

WATER PERMIT NO. 1992-1

Name of Applicant: **Town of Buffalo**

Address: **PO Box 82, Buffalo SD 57720** Phone: **605 641-0215**

Amount of Water Claimed: **0.190 cfs (82 AF)** Total Acres: **NA**

Source of Water Supply: **groundwater (one well)**

Water to be used for: **municipal** County: **Harding**

Type of Waste Disposal System:

Location:

PRIORITY Date Received: **10-25-19**

Application/License Fee: **\$ 750**

Corrected Application Received: **10-31-19**

Period of Annual Use: **January 1 – December 31**

Remarks:

Diversion Point: **SE 1/4 NW 1/4 Sec 29-T19N-R5E**

Land to be Irrigated: **NA**

Depth of Well: **280 feet deep**

Well Driller:

Remarks:

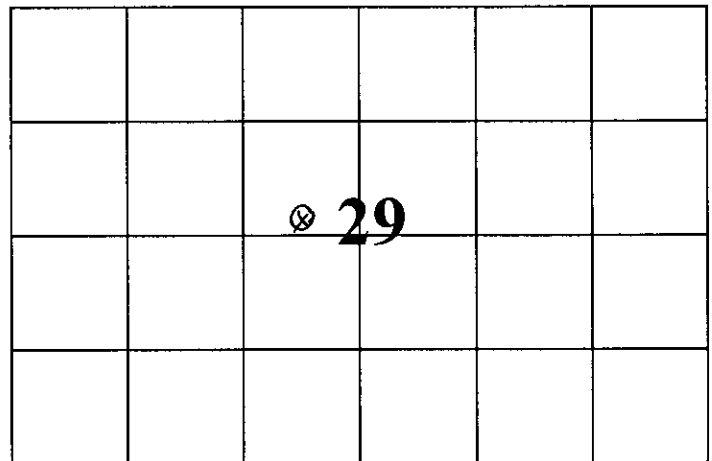
Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **10-31-19**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



**SOUTH DAKOTA
WATER PERMIT NO. 1992-1**

Date of first receipt of application October 25, 2019.

Date of return to applicant for corrections, amendments or changes October 28, 2019.

Date of receipt of corrected application October 31, 2019.

The Water Management Board approved Water Permit No. 1992-1 on October 7, 2020 for the Town of Buffalo, PO Box 82, 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. 1992-1 appropriates 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E. This site is located on the southeast edge of Buffalo SD.
2. The water appropriated shall be used for the purpose of municipal 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 from which applicant may claim right is October 25, 2019.
5. One-fifth of the construction is to be completed on or before April 7, 2023.
6. All construction is to be completed on or before October 7, 2025.
7. Water is to be put to beneficial use on or before October 7, 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 well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
4. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

WATER MANAGEMENT BOARD

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

DEC 07 2020

date



OCT 25 2019

WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>1992-1</u>	(office use only) Hydrologic Unit <u>10130302</u>
	Basin <u>Grand River</u>	
	Newspaper <u>Nation's Center News, Buffalo</u>	
	<u>Black Hills Pioneer, Spearfish</u>	

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.)

Add a diversion point for the Buffalo SD municipal water system1. Name to Appear on Water Permit Town of Buffalo

Mailing Address PO Box 82 Buffalo SD 57720
(Address) (City) (State) (Zip Code)
 Phone 605-375-3130 Mobile 605-641-0215 Email Townofbuffalo@sdplains.com; Townofbuf@sdplains.com

2. Amount of water claimed 0.190 *CFS or 85 **GPM and 82 ***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 Hell Creek
~~Fox Hills Formation~~

4. Location of point of diversion SE 1/4 of the NW1/4 of Section 29 - T19N - R5E 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 ☐ No

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

(example - NW1/4 section 12-T104N-R53W)5. County or counties where water will be used Harding County6. Annual period during which water is to be used Year around Jan 1 to Dec 31

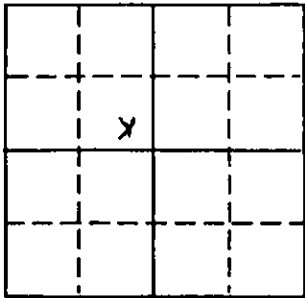
7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

The town of Buffalo would like to drill a deeper well to see if we can get better water and start the retire 2 other existing wells.

I, Ryan D Smith Water Superintendent, 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 WELL COMPLETION REPORT

11-02

Location <u>SE 1/4 NW 1/4</u> Sec <u>29</u> Twp <u>19</u> Rg <u>5</u> County <u>Handling</u> Please mark well location with an "X"  Well completion Date <u>7-22-19</u> Distance from nearest potential pollution source (Septic tank, abandoned well, feed lot, etc.) <u>1600 ft. from City Well.</u> (Identify source)		Well Owner: <u>City of Buffalo</u> Business Name: <u>Well # 8</u> Address1: <u>P.O. Box 82</u> Address2: _____ City, State, Zip: <u>Buffalo SD 57720</u> WELL LOG: <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">FORMATION</th> <th colspan="2">DEPTH</th> </tr> <tr> <th>FROM</th> <th>TO</th> </tr> </thead> <tbody> <tr> <td><u>Clay Lt. Brown</u></td> <td><u>0</u></td> <td><u>4</u></td> </tr> <tr> <td><u>Sand Brown</u></td> <td><u>4</u></td> <td><u>15</u></td> </tr> <tr> <td><u>Clay Brown</u></td> <td><u>15</u></td> <td><u>22</u></td> </tr> <tr> <td><u>Clay and Sand layers</u></td> <td><u>22</u></td> <td><u>62</u></td> </tr> <tr> <td><u>Sand Gray - thin clay layers</u></td> <td><u>62</u></td> <td><u>73</u></td> </tr> <tr> <td><u>Clay Brown</u></td> <td><u>73</u></td> <td><u>79</u></td> </tr> <tr> <td><u>Sand Gray coarse</u></td> <td><u>79</u></td> <td><u>95</u></td> </tr> <tr> <td><u>Clay Gray</u></td> <td><u>95</u></td> <td><u>224</u></td> </tr> <tr> <td><u>Sand Gray medium</u></td> <td><u>224</u></td> <td><u>262</u></td> </tr> <tr> <td><u>Clay Gray</u></td> <td><u>262</u></td> <td><u>280</u></td> </tr> </tbody> </table>		FORMATION	DEPTH		FROM	TO	<u>Clay Lt. Brown</u>	<u>0</u>	<u>4</u>	<u>Sand Brown</u>	<u>4</u>	<u>15</u>	<u>Clay Brown</u>	<u>15</u>	<u>22</u>	<u>Clay and Sand layers</u>	<u>22</u>	<u>62</u>	<u>Sand Gray - thin clay layers</u>	<u>62</u>	<u>73</u>	<u>Clay Brown</u>	<u>73</u>	<u>79</u>	<u>Sand Gray coarse</u>	<u>79</u>	<u>95</u>	<u>Clay Gray</u>	<u>95</u>	<u>224</u>	<u>Sand Gray medium</u>	<u>224</u>	<u>262</u>	<u>Clay Gray</u>	<u>262</u>	<u>280</u>
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PROPOSED USE: ☐ Domestic/Stock ☒ Municipal ☐ Business ☐ Test Holes ☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well METHOD OF DRILLING: _____		STATIC WATER LEVEL <u>47' top of casing</u> FEET If flowing: closed in pressure _____ PSI GPM flow _____ through _____ inch pipe Controlled by ☐ Valve ☐ Reducers ☐ Other _____ Reduced flow rate _____ GPM Can well be completely shut in? _____																																				
CASING DATA: ☐ Steel ☒ Plastic ☐ Other If other describe _____ <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>PIPEWEIGHT</th> <th>DIAMETER</th> <th>FROM</th> <th>TO</th> <th>HOLE DIAMETER</th> </tr> </thead> <tbody> <tr> <td><u>SDR21 LB/FT</u></td> <td><u>8 IN</u></td> <td><u>+2 FT</u></td> <td><u>224 FT</u></td> <td><u>12 1/4 IN</u></td> </tr> <tr> <td><u>SDR21 LB/FT</u></td> <td><u>8 IN</u></td> <td><u>264 FT</u></td> <td><u>270 FT</u></td> <td><u>12 1/4 IN</u></td> </tr> <tr> <td>LB/FT</td> <td>IN</td> <td>FT</td> <td>FT</td> <td>IN</td> </tr> </tbody> </table>		PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER	<u>SDR21 LB/FT</u>	<u>8 IN</u>	<u>+2 FT</u>	<u>224 FT</u>	<u>12 1/4 IN</u>	<u>SDR21 LB/FT</u>	<u>8 IN</u>	<u>264 FT</u>	<u>270 FT</u>	<u>12 1/4 IN</u>	LB/FT	IN	FT	FT	IN	WELL TEST DATA: ☐ Pumped Describe: <u>run up with drill pipe</u> ☐ Bailed _____ ☒ Other _____ Pumping Level Below Land Surface <u>180'</u> Ft After <u>1 1/2</u> Hrs. pumped <u>80</u> GPM <u>260'</u> Ft After <u>1 1/2</u> Hrs. pumped <u>120</u> GPM If pump installed, pump rate: <u>80</u> GPM																
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GROUTING DATA: Grout Type <u>Mortonell</u> No. of Sacks <u>28</u> Grout Weight <u>9.4</u> Lb/gal From <u>0</u> Ft To <u>215</u> Ft Describe grouting procedure <u>pump down with tremie pipe</u>		SCREEN: ☐ Perforated pipe ☒ Manufactured Diameter <u>8</u> Inches Length <u>40</u> Feet Material <u>SDR21 PVC</u> Slot Size <u>20</u> Set From <u>224</u> Feet to <u>264</u> Feet Other information <u>Coppel Bottom</u> <u>Sand pack</u>																																				
WAS A PACKER OR SEAL USED? ☐ Yes ☒ No If so, what material? _____ Describe packer(s) and location _____		REMARKS This well was drilled under license # <u>643</u> And this report is true and accurate. Drilling firm: <u>Gregory Water and Energy Inc.</u> Signature of License Representative: <u>Gregory</u> Signature of Well Owner or Equitable Property Holder: <u>[Signature]</u> Date: <u>8/2/19</u>																																				
DISINFECTION: Was well disinfected upon completion? ☒ Yes, How? <u>Chlorine H+H</u> ☐ No, Why Not? _____ Lab sample sent to for water quality analysis _____																																						

Please return White Copy to DENR Water Rights

523 E. Capitol Ave., Pierre SD 57501



Search places

SE¼ of the NW¼ of **Section 29** | **Township 19 North, Range 5 East** | **Black Hills Principal Meridian, South Dakota** | Long, Lat: -103.53701, 45.58205



Map data ©2019 Imagery ©50 m, Mapbox Technologies, USDA Forest Service Report a map error

Find parcel: Section Township: North Range: West PM: State: **GO!**

View Section Township and Range on Google Maps

This free tool shows the **Township Range Section grid** on Google Maps. Use this **township and range locator** to create a **free section township range map**. Search

19N
Section

19N 5E
Section: 19

19N 5E
Section: 20

19N 5E
Section: 21

19N 5E
Section: 30

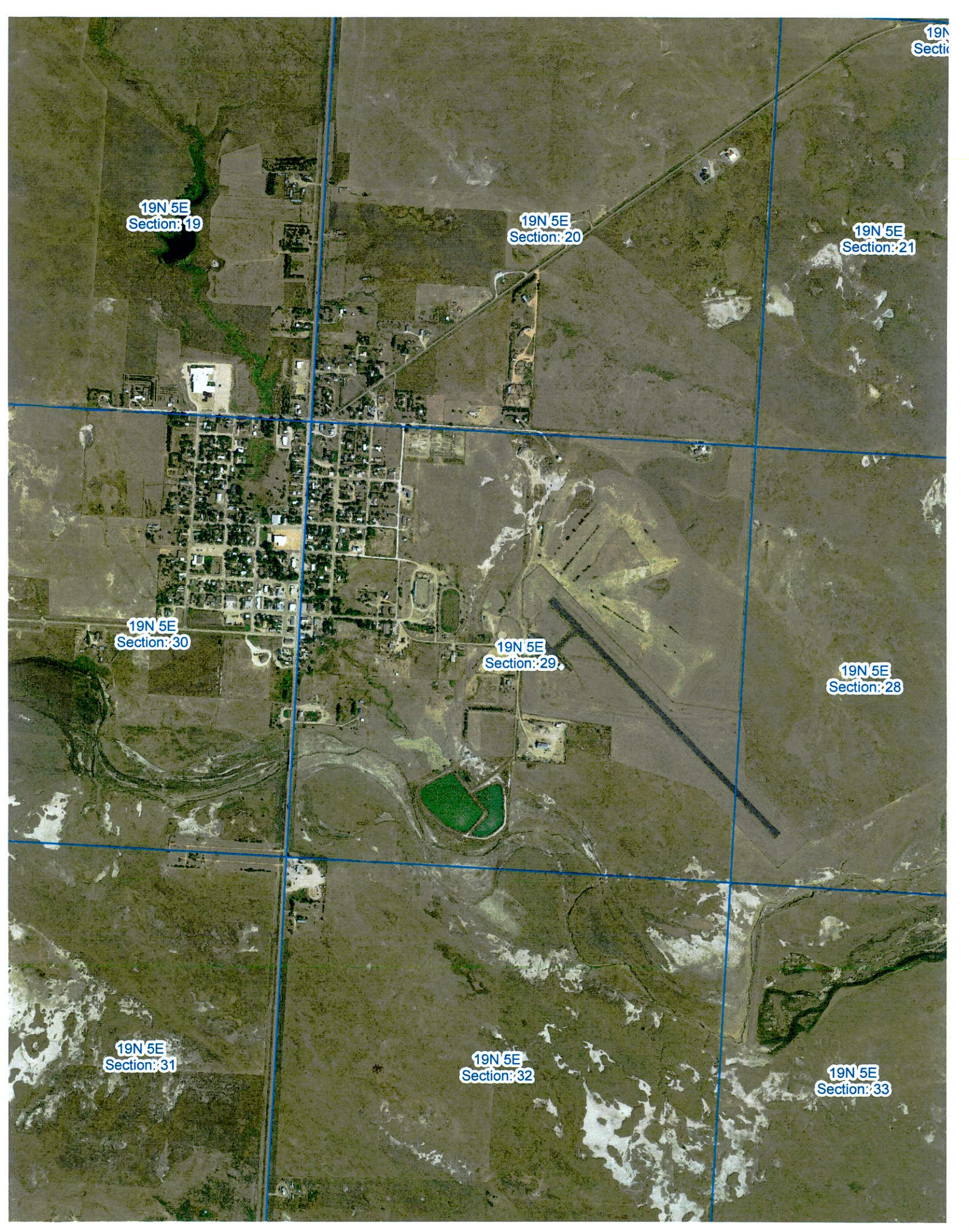
19N 5E
Section: 29

19N 5E
Section: 28

19N 5E
Section: 31

19N 5E
Section: 32

19N 5E
Section: 33



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date October 28, 20 19

RECEIVED OF Town of Buffalo PO Box 82 Buffalo SD 57720

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

Fee for Application for Permit No. <u>1992-1</u> to Appropriate Water, to construct and to put water to beneficial use	750	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>1992-1</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	950 00

No. **09227**

By Jeanne Goodman
Chief Engineer ZYM



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

October 28, 2019

Town of Buffalo
Ryan D Smith, Water Supt
PO Box 82
Buffalo SD 57720

Dear Mr. Smith:

Thank you for submitting the *Application for a Permit to Appropriate Water* for the Town of Buffalo. In order to complete the application, the following is required.

- The application requests an appropriation of 85 gallons per minute (gpm). In addition to the pump rate, the application needs to include the annual volume in either gallons/year or acre feet/year. In calculating the annual volume, be reasonable but also plan for the maximum annual volume of use from the well at full development. It is unrealistic that 85 gpm will be pumped continuously during an entire year. Therefore, DENR requests an annual volume to be used by the town.

A general practice is to convert the diversion rate to a volume in acre-feet of water annually based on 60% pumping. Applying this 60% rate to 85 gpm over the course of a year equates to 82 acre-feet of water annually. Do you concur with this amount or what amount would be appropriate for the town's needs?

- We received the \$950 application/license fee. The fee will be based on the acre-feet amount requested. The fee for the first 120 acre-feet is \$500, an additional 120 acre-feet is an additional \$250. The license fee is \$200. If you determine an annual volume of 82 acre-feet is appropriate, the total application/license fee would be \$700. If necessary, we will refund a portion of the fee.

If you have any questions, please contact me.

Sincerely,

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

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, October 31, 2019 2:40 PM
To: 'townofbuf@sdplains.com'
Subject: RE: [EXT] new Buffalo SD water well

Thanks for responding. We will proceed with the application for 0.190 cfs (85 gpm) and 82 acre-feet of water. As stated in my letter, the overpayment of \$250 will be refunded to the Town once we are through the permitting process.

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

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

From: townofbuf@sdplains.com <townofbuf@sdplains.com>
Sent: Thursday, October 31, 2019 2:28 PM
To: Schlaak, Karen <Karen.Schlaak@state.sd.us>
Subject: [EXT] new Buffalo SD water well

Hey Karen this is Ryan from Buffalo. I received your letter concerning the gpm pump rate and the acre feet per year. I think that 82 acre-feet of water annually is enough to cover the towns drinking water needs into the future. If you need anything else from me just let me know.

Thanks

Ryan Smith
Buffalo, SD
605-641-0215

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Ryan Smith, Waste/Water Supt.

ADDRESS: PO Box 82

DATE: December 12, 2019

TELEPHONE: 605.641.0215

RE: Water Permit Application No. 1992-1

COMMENTS:

I spoke with Ryan Smith, Waste/Water Superintendent, concerning a couple of issues regarding the application submitted by the Town of Buffalo. The well completion report is an 8 inch cased well that the town intends to use as a production well if the application is approved. There is no pump in the well. The information on the supplemental information form is incorrect regarding the depth to water bearing material and the static water level. Mr. Smith indicated that the information on the well completion report should be used rather than the supplemental information provided on Form 2A. I also informed Mr. Smith that a preliminary look at the well completion report information may result in the proposed water source being changed from the Fox Hills Formation to the Hell Creek aquifer. Mr. Smith indicated the change was acceptable if the determination was made that the Hell Creek aquifer is the appropriate water source.



Ron Duvall
Natural Resources Engineer
Water Rights Program



**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. 1992-1, Town of Buffalo**

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. 1992-1, Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720.

The Chief Engineer is recommending APPROVAL of Application No. 1992-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
3. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "Jeanne Goodman", is written over a horizontal line.

Jeanne Goodman, Chief Engineer
January 2, 2020

Report to the Chief Engineer
Water Permit Application No. 1992-1
Town of Buffalo
December 30, 2019

Water Permit Application No. 1992-1 by the Town of Buffalo proposes to appropriate up to 82 acre-feet of water annually at a maximum instantaneous diversion rate 0.19 cubic feet per second (cfs) from the Hell Creek aquifer for municipal use. The diversion point is one existing well (280 feet deep) located in the SE ¼ NW ¼ Section 29-T19N-R5E on the southeast edge of Buffalo, SD.

Aquifer: Hell Creek (HLCK)

Aquifer Characteristics and Hydrogeology

The Hell Creek Formation is part of the Cretaceous aged deposits that underlie portions of South Dakota, North Dakota, Wyoming, Montana, and Canada (Long et al., 2014). In characterizing the hydrogeologic framework of the uppermost aquifer system of the entire Williston Basin area, Thamke et al. (2014) subdivided the Hell Creek Formation into two hydrogeologic units, the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer based on the relative percentage of sandstone within the formation. These hydrogeologic divisions are approximately consistent with the division of the formation into the upper and lower Hell Creek Formation, with the term hydrogeologic unit being applied to the upper since it has been identified as a confining unit in some areas of the Williston Basin (Long et al., 2014 and Thamke et al., 2014). However, the upper Hell Creek hydrogeologic unit may not act as a confining unit across the entirety of the Williston Basin (Long et al., 2014 and Thamke et al., 2014). The hydrogeologic units of the Thamke et al. (2014) and Long et al. (2014) study area are shown in Figure 1. In examining the lithologic and hydraulic data from well logs presented by Thamke et al. (2014) for sites in South Dakota, wells in the Hell Creek Formation were completed in both the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer.

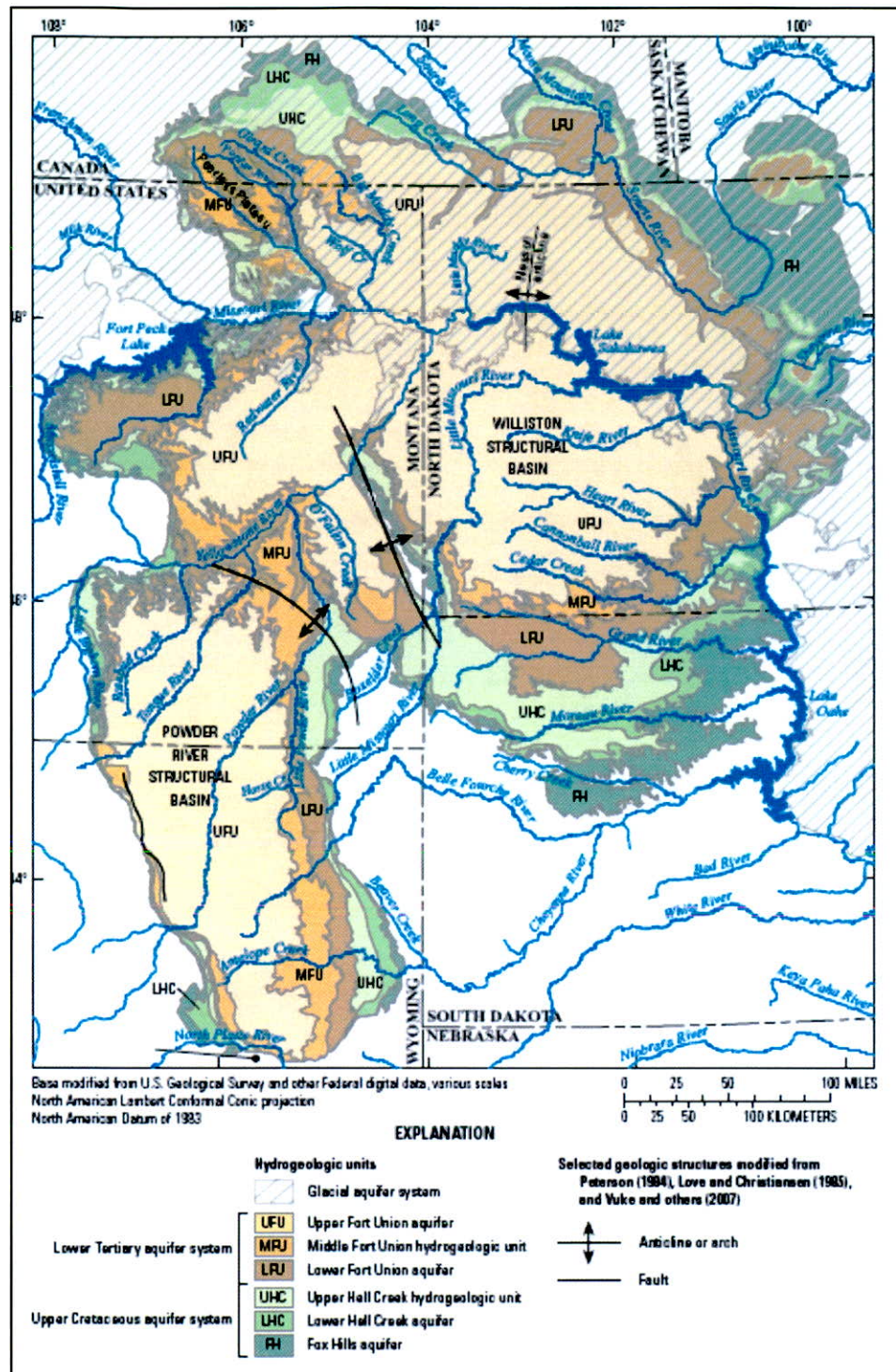


Figure 1: Thamke et al. (2014) and Long et al. (2014) study area and hydrogeologic units (modified from Thamke et al., 2014)

In South Dakota, the Hell Creek Formation is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate (Martin et al., 2004). For the purpose of water management in South Dakota the Water Rights

Program does not subdivide the Hell Creek Formation and for the purpose of appropriations considers the permeable and porous portions of the Hell Creek Formation to be a single aquifer. Allen et al. (1985) estimates that the Hell Creek Formation underlies about 5,390,720 acres of South Dakota with an estimated 82,260,400 acre-feet of water in storage; the break down by county is shown in Table 1. In the area of the Buffalo quadrangle (where the well sites for this application are located), Erickson (1956) notes that the Hell Creek Formation can be over 300 feet in thickness in some areas.

Table 1: Area and Storage of the Hell Creek Aquifer in South Dakota (Allen et al., 1985)

County	Area (acres)	Recoverable Water (acre-feet)
Butte	208,000	3,640,000
Corson	881,920	11,024,000
Dewey	87,680	219,200
Harding	1,629,440	28,515,200
Meade	280,320	3,323,680
Perkins	1,776,640	31,091,200
Ziebach	526,720	4,447,120
Total	5,390,720	82,260,400

The well completion report for this application reports the well is primarily screened into “sand gray medium” that was encountered at a depth of 224 to 262 feet below grade. The reported static water level at the time of completion (July 22, 2019) was 47 feet below the top of casing with the top of casing reported at two feet above ground surface. Based on the location, approximate elevation, and description of the “sand” this well is screened into, this well is completed into the Hell Creek aquifer (Thamke et al., 2014; Martin, et al., 2004; Water Rights, 2019a; and Water Rights, 2019b). Although the Hell Creek Formation outcrops in the area of the well for this application, the makeup of the formation (shale interbedded with sandstone and other materials) can result in confined conditions in the lower sandstones of the formation, which is the case for the well for this application.

South Dakota Codified Law (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability there is unappropriated water available for the applicant’s proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, and the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and potential effects on existing rights from the aquifer that are pertinent to this application.

Water Availability

Water Permit Application No. 1992-1 proposes to appropriate water from the Hell Creek aquifer for municipal use. The probability of unappropriated water being available from an aquifer

can be evaluated by considering SDCL 46-6-3.1 which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and the application is for a water distribution system defined pursuant to SDCL 46-1-6 (17), the Board need not consider the recharge/withdrawal issue. The Hell Creek aquifer is not older or lower than the Greenhorn Formation, therefore the withdrawal/recharge issue must be considered.

Observation Wells

In determining the availability of unappropriated water for a permit application, Administrative Rule of South Dakota 74:02:05:07 requires the Water Management Board to rely on the record of observation well measurements, in addition to other data, to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated annual recharge.

The Water Rights Program monitors one observation well completed into the Hell Creek aquifer. Observation well HR-86F is located about 3.9 miles to the southeast of the well site for this application. The hydrograph for observation well HR-86F is shown in Figure 2.

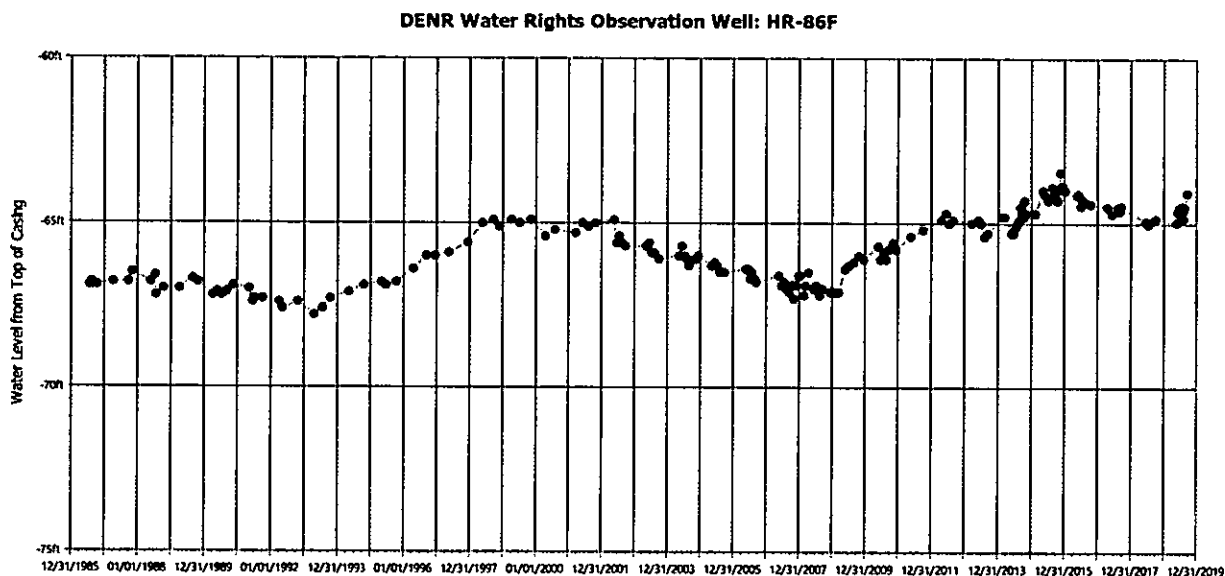


Figure 2: Hydrograph of observation well HR-86F (Water Right, 2019b)

The observation well data documents cyclic conditions of water levels, recharging during wet periods and declining during dry periods. Fluctuations in water level over the period of record are relatively small (about 4.3 feet). Over the period of record, the hydrograph of observation well HR-86F shows increased water in storage in the aquifer in the area of this observation well. Observation well data indicates that at the current level of development, climatic conditions dominate the water levels in the aquifer, indicating that recharge to and natural discharge from the aquifer exceeds well withdrawal recognizing natural discharge can be captured for pumping. The

hydrograph demonstrates that the amount of water in storage has slightly increased from the start of the period of record, indicating that on average over the period of record recharge to the aquifer has exceeded withdrawals. Therefore, there is a reasonable probability that water is available for appropriation.

Hydrologic Budget

Recharge

Recharge to the Hell Creek aquifer occurs from the infiltration of precipitation, stream flow infiltration, and groundwater inflow (Long et. al., 2014). Hedges and Burch (1985) used base flow recession analysis at two locations in South Dakota to determine an order of magnitude for recharge resulting in estimates of 0.25 and 0.29 inches per year. This yields an estimated average annual recharge to the Hell Creek aquifer in South Dakota of approximately 112,306 to 130,275 acre-feet per year with approximately 33,946 to 39,378 acre-feet per year to Harding County alone.

Long et. al. (2014) utilized a numerical soil water balance model to examine the potential precipitation recharge from 1981 to 2011 in the study area shown in Figure 1. Modeled average annual precipitation recharge from 1981 to 2011 to the Williston Basin portion of the study area was 0.18 inches per year with rates that varied from 0 to 6.8 inches per year (Long et. al., 2014). Modeled precipitation recharge to the area of South Dakota underlain by the Hell Creek aquifer primarily ranged from 0 to 0.5 inches per year (Long et. al., 2014). However, the modeled rates were not aquifer specific and likely are not reflective of loss to any overlying aquifers (Long et. al., 2014 and Aurand, 2013).

Withdrawals

Discharge from the Hell Creek aquifer occurs through evapotranspiration, seepage to surface water near the outcrops, groundwater outflow, and well withdrawals (Long et al, 2014 and Bedner, 2013). Given their relatively low diversion rates the amount of water withdrawn by domestic uses is not considered a significant portion of the hydrologic budget of the aquifer. Currently, there are 11 water rights/permits appropriating water from the Hell Creek aquifer and one application pending to amend Water Permit No. 1963-1 (Water Rights, 2019b). These water rights/permits are summarized in Table 2.

Historically, water use by non-irrigation appropriations limited by instantaneous diversion rates has been less than 60% of full time pumping at the permitted authorized diversion rate. Average annual use for Water Permit No. 1963-1 was estimated at 100% of full pumping since it is for both irrigation and non-irrigation use, however actual use maybe less than estimated. Water Permit Application 1963A-1, an amendment to Water Permit No. 1963-1, is currently going through the contested case process and proposes to add additional areas of use to the temporary workforce camp portion of the permit. In the qualifications to Water Permit Application 1963A-1, the Chief Engineer of the Water Rights Program is recommending an annual volume limitation for the temporary workforce camp portions of Water Permit No. 1963-1 and Water Permit Application No. 1963A-1 for 57.2 acre-feet annually. Water Permit 1963-1 was issued in July of 2017, so long term irrigation data is not available to estimate average annual irrigation use for the permit.

However, for perspective, the 2018 Irrigation Questionnaire for Water Permit No. 1963-1 reported applying 28.46 acre-feet to 50 acres, which is approximately 0.57 feet per acre and applying the 2018 application rate for Water Permit No. 1963-1 to 216 acres results in approximately 123 acre-feet (Water Rights, 2019d and Water Rights, 2019f). This results in an estimated annual water use for the water rights/permits appropriating water from the Hell Creek aquifer in South Dakota of less than 806 acre-feet per year.

Table 2: Estimated Appropriative Water Use from the Hell Creek Aquifer in South Dakota (Water Rights, 2019b)

Permit No.	Name	County	Status	Use	Rate (cfs)	Acres	Estimated Annual Use (acre-feet per year)
278-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.13	n/a	56
1163-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.07	n/a	30
1178A-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.14	n/a	61
1178B-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.26	n/a	113
1273-1	CITY OF MORRISTOWN	CORSON	LICENSE	MUNICIPAL	0.08	n/a	35
1626-1	SLIM BUTTES LUTHERAN CHURCH	HARDING	LICENSE	INSTITUTIONAL	0.026	n/a	11
1691-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.156	n/a	68
1782-1	FLOYD JOHNSON	PERKINS	LICENSE	SUBURBAN HOUSING DEVELOPMENT, DOMESTIC	0.04	n/a	17
1909-1	ALVIN L CORDELL	HARDING	LICENSE	COMMERCIAL	0.04	n/a	17
1940-1	SLIM BUTTES LODGE L	HARDING	LICENSE	COMMERCIAL	0.03	n/a	13
1963-1	TOM & LORI WILSON	HARDING	PERMIT	IRRIGATION, DOMESTIC*	0.53	216	384
Total					1.502	216	806

*Use for 1963-1 estimated at 100% of diversion rate

Long et al. (2014) examined average groundwater withdrawal from South Dakota from the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer in five-year periods from 1981 to 2005 for the Long et al. (2014) study area. Long et al. (2014) estimated average groundwater use (including domestic use) from 2001 to 2005 from the Hell Creek aquifer in South Dakota at 0.87 cfs, resulting in an estimated average annual withdrawal of 630 acre-feet per year for that time period.

Balance

Estimated average annual appropriative withdrawals from the Hell Creek aquifer in South Dakota are less than 806 acre-feet per year. Average annual recharge to the Hell Creek aquifer in South Dakota is estimated at approximately 112,306 to 130,275 acre-feet per year with approximately 33,946 to 39,378 acre-feet per year to Harding County alone. This application proposes to use up to 82 acre-feet per year. Therefore, there is a reasonable probability that unappropriated water is available in the Hell Creek aquifer in South Dakota to meet the request for this application.

Existing Water Rights/Permits

The water rights/permits in the area of the wellsite for this application are shown in Figure 3 and summarized in Table 2. The nearest water right/permit to the well for this application is Water Right No. 1178B-1 for the Town of Buffalo located approximately 0.3 miles to the west-northwest of the well site for this application (Water Rights, 2019a). The nearest water right/permit not belonging to the applicant is Water Permit No. 1963-1 for irrigation and domestic use located

approximately 8.1 miles to the west of the well site 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/permits. There are domestic well completion reports on file with the SDDENR-Water Rights Program within two miles of this application that appear to be completed into the Hell Creek aquifer (Water Rights Program, 2019c).

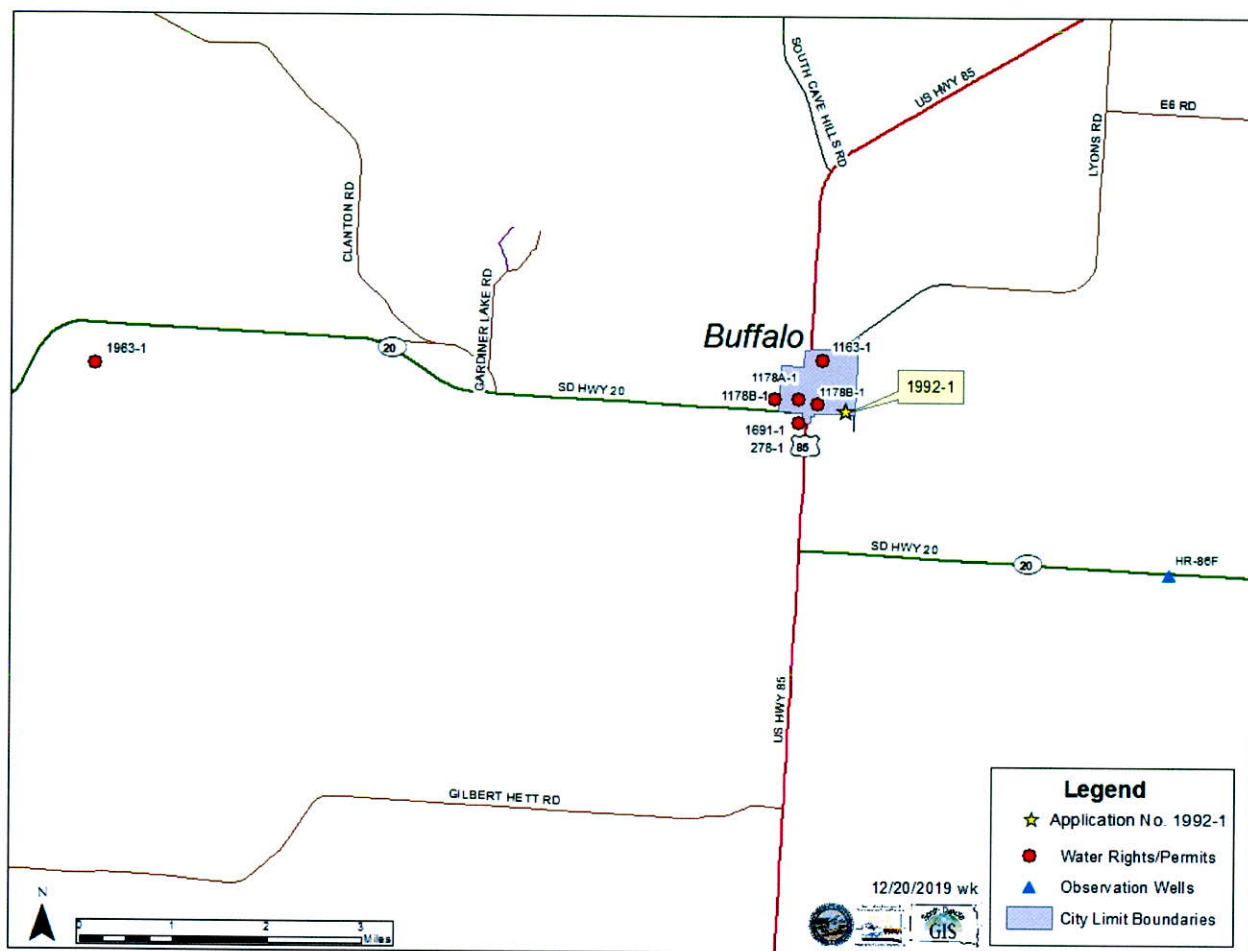


Figure 3: Water rights/permits currently authorized to appropriate water from the Hell Creek aquifer in the area of the well location for this application (Water Rights, 2019a and Water Rights, 2019b)

Since the aquifer is under confined conditions in the area of the well, some amount of drawdown from pumping is expected. The exact amount of drawdown as the result of pumping due to this proposed diversion cannot be quantified without aquifer testing. Observation well HR-86F is located approximately 4.2 miles from the existing water rights for the City of Buffalo, and the hydrograph from the observation well (Figure 2) shows no signs of well interference. Additionally, there is not a history of well interference complaints in the area (Water Rights, 2019a and Water Rights, 2019e). In the past, the Water Management Board has recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. The Water

Management Board has promulgated rules that allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure. An adversely impacted domestic well has been defined by the Administrative Rules of South Dakota 74:02:04:20 (7) 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". In the case of Water Permit Application No. 2313-2 for the Coca-Cola Bottling Company of the Black Hills, the Water Management Board adopted findings of fact that noted that if the increased costs or decreased production as a result of the impacts of legitimate users on artesian head pressure could be considered an adverse impact it would conflict with SDCL 46-1-4 (Water Rights, 1995). SDCL 46-1-4 requires the water resources of the state be put to beneficial use to the maximum extent of which they are capable. Therefore, there is a reasonable probability that pumping under this application, if approved, will not unlawfully impair existing water rights/permits with adequate wells or domestic users with adequate wells.

Conclusions

1. Water Permit Application No. 1992-1 for the Town of Buffalo proposes to appropriate up to 82 acre-feet of water annually at a maximum diversion rate of 0.19 cfs from the Hell Creek aquifer for municipal use from one existing well located in the SE ¼ NW ¼ Section 29-T19N-R5E.
2. Based on a review of the South Dakota hydrologic budget and the observation well information for the Hell Creek aquifer, there is a reasonable probability that unappropriated water is available in the aquifer for the applicant's proposed use as required by SDCL 46-2A-9.
3. There is a reasonable probability that this application, if approved, will not unlawfully impair existing water rights/permits or domestic users with adequate wells.


Whitney Kiltz

SDDENR Water Rights Program

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- Water Rights. 2019f. 2018 Irrigation Summary by Aquifer. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

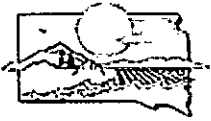
Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, January 2, 2020 1:56 PM
To: townofbuf@sdplains.com
Subject: Water Permit Application No. 1992-1
Attachments: Application No. 1992-1.pdf

Attached is the report, recommendation and information regarding the public notice for Water Permit Application No. 1992-1, Town of Buffalo. It is important that someone call the Black Hills Pioneer ASAP to authorize publication in both the Black Hills Pioneer and the Nation's Center News and arrange for payment. The paper copies are in the mail today.

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.**

January 2, 2020

Town of Buffalo
c/o Ryan D Smith, Water Supt.
PO Box 82
Buffalo SD 57720

Dear Mr. Smith:

Water Permit Application No. 1992-1 for municipal use has been examined and found to comply with the South Dakota Water Laws and applicable rules. Notice has been sent to the Black Hills Pioneer, Spearfish SD (Ph # 605 642-2761) to be published in both the Black Hills Pioneer and the Nation's Center News. You will need to contact the Black Hills Pioneer to authorize publication of this notice in both papers. 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,


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. 1992-1 to Appropriate Water

Notice is given that the Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720 has filed an application for a water permit to appropriate 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E for municipal use. This site is located on the southeast edge of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1992-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation 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 January 20, 2020.

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.

Published once at the total approximate cost of_____.

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, January 2, 2020 1:41 PM
To: Black Hills Pioneer Spearfish (legals@bhpioneer.com)
Subject: 1992-1, Town of Buffalo
Attachments: 1992-1public.short.docx; FORM8.FRM.doc

Attached is a notice to be published in BOTH the Black Hills Pioneer and the Nation's Center News on January 9, 2020.

The Town of Buffalo, c/o Ryan Smith, Water Supt, PO Box 82, Buffalo SD 57720 (605 375-3130) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavits or return the attached Proof of Publication form for both papers 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



RECEIVED

JAN 21 2020

WATER RIGHTS
PROGRAM

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. 1992-1

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 Jan, 2020 and the last publication on the day of , that the full amount of fees charged for publishing same, to-wit: The sum of \$ 25.87 insures solely to the benefit of the publisher of the NATION'S CENTER NEWS, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Signature]
Subscribed and sworn to before me this 16th day of Jan, 2020

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

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.

Published once at the total approximate cost of \$25.41.

#917
Jan 9

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Notice is given that the Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720 has filed an application for a water permit to appropriate 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E for municipal use. This site is located on the southeast edge of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1992-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation 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 January 20, 2020.

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

RECEIVED

JAN 21 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 Application
No. 1992-1

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 Jan, 2020, and the last publication on the day of , , that the full amount of fees charged for publishing same, to-wit: The sum of \$ 25.87, 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 16th day of Jan, 2020

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

NOTICE OF APPLICATION NO. 1992-1 to Appropriate Water

Notice is given that the Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720 has filed a water permit to appropriate 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E for municipal use. This site is located on the southeast edge of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1992-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation 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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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.

Published once at the total approximate cost of \$25.41.

#195
Jan 9

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JAN 19 2020

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

WATER RIGHTS
PROGRAM

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, John Harter, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of the State of South Dakota and a land owner and rancher on the proposed route of the KXL pipeline. I am interested and concerned about the honesty and integrity of the DENR permit process as well as responsibilities to protect the quality and quantity of our water resources, local agricultural economy (affecting my own Family), and quality of life, for the current and future generations.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes when the truth is, the Town of Buffalo had already entered into an agreement with TransCanada Energy to provide this public water to TCE for use for undescribed purposes, presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for municipal use for a period of up to the next two years.
2. As the Petitioner, I contend the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting appropriating public water to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly sought and obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson for the maximum amount of public water from the Hell Creek Aquifer requested for its needs from this Aquifer for its proposed man camp and construction of the KXL pipeline. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needs for this entire project.
5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application would not be for the immediate

beneficial use of the Applicant, but unlawfully for an unnamed third party for an unstated use for up to a two year period. It therefore would not be a beneficial use under our laws.

6. Additionally, the apparent effort by Applicant working with TCE to fraudulently obtain this well and public water immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus contrary to law and regulation, would make this fraudulently sought appropriation of public water not to be in the public interest.
7. It would further not be in the public interest to grant this Application to appropriate public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of February, 2019.

/s/ John Harter
JOHN HARTER
28125 307th Avenue
Winner, SD 57580
johnharter11@yahoo.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of February, 202019.

/s/ John Harter

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ema.
JAN 19 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Dakota Rural Action (DRA), by and through the below-signed counsel, hereby submits this Petition to Oppose and Contest the Application by the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of public water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for "Municipal" purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE¼ of the NW¼ of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner, Dakota Rural Action, is a South Dakota grassroots statewide organization whose members include South Dakota and Tribal farming and ranching families. A major focus of DRA is the protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner contends its members and the People within South Dakota are interested in any appropriations of water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. Petitioner and its members are further concerned about any attempt

to fraudulently obtain public water for private interests.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes and omitted the fact that the Town of Buffalo has already entered into an agreement with TransCanada Energy to provide this public water to TCE for purpose(s) not stated in the Application, but presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for its municipal use for a period of up to the next two years.
2. Petitioner contends the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of the requested water appropriation to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson, for the maximum amount of public water from the Hell Creek Aquifer. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needed for its proposed man camps and

construction of the KXL pipeline, and obtained that amount.

5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application is not be for the immediate beneficial use of the Applicant, but contrary to law, for an unnamed third party for an unstated use for up to a two year period.
6. Additionally, the apparent effort by Applicant in league with TCE to fraudulently obtain this well immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus circumvention of law and regulation by TCE and the Applicant, the granting this fraudulently sought appropriation of public water would not be in the public interest.
7. It would further not be in the public interest to grant this Application for public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.
9. The granting of the Application threatens cultural and historic resources which largely remain unsurveyed and unprotected.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of January, 2020.

/s/ Bruce Ellison

BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of January, 2020.

/s/ Bruce Ellison

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JAN 19 2020

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

WATER RIGHTS
PROGRAM

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Elizabeth Lone Eagle, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW¼ of Section 29-T19N-R5E].

On January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of South Dakota concerned about protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. This is especially true where a foreign, private company attempts to do so through fraud and deceit.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada Energy to provide this public water to TCE's use to construct the hazardous materials KXL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the DENR to protect and improve our water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the KXL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.
5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to actually provide TCE with the water for the next two years, the granting of this Application would not be a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert water

resources from municipal use without public notice and review and WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the KXL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a two year period.

7. Additionally, granting this fraudulently sought appropriation of public water for construction of the KXL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills in our State, which would create real future threats to the water, land, and air upon which our future generations and agricultural economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of the water for municipal purposes which in fact the water would be used by a foreign, for profit corporation to construct a hazardous materials transportation facility through South Dakota;
9. It is not in the public interest, including the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TCE to construct the KXL hazardous materials pipeline in an apparent effort to obtain public water without public notice and review, WMB determination, oversight, and/or regulation;
10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.

12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 19th day of January 2020.

/s/ Elizabeth Lone Eagle
Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Email submitted: this 19th day of January 2020.
US Postage paid January 21, 2020 due to federal holiday.

/s/ Elizabeth Lone Eagle

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JAN 19 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Mahmud Fitil, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo, South Dakota (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 acre-feet per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW ¼ Section 29-T19N-R5E].

On January 2, 2020, Jeanne Goodman, the Chief Engineer of the Water Rights Program, DENR, recommended that the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen and resident of Nebraska whom spends a great deal of time, energy and resources in South Dakota having various recreational and environmental interests as well as relatives throughout the state and is concerned about protection of both the quality and quantity of our water resources, the state's local agricultural-based economy, and quality of life for current and future generations of South Dakotans and those sharing both the aquifer and surface water systems throughout the region.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for both current and future generations. The petitioner is specifically interested in any

attempts of public appropriation of water allocated for a private entity/corporation through fraud and deceit under guise of a public works or municipality project as a means of circumventing the existent water rights permitting procedures.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

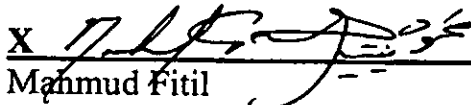
1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada / TC Energy (TCE) to provide this public water to TCE's use to construct the proposed hazardous materials Keystone XL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use as stated in the application for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the South Dakota Department of Environment and Natural Resources to protect and improve water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 having detailed to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the Keystone XL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.

5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to in actuality provide TransCanada with water for the next two years, the granting of this Application would not be understood as a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert public water resources from municipal use without public notice and review circumventing WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the Keystone XL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a period of two years.
7. Granting this fraudulently sought after appropriation of public water for construction of the Keystone XL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills within the state of South Dakota, which would create real future threats to the water, land, and air upon which our future generations and agricultural-based economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of this public water for municipal purposes which in fact the water would rather be used by a foreign, for profit corporation to construct hazardous materials transportation pipeline through South Dakota;
9. It is not in the public interest, including both the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TransCanada to construct the proposed Keystone XL hazardous materials pipeline in an apparent effort to obtain public water without public notice, public review, WMB determination, WMB oversight, and/or WMB regulation;

10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.
12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 17th day of January 2020.

X 

Mahmud Fitol
4949 S. 30th St.
Omaha, NE 68107

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Mahmud Fitol Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 17th day of January 2020.

X 

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Trisha Etringer, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo, South Dakota (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 acre-feet per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ Section 29-T19N-R5E].

On January 2, 2020, Jeanne Goodman, the Chief Engineer of the Water Rights Program, DENR, recommended that the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is an enrolled tribal member of the Winnebago Tribe of Nebraska who spends a great deal of time, energy and resources in South Dakota having various recreational and environmental interests as well as relatives throughout the state and is concerned about protection of both the quality and quantity of our water resources, the state's local agricultural-based economy, and quality of life for current and future generations of South Dakotans and those sharing both the aquifer and surface water systems throughout the region.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for both current and future generations. The petitioner is specifically interested in any

attempts of public appropriation of water allocated for a private entity/corporation through fraud and deceit under guise of a public works or municipality project as a means of circumventing the existent water rights permitting procedures.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada / TC Energy (TCE) to provide this public water to TCE's use to construct the proposed hazardous materials Keystone XL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use as stated in the application for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the South Dakota Department of Environment and Natural Resources to protect and improve water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 having detailed to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the Keystone XL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.

5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to in actuality provide TransCanada with water for the next two years, the granting of this Application would not be understood as a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert public water resources from municipal use without public notice and review circumventing WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the Keystone XL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a period of two years.
7. Granting this fraudulently sought after appropriation of public water for construction of the Keystone XL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills within the state of South Dakota, which would create real future threats to the water, land, and air upon which our future generations and agricultural-based economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of this public water for municipal purposes which in fact the water would rather be used by a foreign, for profit corporation to construct hazardous materials transportation pipeline through South Dakota;
9. It is not in the public interest, including both the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TransCanada to construct the proposed Keystone XL hazardous materials pipeline in an apparent effort to obtain public water without public notice, public review, WMB determination, WMB oversight, and/or WMB regulation;

10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.
12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 17th day of January 2020.

X Trisha Etringer

Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Trisha Etringer Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 17th day of January 2020.

X _____

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PMA,
JAN 19 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, _Carol Hayse, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E].

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of South Dakota concerned about protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. This is especially through where a foreign, private company attempts to do so through fraud and deceit.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada Energy to provide this public water to TCE's use to construct the hazardous materials KXL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the DENR to protect and improve our water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the KXL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.
5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to actually provide TCE with the water for the next two years, the granting of this Application would not be a beneficial use by the Applicant of this public water.

6. Since the real proposed use of such proposed water would divert water resources from municipal use without public notice and review and WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the KXL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a two year period.
7. Additionally, granting this fraudulently sought appropriation of public water for construction of the KXL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills in our State, which would create real future threats to the water, land, and air upon which our future generations and agricultural economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
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9. It is not in the public interest, including the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TCE to construct the KXL hazardous materials pipeline in an apparent effort to obtain public water without public notice and review, WMB determination, oversight, and/or regulation;
10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the

DENR.

12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 19th day of January, 2020

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 19th day of January, 2020.

