

SOUTH DAKOTA
WATER PERMIT NO. 43A-1

Date of first receipt of application January 19, 1995.

The Water Management Board approved Water Permit Application No. 43A-1 on December 6, 1995 for Homestake Mining Company, 630 E Summit, Lead SD 57754-1700 authorizing development of an instream flow use and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 43A-1 amends Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 (Homestake Hydroplant No. 1) appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek for hydropower generation. The headworks (Point of diversion from Spearfish Creek) are located in the NW 1/4 SE 1/4 Section 8-T5N-R2E. Water is then transported through a pipeline to the power station located in the NE 1/4 SE 1/4 Section 15-T6N-R2E (Spearfish area). This permit amends Water Right No. 43-1 to add instream flow use without increasing the amount of water appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from the headworks on Spearfish Creek located in the NW 1/4 SE 1/4 Section 8-T5N-R2E for power generation purposes. Water Permit No. 43A-1 allows the use of up to 20 cfs for instream flow purposes for a portion of Little Spearfish Creek from a point located in the NE 1/4 SE 1/4 Section 36-T5N-R1E on Little Spearfish (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW 1/4 NW 1/4 Section 31-T5N-R2E. If the Little Spearfish Creek intake (authorized by Water Right No. 137-1) is abandoned, this water (20 cfs) will continue to be appropriated for instream flow purposes from the point of Homestake's existing diversion on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek.
2. The amendment for an additional use of water shall be used for maintaining instream flows on a portion of Little Spearfish Creek and may not exceed the amount of water needed for beneficial use for instream flow purposes.
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 January 4, 1909.
5. One-fifth of the construction is to be completed on or before May 6, 1998.
6. All construction is to be completed on or before December 6, 2000.
7. Water is to be put to beneficial use on or before December 6, 2004.
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. Water Permit No. 43A-1 authorizes an additional use for instream flow purposes for up to 20.0 cfs from Little Spearfish Creek without an increase in the diversion rate authorized by Water Permit No. 43-1.

(continued)

2. Development of the instream flow use authorized by Permit No. 43A-1 is subject to abandonment of the Little Spearfish Creek diversion point authorized by Water Right No. 137-1.
3. Water Permit No. 43A-1 retains a priority date of January 4, 1909 established by Water Right No. 43-1.

WATER MANAGEMENT BOARD

By: *John Hatch*
John Hatch, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JUL 2 1996
date



Mail to:
Water Rights Division
Joe Foss Building
523 E Capitol
Pierre SD 57501-3181
605 773-3352

No. 43A-1 Hydrologic Unit _____
Basin _____
Newspaper _____
(office use only)



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

Check use of water:

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

Type of Application: ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
 (check one) ☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 43-1

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) Add
an instream flow use without increasing amount of water appropriated.

1. Name of Applicant Homestake Mining Company of California Phone 605-584-4632
 (check one) ☐ Owner ☐ Tenant/lessee
 Mailing Address 630 East Summit Lead State SD 57754
 (Street, RR, or Box) (City) (Zip Code)

2. Amount of water claimed 20 CFS *CFS or **GPM ***AF
 (*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet -- storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Little Spearfish Creek

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
NE1/4SE1/4 Section 36, T5N, R1E

County Lawrence
 5. County or counties where water will be used Lawrence

6. Annual period during which water is to be used January 1 - December 31

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

If the proposed amendment is approved, applicant would be allowed to use up to 20 CFS of Little Spearfish Creek for instream flow purposes from a point located in the NE1/4SE1/4 Section 36, T5N, R2E (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW1/4NW1/4 Section 31, T5N, R2E

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

STATE OF SOUTH DAKOTA)

County of Lawrence ss

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

Signed [Signature]

Subscribed and sworn to before me this 19th day of January 19 95

[Signature]
 Notary Public

FAX TRANSMITTAL SHEET



HOMESTAKE MINING COMPANY

630 E. Summit
Lead, SD 57754
(605) 584-4790 (Phone)
(605) 584-4948 (Fax)

To:

From:

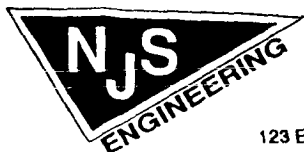
Number of Pages: 2 (Including Cover Sheet)

Please call _____ if all pages are not received.

Comments:

CONFIDENTIAL

Fax messages are sometimes received by persons other than those to whom they are addressed as a result of equipment failure or human error. This communication is intended solely for the addressee. Please notify Homestake immediately at the fax or telephone numbers listed on this page if you are not the addressee or someone responsible for delivering it to the addressee. **Homestake retains all rights and privileges as to this communication and prohibits any dissemination, distribution, or copying by or to anyone other than the addressee.**



Consulting Engineers
Land Surveyors

123 E. JACKSON BLVD. SUITE 1 • P.O. BOX 226
SPEARFISH, SD 57783
(605) 642-4772 • Fax (605) 642-4773

LETTER OF TRANSMITTAL

DATE <u>1/17/95</u> 12/29/94	JOB NO. 2232
ATTENTION Roger Tellinghuisen	
RE: Homestake Water Rights	

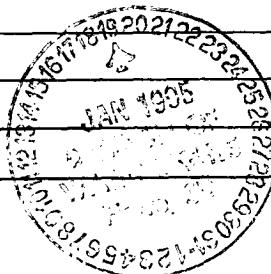
TO Fuller & Tellinghuisen
130 E. Illinois
Spearfish, SD 57783

GENTLEMEN:

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via Hand Delivered the following items:

- | | | | | |
|---|---------------------------------------|--------------------------------|----------------------------------|---|
| ☐ Shop drawings | ☐ Prints | ☐ Plans | ☐ Samples | ☐ Specifications |
| ☐ Copy of letter | ☐ Change order | ☐ _____ | | |

COPIES	DATE	REV. NO.	DESCRIPTION
1	12/29/94 <u>1/17/95</u>		Map Of Homestake's Hydro 2 Diversion #1 With Original Signature And Seal
1	12/29/94 <u>1/17/95</u>		Map Of Homestake's Hydro 2 Diversion #2 With Original Signature And Seal



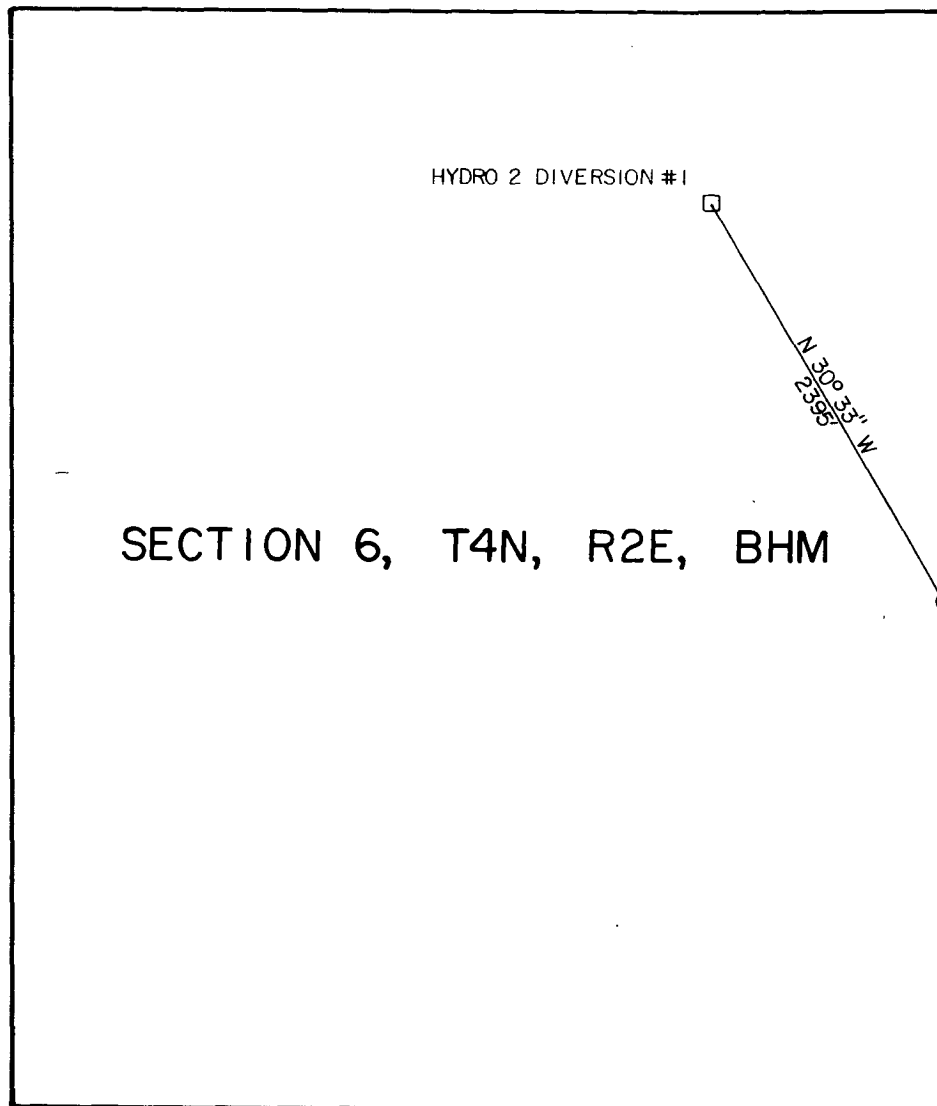
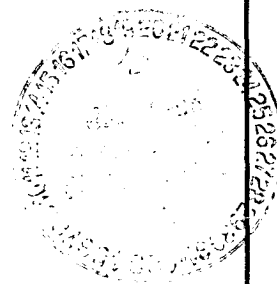
THESE ARE TRANSMITTED as checked below:

- | | | |
|--|---|---|
| ☐ For approval | ☐ Approved as submitted | ☐ Resubmit _____ copies for approval |
| ☒ For your use | ☐ Approved as noted | ☐ Submit _____ copies for distribution |
| ☒ As requested | ☐ Returned for corrections | ☐ Return _____ corrected prints |
| ☐ For review and comment | ☐ _____ | |
| ☐ FOR BIDS DUE _____ 19 _____ | ☐ PRINTS RETURNED AFTER LOAN TO US | |

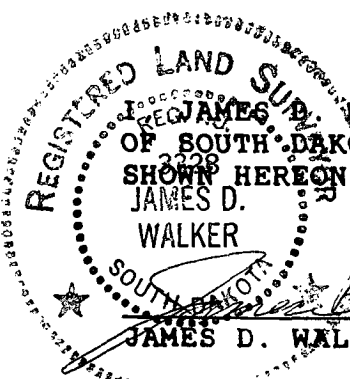
REMARKS _____

[Signature]

MAP OF HOMESTAKE MINING COMPANY'S HYDRO 2 DIVERSION POINT #1
LOCATED IN THE NE1/4 OF SECTION 6, T4N, R2E, BHM,
LAWRENCE COUNTY, SOUTH DAKOTA



SCALE: 1"=1000'



JAMES D. WALKER, REGISTERED LAND SURVEYOR #3328 IN THE STATE
OF SOUTH DAKOTA, DO HEREBY CERTIFY THAT THE DIVERSION POINT AS
SHOWN HEREON WAS LOCATED UNDER MY SUPERVISION IN DECEMBER, 1994.

JAMES D.
WALKER

JAMES D. WALKER

RLS #3328

NJS ENGINEERING #2232

**HOMESTAKE MINING COMPANY**

630 E. Summit
Lead, South Dakota 57754
(605) 584-4653



January 20, 1995

John Hatch, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Withdrawal of application to Amend Water Right 137-1

Dear John,

Please accept this letter as Homestake's withdrawal of our application to amend Water Right 137-1 for addition of an instream flow right on Little Spearfish Creek.

We request that the fee accompanying that application be applied to the application faxed to you on January 19, 1995 for amendment to Water Right 43-1 for the addition of an instream right on Little Spearfish Creek. We also request that the map accompanying the application for amendment to 137-1 be used for the application requesting amendment to Water Right 43-1.

Thank you for your continued assistance in these matters.

Sincerely,

Phil Barnes, Director
Environmental & Regulatory Affairs

xc: Roger Tellinghuisen

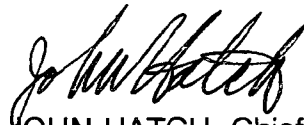
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 43A- 1, Homestake Mining Company**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 43A-1, Homestake Mining Company of California, c/o Stephen Orr, 630 East Summit, Lead, SD 57754.

The Chief Engineer is recommending APPROVAL of Application No. 43A-1 because 1) the proposed instream flow use can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) in the public interest with the following qualifications:

1. Water Permit No. 43A-1 authorizes an additional use for instream flow purposes for up to 20.0 cfs from Little Spearfish Creek without an increase in the diversion rate authorized by Water Right No. 43-1.
2. Development of the instream flow use authorized by Permit No. 43A-1 is subject to the abandonment of the Little Spearfish Creek diversion point authorized by Water Right No. 137-1.
3. Water Permit No. 43A-1 retains a priority date of January 4, 1909, established by Water Right No. 43-1.

See report on application for additional information.



JOHN HATCH, Chief Engineer
January 19, 1995

**Report on Water Permit Application No. 43A-1
Homestake Mining Company
January 18, 1995**

Background

Water Permit Application No. 43A-1 is to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek, with a priority date of January 4, 1909, for power generation at Homestake Mining Company (HMC) Hydropower Plant No. 1 located in the NE1/4 SE1/4 Section 15, T6N-R2E (located south side of the City of Spearfish). The diversion point for Hydropower plant No. 1 is located in the NW1/4 SE1/4 Section 8, T5N-R2E, in Lawrence County. The diversion point on Little Spearfish Creek is about 6.5 miles upstream of the intake for Hydropower plant No. 1.

The application proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the amount of water historically appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from Spearfish Creek. If approved, Water Permit Application No. 43A-1 will allow the use of up to 20 cfs of Little Spearfish Creek water for instream flow purposes, from a point located in the NE1/4 SE1/4 Section 36, T5N-R1E, on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1, Hydropower Plant No. 2) to the confluence of Little Spearfish Creek with Spearfish Creek located in the SW1/4 NW1/4 Section 31, T5N-R2E. HMC will retain the January 4, 1909 priority date for Water Right No. 43-1 and Water Permit No. 43A-1.

Discussion

Water from Little Spearfish Creek and Spearfish Creek is transported through a 52 inch pipe to HMC Hydropower Plant No. 2 (authorized by Water Right No. 137-1). The intake for HMC Hydropower Plant No. 1 is located approximately 1 mile downstream of Hydropower Plant No. 2. Water flowing out of Hydropower Plant No. 2, and any water in Spearfish Creek flowing by Hydropower Plant No. 2 is diverted for power generation at HMC Hydropower Plant No. 1. HMC has a water right to appropriate 120 cfs from Spearfish Creek for power generation at HMC Hydropower Plant No. 1.

If Water Permit Application No. 43A-1 is approved and developed, water will flow over Spearfish Falls at Savoy and into Spearfish Creek. Development of the instream flow use authorized by Permit No. 43A-1 is subject to the abandonment of the Little Spearfish Creek diversion point authorized by Water Right No. 137-1.

Hydrology

The USGS Gauging Station on Spearfish Creek, at Cheyenne Crossing shows a maximum daily mean flow of 44 cfs for water year 1989

through 1993. For the same period of record, the USGS Gauging Station on Little Spearfish Creek shows a maximum daily mean flow of 21 cfs.

For the most part, Spearfish Creek, from Savoy to the Hydropower Plant No. 1 intake flows over the Deadwood Formation. Preliminary study of the area does not show the existence of any sinkholes. Flow records for the USGS Gauging Station near Maurice, which is located less than one mile upstream from HMC intake for Hydropower plant No. 1, show an increase in the flow of Spearfish Creek, from Cheyenne Crossing to the intake for Hydropower Plant No. 1. Most of the additional flow comes from Annie Creek (between Cheyenne Crossing and Savoy) and from Iron Creek (between Savoy and the intake for Hydropower Plant No. 1). From August 3, 1988, to November 29, 1990, Iron Creek had a maximum flow of 3.19 cfs (May 11, 1989) and a minimum flow of 1.09 cfs (September 11, 1989). The additional flow is also from other smaller tributaries to Spearfish Creek and numerous smaller springs along the creek.

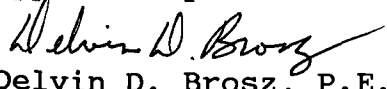
Water at the intake for Hydropower Plant No. 1 is transported by pipeline to Hydropower Plant No. 1 for power generation. Water is discharged to Spearfish Creek and is appropriated for domestic use and irrigation of 3240 acres which are located in the City of Spearfish and to the north of the city. Spearfish Creek flows into the Redwater River which, in turn, flows into the Belle Fourche River. The Belle Fourche Irrigation District stores water from the Belle Fourche River and its tributaries for irrigation purposes.

Conclusions and Recommendation

1. Little Spearfish Creek has had a maximum daily mean flow of 21 cfs (April 25, 1994).
2. The stretch of Spearfish Creek, between Savoy and the intake for Hydropower Plant No. 1 is a gaining stream. Approval of Water Permit Application No. 43A-1, should not have any adverse affect on irrigators downstream of the City of Spearfish.
3. Development of the instream flow use authorized by Permit No. 43A-1 is subject to the abandonment of the Little Spearfish Creek diversion point authorized by Water Right No. 137-1.
4. Water Permit Application No. 43A-1 should be approved for an amendment to Water Right No. 43-1 to add an additional use for instream flow purposes for up to 20.0 cfs from Little Spearfish Creek, with a January 4, 1909 priority date, without an increase in the diversion rate authorized by Water Right No. 43-1.


M. Rassool Ahadi
Natural Resources Engineer III

Approved By:



Delvin D. Brosz, P.E.

Natural Resources Engineer IV

References:

1. **Personal Communication with Dan Driscoll**, January 19, 1995,
United States Geological Survey, Rapid City, South Dakota.
2. **Water Resources Data, South Dakota**. United States Geological
Survey Water-Data Report SD-89-1 through SD-94-1.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 20, 1995

TO: Parties of Record in the Homestake Mining Company Vested Water
Right Applications

Persons Who have Expressed an Interest in these Applications

Water Permit/Right Holders from Elk, Spearfish and Whitewood Creek

SUBJECT: Notice of Hearings for Homestake Mining Company's Vested Water
Right Applications and Water Permit Application No. 43A-1

Enclosed is a copy of the notice of hearings for vested water right applications filed November 17, 1994 and Water Permit Application No. 43A-1 filed by Homestake Mining Company. The notice of hearings are to be published January 25 and February 1, 1995 in the Black Hills Pioneer, Rapid City Journal, Meade Co. Times Tribune and Belle Fourche Post.

Persons wishing to participate in the vested water right applications or any person wanting to intervene in Water Permit No. 43A-1 must file a written petition to intervene by February 17, 1995. The enclosed notice of hearings include directions on filing a petition to intervene.

Those parties that petitioned to intervene in the initial Homestake Mining Company case need to refile their petition to intervene. Refiling avoids any possible dispute on maintaining party status. A letter asserting an intent to remain a party of record is all that is required.

The evidentiary hearing is currently scheduled to be conducted the week of February 27 through March 3, 1995, at the Golden Hills Resort and Convention Center in Lead, SD. Additionally, a prehearing videoconference on the vested water right applications is set for February 21, 1995 at 1:00 pm to 3:00 pm (central standard time) [12:00 pm to 2:00 pm mountain standard time] on the Rural Development Telecommunications Network at sites located in Pierre, Rapid City, Sioux Falls and Spearfish. The specific location of the sites can be found in the enclosed notice of hearing.

A copy of the supplemental report and revised recommendations for the applications filed November 17, 1994, or the report and recommendation on Water Permit No. 43A-1 may be obtained by contacting Eric Gronlund at (605) 773-3352.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division
605 773-3352

enclosures

STEPHEN ORR
HOMESTAKE MINING COMPANY
630 E. SUMMIT
LEAD, SD 57754

GERALD F. APA, CHAIRMAN
LAWRENCE COUNTY COMMISSIONERS
PO BOX F
DEADWOOD, SD 57732

BRUCE OBERLANDER, MAYOR
CITY OF DEADWOOD
102 SHERMAN STREET

JON MATTSON, PRESIDENT
DEER MOUNTAIN SKI AREA
BOX 622
DEADWOOD, SD 57732

GLEN VANDINE
722 WEST SUMMIT
LEAD, SD 57754

ROBERT E. STUERMAN, SUPERINTENDENT
LEAD-DEADWOOD SCHOOL DIST. #40-1
320 SOUTH MAIN STREET
LEAD, SD 57754

HAROLD DAVIS, TOWN BOARD PRESIDENT
CENTRAL CITY
HC 37, BOX 310
LEAD, SD 57754

BLACK HILLS POWER & LIGHT CO.
%RON KOCOUREK
PO BOX 377
DEADWOOD, SD 57732

RICHARD L. FORT
HC 37, BOX 2421
LEAD, SD 57754

WILLIAM TAYLOR
WOODS, FULLER, SHULTZ & SMITH
310 SOUTH 1ST AVE.
SIOUX FALLS, SD 57102

ROGER A. TELLINGHUISEN
FULLER & TELLINGHUISEN
PO BOX 1087
SPEARFISH, SD 57783

DENNIS J. YORK, MAYOR
CITY OF LEAD
801 WEST MAIN
LEAD, SD 57754-1538

FRANCIS TOSCANA, MANAGER
LEAD-DEADWOOD SANITARY DIST. NO. 1
PO BOX 413
DEADWOOD, SD 57732

LEO DEROSIER, CHAIRMAN
LAWRENCE CO. PLANNING
AND ZONING COMMISSION
90 SHERMAN STREET
DEADWOOD, SD 57732

BEV HINK, PRESIDENT
TWIN CITY AREA DEVELOPMENT CORP.
PO BOX 735
LEAD, SD 57754

BOB KAUL, PRESIDENT
DEADWOOD ECONOMIC DEVELOPMENT CORP.
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DEADWOOD, SD 57732

TIMOTHY THOMAS
MORRILL BROWN & THOMAS
PO BOX 8108
RAPID CITY, SD 57709

HOWARD W. MORRISON
HC 37, BOX 1394
LEAD, SD 57754

DOUG HOFER, ACTING SECRETARY
DEPARTMENT OF GAME, FISH & PARKS
FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501

LLOYD L. EAGAN CO., INC.
2709 SOUTH 4TH AVE.
SIOUX FALLS, SD 57105

PAT AND TOM TRASK
PO BOX 19
ELM SPRINGS, SD 57736

JACK R. COLE
SPEARFISH CANYON
PO BOX 882
SPEARFISH, SD 57783

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%AMERICAN WILDLANDS
7500 E. ARAPAHO RD.
ENGLEWOOD, CO 80112

GREG BOURLAND, CHAIRMAN
CHEYENNE RIVER SIOUX TRIBE
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EAGLE BUTTE, SD 57625

THOMAS A. SMITH
BOX 21
OWANKA, SD 57767

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HC 75, BOX 324
STURGIS, SD 57785

MARSHALL EDDY
HCR 73, BOX 1220
DEADWOOD, SD 57732

WALTER D. AND WALTER MILLER
NEW UNDERWOOD, SD 57761

CARL AND ANNA HUMPHREY
NEW UNDERWOOD, SD 57761

STACY J. MADSEN
RR 1, BOX 55A
NEW UNDERWOOD, SD 57761-9607

CLARENCE E. HUMPHREY
RR 1, BOX 51
NEW UNDERWOOD, SD 57761

ARLENE COX
HCR 73, BOX 2291
DEADWOOD, SD 57732-9722

CHERYL WILLISS
US FISH & WILDLIFE SERVICE
DENVER FEDERAL CENTER
PO BOX 25486
DENVER, CO 80225

TED VORE
CITY OF SPEARFISH
722 MAIN STREET
SPEARFISH, SD 57783

GARY ADAM
WALTER-SCHULER DITCH
PEARSON DRIVE
SPEARFISH, SD 57783

ALBERT JEFFERY
BOWMAN DITCH
RR 1
SPEARFISH, SD 57783

DONALD W. HOWE
1213 CHARLES STREET
SPEARFISH, SD 57783

JIM JENNINGS
KEMPER DITCH AND
COOK-BURNS DITCH COMPANY
RR 1, BOX 182C
SPEARFISH, SD 57783

RICHARD CUNDY
RR 1, BOX 55
ST. ONGE, SD 57779

CLARA ZIEBERT
RIM ROCK LODGE
PO BOX 365
SPEARFISH, SD 57783

WICKIUP/ADELPHIA PARTNERS
PO BOX 939
NIWOT, CO 80544

DELANE WAGNER
WHITEWOOD DEVELOPMENT CORPORATION
PO BOX 875
LEAD, SD 57754

NEIL SHUCK
RR 1, BOX 98
VALE, SD 57788

W. GILBERT ALAN
RR 1, BOX 7
WHITEWOOD, SD 57793

ROLAND AND MARY BERGER
RR 2, BOX
WHITEWOOD, SD 57793

CHARLES WENNBERG
RR 1, BOX 1
WHITEWOOD, SD 57793

TIM RICHARDSON
THE DUNBAR, INC.
PO BOX 503
DEADWOOD, SD 57732



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

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

January 19, 1995

Steven Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700

Dear Mr. Orr

Homestake Mining Company's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1 for municipal and industrial use and Water Permit Application No. 43A-1 for an additional use of instream flow have been examined and found to comply with the South Dakota Water Laws and applicable rules. Notices of hearing have been sent to the Publishers of the Rapid City Journal printed at Rapid City, SD (Ph # 605-342-4612), Black Hills Pioneer printed at Spearfish, SD (Ph # 605-642-2761), Meade County Times-Tribune printed at Sturgis, SD (Ph # 605-347-2503) and the Belle Fourche Post printed at Belle Fourche, SD (Ph # 605-892-2528). For your information copies of the notices on the applications are enclosed. A copy of the report and the Chief Engineer's recommendation will be sent to you at a later date. Please review the notices prior to publication and notify this office if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your Notices of Hearing and to arrange for payment. Early contact with the papers can eliminate delays. The publishers have been instructed to publish your notices once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspapers have been instructed to send us the Proof of Publications. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notices of hearing. The Water Management Board will then consider your concerns during a hearing on the applications.

c: Phil Barnes, Homestake Mining Company, 630 E Summit, Lead, SD 57754-1700
Roger Tellinghuisen, PO Box 1087, Spearfish, SD 57783



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 19, 1995

Rapid City Journal
PO Box 450
Rapid City, SD 57709-0450

ATTENTION: Legal Department

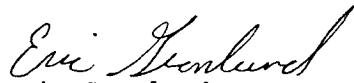
Enclosed is the Notice of Hearing for Homestake Mining Company's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1 and the Notice of Hearing for Water Permit Application No. 43A-1 to be published twice. Please publish the notices on January 25, 1995, with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICES ARE TO BE PUBLISHED before you make the first publication. Please BILL the APPLICANT for the cost of publications. The APPLICANT is Steven Orr, Homestake Mining Company, 630 East Summit, Lead, SD (Ph # 605-584-1020).

