

Additional documents from the contested case hearing on Water Permit No. 1963A-1 can be found here:

https://denr.sd.gov/wrimage/wrinfo/wr_div1/1963A-1_CCHearingDocs.pdf

**SOUTH DAKOTA
WATER PERMIT NO. 1963A-1**

Date of first receipt of application November 1, 2018.

The Water Management Board approved Water Permit No. 1963A-1 on February 26, 2020 for Tom & Lori Wilson, 11637 SD Highway 20, Buffalo SD 57720 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. 1963A-1 authorizes additional areas of use to Water Permit No. 1963-1. Water Permit No. 1963-1 appropriates 0.53 cubic feet of water per second (cfs) from four wells completed into the Hell Creek Aquifer (approximately 140 feet deep) located in the NW 1/4 Section 25-T19N-R3E for irrigation of 216 acres, livestock watering and to supply a temporary pipeline man camp which is to be located in Section 25-T19N-R3E. This permit authorizes use of the above listed wells as a backup supply for temporary workforce camps to be located in Section 3-T97N-R75W (Tripp County), Section 9-T12N-R12E (Meade County), Section 11-T1N-R20E (Haakon County) and two locations (Section 15-T7N-R59E and Section 29-T14N-R54E) in Dawson and Fallon Counties of Montana. Annual water use for the temporary workforce camps shall not exceed 57.2 acre-feet of water. This permit does not authorize any increase in the diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1. The site of wells is approximately seven miles west of Buffalo SD.
2. The water shall be used for the purpose of a backup supply for temporary workforce camps and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is November 1, 2018.
5. One-fifth of the construction is to be completed on or before August 26, 2022.
6. All construction is to be completed on or before February 26, 2025.
7. Water is to be put to beneficial use on or before February 26, 2029.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The wells approved under Water Permit Nos. 1963-1 and 1963A-1 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The use of water from the wells authorized by Water Permit Nos. 1963-1 and 1963A-1 shall not exceed 57.2 acre feet of water annually for use at temporary workforce camps set forth in Water Permit Nos. 1963-1 and 1963A-1.

(continued)

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year for the water diverted for irrigation use.
4. The permit holder shall report the monthly volume of water diverted for use at the temporary workforce camps during the prior month and the past twelve months. The reporting for workforce camps use is not required once the temporary workforce camps are no longer in place.

WATER MANAGEMENT BOARD

By: _____

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

FEB 28 2020

date



Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>1963A-1</u> (office use only)	Hydrologic Unit <u>10130302</u>
	Basin <u>Grand River</u>	
	Newspaper _____	

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 <u>temporary workforce camp</u>	

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. <u>1963-1</u>		

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

This amendment to the previously approved Permit is to add additional temporary workforce camps that may use this well as a backup water supply. See Part 7 below for additional information.

1. Name to Appear on Water Permit Tom & Lori Wilson

Mailing Address 11637 SD Highway 20 Buffalo SD 57720
(Address) (City) (State) (Zip Code)

Phone 605-848-1336 Mobile _____ Email _____

2. Amount of water claimed 0.53 *CFS or no additional water **GPM and X ***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 Existing well (Tom and Lori Wilson) Authorized by WP 1963-14. Location of point of diversion NW 1/4 Section 25-T19N-R3E County Harding
(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 ☐ NoIf "Yes," where will water be used? (see locations listed in Part 7. below)

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

5. County or counties where water will be used Meade, Harding, Haakon, Tripp, Dawson, Fallon6. 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)

The project description as identified in the approved Water Permit No. 1963-1 has not changed except for the potential of water from this site being used as a backup supply for additional temporary workforce camps (see attached approved permit). The additional temporary workforce camp locations are listed below:

Section 3-T97N-R75W	Section 25-T19N-R3E
Section 9-T12N-R12E	Section 15-T7N-R59E
Section 11-T1N-R20E	Section 29-14N-R54E

I, Thomas Wilson, the applicant, certify under
Name of Person (Thomas Wilson) 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.

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☐ Drilling new well(s) ☒ Using existing well(s)

a) If new wells, how many ____ Have test holes been drilled ☐ Yes ☐ No Drilled by ____
(if yes, please provide copies of logs)

b) If existing wells, how many 2 Provide copy of log(s), if available. Drilled by ____

For either Existing or Proposed Wells:

c) Well Depth (required) 140' Depth to Top of Water Bearing Material ____ Depth to Water from Surface ____

d) Distance to nearest domestic well on applicant's property ____ Property owned by others ____

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) ____

b) System Capacity (gallons) ____ Year Constructed ____

c) Connected to the City of ____ Sanitary System

3. Dugout Information

a) Surface Dimensions ____ Depth ____

b) Depth to water (ground surface to water level) ____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

b) Freeboard ____

c) Crest Width ____

Crest Length ____

d) Height ____

e) Primary Outlet Capacity ____

If pipe, diameter ____

f) Secondary Spillway Capacity ____

Spillway Width ____

g) X & Y Slope (e.g. 3 to 1 is a typical slope)

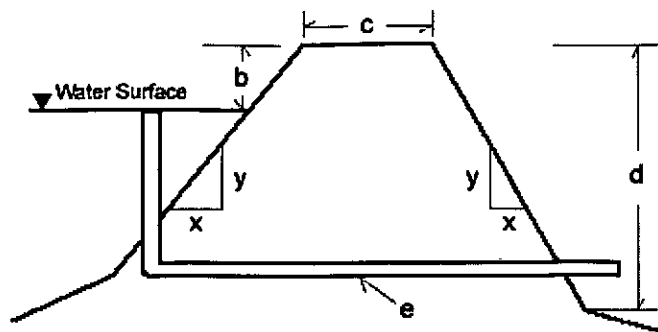
Upstream ____

Downstream ____

h) Surface Area of Impoundment ____

i) Storage ____ Acre Feet

j) Drainage Area Above Dam ____ Acres



October 26, 2018

Eric Gronlund
Water Rights Program
Department of Environment and Natural Resources
523 E. Capitol Avenue
Pierre, SD 57501-3182

RECEIVED
NOV 01 2018
WATER RIGHTS
PROGRAM

PAID
NOV 01 2018
Ck# 304

Re: Application to Amend Permit 1963-1 to Appropriate Water Within the State of South Dakota

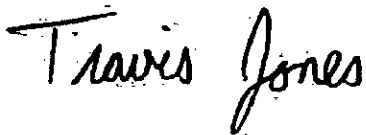
Dear Eric,

I am writing on behalf of Thomas and Lori Wilson, landowners who hold Permit 1963-1. It has been determined that in addition to the temporary workforce camp identified in the existing Permit 1963-1, additional temporary workforce camps may utilize Mr. Wilson's well as a backup supply. No other modifications to Permit 1963-1 are being requested. These additional temporary workforce camp locations include:

Section 3-T97N-R75W	Section 25-T19N-R3E
Section 9-T12N-R12E	Section 15-T7N-R59E
Section 11-T1N-R20E	Section 29-14N-R54E

Mr. and Mrs. Wilson requests that SD DENR amend the referenced permit. We appreciate your assistance with this request. If you have any questions or comments related to the request above, please feel free to contact us.

