

WATER PERMIT NO. 1838-1

Name of Applicant: Mark E Lermeny

Address: PO Box 86, Reva SD 57651

Phone: 605 375-3375

Amount of Water Claimed: 0.055 cfs (25 gpm)

Total Acres: NA

Source of Water Supply: springs

Water to be used for: common distribution system

County: Harding

Type of Waste Disposal System:

Location: 18 miles east of Buffalo

PRIORITY Date Received: 3-10-05

Application/License Fee: \$100

Corrected Application Received:

Period of Annual Use: January 1 – December 31

Remarks: existing system since 1988

Diversion Point: S ½ Sec 32-T19N-R8E

Land to be Irrigated: NA

Depth of Well: NA

Well Driller:

Remarks:

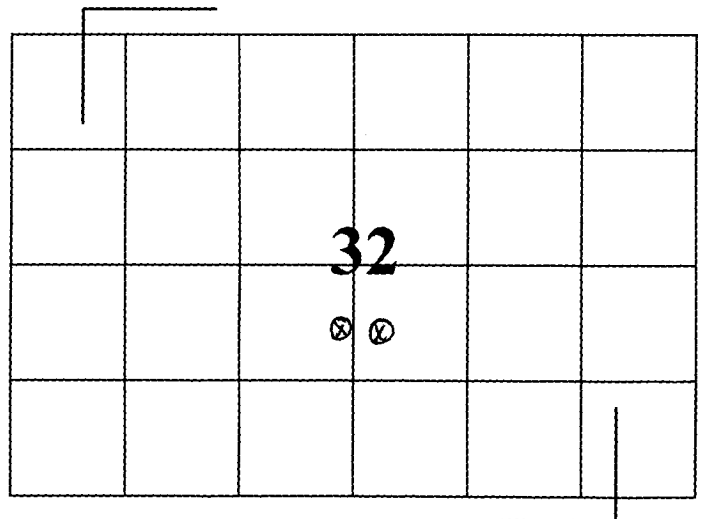
Type of Map: topo

Prepared by: Jerry L Nelson, Buffalo Co NRCS

Reviewed and the Number Assigned on: 3-10-05

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



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

RECEIVED

MAR 10 2005

WATER RIGHTS
PROGRAM

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>1838-1</u>	(office use only) Hydrologic Unit <u>10130302</u>
	Basin <u>Grand River</u>	
	Newspaper <u>Nation's Center News, Buffalo</u>	

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

Check use(s) of water:

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

Type of Application: ☒ 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/Correction to Permit No. _____

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

1. Name of Applicant Mark E. Lermeny Phone 605-375-3375
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address P.O. Box 86 Aera State SD 57451
(Street, RR, or Box and City) (Zip Code)

2. Amount of water claimed 0.055 *CFS or 25 **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 Springs

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) Side Draw's of Doc Hedge
Draw. The S. 1/2 of Section 32 T. 19 N. R. 8 E.
County Harding

5. County or counties where water will be used Harding

6. Annual period during which water is to be used 365 Days a Year Jan 1-Dec 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)

A free flowing Springs, developed into a Pipeline to provide water for Livestock and other Multiple Uses.

STATE OF SOUTH DAKOTA)
County of Harding) SS

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

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

Applicant's signature Mark E. Lermeny

Subscribed and sworn to before me this 8th day of March 20 05

Karen Wilkinson
Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 1838-1**

Date of first receipt of application March 10, 2005.

The Water Management Board approved Water Permit No. 1838-1 on October 4, 2005 for Mark E Lermeny, PO Box 86, Reva SD 57651 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1838-1 appropriates 0.055 cubic feet of water per second (25 gallons per minute) from two springs located in the NE 1/4 SW 1/4 and NW 1/4 SE 1/4 Section 32-T19N-R8E.
2. The water appropriated shall be used for a common distribution system providing water for livestock and other domestic 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 date from which applicant may claim right is March 10, 2005.
5. One-fifth of the construction is to be completed on or before April 4, 2008.
6. All construction is to be completed on or before October 4, 2010.
7. Water is to be put to beneficial use on or before October 4, 2014.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Permit No. 1838-1 does not grant access to springs or right-of-way easement for the pipeline on property not owned by permit holder.
2. The permit holder shall comply with conditions on required federal permits.
3. Low flows as needed for downstream domestic use, including livestock water must be by-passed.

WATER MANAGEMENT BOARD

By: _____

Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

OCT 13 2005

date



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date March 10, 20 05

RECEIVED OF Mark Lemery, Box 86, Rave SD 57651

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

Fee for Application for Permit No. <u>1738-1</u> 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. <u>1738-1</u>	50	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	100.00

No. 00009

By Wayland Eubank

Chief Engineer gm

Points of Diversion

Spring #1

1950ft North + 2700ft East
of SE corner of Sec. 32 T19N R8E

Spring #2

1900ft North + 2130ft East of
SE corner of Sec. 32 T19N R8E

Jerry L. Nelson

Jerry L. Nelson District Conservationist
USDA - NRCS, Buffalo SD



1838-1



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 13, 2005

Mark Nienow
Custer National Forest
1310 Main Street
Billings MT 59105

Dear Mr. Nienow:

Enclosed is a copy of the report, recommendation and public notice for a Water Permit Application No. 1838-1 filed by Mark Lermeny. The notice is scheduled to be public noticed in the Nation's Center News printed in Buffalo South Dakota on May 19th and 26th.

You requested a copy of this information once we were prepared to go to public notice. If you have any questions, please give me a call.

Sincerely,

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

enclosures



United States
Department of
Agriculture

Forest
Service

Custer National Forest

1310 Main Street
Billings, MT 59105
406 657-6200

File Code: 2540

Date: June 3, 2005

Garland Erbele
Chief Engineer
Water Rights Program, SD Dept of Environment and
Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

RECEIVED
JUN - 6 2005
WATER RIGHTS
PROGRAM

Dear Mr. Erbele:

The Forest Service, an agency of the U.S. Department of Agriculture, files this letter as a petition opposing Application No. 1838-1 to Appropriate Water by Mark E. Lermeny of Reva, SD.