Carol Hayse

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

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JAN 23 2020

WATER RIGHTS
PROGRAM

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Mahmud Fitol, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo, South Dakota (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 acre-feet per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW ¼ Section 29-T19N-R5E].

On January 2, 2020, Jeanne Goodman, the Chief Engineer of the Water Rights Program, DENR, recommended that the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen and resident of Nebraska whom spends a great deal of time, energy and resources in South Dakota having various recreational and environmental interests as well as relatives throughout the state and is concerned about protection of both the quality and quantity of our water resources, the state's local agricultural-based economy, and quality of life for current and future generations of South Dakotans and those sharing both the aquifer and surface water systems throughout the region.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for both current and future generations. The petitioner is specifically interested in any

attempts of public appropriation of water allocated for a private entity/corporation through fraud and deceit under guise of a public works or municipality project as a means of circumventing the existent water rights permitting procedures.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

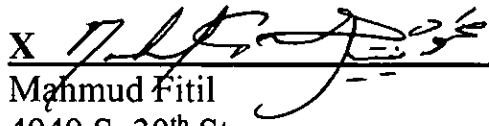
1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada / TC Energy (TCE) to provide this public water to TCE's use to construct the proposed hazardous materials Keystone XL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use as stated in the application for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the South Dakota Department of Environment and Natural Resources to protect and improve water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 having detailed to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the Keystone XL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.

5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to in actuality provide TransCanada with water for the next two years, the granting of this Application would not be understood as a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert public water resources from municipal use without public notice and review circumventing WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the Keystone XL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a period of two years.
7. Granting this fraudulently sought after appropriation of public water for construction of the Keystone XL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills within the state of South Dakota, which would create real future threats to the water, land, and air upon which our future generations and agricultural-based economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of this public water for municipal purposes which in fact the water would rather be used by a foreign, for profit corporation to construct hazardous materials transportation pipeline through South Dakota;
9. It is not in the public interest, including both the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TransCanada to construct the proposed Keystone XL hazardous materials pipeline in an apparent effort to obtain public water without public notice, public review, WMB determination, WMB oversight, and/or WMB regulation;

10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.
12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 17th day of January 2020.

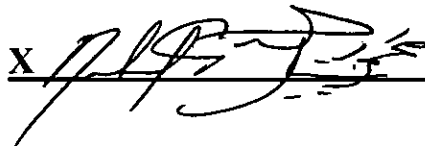
X 

Mahmud Fitol
4949 S. 30th St.
Omaha, NE 68107

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Mahmud Fitol Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 17th day of January 2020.

X 

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 23 2020

**WATER RIGHTS
PROGRAM**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, John Harter, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of the State of South Dakota and a land owner and rancher on the proposed route of the KXL pipeline. I am interested and concerned about the honesty and integrity of the DENR permit process as well as responsibilities to protect the quality and quantity of our water resources, local agricultural economy (affecting my own Family), and quality of life, for the current and future generations.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes when the truth is, the Town of Buffalo had already entered into an agreement with TransCanada Energy to provide this public water to TCE for use for undescribed purposes, presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for municipal use for a period of up to the next two years.
2. As the Petitioner, I contend the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting appropriating public water to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly sought and obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson for the maximum amount of public water from the Hell Creek Aquifer requested for its needs from this Aquifer for its proposed man camp and construction of the KXL pipeline. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needs for this entire project.
5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application would not be for the immediate

beneficial use of the Applicant, but unlawfully for an unnamed third party for an unstated use for up to a two year period. It therefore would not be a beneficial use under our laws.

6. Additionally, the apparent effort by Applicant working with TCE to fraudulently obtain this well and public water immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus contrary to law and regulation, would make this fraudulently sought appropriation of public water not to be in the public interest.
7. It would further not be in the public interest to grant this Application to appropriate public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of February, 2019.

/s/ John Harter *John H Harter*
JOHN HARTER
28125 307th Avenue
Winner, SD 57580
johnharter11@yahoo.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of February, 202019.

/s/ John Harter

John H Harter

LAW OFFICE OF BRUCE ELLISON

P.O. Box 2508

Rapid City, S.D. 57709

(605) 348-1117

belli4law@aol.com

RECEIVED

JAN 24 2020

**WATER RIGHTS
PROGRAM**

January 20, 2020

JEANNE GOODMAN, Chief Engineer
Dept. Of Environment & Natural Resources
523 E. Capitol
Pierre, SD 57501

Re: Application for Water Appropriation Permit 1992-1
Petition to Oppose and Contest

Ms. Goodman:

Attached please find for filing and service of Dakota Rural Action's Petition to Oppose and Contest Application for Permit 1992-1, to Appropriate Water And For A Hearing in the above-entitled matter, together with Certificates of Service.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Ellison', with a stylized flourish at the end.

Bruce Ellison

Attorney for Dakota Rural Action

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 24 2020

**WATER RIGHTS
PROGRAM**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Dakota Rural Action (DRA), by and through the below-signed counsel, hereby submits this Petition to Oppose and Contest the Application by the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of public water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for "Municipal" purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE¼ of the NW¼ of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner, Dakota Rural Action, is a South Dakota grassroots statewide organization whose members include South Dakota and Tribal farming and ranching families. A major focus of DRA is the protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner contends its members and the People within South Dakota are interested in any appropriations of water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. Petitioner and its members are further concerned about any attempt

to fraudulently obtain public water for private interests.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

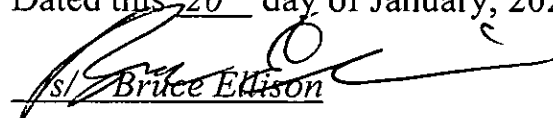
1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes and omitted the fact that the Town of Buffalo has already entered into an agreement with TransCanada Energy to provide this public water to TCE for purpose(s) not stated in the Application, but presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for its municipal use for a period of up to the next two years.
2. Petitioner contends the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of the requested water appropriation to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson, for the maximum amount of public water from the Hell Creek Aquifer. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needed for its proposed man camps and

construction of the KXL pipeline, and obtained that amount.

5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application is not be for the immediate beneficial use of the Applicant, but contrary to law, for an unnamed third party for an unstated use for up to a two year period.
6. Additionally, the apparent effort by Applicant in league with TCE to fraudulently obtain this well immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus circumvention of law and regulation by TCE and the Applicant, the granting this fraudulently sought appropriation of public water would not be in the public interest.
7. It would further not be in the public interest to grant this Application for public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.
9. The granting of the Application threatens cultural and historic resources which largely remain unsurveyed and unprotected.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of January, 2020.


/s/ Bruce Ellison

BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of January, 2020.

/s/ Bruce Ellison

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

JAN 24 2020

**WATER RIGHTS
PROGRAM**

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Elizabeth Lone Eagle, hereby submits this Petition to Oppose and Contest the Application of the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for municipal purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE ¼ of the NW1/4 of Section 29-T19N-R5E].

On January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board (hereinafter, "WMB") approve Water Permit Application No. 1992-1.

The Petitioner is a citizen of South Dakota concerned about protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner is interested in any appropriations of public water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. This is especially true where a foreign, private company attempts to do so through fraud and deceit.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for reasons including but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false and perjurious statements and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. That the Application falsely stated it seeks public water for Municipal purposes when in fact the Town of Buffalo has entered into an agreement with TransCanada Energy to provide this public water to TCE's use to construct the hazardous materials KXL pipeline;
 - b. The agreement would grant TCE the use of the public water for private industrial purposes rather than municipal water use for the next two years;
2. Petitioner contends the granting of this Application would be contrary to the Legislative purpose and duty imposed upon the DENR to protect and improve our water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of this Application would constitute waste of public water resources since TransCanada has already indicated and obtained Water Appropriation Permits 1963A-1 and 1975A-1 to the Water Management Board the maximum amount of public water it needs from this Aquifer for construction of the KXL pipeline. The proposed actual and agreed to use of Hell Creek Aquifer public water omitted in the Application by TCE for the next two years would be substantially in excess of that amount.
5. Due to the fraudulent nature and contents of the Application and the omission of description of the agreement by the Town of Buffalo to actually provide TCE with the water for the next two years, the granting of this Application would not be a beneficial use by the Applicant of this public water.
6. Since the real proposed use of such proposed water would divert water

resources from municipal use without public notice and review and WMB determination and regulation, and thereby provide public water to facilitate TCE's construction of the KXL pipeline, it would not be for the immediate beneficial use of the Applicant, but prohibitively for an unnamed third party for up to a two year period.

7. Additionally, granting this fraudulently sought appropriation of public water for construction of the KXL pipeline by a foreign company with a documented and continuous history of federal environmental and safety violations, including and resulting in two recent large spills in our State, which would create real future threats to the water, land, and air upon which our future generations and agricultural economy depend which would not otherwise exist, is not a beneficial use consistent with the public interest.
8. It is not in the public interest for the WMB to approve an appropriation of public water based upon materially false facts as to the initial purpose and use of the water for municipal purposes which in fact the water would be used by a foreign, for profit corporation to construct a hazardous materials transportation facility through South Dakota;
9. It is not in the public interest, including the maintenance of the integrity and authority of the WMB to grant a permit for the appropriation of public water for municipal purposes to the Town of Buffalo where the real and omitted use of the water would be by TCE to construct the KXL hazardous materials pipeline in an apparent effort to obtain public water without public notice and review, WMB determination, oversight, and/or regulation;
10. The construction of the proposed pipeline threatens cultural and historic resources which largely remain unsurveyed and unprotected.
11. Petitioner contends granting this Application would be contrary to the statutory water protection responsibilities of the DENR to protect the public interest involving this individual permit and related matters within the jurisdiction of the Chief Engineer and the Board of the DENR.

12. The granting of the Application would violate the Public Trust responsibilities of the DENR.

Petitioner asks the Board to schedule a meeting with the parties to this proceeding to create a schedule for discovery, the filing of motions, and other matters to be completed prior to the Hearing on the Application.

Dated this 19th day of January 2020.



Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Email submitted: this 19th day of January 2020.

US Postage paid January 21, 2020 due to federal holiday.



Elizabeth Lone Eagle



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 28, 2020

denr.sd.gov

NOTICE OF HEARING

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 1992-1, Town of Buffalo

Six petitions were filed in the matter of Water Permit Application No. 1992-1 in response to the Notice of Application published in the Nation's Center News and Black Hills Pioneer. This notice schedules a hearing on Application No. 1992-1 before the South Dakota Water Management Board.

Water Permit Application No. 1992-1 proposes to appropriate 82 acre-feet of water annually at a maximum pump rate of 0.19 cubic feet of water per second from one well to be completed into the Hell Creek Aquifer (280 feet deep) located in the SE 1/4 NW 1/4 Section 29-T19N-R5E for municipal use. This site is located on the southeast edge of Buffalo SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1992-1 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 1992-1 at 10:00 AM on Wednesday, February 26, 2020, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided to parties if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The February 26, 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 February 14, 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.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and is required to be represented by a lawyer. As a municipality, the applicant is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited

if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Eric Gronlund at the above Chief Engineer's address to request the staff report, recommendation, application or any other information. 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.

Enclosed is a copy of the report, recommendation, affidavits of publication and the petitions filed in the matter of Water Permit Application No. 1992-1. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

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 direct mail to you, and the applicable date to give notice to the Chief Engineer is February 7, 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; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosures

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57745

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on January 28, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated January 28, 2020, regarding notice of hearing for Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



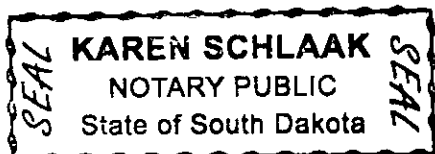
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of January, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

Email

FEB 11 2020

WATER RIGHTS
PROGRAM

BEFORE THE WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

**IN RE APPLICATION OF TOWN OF BUFFALO FOR
WATER APPROPRIATION PERMIT NO. 1992-1**

**DAKOTA RURAL ACTIONS MOTION FOR ORDER APPROVING PRE-
HEARING DISCOVERY PROCESS AND DISCOVERY PERIOD**

Dakota Rural Action (hereinafter, "DRA"), hereby moves this Board, pursuant to SDCL §1-26-18, §1-26-19, and §15-6-37(a), for an Order authorizing DRA to serve written interrogatories on the Applicant and the Chief Engineer scheduling a discovery period within which such interrogatories must be served and filed, answered, a date for the filing of any motions to compel, and pre-hearing motions for subpoena of records necessary to obtain documents relevant to these proceedings.

Dated this 11th day of February 2020.

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Jeanne Goodman, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Town of Buffalo

c/o Ryan Smith

P.O. Box 82

Buffalo, SD 57720.

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

A copy of electronically sent to:

Ann Mines-Bailey

Assistant Attorney General for DENR

1302 E. Highway 14, Suite 1

Pierre, SD 57501

ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman

Water Management Board

523 E. Capitol

Pierre, SD 57501

Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General

Water Management Board Counsel

1302 E. Highway 14, Ste 1

Pierre, SD 57501

David.mcvey@state.sd.us

John Harter

28125 307th Avenue

Winner, SD 57580

Johnharter11@yahoo.com

Mahmud Fitol

4949 S. 30th Street

Omaha, NE 68107

mahmudfitil@gmail.com

Elizabeth Lone Eagle

593 Big Foot Loop Road

Bridger, SD 57745

bethebest@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com

Dated this 11th of February, 2020.

/s/ Bruce Ellison



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

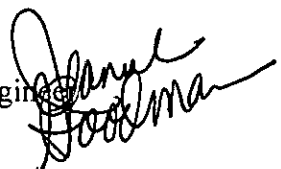
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

February 12, 2020

NOTICE

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 1992-1,
Town of Buffalo

Petitions of opposition were filed in response to the public notice for Water Permit Application No. 1992-1, Town of Buffalo. Notice of hearing dated January 28, 2020, was sent to parties scheduling a February 26, 2020, hearing before the Water Management Board on Application No. 1992-1. In response to this notice, Dakota Rural Action filed a motion for order delaying the scheduled February 26, 2020, hearing date (copy enclosed). This motion is construed as written notice, pursuant to SDCL 46-2A-5, to the chief engineer requesting a postponement of the date set for hearing on the application. Therefore, the hearing on Application No. 1992-1 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on February 26, 2020.

The hearing to consider Application No. 1992-1 is now tentatively scheduled for the May 6 - 7, 2020, Water Management Board meeting. The Board will formalize their next meeting date at the February 26th meeting. Future notice of the time and place of the hearing for Application No. 1992-1 will be provided to all parties of record.

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 1992-1 are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>.

Questions regarding the hearing process may be directed to Eric Gronlund at (605) 773-3352.

enclosure

c: Ann Mines Bailey, Assistant Attorney General
Dusty Ginsbach, PO Box 365, Buffalo SD 57720

CERTIFICATION

I hereby certify that on February 12, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated February 12, 2020, regarding notice of hearing for Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
PO Box 365
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



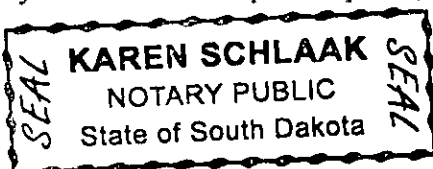
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of February, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57745

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

RECEIVED

email
FEB 11 2020

WATER RIGHTS
PROGRAM

BEFORE THE WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE APPLICATION OF TOWN OF BUFFALO FOR
WATER APPROPRIATION PERMIT NO. 1992-1

DAKOTA RURAL ACTIONS MOTION FOR ORDER DELAYING THE
SCHEDULED FEBRUARY 26, 2020 HEARING DATE

Dakota Rural Action (hereinafter, "DRA"), hereby moves this Board for an Order delaying the February 26, 2020 Hearing Date scheduled for this matter for at least sixty (60) days to permit a pre-hearing discovery process and period, together with sufficient time for analysis and incorporation of such received discovery with otherwise available evidence, and thereby properly prepare to fully confront any evidence by presented by Applicant and the Chief Engineer and for DRA to present evidence at the Hearing.

Dated this 11th day of February 2020.

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Jeanne Goodman, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Town of Buffalo

c/o Ryan Smith

P.O. Box 82

Buffalo, SD 57720.

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

A copy of electronically sent to:

Ann Mines-Bailey

Assistant Attorney General for DENR

1302 E. Highway 14, Suite 1

Pierre, SD 57501

ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman

Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
Pierre, SD 57501
David.mcvey@state.sd.us

John Harter
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Johnharter11@yahoo.com

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Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745
bethebest@gmail.com

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759
carolhaysie@gmail.com

Dated this 11th of February, 2020.

/s/ Bruce Ellison

Gronlund, Eric

From: Gronlund, Eric
Sent: Friday, February 14, 2020 11:15 AM
To: 'Elizabeth Lone Eagle'
Subject: Town of Buffalo water permit application
Attachments: 1992-1Notice01282020.pdf; 1992-1Notice02122020.pdf

Mrs. Lone Eagle

You petitioned in response to the water permit application filed by the town of Buffalo. Notice of hearing was sent January 28, 2020, scheduling the matter for February 26, 2020. DENR received "Return to Sender – Insufficient Address" from the Post Office. The address used by DENR was 593 Big Foot Loop Road, Bridger SD 57745. Therefore, I am emailing you the January 28th notice as well as the notice dated February 12th autodelaying the February 26th hearing date.

Eric Gronlund
Water Rights Program, DENR
605 773-3352

RECEIVED

FEB 14 2020

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

WATER RIGHTS
PROGRAM

In The Matter of Water)
Permit Application No. 1992-1)
To Appropriate Water)

Town of Buffalo, South Dakota)

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Dusty J. Ginsbach, Town Attorney for the Town of Buffalo, South Dakota, P.O. Box 82, Buffalo, SD 57720, dusty.ginsbach@gmail.com, enters his appearance in the above-referenced matter on behalf of the Town of Buffalo, South Dakota and requests that all further pleadings, affidavits, notices, motions, or other documents in the above-referenced matter be served upon him.

Dated this 14th day of February, 2020.

Town of Buffalo, South Dakota

By

Dusty J. Ginsbach

P.O. Box 82

Buffalo, SD 57720

(605)375-3130

Dusty.Ginsbach@gmail.com

Attorney for the Town of Buffalo

CERTIFICATE OF SERVICE

I certify that on this 14th day of February, 2020, a true and correct copy of the foregoing Notice of Appearance was filed with the Chief Engineer of the DENR c/o Eric Gronlund at eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol Ave., Pierre, SD 57501 by first class mail. Also, on this day, a true and accurate copy was sent via first class mail to the following:

Bruce Ellison
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

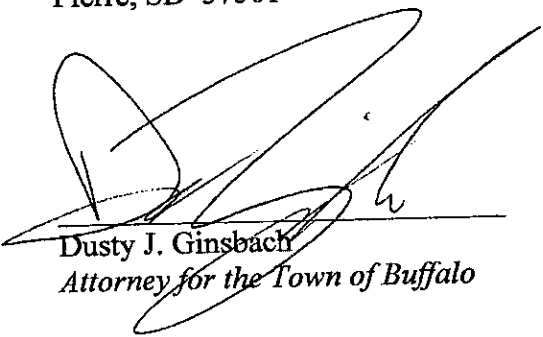
Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Mahmud Fitol
4949 S. 30th St.
Omaha, NE 68107

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1925 S Pomegranite St.
Sioux City, IA 51106

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

Ann Mines Bailey, Assistant Attorney
General
Counsel for Water Rights Program, DENR
Attorney General's Office
1392 East Highway 14, Suite 1
Pierre, SD 57501



Dusty J. Ginsbach
Attorney for the Town of Buffalo

RECEIVED

FEB 18 2020

WATER RIGHTS
PROGRAM

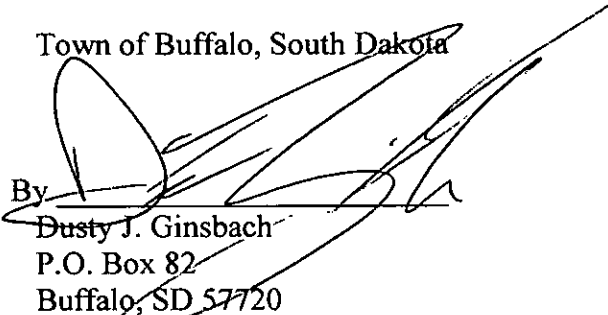
STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

In The Matter of Water	)	
Permit Application No. 1992-1	)	
To Appropriate Water	)	
	)	NOTICE OF APPEARANCE
Town of Buffalo, South Dakota	)	
	)	

PLEASE TAKE NOTICE that Dusty J. Ginsbach, Town Attorney for the Town of Buffalo, South Dakota, P.O. Box 82, Buffalo, SD 57720, dusty.ginsbach@gmail.com, enters his appearance in the above-referenced matter on behalf of the Town of Buffalo, South Dakota and requests that all further pleadings, affidavits, notices, motions, or other documents in the above-referenced matter be served upon him.

Dated this 14th day of February, 2020.

Town of Buffalo, South Dakota

By 

Dusty J. Ginsbach

P.O. Box 82

Buffalo, SD 57720

(605)375-3130

Dusty.Ginsbach@gmail.com

Attorney for the Town of Buffalo

CERTIFICATE OF SERVICE

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Bruce Ellison
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

Trisha Etringer
1925 S Pomegranite St.
Sioux City, IA 51106

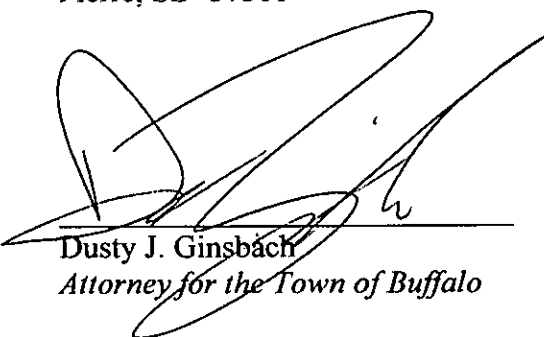
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593 Big Foot Loop Road
Bridger, SD 57745

Ann Mines Bailey, Assistant Attorney
General
Counsel for Water Rights Program, DENR
Attorney General's Office
1392 East Highway 14, Suite 1
Pierre, SD 57501

Mahmud Fitol
4949 S. 30th St.
Omaha, NE 68107



Dusty J. Ginsbach
Attorney for the Town of Buffalo

LAW OFFICE OF BRUCE ELLISON
P.O. Box 2508
Rapid City, SD 57709
Belli4law@aol.com

RECEIVED

FEB 18 2020

WATER RIGHTS
PROGRAM

February 11, 2020

CHIEF ENGINEER

Water Rights Program

523 E. Capital

Pierre, SD 57501

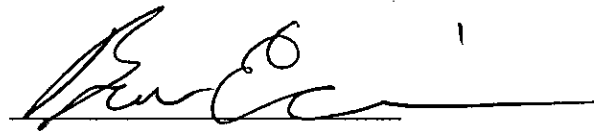
Re: Application for Water Appropriation Permit 1992-1

Chief Engineer:

Attached please find for filing and service Dakota Rural Action's
Motions for Discovery Process and Delay in Hearing, together with
Certificates of Service.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Ellison", written over a horizontal line.

BRUCE ELLISON

Attorney for DRA

RECEIVED

FEB 18 2020

WATER RIGHTS
PROGRAM

BEFORE THE WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE APPLICATION OF TOWN OF BUFFALO FOR
WATER APPROPRIATION PERMIT NO. 1992-1

DAKOTA RURAL ACTIONS MOTION FOR ORDER DELAYING THE
SCHEDULED FEBRUARY 26, 2020 HEARING DATE

Dakota Rural Action (hereinafter, "DRA"), hereby moves this Board for an Order delaying the February 26, 2020 Hearing Date scheduled for this matter for at least sixty (60) days to permit a pre-hearing discovery process and period, together with sufficient time for analysis and incorporation of such received discovery with otherwise available evidence, and thereby properly prepare to fully confront any evidence by presented by Applicant and the Chief Engineer and for DRA to present evidence at the Hearing.

Dated this 11th day of February 2020.

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

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Town of Buffalo

c/o Ryan Smith

P.O. Box 82

Buffalo, SD 57720.

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

A copy of electronically sent to:

Ann Mines-Bailey

Assistant Attorney General for DENR

1302 E. Highway 14, Suite 1

Pierre, SD 57501

ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman

Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
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Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745
bethebest@gmail.com

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759
carolhaysie@gmail.com

Dated this 11th of February, 2020.

/s/ Bruce Ellison

BEFORE THE WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE APPLICATION OF TOWN OF BUFFALO FOR
WATER APPROPRIATION PERMIT NO. 1992-1

DAKOTA RURAL ACTIONS MOTION FOR ORDER APPROVING PRE-
HEARING DISCOVERY PROCESS AND DISCOVERY PERIOD

Dakota Rural Action (hereinafter, "DRA"), hereby moves this Board, pursuant to SDCL §1-26-18, §1-26-19, and §15-6-37(a), for an Order authorizing DRA to serve written interrogatories on the Applicant and the Chief Engineer scheduling a discovery period within which such interrogatories must be served and filed, answered, a date for the filing of any motions to compel, and pre-hearing motions for subpoena of records necessary to obtain documents relevant to these proceedings.

Dated this 11th day of February 2020.

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Jeanne Goodman, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Town of Buffalo

c/o Ryan Smith

P.O. Box 82

Buffalo, SD 57720.

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

A copy of electronically sent to:

Ann Mines-Bailey

Assistant Attorney General for DENR

1302 E. Highway 14, Suite 1

Pierre, SD 57501
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bethebest@gmail.com

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759
carolhaysie@gmail.com

Dated this 11th of February, 2020.

/s/ Bruce Ellison



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

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MAR 03 2020

WATER RIGHTS
PROGRAM

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 2, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
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4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Notice of Appearance, Chief Engineer's Response for Discovery and Proposed Procedural Order and DENR'S Proposed Procedural and Scheduling Order.

Sincerely,


Ann F. Mines Bailey
Assistant Attorney General

AFM/mb
Enclosures
cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

MAR 03 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER)
APPLICATION NO. 1992-1, TOWN OF)
BUFFALO)
)

NOTICE OF
APPEARANCE

The undersigned attorney, Ann F. Mines Bailey, hereby notices her appearance as counsel for the Chief Engineer and the South Dakota Department of Environment and Natural Resources, Water Rights Program in the above-entitled action, and requests that copies of all further pleadings, affidavits, or motions in the above-entitled matter be served upon her.

Respectfully submitted this 2nd day of March, 2020.

JASON R. RAVNSBORG
ATTORNEY GENERAL


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

RECEIVED

MAR 03 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S RESPONSE TO
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR DISCOVERY AND
BUFFALO	)	PROPOSED PROCEDURAL ORDER
	)	

Pending before the Water Management Board is an application by the Town of Buffalo for a new well and an increased diversion rate. The application provides that Buffalo wishes to retire two of its existing wells which would be replaced by this new deeper well, if the new well provides better water. The Chief Engineer has recommended approval of the application and the application and recommendation were publicly noticed. In response to the notice, petitions to intervene were received from the following: Elizabeth Lone Eagle, Mahmud Fitol, John Harter, Trisha Etringer, Carol Hayse, and Dakota Rural Action. Each of the petitions, which appear to be identical, allege that the application is false, that the grant of the application would be contrary to the duties imposed upon the Water Rights Program and the Board, that the application would impact existing water rights and that the real user of the water would not be Buffalo but rather TCE, also known as TransCanada. The petitions each then discuss the potential harm of the TransCanada pipeline project.

This matter was initially set for hearing during the February 26, 2020 meeting. A motion for delay was requested by Dakota Rural Action. This

motion was construed as an exercise of the statutory right for an automatic delay of the hearing. Accordingly, the matter is currently scheduled to be heard by the Board at its May 6-7, 2020 hearing.¹

Dakota Rural Action now seeks an order for discovery. Discovery is not regularly entertained in matters such as this. In fact, the right to discovery is not absolute as the Rules of Civil Procedure do not apply. The Board, however, may in its discretion order discovery. There should, however, be a showing that discovery is necessary. In the pending motion, there is no description as to what discovery is sought or the need for discovery. Even in cases where the Rules of Civil Procedure applies, discovery is only allowed if it is “relevant to the subject matter involved in the pending action[.]” Here, the question is whether the application satisfies the factors set forth in SDCL § 46-2A-9.² Dakota Rural Action should demonstrate what discovery they need in relation to SDCL § 46-2A-9 before the Board allows the extraordinary measure of discovery.³ Further, an order for discovery is not necessary for Dakota Rural Action, or the

¹ The motion for delay requested a delay of at least sixty days. Rescheduling the hearing from February 26, 2020, to May 6, 2020, provides a delay of seventy days.

² South Dakota Codified Law, section 46-2A-9 provides as follows:

A permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

³ A review of Dakota Rural Action's Petition to Intervene (attached hereto) demonstrates that many of its concerns regarding this application involve matters which are not relevant to the factors for consideration set forth in SDCL § 46-2A-9.

other intervenors or parties, to move for the issuance of a subpoena.

Accordingly, Water Rights requests that the motion for discovery be denied at this time.

Water Rights is ready to proceed to hearing and does not feel that a procedural order is necessary. However, given the number of pro se intervenors, it may be the preference of the Prehearing Chairman to impose a procedural order to provide some guidance to intervenors. Accordingly, Water Rights submits the attached Proposed Procedural Order.

Respectfully submitted this 2nd day of March, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

RECEIVED

IN RE APPLICATION OF THE TOWN OF BUFFALO
FOR WATER PERMIT NO. 1992-1 FOR MUNICIPAL
WATER WELL

MAR 03 2020

**WATER RIGHTS
PROGRAM**

**PETITION TO OPPOSE AND CONTEST APPLICATION FOR PERMIT
1992-1, TO APPROPRIATE WATER WITHIN THE STATE OF SOUTH
DAKOTA AND FOR HEARING**

The Petitioner, Dakota Rural Action (DRA), by and through the below-signed counsel, hereby submits this Petition to Oppose and Contest the Application by the Town of Buffalo (Applicant), P.O. Box 82, Buffalo, SD 57720, for Water Permit 1992-1. The Application seeks appropriation of public water at an amount of 0.190 CFS or 85 GPM and a total appropriation of 82 AF per year for "Municipal" purposes from the Hell Creek Aquifer (well approximately 280 feet deep) described by Applicant as located in the SE¼ of the NW¼ of Section 29-T19N-R5E.

On December January 2, 2020, the Chief Engineer of the Water Rights Program, DENR, recommended the Water Management Board approve Water Permit Application No. 1992-1.

The Petitioner, Dakota Rural Action, is a South Dakota grassroots statewide organization whose members include South Dakota and Tribal farming and ranching families. A major focus of DRA is the protection of the quality and quantity of our water resources, local agricultural economy, and quality of life for the current and future generations.

The Petitioner contends its members and the People within South Dakota are interested in any appropriations of water which will potentially directly and/or indirectly adversely impact water resources needed for our current and future generations. Petitioner and its members are further concerned about any attempt

to fraudulently obtain public water for private interests.

The Petitioner hereby opposes and contests Water Permit Application No. 1992-1 for the following reasons including, but not limited to:

1. The Application should be denied since the Applicant intentionally and/or recklessly and knowingly made materially false statements under penalty of perjury and intentionally and/or recklessly and knowingly made material omissions in its Application to wit:
 - a. The Applicant in the Application stated the Town seeks water For municipal purposes and omitted the fact that the Town of Buffalo has already entered into an agreement with TransCanada Energy to provide this public water to TCE for purpose(s) not stated in the Application, but presumably related to construction of its hazardous materials transportation KXL pipeline;
 - b. The agreement by the Town of Buffalo would grant TCE the diversion of the public water requested for its municipal use for a period of up to the next two years.
2. Petitioner contends the granting of this Application would be contrary to the Legislative duty imposed upon the DENR, the Water Management Board, and the Water Rights Program to protect and improve our limited water resources for current and future generations.
3. The granting of this Application would impact existing water rights;
4. The granting of the requested water appropriation to be used by the real user for the next two years, TCE, would constitute waste of public water resources since TransCanada has already indicated and openly obtained Water Appropriation Permit Nos. 1963-1 and 1963A-1 through Tom and Lori Wilson, for the maximum amount of public water from the Hell Creek Aquifer. In WAP Nos. 1975-1, 1975A-1, 2792-2, 2793-2, TCE further stated to this Board the maximum amount of water it needed for its proposed man camps and

construction of the KXL pipeline, and obtained that amount.

5. Since the real proposed use of such proposed water appropriation would divert water resources from municipal use for private corporate use, this fraudulent Application is not be for the immediate beneficial use of the Applicant, but contrary to law, for an unnamed third party for an unstated use for up to a two year period.
6. Additionally, the apparent effort by Applicant in league with TCE to fraudulently obtain this well immediately on behalf of TCE, without public notice and review, determination, oversight and/or regulation by the DENR, and thus circumvention of law and regulation by TCE and the Applicant, the granting this fraudulently sought appropriation of public water would not be in the public interest.
7. It would further not be in the public interest to grant this Application for public water presumably to construct the KXL hazardous materials pipeline by TCE, a foreign company with a decade long, extensively documented, and continuous history of federal environmental and safety practices and violations, untimely detection and correction of construction defects resulting in two recent large spills in our State, other spills and near spills, creating a substantial threat to our water, land, and air upon which our future generations and agricultural economy depend -- threats which would not otherwise exist.
8. The granting of the Application would violate and be contrary to the Public Trust responsibilities of the DENR.
9. The granting of the Application threatens cultural and historic resources which largely remain unsurveyed and unprotected.

Petitioner asks the Board to schedule a telephonic conference with the Parties to create a schedule for discovery, the filing of motions, and other matters to be completed prior to any Hearing on the merits of this Application.

Dated this 20th day of January, 2020.

/s/ Bruce Ellison

BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Petition of Dakota Rural Action Opposing Water Permit Application 1992-1 was mailed, U.S. postage paid, to: Ryan Smith, Water Superintendent for the Town of Buffalo, P.O. Box 82, Buffalo, S.D. 57720 and the Chief Engineer of the DENR c/o eric.gronlund@st.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

Dated this 20th day of January, 2020.

/s/ Bruce Ellison

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MAR 03 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	DENR'S PROPOSED
APPLICATION NO. 1992-1, TOWN OF	)	PROCEDURAL AND SCHEDULING
BUFFALO	)	ORDER
	)	

Upon due consideration of the motions pending and, in an effort, to provide guidance and structure for the parties, the following Procedural Order shall be entered.

It is ORDERED:

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2. The Order granting *pro hac vice* shall be filed with the Water Management Board.

2. The following pre-hearing schedule and obligations apply to Applicant, Water Rights, and all other parties:

a) Each party shall disclose in writing the names of any expert that party intends to call as a witness at the hearing of this matter on or before April 8, 2020. This disclosure must include copies of any *curricula vitae*, along with copies of any expert report the party intends to offer. If an expert report has not been prepared, the parties shall disclose a summary statement of the

anticipated testimony the expert will provide and describing the methodology used by the expert to reach his/her conclusions.

b) All motions must be filed on or before April 23, 2020.

Parties may file responses on or before April 28, 2020.

c) Each party shall disclose in writing the name and contact information for any and all witnesses that the party expects to call during the hearing of this matter on or before April 29, 2019. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

d) Each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing and copies of said exhibits on or before April 29, 2020. Copies of the exhibits, with the exception of the administrative file, shall be provided to the parties. The copies may be provided by electronic means if the parties consent. However, provision of a hyperlink or internet address is not sufficient to meet this disclosure requirement.

e) All exhibits shall be marked in advance of contested proceedings by each party. The parties shall use the following exhibit identifiers:

Applicant shall use letters A-Z.

Water Rights shall use numbers 1-99.

Elizabeth Lone Eagle shall use numbers 100-199.

Mahmud Fitol shall use numbers 200-299.

John Harter shall use numbers 300-399.

Trisha Etringer shall use numbers 400-499.

Carol Hayse shall use numbers 500-599.

Dakota Rural Action shall use numbers 600-699.

f) Each party shall provide a sufficient number of copies of exhibits, with the exception of the administrative file, for use at the contested case hearing, including ten (10) copies for use by the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

g) All original pleadings and motions shall be sent by first-class mail to Ron Duvall, DENR Water Rights Program, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. Parties must also serve copies of all pleadings and motions on all other parties. Service must also be made upon Board Counsel, Assistant Attorney General David McVey, 1302 E. Hwy 14, Suite 1, Pierre, South Dakota, 57501. If a document is filed by email, it must be received by 5pm central time the day it is due, or it will be otherwise considered untimely and rejected. Such filings may be emailed to Ron.Duvall@state.sd.us.

Dated this _____ day of March, 2020.

South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that true and correct copies of the Notice of Appearance, Chief Engineer's Response for Discovery and Proposed Procedural Order and DENR'S Proposed Procedural and Scheduling Order in the above matter were served by U.S. mail, first class, postage prepaid, upon the following on this 2nd day of March 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

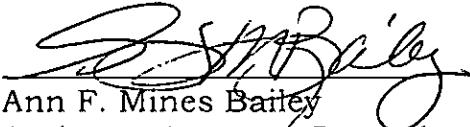
Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General

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MAR 04 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

email copy

IN THE MATTER WATER APPLICATION)	ORDER ON DAKOTA RURAL ACTION
NO. 1992-1, TOWN OF BUFFALO)	MOTION TO DELAY FEBRUARY 26,
)	2020 HEARING DATE
)	

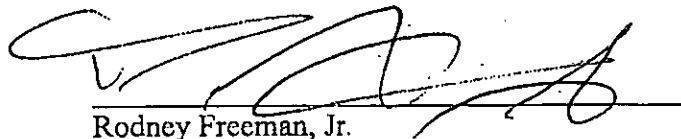
WHEREAS, on February 11, 2020, Dakota Rural Action, by and through their attorney, filed a Motion for an Order Delaying the February 26, 2020 hearing date; and

WHEREAS, the Department of Environment and Natural Resources, Water Rights Program ("Water Rights") construed the Motion as an exercise of the statutory right for an automatic delay in the hearing; and

WHEREAS, the matter was re-scheduled to be heard by the Board at its May 6-7, 2020 hearing (an approximately 70-day delay.)

NOW THEREFORE, for the reasons set forth herein, Dakota Rural Action's Motion for an Order Delaying the February 26, 2020 hearing date is **DENIED** as moot.

Dated this 4th day of March, 2020.



Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

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MAR 04 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

email copy

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION)	PROCEDURAL AND SCHEDULING
NO. 1992-1, TOWN OF BUFFALO)	ORDER
)	
)	

In an effort, to provide guidance and structure for the parties, the following Procedural Order shall be entered.

It is ORDERED:

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2. The Order granting *pro hac vice* shall be filed with the Water Management Board.

2. The following pre-hearing schedule and obligations apply to Applicant, Water Rights, and all other parties:

a) Each party shall disclose in writing the names of any expert that party intends to call as a witness at the hearing of this matter on or before April 8, 2020. This disclosure must include copies of any *curricula vitae*, along with copies of any expert report the party intends to offer. If an expert report has not been prepared, the parties shall disclose a summary statement of the anticipated testimony the expert will provide and describing the methodology used by the expert to reach his/her conclusions.

b) All motions must be filed on or before April 23, 2020. Parties may file responses on or before April 28, 2020.

c) Each party shall disclose in writing the name and contact information for any and all witnesses that the party expects to call during the hearing of this matter on or before April 29, 2019. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

d) Each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing and copies of said exhibits on or before April 29, 2020. Copies of the exhibits, with the exception of the administrative file, shall be provided to the parties. The copies may be provided by electronic means if the parties consent. However, provision of a hyperlink or internet address is not sufficient to meet this disclosure requirement.

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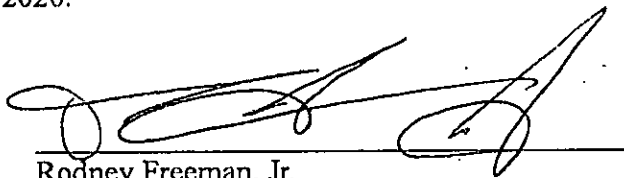
Dakota Rural Action shall use numbers 600-699.

f) Each party shall provide a sufficient number of copies of exhibits, with the exception of the administrative file, for use at the contested case hearing, including ten (10)

copies for use by the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

g) All original pleadings and motions shall be sent by first-class mail to Ron Duvall, DENR Water Rights Program, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. Parties must also serve copies of all pleadings and motions on all other parties. Service must also be made upon Board Counsel, Assistant Attorney General David McVey, 1302 E. Hwy 14, Suite 1, Pierre, South Dakota, 57501. If a document is filed by email, it must be received by 5pm central time the day it is due, or it will be otherwise considered untimely and rejected. Such filings may be emailed to Ron.Duvall@state.sd.us.

Dated this 4th day of March, 2020.



Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

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MAR 04 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

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WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION)	ORDER ON DAKOTA RURAL ACTION
NO. 1992-1, TOWN OF BUFFALO)	MOTION FOR PRE-HEARING
)	DISCOVERY PROCESS AND
)	DISCOVERY PERIOD

WHEREAS, on February 11, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion for an Order Approving Pre-Hearing Discovery Process and Discovery Period; and

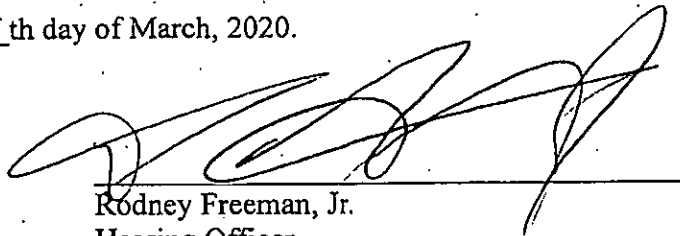
WHEREAS, on March 2, 2020 the Department of Environment and Natural Resources, Water Rights Program ("Water Rights") filed their response to DRA's Motion.

NOW THEREFORE, the issue being fully briefed by the Parties and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

Discovery is not regularly entertained in matters such as this. The right to discovery is not absolute as the Rules of Civil Procedure do not apply. The Board, however, may in its discretion order discovery. In this case, however, there has been no showing that discovery is necessary. There is no description as to what discovery is sought or the need for discovery and no showing whether discovery would be relevant to the subject matter involved in the pending action. Here, the question is whether the application satisfies the factors set forth in SDCL § 46-2A-9. DRA has not demonstrated what discovery they need in relation to SDCL § 46-2A-9 which would require the extraordinary measure of discovery. Further, an order for discovery is not necessary for DRA, or the other intervenors or parties, to move for the Pre-Hearing Chair for the issuance of a subpoena pursuant to SDCL §1-26-19.1.

FOR THE REASONS set forth herein, the DRA's Motion for an Order Approving Pre-Hearing Discovery Process and Discovery Period is hereby **DENIED**.

Dated this 4th day of March, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 5, 2020

NOTICE OF ENTRY OF ORDER

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Procedural and Scheduling Order and Orders on Motions Regarding
Water Permit Application No. 1992-1, Town of Buffalo

Enclosed are Hearing Officer Freeman's orders in the matter of Water Permit Application No. 1992-1:

- Procedural and Scheduling Order;
- Order on Dakota Rural Action Motion to Delay February 26, 2020 Hearing Date; and
- Order on Dakota Rural Action Motion for Pre-Hearing Discovery Process and Discovery Period

Application No. 1992-1 will be scheduled for hearing at the May 6 and 7, 2020, Water Management Board meeting in Pierre SD. Future notice will be provided of the exact time and place.

Enclosures

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57745

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on March 5, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated March 5, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

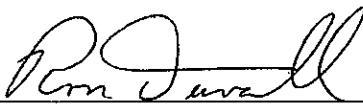
Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



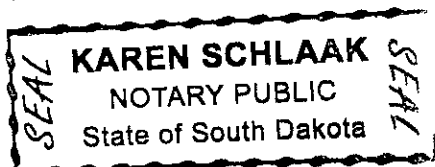
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of March, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



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MAR 05 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION)	ORDER ON DAKOTA RURAL ACTION
NO. 1992-1, TOWN OF BUFFALO)	MOTION TO DELAY FEBRUARY 26,
)	2020 HEARING DATE
)	

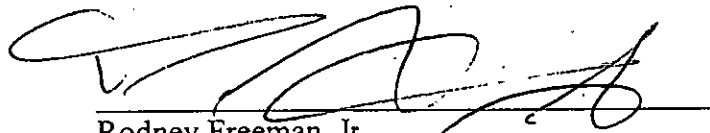
WHEREAS, on February 11, 2020, Dakota Rural Action, by and through their attorney, filed a Motion for an Order Delaying the February 26, 2020 hearing date; and

WHEREAS, the Department of Environment and Natural Resources, Water Rights Program ("Water Rights") construed the Motion as an exercise of the statutory right for an automatic delay in the hearing; and

WHEREAS, the matter was re-scheduled to be heard by the Board at its May 6-7, 2020 hearing (an approximately 70-day delay.)

NOW THEREFORE, for the reasons set forth herein, Dakota Rural Action's Motion for an Order Delaying the February 26, 2020 hearing date is **DENIED** as moot.

Dated this 4th day of March, 2020.



Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

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MAR 05 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION)	PROCEDURAL AND SCHEDULING
NO. 1992-1, TOWN OF BUFFALO)	ORDER
)	
)	

In an effort, to provide guidance and structure for the parties, the following Procedural Order shall be entered.

It is ORDERED:

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2. The Order granting *pro hac vice* shall be filed with the Water Management Board.

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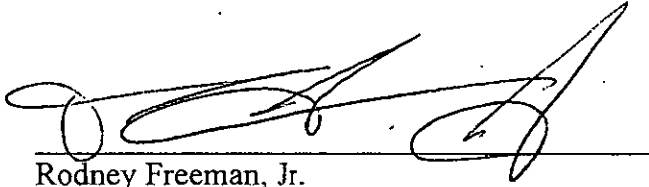
Dakota Rural Action shall use numbers 600-699.

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copies for use by the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

g) All original pleadings and motions shall be sent by first-class mail to Ron Duvall, DENR Water Rights Program, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. Parties must also serve copies of all pleadings and motions on all other parties. Service must also be made upon Board Counsel, Assistant Attorney General David McVey, 1302 E. Hwy 14, Suite 1, Pierre, South Dakota, 57501. If a document is filed by email, it must be received by 5pm central time the day it is due, or it will be otherwise considered untimely and rejected. Such filings may be emailed to Ron.Duvall@state.sd.us.

Dated this 4th day of March, 2020.

A handwritten signature in black ink, appearing to read "Rodney Freeman, Jr.", is written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

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MAR 05 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION)	ORDER ON DAKOTA RURAL ACTION
NO. 1992-1, TOWN OF BUFFALO)	MOTION FOR PRE-HEARING
)	DISCOVERY PROCESS AND
)	DISCOVERY PERIOD

WHEREAS, on February 11, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion for an Order Approving Pre-Hearing Discovery Process and Discovery Period; and

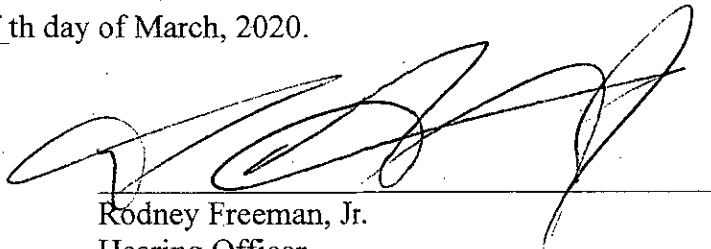
WHEREAS, on March 2, 2020 the Department of Environment and Natural Resources, Water Rights Program ("Water Rights") filed their response to DRA's Motion.

NOW THEREFORE, the issue being fully briefed by the Parties and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

Discovery is not regularly entertained in matters such as this. The right to discovery is not absolute as the Rules of Civil Procedure do not apply. The Board, however, may in its discretion order discovery. In this case, however, there has been no showing that discovery is necessary. There is no description as to what discovery is sought or the need for discovery and no showing whether discovery would be relevant to the subject matter involved in the pending action. Here, the question is whether the application satisfies the factors set forth in SDCL § 46-2A-9. DRA has not demonstrated what discovery they need in relation to SDCL § 46-2A-9 which would require the extraordinary measure of discovery. Further, an order for discovery is not necessary for DRA, or the other intervenors or parties, to move for the Pre-Hearing Chair for the issuance of a subpoena pursuant to SDCL §1-26-19.1.

FOR THE REASONS set forth herein, the DRA's Motion for an Order Approving Pre-Hearing Discovery Process and Discovery Period is hereby **DENIED**.

Dated this 4th day of March, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

**BEFORE THE WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**IN RE APPLICATION OF TOWN OF BUFFALO FOR
WATER APPROPRIATION PERMIT NO. 1992-1**

**DAKOTA RURAL ACTION'S REPLY TO CHIEF ENGINEER'S
RESPONSE TO DRA MOTION FOR ORDER APPROVING DISCOVERY**

Dakota Rural Action (hereinafter, "DRA"), by and through the below-signed Counsel, hereby replies to more detailed information as to the nature, purpose, and necessity of discovery raised by the Chief Engineer it is Response to DRA's Motion regarding discovery.

DRA has challenged and opposed the granting of the Town's Application for Water Appropriation Permit No. 1992-1 (hereinafter, "WAP No. 1992-1") upon reliable information and evidence that the Application Town of Buffalo (hereinafter, "Town") filed a materially false and misleading application for public water and further submitted an insufficient application by omitting the actual intended use as well as the identity of the actually intended immediate beneficiary, as required by SDCL §46-2A-9.

According to the Minutes of a Meeting of the Town of Buffalo published in the Nation Center News, the Town of Buffalo approved an agreement with TransCanada Energy (hereinafter "TCE" aka TranCanada or its agents) regarding "Well Number 8". The agreement reportedly formalized plans whereby TransCanada would pay for or be reimbursed for the cost of the new well for the Town, as well as other considerations, and in return for which, TCE would use the water from the new well for the first two years of operation. At the termination of the agreement, the well would reportedly then be available and used for municipal purposes. The agreement was adopted by the Town some three weeks after the instant Application was submitted to the Water Rights Program. No amendment was ever been made to the Application as to intended use or beneficiary.

The Town submitted a sworn Application to acquire a permit to appropriate public water from this new well for "municipal purposes." No reference was made in the Application to the soon to be formalized agreement with TCE, that immediate beneficial use was not for municipal purposes of Town residents, but for use by TCE for its own industrial purposes.

DRA seeks disclosure of evidence to permit it to show this Board that the Application is fatally flawed and should be denied since it is materially misleading

as to the initial intended use and the non-municipal beneficiary of the public water sought.

DRA seeks authorization from the Board to submit interrogatories to the Applicant to seek disclosure of evidence and information which may reasonably lead to disclosure of evidence relevant to these proceedings regarding the Application for Water Appropriation Permit No. 1992-1 containing material misleading information and a knowing, if not intentional material omission as to identity of the true beneficiary of the use public water. Particularly, DRA seeks discovery of evidence and information as to the timing, facts, and circumstances surrounding the conceptualization of the plan and activities leading to construction of the well, the non-municipal or non-public source of funds for well and related infra-structure construction, the agreement between the Town of Buffalo and TCE regarding costs and other considerations from TCE in return for TCE obtaining immediate use public water without applying for or obtaining approval of the Board. DRA further seeks disclosure of evidence of the timing, facts, and circumstances surrounding timing of the Town's approval of the agreement with TCE and the completion and filing of the sworn Town's Application for WAP No. 1992-1 asserting the water would be used for municipal purposes without reference to the industrial use by an unnamed, third-party beneficiary for some two years.

DRA also seeks discovery of the identity of participants in the actions described above, together with the location and custodian of all supporting documents including, but not limited to:

1. Town Minutes reflecting and/or reporting the timing, substance and/or occurrence of presentation(s) or representations by TCE or its agent(s), public and Town Council member discussion, consideration, and/or any agreements made at any public and/or executive session of the Town of Buffalo regarding the well, the proposed use of water from it, and/or the agreement with TCE;
2. Town Minutes reflecting and/or reporting the timing, substance and/or occurrence of presentation(s) or representations by TCE or its agent(s) or others at Meetings of the Town of Buffalo, public and Town Council member discussion, consideration, and any decisions occurring at any public and/or executive session of a Town of Buffalo meeting regarding the timing, purpose, contents, and/or filing of Application for WAP No. 1992-1;
3. Other documents, including but not limited to e-mails created and/or maintained by Town of Buffalo employees or officials in the ordinary course of business and also including the identification of persons with knowledge regarding the initial creation through the ultimate draft of the final agreement, and the approval by the Town of the agreement between the Town and TCE regarding the construction, funding, reimbursement of the costs thereof and use of water from the well by TCE, as well as the identity of the drafter(s) of any such documents;
4. Other documents, including but not limited to e-mails maintained by the Town of Buffalo employees and officials in the ordinary course of business and reflecting the identification of persons with knowledge regarding the drafting, approval, timing, and submission of the instant Application for WAP 1992-1.

With the information as to the location of documents and identity of their respective custodian, DRA will be able to seek authorization for subpoenas for any

documents not voluntarily disclosed. The Town's documents requested would be admissible as those kept in the ordinary course of business.

DRA's Motion for a reasonable discovery process and period prior to any Hearing on the merits of this Application should be granted.

Dated this 9th day of March 2020.

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Reply was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Jeanne Goodman, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

A copy of further electronically sent to:

Ann Mines-Bailey

Assistant Attorney General for DENR

1302 E. Highway 14, Suite 1

Pierre, SD 57501

ann.mines@state.sd.us

Dusty Ginsbach

Attorney for Town of Buffalo

P.O. Box 82

Buffalo, SD 57720

Dusty.Ginsbach@gmail.com

Rodney Freeman, Jr. Prehearing Chairman

Water Management Board

523 E. Capitol

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Rfreeman.huronlaw@midconetwork.com

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Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745
bethebest@gmail.com

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759
carolhaysie@gmail.com

Dated this 9th of March, 2020.

