

WATER PERMIT NO. 1904B-1

Name of Applicant: Douglas Ottema

Address: 1218 East St, Whitewood SD 57793

Phone: 605 717-2028

Amount of Water Claimed: 0.167 cfs (6 AF)

Total Acres: Na

Source of Water Supply: runoff

Water to be used for: industrial

County: Lawrence

Type of Waste Disposal System:

Location: 12 miles west of Lead/Deadwood

PRIORITY

Date Received: 3-9-20

Application/License Fee: \$100

Corrected Application Received:

Period of Annual Use: Jan – Dec 31

Remarks: Extension of time for Permit No. 1904A-1

Diversion Point: W 1/2 SW 1/4, SW 1/4 NW 1/4

Sec 20-T5N-R1E

Land to be Irrigated: NA

Depth of Well: NA

Well Driller:

Remarks:

Type of Map:

Prepared by:

Reviewed and the Number Assigned on: 3-9-20

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

	⊗				
			20		
	⊗				

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

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>1904B-1</u>	(office use only) Hydrologic Unit <u>10120203</u>
	Basin <u>Belle Fourche</u>	
	Newspaper <u>Black Hills Pioneer</u>	

PAID
MAR - 9 2020
Ck# 2266
RECEIVED

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

Check use(s) of water:

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

Type of Application:
(check one)

☐ New	☐ Vested Right (Use predates Mar 2, 1955)	☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____		
☐ Amendment/Correction to Permit No. _____		

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

Extension of Time for Permit No. 1904A-1 as allowed by 46-5-26

1. Name to Appear on Water Permit Douglas OttemaMailing Address 1218 Easy St Whitewood ☒ SD ☒ 57793
(Address) (City) (State) (Zip Code)Phone 605 717-2028 Mobile _____ Email doug.ottema@yahoo.com2. Amount of water claimed 0.167 *CFS or 75 **GPM and up to 6 ***AF or _____ Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use)3. Source of water supply dams and diversion from dry gulches4. Location of point of diversion W 1/2 SW 1/4, SW 1/4 NW 1/4, Sec 20-T5N-R1E County Lawrence ☒
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No

If "Yes," where will water be used? _____

(example - NW1/4 section 12-T104N-R53W)

5. County or counties where water will be used Lawrence6. Annual period during which water is to be used January 1 - December 31

7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Extension of time requested because of exigent circumstances beyond the control of the permit holder due to the fact that he has become the full time caregiver of his ailing wife.

RECEIVED

MAR 09 2020

WATER RIGHTS PROGRAM

I, Douglas Ottema Owner, the applicant, certify under
Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

**SOUTH DAKOTA
WATER PERMIT NO. 1904B-1**

Date of first receipt of application March 9, 2020.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 1904B-1 to Douglas Ottema, 1218 Easy St, Whitewood SD 57793 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. 1904B-1 extends the length of time allowed to place water to beneficial use. Water Permit No. 1904A-1 appropriates up to 6 acre-feet of water in a series of three small dry draw dams/dugouts for a mining operation located in the W 1/2 SW 1/4 and SW 1/4 NW 1/4 Section 20-T5N-R1E. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum rate of 0.167 cubic feet of water per second [cfs] (75 gallons per minute) for use in processing ore. The mining claim is within the boundaries of the Black Hills National Forest in Lawrence County and located approximately 12 miles west of Lead/Deadwood SD.
2. The water appropriated shall be used for the purpose of industrial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 1904B-1 is July 8, 2020.
5. The date from which applicant may claim right is January 2, 2015 (for undeveloped portion which is 5.5 acre-feet of water in storage) and March 30, 2009 (for the diversion rate of 0.167 cfs and 0.5 acre-feet of water in storage).
6. One-fifth of the construction is to be completed on or before October 6, 2022.
7. All construction is to be completed on or before April 6, 2025.
8. Water is to be put to beneficial use on or before April 6, 2029.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

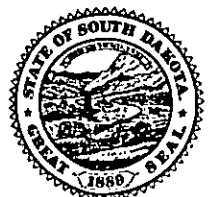
1. Water Permit Nos. 1904-1, 1904A-1 and 1904B-1, combined, authorize three dry draw dams/dugouts with a total combined storage capacity of six acre feet of water and sufficient water annually to maintain the water level in the dams/dugouts.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights, must be by-passed.
3. Applicable provisions of Water Permit Nos. 1904-1 and 1904A-1 are incorporated into Water Permit No. 1904B-1.