The two springs in Section 32, T19N, R8E, which are identified as the sources for Mr. Lermeny's proposed appropriation permit, are located on National Forest System land approximately a third to a half mile above the Forest boundary. Beneficial uses of this water on Forest Service land include livestock grazing, and wildlife and aquatic biota.

The area in and around Section 32 is commonly referred to as "Slim Buttes" and is on the Sioux District of the Custer National Forest. The two Section 32 springs are located within a grazing allotment that the Sioux District manages. Currently, livestock grazing on National Forest System lands in Section 32 drink directly from the two Section 32 springs and from the stream into which the springs flow. In the past, livestock also drank from a water tank located downstream which was filled with water from the springs. The Sioux District is currently evaluating grazing management in the Slim Buttes area and plans to pipe a portion of the flow from these two springs to nearby tanks on National Forest System land to provide off-stream stockwater, reduce livestock-related resource impacts, and improve water quality and riparian conditions.

In addition, an extensive wetland complex exists on National Forest System land along the reach of stream below the two Section 32 springs. Surface flow from these springs feeds this wetland complex and helps sustain wildlife and aquatic habitat and associated species. The Forest Service is concerned about a reduction in surface flow to this wetland complex and a corresponding loss of wildlife and aquatic habitat.

Therefore, at least a portion of the flow from the two Section 32 springs is needed for use on the Forest to both properly manage livestock and meet Forest Plan standards and guidelines concerning wildlife habitat, riparian areas, and water quality. Water from these springs is not available for a continuous diversion of 25 gallons per minute by Mr. Lermeny because it will deplete water flows in the area to the extent that the Forest Service's uses of the water will be impaired.



Although the Forest Service has issued Mr. Lermeney a special use permit for a pipeline from the Section 32 spring sources, the permit is for the purpose of "occupancy and maintenance of a pipeline to provide water for livestock use on private land." The special use permit does not convey any legal interest in water rights and expires on December 31, 2008. (See Attached Special Use Permit signed on 3/12/98 by Mr. Lermeney, Item VII. Other Provisions, E. Water Rights; and Item II.A. Expiration at End of Authorized Period.) Mr. Lermeney's special use permit does not authorize water use for domestic purposes. Although the State of South Dakota includes livestock use within its definition of domestic water use, the Forest Service distinguishes these two types of uses and did not authorize use of the Section 32 springs for human domestic use. The Forest Service issued Mr. Lermeney a special use permit for water use limited to livestock use, to be used in a way which would not deplete the two springs so that enough water from the two springs would remain available for ongoing use of the water for wetland habitat and livestock watering on National Forest System lands.

Sioux District personnel recently met with Mr. Lermeney to discuss his uses and explained the Forest Service's concern regarding Water Permit Application 1838-1. The Forest Service plans to continue these discussions with Mr. Lermeney in the hopes of resolving its objection to Water Permit Application 1838-1 without the need for a hearing.

The Custer National Forest is represented by the USDA-Office of the General Counsel, Missoula Field Office, Missoula Montana. Please contact Jody Miller at 406-329-3069. Her mail address is P.O. Box 7669, Missoula, Montana 59807.

Sincerely,



NANCY T. CURRIDEN
Forest Supervisor

Enclosure

Cc:
Mark Lermeney
Jody Miller, Regional Office

when expires; combine
with 510411
same use type

copy
FS-2700-4 (9/96)
OMB No. 0596-0082

U. S. DEPARTMENT OF AGRICULTURE Forest Service SPECIAL-USE PERMIT Authority: <u>FLPMA Act of 10/21/76</u>	Holder No. 5 0 3 1-0 3	Issue Date <u>03/17/98</u>	Expir. Date 1 2/3 1/0 8
	Type Site(s) 9 1 5 - - -	Authority 6 7 6	Auth. Type 0 0 2 0
	Region/Forest/District 0 1/ 0 8 / 0 3		State/County 4 6/ 0 6 3
	Cong. Dist. 0 2	Latitude 4 5-3 4-0 0	Longitude 1 0 3-1 0-0 0

Mark E. Lermeny
(Holder Name)

of Box 86

(Billing Address - 1)

Reva
(Billing Address - 2)

(City)

SD
(State)

57651
(Zip Code)

(hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the Custer National Forest.

This permit covers a water transmission pipelining of less than 12" diameter made of plastic pipe; covering 1.00 acre and an area 20 feet wide x 3,168 feet long totalling 0.60 miles and is described as SE1/4 of Section 32, T19N, R8E, BHM; as shown on the location map attached to and made a part of this permit, and is issued for the purpose of: Occupancy and maintenance of a pipeline to provide water for livestock use on private lands. See attached map (Exhibit A by Laurie Walters-Clark and dated 01/98 for location.

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on December 31, 2008. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 365 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits, laws, or regulation.

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the authorized officer and shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form FS-2700-3, Special Use Application and Report, or Form FS-2700-3a, Request for Termination of and Application for Special-Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this permit. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all

administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

C. The holder has an affirmative duty to protect from damage the land, property, and interests of the United States.

D. In the event of any breach of the conditions of this authorization by the holder, the Authorized Officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.

E. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

F. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VI. FEES

A. Termination for Nonpayment. This permit shall automatically terminate without the necessity of prior notice when land use rental fees are 90 calendar days from the due date in arrears.

B. The holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use granted by this authorization. The initial payment is set at \$51.00 for the remainder of the calendar year. Subsequent payments shall be determined by the use of an annual fee schedule. The Forest Service may adjust the amount of payment annually by an appropriate indexing factor to reflect more nearly the fair market value of the use. At certain intervals the Forest Service shall review the fee and adjust the fee as necessary to assure that it is commensurate with the fair market value of the authorized rights and privileges, as determined by appraisal or other sound business management principles.

C. Payment Due Date. The payment due date shall be the close of business on January 1 of each calendar year payment is due. Payments due the United States for this use shall be deposited at Collection Officer, FS, Northern Region, P.O. Box 60,000, File No. 51653, San Francisco, CA 94160-1653 in the form of a check, draft, or money order payable to "Forest Service, USDA." Payments shall be credited on the date received by the designated Forest Service collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non workday, the charges shall not apply until the close of business on the next workday.