/s/ Bruce Ellison

**BEFORE THE WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**IN RE APPLICATION OF TOWN OF BUFFALO FOR
WATER APPROPRIATION PERMIT NO. 1992-1**

**DAKOTA RURAL ACTION'S RESPONSE AND OPPOSITION TO TO
PROCEDURAL SCHEDULE PROPOSED BY CHIEF ENGINEER**

Dakota Rural Action (hereinafter, "DRA"), by and through the below-signed Counsel, hereby opposes and responds to the procedural and scheduling order proposed by the Chief Engineer.

The procedural schedule proposed by the Chief Engineer notes the absence of an order authorizing a period and means for discovery and proposes dates for the disclosure of the names and reports of experts, names of witnesses, and list of tangible exhibits prior to the currently scheduled May, 2020 Hearing, without provision for such a discovery period. DRA objects thereto.

Noting the nature of and need for discovery in this matter to preserve its due process rights, DRA has filed a Motion and also the Reply to Response by the

Chief Engineer regarding discovery, which are hereby expressly incorporated into this Response.

DRA respectfully submits that in order to reasonably ensure the Due Process rights of DRA and other Intervenor Parties at the Hearing on the merits of this pending public water appropriation permit, a reasonable period of discovery is required to allow for: service of interrogatories, service of answers to the interrogatories, submission of requests for document subpoenas, as well as time for the submission of any motions to compel and affording time for pre-hearing determination of remaining issues by the Board.

DRA requests that a discovery process and period be authorized and scheduled for interrogatories, answers, document subpoena requests, and motions and related orders prior to the dates respectively scheduled for disclosure of experts, witnesses, and physical evidence.

Dated this 9th day of March 2020.

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Reply was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Jeanne Goodman, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

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1925 S. Pomegranite St.
Sioux City, IA 51106

A copy of further electronically sent to:

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Assistant Attorney General for DENR
1302 E. Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

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Attorney for Town of Buffalo
P.O. Box 82
Buffalo, SD 57720
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Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
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Elizabeth Lone Eagle

593 Big Foot Loop Road

Bridger, SD 57745

bethebest@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com

Dated this 9th of March, 2020.

/s/ Bruce Ellison



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 16, 2020

NOTICE

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 1992-1, Town of Buffalo

The Water Management Board will conduct a hearing to consider Application No. 1992-1 at 1:00 PM (Central Time), on Wednesday, May 6, 2020, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notices dated January 28, 2020, and the public notices in the Nation's Center News and Black Hills Pioneer published January 9, 2020, still apply.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
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Elizabeth Lone Eagle
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Mahmud Fitol
4949 S 30th Street
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Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

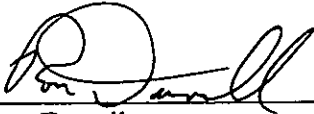
I hereby certify that on March 16, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice Hearing dated March 16, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



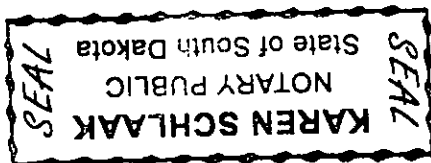
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 1 day of ^{April}~~March~~, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED

MAR 31 2020

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 30, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

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Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Expert Witness Disclosure in the above-referenced file.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/klg
Enclosures
cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

MAR 31 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION	)	CHIEF ENGINEER'S
NO. 1992-1, TOWN OF BUFFALO	)	EXPERT WITNESS
	)	DISCLOSURE
	)	

Pursuant to the Procedural and Scheduling Order dated March 4, 2020, the Chief Engineer hereby provides the names of his expert witnesses:

1. Whitney Kilts, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. A copy of her report regarding this application and upon which the Chief Engineer's recommendation is based is attached hereto.

2. Eric Gronlund, Chief Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. Mr. Gronlund has not authored a report in this matter. Mr. Gronlund will testify as to his adoption of the former Chief Engineer's recommendation to approve the application for a water permit in the above-entitled matter. The recommendation which Mr. Gronlund adopts is attached hereto.

The curricula vitae for each of these individuals is also attached hereto.

Dated this 30th day of March, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

pld_amb(klg)

Whitney Kilts

Education

CE 654: Design of Groundwater Flow Systems, Kansas State University, Fall 2017

Master of Science in Civil Engineering (Environmental emphasis), South Dakota State University

Thesis Title: Impact of DEM Resolution on Rangeland BMP Analysis Using SWAT in the Burnt Creek Watershed

Graduation Date: May 2014

Bachelor of Science in Civil Engineering (Environmental emphasis), Biology Minor, South Dakota State University

Graduation Date: May 2012

Bachelor of Science in Chemistry, Spanish Minor, South Dakota State University

Graduation Date: May 2012

Career Experience

Natural Resources Engineer, South Dakota Department of Environment and Natural Resources- Water Rights Program, Sept 23rd, 2014-Current

- Prepare technical reports to the Chief Engineer on assigned groundwater permit applications
- Provide expert testimony to the Water Management Board on contested applications
- Respond to inquiries from the public and state and federal agencies on aquifer, dam, water well, and basic water rights information
- Perform data management and QA/QC on the Water Rights Program observation well network database and dam safety database
- Co-direct the daily activities of four seasonal observation well technicians
- Conduct water permit licensing inspections and dam safety inspections
- Perform plans and specifications reviews for the Dam Safety Program
- Assist in water well driller and pump installer licensing and renewal
- Conduct groundwater investigations and complaint investigations

Engineering Research Assistant, Conservation Effects Assessment Program Lower Bad River Project, May 2013-Sept 2013 and Mar 2014-June 2014

- Assist in modeling efforts to examine sedimentation and best management practices in the Bad River water shed

Lab Assistant, SDSU Water and Environmental Engineering Research Center, Aug 2011-Mar 2014

- Analysis of water and wastewater samples in an analytical lab
 - BOD, TOC, SUVA, COD, total chlorine, ammonia, conductivity, nitrates, sulfates, jar testing, solids, and pH
- Assisting in laboratory upkeep and prepare sampling materials for clients on a monthly basis

Teaching Assistant, South Dakota State University, Sept 2013-Jan 2014

- Grade and provide students with feedback on homework and exercises for a Computer Aided Design course

Teaching Assistant, South Dakota State University, Jan 2013-May 2013

- Grade and provide students with feedback on lab reports for a Materials lab and Hydrology course homework

Research Assistant, National Science Foundation funded SDSU OSSPEEC Internship, May 2011-Aug 2011

- Assisted in team field work and laboratory work for research projects on the Pine Ridge Indian Reservation and in Northwestern Nebraska

Appearances before the South Dakota Water Management Board

- Application Nos. 8091-3 & 8092-3, Roy Grismer
- Application No. 7265A-2, Leesman Ranch
- Application No. 1963A-1, Tom & Lori Wilson

Report to the Chief Engineer
Water Permit Application No. 1992-1
Town of Buffalo
December 30, 2019

Water Permit Application No. 1992-1 by the Town of Buffalo proposes to appropriate up to 82 acre-feet of water annually at a maximum instantaneous diversion rate 0.19 cubic feet per second (cfs) from the Hell Creek aquifer for municipal use. The diversion point is one existing well (280 feet deep) located in the SE ¼ NW ¼ Section 29-T19N-R5E on the southeast edge of Buffalo, SD.

Aquifer: Hell Creek (HLCK)

Aquifer Characteristics and Hydrogeology

The Hell Creek Formation is part of the Cretaceous aged deposits that underlie portions of South Dakota, North Dakota, Wyoming, Montana, and Canada (Long et al., 2014). In characterizing the hydrogeologic framework of the uppermost aquifer system of the entire Williston Basin area, Thamke et al. (2014) subdivided the Hell Creek Formation into two hydrogeologic units, the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer based on the relative percentage of sandstone within the formation. These hydrogeologic divisions are approximately consistent with the division of the formation into the upper and lower Hell Creek Formation, with the term hydrogeologic unit being applied to the upper since it has been identified as a confining unit in some areas of the Williston Basin (Long et al., 2014 and Thamke et al., 2014). However, the upper Hell Creek hydrogeologic unit may not act as a confining unit across the entirety of the Williston Basin (Long et al., 2014 and Thamke et al., 2014). The hydrogeologic units of the Thamke et al. (2014) and Long et al. (2014) study area are shown in Figure 1. In examining the lithologic and hydraulic data from well logs presented by Thamke et al. (2014) for sites in South Dakota, wells in the Hell Creek Formation were completed in both the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer.

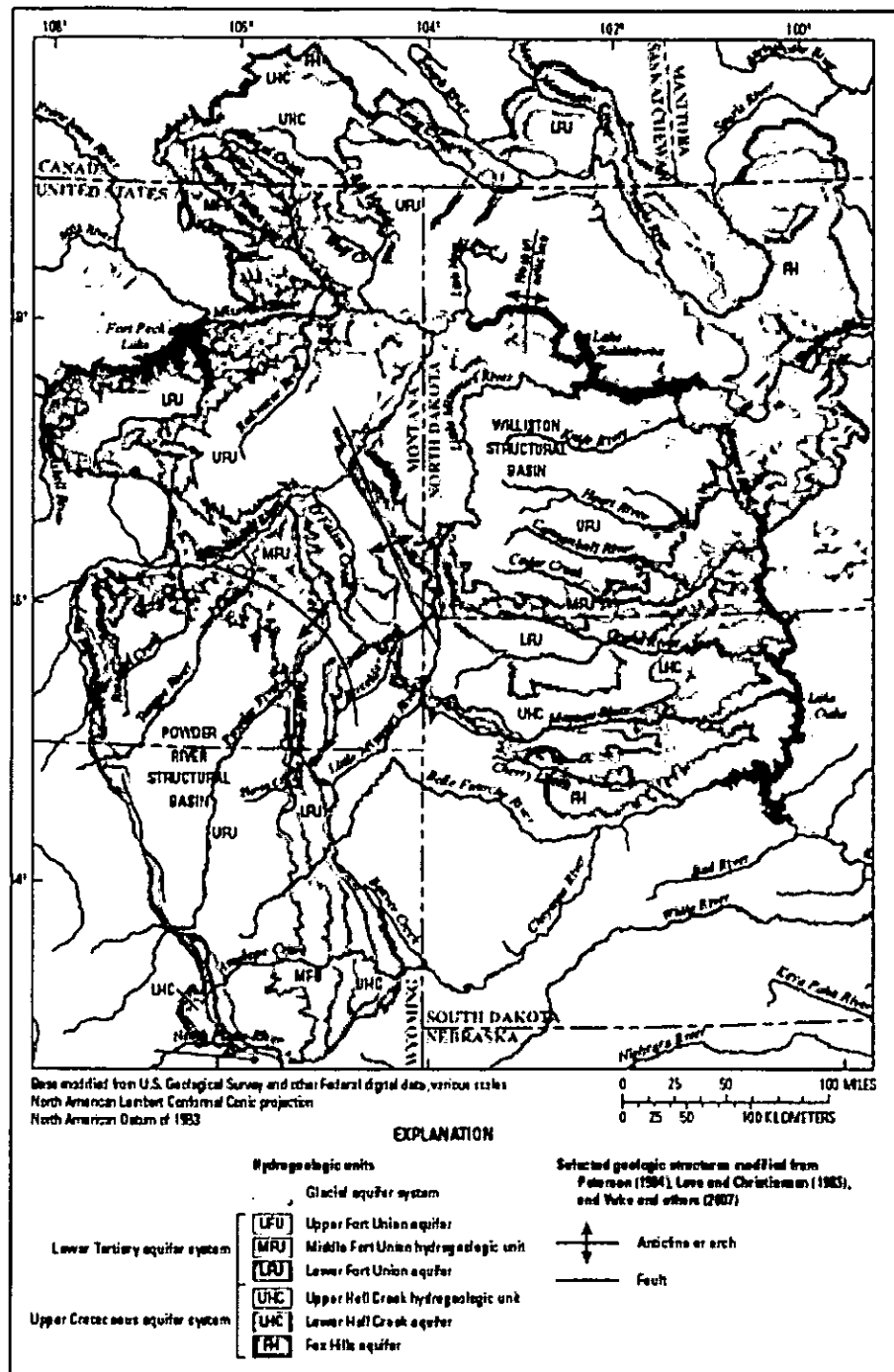


Figure 1: Thamke et al. (2014) and Long et al. (2014) study area and hydrogeologic units (modified from Thamke et al., 2014)

In South Dakota, the Hell Creek Formation is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate (Martin et al., 2004). For the purpose of water management in South Dakota the Water Rights

Program does not subdivide the Hell Creek Formation and for the purpose of appropriations considers the permeable and porous portions of the Hell Creek Formation to be a single aquifer. Allen et al. (1985) estimates that the Hell Creek Formation underlies about 5,390,720 acres of South Dakota with an estimated 82,260,400 acre-feet of water in storage; the break down by county is shown in Table 1. In the area of the Buffalo quadrangle (where the well sites for this application are located), Erickson (1956) notes that the Hell Creek Formation can be over 300 feet in thickness in some areas.

Table 1: Area and Storage of the Hell Creek Aquifer in South Dakota (Allen et al., 1985)

County	Area (acres)	Recoverable Water (acre-feet)
Butte	208,000	3,640,000
Corson	881,920	11,024,000
Dewey	87,680	219,200
Harding	1,629,440	28,515,200
Meade	280,320	3,323,680
Perkins	1,776,640	31,091,200
Ziebach	526,720	4,447,120
Total	5,390,720	82,260,400

The well completion report for this application reports the well is primarily screened into “sand gray medium” that was encountered at a depth of 224 to 262 feet below grade. The reported static water level at the time of completion (July 22, 2019) was 47 feet below the top of casing with the top of casing reported at two feet above ground surface. Based on the location, approximate elevation, and description of the “sand” this well is screened into, this well is completed into the Hell Creek aquifer (Thamke et al., 2014; Martin, et al., 2004; Water Rights, 2019a; and Water Rights, 2019b). Although the Hell Creek Formation outcrops in the area of the well for this application, the makeup of the formation (shale interbedded with sandstone and other materials) can result in confined conditions in the lower sandstones of the formation, which is the case for the well for this application.

South Dakota Codified Law (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability there is unappropriated water available for the applicant’s proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, and the proposed use is a beneficial use and in the public interest. This report will address the availability of unappropriated water and potential effects on existing rights from the aquifer that are pertinent to this application.

Water Availability

Water Permit Application No. 1992-1 proposes to appropriate water from the Hell Creek aquifer for municipal use. The probability of unappropriated water being available from an aquifer

can be evaluated by considering SDCL 46-6-3.1 which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and the application is for a water distribution system defined pursuant to SDCL 46-1-6 (17), the Board need not consider the recharge/withdrawal issue. The Hell Creek aquifer is not older or lower than the Greenhorn Formation, therefore the withdrawal/recharge issue must be considered.

Observation Wells

In determining the availability of unappropriated water for a permit application, Administrative Rule of South Dakota 74:02:05:07 requires the Water Management Board to rely on the record of observation well measurements, in addition to other data, to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated annual recharge.

The Water Rights Program monitors one observation well completed into the Hell Creek aquifer. Observation well HR-86F is located about 3.9 miles to the southeast of the well site for this application. The hydrograph for observation well HR-86F is shown in Figure 2.

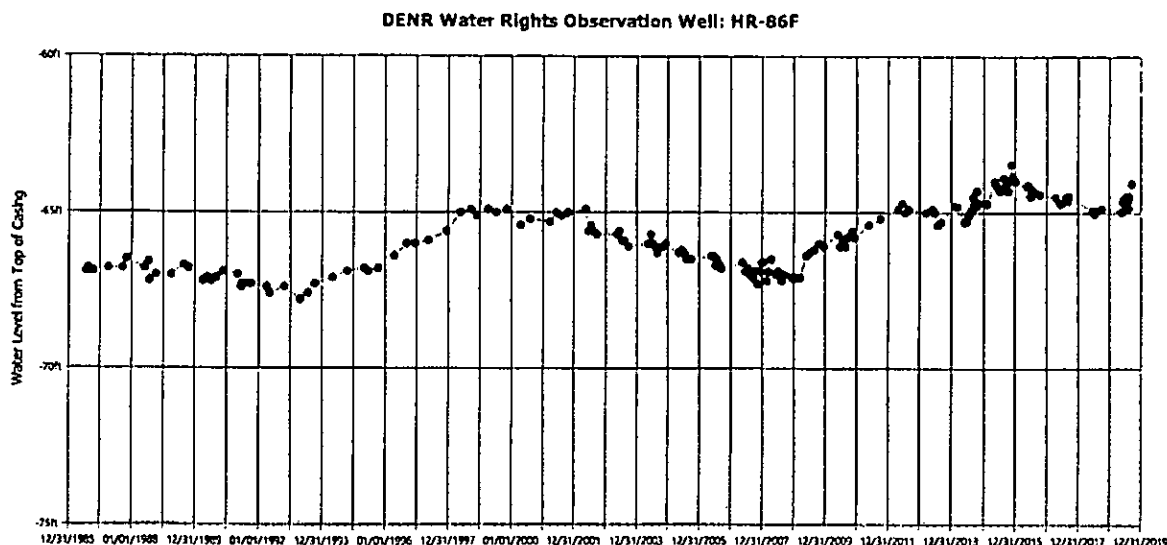


Figure 2: Hydrograph of observation well HR-86F (Water Right, 2019b)

The observation well data documents cyclic conditions of water levels, recharging during wet periods and declining during dry periods. Fluctuations in water level over the period of record are relatively small (about 4.3 feet). Over the period of record, the hydrograph of observation well HR-86F shows increased water in storage in the aquifer in the area of this observation well. Observation well data indicates that at the current level of development, climatic conditions dominate the water levels in the aquifer, indicating that recharge to and natural discharge from the aquifer exceeds well withdrawal recognizing natural discharge can be captured for pumping. The

hydrograph demonstrates that the amount of water in storage has slightly increased from the start of the period of record, indicating that on average over the period of record recharge to the aquifer has exceeded withdrawals. Therefore, there is a reasonable probability that water is available for appropriation.

Hydrologic Budget

Recharge

Recharge to the Hell Creek aquifer occurs from the infiltration of precipitation, stream flow infiltration, and groundwater inflow (Long et. al., 2014). Hedges and Burch (1985) used base flow recession analysis at two locations in South Dakota to determine an order of magnitude for recharge resulting in estimates of 0.25 and 0.29 inches per year. This yields an estimated average annual recharge to the Hell Creek aquifer in South Dakota of approximately 112,306 to 130,275 acre-feet per year with approximately 33,946 to 39,378 acre-feet per year to Harding County alone.

Long et. al. (2014) utilized a numerical soil water balance model to examine the potential precipitation recharge from 1981 to 2011 in the study area shown in Figure 1. Modeled average annual precipitation recharge from 1981 to 2011 to the Williston Basin portion of the study area was 0.18 inches per year with rates that varied from 0 to 6.8 inches per year (Long et. al., 2014). Modeled precipitation recharge to the area of South Dakota underlain by the Hell Creek aquifer primarily ranged from 0 to 0.5 inches per year (Long et. al., 2014). However, the modeled rates were not aquifer specific and likely are not reflective of loss to any overlying aquifers (Long et. al., 2014 and Aurand, 2013).

Withdrawals

Discharge from the Hell Creek aquifer occurs through evapotranspiration, seepage to surface water near the outcrops, groundwater outflow, and well withdrawals (Long et al, 2014 and Bedner, 2013). Given their relatively low diversion rates the amount of water withdrawn by domestic uses is not considered a significant portion of the hydrologic budget of the aquifer. Currently, there are 11 water rights/permits appropriating water from the Hell Creek aquifer and one application pending to amend Water Permit No. 1963-1 (Water Rights, 2019b). These water rights/permits are summarized in Table 2.

Historically, water use by non-irrigation appropriations limited by instantaneous diversion rates has been less than 60% of full time pumping at the permitted authorized diversion rate. Average annual use for Water Permit No. 1963-1 was estimated at 100% of full pumping since it is for both irrigation and non-irrigation use, however actual use maybe less than estimated. Water Permit Application 1963A-1, an amendment to Water Permit No. 1963-1, is currently going through the contested case process and proposes to add additional areas of use to the temporary workforce camp portion of the permit. In the qualifications to Water Permit Application 1963A-1, the Chief Engineer of the Water Rights Program is recommending an annual volume limitation for the temporary workforce camp portions of Water Permit No. 1963-1 and Water Permit Application No. 1963A-1 for 57.2 acre-feet annually. Water Permit 1963-1 was issued in July of 2017, so long term irrigation data is not available to estimate average annual irrigation use for the permit.

However, for perspective, the 2018 Irrigation Questionnaire for Water Permit No. 1963-1 reported applying 28.46 acre-feet to 50 acres, which is approximately 0.57 feet per acre and applying the 2018 application rate for Water Permit No. 1963-1 to 216 acres results in approximately 123 acre-feet (Water Rights, 2019d and Water Rights, 2019f). This results in an estimated annual water use for the water rights/permits appropriating water from the Hell Creek aquifer in South Dakota of less than 806 acre-feet per year.

Table 2: Estimated Appropriative Water Use from the Hell Creek Aquifer in South Dakota (Water Rights, 2019b)

Permit No.	Name	County	Status	Use	Rate (cfs)	Acres	Estimated Annual Use (acre-feet per year)
278-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.13	n/a	56
1163-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.07	n/a	30
1178A-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.14	n/a	61
1178B-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.26	n/a	113
1273-1	CITY OF MORRISTOWN	CORSON	LICENSE	MUNICIPAL	0.08	n/a	35
1626-1	SLIM BUTTES LUTHERAN CHURCH	HARDING	LICENSE	INSTITUTIONAL	0.026	n/a	11
1691-1	TOWN OF BUFFALO	HARDING	LICENSE	MUNICIPAL	0.156	n/a	68
1782-1	FLOYD JOHNSON	PERKINS	LICENSE	SUBURBAN HOUSING DEVELOPMENT, DOMESTIC	0.04	n/a	17
1909-1	ALVIN L CORDELL	HARDING	LICENSE	COMMERCIAL	0.04	n/a	17
1940-1	SLIM BUTTES LODGE L	HARDING	LICENSE	COMMERCIAL	0.03	n/a	13
1963-1	TOM & LORI WILSON	HARDING	PERMIT	IRRIGATION, DOMESTIC*	0.53	216	384
Total					1.502	216	806

*Use for 1963-1 estimated at 100% of diversion rate

Long et al. (2014) examined average groundwater withdrawal from South Dakota from the upper Hell Creek hydrogeologic unit and the Lower Hell Creek aquifer in five-year periods from 1981 to 2005 for the Long et al. (2014) study area. Long et al. (2014) estimated average groundwater use (including domestic use) from 2001 to 2005 from the Hell Creek aquifer in South Dakota at 0.87 cfs, resulting in an estimated average annual withdrawal of 630 acre-feet per year for that time period.

Balance

Estimated average annual appropriative withdrawals from the Hell Creek aquifer in South Dakota are less than 806 acre-feet per year. Average annual recharge to the Hell Creek aquifer in South Dakota is estimated at approximately 112,306 to 130,275 acre-feet per year with approximately 33,946 to 39,378 acre-feet per year to Harding County alone. This application proposes to use up to 82 acre-feet per year. Therefore, there is a reasonable probability that unappropriated water is available in the Hell Creek aquifer in South Dakota to meet the request for this application.

Existing Water Rights/Permits

The water rights/permits in the area of the wellsite for this application are shown in Figure 3 and summarized in Table 2. The nearest water right/permit to the well for this application is Water Right No. 1178B-1 for the Town of Buffalo located approximately 0.3 miles to the west-northwest of the well site for this application (Water Rights, 2019a). The nearest water right/permit not belonging to the applicant is Water Permit No. 1963-1 for irrigation and domestic use located

approximately 8.1 miles to the west of the well site 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/permits. There are domestic well completion reports on file with the SDDENR-Water Rights Program within two miles of this application that appear to be completed into the Hell Creek aquifer (Water Rights Program, 2019c).

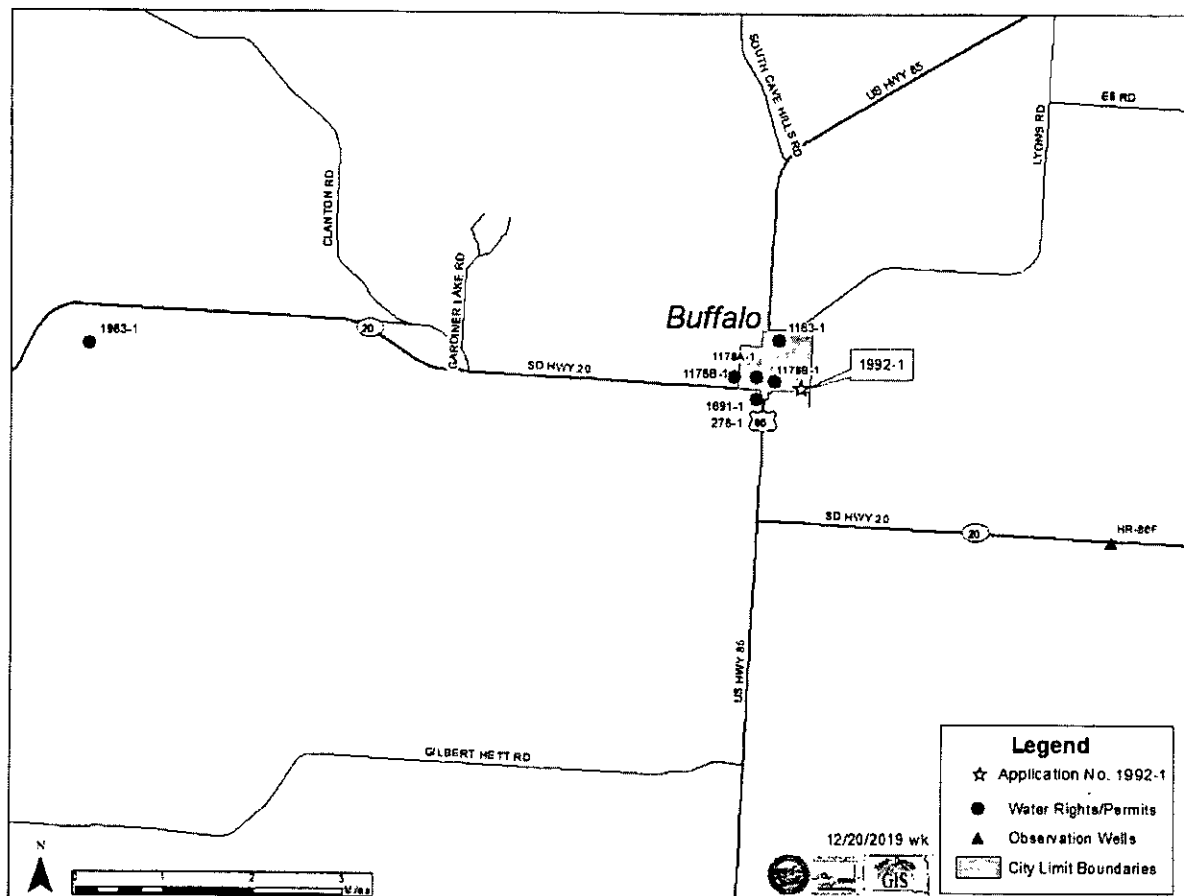


Figure 3: Water rights/permits currently authorized to appropriate water from the Hell Creek aquifer in the area of the well location for this application (Water Rights, 2019a and Water Rights, 2019b)

Since the aquifer is under confined conditions in the area of the well, some amount of drawdown from pumping is expected. The exact amount of drawdown as the result of pumping due to this proposed diversion cannot be quantified without aquifer testing. Observation well HR-86F is located approximately 4.2 miles from the existing water rights for the City of Buffalo, and the hydrograph from the observation well (Figure 2) shows no signs of well interference. Additionally, there is not a history of well interference complaints in the area (Water Rights, 2019a and Water Rights, 2019e). In the past, the Water Management Board has recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. The Water

Management Board has promulgated rules that allow water to be placed to maximum beneficial use without the necessity of maintaining artesian head pressure. An adversely impacted domestic well has been defined by the Administrative Rules of South Dakota 74:02:04:20 (7) 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". In the case of Water Permit Application No. 2313-2 for the Coca-Cola Bottling Company of the Black Hills, the Water Management Board adopted findings of fact that noted that if the increased costs or decreased production as a result of the impacts of legitimate users on artesian head pressure could be considered an adverse impact it would conflict with SDCL 46-1-4 (Water Rights, 1995). SDCL 46-1-4 requires the water resources of the state be put to beneficial use to the maximum extent of which they are capable. Therefore, there is a reasonable probability that pumping under this application, if approved, will not unlawfully impair existing water rights/permits with adequate wells or domestic users with adequate wells.

Conclusions

1. Water Permit Application No. 1992-1 for the Town of Buffalo proposes to appropriate up to 82 acre-feet of water annually at a maximum diversion rate of 0.19 cfs from the Hell Creek aquifer for municipal use from one existing well located in the SE ¼ NW ¼ Section 29-T19N-R5E.
2. Based on a review of the South Dakota hydrologic budget and the observation well information for the Hell Creek aquifer, there is a reasonable probability that unappropriated water is available in the aquifer for the applicant's proposed use as required by SDCL 46-2A-9.
3. There is a reasonable probability that this application, if approved, will not unlawfully impair existing water rights/permits or domestic users with adequate wells.


Whitney Kiltz
SDDENR Water Rights Program

References

- Aurand, K. R., 2013. Groundwater recharge estimates for the lower Tertiary and Upper Cretaceous aquifers in the Williston and Powder River structural basins: Rapid City, South Dakota, South Dakota School of Mines and Technology, M.S. Thesis.

- Allen, J. C., Iles, D. L., Petres, A. K. 1985. Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota. Tasks 3A.B.C and 4 A.B.: Groundwater Resources Inventory, Final Report. U.S. Army Corps of Engineers Contract DACW45-82-C-0151.
- Bedner, J. M. 2013. Interaction of Groundwater and Surface Water in the Williston and Powder River Structural Basins. Rapid City, South Dakota, South Dakota School of Mines and Technology, M.S. Thesis.
- Erickson, H. 1956. Areal Geology of the Buffalo Quadrangle. South Dakota Geologic Survey. Vermillion, South Dakota.
- Hedges, L.S. and S. L. Burch. 1985. Analysis of Ground-Water and Streamflow Data Western Dakota Region of South Dakota, Task 3.D and 4.C: Ground-Water Recharge. South Dakota Geologic Survey. Vermillion, South Dakota.
- Long, A.J., Aurand, K.R., Bednar, J.M., Davis, K.W., Mckaskey, J.D.R.G., and Thamke, J.N., 2014, Conceptual model of the uppermost principal aquifer systems in the Williston and Powder River structural basins, United States and Canada: U.S. Geological Survey Scientific Investigations Report 2014–5055, 41 p.
- Martin, J. E., Sawyer, J. F., Fahrenbach, M. D., Tomhave, D. W., and Schulz, L. D. 2004. Geologic Map of South Dakota. General Map 10. South Dakota Geological Survey, Vermillion, SD.
- Thamke, J.N., LeCain, G.D., Ryter, D.W., Sando, Roy, and Long, A.J., 2014, Hydrogeologic framework of the uppermost principal aquifer systems in the Williston and Powder River structural basins, United States and Canada (ver. 1.1, December 2014): U.S. Geological Survey Scientific Investigations Report 2014–5047, 38 p.
- Water Rights, 1995. Water Right File No. 2313-2. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019a. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019b. Water Rights Program Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019c. Well Completion Reports Database. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019d. Water Rights Irrigation Questionnaire Database. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights, 2019e. Water Rights County Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2019f. 2018 Irrigation Summary by Aquifer. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Eric S. Gronlund PE
Chief Engineer
SD-DENR, Water Right Program

Education

1. B.S. Agricultural Engineering, South Dakota State University (December 1983).
2. Other Courses
 - Corps of Engineer's HEC-2 Modeling
 - Western States Engineers Spring Workshops
 - Western SD Hydrology Conferences
 - Arc View training

Career Experience

TITLE: Chief Engineer, Water Rights Program, DENR (February 2020 - Present)
ORGANIZATION: DENR – Division of Environmental Services, Water Rights Program
MAJOR DUTIES: Administer the Program, which coordinates the appropriation of water resources in South Dakota to protect the public welfare and interest in the development of the water resources and determine in what way the water of the state should be developed for the greatest public benefit.

TITLE: Engineering Manager I (2019 – February 2020)
ORGANIZATION: DENR – Division of Environmental Services, Water Rights Program
MAJOR DUTIES: Provide engineering and program management for the appropriation of water in South Dakota including coordinating, planning and directing processing of water permit applications. Coordinate activity of the Water Management Board in conducting contested case hearings. Establish goals for team members conducting review of applications to appropriate water, conducting licensing investigations and complaint investigations. Provide technical engineering guidance to staff engineers in review of application to appropriate water. Technical review of staff engineer's reports on applications to ensure criteria for issuance of permit are met. Direct public notice process and issuance of approved water right permits. Oversee licensing of water permits determining the level of development of permitted water use systems. Presentations of water right law and regulations. Team leader directing work of three staff engineers and four water right inspectors.

TITLE: Natural Resources Engineering Specialist or Engineer III (1990 – 2018)
ORGANIZATION: DENR – Division of Environmental Services, Water Rights Program
MAJOR DUTIES: Administer day to day operation of the water right permitting process. This includes review of application completeness, review of the engineering aspects of proposed projects, participation in the report writing process, preparation of public notice and scheduling. Knowledge of the water rights regulations. Communicate the water right regulations and permitting process to citizens and other agencies. Provide advice on engineering principles and the application of state water rights law. Conduct water permit licensing investigations and complaint investigations. Review engineering studies and provide technical assistance.

TITLE: Natural Resources Engineer III (1984 – 1989)
ORGANIZATION: DENR- Division of Technical and Financial Assistance
MAJOR DUTIES: Manage major project development, including state liaison on project development and grant administration for water projects throughout South Dakota. Team member for the James River Restoration Project with specific responsibility for the hydraulic analysis of project alternatives using HEC-2 modeling. Review engineering studies and provide technical assistance.

TITLE: Research Assistant (summer seasonal 1978 – 1983)
ORGANIZATION: SDSU – West River Research and Extension Center
MAJOR DUTIES: Conduct range research including field sampling, data processing, soil sampling, surveying and data analysis.

Registrations

SD Licensed Professional Engineer (Certification No. 7104)

Testimony Before SD Water Management Board

Routinely provide testimony before the SD Board of Water Management Board on pending applications, declaratory rulings, cancellation proceeding, deferred applications and review of future use permits included but not limited to:

- Provide testimony on contested water permit applications regarding the process, completeness, public notice, scheduling and review as needed.
- Homestake Mining Company vested water right application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1.
- Water Permit Application Nos. 43A-1 and 43B-1, Homestake Mining Company for instream flow
- Water Permit Application No. 2362-2, Provo Township and No. 2388-2, Mark Hutton
- Violation of Water Permit No. 1735-1, Steve Bauer
- Water Permit Application No. 8013-3, Riverside Hutterian Brethren
- Water Permit Application 7239-3, Hanson County Dairy
- Water Permit Application No. 7520-3, JH Gunderson & GA Shiefen
- Cancellation consideration
- Review of Future Use Permits



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. 1992-1, Town of Buffalo

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. 1992-1, Town of Buffalo, c/o Ryan D Smith, Water Superintendent, PO Box 82, Buffalo SD 57720.

The Chief Engineer is recommending APPROVAL of Application No. 1992-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
3. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
January 2, 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Expert Witness Disclosure in the above matter were served by U.S. mail, first class, postage prepaid, upon the following on this 30th day of March 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

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APR 1 2020

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

March 30, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
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Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Motion for Continuance in the above-referenced file.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/klg
Enclosures
cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

APR 01 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR
BUFFALO	)	CONTINUANCE
	)	

The above-entitled matter is currently scheduled to be heard before the Water Management Board at its regularly scheduled meeting May 6-7, 2020. Currently, the Governor has issued an executive order declaring a state of emergency due to the COVID-19 pandemic. See Executive Order 2020-04. As part of that Executive Order, the Governor requests that all South Dakotans practice social distancing and avoid gatherings of ten or more individuals. The Executive Order is set to expire May 2, 2020. Nonetheless, in light of the current public health situation, the Chief Engineer requests a continuance of the evidentiary hearing in this matter. The Chief Engineer requests that a new date be set for hearing in June of 2020.

Dated this 30th day of March, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

APR 01 2020
WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Motion for Continuance in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 30th day of March 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
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Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

April 9, 2020

NOTICE OF ENTRY OF ORDER AND SCHEDULING FOR HEARING

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: *for* Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Order on Motion for Continuance Regarding Water Permit
Application No. 1992-1, Town of Buffalo and Scheduling for Hearing

Enclosed is Hearing Officer Freeman's order concerning the Chief Engineer's motion for a continuance in the matter of Water Permit Application No. 1992-1.

Based on the order and the Covid-19 pandemic, the contested case for Application No. 1992-1 will NOT be heard by the Water Management Board at the May 6 and 7, 2020, Board meeting in Pierre SD. However, a board meeting will be held on May 6 to conduct routine board business including the board considering adoption and possible amendment of the order issued by Hearing Officer Freeman. At the Board's discretion, one amendment to the order the board may consider is alternative dates to conduct the contested case hearing. This matter is scheduled for consideration by the Board at 8:45 AM Central Time on May 6, 2020. Given the Covid-19 pandemic, this board meeting is being conducted remotely. If you wish to participate via conference call you may do so by calling +1 605-679-7263 and entering Conference ID: 100 780 985#. You may also contact us for a link if you wish to participate by video. To participate by video, you will need a device with a webcam and microphone as well as a mobile wireless or internet connection.

Questions regarding this matter may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57745

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Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

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APR 07 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR A CONTINUANCE
BUFFALO	)	
	)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

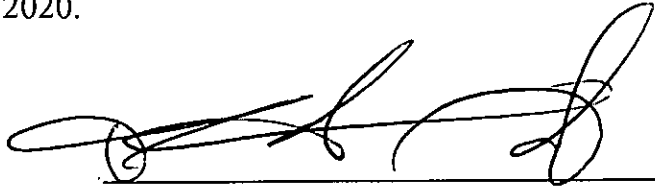
WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Wednesday June 10, 2020 through Thursday June 11, 2020.

3. The DENR Water Rights Program will provide notice of the time and place of the hearing in compliance with the Open Meetings Law.

Dated this 6th day of April, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

CERTIFICATION

I hereby certify that on April 9, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order and Scheduling for Hearing dated April 9, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

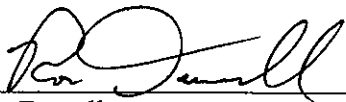
Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



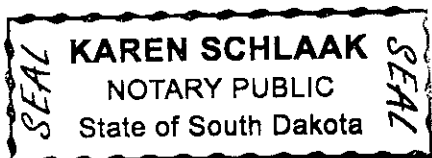
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of April ~~March~~, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

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APR 27 2020

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 24, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

John Harter
28125 307th Avenue
Winner, SD 57580

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

Elizabeth Lone Eagle
593 Big Foot Loop Road
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Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Witness and Exhibit Disclosure.

Sincerely,


Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program

APR 27 2020

WATER RIGHTS
PROGRAMSTATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	WITNESS AND EXHIBIT
BUFFALO	)	DISCLOSURE
	)	

Pursuant to the Procedural and Scheduling Order dated March 4, 2020, the Chief Engineer hereby provides his list of witnesses and exhibits.

WITNESS LIST

1. Whitney Kilts, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. Ms. Kilts will be testifying regarding the availability of unappropriated water and potential unlawful impairment of existing water rights.

2. Eric Gronlund, Chief Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. Mr. Gronlund will testify regarding the recommendation of approval of the proposed amendment to this application.

The witnesses may be contacted at:

South Dakota Department of Environment and Natural Resources
Water Rights Program
523 E. Capitol Avenue
Pierre, SD 57501
(605)773-3352

EXHIBIT LIST

Exhibit 1: Administrative record of Water Permit Application No. 1963A-1. The paper file is available for review upon request. The majority of its contents are available online at <https://denr.sd.gov/ccdocs.aspx?CCID=CCID87>.

Exhibit 2: Curriculum vitae of Whitney Kilts.

Exhibit 3: Curriculum vitae of Eric Gronlund.

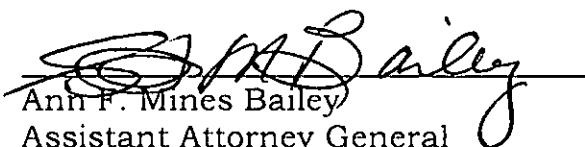
Exhibit 4: Hydrograph of HR-86F (observation well).

Exhibit 5: Area map of wells near the proposed diversion point.

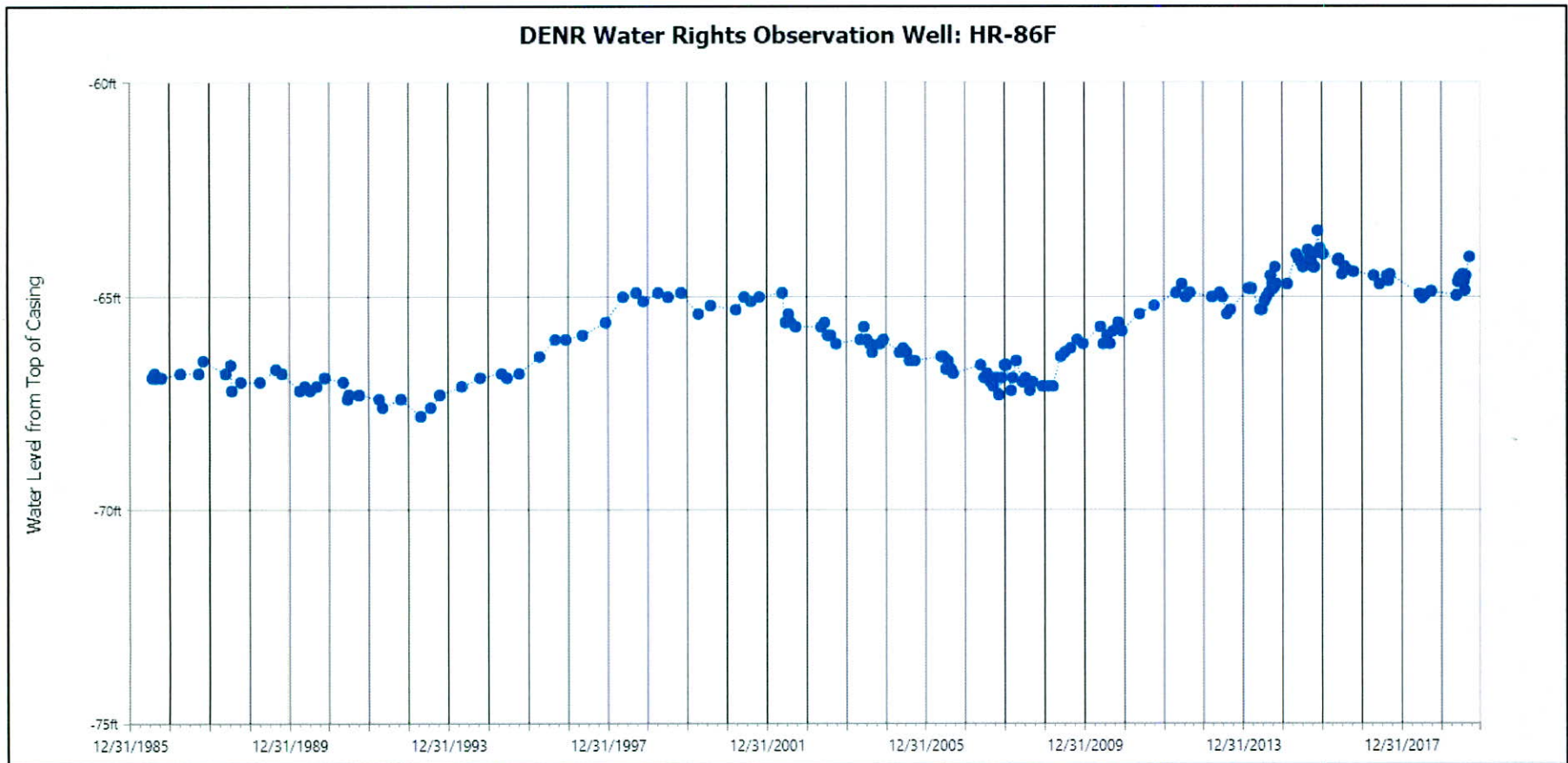
Exhibit 6: Map of Formation in SD

Exhibits 2 and 3 were previously provided in the Chief Engineer's March 30, 2020 Expert Witness Disclosure. Copies of Exhibits 4-6 are attached hereto.

Dated this 24th day of April, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

Hell Creek Aquifer Observation Well HR-86F



Retrieved from the SD DENR Water Rights Observation Well Database on 4/17/2020



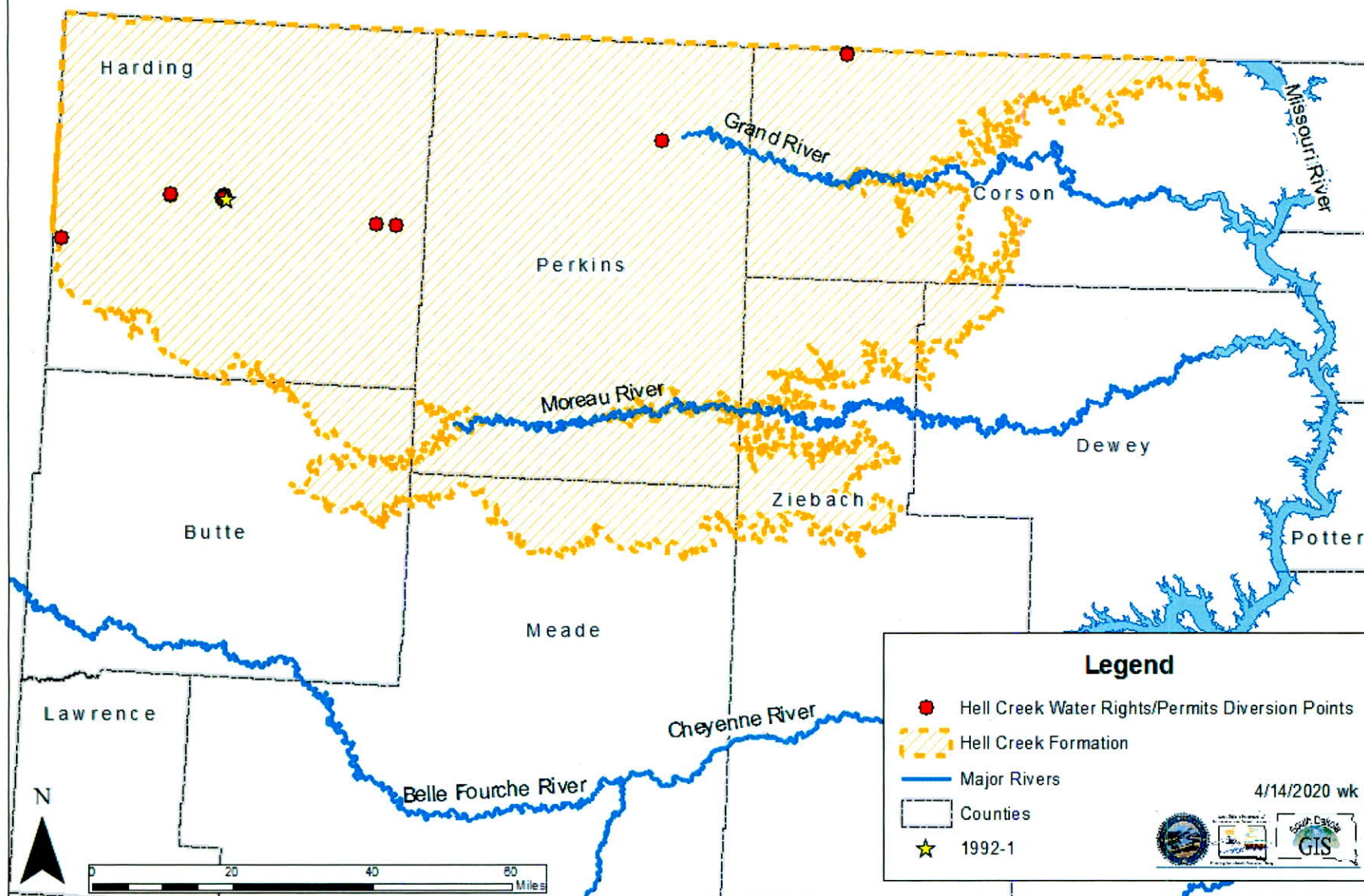
Map of Buffalo, South Dakota, showing water rights and permits. The map includes the city of Buffalo, major roads like Highway 85 and Highway 20, and various water rights locations marked with red triangles and dots. A legend in the bottom right corner defines the symbols: red triangle for Buffalo Water Rights/Permits, red dot for Other Hell Creek Water Rights/Permits, blue diamond for Hell Creek Observation Well, green dot for Domestic/Stock Wells*, and purple outline for City limit Boundaries. A scale bar and north arrow are in the bottom left. The date 4/13/2020 wk is noted at the bottom center.

EXHIBIT

tabbies

5

Approximate Extent of the Hell Creek Formation in South Dakota



EXHIBIT

6

Approximate Extent of the Hell Creek Formation in South Dakota References

Allen, J. C., Iles, D. L., Petres, A. K. 1985. Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota. Tasks 3A.B.C and 4 A.B.: Groundwater Resources Inventory, Final Report. U.S. Army Corps of Engineers Contract DACW45-82-C-0151.

Martin, J. E., Sawyer, J. F., Fahrenbach, M. D., Tomhave, D. W., and Schulz, L. D. 2004. Geologic Map of South Dakota. General Map 10. South Dakota Geological Survey, Vermillion, SD.

Thamke, J.N., LeCain, G.D., Ryter, D.W., Sando, Roy, and Long, A.J., 2014, Hydrogeologic framework of the uppermost principal aquifer systems in the Williston and Powder River structural basins, United States and Canada: U.S. Geological Survey Scientific Investigations Report 2014–5047, 38 p.

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that true and correct copy of the Chief Engineer's Witness and Exhibit Disclosure in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 24th day of April 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

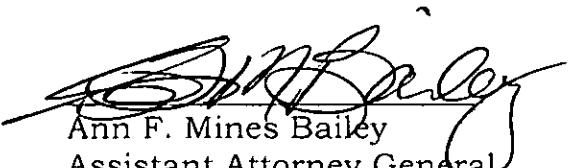
Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General

APR 27 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD OF THE DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES OF THE STATE OF SOUTH
DAKOTA**

IN RE APPLICATION OF TOWN OF BUFFALO FOR WATER APPROPRIATION PERMIT
NO. 1992-1

Motion in Limine

Comes now Dusty Ginsbach, attorney for the Applicant, and hereby files this Motion in Limine to preclude all evidence and testimony related to the merit of oil pipeline projects.

A. The Board does not have jurisdiction over oil pipelines.

SDCL 49-41B-1 states "The Legislature finds that energy development in South Dakota and the Northern Great Plains significantly affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of the natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a facility may not be constructed or operated in this state without first obtaining a permit from the commission." SDCL 49-41B-2(4) goes on to identify the commission as the Public Utilities Commission. Because the legislature has chosen to give the authority over energy

transmission facilities specifically to the PUC, the merit or benefit of oil pipeline projects are outside of the scope of the Water Management Board's jurisdiction. The merit of oil pipelines will not provide any benefit to the Board's decision in granting the Applicant the right to appropriate water under the permit and this hearing is not the appropriate venue for such testimony.

B. The question of beneficial use lies with the benefit of the Applicant.

A "beneficial use" is "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and that at the same time is consistent with the interests of the public of this state in the best utilization of water supplies." (SDCL 46-1-6(3)). The statute specifically states the use of the appropriation must be beneficial to the *appropriator*. It does not require the use to be beneficial to anyone else. The Applicant entered into an agreement with the Harding County Chamber of Commerce, on whose property the proposed point of diversion sits, on the 15th day of October, 2019. This agreement acknowledges the location of the test hole for which this the proposed appropriation correlates and "that water produced upon the property will be a part of the Town's water system and will in time be available for multiple uses, including but not limited to, recreation, fire suppression, construction, and drinking water".¹ As proposed in this document, appropriation of the water would inure to the benefit of the applicant.

¹ "License to Use Premises" between the Town of Buffalo and the Harding County Chamber of Commerce, dated October 15th, 2019 and October 17, 2019.

C. Public interest is limited to the use of water.

The Board must consider whether the proposed appropriation is in the public interest. (SDCL 46-2A-12 and 46-1-6(3)). The Town of Buffalo has proposed, as a municipality, that the appropriated water would be put to "municipal use".² The "public interest" of oil pipeline projects, on the contrary, is not determinative, nor does it have any bearing at all, on the public interest; it only applies to the "proposed use," as identified in SDCL 46-2A-9.

CONCLUSION

The Applicant respectfully requests the Board hear this Motion at the beginning of the evidentiary hearing, noticed to commence on May 6, 2020, but indefinitely postponed due the Coronavirus pandemic. Applicant requests the Board grant the Motion in Limine and preclude any evidence that relating to the merit of oil pipeline projects.

Respectfully submitted this 23 day of April, 2020.