WATER MANAGEMENT BOARD

By: *Eric Gronlund*
Eric Gronlund, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

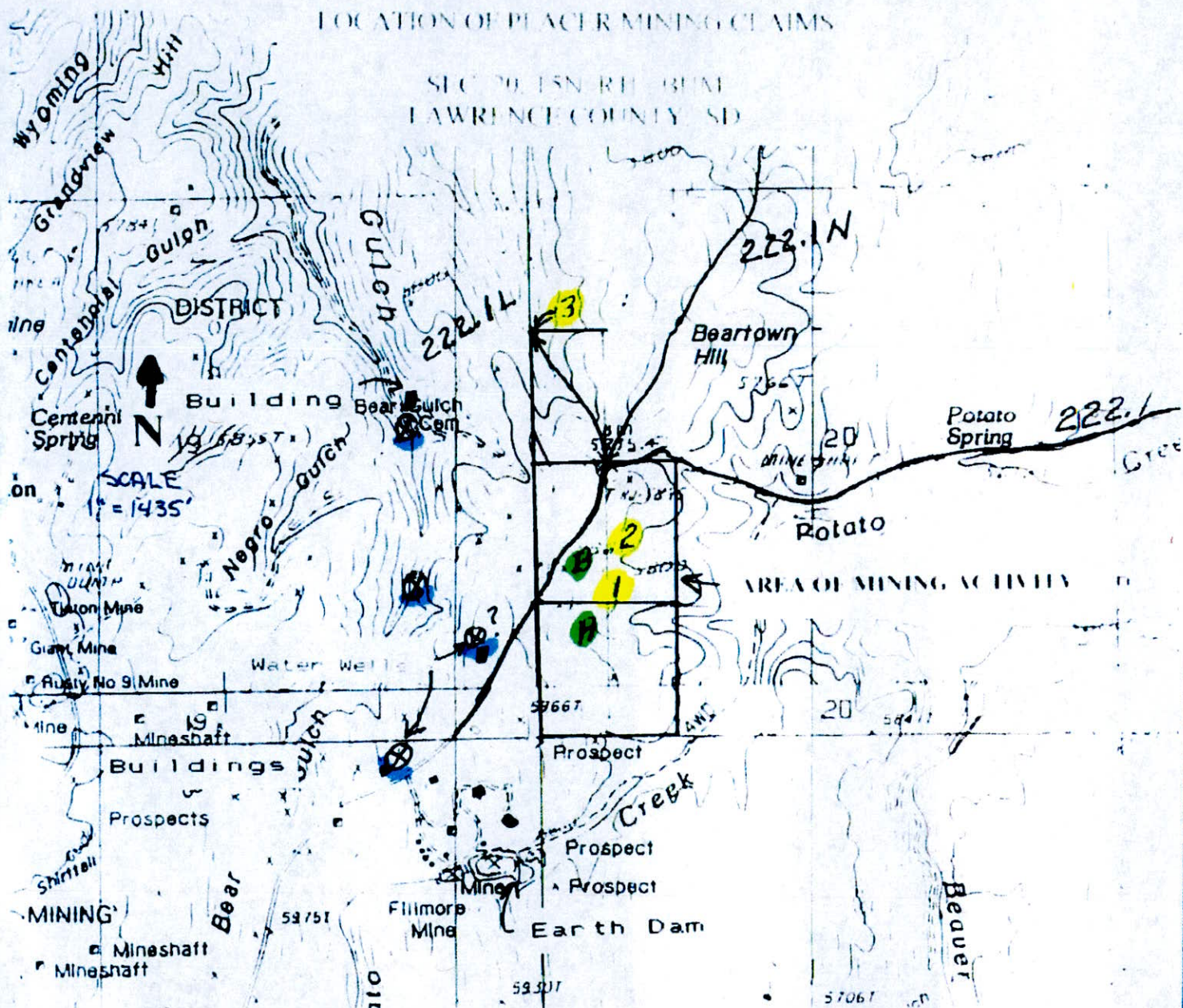
JUL 27 2020

date



LOCATION OF PLACER MINING CLAIMS

SEC 20, T5N, R1E, B1M
LAWRENCE COUNTY, SD



● Location of Water Wells - No usage

● Buildings

○ Description of dam and diversion location

Legal Description W 1/2 of SW 1/4 W 1/2 of SW 1/4 of NW 1/4 Sec 20, T5N, R1E

- Dam No. 1 Beginning SW corner of Section 20 thence 145 ft North thence 790 ft East
- Dam No. 2 Beginning SW corner of Section 20 thence 20.4 ft North thence 9.9 ft East
- Dam No. 3 beginning SW corner of Section 20 thence 3960 ft North thence 56 ft East
- Diversion A Beginning SW corner of Section 20 thence 1056 ft North thence 422 ft East
- Diversion B Beginning SW corner of Section 20 thence 1690 ft North thence 528 ft East

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JUN 26 2009

WATER RIGHTS
PROGRAM

MAP APPROVED BY:

Thomas D. Ver Helst

Thomas D. Ver Helst

Ag Engineer, NRCS, Belle Fourche

June 24, 2009

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Environment and Natural Resources

Date March 9, 2020

RECEIVED OF Douglas Ottema 1218 Easy St Whitewood SD 57793

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

Fee for Application for Permit No. <u>1904B-1</u> to Appropriate Water, to construct and to put water to beneficial use	\$100.00
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. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law)	
TOTAL	\$100.00

By Eric Bronlund
Chief Engineer me



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

February 25, 2020

Douglas Ottema
1218 Easy St
Whitewood SD 57793

Dear Mr. Ottema:

Enclosed is a partially completed *Application for Permit* form for filing an extension of time for Water Permit No. 1904A-1.

Please review the form and make any necessary changes. If available, include your cell phone number and email address. Please sign at the bottom of the form and return the application to our office. The application filing fee is \$100.00.

If you have any questions, please contact Eric Gronlund or me.

Sincerely,

Karen Schlaak

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

enclosure

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Douglas Ottema

ADDRESS: 1218 Easy St, Whitewood SD 57793