Sincerely,



Travis Jones
Project Engineer

CC: Thomas and Lori Wilson, Landowner

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

RECEIVED OF Tom & Lori Wilson 11637 HD Highway 20 Buffalo SD 57720 Date November 1, 20 18

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

Fee for Application for Permit No. <u>1963A-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. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	100 00

No. **08791**

By Jeanne Goodman
Chief Engineer

7/12

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Tom and Lori Wilson

ADDRESS: COUNTY: Harding County

DATE: November 15, 2018 TELEPHONE:

RE: return call from Tom Wilson

Mr. Wilson called in response to my previous inquiry for clarification to his application to amend Water Permit No. 1963-1.

Under Item No. 2, Mr. Wilson requested removal of the 2 acre feet. Mr. Wilson indicated he is relying on the existing diversion authority granted under Water Permit No. 1963-1.

Under Item No. 3, Mr. Wilson requested the "well" be changed to existing diversion points authorized by Water Permit No. 1963-1.

NAME: Eric H. Hensley

Schlaak, Karen

From: Gronlund, Eric
Sent: Friday, December 21, 2018 10:26 AM
To: 'Travis Jones'
Cc: Nicole Wallenta; Schlaak, Karen
Subject: RE: [EXT] Wilson / Wink water permit applications to amend to include other place of use.

DENR will be sending Tom the staff report, recommendation and public notice along with a cover letter instructing him to review and if in agreement to contact the two newspapers to authorize publication. We try to walk the applicant through the process.

DENR sends the public notice to the newspaper electronically but it is ultimately the applicant's responsibility to contact the newspaper to authorize publication and arrange for payment.

We will scan and email Nikki and you the material sent to Tom so you stay in the loop.

Eric

From: Travis Jones [mailto:Travis.Jones@kljeng.com]
Sent: Friday, December 21, 2018 10:17 AM
To: Gronlund, Eric
Cc: Nicole Wallenta; Schlaak, Karen
Subject: RE: [EXT] Wilson / Wink water permit applications to amend to include other place of use.

Eric,
Thanks for the help on everything. Will Tom Wilson need to be prepared to post those notices; or will that be the State taking care of it?
Thanks,
Travis

From: Gronlund, Eric [mailto:Eric.Gronlund@state.sd.us]
Sent: Friday, December 21, 2018 6:51 AM
To: Travis Jones <Travis.Jones@kljeng.com>
Cc: Nicole Wallenta <Nicole.Wallenta@kljeng.com>; Schlaak, Karen <Karen.Schlaak@state.sd.us>
Subject: RE: Wilson / Wink water permit applications to amend to include other place of use.

Okay – We will proceed to public notice. We will send out next Wednesday/Thursday with a goal to set publication for the first week in January. We will include you electronically the material sent to Mr. Wilson.

Eric

From: Travis Jones [mailto:Travis.Jones@kljeng.com]
Sent: Thursday, December 20, 2018 12:14 PM
To: Gronlund, Eric
Cc: Nicole Wallenta
Subject: RE: [EXT] Wilson / Wink water permit applications to amend to include other place of use.

Eric,

Please proceed with the Wilson notices as soon as reasonable. The client doesn't want to wait for the Wink application.

Thanks,

Travis

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]

Sent: Tuesday, December 18, 2018 1:44 PM

To: Travis Jones <Travis.Jones@klijeng.com>

Cc: Nicole Wallenta <Nicole.Wallenta@klijeng.com>

Subject: RE: Wilson / Wink water permit applications to amend to include other place of use.

Travis / Nikki

Thanks for the email.

The Wilson application in Harding County is ready for public notice. Public notice will need to be in five newspapers. Do you want us to work with Tom Wilson to proceed with the public notice at this time or do you want us to wait until the similar Wink application has been reviewed? It may not be until sometime in mid-January until the review is completed on the Wink application.

Eric

From: Travis Jones [<mailto:Travis.Jones@klijeng.com>]

Sent: Friday, December 14, 2018 5:49 PM

To: Gronlund, Eric

Cc: Nicole Wallenta

Subject: RE: [EXT] Wilson / Wink water permit applications to amend to include other place of use.

Hello Eric,

As a follow-up to our conversation, please find the following summary regarding the water usage anticipated for the proposed KXL Temporary Workforce Camps. The summary is applicable to both Tom Wilson's and Dean Wink's water rights modification requests.

The maximum peak water usage anticipated for a single camp is estimated to be 60,000 gallons per day (gpd). The estimated average water usage corresponds to approximately a 42 gallons per minute (gpm) withdrawal rate over the course of a 24-hour period. Because we will have onsite storage tanks at the camps, we will not need to withdraw water at a high instantaneous flow rate. The private landowner wells will simply be used to keep the tanks full, so the camp system and/or truck can withdraw water from the storage tanks.

Using the 42 gpm withdrawal rate calculated for peak camp occupancy, it is anticipated that the maximum instantaneous water usage for the camp would be 1.5X the average water usage, which corresponds to approximately 63 gpm. In the case of both the Wilson and Wink water rights, this is less than the allowable instantaneous withdrawal rate. Please keep in mind this is for peak camp occupancy (i.e. 1200 residents per camp); so the total water usage across the life of the camp will be significantly less, as the staffing ramps up and down throughout the construction season.

Assuming a single camp is in operation for nine months out of the year, the estimated water usage in acre-feet is as follows:

- 60,000 gpd x 270 days = 16,200,000 gallons per nine month operation period
- 16,200,000 gallons / 325,851 gallons per acre-foot = 49.7 acre-feet per nine month operational period

There is a chance the construction season could be extended further or there are unforeseen inefficiencies within the camp operations, we'd like to include a ten percent increase in allocation for the camp, which leads to the following:

- 49.7 acre-feet x 1.1 (10 percent increase) = 54.7 acre-feet of water per yearly operational period

Each camp has its own individual water source identified; however, on the possibility of an emergency scenario that compromises the supply, we'd also like to allocate an additional 15 percent for hauling and contingency. We envision the circumstances of an emergency scenario to surround the failure of a well pump, which could take several days to repair/replace. If that scenario were to occur, we would need to haul water from other sources (such as the Wink and Wilson wells), only for the duration that it takes to complete the repairs and get the primary source back online. This leads to:

If for any reason the camp cannot meet the water delivery needs necessary for operation, water would likely be sourced from existing private independent water sources within the area. The camp is planned to operate throughout approximately nine months of a twelve month calendar year. Anticipated maximum yearly water usage from the camps in acre-feet can be calculated given the estimated 60,000 gpd usage and an approximated 270 day (roughly 9 month) operational period as follows (where 1 acre foot is equal to 325,851 gallons):

- 49.7 acre-feet x 1.15 (15 percent increase) = 57.2 acre-feet of water per yearly operational period

To summarize, we anticipate a total water allocation for camp consumption to be 63 gpm for a total volume of 57.2 acre-feet per year, to be associated with each water rights modification request. For the Wilson water rights, the camp allocation is a small portion of the overall allocation. There does not appear to be an annual water usage volume associated with the Wink well.