/s/Dusty Ginsbach
Dusty Ginsbach
Attorney for the Applicant
P.O. Box 82
Buffalo, SD 57720

² "Application for uses other than irrigation 1992-1," https://denr.sd.gov/wrimage/pub/1992-1_apl.pdf.

CERTIFICATE OF SERVICE

I certify that on this 23rd day of April, 2020, a true and correct copy of the foregoing Motion in Limine was filed with the Chief Engineer of the DENR c/o Eric Gronlund at eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol Ave., Pierre, SD 57501 by first class mail. Also, on this day, a true and accurate copy was sent via first class mail to the following:

Bruce Ellison
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
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12299 Benchmark Road
Nemo, SD 57759

Ann Mines Bailey, Assistant Attorney
General
Counsel for Water Rights Program, DENR
Attorney General's Office
1392 East Highway 14, Suite 1
Pierre, SD 57501



Dusty J. Ginsbach
Attorney for the Town of Buffalo

RECEIVED

APR 30 2020

WATER RIGHTS
PROGRAM

**BEFORE THE WATER MANAGEMENT BOARD OF THE DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES OF THE STATE OF SOUTH
DAKOTA**

IN RE APPLICATION OF TOWN OF BUFFALO FOR WATER APPROPRIATION PERMIT
NO. 1992-1

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transmission facilities specifically to the PUC, the merit or benefit of oil pipeline projects are outside of the scope of the Water Management Board's jurisdiction. The merit of oil pipelines will not provide any benefit to the Board's decision in granting the Applicant the right to appropriate water under the permit and this hearing is not the appropriate venue for such testimony.

B. The question of beneficial use lies with the benefit of the Applicant.

A "beneficial use" is "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and that at the same time is consistent with the interests of the public of this state in the best utilization of water supplies." (SDCL 46-1-6(3)). The statute specifically states the use of the appropriation must be beneficial to the *appropriator*. It does not require the use to be beneficial to anyone else. The Applicant entered into an agreement with the Harding County Chamber of Commerce, on whose property the proposed point of diversion sits, on the 15th day of October, 2019. This agreement acknowledges the location of the test hole for which this the proposed appropriation correlates and "that water produced upon the property will be a part of the Town's water system and will in time be available for multiple uses, including but not limited to, recreation, fire suppression, construction, and drinking water".¹ As proposed in this document, appropriation of the water would inure to the benefit of the applicant.

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The Board must consider whether the proposed appropriation is in the public interest. (SDCL 46-2A-12 and 46-1-6(3)). The Town of Buffalo has proposed, as a municipality, that the appropriated water would be put to “municipal use”.² The “public interest” of oil pipeline projects, on the contrary, is not determinative, nor does it have any bearing at all, on the public interest; it only applies to the “proposed use,” as identified in SDCL 46-2A-9.

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Respectfully submitted this 23 day of April, 2020.

/s/Dusty Ginsbach
Dusty Ginsbach
Attorney for the Applicant
P.O. Box 82
Buffalo, SD 57720

² “Application for uses other than irrigation 1992-1,” https://denr.sd.gov/wrimage/pub/1992-1_apl.pdf.

CERTIFICATE OF SERVICE

I certify that on this 23rd day of April, 2020, a true and correct copy of the foregoing Motion in Limine was filed with the Chief Engineer of the DENR c/o Eric Gronlund at eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol Ave., Pierre, SD 57501 by first class mail. Also, on this day, a true and accurate copy was sent via first class mail to the following:

Bruce Ellison
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

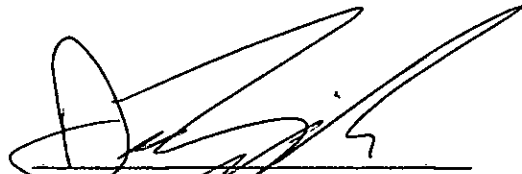
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Ann Mines Bailey, Assistant Attorney
General
Counsel for Water Rights Program, DENR
Attorney General's Office
1392 East Highway 14, Suite 1
Pierre, SD 57501



Dusty J. Ginsbach
Attorney for the Town of Buffalo

LAW OFFICE OF BRUCE ELLISON
P.O. Box 2508
Rapid City, S.D. 57709
(605) 348-1117
belli4law@aol.com

RECEIVED

MAY 01 2020

**WATER RIGHTS
PROGRAM**

April 29, 2020

ERIC GRONLUND, Chief Engineer
Dept. Of Environment & Natural Resources
523 E. Capitol
Pierre, SD 57501

Re: Application for Water Appropriation Permit 1992-1
DRA's Notice of Witnesses and Exhibits

Mr. Gronlund:

Attached please find for filing and service of Dakota Rural Action's Notice of Witnesses and Exhibits regarding the Application for Permit 1992-1, in the above-entitled matter, together with Certificates of Service.

Thank you.

Sincerely,



Bruce Ellison

Attorney for Dakota Rural Action

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
APPLICATION NO. 1992-1, BY)
THE TOWN OF BUFFALO)

DAKOTA RURAL ACTION’S NOTICE OF WITNESSES AND EXHIBITS

Pursuant to the Procedural and Scheduling Order dated March 4, 2020,
Dakota Rural Action (hereinafter, “DRA”) hereby provides its list of witness and
exhibits.

WITNESS LIST

1. Ryan Smith, Town of Buffalo, P.O. Box 82, Buffalo, SD 57720. Mr.
Smith will testify regarding the Application by the Town of Buffalo for
public water for municipal (only) use;
2. Gary Johnson, President of Town Board (Mayor), Town of Buffalo, P.O.
Box 82, Buffalo, SD 57720. Mr. Johnson will testify regarding the
executed 2019 contract(s) between the Town of Buffalo and
TransCanada Energy (hereinafter, “TCE”) for 100,000 gal/day of the

public water the Town seeks by Application No 1992-1 for “municipal” use for up to four (4) years for construction of the KXL hazardous materials pipeline.

3. Jeanne Goodman, DENR. Water Rights Program, 523 E. Capitol Avenue, Pierre, SD 57501. Ms. Goodman will testify about her Recommendation in this matter.
4. Custodian of Records, Town of Buffalo, P.O. Box 82, Buffalo, SD 57720. The Custodian will lay the foundation for the admission of the below-listed Exhibits comprising of Town records.

EXHIBIT LIST

EX. 600	10-7-19 Water Purchase Agreement
EX. 601	9-12-19 Water Purchase Agreement
EX. 602	10-15-19 License to Use Premises
EX. 603	Well # 8 Development Costs
EX. 604A	2-11-19 Minutes of Regular Town Brd. Mtg
EX. 604B	3-11-19 Minutes
EX. 604C	4-8-19 Minutes
EX. 604E	5-13-19 Minutes
EX. 604F	6-10-19 Minutes
EX. 604G	7-8-19 Minutes

EX. 604H 8-1-19 Minutes
EX. 604I 8-12-19 Minutes
EX. 604J 9-9-19 Minutes
EX. 604K 10-15-19 Minutes
EX. 604L 12-17-19 Minutes
EX. 604M 1-3-20 Minutes
EX. 605A 8-1-19 Agenda, Town of Buffalo Brd of Trustees
EX. 605B 10-15-19 Agenda
EX. 606A Dec. 2019 Receipt Journal
EX. 607A Jan. 2020 Expenditures Journal
EX. 607B Feb. 2020 Expenditures Journal

Dated this 29th day of April, 2020

/s/ Bruce Ellison

BRUCE ELLISON

Attorney for Dakota Rural Action

P.O. Box 2508

Rapid City, SD 57709

belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Notice of Witnesses and Exhibits, together with a copy of DRA's proposed Exhibits was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

A copy of electronically sent to:

Town of Buffalo

c/o Ryan Smith

P.O. Box 82

Buffalo, SD 57720.

Dusty.ginsbach@gmail.com

Ann Mines-Bailey

Assistant Attorney General for DENR

1302 E. Highway 14, Suite 1

Pierre, SD 57501

ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman

Water Management Board

523 E. Capitol

Pierre, SD 57501

Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
Pierre, SD 57501
David.mcvey@state.sd.us

John Harter
28125 307th Avenue
Winner, SD 57580
Johnharter11@yahoo.com

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107
mahmudfitil@gmail.com

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745
bethebest@gmail.com

Carol Hayse
12299 Benchmark Rd.
Nemo, SD 57759
carolhaysie@gmail.com

Dated this 29th of April, 2020.

/s/ Bruce Ellison

WATER PURCHASE AGREEMENT

This Agreement is made and entered into on this 17th day of December, 2019 ("Effective Date"), between TransCanada Keystone Pipeline, LP ("Company"), with a mailing address of 13710 FNB Parkway, Suite 300, Omaha, NE, 68154, and the City of Buffalo, SD, an incorporated municipality, with a mailing address of P.O. Box 82, Buffalo, SD, 57720 ("City").

WHEREAS:

- A. City owns and operates a municipal water system;
- B. Company is a duly organized pipeline company that is constructing the Keystone XL pipeline, and needs to acquire water for use in its construction, including but not limited to, for use in dust control, dust abatement, non-potable water for work force camp, horizontal directional drilling, and hydrostatic testing of sections of the Keystone XL pipeline;
- C. City has the capacity to provide water in sufficient quantities to meet Company's needs, so long the sale of water is not a detriment to City's needs, and Company wishes to purchase water from City for its needs.

NOW THEREFORE, in consideration of the sum stated herein, the receipt and sufficiency of which is hereby acknowledged by City, and of the mutual covenants and terms and conditions contained herein, the parties therefore agree as follows:

1. PURPOSE

Under this Agreement, City will sell water to Company on the conditions stated herein. Company agrees to pay for the cost of the water at the rates indicated herein and to maintain its water systems in good condition to accept delivery of the water supply.

2. SUPPLY OF WATER

City shall furnish water to Company, and Company may fill its trucks and tanks with water from City's pump station in an amount not to exceed 100,000 gallons per day, but Company may purchase more water from City if such water is available. City will collect monthly meter readings of the water received by Company. If the meter reading equipment fails during any period, City shall determine the amount of water used in that period by the use of an historical average of Company's use, unless City and Company agree to use a different meter reading amount.

3. METERING EQUIPMENT

City will install a meter and required devices of standard type for properly measuring the quantity of water received by Company.

4. FILL TIMES & POINT OF RECEIPT (POR)

There are no restrictions on the fill times or dates for Company to receive City's water. City's municipal water system is available to Company twenty-four hours per day and seven days a week. POR for City's well location (Well

#8): SE 1/4 of the NW 1/4 of Sec. 29 T-19N/R-5E -103.53677/45.58205

Company may also utilize temporary piping to deliver water from City's system to the Company's construction sites but Company shall be solely responsible for obtaining the requisite landowner permissions and permits.

5. **PAYMENT FOR WATER**

Company shall pay City an administrative fee of; *five thousand nine hundred seventy two* (\$58972.00). In addition to the administrative fee, Company shall pay City the sum of SEVEN DOLLARS (\$7.00) for every ONE THOUSAND (1,000) gallons of water pumped to fill the Company's trucks and tanks.

6. **TIME OF PAYMENT**

City shall provide Company a statement showing all amounts due and the volume of water pumped and received by Company each month. Company shall pay all amounts due within 45 days of the date of the statement. If Company fails to pay the amounts due within that time frame, this Agreement will be terminated, and City can deduct those outstanding amounts from the Deposit.

7. **INTERRUPTION OF SERVICE**

Company's use of City's water is subject to and governed by City's other provisions of ordinances and resolutions for receiving water. City shall have the right to interrupt water service to Company during times of capacity shortage, regardless of the cause of the shortage. For the avoidance of doubt, preference will always be given to municipal water needs over Company's water needs during times of capacity shortage.

8. **INTERRUPTION OF SERVICE DURING REPAIRS**

City has the right to temporarily interrupt or reduce the amount of water available to Company for the purpose of maintaining, repairing, replacing, investigating, or inspecting any of the City's water works, so long as City gives Company reasonable notice of such interruption or reduction. In such event, City shall not be responsible for any damage or inconvenience arising from such interruption or reduction in water service.

9. **TERM**

This Agreement shall remain in effect for a period of four (4) years ("Term") after the date that Company first receives water from City. Company and City shall have the right to terminate this agreement before the expiration of the Term by providing written notice, via U.S. certified mail at the addresses listed above, of its intent to terminate this Agreement at least three (3) months prior to the termination of water services under this Agreement.

10. **INDEMNITY**

Each party shall indemnify and hold the other party and its elected officials, officers, agents and employees, harmless from liability for any damage or claims stemming from the indemnifying party's activities and obligations specified herein, except as to claims that are the direct or proximate result of the reckless conduct or intentional actions of the party to be indemnified.

11. SEVERABILITY

If any provision of this Agreement is invalid under any applicable statute or is declared invalid by a court of competent jurisdiction, then it shall be deemed to be severed from this Agreement provided, however, that the remainder of this Agreement shall continue in full force and effect.

12. FACSIMILE AND COUNTERPART

This Agreement may be executed and delivered (including by facsimile or other electronic transmission) by the different parties hereto in separate counterparts, each of which will, when executed, be deemed an original and all of which taken together will constitute one and the same Agreement.

13. ENTIRE AGREEMENT

This Agreement represents the entire agreement of the parties and can only be modified by a written agreement of the parties.

///

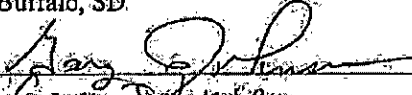
The parties are executing this Agreement as of the Effective Date.

TRANSCANADA KEYSTONE PIPELINE, LP
by its agent TC Oil Pipeline Operations Inc.

Signed: 
Name: Robert J. Latimer
Title: Sr. Land Rep.

Signed: 
Name: Denise Cummings
Title: Land Manager

City of Buffalo, SD

Signed: 
Name: Gary Johnson
Title: President of Town Board (Mayor)

WATER PURCHASE AGREEMENT

This Agreement is made and entered into on this 11th day of September, 2019 ("Effective Date"), between TransCanada Keystone Pipeline, LP ("Company"), with a mailing address of 13710 FNB Parkway, Suite 300, Omaha, NE, 68154, and the City of Buffalo, SD, an incorporated municipality, with a mailing address of P.O. Box 82, Buffalo, SD, 57720 ("City").

WHEREAS:

- A. City owns and operates a municipal water system;
- B. Company is a duly organized pipeline company that is constructing the Keystone XL pipeline, and needs to acquire water for use in its construction, including but not limited to, for use in dust control, dust abatement, non-potable water for work force camp, horizontal directional drilling, and hydrostatic testing of sections of the Keystone XL pipeline;
- C. City has the capacity to provide water in sufficient quantities to meet Company's needs, so long the sale of water is not a detriment to City's needs, and Company wishes to purchase water from City for its needs.

NOW THEREFORE, in consideration of the sum stated herein, the receipt and sufficiency of which is hereby acknowledged by City, and of the mutual covenants and terms and conditions contained herein, the parties therefore agree as follows:

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Under this Agreement, City will sell water to Company on the conditions stated herein. Company agrees to pay for the cost of the water at the rates indicated herein and to maintain its water systems in good condition to accept delivery of the water supply.

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City shall furnish water to Company, and Company may fill its trucks and tanks with water from City's pump station in an amount not to exceed 100,000 gallons per day, but Company may purchase more water from City if such water is available. City will collect monthly meter readings of the water received by Company. If the meter reading equipment fails during any period, City shall determine the amount of water used in that period by the use of an historical average of Company's use, unless City and Company agree to use a different meter reading amount.

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City will install a meter and required devices of standard type for properly measuring the quantity of water received by Company.

4. FILL TIMES & POINT OF RECEIPT (POR)

There are no restrictions on the fill times or dates for Company to receive City's water. City's municipal water system is available to Company twenty-four hours per day and seven days a week. POR for City's well location (Well #7) is: immediately west of US HWY 85 about a quarter mile south of Main Street. GPS: 45°34'44.39"N 103°32'46.45"W.

Company may also utilize temporary piping to deliver water from City's system to the Company's construction sites but Company shall be solely responsible for obtaining the requisite landowner permissions and permits.

5. PAYMENT FOR WATER

Company shall pay City an administrative fee of; THIRTY-SEVEN THOUSAND, ONE HUNDRED SEVENTY NINE DOLLARS (\$37,179.00). In addition to the administrative fee, Company shall pay City the sum of TEN DOLLARS (\$10.00) for every ONE THOUSAND (1,000) gallons of water pumped to fill the Company's trucks and tanks. Company shall also deposit the sum of TEN THOUSAND DOLLARS (\$10,000.00) ("Deposit") with City before receiving any water to secure payment during the term of this Agreement. The Deposit shall be returned to Company at the end of the Agreement, except for the deduction of any unpaid statements as set forth below in Section 6.

6. TIME OF PAYMENT

City shall provide Company a statement showing all amounts due and the volume of water pumped and received by Company each month. Company shall pay all amounts due within 45 days of the date of the statement. If Company fails to pay the amounts due within that time frame, this Agreement will be terminated, and City can deduct those outstanding amounts from the Deposit.

7. INTERRUPTION OF SERVICE

Company's use of City's water is subject to and governed by City's other provisions of ordinances and resolutions for receiving water. City shall have the right to interrupt water service to Company during times of capacity shortage, regardless of the cause of the shortage. For the avoidance of doubt, preference will always be given to municipal water needs over Company's water needs during times of capacity shortage.

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This Agreement shall remain in effect for a period of four (4) years ("Term") after the date that Company first receives water from City. Company and City shall have the right to terminate this agreement before the expiration of the Term by providing written notice, via U.S. certified mail at the addresses listed above, of its intent to terminate this Agreement at least three (3) months prior to the termination of water services under this Agreement.

10. **INDEMNITY**

Each party shall indemnify and hold the other party and its elected officials, officers, agents and employees, harmless from liability for any damage or claims stemming from the indemnifying party's activities and obligations specified herein, except as to claims that are the direct or proximate result of the reckless conduct or intentional actions of the party to be indemnified.

11. **SEVERABILITY**

If any provision of this Agreement is invalid under any applicable statute or is declared invalid by a court of competent jurisdiction, then it shall be deemed to be severed from this Agreement provided, however, that the remainder of this Agreement shall continue in full force and effect.

12. **FACSIMILE AND COUNTERPART**

This Agreement may be executed and delivered (including by facsimile or other electronic transmission) by the different parties hereto in separate counterparts, each of which will, when executed, be deemed an original and all of which taken together will constitute one and the same Agreement.

13. **ENTIRE AGREEMENT**

This Agreement represents the entire agreement of the parties and can only be modified by a written agreement of the parties.

///

Ex 602

LICENSE TO USE PREMISES

This License Agreement is entered into as of the 15th day of October, 2019 by and between the Town of Buffalo, P.O. Box 82, Buffalo, SD 57720 ("the Town") and the Harding County Chamber of Commerce ("Licensor").

WHEREAS, Licensor, formerly known as the Buffalo Commercial Club, owns a parcel known as Lot 1, Block U of Smith's Amended Addition to the Town of Buffalo; and

WHEREAS, the Town desires to use that portion of the of the parcel wherein a test hole was drilled in 2019, including an area starting ten feet due north of the test hole, thenceforth thirty feet due east, thenceforth sixty feet due south, thenceforth fifty feet due west, thenceforth sixty feet due north, thenceforth twenty feet due east to the point of origin ("Property"); and

WHEREAS, subject to the written approval by the President of the Harding County Chamber of Commerce, Licensor is willing to permit the Town to use the previously described property for making improvements around the test hole and to use the previously described property for the production of water; and

WHEREAS, Licensor acknowledges that the use will require necessary improvements including, but not limited to, a wellhead, pump house; electric panel; electric, propane, or gas lines; parking area; security fence; waterlines; and an access road to the property; and

WHEREAS, Licensor acknowledges and accepts that water produced upon the property will be a part of the Town's water system and will in time be available for multiple uses, including, but not limited to, recreation, fire suppression, construction, and drinking water.

NOW, THEREFORE, the parties agree as follows:

1. License to Use Property. Licensor hereby grants the Town permission to include the Property in Town's water system and to use the Property for the production of water. All water produced from the Property in support of construction operations ("Construction Sales") will be measured and accounted for in increments of 1,000 gallons. This License includes the right to place waterlines on the parcel to transport water off of the Property as part of the Town's water system.

2. Fees and Costs. In consideration of being permitted to use the Property, Town agrees to remit to Harding County Chamber of Commerce \$5 (five dollars) per 1,000 gallons of water which the Town sells as Construction Sales relating to projects wherein the cumulative Construction Sales will be greater than 500,000 (five hundred thousand) gallons. The Town will also pay the Harding County Chamber of Commerce 10% (ten percent) of any administrative fees charged by the Town on such Construction Sales. No compensation will be made for water used for any other purpose. Payments by the Town will be made on a monthly or other periodic basis as Construction Sales occur.

3. Use of Property. The Town shall use the Property only for the purpose of producing, transporting, and supplying water. The Town shall not use or permit the use of the Property for any other purpose. The Town shall use and occupy the Property in a careful, safe, and lawful manner which does not interfere with the use of the surrounding premises. The Town agrees that its use of the Property shall at all times be in full compliance with all applicable laws and regulations. The Town agrees to regularly remove all garbage and debris from the Property. The Town shall be responsible for the construction and upkeep of improvements on the premises and any damage to equipment, including any costs incurred to install, clean, or repair same.

4. Condition of Premises; Liability. Licensor makes no warranties whatsoever regarding the condition of the Property or the water well, including water quality, volume or any other aspect

of the well and water produced therefrom. The Town has inspected the Property and found it suitable for the Town's purposes. Licensor shall not be liable for any personal injury or damage to property which the Town or its guests or invitees may incur, regardless of the cause thereof. The Town hereby releases Licensor from all such liability, it being the intent of the parties that the Town shall maintain adequate insurance to cover any such losses. The Town hereby agrees to defend, indemnify, and hold harmless Licensor, its members, officers, employees, and agents from and against any and all claims, damages, losses, suits, judgments, costs, and expenses arising from the Town's occupation of the Property including, but not limited to, the amounts of deductibles on the Town's insurance policies, or any costs resulting from the Town's failure to acquire insurance coverage as required hereunder, and any costs arising from subrogation under worker's compensation or liability claims.

Licensor shall not be liable in any way for any failure or termination of or interruption in any utility services to or for the benefit of the Property or of any failure or termination of or interruption in the water produced by the water well, and the Town hereby releases Licensor from any and all liabilities or damages of any kind which may result by reason of any such failure, termination, or interruption.

5. Compliance with Laws. The Town agrees to comply with all applicable federal, state, and local laws and regulations. The Town will not discriminate on the basis of race, religion, age, sex, color, disability, sexual orientation, political affiliation, national or ethnic origin, or veteran status.

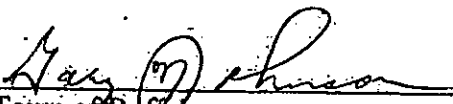
6. Termination. This Agreement shall automatically terminate when the Property is no longer used as a part of the Town's water system, the well bore has been satisfactorily capped, and the well permanently abandoned.

7. Assignment. The Town may not assign or sub-license this Agreement without the prior written consent of Licensor, except to another political subdivision of the State of South Dakota or a recognized non-profit organization utilizing the water produced therefrom to support recreation or fire suppression.

8. Default; Entire Agreement; Amendment. Time is of the essence of this Agreement. Should either party claim a breach of this Agreement by the other party, the non-defaulting party will give written notice explaining the default to the defaulting party, and the defaulting party will have 30 days within which to cure the default. Written notice shall be given by US Certified Mail, and shall be deemed received the earlier of date of receipt or three days after posting to the defaulting party's mailing address. If the default is not satisfactorily cured within the time set forth, this Agreement may be declared in default and either party may commence legal action in Harding County Circuit Court or otherwise agree to mediate the dispute. This Agreement contains the entire agreement of the parties, and no covenants, representatives, inducements, or promises, oral or otherwise, not embodied herein, shall be in force or effect. This Agreement may not be modified, nor any of its provisions waived, except by a writing signed by both parties.

9. Governing Law. This Agreement will be governed by and construed in accordance with the law of the State of South Dakota. The parties consent to the exclusive jurisdiction of the Harding County, South Dakota courts for any dispute arising hereunder not otherwise addressed by mediation of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the first date
written above.


Town of Buffalo

By: Gary Johnson

Title: President

Date: 10-15-2019


Harding County Chamber of Commerce

By: Sam Olson

Title: President

Date: 10-17-19

Well #8 Development Costs

Ex 603

✓ Grand Electric meter loop - \$400⁰⁰

✓ Lines electric - underground from pole Boxes - inside wiring
↳ 3 outlets/conduit - 8171¹⁵

Building 10 x 10¹² insulated 2x6 walls
wood or steel floor - 4319⁶⁰

Location work/site work - gravel or cement pad?
55 x 35 10 x 14¹⁴
~~Foot pad~~ gravel pad

Fence - 7 ft security - 2 gates - install - 160 ft + 2 man gates
+ Barbwire & 1 cor gate

✓ State Fee & Application - \$750⁰⁰

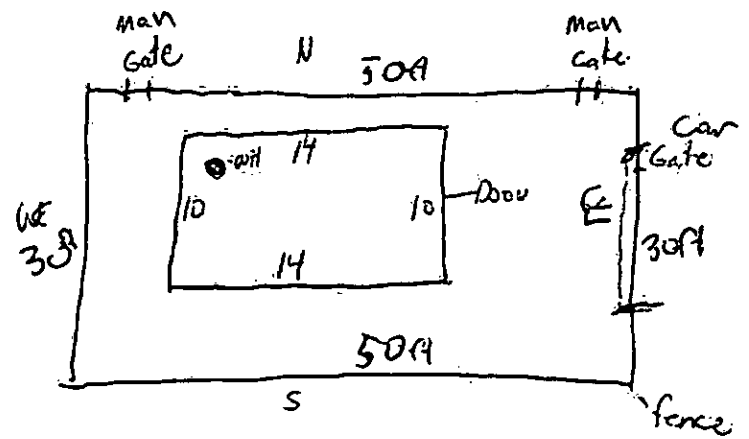
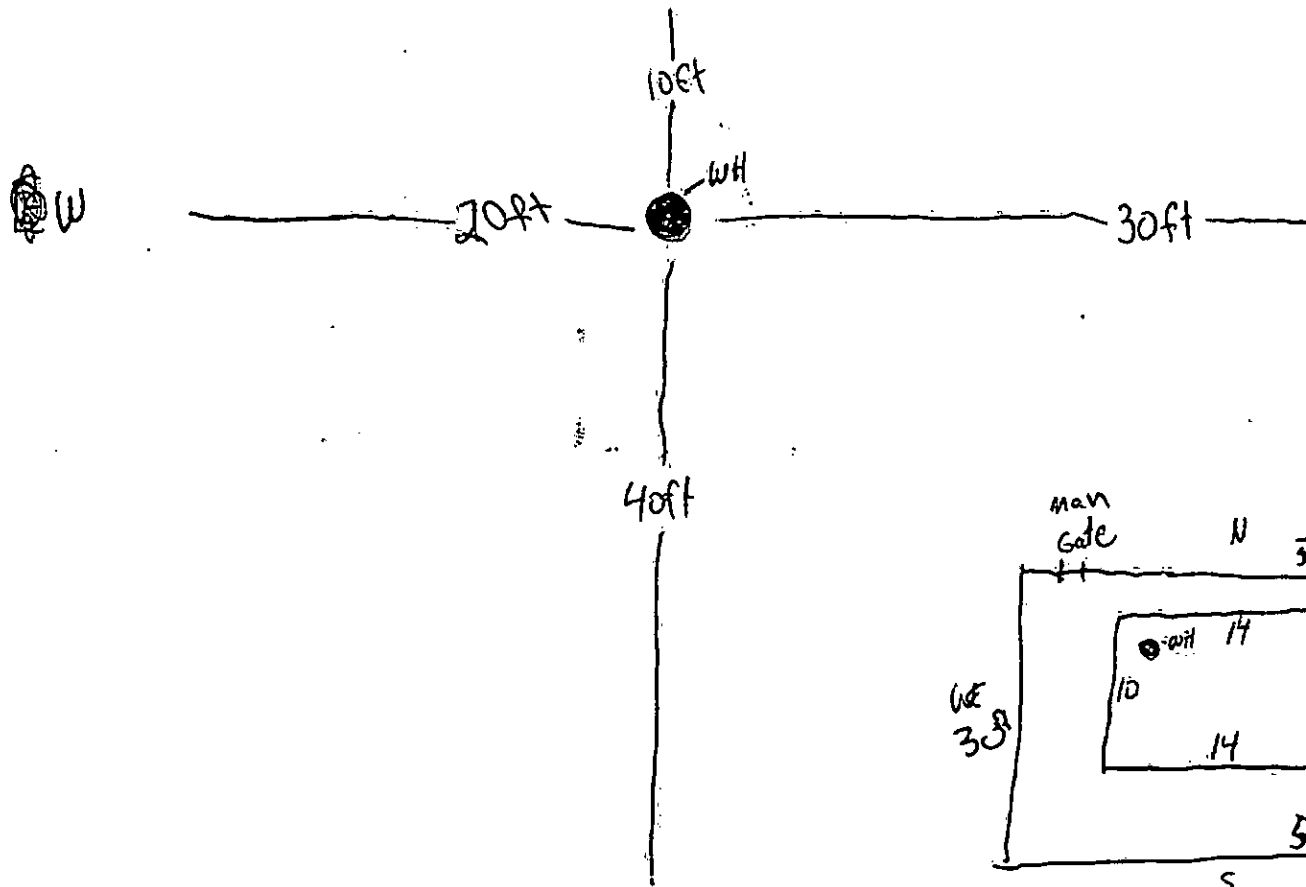
3' piping install -
in building - underground to south 10.20 ft

✓ Heater & propane take install - \$2900⁰⁰

✓ Chemical storage & pump - \$450 pump - \$100 storage

✓ Level monitor
Low controls series 1613 - Electric
Communications B1 11

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MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., February 11, 2019, at the Town Office. Trustees present were Randy Lyons, Shaine Odell, Gary Johnson, Jeremy Humbracht and Traci Routier. Employees present were Diane Haivala, Ryan Smith and Dusty Ginsbach. Johnson called the meeting to order.

GUESTS: Deputy Sheriff Russ and Josh Page were present as guests.

APPROVAL OF BILLS: Motion was made by Routier, seconded by Lyons and carried to approve payment of the following bills: Payroll – General – 6076.61, Water – 1350.81, Sewer – 1575.96; K. Watson – wages – 325.31; T. Rue – wages – 783.94; Grand Electric Coop., Inc. – kwh – 2932.50; SD Federal Property Agency – Street Liner – 950.00; South Dakota Association of Towns & Townships – dues – 222.50; Buffalo Hardware, LLC – supplies – 285.16; Southwest Business Machines – office supplies; Olson Propane, LLC – propane – 1195.21; Tim w. Olson Construction, Inc. – water line repair – 756.00; AFLAC – insurance – 13.30; Stereos N Stuff – software – 72.00; Nation Center News – publishing – 225.56; EFTPS – Employers Federal Tax – 2254.11; CPS. Checks – supplies – 101.60; Department of Revenue – sales tax – 266.24; SD Retirement System – contributions – 1020.40; Henderson Oil – fuel – 147.26; West River Coop. Telephone Co. – telephone – 300.37; Seth Webster – meter deposit refund – 25.00; Propoint Cooperative – fuel – 273.87; Verizon – cellular service – 124.85; NWSD Regional Landfill Assoc. – operating fees – 3425.18; Pioneer Bank – safe deposit box – 15.00; Town of Buffalo – utilities – 144.08; Harding County Post Prom Committee – recreation – 50.00; G. Ginsbach – wages – 166.23; Town of Buffalo – postage petty cash – 158.33; Harding County Chamber of Commerce – dues – 800.00; Ryan Smith – training expense – 332.67; Northwest Pipe Fittings, Inc. – meters – 475.14; Town of Buffalo – utilities – 25.00; G. Johnson – wages – 79.95; Jenner Equipment – Bobcat Skid Steer with Bucket – 56135.00.

LAW ENFORCEMENT REPORT: Deputy Sheriff Russ stated there had been no problems in January. There has been no progress on the missing street signs.

MINUTES: Motion was made by Humbracht, seconded by Routier and carried to approve the January 14, 2019, meeting minutes as read.

FINANCIAL REPORT: Motion was made by Routier, seconded by Odell and carried to approve the January, 2019, financial report as follows:

General Fund -	\$345979.72
Receipts -	15962.63
Expenditures -	<u>23006.82</u>
Balance -	338935.43
 Harding County Memorial Rec Center	 16556.79
Receipts -	1343.70
Expenditures -	<u>1335.50</u>
Balance -	16564.99
 Bridge & Street Fund -	 307452.93
Receipts -	1478.69
Expenditures -	<u>.00</u>

Balance -	308931.62
General Reserves -	275991.64
No Activity	
Liquor Fund -	37579.59
No Activity	
Bar Improvement -	1642.52
Water Fund -	31348.42
Receipts -	6212.16
Expenditures -	<u>3349.13</u>
Balance -	34211.45
Water Surcharge -	75121.09
Receipts -	5982.57
Expenditures -	<u>12573.24</u>
Budget -	68530.42
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5305.65
No Activity	
Sewer Fund -	30016.50
Receipts -	3585.17
Expenditures -	<u>2150.15</u>
Balance -	31451.52
Sewer Reserves -	60281.25
No Activity	
Solid Waste Fund -	3481.24
Receipts -	4406.28
Expenditures -	<u>5778.68</u>
Balance -	2088.84
Solid Waste Reserves -	1000.00
No Activity	
Miscellaneous -	-107.00
No Activity	
TOTAL FUNDS -	1202407.92
TOTAL ACCOUNTS -	1202407.92
CERTIFICATES OF DEPOSIT:	
METER DEPOSIT	1000.00
METER DEPOSIT	1000.00

GENERAL/STREETS
GENERAL/STREETS

30000.00
10000.00

SAFE ROUTES TO SCHOOLS GRANT: J. Page inquired about the progress of the Safe Routes to Schools Grant. Haivala stated that last fall the Board expressed interest in getting an intern through Black Hills Council of Local Governments to help decide the routes. A letter has been received, stating that there have been no interns hired at this time, but that the position application deadline has been extended into March.

HARDING COUNTY MEMORIAL REC CENTER: There was some discussion concerning the Harding County School District's intentions in rental of the Harding County Memorial REC Center. Page stated that the subject would be addressed at the next School District meeting.

Jo Piekkola is still interested in resealing the Rec Center floors.

The United Fire Insurance valuation of the Rec Center was reviewed.

The siding on the west side of the Rec Center is in need of repair.

LAND ACQUISITION: There was discussion on the Town of Buffalo taking ownership of Lots 4 & 5, Block N, Smith's Amended Addition, Town of Buffalo..

NUISANCE PROPERTY: There was discussion on nuisance properties.

SURPLUS PROPERTY: A beer cooler, the Caterpillar and old desk will be designated as surplus property at the next regular meeting.

BUFFALO RESTRICTED USE SITE: Baine Maupin, Kathy Fox, Donny Powell and Ed Smith were interested to sub at the Buffalo Restricted Use Site when Rue is unable to be there.

ELECTION: The election will be held June 4, 2019. Motion was made by Lyons, seconded by Humbracht and carried to sign the election agreement to have a combined election with the School District and Town of Camp Crook. The Trustee Vacancies with Town of Buffalo are: Randy Lyons – 1 year Trustee and Jeremy Humbracht – 3 year Trustee. Petition circulation begins March 1, 2019.

EQUIPMENT: The Bobcat skid steer was received today.

SNOW REMOVAL: Smith was asked to keep the Buffalo Fire Hall driveway cleared of snow.

WEST RIVER SIGNING PROJECT: The West River Signing State Project which entails inventorying existing signing, analyzing if it meets current federal standards, and updating all signing that needs replacement or updating, within the Town of Buffalo and is no cost to the Town, is being administrated by Brosz Engineering. The first step is to schedule a Public Informational Meeting. The meeting will be March 11, 2019, 5:00 p.m., at the Town Office.

STREETS: The Board discussed the need for better drainage on West Main Street. Humbracht will check with State about cleaning out the drainage ditch which goes under SD Hwy 20 to the south.

TRANSCANADA: KLJ Engineering spoke to Smith about TransCanada's interest in bulk water from the Town of Buffalo during the construction of the pipeline.

SEWER CAMERA: Motion was made by Lyons and seconded by Routier to purchase a Sewer Camera which could be rented out to residents when needed.

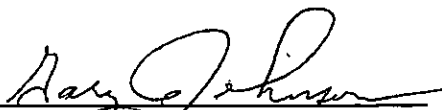
ADJOURNMENT: As there is no further business at this time, Johnson declared the meeting adjourned.

WEST RIVER SIGNING PROJECT PUBLIC MEETING: 5:00 P.M. March 11, 2019, Town Office.

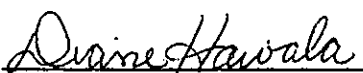
NEXT REGULAR MEETING: 6:00 P.M., March 11, 2019. Town Office.

LOCAL BOARD OF EQUALIZATION: 6:00 P.M., March 18, 2019, Town Office

SIGNED:


Gary Johnson, President

ATTEST:


Diane Haivala, Finance Officer

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., March 11, 2019, at the Town Office. Trustees present were Shaine Odell, Jeremy Humbracht and Traci Routier, Randy Lyons and Gary Johnson were absent. Employees present were Diane Haivala, Ryan Smith and Dusty Ginsbach. Vice President Routier called the meeting to order.

GUESTS: There were no guests present.

APPROVAL OF BILLS: Motion was made by Routier, seconded by Lyons and carried to approve payment of the following bills: Payroll – General – 7576.61, Water – 1350.81, Sewer – 1575.96; EFTPS – Employers Federal Tax – 2172.64; SD Retirement System – contributions – 1020.40; R. Smith – Reimbursement – 893.52; Glines Electric, LLC – Repairs – 57.14; AFLAC – Insurance – 13.30; USA Blue Book – supplies – 537.68; Johnson Insurance Agency – Bond – 473.03; Nation Center News – publishing – 69.44; T. Rue – wages – 580.48; Olson Propane – propane – 666.09; Town of Buffalo – utilities – 146.68; Northern Truck Equip. Corp. – parts – 402.00; K. Watson – wages – 239.48; Grand Electric Cooperative, Inc. – kwh – 3700.90; NWSD Regional Landfill Assoc. – operating fees – 3625.18; Hawkins, Inc. – supplies – 5799.50; Town of Buffalo – postage petty cash – 22.05; Southwest Business Machines – supplies – 618.22; Olson Fuels, LLC – fuel – 118.80; Buffalo Hardware, LLC – supplies – 360.32; ProPoint Coop. – fuel – 378.51; First Western Insurance Belle – Property Insurance – 11651.00; Verizon – cellular service – 124.79; Harding County – law enforcement – 10750.00; Town of Buffalo – meter dep refund to utilities – 44.00; West River Coop. Telephone Co. – telephone – 295.28.

MINUTES: Motion was made by Humbracht, seconded by Odell and carried to approve the February 11, 2019, meeting minutes as read.

FINANCIAL REPORT: Motion was made by Humbracht, seconded by Routier and carried to approve the February, 2019, financial report as follows:

General Fund -	\$338935.43
Receipts -	36920.53
Expenditures -	<u>68960.38</u>
Balance -	306895.58
Harding County Memorial Rec Center	16564.99
Receipts -	160.00
Expenditures -	<u>1366.50</u>
Balance -	15358.49
Bridge & Street Fund -	308931.62
Receipts -	4294.52
Expenditures -	<u>.00</u>
Balance -	313226.14
General Reserves -	275991.64
No Activity	
Liquor Fund -	37579.59

No Activity	
Bar Improvement -	1642.52
Water Fund -	34211.45
Receipts -	5076.22
Expenditures -	<u>3927.34</u>
Balance -	35360.33
Water Surcharge -	68530.42
Receipts -	6057.28
Expenditures -	<u>.00</u>
Budget -	74587.70
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5305.65
Receipts -	25.00
Expenditures -	<u>50.00</u>
Balance -	5280.65
Sewer Fund -	31451.52
Receipts -	3372.14
Expenditures -	<u>1957.41</u>
Balance -	32866.25
Sewer Reserves -	60281.25
No Activity	
Solid Waste Fund -	2088.84
Receipts -	4299.47
Expenditures -	<u>4602.11</u>
Balance -	1786.20
Solid Waste Reserves -	1000.00
No Activity	
Miscellaneous -	-107.00
No Activity	
TOTAL FUNDS -	1181749.34
TOTAL ACCOUNTS -	1181749.34
CERTIFICATES OF DEPOSIT:	
METER DEPOSIT	1000.00
METER DEPOSIT	1000.00
GENERAL/STREETS	30000.00
GENERAL/STREETS	10000.00

BUFFALO BAR REPORT: Odell reported that the outside light will be installed at the back door of the Buffalo Bar when the snow is gone. The Buffalo Bar & Liquor Store renewal for Hunter Kalisiak will come up at the April meeting. Odell reported that there may be one more lottery machine installed in the Bar.

STREETS: Smith was praised by the Board on his job of snow removal on the streets.

WATER: Smith reported that a person for automatic readers will come in April to advise the water department.

TRANSCANADA: Smith met with a Brosz Engineering and 3 contractors concerning bulk water for the pipeline. There was conversation about bulk water and the drilling of a well.

HARDING COUNTY MEMORIAL REC CENTER: There is a leak at the east door of the Harding County Memorial Rec Center.

SIDEWALKS: There was some discussion on the sidewalks on Tipperary Street. It was tabled until the April meeting.

ELECTION: The petitions for the election of 2 trustees are due March 26, 2019.

SURPLUS PROPERTY: The designation of surplus property was tabled until the next regular meeting.

CONFLICT OF INTEREST RESOLUTION: The Conflict of Interest Resolution was tabled.

NUISANCE PROPERTY: The Town Board was given a purchase price of \$18000 for the nuisance property with the legal description of BU, Olnas, Blk1, Lt4. The Town Board will offer \$10000.00 as the plan is to resell the property with the stipulation that all buildings are demolished within a certain time of the resale.

SPECIAL MEETING: March 18, 2019, 5:30 p.m., Town Office.

LOCAL BOARD OF EQUALIZATION: March 18, 2019, 6:00 p.m., Town Office

NEXT REGULAR MEETING: April 8, 2019, 6:00 p.m., Town Office

ADJOURNMENT: As there is no further business at this time, Johnson declared the meeting adjourned.

SIGNED: Traci Routier

~~Gary Johnson, President~~

Traci Routier, Vice President

ATTEST:

Diane Haivala
Diane Haivala, Finance Officer

Ex 604E

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., April 8, 2019, at the Town Office. Trustees present were Shaine Odell, Jeremy Humbracht, Randy Lyons, Gary Johnson and Traci Routier. Employees present were Diane Haivala, Ryan Smith and Dusty Ginsbach. President Johnson called the meeting to order.

GUESTS: Deputy Sheriff Russ, Hunter Kalisiak and Ron Ginsbach were present as guests.

APPROVAL OF BILLS: Motion was made by Lyons, seconded by Routier and carried to approve payment of the following bills: Payroll – General – 6076.61, Water – 1350.81, Sewer – 1575.96; EFTPS – Employers Federal Tax – 2362.74; Nation Center News – publishing – 99.38; West River Cooperative Telephone Co. – telephone, internet – 294.78; Olson Propane, LLC – propane – 1028.51; Runnings – carry-on trailer – 799.99; Propoint Cooperative – fuel – 437.04; A2Z – Printing – 799.85; Town of Buffalo – utilities – 141.88; K. Watson – wages – 132.55; Johnson Insurance Agency – bond – 83.47; USA Blue Book – supplies – 729.18; US Bank – SRF Loan Payment – 12573.24; H & L Super Valu – supplies – 7.78; Olson Fuels LLC – fuels – 130.59; Ed Smith – contract labor – 174.90; Southwest Business Machines – supplies – 60.29; Stan Houston Equip. Co. Inc. – supplies – 169.50; AFLAC – Insurance – 13.30; Buffalo Hardware LLC – supplies – 140.87; Stereos N Stuff – software – 36.99; Olson Construction – repairs – 25.00; DC Inc. – repairs – 50.00; T. Rue – wages – 520.64; SDML Workers Compensation Fund – workers comp audit – 817.00; Town of Buffalo – utility – 64.86; Grand Electric Cooperative, Inc. – kwh – 3300.38; Department of Revenue – sales tax – 194.09; SD Retirement System – contributions – 1020.40; NWSD Regional Landfill Assoc. – operating fees – 3529.68; SD Dept of Revenue – malt beverage & wine license renewals – 300.00; SD Public Assurance Alliance – Liability Insurance – 6348.69; D. Johnson – Refund of payment – 500.00.

MINUTES: Motion was made by Humbracht, seconded by Routier and carried to approve the March 11, 2019, regular meeting and the March 18, 2019, Local Board of Equalization minutes as read.

FINANCIAL REPORT: Motion was made by Odell, seconded by Lyons and carried to approve the March, 2019, financial report as follows:

General Fund -	\$306895.58
Receipts -	19226.19
Expenditures -	<u>29677.47</u>
Balance -	296444.30
 Harding County Memorial Rec Center	 15358.49
Receipts -	380.00
Expenditures -	<u>5086.21</u>
Balance -	10652.28
 Bridge & Street Fund -	 313226.14
Receipts -	1692.03
Expenditures -	<u>.00</u>
Balance -	314918.17

General Reserves -	275991.64
No Activity	
Liquor Fund -	37579.59
Receipts -	.00
Expenditures -	<u>1380.00</u>
Balance -	36199.59
Bar Improvement -	1642.52
Water Fund -	35360.33
Receipts -	6233.52
Expenditures -	<u>10530.81</u>
Balance -	31063.04
Water Surcharge -	74587.70
Receipts -	6565.47
Expenditures -	<u>.00</u>
Budget -	81153.17
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5280.65
Receipts -	.00
Expenditures -	<u>44.00</u>
Balance -	5236.65
Sewer Fund -	32866.25
Receipts -	5111.38
Expenditures -	<u>2739.62</u>
Balance -	35238.01
Sewer Reserves -	60281.25
No Activity	
Solid Waste Fund -	1786.20
Receipts -	4935.81
Expenditures -	<u>5216.00</u>
Balance -	1506.01
Solid Waste Reserves -	1000.00
No Activity	
Miscellaneous -	-107.00
No Activity	
TOTAL FUNDS -	1171219.63
TOTAL ACCOUNTS -	1171219.63

CERTIFICATES OF DEPOSIT:

METER DEPOSIT	1000.00
METER DEPOSIT	1000.00
GENERAL/STREETS	30000.00
GENERAL/STREETS	10000.00

LAW ENFORCEMENT REPORT: Deputy Sheriff Russ reported to the Board. His SD State certification has been completed.

FAILURE TO STOP: A complaint has been received that there are several failures to stop at the West Three Toes Street/Third Street West intersection. Deputy Sheriff Russ stated that he has been patrolling that intersection after receiving a complaint, but of course everyone stops when they see him. The installing of a speed bump on Third Street was discussed. It will be checked on.

BUFFALO BAR & LIQUOR STORE: H. Kalisiak was present to renew the contract for the lease of the Buffalo Bar & Liquor Store. It was decided to change the dates of the contract to April 16, 2019 through December 31, 2019, so the renewal date would coincide with the renewal of the liquor licenses. This would result in the lease being \$4500.00 for a 9 month lease. Motion was made by Routier, seconded by Lyons and carried to approve renewal of the Buffalo Bar & Liquor Store lease to Hunter Kalisiak with the term being April 16, 2019 through December 31, 2019.

WEST MAIN STREET: R. Ginsbach registered the complaint that since the improvement of West Main Street, he cannot get into his shop without dragging the bumper of his vehicle. It was decided to take a look at the drainage of the street after the next predicted storm and see what can be done. Contact will also be made with State DOT and Smith Ramsey Foundation to get the culvert & the drainage ditch south of Hwy 20 cleaned out for better drainage.

DRAINAGE COMPLAINT: A complaint was received at the office concerning the drainage of water at the East Three Toes Street/Third Street East intersection. It was decided to install a culvert on Third Street East to drain to the east side of Third Street East.

SRF LOAN PAYMENT: Haivala was directed to get permission from the SD DENR to make an extra payment on the principle of the SRF Loan #C462245-01.

See minutes →
of 5/13/19

for addition
of temporary

mb
license.

SUMMER HELP: Haivala was directed to advertise for 2 persons for summer help with salary being \$10.00 to \$15.00 per hour.

TRANSCANADA: The sale of water to TransCanada was tabled until further information is received.

PARKING ON US HIGHWAY 85: A complaint was received concerning trucks parking on US HWY 85 and blocking driveways. The Board stated that the residents should call the law enforcement.

FEDERAL SURPLUS: Smith requested permission to purchase roadway paint and sandbags from Federal Surplus at Huron. Permission was given.

SIDEWALKS: There was discussion on putting curb and gutter and sidewalks on the north side of West Tipperary Street. Research on grants, etc. will be done.

CHIP & SEAL PROJECT: Chip and Seal of the streets in Buffalo is being planned for this year. The Board is waiting for the Bids for the County to come in. A compaction of gravel is needed on West Main Street, a portion of Hodge Street and Third Street East. Smith stated that there is a milling process with "hardening" that is being considered by the County. Smith will check into this further.

SURPLUS PROPERTY: Motion was made by Lyons and seconded by Odell to declare the following as surplus property with appraisals of less than \$500.00:

- (1) Wooden Desk
- (1) Homemade Pickup Box Trailer
- (1) Air Compressor
- (1) Water Pump
- (1) Hose Reel with Hose)
- (2) Fuel Tank 250gal.

Roll Call Vote: Yes – Johnson, Routier, Humbracht, Lyons, Odell. No – 0

These items may be viewed by contacting Ryan Smith 605-375-3371 or the Town Office 605-375-3130. As these items are less than \$500.00 they will be privately sold by "first come, first served" offers.

Motion was made by Lyons and seconded by Odell to declare the following as surplus property:

- (1) Model #D-6B Caterpillar Dozer 1964
Crawler – Serial No. 44A-10746

Roll Call Vote: Johnson, Routier, Humbracht, Lyons, Odell. No – 0.

APPRAISAL: Dan Penn, Tim Olson and Jeremy Humbracht will be contacted to request appraisal of the Caterpillar Dozer.

WORKMANS COMP: The Buffalo Volunteer Fire Department Firefighters have been included in SDML Workmans Comp Fund coverage with the Town of Buffalo. An updated roster of firefighters will be requested and filed with the Town of Buffalo Finance Office.

CONFLICT OF INTEREST: Motion was made by Humbracht, and seconded by Johnson to adopt the following resolution:

RESOLUTION #001-2019

A RESOLUTION ADOPTING A CONFLICT OF INTEREST POLICY FOR ELECTED AND APPOINTED OFFICIALS OF THE TOWN OF BUFFALO

WHEREAS, South Dakota Codified Laws (hereinafter "SDCL") Section 1-56-10 requires that all non-state agencies receiving state grants and awards from a state agency adopt and enforce a conflict of interest policy; and

WHEREAS, the Town of Buffalo, South Dakota (hereinafter "Town") receives funds from the State of South Dakota either directly or through federal pass-through funds which will be subject to the statutory requirement that it enforce a conflict of interest policy; and

WHEREAS, while provisions addressing conflicts of interest for municipal officials currently exist in state law, the Town wishes to adopt a conflict of interest policy that incorporates these statutory requirements and assists its elected and appointed officials in recognizing, disclosing, and avoiding conflicts of interest; and

WHEREAS, adopting a conflict of interest policy will clarify expectations from the public when elected and appointed officials are conducting Town business; and

WHEREAS, the Town deems it in the best interest of the Town to adopt this Conflict of Interest Policy for the Town and for all elected and appointed officials of the Town.

NOW, THEREFORE BE IT RESOLVED by the Town Board of the Town of Buffalo, South Dakota, at the regular meeting thereof, held at the Buffalo Municipal Building at 107 First Street, Buffalo, SD 57720, at 6:00 p.m. on the 8th day of April, 2019, that there is hereby established the following Conflict of Interest policy, which in its entirety reads as follows:

**BUFFALO CONFLICT OF INTEREST POLICY
FOR ELECTED AND APPOINTED OFFICIALS**

The Town of Buffalo, South Dakota (hereinafter "Town") seeks to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid the appearance of such conflicts to the public it serves. Each elected and appointed official has the duty to place the interests of the citizens of the Town foremost in any dealing on behalf of the Town and has a continuing responsibility to comply with this Policy. This Policy applies to any elected or appointed official who serves on the Town Board, who serves on any board committee, or commission of the Town, or who is appointed to serve the Town in any capacity pursuant to SDCL Chap. 9-14 (collectively referred to as "Official").

Conflicts of interest may exist when an Official, or an immediate family member of such Official, has a personal or financial interest clearly separate from that of the general public on a matter before the Official. An immediate family member, for the purposes of this Policy is any person related to an Official within the first degree of consanguinity and includes a spouse, parent, child, grandparent, grandchild, or an individual claimed by the Official or his or her spouse as a dependent for federal income tax purposes. Such conflicts of interest may be financial or personal, direct or indirect, and the existence of a conflict of interest is dependent upon the unique facts of a particular situation.

