

WATER PERMIT NO. 1851-1

Name of Applicant: Richard Niehoff

Address: 6809 Deadwood Ave N, Rapid City SD 57702

Phone: 605 787-5500

Amount of Water Claimed: 0.33 cfs

Total Acres: 9.7

Source of Water Supply: spring

Water to be used for: irrigation

County: Meade

Type of Waste Disposal System:

Location: 1 mile east of BlackHawk

PRIORITY Date Received: 8-4-05

Application/License Fee: \$200

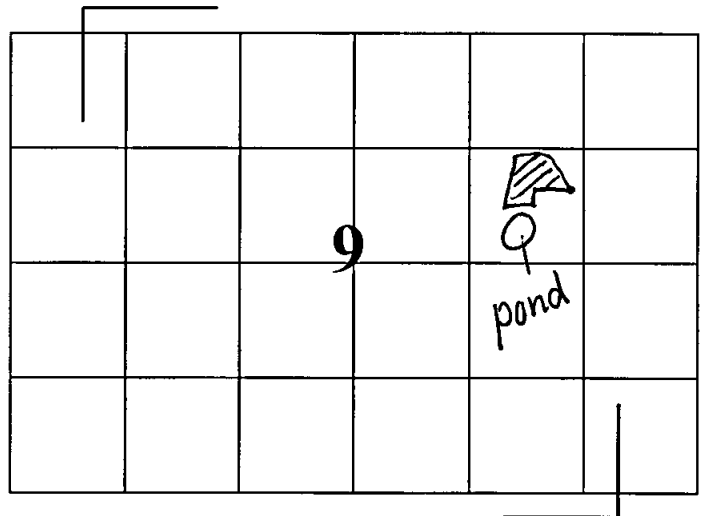
Corrected Application Received: 8-11-05

Period of Annual Use: May 1 – October 31

Remarks:

Diversion Point: SE ¼ NE ¼ Sec 9-T2N-R7E

Land to be Irrigated: SE ¼ NE ¼ Sec 9-T2N-R7E



Depth of Well: NA

Well Driller:

Remarks:

Type of Map: plat

Prepared by: Jerry Wendland, RLS

Reviewed and the Number Assigned on: 8-12-05

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>1851-1</u>	(office use only) Hydrologic Unit <u>10120111</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Meade Co Times-Tribune, Sturgis</u>	

RECEIVED
AUG - 4 2005
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: ☒ New ☐ Vested Right ☐ Amendment/Correction to Permit No. _____
(Use predates Mar 2, 1955)

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

- Name of Applicant Richard Niehoff Phone 605 787-5500
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 6809 Deadwood Ave. N., Rapid City State SD 57702
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 0.33 *CFS or 150 **GPM ***AF Total Acreage 9.7
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Spring fed pond
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
We are sending a map to you to view.
SE 1/4 NE 1/4 Section 9 T2N, R7E B1M County Meade SD
- County or counties where water will be used Meade
- Annual period during which water is to be used May 1 - Oct. 31
- List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
<u>SE 1/4 NE 1/4 Section 9,</u>	<u>9.7</u>		
<u>T2N, R7E B1M</u>			
<u>Meade County SD</u>			

8. Give a description of the project. (Attach sheet if more space is needed)

Sheet is sent explaining.

STATE OF SOUTH DAKOTA) SS
County of Meade

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, Richard Niehoff, 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 Richard Niehoff

Subscribed and sworn to before me this 03 day of Aug 2005

Patricia Small
Notary Public signature

SOUTH DAKOTA

WATER PERMIT NO. 1851-1 FOR IRRIGATION

Date of first receipt of application August 4, 2005.

Date of return to applicant for corrections, amendments or changes August 4, 2005.

Date of receipt of corrected application August 11, 2005.

The Water Management Board approved Water Permit No. 1851-1 on March 3, 2006 for Richard Niehoff, 6809 Deadwood Ave N, Rapid City SD 57702 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. 1851-1 appropriates 0.33 cubic feet of water per second (cfs) from a spring fed pond at the confluence of an unnamed tributary with Black Hawk Creek located in the SE ¼ NE ¼ Section 9 to irrigate 9.7 acres located in the SE ¼ NE ¼ Section 9; all in T2N-R7E. The storage capacity of the pond is approximately 6.5 acre feet of water.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – October 31.
3. The date from which applicant may claim right is August 4, 2005.
4. One-fifth of the construction is to be completed on or before September 3, 2008.
5. All construction is to be completed on or before March 3, 2011.
6. Water is to be put to beneficial use on or before March 3, 2015.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Water Permit No. 1851-1 authorizes a pond on Black Hawk Creek at its junction with an unnamed tributary with a storage capacity of 6.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation.
2. Permit No. 1851-1 limits the diversion rate from the pond to the statutory limit of 0.14 cubic feet of water per second (62 gpm) for irrigation of 9.7 acres unless the number of hours of irrigation per day are reduced to a corresponding equivalent time period and the total amount of water applied does not exceed 24 inches per year. At a pumping rate of 0.33 cfs (150 gpm), the pumping time shall not exceed 10 hours per day.
3. The pond must be maintained with a bypass mechanism capable of bypassing all or part of the inflow as directed by the Chief Engineer to satisfy downstream domestic use, including livestock water and prior water rights. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

(continued)

4. A permanent benchmark from a local datum shall be established near the pond for the purpose of referencing the pond at the 6.5 acre feet storage capacity. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held by the Water Rights Program.
5. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

APR 27 2008

date



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date August 11, 20 05

RECEIVED OF Richard Niehoff, 6809 Deadwood Ave N, Rapid City SD 57702

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>1851-6</u>		
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	50.00

No.

001929

By

Darland Elbeke
Chief Engineer
gm

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date August 4, 20 05

RECEIVED OF Richard Niehoff, 6809 Deadwood Ave N, Rapid City SD 57702

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

Fee for Application for Permit No. <u>1851-1</u> to Appropriate Water, to construct and to put water to beneficial use	150	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. _____		
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	150.00

No.

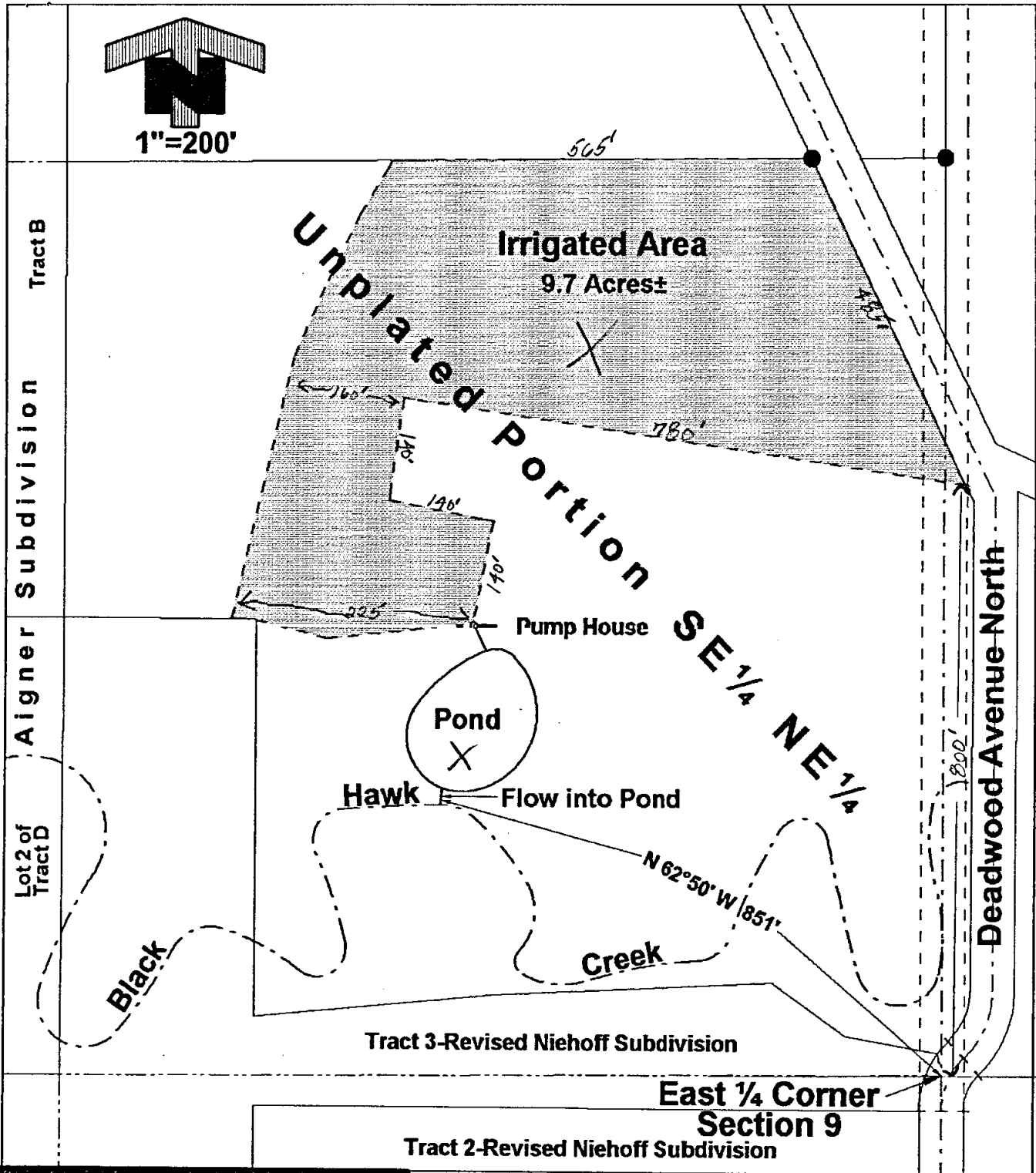
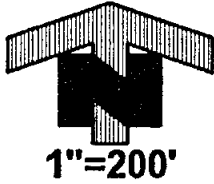
001913

By

Darland White

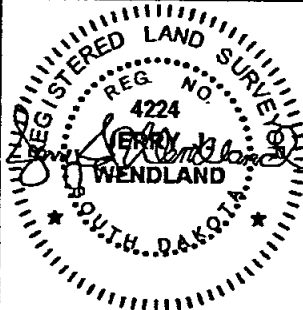
Chief Engineer

gm



JERRY J. WENDLAND
LAND SURVEYING
6909 Ridgeview Dr.
Black Hawk, SD
57718

Phone: (605) 787-4503 Fax: (605) 787-9454
ANGLE SURVEYS



**Water Pumping Station,
Pond & Irrigation Area
Richard Niehoff Ranch,
SE 1/4 NE 1/4 Section 9,
T2N, R7E, BHM,
Meade County,
South Dakota**

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Irrigation by Mr. & Mrs. Richard Niehoff

ADDRESS: 6809 Deadwood Avenue N, Rapid City SD 57702 COUNTY: ~~RE~~ MD

DATE: July 20, 2005 TELEPHONE: 787-5500

RE: Complaint about Niehoff's irrigating

COMMENTS:

Jeane Howe (787-4410) called regarding the irrigation and use of water by Mr. and Mrs. Richard Niehoff located approximately 2.5 miles north of the Windmill Truckstop where I-90 and Deadwood Avenue bisect. Mrs. Howe explained that they share a well with Niehoff's. The Howe's hold a 2/3 share from the well and the Niehoff's have the remaining 1/3 share. She explained that the well is metered and the use of water by the Niehoff's has skyrocketed. She said the use was as much as 3,000 to 4,000 gallons in a period (I recall an 8 – 14 hour period) that in the past would have only been 500 gallons. She was sure they were irrigating from the well. While she said she's not opposed to them irrigating, she attributes the increased production from the well as causing it to produce sand. I told her that we'd check into it. Coincidentally, we also received a hand delivered letter from Margaret Paulos that morning concerning landowners upstream of her property irrigating from Box Elder Creek and/or Black Hawk Creek that included Niehoff's were irrigating

I contacted Don Stroup, Water Rights staff engineer, who was in the area. Don met with Mrs. Howe and heard the same concerns that she had expressed in our phone conversation. Don stated that no one was home at the Niehoff residence but from the road he saw no apparent irrigation.