It should be noted that in addition to the water supplied by the Wilson and Wink wells, TransCanada is also in the process of securing agreements with municipalities to serve as a supplemental/emergency water source. While we anticipate the Wink and Wilson wells will be able to serve the camp needs, without any supplement; there will be backup sources, to make sure the consumption does not exceed the limitations of the respective water rights. Similarly, the intent of these water rights modifications is to allow TransCanada to supplement the supplies at all of their camps, so that one of the other camp locations is not unusable should there be a temporary disruption in the primary water supply for the respective camp.

Please let us know if you have any questions regarding the above assessment.

Thanks,

Travis Jones PE



406-247-2915 Direct
406-839-5665 Cell
2611 Gabel Road
Billings, MT 59102-7329
kljeng.com

From: Travis Jones
Sent: Monday, December 10, 2018 3:38 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>; Nicole Wallenta <Nicole.Wallenta@kljeng.com>
Subject: RE: Wilson / Wink water permit applications to amend to include other place of use.

Eric,
My apologies for not providing an update. I've prepared a summary, which we're getting reviewed by TransCanada, prior to submission. I'll send them a reminder to get us their feedback. We'll double-check that we've addressed your comment too.

Thanks,
Travis

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Monday, December 10, 2018 3:30 PM
To: Travis Jones <Travis.Jones@kljeng.com>; Nicole Wallenta <Nicole.Wallenta@kljeng.com>
Subject: Wilson / Wink water permit applications to amend to include other place of use.

Travis / Nikki

Last week we spoke about coming up with an annual acre foot volume that would be used for the temporary man camps for each of these applications. I believe you were working to provide an annual volume for the sites described in the existing permits and, if needed, as a back up supply for the additional man camps described in the application to amend the water right permit.

In doing so, please include a narrative about the circumstance that may occur that would require needing to supply these additional man camps. In other words - why the present anticipated water supply may not be supply the needed amount at the other sites.

Eric Gronlund
Water Rights Program, DENR, South Dakota
605 773-4062 (direct)



**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. 1963A-1, Tom & Lori Wilson**

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. 1963A-1, Tom and Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720.

The Chief Engineer is recommending APPROVAL of Application No. 1963A-1 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. The wells approved under Permit Nos. 1963-1 and 1963A-1 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The use of water from the wells authorized by Water Permit Nos. 1963-1 and 1963A-1 shall not exceed 57.2 acre feet of water annually for use at temporary workforce camps set forth in Water Permit No. 1963-1 and 1963A-1.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year for the water diverted for irrigation use.
4. The Permit holder shall report the annual volume of water diverted for use at the temporary workforce camps. The reporting will cease to be required once the temporary workforce camps are no longer in place.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
December 27, 2018

Report to the Chief Engineer
Water Permit Application 1963A-1
Tom and Lori Wilson
November 26, 2018

Water Permit Application No. 1963A-1 proposes additional locations of use for the diversion points already authorized by Water Permit No. 1963-1. The additional use is to serve as a backup water supply for temporary workforce camps to be located in Section 3-T97N-R75W (Tripp County), Section 9-T12N-R12E (Meade County), Section 11-T1N-R20E (Haakon County), and two locations in Dawson (Section 15-T7N-R59E) and Fallon (Section 29-T14N-R54E) Counties in Montana. Water Permit No. 1963-1 authorizes the appropriation of water from the Hell Creek aquifer at a maximum instantaneous diversion rate of 0.53 cubic feet per second (cfs) for irrigation of 216 acres, stock watering, and to supply a temporary pipeline construction man camp. The diversion points are four wells approximately 140 feet deep located in the NW ¼ of Section 25-T19N-R3E. This application, if approved, would not authorize any increase in the maximum permitted diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1. The application includes that the water use for the temporary workforce camps will not exceed 57.2 acre-feet of water per yearly operational period.

Aquifer: Hell Creek (HLCK)

South Dakota Codified Law (SDCL) 46-2A-12 and SDCL 46-5-30.4

Pursuant to SDCL 46-2A-12, an existing permit to appropriate water may be amended for a change in use, change in diversion point, or other change provided the change does not unlawfully impair existing rights, is for beneficial use, and is in the public interest. SDCL 46-5-30.4 provides that any water permit or right holder, except for in §§ 46-5-33 and 46-5-34 governing changes in irrigation rights, may apply for a change of use of the water, a change of location of the use or other amendment to the permit or right. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights. This report addresses the potential effects on existing rights from the aquifer that are pertinent to this application.

Discussion

The irrigation component of Water Permit No. 1963-1 may not exceed two acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The non-irrigation component of Water Permit No. 1963-1 is limited by a maximum instantaneous diversion rate of 0.53 cfs. This application, if approved, would not authorize any increase in the maximum diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1. The additional areas of use proposed by this application could result in a greater volume of water being used for temporary work force camps. Since there was no volume limitation on the non-

irrigation portion of Water Permit No. 1963-1, and this application, if approved, will not authorize an increase in the diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1, no additional water is being appropriated under this application. Since the proposed additional areas of use are all for temporary use the long term average annual volume of water used by Water Permit No. 1963-1 is not expected to be increased by use under this application, if approved.

Water rights/permits appropriating water from the Hell Creek aquifer in the area of the well sites for this application are shown in Figure 1 and summarized in Table 1. The nearest water right is Water Right No. 1178B-1 for the Town of Buffalo. Water Right No. 1178B-1 is located approximately 7.2 miles east of the well sites for this application. Due to the distances involved, there is a reasonable probability that this application, if approved, will not adversely impact existing water rights. There are several domestic/stock well completion reports on file with the South Dakota DENR-Water Rights Program that are within approximately two miles of the proposed well location for this application, some of which are likely completed into the Hell Creek aquifer (Water Rights, 2018c).