A copy of BOTH publications for each Notice must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publications with the FIRST Transmittal form on the bottom of this page. The first copies are needed to check the publications for errors so any corrections can be made in the second publications. Publication errors can invalidate the public notices and cause the applicant costly delays.

Please be sure the SECOND publications are returned IMMEDIATELY with the enclosed Proof of Publication forms. DO NOT WAIT until the end of the month or the billing cycle. No action may be taken on the applications until proof of publications are received.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

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

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Homestake Mining Company's Notices of Hearing on Application Nos. _____ which were first published in our issue of _____. ENCLOSED ARE COPIES OF THE FIRST PUBLICATIONS.

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 19, 1995

Meade Co. Times-Tribune
Box 69
Sturgis, SD 57785-0069

ATTENTION: Legal Department

Enclosed is the Notice of Hearing for Homestake Mining Company's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1 and the Notice of Hearing for Water Permit Application No. 43A-1 to be published twice. Please publish the notices on January 25, 1995, with the second publication 7 days later.

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Joe Foss Building
Pierre SD 57501-3181

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Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 19, 1995

Belle Fourche Post
Box 400
Belle Fourche, SD 57717-0400

ATTENTION: Legal Department

Enclosed is the Notice of Hearing for Homestake Mining Company's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1 and the Notice of Hearing for Water Permit Application No. 43A-1 to be published twice. Please publish the notices on January 25, 1995, with the second publication 7 days later.

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Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

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FIRST TRANSMITTAL NOTICE

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

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Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 19, 1995

Black Hills Pioneer
Box 7
Spearfish, SD 57783-0007

ATTENTION: Legal Department

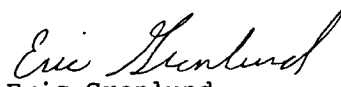
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Name

Newspaper

Instruction to Newspaper - Publish first Notice on January 25, 1995 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application for Water Permit Application No. 43A-1
to Amend Water Right No. 43-1

Notice is given that Homestake Mining Company, c/o Stephen Orr, 630 East Summit, Lead, SD 57754 has filed Water Permit Application No. 43A-1 to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 (Homestake Hydroplant No. 1) appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek for hydropower generation. The headworks (point of diversion from Spearfish Creek) are located in the NW1/4 SE1/4 Section 8, T5N, R2E. Water is then transported through a pipeline to the power station located in the NE1/4 SE1/4 Section 15, T6N, R2E (Spearfish area). This application proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the amount of water appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from the headworks on Spearfish Creek located in the NW1/4 SE1/4 Section 8, T5N, R2E for power generation purposes. If approved, Water Permit Application No. 43A-1 will allow the use of up to 20 cfs for instream flow purposes for a portion of Little Spearfish Creek from a point located in the NE1/4 SE1/4 Section 36, T5N, R1E on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW1/4 NW1/4 Section 31, T5N, R2E. Homestake's intent is that if the Little Spearfish Creek intake (authorized by Water Right No. 137-1) is abandoned, that this water (20 cfs) would continue to be appropriated for instream flow purposes from the point of Homestake's existing diversion on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek. Homestake Mining Company will retain the January 4, 1909 priority date established by Water Right No. 43-1 for both Water Right No. 43-1 and Water Permit No. 43A-1.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Water Permit Application No. 43A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting the application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 17, 1995. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider the application beginning at 9:00 am (mst), February, 27, 1995, Crown Point/Gold Room, Golden Hills Resort and Convention Center, 900 Miners Avenue, Lead, SD. The Board will also consider Homestake Mining Company's vested water right applications at this meeting (see separate notice of hearing). Whether the Board conducts the hearing on these dates is subject to the 1995 Legislature appropriating funds for the continued operation of the Department of Environment and Natural Resources.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the facts presented at the public hearing. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 17, 1995.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by February 17, 1995, at the above Water Rights Division address to request copies of information pertaining to the application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

The application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-33 thru 46-5-35; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; Steven M. Pirner, Acting Secretary, Department of Environment and Natural Resources.

Instruction to Newspaper - Publish first Notice on January 25, 1995 with the second publication 7 days later. The Water Rights Division is responsible for payment.

NOTICE OF HEARING To Validate Vested Water Right Applications to
Appropriate Water for Homestake Mining Company

Notice is given that on November 17, 1994, Homestake Mining Company, 630 E. Summit, Lead, SD 57754 filed applications to validate vested water right claims in response to a Chief Engineer's notice of requirement to file vested water right claims. Homestake Mining Company (HMC) filed these applications as new vested water right applications. Although the Chief Engineer believes these applications are amended refilings of pending Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1, 1594-1 whether the applications are determined new or refiled does not prejudice jurisdiction claims that any party of record may make. A determination may be made by the Water Management Board's Prehearing Chairman Rodney Freeman or the entire Board during the hearing process on whether the applications are new or amended filings.

At the time of the original filing of HMC vested water right applications, Richard L. Fort of Lead, SD filed a declaratory ruling request on a proposal titled "Proposed Water Management Changes for Spearfish Creek Watershed" (includes springs located in the Rapid Creek drainage basin) of watercourses located in the northern Black Hills related to Homestake's applications. Mr. Fort's request directly impacts a portion of HMC's applications and was previously consolidated with the HMC pending applications for the purpose of conducting the hearing.

The pending applications were consolidated by the Board Prehearing Chairman Rodney Freeman with the exception of No. 1592-1. For the purpose of this notice of hearing each application will be described separately with the number assigned to the application as filed originally. The November 17, 1994, vested water right application filings are as follows:

Vested Water Right Application Nos. 1587-1 and 1588-1 claim 16.89 cubic feet of water per second (cfs) which is equivalent to 7,580 gallons per minute (gpm) from Spearfish Creek and springs. The location of the diversion points is the SE $\frac{1}{4}$ Section 6, T3N, R2E (Spearfish Creek); NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 6, T3N, R2E (Raddick Draw); portions of Section 27, T4N, R2E (5 springs collectively known as Wildcat Springs); and the S $\frac{1}{2}$ Section 35, T4N, R2E (Hanna). Water, once collected, is transported to the Hanna Pump Station. Hanna Pump Station has a pumping capacity of approximately 13.3 cfs. Water is pumped uphill where it is joined with water collected in the Peake pipeline. The Peake pipeline has a carrying capacity of 3.55 cfs and is comprised of water from diversion points on Ward and Keough Draws. The diversion points are located in the SE $\frac{1}{4}$ Section 10 and SW $\frac{1}{4}$ Section 1, all in T3N, R2E. Water has been used for municipal purposes, for HMC's mining and milling complex, and for power generation in Englewood Hydroplant located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T4N, R3E. HMC claims priority dates of June 4, 1877, May 1876, and March 20, 1877. HMC claims a 1906 priority date for power generation at Englewood Hydroplant.

Vested Water Right Application No. 1589-1 claims 1.41 cfs from springs on the Elk Creek headwaters. The system consists of five separate springs flowing into sumps and transported via a common pipeline. The diversion points are located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T3N, R3E; NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5, T3N, R3E; SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T4N, R3E. Water has been used for municipal uses and in HMC's mining and milling complex. HMC claims priority dates of November 23, 1877, and August 4, 1880.

Vested Water Right Application No. 1590-1 claims 2.0 cfs from the headwaters of Tillson Creek and springs (also known as Little Rapid Springs located in the Rapid Creek drainage basin). The diversions points are located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26 (Tillson Intake) and in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13 (Homestake Springs); all in T3N, R2E. Water has been used for municipal use, for HMC's mining and milling complex, and for power generation at Englewood Hydroplant. HMC claims a priority date of May 1879 (Tillson Intake) and August 1885 (Homestake Springs). HMC claims a 1906 priority date for power generation at Englewood Hydroplant.

Vested Water Right Application No. 1591-1 claims 5.89 cfs from springs. The springs are collected at the Bowen diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 31, T4N, R3E and the Clark's diversion located in the NE $\frac{1}{4}$ Section 30, T4N, R3E. Water from these sources is transported through the Clark-Bowen pipeline for municipal use and for HMC's mining and milling complex. Homestake claims priority dates of January 1, 1878, and August 18, 1876.

Vested Water Right Application No. 1594-1 claims 8.0 cfs from Whitewood Creek from a point located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T4N, R3E. Water is for standby purpose and is used when there is insufficient water available from the other sources to meet water needs. Water use is for municipal purposes and for use in HMC's mining and milling complex. HMC claims a priority date of September, 1876.

Water from the above referenced collection system is transported through the Old Abe Pipeline which begins below the Englewood Hydroplant and proceeds to the Whitetail weir located south of Lead. The capacity of the Old Abe pipeline is 17.5 cfs. At the weir, the water is divided and flows in pipeline to the west Lead and south Lead reservoirs. The water is stored in these reservoirs to supply the water needs for the HMC mining operation and the municipalities of Lead, Central City, Deadwood, Pluma and the Grizzly Gulch area of Lawrence County.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of the vested water right applications as follows: 1) Application Nos. 1587-1 and 1588-1 for 14.0 cfs from Spearfish Creek and springs with a priority date of June 4, 1877; 2) Application No. 1589-1 for 1.41 cfs from Elk Creek Springs with a priority date of November 23, 1877; 3) Application No. 1590-1 for 1.2 cfs from Tillson Creek and 0.8 cfs from Little Rapid springs with a priority of May 1, 1879 and August 27, 1885, respectively; 4) Application No. 1591-1 for 5.89 cfs from Clark-Bowen Springs with a priority of February 28, 1877; and 5) Application No. 1594-1 for 8.0 cfs from Whitewood Creek (Englewood claim) with a priority of February 28, 1877 to be used as a standby water supply. The Chief Engineer also recommends that the collective diversion from these sources may not exceed 17.5 cfs based on the physical capabilities of the works to place water to beneficial use. The Old Abe pipeline controls the ability of the works to deliver water for municipal and industrial use. Management of the diversions from the above referenced sources has historically been an operational determination of Homestake Mining Company; however, the total amount of water may not exceed 17.5 cfs. The Chief Engineer's recommendation is based on review of the applications which show 1) water has been appropriated as described for municipal and industrial use, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest with qualifications.

Vested Water Right Application No. 1592-1 claims 2.56 cfs from Whitewood Creek at a point located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T4N, R3E. At the point of diversion, a dam has been constructed across Whitewood Creek which allows diversion of water into a pipeline. Water flows through the Hearst pipeline to the Kirk Powerplant which is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 4, T4N, R3E. Water is used in the coal burning power plant for cooling and makeup water. Homestake claims priority dates of "prior to June 1, 1877" and June 18, 1877.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 1592-1 for 2.56 cfs because 1) water has been appropriated as described for industrial use with a priority date of June 18, 1877, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is listed at the beginning of this notice. A petition filed by either an interested person or the applicant must be filed by February 17, 1995. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Board will consider these applications February 27 through March 3, 1995 beginning at 9:00 a.m. (mountain standard time), February 27, 1995, Crown Point/Gold Room, Golden Hills Resort and Convention Center, 900 Miners Avenue, Lead, SD. The Board will also consider Homestake Mining Company's Water Permit Application No. 43A-1 at this meeting (see separate notice of hearing). Whether the Board conducts the hearing on these dates is subject to the 1995 Legislature appropriating funds for the continued operation of the Department of Environment and Natural Resources.

The Board Prehearing Chairman Rodney Freeman has scheduled a prehearing conference for February 21, 1995 at 1:00 pm to 3:00 pm (central standard time). At this hearing, arguments may be heard on any pending motions and at which any pretrial matters may be taken up. The hearing will be a videoconference conducted on the South Dakota Rural Development Telecommunications (RDT) Network. Sites which parties may participate from are: 1) State Capitol Building, Room B12, 500 E. Capitol, Pierre, SD; 2) SD School of Mines & Technology, Classroom Building, Room 109, 501 E. Saint Joseph St., Rapid City, SD; 3) Sioux Valley Hospital, Room G466, 1100 S. Euclid Ave., Sioux Falls, SD; and 4) Black Hills State University, E.Y. Berry Library, Room L020, 1200 University Station, Spearfish, SD.

The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve the validations, 2) approve the validations with qualifications, 3) defer, or 4) deny validation of any or all of these applications based on the facts presented at the public hearing. The Board, at its discretion, may make a decision upon completion of testimony or defer action on any application. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by February 17, 1995.

These hearings will be an adversary proceedings. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by February 17, 1995, at the above Water Rights Division address to request copies of information pertaining to these applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

The legal authority and jurisdiction under which the hearing is to be held is SDCL Chapters. 46-1, 46-2, 46-2A, 46-5, 46-6 and ARSD Ch. 74:02:01. The particular sections of the statutes and rules involved are SDCL 46-1-1 thru 46-1-10, 46-1-14, 46-2-9, 46-2-11, 46-2A-1 thru 46-2A-8, 46-2A-9, 46-2A-15 thru 46-2A-18, 46-5-5, 46-5-8, 46-5-37, 46-5-37.1, 46-5-49, 46-6-1 thru 46-6-2 and Board Rules ARSD 74:02:01:01, 74:02:01:12 thru 74:02:01:14, ARSD 74:02:01:20 thru 74:02:01:22, 74:02:01:37 thru 74:02:01:37.02. Steven M. Pirner, Acting Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Butte) ss

I, Faye D. Pate

certify that the attached printed Notice was

taken from the _____

Belle Fourche Post

printed and published in Belle Fourche

County of Butte and State of

South Dakota. The notice was published in
the newspaper on the following two dates:

January 25, 1995

February 1, 1995

Cost of Printing: 290.13

Faye D. Pate
(Signature)

Accountant
(Title)

February 1, 1995
(Date Signed)



**NOTICE OF HEARING
on Application for
Water Permit**

**Application No. 43A-1 to
Amend Water Right No. 43-1**

Notice is given that Homestake Mining Company, c/o Stephen Orr, 630 East Summit, Lead, SD 57754 has filed Water Permit Application No. 43A-1 to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 (Homestake Hydroplant No. 1) appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek for hydropower generation. The headworks (point of diversion from Spearfish Creek) are located in the NW1/4 SE1/4 Section 8, T5N, R2E. Water is then transported through a pipeline to the power station located in the NE1/4 SE1/4 Section 15, T6N, R2E (Spearfish area). This application proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the amount of water appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from the headworks on Spearfish Creek located in the NW1/4 SE1/4 Section 8, T5N, R2E for power generation purposes. If approved, Water Permit Application No. 43A-1 will allow the use of up to 20 cfs for instream flow purposes for a portion of Little Spearfish Creek from a point located in the NE1/4 SE1/4 Section 36, T5N, R1E on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW1/4 NW1/4 Section 31, T5N, R2E. Homestake's intent is that if the Little Spearfish Creek intake (authorized by Water Right No. 137-1) is abandoned, that this water (20 cfs) would continue to be appropriated for instream flow purposes from the point of Homestake's existing diversion on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek. Homestake Mining Company will retain the January 4, 1909 priority date established by Water Right No. 43-1 for both Water Right No. 43-1 and Water Permit No. 43A-1.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Water Permit Application No. 43A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is the public interest.

Any person interested in opposing or supporting the application must file a written petition with BOTH the applicant and Chief En-

gineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Right Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352); and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 17, 1995. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider the application beginning at 9:00 am (mst) February 27, 1995, Crown Point/Gold Room, Golden Hills Resort and Convention Center, 900 Miners Avenue, Lead, SD. The Board will also consider Homestake Mining Company's vested water right applications at this meeting (see separate notice of hearing). Whether the Board conducts the hearing on these dates is subject to the 1995 Legislature appropriating funds for the continued operation of the Department of Environment and Natural Resources.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the facts presented at the public hearing. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 17, 1995.

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The application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-33 thru 46-5-35; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; Steve M. Pirner, Acting Secretary, Department of Environment and Natural Resources.

P2t1/25-2/1



PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Lawrence) ss



I, Laurie Hardin

certify that the attached printed Notice was
taken from the Dept of Env.

printed and published in Black Hills Pioneer

County of Lawrence and State of

South Dakota. The notice was published in
the newspaper on the following two dates:

Jan. 25, 1995
& Feb 1, 1995

Cost of Printing: \$84.69 (#982)
\$199.40 (#983)

Laurie Hardin
(Signature)

Accounts Receivable
(Title)

2-2-95
(Date Signed)

**NOTICE OF HEARING
on Application for Water Permit
Application No. 43A-1
to Amend Water Right No. 43-1**

NOTICE IS GIVEN that Homestake Mining Company, c/o Stephen Orr, 630 East Summit, Lead, SD 57754 has filed Water Permit Application No. 43A-1 to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 (Homestake Hydroplant No. 1) appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek for hydropower generation. The headworks (point of diversion from Spearfish Creek) are located in the NW1/4 SE1/4 Section 8, T5N, R2E. Water is then transported through a pipeline to the power station located in the NE1/4 SE1/4 Section 15, T6N, R2E (Spearfish area). This application proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the amount of water appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from the headworks on Spearfish Creek located in the NW1/4 SE1/4 Section 8, T5N, R2E for power generation purposes. If approved, Water Permit Application No. 43A-1 will allow the use of up to 20 cfs for instream flow purposes for a portion of Little Spearfish Creek from a point located in the NE1/4 SE1/4 Section 36, T5N, R1E on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW1/4 NW1/4 Section 31, T5N, R2E. Homestake's intent is that if the Little Spearfish Creek intake (authorized by Water Right No. 137-1) is abandoned, that this water (20cfs) would continue to be appropriated for instream flow purposes from the point of Homestake's existing diversion on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek. Homestake Mining Company will retain the January 4, 1909 priority date established by Water Right No. 43-1 for both Water Right No. 43-1 and Water Permit No. 43A-1.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Water Permit Application No. 43A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting the application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 17, 1995. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider the application beginning at 9:00 am (mst), February 27, 1995, Crown Point/Gold room, Golden Hills Resort and Convention Center, 900 Miners Avenue, Lead, SD. The Board will also consider Homestake Mining Company's vested water right applications at this meeting (see separate notice of hearing). Whether the Board conducts the hearing on these dates is subject to the 1995 Legislature appropriating funds for the continued operation of the Department of Environment and Natural Resources.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the facts presented at the public hearing. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 17, 1995.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by February 17, 1995, at the above Water Rights Division address to request copies of information pertaining to the application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

The application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-33 thru 46-5-35; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15;

Steven M. Pirner,
Acting Secretary,
Department of Environment
and Natural Resources.

#982
Jan. 25, Feb. 1





AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MEADE

Faye D. Pate, being duly sworn, says: That the Meade County Times-Tribune, is and, during all the times hereinafter mentioned, was a legal newspaper as defined in SDCL 17-2-2, as amended, published at Sturgis, Meade County, South Dakota, by Allison Publishing, Inc.; that affiant is and, during all of said times, was employed as an accountant by the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is attached, was published in said newspaper for successive issues, bearing the following dates:

January 25	199 5	199
February 1	199 5	199
	199	199
	199	199
	199	199

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

Faye D. Pate

Subscribed and sworn to before me this

1 day of February, 199 5

Malinda S. Burt

Notary Public, South Dakota

Malinda S. Burt
Notary Public
My Commission Expires July 8, 2002

18545c[11



Water application

NOTICE OF HEARING on Application for Water Permit Application No. 43A-1 to

Amend Water Right No. 43-1

Notice is given that Homestake Mining Company, c/o Stephen Orr, 630 East Summit, Lead, SD 57754 has filed Water Permit Application No. 43A-1 to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 (Homestake Hydroplant No. 1) appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek for hydropower generation. The headworks (point of diversion from Spearfish Creek) are located in the NW1/4 SE1/4 Section 8, T5N, R2E. Water is then transported through a pipeline to the power station located in the NE1/4 SE1/4 Section 15, T6N, R2E (Spearfish area). This application proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the amount of water appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from the headworks on Spearfish Creek located in the NW1/4 SE1/4 Section 8, T5N, R2E for power generation purposes. If approved, Water Permit Application No. 43A-1 will allow the use of up to 20 cfs for instream flow purposes for a portion of Little Spearfish Creek from a point located in the NE1/4 SE1/4 Section 36, T5N, R1E on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW1/4 NW1/4 Section 31, T5N, R2E. Homestake's intent is that if the Little Spearfish Creek intake (authorized by Water Right No. 137-1) is abandoned, that this water (20 cfs) would continue to be appropriated for instream flow purposes from the point of Homestake's existing diversion on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek. Homestake Mining Company will retain the January 4, 1909 priority date established by Water Right No. 43-1 for both Water Right No. 43-1 and Water Permit No. 43A-1.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Water Permit Application No. 43A-1 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting the application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre, SD (605) 773-3352" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 17, 1995. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider the application beginning at 9:00 am(mst), February 27, 1995, Crown Point/Gold Room, Golden Hills Resort and Convention Center, 900 Miners Avenue, Lead, SD. The Board

will also consider Homestake Mining Company's vested water right applications at this meeting (see separate notice of hearing). Whether the Board conducts the hearing on these dates is subject to the 1995 Legislature appropriating funds for the continued operation of the Department of Environment and Natural Resources.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application based on the facts presented at the public hearing. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 17, 1995.

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The application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-33 thru 46-5-35, and Board Rules, ARSD 74:02:01:01 thru 74:02:01:15; Steven M. Pimer, Acting Secretary, Department of Environment and Natural Resources.

Publ Jan 25 and Feb. 1, 1995
Meade County Times-Tribune

Notice is given that Homestake Mining Company, c/o Stephen Orr, 630 East Summit, Lead, SD 57754, has filed Water Permit Application No. 43A-1 to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek. Water Right No. 43-1 (Homestake Hydropower Plant No. 1) appropriates 120 cubic feet of water per second (cfs) from Spearfish Creek for hydropower generation. The headworks (point of diversion from Spearfish Creek) are located in the NW¼ SE¼ Section 8, T5N, R2E. Water is then transported through a pipeline to the power station located in the NE¼ SE¼ Section 15, T4N, R2E (Spearfish area). This application proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the amount of water appropriated. Water Right No. 43-1 will continue to appropriate 120 cfs from the headworks on Spearfish Creek located in the NW¼ SE¼ Section 8, T5N, R2E for power generation purposes. If approved, Water Permit Application No. 43A-1 will allow the use of up to 20 cfs for instream flow purposes for a portion of Little Spearfish Creek from a point located in the NE¼ SE¼ Section 36, T5N, R1E on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1) to the confluence of the Little Spearfish Creek with Spearfish Creek located in the SW¼ NW¼ Section 31, T5N, R2E. Homestake's intent is that if the Little Spearfish Creek intake (authorized by Water Right No. 137-1) is abandoned, that this water (20 cfs) would continue to be appropriated for instream flow purposes from the point of Homestake's existing diversion on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek. Homestake Mining Company will retain the January 4, 1999 priority date established by Water Right No. 43-1 for both Water Right No. 43-1 and Water Permit No. 43A-1.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Water Permit Application No. 43A-1 because 1) existing rights will not be unlawfully impaired; 2) it is a beneficial use of water; and 3) it is in the public interest.