I called the Howe's and spoke with Alvin Howe who stated there is definitely irrigation taking place and that in fact the Niehoff's were using some of Don Konechne's towlines.

I called Mrs. Niehoff (787-4410) and left a message on their answering machine. She called me back and stated they were irrigating between 7 – 10 acres of alfalfa ground and a new tree belt. She said they were not using the well for irrigation. She stated they have developed a spring that flows into a pond and they are irrigating from this source. I do not believe the pond is in the creek. I explained that a water right permit is required in South Dakota to irrigate above domestic use. She stated they were unaware of the need to obtain a water permit. I sent her application forms in order to file for a water permit. I told her the timeframe for obtaining a permit is over 2 ½ months. She asked if I was shutting them off from irrigating because they were trying to get a new stand of alfalfa going and the new tree belt needed water. Her words were "please don't tell me we can not irrigate until they get their water permit". I told her that was ultimately that was a call for the Chief Engineer to make but that she should get the water permit application completed as soon as

possible. I also told her under no circumstance should they use the well to irrigate above the domestic use criteria. She assured me that they had not used the well to irrigate and will not use it to irrigate.

I called Mrs. Howe back to inform her of what I had found out. She said that they are not opposed to the Niehoff's irrigating from a spring but do not want the well used especially if it causes problems to the well such as sand production. I told her that we will provide her notice when the application is processed and public noticed. Finally, I told her the use from the well in regards to their respective shares in the well is a contractual issue that the state will not be able to resolve.

NAME: Eric Hensley

July 18, 2005

State of South Dakota
Department of Environment and Natural Resources
Water Rights Program

*Richard
Konechne
also has
a piece
of creek on
land.*

I want to know why the people living on Box Elder Creek and Black Hawk Creek above where I live and have property are holding water at there property and using it for irrigation or whatever.

The following people live above where I live:

Don Konechne, 5800 Deadwood Ave. N., Rapid City, S. Dak.

Richard Niehoff, RR6. Or this address could be also known as Deadwood Ave., N. Rapid City

Alvin Howe, Deadwood Ave. N., Rapid City, S. Dak.

There is another person living up north on Deadwood Ave. Or the road that turns West
Going into Black Hawk. I do not know the name but if you drive towards Black
Hawk west you can see the pond on the right hand side of road.

I and the rest of the people living downstream from these people that are holding this water have rights to some of the water also. I have livestock that needs water.

Margaret Paulos

Margaret Paulos
P. O. Box 1912
Rapid City, S. Dak. 57709

I can be reached now at: Evergreen Manor
220 W. Dakota Ave.
Pierre, S. Dak. 57501
Telephone No. 945-0999



**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 22, 2005

Margaret Paulos
Evergreen Manor
220 W. Dakota Avenue
Pierre SD 57501

Dear Mrs. Paulos:

I am writing in response to your office visit on July 19, 2005 in which you provided me a letter concerning lack of flow on Box Elder Creek and Black Hawk Creek. You are concerned that upstream landowners are holding water back on their property and using it for irrigation and other uses which is negatively impacting your downstream livestock watering needs.

Don Stroup conducted a visual inspection of Box Elder Creek and Black Hawk Creek on the same day you visited with me at my office. Mr. Stroup found no evidence of irrigation taking place from either creek. Both creeks are dry above the landowner's property mentioned in your letter. The on-site investigation found that Box Elder Creek has been dry for quite some time. Vegetation along Black Hawk Creek show that it went dry recently. The Water Rights Program concludes that the lack of flow in Box Elder Creek and Black Hawk Creek is a result of the dry climatic conditions and not a result of anyone obstructing or diverting creek flow.

Our investigation did find that Mr. and Mrs. Niehoff have been irrigating 7 – 10 acres from a pond that is supplied water from a spring. It is our understanding that this spring is not located on the creek. The Niehoffs' were made aware that a water right permit must be obtained in order to irrigate in South Dakota. We anticipate that they will be filing an application to irrigate from this spring. I will provide you the public notice once the application is filed so that you have an opportunity to intervene in the hearing process.

Finally, your letter refers to a pond that can be seen on the right hand side of the road when driving to Black Hawk. Mr. Stroup was able to view this pond which appears to have been in existence for quite some time. However, this pond is located on a tributary to Black Hawk Creek and not in the actual creek channel. State law allows a landowner to construct a pond on a dry draw or non-navigable watercourse without obtaining a water permit if it does not impound greater than 25 acre feet of water. This pond clearly does not exceed this storage capacity so the state does not have an ability to take action.

The combination of the past five years of drought and the recent hot weather is causing reduced flow and the drying up of many streams in the Black Hills. The lack of flow in Box Elder Creek and Black Hawk Creek is the result of climactic conditions and not the actions of upstream landowners.

If you have further questions on our investigation or have additional information on upstream landowner's actions that affect your ability to water livestock, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Gronlund". The signature is fluid and cursive, with a large, stylized initial "E".

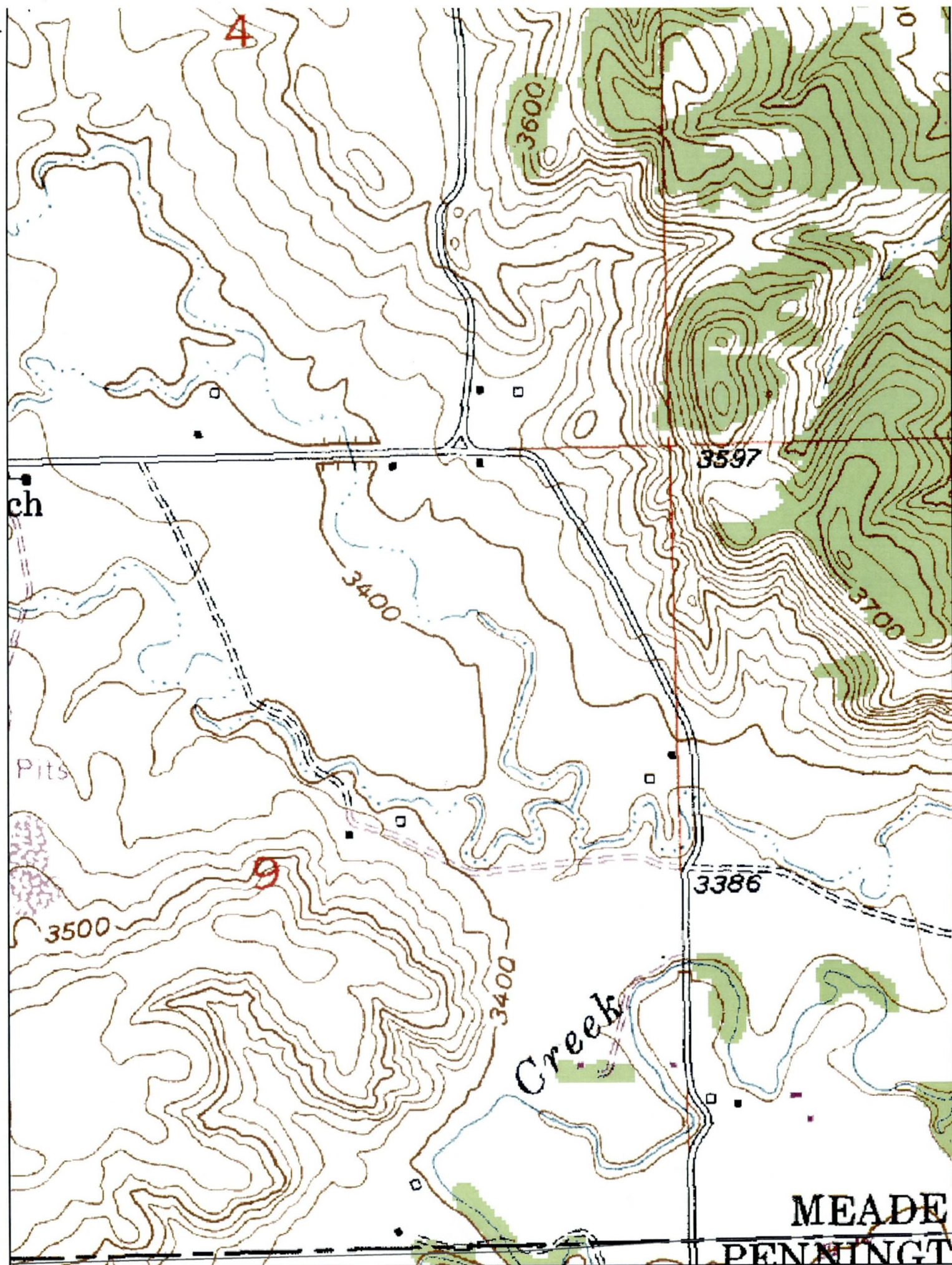
Eric Gronlund
Water Rights Program, DENR
(605) 773-3352



tributary

Black Hawk creek

Nishoff's



Aug. 2-05

Dear Board:

The Creek that runs thro our land has went dry the last 5 years. Weather Conditions as you know are bad. The Creek is not running & drying up now as I write. We had to do something to water our livestock, new trees and the ground shown on map sent to you. We are not using any part of the well to irrigate.

We dug down and opened up a good Spring that filled the pond of ours in about 10 days. The water over flo was then running down the bone dry Creek. There was never any rain to help - it was all the Spring.

We are very much dependant on the pond in this drought and hope we can continue to use it.

We have spoken about this matter with the Naves across road from

us and was told they had no problem
with us irrigating. They are aware
of the water that ~~this~~ runs out
of the spring fed pond and down
Creek.

Love,
Richard & Patricia
Nichoff

Richard Nichoff
6809 Birchwood Ave. N
Rapid City SD 57702
605-787-5500



August 4, 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

Richard Niehoff
6809 Deadwood Ave N
Rapid City SD 57702

Dear Mr. Niehoff:

Thank you for submitting the *Application for a Permit to Appropriate Water* for irrigation in Meade County.

We received the \$150 application filing fee. In addition to the application filing fee, the Water Rights Program collects the \$50 licensing fee at the time of filing. Please submit \$50 for the licensing of the water permit.

As stated in your phone conversation with Eric Gronlund this morning, Don Stroup with this office will be out to view your system in the next few weeks.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

August 22, 2005

RECEIVED

AUG 23 2005

WATER RIGHTS
PROGRAM

Eric Gronlund
Water Rights Program, DENR
Dept. Of Environment and Natural Resources
Joe Loss Building
523 East Capitol
Pierre, South Dakota 57501

Dear Mr. Gronlund:

Yes I am aware of drought and hot weather, but the people living downstream from the people I told you about do need water for their livestock if there is water in the creek. If everyone used all the water in the creek to irrigate, no person downstream from them would ever have water in the creek.

Your letter did not mention Don Konechne and Alvin Howe. Why do these people have a right to hold water from the creek for irrigation or whatever?

No, I am not satisfied with your investigation. I have pictures of some of these areas. What does it take to get answers to my questions? Is this the same situation as the Missouri River and people downstream having problems like I read about in the paper? Well the problem we have living downstream from someone that digs ponds in the creek or puts dams in the creek is the same as the Missouri River problems only on a smaller scale. The people living downstream must have some right to the water. Does it take a lawsuit to stop these people from using all the water so the people downstream have nothing?

Sincerely,



Margaret Paulos
P. O. Box 1912
Rapid City, S. Dak. 57709

*Are you sure
Nichoff's have a
spring?*

I can be reached at: Evergreen Manor
220 W. Dakota Ave.
Pierre, S. Dak. 57501
Telephone No. 945-0999

WATER PERMIT APPLICATION No. 1851-1

**Richard Niehoff
6809 Deadwood Ave N
Rapid City, SD 57702
(605)787-5500**

Water Permit Application No. 1851-1, Richard Niehoff, proposes to appropriate 0.33 cubic feet per second (cfs) of water from a pond in the SE¼ NE¼ Section 9 T2N R7E to irrigate 9.7-acres in the same quarter section (Attachment 1). The applicant is requesting a diversion rate greater than the statutory limit of 1-cfs per 70-acres. The annual period of use requested is from May 1 to October 31.