D. Late Payment Interest. Pursuant to 31 USC 3717, and regulations at 7 CFR Part 3, Subpart B, and 4 CFR Part 102, an interest charge shall be assessed on any payment or financial statement not received by the due date. Interest shall be assessed using the most current rate prescribed by the United States Department of Treasury's Financial Manual (TFM-6-8020). Interest shall accrue from the date the payment or financial statement was due. In the event that two or more billings are required for delinquent accounts, administrative costs to cover processing and handling of the delinquent debt will be assessed.

E. Additional Penalties. In the event of permit termination pursuant to provisions VI (A), and prior to the issuance of a new permit, a penalty of 6 percent per year shall be assessed on any fee amount overdue in excess of 90 days from the payment due date. This penalty shall accrue from the due date of the first billing or the date the fee calculation financial statement was due. The penalty is in addition to interest and any other charges specified in the above paragraph.

F. Disputed Fees. Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or appeal decision.

G. Delinquent Fees.

1. Delinquent fees and other charges shall be subject to all rights and remedies afforded the United States pursuant to Federal law and implementing regulations (31 U.S.C. 3711 et seq.).

2. The authorized officer shall require payment of fees owed the United States under any Forest Service authorization before issuance of a new permit.

VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. Improvement Relocation. This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer. (X-33)

E. Water Rights. This authorization does not convey any legal interest in water rights as defined by applicable State law. (X-74)

F. Periodic Inspections. The holder understands that periodic inspections by and for the Forest Service are necessary for monitoring special-use authorization compliance. Therefore, the holder agrees to make the authorized premises, improvement, facilities, and activities available and accessible for inspection by, and on behalf of, the Forest officer in charge and/or any other duly authorized official. (R1-X19)

G. Superseded Authorization. This authorization supersedes a special-use authorization designated: Permit issued on 6/13/88 to Mark E. Lermeny which has expired. (X-18)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to

promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

This permit is accepted subject to the conditions set out above.

HOLDER NAME: MARK E. LERMENY

U. S. DEPARTMENT OF AGRICULTURE
Forest Service

By: X Mark E. Lermeny
MARK E. LERMENY

By: Nancy T. Curriden
NANCY T. CURRIDEN

(Holder Signature)

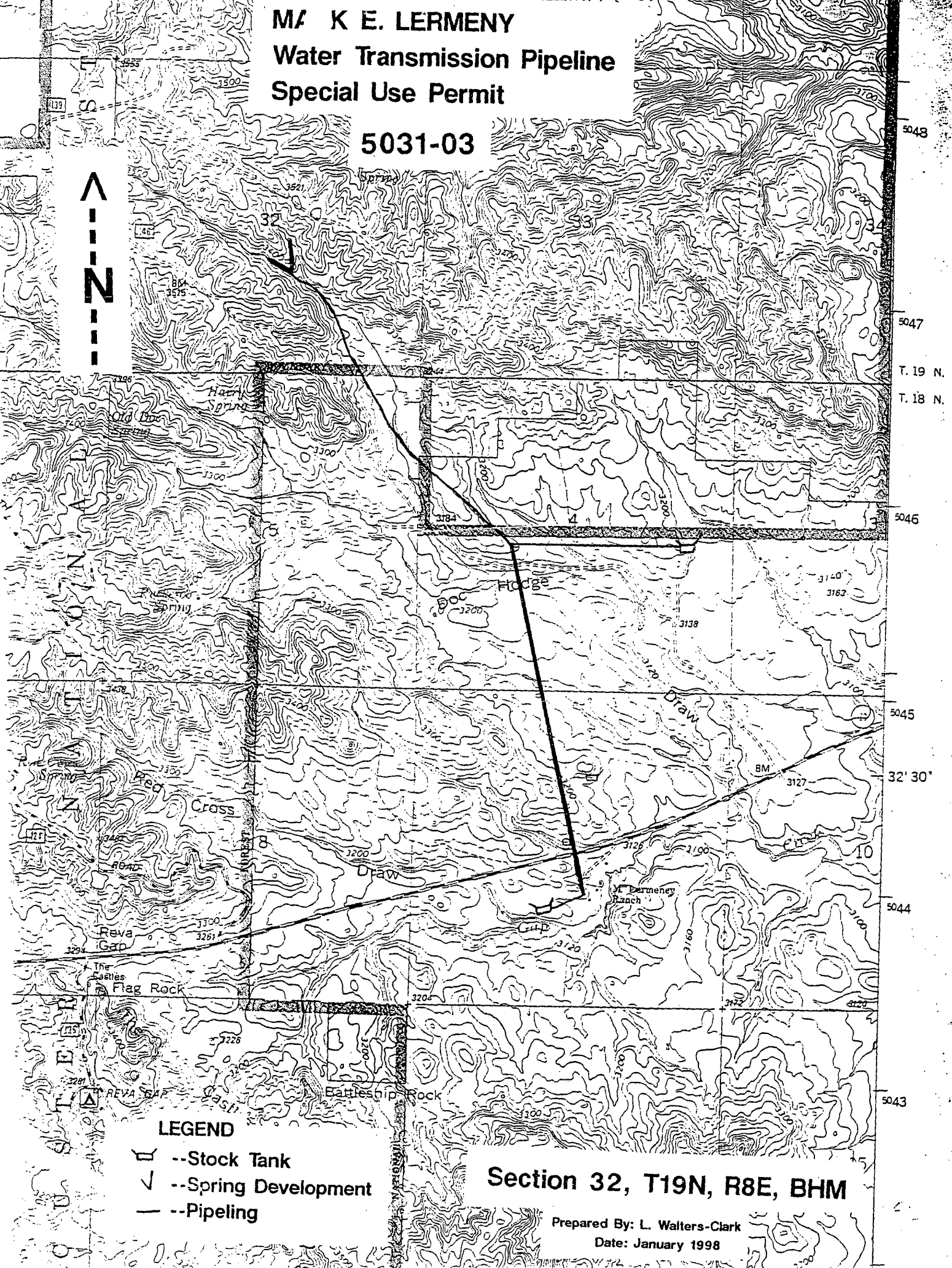
FOREST SUPERVISOR

Date: X 3-12-98

Date: 3/17/98

M/ K E. LERMENY
Water Transmission Pipeline
Special Use Permit

5031-03



LEGEND

- Stock Tank
- Spring Development
- Pipeling

Section 32, T19N, R8E, BHM

Prepared By: L. Walters-Clark
Date: January 1998

HEADING**DECISION MEMO**

LERMENY WATER TRANSMISSION LINE SPECIAL USE PERMIT
SIOUX RANGER DISTRICT, CUSTER NATIONAL FOREST
HARDING COUNTY, SOUTH DAKOTA
Slim Buttes. T.19N., R.8E., Section 32

DECISION

The Sioux Ranger District of the Custer National Forest has decided to issue a special use permit to Mark Lermeny for a water transmission line which serves as a livestock water supply source. The purpose of this decision is to approve the continued use of an existing pipeline. There will be no new ground disturbance. The permit will be issued for a ten year period.