DATE: April 1, 2020

TELEPHONE: 605-717-2028

RE: Application No. 1904B-1 for Extension of Time

COMMENTS:

I called Mr. Ottema to determine the length of time he would like to apply for as an extension to complete works authorized under No. 1904A-1. Mr. Ottema indicated he would like to apply for an additional five years. He also noted that his wife died in mid-March 2020. I told Mr. Ottema that his application will be schedule for consideration at the July 8, 2020, board meeting and he should be expecting a letter with the public notice directing him to contact the paper to authorize publication.



Ron Duvall
Natural Resources Engineer
Water Rights Program

REPORT ON WATER PERMIT APPLICATION 1904B-1

DOUGLAS OTTEMA

March 25, 2020

Water Permit Application No. 1904B-1 proposes to amend Water Permit No. 1904A-1 to extend the length of time allowed to complete the construction of three small dry draw dams/dugouts. Water Permit No. 1904-1 authorized the appropriation of up to 6 acre-ft of water for the dams/dugouts to be used in a mining operation located in the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T5N-R1E, approximately 12 miles west of Lead/Deadwood, SD, in Lawrence County. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum instantaneous diversion rate of 0.167 cubic feet of water per second (cfs), which is less than 75 gallons per minute (gpm), to be used when processing ore. If snowmelt/runoff events are not supplying up to 6 acre-ft of water in the dams/dugouts, water in adjacent dry gulches will be diverted at a maximum instantaneous diversion rate of 0.167 cfs to maintain the water levels in the dams/dugouts.

Water Permit No. 1904-1 was approved December 7, 2009, and construction of the project was to be completed by December 7, 2014, with water to be put to beneficial use by December 7, 2018. Since construction was only able to be partially completed, the applicable portions of Water Permit No. 1904-1 were incorporated into Water Permit No. 1904A-1 on April 6, 2015, and a new construction deadline of April 6, 2020 was issued, with water to be put to beneficial use by April 6, 2024. Due to exigent circumstances, Water Permit Application No. 1904B-1 was submitted to amend Water Permit No. 1904A-1 by allowing for a new construction completion date of April 6, 2025, upon approval.