Review of Proposed Project

The applicant proposes to use the water appropriated from a pond constructed on his property for domestic use and irrigation of 9.7-acres.

Water Source and Existing Water Rights

The water source for this proposed project is a pond constructed on the junction of an unnamed draw and Black Hawk Creek about 1.5-miles east of Blackhawk, SD (Attachment 1). The pond and a pumping system was constructed and used for irrigation before the applicant was advised by Water Rights Program staff that such use required a water permit. The pond has a surface area of approximately 1.65-acres, a depth of about 10-feet, with storage of approximately 6.5 acre-feet (283,140 cubic feet). A drop-tube is installed to regulate the depth and volume of water in the pond and return excess water flows to the Black Hawk Creek channel. The delivery capacity of the installed pumping system is 0.33-cfs (148-gpm).

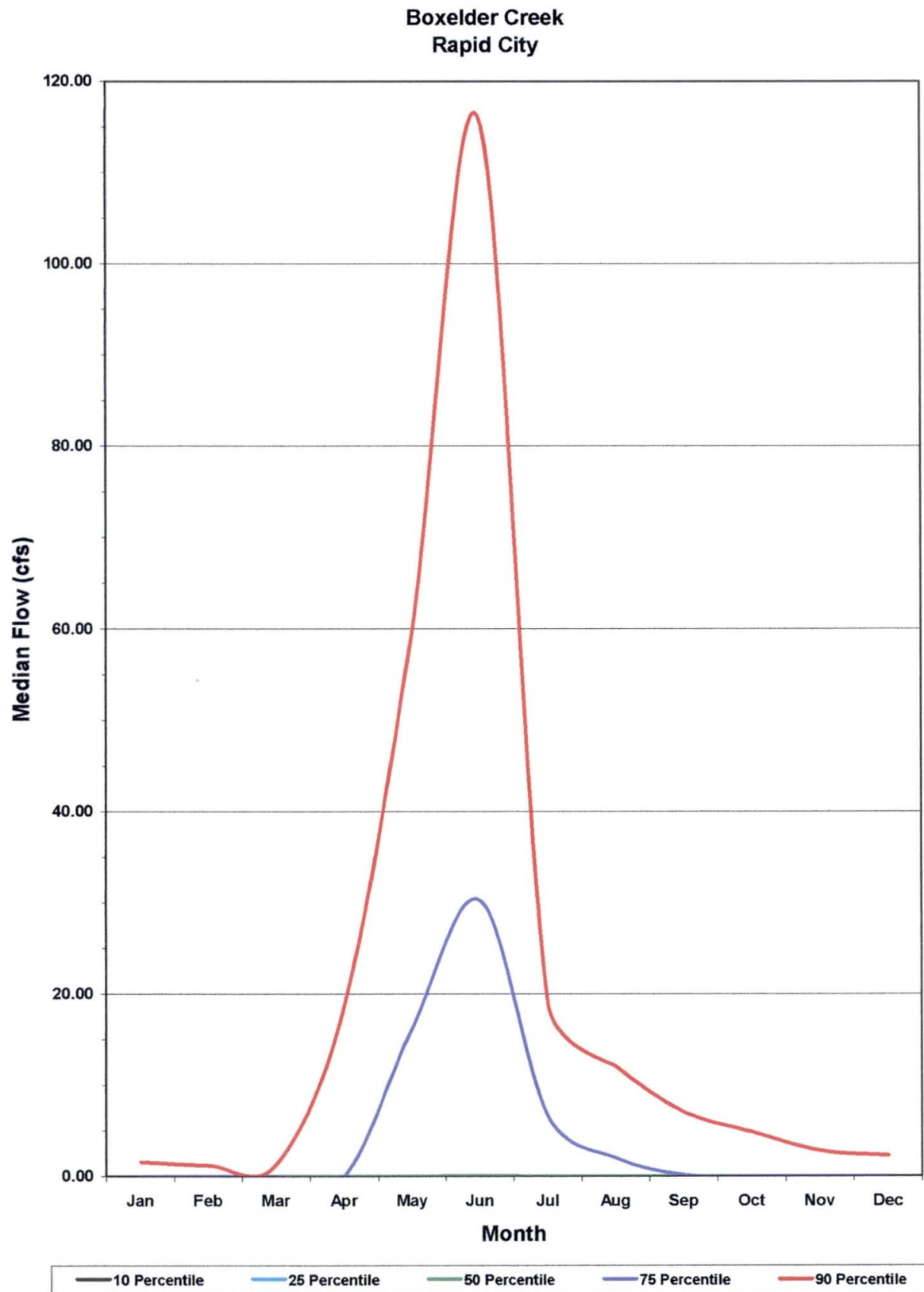
Black Hawk Creek is an intermittent stream that flows east from the Black Hills joining Boxelder Creek about one-half mile below the proposed project location (Attachment 1). Boxelder Creek is also an intermittent stream in this area. Both creeks and the unnamed draw have water flow only after runoff from spring snow melt or substantial local rainfalls.

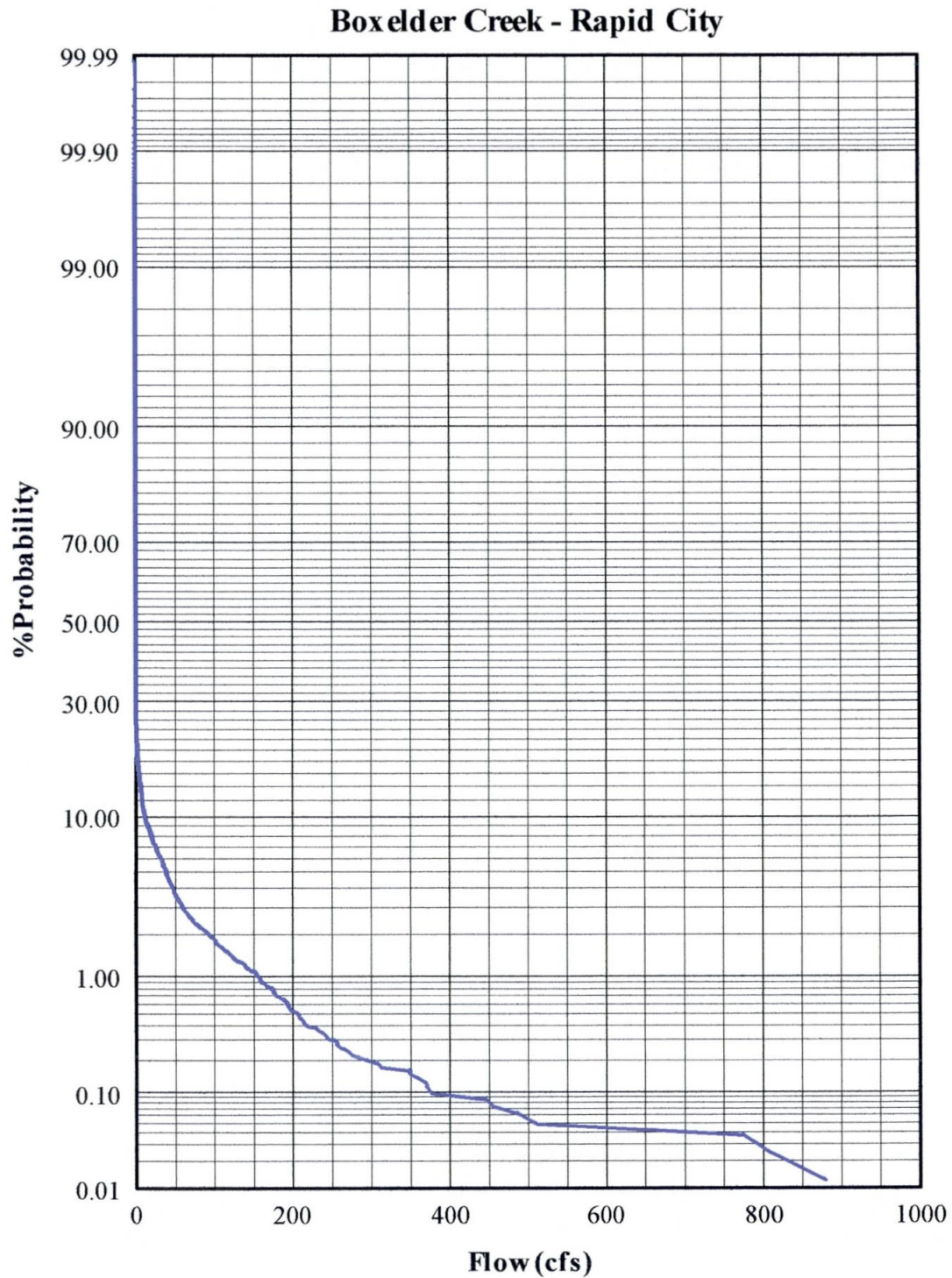
The U.S. Geological Survey (USGS) has maintained a gaging station on Boxelder Creek south of Blackhawk, SD (Attachment 1) since 1978. This data is skewed to higher flows conditions due to the above normal precipitation throughout the 1990s in the area. Historical data from this gage show that flow only occurs in Boxelder Creek at the 75-percentile level or greater (Table 1 & Figure 1). These same flow conditions can be correlated to Blackhawk Creek at this project's location. This indicates that rainfall conditions have to be approximately 25-percent above normal in the area for these streams to have water flowing in them.

Table 1. Boxelder Creek-Rapid City, SD Median Flow Percentiles (cfs)

Percentile	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
25	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
50	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
75	0.0	0.0	0.0	0.0	16.3	30.2	6.6	2.0	0.2	0.0	0.0	0.0
90	1.6	1.2	1.3	18.7	59.8	115.9	19.0	12.1	7.1	4.8	2.8	2.3

Figure 1. Boxelder Creek Hyrograph





Boxelder Creek Probability Graph

Of the 8191 datum points contained in the USGS historical data file for the Boxelder Creek Rapid City gage, 5944 have zero value. This shows that about 70-percent of the time there will

be no flow in the stream in the area of the proposed project. The Probability Graph indicates the same information, there is about a 30-percent chance the flow will be greater than zero.

The data also indicate a low probability this pond infringes on downstream domestic use from both Black Hawk and Boxelder Creeks. Rainfalls in the area that are 25-percent above normal will cause the pond to overflow through the drop tube into the Black Hawk Creek channel thence into Boxelder Creek. Consistent 75-percentile and greater rainfalls in the area will maintain flow in these streams, but under normal conditions in the area, the flow created by a rainfall only lasts several days because of evapotranspiration losses in the summer and influx into the channel alluvium. Whether the pond is present or not will not change these conditions. An area drought aggravates water availability in both creeks. Removal of this pond will not improve water availability downstream.

There are no surface water rights on Black Hawk or Boxelder Creeks for several miles downstream of the proposed project location.

Conclusions

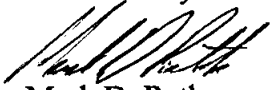
1. Water Permit Application No. 1851-1, Richard Niehoff, proposes to appropriate 0.33 cubic feet per second (cfs) of water to irrigate 9.7-acres.
2. Black Hawk and Boxelder Creeks are intermittent streams having water flow only from spring snow melt or substantial local rainfalls in the area of the proposed project.
3. USGS historical data indicates that rainfall conditions have to be approximately 25-percent above normal in the area for Boxelder and Blackhawk Creeks to have water flowing in them.
4. The data also indicate a low probability the pond infringes on downstream domestic use from both Black Hawk and Boxelder Creeks and that removal of this pond will not improve water availability downstream.
5. There are no active surface water rights in the area of the proposed project.
6. The installed pumping system capacity is 0.33-cfs necessitating the applicant to request a diversion rate greater than the statutory limit of 1-cfs per 70-acres.
7. The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires.
8. Since the pumping system installed has a capacity greater than the statutory limit, and if this application is approved, the applicant should have a time constraint of no more than 10-hours per day pumping from the pond for the purpose of irrigation imposed on the water permit.

9. If this application is approved, a bench mark should be established on the property to ensure the drop tube level in the pond is not altered.