**REASONS FOR
CATEGORICALLY
EXCLUDING THE
PROPOSED PROJECT**

This action is categorically excluded from documentation in an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under category 3(g) of FSH 1909.15-92-1.31.2. The following factors were considered in making the determination to categorically exclude this project from further documentation:

1. The proposed action will meet the standards and direction of the Custer National Forest Land and Resources Management Plan (NFMA).
2. There will be no effect on threatened, endangered or sensitive plants or animals.
3. There will be no effect on heritage resources.
4. No extraordinary circumstances exist that might cause the proposed action to have significant effects.

**SCOPING AND
PUBLIC
INVOLVEMENT**

Public involvement included placing a news release in the Nation Center News. No comments were received concerning the issuance of this permit.

**FINDINGS
REQUIRED BY
OTHER LAWS**

I have reviewed the project and find the decision is consistent with the Custer National Forest Plan as well as all applicable Federal, State and Local Laws for protection of the environment.

**ADMINISTRATIVE
REVIEW OR APPEAL
OPPORTUNITIES**

As this decision is a reaffirmation of a prior decision, this decision is not subject to appeal. (CFR 251.83 (o).)

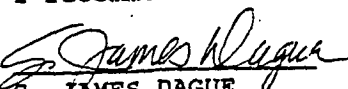
**IMPLEMENTATION
DATE**

Implementation of this decision will occur on the date this Decision Memo is signed.

CONTACT PERSON

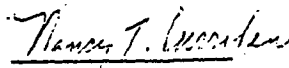
Laurie Walters-Clark
Sioux Ranger District
PO Box 32
Camp Crook, SD 57724
605-797-4432

I recommend:


G. JAMES DAGUE
DISTRICT RANGER

02/02/98
DATE

I approve:


NANCY T. CURRIDEN
FOREST SUPERVISOR

2/13/98
DATE



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 12, 2005

NOTICE

TO: Mark E Lermeny
PO Box 86
Reva SD 57651

Nancy T Curriden, Forest Supervisor
Custer National Forest
1310 Main Street
Billings MT 59105

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Notice of Hearing on Water Permit Application No. 1838-1, Mark E Lermeny

The United States Forest Service has submitted a petition in opposition to issuance of Water Permit Application No. 1838-1 filed by Mark E Lermeny. The petition was filed in response to the Notice of Application to appropriate water published in the Nation's Center News printed in Buffalo SD. This notice schedules a hearing before the Water Management Board to consider this application.

Application No. 1838-1 proposes to appropriate 0.055 cubic feet of water per second (25 gallons per minute) from two springs located in the NE ¼ SW ¼ and NW ¼ SE ¼ Section 32-T19N-R8E. This application is for a common distribution system providing water for livestock and other domestic purposes.

In response to the Forest Service's petition the Chief Engineer has revised his recommendation. A copy of the revised recommendation is enclosed.

The Water Management Board will conduct a hearing to consider Application No. 1838-1 at 10:30 AM (CST) on Tuesday, October 4, 2005 in the Conference Room at the Pierre Chamber of Commerce Building, 800 West Dakota Avenue, Pierre SD. Future notice will be provided to all parties if there are changes to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1838-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. 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 the application based on the evidence presented at the public hearing.

The October 4, 2005, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any party of record opposing the application. The request for an automatic delay must be filed by September 23, 2005.

This hearing may be an adversarial proceeding. Any party of record and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Notice is further given to persons with disabilities that this hearing is being held in a physically accessible place and that interpreter services will be provided, upon request, during the hearing. Please notify Eric Gronlund at (605) 773-3352 by September 23, 2005, if you have any questions about the hearing process or have special needs for which the department will make arrangements.

The application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-23; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

c: Diane Best, Assistant Attorney General
Jody Miller, USDA – Office of the General Counsel, PO Box 7669, Missoula MT 59807

enclosure

NOTE: Since this matter does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case need not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by September 23, 2005.

CERTIFICATION

I hereby certify that on July 12, 2005 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 12, 2005 regarding Notice of Hearing on Water Permit Application No. 1838-1 addressed as stated below:

Mark E Lermeny
PO Box 86
Reva SD 57651

Nancy T Curriden Forest Supervisor
Custer National Forest
1310 Main Street
Billings MT 59105

Jody Miller USDA
Office of the General Counsel
PO Box 7669
Missoula MT 59807

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

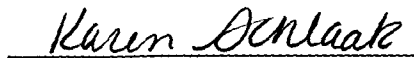
Diane Best, Assistant Attorney General, Capitol Building



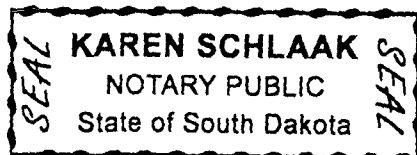
Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of July, 2005.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





United States Department of Agriculture
Office of the General Counsel

Mountain Region - Missoula Office
340 North Pattee, Suite 205
P.O. Box 7669
Missoula, MT 59807

Telephone: 406-329-3066
Facsimile: 406-329-3064

August 22, 2005

Garland Erbele, Chief Engineer
Water Rights Program, SD Dept. of Environment & Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501

RE: Water Permit Application No. 1838-1
Applicant Mark E. Lermeney

Dear Mr. Erbele:

I have enclosed for filing the United States (USDA-Forest Service) Notice of Serving First Sets of Discovery for Water Permit Application No. 1838-1.