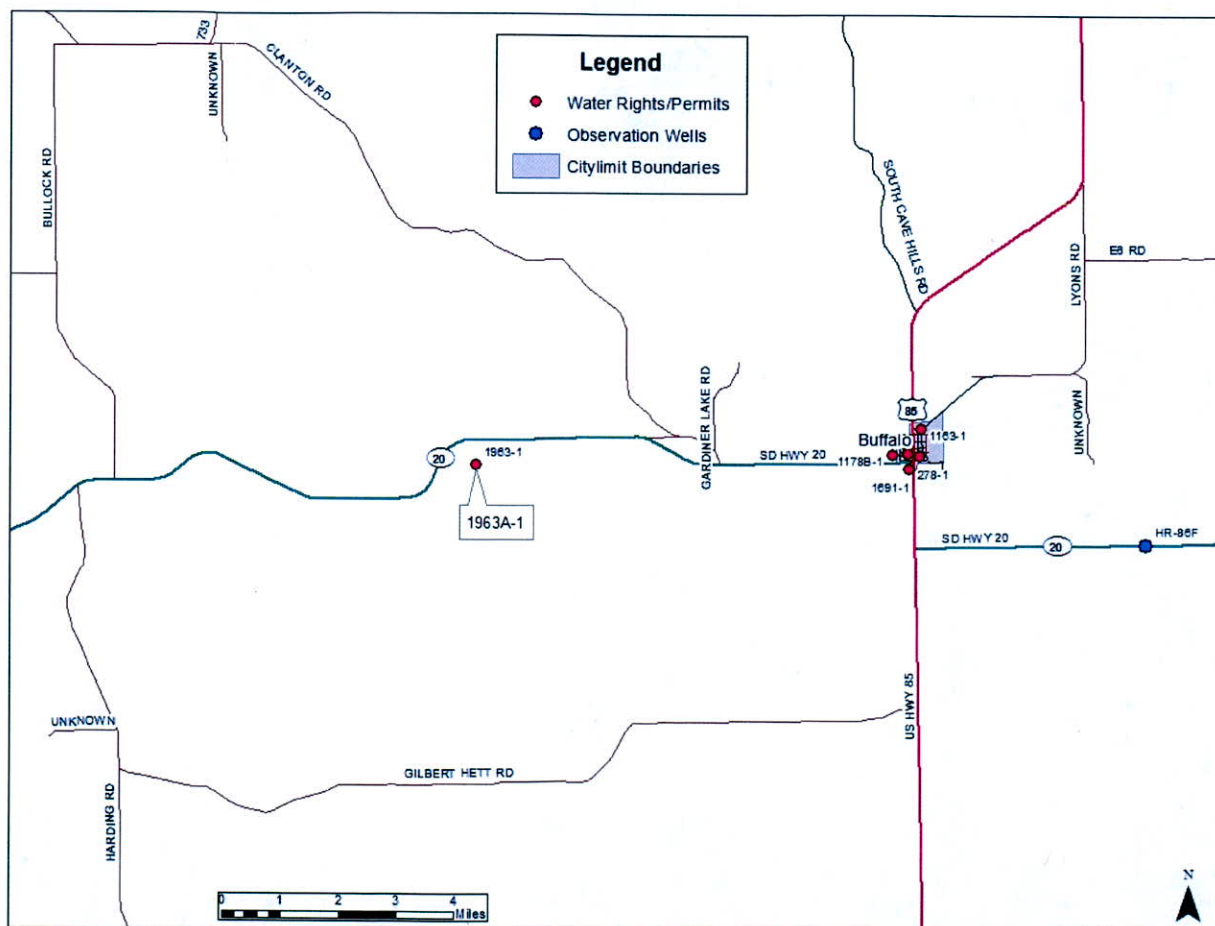


Figure 1: Water rights/permits currently authorized to appropriate water from the Hell Creek aquifer in the area of the well sites for Water Permit Application No. 1963A-1 (Water Rights, 2018a and 2018b)

Table 1: Summary of Water Rights/Permits shown in Figure 1 (Water Rights, 2018b)

Permit No.	Name	Status	Use	Rate (cfs)	Acres
278-1	TOWN OF BUFFALO	LC	MUN	0.13	n/a
1163-1	TOWN OF BUFFALO	LC	MUN	0.07	n/a
1178A-1	TOWN OF BUFFALO	LC	MUN	0.14	n/a
1178B-1	TOWN OF BUFFALO	LC	MUN	0.26	n/a
1691-1	TOWN OF BUFFALO	LC	MUN	0.156	n/a
1963-1	TOM & LORI WILSON	PE	IRR & DOM	0.53	216

LC-water right, PE- water permit, MUN-municipal, DOM-domestic, irr- irrigation

Due to the proximity of the well locations for this application to each other, any additional drawdown as a result of pumping under this application will affect the wells for this application before potentially affecting other wells in the area. Additionally, observation well HR-86F is located approximately 4.2 miles from the water rights for the City of Buffalo, and the hydrograph from the observation well (shown in Figure 2) shows no signs of well interference. Therefore, there is a reasonable probability that pumping under this application, if approved, will not unlawfully impair water rights/permits with a senior priority date.

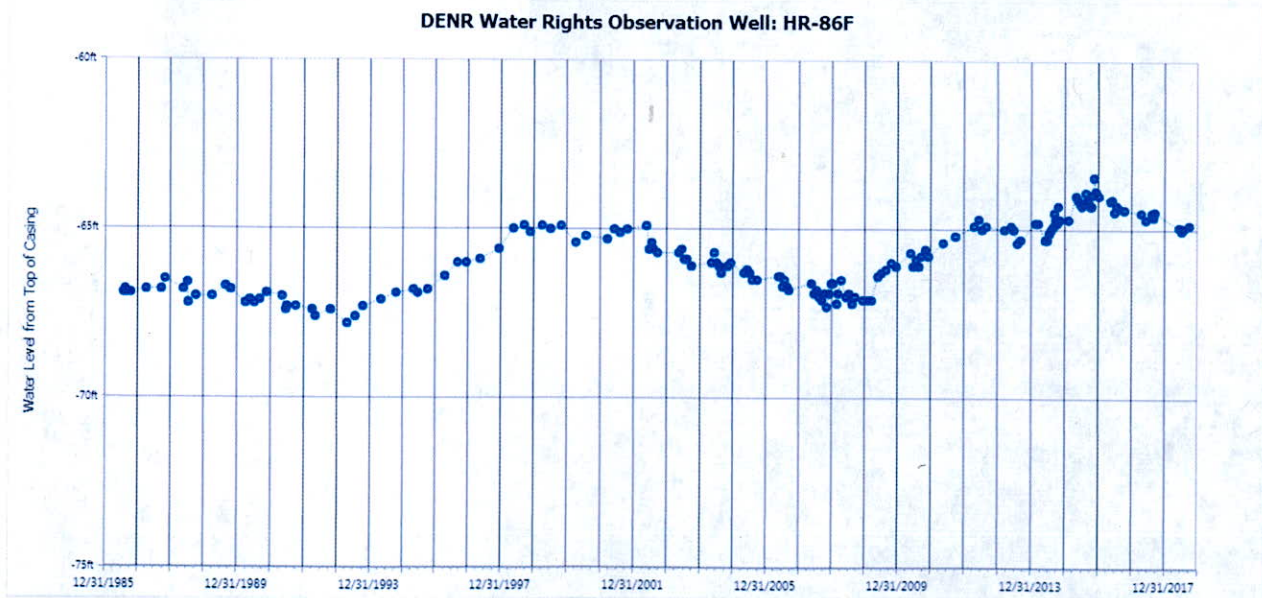


Figure 2: Hydrograph of observation well HR-86F (Water Rights, 2018a)