Any person interested in opposing or supporting the application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Fass Building, 523 E. Capitol, Pierre, SD 57501, (605-773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 17, 1995. 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.

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Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

I, Helena M. Bauer

ss.



_____, being first duly sworn,
upon his oath says: That he is now and was at all times hereinafter mentioned, an employee of the RAPID CITY JOURNAL COMPANY, a corporation, of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said RAPID CITY JOURNAL, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said newspaper once each _____ week
for _____ two _____ successive _____ weeks, the
first publication thereof being on the _____ 25th _____ day of
January _____, 19_95_, that the fees charged for the
publication thereof are One hundred fifty four _____ Dollars and
_____ none _____ cents.

Helena M. Bauer

Subscribed and sworn to before me this _____ 16th _____ day of

February _____, 19_95_.

Bouaine K. Rostad
Notary Public.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4)

deny the application based on the facts presented at the public hearing. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 17, 1995.

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IN THE _____ COURT
COUNTY OF PENNINGTON

**Publisher's and Attorney's
Affidavit**

Filed in the office of _____

the _____ day of _____

on _____

19

MATRIX OF PETITIONERS
HOMESTAKE MINING COMPANY'S WATER PERMIT APPLICATION NO. 43A-1

S -- SUPPORT O -- OPPOSITION I -- INTEREST

43A-1	PETITIONER
S	RICHARD L. FORT
S	RAMSDELL IRRIGATION ASSOCIATION
I	SD GAME, FISH AND PARKS
I	JACK COLE
O	KENNY MCFARLAND
S	REVEREND NORMAN NICHOLLS
O	FREDDIE FERGUSON
O	JAMES SMITH
O	MAXINE SMITH
O	JAMES AND CAROLINE WILSEY
O	PHILIP WILSON
O	KENNETH WILSON
O	JAMES AND JOHN LINN
O	ROBERT POWLES
O	KENNETH BAKER
O	GLENN MCPHERSON
O	KURT KETELSON
O	BERNARD WIEHL
O	JONATHAN HARRINGTON
O	MATT KAMMERER
O	GREGOR MCFARLAND
O	LEROY HARRINGTON
O	JEFF BAKER

MATRIX OF PETITIONERS
HOMESTAKE MINING COMPANY'S WATER PERMIT APPLICATION NO. 43A-1

S -- SUPPORT O -- OPPOSITION I -- INTEREST

43A-1	PETITIONER
O	RAYMOND KETELSEN
O	KELLY RICARD
O	SHANNON TIBBETTS
O	KENNETH BLAIR
O	RON HAM
O	JOEL BAKER
O	JAMES BAKER
O	CAROL JUNG
O	JAKE MOONEY
O	HERBERT JENSEN
O	DALE VOLMER
O	PATRICIA DIERHS
O	FRED MCFARLAND
O	DAN MCFARLAND
O	DEAN OLSON
O	FRANCIS WIEHL
O	JERALD MCFARLAND
O	MIKE OPITZ
O	AMALIE ADER
O	BERNADETTE RICARD
O	MED RICARD
O	LEROY BREN
O	LLOYD SHORT
O	PHILIP VAN DERVOORT

MATRIX OF PETITIONERS
HOMESTAKE MINING COMPANY'S WATER PERMIT APPLICATION NO. 43A-1

S -- SUPPORT O -- OPPOSITION I -- INTEREST

43A-1	PETITIONER
O	ROBERTA WILBURN
O	LARRY HENDERSON
O	ALFRED KAMMERER
O	ELIOT KAMMERER
O	LARRY SMITH
O	DONALD EICH
O	MAXINE HAM FRITZSCHER
O	WILLIAM NASH
O	ADAM ROHRBUCK
O	PAULA SOELZER
O	RON SOELZER

**PARTIES OF RECORD
WATER PERMIT APPLICATION NO. 43A-1
HOMESTAKE MINING COMPANY**

APPLICANT:

Steven Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700

REPRESENTED BY:

Roger Tellinghuisen, Attorney
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783-1087

PETITIONERS:

Reverend Norman G. Nicholls
HC-37, Box 1377
Lead, SD 57754

Reverend Norman G. Nicholls
740 Weston Rd., #602
Hot Springs, AR 71913

Lenora Haag, Secretary
Ramsdell Irrigation Association
1421 5th Street
Spearfish, SD 57783

Jonathan Harrington
Box 72, HC 80
Piedmont, SD 57769

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

Matt Kammerer
RR 3, Box 475
Rapid City, SD 57701

Kenny McFarland
HC 80, Box 747
Piedmont, SD 57769

Gregor McFarland
HC 75, Box 324
Sturgis, SD 57785

Robert W. Powles
HC 80, Box 632-20
Piedmont, SD 57769

LeRoy Harrington
HC 80, Box 735
Piedmont, SD 57769

Kenneth Baker
Box 2769
Rapid City, SD 57709

Jeff Baker
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Piedmont, SD 57769

Glenn McPherson
HC 80, Box 724
Piedmont, SD 57769

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HCR 82, Box 149
Box Elder, SD 57719

Kurt Ketelsen
HCR 82, Box 150
Box Elder, SD 57719

Kelly Ricard
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Piedmont, SD 57769

Bernard Wickl
HC 80, Box 734
Piedmont, SD 57769

Shannon Tibbetts
(as per Eugene Tibbetts)
3190 Country Rd.
Rapid City, SD 57701

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709

Ron C. Ham
RR 3, Box 2410
Rapid City, SD 57701

Joel Baker
RR 3, Box 2410
Rapid City, SD 57701

James P. Baker
RR 10, Box 2720
Rapid City, SD 57701

Carol Jung
HC 80, Box 750
Piedmont, SD 57769

Jake E. Mooney
HCR 80, Box 633
Piedmont, SD 57769

Herbert R. Jensen
HC 80
Piedmont, SD 57769

Dale A. Volmer
HCR 80, Box 763-10
Piedmont, SD 57769

Patricia J. Dierks
HC 80, Box 632
Piedmont, SD 57769

Fred McFarland
P.O. Box 2110
Rapid City, SD 57709

Dan F. McFarland
5200 Dyess Ave.
Rapid City, SD 57701

Dean J. Olson
HC 82, Box 143
Box Elder, SD 57719

Francis Wiehl
HC 80, Box 736
Piedmont, SD 57769

Jerald McFarland
HC 75, Box 324
Sturgis, SD 57785

Mike Opitz
HC 80, Box 632-15
Piedmont, SD 57769

Amalie M. Ader
HC 80, Box 752
Piedmont, SD 57769

Bernadette & Med Ricard
HC 80, Box 751
Piedmont, SD 57769

LeRoy Bren
HCR 80, Box 755
Piedmont, SD 57769

Lloyd Short
Box 655, HCR 80
Piedmont, SD 57769

Phil R. VanDervoort
HC 80, Box 760
Piedmont, SD 57769

Roberta Wilburn
HC 80, Box 624
Piedmont, SD 57769

Larry D. Henderson
RR 10, Box 2640
Rapid City, SD 57701

Alfred & Eliot Kammerer
HC 80, Box 725
Piedmont, SD 57769

Larry Smith
HC 80, Box 742
Piedmont, SD 57769

Donald L. Eich
HC 80, Box 627
Piedmont, SD 57769

Maxine Ham Fritzsche
1209 Pine Knoll Pl.
Rapid City, SD 57701

William L. Nash
HC 80, Box 743
Piedmont, SD 57769

Adam Rohrbuck
HC 80, Box 656
Piedmont, SD 57769

Douglas R. Hansen
Director, Division of Wildlife
Department of Game, Fish & Parks
Foss Building
523 East Capitol
Pierre, SD 57501-3182

James F. & Caroline L. Wilsey
512 N. Needles
Brandon, SD 57005

Kenneth Wilson
HC 86, Box 16
Elm Springs, SD 57736

Jack R. Cole
Spearfish Canyon
P.O. Box 882
Spearfish, SD 57783

Paula M. & Ron L. Soelzer
P.O. Box 208
Piedmont, SD 57769

Freddie Ferguson
HC 86, Box 5
Wasta, SD 57791-9203

James B. Smith
Box 21
Owanka, SD 57767

Philip Wilson
HC 86, Box 14
Elm Springs, SD 57736

James L. & John E. Linn
HC 86, Box 25
Elm Springs, SD 57736

Gary L. Richter, Attorney
Dept. of Game, Fish & Parks
Foss Building
523 East Capitol
Pierre, SD 57501-3182

January 23, 1995



TO: John Hatch, Chief Engineer
Water Rights Division
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
Joe Foss Building, 523 East Capitol
Pierre, SD 57501-3181

FROM: Richard L. Fort

RE: Intervention status on Homestake Mining Company's Water Right
and Permit Applications.

Dear Mr. Hatch:

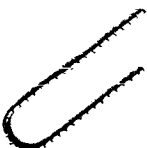
In response to your letter of January 20, 1995 this is to confirm that I wish to continue as a party of record.

I should like to have this intervention status also apply to the Water Permit Application No. 43A-1. My intervention on this is likely to be in support but I may wish to suggest amendments.

I believe this is already implied but my interventions are also applicable to the Chief Engineer's recommendations.

Sincerely,

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754
584-3832



Mr. John Hatch
Chief Engineer
Water Rights Division Joe Foss Building
523 E. Capitol
Pierre, SD 57501



January 25, 1995

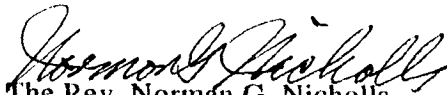
Subject: Homestake Mining Company's Vested Water Right Applications and Water Permit
Application No. 43A-1

Dear Sir:

It is my desire as an original intervenor to continue as a party of record in the above subject hearings.

Thank you for your consideration in this matter.

Sincerely,


The Rev. Norman G. Nicholls
HC-37, Box 1377
Lead, SD 57754

cc: Stephen Orr, HMCo., 630 E. Summit, Lead, SD 57754-1700



Water Rights Division
Foss Building
523 E Capitol
Pierre S.D. 57501-3181

RE: Homestake Application
Permit # 43A-1

I Kenny McFarland do Petition To Remain
an Opposing Party To Homestakes water right
Application Concerning Use of Elk Creek Waters.

Kenny McFarland
Elk Creek Landowners
Hc 80 Box 747
Piedmont S.D. 57769

January 30, 1995



TO: SD WATER MANAGEMENT BOARD and Parties of Record and of Interest

FROM: Richard L. Fort, Applicant and Intervenor.

RE: Homestake Vested Water Right Applications and the R. Fort Request for a Declaratory Ruling.

SPECIFICALLY: Response to the Chief Engineer's recommendations on Applications 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1.

The above applications and my application, in accord with the ruling from the hearing chairman, are to be considered together.

I agree with the Chief Engineer's recommendation that the **total collective diversion** from these sources should be **17.5 cfs**, the capacity of the Homestake water collection system. And I also agree that more than this amount must be allocated to allow for a standby water supply. However, I recommend modification of the standby water allocations and elimination of some of the diversions as not being needed.

Specifically my recommendations are as follows:

1587-1 and 1588-1: In agreement with the Chief Engineer I recommend allocation of **14 cfs**. However, **3 cfs of this should be for standby water. Also the Ward Draw Diversion on the Peake line should be abandoned.**

1589-1: The diversions of Elk Springs should be abandoned, as not needed.

1590-1: The diversion at Tillson Creek should be abandoned. Little Rapid Springs and its .8 cfs would be retained.

1591-1: I agree with the Chief Engineer's recommendation of **5.89 cfs from Clark-Bowen Springs.**

1594-1: I agree with the Chief Engineer's recommendation of **8.0 cfs but would stipulate that 2 cfs be for regular use and 6 cfs for a standby water supply.**

This provides a total of 19.69 cfs (2.19 cfs above capacity) for regular use and a total of 9 cfs for a standby water supply. Total water allocated would be 28.69 cfs, which is very substantially more than the carrying capacity of the system.

I further recommend that the above vested rights be held jointly by HOMESTAKE MINING COMPANY and THE SANITARY DISTRICT NO. 1 and that 6 cfs (4 million gpd) of the 17.5 cfs of the collective diversion be allocated to Sanitary District No. 1 and the remaining 11.5 cfs to Homestake Mining Company.

Page two

RESPONSE TO THE CHIEF ENGINEER'S RECOMMENDATIONS ON
WATER PERMIT APPLICATION NOS. 1592-1 and 43A-1.

1592-1: I agree in toto with the Chief Engineer's recommendation.

43A-1: I agree with the Chief Engineer's recommendation except that I
would amend this to read "...the use of not less than 10 cfs and up
to 20 cfs.."



Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

enclosures

cc: Roger Tellinghuisen, William Taylor, Rev. Norm Nicholls, Jon
Mattson, Dennis York, Mike Rodman, Harold Davis, Robert Jackson, Bob
Kaul, Michael McGuigan, Robert Stuermer, Frank Ward, Bev. Hink, Randy
Oliver, Gerald Apa, Glen Vandine, Rodney Freeman, Bruce Laymon, Leo
Derosier, Jack Cole, John Steele, Mark Vickers, Allen White Lightning,
Ray and Mary Osloond, William Perron, Howard Morrison, Bernard
Peoples, Brian Brademeyer, Kenny McFarland, Myron Rock, Lenore Haag,
Timothy Thomas, Steve Emery, Gary Richter, John Hatch, John Guhin,
Diane Best.

REQUESTED WATER ALLOCATIONS

Water Rights Division

Application Number	CFS	GPM	GPD
1587-1 1588-1	14.0	6,283.2	9,047,808
1589-1	1.41	632.81	911,246.4
1590-1	2.0	897.6	1,292,544
1591-1	5.89	2,643.43	3,806,539.2
1592-1	2.56	1,148.93	1,654,459.2
1594-1	8.0	3,590.4	5,170,176
TOTAL	33.86	15,196.37	21,882,772.8

**ESTIMATED PEAK^ TOTAL WATER NEEDS FOR USERS OF
THE HOMESTAKE WATER SYSTEM**

USER	Gallons per day	Gallons per minute	Cubic feet per second
HOMESTAKE	3,888,000	2,700	6.02
LEAD AND * CENTRAL CITY	2,060,000	1,430.56	3.19
DEADWOOD * (with expansion)	1,440,000	1,000	2.23
BACK UP + (Whitewood Creek)	5,170,176	3,590.40	8
KIRK POWER PLANT	1,654,459.2	1,148.93	2.56
DEER MOUNTAIN	50,000	34.7	0.08
TOTAL	14,262,635.2	9,904.59	22.08
STATE TOTAL (Recommended)	21,882,772.8	15,196.37	33.86
SURPLUS (?)	7,620,137.6	5,291.76	11.79

* Capacity of planned filtration facility according to Francis Toscana, Manager of Lead-Deadwood Sanitary District No. 1.

+ Deadwood may also have back-up water from the Cutting Mine which is not part of the Homestake water system.

^ The peak figures here are generously over-estimated. Homestake's average of water taken from the collection system is 2000 GPM according to Mr. Waterland, a Homestake official. Deadwood's average daily use is more nearly 500 to 600 GPM; thus a great deal has been allowed for expansion. Deer Mountain's contract is only for a small fraction of the figure above. This figure should also encompass additional individual users which tap the line and some allowance for further additions. It is not clear whether Kirk Power Plant actually uses the water allotted and it is probable that the figures for Lead and Central City are too large.

Water Rights Division
Foss Building
523 E. Capitol
Pierre, SD 57501



February 1, 1995

RE: Application for Water Permit Application No. 43A-1 to Amend Water
Right No. 43-1

TO WHOM IT MAY CONCERN:

As a resident and registered voter of South Dakota, a property owner in Spearfish Canyon and a concerned citizen, I am intervening **in support** of the above referenced application and the release of 20 CFS from the Little Spearfish diversion dam. It is highly recommended that a minimum amount be stipulated as well with conditions with respect to release under emergency conditions.

In my opinion this type of in-stream flow is a necessity for fire prevention, fire fighting, fish propagation, beautification of the Canyon, and an effort by Homestake Mining Company to bring back the serenity and naturalness of Spearfish Creek. Further, this is part of a similar request that has already been suggested in the previous intervention on HMCo. water rights applications and in the matter of the request for declaratory ruling filed by Richard L. Fort, regarding proposed changes in the Spearfish Creek Watershed (Phase II), which I, and others, support.

Even though I support this application I can not help but think of some of the possible underlying reasons for this action: an increase in tourism for the proposed motel at Savoy; an increase in tourism for the Latchstring Inn facility at Savoy because of the possible regeneration of Spearfish Falls; the PR which Homestake Mining Company will receive for offering this beneficent sharing of their water rights in this small area (realizing that the total CFS will still be available for hydropower generation at the Spearfish hydro electric plant); this will allow a continuous flushing of Spearfish Creek, with 20 CFS stream flow, from the Little Spearfish Canyon diversion dam to the Mourice diversion dam; this increased stream flow will help to control the possible pollution caused by the over use of the Latchstring Inn facility septic system; and will control the stagnant pools and growth of vegetation in the stream bed due to lack of in-stream flow over the past century.

Now, it seems, is an appropriate time for Homestake Mining Company to be even more beneficent and allow a continuous and sufficient (except in emergency situations) stream flow to occur from the **Savoy diversion dam** down stream. This would allow similar advantages as stated above as well as fulfill requests suggested the Declaratory Ruling filed by Richard Fort in the original Water Permit Applications (Phase II).

Because of the above I **support** Application No. 43A-1 to Amend Water Right No. 43-1.

Sincerely,


The Rev. Norman G. Nicholls
HC-37, Box 1377
Lead, SD 57754

(Winter)
740 Weston Rd., #602
Hot Springs, AR 71913

cc: Homestake Mining Co., c/o Stephen Orr, 630 E. Summit, Lead, SD 57754



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 3, 1995

Jack Cole
5240 North Montezuma Trail
Tucson, Arizona 85715

Dear Mr. Cole:

As you requested, please find enclosed the following information on Homestake Mining Company's (HMC) pending applications:

1. The supplemental report and revised recommendations on HMC's vested water right applications.
2. The applications filed by HMC on November 17, 1995.
3. The report and recommendation on Water Permit Application No. 43A-1.

Please contact me if I may be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Gronlund".

Eric Gronlund
Water Rights Division
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 3, 1995

Richard Fort
HC 37, Box 2421
Lead, SD 57754

Dear Mr. Fort:

As you requested, please find enclosed the following information on Homestake Mining Company's (HMC) pending applications:

1. The supplemental report and revised recommendations on HMC's vested water right applications.
2. The report and recommendation on Water Permit Application No. 43A-1.

Please contact me if I may be of further assistance.

Sincerely,

Eric Gronlund
Water Rights Division
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 3, 1995

Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754

Dear Mr. Orr:

Please find enclosed the report and revised recommendations for Homestake Mining Company's vested water right applications and the report and recommendation for Water Permit Application No. 43A-1. A copy of these reports and recommendations will be sent to all parties of record in the matter of Homestake's Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1.

Sincerely,

Eric Gronlund
Water Rights Division
(605) 773-3352

enclosure

c: Phil Barnes, Homestake Mining Company
Roger Tellinghuisen, P.O. Box 1087, Spearfish, SD 57783



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 7, 1995

TO: Parties of Record in the Homestake Mining Company Vested Water Right Applications

Persons Who have Expressed an Interest in these Applications

SUBJECT: Supplemental Report and Revised Recommendations for Homestake Mining Company's Vested Water Right Applications and Report and Recommendation for Water Permit Application No. 43A-1

Enclosed is a copy of the supplemental report and revised recommendations for Homestake Mining Company's vested water right applications and report and recommendation for Water Permit Application No. 43A-1. If you have any questions regarding these reports, please contact Diane Best, Assistant Attorney General at (605) 773-3215.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division
605 773-3352

enclosures

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 7, 1995, a Memo dated February 7, 1995, regarding Supplemental Report and Revised Recommendations for Homestake Mining Company's Vested Water Right Applications and Report and Recommendation for Water Permit Application No. 43A-1, along with copies of the above described information, was served by United States Mail, first class, postage prepaid upon:

STEPHEN ORR
HOMESTAKE MINING COMPANY
630 E. SUMMIT
LEAD, SD 57754

DENNIS J. YORK, MAYOR
CITY OF LEAD
801 WEST MAIN
LEAD, SD 57754-1538

GERALD F. APA, CHAIRMAN
LAWRENCE COUNTY COMMISSIONERS
PO BOX F
DEADWOOD, SD 57732

FRANCIS TOSCANA, MANAGER
LEAD-DEADWOOD SANITARY DIST. #1
PO BOX 413
DEADWOOD, SD 57732

BRUCE OBERLANDER, MAYOR
CITY OF DEADWOOD
102 SHERMAN STREET
DEADWOOD, SD 57732

LEO DEROSIER, CHAIRMAN
LAWRENCE COUNTY PLANNING
AND ZONING COMMISSION
90 SHERMAN STREET
DEADWOOD, SD 57732

JON MATTSON, PRESIDENT
DEER MOUNTAIN SKI AREA
BOX 622
DEADWOOD, SD 57732

BEV HINK, PRESIDENT
TWIN CITY AREA DEVELOPMENT CORP.
PO BOX 735
LEAD, SD 57754

GLEN VANDINE
722 WEST SUMMIT
LEAD, SD 57754

BOB KAUL, PRESIDENT
DEADWOOD ECONOMIC DEV. CORP.
102 SHERMAN STREET
DEADWOOD, SD 57732

ROBERT E. STUERMAN, SUPERINTENDENT
LEAD-DEADWOOD SCHOOL DIST. #40-1
320 SOUTH MAIN STREET
LEAD, SD 57754

TIMOTHY THOMAS
MORRILL BROWN & THOMAS
PO BOX 8108
RAPID CITY, SD 57709

HAROLD DAVIS, TOWN BOARD PRESIDENT
CENTRAL CITY
HC 37, BOX 310
LEAD, SD 57754

HOWARD W. MORRISON
HC 37, BOX 1394
LEAD, SD 57754

BLACK HILLS POWER & LIGHT CO.
%RON KOCOUREK
PO BOX 377
DEADWOOD, SD 57732

LLOYD L. EAGAN CO., INC.
2709 SOUTH 4TH AVE.
SIOUX FALLS, SD 57105

ROGER A. TELLINGHUISEN
FULLER & TELLINGHUISEN
PO BOX 1087
SPEARFISH, SD 57783

WILLIAM TAYLOR
WOODS, FULLER, SHULTZ & SMITH
310 SOUTH 1ST AVE.
SIOUX FALLS, SD 57102

GREG BOURLAND, CHAIRMAN
CHEYENNE RIVER SIOUX TRIBE
PO BOX 590
EAGLE BUTTE, SD 57625

STEVE EMERY, ATTORNEY GENERAL
CHEYENNE RIVER SIOUX TRIBE
PO BOX 590
EAGLE BUTTE, SD 57625

JOHN STEELE, PRESIDENT
OGLALA SIOUX TRIBE
BOX H
PINE RIDGE, SD 57770

FRANK WARD, PRESIDENT
EVANS-TONN DITCH, INC.
RR 1, BOX 145
SPEARFISH, SD 57783

MARK VICKERS, SECRETARY
BLACK HILLS FLYFISHERS
PO BOX 1621
RAPID CITY, SD 57709

RANDY OLIVER, PROJECT MANAGER
BELLE FOURCHE IRRIGATION DISTRICT
PO BOX 225
NEWELL, SD 57760

ROBERT JACKSON, CITY ATTORNEY
CITY OF RAPID CITY
300 SIXTH STREET
RAPID CITY, SD 57701

REVEREND NORMAN G. NICHOLLS
HC 37, BOX 1377
LEAD, SD 57754

PAT AND TOM TRASK
PO BOX 19
ELM SPRINGS, SD 57736

TIPA-LNOC
ATTN: BERNARD PEOPLES
638 E. BLVD. NORTH, SUITE B
RAPID CITY, SD 57701

MIKE RODMAN, PRESIDENT
DEADWOOD GAMING ASSOCIATION
709 MAIN STREET
DEADWOOD, SD 57732

BRIAN BRADEMEYER
PO BOX 762
RAPID CITY, SD 57709

JESSE TAKEN ALIVE, CHAIRMAN
STANDING ROCK SIOUX TRIBE
PO BOX D
FORT YATES, ND 58538

ALLEN WHITE LIGHTNING, DIRECTOR
DEPT. OF WATER & NATURAL RESOURCES
BOX D
FORT YATES, ND 58538

MICHAEL MC GUIGAN, PRESIDENT
COOK DITCH COMPANY
RR 1
SPEARFISH, SD 57783

RAY AND MARY ELLEN OSLOOND
411 HILLSVIEW DRIVE
SPEARFISH, SD 57783

WILLIAM P. PERRON JD CPA
12219 WOOD LAKE DR.
BURNSVILLE, MN 55337

BRUCE M. LAYMON, FIELD OFFICE MGR.
BUREAU OF RECLAMATION
PO BOX 226
NEWELL, SD 57760

DANIEL BJERKE, PUBLIC WORKS DIR.
OF ENGINEERING/UTILITIES
300 SIXTH STREET
RAPID CITY, SD 57701

REVEREND NORMAN G. N NICHOLLS
740 WESTER RD. #602
HOT SPRINGS, AR 71913

MYRON W. ROCK
1 SIGNAL DRIVE
RAPID CITY, SD 57701

KENNY MC FARLAND
ELK CREEK LANDOWNERS
HC 80, BOX 747
PIEDMONT, SD 57769

ROBERT AND LENORA HAAG
1421 5TH ST.
SPEARFISH, SD 57783

PHIL BARNES
HOMESTAKE MINING COMPANY
630 E. SUMMIT
LEAD, SD 57754

SHIRLEY MARVIN, PLANNING DIRECTOR
LOWER BRULE SIOUX TRIBE
PO BOX 187
LOWER BRULE, SD 57548

WOODY CORBINE
MNI-SOSE INTERTRIBAL
WATER COALITION, INC.
PO BOX 226
RAPID CITY, SD 57709-0226

RICHARD BAD MOCCASIN, EXEC. DIR.
MNI-SOSE INTERTRIBAL
WATER COALITION, INC.
PO BOX 226
RAPID CITY, SD 57709-0226

and served by interoffice mail on the same date upon:

DOUG HOFER, ACTING SECRETARY
DEPARTMENT OF GAME, FISH & PARKS
JOE FOSS BUILDING
PIERRE, SD 57501

DIANE BEST
ASSISTANT ATTORNEY GENERAL
CAPITOL BUILDING
PIERRE, SD 57501

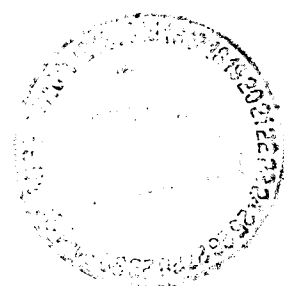
GARY RICHTER
DEPARTMENT OF GAME, FISH & PARKS
JOE FOSS BUILDING
PIERRE, SD 57501

TIM OLSON, W.P. COORDINATOR
DEPARTMENT OF GAME, FISH & PARKS
JOE FOSS BUILDING
PIERRE, SD 57501

hand delivered to:

JOHN HATCH
CHIEF ENGINEER
WATER RIGHTS DIVISION


Eric S. Gronlund
Natural Resources Engineer III



LENORA HAAG
SECRETARY
RAMSDALL IRRIGATION ASSOCIATION
1421 5TH STREET
SPEARFISH SD 57783

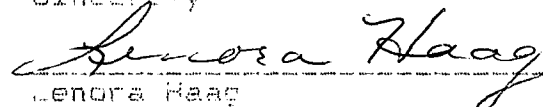
JOHN HATCH
CHIEF ENGINEER
DIVISION OF WATER RIGHTS
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
306 FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-0181

Re: Water Permit Application No. 48A-1

I am requesting that I be allowed to intervene as an interested party, on behalf of the Ramsdall Irrigation Association. As a Vested Water Right Permit holder on Spearfish Creek, I would like to be named as an interested party on Water Permit Application No. 48A-1.