It is the policy of the Town to follow state law regarding conflicts of interest, and this Policy is not intended to be stricter than the applicable requirements of state law. Generally, state law provides that an Official may not have a personal financial interest in any Town transaction for the purchase of labor or services, materials, or supplies, or real or personal property that belongs to the Town. An exception to this general rule may apply if the transaction is reasonable and just, if the contract is made without fraud or deceit, and if the Official

discloses the conflict and recuses himself or herself from participation in the decision for which there is a conflict of interest. These exceptions include the following:

- (1) A contract for \$5,000.00 or less;
- (2) A contract awarded by competitive bidding procedures if more than one competitive bid is submitted or, if only one competitive bid is submitted, the procedures in SDCL 6-1-2.1 have been followed;
- (3) A contract for professional services;
- (4) A contract awarded off of the state contract list at the established price or less;
- (5) A contract that does not require competitive bidding when there is no other source or supply or services and when the total of any such contracts does not exceed \$50,000.00 for a public improvement or \$25000.00 for a contract for supplies or services; or
- (6) A contract with an entity for which competitive bidding is not required unless the majority of the governing body are members or stockholders who collectively have a controlling interest, or any governing board Official is an officer or manager of such entity.

No department director who is authorized in his or her official capacity to sell or lease any property or to make any contract may be personally interested, directly or indirectly, in any such sale, lease, or contract.

Procedure When Conflicts of Interest Exist

If an Official who is a member of the Town Board, or a board, committee, or commission has a disqualifying interest in a matter before the body on which the Official serves, he or she shall disclose the conflict to the body prior to its consideration of the matter. Once this disclosure is made, the Official shall not formally participate in the official discussion, any executive session, or any vote on the matter. If the Official has a conflict of interest in the matter and chooses to participate in the discussion, the Official should leave his or her seat and speak on the item from the audience as a member of the public.

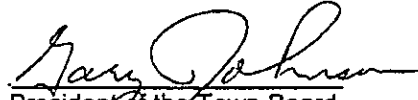
If it is alleged that an Official has a disqualifying conflict of interest in a matter before the Town Board, or a board, committee, or a commission on which the Official serves, and if the Official does not voluntarily refrain from participating in the matter, then the Official may be disqualified from official participating in consideration of the matter upon a two-thirds vote of Board, or a board, committee, or commission on which the Official serves. The Town Board, or a board, committee, or commission voting to disqualify such Official must make a specific finding of the disqualifying conflict of interest for which it has excluded the Official from participating in the matter under consideration. An Official disqualified in this manner may not participate in official discussion, any executive session, or any vote on the matter. If any Official desires assistance to determine if that Official, or another Official, has a disqualifying conflict of interest, the Official may request an advisory opinion from the Town Attorney's Office. Such opinion shall be made available to all members of the Town Board, or the board, committee, or commission about which the opinion is provided, but shall not be available for public inspection.

unless a majority of the members of the Town Board, or the board, committee or commission to which the opinion is provided votes to make such opinion public.

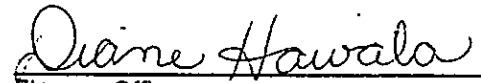
Distribution of Policy to Officials

Upon adoption of this Policy, the Town Attorney's Office shall distribute this Conflict of Interest Policy and all pertinent state law provisions to all Town Officials. This Policy and state law provisions shall be timely provided to all newly elected or appointed Officials.

Dated this 8th day of April, 2019.


President of the Town Board

ATTEST:


Finance Officer

Publication Date: April 18, 2019

Effective Date: May 8, 2019

Vote: Yes – Johnson, Routier, Odell, Lyons, Humbracht, No – 0

NUISANCE PROPERTY: The Town Board's purchase offer of \$10,000.00 for the property with the legal description of BU, Oinas, Blk1, Lt 4 has been accepted by the property owner. Motion was made by Odell, seconded by Humbracht and carried to purchase the property with the legal description of BU, Oinas, Blk1, Lt 4 for \$10,000.00. Town Attorney Ginsbach will complete the paperwork for the purchase. The Town will then try to sell the property with the stipulation that all buildings are demolished within a certain time of the resale.

MUNICIPAL ELECTION: As Jeremy Humbracht was the only person submitting a petition for the 3 year Trustee vacancy and no one submitted a petition for the 1 year Trustee vacancy, there will be no municipal election in June. Humbracht will receive an election certificate. The Board will appoint someone to fill the 1 year Trustee vacancy in July, 2019.

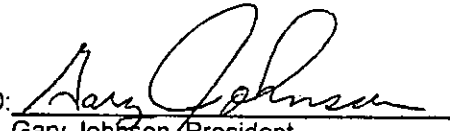
RETAIL MALT BEVERAGE AND SD FARM WINE LICENSE RENEWAL: Motion was made by Lyons, seconded by Odell and carried to approve the renewal applications of the 2019-2020 Retail Malt Beverage and SD Farm Wine Licenses and the Municipal Operating Agreements to the Blossoms & Brew and the Bowman Farmers Union Oil Co., Buffalo.

RESIGNATION: Diane Haivala informed the Board that she plans to resign as Finance Officer as of July 1, 2019. The position will be advertised, with interviews to begin in May, 2019.

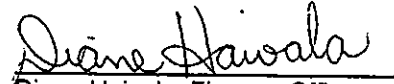
NEXT REGULAR MEETING: May 13, 2019, 6:00 p.m., Town Office

ADJOURNMENT: As there is no further business at this time, Johnson declared the meeting adjourned.

SIGNED:


Gary Johnson, President

ATTEST:


Diane Haivala, Finance Officer

Ex 604E

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., May 13, 2019, at the Town Office. Trustees present were Shaine Odell, Jeremy Humbracht, Randy Lyons, Gary Johnson and Traci Routier. Employees present were Diane Haivala, Ryan Smith and Dusty Ginsbach. President Johnson called the meeting to order.

GUESTS: Justin Lyons, Sam Olson, Randy Routier, Brandon Hunsucker and Ron Ginsbach were present as guests.

APPROVAL OF BILLS: Motion was made by Lyons, seconded by Routier and carried to approve payment of the following bills: Payroll – General – 6076.61, Water – 1350.81, Sewer – 1575.96; Town of Buffalo – Smith wages – 64.86; E. Smith – contract labor - 23.20; G & O Paper and Supplies – supplies – 70.30; Wallman Electric – repairs – 245.90; Town of Buffalo – meter dep refund – 25.00; Tim W. Olson Construction, Inc. – repairs – 280.00; ProPoint Coop. – fuel – 97.92; Northern Truck Equipment Corp. – cutting edge – 766.00; Nation Center News – publishing – 184.66; Grand Electric Coop, Inc. – kwh – 2224.54; Buffalo Hardware – supplies – 628.82; Olson Fuels, LLC – fuel – 101.11; Town of Buffalo – postage petty cash – USA Blue Book – supplies – 39.23; Western Dakota Waste Solutions, LLC – tire recycle – 2455.20; Stan Houston Equipment, Co., Inc – supplies – 107.70; Southwest Business Machines – supplies – 53.99; AFLAC – insurance – 13.30; Olson Propane, LLC – propane – 1342.32; MidContinent Testing Lab, Inc – analysis – 71.55; D. Johnson – refund – 500.00; U.S. Treasury – withholding correction – 27.54; Ryan Smith – travel expense – 333.00; K. Watson – wages – 196.89; Northwest SD Regional Landfill Association – operating fees – 3537.68; Town of Buffalo – meter dep refund – 25.00; T. Rue – wages – 305.19; Town of Buffalo – utilities – 149.08; SD Municipal League – workshop – 25.00; SD Municipal League – workshop fee – 50.00; SD Governmental Human Resource School – workshop fee – 50.00; SD Governmental Finance Officers' Association – 75.00; Northwest Pipe Fittings, Inc. – supplies -645.30; SD State Treasurer – sales tax – 159.16; K. Fox – wages – 346.08; A. Rolph – wages – 109.39; Verizon – cellular service – 124.63; Jenner Equipment – supplies – 84.72; Eido Connect – ad – 100.80; Verizon – cellular service; 124.63; West River Coop. Telephone Co. – telephone – 289.60; Olson Propane – propane – 268.11; EFTPS – Employers Federal Tax – 2199.08.

MINUTES: There were three additions/ corrections to the April 8, 2019, minutes. The list of surplus property was corrected as follows: (1) Fuel Tank 250 gal. The description of the Caterpillar Dozer should include the year made of 1964. The addition of : TEMPORARY MALT BEVERAGE LICENSE: Motion was made by Routier, seconded by Humbracht and carried to approve the Temporary Malt Beverage License application to the Buffalo Bar and Liquor Store, to be used at the Harding County Rec Center on April 25, 2019. Motion was made by Humbracht, seconded by Odell and carried to approve the April 8, 2019, regular meeting minutes as read with the above additions and corrections.

FINANCIAL REPORT: Motion was made by Routier, seconded by Odell and carried to approve the April, 2019, financial report as follows:

General Fund -	\$296444.30
Receipts -	25231.67
Expenditures -	<u>20282.82</u>
Balance -	301393.15

Harding County Memorial Rec Center	10652.28
Receipts -	250.00
Expenditures -	<u>2386.17</u>
Balance -	8516.11
Bridge & Street Fund -	314918.17
Receipts -	1898.12
Expenditures -	<u>.00</u>
Balance -	316816.29
General Reserves -	275991.64
No Activity	
Liquor Fund -	36199.59
Receipts -	4200.00
Expenditures -	<u>330.28</u>
Balance -	40069.31
Bar Improvement -	1642.52
Water Fund -	31063.04
Receipts -	5317.14
Expenditures -	<u>4212.85</u>
Balance -	32167.33
Water Surcharge -	81153.17
Receipts -	6304.94
Expenditures -	<u>12573.24</u>
Budget -	74884.87
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5236.65
No Activity	
Sewer Fund -	35238.01
Receipts -	3676.30
Expenditures -	<u>2131.43</u>
Balance -	36782.88
Sewer Reserves -	60281.25
No Activity	
Solid Waste Fund -	1506.01
Receipts -	4114.96
Expenditures -	<u>5010.09</u>
Balance -	610.88
Solid Waste Reserves -	1000.00
No Activity	

Miscellaneous -	-107.00
No Activity	

TOTAL FUNDS -	1175285.88
TOTAL ACCOUNTS -	1175285.88

CERTIFICATES OF DEPOSIT:

METER DEPOSIT	1000.00
METER DEPOSIT	1000.00
GENERAL/STREETS	30000.00
GENERAL/STREETS	10000.00

TRANSFERS: After discussion concerning transferring monies to a 3 year Certificate of Deposit, it was decided to table it for now. Motion was made by Odell, seconded by Lyons and carried to transfer \$1000.00 from Solid Waste Reserve to Solid Waste Fund and \$5000.00 from General Reserve to Solid Waste Fund.

CHIP AND SEAL: The County accepted bids were reviewed for the Town Chip and Seal Project. Smith was instructed to check further into the bids and call the bidders.

BUFFALO BAR AND LIQUOR STORE: No report.

LAW ENFORCEMENT REPORT: No report.

HARDING COUNTY MEMORIAL REC CENTER: Maintenance items were discussed.

DRAINAGE: Drainage on West Main Street was discussed. Smith stated that he did get permission from the owner of the property south of Hwy 20 to clean out the drainage ditch on his property. Smith will contact SD DOT concerning the culverts on SD Hwy 20 being too high to drain. R. Ginsbach stated that he had a friend of his, who is an engineer, coming to look at the drainage around his property at 402 W. Main Street.

RESTRICTED USE SITE: Smith stated that the digging of a new pit at the Buffalo Restricted Use Site is on the agenda for the next Harding County Commissioner meeting as Buffalo and Harding County have taken turns paying for the excavation. Olson stated that Olson Construction would dig the pit in exchange for dirt. Motion was made by Lyons, seconded by Routier and carried to have Olson Construction dig the new pit at the Buffalo Restricted Use Site in exchange for dirt.

Smith will check on the heating of the Restricted Use Site building and options of a port a potty or outdoor toilet.

Haivala will include a letter within the utility bills informing the users that they are responsible for any littering on the way to the Restricted Use Site and a reminder that ALL household garbage must be bagged.

WATER SALE: Smith stated that there will be a discussion at the Town Office at 10:00 a.m., May 16, 2019, with TransCanada representatives on the plan of obtaining water from the Town of Buffalo for the TransCanada Pipeline Project. Lyons would like to attend.

LAGOON: Smith stated that he is in the process of working with DENR for discharging from the town lagoon.

STREET: Smith stated that a culvert has been installed on Third Street East near the Third Street/Three Toes Street intersection.

SUMMER HELP: Motion was made by Odell, seconded by Routier and carried to hire Kyler Baier for the Summer Help position at \$15.00/hour.

BASEBALL FIELD: J. Lyons stated that a group of interested persons has come up with a plan to replace the backstop at the Trevillyan Baseball Field that was destroyed last year by weather. They feel that it would cost a total of \$6500 for the whole project and are asking for funding of \$5000.00 from the Town of Buffalo Recreation Department. They have started an application for a grant thru Minnesota Twins, but do not know if it will qualify. Motion was made by Odell, seconded by Humbracht and carried to grant funding of \$5000.00 from the Buffalo Parks & Recreation Department to the Trevillyan Baseball Field repair project. Hunsucker stated that there has been no water at the Field since a water break years ago and wonders if this could be fixed. Smith will look into the situation.

AUTOMATIC READERS: Smith stated that installing automatic readers for water usage to 150 households would cost around \$50000.00. Haivala stated an estimate of 235 users.

SUMMER NIGHTS: Olson, representing the Chamber of Commerce, stated that the Chamber is organizing "Summer Nights" on First Street W within the Town of Buffalo for the dates of June 20, July 11 and August 1. There will be a band, vendors, street games, etc. Motion was made by Routier, seconded by Lyons and carried to shut off First Street W from 101 – 207 during "Summer Nights" and grant "open container" on the same section until 10:00 p.m. Temporary alcohol licenses will need to be issued as follows: Buffalo Bar & Liquor Store – June 20, No. 3 Saloon – July 11 and Economic Development – August 1.

FLOYD SUBDIVISION/MANUFACTURED HOME PARK: A letter has been received from a resident concerning the proper permitting of Colt Floyd's Manufactured Home Park. The Buffalo Planning and Zoning Board have also approved a recommendation to the Town Board that they investigate the proper permitting and see that the current ordinance is being adhered to concerning the Floyd Subdivision. D. Ginsbach, Town Attorney, recommended that a continuous conditional use permit for a mobile home park be applied for.

CLEAN UP WEEK: The Board has scheduled May 20 – 25th, 2019, as Clean Up Week within the Town of Buffalo. Posters will be posted.

DRINKING WATER ACHIEVEMENT AWARD: The Town of Buffalo, along with Greg Ginsbach and Ryan Smith, has received a Drinking Water Certificate of Achievement Award from SD DENR for demonstrating excellence in water system management and maintenance.

SURPLUS PROPERTY: The 1964 Dozer has not been appraised at this time.

NUISANCE PROPERTY: Motion was made by Humbracht and seconded by Lyons to approve the following resolution:

RESOLUTION #002-2019

A RESOLUTION OF THE TOWN OF BUFFALO, SOUTH DAKOTA DECLARING A PUBLIC NUISANCE

WHEREAS, the property having an address of 506 4th Street, Buffalo, SD 57720, and a legal description of Lot 4 of Block 1, Oinas Addition to the Town of Buffalo, Harding County, South Dakota is an unsafe or dilapidated building, and

WHEREAS, the aforementioned property is kept or maintained in such a manner that it causes or tends to cause substantial diminution in value of the other property in the neighborhood in which the premises is located, and

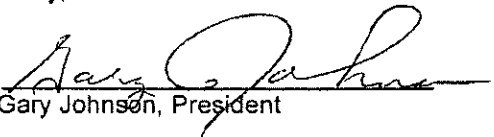
WHEREAS, the aforementioned property is a possible harborage for rats, snakes, and other vermin,

WHEREAS, the aforementioned property in its current state of disrepair and uninhabitability is hazardous and is an attractive nuisance that is likely to attract children who are unable to appreciate the risk posed by the condition.

THEREFORE, BE IT RESOLVED, that the Town of Buffalo declares the aforementioned property to be a public nuisance in that it is a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

BE IT FURTHER RESOLVED, that the Town of Buffalo intends to take the aforementioned property in fee simple absolute to abate the nuisance and pay to the owner of the property just compensation, as it is a necessary action to further the public good.

Dated at Buffalo, South Dakota on this 13th day of May, 2019.

BY: 
Gary Johnson, President

ATTEST: 
Diane Haivala, Finance Officer

Roll Call Vote: Yes – Routier, Lyons, Humbracht, Odell, Johnson, No – 0.

A purchase agreement for \$10000.00 was reviewed and signed by President Johnson and will be sent to the current owner of the property.

BUILDING PERMIT: A building permit application with a variance for property with the legal description of BU, Oinas, Blk 2, Lt 13-14-15, has been submitted to the Town Board by Ryan and Stephanie Smith. The Buffalo Planning and Zoning Board recommendation to the Town Board is to allow the placement of a 2019 manufactured HUD house 30 ft X 76 ft on the property described as BU, Oinas, Blk 2, Lt 13-14-15, owned by Ryan and Stephanie Smith, with

a front setback of 10 ft. from the property line, with the consideration of the 31 ft. from the street curb. Motion was made by Odell, seconded by Lyons and carried to approve building permit #415 to Ryan and Stephanie Smith at BU, Oinas, Blk 2, Lt 13-14-15.

ANNUAL REPORT: The 2019 Annual Report was presented to the Board. Motion was made by Lyons, seconded by Routier and carried to approve the 2019 Annual Report and ordered published and sent to Legislative Audit.

SHOP: Smith stated that he had checked on the spray foam insulation for the north shop walls. The prices were Southern Comfort - \$4300.00 and Olson Construction \$5200.00. He plans to check into other options.

BUFFALO PLANNING AND ZONING BOARD: Motion was made by Routier, seconded by Lyons and carried to appoint Matt Weakland and Shaine Odell to the Buffalo Planning and Zoning Board for 3 year terms of office beginning July 1, 2019.

WEB SITE: There was discussion concerning a web site for the Town of Buffalo. Bowman, ND, stated it cost them an estimated \$20000.00 to build a web site. Haivala will check with SDML concerning a company that does this.

JOB APPLICATIONS: Motion was made by Routier, seconded by Odell and carried to go into executive session to review job applications for Restricted Use Site Attendant and Finance Officer at 9:32 p.m. The Board returned to regular session at 10:00 p.m.

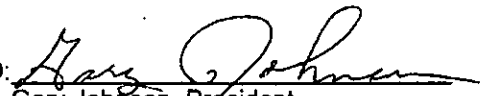
INTERVIEWS: Interviews will be done at 6:00 p.m., Tuesday, May 15, 2019, at the Town Office.

SPECIAL MEETING FOR INTERVIEWS: 6:00 p.m., May 14, 2019.

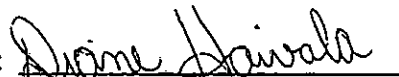
NEXT REGULAR MEETING: June 10, 2019, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned.

SIGNED:


Gary Johnson, President

ATTEST:


Diane Haivala, Finance Officer

Ex 604F

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., June 10, 2019, at the Town Office. Trustees present were Shaine Odell, Jeremy Humbracht, Gary Johnson and Traci Routier. Employees present were Diane Haivala, Ryan Smith, Deb Johnson, and Dusty Ginsbach. President Johnson called the meeting to order.

GUESTS: Keith Russ, Sara Sabo, Gail Parfrey, Tom Johnson, Hunter Kalisiak, Randy Routier and Ron Ginsbach were present as guests.

APPROVAL OF BILLS: Motion was made by Humbracht, seconded by Routier and carried to approve payment of the following bills, with Haivala checking on the demand charge on the Grand Electric Cooperative bill totalling \$3346.36: Payroll - General - 9,574.28, Water - 1350.81, Sewer - 1575.96; Buffalo Hardware, LLC - supplies - 1,410.45; Harding County 4-H Rodeo - Co-Sponsor - \$50.00; AFLAC - insurance - 13.30; ProPoint - fuel - 45.70; Ace In the Hole Construction, LLC - road repairs - 2,837.65; SD DENR - drinking water fee - 180.00; SD DOT - Abrasive - 600.00; Wallman Electric - Bar light repair - 99.92; Town of Buffalo - transfer of monies - 6,000.00; Town of Buffalo - utilities - 141.88; Olson Fuels, LLC - fuel - 154.96; D. Haivala - postage - 55.00; US Postal Service - postage - 76.00; EFTPS - Employer Federal Tax - 2,544.44; Eido Connect - advertising - 50.40; Nation Center News - publishing - 387.67; West River Coop. Telephone Co. - telephone service - 294.32; Blossom & Brew - flowers/ funeral - 50.00; K. Fox - wages - 380.97; K. Baier - wages - 1,226.16; B. Maupin - wages - 321.37; A. Rolph - wages - 34.63; K. Watson - wages - 173.81; SD State Treasurer - sales tax - 208.04; SD Retirement System - contributions - 1,020.40; Baseball Field Program - repairs - 5000.00; Harding County Highway Department - gravel - 150.00; Northwest Pipe Fittings, Inc. - supplies - 1326.22; Town of Buffalo - postage petty cash - 181.10; Harding County Treasurer - Law Enforcement Contract - 10750.00; US Bank - SRF Loan Extra Payment - 65,000.00; Nation Center News - advertising - 349.00; NWSD Regional Landfill Association - operating fees - 3,762.68; H & L Super Valu - supplies - 40.34, Verizon - cellular service - 124.65.

MINUTES: Motion was made by Routier, seconded by Humbracht and carried to approve the May 13, 2019, Regular Meeting minutes and the May 14, 2019, Special Meeting minutes as read.

FINANCIAL REPORT: Motion was made by Routier, seconded by Humbracht and carried to approve the May, 2019, financial report as follows:

General Fund -	\$301,393.15
Receipts -	51,729.11
Expenditures -	<u>18,860.37</u>
Balance -	334,261.89
 Harding County Memorial Rec Center	 8,516.11
Receipts -	400.00
Expenditures -	<u>1,908.42</u>
Balance -	7,007.69
 Bridge & Street Fund -	 316,816.29
Receipts -	2,795.50

Expenditures -	.00
Balance -	319,611.79
General Reserves -	275,991.64
No Activity	
Liquor Fund -	40,069.31
Receipts -	.00
Expenditures -	775.89
Balance -	39,293.42
Bar Improvement -	1,642.52
Water Fund -	32,167.33
Receipts -	5,626.43
Expenditures -	3,288.40
Balance -	34,505.36
Water Surcharge -	74,884.87
Receipts -	5,872.91
Expenditures -	.00
Balance -	80,757.78
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5,236.65
Receipts -	50.00
Expenditures -	50.00
Balance -	5,236.65
Sewer Fund -	36,782.88
Receipts -	3,443.20
Expenditures -	1,812.79
Balance -	38,413.29
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	611.88
Receipts -	5,223.05
Expenditures -	7,370.61
Balance -	-1,535.68
Solid Waste Reserves -	1,000.00
Receipts -	.00
Expenditures -	1,000.00
Balance -	.00
Miscellaneous -	-107.00
No Activity	

TOTAL FUNDS -	1,215,360.60
TOTAL ACCOUNTS -	1,215,360.60

CERTIFICATES OF DEPOSIT:	
METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00
GENERAL/STREETS	30,000.00
GENERAL/STREETS	10,000.00

OUTSTANDING CHECKS: Motion was made by Humbracht and seconded by Routier to approve the resolution as follows:

RESOLUTION #003-2019

RESOLUTION OF THE TOWN OF BUFFALO, SOUTH DAKOTA
CANCELLING CHECKS NOT TIMELY PRESENTED

WHEREAS, pursuant to SDCL 9-23-21 the Town of Buffalo may by resolution cancel any check that has not been presented for payment at any time within 180 days of the date on which the check was issued; and

WHEREAS, the Town of Buffalo wishes to cancel all outstanding checks that have not been presented and are over one year of age from the date on which they were issued.

NOW, THEREFORE, BE IT RESOLVED by the Town of Buffalo, South Dakota, as follows:

All outstanding checks not presented for more than one year since date of issue and numbered as follows: 34453, 34824, 34867, and 34937 are hereby cancelled by resolution of the Town of Buffalo, South Dakota, a municipality of the State of South Dakota.

Passed, adopted and approved by the Town of Buffalo, South Dakota this 10th day of June, 2019.

By: 
PRESIDENT, BOARD OF TRUSTEES

ATTEST: 
FINANCE OFFICER

(SEAL)

VOTES FOR RESOLUTION: Routier, Odell, Humbracht and G. Johnson
VOTES AGAINST RESOLUTION: 0

BAD CHECKS: Motion was made by Odell, seconded by Humbracht and carried to write off the uncollectible checks of \$107.00 under the Miscellaneous Fund.

LAW ENFORCEMENT REPORT: Deputy Sheriff Russ reported on law enforcement activity during May. Russ reported that Sheriff Sabo is taking care of the abandoned car east of the Congregational Church.

HARDING COUNTY MEMORIAL REC CENTER: Haivala discussed the use of chairs, tables, coffeepots, etc. from the Harding County Memorial REC Center. Motion was made by Humbracht, seconded by Routier, and carried to have a sign up-sheet and charge a deposit of \$100 when items are borrowed from the Harding County Memorial Rec Center

BUFFALO BAR & LIQUOR STORE: Kalisiak dropped off the temporary alcohol license that he had signed. He had no other concerns.

SUMMER NIGHTS: Sabo was present to confirm the plans for the Summer Nights planned for June 20, 2019. The Board approved the closure of the streets with barricades on Main Street at Hwy 85 and west on Main, North on 1st Street near the Bank and South on 1st Street near Hwy 20. The barricades would be up from 4:30 to 10:00 p.m. A map for the yard sales during the day will be available. She also has the REC Center meeting room reserved for a group rummage sale for those from out of the Town Limits.

WATER SALE: The TransCanada Keystone Pipeline, LP Temporary Access Road agreements for transportation of water were reviewed.

CHIP AND SEAL PROJECT: Smith stated that he had contacted Gunderson Trucking for hauling of chips, Jensen Rock & Sand, Inc. for application of chip and seal, Simon Contractors for the oil and Fisher Sand and Gravel for the chips, all under accepted bids of Harding County.

STREETS: Smith informed the Board that he has acquired proposals from Tim W. Olson Construction, Inc. and Ace in the Hole Construction, LLC, for the road work to be done at the intersection of 3rd Street E. and Allison Street and the regrade and repack 3rd Street East, East Tipperary Street and East Hodge Street in order to prepare streets to be chip and sealed. Sacrison Paving has been contacted to asphalt patch the street at 514 3rd Street and 308 Hodge Street.

R. Ginsbach reported that his friend, Neil Stadalski, had looked over the drainage on West Main. He had talked to State about lowering the culverts on SD Hwy 20, but they said no. He thought the Town could get a permit to bore under Hwy 20. R. Ginsbach wondered if the culvert on 3rd Street could be taken out and just have a valley.

POND: D. Ginsbach stated that he had visited with D & M Water Co. on the south side of Buffalo concerning a pond in that area and they were not against it. Ginsbach felt that all storm water within the Town of Buffalo could be directed to the pond. He also stated there is a USD Storm Water Grant. Also there are engineers on staff with the NRCS. Game, Fish and Parks may also have some funding. The pond would prevent soil erosion and nutrient runoff.

COMMUNITY ACCESS GRANT: There was discussion on applying for a Community Access Grant for Tipperary Street to the School. The application is due July 15. The Town of Buffalo would have to pay for the engineering.

APPRAISAL: Motion was made by Routier, seconded by Odell and carried to accept the appraisal of \$1500.00, submitted by Wade Bail, Dennis Wallman and Jeremy Humbracht, for the Model #D6B Caterpillar Dozer Crawler 1964, Serial No. 44A-10746. The Certificate of Appraisal is filed at the Finance Office. Haivala will place a notice in the newspaper, calling for sealed bids for the Dozer, to be opened at the July 8, 2019, regular meeting.

LEASE: Ron Floyd had spoken to the Town Attorney concerning sale or lease of the piece of property belonging to the Town of Buffalo which is his parking lot at the East Sagebrush Apartment building. Motion was made by Routier, seconded by Odell and carried to lease the parking lot on the east side of East Sagebrush Apartment building to Ron Floyd for \$500.00 for the 50 year term of lease. D. Ginsbach will draw up the paperwork.

FLOYD SUBDIVISION: There has been no decision made concerning a conditional use permit on the Floyd Mobile Home Park.

PRELIMINARY REPLAT: Gail Parfrey and Tom Johnson were present to submit a Preliminary Replat of Sacrison Pines Subdivision, Jack Pine Loop, Lot 1, 2, 3, 4, 5, 6 and 7, to the Town Board for approval. The 7 lots will be reduce to 2 lots as Parfrey and Johnson felt that it would be easier to sell 2 large lots rather than 7 small lots and there would be better access to 4th Street West. The Buffalo Planning and Zoning Board recommends to the Town Board that they approve the preliminary replat. Motion was made by Routier, seconded by Humbracht and carried to approve the Preliminary Replat of Sacrison Pines Subdivision, Jack Pine Loop, Lot 1, 2, 3, 4, 5, 6 and 7, changing the 7 lots to 2 lots. Haivala will set up a Buffalo Planning and Zoning Meeting for 5:30 p.m., July 8, 2019, to review the final replat.

TEMPORARY ALCOHOL LICENSE APPLICATIONS: Motion was made by Humbracht, seconded by Routier and carried to approve the Temporary Liquor License to Buffalo Bar & Liquor Store, Hunter Kalisiak, for 1st Street W downtown "Summer Nights" on June 20, 2019 and a Temporary Malt Beverage License to No. 3 Saloon, Nicole Balcom, for 1st Street W downtown "Summer Nights" on July 11, 2019.

BUFFALO PLANNING AND ZONING ADMINISTRATOR: Motion was made by Humbracht, seconded by Odell and carried to appoint Ryan Smith as Administrator of the Buffalo Planning & Zoning.

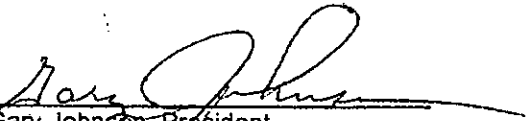
HARDING COUNTY ECONOMIC DEVELOPMENT CORPORATION: D. Ginsbach presented a project to get the Harding County Economic Development Corporation active to the Board. The Economic Development Corporation could purchase the property at 506 4th Street, but the corporation has only \$7,500 - \$8,000. The corporation plans to use volunteers to tear down all the buildings on the property and ask the Harding County High School Trade School to build a garage. The corporation would need money to pay for the supplies. Ginsbach suggested that the Town of Buffalo could give the property to the Economic Development Corporation with possibly an agreement that when it was sold, the municipality recover the \$10,000 purchase price or part thereof. This has been tabled until the next regular meeting.

BUFFALO PLANNING & ZONING MEETING: 5:30 p.m., July 8, 2019.

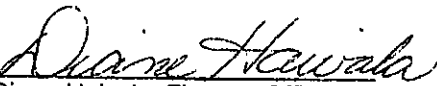
NEXT REGULAR MEETING: July 8, 2019, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned.

SIGNED:


Gary Johnson, President

ATTEST:


Diane Haivala, Finance Officer

Ex 6046

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:30 p.m., July 8, 2019, at the Town Office. Trustees present were Shaine Odell, Jeremy Humbracht, Gary Johnson, Randy Lyons and Traci Routier. Employees present were Diane Haivala, Ryan Smith, and Dusty Ginsbach. President Johnson called the meeting to order.

GUESTS: Gail Parfrey, Tom Johnson, Randy Routier, Virginia Green and Jo Piekkola were present as guests.

APPROVAL OF BILLS: Motion was made by Lyons, seconded by Odell and carried to approve payment of the following bills: Payroll – General – 9574.28, Water – 1350.81, Sewer – 1575.96; Buffalo Hardware, LLC – supplies – 1203.63; Grand Electric Coop, Inc. – kwh – 3436.90; West River Cooperative Telephone, Co. – telephone – 293.89; State of SD – Sales Tax – 185.35; K. Watson – Wages – 139.68; Ryan Smith – reimbursement/supplies – 62.45; Tim Olson Construction – Street Repairs – 7207.25; AFLAC – Insurance – 13.00; Tammy Bruha – Refund – 40.00; Town of Buffalo – postage petty cash – 166.90; Deb Johnson – reimbursement /education – 604.17; A-1 Sewer & Drain, Inc – jetting – 3089.60; EFTPS – Employers Federal Tax – 3791.12; K. Fox – wages – 47.88; NWSD Regional Landfill Association – operating fees – 3450.18; Tim W. Olson Construction – repairs/supplies – 3747.28; Town of Buffalo – utilities – 71.38; SD Association of Rural Water Systems, Inc. – technical assistance service – 400.00; B. Maupin – wages – 487.06; Town of Buffalo – utilities – 70.50; Town of Buffalo Misc. Dept. – NSF Checks – 107.00; H & L Super Valu – supplies – 54.63; K. Baier – wages – 1977.46; Olson Fuels – fuel – 319.33; A2Z Printing – office supplies – 14.00; US Bank – SRF Loan #C462245-01 – 12573.24; R. Smith – reimbursement/vehicle service – 45.49; SD Federal Property Agency – floor buffer – 100.00; Sheri Blankenbaker – supplies – 58.00; Nation Center News – 194.60; ProPoint Cooperative – fuel – 92.82; SD Retirement System – contributions – 1440.12; Verizon – cellular service – 125.45.

MINUTES: Motion was made by Humbracht, seconded by Odell and carried to approve the June 10, 2019, Regular Meeting minutes as read.

FINANCIAL REPORT: Motion was made by Humbracht, seconded by Odell and carried to approve the June, 2019, financial report as follows:

General Fund -	\$334,261.89
Receipts -	35,263.88
Expenditures -	<u>44,102.12</u>
Balance -	325,423.65
Harding County Memorial Rec Center	7,007.69
Receipts -	120.00
Expenditures -	<u>2,049.40</u>
Balance -	5,078.29
Bridge & Street Fund -	319,611.79
Receipts -	8,876.42
Expenditures -	<u>2,837.65</u>
Balance -	325,650.56

General Reserves -	275,991.64
No Activity	
Liquor Fund -	40,683.58
Receipts -	.00
Expenditures -	<u>206.92</u>
Balance -	40,476.66
Bar Improvement -	1,642.52
No Activity	
Water Fund -	34,505.36
Receipts -	8,939.63
Expenditures -	<u>3,593.67</u>
Balance -	39,851.32
Water Surcharge -	80,757.78
Receipts -	6,433.32
Expenditures -	<u>65,000.00</u>
Balance -	22,191.10
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5,236.65
Receipts -	25.00
Expenditures -	<u>.00</u>
Balance -	5,261.65
Sewer Fund -	38,413.29
Receipts -	4,005.65
Expenditures -	<u>1,785.25</u>
Balance -	40,633.69
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	(1,535.68)
Receipts -	10,567.54
Expenditures -	<u>5,066.22</u>
Balance -	3,965.64
Solid Waste Reserves -	.00
No Activity	
Miscellaneous -	-107.00
Receipts -	107.00
Expenditures -	<u>.00</u>
Balance -	.00
TOTAL FUNDS -	1,166,447.97

TOTAL ACCOUNTS - 1,166.447.97

CERTIFICATES OF DEPOSIT:

METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00
GENERAL/STREETS	30,000.00
GENERAL/STREETS	10,000.00

PLAT: The Plat of Lot 1 and Lot 2 in Block 4 of West Buffalo Addition Sacrison Pines Subdivision, submitted by Gail Parfrey and Tom Johnson, was reviewed. The Buffalo Planning and Zoning Board's recommendation to the Town Board was to approve the Plat. Motion was made by Humbracht and seconded by Odell to approve the following resolution:

Resolution #004-2019

BE IT RESOLVED by the Town of Buffalo Board of Trustees, Lot 1 and Lot 2 of Sacrison Pines in Block 4 of West Buffalo Addition in the City of Buffalo, having been examined is hereby approved in accordance with the provisions of South Dakota compiled law, Chapter 11-3, and any amendments thereof.

Passed, adopted and approved by the Town of Buffalo, South Dakota this 8th day of July, 2019

By: _____
Gary Johnson, President, Board of Trustees

ATTEST: _____
Diane Haivala, Acting Finance Officer

(SEAL)

Votes for Resolution – Johnson, Routier, Lyons, Odell, Lyons
Votes Against Resolution – 0

AFLAC INSURANCE: Virginia Green, AFLAC agent, informed the Board and employees on the AFLAC Insurance and left information to be reviewed. Anyone interested in the insurance, may call her.

TRUSTEE: Motion was made by Odell, seconded by Humbracht and carried to appoint Randy Lyons to fill the vacancy for a 1 year Trustee. The Oath was signed.

ELECTION OF OFFICERS: Gary Johnson was nominated for President by Lyons. Humbracht made the motion that nominations cease, seconded by Odell and carried. Traci Routier was nominated as Vice President by Johnson. Johnson made the motion that nominations cease, seconded by Humbracht and carried.

LAW ENFORCEMENT REPORT: There was no law enforcement officer present. There was some discussion of bringing back the DARE Program at the school.

BUFFALO BAR & LIQUOR STORE: No report was given.

HARDING COUNTY MEMORIAL REC CENTER: Jo Piekkola was present to discuss her plans of resealing the floors in the Harding County Memorial Rec Center with Hilliard Products. 15 -20 tiles will have to be replaced. She plans to use 2 base coats and 4 seal coats on the floors. The gym lines will be painted on. She informed the Board of ways to keep it clean and preserve the seal. Motion was made by Lyons, seconded by Humbracht and carried to have Piekkola reseal the floors at the Harding County Memorial Rec Center. Time has been blocked out in August for the resealing.

JETTING OF SEWERS: Smith stated that jetting of the sewers has been completed on the west side of Town and from the Laundromat.

WATER SALE TO TRANSCANADA: Smith stated that the test hole for water will be done at the baseball fields for water to sell to TransCanada this next week. A water purchase agreement has been received but the Board will wait to sign it after the test hole results.

CHIP & SEAL: Smith does not know when the Chip & Seal Project will begin.

STREETS: The repair at the intersection of East Allison Street/Third Street East has been completed by Olson Construction.

The grading of Third Street East has not been completed by Ace in the Hole Construction at this time.

COMMUNITY ACCESS GRANT: The Board reviewed the possibility of applying for a Community Access Grant to improve Tipperary Street West. Motion was made by Routier, seconded by Lyons and carried to approve having Randy Fischer complete a cost estimate for the Project and if it is below Brosz Engineering's estimate, he would be hired.

TIPPERARY STREET: The blading of Tipperary Street East was discussed.

MOSQUITO SPRAYING: Approval was given to have Smith spray the Golf Course and Centennial Park for mosquitoes.

DEED: The Board requested Haivala to take the warranty deed for Lot 4, Block 1 of Oinas' Addition to the Town of Buffalo, to the Harding County Register of Deeds to be recorded. Motion was made by Lyons, seconded by Routier and carried that the Town of Buffalo would pay the outstanding water surcharge of \$76.00 on the property described as Lot 4, Block 1 of Oinas' Addition to the Town of Buffalo.

HARDING COUNTY DEVELOPMENT CORPORATION: The Harding County Development Corporation is interested in acquiring the land at Lot 4, Block 1 of Oinas' Addition. The Corporation was set up in 2016 to attract individuals and businesses to the community. The Harding County Development Corporation was encouraged to inform the community of the Corporation's purpose, as many have questioned what its purpose is. Motion was made by Lyons, seconded by Routier and carried to surplus the Town owned property with the description of Lot 4, Block 1 of Oinas Addition, Town of Buffalo, and transfer the property to Harding County Development Corporation(a non-profit industrial corporation) with the conditions that the Town of Buffalo's \$10,000.00 investment is repayed at the time of sale and the existing buildings demolished by September 30, 2019, and the lot is ready for improvement.

SURPLUS PROPERTY: The motion was made by Humbracht and seconded by Odell to declare the property with the description of Lot 4, Block 1 of Oinas Addition, Town of Buffalo, as surplus property. G. Johnson will arrange for three real estate owners to do an appraisal of the property. Roll Call Vote: Yes – Johnson, Lyons, Odell, Routier and Humbracht. No – 0.

LICENSE TO USE PREMISES: As the Sagebrush Properties, LLC is using part of the Town of Buffalo owned property with the description of Lot 6, Block U of Smith's Amended Addition to the Town of Buffalo as a parking lot, a License to Use Premises document was reviewed. The document provides a fee of \$500 (five hundred dollars) per 25 years from the licensee. It was tabled until a later meeting.

DOZER BIDS: Sealed bids for the surplused Model #D6B Caterpillar Dozer Crawler were opened as follows: Dalton Hurst - \$750.00, John W. Humbracht - \$1256.00. Motion was made by Odell, seconded by Lyons and carried to accept the highest bid of \$1256.00 received from John W. Humbracht.

SUMMER NIGHTS: Closure of the streets for the "Summer Nights" was discussed.

TEMPORARY MALT BEVERAGE LICENSE: Motion was made by Lyons, seconded by Odell and carried to approve the Temporary Malt Beverage License application to the Harding County Development Corporation to sell malt beverages during the "Summer Nights" on the block of 101-109 First Street in Buffalo on August 1, 2019.

SURPLUS PROPERTY: The motion was made by Routier and seconded by Lyons to surplus the Harbortouch POS software and equipment. Roll Call Vote: Yes - Johnson, Lyons, Odell, Routier, Humbracht, No – 0. It will be advertised for sealed bids.

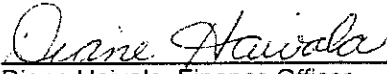
DRUG TEST POLICY: A drug test policy for all employees will be included in the Town of Buffalo Employee Policy Manual.

EXTENDED EMPLOYMENT: Because of a family illness, Deb Johnson, will be gone the next week. Motion was made by Routier, seconded by Humbracht and carried to extend Diane Haivala's retirement date to July 31, 2019. At that time, any accumulated leave time will be paid to Haivala.

NEXT REGULAR MEETING: August 12, 2019, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned.

SIGNED: 
Gary Johnson, President

ATTEST: 
Diane Haivala, Finance Officer

Acting

Ex 604H

MINUTES OF SPECIAL MEETING
TOWN OF BUFFALO

The Board of Trustees of the Town of Buffalo met in Special Session at 5:30 PM on August 1st, 2019 at the Town Office to discuss the property purchased by the Town Of Buffalo at Lot 4, Block 1 of Oinas' Addition to the Town of Buffalo. Trustees present were Gary Johnson, Shaine Odell, Traci Routier, and Randy Lyons. Jeremy Humbracht was absent. Employees present were Deb Johnson, Ryan Smith, and city attorney Dusty Ginsbach. Board President Johnson called the meeting to order.

GUESTS: Sue Litzel and Randy Routier

A motion was made by Routier, 2nd by Lyons to declare the property described as Lot 4, Block 1 of Oinas' Addition to the town of Buffalo as surplus property.

A motion was made by Lyons, 2nd by Routier the Town of Buffalo will pay the back taxes owed on above property.

Discussion was held and it was decided to adapt Resolution #003-2019.

RESOLUTION # 003-2019

A RESOLUTION TO TRANSFER SURPLUS REAL PROPERTY GENERALLY
LOCATED AT 506 4TH STREET AND ASSIGN THE TOWN'S INTEREST IN THE
PROPERTY TO HARDING COUNTY DEVELOPMENT CORPORATION.

WHEREAS, on July 8, 2019, the Town of Buffalo, South Dakota declared certain real property, described more fully below, to be surplus and no longer suitable for municipal purposes; and

WHEREAS, a board of three disinterested appraisers who are freeholders within the municipality was appointed to establish a value of the property as required by statute; and

WHEREAS, such board has appraised the real property and presented its findings; and

WHEREAS, SDCL § 6-5-4 allows transfers of real or personal property to nonprofit corporations for public, charitable, or humanitarian purposes; and

WHEREAS, SDCL 9-27-36 allows the transfer of municipal property to a non-profit local industrial development corporation; and

WHEREAS, Harding County Development Corporation is a South Dakota non-profit Corporation formed to promote and encourage industrial and economic development within the Town of Buffalo and Harding County; and

WHEREAS, Harding County Development Corporation seeks to assist the Town in abating the nuisance caused on the real property; and

WHEREAS, Harding County Development Corporation has requested the City donate this parcel to the corporation for the purpose of razing existing structures and building new structures; and

WHEREAS, the Board of Trustees of the Town of Buffalo finds it to be in the best interests of the community to transfer the property described below to the Harding County Development Corporation, a South Dakota non-profit corporation, for the purpose of abating the nuisance thereon;

NOW THEREFORE, BE IT RESOLVED, by the Board of Trustees of the Town of Buffalo that the following described real estate in the County of Harding in the State of South Dakota shall be transferred to Harding County Development Corporation, a South Dakota non-profit corporation:

Lot 4, Block 1 of Oinas' Addition to the Town of Buffalo

*Subject to all reservations, easements, and rights of way expressly reserved in prior grants or deeds or by operation of Federal or State Law.

BE IT FURTHER RESOLVED, that the President and Finance Officer are authorized to execute a warranty deed transferring the property as described above via a deed containing a reversionary clause which requires the demolition of the existing nuisances as outlined in Resolution 2019-02 by the 30th day of September, 2019 and under the understanding that Harding County Development Corporation shall pay the sum of \$10,000 for the Town's interest in the property upon resale of the real property.

Dated at Buffalo, South Dakota on this 8 day of August, 2019.

BY: /s/ Gary Johnson


Gary Johnson, President

ATTEST: /s/ Deborah Johnson

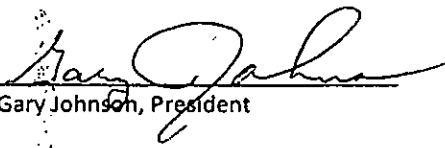
Deborah Johnson

Finance Officer

Roll Call Vote: Yes – Routier, Lyons, Odell, Johnson No -0.

ADJOURNMENT: There being no further business before the Board, President Johnson declared the meeting adjourned at 6:00 PM.

SIGNED: Gary Johnson


Gary Johnson, President

ATTEST: Deborah Johnson

Deborah Johnson, Finance Officer

Ex 604I

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., August 12, 2019, at the Town Office. Trustees present were Shaine Odell, Jeremy Humbracht, and Gary Johnson. Absent were Randy Lyons and Traci Routier. Employees present were Deb Johnson, Ryan Smith, and Dusty Ginsbach. President Johnson called the meeting to order at 6:00 p.m.

GUESTS: Brett Clanton, Mellisa Breeding, Keith Russ, Wally Stephens, Sam Olson, Billy Clanton, and Matt Weakland were present as guests.

APPROVAL OF BILLS: Motion was made by Humbracht, 2nd by Odell to approve payment of the following bills: Payroll – General – 9574.28, Water – 1350.81, Sewer – 1575.96, Maupin – wages – 592.76, Watson – wages – 136.12, Baier – wages – 2080.22, Haivala – vacation/sick pay – 3476.59, Federal Withholding, Social Security, Medicare – 3591.19, SD retirement – 1440.12, Harding County treasure – taxes – 436.08, Haivala – reimbursement for supplies – 52.81, Dept. of Revenue – sales tax – 177.77, Smith – training expenses – 218.22, Blossoms & Brew – funeral plant – 45.00, Prairie Land Consulting – weed spraying – 1485.00, HUB Intl. – insurance – 841.00, Olson Construction – road work – 3710.38, MidContinent – water testing – 664.35, SD Municipal League – handbook supplement – 10.00, Servall – supplies – 172.51, Olson Construction – pipe stand – 210.38, Hillyard – supplies – 1758.98, Town of Buffalo – meter refund – 25.00, Town of Buffalo – utilities REC – 70.50, Deb Johnson – reimbursement/postage – 110.00, Town of Buffalo – utilities/Clinic – 73.78, Town of Buffalo – outstanding water surcharge – 53.00, Town of Buffalo – petty cash/postage – 166.90, Gary Johnson – wages – 483.92, Grand Electric – electricity – 2212.28, Pioneer Bank & Trust – stop payment fee – 25.00, Buffalo Hardware – supplies – 1307.77, WRCTC – phone – 90.28, S&T Custom Plumbing – repairs – 525.00, Brosz – design – 2420.00, Stan Houston – supplied – 107.70, Black Hills Chemical – supplies – 170.40, WRCTC – internet – 76.00, BH Pioneer – publishing – 16.00, H&L Super Valu – supplies – 17.49, Olson Fuels – fuel – 448.6, Fisher Sand & Gravel – rock – 24,036.16, Propoint – fuel – 162.53, Verizon – cell phones – 125.45,

MINUTES: Motion was made by Humbracht, seconded by Odell and carried to approve the July 9th, 2019 Regular Meeting minutes with corrections "Town Board will meet on 80102019 at 5:30 regarding Resolution #003-2019 concerning the Grindlingh property and the August 1st, 2019 Special Meeting as read.

FINANCIAL REPORT: Motion was made by Odell, seconded by Humbracht and carried to approve the July, 2019, financial report as follows:

General Fund -	\$325,003.92
Receipts -	28,141.13
Expenditures -	<u>19,083.74</u>
Balance -	334,061.31
 Harding County Memorial Rec Center	 5078.29
Receipts -	420.00
Expenditures -	<u>2,201.85</u>
Balance -	3296.44

Bridge & Street Fund -	325,650.56
Receipts -	3063.79
Expenditures -	<u>0.00</u>
Balance -	328,714.35
General Reserves -	275,991.64
No Activity	
Liquor Fund -	40,476.66
Receipts -	.00
Expenditures -	<u>.00</u>
Balance -	40,476.66
Bar Improvement -	1,642.52
No Activity	
Water Fund -	39,851.32
Receipts -	5402.70
Expenditures -	<u>12,531.79</u>
Balance -	32,722.23
Water Surcharge -	22,191.10
Receipts -	6173.14
Expenditures -	<u>12,573.24</u>
Balance -	15,791.00
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5261.65
Receipts -	25.00
Expenditures -	<u>25.00</u>
Balance -	5,261.65
Sewer Fund -	40,633.69
Receipts -	3671.47
Expenditures -	<u>4706.81</u>
Balance -	39,598.36
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	3965.64
Receipts -	4643.71
Expenditures -	<u>4546.08</u>
Balance -	4063.27
Solid Waste Reserves -	.00
No Activity	
Miscellaneous -	.00

No activity

TOTAL FUNDS -	1,161,900.67
TOTAL ACCOUNTS -	1,161,900.67

CERTIFICATES OF DEPOSIT:

METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00
GENERAL/STREETS	30,000.00
GENERAL/STREETS	10,000.00

LAW ENFORCEMENT REPORT: Deputy Keith Russ reported it has been quiet. Discussion was held on City Ordinances regarding non-running vehicles parked along city streets.

CITY PURCHASED PROPERTY: Brett Clanton expressed concern over the city purchase of property described as Lot 4, Block 1 of Oinas' Addition to the Town of Buffalo. The plan of the Harding County Economic Development Corporation was discussed.

TRANSCANADA WELL ON CHAMBER PROPERTY: Sam Olson of the Harding County Chamber of Commerce suggested a mixed board of Chamber members and town board members to discuss an agreement. Ryan Smith will check on the development of the new well and feasibility. The mixed meeting will take place Wednesday August 14th, 2019 at 6:30 at the City Office.

GILBERT HOOK UP TO CITY WATER: Gary Gilbert will be hooking into city water. Smith will explain connection fees which will include a \$3000.00 access fee, a \$25.00 meter deposit, monthly usage fee, and monthly water surcharge fee of \$19.00 Gilbert will also be advised to do a disconnect valve.

HARBORTOUCH POS SOFTWARE: No bids were received.

COMMUNITY ACCESS GRANT: The Brosz Engineering proposal was discussed. It was decided to change the asphalt to chip and seal. Smith will apply for the Grant next June.

LICENSE TO USE PREMISES: City Attorney Ginsbach to get signature of Officer of Sagebrush Properties, LLC. for the use of Lot 6, Block U of Smith's Amended Addition to the Town of Buffalo.

BUFFALO BAR: Collins Plumbing is to begin work in the basement on August 13, 2019. The basement will be completely gutted and cleaned. The sewer and water pipes have been repaired.

TEMPORARY ALCOHOL LICENSE APPLICATION: Motion was made by Humbracht, seconded by Odell and carried to approve the Temporary Malt Beverage License to the Harding County Chamber of Commerce for August 31st, 2019 –September 2nd, 2019 for Lot 1, Block U except tract A, Smiths Addition, Town of Buffalo (rodeo grounds) and 101-109 1st St. West, Town of Buffalo. A Temporary Liquor License to Crooked Creek #1 Grill and Bar for September 28, 2019 at the REC Center in Buffalo, SD.

GUTTERS FOR REC BUILDING: tabled until next spring

SPLASH PAD: Smith will do some talking with Newell on their plan and bring information to the next meeting.

A Special Meeting to discuss the upcoming 2020 Budget was set for August 27th, 2019 at 6:00PM.

NEXT REGULAR MEETING: September 9th, 2019, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned at 8:25 p.m.

SIGNED: _____

Gary Johnson, President

ATTEST: _____

Deb Johnson, Finance Officer

Ex 604J

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., September 9th, 2019, at the Town Office. Trustees present were Shaine Odell, Traci Routier, and Gary Johnson. Randy Lyons arrived later. Absent was Jeremy Humbracht. Employees present were Deb Johnson, Ryan Smith, and Dusty Ginsbach. President Johnson called the meeting to order at 6:00 p.m.