Administrative Rule of South Dakota (ARSD) 74:02:04:20(7) defines an adversely impacted domestic well as “a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs.” Since the application, if approved, does not authorize an increase in the maximum permitted diversion rate

of 0.53 cfs authorized by Water Permit No. 1963-1 and the proposed additional locations of use are all for temporary uses, this application, if approved, would not be expected to significantly increase drawdown as a result of pumping. Therefore, there is a reasonable probability that this application, if approved, will not adversely impact existing domestic users as defined by ARSD 74:02:04:20(7).

Conclusions

1. Water Permit Application No. 1963A-1 proposes an additional use for the diversion points already authorized by Water Permit No. 1963-1. The additional use is to serve as a backup water supply for temporary workforce camps to be located in Section 3-T97N-R75W (Tripp County), Section 9-T12N-R12E (Meade County), Section 11-T1N-R20E (Haakon County), and two locations in Dawson (Section 15-T7N-R59E) and Fallon (Section 29-T14N-R54E) Counties in Montana.
2. Water Permit No. 1963-1 is for the appropriation of water from the Hell Creek aquifer at a maximum diversion rate of 0.53 cfs for irrigation of 216 acres, stock watering, and to supply a temporary pipeline construction man camp from four wells completed into the Hell Creek aquifer.
3. This application, if approved, would not authorize an increase in the diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1.
4. There is a reasonable probability that this application, if approved, will not adversely impact existing water rights.



Whitney Kilts
SD DENR-Water Rights Program

References

- Water Rights. 2018a. Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2018b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2018c. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



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 NEWSPAPERS RIGHT AWAY.**

January 14, 2019

Tom & Lori Wilson
11637 SD Hwy 20
Buffalo SD 57720

Dear Mr. & Mrs. Wilson:

Water Permit Application No. 1963A-1 for backup supply for temporary workforce camp use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the following papers:

Winner Advocate, Winner SD 605 842-1481
Faith Independent, Faith SD 605 967-2161
Pioneer Review, Philip SD 605 859-2516
Nation's Center News, Buffalo SD 605 375-3228
Rapid City Journal, Rapid City SD 605 394-8300

You will need to contact the newspapers 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 newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
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.

NOTICE OF APPLICATION NO. 1963A-1

Notice is given that Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 have filed an application for a water permit for additional areas of use to Water Permit No. 1963-1. Water Permit No. 1963-1 appropriates 0.53 cubic feet of water per second (cfs) from four wells completed into the Hell Creek Aquifer (approximately 140 feet deep) located in the NW 1/4 Section 25-T19N-R3E for irrigation of 216 acres, livestock watering and to supply a temporary pipeline man camp which is to be located in Section 25-T19N-R3E. This application proposes to use the above listed wells as a backup supply for temporary workforce camps to be located in Section 3-T97N-R75W (Tripp County), Section 9-T12N-R12E (Meade County), Section 11-T1N-R20E (Haakon County) and two locations (Section 15-T7N-R59E and Section 29-T14N-R54E) in Dawson and Fallon Counties of Montana. Annual water use for the temporary workforce camps shall not exceed 57.2 acre-feet of water. This application, if approved, does not authorize any increase in the diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1. The site of wells is approximately seven miles west of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1963A-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 Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 4, 2019.

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.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

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

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 14, 2019 9:03 AM
To: winneradvocate@hotmail.com
Subject: 1963A-1, Tom & Lori Wilson
Attachments: 1963A-1public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on January 23, 2019.

Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 (605 848-1336) 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



Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 14, 2019 9:04 AM
To: faithind@faithsd.com
Subject: 1963A-1, Tom & Lori Wilson
Attachments: 1963A-1public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on January 23, 2019.

Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 (605 848-1336) has been notified to contact you to authorize publication and arrange for payment.

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

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



Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 14, 2019 9:06 AM
To: newsdesk@pioneer-review.com
Subject: FW: 1963A-1, Tom & Lori Wilson
Attachments: 1963A-1public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on January 24, 2019.

Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 (605 848-1336) 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



Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 14, 2019 9:07 AM
To: Legals (legals@bhpioneer.com)
Subject: 1963A-1, Tom & Lori Wilson
Attachments: 1963A-1public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on January 24, 2019 in the Nation's Center News, Buffalo SD.

Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 (605 848-1336) 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



Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 14, 2019 9:08 AM
To: RCY Legals (legals@rapidcityjournal.com)
Subject: 1963A-1, Tom & Lori Wilson
Attachments: 1963A-1public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on January 23, 2019.

Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 (605 848-1336) 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



Schlaak, Karen

From: Gronlund, Eric
Sent: Monday, January 14, 2019 8:26 AM
To: 'Nicole Wallenta'; 't_wilson32@hotmail.com'; Travis Jones (Travis.Jones@kljeng.com)
Cc: Schlaak, Karen
Subject: Water permit application to amend Permit No. 1963A-1 (adding back-up service to workforce camps)
Attachments: 1963A-1.pdf

Tom, Nikki and Travis

Attached is a scanned version of the cover letter, public notice and report and recommendation on Water Permit Application No. 1963A-1 to amend Tom Wilson's current permit to allow was to be used at other workforce camps identified in the application. A hard copy of this material is being mailed to Tom by US Mail.

The public notice is sent to each newspaper electronically. Please review the public notice, report and recommendation. If in agreement you will need to contact each newspaper to authorize publication and arrange for payment. The phone numbers are provided in the cover letter.

Please wait until at least January 15th to contact the newspapers to insure time for DENR to get the electronic version of the public notice emailed to them.

If you have any questions, do not hesitate to contact me.

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

From: Nicole Wallenta [<mailto:Nicole.Wallenta@kljeng.com>]
Sent: Friday, January 11, 2019 10:03 AM
To: Gronlund, Eric
Cc: Travis Jones
Subject: [EXT] Tom Wilson's Email

Hi Eric,

Thanks again for giving me a call back this morning. Here is Tom Wilson's email address: t_wilson32@hotmail.com

Let me know if you need anything else.