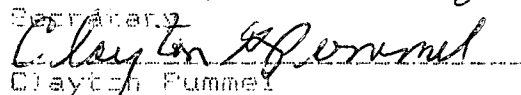
Dated this 12th, Day of February, 1995

Sincerely



Lenora Haag

Secretary



Clayton Fummi

Board Member

William F. Peron

12219 WOOD LAKE DRIVE • MEZZANINE
BURNSVILLE, MN 55337



February 14, 1995

Mr. John Hatch
Chief Engineer
Department of Environment
Joe Foss Building
523 East Capital
Pierre SD 57501

Dear Mr. Hatch:

It has been noted that we must reaffirm our position to intervene in the matters of Homestake Mining and the water rights 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1, and 1594-1.

Please consider this letter notice that I wish to continue to be a party to this proceeding.

If you or any other party requires further information from me regarding this matter, please advise me.

It is my further understanding that Homestake has applied for changes in the Spearfish Falls area of Spearfish Canyon in the form of application 43A-1. Please list me as an interested party on this application as well.

Sincerely,



LENORA HAAG
SECRETARY
RAMSDELL IRRIGATION ASSOCIATION
1421 5TH STREET
SPEARFISH SD 57783

JOHN HATCH
CHIEF ENGINEER
DIVISION OF WATER RIGHTS
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PEIRRE, SD 57501-3181

Re: Water Permit Application No. 43A-1

I am requesting that I be allowed to intervene as an interested party, on behalf of the Ramsdell Irrigation Association. As a Vested Water Right Permit holder on Spearfish Creek, I would like to be named as an interested party on Water Permit Application No. 43A-1.

Dated this 12th, Day of February, 1995

Sincerely

Lenora Haag

Lenora Haag

Secretary

Clayton Fummel

Clayton Fummel

Board Member



DEPARTMENT OF GAME, FISH AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182



February 16, 1995

Mr. John Hatch, Chief Engineer
Division of Water Rights
S.D. Department of Environment and Natural Resources
Foss Building, 523 East Capitol Ave.
Pierre, SD 57501

RE: Water Permit Application No. 43A-1, Homestake Mining Company

Dear Mr. Hatch:

The South Dakota Department of Game, Fish and Parks (GF&P) has reviewed the notice of hearing, report and Chief Engineer's recommendation for the above referenced water right application. The application is a request to amend an existing Homestake Mining Company water right (No. 43-1) by adding an additional use for instream flow purposes on the lower reaches of Little Spearfish Creek.

Pursuant to SDCL 1-26 we request that GF&P be made a party of record in the proceedings for this matter. GF&P is an interested and potentially affected party by virtue of statutory authority to manage fish and wildlife resources of the state (SDCL Chapter 41).

The Department of Game, Fish and Parks has historically been very interested in the maintenance and restoration of instream flows for purposes of conserving fisheries, wildlife, recreational and aesthetic values of South Dakota's streams and rivers. Homestake's proposal to alter the management of its hydroelectric plant water diversions in the Spearfish Creek drainage may significantly improve such values.

Although we would have liked to have filed in support of the application, the report leaves some questions related to diversion quantification, water availability and actual instream effects unanswered. We are hopeful that a full discussion of such questions will take place during the February 27th hearing.

Thank you for the opportunity to comment.

Sincerely,

Douglas R. Hansen
Director, Division of Wildlife

cc: Stephen Orr, Homestake Mining Co.

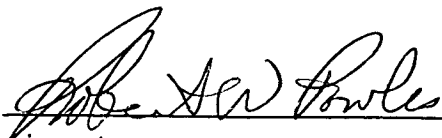


DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I ROBERT W. POWLES, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.


signature

address

HC 80 Box 632-20
PLEMONT SD. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Kenneth Baker, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Kenneth Baker
signature

address

Box 2769
Rapid City SD
57709



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Alexander M. O. Therson, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Alexander M. O. Therson
signature

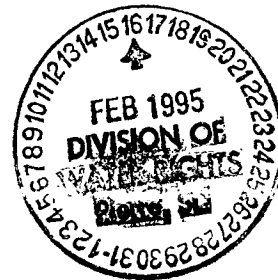
address

HC 80 Box 724

Pierre, S. D.

57769

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Runt Kethen, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Runt Kethen
signature

address
Runt Kethen
Ace 82 Box 150
Box Elder SD 57719



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Bernard Wichl, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Bernard Wichl

signature

address

HC 80 Box 734

Piedmont SD

57769



DNR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Jonathan Harrington submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Jonathan Harrington
signature

address

Box 728 HC 80
Reedmont SD
57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Matt Kammerer, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Matt Kammerer
signature

address

RR 3 Box 475
Rapid City SD 57701



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Gregor McFarland submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Gregor McFarland
signature

address

HC 75 Box 384
Sturgis, S.D
57785



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I LeRoy Harrington, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

LeRoy Harrington

signature

address

HC 80 Box 735

Piedmont South Dakota

57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Jeff Baker, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Jeff Baker
signature

address

HC 80 Box 744
Piedmont SD
57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Raymond Ketelsen, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Raymond Ketelsen
signature

address

Ray Ketelsen
Acr 82 Box 149
Box Elm SD. 57719

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Kelly Rieard, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Kelly Rieard
signature

address

Hc 40 Box 751
Piedmont SD 57769

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Shannon Tibbets (as per Eugene Tibbets) submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.



signature

address

3690 Country Rd

Rd. SD 57701

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I KENNETH BLAIR, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Kenneth D. Blair
signature

address

P.O. Box 3363

RAPID CITY SD 57709



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Roy C. Ham, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Roy C. Ham
signature

address

RR 3 Box 2410
Rapid City, S.D. 57701

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I JOEL BAKER, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Joel Baker
signature

address

RR 3 Box 2410
Rapid City SD.
57701



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I James P. Baker, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

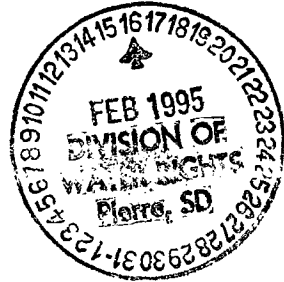
Therefore please accept this petition.

James P. Baker
signature

address

RR 10 Box 2720
Rapid City S.D.
57701

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Carl Jung, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Carl Jung
signature

address

Hc 80 Box 750
Piedmont, D.O. 57969



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I John E. Mooney, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

John E. Mooney
signature

address

HCR 80 Box 633

Piedmont, S.D. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Herbert A. Johnson, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Herbert A. Johnson
signature

address

HC 80
Piedmont SD 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Wah A. Valmer, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Wah A. Valmer
signature

address

H/CR 80 Box 763-10
Piedmont, S.D. 57769
787-6809



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

Patricia J. Dierks, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Patricia J. Dierks
signature

address

HC 80 Box 632
Piedmont, SD.
57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Fred McFarland, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Fred McFarland
signature

address

P.O. Box 7110
Pierre City, SD
57709

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I *Dan F. McFarland*, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Dan F. McFarland
signature

address

5200 Dyer Ave

Rapid City, SD 57701

343-1561



DNR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Dean J. Olson, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Dean J. Olson
signature

address

HL85 Box 143
Box Elder, SD 57719



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Francis Wiehl, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Francis Wiehl

signature

address

PO Box 736

Piedmont S.D. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I James McFarland, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

James McFarland
signature

address

HC 78 Box 324

Stacyis S.D. 5785



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Mike Opitz, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Mike Opitz

signature

address

#C80 Box 632-15

Piedmont, SD. 57769.



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Amalie Ader, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Amalie M Ader

signature

address

HC 80 Box 752

Piedmont, SD 57769



DNR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Bernadette Ricard, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Bernadette Ricard
signature

address

HC 80 Box 751

Liedmont, S.D. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Med Ricard, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Med Ricard
signature

address

Hc-80 Box 751
Piedmont S.Dak
57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Leroy Bren, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Leroy A. Bren
signature

address

HCB 80 Box 755

Biedmont S.D. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Lloyd Short, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Lloyd Short
signature

address

Box 655 HCR 80

Piedmont SDak

57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Phil Van Derwoort, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Phil R. VanDerwoort
signature

address

HC 80 Box 760
Piedmont, SD 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Robert J. Milburn, submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for domestic and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

Robert J. Milburn
signature

address

HC 80 Box 624
Piedmont, S.D. Dakota
57769

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Larry D. Henderson submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Larry D. Henderson
signature

address

RR 10 Box 2640
Rapid City
SD 57701



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Alfred Kammerer, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Alfred Kammerer
signature

address

HC 80 Box 725
Piedmont
South Dakota 57769



DNR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Eliot Kammerer, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Eliot Kammerer
signature

address

HC 80 Box 725
Piedmont, SD. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Larry Smith, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Larry Smith
signature

address

Hc 80 Box 747
plu dman 7 S-D.
57769



DNR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Donald L. Eich, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Donald L. Eich
signature

address

HC 83 Box 627
Piedmont SD. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Maxine Ham Fritzsch submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Maxine H Fritzsch
signature

address

1209 Pine Knoll Dr.
Rapid City, S.D.
57701



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I William L. Nash, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

William L. Nash
signature

address

HC. 80 Box 743
Redmont, SD.
57769



DNR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Adam Rohrbuck, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Adam Rohrbuck
signature

address

HC-83 Box 654
Friedmont, S.D.
57749

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I PAULA M SOELZER, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Paula M Soelzer
signature

address

P.O. Box 208
PIEDMONT S.D. 57769



DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181

RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Ron L Soelzer, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Ron L Soelzer
signature

address

PO Box 208
Piedmont SD 57769

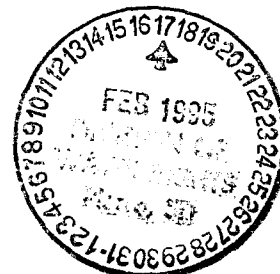


A NEWSLETTER FOR RESIDENTS

OF SPEARFISH CANYON

THE CANYON ECHO • P.O. Box 882, Spearfish, S. Dak. 57783

February 13, 1995



Mr. John Hatch, Chief Engineer
D.E.N.R.
Joe Foss Building
Pierre, S. D. 57501

Dear Mr. Hatch:

Please use this corrected copy of my Intervention as to Homestake's Application 43A-1 on Little Spearfish Creek. The one I sent to you on Saturday had some "typos".

Thank you.

The letter to John Hatch/D.E.N.R. and notice on the other Homestake Applications is O.K.

Sincerely,

Jack R. Cole

encl: "In the Matter of Homestake Mining Company's WATER RIGHTS APPLICATION No. 43A-1 - to Amend WATER RIGHT No. 43-1"

WOODS, FULLER, SHULTZ & SMITH P.C.

LAWYERS

310 SOUTH FIRST AVENUE

SIOUX FALLS, SOUTH DAKOTA 57102

TELEPHONE (605) 336-3890

TELECOPIER (605) 339-3357

Francis M. Smith
Merle A. Johnson
Arlo D. Sommervold
Richard O. Gregerson
John E. Simko
William G. Taylor
William P. Fuller
Stuart L. Tiede
Gary P. Thimsen
Bradley C. Grossenburg
James M. Wiederrich
Comet H. Haraldson
J. G. Shultz
Roger W. Damgaard
Barbara Anderson Lewis
Frederick M. Entwistle
David C. Kroon

Michael M. Billion
Mark J. Welter
A. Russell Janklow
James E. Moore
Peter W. Sommervold
Kristine L. Kreiter
Scott C. Folkers
Elizabeth A. Lewis
Tim R. Shattuck



Melvin T. Woods (1899-1983)
Howell L. Fuller (1909-1981)
John B. Shultz (1912-1975)

February 16, 1995

Mr. John Hatch, Chief Engineer
Department of Environment and
Natural Resources
Foss Building
Pierre, South Dakota 57501

RE: Homestake Mining Company Water Rights Applications

Dear Mr. Hatch:

Enclosed is the original of Trasks and Eagan's Petition to Intervene in Water Permit Application No. 43A-1 and Certificate of Service. Please cause these originals to be filed.

Thank you.

Very truly yours,

WOODS, FULLER, SHULTZ & SMITH P.C.

Bill

William Taylor

Enclosures

cc: Ms. Diane Best (all w/enc.)
Roger Tellinghuisen
Homestake Mining Company

WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA



o-o

IN THE MATTER OF THE HOMESTAKE : PETITION TO INTERVENE IN
MINING COMPANY WATER RIGHTS : WATER PERMIT APPLICATION
APPLICATIONS : NO. 43A-1

o-o

Lloyd L. Eagan Co., Inc., a South Dakota corporation of 2709 South Fourth Avenue, Sioux Falls, South Dakota 57105, and Pat and Tom Trask of Post Office Box 19, Elm Springs, South Dakota 57736, hereby petition to intervene in Homestake Mining Company's Application for a water permit numbered 43A-1.

Lloyd L. Eagan Co., Inc. is the owner of Spearfish Canyon Lot 112, a portion of the Pole No. 5 Load, Mineral Survey 1603, in Sections 22 and 27, Township 4 North, Range 2 East, of Black Hills Meridian, Lawrence County, South Dakota, according to plat document 90-3433, as recorded.

The Trasks farm and ranch on Elk Creek near its confluence with the Cheyenne River, are the owners of certain water rights allowing appropriation from Elk Creek, and make use of the waters from Elk Creek for domestic and stock watering uses. Lloyd L. Eagan Co., Inc. and the Trasks assert that their pecuniary interests will be affected by the outcome of this hearing. At this time, they are unable to state whether they are opposed to Homestake's application or in favor of it. They believe that the

application must be considered in conjunction with other applications to validate certain vested water rights.

Dated this 16th day of February, 1995.

WOODS, FULLER, SHULTZ & SMITH P.C.

By Wm Taylor
William Taylor
310 South First Avenue
Sioux Falls, South Dakota 57102
Attorneys for Pat and Tom Trask
and the Lloyd L. Eagan Co.

WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

o-o

IN THE MATTER OF THE HOMESTAKE : CERTIFICATE OF SERVICE
MINING COMPANY WATER RIGHTS
APPLICATIONS :

o-o

I, the undersigned, one of the attorneys for Pat and Tom Trask and the Lloyd L. Eagan Co., hereby certify that I served Trasks and Eagan's Petition to Intervene in Water Permit Application No. 43A-1 in the above matter upon:

John Hatch
Chief Engineer
Water Rights Division
Foss Building
523 East Capitol
Pierre, South Dakota 57501

Diane Best
Deputy Attorney General
Attorney General's Office
500 East Capitol
Pierre, South Dakota 57501-5070

Homestake Mining Company
Post Office Box 875
Lead, South Dakota 57754

Roger Tellinghuisen
Attorney at Law
Post Office Box 898
Lead, South Dakota 57754

by U.S. mail, by mailing a true and correct copy thereof to each of them at their respective addresses, postage prepaid thereon, on this 16th day of February, 1995.

WOODS, FULLER, SHULTZ & SMITH P.C.

By

Wm Taylor

William Taylor
310 South First Avenue
Sioux Falls, South Dakota 57102
Attorneys for Pat and Tom Trask
and the Lloyd L. Eagan Co.

Before the Water Management Board

State of South Dakota

In the matter of Homestake Mining Company's WATER PERMIT APPLICATION
No. 43A-1 to Amend WATER RIGHT No. 43-1



WHAT ARE THE PURPOSES & THE EFFECTS OF ALLOWING
LITTLE SPEARFISH CREEK TO FLOW OVER SPEARFISH FALLS???

1. In the early 1900's, Homestake dammed up Little Spearfish Creek directly above Savoy and diverted most of the flow from the traditional stream bed and piped the water thru an aqueduct approximately $5\frac{1}{2}$ miles to Maurice where it is used to generate hydro power. Prior to that diversion, the water flowed over a minor tourist attraction, called Spearfish Falls. The water was then returned to the Creek below Maurice for approximately 1 mile and then diverted again into another aqueduct where it then flowed to the South side of the City of Spearfish where it was used again to produce Hydro Power. The water was then released back into Spearfish Creek, and then flowed thru the City of Spearfish.
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3. Homestake also built another dam, in the early 1900's, above Savoy to catch the water of the main Spearfish Creek, ran the water thru an aqueduct to Maurice's Hydro Plant, then returned the water to the Creek at Maurice, caught it again below Maurice, and piped to their Hydro Plant at Spearfish and then released it to the stream again.

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5. In the early 1990's, Homestake also completed, thru its new non-profit affiliate, (now interestingly called, "Spearfish Canyon Foundation"), the Latchstring Inn at Savoy. This has turned out to be quite a costly "White Elephant" for Homestake. The Corporation has been trying to divest itself of the cost and responsibility of this Restaurant, Bar & Gift Shop and is in the process of dealing with a new Corporation, (incorporated in Jan of 1994, as "Spearfish Canyon Resorts, LLC) to take it off their hands while the new Corporation also constructs a Resort/Entertainment Center at Savoy.

The promoters (of the Spearfish Canyon Resorts) have felt for some time that if the Spearfish Falls were restored, that it would be a good attraction to help the Inn and the new Resort survive.

The final construction and use of the new Resort is in doubt. Its "Building Permit" is presently in litigation, filed by numerous property owners in in Spearfish Canyon and others alleging highly irregular proceedings in getting approval of the Permit.

6. The very existence of the dam above Savoy also presents added flood dangers to the proposed new resort on the Flood Plain below the dam. By releasing the water in Little Spearfish Creek from the dam, it would increase the flow of the stream adjacent to the resort and also make the site more attractive for the itinerant tourists, stopping at Savoy.
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13. Under no conditions should the move be allowed to:

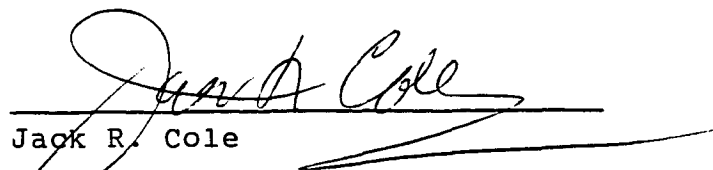
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- A) Spearfish Creek, at Spearfish, (including Little Spearfish Creek and all its tributaries) averages only 51.9 CU feet per second over a recent 43 year period.
- B) It is estimated that Homestake knowingly over the years, has requested and obtained from the clerical staff at the Regulatory Agency, appropriations for more than twice as much water as there is in the Canyon.
- C) We understand that the flow of Little Spearfish Creek has traditionally run about 11 C.F.S. below Roughlock Falls at Savoy.

We look forward to learning more about this new Homestake "move" in
Spearfish Canyon and to participate in these Proceedings.

Dated this 12th day of February, 1995.



Jack R. Cole

Spearfish Canyon
P.O. Box 882
Spearfish, S. D. 57783
Phone: (605) 584-3778

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Freddie D. Ferguson, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

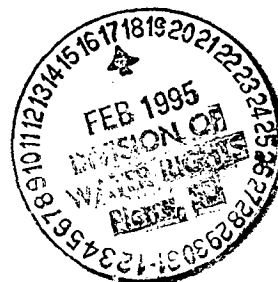
Therefore please accept this petition.

Freddie D. Ferguson
signature

address

HC 86 Box 5
Wasta S.D.
57791-9203

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I James B. Smith, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

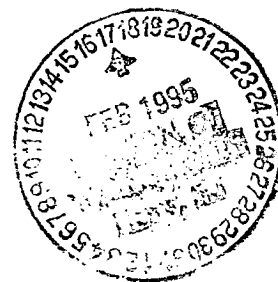
James B. Smith
signature

address

James B. Smith
Box 21

Owens, SD. 57767

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Maxine L. Smith, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Maxine L. Smith
signature

address

Box 21
Owanka, SD.
57767

DENE WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

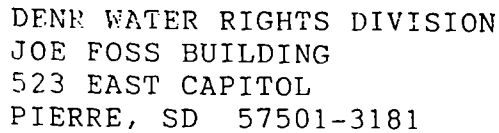
James F. Wiley
Caroline L. Wiley
I Caroline L. Wiley submit this petition in
opposition of HOMESTAKES water right applications. As a
property owner and resident within the ELK CREEK drainage
I am dependent upon these waters for ~~domestic~~ and livestock
purposes. Quantity and quality of said waters have a direct
impact on my livelihood.

Therefore please accept this petition.

James F. Wiley
Caroline L. Wiley
signature

address

512 No. Needles
Brandon
So. Dak. 57005



I Philip Wilson, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

57736

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

I Kenneth Wilson, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

Kenneth Wilson
signature

address

HC 86 Box 16
Elm Springs
S.D. 57736

DENR WATER RIGHTS DIVISION
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SD 57501-3181



RE: HOMESTAKE WATER RIGHT APPLICATION
NO.43A-1 NO.1589-1

James L. Linn

I *John E Linn*, submit this petition in opposition of HOMESTAKES water right applications. As a property owner and resident within the ELK CREEK drainage I am dependent upon these waters for domestic and livestock purposes. Quantity and quality of said waters have a direct impact on my livelihood.

Therefore please accept this petition.

James L Linn

John E. Linn
signature

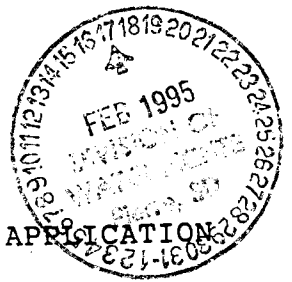
address

HC 86 Box 25
Elm Springs, SD
57736

Before the Water Management Board

State of South Dakota

In the matter of Homestake Mining Company's WATER PERMIT APPLICATION
No. 43A-1 to Amend WATER RIGHT No. 43-1



WHAT ARE THE PURPOSES & THE EFFECTS OF ALLOWING
LITTLE SPEARFISH CREEK TO FLOW OVER SPEARFISH FALLS???

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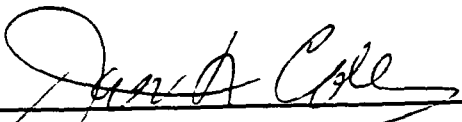
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Dated this 12th day of February, 1995.