GUESTS: John Latham, Wayne King from Ainsworth Benning, and Randy Routier

APPROVAL OF BILLS: Motion was made by Odell, 2nd by Routier, to approve payment of the following bills: Payroll – General – 5573.63, Water – 1350.81, Sewer – 1575.96, Maupin – wages – 748.03, Watson – wages – 29.10, Baier – wages – 1128.75, Haivala – consulting/temporary employee – 1109.48, Federal Withholding, Social Security, Medicare – 2227.20, SD retirement – 480.02, Lee Toft – meter refund – 25.00, SDARWS – technical assistance trailer – 400.00, Stan Houston Equipment – perma patch – 448.75, Dept. Of Revenue – sales tax – 162.37, NCN – legal publishing – 139.72, Collins Carpet Cleaning – bar basement – 4970.00, USA Bluebook – tools – 456.51, Glines Electric - repairs – 395.63, Petty cash/postage – 166.90, Mendoza Plumbing – bar basement – 518.00, Hawkins – water supplies – 2894.50, Buffalo Hardware – supplies – 539.33, WRCTC – phone/internet – 294.04, Town of Buffalo – clinic and Rec Center utilities – 141.38, Hillyard – Rec Center floor supplies – 160.00, Grand Electric – electricity – 2601.26, NW SD Regional Landfill Association – operating fees – 5475.36, Servall – supplies – 169.88, G&O Paper – office supplies – 103.40, Nutrien Ag Solutions – mosquito chemical – 510.00, Deb Johnson – reimbursement for stamps – 110.00, Town Board payroll – 1385.25, Harding County – law enforcement contract – 10750.00, SW Business Machines – office supplies – 105.14, Reemployment Assistance – 25.00, SD One-Call – message fees – 8.40, Ryan Smith – reimbursement for sewer camera – 72.40, Stan Houston Equipment – perma-patch – 269.25, S&T Custom Plumbing – bar basement – 345.00

MINUTES: Motion was made by Odell, 2nd by Routier, all approved August 12th 2019 Regular Town Board meeting and the August 29th, 2019 Special Board Meeting.

FINANCIAL REPORT: Motion was made by Routier, seconded by Odell and carried provided a correction of \$8.04 is made to reconcile with bank statement - financial report as follows:

General Fund -	\$334061.31
Receipts -	7646.79
Expenditures -	<u>21697.15</u>
Balance -	320010.95
 Harding County Memorial Rec Center	 3296.44
Receipts -	160.00
Expenditures -	<u>2373.82</u>
Balance -	1082.62
 Bridge & Street Fund -	 328714.35
Receipts -	4851.64
Expenditures -	<u>24198.69</u>
Balance -	309367.30

General Reserves -	275,991.64
No Activity	
Liquor Fund -	40,476.66
Receipts -	.00
Expenditures -	<u>834.41</u>
Balance -	39642.25
Bar Improvement -	1,642.52
No Activity	
Water Fund -	32722.23
Receipts -	9025.91
Expenditures -	<u>2715.36</u>
Balance -	39032.78
Water Surcharge -	15791.00
Receipts -	5971.83
Expenditures -	<u>0.00</u>
Balance -	21762.83
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5261.65
Receipts -	0.00
Expenditures -	<u>25.00</u>
Balance -	5,236.65
Sewer Fund -	39598.36
Receipts -	3565.17
Expenditures -	<u>1820.18</u>
Balance -	41343.34
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	4063.27
Receipts -	4193.00
Expenditures -	<u>942.44</u>
Balance -	7313.83
Solid Waste Reserves -	.00
No Activity	
Miscellaneous -	.00
No activity	
TOTAL FUNDS -	1,142,707.96
TOTAL ACCOUNTS -	1,142,716.00 +8.04

CERTIFICATES OF DEPOSIT:

METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00
GENERAL/STREETS	30,000.00
GENERAL/STREETS	10,000.00

LAW ENFORCEMENT REPORT: No law enforcement was present

PIONEER BANK BUILDING PERMIT & VARIANCE: Discussion was held on the recommendations from the Planning & Zoning committee regarding the building plans for Pioneer Bank and Trust. Wayne King explained the plans. A motion was made by Odell and 2nd by Routier and approved to grant a variance for the west side and a license agreement for the south side.

DIANE HAIVALA: It was agreed to keep Diane on as a temporary employee to fill in and assist as needed. Her hourly wage will be \$24.00/hour.

2020 BUDGET: The 1st reading of the 2020 Budget Ordinance was held. Tuesday, September 17th at a Special Meeting at 6:00 to have the 2nd reading and approval.

WATER AGREEMENT WITH TRANSCANADA: Smith suggested having a deposit section added to the agreement. Johnson suggested a \$10,000.00 deposit. A motion was made by Routier and 2nd by Odell to sign the agreement when this has been added. Motion approved.

WATER AGREEMENT WITH HARDING COUNTY CHAMBER: Motion made by Odell and 2nd by Routier to sign the agreement. Motion approved.

TEMPORARY MALT BEVERAGE LICENSE: A motion was made by Routier, 2nd by Odell to approve a temporary malt beverage license to the Buffalo City Bar for the rodeo grounds on 9/12/2019.

REC CENTER: Discussion was held on the floor. Smith suggested having Hillyard check it out. Harding County School will be charge \$40.00 per practice. Board agreed to have 10 tables set up in meeting room at all times. The Lamison Post of the Legion and Auxiliary will hold meetings on the 2nd Monday of each month free of charge.

AGREEMENT WITH HARDING COUNTY DEVELOPMENT CORPORATION ON PROPERTY AT LOT 4, BLOCK 1 OF OINAS' ADDITION TO THE TOWN OF BUFFALO: John Latham address the board regarding the agreement to have said property cleaned up by the end of September, 2019. John explained the corporation would not be able to complete the cleanup by the deadline date. Motion was made by Routier, 2nd by Odell to extend the deadline for clean-up of the property to December 31, 2019.

Smith informed the board that the Town of Buffalo has been approved for the generator grant from Homeland Security. Smith also is gathering quotes for the comprehensive sewer view.

Being no more business to discuss, Johnson adjourned the meeting at 7:25 PM.

SPECIAL BUDGET MEETING: September 17th, 2019, 6:00PM, Town Office

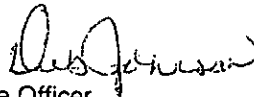
NEXT REGULAR MEETING: October 14th, 2019, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned at 8:25 p.m.

SIGNED: /s/ Gary Johnson
Gary Johnson, President



ATTEST: /s/ Deb Johnson
Deb Johnson, Finance Officer



Ex. 604k

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., October 15th, 2019, at the Town Office. Trustees present were Shaine Odell, Traci Routier, Gary Johnson, Jeremy Humbracht, and Randy Lyons. Employees present were Deb Johnson, Ryan Smith, and Dusty Ginsbach. President Johnson called the meeting to order at 6:00 p.m.

GUESTS: Randy Routier, Kevin Watson, Steve Pemble, and John Carter

APPROVAL OF BILLS: Motion was made by Odell, 2nd by Routier, to approve the following payments: General payroll – 8500.40, Karen Watson – payroll – 71.90, Baine Maupin – payroll – 642.76, Diane Haivala – payroll – 127.44, SD Retirement – contributions – 960.04, Gregory Water & Energy – city well #8 – 37,179.00, Ryan Smith – reimbursement – 717.40, NCN – legals – 179.11, Dillon Glines – refrigerant evacuation – 450.00, Olson Fuels – fuel – 696.43, Propoint – fuel – 275.80, Jensen Rock & Sand – chip seal – 46,144.62, Summit Companies – fire extinguishers – 365.00, SD DOR – taxes – 162.75, US Bank – loan payment – 12,573.24, Buffalo Hardware – supplies – 482.31, Deb Johnson – stamps – 55.00, G&O Paper – envelopes – 212.00, Simon – emulsion – 62,060.98, Grand Electric – 2391.70, WRCTC – phone/internet/fax – 291.52, Adams ISC – plow repair – 1158.00, NW SD Regional Landfill Association – operating fees – 2737.68, DC Inc – sewer repair – 2442.87, Glines Electric – Rec Center needs – 905.98, Verizon – cell phones – 251.00, Jo Piekkola – Rec Center floor – 2300.00, AFLAC – Deb Johnson – 39.45, Olson Construction – ditch repair – 340.00, Town of Buffalo – Rec Center/Clinic Utilities – 142.38, Black Hills Chemical – Rec Center floor – 43.16, SBM – ink – 117.86, Town of Buffalo – postage – 165.00, Medicare/Social Security/Federal Withholdings – 2479.18

MINUTES: Motion was made by Routier, 2nd by Humbracht, all approved September 9th 2019 Regular Town Board meeting.

FINANCIAL REPORT: Motion was made by Routier, seconded by Odell and carried.

General Fund -	\$319964.29
Receipts -	34570.66
Expenditures -	<u>30185.94</u>
Balance -	324349.01
 Harding County Memorial Rec Center	 1082.62
Receipts -	250.00
Expenditures -	<u>3440.92</u>
Balance -	(2108.30)
 Bridge & Street Fund -	 309367.30
Receipts -	2365.99
Expenditures -	<u>21947.66</u>
Balance -	289775.63
 General Reserves -	 275,991.64
No Activity	
 Liquor Fund -	 39642.25

Receipts -	.00
Expenditures -	<u>5833.00</u>
Balance -	33809.25
Bar Improvement -	1,642.52
No Activity	
Water Fund -	39032.78
Receipts -	6092.83
Expenditures -	<u>5931.78</u>
Balance -	39193.83
Water Surcharge -	21762.83
Receipts -	5587.08
Expenditures -	<u>0.00</u>
Balance -	27349.91
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5236.65
Receipts -	50.00
Expenditures -	<u>25.00</u>
Balance -	5956.78
Sewer Fund -	41343.34
Receipts -	4264.47
Expenditures -	<u>2185.66</u>
Balance -	43422.15
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	7343.53
Receipts -	3924.17
Expenditures -	<u>6613.74</u>
Balance -	4653.96
Solid Waste Reserves -	.00
No Activity	
Miscellaneous -	.00
No activity	
TOTAL FUNDS -	1,123,647.50
TOTAL ACCOUNTS -	1,123,647.50
CERTIFICATES OF DEPOSIT:	
METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., December 17th, 2019, at the Town Office. Trustees present were Shaine Odell, Traci Routier, Gary Johnson, Jeremy Humbracht, and Randy Lyons. Employees present were Deb Johnson, Ryan Smith, and Dusty Ginsbach. President Johnson called the meeting to order at 6:00 p.m.

GUESTS: Randy Routier, Michelle Padden, Spring Padden, Keith Russ, Tammy Gilbert, Natalie Glines, Kevin Watson

MINUTES: Motion made to approve last month's minutes made by Routier, 2nd by Humbracht – all approved.

APPROVAL OF BILLS: Motion was made by Humbracht, 2nd by Routier, to approve the following payments: General Payroll – Ginsbach, D. Johnson, Smith - \$8500.40, Maupin – wages - \$687.08, Watson – wages - \$175.36, Wright – wages - \$166.23, Paula Smith – Rec Center rent refund - \$80.00, Town Board Quarterly payroll – \$1385.25, SD Municipal League membership - \$506.80, Federal withholding - \$504.04, Social Security - \$1378.57, Medicare - \$322.41, AFLAC – Deb Johnson - \$39.45, Ace In the Hole – ditch repair - \$4800.00, SBM – supplies - \$255.79, Grand Electric – electricity & light repairs - \$2342.44, Olson Fuels – fuel - \$141.48, WRCTC – phone, internet, fax - \$294.07, Propoint – fuel - \$241.12, Stereos 'N Stuff – computer repair - \$364.92, H&L – supplies - \$21.09, Northern Truck Equipment – plow shoes - \$268.00, SD One Call – messaging - \$5.25, Ryan Smith – supplies – \$442.72, Verizon – cell phones - \$251.20, SD DOR – taxes - \$164.24, HC Electric – generator - \$23,362.15, Olson Propane - \$1419.85, Town of Buffalo – postage - \$168.75, Glines Electric – bar furnace – \$57.14, Town of Buffalo – Rec center/Clinic Utilities - \$144.28, Jessica Holmes – BB hoops - \$150.00, SD Retirement – contributions - \$960.04, Buffalo Hardware – supplies - \$238.69

FINANCIAL REPORT: Motion to approve was made by Routier, 2nd by Odell and carried.

General Fund -	339,505.49
Receipts -	39,490.90
Expenditures -	<u>14,316.77</u>
Balance -	364,679.62
Harding County Memorial Rec Center	(1752.60)
Receipts -	1800.00
Expenditures -	<u>24,471.09</u>
Balance -	(24,423.69)
Bridge & Street Fund -	182,567.22
Receipts -	6,210.32
Expenditures -	<u>7245.00</u>
Balance -	181,532.54
General Reserves -	275,991.64
No Activity	
Liquor Fund -	31,366.38

Receipts -	.00
Expenditures -	<u>31.08</u>
Balance -	31,334.40
Bar Improvement -	1,642.52
No Activity	
Water Fund -	42,848.00
Receipts -	3552.90
Expenditures -	<u>1955.90</u>
Balance -	44,445.00
Water Surcharge -	21,539.49
Receipts -	5538.09
Expenditures -	<u>0</u>
Balance -	27,077.58
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5286.65
Receipts -	0.00
Expenditures -	<u>0.00</u>
Balance -	5956.78
Sewer Fund -	46,796.12
Receipts -	3775.73
Expenditures -	<u>1791.08</u>
Balance -	48,7801.77
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	5177.02
Receipts -	2741.14
Expenditures -	<u>3962.31</u>
Balance -	3955.85
Solid Waste Reserves -	.00
No Activity	
Miscellaneous -	.00
No activity	
TOTAL FUNDS -	1,040,584.13
TOTAL ACCOUNTS -	1,040,584.13
CERTIFICATES OF DEPOSIT:	
METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00

GENERAL/STREETS
GENERAL/STREETS

30,000.00
10,000.00

Motion to approve financial report made by Routier, 2nd by Humbracht. All approved.

REC CENTER SCHEDULING FOR BB PRACTICES: Discussion was held regarding the reserving of basketball practices by the school and boys/girls travelling teams. The school will receive first preference provided they provide a set schedule as far in advance as possible. If changes need to be made the school should contact the city office 3-4 days prior to the date. The travelling teams will work together with each other and the school to set their schedules.

PROPERTY ON 4TH STREET DEEDED OVER TO ECONOMIC DEVELOPMENT: The deed has not been transferred in the Economic Development Committee. There is no current plan to clean the property. Decision will be discussed at next meeting on 12-30-2019.

IT WAS DISCUSSED AND DECIDED TO HOLD A PUBIC MEETING REGARDING REPAIR OF TIPPERARY STREET IN THE FUTURE.

BAR LEASE PAYMENTS: Discussion was held, and the Town Board decided that the lease must be paid in full at renewal date.

NEW SIGN FOR REC CENTER: Routier to talk with school art instructor. Could possibly be a contest?

WELL #8 AGREEMENT WITH TC: Motion to approve and sign made by Humbracht, 2nd by Lyons, all approved.

RIGHT AWAY AGREEMENT WITH TC: Motion to approve and sign made by Humbracht, 2nd by Routier, all approved.

BROSZ SEWER REVIEW AGREEMENT: Discussion was held. Lyons and Smith will have a conference call with Brosz to discuss cost estimates.

INSURANCE DEDUCTIBLES: D. Johnson will meet with Insurance Agent on Thursday, December 19th, 2019 to discuss changing deductibles.

TRANSFER OF CITY BAR MONIES FOR TEMPORARY LIQUOR LICENSE AND REC CENTER RENTAL: Approval of transferring monies to new event but will have to have the approval from the board for a new temporary liquor permit.

MISC: Kevin Watson inquired about any changes in well/water. The school had film on their floors from cleaning. Watson also expressed some concerns over the repairs on Tipperary St.

Starting January 1st, 2010 the Rec Center Rental will increase to \$50.00 for one side and \$100.00 for entire building.

Smith will be purchasing a ping pong table, corn hole, and a foosball table for the Rec Center to be able to be used by paying members.

NEXT MEETING: December 30th, 2019, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned at 8:50 p.m.

SIGNED: 
/s/s Gary Johnson
Gary Johnson, President

ATTEST: 
/s/ Deb Johnson
Deb Johnson, Finance Officer

Ex 604 H

MINUTES OF THE REGULAR TOWN BOARD MEETING

The Board of Trustees of the Town of Buffalo met in regular session at 6:00 p.m., January 13th, 2020 at the Town Office. Trustees present were Shaine Odell, Traci Routier, Gary Johnson, Jeremy Humbracht, and Randy Lyons. Employees present were Deb Johnson, Ryan Smith. President Johnson called the meeting to order at 6:00 p.m.

GUESTS: Deputy Keith Russ, Randy Routier, Brett Clanton

MINUTES: Motion made to approve last month's minutes with corrections made by Humbracht, 2nd by Odell – all approved.

LAW ENFORCEMENT REPORT: Discussion was held regarding persons under the age of 21 in the liquor establishments. It was agreed that both bars must follow the State of SD laws. The City Attorney will be consulted for further clarification.

APPROVAL OF BILLS: Motion was made by Routier, 2nd by Lyons, to approve the following payments: General Payroll – Ginsbach, D. Johnson, R Smith – 8500.40, Baine Maupin – wages – 642.94, B Wright – wages – 225.00, A Rolph – wages – 22.50, D. Haivala – wages 585.60, Retirement contributions - \$960.04, SBM – supplies – 26.04, BH Pioneer – Rec center ad – 128.40, WRCTC – phone, internet, fax – 239.09, Midcontinent Labs – water testing – 192.75, Propoint – fuel 179.32, NW SD Regional Landfill Assoc. – operating fees - 5557.53, G&O Paper – supplies - \$17.99, Harding County – law enforcement agreement fee – 10,750.00, R Smith reimbursement – supplies – 879.56, AFLAC – D. Johnson – 39.45, Glines Electric – repairs – 191.41, SDARWS – dues – 370.00, Prairie Land Consulting – 478.00. DENR – wastewater fee permit – 350.00, Brosz – drafting – 180.00, EFTPS – social security – 1254.37, EFTPS – medicare – 293.36, EFTPS – federal withholding – 537.04, Olson Propane – propane – 520.20, Town of Buffalo – Rec/Clinic Utilities – 141.88, Town of Buffalo – postage – 166.85, Grand Electric – electricity – 3078.75. NCN – legal publishing – 7.96, Buffalo Hardware – supplies – 667.40, DOR – sales tax – 164.26

FINANCIAL REPORT: Motion to approve was made by Routier, 2nd by Odell and carried.

General Fund -	364,680.12
Receipts -	38,975.27
Expenditures -	<u>97,673.79</u>
Balance -	305,981.60
 Harding County Memorial Rec Center	 (24,423.69)
Receipts -	520.00
Expenditures -	<u>1275.55</u>
Balance -	(25,279.24)
 Bridge & Street Fund -	 181,532.54
Receipts -	2,565.60
Expenditures -	<u>0.00</u>
Balance -	184,098.14
 General Reserves -	 <u>275,991.64</u>

No Activity	
Liquor Fund -	31,334.40
Receipts -	.00
Expenditures -	<u>57.14</u>
Balance -	31,227.26
Bar Improvement -	1,642.52
No Activity	
Water Fund -	44,445.00
Receipts -	7247.43
Expenditures -	<u>189.83</u>
Balance -	53,507.63
Water Surcharge -	27,077.58
Receipts -	6264.05
Expenditures -	<u>0</u>
Balance -	33,341.63
Water Reserves -	20000.00
No Activity	
Water Meter Deposits -	5286.65
Receipts -	0.00
Expenditures -	<u>0.00</u>
Balance -	5956.78
Sewer Fund -	48,780.77
Receipts -	3584.83
Expenditures -	<u>1983.35</u>
Balance -	50,382.25
Sewer Reserves -	60,281.25
No Activity	
Solid Waste Fund -	3955.85
Receipts -	4548.20
Expenditures -	<u>1279.66</u>
Balance -	7224.39
Solid Waste Reserves -	.00
No Activity	
Miscellaneous -	.00
No activity	
TOTAL FUNDS -	1,003,835.72
TOTAL ACCOUNTS -	1,003,835.72

CERTIFICATES OF DEPOSIT:

METER DEPOSIT	1,000.00
METER DEPOSIT	1,000.00
GENERAL/STREETS	30,000.00
GENERAL/STREETS	10,000.00

Motion to approve financial report made by Routier, 2nd by Humbracht. All approved.

ORDINANCE #182 (WATER/SEWER RATE INCREASE)/DUMP FEE INCREASE:

A motion was made by Lyons, 2nd by Routier not to have any increases in fees for water, sewer, and garbage. All approved.

WATER PERMIT FOR WELL #8: Brett Clanton addressed the Board concerning the terminology "municipal use". Board will check with DENR and City Attorney to make sure this term includes commercial sales of water.

COMBINED ELECTION AGREEMENT: A motion was made by Routier and 2nd by Humbracht to agree to the combined election agreement with Harding County, Harding County School District, and the Town of Camp Crook. All approved.

Board members up for re-election in 2020 are Randy Lyons and Shaine Odell. If anyone is interested in running for board member petitions may be picked up at the city office. The earliest date to begin petition circulation and filing is March 1st, 2020. The election will take place June 2, 2020.

A motion was made by Routier and 2nd by Humbracht to designate the Nation Center News as the official newspaper and Pioneer Bank and Trust as the official financial institution. Motion was approved by all.

A motion was made by Odell and 2nd by Lyons to retain Dusty Ginsbach as the attorney for the Town of Buffalo. Roll call vote: Humbracht-yes, Odell-yes, Johnson-yes, Routier-yes, and Lyons-yes. Research will be done to find an alternate in case of absence or conflict of interest.

SALARIES: A complete list of all the salaries for all officers and employees of the municipal corporation shall be published with the minutes of the first meeting following the beginning of the fiscal year or within 30 days thereafter. SDCL 6-1-10. The Town of Buffalo, salaries for 2020 are as follows: Attorney - \$6000.00/year, Finance Officer - \$43,374.96/year, Public Work Superintendent - \$55,918.08/year, Trustee - \$1200.00/year, Restricted use Site Attendant - \$12.48/hr, and Rec Center janitor - \$15.00/hr.

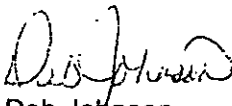
MISC: The Board approved purchases of speaker phone, business cards, subscription to NCN, and grant training. Routier informed the Board that the Art department at HC High School would help with a new sign for the Rec Center.

A discussion on the future plans for Tipperary Street will take place at the next regular Board meeting. Topics will include width of street, curb, gutter, sidewalks, etc. The public is invited to attend and give suggestions and ideas.

NEXT MEETING: February 10th, 6:00 p.m., Town Office.

ADJOURNMENT: As there was no further business at this time, Johnson declared the meeting adjourned at 8:50 p.m.

SIGNED: /s/ Gary Johnson
Gary Johnson, President


ATTEST: /s/ Deb Johnson
Deb Johnson, Finance Officer

Ex 605A

TOWN OF BUFFALO
BOARD OF TRUSTEES
REGULAR MEETING
6:00PM TOWN OFFICE
AGENDA

Call to order
Approval of Bills
Minutes

Correction of July minutes: Town Board will meet on 8-1-2019 at 5:30 regarding Resolution #003-2019 concerning the Grindlingh property

Financial Report
Supplement to the Water Fund
Wages for 2020 Budget
Pay advances

Law Enforcement Report

WWS Report
Well #7 Agreement
Gary Gilbert – city water & sewer
Brosz Engineering
TransCanada Water well – lease agreement – Chamber property Survey Lagoon

Buffalo Bar
Cleaning of the basement

License to use premises – Sagebrush Properties, LLC

Harbor Touch Software Bids

Temporary Malt Beverage Licenses – Chamber – rodeo grounds & downtown – August 31-September 2, 2019
Temporary Liquor Licenses – Suzette Braaten – Rec Center – September 28th, 2019

Gutters for Rec Center

Splash Pad

TOWN BOARD MEMBERS: If unable to attend, contact Deb @ 605-375-3130.

Ex 605B

TOWN OF BUFFALO
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, OCTOBER 15TH, 2019
6:00PM TOWN OFFICE
AGENDA

Call to order
Approval of Bills
Minutes
Financial Report
Law Enforcement Report

Landfill:

Increase rates?
Toilet?

Water:

Well agreement with Chamber
Extension of water lines

Rec Center:

Increase rates?
Cleaning services

Proposals for services

Broze for sewer review
Banyon for account funding software

Tipperary Street

Flat ditch, spot repair
Grants?

Temporary liquor licenses for the #3 and the City Bar

Renewal of on/off sale licenses for the #3 and the City Bar

Delinquent water bills

Burning of Dingfelder old house

Alley plowing

Change of next meeting date due to Holiday – Thursday, November 7th, 2019 @ 6:00PM?

TOWN BOARD MEMBERS: If unable to attend, contact Deb @ 605-375-3130.

RECEIPT JOURNAL		DECEMBER	2019										GENERAL		LIQUOR FUND 601*****	LIQUOR FUND 602*****	WATER FUND 602*****	
RECEIPT			TOTAL	GENERAL FUND 101*****		REC CENTER 202		BRIDGE & STREET 218		RESERVES		GENERAL	LIQUOR FUND 601*****	LIQUOR FUND 602*****	WATER FUND 602*****			
DATE	#	NAME	DESCRIPTION	RECEIPT	ACCT.#	AMT.	ACCT.	AMT.	ACCT.	AMT.	ACCT.	AMT.	FUND TOTAL	ACCAMT.	RESERVES	FUND TOTAL	ACCT.#	AMT.
12/2/2019		HARDING COUNTY	TAXES	5550.74	310/311	3813.43			338.05	1718.56			5,531.99					
					310/319	18.75							18.75					
12/3/2019		GRAND RIVER	SALE OF CHIPS	32.86	340/341.03	32.86							32.86					
12/3/2019		#3 SALOON LLC	2020 LICENSES	1400.00	320/323	1400.00							1,400.00					
12/4/2019		RON JIM GINSBACH	REC MEMBERSHIP	20.00			346.02	20.00					20.00					
12/4/2019		BRYCE MATTHEWS	REC MEMBERSHIP	20.00			346.02	20.00					20.00					
12/6/2019		STATE OF SD	MUNICIPAL TAX	17516.62	310/313	17516.62							17,516.62					
12/9/2019		PAULA RICHTER	REC MEMBERSHIP	50.00			346.02	50.00					50.00					
12/11/2019		HC CHAMBER	REC RENTAL	40.00			346.06	40.00					40.00					
12/11/2019		MICHELLE PADDEN	REC RENTAL	80.00			346.06	80.00					80.00					
12/11/2019		PASTOR GEORGE	REC RENTAL	40.00			346.06	40.00					40.00					
12/12/2019		OLSON CONST.	BULK SALT/SAND	905.25	340/341.03	905.25							905.25					
12/17/2019		ARDIS LERMEY	WASHER DISPOSAL	4.18														
12/17/2019		CHERI DECOCK	REC CENTER DONATE	40.00			349.09	40.00					40.00					
12/17/2019		R. TURBIVILLE	REC MEMBERSHIP	50.00			346.06	50.00					50.00					
12/17/2019		TIM GLINES	CARCUS	15.68														
12/18/2019		STARLA JENSON	REC MEMBERSHIP	100.00			346.06	50.00					50.00					
			DONATION				346.09	50.00					50.00					
12/19/2019		TRANSCANADA	RIGHT AWAY LEASE	7472.43														
12/19/2019		MARISSA HETT	REC RENTAL	40.00			346.06	40.00					40.00				381.99	7,472.43
12/19/2019		MISTY KOAN	REC RENTAL	40.00			346.06	40.00					40.00					
12/26/2019		KELLY MESSMER	CARCUS	15.68														
12/26/2019		ACE IN THE HOLE	BULK WATER	4.18														
12/26/2019		CD INTEREST	CD INTEREST	42.38					361	42.38			42.38					4.18
12/31/2019		STATE OF SD	MUNICIPAL TAX	15,288.36	310/313	15,288.36							15,288.36					
12/31/2019		UTILITIES	UTILITIES	18,282.59														
12/31/2019		INTEREST	INTEREST ON MM	804.66					361	804.66			804.66					
				67,855.61		38,975.27		520.00		2,565.60			42,060.87					11,397.66
TRANSFERS																		
12/3/2019		MM TO CHECKING	\$5,000.00															
12/6/2019		MM TO CHECKING	\$20,000.00															
12/17/2019		MM TO CHECKING	60000.00															

Ex 606A

Ex 607A

EXPENDITURES JOURNAL		JANUARY		2020		GENERAL FUND 101*****		REC CENT INTER 456		BRIDGE & STREET 2 RESERVES		GENERAL FUND		LIQUOR FUND	
DATE	CK #	NAME	DESCRIPTION	TOTAL		ACCT.	AMT.	ACCT.	AMT.	ACCT.	AMT.	ACCT.	AMT.	TOTAL	ACCT.
1/3/2020	ACH	EFTPS	FEDERAL W/HOLD	537.04	X	412.2/411	305.43							305.43	
						431/411	81.06							81.06	
	ACH	EFTPS	SOCIAL SECURITY	1,254.37	X	414.1/411	31.00	411	15.35					46.35	
						414.1/412.1	31.00	412.1	15.35					46.35	
						414.2/411	258.52							258.52	
						414.2/412.1	258.52							258.52	
						431/411	97.71							97.71	
						431/412.1	97.71							97.71	
	ACH	EFTPS	MEDICARE	293.36	X	414.1/411	7.25	411	3.59					10.84	
						414.1/412.2	7.25	412.2	3.59					10.84	
						414.2/411	60.46							60.46	
						414.2/412.2	60.46							60.46	
						431/411	22.85							22.85	
						431/412.2	22.85							22.85	
1/13/2020	35814	SBM	SUPPLIES	26.04	x	419.2/426.112	26.04							26.04	
1/13/2020	35815	BLACK HILLS PIONEER	ADVERTISEMENT REC	128.40	x			429	128.40					128.40	
1/13/2020	35816	WEST RIVER TELE	PHONE, INTERNET, FAX	239.09		419.2/428.2	114.00	428	86.15					200.15	
						419.2/428.1	38.94							38.94	
1/13/2020	35817	MIDCONTINENT LABS	WATER TESTING	192.75	x									-	
1/13/2020	35818	PROPOINT	FUEL	179.32	x	431.7/426.12	179.32							179.32	
1/13/2020	35819	NW SD REG LANDFILL	OPERATING FEES	2,819.85	x									-	
1/13/2020	35820	G & O PAPER	SUPPLIES	17.99	x	419.2/426.112	17.99							17.99	
1/13/2020	35821	HARDING COUNTY	LAW ENFORCEMENT	10,750.00	x	420/422	10,750.00							10,750.00	
1/13/2020	35822	RYAN SMITH	REIMBURSEMENTS	879.56	x	440/441.3	50.00	426.11	806.57					856.57	
1/13/2020	35823	NW SD REG LANDFILL	OPERATING FEES	2,737.68	x									-	
1/13/2020	35824	AFLAC	DEB JOHNSON	39.45	x	412.2/411	39.45							39.45	
1/13/2020	35825	GLINES ELECTRIC	FURNANCE REPAIR	417.94	x									-	425
1/13/2020	35826	PRAIRIE LAND CONS.	ROUSTABOUT	478.00		431.1/426.11	478.00							478.00	
1/13/2020	35827	SDARWS	DUES	370.00	x									-	
1/13/2020	35828	SD DENR	WATER PERMIT	350.00	x									-	
1/13/2020	35829	DEB JOHNSON	REIMBURSEMENT	599.00	x	410/422	599.00							599.00	
1/13/2020	35830	BROSZ ENGINEERING	DRAFTING	180.00	x									-	
1/13/2020	35831	OLSON PROPANE	PROPANE	520.20	x	419.2/426.121	520.20							520.20	
1/13/2020	35832	TOWN OF BUFFALO	UTILITIES REC/CLINIC	141.88	x	440/441.4	71.38	428	70.50					141.88	
1/13/2020	35833	GRAND ELECTRIC	ELECTRICITY	3,078.75	x	440/441.4	212.77	426.12	889.01					1,101.78	
						431.6/426.121	897.50							897.50	
						431.6/426.112	32.00							32.00	
						422/426.12	106.63							106.63	
						419.2/426.121	50.07							50.07	
						419.2/426.122	194.91							194.91	
						458/426.1	148.72							148.72	
						452/426.12	35.00							35.00	
1/13/2020	35834	TOWN OF BUFFALO	POSTAGE/PETTY CASH	166.85	x	419.2/426.122	166.85							166.85	
1/13/2020	35835	NATION CENTER NEWS	DEC 2019 LEGALS	7.96	x	410/423	7.96							7.96	
1/13/2020	35836	BUFFALO HARDWARE	SUPPLIES	667.40	x	419.2/426.111	358.33	426.11	291.07					649.40	

Ex 607B

EXPENDITURES JOURNAL			FEBRUARY	2020	GENERAL FUND 101*****										LIQUOR FUND 601*****		
													GENERAL				BAR IM
													FUND				ACCT.
DATE	CK #	NAME	DESCRIPTION	TOTAL		ACCT.	AMT.	ACCT.	AMT.	ACCT.	AMT.	ACCT.	AMT.	TOTAL	ACCT.	AMT.	ACCT.
2/10/2020	35845	HC ELECTRIC	INSTALL GENERATOR	6,232.79	x			433	6232.79					6,232.79			
2/10/2020	35846	RYAN SMITH	REIMBURSEMENTS	1,094.66	x	452/429	81.90	426.1	21.30					103.20			
						419.2/425.1	991.46							991.46			
2/10/2020	35847	OLSON FUELS	FUEL	190.33	x	419.2/426.12	190.33							190.33			
2/10/2020	35848	SD DEPT OF REV	TAXES	136.91	x												
2/10/2020	35849	SERVALL	SUPPLIES	102.48	x			426.11	102.48					102.48			
2/10/2020	35850	BUFFALO HRDWR	SUPPLIES	461.37	x	419.2/426.111	39.02	426.11	116.61					155.63			
						419.2/426.112	21.96							21.96			
						452/426.11	56.38							56.38			
						431/426.11	12.99							12.99			
2/10/2020	35851	SBM	COPIES	192.70	x	419.2/422.12	192.70							192.70			
2/10/2020	35852	BH PIONEER	PUBLISHING	270.49	x	410/423	270.49							270.49			
2/10/2020	35853	SD RETIREMENT	LATE FEE	48.60	x	410/413	48.60							48.60			
2/10/2020	35854	USA BLUE BOOK	METERS	1,829.19	x												
2/10/2020	35855	WRCTC	PHONE, FAX, INTERNET	413.79	x	419.2/428.2	231.25	428	96.00					327.25			
						419.2/428.1	86.54							86.54			
2/10/2020	35856	SD ASS.OFTOWNSH	2020 MEBERSHIP	222.50		410/422	222.50							222.50			
2/10/2020	35857	G&O PAPER	PAPER	44.82	x	419.2/426.122	44.82							44.82			
2/10/2020	35858	OLSON PROPANE	PROPANE	2,119.52	x	419.2/424.11	150.00							150.00			
						419.2/426.121	456.03							456.03			
						422/426.12	1,214.73							1,214.73			
2/10/2020	35859	GRAND ELECTRIC	ELECTRICITY	3,138.42	x	419.2/426.121	45.37	426.12	849.83					895.20			
						419.2/426.122	245.73							245.73			
						452/426.12	35.00							35.00			
						458/426.12	178.51							178.51			
						440/441.4	216.64							216.64			
						422/426.12	103.35							103.35			
						431/426.121	897.50							897.50			
						431/426.122	32.00							32.00			
2/10/2020	35860	TOWN OF BUFF	ULTILTIES	141.88	x	440/441.4	71.38	428	70.50					141.88			
2/10/2020	35861	TOWN OF BUFF	REFRIDGE DISPOSAL	25.00	x												
2/10/2020	35862	TOWN OF BUFF	POSTAGE	165.00	x	419.2/426.112	165.00							165.00			
2/10/2020	35863	NW LANDFILL	OPERATING FEES	2,819.85	x												
2/10/2020	35864	BH PIONEER	WATER APPLICATION	51.74	x	410/423	51.74							51.74			
2/10/2020	35865	HC TREASURER	LAND TAXES	430.01	x	430/432	430.01							430.01			
2/10/2020	35866	BANYON	UB SUPPORT	795.00	x	414.2/422	795.00							795.00			
2/10/2020	35867	SD MUNI ATTORNEY	2020 MEMBERSHIP	20.00	x	414.1/422	20.00							20.00			
2/10/2020	35868	SEATON PUBLISH	NCN SUBSCRIPTION	53.52	x	410/429	53.52							53.52			
2/10/2020	35869	SD ONE CALL	MESSAGING	2.10	x												
2/10/2020	35870	AFLAC	DEB JOHNSON	39.45	x	412.2/411	39.45							39.45			
2/10/2020	35871	VERIZON	CELL PHONES	125.11	x	431/428	62.56							62.56			
2/10/2020	35872	DEB JOHNSON	BUSINES CARDS/PHONE	125.76	x	419.2/426.11	125.76							125.76			
2/10/2020	35873	PROPOINT	IFUEL	44.24	x	431.7/426.12	44.24							44.24			

THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF THE
STATE OF SOUTH DAKOTA

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MAY 04 2020

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN RE APPLICATION OF TOWN OF BUFFALO FOR WATER APPROPRIATION PERMIT
NO. 1992-1

Applicant's Witness and Disclosure Statement

Applicant, through counsel, Dusty Ginsbach, hereby proffers its list of witnesses and exhibits.

WITNESSES:

Ryan Smith, City Works Supervisor, Town of Buffalo, South Dakota. P.O. Box 82, Buffalo, SD 57720.

Mr. Smith will testify as to the current state of the Applicant's water system and future plans of drinking and wastewater management in the Town of Buffalo, SD.

EXHIBIT LIST:

- A. Application to Appropriate Water 1992-1
(https://denr.sd.gov/wrimage/pub/1992-1_apl.pdf)
- B. Applicant's License Agreement with the Harding County Chamber of Commerce
Attached hereto

Respectfully submitted this 29th day of April, 2020.


Dusty Ginsbach
Attorney for the Applicant
P.O. Box 82
Buffalo, SD 57720

LICENSE TO USE PREMISES

This License Agreement is entered into as of the 15th day of October, 2019 by and between the Town of Buffalo, P.O. Box 82, Buffalo, SD 57720 ("the Town") and the Harding County Chamber of Commerce ("Licensor").

WHEREAS, Licensor, formerly known as the Buffalo Commercial Club, owns a parcel known as Lot 1, Block U of Smith's Amended Addition to the Town of Buffalo; and

WHEREAS, the Town desires to use that portion of the of the parcel wherein a test hole was drilled in 2019, including an area starting ten feet due north of the test hole, thenceforth thirty feet due east, thenceforth sixty feet due south, thenceforth fifty feet due west, thenceforth sixty feet due north, thenceforth twenty feet due east to the point of origin ("Property"); and

WHEREAS, subject to the written approval by the President of the Harding County Chamber of Commerce, Licensor is willing to permit the Town to use the previously described property for making improvements around the test hole and to use the previously described property for the production of water; and

WHEREAS, Licensor acknowledges that the use will require necessary improvements including, but not limited to, a wellhead, pump house; electric panel; electric, propane, or gas lines; parking area; security fence; waterlines; and an access road to the property; and

WHEREAS, Licensor acknowledges and accepts that water produced upon the property will be a part of the Town's water system and will in time be available for multiple uses, including, but not limited to, recreation, fire suppression, construction, and drinking water.

NOW, THEREFORE, the parties agree as follows:

1. License to Use Property. Licensor hereby grants the Town permission to include the Property in Town's water system and to use the Property for the production of water. All water produced from the Property in support of construction operations ("Construction Sales") will be measured and accounted for in increments of 1,000 gallons. This License includes the right to place waterlines on the parcel to transport water off of the Property as part of the Town's water system.

2. Fees and Costs. In consideration of being permitted to use the Property, Town agrees to remit to Harding County Chamber of Commerce \$5 (five dollars) per 1,000 gallons of water which the Town sells as Construction Sales relating to projects wherein the cumulative Construction Sales will be greater than 500,000 (five hundred thousand) gallons. The Town will also pay the Harding County Chamber of Commerce 10% (ten percent) of any administrative fees charged by the Town on such Construction Sales. No compensation will be made for water used for any other purpose. Payments by the Town will be made on a monthly or other periodic basis as Construction Sales occur.

3. Use of Property. The Town shall use the Property only for the purpose of producing, transporting, and supplying water. The Town shall not use or permit the use of the Property for any other purpose. The Town shall use and occupy the Property in a careful, safe, and lawful manner which does not interfere with the use of the surrounding premises. The Town agrees that its use of the Property shall at all times be in full compliance with all applicable laws and regulations. The Town agrees to regularly remove all garbage and debris from the Property. The Town shall be responsible for the construction and upkeep of improvements on the premises and any damage to equipment, including any costs incurred to install, clean, or repair same.

4. Condition of Premises; Liability. Licensor makes no warranties whatsoever regarding the condition of the Property or the water well, including water quality, volume or any other aspect

of the well and water produced therefrom. The Town has inspected the Property and found it suitable for the Town's purposes. Licensor shall not be liable for any personal injury or damage to property which the Town or its guests or invitees may incur, regardless of the cause thereof. The Town hereby releases Licensor from all such liability, it being the intent of the parties that the Town shall maintain adequate insurance to cover any such losses. The Town hereby agrees to defend, indemnify, and hold harmless Licensor, its members, officers, employees, and agents from and against any and all claims, damages, losses, suits, judgments, costs, and expenses arising from the Town's occupation of the Property including, but not limited to, the amounts of deductibles on the Town's insurance policies, or any costs resulting from the Town's failure to acquire insurance coverage as required hereunder, and any costs arising from subrogation under worker's compensation or liability claims.

Licensor shall not be liable in any way for any failure or termination of or interruption in any utility services to or for the benefit of the Property or of any failure or termination of or interruption in the water produced by the water well, and the Town hereby releases Licensor from any and all liabilities or damages of any kind which may result by reason of any such failure, termination, or interruption.

5. Compliance with Laws. The Town agrees to comply with all applicable federal, state, and local laws and regulations. The Town will not discriminate on the basis of race, religion, age, sex, color, disability, sexual orientation, political affiliation, national or ethnic origin, or veteran status.

6. Termination. This Agreement shall automatically terminate when the Property is no longer used as a part of the Town's water system, the well bore has been satisfactorily capped, and the well permanently abandoned.

7. Assignment. The Town may not assign or sub-license this Agreement without the prior written consent of Licensor, except to another political subdivision of the State of South Dakota or a recognized non-profit organization utilizing the water produced therefrom to support recreation or fire suppression.

8. Default; Entire Agreement; Amendment. Time is of the essence of this Agreement. Should either party claim a breach of this Agreement by the other party, the non-defaulting party will give written notice explaining the default to the defaulting party, and the defaulting party will have 30 days within which to cure the default. Written notice shall be given by US Certified Mail, and shall be deemed received the earlier of date of receipt or three days after posting to the defaulting party's mailing address. If the default is not satisfactorily cured within the time set forth, this Agreement may be declared in default and either party may commence legal action in Harding County Circuit Court or otherwise agree to mediate the dispute. This Agreement contains the entire agreement of the parties, and no covenants, representatives, inducements, or promises, oral or otherwise, not embodied herein, shall be in force or effect. This Agreement may not be modified, nor any of its provisions waived, except by a writing signed by both parties.

9. Governing Law. This Agreement will be governed by and construed in accordance with the law of the State of South Dakota. The parties consent to the exclusive jurisdiction of the Harding County, South Dakota courts for any dispute arising hereunder not otherwise addressed by mediation of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the first date written above.


Town of Buffalo

By: Gary Johnson

Title: President

Date: 10-15-2019


Harding County Chamber of Commerce

By: Sam Olson

Title: President

Date: 10-17-19

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WATER RIGHTS
PROGRAM

CERTIFICATE OF SERVICE

I certify that on this 29th day of April, 2020, a true and correct copy of the foregoing Applicant's Witness and Exhibit Disclosure was filed with the Chief Engineer of the DENR c/o Eric Gronlund at eric.gronlund@state.sd.us and U.S. postage paid to: Jeanne Goodman, Chief Engineer, DENR, 523 E. Capitol Ave., Pierre, SD 57501 by first class mail. Also, on this day, a true and accurate copy was sent via first class mail to the following:

Bruce Ellison
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Mahmud Fitol
4949 S. 30th St.
Omaha, NE 68107

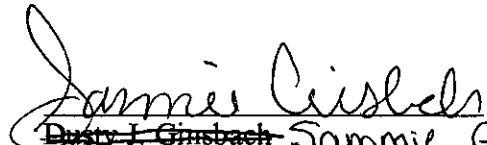
Trisha Etringer
1925 S Pomegranite St.
Sioux City, IA 51106

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

Ann Mines Bailey, Assistant Attorney
General
Counsel for Water Rights Program, DENR
Attorney General's Office
1392 East Highway 14, Suite 1
Pierre, SD 57501

Assistant Attorney General David McVey
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

Ron Duvall, DENR Water Rights Program
Foss Building, 523 E. Capitol Ave.
Pierre, SD 57501


~~Dusty J. Ginsbach~~ Sammie Ginsbach
Attorney for the Town of Buffalo

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MAY 08 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR A CONTINUANCE
BUFFALO	)	
	)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

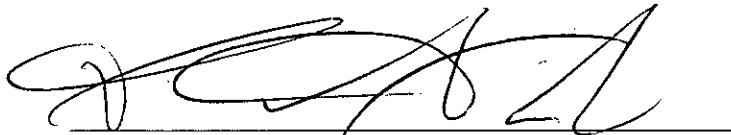
NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Thursday July 9, 2020 beginning at 8:30 A.M. In the event the contested case

proceedings scheduled to be held on July 8, 2020 on not yet finished, this case will commence at the conclusion of the July 8, 2020 cases.

3. In the event this matter cannot be concluded on July 9, the matter will continue on Friday, July 10, 2020 at 8:30 A.M.
4. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 9, 2020 hearing can be held.
5. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', is written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 11, 2020

NOTICE OF ENTRY OF ORDER AND SCHEDULING FOR HEARING

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Order on Motion for Continuance Regarding Water Permit
Application No. 1992-1, Town of Buffalo and Scheduling for Hearing

Enclosed is Hearing Officer Freeman's order concerning the Chief Engineer's motion for a continuance in the matter of Water Permit Application No. 1992-1 and scheduling for hearing.

Based on the order, the Chief Engineer's motion for continuance is granted and the contested case for Application No. 1992-1 will NOT be heard on June 10 or 11, 2020. The evidentiary hearing is rescheduled for hearing at 8:30 AM central time on Thursday, July 9, 2020, continuing July 10 if necessary. Prior agenda items may delay the start of the hearing.

On Thursday, June 11, 2020, a remote conference call will be held at 9:00 AM central time to discuss the status of the COVID-19 pandemic and to determine whether the July 9-10, 2020, hearing can be held. In preparation for this conference call, please be prepared to provide an approximate head count for your group to help with planning what size of room is needed to accommodate everyone with appropriate social distancing. To participate in the conference call, dial 605-679-7263 and enter the Conference ID 460 008 44# when prompted. You may also contact us for a link if you wish to participate by video. To participate by video, you will need a device with a webcam and microphone as well as a mobile wireless or internet connection.

Questions regarding this matter may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR A CONTINUANCE
BUFFALO	)	
	)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

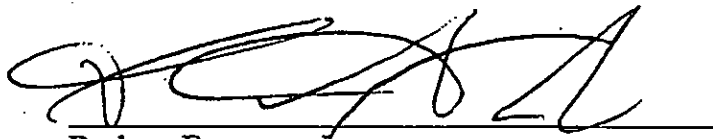
NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Thursday July 9, 2020 beginning at 8:30 A.M. In the event the contested case

proceedings scheduled to be held on July 8, 2020 on not yet finished, this case will commence at the conclusion of the July 8, 2020 cases.

3. In the event this matter cannot be concluded on July 9, the matter will continue on Friday, July 10, 2020 at 8:30 A.M.
4. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 9, 2020 hearing can be held.
5. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

CERTIFICATION

I hereby certify that on May 11, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order and Scheduling for Hearing dated May 11, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

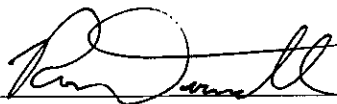
Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



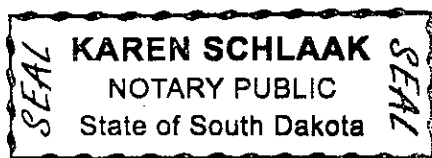
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of May, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 20, 2020

NOTICE OF ENTRY OF ORDER

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

A handwritten signature in black ink, reading "Eric Gronlund".

SUBJECT: Hearing Officer's Order on Motion in Limine by Town of Buffalo Regarding Water
Permit Application No. 1992-1, Town of Buffalo

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 1992-1 concerning the Town of Buffalo Motion in Limine.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION)
NO. 1992-1, TOWN OF BUFFALO)
)
)

ORDER ON TOWN OF BUFFALO
MOTION *IN LIMINE*

WHEREAS, on April 23, 2020, the Town of Buffalo, by and through their attorney, filed a Motion *In Limine*; and

NOW THEREFORE, upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

SDCL § 46-2A-9 states:

A permit to appropriate water may be issued only if there is (1) reasonable probability that there is unappropriated water available for the applicant's proposed use, (2) that the proposed diversion can be developed without unlawful impairment of existing rights and (3) that the proposed use is a beneficial use and (4) in the public interest. (*numbering added*).

In order for the Board to grant a permit for the appropriation of water, evidence must be submitted on each of the four factors listed above. SDCL § 1-26-25 requires that a decision by the Board "include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." (*See also, In the Matter of the 1990 RENEWAL APPLICATION OF SDDS, INC.*, 507 N.W.2d 702 (S.D. 1993)) stating "no...permit may be issued in a contested case unless the Board finds that to do so is in the public interest. We noted that findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.)

SDCL § 1-29-19(1) states in relevant part "The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed." Further SDCL § 19-19-401 provides:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

SDCL § 19-19-402 provides:

All relevant evidence is admissible, except as otherwise provided by constitution or statute or by this chapter or other rules promulgated by the Supreme Court of this state. Evidence which is not relevant is not admissible.

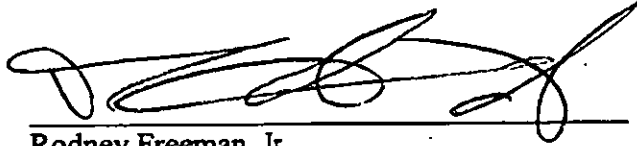
Jurisdiction to approve the construction Keystone XL Pipeline rests with the Public Utilities Commission ("PUC") pursuant to SDCL Ch. 49-41B, not with the Water Management Board. The question of whether TransCanada can build the Keystone XL Pipeline has already been answered in the affirmative by the PUC when they granted the permit on June 29, 2010. The question before this Board is whether the requested appropriation of water by the Town of Buffalo meets the requirement of SDCL § 46-2A-9. More specifically and setting aside the first two prongs of § 46-2A-9, the question is whether the use of the water as proposed is a beneficial use and in the public interest. That is a vastly different question than whether the pipeline itself is being used as a beneficial use and whether it is in the public interest.

The question before this Board is limited to the use of the water and is not an opportunity to re-litigate the PUC permit that was granted in 2010.

It is **ORDERED**, that the Town of Buffalo's Motion *In Limine* is **GRANTED** and evidence and argument will be limited to the proposed use of the water as applied in the context of SDCL

§46-2A-9. Evidence and argument regarding the merits, beneficial use, or public interest of the pipeline itself are precluded.

Dated this 20th day of May, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

CERTIFICATION

I hereby certify that on May 20, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated May 20, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

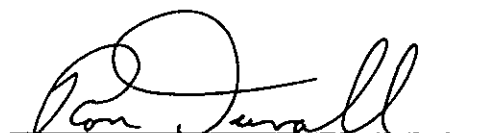
Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



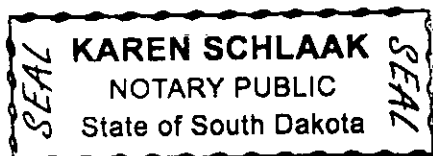
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 20th day of May, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



MAY 22 2020

WATER RIGHTS
PROGRAMSTATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

 IN THE MATTER WATER APPLICATION)
 NO. 1992-1, TOWN OF BUFFALO)
ORDER ON TOWN OF BUFFALO
MOTION *IN LIMINE*)
)
)
)

WHEREAS, on April 23, 2020, the Town of Buffalo, by and through their attorney, filed a Motion *In Limine*; and

NOW THEREFORE, upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

SDCL § 46-2A-9 states:

A permit to appropriate water may be issued only if there is (1) reasonable probability that there is unappropriated water available for the applicant's proposed use, (2) that the proposed diversion can be developed without unlawful impairment of existing rights and (3) that the proposed use is a beneficial use and (4) in the public interest. (*numbering added*).

In order for the Board to grant a permit for the appropriation of water, evidence must be submitted on each of the four factors listed above. SDCL § 1-26-25 requires that a decision by the Board "include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." (*See also, In the Matter of the 1990 RENEWAL APPLICATION OF SDDS, INC.*, 507 N.W.2d 702 (S.D. 1993)) stating "no...permit may be issued in a contested case unless the Board finds that to do so is in the public interest. We noted that findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.)