Please return the yellow photocopy of the first page of this notice, file-stamped, in the stamped, self-addressed envelope provided.

Sincerely,

MARK D. LODINE
Associate Regional Attorney

JODY MILLER
Attorney Advisor
Office of the General Counsel
P.O. Box 7669
Missoula, MT 59807
(406) 329-3069

RECEIVED
AUG 25 2005
WATER RIGHTS
PROGRAM

Enclosure

MARK D. LODINE
Assistant Regional Attorney
OFFICE OF THE GENERAL COUNSEL
Jody M. Miller
Attorney Advisor
P.O. Box 7669
Missoula MT 59807
(406) 329-3069

BEFORE THE SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

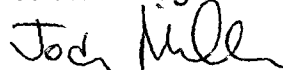
IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 1838-1 BY MARK E.)
LERMENY)
_____)

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

The United States of America (USDA-Forest Service) gives notice that, on
today's date, it is serving discovery for Water Permit Application No. 1838-1 on
Applicant Mark E. Lermeny.

Dated this 22nd day of August, 2005.

MARK D. LODINE
Assistant Regional Attorney



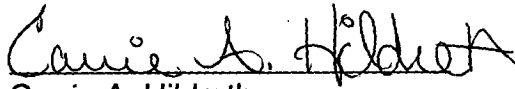
JODY MILLER
Attorney Advisor
Office of the General Counsel
P.O. Box 7669
Missoula, MT 59807

CERTIFICATE OF SERVICE

I, Carrie A. Hildreth, Office Automation Clerk for the UNITED STATES (USDA - Office of the General Counsel), which agency performs clerical and technical services for those attorneys representing the UNITED STATES OF AMERICA, hereby certify that a true and correct copy of the **Notice of Service of Interrogatories & Requests For Production of Documents** was mailed via First Class mail, postage prepaid, to the following on this 22nd day of August, 2005:

Mark E. Lermeny
P.O. Box 86
Reva, SD 57651

Diane Best, Assistant Attorney General
State of South Dakota, Attorney Generals Office 1st Floor
500 E. Capitol Avenue
Pierre, SD 57501-5070


Carrie A. Hildreth



United States
Department of
Agriculture

Forest
Service

Custer National Forest

1310 Main Street
Billings, MT 59105
406 657-6200

File Code: 2540-1

Date: September 28, 2005

Garland Erbele
Chief Engineer
Water Rights Program, South Dakota Department of
Environment & Natural Resources
Joe Foss Building
523 E Capitol
Pierre, SD 57501

RECEIVED
OCT - 3 2005
WATER RIGHTS
PROGRAM

Dear Mr. Erbele,

The Forest Service files this letter to withdraw our objection (dated June 3, 2005) to Application No. 1838-1 to Appropriate Water by Mark E. Lermeny of Reva, SD.

I support your revised recommendations for this permit (dated July 12, 2005), which include the following qualifications:

1. Permit No. 1838-1 does not grant access to springs or right-of-way easement for the pipeline on property not owned by permit holder.
2. The permit holder shall comply with conditions on required federal permits.
3. Low flows as needed for downstream domestic use, including livestock water must be by-passed.

I would like to recognize the existing Forest Service right, under South Dakota Water Law, to continue to use groundwater and surface water with the same source as the waters identified in this permit, for the purposes of livestock management on National Forest System land.

Thank you for your time and patience on this matter.

Sincerely,

Gary L. Benes

for

NANCY T. CURRIDEN
Forest Supervisor

Cc:

Mark E. Lermeny, PO Box 86, Reva, SD 57651
Jody Miller, PO Box 7669, Missoula, MT 59807
Rhonda O'Byrne, Sioux District Ranger



REPORT ON WATER PERMIT APPLICATION 1838-1

Mark E. Lermeny

PO Box 86

Reva, SD 57651

(605)375-3375

Water Permit Application No. 1838-1, Mark E. Lermeny, proposes to appropriate 0.055 cubic feet per second (cfs) of water from two (2) springs located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32 T19N R8E near Reva, Harding County, SD for a common distribution system (Attachment 1). The distribution system will provide water for livestock and other domestic uses.

Proposed Project

A pipeline has been in place since 1988 that transports 23 gallons per minute (0.05-cfs) to a 1000 gallon cistern. The water is then distributed through about 14 miles of pipeline to pastures and ranch homes in the area for domestic use to include livestock watering. SDCL 46-1-6 (7) defines domestic use of water as not exceeding 18 gallons per minute (gpm) on an average daily basis and SDCL 46-5-8.2 requires a water distribution system diverting more than 18-gpm make application to the Water Management Board for a permit to appropriate water.

Water Source

The water source for the proposed project is two springs located on Custer National Forest land between Buffalo and Reva, Harding County, SD. This area of Custer National Forest has over a dozen springs (Attachment 2). The U.S. Forest Service staff at Custer National Forest at Camp Crook, SD and Billings, Mt is aware of the Lermeny system and issued a special use permit for use of the springs.

Existing Water Rights

There are no existing water rights in the area of the springs or the Lermeny Ranch.

Conclusions

1. Water Permit Application No. 1838-1, Mark E. Lermeny, proposes to appropriate 0.055 cubic feet per second (cfs) of water from two (2) springs located on Custer National Forest land in Harding County, SD
2. South Dakota statutes require a water distribution system using more than 18-gpm obtain a permit to appropriate water.
3. This application will not impair any prior water rights.



Donald E. Stroup

Natural Resources Project Engineer

DENR Water Rights Program

Reviewed by:



Mark D. Rath

Natural Resources Engineering Specialist

DENR Water Rights Program

References:

South Dakota Department of Environment and Natural Resources, Water Rights Program Records

Communications with USFS Personnel Camp Crook, SD and Billings, MT

Attachment 2. Custer National Forest, Buffalo, SD



Permit # 1838-1
Mark E. Lermeny
PO Box 86
Reva, SD 57651

T19N-R8E

Running
Spring

Spring

Spring

BM 3515

0.125 0.25 0.375 0.5 Miles

Harry



Donald E. Stroup

Donald E. Stroup
Natural Resources Project Engineer
DENR Water Rights Program

Attachment 1



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1838-1, Mark E Lermeny**

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. 1838-1, Mark E Lermeny, PO Box 86, Reva SD 57651.