Jack R. Cole

Spearfish Canyon
P.O. Box 882
Spearfish, S. D. 57783
Phone: (605) 584-3778



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 17, 1995

Roger Tellinghuisen
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783

RE: Petitions received on Homestake Mining Company's Vested Water Right Applications

Dear Mr. Tellinghuisen:

Please find enclosed a copy of the following submittals to Homestake Mining Company's pending vested water right applications and water permit application.

1. Petitions from property owners and resident within the Elk Creek drainage.
2. Petitions to Water Permit Application No. 43A-1.
3. Letters from Parties of Record to Homestake's vested water right applications expressing the intent to remain a party.

This enclosure is current as of the morning of February 17, 1995.

Sincerely,


Eric Gronlund
Water Rights Division
605 773-3352

enclosure

c: Diane Best, Assistant Attorney General



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

May 22, 1995

NOTICE

TO: Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700
and parties participating in hearing

Richard Fort
HC 37, Box 2421
Lead, SD 57754

FROM: John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352 

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

The Water Management Board directed that all Parties are to submit proposed Findings of Fact, Conclusions of Law and a Final Decision on the following cases:

1. Water Permit Application No. 43A-1, Homestake Mining Company
2. Vested Water Right Application No. 1592-1 (Hearst Claim), Homestake Mining Company
3. CONSOLIDATED CASE -- Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, and 1594-1, Homestake Mining Company and Richard Fort's Declaratory Ruling Request

The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 pm (CDT) September 27, 1995, Floyd Matthew Training Center, 523 E. Capitol, Pierre, SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items. Notice will be provided to current parties if there is a change in the time or location of the Board's consideration of the Findings, Conclusions and Final Decisions.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decisions be mailed to each Board member, the Board's attorney John Guhin, the Chief Engineer and all current Parties of Record and their attorneys by September 1, 1995. Written objections or comments in support of the proposed Findings, Conclusions and Final Decisions, are to be mailed to each Board member, the Board attorney and all Parties of Record by September 15, 1995. A copy of the names and addresses of Board members, the Board's attorney, the Chief Engineer, Water Rights Division staff attorney's is enclosed along with a list of parties who attended the hearings.

At the discretion of the Board, oral arguments may be made by parties filing proposed Findings, Conclusions and Final Decision or parties filing written comments in opposition or support of any submitted proposed Findings, Conclusions and Final Decision may be made on September 27, 1995. The public hearings on these cases were completed. No additional testimony will be received on September 27, 1995.

enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Roxanne Giedd, Assistant Attorney General
Phil Barnes, Homestake Mining Company
Tim Olson, G,F&P Permits Coordinator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 22, 1995, a Notice dated May 22, 1995, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decisions was served by United States mail, first class, postage prepaid upon Stephen Orr, Homestake Mining Company, 630 East Summit, Lead, SD 57754-1700, and the individuals listed below:

Roger A. Tellinghuisen
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783

Max Main
618 State
Belle Fourche, SD 57717

Phil Barnes
Homestake Mining Company
630 E. Summit
Lead, SD 57754

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

William Taylor
Woods, Fuller, Shultz & Smith
310 South 1st Ave.
Sioux Falls, SD 57102

Julian H. Brown
Attorney at Law
P.O. Box 1116
Pierre, SD 57501-1116

Howard W. Morrison
HC 37, Box 1394
Lead, SD 57754

Jack R. Cole
P.O. Box 882
Spearfish, SD 57783

Timothy Thomas
Morrill Brown & Thomas
P.O. Box 8108
Rapid City, SD 57709

Kenny McFarland
Elk Creek Landowners
HC 80, Box 747
Piedmont, SD 57769

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709

Jon Mattson, President
Deer Mountain Ski Area
Box 622
Deadwood, SD 57732

Glen Vandine
722 West Summit
Lead, SD 57754

Tom Trask
HCR 86, Box 28
Elm Springs, SD 57736

Pat Trask
Box 19
Wasta, SD 57791

Brian Brademeyer
P.O. Box 762
Rapid City, SD 57709

Lenora Haag
Ramsdell Irrigation Association
1421 5th St.
Spearfish, SD 57783

Marvin Kammerer
RR 3, Box 470
Rapid City, SD 57701

Kelly Ricard
HC 80, Box 751
Piedmont, SD 57769

Med Ricard
HC 80, Box 751
Piedmont, SD 57769

Gregor & Ardith McFarland
HC 75, Box 324
Sturgis, SD 57785

Jim Smith
Box 21
Owanka, SD 57767

Robert and Janet Powles
HC 80, Box 632-20
Piedmont, SD 57769

Gerald Apa, Chairman
Lawrence County Commission
P.O. Box F
Deadwood, SD 57732

James Wilsey
512 N. Needles
Brandon, SD 57005

Riley & Amalie Ader
HC 80, Box 752
Piedmont, SD 57769

Shirley Marvin, Planning Director
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, SD 57548

Dean Olson
HC 82, Box 143
Box Elder, SD 57769

and served by interoffice mail on the same date upon:

Diane Best
Assistant Attorney General
Capitol Building
Pierre, SD 57501

Roxanne Giedd
Assistant Attorney General
Capitol Building
Pierre, SD 57501

John Guhin
Deputy Attorney General
Capitol Building
Pierre, SD 57501

Gary L. Richter, Attorney
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501

Tim Olson
Water Permits Coordinator
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501

Hand Delivered to:

John Hatch, Chief Engineer
DENR/Water Rights Division
523 E. Capitol
Pierre, SD 57501-3181



Cheryl F. Frost
Secretary

CERTIFICATION

I hereby certify that on May 22, 1995, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 22, 1995, regarding Preparation of Findings Fact, Conclusions of Law and Final Decisions, and a copy of the attached "Certificate of Service", addressed as stated below and on the "Certificate of Service" attached to this "Certification":

Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES)

SS

Sworn to, before me, this 24th day of May, 1995



John Hatch
Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

January 26, 1995

Homestake seeks to fix falls

Little Spearfish Falls could flow if water application is approved

By George Ledbetter
Journal Correspondent

SAVOY — Little Spearfish Falls, a once-famous waterfall in Spearfish Canyon that has existed only briefly since 1917, could flow again if the state Water Management Board approves a recent Homestake Mining Co. water permit application.

Reviving the falls, a 40-foot cascade at the confluence of Little Spearfish Creek and Spearfish Creek near Savoy, is the intent of Homestake's most recent amendment to water permit applications pending before the Water Board, attorney Roger Tellinghuisen said Wednesday.

The amendment would allow Homestake to release up to 20 cubic feet per second of water for "in-stream" flow instead of putting the water into its intake just below Roughlock Falls on Little Spearfish Creek.

That in-stream flow would go over the falls and into Spearfish Creek, confirmed Tellinghuisen.

Larry Mann, Homestake's governmental affairs spokesman, said the application was the first step in "a continuing effort" to restore Little Spearfish Falls, but cautioned that unspecified other steps must occur before the falls will flow again. "I don't want to mislead anyone into thinking that it will happen."

Little Spearfish Falls was a prime Spearfish Canyon tourist attraction until 1917, when Homestake diverted the stream flow into a pipeline for use in a downstream hydroelectric generating station.

The falls have been only a memory since then, except for a brief period in 1988 when leaks and finally a pipeline break produced a small flow over the limestone cliff at the confluence of the two streams.

Homestake rejected as impractical suggestions in 1993 from environmentalists Howard Morrison and Dick Fort that the falls be revived.

Tellinghuisen said approval of the permit amendment would not automatically mean closure of the Little Spearfish pipe intake, but would give Homestake the "flexibility" to let water go over the falls.

Homestake's Hydro power plant No. 2 at Maurice is fed by intakes on Little Spearfish Creek and Spearfish Creek. Closing the Little Spearfish intake might cause some drop in electrical generating ability, but the main intake on Spearfish Creek may have enough flow to keep the plant at full output, said Tellinghuisen.

Mann called that an oversimplification. "If we turn the water into Little Spearfish Falls, we lose money ... It will cost us a lot of money. We are not going to give it away."

Homestake uses the same water to produce power at Hydro plant No. 1 near Spearfish. The company wants to maintain the water right that allows its second "pass-through" use, said Tellinghuisen.

Fort, who opposes Homestake's water claims in several other areas, called the company's latest move "exciting" and said he would support it before the water board.

But Fort said he would ask the board to require a minimum of 10 cubic feet per second flow in the creek to promote trout habitat.

The Water Board is scheduled to consider all of Homestake's water claims, including the latest filing, at hearings that begin Feb. 27 in Lead.

The hearings are part of a process of validating the historical claims that Homestake uses to support an extensive water collection network in the northern Black Hills.



Historic file photo

Flush with runoff, Little Spearfish Falls gushes below a passing Burlington & Missouri River Railroad train. Passengers posed for this travel promotional picture in 1910-11.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

July 24, 1995

NOTICE

TO: Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700
and parties participating in hearing

Richard Fort
HC 37, Box 2421
Lead, SD 57754

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

SUBJECT: Date Change for Board Consideration of Findings of Fact, Conclusions of Law and Final Decisions

The date of the September 27 and 28, 1995, Water Management Board meeting has been changed to October 4 and 5, 1995. The Board will now consider the proposed Findings, Conclusions and Final Decision at 1:00 pm (CDT) October 4, 1995, Floyd Matthew Training Center, 523 E. Capitol, Pierre, SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

Proposed Findings of Fact, Conclusions of Law and a Final Decisions will be considered on the following cases:

1. Water Permit Application No. 43A-1, Homestake Mining Company
2. Vested Water Right Application No. 1592-1 (Hearst Claim), Homestake Mining Company
3. CONSOLIDATED CASE -- Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, and 1594-1, Homestake Mining Company and Richard Fort's Declaratory Ruling Request

The dates for submitting proposed Findings, Conclusions and Final Decisions or commenting on proposed Findings remains unchanged. Proposed Findings, Conclusions and Final Decisions are to be mailed to each Board member, the Board's attorney John Guhin, the Chief Engineer and all current Parties of Record and their attorneys by September 1, 1995. Written objections or comments in support of the proposed Findings, Conclusions and Final Decisions, are to be mailed to each Board member, the Board attorney and all Parties of Record by September 15, 1995.

At the discretion of the Board, oral arguments may be made on October 4, 1995, by parties filing proposed Findings, Conclusions and Final Decision or written comments in opposition or support of any submitted proposed Findings, Conclusions and Final Decision. The public hearings on these cases were completed. No additional testimony will be received on October 4, 1995.

c: John Guhin, Deputy Attorney General
 Diane Best, Assistant Attorney General
 Roxanne Giedd, Assistant Attorney General
 Phil Barnes, Homestake Mining Company
 Tim Olson, G,F&P Permits Coordinator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 24, 1995, a Notice dated July 24, 1995, regarding Date Change for Board Consideration of Findings of Fact, Conclusions of Law and Final Decisions was served by United States Mail, first class, postage prepaid upon Stephen Orr, Homestake Mining Company, 630 East Summit, Lead, SD 57754-1700, and to the individuals listed below:

Roger A. Tellinghuisen
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783-1087

Max Main
618 State
Belle Fourche, SD 57717

Phil Barnes
Homestake Mining Company
630 E. Summit
Lead, SD 57754

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

William Taylor
Woods, Fuller, Shultz & Smith
310 South 1st Ave.
Sioux Falls, SD 57102

Julian H. Brown
Attorney at Law
P.O. Box 1116
Pierre, SD 57501-1116

Howard W. Morrison
HC 37, Box 1394
Lead, SD 57754

Jack R. Cole
P.O. Box 882
Spearfish, SD 57783

Timothy Thomas
Morrill Brown & Thomas
P.O. Box 8108
Rapid City, SD 57709

Kenny McFarland
Elk Creek Landowners
HC 80, Box 747
Piedmont, SD 57769

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709

John Mattson, President
Deer Mountain Ski Area
Box 622
Deadwood, SD 57732

Glen Vandine
722 West Summit
Lead, SD 57754

Tom Trask
HCR 86, Box 28
Elm Springs, SD 57736

Pat Trask
Box 19
Wasta, SD 57791

Brian Brademeyer
P.O. Box 762
Rapid City, SD 57709

Lenora Haag
Ramsdell Irrigation Association
1421 5th St.
Spearfish, SD 57783

Marvin Kammerer
RR 3, Box 470
Rapid City, SD 57701

Kelly Ricard
HC 80, Box 751
Piedmont, SD 57769

Gregor & Ardith McFarland
HC 75, Box 324
Sturgis, SD 57785

Robert and Janet Powles
HC 80, Box 632-20
Piedmont, SD 57769

James Wilsey
512 N. Needles
Brandon, SD 57005

Shirley Marvin, Planning Director
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, SD 57548

and served by interoffice mail on the same date upon:

Diane Best
Assistant Attorney General
Capitol Building
Pierre, SD 57501

John Guhin
Deputy Attorney General
Capitol Building
Pierre, SD 57501

Tim Olson
Water Permits Coordinator
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501

Hand Deliver to:

John Hatch, Chief Engineer
DENR/Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

Med Ricard
HC 80, Box 751
Piedmont, SD 57769

Jim Smith
Box 21
Owanka, SD 57767

Gerald Apa, Chairman
Lawrence County Commission
P.O. Box F
Deadwood, SD 57732

Riley & Amalie Ader
HC 80, Box 752
Piedmont, SD 57769

Dean Olson
HC 82, Box 143
Box Elder, SD 57769

Roxanne Giedd
Assistant Attorney General
Capitol Building
Pierre, SD 57501

Gary L. Richter, Attorney
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501

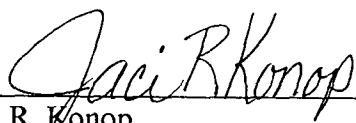


Jaci R. Konop
Senior Secretary

CERTIFICATION

I hereby certify that on July 24, 1995, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 24, 1995, regarding Date Change for Board Consideration of Findings of Fact, Conclusions of Law and Final Decisions, and a copy of the attached "Certificate of Service", addressed as stated below and on the "Certificate of Service" attached to this "Certification":

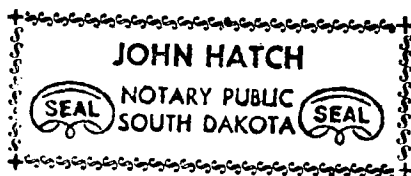
Stephen Orr
Homestake Mining Company
630 E. Summit
Lead, SD 57754-1700

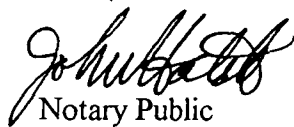


Jaci R. Konop
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of July, 1995





Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

August 23, 1995



TO: SOUTH DAKOTA WATER MANAGEMENT BOARD
FROM: RICHARD L. FORT

RE: PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON

- 1. Water Permit Application No. 43A-1, Homestake Mining Company**
- 2. Vested Water Right Application No. 1592-1 (Hearst Claim), Homestake Mining Company.**
- 3. CONSOLIDATED CASE - Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, and 1594-1, Homestake Mining Company and Richard Fort's Declaratory Ruling Request.**

These matters came before the Water Management Board pursuant to the petitions of Homestake Mining Company and Richard L. Fort. Hearing was held before the Water Management Board in March, 1995, at the Golden Hills Resort, Deadwood, South Dakota and concluded in May, 1995, at the Deadwood Gulch Resort in Deadwood, South Dakota. Having reviewed the pleadings, heard the testimony of witnesses, and heard the arguments of intervenors and counsel, the Water Management Board, acting by and through its Hearing Chairman, Rodney Freeman, makes the following Findings of Fact and Conclusions of Law:

Water Permit Application No. 43A-1. Homestake Mining Company

1. Homestake Mining Company, a California corporation made application to the Water Rights Division of the Department of Environment and Natural Resources for permission to divert water for instream flow on Little Spearfish Creek while keeping 120 cfs of water from the Spearfish watershed for non-consumptive use in power production. Through the office of the Chief Engineer this application was listed as application No. 43A-1.

2. Homestake Mining Company presented no evidence during testimony at the hearings indicating continuous use of 120 cfs. of such water for non-consumptive use.

3. Hearings on non-consumptive use of Spearfish watershed water will be held later in Phase 2 of the water rights hearings as ruled by the Chief Engineer and agreed to by the parties to the hearings.

4. The request for instream flow diversion is a separate issue from the amount of water to be used for power from this watershed.

5. The request for instream flow diversion in itself implies and comments of counsel agreed that this would mean ultimate abandonment of the present diversion on Little Spearfish Creek.

6. Testimony established that there would be substantial beneficial use gains for the public interest as a result of the instream flow diversion. Spearfish Falls would be restored as a tourist attraction and the Central Canyon trout fishery would be substantially improved.

From the foregoing Findings of Fact, the Water Management Board makes the following Conclusions of Law:

1. The Water Management Board has jurisdiction over the parties to this action and the subject matter of the issues in controversy.
2. Richard L. Fort has properly intervened on this issue.
3. No allocation of 120 cfs. of Spearfish Watershed water for non-consumptive use can be made at this time. Therefore this part of the Homestake application is denied.
4. The application for instream flow diversion to Little Spearfish Creek is granted and Homestake shall abandon their diversion for power production on this creek.

Vested Water Rights Application No. 1592-1 (Hearst Claim). Homestake Mining Company.

1. Homestake Mining Company, a California corporation made application to the Water Rights Division of the Department of Environment and Natural Resources for permission to divert 2.56 cfs. of Whitewood Creek water for use of the Kirk Power Plant. Through the office of the Chief Engineer this application was designated No. 1592-1.
2. Testimony presented established that this would be a beneficial use.
3. Testimony presented indicated that a court decision had already established this as a valid claim.
4. Testimony presented indicated that there had been continuous use in accordance with the requirements of the law.
5. Subsequent to the completion of the hearings Black Hills Power and Light announced in August that they would shut down the Kirk Power Plant in September.

From the foregoing Findings of Fact the Water Management Board makes the following Conclusions of Law:

1. The Water Management Board has jurisdiction over the parties and the subject matter of this controversy.
2. Richard L. Fort has validly intervened on this application.
3. The decision to grant this application when made in May was in accord with the facts known at the time.
4. The subsequent announcement of the abandonment of the Kirk Power Plant requires that this decision be suspended and reviewed at a subsequent hearing before the Board.

CONSOLIDATED CASE

Vested Water Rights Applications Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, and 1594-1 of Homestake Mining Company and Richard L. Fort's Request for a Declaratory Ruling.

1. Homestake Mining Company, a California corporation, made application to the Water Rights Division of the Department of Environment and Natural Resources for the validation of vested rights in the watersheds of Spearfish, Rapid, Elk and Whitewood Creeks. Richard L. Fort made application to the same for abandonment of some of the diversions in these watersheds. Since the two applications overlap and conflict the Hearing Chairman Rodney Freeman ruled that both applications be considered at the same time and that these applications from Homestake be handled together. Through the office of the Chief Engineer the Division assigned the numbers above to the Homestake applications.

2. Evidence presented showed that the Schafer Ditch (now abandoned) above Englewood and along the Elk Creek line, when active, produced substantially more water than has ever come from the Elk Creek diversions. No evidence was presented by Homestake as to why this historic diversion could not be restored.

3. Testimony presented showed that there would be beneficial use additions for present landholders and the public along 10 miles of Elk Creek below these diversions if they were abandoned. Landholders with wells below the area where Elk Creek enters the Madison Aquifer would benefit from addition of water to this underground aquifer.

4. Evidence presented showed that Homestake takes in more water from the Spearfish Intakes than they ever use. This excess is discharged into Hanna or East Spearfish Creek.

5. The only evidence on amounts of past use of water were presented by Homestake of weekly weir measurements covering a period of 35 years.

6. Averages compiled from these measurements indicated a total use averaging 8.38 cfs for the period 3/11/38 to 12/31/93. For the period 12/30/83 to 12/31/93 the average was 10.41 cfs.

7. Averages compiled from these measurements as to the amount of water pumped from the Hanna station were 4.10 cfs for the 35 year period as described above and 5.99 cfs. for the later 10 year period.

8. No evidence was provided that Homestake and the towns together have ever used 17.5 cfs which the State has established as the capacity of the water system at issue.

9. The average of maximums pumped from Hanna for the 35 year period was 9.36 cfs.

10. While some of the weekly weir measurements were questioned as probably inaccurate, they were the only figures presented and must be used to give an overall account of water in the system.

11. Homestake discharges at Gold Run a recent three year average of 2300 gpm. This is clean water which could be recycled.

12. Testimony indicated that abandonment of Ward Draw intake would enhance beneficial use by the addition of two miles of trout fishery where now there is none.

From the foregoing Findings of Fact, the Water Management Board makes the following conclusions of law:

1. The Water Management Board has jurisdiction over the parties to this action and the subject matter of the issues in controversy.

2. Richard L. Fort is validly an applicant and intervenor on the issues in controversy.

3. Pipe capacity is not in law a valid measure of amount of water used.

4. Homestake has not presented evidence that would justify allocation to them of more than 10.41 cfs of water for average use and a maximum at any one time of no more than 17.5 cfs.

5. The Elk Creek diversions shall be abandoned as not needed.

6. The Ward Draw diversion shall be abandoned as not needed.

7. Homestake may not draw at any one time more than 14 cfs from the Spearfish watershed.

ORDERED, ADJUDGED AND DECREED that the application of Homestake Mining Company to validate alleged vested water rights in applications Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1 and 1594-1 is denied and instead Homestake is granted for total water use an average of 10.5 cfs. and a maximum of 17.5 cfs with no more than 14 cfs to come from the Spearfish watershed. Richard L. Fort's Request for a Declaratory ruling shall be partially granted in that Homestake shall abandon the Ward Draw Intake and the Elk Creek Diversions.

Dated this _____ day of _____, 1995

Rodney Freeman, Acting Chairman
for purposes of these proceedings
of the Water Management Board.

Copies of the foregoing have been sent to the following:

Gerald Apa, Bruce Oberlander, Dennis York, Francis Toscana, Jon Mattson, Leo Derosier, Glen Vandine, Bev Hink, Robert Stuerman, Bob Kaul, Harold Davis, Timothy Thomas, Howard Morrison, Gerald Richter, William Taylor, Brian Brademeyer, Myron Rock, Bernard Peoples, Jack Cole, Kenny McFarland, Gregg Bourland, Jesse Taken Alive, John Steele, Michael McGuigan, Fran Ward, Ray & Mary Ellen Osloond, Mark Vickers, William Perron, Jim Winterton, Bruce Laymon, Norm Nichols, Robert Jackson, Daniel Bjerke, Diane Best, Rodney Freeman, Roger Tellinhuisen, Phil Barnes, Kenneth Blair, Pat Trask, Lenora Haag, Max Main, Julian Brown, Tom Trask, Marvin Kammerer, Kelly & Med Ricard, Gregor & Ardith McFarland, Robert & Janet Powles, James Wilsey, Shirley Marvin, Jim Smith, Riley & Amalie Ader, Dean Olsen, John Guhin, Tim Olson, John Hatch, Roxanne Giedd, Dwayne Rollag, Francis Brink, Bernita Loucks, Marian Gunderson, Joel Rickenbach, and Leo Holzbauer.



Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

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

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER) CERTIFICATE OF SERVICE
RIGHT APPLICATION NO. 43A.)

I, Roger A. Tellinghuisen, one of the attorneys for Homestake, does hereby certify that on the 1st day of September, 1995, I caused a full, true and complete copy of HOMESTAKE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION to be served upon each of the following named entities and/or persons at their last known post office addresses as follows:

Ralph Carr, Chairman
Lawrence County Commissioners
P. O. Box F
Deadwood, SD 57732

Howard W. Morrison
HC 37, Box 1394
Lead, SD 57754

Julian H. Brown
Attorney at Law
P. O. Box 1116
Pierre, SD 57501-1116

Jack Cole
P. O. Box 882
Spearfish, SD 57783

Kenny McFarland
Elk Creek Landowners
HC 80, Box 747
Piedmont, SD 57769

William Taylor
Woods, Fuller, Shultz & Smith
310 South 1st Avenue
Sioux Falls, SD 57102

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

Timothy Thomas
Morril, Brown & Thomas
P. O. Box 8108
Rapid City, SD 57709

Kenneth Blair
P. O. Box 3363
Rapid City, SD 7709

Leonora Haag
Ramsdell Irrigation Assn.
1421 5th Street
Spearfish, SD 57783

Glen Vandinie
722 W. Summit
Lead, SD 57754

Brian Brademeyer
P. O. Box 762
Rapid City, SD 57769

Kelly Ricard
HC 80, Box 751
Piedmont, sd 57769

Gregor & Ardith McFarland
HC 75, Box 324
Sturgis, SD 57785

Robert and Janet Powles
HC 80, Box 752
Piedmont, SD 57769

Riley & Amalie Ader
HC 80, Box 752
Piedmont, SD 57769

Gary L. Richter
Asst. Attorney General
Dept. of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501-3182

John P. Guhin
Deputy Attorney General
500 East Capitol Avenue
Pierre, SD 57501-5070

Jon Mattson
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Deadwood, SD 57732

Marvin Kammerer
R. R. 3, Box 470
Rapid City, SD 57701

Med Ricard
HC 80, Box 751
Piedmont, SD 57769

Jim Smith
Box 21
Owanka, SD 57767

James Wilsey
512 N. Needles
Brandon, SD 57005

Dean Olson
HC 82, Box 143
Box Elder, SD 57719

John Hatch, Cheif Engineer
Water Rights Division
Dept. of Env. & Nat. Resources
Joe Foss Building
Pierre, SD 57501-3182

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

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

Marian Gunderson
811 W. Third
Yankton, SD 57078-3702

Joel Rickenbach
P. O. Box 97
Oelrich, SD 57763-0097

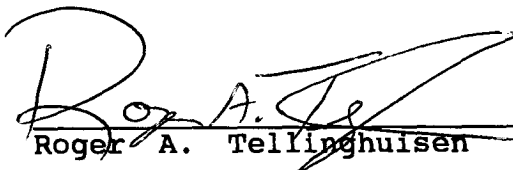
Bernita Loucks
219 42nd Street
Rapid City, SD 57702-2123

Leo Holzbauer
R. R. 1, Box 170
Wagner, SD 57380-9681

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

Ms. Diane Best
Attorney General's Office
500 E. Capitol
Pierre, SD 57501

by depositing the same in the United States Mail in Lead,
South Dakota with first class postage thereon fully prepaid,
in envelopes addressed as above.