SDCL § 1-29-19(1) states in relevant part "The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed." Further SDCL §19-19-401 provides:

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

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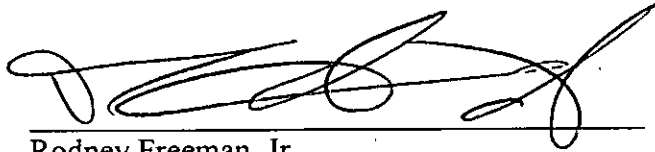
Jurisdiction to approve the construction Keystone XL Pipeline rests with the Public Utilities Commission ("PUC") pursuant to SDCL Ch. 49-41B, not with the Water Management Board. The question of whether TransCanada can build the Keystone XL Pipeline has already been answered in the affirmative by the PUC when they granted the permit on June 29, 2010. The question before this Board is whether the requested appropriation of water by the Town of Buffalo meets the requirement of SDCL § 46-2A-9. More specifically and setting aside the first two prongs of §46-2A-9, the question is whether the use of the water as proposed is a beneficial use and in the public interest. That is a vastly different question than whether the pipeline itself is being used as a beneficial use and whether it is in the public interest.

The question before this Board is limited to the use of the water and is not an opportunity to re-litigate the PUC permit that was granted in 2010.

It is **ORDERED**, that the Town of Buffalo's Motion *In Limine* is **GRANTED** and evidence and argument will be limited to the proposed use of the water as applied in the context of SDCL

§46-2A-9. Evidence and argument regarding the merits, beneficial use, or public interest of the pipeline itself are precluded.

Dated this 20th day of May, 2020.

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

DAKOTA RURAL ACTION'S MOTION FOR SUBPOENAS

Dakota Rural Action (hereinafter, "DRA"), pursuant to SDCL §1-26-18(2), together with its Statutory and State and Federal Constitutional Rights to Due Process, hereby moves the Water Management Board (hereinafter, "WMB") to authorize issuance of subpoenas either by the Board or by DRA for witness testimony and official documents, to permit DRA to thereby to exercise its rights to present material evidence at the scheduled July 9-10, 2020 Hearing in this matter.

DRA respectfully requests a subpoena be authorized for:

1. Jeanne Goodman, DENR Water Rights Program, 523 E. Capitol Avenue, Pierre, SD 57501. Ms. Goodman will testify about the conclusions she made of each of the four factors required to be found by the WMB under SDCL §46-2A-9 before a permit may be granted, expressed in the

Recommendation the Staff intends to introduce as evidence in this matter.

DRA further requests authorization for a subpoena to the Custodian of Records for the Town of Buffalo, P.O. Box 82, Buffalo, SD 57720 and to bring with him/her the following Town records constituting DRA's Noticed Exhibits regarding the facts and circumstances of the agreement between the Town and TransCanada Energy for the drilling of a well to provide water for the construction of the KXL pipeline for up to four years and the subsequent Application for Water Appropriation Permit 1992-1 by the Town for municipal use only of the public water, materially omitting any reference to and permitting proper regulatory review and analysis of the merits of the Application by the Water Management Board of the actual beneficiary and intended industrial of the public water for industrial/construction use:

EX. 600	10-7-19 Water Purchase Agreement with TransCanada
EX. 601	9-12-19 Water Purchase Agreement with TransCanada
EX. 602	10-15-19 License to Use Premises
EX. 603	Well # 8 Development Costs
EX. 604A	2-11-19 Minutes of Regular Town Board Meeting
EX. 604B	3-11-19 Town Board Minutes
EX. 604C	4-8-19 Town Board Minutes
EX. 604E	5-13-19 Town Board Minutes
EX. 604F	6-10-19 Town Board Minutes

EX. 604G 7-8-19 Town Board Minutes
EX. 604H 8-1-19 Town Board Minutes
EX. 604I 8-12-19 Town Board Minutes
EX. 604J 9-9-19 Town Board Minutes
EX. 604K 10-15-19 Town Board Minutes
EX. 604L 12-17-19 Town Board Minutes
EX. 604M 1-3-20 Town Board Minutes
EX. 605A 8-1-19 Agenda, Town of Buffalo Board of Trustees
EX. 605B 10-15-19 Agenda, Town of Buffalo Board of Trustees
EX. 606A Dec. 2019 Receipt Journal of Town - Buffalo Board of
Trustees
EX. 607A Jan. 2020 Expenditures Journal - Town of Buffalo Board of
Trustees
EX. 607B Feb. 2020 Expenditures Journal - Town of Buffalo Board of
Trustees.

Dated this 15th day of June, 2020,

/s/ Bruce Ellison
BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709
belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion for Subpoenas was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106

A copy of electronically sent to:
Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

Ann Mines-Bailey
Assistant Attorney General for DENR
1302 E. Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman
Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
Pierre, SD 57501
David.mcvey@state.sd.us

John Harter
28125 307th Avenue

Winner, SD 57580

Johnharter11@yahoo.com

Mahmud Fitol
4949 S. 30th Street

Omaha, NE 6810

mahmudfitil@gmail.com

Elizabeth Lone Eagle

593 Big Foot Loop Road

Bridger, SD 57745

bethebest@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com

Dated this 15th of June, 2020.

/s/ Bruce Ellison

BRUCE ELLISON

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

**DAKOTA RURAL ACTION'S MOTION FOR COVID-19 HEALTH
PROTECTIONS AT SCHEDULED HEARING ON MERITS OF
APPLICATION**

Dakota Rural Action (hereinafter, "DRA"), by and through the below-signed Attorney hereby moves the Water Management Board (hereinafter, "WMB") for reasonable preventive safety and health protocols at the scheduled July 9-10, 2020 Hearing on the merits of this matter.

This Motion is made without waiving DRA's concerns and oral motion to Continue Hearing based upon the continuing spread of the COVID-19 virus in South Dakota, the absence of a vaccine, and how the scheduled date creates an unnecessary and enhanced health and safety risk of COVID-19 infection to all participants present, the particular increased mortal risk infection poses to persons 70 years and older especially with certain medical conditions including the below-signed

Counsel, some of the intervenors, and some of the WMB members, the general risk of spread to those in attendance at an indoor Hearing, the medical evidence that persons with COVID-19 can be infectious to others by persons not displaying any symptoms of the virus for up to 3-4 days, and the lack of urgency or any prejudice to the Parties to conduct this Hearing at a future date when the risk of exposure has dissipated.

In order to attempt to minimize the risk of infection to participants during the scheduled Hearing, DRA respectfully requests that each and all of the following precautionary measures be ordered:

1. All persons entering the building and hearing room shall wear a moisture barrier mask at all times;
2. Before being allowed to enter the Hearing room on July 9 and 10, 2020, each person desiring to do so be medically screened, to then participate in the 15 minute rapid test for COVID-19 and have a negative result. Anyone testing positive or showing symptoms of the COVID-19 shall not be permitted to enter the Hearing room and be ordered to leave the building immediately;
3. That any desk, machine, or other tangible object handled by any participant in the Hearing room be wiped clean with chemical agents which kill the

COVID-19 virus after each such use;

4. Any further procedures desired by the WMB which will further protect participants from being infected with COVID-19 during the duration of the Hearing.

This Motion is further based on DRA's Rights to Due Process including the right to participate fully in these proceedings without the unnecessary health risk posed by the timing of the scheduled hearing amidst the growing pandemic and in the absence of imposition of each and every one of the above minimal required and prudent safety precautions.

Dated this 15th day of June, 2020,

/s/ Bruce Ellison
BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709
belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion for COVID-19 Safety Precautions was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was further mailed, U.S. Postage paid to:

Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106

A copy of electronically sent to:

Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

Ann Mines-Bailey
Assistant Attorney General for DENR
1302 E. Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman
Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
1302 E. Highway 14, Ste 1
Pierre, SD 57501
David.mcvey@state.sd.us

John Harter
28125 307th Avenue

Winner, SD 57580

Johnharter11@yahoo.com

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Elizabeth Lone Eagle

593 Big Foot Loop Road

Bridger, SD 57745

bethebest@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com

Dated this 15th of June, 2020.

/s/ Bruce Ellison

BRUCE ELLISON

RECEIVED

JUN 18 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S
APPLICATION NO. 1992-1, TOWN OF	)	CORRECTION TO THE
BUFFALO	)	EXHIBIT DISCLOSURE
	)	

On April 24, 2020, the Chief Engineer disclosed the exhibits intended to be introduced during the hearing in the above-entitled matter. In reviewing that disclosure, counsel has found an error in the Application No. listed in Exhibit 1. In the April 24 disclosure, Exhibit 1 was listed to be the administrative record of Water Permit Application No. 1963A-1. Exhibit 1, however, is the administrative record of this matter, Water Permit Application No. 1992-1.

Dated this 17th day of June, 2020.



Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

RECEIVED

JUN 18 2020

WATER RIGHTS
PROGRAM

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Correction to the Exhibit Disclosure in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 17th day of June 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

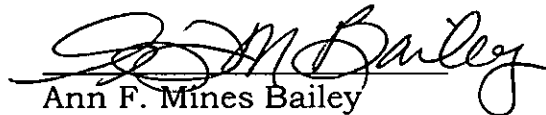
Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	ORDER
OF BUFFALO	)	
	)	

This matter is scheduled to be heard by the Water Management Board on July 9, 2020. In preparation for that hearing, the parties shall comply with the following:

1. To facilitate distribution to those Board members who will be appearing remotely during the July 9 hearing, the parties shall provide a hardcopy of each exhibit which may be used during the course of the hearing. Each exhibit is to be numbered prior to submission in accordance with the Procedural Order dated March 4, 2020.

Applicant shall use letters A-Z.

Water Rights shall use numbers 1-99.

Elizabeth Lone Eagle shall use numbers 100-199.

Mahmud Fitol shall use numbers 200-299.

John Harter shall use numbers 300-399.

Trisha Etringer shall use numbers 400-499.

Carol Hayse shall use numbers 500-599.

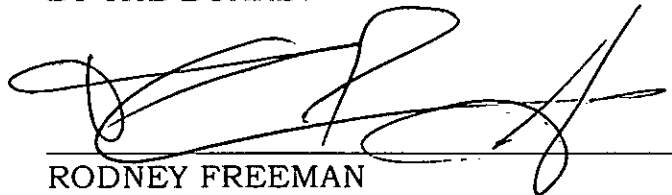
Dakota Rural Action shall use numbers 600-699.

2. In order to comply with the guidance issued by the Centers for Disease Control and the South Dakota Department of Health, the parties shall also submit the number of individuals who will be present on their behalf during the hearing.
3. The parties must still be prepared to provide a sufficient number of copies of exhibits, with the exception of the administrative file, for use at the contested case hearing, including at least nine (9) copies for the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

On or before June 26, 2020, the number of participants to be present and the exhibits as outlined above must be provided to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 17th day of June, 2020.

BY THE BOARD:

A handwritten signature in black ink, appearing to be "Rodney Freeman", written over a horizontal line.

RODNEY FREEMAN
PREHEARING CHAIRMAN

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
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Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

TTY (605) 773-6585

<http://atg.sd.gov/>

RECEIVED

JUN 18 2020

**WATER RIGHTS
PROGRAM**

JASON R. RAVNSBORG

ATTORNEY GENERAL

CHARLES D. McGUIGAN

CHIEF DEPUTY ATTORNEY GENERAL

June 17, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Mahmud Fitil
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
Hand Delivered

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Correction to the Exhibit Disclosure in the above-referenced file.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/klg

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

June 18, 2020

NOTICE OF ENTRY OF ORDER

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Order on Providing Numbered Exhibits and Number of Individuals
attending Hearing on Water Permit Application No. 1992-1, Town of Buffalo

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 1992-1 to submit numbered exhibits and provide the number of individuals attending the hearing to Ron Duvall on or before June 26, 2020. In addition, the order requires having enough copies of numbered exhibits available at the hearing.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

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1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on June 18, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated June 18, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

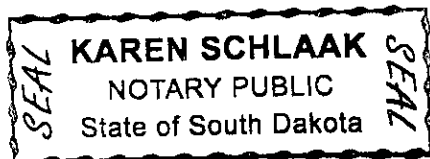
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Ron Duvall
Water Rights Program, DENR

[illegible]

Sworn to, before me, this 18th day of June, 2020.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

JUN 19 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S RESPONSE TO
APPLICATION NO. 1992-1, TOWN OF	)	DAKOTA RURAL ACTION'S MOTION
BUFFALO	)	FOR COVID-19 HEALTH
	)	PROTECTIONS

The above-entitled matter is scheduled to commence before the Water Management Board on July 9, 2020, with a possible continuation on July 10, 2020. Dakota Rural Action has filed a motion requesting specific precautions it believes the Board should mandate for all participants. In an effort to assist the Board, the Chief Engineer now responds to provide information regarding the precautionary measures which are already in effect and those which have been arranged to be in place during the course of the July 2020 Water Management Board meeting. Additionally, Water Rights objects to the portion of the motion which would require the wearing of a mask by a witness while testifying.

The meeting is to be held at the Matthews Training Center in Pierre, SD. When the COVID-19 pandemic began, the building was thoroughly cleaned while state employees were ordered to work from home. Cleaning crews continue to clean and disinfect by wiping down all common surfaces, including light switches, doorknobs and handles, tabletops, and chairs, etc. DENR is in the process of securing a supply of wipes to be made available to participants in the hearings for their use to wipe down any areas they feel need to be sanitized during the hearings. Additionally, arrangements have been made to sanitize the meeting room in between each hearing.

With regard to the request for rapid testing for COVID-19, DENR is inquiring as to whether such testing would be available. It is, however, unlikely that such tests and healthcare workers needed to administer the tests would be available for this purpose. Currently, the State requires state employees to self-screen. To that end, state employees are required to take their temperatures at home or upon entering a state building. Monitoring stations are set up at the building entrance where an individual can take their temperature. The State does not require the screening of the public. Employees and the public who are exhibiting symptoms are encouraged to remain at home.

Likewise, masks are provided to state employees under certain circumstances and will be available for the Board members. Per executive guidance, masks are not required to be worn by the public or most state employees. Under DENR policy, when physical interaction with the public is required and social distancing cannot be maintained, DENR employees are required to wear masks. For these hearings, DENR will have masks available for those who wish to utilize them.

DENR is taking steps to maintain social distancing amongst the participants through the course of the hearings. The Board members will be spaced six feet apart. Social distancing for the court reporter, witness, and individual questioning the witness will be dependent on how the Board wishes to proceed with questions – if they prefer the questioner to be at the front of the room or remain at the party table. Tables are prepared for the parties which are also spaced in accordance with the CDC guidance; however, there will not be a full six feet in between individuals seated at the same party table. Each party will have one table. The

party tables will allow two people with approximately 4-5 feet of space between them. The parties may choose to have more than two people at their table which would further diminish the space between individuals. Seating will be available for the public and media which will also be spaced in accordance with CDC guidelines. The number of seats available for the public will be dependent upon the number of parties participating in that particular hearing. Further, accommodations are being arranged for parties who are awaiting their hearing to commence before the Board.

While Water Rights is greatly concerned about the health risks posed due to COVID-19, especially given that several of the members of the Board, DENR staff, parties, and potential public participants are at a higher risk, Water Rights would oppose the wearing of a mask by an individual testifying during their testimony. It is essential that the Board members be able to assess the credibility of the witness, which includes body language and facial cues. For that reason alone, a blanket order that all individuals must be masked is inappropriate.

Dated this 18th day of June, 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Response to Dakota Rural Action's Motion for COVID-19 Health Protections in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 18th day of June 2020:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General

RECEIVED

JUN 22 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

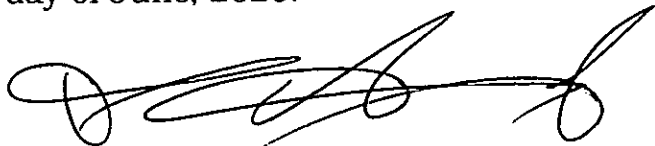
IN THE MATTER WATER	)	ORDER ON DAKOTA RURAL
APPLICATION NO. 1992-1, TOWN OF	)	ACTION MOTION FOR SUBPOENAS
BUFFALO	)	
	)	

WHEREAS, on June 15, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion for Subpoenas; and

WHEREAS, no parties or interveners filed any opposition to the motion .

NOW THEREFORE, upon consideration of the papers filed herein, the DRA's Motion for Subpoenas is hereby **GRANTED** and the DRA may issue subpoenas as set forth in their June 15, 2020 Motion for Subpoenas.

Dated this 19th day of June, 2020.



Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

RECEIVED

JUN 19 2020

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 18, 2020

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

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Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Response to Dakota Rural Action's Motion for COVID-19 Health Protections.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

JUN 22 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER DAKOTA RURAL ACTION'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR COVID-19 HEALTH
BUFFALO	)	PROTECTIONS
	)	

WHEREAS, on June 15, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion for COVID-19 Health Protections; and

WHEREAS, on June 18, 2020, the DENR filed the Chief Engineer's response to DRA's Motion; and

WHEREAS, no other party or intervener filed a response to the motion.

NOW THEREFORE, the issue being briefed by the Parties and upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

The above-entitled matter is scheduled to commence before the Water Management Board on July 9, 2020, with a possible continuation on July 10, 2020.

The meeting is to be held at the Matthews Training Center in Pierre, SD. When the COVID-19 pandemic began, the building was thoroughly cleaned while state employees were ordered to work from home. Cleaning crews continue to clean and disinfect by wiping down all common surfaces, including light switches, doorknobs and handles, tabletops, and chairs, etc. DENR is working to secure a supply of wipes to be made available to participants in the

hearings for their use to wipe down any areas they feel need to be sanitized during the hearings. Additionally, DENR has made arrangements to have the meeting room sanitized in between each hearing.

The State requires state employees to self-screen. To that end, state employees are required to take their temperatures at home or upon entering a state building. Monitoring stations are set up at the building entrance where an individual can take their temperature. The State does not require the screening of the public. Employees and the public who are exhibiting symptoms are encouraged to remain at home.

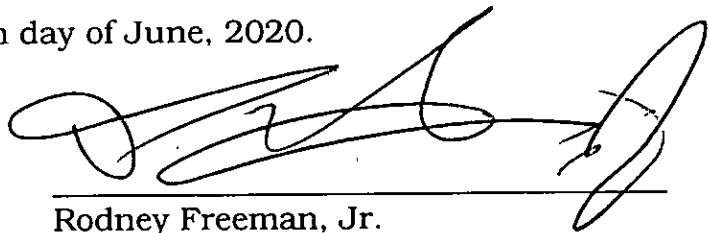
Masks are provided to state employees under certain circumstances and will be available for the Board members. Per executive guidance, masks are not required to be worn by the public or most state employees. It is DENR policy, when physical interaction with the public is required and social distancing cannot be maintained, for DENR employees to wear masks. For these hearings, DENR has agreed to have masks available for those who wish to utilize them.

DENR is taking steps to maintain social distancing amongst the participants through the course of the hearings. The Board members will be spaced six feet apart. Social distancing for the court reporter, witness, and individual questioning the witness will be at the discretion of the Board and dependent on how they wish to proceed with questions. DENR will prepare tables for the parties which are spaced in accordance with the CDC guidance; however, there will not be space available for a full six feet in between

individuals seated at the same party table. Each party will have one table. The parties may choose to have more than two people at their table which would diminish the space between individuals, but that is in the discretion of the individual party. Seating will be available for the public and media which will also be spaced in accordance with CDC guidelines. The number of seats available for the public will be dependent upon the number of parties participating in that particular hearing.

It is **ORDERED**, that DRA's Motion for COVID-19 Health Protections is **DENIED** except as set forth herein.

Dated this 19th day of June, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 22, 2020

NOTICE OF ENTRY OF ORDERS

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: Hearing Officer's Orders on Dakota Rural Action's Motions for Covid-19 Health
Protections and for Subpoenas on Water Permit Application No. 1992-1, Town of
Buffalo

Enclosed are Hearing Officer Freeman's orders in the matter of Water Permit Application No. 1992-1
regarding Dakota Rural Action's Motions for Covid-19 Health Protections and for Subpoenas.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
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Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on June 22, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated June 22, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

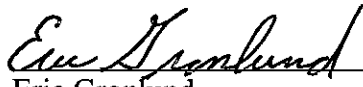
Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

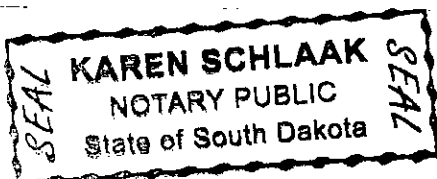
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of June, 2020.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

RECEIVED
JUL 02 2020
**WATER RIGHTS
PROGRAM**

**DAKOTA RURAL ACTION'S MOTION FOR COUNSEL TO APPEAR
AND PARTICIPATE REMOTELY AT SCHEDULED HEARING ON
MERITS OF APPLICATION OR FOR CONTINUANCE**

Dakota Rural Action (hereinafter, "DRA"), by and through the below-signed Attorney hereby moves the Water Management Board (hereinafter, "WMB") to permit its Counsel to appear and participate remotely (video and audio) in proceedings scheduled in this matter for July 9-10, 2020 due to the growing COVID-19 pandemic, the age and other medical conditions of DRA's Counsel which place him at much higher risk from any exposure at the Hearing or building in which it is to be held, and the di minimis and insufficient safety and health precautions approved by the Board for the Hearing.

Should the Board refuse to permit Counsel for DRA to appear and participate in the hearing remotely, DRA hereby requests a continuance of at least 60 days to

permit either the COVID virus to be really (not wishfully) gone, reasonably safe and healthy protocols be implemented, or for DRA to attempt to find other counsel willing to risk catching the COVID virus in order for the matter to proceed.

There is no prejudice to any party by the granting of the relief requested, including a continuance.

This Motion is based upon the following facts and circumstances:¹

1. The hearing is scheduled for over 3 hours on Thursday and Friday, July 9-10, 2020. The nature of the proceedings in a confined space with poor air circulation in the Mathew Training Center will require the public, the parties, counsel, the Water Management Board and staff participants to be in a confined space with poor circulation for lengthy periods of time each of those days, which science shows enhances risks of contamination.

2. The United States, as well as much of the rest of the world are in the midst of a public health emergency due to the exponential spread of COVID-19, the respiratory disease caused by the novel corona virus SARS-CoV-2. According the Centers for Disease Control (“CDC”), this coronavirus is spreading very easily and sustainably between people, including asymptomatic people.² Persons of all ages

¹ See, Statement of Facts and citations in Complaint, Cheyenne River Sioux Tribe v. Trump, et al, Civ.No. 20-01709 (D.S.D.) [Document No. 1]. Special thanks to Counsel of record for the Big Fire Law and Policy Group.

² Centers for Disease Control and Prevention, *How Corona Virus Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/how-corona-virus-spreads.html> (last visited 6/20/20).

have contracted the disease.³

3. Since April 2020, the United States has led the world in the total number of COVID-19 cases. As of April 30, 2020, the United States has confirmed over one million cases of COVID-19 and reported 60,999 deaths due to COVID-19. In the past month and a half, these numbers have more than doubled. The United States has, as of a week ago, had confirmed 2,312,302 cases of COVID-19 and reported 120,402 deaths due to COVID19 and counting.⁴

4. Even mild cases of the COVID-19 generally involve about two weeks of fevers and dry coughs and are more severe than the flu.⁵

5. COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage kidney, heart, and liver tissues as well as other systemic damage.⁶ The surge of COVID-19 cases also causes mounting strains on healthcare systems, including critical shortages of doctors, nurses, hospital beds, medical equipment, diagnostic tests, and personal protective equipment.⁷

3 Robert, Verity, et al., Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis, *The Lancet* 6 *Infect.Dis.* (Mar. 30, 2020), [https://www.thelancet.com/action/showPdf?pii=S2473-3099\(20\)30243-76](https://www.thelancet.com/action/showPdf?pii=S2473-3099(20)30243-76)

4 Lisa Lokerd Maragakis, *Coronavirus Disease 2019 v. the Flu*, Johns Hopkins Univ.Hcalth, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-disease-2019-vs-the-flu> (last visited June 23, 2020); see also COVID-19 Dashboard, Johns Hopkins Ctr. For Sys.Sci.&Eng'g, <https://www.arcgis.com/apps/opsdashboard/index.html#bda759470fd40299423467b48e9ecf6> (last visited June 23, 2020) (GIS map of global COVID-19 cases developed by Johns Hopkins Ctr. For Sys.Sci.&Engineering).

5 Holly Secon & Aria Bendix, *There is a wide misconception of what a 'mild' case of the COVID-19 looks like. It can be ugly and brutal.* *Business Insider* (Apr. 16, 2020), <https://www.businessinsider.com/mild-coronavirus-cases-high-fever-dry-cough-2020-3>.

6 Ctrs. For Disease Control & Prevention, *Interim Clinical Guidance for Management of Patients With Confirmed Coronavirus Disease* (last visited June 21, 2020).

7 Megan L. Ranney, et al., Critical Supply Shortages – The Need for Ventilators and Personal Protective

6. In serious cases, individuals' lungs "become filled with inflammatory material [and] are unable to get enough oxygen to the bloodstream."⁸ Severe cases of COVID-19 cause acute respiratory distress syndrome in which fluid displaces air in the lungs. Such patients "are essentially drowning in their own blood and fluids because their lungs are so full."⁹ The virus frequently causes extreme symptoms, including fever and chills that can last for weeks, excruciating pain, debilitating fatigue, an unremitting cough, uncontrollable diarrhea, and an inability to keep down food and water.¹⁰

7. People of all ages have contracted COVID and died from it, but the illness for older adults poses special risks for the elderly and those with certain pre-existing medical conditions. According to the CDC's analysis, 80% of all COVID-19 related deaths in the United States are people 65 and older.¹¹ COVID-19 also poses greater risks for people with pre-existing heart and respiratory conditions, individuals with compromised immune systems, and those with many other

Equipment during the COVID-19 Pandemic, *New Eng. J. Medicine*, Apr 30, 2020).

<https://www.nejm.org/doi/full/10.1056/NEJMp2006141>; World Health Org., *Shortage of personal protective equipment endangering health workers worldwide* (Mar. 3, 2020), <https://www.who.int/news-room/detail/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide>.

⁸ Graham Redfearn, *What happens to people's lungs when they get coronavirus?*, *The Guardian* (Apr. 14, 2020), <https://www.theguardian.com/world/2020/apr/15/what-happens-to-your-lungs-with-coronavirus-covid-19>.

⁹ Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure from COVID-19 – In His Young Patients*, *ProPublica* (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid-19-even-in-his-young-patients>.

¹⁰ See, e.g., *Ibid*; Leah Groth, *Is Diarrhea a Symptom of COVID-19?*

¹¹ Ctrs. For Disease Control and Prevention, *Older Adults*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited June 23, 2020).

conditions.¹² As of May 30, 2020, among COVID-19 cases, the most common underlying health conditions were cardiovascular disease (32%), diabetes (30%), and *chronic* lung disease (18%).¹³ Hospitalizations were six times higher and deaths 12 times higher among those with reported underlying conditions compared with those with none reported.¹⁴

8. DRA's Counsel is seventy (70) years of age, is a heart patient, and has other serious medical issues which make him at very high risk generally with regard to exposure to the COVID-19. He has been advised by his medical providers that attending the hearing involving hours in a confined space under the health and safety protocols established by the Board, particularly including the failure to mandate mask wearing in the building, would be contrary to their medical advice and put him at an unreasonable health and safety risk. As health officials agree, the average risk for a sustained indoor event poses a risk 20x higher than a similar event outdoors. It is noted that at least one Board member with similar medical conditions is being permitted by the Board to participate remotely so as to not have to attend in person and be subjected to the high risks of infection involved.

9. The effects of the pandemic on public social interaction will last well

¹² Ctrs. For Disease Control and Prevention, *Groups at Higher Risk of Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

¹³ Ctrs. For Disease Control and Prevention, *Morbidity & Mortality Weekly Report*, June 19, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm>.

¹⁴ *Ibid.*

into the summer of 2020, if not longer. Experts have indicated that seasonal changes are “unlikely to stop transmission.”¹⁵ Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, recently reiterated his warning of a second wave of COVID-19 infections. “When people talk about a second wave in the summer, you can’t about a second wave in the summer because we’re still on the first wave.”¹⁶

10. The COVID-19 pandemic has deeply affected South Dakota. As of July 1, 2020, the State had confirmed 6726 cases.¹⁷ Ninety-three (93) South Dakotans have died from the disease.¹⁸ Of those that were tested, there were Sixty-Two (62) new people who tested positive for the disease since the day before.¹⁹

11. There has never been a stay-at-home order in South Dakota, nor are there any active stay-at-home orders that apply to all citizens on State land or Tribal areas. The State’s decision to forego a statewide order has been the source of considerable controversy, as was the Governor Kristi Noem’s decision to use state resources to participate in trials of hydroxychloroquine to treat COVID-19.²⁰

15 Marc Lipsitch, Harvard T.H.Chan School of Public Health, Ctr. For Communicable Disease Dynamics, *Seasonality of the SARS-CoV2: Will COVID-19 go away on its own in warmer weather?* <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/> (last visited June 21, 2020).

16 Ross Krasny, *Don’t Plan on Summer Holidays in the U.S., Fauci Tells the British*,

17 South Dakota Department of Health, *Novel Coronavirus (COVID-19) Updates and Information*, <https://doh.sd.gov/news/coronavirus.aspx#SD> (last visited July 1, 2020).

18 *Ibid.*

19 *Ibid.*

20 Griff White, *South Dakota Governor Resisted Ordering People to Stay Home. Now It Has One of the Nation’s Largest Coronavirus Hot Spots*, Washington Post, <https://www.washingtonpost.com/national/south-dakotas->

12. DRA has indigenous members who, as in the past, would like to attend the public hearing in person. One of the Individual Intervenors, Elizabeth Lone Eagle, is a member of the Cheyenne River Sioux Tribe and resides in a remote area within the Cheyenne River Reservation boundaries.

13. The COVID-19 pandemic has a particularly devastating effect on Native American communities. Non-Hispanic American Indian or Native persons have a COVID-19 hospitalization rate approximately 5.5 times that of non-Hispanic White persons.²¹

14. COVID-19 has put the Cheyenne River Sioux people in dire jeopardy. Remoteness, millions of acres of land, and a historically failed trust has meant and means a lack of adequate infrastructure.

15. Disparities in access to transportation further exacerbate Native Americans' access to healthcare. The Cheyenne River Sioux Tribal government has 1,700 miles of mostly unpaved roads with funds, with grossly insufficient funds to maintain more than some 300 miles of road. During certain times of the year, wet conditions and melting snow make some roads nearly impassable. Compounding the issue, several roads are still closed after the historic flooding in

[governor-resisted-ordering-people-to-stay-home-now-it-has-one-of-the-nations-largest-coronavirus-hot-spots/2020/04/13/5cff90fe-7daf-11ea-a3ee1ae0a3571_story.html](#) (last visited June 23, 2020).

²¹ Ctrs for Disease Control & Prevention, COVID View, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (last visited June 22, 2020).

March 2019 destroyed entire swaths of the road all over the Reservation. In many areas, there is no telephone or internet service. Residents in outlying communities must travel up to ninety (90) miles to reach basic Indian Health Services medical care at the Tribal headquarters in Eagle Butte.

16. Underlying health disparities further render Native Americans particularly vulnerable to COVID-19. Native Americans suffer from disproportionately high rates of diabetes, cancer, heart disease, and asthma, which subject them to a greater risk of fatal complications from COVID-19.

17. The Cheyenne River Sioux Tribes' HIS facility in Eagle Butte has only eight in-patient beds, six ventilators, two negative pressure rooms, inadequate staff, and zero respiratory therapists to care for the Reservations 10,000 resident Tribal members. If more advanced medical intervention is needed for a COVID-19 patient, the patient would be transferred by HIS to an off-Reservation facility, the closest of which is 175 miles (three hours) away.

18. On or about June 20, 2020, DRA filed a Motion for COVID-19 Safety Precautions, seeking various safety precautions including mandatory mask wearing, COVID-19 daily rapid testing protocols, a room with good ventilation at a minimum as recommended by the CDC for persons over 65 and persons with certain medical conditions, at greater risk of not surviving the virus.

19. The Water Rights Staff responded that steps would be taken to comply with CDC guidelines and will sanitize the meeting room after each days's session, will secure wipes participants can use to wipe areas, there would unlikely be tests and healthcare workers to perform COVID-19 tests, that DENR employees will wear masks when social distancing cannot be maintained, that the State does not "require" screening of the public, and that masks will be optional. See, Chief Engineers's Response to DRA's Motion to COVID-19 Protections, dated June 18, 2020.

20. That SD Governor Kristi Noem, by Executive Order 2020-8 requested that people "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at last 6 feet is not possible.

21. In its following Order, the Pre-Hearing Chairman denied DRA's Motion in its entirety. The Order stated that CDC Guidelines would be followed, except where Executive Order from Governor Noem instructed the contrary or ignoring of safety protocols of mask wearing making them optional, no daily COVID-19 checks except for optional temperature checks and voluntary remaining at home if have symptoms.

22. **"In general, your risk of getting severely ill from COVID-19 increases as you get older. In fact, 8 out of 10 COVID-19-related deaths reported**

in the United States have been among adults aged 65 years and older....”

“As you get older, your risk of being hospitalized for COVID-19 increases. **Everyone, especially older adults and others at increased risk of severe illness, should take steps to protect themselves from getting COVID-19.**” (Bold in original text) (last viewed July 1, 2020)
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

23. “If you are thinking about participating in an event or gathering:

If you are at increased risk for severe illness, consider avoiding high-risk gatherings. The risk of COVID-19 spreading at events and gatherings increases as follows:

Lowest risk: Virtual-only activities, events, and gatherings.

More risk: Smaller outdoor and in-person gatherings in which individuals from different households remain spaced at least 6 feet apart, wear cloth face coverings, do not share objects, and come from the same local area (e.g., community, town, city, or county).

Higher risk: Medium-sized in-person gatherings that are adapted to allow individuals to remain spaced at least 6 feet apart and with attendees coming from outside the local area.

Highest risk: Large in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area.” (last viewed 7/1/20)

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

24. According during the morning news on July 1, 2020 advertisement

From the State of South Dakota published on KOTA-TV: “The best way to avoid COVID-19 is to avoid exposure.”

Counsel for DRA therefore seeks authorization from the Board to do that – to avoid exposure. He thereby seeks authorization and the ability to participate on

behalf of DRA in the Hearing remotely, with both audio and video receiving and sending capability.

In the alternative, since no party has expressed any prejudice would be forthcoming, DRA respectfully requests a continuance of at least 60 days with the hopes that at that time either the Board would agree to safety protocols to best protect the public, the parties, and the Board and its staff or the COVID-19 would no longer be a serious threat to elders with/or those special medical conditions which dramatically increase risk of serious medical complications, if not death.

This Motion is further based on DRA's Rights to Due Process including the right to participate fully in these proceedings without the unnecessary health risk posed by the timing of the scheduled hearing amidst the growing pandemic and in the absence of imposition of each and every one of the above minimal required and prudent safety precautions.

Dated this 2nd day of July, 2020,

/s/ Bruce Ellison
BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709
belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Motion for DRA Counsel to Appear And Participate Remotely or for Continuance for was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy of electronically sent to:
Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

Ann Mines-Bailey
Assistant Attorney General for DENR
1302 E. Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Rodney Freeman, Jr. Prehearing Chairman
Water Management Board
523 E. Capitol
Pierre, SD 57501
Rfreeman.huronlaw@midconetwork.com

David McVey, Assistant Attorney General
Water Management Board Counsel
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Pierre, SD 57501
David.mcvey@state.sd.us

John Harter
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Winner, SD 57580

Mahmud Fitol
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Omaha, NE 6810

Johnharter11@yahoo.com

Elizabeth Lone Eagle

593 Big Foot Loop Road

Bridger, SD 57745

bethcbest@gmail.com

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

tetringer@greatplainsaction.org

Dated this 2nd of July, 2020.

/s/ Bruce Ellison

BRUCE ELLISON

mahmudfitil@gmail.com

Carol Hayse

12299 Benchmark Rd.

Nemo, SD 57759

carolhaysie@gmail.com



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 2, 2020

NOTICE OF ENTRY OF ORDER

TO: Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

And Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Hearing Officer's Order on Dakota Rural Action's Motion for Counsel to Appear and Participate Remotely at Scheduled Hearing on Merits of Application or for Continuance of Water Permit Application No. 1992-1, Town of Buffalo

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 1992-1 regarding Dakota Rural Action's Motion for Counsel to Appear and Participate Remotely at Scheduled Hearing on Merits of Application or for Continuance.

Enclosure

c: David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on July 2, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated July 2, 2020, regarding Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

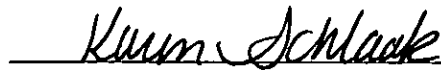
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

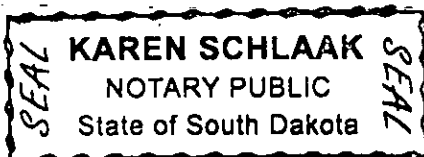
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of July, 2020.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

JUL 02 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER DAKOTA RURAL ACTION'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR COUNSEL TO
BUFFALO	)	APPEAR REMOTELY OR FOR
	)	CONTINUANCE

WHEREAS, on July 2, 2020, Dakota Rural Action ("DRA"), by and through their attorney, filed a Motion to Appear Remotely or for a Continuance of the contested case hearing regarding the above-entitled matter which is scheduled for July 9-10, 2020; and

WHEREAS, on June 11, 2020, the Board, the Parties, and the interveners (including counsel for DRA) held a conference call regarding COVID-19 issues and scheduling for the hearings. Specifically addressed, was the need for all counsel (among others) who would be entering evidence or eliciting testimony to be present in person at the contested case hearing; and

WHEREAS, on June 15, 2020, DRA, by and through their attorney, filed a Motion for COVID-19 Health Protections; and

WHEREAS, on June 19, 2020, the Board Hearing Officer issued an Order setting forth the COVID-19 protocols that will be in place for the upcoming hearings.

NOW THEREFORE, upon consideration of the papers filed herein, the following Order shall be entered in the above captioned action.

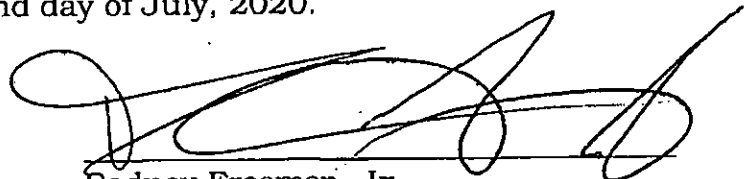
The COVID-19 pandemic has been on most the Nation's mind since January of 2020, and certainly, by March of 2020 everyone was paying attention. In fact, on March 13, 2020 the Governor of the State of South Dakota issued Executive Order 2020-05 in which she ordered all non-essential state personnel to work remotely. The Board itself has recognized the seriousness of the COVID-19 crisis having delayed the hearing date several times since the original hearing date of February 26, 2020.

Based on the procedural history of this case, however, DRA has had ample opportunity to find substitute counsel. DRA has, in prior matters, used substitute counsel or additional counsel to represent their interests. (See generally, IN THE MATTER WATER APPLICATIONS NO. 1986-1, 2792-2, and 2793-2, TRANSCANADA.)

There is no requirement in the rules that a party in this type of proceeding be represented by counsel, nor is there a requirement that parties are entitled to representation by a particular attorney. DRA had, and still has the opportunity to locate substitute counsel.

It is **ORDERED**, that DRA's Motion for Counsel to Appear Remotely or for a Continuance **DENIED**.

Dated this 2nd day of July, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER DAKOTA RURAL ACTION'S
APPLICATION NO. 1992-1, TOWN OF	)	MOTION FOR COUNSEL TO
BUFFALO	)	APPEAR REMOTELY OR FOR
	)	CONTINUANCE

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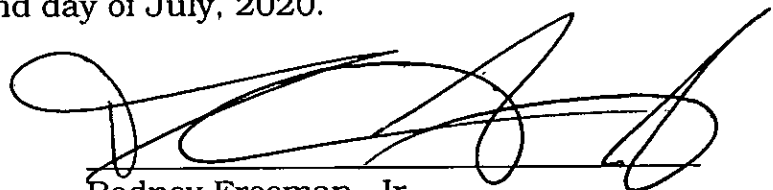
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There is no requirement in the rules that a party in this type of proceeding be represented by counsel, nor is there a requirement that parties are entitled to representation by a particular attorney. DRA had, and still has the opportunity to locate substitute counsel.

It is **ORDERED**, that DRA's Motion for Counsel to Appear Remotely or for a Continuance **DENIED**.

Dated this 2nd day of July, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

6 July 2020

RECEIVED

JUL 07 2020

WATER RIGHTS
PROGRAM

TO:

Eric Grunland
Ann Mines Bailey
Dusty Ginsbach
Ryan Smith

David McVey
Rodney Freeman, Jr.

CC:

Bruce Ellison
Mahmud Fatil
Elizabeth Lone Eagle
John Harter
Tricia Etringer

Dear Mr. Grunland, et. al,

As an intervenor for Water Permit Application #1992-1, I am dismayed at Eric Grunland's communication of July 2, indicating that remote attendance at the WMB hearing regarding this Application would not be facilitated.

The letter states that DRA has had time to find substitute counsel. But I too am an intervenor, and I cannot "find substitute counsel." I am simply a concerned, regular, 75-year old citizen, among those most vulnerable to the COVID virus.

This ruling is insensitive at best, and outrageous at worst. It does not make me feel that my thoughts or presence at such a meeting are valued, and certainly makes me feel consciously excluded from one of the political processes that is important in our state.

I urge you to reconsider this ruling so that myself, and others who cannot travel to Pierre for the hearing, can be included.

Sincerely,
Carol Hayse
Nemo, SD

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION WATER FOR MUNICIPAL USE**

OBJECTION, RESPONSE, AND MOTION FOR RE-CONSIDERATION

Dakota Rural Action ("DRA"), by and through the below-signed attorney hereby submits An Objection, Response, and Motion for Reconsideration of DRA's Motion for safety protocols and a continuance of the Hearing Scheduled for July 9-10, 2020.

On or about June 15, 2020, DRA requested various safety protocols necessary to protect participants at the Hearing on this matter. On June 19, 2020, the Board set forth protocols based on Center for Disease Control ("CDC") COVID-19 guidelines, except for those Guidelines which conflicted with Governor Kristi Noem's plan to ensure that the State's bureaucracies never close and that all state business go on. On or about July 2, 2020, after consultation with various physicians, DRA's counsel was advised that the protocols ordered to be in place for the two day, three hour plus sessions each day in a closed room with poor circulation, with no daily COVID-19 testing and no mask requirement created a severe risk to counsel, as well as other participants in the room. DRA's Counsel then moved the Board allow him to appear remotely or to continue the Hearing until the COVID-19 virus infection had abated and reasonable safety protocols were established.

On July 6, 2020, the below-signed Counsel received the Hearing Officer's Order dated July 2, 2020. Like the previous orders sent by U.S. mail and with intervening holidays or weekends,

some 4-6 days would elapse before DRA counsel would receive any Orders. The July 2, 2020 Order denied DRA's Motion, ignoring DRA's reality and CDC based concerns about reasonable COVID-19 safety protocols.

The Order dated July 2, 2020 claimed the Governor does take the COVID-19 seriously as exemplified by her gracious permission to allow "non-essential" personnel to work from home rather than risk infection from long periods of contact with co-workers in their offices. Certainly this should be applauded. Politics, however, then trumped medical science for the pandemic for other State workers and those interacting with State employees on an official basis. With all due respect, the Governor's willingness to sacrifice the health, safety, if not the life of the rest of state workers is, with all due respect, a disrespectful and callous standard to be applied to state employees deemed "essential" by the Governor. Apparently, in general, this Board ostensibly existing to not only manage, but protect our water resources considers itself or is considered "essential." Apparently the determination of a water appropriation permit is considered so essential that safety protocols be shoved aside where it would interfere with "hearings" to make sure the permits are granted, especially to industry. Further, and with all due respect, the Governor's apparent disregard for the value and sanctity of human life as exhibited by forced in-office work requirements for the "essentials", does not empower this Board to endanger the lives of parties in pending contested water rights applications. This is especially true where politics supersedes CDC guidelines. Those CDC guidelines and the clear instructions for mandatory mask wearing in confined spaces generally, especially where elders or persons with certain health conditions, are at substantially great risk of infection sources not required to wear masks. This includes infected asymptomatic individuals. The longer any given hearing session with the

mask-less in the closed environment, the greater the risk of exposure to COVID-19. And without question, masks are now known to prevent infection of others and becoming infected by others.

DRA notes that Board Member Bjork, with similar health risk factors regarding the COVID-19 as DRA's Counsel is being allowed to participate in the hearing remotely. Either Mr. Bjork is regarded by the Board as "non-essential," or he is being given permission to remain in a safe environment while the rest of the Board, Staff, and Parties are subject to being sacrificed for the sake of this hearing proceeding as planned. The Board gave Mr. Bjork a reasonable and appropriate choice of participating in the Hearing remotely to prevent the risk to him and his family of serious COVID-19 complications his presence in the hearing room might create. The rest of us were not. Since all life is equal and sacred, one would think that what's good and feasible for a Board member's protection would be similarly good and permissible by those before the Board during a hearing on this pending matter.

DRA notes the Hearing Officer did not find it was technologically infeasible or even difficult for DRA Counsel to participate remotely as requested. It simply ignored the issue to the extreme prejudice of DRA, denied equal treatment under the law, and fundamental fairness. Indeed, in past proceedings, remote participation by parties has been allowed for years, until it was suddenly stopped last Fall due to a purported auditory difficulty at the moment.

The Hearing Officer notes that in prior Water Management Board hearings over the past, DRA was able to secure other counsel (who was from out of state). With all due respect, when it became apparent to that due to DRA counsel's existing health issues during those much more lengthy hearing involving five separate permits, counsel had months to successfully secure additional counsel for those matters. Also, there was no COVID-19 pandemic creating its own

existential threat at the time. The hearing for the single Application No. 1992-1 has always been expected to take a much shorter time than the previous 11 days of hearings. Therefore, unlike prior hearings on TransCanada's efforts to get public water, the COVID-19 pandemic has created a highly difficult recruitment factor inhibiting DRA's ability to retain alternative counsel willing to plunge into what will be a dangerously infectious environment.

The Board is reminded that the Applicant has never claimed it would be prejudiced by a continuance. And, with the July 6, 2020 ruling by the U.S. Supreme Court leaving in place the existing federal injunction against construction of the KXL pipeline, lawful construction is not likely this year or for the foreseeable future. The real intended beneficiary of public water sought under No. 1992-1 simply has no use for this public water in the near-time. Thus, there is no rush, no prejudice other than to DRA as a party, unnecessarily subjecting the balance of the Board, staff, parties, and the public to an extremely dangerous pandemic. DRA strenuously objects to the largely undefined and unnecessary urgency apparently felt by the Board ready to sacrifice of its own safety and the safety of the staff and parties and public, rather than wait until a COVID-19 safer time and establishing reasonable safety protocols so as to virtually eliminate risk of infection.

As to the Order's assertion that there is no requirement that a party in this type of proceeding "be represented by counsel," this Board's practice has been to the contrary. Not only was Elizabeth Lone Eagle's barred from representing her minor children during last year's challenge to other TransCanada public water permit applications without counsel, but the Board has repeatedly made clear that an organization must be represented by counsel, rather than a member or other non-lawyer. As to the further statement in the Order that there is no "requirement" that a party is "entitled" to representation by a particular attorney," DRA

respectfully objects and responds that it is a basic premise of and belief in our jurisprudence that a party has the right to counsel of its choice, absent circumstances not present here.

And contrary to the contention in the Order that DRA has had plenty of time to secure alternative counsel, it was not known until the Order dated July 2, 2020 received on July 6th, that the Board was, against all reason, sticking to its political and risky decision to risk it all to hold this hearing on July 9-10, 2020, without reasonable health and safety protections against COVID-19 infection. The suggestion that DRA “still has” (as of June 6, 2020 receipt of the Order) an opportunity “to locate substitute counsel,” is respectfully, consistent with the Board member’s statement during the June 11, 2020 telephonic hearing that a continuance for safety reasons would cost the state more money and essentially, that it was more important to save the State’s purse than ensure the health and safety of participants in these proceedings. Such a conclusion also ignores the lack of time for any such attorney found to reasonably familiarize themselves with the existing record and Noticed evidentiary documents in DRA files waiting to be presented in DRA’s case in chief or used to confront Applicant and Staff witnesses. Even if such an attorney could be found at this late date, there has yet to be one found also willing to risk their and their families health and safety from COVID-19. DRA respectfully submits the failure to require mask wearing on other CDC guidelines test credulity and frankly border on the limits of reason, reality and common sense.

DRA has been unable to find an attorney willing to sacrifice their and their family’s safety by agreeing to represent DRA at the scheduled hearing prior to July 6, 2020.

DRA contends the July 2, 2020 Order will deny DRA its due process rights to participate in the hearing and continue its substantive challenge to the fraudulent and well documented attempt [see, DRA Exhibits 600-607] by The Town of

Buffalo and TransCanada to obtain public water consistent with the merits and purpose of the statutes governing the Water Management Board's duties to determine the factors under SDCL 46-2A-9. Additionally, and with all due respect, the granting of this permit application under the circumstances here would be an especially egregious act, contrary to the public trust given the Board which requires the State to protect our water for the beneficial use of current and future generations and contrary to the public interest.

Dated this 8th day of July, 2020.

/s/ Bruce Ellison
BRUCE ELLISON
Attorney for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709
belli4law@aol.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of DRA's Objection and Response was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy of electronically sent to:

Town of Buffalo
c/o Dusty Ginsbach
P.O. Box 82
Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

Ann Mines-Bailey
Assistant Attorney General for DENR
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Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106
tetringer@greatplainsaction.org

Dated this 8th of July, 2020.

/s/ Bruce Ellison

BRUCE ELLISON

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4949 S. 30th Street

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Carol Hayse

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Nemo, SD 57759

carolhaysie@gmail.com

email

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

**INDIVIDUAL INTERVENOR JOHN HARTER'S MOTION FOR CONTINUANCE OF SCHEDULED HEARING ON
MERITS OF APPLICATION**

John Harter, Individual Intervenor, hereby requests the Water Management Board (hereinafter "WMB") to order a continuance of at least 60 days of the proceedings scheduled on this matter for July 9-10 due to the growing COVID-19 pandemic and the minimal and insufficient health and safety precautions approved by the Board for the Hearing.

This Motion is based on the following facts and circumstances:

1. The hearing is scheduled for over 3 hours on Thursday and Friday, July 9-10, 2020. The nature of the proceedings in a confined space with poor air circulation in the Matthews Training Center will require the public, the parties, counsel, the Water Management Board and staff participants to be in a confined space with poor circulation for lengthy periods of time each of those days, which science shows enhances risks of spread of germs and viruses.
2. The United States, as well as much of the rest of the world are in the midst of a public health emergency due to the exponential spread of COVID-19, or Novel Coronavirus. According the Centers for Disease Control ("CDC"), this coronavirus is spreading very easily between people, including asymptomatic people. Persons of all ages have contracted the disease.
3. Even mild cases of the COVID-19 generally involve about two weeks of fevers and dry coughs and are much more severe than the flu. COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage kidney, heart, and liver tissues as well as other systemic damage.
4. The virus frequently causes extreme symptoms, including fever and chills that can last for weeks, excruciating pain, debilitating fatigue, an unremitting cough, uncontrollable diarrhea, and an inability to keep down food and water.
5. John Harter is an independent family farmer & rancher from Tripp County, and must be able to complete daily chores and seasonal work related to the daily operation of his farm/ranch. There is no "backup crew, no "sick leave" and no "time off"--paid or unpaid. Committing to attend a

one or two day hearing is difficult, but he made that commitment to attend when he filed petition on this matter.

6. However, as health officials agree, the average risk of COVID-19 exposure for a sustained indoor event poses a risk 20x higher than a similar event outdoors. Therefore, attending a hearing with minimal health and safety precautions to reduce or eliminate the spread of the virus puts the intervenor's long-term health at risk. Harter's health is essential for him to continue operating his farm and ranch. If Harter becomes ill with the virus, he will likely be unable to do the daily work that is necessary for the economic success of his farm/ranch enterprise and the financial support of his family.
7. Further, Harter believes that failure of the WMB to provide for adequate health and safety measures within the hearing room as well as the Pre-Hearing Chair's denial of DRA counsel Bruce Ellison's motion to appear remotely represent a denial of due process rights of parties to the proceeding, wherein parties and their witnesses are unfairly required to jeopardize their own health and safety as well as that of their families in order to participate in what should be an accessible democratic process.
8. Finally, Mr. Harter notes the July 6, 2020 decision of the U.S. Supreme Court to uphold the stay on TC Energy's Nationwide Permit 12 for water crossings. According to documents provided by the applicant itself, the water being requested in WAP 1992-1 is under contract to be used by TC Energy for construction of their tar sands pipeline. Due to the termination of TC Energy's Nationwide 12 Permit, there should be no rush to schedule this hearing because the true beneficiary of the water will not be able to proceed on their project for the foreseeable future.

John Harter respectfully requests the WMB order a continuance of at least 60 days in the hope that at that time either the Board would agree to safety protocols to best protect the public, the parties, and the Board and its staff or that COVID-19 would no longer be the serious threat that it clearly presents itself as at this time.

Dated this 7th day of July, 2020

/s/ John Harter

John Harter
28125 307th Avenue
Winner, SD 57580
Johnharter11@yahoo.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of John Harter's Motion for Continuance was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was electronically sent to:

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Elizabeth Lone Eagle
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Carol Hayse
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Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106
tetringer@greatplainsaction.org

Dated this 7th of July, 2020.

/s/ John Harter

John Harter

email

BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES

IN RE APPLICATION 1992-1 THE TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION WATER FOR MUNICIPAL USE

INDIVIDUAL INTERVENOR ELIZABETH LONE EAGLE'S MOTION FOR CONTINUANCE OF SCHEDULED
HEARING ON MERITS OF APPLICATION

Elizabeth Lone Eagle, Individual Intervenor, hereby requests the Water Management Board (hereinafter "WMB") to order a continuance of at least 60 days of the proceedings scheduled on this matter for July 9-10 due to the growing COVID-19 pandemic, tribal restrictions on travel, and the minimal and insufficient health and safety precautions approved by the Board for the Hearing.