The Chief Engineer is recommending APPROVAL of Application No. 1838-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest.

See report on application for additional information.

Garland Erbele, Chief Engineer
May 11, 2005



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1838-1, Mark E Lermeny**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 1838-1, Mark E Lermeny, PO Box 86, Reva SD 57651.

The Chief Engineer is recommending APPROVAL of Application No. 1838-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications.

1. Permit No. 1838-1 does not grant access to springs or right-of-way easement for the pipeline on property not owned by permit holder.
2. The permit holder shall comply with conditions on required federal permits.
3. Low flows as needed for downstream domestic use, including livestock water must be bypassed.

Garland Erbele, Chief Engineer
July 12, 2005



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

May 13, 2005

Mark E Lermeney
PO Box 86
Reva SD 57651

Dear Mr. Lermeney:

Water Permit Application No. 1838-1 for common distribution system use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Nation's Center News printed at Buffalo, SD (Ph # 605-375-3228). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. 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.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 13, 2005

Nation's Center News
PO Box 107
Buffalo SD 57720-0107

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 1838-1 to Appropriate Water to be published twice. Please publish the first notice on May 19, 2005 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Mark E Lermeny, PO Box 86, Reva SD (Ph # 605-375-3375).

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

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 1838-1

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

Date _____

We are in receipt of your letter of May 13, 2005 enclosing Notice to Appropriate Water by Application No. 1838-1 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

Instruction to Newspaper - Publish first Notice on May 19, 2005 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 1838-1 to Appropriate Water

Notice is given that Mark E Lermeny, PO Box 86, Reva SD 57651 has filed an application for a water permit to appropriate 0.055 cubic feet of water per second (25 gallons per minute) from two springs located in the NE ¼ SW ¼ and NW ¼ SE ¼ Section 32-T19N-R8E. This application is for a common distribution system providing water for livestock and other domestic purposes.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1838-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 6, 2005.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF HARDING:

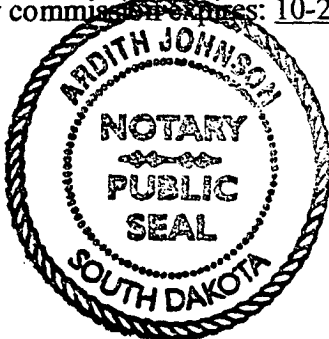
Stewart Huntington of said County and State being first duly sworn, on his oath says: That the NATION'S CENTER NEWS is a legal weekly newspaper of general circulation, printed and published in the City of Buffalo, in said County and State by Stewart Huntington, and has been such a newspaper during the 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, Stewart Huntington, 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 Application
No 1838-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 2 successive and consecutive weeks, the first publication being made on the 19th day of May, 2005, and the last publication on the 26th day of May, 2005, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 38.41, insures solely to the benefit of the publisher of the NATION'S CENTER NEWS, 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 26th day of May, 2005

[Signature]
Notary Public, Lawrence County, South Dakota
My commission expires: 10-24-2010



NOTICE OF APPLICATION NO. 1838-1 to Appropriate Water

NOTICE IS GIVEN that Mark E Lermeny, PO Box 86, Reva SD 57651 has filed an application for a water permit to appropriate 0.055 cubic feet of water per second (25 gallons per minute) from two springs located in the NE1/4 SW1/4 and NW1/4 Section 32-T19N-R8E. This application is for a common distribution system providing water for livestock and other domestic purposes.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1838-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting 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 appli-

cant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 6, 2005.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

#86
May 19, 26

RECEIVED
JUN - 1 2005
WATER RIGHTS PROGRAM



June 1, 2005

Nation's Center News
PO Box 107
Buffalo SD 57720-0107

ATTENTION: Legal Public Notice

The Notice of Application for Water Permit No. 1838-, Mark E Lermeny, PO Box 86, Reva SD (Ph # 605-375-3375) was published May 19 and 26 with an error in the legal description of the two springs. The Notice stated the springs were located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ Section 32-T19N-R8E. The correct location is NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32-T19N-R8E. We contacted the newspaper with the correction to be made in the May 26th publication. The correction was not made.

Enclosed is a Notice of Application No. 1838-1 to Appropriate Water to be published twice. Please publish the first notice on June 9, 2005 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 1838-1

Date _____

We are in receipt of your letter of June 1, 2005 enclosing Notice to Appropriate Water by Application No. 1838-1 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

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

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 1, 2005

Mark E Lermeney
PO Box 86
Reva SD 57651

Dear Mr. Lermeney:

The Notice of Application for Water Permit No. 1838-1 was published with an error in the legal description of the two springs. The Notice stated the springs were located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ Section 32-T19N-R8E. The correct location is NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32-T19N-R8E. We contacted the newspaper with the correction to be made in the May 26th publication. The correction was not made.

As a result of the error, the legal notice will need to be readvertised. The readvertisement is needed to ensure the permit is free from legal problems due to inaccurate and incomplete public notice. The information to readvertise is enclosed. Be sure to contact the Nation's Center News (Phone 605 375-3228) to authorize publication on June 9 and 16, 2005 and arrange for payment.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-335 enclosures

enclosures

Instruction to Newspaper - Publish first Notice on June 9, 2005 with the second publication 7 days later.