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

Reviewed by:



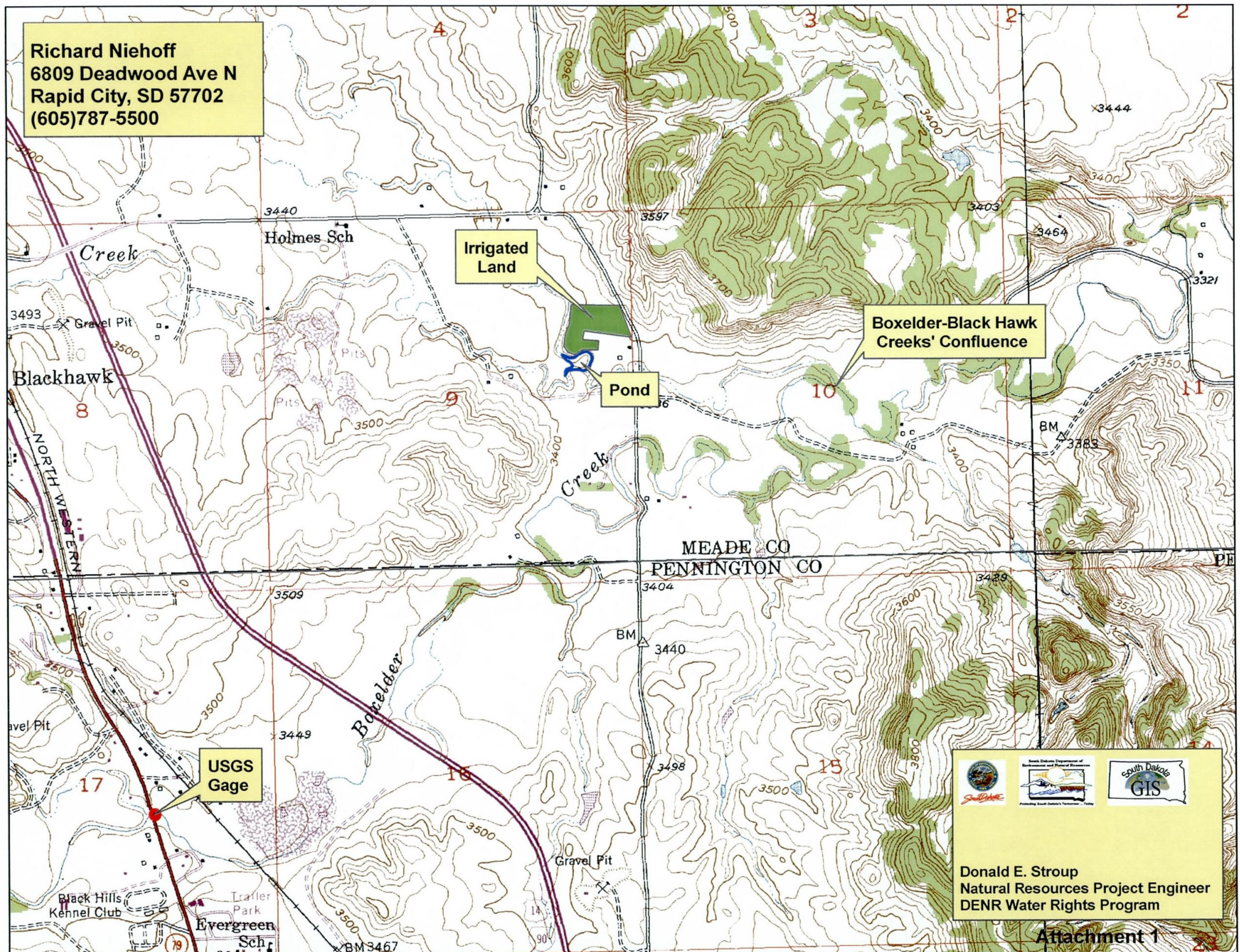
Mark D. Rath
Natural Resources Engineering Specialist
DENR Water Rights Program

References

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

USGS National NWISWeb Water Information System, Historical Stream Flow for South Dakota

Richard Niehoff
6809 Deadwood Ave N
Rapid City, SD 57702
(605)787-5500



South Dakota Department of Natural Resources
South Dakota GIS

Donald E. Stroup
Natural Resources Project Engineer
DNR 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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1851-1, Richard Niehoff**

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. 1851-1, Richard Niehoff, 6809 Deadwood Avenue North, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 1851-1 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. Water Permit No. 1851-1 authorizes a pond on Black Hawk Creek at its junction with an unnamed tributary with a storage capacity of 6.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation.
2. Permit No. 1851-1 limits the diversion rate from the pond to the statutory limit of 0.14 cubic feet of water per second (62 gpm) for irrigation of 9.7 acres unless the number of hours of irrigation per day are reduced to a corresponding equivalent time period and the total amount of water applied does not exceed 24 inches per year. At a pumping rate of 0.33 cfs (150 gpm), the pumping time shall not exceed 10 hours per day.
3. The pond must be maintained with a bypass mechanism capable of bypassing all or part of the inflow as directed by the Chief Engineer to satisfy downstream domestic use, including livestock water and prior water rights. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
4. A permanent benchmark from a local datum shall be established near the pond for the purpose of referencing the pond at the 6.5 acre feet storage capacity. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held by the Water Rights Program.
5. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
September 16, 2005



AFFIDAVIT OF PUBLICATION

OK

STATE OF SOUTH DAKOTA
COUNTY OF MEADE

Pam Buhler, being duly sworn, says: That the Meade County Times Tribune/Black Hills Press is, and during all times hereinafter mentioned, is a legal newspaper as defined in SDDCL 17-2-2, as amended published in Sturgis, Meade County, South Dakota, by Lee Enterprises; that affidavit is and during all of said times, was employed as an Accounting Clerk by the publisher of such newspaper and has personal knowledge of the facts stated in the affidavit, that the notice, order or advertisement, a printed copy which is attached, was published in said newspaper for successive issues, bearing the following dates:

<u>Oct 12</u>	200	<u>5</u>		200
<u>Oct 19</u>	200	<u>5</u>		200
	200			200
	200			200
	200			200

that the full amount of the fee charged for publishing the same, to-wit, the sum of \$ 70.51, insures solely to the benefit of the publisher of said newspaper: that no agreement or understanding for the division of the fee has been made with any person, and that no part of the fee has been agreed to be paid to any other person.



Subscribed and sworn to before me this

_____ day of _____, 200__

Notary Public, South Dakota

RECEIVED
OCT 13 2005
WATER RIGHTS
PROGRAM

Account No. 2003 5495
Total Amount \$ 70.51

**NOTICE OF HEARING
on Application No. 1851-1
to Appropriate Water**

Notice is given that Richard Niehoff, 6809 Deadwood Ave N, Rapid City SD 57702 has filed an application for a water permit to appropriate 0.33 cubic feet of water per second (cfs) from a spring fed pond at the confluence of an unnamed tributary with Black Hawk Creek located in the SE 1/4 NE 1/4 Section 9 to irrigate 9.7 acres located in the SE 1/4 NE 1/4 Section 9; all in T2N-R7E. The storage capacity of the pond is approximately 6.5 acre feet of water. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1851-1 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. Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 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.

The Water Management Board will consider this application at 8:45 A.M. December 7, 2005 at the Matthew Training Center, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The December 7, 2005 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by November 25, 2005.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to

SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by November 25, 2005, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by November 25, 2005.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9,

46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Publ. Oct. 12, 19, 2005
Meade County Times-Tribune

Instruction to Newspaper - Publish first Notice on October 12, 2005 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 1851-1 to Appropriate Water

Notice is given that Richard Niehoff, 6809 Deadwood Ave N, Rapid City SD 57702 has filed an application for a water permit to appropriate 0.33 cubic feet of water per second (cfs) from a spring fed pond at the confluence of an unnamed tributary with Black Hawk Creek located in the SE ¼ NE ¼ Section 9 to irrigate 9.7 acres located in the SE ¼ NE ¼ Section 9; all in T2N-R7E. The storage capacity of the pond is approximately 6.5 acre feet of water. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1851-1 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.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 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.

The Water Management Board will consider this application at 8:45 A.M. December 7, 2005 at the Matthew Training Center, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The December 7, 2005 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by November 25, 2005.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by November 25, 2005, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by November 25, 2005.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.



**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.**

October 5, 2005

Richard Niehoff
6809 Deadwood Ave N
Rapid City SD 57702

Dear Mr. Niehoff:

Water Permit Application No. 1851-1 for irrigation 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 Meade Co Times-Tribune printed at Sturgis, SD (Ph # 605-347-2503). 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

October 5, 2005

Meade Co Times-Tribune
PO Box 69
Sturgis SD 57785

ATTENTION: Legal Public Notice

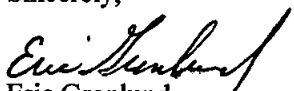
Enclosed is a Notice on Application No. 1851-1 to Appropriate Water to be published twice. Please publish the first notice on October 12, 2005 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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 Richard Niehoff, 6809 Deadwood Ave N, Rapid City SD (Ph # 605-787-5500).

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. 1851-1

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

Date _____

We are in receipt of your letter of October 5, 2005 enclosing Notice to Appropriate Water by Application No. 1851-1 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 5, 2005

Margaret Paulos
PO Box 1912
Rapid City SD 57709

Dear Mrs. Paulos

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 1851-1 filed by Richard Niehoff. The public notice is scheduled to be published October 12 and 19, 2005 in the Meade Co. Times-Tribune. The notice schedules a December 7th hearing in Pierre before the Water Management Board. Petitions to intervene in the hearing process must be submitted by November 25, 2005.

This information is being sent to you because of your past concern regarding flow in area creeks for livestock watering.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

also sent to: Margaret Paulos at Evergreen Manor, 220 W. Dakota Avenue, Pierre SD 57501



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 5, 2005

Alvin and Jean Howe
6812 Deadwood Avenue North
Rapid City SD 57702-9677

Dear Mr. and Mrs. Howe:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 1851-1 filed by Richard Niehoff. The public notice is scheduled to be published October 12 and 19, 2005 in the Meade Co. Times-Tribune. The notice schedules a December 7th hearing in Pierre before the Water Management Board. Petitions to intervene in the hearing process must be submitted by November 25, 2005.

This information is being sent to you because of your past phone call regarding the Niehoff's water use.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Richard Niehoff – Water Permit Application No. 1851-1

ADDRESS: COUNTY: Meade

DATE: October 21, 2005 TELEPHONE: 787-5500

RE: On-site visit of structure proposed to be authorized by Water Permit Application No. 1851-1

COMMENTS:

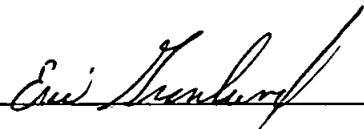
I conducted an on-site visit on the Niehoff's pond in order to get a better idea of the configuration of the system. At the time of the visit I observed:

There was no flow in Box Elder Creek upstream of Black Hawk Creek's confluence with Box Elder.

Flow estimated at 80 – 100 gpm through drop tube in dam (see picture)

Flow estimate of Black Hawk Creek is 15-20 gpm at a crossing with a culvert upstream of pond – approximately 150 yards.