This Motion is based on the following facts and circumstances:

1. The hearing is scheduled for over 3 hours on Thursday and Friday, July 9-10, 2020. The nature of the proceedings in a confined space with poor air circulation in the Matthews Training Center will require the public, the parties, counsel, the Water Management Board and staff participants to be in a confined space with poor circulation for lengthy periods of time each of those days, which science shows enhances the risk of spread of germs and viruses.
2. The United States, as well as much of the rest of the world are in the midst of a public health emergency due to the exponential spread of COVID-19, or Novel Coronavirus. According to the Centers for Disease Control ("CDC"), this coronavirus is spreading very easily between people, including asymptomatic people. Persons of all ages have contracted the disease.
3. Even mild cases of the COVID-19 generally involve about two weeks of fevers and dry coughs and are much more severe than the flu. COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage kidney, heart, and liver as well as causing other systemic damage.
4. The virus frequently causes extreme symptoms, including fever and chills that can last for weeks, excruciating pain, debilitating fatigue, an unremitting cough, uncontrollable diarrhea, and an inability to keep down food and water.

5. Elizabeth Lone Eagle, as a resident, and relative, of the Cheyenne River Sioux Tribe, is subject to that nation's orders to contain the spread of COVID-19. As of April 20th, 2020, those restrictions include (and can be found on the Tribe's website):
 - a. Residents are only allowed to travel for "Essential Activities."
 - i. Residents may travel to a non-hotspot within SD if it's for an Essential Activity. They must still complete the Health Questionnaire and be given an Informational Sheet when they leave and when they return. This needs to be done EVERY TIME they go through a checkpoint.
 - ii. Residents may only travel to a hotspot in SD or out of state if it's for one of three purposes:
 1. Essential work
 2. Medical appointment
 3. Obtaining or delivering essential supplies or services that are not available within the Cheyenne River Sioux Reservation.
6. Hughes County, SD, where the hearing will take place, has been designated a hotspot by the Cheyenne River Sioux Tribe because of its growing number of cases and substantial community spread of COVID-19. Because this WMB hearing does not fall into the permitted travel categories, Mrs. Lone Eagle is not legally permitted to leave the boundaries of the Cheyenne River Reservation to attend in person.
7. As health officials agree, the average risk of COVID-19 exposure for a sustained indoor event poses a risk 20x higher than a similar event outdoors. Therefore, attending a hearing with minimal health and safety precautions to reduce or eliminate the spread of the virus puts the intervenor's long-term health at risk.

8. Further, Mrs. Lone Eagle believes that failure of the WMB to provide for adequate health and safety measures within the hearing room, and to recognize the unique circumstance faced in this COVID-19 pandemic by tribal citizens who are also South Dakota residents represent a serious denial of due process rights of parties to the proceeding. Parties and their witnesses are unfairly required to jeopardize their own health and safety as well as that of their families in order to participate in what should be an accessible democratic process.
9. Mrs. Lone Eagle has been determined by the Social Security Administration to be completely and permanently disabled.
10. Mrs. Lone Eagle has been diagnosed with at least 2 immunodeficiency conditions that seriously compromise her if exposed to COVID-19. As such Mrs. Lone Eagle's participation is also governed by the American's with Disabilities Act (hereinafter "ADA").
11. Since the WMB has failed to ensure Mrs. Lone Eagle's safety by refusing to accommodate her conditions according to the ADA, she contends that the WMD is in violation of the ADA, thus violating her right to participate.
12. Finally, Mrs. Lone Eagle notes the July 6, 2020 decision of the U.S. Supreme Court to uphold the stay on TC Energy's Nationwide Permit 12 for water crossings. According to documents provided

by the applicant itself, the water being requested in WAP 1992-1 is under contract to be used by TC Energy for construction of their tar sands pipeline. Due to the termination of TC Energy's Nationwide 12 Permit, there should be no rush to schedule this hearing because the true beneficiary of the water will not be able to proceed on their project for the foreseeable future.

Elizabeth Lone Eagle respectfully requests the WMB order a continuance of at least 60 days in the hopes that the WMB can institute the systems required to have a full, fair, and accessible virtual hearing that preserves the health, safety, and welfare of all parties to the proceeding.

Dated this 7th day of July, 2020

/s/ Elizabeth Lone Eagle

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57748
bethcbest@gmail.com

**BEFORE THE WATER MANAGEMENT BOARD
OF THE SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

**IN RE APPLICATION 1992-1 TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE**

**INDIVIDUAL PRO SE INTERVENOR MAHMUD FITIL'S MOTION FOR CONTINUANCE OF
SCHEDULED HEARING ON MERITS OF APPLICATION**

Mahmud Fitil, pro se intervenor, hereby requests the Water Management Board (hereinafter "WMB") to order a continuance of at least 60 days of the proceedings scheduled on this matter for 9-10 July 2020 due to the global COVID-19 pandemic currently ravaging the United States and the minimal and insufficient health and safety precautions approved by the Board for the Hearing.

This Motion is based on the following facts and circumstances:

1. The hearing is scheduled for over 3 hours on both Thursday and Friday, July 9-10, 2020. The nature of the proceedings are in a confined space with poor air circulation in the Matthews Training Center will require the public, the parties, counsel, the Water Management Board and staff participants to be in a confined space with poor circulation for lengthy periods of time each of those days, which according to scientific understanding enhances risks of the transmission of germs and viruses.
2. The United States, as well as much of the rest of the world are in the midst of a public health emergency due to the exponential spread of COVID-19, or Novel Coronavirus. According the Centers for Disease Control ("CDC"), this coronavirus is spreading very easily between people, including asymptomatic people as confirmed vectors. Persons of all ages have contracted the disease with emerging reports of multiple infections.
3. Even mild cases of the COVID-19 generally involve about two weeks of fevers and dry coughs and are much more severe than the flu. COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage kidney, heart, and liver tissues as well as other systemic damage.
4. The virus frequently causes extreme symptoms, including fever and chills that can last for weeks, excruciating pain, debilitating fatigue, an unremitting cough, uncontrollable diarrhea, and an inability to keep down food and water.
5. Mahmud Fitil, a resident of Douglas County Nebraska, is an out of state pro se intervenor in these water permitting proceedings before the board regarding application 1992-1. Unfortunately, Mr. Fitil recently incurred a traumatic head injury resultant in serious physical and sensory impairment. Due to ongoing active litigation Mr. Fitil is not at liberty to discuss further details at this time. Committing to attend a hearing is difficult and assuredly an investment of one's time, however, this intervenor has successfully demonstrated his previous commitment and reliability in terms of attendance regarding other applications before this board. Mr. Fitil made that commitment to attend when he filed the petition on this matter.
6. However, as health officials agree, the average risk of COVID-19 exposure for a sustained indoor event poses a risk 20x higher than a similar event outdoors. Therefore, attending a hearing with minimal health

and safety precautions to reduce or eliminate the spread of the virus puts the intervenor's long-term health at risk. Mr. Fitol's health is essential for him to continue his recovery from a serious injury according to his physician's treatment plan. If Mr. Fitol becomes ill with the virus, his ongoing treatment may be unnecessarily interrupted and delayed with the potential for poorer health and recovery outcomes.

7. Further, Mr. Fitol believes that failure of the WMB to provide for adequate health and safety measures within the hearing room as well as the Pre-Hearing Chair's denial of DRA counsel Bruce Ellison's motion to appear remotely represent a denial of due process rights of parties to the proceeding, wherein parties and their witnesses are unfairly required to jeopardize their own health and safety as well as that of their families in order to participate in what should be an accessible democratic process. Mr. Fitol also notes that while these accommodations for virtual or electronic "remote" participation are being made for at least some members of the board, those same accommodations are being denied to all other parties. In effect, this is a limitation placed on the public's participation in matters pertaining to public water and the permitting for usage there of.
8. Finally, Mr. Fitol notes the July 6, 2020 decision of the Supreme Court of the United States to uphold the stay on TC Energy's (formerly TransCanada) Army Corps of Engineers (ACOE) Nationwide Permit 12 for water crossings. According to documents provided by the applicant itself, the water being requested in WAP 1992-1 is under contract to be used by TC Energy for construction of their hazardous materials / "tar sands" pipeline. Due to the termination of TC Energy's Nationwide 12 Permit, there should be no haste to schedule this hearing because the true beneficiary of the water will not be able to proceed on their project for the foreseeable future.

Mahmud Fitol respectfully requests the WMB order a continuance of at least 60 days in the hope that at that time either the Board would agree to safety protocols to best protect the public, the parties, and the Board and its staff or that COVID-19 would no longer be the serious threat that it clearly presents itself as at this time.

Dated this 7th day of July, 2020

/s/ Mahmud Fitol

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107
MahmudFitil@gmail.com

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Mahmud Fitol's Motion for Continuance was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was submitted electronically to:

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Buffalo, SD 57720.
Dusty.ginsbach@gmail.com

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Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106
tetringer@greatplainsaction.org

Dated this 7th of July, 2020.

/s/ Mahmud Fitol

Mahmud Fitol

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JUL 10 2020

BEFORE THE WATER MANAGEMENT BOARD
OF THE SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES

WATER RIGHTS
PROGRAM

IN RE APPLICATION 1992-1 TOWN OF
BUFFALO FOR APPROPRIATION OF PUBLIC HELL
CREEK FORMATION FOR MUNICIPAL USE

INDIVIDUAL PRO SE INTERVENOR MAHMUD FITIL'S MOTION FOR CONTINUANCE OF
SCHEDULED HEARING ON MERITS OF APPLICATION

Trisha Etringer, pro se intervenor, hereby requests the Water Management Board (hereinafter "WMB") to order a continuance of at least 60 days of the proceedings scheduled on this matter for 9-10 July 2020 due to the global COVID-19 pandemic currently ravaging the United States and the minimal and insufficient health and safety precautions approved by the Board for the Hearing.

This Motion is based on the following facts and circumstances:

1. The hearing is scheduled for over 3 hours on both Thursday and Friday, July 9-10, 2020. The nature of the proceedings are in a confined space with poor air circulation in the Matthews Training Center will require the public, the parties, counsel, the Water Management Board and staff participants to be in a confined space with poor circulation for lengthy periods of time each of those days, which according to scientific understanding enhances risks of the transmission of germs and viruses.
2. The United States, as well as much of the rest of the world are in the midst of a public health emergency due to the exponential spread of COVID-19, or Novel Coronavirus. According the Centers for Disease Control ("CDC"), this coronavirus is spreading very easily between people, including asymptomatic people as confirmed vectors. Persons of all ages have contracted the disease with emerging reports of multiple infections.
3. Even mild cases of the COVID-19 generally involve about two weeks of fevers and dry coughs and are much more severe than the flu. COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage kidney, heart, and liver tissues as well as other systemic damage.
4. The virus frequently causes extreme symptoms, including fever and chills that can last for weeks, excruciating pain, debilitating fatigue, an unremitting cough, uncontrollable diarrhea, and an inability to keep down food and water.
5. Trisha Etringer, a resident of Woodbury County in Iowa, is an out of state pro se intervenor in these water permitting proceedings before the board regarding application 1992-1. Unfortunately, Ms. Etringer has already contracted the coronavirus on or around May 6, 2020. Ms. Etringer tested positive for coronavirus on May 11, 2020. Proof is submitted as document "Etringer1" and "Etringer2." Ms. Etringer takes the COVID-19 pandemic seriously as it endangered her own health. Ms. Etringer was seen at Unity Point Health in Sioux City for breathing problems and was prescribed an inhaler. Ms. Etringer has never been seen for breathing problems in her health history. This intervenor has successfully demonstrated his previous commitment and reliability in terms of attendance regarding other applications before this board.

6. Ms. Etringer is an enrolled member of the Winnebago Tribe of Nebraska. Ms. Etringer is also a single mother of three children ages 7 years old, 3 years old, and 11 months old. Ms. Etringer does not have a reliable daycare provider because of the COVID-19 pandemic. Stipulations and restrictions have been placed on daycare providers to ensure the safety of children. Furthermore, Ms. Etringer had a difficult time in self-isolating when she did contract the coronavirus. Ms. Etringer's 11-month-old daughter experienced a high fever, rash, and congestion in the same period of time that Ms. Etringer was diagnosed and quarantined. Ms. Etringer does not want to threaten her children's health and well-being if it can be avoided.
7. Woodbury County is the second largest COVID hotspot in the state of Iowa per Iowa Department of Public Health. Sioux City, IA is the epicenter of meat packing plants such as Tyson Fresh Meats, Seaboard Triumph Foods, and Perdue Farms. There are other agricultural factories in the surrounding area. Sioux City, IA is considered a tri-state metropolitan area of Iowa, Nebraska, and South Dakota. Sioux City, IA Dakota County, NE and Thurston County, NE border Sioux City, IA which now are experiencing high spikes in COVID-19. There have been reported COVID outbreaks in these said factories.
8. Further, Ms. Etringer believes that failure of the WMB to provide for adequate health and safety measures within the hearing room as well as the Pre-Hearing Chair's denial of DRA counsel Bruce Ellison's motion to appear remotely represent a denial of due process rights of parties to the proceeding, wherein parties and their witnesses are unfairly required to jeopardize their own health and safety as well as that of their families in order to participate in what should be an accessible democratic process. Ms. Etringer also notes that while these accommodations for virtual or electronic "remote" participation are being made for at least some members of the board, those same accommodations are being denied to all other parties. In effect, this is a limitation placed on the public's participation in matters pertaining to public water and the permitting for usage there of.
9. Finally, Ms. Etringer notes the July 6, 2020 decision of the Supreme Court of the United States to uphold the stay on TC Energy's (formerly TransCanada) Army Corps of Engineers (ACOE) Nationwide Permit 12 for water crossings. According to documents provided by the applicant itself, the water being requested in WAP 1992-1 is under contract to be used by TC Energy for construction of their hazardous materials / "tar sands" pipeline. Due to the termination of TC Energy's Nationwide 12 Permit, there should be no haste to schedule this hearing because the true beneficiary of the water will not be able to proceed on their project for the foreseeable future.

Trisha Etringer respectfully requests the WMB order a continuance of at least 60 days in the hope that at that time either the Board would agree to safety protocols to best protect the public, the parties, and the Board and its staff or that COVID-19 would no longer be the serious threat that it clearly presents itself as at this time.

Dated this 8th day of July, 2020

/s/ Trisha Etringer

Trisha Etringer

1925 S. Pomegranite St.

Sioux City, IA 51106

teltringer@greatplainsaction.org

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Trisha Etringer's Motion for Continuance was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E Capitol, Pierre, SD 57501.

A copy was submitted electronically to:

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Trisha Etringer
1925 S. Pomegranite St.
Sioux City, IA 51106
tettringer@greatplainsaction.org

Dated this 8th of July, 2020.

/s/ Trisha Etringer

Trisha Etringer

For any questions, please call 515-575-2131 or 844-844-1561.

English ▼

TEST RESULT

Hello Trisha Etringer,

Your Unique ID is: SUEY-CNWh-v0Ci-T29u.

Your tested date is: 2020-5-11 09:25:07

You have tested **POSITIVE** for COVID-19. Please follow these recommendations:

Stay at home: Most people with COVID-19 have mild illness and are able to recover at home without medical care. Do not leave your home, except to get medical care. Do not visit public areas. Remember, most people who have this disease get better at home.

Stay in touch with your doctor. Call ahead before you get medical care. Be sure to seek medical care if you have:

- Trouble breathing while sitting still
- Persistent pain or pressure in the chest
- Mental confusion

- Bluish lips or face or if you think it is an emergency

Avoid public transportation: Avoid using public transportation, ride-sharing, or taxis.

Other recommendations include:

- Stay at home except to get medical care
- Separate yourself from other people in your home who are not sick
- Wear a facemask
- Cover your coughs and sneezes
- Clean your hands often
- Avoid sharing household items
- Clean all “high-touch” surfaces like computer keyboards, phones, wallets, doorknobs, fridge doors, toilet and faucet handles, every day
- Monitor your symptoms and seek medical attention if they are worsening

Please visit the **Centers for Disease Control & Prevention** site for more information on what to do if you are sick, including things you can do at home and what to do if you go to the doctor.

The platform where your data is stored has a comprehensive set of controls that meet various security requirements. Those requirements include ISO 27001 and HITRUST.

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JUL 10 2020

**BEFORE THE WATER MANAGEMENT BOARD OF THE DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES OF THE STATE OF SOUTH
DAKOTA**

WATER RIGHTS
PROGRAM

IN RE APPLICATION OF TOWN OF BUFFALO FOR WATER APPROPRIATION PERMIT
NO. 1992-1

Applicant's Response to Intervenor's Motion for Continuance

Comes now Dusty Ginsbach, attorney for the Applicant, and hereby files this Response imploring the Board to deny the Motions for Continuance filed by the intervenors in the proceeding.

A. The Governor has initiated her "Back to Normal" Plan, directing State entities to resume business for the benefit of the people of South Dakota.

By Executive Order 2020-30, dated July 7, 2020, the Governor has rescinded Executive Order 2020-26 and has terminated Section 37 of Executive Order 2020-16, which suspended the statutory provision requiring a physical location for a siting public input meeting. The Governor's actions by Executive Order demonstrate the intent to resume necessary government functions that have been put on hold during the emergency declared for the threat of COVID-19. Reasoned thought and scientific opinion of the State has led to our State's preparedness to respond to outbreaks of the coronavirus has "flattened the curve" and there is no longer a threat that the government or infrastructure will not be able to make a timely response to save lives.

B. Applicant has a right to a hearing on the application.

The Town of Buffalo has waited patiently for months for the Water Management Board to make a decision on its application to appropriate water, obliging the continuances requested by the intervenors as well as the Chief Engineer. However, a great deal of time and preparation has been expended by the Applicant and the Board in Preparation for this hearing. The intervenors have and will continue to utilize any tactic to delay the applicant from obtaining its right to appropriate water. These motions for continuance will only delay the proceedings further, without need and with little effect on concerns claimed by the intervenors in regard to misguided fears of the spread of coronavirus, which have been mitigated by actions taken in preparation of the situs of the hearing and by the Order of the Prehearing Chair.

C. Intervenors' notation of a U.S. Supreme Court decision of July 6, 2020 has no bearing on the Application.

The Town of Buffalo has made this application to appropriate water for the benefit of the Town and its citizens. The Town's use of this water and its point of diversion does not rely on TC Energy or any other bulk/construction water purchaser.

The Applicant respectfully requests the Motions for Continuance be denied and the Hearing be held as scheduled.

Respectfully submitted this 8th day of July, 2020.

/s/Dusty Ginsbach
Dusty Ginsbach
Attorney for the Applicant
P.O. Box 82
Buffalo, SD 57720

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Applicant's Response to Intervenor's Motion for Continuance was served and filed with the Chief Engineer, c/o eric.gronlund@st.sd.us and by U.S. postage paid to Eric Gronlund, Chief Engineer, DENR, 523 E. Capitol, Pierre, SD 57501.

A copy was electronically sent to:

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tetringer@greatplainsaction.org

John Harter
28125 307th Ave
Winner, SD 57580
Johnharter11@yahoo.com

Dated this 7th of July, 2020.

/s/Dusty Ginsbach
Dusty J. Ginsbach
Attorney for the Town of Buffalo

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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SEP 04 2020

WATER RIGHTS
PROGRAM

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

September 3, 2020

Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
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Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

Dusty J. Ginsbach
Attorney for Town of Buffalo
P.O. Box 82
Buffalo, SD 57720

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom it May Concern:

Enclosed please find a copy of the Chief Engineer's Proposed Findings of Fact, Conclusions of Law; and Final Decision along with the Certificate of Service in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey".
Ann F. Mines Bailey
Assistant Attorney General

AFM/cmw

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program (*Interoffice mail*)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER PERMIT	)	CHIEF ENGINEER'S PROPOSED
APPLICATION NO. 1992-1, TOWN	)	FINDINGS OF FACT,
OF BUFFALO	)	CONCLUSIONS OF LAW, AND
	)	FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on July 9, 2020. Board members Jim Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Tim Bjork, and Bill Larson were present at the hearing and heard the evidence presented. The Town of Buffalo was represented by Dusty J. Ginsbach. Ann F. Mines Bailey appeared on behalf of the Chief Engineer and the Water Rights Program. Intervenors did not appear.

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 October 25, 2019, the South Dakota Department of Environment and Natural Resources Water Rights Program ("Water Rights ") received an application for a new water permit from the Town of Buffalo.
2. Water Permit Application No. 1992-1 seeks an annual diversion from the Hell Creek aquifer of 82 acre-feet of water at a maximum diversion rate of 0.19 cubic feet per second (cfs) for municipal use. The diversion point is

one existing well located in the SE¼ NW¼ of Section 29-T19N-R5E in Harding County on the southeast edge of Buffalo, SD.

3. At the time the application was reviewed, Chief Engineer Jeanne Goodman recommended approval with the following qualifications:

- The well approved under this Permit 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.
- The well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
- Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

4. Sometime after issuing the recommendation, but prior to the hearing in this matter, Chief Engineer Goodman stepped down, accepting a new position with DENR. Eric Gronlund was subsequently named Chief

Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and recommendation was timely advertised on January 9, 2020, in the Black Hills Pioneer and Nation's Center News pursuant to SDCL § 46-2A-4.
6. DENR received timely petitions to intervene from Carol Hayse, Trisha Etringer, Dakota Rural Action, John Harter, Mahmud Fitol, and Elizabeth Lone Eagle.
7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July 2020 meeting.
8. Water Permit Application No. 1992-1 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 as to whether there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.
9. In considering water availability, this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

10. The Hell Creek aquifer occurs within the saturated permeable and porous portions of the Hell Creek Formation which underlies portions of South Dakota, North Dakota, Wyoming, Montana, and Canada. It is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate.
11. Water in storage for the South Dakota portion of the Hell Creek aquifer is estimated to be in excess of 82 million acre feet. It receives recharge from infiltration of precipitation, stream flow infiltration, and groundwater inflow.
12. Whitney Kilts, an engineer with the South Dakota Department of Environment and Natural Resources, Water Rights Program provided expert testimony regarding the Hell Creek aquifer, the availability of unappropriated water and the potential for unlawful impairment of existing rights should the application be granted.
13. Ms. Kilts was able to estimate average annual recharge to the aquifer from a published study of the aquifer, which used a base flow recession analysis to estimate an order of magnitude for recharge to the aquifer in South Dakota. Ms. Kilts estimated the South Dakota portion of the aquifer receives between 112,306 to 130,275 acre-feet of recharge per year.
14. Ms. Kilts testified that there are twelve water permits on file with the South Dakota Water Rights Program appropriating water from the Hell

Creek aquifer. Those twelve rights are estimated to withdraw less than 806 acre-feet of water per year.

15. Observation well data was also considered when reviewing the aquifer. The data from the observation well, located approximately 3.9 miles from the proposed diversion site, demonstrates that the aquifer is responsive to climatic conditions. Water levels have remained relatively stable and show a slight increase over the period of record, thus indicating there is more water in storage in the aquifer than there was at the start of the period of record.
16. Based upon her technical analysis and the observation well data, Ms. Kilts concluded there is unappropriated water available in the Hell Creek aquifer.
17. Ms. Kilts also reviewed the potential of unlawful impairment of existing rights. The closest water rights on file completed into the Hell Creek aquifer are other rights held by the Town of Buffalo. The closest water rights on file not held by the Town of Buffalo are Water Permit Nos. 1963-1 and 1963A-1 located approximately eight miles to the west of the proposed diversion point. Ms. Kilts identified approximately six domestic wells on record with the Water Rights Program located within one mile of the proposed diversion site.
18. Ms. Kilts opined that there is a reasonable probability that this application would not result in an unlawful impairment of existing water rights should this application be granted. She based her opinion on a

review of the observation well data which shows no signs of well interference. Additionally, Ms. Kilts pointed out that there is approximately 170 feet of artesian head pressure in this portion of the aquifer. As artesian head pressure is not protected, that 170 feet of artesian head pressure would have to be overcome before there could be an unlawful impairment. Finally, Ms. Kilts testified that her opinion was also based upon the proximity of the proposed diversion site to other well locations held by the Town of Buffalo, reasoning that it is in the interests of the Town of Buffalo to manage its pumping in a manner which would not interfere with its other wells.

19. 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. Kilts' testimony and the reports and exhibits which she prepared and/or relied upon.
20. The Board also received the testimony of Chief Engineer Eric Gronlund. Chief Engineer Gronlund testified that he concurs with and adopts the recommendation issued under his predecessor. He further testified that based upon the Board's previous rulings, the application is a beneficial use and is in the public interest. Chief Engineer Gronlund additionally testified that municipal use includes the sale of water by the municipality. The Board finds Chief Engineer Gronlund to be a credible witness and that these Findings of Fact are supported by the testimony of Chief Engineer Gronlund.

21. Ryan Smith, Waste and Water Superintendent for the Town of Buffalo, also testified. Mr. Smith testified that he completed the application on behalf of the Town of Buffalo. Mr. Smith stated the Town wishes to retire two wells. He further provided that, in fact, two of the Town's wells have been plugged. Mr. Smith further testified that the water from this proposed diversion would be used to supply the water needs of its residents, irrigation of its properties, and bulk water sales.
22. After considering the testimony of the witnesses and the exhibits received into evidence, the Board finds that there is unappropriated water available to satisfy this application.
23. The Board further finds, based upon the evidence presented that the proposed diversion will not unlawfully impair existing rights and is for a beneficial use and in the public interest.
19. 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 Board has jurisdiction over the Application and the parties pursuant to SDCL Ch. 46-2 and 46-2A.
2. Publication was properly made, and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting this application. That recommendation, however, is not binding upon the Board. See SDCL § 46-2A-4(8).
4. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.
5. The Applicant bore the burden of proof under SDCL § 46-2A-9. The Applicant met its burden of proof and is entitled to a permit subject to qualifications adopted by the Board.
6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1
7. The Board concludes there is a reasonable probability that there is unappropriated water is available to fulfill the amount requested by the Applicant.
8. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.
10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (municipal) is a beneficial use.
11. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3). The Board finds that appropriating water for municipal use is in the public interest.
12. Any Conclusion of Law more properly designated as a Finding of Fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 1992-1 is granted with the following qualifications:

1. The well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
4. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

Dated this _____ day of October, 2020.

James Hutmacher, Chairman
Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER)	
APPLICATION NO. 1992-1, TOWN)	CERTIFICATE OF SERVICE
OF BUFFALO)	

The undersigned hereby certifies that true and correct copy of the Chief Engineer's Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 3rd day of September 2020:

Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
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Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
Nemo, SD 57759

David M. McVey
Counsel for Water Rights Program
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered & Word Copy

Dusty J. Ginsbach
Attorney for Town of Buffalo
P.O. Box 82
Buffalo, SD 57720

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501
(Interoffice mail)

pld_afm (cmw)



Ann F. Mines Bailey
Assistant Attorney General



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

RECEIVED

SEP 10 2020

**WATER RIGHTS
PROGRAM**

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

September 9, 2020

Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

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Buffalo, SD 57720

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: *In the Matter Water Application No. 1992-1, Town of Buffalo*

To Whom It May Concern,

I have recently become aware that the Chief Engineer's Proposed Findings of Fact, Conclusions of Law, and Final Decision, sent to you on September 3, 2020, was actually a draft copy which contained two minor markups which are apparent on

the face of the document and not the final version. Enclosed please find the final copy. There are no substantive changes. The enclosed is simply a clean copy. I apologize for any inconvenience.

Sincerely,

A handwritten signature in black ink, appearing to read "AFM Bailey", written in a cursive style.

Ann F. Mines Bailey
Assistant Attorney General

AFM/cmw

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program (*Interoffice mail*)

SEP 10 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER PERMIT APPLICATION NO. 1992-1, TOWN OF BUFFALO	))))	CHIEF ENGINEER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
--	------------------	---

This matter came before the South Dakota Water Management Board for hearing on July 9, 2020. Board members Jim Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Tim Bjork, and Bill Larson were present at the hearing and heard the evidence presented. The Town of Buffalo was represented by Dusty J. Ginsbach. Ann F. Mines Bailey appeared on behalf of the Chief Engineer and the Water Rights Program. Intervenors did not appear.

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 October 25, 2019, the South Dakota Department of Environment and Natural Resources Water Rights Program ("Water Rights ") received an application for a new water permit from the Town of Buffalo.
2. Water Permit Application No. 1992-1 seeks an annual diversion from the Hell Creek aquifer of 82 acre-feet of water at a maximum diversion rate of 0.19 cubic feet per second (cfs) for municipal use. The diversion point is

one existing well located in the SE¼ NW¼ of Section 29-T19N-R5E in Harding County on the southeast edge of Buffalo, SD.

3. At the time the application was reviewed, Chief Engineer Jeanne Goodman recommended approval with the following qualifications:

- The well approved under this Permit 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.
- The well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
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- Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

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Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and recommendation was timely advertised on January 9, 2020, in the Black Hills Pioneer and Nation's Center News pursuant to SDCL § 46-2A-4.
6. DENR received timely petitions to intervene from Carol Hayse, Trisha Etringer, Dakota Rural Action, John Harter, Mahmud Fitol, and Elizabeth Lone Eagle.
7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July 2020 meeting.
8. Water Permit Application No. 1992-1 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 as to whether there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.
9. In considering water availability, this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

10. The Hell Creek aquifer occurs within the saturated permeable and porous portions of the Hell Creek Formation which underlies portions of South Dakota, North Dakota, Wyoming, Montana, and Canada. It is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate.
11. Water in storage for the South Dakota portion of the Hell Creek aquifer is estimated to be in excess of 82 million acre feet. It receives recharge from infiltration of precipitation, stream flow infiltration, and groundwater inflow.
12. Whitney Kilts, an engineer with the South Dakota Department of Environment and Natural Resources, Water Rights Program provided expert testimony regarding the Hell Creek aquifer, the availability of unappropriated water and the potential for unlawful impairment of existing rights should the application be granted.
13. Ms. Kilts was able to estimate average annual recharge to the aquifer from a published study of the aquifer, which used a base flow recession analysis to estimate an order of magnitude for recharge to the aquifer in South Dakota. Ms. Kilts estimated the South Dakota portion of the aquifer receives between 112,306 to 130,275 acre-feet of recharge per year.
14. Ms. Kilts testified that there are twelve water permits on file with the South Dakota Water Rights Program appropriating water from the Hell

Creek aquifer. Those twelve rights are estimated to withdraw less than 806 acre-feet of water per year.

15. Observation well data was also considered when reviewing the aquifer. The data from the observation well, located approximately 3.9 miles from the proposed diversion site, demonstrates that the aquifer is responsive to climatic conditions. Water levels have remained relatively stable and show a slight increase over the period of record, thus indicating there is more water in storage in the aquifer than there was at the start of the period of record.
16. Based upon her technical analysis and the observation well data, Ms. Kilts concluded there is unappropriated water available in the Hell Creek aquifer.
17. Ms. Kilts also reviewed the potential of unlawful impairment of existing rights. The closest water rights on file completed into the Hell Creek aquifer are other rights held by the Town of Buffalo. The closest water rights on file not held by the Town of Buffalo are Water Permit Nos. 1963-1 and 1963A-1 located approximately eight miles to the west of the proposed diversion point. Ms. Kilts identified approximately six domestic wells on record with the Water Rights Program located within one mile of the proposed diversion site.
18. Ms. Kilts opined that there is a reasonable probability that this application would not result in an unlawful impairment of existing water rights should this application be granted. She based her opinion on a

review of the observation well data which shows no signs of well interference. Additionally, Ms. Kilts pointed out that there is approximately 170 feet of artesian head pressure in this portion of the aquifer. As artesian head pressure is not protected, that 170 feet of artesian head pressure would have to be overcome before there could be an unlawful impairment. Finally, Ms. Kilts testified that her opinion was also based upon the proximity of the proposed diversion site to other well locations held by the Town of Buffalo, reasoning that it is in the interests of the Town of Buffalo to manage its pumping in a manner which would not interfere with its other wells.

19. 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. Kilts' testimony and the reports and exhibits which she prepared and/or relied upon.
20. The Board also received the testimony of Chief Engineer Eric Gronlund. Chief Engineer Gronlund testified that he concurs with and adopts the recommendation issued under his predecessor. He further testified that based upon the Board's previous rulings, the application is a beneficial use and is in the public interest. Chief Engineer Gronlund additionally testified that municipal use includes the sale of water by the municipality. The Board finds Chief Engineer Gronlund to be a credible witness and that these Findings of Fact are supported by the testimony of Chief Engineer Gronlund.

21. Ryan Smith, Waste and Water Superintendent for the Town of Buffalo, also testified. Mr. Smith testified that he completed the application on behalf of the Town of Buffalo. Mr. Smith stated the Town wishes to retire two wells. He further provided that, in fact, two of the Town's wells have been plugged. Mr. Smith further testified that the water from this proposed diversion would be used to supply the water needs of its residents, irrigation of its properties, and bulk water sales.
22. After considering the testimony of the witnesses and the exhibits received into evidence, the Board finds that there is unappropriated water available to satisfy this application.
23. The Board further finds, based upon the evidence presented that the proposed diversion will not unlawfully impair existing rights and is for a beneficial use and in the public interest.
19. 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 Board has jurisdiction over the Application and the parties pursuant to SDCL Ch. 46-2 and 46-2A.
2. Publication was properly made, and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting this application. That recommendation, however, is not binding upon the Board. See SDCL § 46-2A-4(8).
4. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.
5. The Applicant bore the burden of proof under SDCL § 46-2A-9. The Applicant met its burden of proof and is entitled to a permit subject to qualifications adopted by the Board.
6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1
7. The Board concludes there is a reasonable probability that there is unappropriated water is available to fulfill the amount requested by the Applicant.
8. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.
10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (municipal) is a beneficial use.
11. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3). The Board finds that appropriating water for municipal use is in the public interest.
12. Any Conclusion of Law more properly designated as a Finding of Fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 1992-1 is granted with the following qualifications:

1. The well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
4. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

Dated this _____ day of October, 2020.

James Hutmacher, Chairman
Water Management Board

RECEIVED

SEP 10 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 1992-1, TOWN	)	CERTIFICATE OF SERVICE
OF BUFFALO	)	

The undersigned hereby certifies that true and correct copy of the corrected version of the Chief Engineer's Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 9th day of September 2020:

Town of Buffalo
c/o Ryan Smith
P.O. Box 82
Buffalo, SD 57720

Bruce Ellison
Counsel for Dakota Rural Action
P.O. Box 2508
Rapid City, SD 57709

John Harter
28125 307th Avenue
Winner, SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger, SD 57745

Trisha Etringer
1925 S. Pomegranite Street
Sioux City, IA 51106

Mahmud Fitol
4949 S. 30th Street
Omaha, NE 68107

Carol Hayse
12299 Benchmark Road
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David M. McVey
Counsel for Water Rights Program
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered & Word Copy

Dusty J. Ginsbach
Attorney for Town of Buffalo
P.O. Box 82
Buffalo, SD 57720

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501
(Interoffice mail)

pld_afm (cmw)


Ann F. Mines Bailey
Assistant Attorney General



DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

July 15, 2020

NOTICE

TO: Town of Buffalo and Parties of Record (see attached list)
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

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

The Water Management Board directed counsel for the Water Rights Program to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 1992-1, Town of Buffalo.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 1:00 PM Central Time, on Wednesday, October 7, 2020, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to each Board member and parties of record by September 3, 2020. Written objections or comments in support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision are to be mailed to each Board member, the Board attorney, and other parties of record by September 17, 2020. A mailing list is enclosed. Board counsel requests that the draft findings or alternative findings be provided in both a PDF format and a WORD format file via email to David.McVey@state.sd.us.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision may be made at the October 7, 2020, meeting. The evidentiary hearing was completed July 9, 2020. No additional testimony will be received on October 7, 2020.

If you have questions about the findings process, please contact Ann Mines-Bailey at (605) 773-3215.

Enclosure

C: Ann Mines Bailey, Water Rights Program Counsel
David McVey, Water Management Board Counsel

PARTIES OF RECORD MAILING LIST
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

John Harter
28125 307th Avenue
Winner SD 57580

Elizabeth Lone Eagle
593 Big Foot Loop Road
Bridger SD 57748

Trisha Etringer
1925 S Pomegranite St.
Sioux City IA 51106

Mahmud Fitol
4949 S 30th Street
Omaha NE 68107

Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on July 15, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 15, 2020, regarding preparation of findings of fact, conclusion of law and final decision for Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

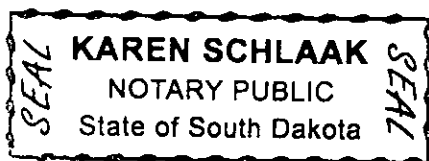
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of July, 2020.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025





DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 30, 2020

NOTICE

TO: Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720
and Parties of Record (see attached list)

FROM: Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: In the Matter of Water Permit Application No. 1992-1, Town of Buffalo

Enclosed is the Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 1992-1 as compiled by Board Counsel David McVey. Consideration of findings is scheduled for the October 7, 2020, Water Management Board meeting.

enclosure

c: Ann Mines Bailey, Assistant Attorney General
David McVey, Assistant Attorney General

PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
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12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

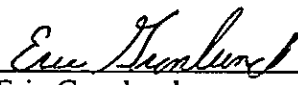
I hereby certify that on September 30, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 30, 2020, regarding notice for Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Dusty Ginsbach
PO Box 365
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



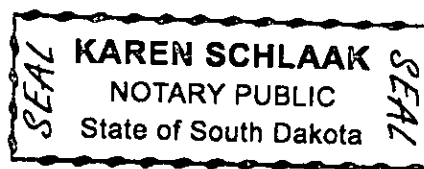
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of September, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION NO. 1992-1, TOWN	)	CONCLUSIONS OF LAW, AND
OF BUFFALO	)	FINAL DECISION
	)	

This matter came before the South Dakota Water Management Board for hearing on July 9, 2020. Board members Jim Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Tim Bjork, and Bill Larson were present at the hearing and heard the evidence presented. The Town of Buffalo was represented by Dusty J. Ginsbach. Ann F. Mines Bailey appeared on behalf of the Chief Engineer and the Water Rights Program. Intervenors did not appear.

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 October 25, 2019, the South Dakota Department of Environment and Natural Resources Water Rights Program ("Water Rights ") received an application for a new water permit from the Town of Buffalo.
2. Water Permit Application No. 1992-1 seeks an annual diversion from the Hell Creek aquifer of 82 acre-feet of water at a maximum diversion rate of 0.19 cubic feet per second (cfs) for municipal use. The diversion point is

one existing well located in the SE¼ NW¼ of Section 29-T19N-R5E in Harding County on the southeast edge of Buffalo, SD.

3. At the time the application was reviewed, Chief Engineer Jeanne

Goodman recommended approval with the following qualifications:

- The well approved under this Permit 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.
- The well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
- Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

4. Sometime after issuing the recommendation, but prior to the hearing in this matter, Chief Engineer Goodman stepped down, accepting a new position with DENR. Eric Gronlund was subsequently named Chief

Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and recommendation was timely advertised on January 9, 2020, in the Black Hills Pioneer and Nation's Center News pursuant to SDCL § 46-2A-4.
6. DENR received timely petitions to intervene from Carol Hayse, Trisha Etringer, Dakota Rural Action, John Harter, Mahmud Fitol, and Elizabeth Lone Eagle.
7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July 2020 meeting.
8. Water Permit Application No. 1992-1 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 as to whether there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.
9. In considering water availability, this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

10. The Hell Creek aquifer occurs within the saturated permeable and porous portions of the Hell Creek Formation which underlies portions of South Dakota, North Dakota, Wyoming, Montana, and Canada. It is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate.
11. Water in storage for the South Dakota portion of the Hell Creek aquifer is estimated to be in excess of 82 million acre feet. It receives recharge from infiltration of precipitation, stream flow infiltration, and groundwater inflow.
12. Whitney Kilts, an engineer with the South Dakota Department of Environment and Natural Resources, Water Rights Program provided expert testimony regarding the Hell Creek aquifer, the availability of unappropriated water and the potential for unlawful impairment of existing rights should the application be granted.
13. Ms. Kilts was able to estimate average annual recharge to the aquifer from a published study of the aquifer, which used a base flow recession analysis to estimate an order of magnitude for recharge to the aquifer in South Dakota. Ms. Kilts estimated the South Dakota portion of the aquifer receives between 112,306 to 130,275 acre-feet of recharge per year.
14. Ms. Kilts testified that there are twelve water permits on file with the South Dakota Water Rights Program appropriating water from the Hell

Creek aquifer. Those twelve rights are estimated to withdraw less than 806 acre-feet of water per year.

15. Observation well data was also considered when reviewing the aquifer.

The data from the observation well, located approximately 3.9 miles from the proposed diversion site, demonstrates that the aquifer is responsive to climatic conditions. Water levels have remained relatively stable and show a slight increase over the period of record, thus indicating there is more water in storage in the aquifer than there was at the start of the period of record.

16. Based upon her technical analysis and the observation well data, Ms.

Kilts concluded there is unappropriated water available in the Hell Creek aquifer.

17. Ms. Kilts also reviewed the potential of unlawful impairment of existing

rights. The closest water rights on file completed into the Hell Creek aquifer are other rights held by the Town of Buffalo. The closest water rights on file not held by the Town of Buffalo are Water Permit Nos.

1963-1 and 1963A-1 located approximately eight miles to the west of the proposed diversion point. Ms. Kilts identified approximately six domestic wells on record with the Water Rights Program located within one mile of the proposed diversion site.

18. Ms. Kilts opined that there is a reasonable probability that this application would not result in an unlawful impairment of existing water rights should this application be granted. She based her opinion on a

review of the observation well data which shows no signs of well interference. Additionally, Ms. Kilts pointed out that there is approximately 170 feet of artesian head pressure in this portion of the aquifer. As artesian head pressure is not protected, that 170 feet of artesian head pressure would have to be overcome before there could be an unlawful impairment. Finally, Ms. Kilts testified that her opinion was also based upon the proximity of the proposed diversion site to other well locations held by the Town of Buffalo, reasoning that it is in the interests of the Town of Buffalo to manage its pumping in a manner which would not interfere with its other wells.

19. 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. Kilts' testimony and the reports and exhibits which she prepared and/or relied upon.
20. The Board also received the testimony of Chief Engineer Eric Gronlund. Chief Engineer Gronlund testified that he concurs with and adopts the recommendation issued under his predecessor. He further testified that based upon the Board's previous rulings, the application is a beneficial use and is in the public interest. Chief Engineer Gronlund additionally testified that municipal use includes the sale of water by the municipality. The Board finds Chief Engineer Gronlund to be a credible witness and that these Findings of Fact are supported by the testimony of Chief Engineer Gronlund.

21. Ryan Smith, Waste and Water Superintendent for the Town of Buffalo also testified. Mr. Smith testified that he completed the application on behalf of the Town of Buffalo. Mr. Smith stated the Town wishes to retire two wells. He further provided that, in fact, two of the Town's wells have been plugged. Mr. Smith further testified that the water from this proposed diversion would be used to supply the water needs of its residents, irrigation of its properties, and bulk water sales.
22. After considering the testimony of the witnesses and the exhibits received into evidence, the Board finds that there is unappropriated water available to satisfy this application.
23. The Board further finds, based upon the evidence presented that the proposed diversion will not unlawfully impair existing rights and is for a beneficial use and in the public interest.
19. 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 Board has jurisdiction over the Application and the parties pursuant to SDCL Ch. 46-2 and 46-2A.
2. Publication was properly made, and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting this application. That recommendation, however, is not binding upon the Board. See SDCL § 46-2A-4(8).
4. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.
5. The Applicant bore the burden of proof under SDCL § 46-2A-9. The Applicant met its burden of proof and is entitled to a permit subject to qualifications adopted by the Board.
6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1
7. The Board concludes there is a reasonable probability that there is unappropriated water is available to fulfill the amount requested by the Applicant.
8. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.
10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (municipal) is a beneficial use.
11. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3). The Board finds that appropriating water for municipal use is in the public interest.
12. Any Conclusion of Law more properly designated as a Finding of Fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 1992-1 is granted with the following qualifications:

1. The well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
4. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

Dated this 7thday of October, 2020.

James Hutmacher, Chairman
Water Management Board



DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

October 13, 2020

NOTICE OF ENTRY OF ORDER

TO: Dusty J. Ginsbach and Parties of Record (see attached list)
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision in the
matter of Water Permit No. 1992-1, Town of Buffalo

Notice is hereby given that on the 7th day of October 2020, the South Dakota Water Management Board entered its Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter. Enclosed is the signed Findings of Fact, Conclusions of Law and Final Decision adopted by the Board.

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

Enclosure

c: Ann Mines Bailey, Water Rights Program Counsel
David McVey, Water Management Board Counsel

PARTIES OF RECORD MAILING LIST
WATER PERMIT APPLICATION NO. 1992-1
TOWN OF BUFFALO

APPLICANT

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dusty J. Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

PETITIONERS

Bruce Ellison
Counsel for Dakota Rural Action
PO Box 2508
Rapid City SD 57709

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28125 307th Avenue
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Carol Hayse
12299 Benchmark Rd
Nemo SD 57759

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION NO. 1992-1, TOWN	)	CONCLUSIONS OF LAW, AND
OF BUFFALO	)	FINAL DECISION
	)	

This matter came before the South Dakota Water Management Board for hearing on July 9, 2020. Board members Jim Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Tim Bjork, and Bill Larson were present at the hearing and heard the evidence presented. The Town of Buffalo was represented by Dusty J. Ginsbach. Ann F. Mines Bailey appeared on behalf of the Chief Engineer and the Water Rights Program. Intervenors did not appear.

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 October 25, 2019, the South Dakota Department of Environment and Natural Resources Water Rights Program ("Water Rights ") received an application for a new water permit from the Town of Buffalo.
2. Water Permit Application No. 1992-1 seeks an annual diversion from the Hell Creek aquifer of 82 acre-feet of water at a maximum diversion rate of 0.19 cubic feet per second (cfs) for municipal use. The diversion point is

one existing well located in the SE¼ NW¼ of Section 29-T19N-R5E in Harding County on the southeast edge of Buffalo, SD.

3. At the time the application was reviewed, Chief Engineer Jeanne Goodman recommended approval with the following qualifications:

- The well approved under this Permit 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.
- The well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
- Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

4. Sometime after issuing the recommendation, but prior to the hearing in this matter, Chief Engineer Goodman stepped down, accepting a new position with DENR. Eric Gronlund was subsequently named Chief

Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and recommendation was timely advertised on January 9, 2020, in the Black Hills Pioneer and Nation's Center News pursuant to SDCL § 46-2A-4.
6. DENR received timely petitions to intervene from Carol Hayse, Trisha Etringer, Dakota Rural Action, John Harter, Mahmud Fitol, and Elizabeth Lone Eagle.
7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July 2020 meeting.
8. Water Permit Application No. 1992-1 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 as to whether there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.
9. In considering water availability, this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

10. The Hell Creek aquifer occurs within the saturated permeable and porous portions of the Hell Creek Formation which underlies portions of South Dakota, North Dakota, Wyoming, Montana, and Canada. It is comprised of shale interbedded with carbonaceous shale, bentonitic silty shale, siltstone, sandstone, and claystone-pebble conglomerate.
11. Water in storage for the South Dakota portion of the Hell Creek aquifer is estimated to be in excess of 82 million acre feet. It receives recharge from infiltration of precipitation, stream flow infiltration, and groundwater inflow.
12. Whitney Kilts, an engineer with the South Dakota Department of Environment and Natural Resources, Water Rights Program provided expert testimony regarding the Hell Creek aquifer, the availability of unappropriated water and the potential for unlawful impairment of existing rights should the application be granted.
13. Ms. Kilts was able to estimate average annual recharge to the aquifer from a published study of the aquifer, which used a base flow recession analysis to estimate an order of magnitude for recharge to the aquifer in South Dakota. Ms. Kilts estimated the South Dakota portion of the aquifer receives between 112,306 to 130,275 acre-feet of recharge per year.
14. Ms. Kilts testified that there are twelve water permits on file with the South Dakota Water Rights Program appropriating water from the Hell

Creek aquifer. Those twelve rights are estimated to withdraw less than 806 acre-feet of water per year.

15. Observation well data was also considered when reviewing the aquifer. The data from the observation well, located approximately 3.9 miles from the proposed diversion site, demonstrates that the aquifer is responsive to climatic conditions. Water levels have remained relatively stable and show a slight increase over the period of record, thus indicating there is more water in storage in the aquifer than there was at the start of the period of record.
16. Based upon her technical analysis and the observation well data, Ms. Kilts concluded there is unappropriated water available in the Hell Creek aquifer.
17. Ms. Kilts also reviewed the potential of unlawful impairment of existing rights. The closest water rights on file completed into the Hell Creek aquifer are other rights held by the Town of Buffalo. The closest water rights on file not held by the Town of Buffalo are Water Permit Nos. 1963-1 and 1963A-1 located approximately eight miles to the west of the proposed diversion point. Ms. Kilts identified approximately six domestic wells on record with the Water Rights Program located within one mile of the proposed diversion site.
18. Ms. Kilts opined that there is a reasonable probability that this application would not result in an unlawful impairment of existing water rights should this application be granted. She based her opinion on a

review of the observation well data which shows no signs of well interference. Additionally, Ms. Kilts pointed out that there is approximately 170 feet of artesian head pressure in this portion of the aquifer. As artesian head pressure is not protected, that 170 feet of artesian head pressure would have to be overcome before there could be an unlawful impairment. Finally, Ms. Kilts testified that her opinion was also based upon the proximity of the proposed diversion site to other well locations held by the Town of Buffalo, reasoning that it is in the interests of the Town of Buffalo to manage its pumping in a manner which would not interfere with its other wells.

19. 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. Kilts' testimony and the reports and exhibits which she prepared and/or relied upon.
20. The Board also received the testimony of Chief Engineer Eric Gronlund. Chief Engineer Gronlund testified that he concurs with and adopts the recommendation issued under his predecessor. He further testified that based upon the Board's previous rulings, the application is a beneficial use and is in the public interest. Chief Engineer Gronlund additionally testified that municipal use includes the sale of water by the municipality. The Board finds Chief Engineer Gronlund to be a credible witness and that these Findings of Fact are supported by the testimony of Chief Engineer Gronlund.

21. Ryan Smith, Waste and Water Superintendent for the Town of Buffalo also testified. Mr. Smith testified that he completed the application on behalf of the Town of Buffalo. Mr. Smith stated the Town wishes to retire two wells. He further provided that, in fact, two of the Town's wells have been plugged. Mr. Smith further testified that the water from this proposed diversion would be used to supply the water needs of its residents, irrigation of its properties, and bulk water sales.
22. After considering the testimony of the witnesses and the exhibits received into evidence, the Board finds that there is unappropriated water available to satisfy this application.
23. The Board further finds, based upon the evidence presented that the proposed diversion will not unlawfully impair existing rights and is for a beneficial use and in the public interest.
19. 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 Board has jurisdiction over the Application and the parties pursuant to SDCL Ch. 46-2 and 46-2A.
2. Publication was properly made, and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting this application. That recommendation, however, is not binding upon the Board. See SDCL § 46-2A-4(8).
4. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.
5. The Applicant bore the burden of proof under SDCL § 46-2A-9. The Applicant met its burden of proof and is entitled to a permit subject to qualifications adopted by the Board.
6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1
7. The Board concludes there is a reasonable probability that there is unappropriated water is available to fulfill the amount requested by the Applicant.
8. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.
10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (municipal) is a beneficial use.
11. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be “consistent with the interests of the public of this state in the best utilization of water supplies.” SDCL § 46-1-6(3). The Board finds that appropriating water for municipal use is in the public interest.
12. Any Conclusion of Law more properly designated as a Finding of Fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 1992-1 is granted with the following qualifications:

1. The well approved under this Permit 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 well authorized by Permit No. 1992-1 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Hell Creek aquifer.
4. Water Permit No. 1992-1 authorizes a total annual diversion of 82 acre foot of water.

Dated this 7th day of October, 2020.



James Hutmacher, Chairman
Water Management Board

CERTIFICATION

I hereby certify that on October 13, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 13, 2020, regarding adoption of findings of fact, conclusion of law and final decision for Water Right Permit Application No. 1992-1, as addressed below and on the parties of record list:

Dusty Ginsbach
Attorney for Town of Buffalo
PO Box 82
Buffalo SD 57720

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

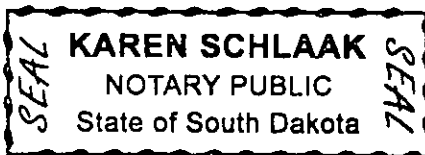
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of October, 2020.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



December 1, 2020

PAYMENT REQUEST FORM

PAYEE: Town of Buffalo
PO Box 82
Buffalo SD 57720

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

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Over Payment of Water Permit Application

AMOUNT: \$250.00

FUNDING SOURCE:

GENERAL: X

FEDERAL:

OTHER:

COMMENTS:

AUTHORIZATION: *Eric Thunlund 12/4/2020*

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct.
I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

DEC 9 7 2020

Town of Buffalo
c/o Ryan Smith
PO Box 82
Buffalo SD 57720

Dear Mr. Smith:

Enclosed is Water Permit No. 1992-1 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

An application/license filing fee of \$950.00 was submitted with the application. The fee should have been \$700.00. \$250.00 will be refunded to you. The refund check should be received within the next couple of weeks.

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