NOTICE OF APPLICATION NO. 1838-1 to Appropriate Water

Notice is given that Mark E Lermeny, PO Box 86, Reva SD 57651 has filed an application for a water permit to appropriate 0.055 cubic feet of water per second (25 gallons per minute) from two springs located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32-T19N-R8E. This application is for a common distribution system providing water for livestock and other domestic purposes.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1838-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 27, 2005.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication

STATE OF SOUTH DAKOTA: COUNTY OF HARDING:

Stewart Huntington of said County and State being first duly sworn, on his oath says: That the NATION'S CENTER NEWS is a legal weekly newspaper of general circulation, printed and published in the City of Buffalo, in said County and State by Stewart Huntington, 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, Stewart Huntington, 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 Application
No. 1838-1

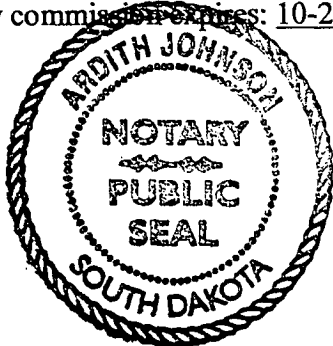
a printed copy of which is hereto attached, was printed and published in said newspaper for 2 successive and consecutive weeks, the first publication being made on the 9th day of June, 2005, and the last publication on the 16th day of June, 2005, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 0, insures solely to the benefit of the publisher of the NATION'S CENTER NEWS, 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 16th day of June, 2005

[Signature]

Notary Public, Lawrence County, South Dakota
My commission expires: 10-24-2010



NOTICE OF APPLICATION NO. 1838-1 to Appropriate Water

NOTICE IS GIVEN that Mark E Lermeny, PO Box 86, Reva SD 57651 has filed an application for a water permit to appropriate 0.055 cubic feet of water per second (25 gallons per minute) from two springs located in the NE1/4 SW1/4 and NW1/4 SE1/4 Section 32-T19N-R8E. This application is for a common distribution system providing water for livestock and other domestic purposes.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1838-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights

Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 27, 2005.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, department of Environment and Natural resources.

#105
June 9, 16

RECEIVED

JUN 29 2005

WATER RIGHTS
PROGRAM



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

OCT 13 2005

Mark E Lermeney
PO Box 86
Reva SD 57651

Dear Mr. Lermeney:

Enclosed is Water Permit No. 1838-1 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

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

enclosures

**NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE**

Date 10-13-05

TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

RECEIVED
OCT 20 2005
WATER RIGHTS
PROGRAM

FROM: Mark E. Lermeney
(name)

P.O. Box 86
(address)

Reva S.D. 57651
(city, state, zip)

605-375-3375
(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

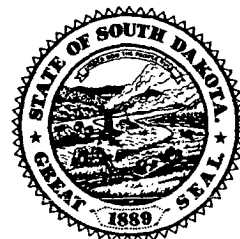
Water Permit No. 1838-1 states that the water use system is to be constructed by
April 4, 2008, and water is to be put to beneficial use by Oct. 4, 2014.
(date) (date)

The water use system was completed on Nov. 1988.
(date)

Applying the water to beneficial use was completed on Nov. 1988.
(date)

You may schedule an investigation so that the water license may be issued.

Mark E. Lermeney
(signature)



Permit No. 1838-1
Grand River - Water District

Report Of Examination Of Works And/Or Application of Water To Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, **October 27, 2005**, made a thorough examination of the water use system constructed by **Mark E. Lermeny** of **P.O. Box 86, Reva, SD 57651** holder of Permit No. **1838-1**, bearing the priority of **March 10, 2005** authorizing the diversion of **0.055 (25 gpm)** cu. ft. per second of the waters of **two springs** for **a common distribution system providing water for livestock and other domestic purposes**, in **Harding** County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

Collection system at two springs and a 1000 gal. cistern

B. Works used to transport water to place of use:

Approximately 18 miles of 2 inch buried PVC pipe

C. Works used to apply water to beneficial use:

The system serves four households and numerous water tanks

The system is in the following condition **good**. The point of diversion is located **Spring #1—1950 ft. north & 2700 ft. west of the SE corner of Sec. 32-T19N-R8E (NE ¼ SW ¼) (Lat. 45.56479, Long. -103.16686); Spring #2—1900 ft. north & 2130 ft. west of the SE corner of Sec. 32-T19N-R8E (NW ¼ SE ¼) (Lat. 45.56466, Long. -103.164839).** The works are capable of diverting and conveying to the place of use **0.055 (25 gpm)** cu. ft. per second of water which is to be used for **a common distribution system providing water for livestock and other domestic purposes**.

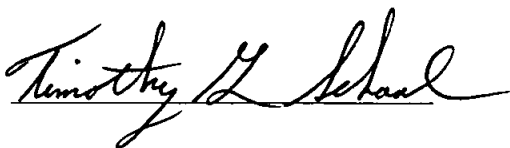
Water has been put to beneficial use to the maximum extent as follows:

An existing common distribution system serving four households and numerous water tanks. The system had approximately 20 - 25 gpm overflow on the day of inspection.

and the license should be issued for **0.055 (25 gpm)** cfs.

Applicable permit qualifications have been complied with: Yes **X**

Exceptions to compliance are: **none** Date Report Completed: **January 27, 2006**



Timothy G. Schaal, P.E.
Natural Resources Engineer Specialist
DENR, Water Rights Program

REPORT ON INSPECTION OF PERMIT NO. 1838-1

DATE OF INSPECTION: October 27, 2005

NAME & ADDRESS OF INSPECTION CONTACT/ Mark E. Lermeny

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: owner

NAME & ADDRESS OF PERMIT HOLDER: Mark E. Lermeny, P.O. Box 86, Reva, SD 57651

DIVERSION POINT LEGAL LOCATION: Spring #1—1950 ft. north & 2700 ft. west of the SE corner of Sec. 32-T19N-R8E (NE ¼ SW ¼) (Lat. 45.56479, Long. -103.16686); Spring #2—1900 ft. north & 2130 ft. west of the SE corner of Sec. 32-T19N-R8E (NW ¼ SE ¼) (Lat. 45.56466, Long. -103.164839).