There was no flow at the culvert through the north-south road approximately 440 yards downstream of pond. (see picture)

NAME: 



drop inlet structure
estimated flow of 80 -100 gpm on October 21, 2005



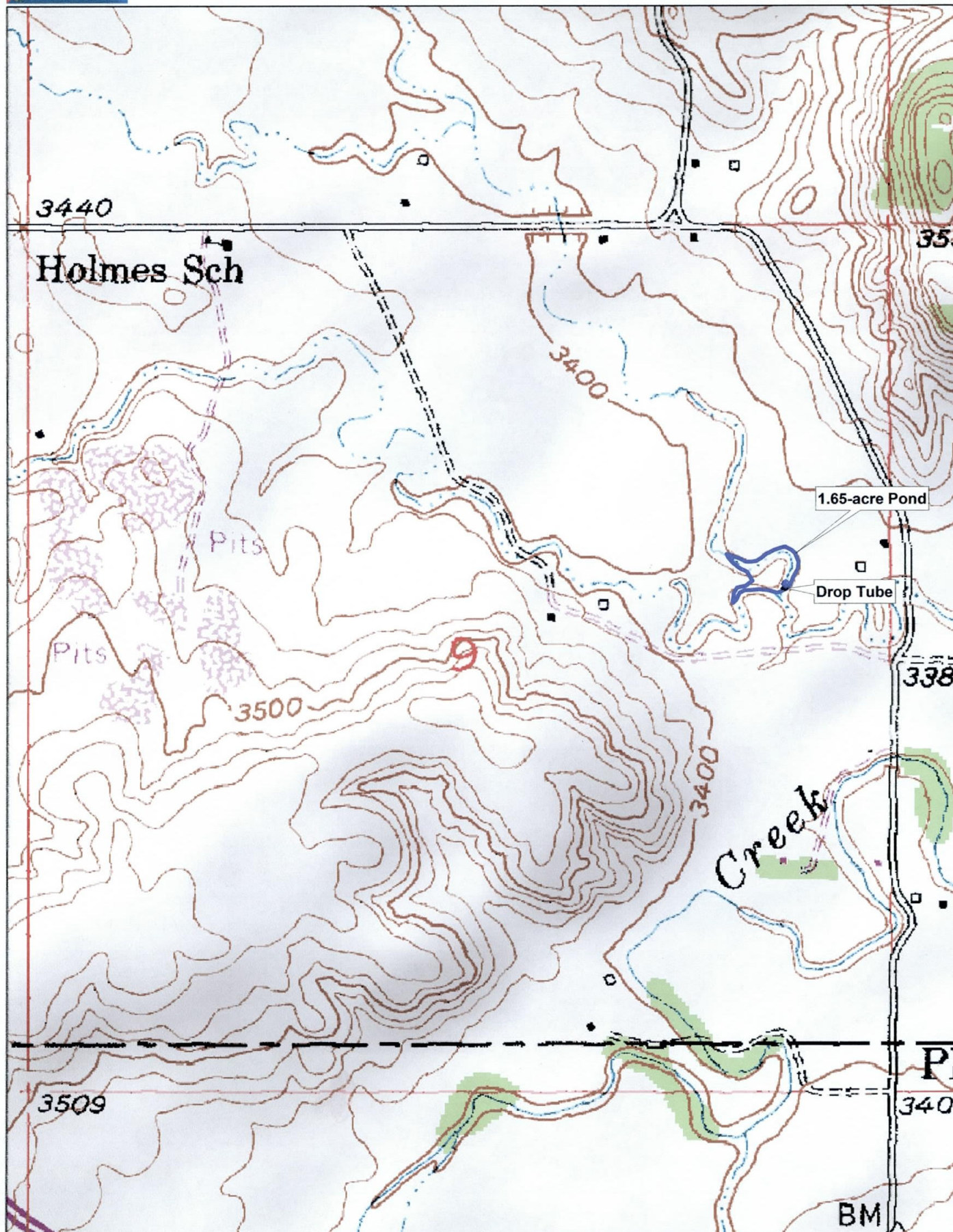
picture of pond grade. Black Hawk Creek's is in the background



Picture looking at unnamed tributary



Picture of box culvert through road approximately 440 yards downstream of dam



Evergreen Manor
220 West Dakota Avenue
Pierre, SD 57501
November 21, 2005

Mr. Richard Niehoff
6809 Deadwood Avenue North
Rapid City, SD 57702

Chief Engineer
DENR Water Rights Program
Foss Building
523 East Capitol Avenue
Pierre, SD 57501

RECEIVED

NOV 23 2005

WATER RIGHTS
PROGRAM

RE: APPLICATION 1851-1 TO APPROPRIATE WATER AND THE
RECOMMENDATION OF THE CHIEF ENGINEER, WATER RIGHTS PROGRAM

Dear Mr. Niehoff and Chief Engineer:

Please accept this Petition of Margaret and Robert Paulos in opposition to Richard Niehoff's Application to appropriate water from a spring fed pond at the confluence of an unnamed tributary with Black Hawk Creek located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, to irrigate 9.7 acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, Township 2N, Range 7E, Meade County, South Dakota.

Also, please accept this Petition as opposing the Chief Engineer's recommendation dated September 16, 2005, under the signature of Garland Erbele, which recommends "Approval" of Application No. 1851-1.

The undersigned Margaret Paulos and Robert Paulos are husband and wife (Paulos). Margaret Paulos, with her husband's permission, will sign this Petition on his behalf.

We are the owners of approximately 500 acres of rural Meade County, South Dakota real estate, which is of course, downstream from the property owned or controlled by Richard Niehoff.

Margaret Paulos's maiden surname was Mann; she is the daughter of the late Owen Mann. Our real estate has been in our family for more than 64 years. Margaret Paulos was raised on this acreage. For the information of those not precisely familiar with the location of the our acreage, it is located a few miles to the north and west of the Rushmore Mall in Rapid City, South Dakota, or about 6 miles east of Black Hawk, South Dakota. The main means of ingress and egress to our home is Haines Avenue, Rapid City, South Dakota, and then ultimately meander a bit to the west to our residence.

We have personally owned and lived at the Paulos acreage since about 1968. We own a menagerie of animals, and need water from Box Elder Creek, Black Hawk Creek, and all of the area tributaries to maintain our operation. We too have a well; we use the well for our personal and household needs. Our well is not used for the needs of our animals, or our pasture. To the contrary, we depend upon rain, snowmelt, and creek water to maintain our acreage and our animals.

Over the years, we have experienced dry and drought conditions, and we and our neighbors have always managed to tolerate the condition if by no other means, by reducing our need for water by decreasing the number of animals that are dependent upon water for survival. We cannot think of any reason why this protocol should not continue. Ultimately it will rain and snow again in western South Dakota and life will be good.

It is our very general information that Richard Niehoff, the Applicant, had constructed his pond, and was appropriating water before he sought permission. We appreciate that mistakes can be made, but do not believe they should be condoned and implicitly approved.

We do not have technical knowledge about how the pond is currently being inundated, i.e., from a spring or from stream flow idea.

As we understand the Application, a pumping system is included, so we assume to some extent that a spring is also involved. Nevertheless, the pond will catch snowmelt and rainwater, and divert that much of the natural flow that would normally meander down the creeks to our place, and to those places below us. We cannot, in this time of dryness and drought, comprehend why one individual should be able to impede the natural flow of water, when we all so desperately need it.

If we understand the primary reason for the impoundment, and the Application is to irrigate hay ground. I have yet to meet a person who lives in rural Meade County who does not need more water for their pasture or alfalfa. Here, if the Application is approved, it would seem to us that one individual is preferred over the other simply because he ill-advisedly constructed a dam, and was told that to irrigate from the dam he needed a permit. Splitting hairs perhaps, but it does seem to us that unintentional wrong should not be permitted into intentional preference. We note in Mr. Niehoff's Application under "Review of Proposed Project", it is stated that he proposes "...to use the water appropriated from a pond constructed on his property for domestic use and irrigation of 9.7 acres." We doubt the accuracy of that statement. We do not believe he is going to impound 9.7 acres for domestic use, or to water domestic livestock. Again, we believe it is to irrigate pastureland. We believe that is an exceptional overreach under all of the circumstances.

The Applicant should be required to dismantle the dam in an appropriate fashion, and wait for rain just like the rest of us.

As we read the report of the investigator, it seems to say, to us anyway, that harm cannot be done because if it rains again we will not care. There is a scintilla of accuracy in that

comment, but we do care. We are entitled to the free-flow of rainwater and snowmelt, without it being impeded by our upstream neighbor. This impoundment will not be invisible; in fact it is quite visible now, which is why we are forced to intervene and ask that the Application be denied.

If this dam impoundment is a viable and reasonable idea, let the Applicant wait until snowfall and rain return to some degree of normalcy and then make the Application. At least then we would know how much practical impact this dam will have on the future of the use of our place.

Thank you very much for permitting us to express our concern with this Petition.

Very truly,

Margaret Paulos
Margaret Paulos

Robert Paulos
Robert Paulos

BY: Margaret Paulos
Margaret Paulos



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

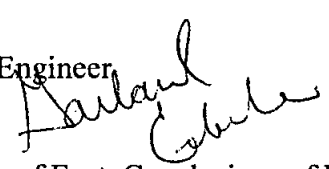
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

December 9, 2005

NOTICE

TO: Richard Niehoff
6809 Deadwood Avenue North
Rapid City SD 57702

Margaret Paulos
Evergreen Manor
220 West Dakota Avenue
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer,
Water Rights Program 

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed John Guhin, Assistant Attorney General, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the approval of Water Permit Application No. 1851-1 filed by Richard Niehoff. The Board will consider adoption of Findings, Conclusions and Final Decision at 8:30 AM, on March 2, 2006, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD 57501. The agenda time is an estimate and may be delayed due to prior agenda items.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by February 10, 2006. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by February 20, 2006.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on March 2, 2006. The public hearing was completed on December 7, 2005. No additional testimony will be received on March 2, 2006.

If either parties has questions about the findings process, please contact Eric Gronlund at (605) 773-3352.

Enclosure

c: Diane Best, Assistant Attorney General

WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink, Chairman
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer
29416 395TH Avenue
Wagner, SD 57380

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks, Secretary
219 42nd Street
Rapid City, SD 57702-0240

Dwayne Rollag
320 Lincoln Lane S
Brookings SD 57006-2741

James Hutmacher, Vice Chairman
802 East 7th Street
Oacoma SD 57365

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702-6874

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best, Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on December 9, 2005 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 9, 2005 regarding Notice of Preparation of Findings of Fact, Conclusion of Law and Final Decision addressed as stated below:

Margaret Paulos
Evergreen Manor
220 West Dakota Ave
Pierre SD 57501

Richard Niehoff
6809 Deadwood Avenue North
Rapid City SD 57702

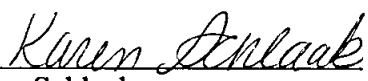
A copy of the above described Notice was sent Inter-office to:

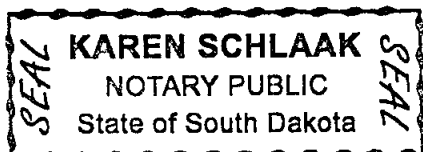
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of December, 2005.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 2, 2006

NOTICE

TO: Richard Niehoff
6809 Deadwood Avenue North
Rapid City SD 57702

Margaret Paulos
Evergreen Manor
220 West Dakota Avenue
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Change in Hearing Time for Consideration of Findings of Fact, Conclusions of Law and
Final Decision for Water Permit No. 1851-1, Richard Niehoff

The Water Management Board was scheduled to consider Findings of Fact, Conclusions of Law and a Final Decision in the approval of Water Permit Application No. 1851-1 at 8:30 AM on March 2, 2006. The agenda time is being moved to 10:30 AM due to changes in the agenda.

The Water Management Board will now consider Findings of Fact, Conclusions of Law and Final Decision for Water Permit No. 1851-1 on March 2, 2006, at 10:30 AM (Central Time), in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD.

Applicable provisions of the notice sent to parties on December 9, 2005 still apply.

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

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on February 2, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 2, 2006, regarding rescheduling of the hearing to consider Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Right Permit No. 1851-1, Richard Niehoff addressed as stated below:

Richard Niehoff
6809 Deadwood Avenue North
Rapid City SD 57702

Margaret Paulos
Evergreen Manor
220 West Dakota Avenue
Pierre SD 57501

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

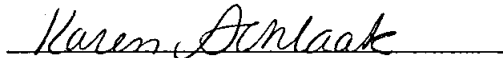
Diane Best, Assistant Attorney General, Capitol Building



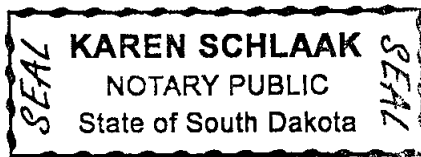
Eric Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of February, 2006.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1

Pierre, South Dakota 57501

Phone (605) 773-3215

FAX (605) 773-4106

www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

RECEIVED
FEB 08 2006
WATER RIGHTS
PROGRAM

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 7, 2006

MEMORANDUM

To: Members of the Water Management Board and interested parties.