Roger A. Tellinghuisen

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

IN THE MATTER OF	)	HOMESTAKE'S PROPOSED
HOMESTAKE MINING	)	FINDINGS OF FACT, CONCLUSION
COMPANY WATER RIGHT	)	OF LAW AND FINAL DECISION
APPLICATION NO. 43A-1	)	

A hearing was held before the South Dakota Water Management Board ("Board") on February 27, 1995, in Lead, South Dakota, on Water Permit Application No. 43A-1 to amend Water License No. 43-1. A quorum of the Board was present at the hearing.

Based upon Homestake's application, the recommendation of the Chief Engineer of the Water Rights Division ("Division"), and the testimony, evidence and arguments presented at the hearings, the Board makes and enters the following:

FINDINGS OF FACT

1. This is an application for amendment to existing Water Right No. 43-1 held by Homestake Mining Company (Homestake) for non-consumptive hydro electric power generation. Homestake has applied for an amendment to its existing water right to add the non-consumptive use of an instream flow for up to 20 cfs of water from Little Spearfish Creek.

2. Currently, Homestake diverts water from Little Spearfish Creek into a pipeline which carries the water to its confluence with water taken from main Spearfish Creek which in turn is used by applicant for power generation. Water Right No. 43-1 has a priority date of January 4, 1909.

3. Homestake diverts up to pipe capacity at its Little Spearfish diversion.

4. Homestake's diversion from Little Spearfish Creek for hydro power generation has been continuous since January 4, 1909.

5. Homestake is discussing with the United States Forest Service a land exchange for property currently owned by Homestake located in Spearfish Canyon. This land exchange, if completed, would also include transfer to the United States Forest Service of the water right held by Homestake on Little Spearfish Creek.

6. Homestake's application for an amendment to its Water Right No. 43-1 for instream flow would be intended to allow the transfer of such water right to the United States Forest Service in the event the land exchange is completed. If the land exchange and transfer of the instream flow water right is completed, Homestake would abandon its diversion of water on Little Spearfish Creek thereby allowing such water to remain instream.

7. Homestake would continue to use the water for hydro power generation even if the diversion at Little Spearfish Creek were abandoned. This use of water would be for Hydro I located near Spearfish. The water would flow down Little Spearfish Creek over Little Spearfish Falls and join main Spearfish Creek. It would then by-pass Hydro II located in Spearfish Canyon and would be collected at the point of diversion for Hydro I where, after passing through Hydro I, it would then be returned to Spearfish Creek.

8. The granting of this application for amendment does

not involve any change in the amount of water capable of diversion pursuant to License No. 43-1. The application requests an additional use and not an additional amount of water.

9. By discontinuing the diversion on Little Spearfish Creek and allowing the water to flow instream, the flow in a stretch of Little Spearfish Creek will be increased and Spearfish Falls will flow, thereby increasing the public's use and enjoyment of such water.

10. The Chief Engineer of the Division of Water Rights recommends approval of application 43A-1 because:

- a. the proposed instream flow can be developed without unlawful impairment of existing rights;
- b. the proposed use is a beneficial use; and
- c. it is in the public interest with the following qualifications:
 - (1) the additional use for instream flow purposes for up to 20 cfs from Little Spearfish Creek would be without an increase in the diversion rate authorized by water right No. 43-1;
 - (2) development of the instream flow use authorized by permit No. 43A-1 is subject to the abandonment of Little Spearfish Creek diversion point authorized by water right No. 137-1; and
 - (3) water Permit No. 43A-1 retains a priority date of January 4, 1909, established by water right No. 43-1.

11. The water that would become available instream upon the abandonment of the diversion of Little Spearfish Creek should increase the availability of water for fisheries below Savoy.

12. Homestake's application No. 43A-1 is complete in all

respects and contains all required and requested information.

13. Proper notice of the time, date and location of the hearing on Homestake's application was timely published.

Based on the foregoing Findings of Fact, the Board hereby makes and enters the following:

CONCLUSIONS OF LAW

I.

All notices of Homestake's application and the hearing thereon, and all other notices required by law, were properly and timely given.

II.

Homestake's application is complete in all respects and contains all required and requested information.

III.

Homestake currently is entitled to divert water from Little Spearfish Creek for hydro power generation with a priority date of January 4, 1909.

IV.

Instream flow of water in Spearfish Creek would be a beneficial use. The amendment of water right 43-1 as requested by Homestake can be developed without unlawful impairment of existing rights.

V.

The use of the 43A-1 water right for instream flow is in the public interest as qualified in the final decision.

VI.

Homestake is the owner of the water right 43-1.

VII.

Application 43A-1 can be approved because:

- a. the proposed instream flow can be developed without unlawful impairment of existing rights;
- b. the proposed use is a beneficial use; and
- c. it is in the public interest with those qualifications set forth by the Chief Engineer.

FINAL DECISION

Homestake's Water Right Application 43A-1 is hereby granted subject to the following qualifications:

- a. Water Permit No. 43A-1 authorizes an additional use for instream flow purposes for up to 20 cfs from Little Spearfish Creek without an increase in the diversion rate authorized by water right No. 43-1;
- b. Development of the instream flow use authorized by Permit No. 43A-1 is subject to the abandonment of the Little Spearfish Creek diversion point authorized by water right No. 137-1; and
- a. Water Permit No. 43A-1 retains a priority date of January 4, 1909, established by water right 43-1.

DATED this _____ day of _____, 1995.

**STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD**

By: _____

Its: _____

Julian H. Brown

Attorney at Law

~~122 East Sioux Avenue~~

P.O. Box ~~1116~~ 340

Pierre, South Dakota 57501-~~1116~~ 0340

Telephone (605) 224-~~9899~~ 1276

Fax (605) 224-1126



September 14, 1995

John Hatch, Chief Engineer
DENR/Water Rights Program
Joe Foss Building
523 East Captiol
Pierre, South Dakota 57501-3181

**RE: In the Matter of Homestake Mining Company Vested Water
Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1,
1591-1, and 1594-1, and 1592-1**

Dear Mr. Hatch:

Please find enclosed for filing the original Certificates of Service to each Water Management Board Member in the above referenced matter.

Sincerely,


Julian H. Brown (by JLA)
Attorney for Lower Brule Sioux Tribe

JHB:jlA

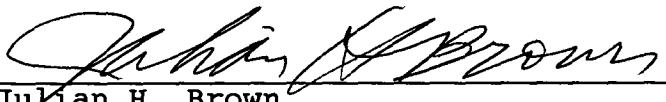
Encl.

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER)
RIGHT APPLICATION NOS. 1587-1) **CERTIFICATE OF SERVICE**
1588-1, 1589-1, 1590-1,)
1591-1, AND 1594-1, AND 1592-1.)

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law**, were served by first-class United States Mail, postage prepaid, upon Rodney Freeman at his last known address of P.O. Box 176, Huron, South Dakota 57350-0176, from the United States post office in Pierre, South Dakota, on the 1st day of September, 1995.

Dated this 14th day of September, 1995.



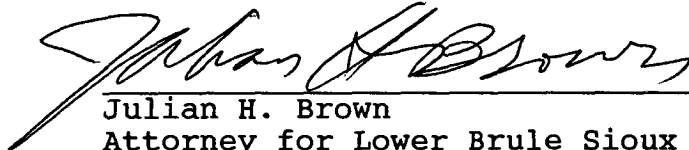
Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER)
RIGHT APPLICATION NOS. 1587-1) **CERTIFICATE OF SERVICE**
1588-1, 1589-1, 1590-1,)
1591-1, AND 1594-1, AND 1592-1.)

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law** were served by first-class United States Mail, postage prepaid, upon Francis E. Brink at his last known address of 1214 S. Wells Street, Aberdeen, South Dakota 57401-7351, from the United States post office in Pierre, South Dakota, on this 14th day of September, 1995.

Dated this 14th day of September, 1995.



Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE	)	
MINING COMPANY VESTED WATER	)	
RIGHT APPLICATION NOS. 1587-1	)	CERTIFICATE OF SERVICE
1588-1, 1589-1, 1590-1,	)	
1591-1, AND 1594-1, AND 1592-1.	)	

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law** were served by first-class United States Mail, postage prepaid, upon Marian Gunderson at his/her last known address of 811 West 3rd Street, Yankton, South Dakota 57078-3702, from the United States post office in Pierre, South Dakota, on this 14th day of September, 1995.

Dated this 14th day of September, 1995.


Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER)
RIGHT APPLICATION NOS. 1587-1) **CERTIFICATE OF SERVICE**
1588-1, 1589-1, 1590-1,)
1591-1, AND 1594-1, AND 1592-1.)

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law** were served by first-class United States Mail, postage prepaid, upon Leo Holzbauer at his last known address of RR 1, Box 170, Wagner, South Dakota 57380-9681, from the United States post office in Pierre, South Dakota, on this 14th day of September, 1995.

Dated this 14th day of September, 1995.



Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER)
RIGHT APPLICATION NOS. 1587-1) **CERTIFICATE OF SERVICE**
1588-1, 1589-1, 1590-1,)
1591-1, AND 1594-1, AND 1592-1.)

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law** were served by first-class United States Mail, postage prepaid, upon Bernita Loucks at her last known address of 219 42nd Street, Rapid City, South Dakota 57702-0240, from the United States post office in Pierre, South Dakota, on this 14th day of September, 1995.

Dated this 14th day of September, 1995.



Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE	)	
MINING COMPANY VESTED WATER	)	
RIGHT APPLICATION NOS. 1587-1	)	CERTIFICATE OF SERVICE
1588-1, 1589-1, 1590-1,	)	
1591-1, AND 1594-1, AND 1592-1.	)	

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law** were served by first-class United States Mail, postage prepaid, upon Joel Rickenbach at his last known address of Box 97, Oelrichs, South Dakota 57763-0097, from the United States post office in Pierre, South Dakota, on this 14th day of September, 1995.

Dated this 14th day of September, 1995.



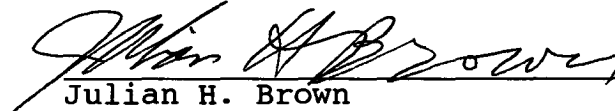
Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD
STATE OF SOUTH DAKOTA

IN THE MATTER OF HOMESTAKE)
MINING COMPANY VESTED WATER)
RIGHT APPLICATION NOS. 1587-1) **CERTIFICATE OF SERVICE**
1588-1, 1589-1, 1590-1,)
1591-1, AND 1594-1, AND 1592-1.)

The undersigned Attorney for the Lower Brule Sioux Tribe certifies that true copies of the attached and foregoing **Final Decisions, and Orders, with Incorporated Findings of Fact and Conclusions of Law** were served by first-class United States Mail, postage prepaid, upon Dwayne A. Rollag at his last known address of 320 Lincoln Lane S, Brookings, South Dakota 57006-2741, from the United States post office in Pierre, South Dakota, on this 14th day of September, 1995.

Dated this 14th day of September, 1995.



Julian H. Brown
Attorney for Lower Brule Sioux Tribe
P.O. Box 340
Pierre, South Dakota 57501
(605) 224-1270

BEFORE THE WATER MANAGEMENT BOARD

FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF:	)	PROPOSED
HOMESTAKE MINING COMPANY	)	FINDINGS OF FACT
WATER RIGHT APPLICATION	)	AND
NO. 43A-1	)	CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Homestake filed Water Permit Application No. 43A-1 which seeks to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek.

2. Under Water Right No. 43-1 Homestake currently appropriates 120 cfs from Spearfish Creek for hydropower generation. Water Right No. 43-1 is a permit issued by the State Engineer in 1909 with a priority date of January 4, 1909.

3. The diversion point for Water Right No. 43-1 is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T5N-R2E, Lawrence County. Water is carried through an aqueduct to the Homestake Hydropower Plant No. 1 located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T6N-R2E (located on the south side of the city of Spearfish).

4. Application No. 43A-1 proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the quantity of water historically appropriated. Under Water Right No. 43-1 Homestake will continue to appropriate 120 cfs from Spearfish Creek.

5. Water Permit Application No. 43A-1 proposes the use of up to 20 cfs of water from Little Spearfish Creek for instream flow purposes between points in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T5N-R1E, on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1 for Hydropower Plant No. 2)

and the confluence of Little Spearfish Creek with Spearfish Creek located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T5N-R2E. Homestake seeks to retain the January 4, 1909, priority date for Water Right No. 43-1 and Water Permit No. 43A-1.

6. At the present time water from Little Spearfish Creek and Spearfish Creek is transported through a 52-inch pipe to Homestake Hydropower Plant No. 2 (authorized by Water Right No. 137-1). The intake for Homestake Hydropower Plant No. 1 is located approximately one mile downstream of Hydropower Plant No. 2. Water flowing from Hydropower Plant No. 2 and water in Spearfish Creek flowing by Hydropower Plant No. 2 is diverted for power generation at Homestake Hydropower Plant No. 1.

7. The USGS maintains a gauging station on Spearfish Creek at Cheyenne Crossing. Flow data show a maximum daily mean flow of 44 cfs for water years 1989 through 1993. For the same period of record, the USGS gauging station on Little Spearfish Creek shows a maximum daily mean flow of 21 cfs.

8. Spearfish Creek, from Savoy to the Hydropower Plant No. 1 intake, flows over the Deadwood formation.

9. The stretch of Spearfish Creek between Savoy and the intake for Hydropower Plant No. 1 is a gaining stream. Increases in the flow of Spearfish Creek come from Annie Creek, Iron Creek, smaller tributaries to Spearfish Creek, and numerous small springs along the creek.

10. Since the stretch of Spearfish Creek between Savoy and the intake for Hydropower Plant No. 1 is a gaining stream, Homestake's proposal (which would result in discontinuing

carriage of water through Homestake's pipeline between Savoy and Hydropower Plant No. 2) would not have an adverse affect on irrigators downstream of the city of Spearfish.

11. Homestake, a major property owner in Spearfish Canyon, has entered into discussions with the United States Forest Service concerning a land/water trade involving Little Spearfish Creek to the confluence of Spearfish Creek. In order to effectuate the USFS trade, the USFS has required that Homestake hold a transferable right for instream flow for Little Spearfish Creek to the confluence with Spearfish Creek.

12. Instream flow use at Little Spearfish Creek would involve abandoning Homestake's current diversion on that creek. Water would flow down Little Spearfish Creek over Spearfish Falls and down the mainstem of Spearfish Creek. Instead of being diverted for use at Homestake Hydroplant No. 2, water would bypass Hydroplant No. 2. At Hydroplant No. 1, water would be available for hydroelectric energy.

13. In the event the USFS land/water exchange was not fully effectuated, Homestake would exercise its right to continue to divert water into Hydroplant No. 2 as it has in the past.

14. The instream flow use, if effectuated by a USFS water/land trade, would allow for public access and opportunities for fishing and other outdoor recreation, fish and wildlife habitat protection, scenic beauty, and enhancement of scenic, natural and recreational values of Spearfish Canyon, values which the Congress in a previous land trade has determined to be "important public values and objectives."

15. Although the water use for Hydroplant No. 1 is a nonconsumptive use at the present time, the present use is a pipeline system. The instream flow use would allow water to flow in its natural channels before reaching Hydroplant No. 1. (24)

16. If the USFS land/water trade is effectuated and water is allowed to flow in its natural course, a large falls will likely be restored at Savoy and the quality of fishing will likely improve in Spearfish Creek.

17. Several persons intervened in this proceeding. Although none of the intervenors were directly opposed to Homestake's proposal, Mr. Jack Cole proposed that this Board continue this matter until such time as Homestake's proposed arrangement with the USFS is complete and until a pending declaratory ruling proceeding filed by Mr. Fort is complete.

18. Mr. Fort, however, disagreed with respect to timing and asserted that such a continuance was unnecessary. Also, with respect to Mr. Cole's position that a continuance be granted until such time as the USFS and Homestake complete their negotiations, this Board finds that such continuance is unwarranted. In the event that such negotiations are not completed, the status quo will continue. In the event that the negotiations are, in fact, effectuated, the instream flow use will become a reality, a goal desired by all parties in this proceeding.

19. According to testimony at hearing, most reaches of Spearfish Creek have adequate water to receive a Class 1 cold water fishery classification by the South Dakota Department of

Game, Fish and Parks for either brown trout fishery or brook trout fishery. (35) For the area between Savoy and Homestake's Hydroplant No. 2, Spearfish Creek is classified as a Class 1 cold water fishery for brown trout, the highest classification designated by the GF&P. (36) This classification is based on number and size of trout per acre of water. (36)

20. If Homestake abandons its diversion on Little Spearfish Creek as a result of the USFS land/water trade, significant increases will occur in the availability of water for fisheries on the reach of stream from Savoy to Hydroplant No. 2. (37) This use of water would enhance the existing quality fishery on Spearfish Creek. (39)

21. Granting Homestake the authority for instream flow use would protect Little Spearfish Creek from other off-stream diversions along the upper reaches of Little Spearfish Creek before Little Spearfish Creek enters Spearfish Creek.

22. The proposed use for instream flow is a beneficial use in that preserving trout streams and recreational values are beneficial uses.

23. The proposed use is in the public interest in that it allows for recreation, fishing, and preservation of aesthetics.

24. The proposed instream flow use will not impair existing water rights.

CONCLUSIONS OF LAW

1. The State of South Dakota, and consequently this Board, has subject matter jurisdiction since (a) the State

acquired the right to regulate water use upon statehood in 1889, (b) water involved in this matter was originally permitted by the State Engineer pursuant to the 1907 water law. 1907 S.D. Sess. Laws ch. 180, and (c) the water is part of the State's continuing public trust responsibility.

2. The Legislature has delegated the State's authority to grant permits to this Board. Pursuant to SDCL chs. 46-1 and 46-6, this Board is authorized to hear and decide this application.

3. Homestake's application was complete and met the requisites of a properly filed application as required by SDCL 46-5-49 and SDCL ch. 46-2A and rules promulgated thereunder.

4. The Chief Engineer issued his recommendation in this matter on a timely basis pursuant to SDCL 46-2A-2.

5. Notice of hearing was timely published in the area newspapers as required by SDCL 46-2A-4. The notice included the required information set forth in SDCL 46-2A-4.

6. All persons or entities who filed petitions to intervene at least ten days before the advertised hearing date (February 27, 1995) were considered to be parties to this proceeding under SDCL ch. 46-2A.

7. Persons filing petitions to participate in this proceeding who did not attend the hearing waived the right to receive further notices pertaining to the hearing, unless written request was made to the chief engineer under ARSD 74:02:01:12.03. No written requests of this type were made.

8. Mr. Cole did not file a request for delay pursuant to SDCL 46-2A-5. Since he failed to exercise his right to the statutory automatic delay, he waived any opportunity for additional continuances.

9. Homestake seeks a permit to add an additional new use to an existing water right under SDCL 46-2A-9 and/or SDCL 46-2A-12.

10. Under SDCL 46-2A-9, this permit may be granted if there is unappropriated water available, if the proposed use can be developed without unlawful impairment of existing rights, if the proposed use is a beneficial use, and if the proposed use is in the public interest. Under SDCL 46-2A-12 and SDCL 46-5-30.4, an existing permit may be changed if the change does not unlawfully impair existing rights, is for a beneficial use, is in the public interest, and does not increase the rate of diversion or volume of water appropriated under the original water right.

11. The proposed use for instream flow can be developed without unlawful impairment of existing rights. This amendment will allow water to flow free in the Little Spearfish Creek and the Spearfish Creek channel. Water will flow over the Deadwood formation (studies show no sinkholes). Also, this instream flow is for a gaining stream with contributions from other creeks and springs. Except for stream losses, the use is a nonconsumptive use, downstream irrigators and domestic users will not be impaired.

12. Under SDCL 46-1-6(3), a proposed use is a beneficial use if it is reasonable, useful and beneficial to the

appropriator and is also in the interest of the public in the best utilization of water supplies.

13. This proposed use is in the best interest of both the appropriator and of the public in the best utilization of water supplies. Since this use would enhance recreational values in Spearfish Canyon, Homestake itself would be benefitted since it is a major property owner in Spearfish Canyon. Also, this proposed use is a beneficial use to Homestake in that it will continue to utilize water for hydropower purposes at Hydropower Plant No. 1.

14. The proposed use is a beneficial use in terms of the best utilization of public resources in that water would be used both for nonconsumptive recreational use and continue to be used for nonconsumptive downstream hydropower use.

15. The proposed use is in the public interest in that it allows for recreational use including improvement in quality of existing trout habitat.

16. Homestake's proposal would not result in an increase of the diversion rate and water would be used for instream flow purposes only if Homestake's diversion is discontinued.

17. Homestake's proposal meets the criteria set forth in SDCL 46-2A-9, SDCL 46-2A-12, and SDCL 46-5-30.4.

FINAL DECISION

Water Permit No. 43A-1 is approved with the following qualifications as recommended by the Chief Engineer:

1. Water Permit No. 43A-1 authorizes an additional use for instream flow

purposes for up to 20.0 cfs from Little Spearfish Creek without an increase in the diversion rate authorized by Water Right No. 43-1.

2. Development of the instream flow use authorized by Permit No. 43A-1 is subject to abandonment of the Little Spearfish Creek diversion point authorized by Water Right No. 137-1.
3. Water Permit No. 43A-1 retains a priority date of January 4, 1909, established by Water Right No. 43-1.

Dated this _____ day of _____, 1995.

BY THE BOARD:

Dwayne Rollag, Chairman
S.D. Water Management Board
(on behalf of the Board)

d-wmb1.db(do)

BEFORE THE WATER MANAGEMENT BOARD
FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF:	)	OBJECTIONS TO PROPOSED
HOMESTAKE MINING COMPANY	)	FINDINGS OF FACT
WATER RIGHT APPLICATION	)	AND
NO. 43A-1	)	CONCLUSIONS OF LAW

COMES NOW the Department of Environment and Natural Resources, Water Rights Program (hereinafter "Program") and files its Objections to Proposed Findings of Fact and Conclusions of Law.

In addition to the Proposed Findings of Fact and Conclusions of Law filed by the Program, proposals were also filed by Richard L. Fort, Jack Cole, and the Homestake Mining Company. The Lead-Deadwood Sanitary District No. 1 and the Deer Mountain Resort Properties, Inc., joined in Homestake's proposals.

A. Cole Proposals. Intervenor Jack Cole filed one group of Proposed Findings of Fact and Conclusions of Law which are apparently intended for all matters heard by this Board involving Homestake. It is assumed that each Proposed Finding filed by Mr. Cole is intended to apply to each case and objections are made accordingly.

1. To the extent that Findings of Fact No. 1, 3, 4, 5, 7, 8, 10, 11 and 14 are intended to apply to the above-entitled application, Program objects. These Findings of Fact pertain to applications filed with the Program and evidence produced at hearing in In the Matter of Homestake Vested Water

Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1594-1 and
Matter of the Request for Declaratory Ruling filed by Richard L.
Fort Regarding Proposed Changes in the Spearfish Creek Water
Shed. Or In the Matter of Homestake Mining Company Vested Water
Right Application No. 1592-1 (Hearst claim). The same objection
also applies to Cole proposed conclusions 3, 4 and 5.

2. Program objects to Cole Finding of Fact No. 9 in
that it refers to evidence not in the record and that it is not
relevant to this proceeding.

3. The Program objects to Cole Proposal No. 12
insofar as it is unsupported by evidence in the record. The
record does not show that pollution will occur as a result of the
requested water use in this case or that allowing this use will
diminish water flow throughout the Hills.

4. Program objects to the Cole proposal that an
independent body be appointed. The Water Management Board is the
legal entity to make determinations with respect to new water
permits and water permit amendments and cannot delegate its
authority to another independent body.