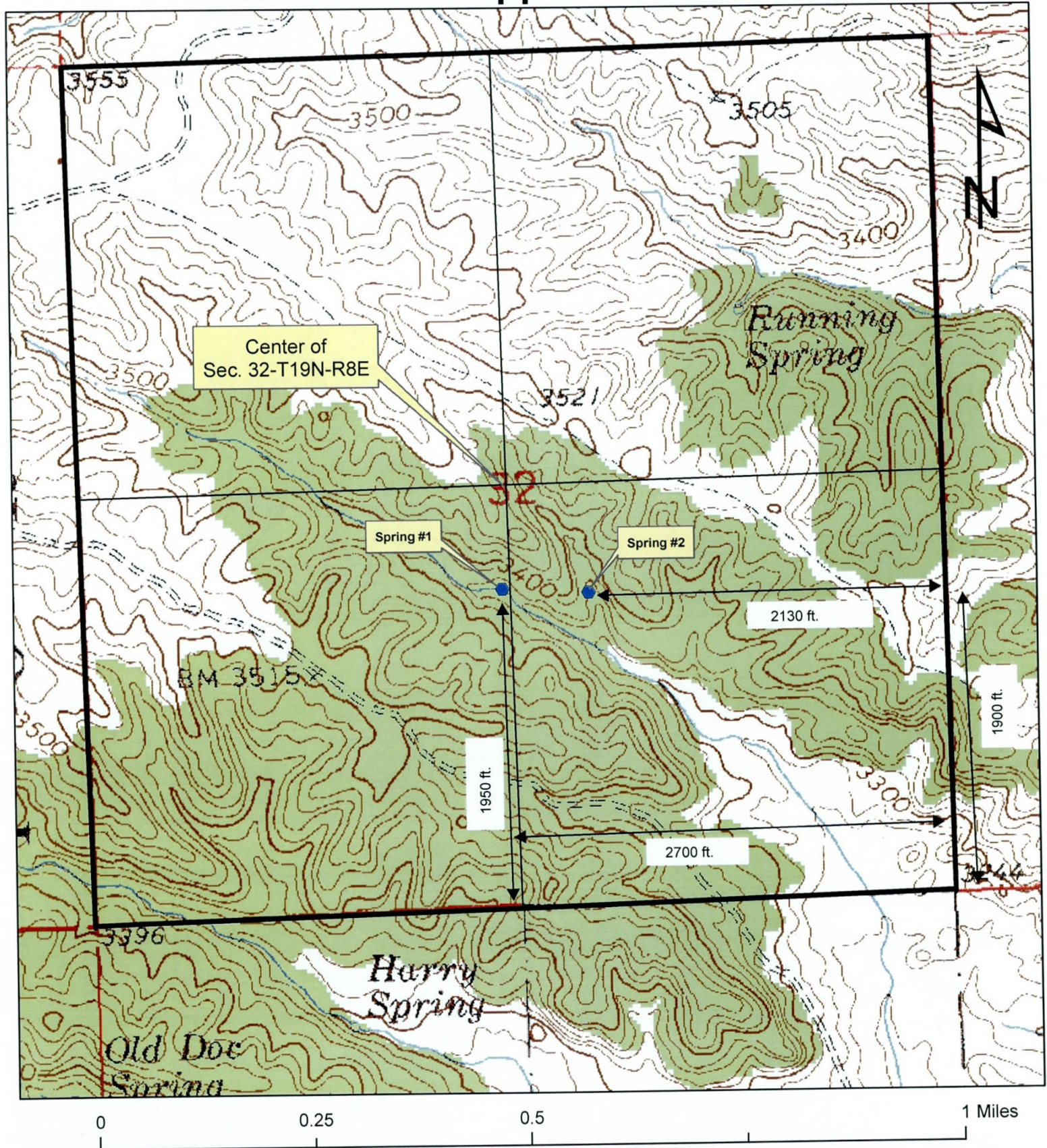
DISTRIBUTION LINES OR CANALS:

1) Type Buried PVC 2) Size 2 inches 3) Length approximately 18 miles

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Soil and water permit lands agree with lands being irrigated and lands listed on permit N/A
- 2) Special qualifications to permit being abided by yes
- 3) All structures, wells and lands on map yes
- 4) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period N/A

Water Permit Application No. 1838-1



Timothy G. Schaal

Timothy G. Schaal, P.E.
Natural Resources Engineering Specialist
DENR, Water Rights Program

1/27/06

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 1838-1

(1) Mark E Lermeny, PO Box 86, Reva SD 57651 made Application No. 1838-1, March 10, 2005 for a water permit to divert 0.055 cubic feet of water per second from two springs located in Harding County, South Dakota for use in a common distribution system providing water for livestock and other domestic uses. Permit No. 1838-1, with a priority date of March 10, 2005 was approved October 4, 2005 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before October 4, 2010 and for the application to beneficial use of water on or before October 4, 2014.

The permit holder submitted a "*Notice of Completion of Works and Application of Water to Beneficial Use*" on October 25, 2005. The "*Notice*" indicated the water use system was completed and water placed to beneficial use in November, 1988.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 0.055 cubic feet of water per second (25 gallons per minute) for beneficial use. The location of the diversion points are:

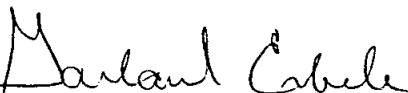
- **Spring #1** – 1,950 feet north and 2,700 feet west of the SE corner of Section 32, T19N, R8E (NE ¼ SW ¼);
- **Spring #2** – 1,900 feet north and 2,130 feet west of the SE corner of Section 32, T19N, R8E (NW ¼ SE ¼).

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use. The existing distribution system serves four households and numerous water tanks.

(4) Pursuant to South Dakota Water Law 46-5-30.1 Mark E Lermeny, PO Box 86, Reva SD 57651 the holder and/or owner of Water Right No. 1838-1 is issued a license to appropriate water, the right to use 0.055 cubic feet of water per second (25 gallons per minute) from two springs with a priority date of March 10, 2005 from the locations specified in (2) of this license. The water is used in a common distribution system providing water for livestock and other domestic uses.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 1838-1 and subject to the following qualifications:

- Water Right No. 1838-1 does not grant access to springs or right-of-way easement for the pipeline on property not owned by permit holder.
- The water right holder shall comply with conditions on required federal permits.
- Low flows as needed for downstream domestic use, including livestock water must be by-passed.



Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

MAR 13 2006
date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

MAR 13 2006

1838-1

Mark E Lermeny
PO Box 86
Reva SD 57651-0086

Dear Mr. Lermeny:

Enclosed is your Water License No. 1838-1 and a copy of the map prepared by the staff engineer who conducted the field investigation.. Water License No. 1838-1 is the final document which completes the process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

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

enclosures