FROM: John P. Guhin, Assistant Attorney General *John P. Guhin*

Re: Proposed Findings of Fact, Conclusions of Law, and Final Decision In the Matter of Water Permit Application No. 1851-1, Richard Niehoff

Pursuant to the direction of the Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law, and a Final Decision in the above-entitled matter.

Please see the Notice of the Chief Engineer of December 9, 2005 for further information.

JPG:js

Cc/enc: Francis E. Brink, Chairman
James Hutmacher, Vice Chairman
Bernita Loucks, Secretary
Leo Holzbauer
Rodney Freeman, Jr.
Dwayne Rollag
Everette Hoyt
Richard Niehoff
Margaret Paulos
Garland Erbele, DENR
Diane Best, Asst. Atty. Gen.

Francis E. Brink, Chairman
1214 South Wells Street
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Dwayne Rollag
320 Lincoln Lane S
Brookings, SD 57006-2741

Everett Hoyt
4422 Carriage Hills Drive
Rapid City, SD 57702-6874

Diane Best, Asst. Atty. Gen.
Office of the Attorney General
Natural Resources Section
1302 E. HWY 14, Suite 1
Pierre, SD 57501-8501

Leo Holzbauer
29416 395th Avenue
Wagner, SD 57380

Bernita Loucks, Secretary
219 42nd Street
Rapid City, SD 57702-0240

James Hutmacher, Vice Chairman
802 East 7th Street
Oacoma, SD 57365

Garland Erbele, Ch. Engineer
Dept. of Environment and
Natural Resources
Water Rights Program

Richard Niehoff
6809 Deadwood Avenue North
Rapid City, SD 57702

Margaret Paulos
Evergreen Manor
220 W. Dakota Avenue
Pierre, SD 57501

STATE OF SOUTH DAKOTA

BEFORE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION NO. 1851-1,	)	CONCLUSIONS OF LAW AND
RICHARD NIEHOFF	)	FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate .33 cfs of water to irrigate 9.7 acres in Meade County. The water will also be used for domestic purposes.

2. The water source for the proposed project is a pond constructed on the junction of an unnamed draw in Black Hawk Creek about 1.5 miles east of Black Hawk, South Dakota.

3. The pond was constructed to hold about 6.5 acre feet of water. The pond has a drop tube which regulates its capacity and which turns water into Black Hawk Creek.

4. The evidence indicates that the pond adds, rather than subtracts, to water flowing in Black Hawk Creek. An on-the-scene inspection revealed upstream waterflow of approximately twenty gallons per minute. After water was added to the stream from the drop tube, the quantity increased to approximately 80 to 100 gallons per minute.

5. It is likely that the pond was dug into a hidden spring. When the pond was dug, water entered the hole at a rate much faster than water was passing by in the stream.

6. Black Hawk Creek joins Box Elder Creek at about one-half mile below the project.

7. Both Box Elder Creek and Black Hawk Creek are intermittent streams.

8. An opponent to the project lives on Box Elder Creek and contends that the use of water by Mr. Niehoff in Black Hawk Creek diminishes the water available to her in Box Elder Creek downstream.

9. The contrary appears to this Board to be true. The construction of the pond actually will have a tendency to increase the flow in Black Hawk Creek and, when it joins Box Elder Creek, the operation of the pond will also have a tendency to increase the flow of water in Box Elder Creek.

10. The amount of water available in the area is not, in any case, substantial. Uncontradicted testimony from the state's expert indicated that rainfall must be 25 percent above normal in the area or there will be no flow in either Black Hawk or Box Elder Creek. In addition, the data indicates that there will likely be no flow at all in either creek 70 percent of the time.

11. Because this is the case, the permit must be conditioned accordingly. Moreover, while the use of the drop tube insures that there will be no loss of water to downstream,

it is appropriate to fix the place of the drop tube so that the same amount of water continues to flow into Black Hawk Creek.

12. The opponent to the permit testified that any person can find water if he digs enough in the area. If that water is found and exploited, the creek bed will drop, according to the opponent. The opponent, however, produced no lay or expert evidence to support this thesis.

13. The Applicant would ordinarily be limited by law to 1 cfs per 70 acres to be irrigated. The Applicant in this case wishes to irrigate 9.7 acres at .33 cfs because that is the installed pumping system capacity. The rate at which the applicant wishes to pump is therefore substantially beyond the 1 cfs per 70 acres allowed by statute without cause. The Board finds that, in this case, the .33 cfs application rate to irrigate the 9.7 acres is not unreasonable and will not interfere with downstream use in any event. Moreover, as set out in the Qualifications to the permit, the Applicant will have imposed upon him a time constraint of no more than ten hours pumping per day from the pond for the purpose of irrigation.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. There is a reasonable probability that there is unappropriated water available for the Applicant's proposed use

by virtue of the digging of the pond and the flow of water into the pond.

3. The proposed diversion can be developed without unlawful impairment of existing rights. Indeed, the Board finds that will likely be more water available to downstream users, including the opponent, because of the Applicant's project.

4. The proposed use for irrigation of trees and alfalfa and for domestic purposes are beneficial uses.

5. The proposed use is in the public interest as qualified in the final decision.

6. The Applicant has shown sufficient cause to allow a rate of application greater than 1 cfs per 70 acres.

FINAL DECISION

The application for Water Permit No. 1851-1 is granted subject to the following qualifications.

1. Water Permit No. 1851-1 authorizes a pond on Black Hawk Creek at its junction with an unnamed tributary with a storage capacity of 6.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation.

2. Permit No. 1851-1 limits the diversion rate from the pond to the statutory limit of 0.14 cubic feet of water per second (62 gpm) for irrigation of 9.7 acres unless the number of hours of irrigation per day are reduced to a corresponding

equivalent time period and the total amount of water applied does not exceed 24 inches per year. At a pumping rate of 0.33 cfs (150 gpm), the pumping time shall not exceed 10 hours per day.

3. The pond must be maintained with a bypass mechanism capable of bypassing all or part of the inflow as directed by the Chief Engineer to satisfy downstream domestic use, including livestock water and prior water rights. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

4. A permanent benchmark from a local datum shall be established near the pond for the purpose of referencing the pond at the 6.5 acre feet storage capacity. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held by the Water Rights Program.

5. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this ____ day of _____, 2006.

Chairman
Water Management Board

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
WATER PERMIT APPLICATION) CERTIFICATE OF SERVICE
NO. 1851-1, RICHARD NIEHOFF)

The undersigned hereby certifies that true and correct copies of the proposed Findings of Fact, Conclusions of Law and Final Decision In the Matter of the Water Permit Application No. 1851-1, Richard Niehoff were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota on this 7th day of February, 2006.

Francis E. Brink, Chairman Rodney Freeman, Jr.
1214 South Wells Street P.O. Box 176
Aberdeen, SD 57401-7351 Huron, SD 57350-0176

Leo Holzbauer Bernita Loucks, Secretary
29416 395th Avenue 219 42nd Street
Wagner, SD 57380 Rapid City, SD 57702-0240

Everett Hoyt Dwayne Rollag
4422 Carriage Hills Drive 320 Lincoln Lane, South
Rapid City, SD 57702-6874 Brookings, SD 57006-2741

James Hutmacher, Vice Chairman
802 East 7th Street
Oacoma, SD 57365

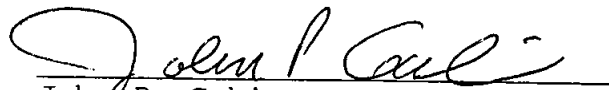
Richard Niehoff Margaret Paulos
6809 Deadwood Avenue N Evergreen Manor
Rapid City, SD 57702 220 W. Dakota Avenue
Pierre, SD 57501

By interoffice to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and
Natural Resources
Foss Building
523 East Capitol
Pierre, SD 57501

By hand delivery to:

Diane Best
Assistant Attorney General
Office of Attorney General
1302 East HWY 14, Suite 1
Pierre, SD 57501-8501



John P. Guhin
Assistant Attorney General
1302 East HWY 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 3, 2006

NOTICE

TO: Richard Niehoff
6809 Deadwood Avenue North
Rapid City SD 57702

Margaret Paulos
Evergreen Manor
220 West Dakota Avenue
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted March 3, 2006, by the Water Management Board approving Water Right Permit No. 1851-1 filed by Richard Niehoff. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

c: John Guhin, Assistant Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

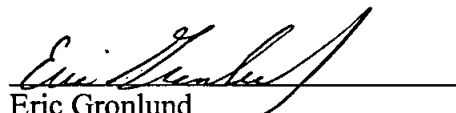
I hereby certify that on March 3, 2006 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 3, 2006 regarding Notice of Adoption of Findings of Fact, Conclusions of Law and Final Decision addressed as stated below:

Richard Niehoff
6809 Deadwood Avenue North
Rapid City SD 57701

Margaret Paulos
Evergreen Manor
220 West Dakota Avenue
Pierre SD 57501

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

Diane Best, Assistant Attorney General, Capitol Building
John Guhin, Assistant Attorney General, Capitol Building



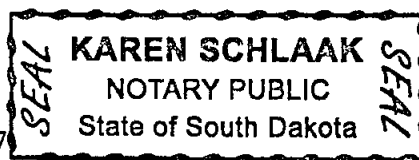
Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of March, 2006.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA

BEFORE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION NO. 1851-1,	)	CONCLUSIONS OF LAW AND
RICHARD NIEHOFF	)	FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate .33 cfs of water to irrigate 9.7 acres in Meade County. The water will also be used for domestic purposes.

2. The water source for the proposed project is a pond constructed on the junction of an unnamed draw in Black Hawk Creek about 1.5 miles east of Black Hawk, South Dakota.

3. The pond was constructed to hold about 6.5 acre feet of water. The pond has a drop tube which regulates its capacity and which turns water into Black Hawk Creek.

4. The evidence indicates that the pond adds, rather than subtracts, to water flowing in Black Hawk Creek. An on-the-scene inspection revealed upstream waterflow of approximately twenty gallons per minute. After water was added to the stream from the drop tube, the quantity increased to approximately 80 to 100 gallons per minute.

5. It is likely that the pond was dug into a hidden spring. When the pond was dug, water entered the hole at a rate much faster than water was passing by in the stream.

6. Black Hawk Creek joins Box Elder Creek at about one-half mile below the project.

7. Both Box Elder Creek and Black Hawk Creek are intermittent streams.

8. An opponent to the project lives on Box Elder Creek and contends that the use of water by Mr. Niehoff in Black Hawk Creek diminishes the water available to her in Box Elder Creek downstream.

9. The contrary appears to this Board to be true. The construction of the pond actually will have a tendency to increase the flow in Black Hawk Creek and, when it joins Box Elder Creek, the operation of the pond will also have a tendency to increase the flow of water in Box Elder Creek.

10. The amount of water available in the area is not, in any case, substantial. Uncontradicted testimony from the state's expert indicated that rainfall must be 25 percent above normal in the area or there will be no flow in either Black Hawk or Box Elder Creek. In addition, the data indicates that there will likely be no flow at all in either creek 70 percent of the time.

11. Because this is the case, the permit must be conditioned accordingly. Moreover, while the use of the drop tube insures that there will be no loss of water to downstream,

it is appropriate to fix the place of the drop tube so that the same amount of water continues to flow into Black Hawk Creek.

12. The opponent to the permit testified that any person can find water if he digs enough in the area. If that water is found and exploited, the creek bed will drop, according to the opponent. The opponent, however, produced no lay or expert evidence to support this thesis.

13. The Applicant would ordinarily be limited by law to 1 cfs per 70 acres to be irrigated. The Applicant in this case wishes to irrigate 9.7 acres at .33 cfs because that is the installed pumping system capacity. The rate at which the applicant wishes to pump is therefore substantially beyond the 1 cfs per 70 acres allowed by statute without cause. The Board finds that, in this case, the .33 cfs application rate to irrigate the 9.7 acres is not unreasonable and will not interfere with downstream use in any event. Moreover, as set out in the Qualifications to the permit, the Applicant will have imposed upon him a time constraint of no more than ten hours pumping per day from the pond for the purpose of irrigation.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. There is a reasonable probability that there is unappropriated water available for the Applicant's proposed use

by virtue of the digging of the pond and the flow of water into the pond.