Have a great rest of your day!

Thanks,

Nikki

Nikki Wallenta
Environmental
KLJ

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, February 04, 2019 10:33 AM
To: faithind@faithsd.com
Subject: FW: 1963A-1, Tom & Lori Wilson
Attachments: 1963A-1public.short.docx; FORM8.FRM.doc

Please send the Water Rights Program the affidavit for this publication.
Karen

From: Schlaak, Karen
Sent: Monday, January 14, 2019 9:04 AM
To: faithind@faithsd.com
Subject: 1963A-1, Tom & Lori Wilson

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

Karen Schlaak

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



AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

Dan Bechtold

of said county being first duly sworn, on oath says that he is the Editor of the

WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said county of Tripp, and has full and personal knowledge of all the facts herein stated that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies weekly and has been published within said county for fifty-two successive weeks prior to the publication of the notice herein mentioned, and was printed wholly or in part in an office maintained at said place of publication; that the

80 lines @ 1 column X 90%

Application

Tom Wilson

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for 1 week(s), on the day of each week on which said newspaper was regularly published to wit:

1-16-19

That the full amount of the fees for the publication of the *annexed notice is \$28.80

Subscribed and sworn to before me this 16th day of January, 2019

County of Tripp, South Dakota

My Commission Expires June 20, 2019



RECEIVED

JAN 22 2019

WATER RIGHTS
PROGRAM

NOTICE OF APPLICATION NO. 1963A-1

Notice is given that Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 have filed an application for a water permit for additional areas of use to Water Permit No. 1963-1. Water Permit No. 1963-1 appropriates 0.53 cubic feet of water per second (cfs) from four wells completed into the Hell Creek Aquifer (approximately 140 feet deep) located in the NW 1/4 Section 25-T19N-R3E for irrigation of 216 acres, livestock watering and to supply a temporary pipeline man camp which is to be located in Section 25-T19N-R3E. This application proposes to use the above listed wells as a backup supply for temporary workforce camps to be located in Section 3-T97N-R75W (Tripp County), Section 9-T12N-R12E (Meade County), Section 11-T1N-R20E (Haakon County) and two locations (Section 15-T7N-R59E and Section 29-T14N-R54E) in Dawson and Fallon Counties of Montana. Annual water use for the temporary workforce camps shall not exceed 57.2 acre-feet of water. This application, if approved, does not authorize any increase in the diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1. The site of wells is approximately seven miles west of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1963A-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 Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 4, 2019.

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~~

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$28.80 (3)

Jan 23-L21105209

**NOTICE OF APPLICATION
NO. 1963A-1**

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Steven M. Pirner
Secretary
Department of Environment and
Natural Resources

(Published once at an approximate cost of \$50.07)

Affidavit of Publication

RECEIVED

JAN 28 2019

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

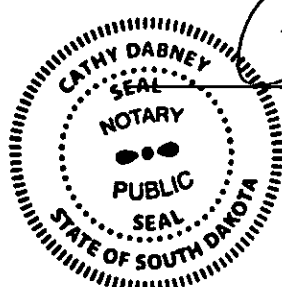
County of Pennington

SS:

Sheri Sponder being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the 23rd day of Jan 2019 that the fees charged for the publication there of are 50 dollars and 07 cents.

Sheri Sponder

Subscribed and sworn to before me this 23rd
day of January, 2019.



Cathy Dabney
Notary public

4-116-2024

My commission expires

**WATER RIGHTS
PROGRAM**

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing

RECEIVED

FEB 04 2019

WATER RIGHTS
PROGRAM

NOTICE OF
APPLICATION NO.
1963A-1

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF HARDING:

Letitia Lister of said County and State being first duly sworn, on her oath says: That the NATION'S CENTER NEWS is a legal weekly newspaper of general circulation, printed and published in the City of Buffalo, in said County and State by 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 Application
No. 1963A-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 24th day of Jan, 2019, and the last publication on the day of , , that the full amount of fees charged for publishing same, to-wit: The sum of \$31.42, insures solely to the benefit of the publisher of the NATION'S CENTER NEWS, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 29th day of Jan, 2019.

Jeani Ollrecht
Notary Public, Butte County, South Dakota
My commission expires: 3-21-2023

Notice is given that Tom & Lori Wilson, 11637 SD Hwy 20, Buffalo SD 57720 have filed an application for a water permit for additional areas of use to Water Permit No. 1963-1. Water Permit No. 1963-1 appropriates 0.53 cubic feet of water per second (cfs) from four wells completed into the Hell Creek Aquifer (approximately 140 feet deep) located in the NW-1/4 Section 25-T19N-R3E for irrigation of 216 acres, livestock watering and to supply a temporary pipeline man camp which is to be located in Section 25-T19N-R3E. This application proposes to use the above listed wells as a backup supply for temporary workforce camps to be located in Section 3-T97N-R75W (Tripp County), Section 9-T12N-R12E (Meade County), Section 11-T1N-R20E (Haakon County) and two locations (Section 15-T7N-R59E and Section 29-T14N-R54E) in Dawson and Fallon Counties of Montana. Annual water use for the temporary workforce camps shall not exceed 57.2 acre-feet of water. This application, if approved, does not authorize any increase in the diversion rate of 0.53 cfs authorized by Water Permit No. 1963-1. The site of wells is approximately seven miles west of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1963A-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 Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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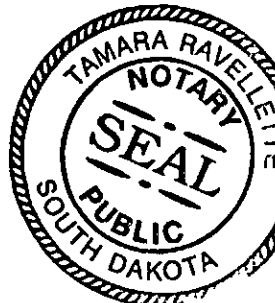
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Steven M. Pimer,
Secretary,
Department of
Environment and
Natural Resources.

Published once at the
total approximate cost of
\$31.88.

#736
Jan 24

**WATER RIGHTS
PROGRAM**



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

Published January 23, 2019 at the total
approximate cost of \$29.73.

RECEIVED

MAR 02 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER
APPLICATION NO. 1963A-1,
TOM AND LORI WILSON

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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)

This matter came before the South Dakota Water Management Board for hearing on October 3-4, 2019; October 29-31, 2019; December 17-20, 2019; and January 13-14, 2020. Board members Jim Hutmacher, Rodney Freeman Jr., Peggy Dixon, Leo Holzbauer, Tim Bjork, and Everett Hoyt were present at the hearing and heard the evidence presented.

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. On November 1, 2018, the South Dakota Department of Environment and Natural Resources Water Rights Program ("Water Rights" hereinafter) received Tom and Lori Wilson's application for a permit to amend existing Water Permit No. 1963-1.