South Dakota Codified Law (SDCL) 46-5-26

Water Permit Application 1904B-1 may amend Water Permit No. 1904A-1 pursuant to South Dakota Codified Law (SDCL) 46-5-26, "a permit may be amended by extending the time for the completion of construction, or for application to beneficial use, for a reasonable time, but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board." The extension of time is requested because of exigent circumstances beyond the control of the permit holder as he has become the full-time caregiver of his ailing wife.

Review of Proposed Project and Water Source

Figure 1 displays the proposed mining operation which is located between where Bear Gulch headwaters and Potato Creek (a tributary of Beaver Creek). Bear Gulch and Beaver Creek are both tributaries of the Redwater River which eventually flows into the Belle Fourche River.

The water to be used in the mining operation is primarily from snowmelt/runoff events which will be stored in three reservoirs. If the volume of water from snowmelt/runoff events in the dams/dugouts is not enough for the proposed appropriation, it may be necessary to divert water

from the two adjacent dry gulches. The applicant stated the two diversion points will be designed for gravity feeding to supply water to the reservoirs, or the water will be pumped.

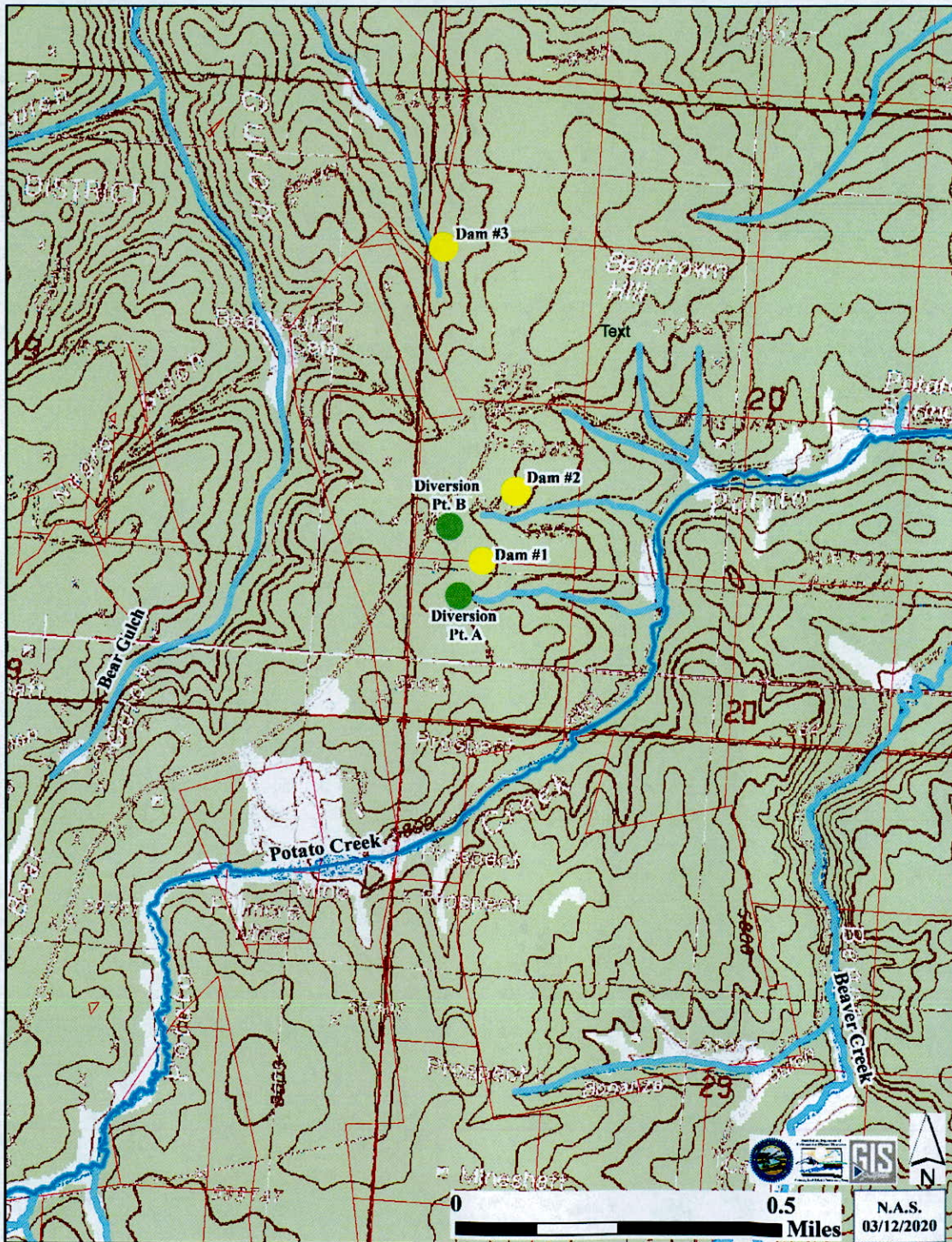


Figure 1. Area Map for Water Permit Application No. 1904B-1

Unlawful Impairment of Existing Rights Discussion

In May 1986, Water Permit Application No. 1348-1 requested to divert irrigation water from Spearfish Creek. The application was deferred for further investigation of the water availability in Spearfish Creek and the Redwater River (both tributaries of the Belle Fourche River) (Water Rights, 2020). The DENR-Water Rights Program completed a study in October (1987) and determined there is no unappropriated water for new diversions because of prior water rights appropriating water from Spearfish Creek and the Redwater River.

Water Permit Application No. 1348-1 was reconsidered by the Water Management Board in May (2002). The application was denied and the Board adopted the “Findings of Facts,” that determined the three water courses – Spearfish Creek, Redwater River and the Belle Fourche River, should be treated as a single complex and that insufficiency of water in the river complex is demonstrated by several factors. A main issue being the U.S. Bureau of Reclamation is regularly unable to capture significant natural flows (authorized by Water Right No 0337-1 with a priority date of August 5, 1904) from the Belle Fourche River to fill the Belle Fourche Reservoir and provide an adequate water supply for the Belle Fourche Irrigation District. Thus, the irrigation district has had to contract for water releases from Keyhole Reservoir for twenty-four of the previous twenty-seven years (Water Rights, 2002).

The surface water runoff from the applicant’s proposed mining site normally flows into Bear Gulch and Potato Creek which is located in the Spearfish Creek, Redwater River and the Belle Fourche River complex. A short distance downstream from the proposed diversion points for the mining site, Bear Gulch and Beaver Creek pass over the Madison Limestone and Minnelusa Formation (two common bedrock loss zones in the Black Hills). A USGS study completed by Hortness and Driscoll (1998) found the median bedrock loss thresholds to the Madison Limestone and Minnelusa Formation for Beaver Creek is 9.1 cfs and Bear Gulch is 4.0 cfs. Those values were quantified using a water balance equation with a control volume that included the stream channel and adjacent alluvial deposits. Except under wet conditions, surface water runoff from the proposed mining site would likely not exceed the threshold rates, so the runoff would be lost to the bedrock aquifers and would not be available to downstream senior rights under normal conditions.

Water Permit No. 1657-1 (held by applicant) authorized the storage of 15 acre-ft of water with a maximum instantaneous diversion rate of 0.22 cfs but was cancelled in May (2008) due to non-construction. The permit cancellation provided water in the Belle Fourche River Basin to be returned to the public and was regarded as unappropriated water available for the original Water Permit No. 1904-1, the subsequent permit No. 1904A-1 and by extension for Water Permit Application No. 1904B-1 (Water Rights, 2020).

Review of Existing Water Rights

Two vested water rights (Nos. 958-1 and 1404-1) combined have a diversion rate of 3.28 cfs from Crow Creek which flows immediately downstream from Beaver Creek. Beyond those, there are several existing water rights that divert from the Redwater and Belle Fourche Rivers (Water Rights, 2020). Except under wet conditions, surface water runoff from the proposed mining site would likely not survive the downstream bedrock loss zone to the Redwater River; therefore, the proposed appropriation would not be expected to unlawfully impair downstream water rights.