B. Fort Proposal. Program objects to those portions
of Fort Finding of Fact No. 2 and Conclusion No. 3 which suggest
that the above-entitled matter is an application to renew or
validate the existing water permit. (No. 43-1). This
application pertains to the addition of an additional use of
water does not involve validation of a vested right. Homestake
holds a 1909 permit which does not require validation.

The Program objects to the Fort Conclusion of Law No. 4 and urges that the Board adopt the Program's Proposed Conclusions regarding the requisite standard of proof and resulting analysis. (Conclusions of Law Nos. 9 through 17).

Dated this 14th day of September, 1995.



Diane Best
Counsel for Water Rights Program
500 East Capitol Avenue
Pierre, SD 57501-5070
Telephone: (605) 773-3215

c-ltr40.db



Sept. 26, 1995

To: John Hatch, Chief Engineer

From: John Guhin, Deputy Attorney General

John P. Guhin

RE: HMC and related case Findings and Conclusions

The Hearing Chairman for these matters has asked me to notify you that he has directed that the hearing on the adoption of Findings and Conclusions on the HMC and related cases be deferred until the next regularly scheduled meeting of the WMB.

Mr. Freeman is of the view that the time from the submission of the final documents to the October hearing is insufficient to allow appropriate consideration by the Board members of the various proposals.

Could you please give the parties to these cases appropriate notice.

Thank you.

cc: Hearing Chairman Rod Freeman



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

September 27, 1995

NOTICE

TO: Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700
and parties participating in the hearing

Richard Fort
HC 37, Box 2421
Lead, SD 57754

FROM: *for* John Hatch, Chief Engineer *Sal M. Selken*
Water Rights Program
(605) 773-3352

SUBJECT: Postponement of Consideration of Findings of Fact, Conclusions of Law
and Final Decision for Homestake Mining Company's Applications and
Richard Fort's Declaratory Ruling Request

Hearing Chairman Rodney Freeman has directed deferral of the hearing on the adoption of Findings of Fact, Conclusions of Law and Final Decision for Water Permit Application No. 43A-1, Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1 and 1590-1, 1591-1, 1592-1 and 1594-1 and Richard Fort's declaratory ruling request. Deferral is to provide time to allow appropriate consideration by the Board members of the various proposals. Consideration of proposed Findings, Conclusions and Final Decisions is postponed and will not be held on October 4, 1995.

The consideration of proposed Findings, Conclusions and Final Decisions will now be scheduled for the Board's December 6 and 7, 1995 meeting in Pierre. Future notice will be provided to all parties of the exact time, date and location of the Board's consideration of findings.

If you have any questions, please contact Diane Best, Assistant Attorney General at (605) 773-3215.

c: Water Management Board
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Roxanne Giedd, Assistant Attorney General
Phil Barnes, Homestake Mining Company
Tim Olson, G, F&P Permits Coordinator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 27, 1995, a Notice dated September 27, 1995, regarding Postponement of Consideration of Findings of Fact, Conclusions of Law and Final Decision for Homestake Mining Company's Application and Richard Fort's Declaratory Ruling Request, was served by United States Mail, first class, postage prepaid upon Stephen Orr, Homestake Mining Company, 630 East Summit, Lead, SD 57754-1700, and to the individuals listed below:

Roger A. Tellinghuisen
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783-1087

Max Main
618 State
Belle Fourche, SD 57717

Phil Barnes
Homestake Mining Company
630 E. Summit
Lead, SD 57754

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

William Taylor
Woods, Fuller, Shultz & Smith
310 South 1st Ave.
Sioux Falls, SD 57102

Julian H. Brown
Attorney at Law
P.O. Box 1116
Pierre, SD 57501-1116

Howard W. Morrison
HC 37, Box 1394
Lead, SD 57754

Jack R. Cole
P.O. Box 882
Spearfish, SD 57783

Timothy Thomas
Morrill Brown & Thomas
P.O. Box 8108
Rapid City, SD 57709

Kenny McFarland
Elk Creek Landowners
HC 80, Box 747
Piedmont, SD 57769

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709

John Mattson, President
Deer Mountain Ski Area
Box 622
Deadwood, SD 57732

Glen Vandine
722 West Summit
Lead, SD 57754

Tom Trask
HCR 86, Box 28
Elm Springs, SD 57736

Pat Trask
Box 19
Wasta, SD 57791

Brian Brademeyer
P.O. Box 762
Rapid City, SD 57709

Lenora Haag
Ramsdell Irrigation Association
1421 5th St.
Spearfish, SD 57783

Marvin Kammerer
RR 3, Box 470
Rapid City, SD 57701

Kelly Ricard
HC 80, Box 751
Piedmont, SD 57769

Gregor & Ardith McFarland
HC 75, Box 324
Sturgis, SD 57785

Robert and Janet Powles
HC 80, Box 632-20
Piedmont, SD 57769

James Wilsey
512 N. Needles
Brandon, SD 57005

Shirley Marvin, Planning Director
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, SD 57548

Water Management Board Members:

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Marian Gunderson
811 W. 3rd Street
Yankton, SD 57078-3702

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

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

and served by interoffice mail on the same date upon:

Diane Best
Assistant Attorney General
Capitol Building
Pierre, SD 57501

Med Ricard
HC 80, Box 751
Piedmont, SD 57769

Jim Smith
Box 21
Owanka, SD 57767

Gerald Apa, Chairman
Lawrence County Commission
P.O. Box F
Deadwood, SD 57732

Riley & Amalie Ader
HC 80, Box 752
Piedmont, SD 57769

Dean Olson
HC 82, Box 143
Box Elder, SD 57769

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

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Joel Rickenbach
Box 97
Oelrichs, SD 57763-0097

Roxanne Giedd
Assistant Attorney General
Capitol Building
Pierre, SD 57501

John Guhin
Deputy Attorney General
Capitol Building
Pierre, SD 57501

Gary L. Richter, Attorney
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501

Tim Olson
Water Permits Coordinator
Department of Game, Fish & Parks
Joe Foss Building

Hand Delivered to:

John Hatch, Chief Engineer
DENR/Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181


Cheryl F. Frost
Secretary

CERTIFICATION

I hereby certify that on September 27, 1995, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 27, 1995, regarding Postponement of Consideration of Findings of Fact, Conclusions of Law and Final Decision for Homestake Mining Company's Applications and Richard Fort's Declaratory Ruling Request, and a copy of the attached "Certificate of Service", addressed as stated below and on the "Certificate of Service" attached to this "Certification":

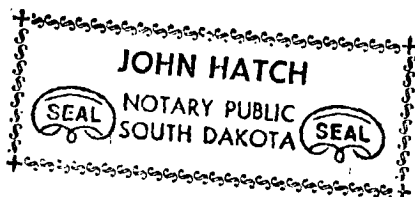
Stephen Orr
Homestake Mining Company
630 E. Summit
Lead, SD 57754-1700



Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of September 1995



Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

November 6, 1995

NOTICE

TO: Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700
and parties participating in the hearing

Richard Fort
HC 37, Box 2421
Lead, SD 57754

FROM: John Hatch, Chief Engineer *John Hatch*
Water Rights Program
(605) 773-3352

SUBJECT: Consideration of Findings of Fact, Conclusions of Law and Final Decision
for Homestake Mining Company's Applications and Phase I of Richard
Fort's Declaratory Ruling Request

The Water Management Board will consider Findings of Fact, Conclusions of Law and Final Decision for Water Permit Application No. 43A-1, Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1592-1 and 1594-1 and Phase I of Richard Fort's declaratory ruling request at 1:00 pm, December 6, 1995, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD.

If you have any questions, please contact Diane Best, Assistant Attorney General at (605) 773-3215.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Roxanne Giedd, Assistant Attorney General
Phil Barnes, Homestake Mining Company
Tim Olson, G, F&P Permits Coordinator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 6, 1995, a Notice dated November 6, 1995, regarding Consideration of Findings of Fact, Conclusions of Law and Final Decision for Homestake Mining Company's Applications and Phase I of Richard Fort's Declaratory Ruling Request, was served by United States Mail, first class, postage prepaid upon Stephen Orr, Homestake Mining Company, 630 East Summit, Lead, SD 57754-1700, and to the individuals listed below:

Roger A. Tellinghuisen
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783-1087

Max Main
618 State
Belle Fourche, SD 57717

Phil Barnes
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Lead, SD 57754

Richard L. Fort
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John Mattson, President
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Deadwood, SD 57732

Glen Vandine
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Lead, SD 57754

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Elm Springs, SD 57736

Pat Trask
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Wasta, SD 57791

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Rapid City, SD 57701

Kelly Ricard
HC 80, Box 751
Piedmont, SD 57769

Med Ricard
HC 80, Box 751
Piedmont, SD 57769

Gregor & Ardith McFarland
HC 75, Box 324
Sturgis, SD 57785

Robert and Janet Powles
HC 80, Box 632-20
Piedmont, SD 57769

James Wilsey
512 N. Needles
Brandon, SD 57005

Shirley Marvin, Planning Director
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, SD 57548

and served by interoffice mail on the same date upon:

Diane Best
Assistant Attorney General
Capitol Building
Pierre, SD 57501

John Guhin
Deputy Attorney General
Capitol Building
Pierre, SD 57501

Tim Olson
Water Permits Coordinator
Department of Game, Fish & Parks
Joe Foss Building

Hand Delivered to:

John Hatch, Chief Engineer
DENR/Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

Jim Smith
Box 21
Owanka, SD 57767

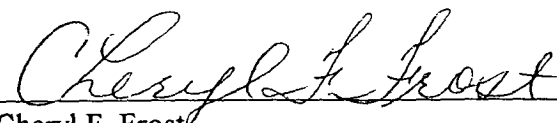
Gerald Apa, Chairman
Lawrence County Commission
P.O. Box F
Deadwood, SD 57732

Riley & Amalie Ader
HC 80, Box 752
Piedmont, SD 57769

Dean Olson
HC 82, Box 143
Box Elder, SD 57769

Roxanne Giedd
Assistant Attorney General
Capitol Building
Pierre, SD 57501

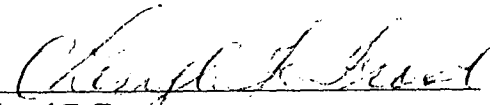
Gary L. Richter, Attorney
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501


Cheryl F. Frost
Secretary

CERTIFICATION

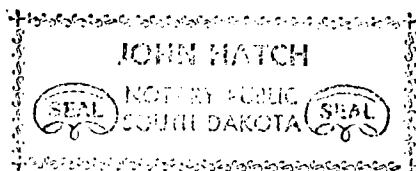
I hereby certify that on November 6, 1995, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 6, 1995, regarding Consideration of Findings of Fact, Conclusions of Law and Final Decision for Homestake Mining Company's Applications and Phase I of Richard Fort's Declaratory Ruling Request, and a copy of the attached "Certificate of Service", addressed as stated below and on the "Certificate of Service" attached to this "Certification":

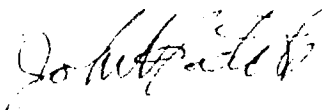
Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of November, 1995




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 9, 1996

NOTICE

TO: Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700
and parties participating in the hearing

Richard Fort
HC 37, Box 2421
Lead, SD 57754

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352



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

This is to notify you that the Final Decisions, including Findings of Fact and Conclusions of Law, were adopted, December 6, 1995, by the Water Management Board on the following cases:

1. Homestake Mining Company Water Right Application No. 43A-1.
2. Homestake Mining Company Vested Water Right Application No. 1592-1
3. Homestake Mining Company Vested Water Right Application Nos. 1587-1, 1588-1, 1589-1, 1590-1, 1591-1, 1594-1 and Phase 1 of the request for declaratory ruling filed by Richard L. Fort regarding proposed changes in the Spearfish Creek watershed.

A copy of the signed Final Decisions, Findings and Conclusions are enclosed. Also enclosed is a memorandum to Chairman Rollag from John Guhin.

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.

enclosures

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Roxanne Giedd, Assistant Attorney General
Phil Barnes, Homestake Mining Company
Tim Olson, G,F&P Permits Coordinator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 9, 1996, a Notice dated February 9, 1996, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision, was served by United States Mail, first class, postage prepaid upon Stephen Orr, Homestake Mining Company, 630 East Summit, Lead, SD 57754-1700, and to the individuals listed below:

Roger A. Tellinghuisen
Fuller & Tellinghuisen
P.O. Box 1087
Spearfish, SD 57783-1087

Max Main
618 State
Belle Fourche, SD 57717

Phil Barnes
Homestake Mining Company
630 E. Summit
Lead, SD 57754

Richard L. Fort
HC 37, Box 2421
Lead, SD 57754

William Taylor
Woods, Fuller, Shultz & Smith
310 South 1st Ave.
Sioux Falls, SD 57102

Julian H. Brown
Attorney at Law
P.O. Box 1116
Pierre, SD 57501-1116

Howard W. Morrison
HC 37, Box 1394
Lead, SD 57754

Jack R. Cole
P.O. Box 882
Spearfish, SD 57783

Timothy Thomas
Morrill Brown & Thomas
P.O. Box 8108
Rapid City, SD 57709

Kenny McFarland
Elk Creek Landowners
HC 80, Box 747
Piedmont, SD 57769

Kenneth Blair
P.O. Box 3363
Rapid City, SD 57709

John Mattson, President
Deer Mountain Ski Area
Box 622
Deadwood, SD 57732

Glen Vandine
722 West Summit
Lead, SD 57754

Tom Trask
HCR 86, Box 28
Elm Springs, SD 57736

Pat Trask
Box 19
Wasta, SD 57791

Brian Brademeyer
P.O. Box 762
Rapid City, SD 57709

Lenora Haag
Ramsdell Irrigation Association
1421 5th St.
Spearfish, SD 57783

Marvin Kammerer
RR 3, Box 470
Rapid City, SD 57701

Kelly and Med Ricard
HC 80, Box 751
Piedmont, SD 57769

Dean Olson
HC 82, Box 143
Box Elder, SD 57769

Gregor & Ardith McFarland
HC 75, Box 324
Sturgis, SD 57785

Robert and Janet Powles
HC 80, Box 632-20
Piedmont, SD 57769

James Wilsey
512 N. Needles
Brandon, SD 57005

Shirley Marvin, Planning Director
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, SD 57548

and served by interoffice mail on the same date upon:

Diane Best
Assistant Attorney General
Capitol Building
Pierre, SD 57501

John Guhin
Deputy Attorney General
Capitol Building
Pierre, SD 57501

Tim Olson
Water Permits Coordinator
Department of Game, Fish & Parks
Joe Foss Building

Hand Delivered to:

John Hatch, Chief Engineer
DENR/Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

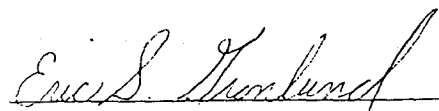
Jim Smith
Box 21
Owanka, SD 57767

Gerald Apa, Chairman
Lawrence County Commission
P.O. Box F
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Riley & Amalie Ader
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Piedmont, SD 57769

Roxanne Giedd
Assistant Attorney General
Capitol Building
Pierre, SD 57501

Gary L. Richter, Attorney
Department of Game, Fish & Parks
Joe Foss Building
Pierre, SD 57501


Eric Gronlund
Natural Resources Engineer
Water Rights Program

CERTIFICATION

I hereby certify that on February 9, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 9, 1996, along with a copy of the Findings for 1) Homestake Mining Company Water Right Application No. 43A-1; 2) Homestake Mining Company Vested Water Right Application No. 1592-1; and 3) Homestake Mining Company Vested Water Right Application Nos. 1587-3, 1588-1, 1589-1, 1590-1, 1591-1, 1594-1 and Phase 1 of the request for declaratory ruling filed by Richard L. Fort regarding proposed changes in the Spearfish Creek watershed, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision, addressed as stated below and on the "Certificate of Service" attached to this "Certification":

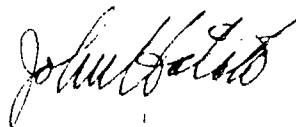
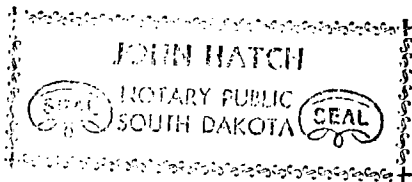
Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700



Eric Gronlund
Natural Resources Engineer

STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES) SS

Sworn to, before me, this 12th day of February, 1996



Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

BEFORE THE WATER MANAGEMENT BOARD

FOR THE STATE OF SOUTH DAKOTA

IN THE MATTER OF:	)	FINDINGS OF FACT,
HOMESTAKE MINING COMPANY	)	CONCLUSIONS OF LAW,
WATER RIGHT APPLICATION	)	AND
NO. 43A-1	)	FINAL DECISION

FINDINGS OF FACT

1. Homestake filed Water Permit Application No. 43A-1 which seeks to amend Water Right No. 43-1 to add an additional use for instream flow purposes on a portion of Little Spearfish Creek.

2. Under Water Right No. 43-1 Homestake currently appropriates 120 cfs from Spearfish Creek for hydropower generation. Water Right No. 43-1 is a permit issued by the State Engineer in 1909 with a priority date of January 4, 1909.

3. The diversion point for Water Right No. 43-1 is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T5N-R2E, Lawrence County. Water is carried through an aqueduct to the Homestake Hydropower Plant No. 1 located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T6N-R2E (located on the south side of the city of Spearfish).

4. Application No. 43A-1 proposes to amend Water Right No. 43-1 to add an instream flow use without increasing the quantity of water historically appropriated. Under Water Right No. 43-1 Homestake will continue to appropriate 120 cfs from Spearfish Creek.

5. Water Permit Application No. 43A-1 proposes the use of up to 20 cfs of water from Little Spearfish Creek for instream flow purposes between points in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T5N-R1E, on Little Spearfish Creek (currently an intake point authorized by Water Right No. 137-1 for Hydropower Plant No. 2)

and the confluence of Little Spearfish Creek with Spearfish Creek located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T5N-R2E. Homestake seeks to retain the January 4, 1909, priority date for Water Right No. 43-1 and Water Permit No. 43A-1.

6. At the present time water from Little Spearfish Creek and Spearfish Creek is transported through a 52-inch pipe to Homestake Hydropower Plant No. 2 (authorized by Water Right No. 137-1). The intake for Homestake Hydropower Plant No. 1 is located approximately one mile downstream of Hydropower Plant No. 2. Water flowing from Hydropower Plant No. 2 and water in Spearfish Creek flowing by Hydropower Plant No. 2 is diverted for power generation at Homestake Hydropower Plant No. 1.

7. The USGS maintains a gauging station on Spearfish Creek at Cheyenne Crossing. Flow data show a maximum daily mean flow of 44 cfs for water years 1989 through 1993. For the same period of record, the USGS gauging station on Little Spearfish Creek shows a maximum daily mean flow of 21 cfs.

8. Spearfish Creek, from Savoy to the Hydropower Plant No. 1 intake, flows over the Deadwood formation.

9. The stretch of Spearfish Creek between Savoy and the intake for Hydropower Plant No. 1 is a gaining stream. Increases in the flow of Spearfish Creek come from Annie Creek, Iron Creek, smaller tributaries to Spearfish Creek, and numerous small springs along the creek.

10. Since the stretch of Spearfish Creek between Savoy and the intake for Hydropower Plant No. 1 is a gaining stream, Homestake's proposal (which would result in discontinuing

carriage of water through Homestake's pipeline between Savoy and Hydropower Plant No. 2) would not have an adverse affect on irrigators downstream of the city of Spearfish.

11. Homestake, a major property owner in Spearfish Canyon, has entered into discussions with the United States Forest Service concerning a land/water trade involving Little Spearfish Creek to the confluence of Spearfish Creek. In order to effectuate the USFS trade, the USFS has required that Homestake hold a transferable right for instream flow for Little Spearfish Creek to the confluence with Spearfish Creek.

12. Instream flow use at Little Spearfish Creek would involve abandoning Homestake's current diversion on that creek. Water would flow down Little Spearfish Creek over Spearfish Falls and down the mainstem of Spearfish Creek. Instead of being diverted for use at Homestake Hydroplant No. 2, water would bypass Hydroplant No. 2. At Hydroplant No. 1, water would be available for hydroelectric energy.

13. In the event the USFS land/water exchange was not fully effectuated, Homestake would exercise its right to continue to divert water into Hydroplant No. 2 as it has in the past.

14. The instream flow use, if effectuated by a USFS water/land trade, would allow for public access and opportunities for fishing and other outdoor recreation, fish and wildlife habitat protection, scenic beauty, and enhancement of scenic, natural and recreational values of Spearfish Canyon, values which the Congress in a previous land trade has determined to be "important public values and objectives."

15. Although the water use for Hydroplant No. 1 is a nonconsumptive use at the present time, the present use is a pipeline system. The instream flow use would allow water to flow in its natural channels before reaching Hydroplant No. 1. (24)

16. If the USFS land/water trade is effectuated and water is allowed to flow in its natural course, a large falls will likely be restored at Savoy and the quality of fishing will likely improve in Spearfish Creek.

17. Several persons intervened in this proceeding. Although none of the intervenors were directly opposed to Homestake's proposal, Mr. Jack Cole proposed that this Board continue this matter until such time as Homestake's proposed arrangement with the USFS is complete and until a pending declaratory ruling proceeding filed by Mr. Fort is complete.

18. Mr. Fort, however, disagreed with respect to timing and asserted that such a continuance was unnecessary. Also, with respect to Mr. Cole's position that a continuance be granted until such time as the USFS and Homestake complete their negotiations, this Board finds that such continuance is unwarranted. In the event that such negotiations are not completed, the status quo will continue. In the event that the negotiations are, in fact, effectuated, the instream flow use will become a reality, a goal desired by all parties in this proceeding.

19. According to testimony at hearing, most reaches of Spearfish Creek have adequate water to receive a Class 1 cold water fishery classification by the South Dakota Department of

Game, Fish and Parks for either brown trout fishery or brook trout fishery. (35) For the area between Savoy and Homestake's Hydroplant No. 2, Spearfish Creek is classified as a Class 1 cold water fishery for brown trout, the highest classification designated by the GF&P. (36) This classification is based on number and size of trout per acre of water. (36)

20. If Homestake abandons its diversion on Little Spearfish Creek as a result of the USFS land/water trade, significant increases will occur in the availability of water for fisheries on the reach of stream from Savoy to Hydroplant No. 2. (37) This use of water would enhance the existing quality fishery on Spearfish Creek. (39)

21. Granting Homestake the authority for instream flow use would protect Little Spearfish Creek from other off-stream diversions along the upper reaches of Little Spearfish Creek before Little Spearfish Creek enters Spearfish Creek.

22. The proposed use for instream flow is a beneficial use in that preserving trout streams and recreational values are beneficial uses.

23. The proposed use is in the public interest in that it allows for recreation, fishing, and preservation of aesthetics.

24. The proposed instream flow use will not impair existing water rights.

CONCLUSIONS OF LAW

1. The State of South Dakota, and consequently this Board, has subject matter jurisdiction since (a) the State

acquired the right to regulate water use upon statehood in 1889, (b) water involved in this matter was originally permitted by the State Engineer pursuant to the 1907 water law. 1907 S.D. Sess. Laws ch. 180, and (c) the water is part of the State's continuing public trust responsibility.

2. The Legislature has delegated the State's authority to grant permits to this Board. Pursuant to SDCL chs. 46-1 and 46-6, this Board is authorized to hear and decide this application.

3. Homestake's application was complete and met the requisites of a properly filed application as required by SDCL 46-5-49 and SDCL ch. 46-2A and rules promulgated thereunder.

4. The Chief Engineer issued his recommendation in this matter on a timely basis pursuant to SDCL 46-2A-2.

5. Notice of hearing was timely published in the area newspapers as required by SDCL 46-2A-4. The notice included the required information set forth in SDCL 46-2A-4.

6. All persons or entities who filed petitions to intervene at least ten days before the advertised hearing date (February 27, 1995) were considered to be parties to this proceeding under SDCL ch. 46-2A.

7. Persons filing petitions to participate in this proceeding who did not attend the hearing waived the right to receive further notices pertaining to the hearing, unless written request was made to the chief engineer under ARSD 74:02:01:12.03. No written requests of this type were made.

8. Mr. Cole did not file a request for delay pursuant to SDCL 46-2A-5. Further, no discretionary continuance is merited. The applicant's interest in obtaining a speedy resolution of this matter prevails over the late request for a continuance. Indeed, a continuance in this matter may result in loss of the opportunity for applicant to make the arrangement it desires, and may mean that the conversion of the subject water to an instream flow purpose will not occur.

9. Homestake seeks a permit to add an additional new use to an existing water right under SDCL 46-2A-9 and/or SDCL 46-2A-12.

10. Under SDCL 46-2A-9, this permit may be granted if there is unappropriated water available, if the proposed use can be developed without unlawful impairment of existing rights, if the proposed use is a beneficial use, and if the proposed use is in the public interest. Under SDCL 46-2A-12 and SDCL 46-5-30.4, an existing permit may be changed if the change does not unlawfully impair existing rights, is for a beneficial use, is in the public interest, and does not increase the rate of diversion or volume of water appropriated under the original water right.