3. The proposed diversion can be developed without unlawful impairment of existing rights. Indeed, the Board finds that will likely be more water available to downstream users, including the opponent, because of the Applicant's project.

4. The proposed use for irrigation of trees and alfalfa and for domestic purposes are beneficial uses.

5. The proposed use is in the public interest as qualified in the final decision.

6. The Applicant has shown sufficient cause to allow a rate of application greater than 1 cfs per 70 acres.

FINAL DECISION

The application for Water Permit No. 1851-1 is granted subject to the following qualifications.

1. Water Permit No. 1851-1 authorizes a pond on Black Hawk Creek at its junction with an unnamed tributary with a storage capacity of 6.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation.

2. Permit No. 1851-1 limits the diversion rate from the pond to the statutory limit of 0.14 cubic feet of water per second (62 gpm) for irrigation of 9.7 acres unless the number of hours of irrigation per day are reduced to a corresponding

equivalent time period and the total amount of water applied does not exceed 24 inches per year. At a pumping rate of 0.33 cfs (150 gpm), the pumping time shall not exceed 10 hours per day.

3. The pond must be maintained with a bypass mechanism capable of bypassing all or part of the inflow as directed by the Chief Engineer to satisfy downstream domestic use, including livestock water and prior water rights. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

4. A permanent benchmark from a local datum shall be established near the pond for the purpose of referencing the pond at the 6.5 acre feet storage capacity. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held by the Water Rights Program.

5. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 2nd day of March, 2006.



Chairman
Water Management Board



APR 27 2008

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Richard Niehoff
6809 Deadwood Ave N
Rapid City SD 57702

Dear Mr. Niehoff:

Enclosed is Water Permit No. 1851-1 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



D.C.Scott
SURVEYORS, INC.
3153 ANDERSON ROAD
RAPID CITY, SD 57703
(605) 393-2400

EXHIBIT

RECEIVED

DEC 23 2016

WATER RIGHTS
PROGRAM

1851-1

Accompanying Water Permit No. 1851-1
in the name of Richard Niehoff
showing location of on-site bench mark
in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9,
Township 2 North, Range 7 East of the Black Hills Meridian,
Meade County, South Dakota.



November, 2016

SCALE IN FEET

0 100 200 300 400

GEIDEL
SUBD.
LOT 1

MARVEL
LOT 1

MOUNTAIN
LOT 7

ESTATES
4

3 LOT 8

NOTE:
THIS EXHIBIT SUPERSEDES AND REPLACES
EARLIER EXHIBIT DATED OCTOBER, 2016.

LOT A

9

10
LOT 21

LOT 2 of
NW $\frac{1}{4}$
NE $\frac{1}{4}$

TRACT 2
AIGNER
SUBD.

1/16 LINE

LENORA'S ACRES
TRACT 1

1/16 LINE

TRIBUTARY

UNNAMED

UNPLATTED
SE $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 9
T2N, R7E B.H.M.

S17°10'21"W
2358.83'

DEADWOOD

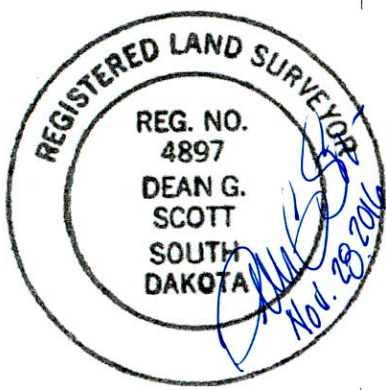
AVENUE

SECTION LINE

SECONDARY

LOT 26
REVISSED

MARVEL MOUNTAIN ESTATES, PHASE III



DISCHARGE STRUCTURE
BEARS N44° E 18.5'
FROM BENCH MARK
RIM ELEVATION = 96.59'

BENCH MARK
5/8" REBAR
ELEVATION = 100.00'

POND

HAWK

BLACK

CREEK

TRACT 3
H O F F
S U B D .

REVISSED

1/4 LINE

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 1851-1

I have this day, September 15, 2016 made a thorough examination of the water use system constructed by Richard Niehoff, 6809 Deadwood Ave No., Rapid City, SD 57702 of Permit No. 1851-1, bearing the priority of 8/4/2005 authorizing the diversion of .33 cu. ft. per second and storage of 6.5 acre-feet of water from a spring fed pond at the confluence of an unnamed tributary and Black Hawk Creek for irrigation purposes, in Meade county.

Inspection contact & relationship to permit holder, if applicable:

Chad Niehoff, son
6807 Deadwood Ave No.
Rapid City, SD 57702
605-484-0194

A. Pond Information:

- 1) Height to crest 9 feet
- 2) Crest width 20 feet
- 3) Crest length 65 feet
- 4) Primary Spillway 24" riser/24" barrel
- 5) Secondary Spillway length 100 ft.
- 6) Secondary Spillway width 20 ft.
- 7) Surface Area 1.1 ac.
- 8) Depth 12 ft.
- 9) Approx. storage 6.5 ac-ft

Date constructed: prior to 2005

B. Works used to divert the water:

Pump:

- 1) Make Berkeley
- 2) Model B2ZPLS (centrifugal)

Power:

- 1) Source Electric
- 2) Horsepower rating 15 hp

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

- 1) Type portable aluminum pipe
- 2) Size 4 inches
- 3) Length approx. 920 feet (max.)

D. Works used to apply water to beneficial use:

Towline

- 1) Length 600 feet (per towline)
- 2) Diameter 3 inches (40' pipe sections with 1 impact sprinkler @ approx. 10 gpm each section)
- 3) Capacity 150 gpm (per towline)
- 4) Acres 9.7

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by: see below

At a pumping rate of .33 cfs (150 gpm) the pumping time is not to exceed 10 hours per day. The operator typically runs 6 hour sets and in 2016, ran one set per day. There have been years when the Operator ran two 6 hour sets per day. He said typically even when irrigating there is still flow out the spillway into Black Hawk Creek.

A permanent benchmark from local datum was to be established near the pond for the purpose of referencing the pond at 6.5 acre-feet storage capacity ("to ensure the drop tube level in the pond is not altered"). The inspection contact was not aware of any benchmark being set. The primary spillway riser base could serve as a reference and the elevation to the spillway crest (6.5 acre-foot level) noted as the vertical distance above the riser base.

- 2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes

List any extended period of nonuse: **none**

- 3) Exceptions to compliance are: none

E. Condition and Location:

1. The system is in good condition with the point of diversion located as follows:

1,980' S and 689' W of the NE corner Section 9 T2N R7E (44.149282, -103.274667).

2. The works are capable of diverting and conveying to the place of use 0.33 cu. ft. per second of water (150 gpm) and storing 6.5 acre-feet of water which is to be used for sprinkler irrigation. Water has been put to beneficial use to the maximum extent as follows:

Section 9 T2N R7E, SE ¼ NE ¼ - 9.7 acres

comprising a total of 9.7 acres of land and the license should be issued for .33 cfs and 6.5 acre-feet of storage .

3. All structures, wells and lands on map: **Yes**

F. Comments or other permit(s) associated with the project:

The pump is capable of pumping up to 300 gpm but to keep within the recommended operating range, the discharge is controlled using gate valves. Inflows upstream of the pond 9/15 were difficult to estimate due to overgrowth of vegetation both on Black Hawk Creek and the unnamed tributary. Outflows from the pond through the 24" cmp were estimated to be in excess of 100 gpm and inflows immediately upstream of the pond could easily have been equal to the outflows, with Black Hawk Creek contributing approximately 80 gpm and the unnamed tributary 20 gpm.



Steven Quissell
Water Rights Inspector
DENR, Water Rights Program

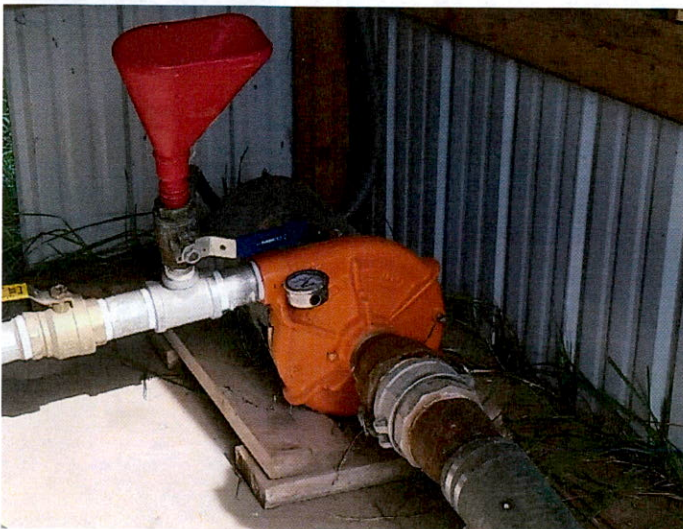
Date report completed: 9/16/2016



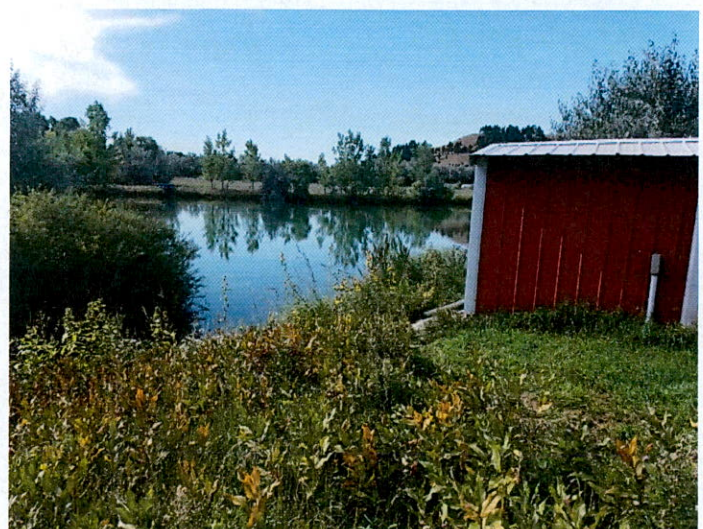
pond viewed from east side
Black Hawk Creek enters background @ far left
unnamed tributary enters background @ center



crest of embankment looking southwest



pump



pump house and pond



3" tow lines



Overflow at riser 9/15



Black Hawk Creek flow upstream of pond



Flow immediately downstream of pond spillway

Water Right #1851-1
Richard Niehoff
9/15/2016



Steven Quissell

Steven Quissell
Water Rights Inspector
DENR Water Rights Program

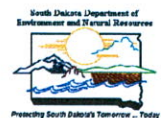


Water Right #1851-1
Richard Niehoff
9/15/2016



Steven Quissell

Steven Quissell
Water Rights Inspector
DENR Water Rights Program



Beck, Lynn

From: Beck, Lynn
Sent: Tuesday, September 20, 2016 9:38 AM
To: Quissell, Steve
Cc: Gronlund, Eric
Subject: RE: Richard Niehoff #1851-1

Questions; 1) is the current drop structure a cmp pipe or a concrete pipe; 2) Does the drop structure have a concrete base or is the base just natural ground? If the base of the drop inlet is just at ground level and not a concrete base, erosion or deposition can occur compromising the integrity of the bench mark.

It is unfortunate that the bench mark qualification was not followed up on. An elevation difference from the top of the drop tube to a bench mark still needs to be established prior to licensing. The integrity of the bench mark depends on it being set apart from the pond and drop inlet structure. Earthen Secondary spillway crests and top of dam crests can be messed with in conjunction with raising the drop inlet structure, though not likely due to the amount of work that would take.