Conclusions

1. Water Permit Application No. 1904B-1 proposes to amend Water Permit Application No. 1904A-1 for an extension on the construction deadline due to exigent circumstances.
2. Water Permit No. 1904A-1 was incorporated with Water Permit No. 1904-1 which authorizes the appropriation of up to 6 acre-ft of water into three small dry draw dams/dugouts supplied by snowmelt/runoff events for industrial use in a small-scale mining operation.
3. Water will be diverted at a maximum instantaneous diversion rate of 0.167 cfs from three dams/dugouts to be used when processing ore. If snowmelt/runoff events are not supplying up to 6 acre-ft of water to the dams/dugouts, water in two adjacent dry gulches will be diverted at a maximum instantaneous diversion rate of 0.167 cfs to maintain the water levels in the dams/dugouts.
4. Surface water runoff from the mining area flows into Bear Gulch and Beaver Creek, both of which are tributaries of the Redwater River and eventually the Belle Fourche River.
5. There are several existing water rights that divert from the Redwater and Belle Fourche Rivers. Except under wet conditions, surface water runoff from the proposed mining site would likely not survive the downstream bedrock loss zone to the Redwater River; therefore, the proposed appropriation would not be expected to unlawfully impair downstream water rights.
6. Due to the cancellation of Water Permit No. 1657-1 in 2008, 15 acre-ft of water from the Belle Fourche River Basin was returned to the public and was regarded as unappropriated water available for the original Water Permit No. 1904-1, the subsequent permit No. 1904A-1 and by extension for Water Permit Application No. 1904B-1.

Nakaila Steen

Nakaila Steen

Natural Resources Engineer I

DENR – Water Rights Program

Reviewed by:

Mark Rath

Mark Rath

Natural Resources Engineer III

DENR – Water Rights Program

References

- Hortness, J.E. and Driscoll, D.G., 1998. Streamflow Losses in the Black Hills of Western South Dakota. United States Geological Survey, Water-Resources Investigations Report 98-4116.
- Water Rights, 2002. Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Water Permit Application No. 1348-1. DENR-Water Rights Program file for Water Right No. 1348-1. Joe Foss Bldg. Pierre, SD.
- Water Rights, 2020. Water Right/Permit Files, SD-DENR-Water Rights Program. Joe Foss Bldg, Pierre, SD.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION
NO. 1904B-1, Douglas Ottema, Whitewood SD

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. 1904B-1, Douglas Ottema, 1218 Easy Street, Whitewood SD 57793.

The Chief Engineer is recommending APPROVAL of Application No. 1904B-1 for an extension of time to complete construction of works pursuant to SDCL 46-5-26 because 1) of a delay due to exigent circumstances. The applicant has become a full-time caregiver for his ailing wife, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Water Permit Nos. 1904-1, 1904A-1 and 1904B-1, combined, authorize three dry draw dams/dugouts with a total combined storage capacity of six acre feet of water and sufficient water annually to maintain the water level in the dams/dugouts.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights, must be by-passed.
3. Applicable provisions of Water Permit Nos. 1904-1 and 1904A-1 are incorporated into Water Permit No. 1904B-1.

See report on application for additional information.

Eric Gronlund, Chief Engineer
March 31, 2020

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APR 15 2020

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF LAWRENCE:

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

Notice Of Hearing On
Application No. 1904B-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 9th day of April, 2020 and the last publication on the _____ day of _____, that the full amount of fees charged for publishing same, to-wit: The sum of \$ 60.52, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Signature]
Subscribed and sworn to before me this 13th day of April 2020

[Signature]
Notary Public, Butte County, South Dakota
My commission expires: 3-21-2023

**NOTICE OF
HEARING ON
APPLICATION
NO. 1904B-1 to
Appropriate Water**

Notice is given that Douglas Ottema, 1218 Easy St, Whitewood SD 57793 has filed an application for a water permit to amend Water Permit No. 1904A-1 to extend the length of time allowed to place water to beneficial use. Water Permit No. 1904A-1 appropriates up to 6 acre-feet of water in a series of three small dry draw dams/dugouts for a mining operation located in the W 1/2 SW 1/4 and SW 1/4 NW 1/4 Section 20-T5N-R1E. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum rate of 0.167 cubic feet of water per second [cfs] (75 gallons per minute) for use in processing ore. The mining claim is within the boundaries of the Black Hills National Forest in Lawrence County and located approximately 12 miles west of Lead/Deadwood SD.