2. Water Permit Application No. 1963A-1 requested that Water Permit No. 1963-1 be amended to allow the water authorized to be diverted by Water

Permit No. 1963-1 to be used as a backup water supply for additional temporary construction work camps.

3. Water Permit No. 1963-1, appropriates water from the Hell Creek aquifer at a maximum diversion rate of 0.53 cubic feet per second (cfs) for irrigation, stock watering and temporary construction work force camp uses. The diversion points are two existing and two proposed wells approximately 140 feet deep located in the NW¼ of Section 25-T19N-R3E; approximately seven miles west of Buffalo, South Dakota.

4. Water Rights determined that the Application was complete.

5. Whitney Kilts, a Natural Resources Engineer employed by Water Rights, reviewed the Application and authored a report to the Chief Engineer in the ordinary course of her employment duties. Ms. Kilts reviewed the potential for unlawful impairment on existing water rights in the Hell Creek aquifer. Ms. Kilts noted that Water Permit Application No. 1963A-1, if approved, does not increase the permitted diversion rate of 0.53 cfs. Ms. Kilts reviewed the records of the Water Rights Program and found that the nearest water right in the Hell Creek aquifer is located approximately 7.2 miles away. Ms. Kilts identified nearby domestic wells on record with the Water Rights Program; noting that some of those wells were likely completed into the Hell Creek aquifer. Ms. Kilts also analyzed observation well HR-86F, which shows no signs of well interference. Ms. Kilts found that, due to the proximity of the well locations for this application to each other, any additional drawdown as a result of pumping under this application will affect the wells for this application before potentially

affecting other wells in the area. Ms. Kilts concluded that there is a reasonable probability that this application, if approved, will not unlawfully impair existing water rights. Ms. Kilts prepared a report of her findings and conclusions and submitted the same to the Chief Engineer.

6. Chief Engineer Goodman determined that the use of the water as a backup water supply for temporary workforce construction camps, where the water would be used for purposes such as drinking, hygiene, sanitation, etc., would not unlawfully impair existing rights, and would be a beneficial use, and would be in the public interest. Chief Engineer Goodman based this determination on previous decisions of the South Dakota Water Management Board and state law.

7. Chief Engineer Goodman prepared a recommendation to the South Dakota Water Management Board (the "Board" hereinafter). She recommended that the Board grant the permit with the following qualifications:

A. The wells approved under Permits Nos. 1963-1 and 1963A-1 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

B. The use of water from the wells authorized by Water Permits Nos. 1963-1 and 1963A-1 shall not exceed 57.2-acre-feet of water

annually for use at temporary workforce camps set forth in Water Permit Nos. 1963-1 and 1963A-1.

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

D. The Permitholder shall report the annual volume of water diverted for use at the temporary workforce camps. The reporting will cease to be required once the temporary workforce camps are no longer in place.

8. Notice of the application and hearing was timely posted on the Department's website and advertised in the Nation's Center News (Harding County), the Rapid City Journal (Pennington County), the Winner Advocate (Tripp County), the Pioneer Review (Haakon County), and The Faith Independent (Meade County) on January 16, 23, or 24, 2019, pursuant to SDCL §§ 46-2A-4 and 46-2A-23.

9. The following parties timely petitioned for intervention: Yankton Sioux Tribe, Dakota Rural Action, Cheyenne River Sioux Tribe, Julie Santella, Tonia Stands, and Matthew Rappold.

10. At its meeting on July 17, 2019, the Board set a hearing on the Application for October 3-4 and 29-31, 2019. The Board also set for hearing at the same time three water permit applications filed by TransCanada Keystone Pipeline, LP concerning the Cheyenne, White, and Bad rivers, and an

application filed by Wink Cattle Company, all of which related to water to be used in some way during construction of the proposed Keystone XL Pipeline.

11. The Board held a contested case hearing on all five applications beginning on October 3-4 and continuing on October 29-31. The hearing continued on December 17-20, 2019, January 13, 2020, and concluded on January 14, 2020. Chairman James Hutmacher presided at the hearing, and was joined by Board members Everett Hoyt, Tim Bjork, Rodney Freeman, Jr., Leo Holzbauer, and Peggy Dixon. David M. McVey, Assistant Attorney General, served as Board Counsel. The Applicant was represented by Matt Naasz. Water Rights was represented by Ann Mines Bailey. The Yankton Sioux Tribe was represented by Thomasina Real Bird, Rebecca Kidder, and Jennifer Baker. Dakota Rural Action was represented by Bruce Ellison and Patricia Handlin. The Cheyenne River Sioux Tribe was represented by Tracey Zephier and Michael Novotny. Intervenors Julie Santella and Tonia Stands appeared *pro se*. The hearing was recorded by Carla Bachand, RPR.

12. At the hearing on this matter, Whitney Kilts testified consistent with her report. Specifically, Ms. Kilts testified that there are only eleven water rights located in the South Dakota portion of the Hell Creek aquifer. She further testified that the nearest water right is approximately seven miles away while the nearest domestic well not owned by the applicant is approximately 0.9 miles from the diversion point. Ms. Kilts concluded that based upon the diversion rate and distance to other wells, there was little potential for unlawful impairment. Moreover, Ms. Kilts testified that since the nearest domestic wells

were owned or leased by the Applicant, it was expected that he would not operate in a manner which would interfere with his own wells. Ms. Kilts also examined the observation well in the area. The observation well data showed that the observation well was not being impacted by existing water rights which were located within four miles of the observation well. The Board finds Ms. Kilts to be a credible expert witness and that these Findings of Fact are supported by the evidence presented, including Ms. Kilt's testimony and the reports and exhibits which she prepared and/or relied upon.

13. Ms. Kilts' conclusion that there is a reasonable probability that this application, if approved, will not unlawfully impair existing water rights was unrefuted.

14. At the hearing on this matter, Chief Engineer Goodman testified consistent with her review of Ms. Kilts' report and her determination regarding beneficial use and public interest. The Board finds Chief Engineer Goodman to be a credible witness and that these Findings of Fact are supported by the testimony of Chief Engineer Goodman.

15. Applicant Tom Wilson testified that the amendment would allow the water already authorized to be used by Water Permit No. 1963-1 to be used as a backup water supply for additional temporary work force camps. Mr. Wilson testified that water would be used at the construction camps for uses similar to domestic uses, i.e., drinking, hygiene, sanitation and other uses. Mr. Wilson testified that the use of this water would be beneficial to him, the appropriator, whether the temporary work force camp at which the water was

used was located in South Dakota or Montana. Mr. Wilson also testified that he has been using water authorized by Water Permit No. 1963-1, and that none of his neighbors have complained about his use of water. The Board finds Mr. Wilson to be a credible witness and that these Findings of Fact are supported by Mr. Wilson's testimony.