Ideally a bench mark needs to be set apart from the pond and an elevation difference established from the bench mark to the overflow of the drop inlet structure. This is the responsibility of the permit holder and needs to be done before licensing of the permit. A compromise could be that an elevation difference is established from the top of the overflow of the drop structure to the earthen overflow of the secondary spillway. I do not like this option because the ground elevation of the secondary spillway may not be consistent and can be subject to erosion. The same can be said for the crest of the pond/dam.

Any thoughts Eric?

Lynn Beck

Natural Resources Engineer III
SD Department of Environment and Natural Resources
Water Rights Program
Phone: (605) 773-3352
Fax: (605) 773-4068
Lynn.beck@state.sd.us
<http://denr.sd.gov/>

From: Quissell, Steve
Sent: Monday, September 19, 2016 10:46 AM
To: Beck, Lynn
Cc: McMath, Genny
Subject: Richard Niehoff #1851-1

Lynn

Attached is the EOW and arc.pdf for Richard Niehoff #1851-1. The license is to be transferred to Chad Niehoff (son), 6807 Deadwood Ave. No., Rapid City 57702.

Take a look at the comments on the permit qualifications and see if you want some edits. Richard died just a few days before the permit was finalized and that may have contributed to the owner not completing the

benchmark requirement. It seems the pond elevation could be referenced quite easily as a vertical distance above the riser base. I did not have equipment along on the day of the inspection to measure that distance properly.

Steven Quissell

Water Right Inspector

SD Department of Environment and Natural Resources

Water Rights Program

Phone: (605) 394-6763

Fax: (605) 394-5317



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 26, 2016

1851-1

Richard Niehoff
6809 Deadwood Ave N
Rapid City SD 57702

Dear Mr. Niehoff:

I am writing in regard to Water Permit No. 1851-1 listed in the name of Richard Niehoff (copy enclosed). Upon inspection of the water use system for licensing purposes, Department of Environment and Natural Resources staff discovered that Qualification No. 4 on the permit has not been met.

4. A permanent benchmark from a local datum shall be established near the pond for the purpose of referencing the pond at the 6.5 acre feet storage capacity. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held by the Water Rights Program.

Permit No. 1851-1 is subject to violation as long as Qualification No. 4 is not met. Once all of Permit No. 1851-1 qualifications are met the process of licensing can continue. The license is the final document in the process of obtaining a water permit.

Please, send the documentation required in Qualification No. 4 to the Water Rights Program.
Contact me if you have any questions concerning this matter.

Sincerely,

Lynn Beck, Natural Resources Engineer III
Water Rights Program
(605) 773-3352
e-mail: lynn.beck@state.sd.us

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 6, 2017

1851-1

Chad Niehoff
6807 Deadwood Ave N
Rapid City SD 57702

Dear Mr. Niehoff:

I am writing in regard to Water Permit No. 1851-1. The water permit is still listed in Richard's name and it is our understanding it should be transferred to you.

Enclosed is a partially completed Notice of Transfer of Ownership form for filing an ownership change. Please review the form and complete as needed. Upon completion, please sign the form and return it to our office with a required filing fee of \$50.00. The check or money order for the fee can be made payable to the Water Rights Program.

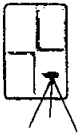
In September, 2016, Steve Quissell with our program conducted an investigation of the water use system for licensing purposes. A copy of the original permit is enclosed. Please see Page 2, Qualification #4 concerning a permanent benchmark. Prior to licensing, we need verification the benchmark was established according to the qualification.

To recap, the transfer of ownership and the filing fee needs to be submitted to get the permit transferred to your name. Qualification #4 needs to be met with verification forwarded to our office. A postage paid envelope is enclosed for your convenience. Please contact our office you have any questions.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures



D.C.Scott
SURVEYORS, INC.
3153 ANDERSON ROAD
RAPID CITY, SD 57703
(605) 393-2400

EXHIBIT

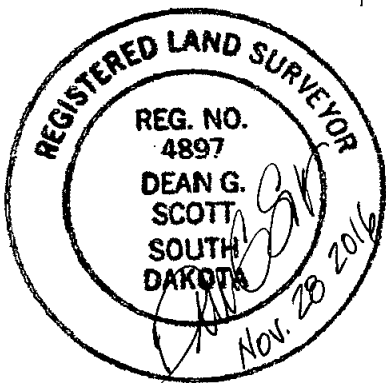
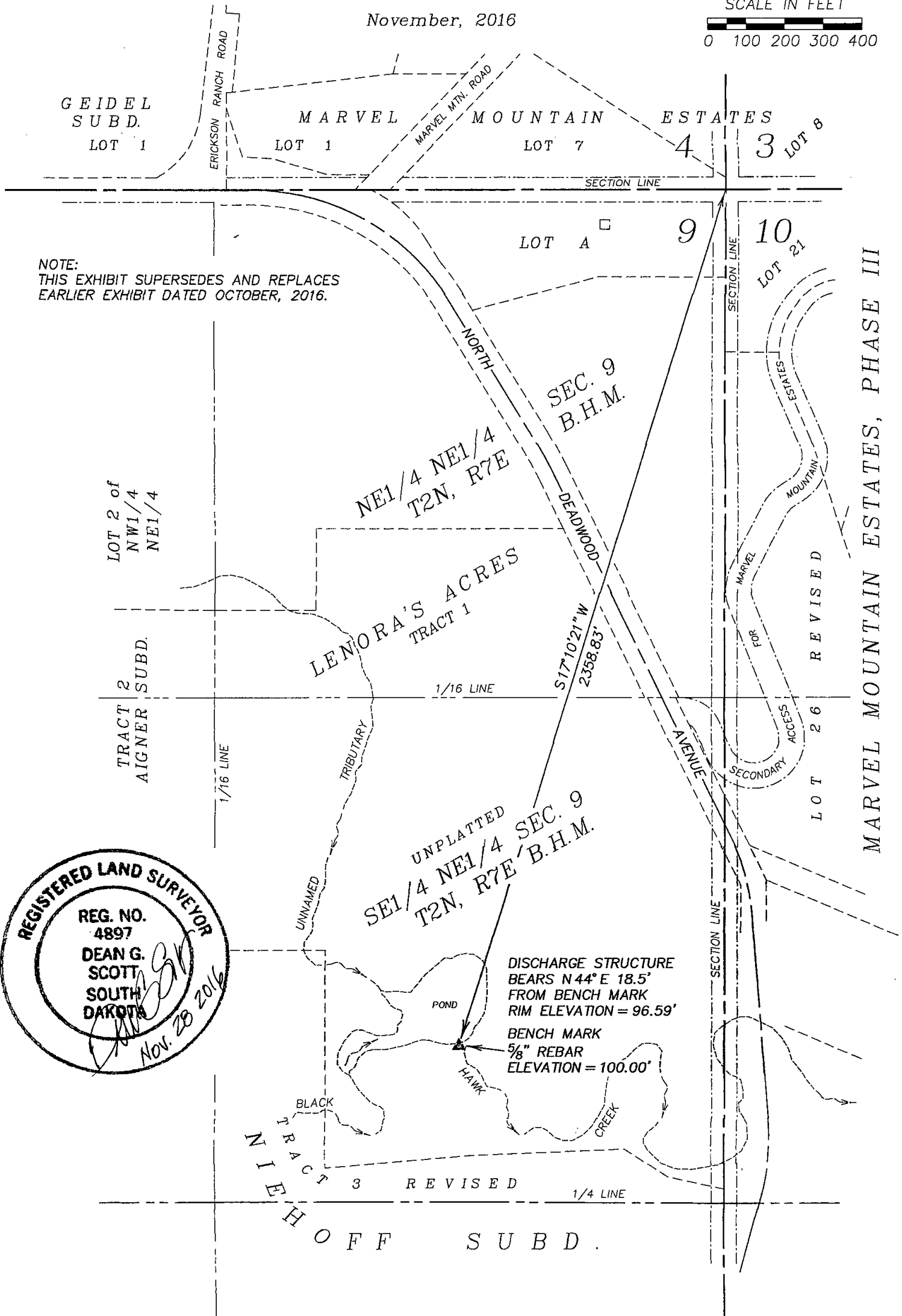
Accompanying Water Permit No. 1851-1
in the name of Richard Niehoff
showing location of on-site bench mark
in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9,
Township 2 North, Range 7 East of the Black Hills Meridian,
Meade County, South Dakota.



SCALE IN FEET

0 100 200 300 400

November, 2016



RECEIVED

DEC 18 2017

WATER RIGHTS
PROGRAM

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 1851-1

Date: 12-13-17

I/We request that Water Permit No. 1851-1

formerly owned by: Richard Niehoff

be transferred to: (name & address) Chad Niehoff

6807 Deadwood Ave. North Rapid City SD 57702

Telephone No. (605) 484-0194

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

9.7 acres located in the SE ¼ NE ¼ Section 9, T2N, R7E

I/We understand that the validity of Water Permit No. 1851-1 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 Fifty Dollars (\$50.00) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Chad Niehoff, the new owner, certify that the above information is true and correct.

Chad Niehoff

(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. 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

Date December 18, 20 17

RECEIVED OF Chad Niehoff 6807 Deadwood Ave Rapid City, 57702 9600

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form 1851-1		
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. _____	50	00
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	

No. **08396**

By Janne Goodman
Chief Engineer

2921



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

MAR 19 2018

1851-1

Chad Niehoff
6807 Deadwood Ave N
Rapid City SD 57702

Dear Mr. Niehoff:

Enclosed is Water License No. 1851-1. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

The ownership change has also been processed. The water right formerly listed in the name of Richard Niehoff is now listed in your name. Enclosed for your records is Receipt No. 08396 in the amount \$50 which you paid for filing the ownership change.

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,

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

enclosures

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 1851-1**

(1) Richard Niehoff, Rapid City SD 57702 made Application No. 1851-1, August 4, 2005 for a water permit to divert 0.33 cubic feet of water per second from a spring fed pond (6.5 acre feet capacity) located at the confluence of an unnamed tributary with Black Hawk Creek, Meade County, South Dakota for irrigation purposes. Permit No. 1851-1, with a priority date of August 4, 2005 was approved March 3, 2006 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 3, 2011 and for the application to beneficial use of said water on or before March 3, 2015.

On December 18, 2017, Water Permit No. 1851-1 was transferred to Chad Niehoff.

(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 0.33 cubic feet of water per second for beneficial use. The location of the diversion point is:

- 1,980'S and 689'W of the NE corner of Section 9, T2N, R7E (SE ¼ NE ¼)
Latitude 44.149282, Longitude -103.274667

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 9 T2N R7E, SE ¼ NE ¼ 9.7 acres

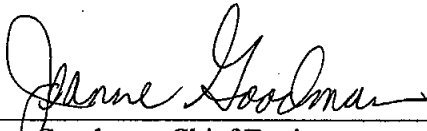
(4) Pursuant to South Dakota Water Law 46-5-30.1 Chad Niehoff, 6807 Deadwood Ave N, Rapid City SD 57702 the holder and/or owner of Water Right No. 1851-1 is issued a license to appropriate water, the right to use 0.33 cubic feet of water per second from a spring fed pond (6.5 acre feet capacity) located at the confluence of an unnamed tributary with Black Hawk Creek with a priority date of August 4, 2005 from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 1851-1 and subject to the following qualifications:

- Water Permit No. 1851-1 authorizes a pond on Black Hawk Creek at its junction with an unnamed tributary with a storage capacity of 6.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation.
- Permit No. 1851-1 limits the diversion rate from the pond to the statutory limit of 0.14 cubic feet of water per second (62 gpm) for irrigation of 9.7 acres unless the number of hours of irrigation per day are reduced to a corresponding equivalent time period and the total amount of water applied does not exceed 24 inches per year. At a pumping rate of 0.33 cfs (150 gpm), the pumping time shall not exceed 10 hours per day.

continued

- The pond must be maintained with a bypass mechanism capable of bypassing all or part of the inflow as directed by the Chief Engineer to satisfy downstream domestic use, including livestock water and prior water rights. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
- A permanent benchmark from a local datum shall be established near the pond for the purpose of referencing the pond at the 6.5 acre feet storage capacity. The location of the benchmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark will be held by the Water Rights Program. *A copy of the survey is on file with the Water Rights Program.*
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

MAR 19 2018

date