Water Permit No. 1904A-1 was approved April 6, 2015, and the proposed project was to be completed by April 6, 2020, with water being put to beneficial use by April 6, 2024. Application No. 1904B-1 requests to extend the length of time allowed to complete construction from April 6, 2020 to April 6, 2025. Application No. 1904B-1, if approved, will retain the January 2, 2015, and March 30, 2009, priority dates assigned to Permit No. 1904A-1.

Pursuant to SDCL 46-5-26, a permit may be amended to extend the time to complete construction due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. The permit holder is requesting an extension of time because he has become the full-time caregiver of his ailing wife.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 1904B-1 with qualifications because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at

<http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:00 am CST on July 8, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 26, 2020.

The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented

by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2020 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by June 26, 2020. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you

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

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 22, 2020. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at the total approximate cost of \$61.91.

#607
Apr 9

NOTICE OF HEARING ON APPLICATION NO. 1904B-1 to Appropriate Water

Notice is given that Douglas Ottema, 1218 Easy St, Whitewood SD 57793 has filed an application for a water permit to amend Water Permit No. 1904A-1 to extend the length of time allowed to place water to beneficial use. Water Permit No. 1904A-1 appropriates up to 6 acre-feet of water in a series of three small dry draw dams/dugouts for a mining operation located in the W 1/2 SW 1/4 and SW 1/4 NW 1/4 Section 20-T5N-R1E. Water to fill the dams/dugouts will be supplied primarily by snowmelt and runoff events. Water will be diverted from the dams/dugouts at a maximum rate of 0.167 cubic feet of water per second [cfs] (75 gallons per minute) for use in processing ore. The mining claim is within the boundaries of the Black Hills National Forest in Lawrence County and located approximately 12 miles west of Lead/Deadwood SD.

Water Permit No. 1904A-1 was approved April 6, 2015, and the proposed project was to be completed by April 6, 2020, with water being put to beneficial use by April 6, 2024. Application No. 1904B-1 requests to extend the length of time allowed to complete construction from April 6, 2020 to April 6, 2025. Application No. 1904B-1, if approved, will retain the January 2, 2015, and March 30, 2009, priority dates assigned to Permit No. 1904A-1.

Pursuant to SDCL 46-5-26, a permit may be amended to extend the time to complete construction due to delays caused by engineering difficulties, delays caused by operation of law or delays caused by other exigent circumstances as identified by the Water Management Board. The permit holder is requesting an extension of time because he has become the full-time caregiver of his ailing wife.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 1904B-1 with qualifications because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 10:00 am CST on July 8, 2020 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 26, 2020.

The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2020 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by June 26, 2020. If an automatic delay is requested, the

hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is April 22, 2020. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

Published once at an approximate cost of _____.

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, April 1, 2020 10:25 AM
To: Legals (legals@bhpioneer.com)
Subject: 1904B-1, Douglas Ottema
Attachments: 1904B-1public.wmb1.docx; FORM8.FRM.doc

Attached is a notice to be published on April 10, 2020.

Douglas Ottema, 1218 Easy St, Whitewood SD 57793 (605 717-2028) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

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

April 1, 2020

Douglas Ottema
1218 Easy St
Whitewood SD 57793

Dear Mr. Ottema:

Water Permit Application No. 1904B-1 for an extension of time has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Black Hills Pioneer printed at Spearfish SD (Ph # 605 642-2761). 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 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 from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Karen Schlaak
Water Rights Program
(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.

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, March 10, 2020 11:55 AM
To: 'doug.ottema@yahoo.com'
Subject: Extension of Time for Permit No. 1904A-1

Mr. Ottema,

Regarding your application for an extension of time for Permit No. 1904A-1, we need to know the amount of time you wish to request for completion of works. You can request up to an additional 5 years.

Please let me know. Thanks.

Karen Schlaak

SD DENR, Water Rights Program
(605) 773-3352





DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUL 27 2020

Douglas Ottema
1218 East St
Whitewood SD 57793

Dear Mr. Ottema:

Enclosed is Water Permit No. 1904B-1 which extends the length of time allowed to place water to beneficial use, 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,

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

enclosures