16. The Chief Engineer testified as to her understanding of the scope of review the Board has used when determining whether the use of water is in the public interest, when they have been called to do so in previous permit applications.

17. Intervenors presented extensive testimony intended to address the beneficial use and public interest component of this Board's inquiry. Intervenors were given broad latitude in their presentation of evidence on this issue. To the extent that the evidence presented by intervenors on this issue was relevant, the Board finds that the evidence presented by intervenors on the topic of beneficial use and public interest does not outweigh the evidence presented that the proposed amendment is for a beneficial use and in the public interest.

18. The Board took judicial notice of Docket HP09-001, in which the South Dakota Public Utilities Commission issued a permit under SDCL § 49-41B-22 for construction and operation of the Keystone XL Pipeline, the PUC concluded that if constructed, the pipeline would not pose an unacceptable threat of serious injury to the environment or to the social and economic conditions of inhabitants or expected inhabitants in the siting area. The PUC

also concluded that if constructed, the pipeline would not substantially impair the health, safety, or welfare of the inhabitants in the siting area.

19. Because no oil or diluted bitumen would be flowing through the pipeline during construction, a spill of crude oil or diluted bitumen with the potential to harm the environment could not occur as a result of the uses of water proposed in the Application.

20. The PUC addressed cultural resources in granting a permit for the Keystone XL Pipeline, including Condition 43 requiring that Keystone follow the Unanticipated Discoveries Plan as reviewed by the State Historical Preservation Office and approved by the United States Department of State as part of the Final Supplemental Environmental Impact Statement in January 2014 (the "FSEIS").

21. After considering the testimony of the witnesses and the exhibits received into evidence, the Board finds that the proposed amendment will not unlawfully impair existing rights, is for a beneficial use, and is in the public interest.

22. Any Finding of Fact more properly designated as a Conclusion of Law shall be treated as such.

From the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

1. The Application is complete.

2. Publication of Chief Engineer Goodman's recommendation and Notice of Application was timely and properly made pursuant to SDCL §§ 46-2A-4 and 46-2A-23.

3. The Board has jurisdiction over the Application and the parties pursuant to SDCL Ch. 46-2A.

4. The Chief Engineer recommended granting this application. That recommendation, however, is not binding upon the Board. SDCL § 46-2A-4(8).

5. South Dakota Codified Law, section 46-2A-12 provides:

"an amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest."

6. The Applicant bore the burden of proof under SDCL § 46-2A-12. The Applicant met its burden of proof and is entitled to a permit subject to qualifications adopted by the Board.

7. The Board finds that the proposed amendment will not result in an unlawful impairment of an existing water right.

8. The Board finds that the evidence presented by intervenors on the issue of beneficial use and public interest does not outweigh the evidence presented by the Applicant and Water Rights that the proposed amendment is for a beneficial use and in the public interest..

9. Beneficial use is defined SDCL § 46-1-6(3) as:

"any use of water within or outside the state that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies."

10. The Board finds that, based on the testimony and the exhibits accepted into evidence, the proposed use is a beneficial use.

11. For the purposes of making a public interest determination pursuant to SDCL ch. 46-2A, the Board is not bound by the PUC findings.

12. The Board further finds that the proposed use of water as a backup source for a temporary workforce camp to be in the public interest.

13. The waters of the State should be put to beneficial use to the fullest extent of which they are capable. SDCL § 46-1-4.

14. The “public interest” under SDCL § 46-2A-12 is not defined by statute, but in this case the Board broadly considered how use of the water as proposed in the Application would affect the health, safety, and general welfare of the people of the State of South Dakota.

15. The proposed amendment will not unlawfully impair existing rights, is for a beneficial use, and is in the public interest, when qualified.

16. Any Conclusion of Law more properly designated as a Finding of Fact shall be treated as such.

FINAL DECISION

The Applicant and Water Rights both filed complete Proposed Findings of Fact and Conclusions of Law and Decision. The Yankton Sioux Tribe, Great Plains Tribal Water Alliance, and Dakota Rural Action filed a joint limited set of Proposed Findings of Fact and Conclusions of Law which only addressed certain facts proposed by the applicant. In compliance with SDCL § 1-26-25,

the Proposed Findings of Fact and Conclusions of Law are accepted, modified, or rejected as follows:

Applicants Proposed Findings of Fact and Conclusions of Law

The proposed facts set forth in paragraphs 3, 4, 11, 14, 15, 16, and 24 are accepted.

The proposed facts set forth in paragraphs 1, 2, 5, 7, 8, 9, 10, 12, 13, 17, 18, 25, 26, and 27 are accepted as modified herein.

The proposed facts set forth in paragraphs 6, 19, 20, 21, 22, 23, and 28 are rejected.

Water Rights Proposed Findings of Fact and Conclusions of Law

The proposed facts set forth in paragraphs 2, 3, 4, 5, 8, 10, 12, 13, 14, 15, and 18 are accepted.

The proposed facts set forth in paragraphs 1, 6, 7, 9, 11, 16, 17, 19, 20, and 21 are accepted as modified herein.

No facts proposed by Water Rights were fully rejected.

Yankton Sioux Tribe, Great Plains Tribal Water Alliance, and Dakota Rural Action filed a joint limited set of Proposed Findings of Fact and Conclusions of Law

All proposed facts were rejected.

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 1963A-1 is **GRANTED** with the following qualifications:

1. The wells approved under Water Permit Nos. 1963-1 and 1963A-1 will be located near domestic wells and other wells which may obtain water

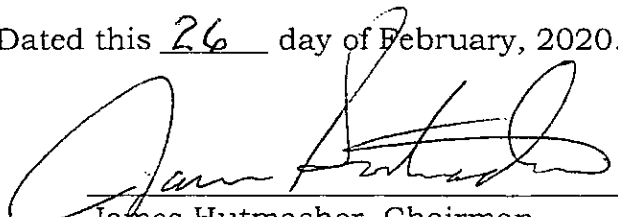
from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The use of water from the wells authorized by Water Permit Nos. 1963-1 and 1963A-1 shall not exceed 57.2acre-feet of water annually for use at temporary workforce camps set forth in Water Permit Nos. 1963-1 and 1963A-1.

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

4. The permit holder shall report the monthly volume of water diverted for use at the temporary workforce camps during the prior month and the past twelve months. The reporting for workforce camps use is not required once the temporary workforce camps are no longer in place.

Dated this 26 day of February, 2020.



James Hutmacher, Chairman
Water Management Board



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

FEB 28 2020

Matthew E Naasz
Counsel for Tom & Lori Wilson
PO Box 8045
Rapid City SD 57709

Dear Mr. Naasz:

Enclosed is Water Permit No. 1963A-1 authorizing additional areas of use to Water Permit No. 1963-1 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 Wilson's 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.

Sincerely,

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

enclosures