11. The proposed use for instream flow can be developed without unlawful impairment of existing rights. This amendment will allow water to flow free in the Little Spearfish Creek and the Spearfish Creek channel. Water will flow over the Deadwood formation (studies show no sinkholes). Also, this instream flow is for a gaining stream with contributions from other creeks and springs. Except for stream losses, the use is a

nonconsumptive use, downstream irrigators and domestic users will not be impaired.

12. Under SDCL 46-1-6(3), a proposed use is a beneficial use if it is reasonable, useful and beneficial to the appropriator and is also in the interest of the public in the best utilization of water supplies.

13. This proposed use is in the best interest of both the appropriator and of the public in the best utilization of water supplies. Since this use would enhance recreational values in Spearfish Canyon, Homestake itself would be benefitted since it is a major property owner in Spearfish Canyon. Also, this proposed use is a beneficial use to Homestake in that it will continue to utilize water for hydropower purposes at Hydropower Plant No. 1.

14. The proposed use is a beneficial use in terms of the best utilization of public resources in that water would be used both for nonconsumptive recreational use and continue to be used for nonconsumptive downstream hydropower use.

15. The proposed use is in the public interest in that it allows for recreational use including improvement in quality of existing trout habitat.

16. Homestake's proposal would not result in an increase of the diversion rate and water would be used for instream flow purposes only if Homestake's diversion is discontinued.

17. Homestake's proposal meets the criteria set forth in SDCL 46-2A-9, SDCL 46-2A-12, and SDCL 46-5-30.4.

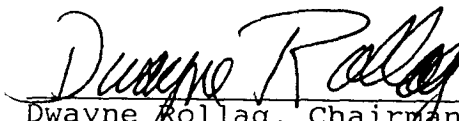
FINAL DECISION

Water Permit No. 43A-1 is approved with the following qualifications as recommended by the Chief Engineer:

1. Water Permit No. 43A-1 authorizes an additional use for instream flow purposes for up to 20.0 cfs from Little Spearfish Creek without an increase in the diversion rate authorized by Water Right No. 43-1.
2. Development of the instream flow use authorized by Permit No. 43A-1 is subject to abandonment of the Little Spearfish Creek diversion point authorized by Water Right No. 137-1.
3. Water Permit No. 43A-1 retains a priority date of January 4, 1909, established by Water Right No. 43-1.

Dated this 7th day of February, 1996.

BY THE BOARD:


Dwayne Rollag, Chairman
S.D. Water Management Board
(on behalf of the Board)

d-wmb1.db(do)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

JUL 2 1996

43A-1

Stephen Orr
Homestake Mining Company
630 East Summit
Lead, SD 57754-1700

Dear Mr. Orr:

Enclosed is Water Permit No. 43A-1 authorizing development of an instream flow use and beneficial use of water, not exceeding the limits as specified in the Water Permit.

Also enclosed is Form 10, Notice of Completion of Works to be filed when development of the instream flow use authorized by Permit No. 43A-1 is completed and the Little Spearfish Creek diversion point authorized by Water Right No. 137-1 has been abandoned.

If you have any questions concerning the enclosed permit, please contact us.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

July 31, 2003

Max S. Main
Attorney at Law
618 State Street
Belle Fourche, SD 57717

RECEIVED
AUG - 1 2003
WATER RIGHTS
PROGRAM

Re: Homestake - Water Rights Transfer Agreement.

Dear Max:

Enclosed is your copy of the fully executed Water Rights Transfer Agreement.

Sincerely,

Gian Best for
Roxanne Giedd
Assistant Attorney General

RG:js
Enclosure
bcc: Eric Gronlund and John Cooper
j-ltr160.rg Homestake

Prepared By:
Bennett, Main & Gubbrud, P.C.
618 State Street
Belle Fourche, SD 57717
Ph: 605.892.2011

WATER RIGHTS TRANSFER AGREEMENT

This Agreement is made and entered into effective the 1st day of August, 2003, by and among **HOMESTAKE MINING COMPANY OF CALIFORNIA** ("Homestake"), of 630 E. Summit, Lead, South Dakota 57754-1700, **SOUTH DAKOTA DEPARTMENT OF GAME, FISH & PARKS** ("DGFP"), of 523 East Capitol Avenue, Pierre, SD 57501-3182, and **SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION** ("DOT"), of 700 E. Broadway Avenue, Pierre, SD 57501-2586.

RECITALS

1. Homestake owns Water License No. 43-1, which authorizes the appropriation of 120 cfs of water from Spearfish Creek for the generation of electrical power at Homestake's Hydropower Plant No. 1. Water License No. 43-1 has a priority date of January 4, 1909. The diversion point on Spearfish Creek for Water License No. 43-1 is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T5N, R2E, B.H.M., Lawrence County, South Dakota (the "Hydropower Plant No. 1 intake").

2. On February 7, 1996, Water Permit No. 43A-1 was issued to Homestake. Water Permit No. 43A-1 amends Water License No. 43-1, by authorizing an additional use for instream flow purposes of up to 20 cfs on Little Spearfish Creek. The additional use for instream flow is authorized for a reach of Little Spearfish Creek beginning in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T5N, R1E, B.H.M., Lawrence County, South Dakota (a diversion point for Water License No. 137-1, and hereinafter referred to as the "Little Spearfish

Revised July 11, 2003

Creek intake”) and continuing to the confluence of Little Spearfish Creek with Spearfish Creek in the SW¼NW¼ of Section 31, T5N, R2E, B.H.M., Lawrence County, South Dakota. Water Permit No. 43A-1 retains the January 4, 1909 priority date of Water License No. 43-1.

3. Water Permit No. 43B-1 was issued to Homestake on March 3, 2000. It amends Water License No. 43-1 and Water Permit No. 43A-1 by providing that Homestake may only divert flows of water in excess of 20 cfs at the Little Spearfish Creek intake during the months of July, August and September of each calendar year. During the three-month period, flows of 20 cfs or less as measured at the Little Spearfish Creek intake must be bypassed for instream flow purposes. Water Permit No. 43B-1 further amended Water License No. 43-1 and Water Permit No. 43A-1 by extending the reach of the instream flow use from the Little Spearfish Creek intake to the Hydropower Plant No. 1 intake on Spearfish Creek.

4. The water bypassed at the Little Spearfish Creek intake for instream flow purposes flows under Highway 14A in a concrete culvert. The capacity of the culvert is substantially less than 20 cfs; its estimated capacity is approximately 11 cfs. As a consequence, the South Dakota Department of Environment and Natural Resources (“DENR”), the DGFP and the DOT have all requested that Homestake limit the amount of water bypassed at the Little Spearfish Creek intake to 11 cfs, until such time as a larger capacity structure replaces the existing culvert under Highway 14A. During the construction/installation of the larger capacity structure, now scheduled for August-September 2003, DENR, DGFP and DOT have all requested that Homestake divert the entire flow of water at the Little Spearfish Creek intake and not bypass any water.

5. To settle natural resource damages actions entitled *State of South Dakota v. Homestake Mining Company of California*, and *United States and Cheyenne River Sioux Tribe v. Homestake Mining Company of California*,

D.S.D. (Civ. Nos. 97-5078 and 97-5100), all the parties to both actions entered into a Consent Decree. The Consent Decree was approved by the Court on September 2, 1999. Paragraph 17 of the Consent Decree required Homestake to amend Water Permit No. 43A-1 as recited in paragraph 3 above. Homestake further agreed in paragraph 17 of the Consent Decree that:

within thirty (30) days of the final and complete closure of operations at the Homestake Mine in Lead, South Dakota, including completion of reclamation required by regulatory agencies, Homestake will submit an application to, and make a good faith effort to, transfer to DGFP, its then existing rights under Water Right No. 43A-1, amended as described herein, for instream flow in Little Spearfish Creek to the intake for Hydropower Plant No. 1. At the time of such transfer, Homestake will agree to the deletion of the three (3) month limitation and will permanently abandon the diversion point on Little Spearfish Creek authorized by its Water Right No. 137-1.

6. Paragraph 17 of the Consent Decree further provides that the DGFP "shall be responsible for and shall pay all costs of removing the diversion structure and any appurtenant facilities" at the Little Spearfish Creek intake.

7. The parties hereto desire to enter into this Agreement regarding the transfer of Water Permit Nos. 43A-1 and 43B-1, the limitation of the amount of water to be bypassed at the Little Spearfish Creek intake until a larger culvert structure is installed in Highway 14A, and the diversion of water at the Little Spearfish Creek intake during construction/installation of the larger culvert structure.

8. When Homestake bypasses up to 11 cfs at the Little Spearfish Creek intake, it must then raise the water level in the standpipe at Hydropower Plant No. 2 in order to increase water pressure at the turbine to make up for the decreased flow. This causes a corresponding pressure increase in the

aqueduct. The increased pressure in the aqueduct can cause blowouts. If there is a blowout in the aqueduct, then Homestake cannot divert any water at the Little Spearfish Creek intake while repairs are being made. If there were more than 11 cfs flowing in Little Spearfish Creek at a time when repairs have to be made to the aqueduct, Highway 14A could be seriously damaged. In the past, Homestake has been able to schedule repairs to the aqueduct during times of low creek flows in order to avoid damage to the highway. However, such scheduling may not be possible if Homestake is obligated to bypass up to 11 cfs at all times.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

I.

TRANSFER AND ASSIGNMENT

Subject to the terms, requirements and conditions of this Agreement, Homestake conveys, transfers and assigns to the DGFP all of its right, title and interest in and to Water Permit Nos. 43A-1 and 43B-1.

II.

DGFP RESPONSIBILITIES

The DGFP:

1. Accepts the transfer of Water Permit Nos. 43A-1 and 43B-1 from Homestake, subject to the terms, requirements and conditions of this Agreement.
2. Shall promptly file a Notice of Transfer of Ownership with the Chief Engineer, Water Rights Program.
3. Shall promptly file an application to amend Water Permit Nos. 43A-1 and 43B-1 to delete the three-month limitation for when flows are bypassed at Little Spearfish Creek intake, and to eliminate the 20 cfs limitation on the amount of water to be bypassed.

4. Accepts the transfer of the diversion structure and any appurtenant facilities at the Little Spearfish Creek intake in their "as is" condition. DGFP shall be responsible for and shall pay all costs of altering, maintaining, repairing, replacing and/or removing the diversion structure and any appurtenant facilities at the Little Spearfish Creek intake. The DGFP shall also reclaim any disturbances at the diversion structure and any appurtenant facilities and pay the costs of such reclamation.

5. Will notify Homestake in advance when it enters Homestake's property to fulfill the purposes of this Agreement.

III.

HOMESTAKE'S RESPONSIBILITIES

Homestake:

1. Will support and assist the DGFP in the transfer of Water Permit Nos. 43A-1 and 43B-1 from Homestake to DGFP.

2. Will not object to the deletion of the three-month limitation for the bypass of flows at Little Spearfish Creek intake. Further, Homestake will not object to the elimination of the 20 cfs limitation on the amount of water to be bypassed at the Little Spearfish Creek intake.

3. Shall permanently abandon the Little Spearfish Creek intake authorized by its Water License No. 137-1 in accordance with Paragraph IV hereof after DOT completes its construction activity on the culvert installed in Highway 14A.

4. Shall grant the DGFP the easement set forth in Paragraph VII hereof.

IV.

**DEFERRAL OF REMOVAL OF LITTLE SPEARFISH CREEK
INTAKE, AND CONTINUATION OF BYPASS LIMITATION**

The parties hereto agree that until a larger culvert structure is installed in Highway 14A where it crosses over Little Spearfish Creek, Homestake will continue to limit the amount of water bypassed at the Little Spearfish Creek intake to 11 cfs. Likewise, the Little Spearfish Creek intake shall not be removed until the larger culvert structure is installed in Highway 14A. Homestake may continue to use any water diverted at the Little Spearfish Creek intake for the generation of electrical power at its Hydropower Plant No. 2, as authorized by Water License No. 137-1. Homestake shall continue to limit the bypass amount at the Little Spearfish Creek intake to 11 cfs until notified in writing by the DGFP to discontinue such bypass limitation.

V.

DIVERSION DURING CULVERT CONSTRUCTION

Upon receiving written notice from DOT to divert all the water at the Little Spearfish Creek intake because construction/installation of the larger culvert structure in Highway 14A will be commencing, Homestake shall notify DOT of the quantity of water to be diverted, and shall make a good faith effort to divert all the water at the Little Spearfish Creek intake. Homestake will continue to make a good faith effort to divert all the water at the Little Spearfish Creek intake until notified in writing by DOT to discontinue such diversion.

VI.

INSURANCE

DOT shall require the general contractor performing the construction/installation of the larger culvert structure in Highway 14A to list

Homestake as an additional named insured under said contracts' Comprehensive Commercial General Liability Policy (the "Policy"). The Policy shall provide coverage for bodily injury and property/environmental damage caused by Homestake's diversion of all the water at the Little Spearfish Creek intake and/or, Homestake's inability to divert all the water at the Little Spearfish Creek intake, during the time period of the construction/installation of the larger culvert structure in Highway 14A. The Policy shall be in an amount of not less than Five Million Dollars (\$5,000,000). Homestake shall not be responsible for any premium or additional premium caused by listing it as an additional named insured under the Policy.

VII.

EASEMENT

1. Homestake hereby conveys to the DGFP a non-exclusive, irrevocable easement to enter upon and use portions of the properties described on Exhibit A attached hereto (the "Easement Properties"), which portions are described in Subparagraph VII.2. below, for the purposes of altering, maintaining, repairing, replacing and/or removing the diversion structure for the Little Spearfish Creek intake and any appurtenant facilities (the "Easement").

2. The Easement shall extend to those portions of the Easement Properties upon, under, in or through which all or any part of the diversion structure for the Little Spearfish Creek and any appurtenant facilities are located on the date hereof, together with so much of the immediately adjacent land as is described in this Subparagraph ("the Easement Areas"). With respect to any pipelines, conduits, trestles, valves, or other buried facilities that are included in the diversion structure and appurtenant facilities, the Easement Areas shall include a strip of land extending 12.5 feet on either side of the center line of such pipeline, conduit, trestle, valve or other buried

facility. With respect to reservoirs or tanks partially or completely on or above the surface that are included within the diversion structure and appurtenant facilities, the Easement Areas shall be the land upon, under or in which such diversion structure and appurtenant facilities are located and all land within 12.5 feet of any wall, edge, perimeter, circumference or other outermost portion of such diversion structure or appurtenant facility.

3. The use of the Easement Areas by the DGFP shall be in a manner calculated to cause the least inconvenience to the ownership, use and enjoyment by Homestake of the Easement Areas and the Easement Properties, consistent with the practical use and occupancy thereof by the DGFP for the purposes above stated. Homestake retains all rights and incidents of ownership of the Easement Properties not expressly granted to the DGFP herein, including but not limited to, the right to enter and use the Easement Properties for any purpose provided that such use does not unreasonably interfere with the DGFP's permitted activities pursuant to the Easement.

4. Homestake shall not, nor allow others to, construct any structure within the Easement Areas.

5. Promptly upon completion of any surface disturbing activity undertaken pursuant to the Easement, the DGFP shall remediate, reclaim, repair and restore any land affected by such activity, together with any improvements and personal property located thereon, to as good or better condition than existed immediately prior to such activity. This remediation, reclamation, repair and restoration shall include backfilling, grading the area to blend in with the adjacent topography, and re-vegetating the disturbed areas to resemble the native vegetation in the area.

VIII.

MUTUAL RELEASE

1. DGFP assumes, and releases and discharges Homestake, its officers, agents, and employees from, any liability of any kind or character

arising out of operating, altering, maintaining, repairing, replacing and/or removing the diversion structure and appurtenant facilities for the Little Spearfish Creek intake and any increased flows resulting therefrom, including, but not limited to, flooding and erosion, from and after the effective date of this Agreement. Further, Homestake, its officers, agents, and employees, are hereby released from any and all liability of any kind or character, should it become necessary for Homestake to bypass more than 11 cfs due to aqueduct leakage and/or repairs, or should Homestake be unable to divert all of the water at the Little Spearfish Creek intake during the construction/installation of the larger culvert structure.

2. Homestake releases and discharges DGFP, its officers, agents and employees, from any liability of any kind or character arising out of the use and maintenance of the diversion structure and appurtenant facilities for the Little Spearfish Creek intake up to the effective date of this Agreement.

IX.

OTHER REAL ESTATE

This Agreement does not, in any manner, convey any real property, buildings, improvements, fixtures, or goods (other than the diversion structure and appurtenant facilities at the Little Spearfish Creek intake). This Agreement pertains only to the transfer of appropriative water rights and a diversion structure and appurtenant facilities, and the conveyance of a related easement.

The parties expressly agree that the DGFP will not be responsible or liable for, in any manner, any taxes or assessments which may be levied against any real property, buildings, improvements, fixtures, or goods owned by Homestake.

X.

NEUTRAL CONSTRUCTION:

This Agreement and the wording contained herein accords with the negotiations of the parties. Accordingly, no provision hereof shall be construed against one party or in favor of another party merely by reason of draftsmanship.

XI.

BINDING EFFECT

This Agreement is effective as of the day and year first set forth above, and shall be binding upon the parties hereto, and their successors and assigns.

XII.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one document.

XIII.

CONTROLLING LAW.

This Agreement shall be construed under the laws of the State of South Dakota.

XIV.

AMENDMENT.

This Agreement may be amended only upon the written agreement of the Parties.

XV.

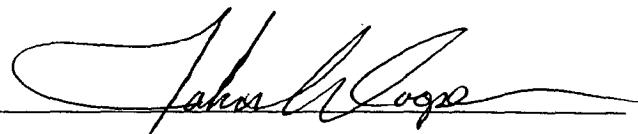
ENTIRE AGREEMENT.

This Agreement constitutes the entirety of the agreement between the Parties.

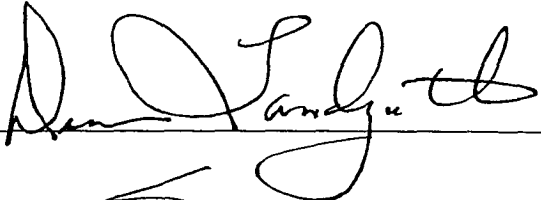
**HOMESTAKE MINING COMPANY OF
CALIFORNIA**

By 
Karl Burke
Its: General Manager

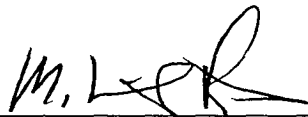
**SOUTH DAKOTA DEPARTMENT OF
GAME, FISH & PARKS**

By 
Its: Secretary / SD DGFP

**SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

By 
Its: Sec.

APPROVED BY:


M. Michael Rounds
Governor
State of South Dakota

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF Lawrence)

On July 15, 2003, before me, the undersigned officer, personally appeared Karl Burke, personally known to me to be the General Manager of Homestake Mining Company of California, a California corporation, and personally known to me to be the person who executed the within instrument and on said oath stated that he was authorized to do so on behalf of said corporation.

IN WITNESS WHEREOF, I have signed my name and affixed my official seal.

Notary Public
My Comm. Exps.: 6/25/04

(Notarial Seal)

STATE OF South Dakota)
) ss.
COUNTY OF Hughes)

On July 30, 2003, before me, the undersigned officer, personally appeared John L. Cooper, personally known to me to be the Department Secretary of Department of Game, Fish & Parks for the State of South Dakota, and personally known to me to be the person who executed the within instrument and on said oath stated that ___he was authorized to do so on behalf of said Department.

IN WITNESS WHEREOF, I have signed my name and affixed my official seal.

Jeanette L. Gournear
Notary Public
My Comm. Exps.: 6/12/07

(Notarial Seal)

STATE OF South Dakota)
) ss.
COUNTY OF Hughes)

On July 30, 2003, before me, the undersigned officer, personally appeared Dennis Landguth, personally known to me to be the Secretary of Department of Transportation for the State of South Dakota, and personally known to me to be the person who executed the within instrument and on said oath stated that he was authorized to do so on behalf of said Department.

IN WITNESS WHEREOF, I have signed my name and affixed my official seal.

(Notarial Seal)

Janis R. Freeman
Notary Public
My Comm. Exps.: July 1, 2007

STATE OF South Dakota)
) ss.
COUNTY OF Hughes)

On July 30, 2003, before me, the undersigned officer, personally appeared M. MIKE ROUNDS, personally known to me to be the Governor of the State of South Dakota, and that he executed the within instrument for the purposes therein contained.

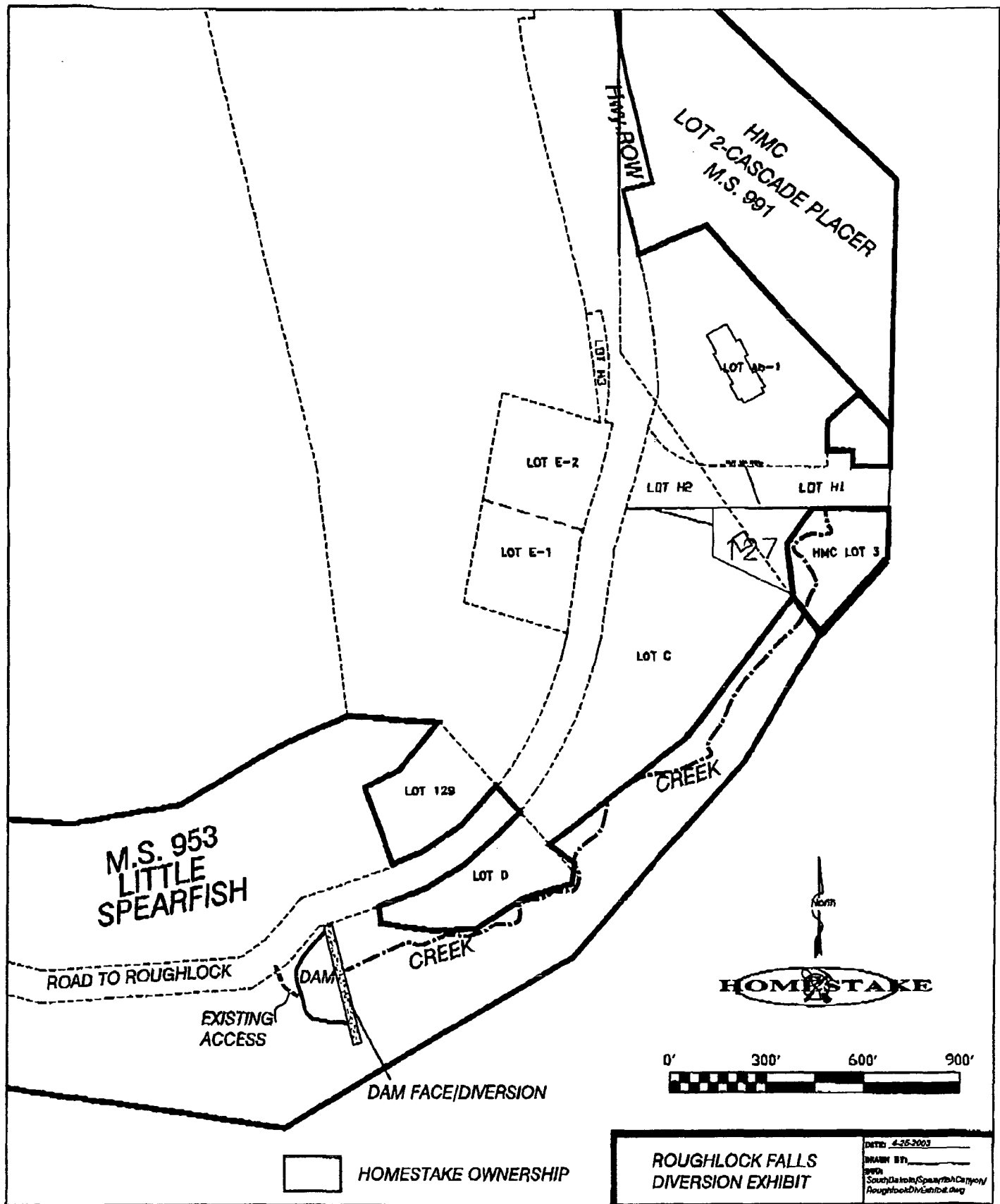
IN WITNESS WHEREOF, I have signed my name and affixed my official seal.

(Notarial Seal)

Shirley A. Jensen
Notary Public
My Comm. Exps.: May 1, 2004

EXHIBIT A

HMC Lot 3 of the Cascade Placer patented lode mining claim, M.S. 991, and as shown on Plat Document No. 91-1769, and the unplatted portion of the Little Spearfish Placer patented lode mining claim, M.S. 953, all located in portions of Section 31, T5N, R2E, and Section 36, T5N, R1E, B.H.M., Lawrence County, South Dakota, and as generally shown on the drawing attached as Exhibit A-1.



Blumberg No. 8119

EXHIBIT

A-1

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 43A-1
Date: October 3, 2003

I/We request that Water Permit No. 43A-1

formerly owned by: Homestake Mining Company

be transferred to: (name & address) South Dakota Game, Fish and Parks

523 East Capitol Avenue

Pierre, SD 57501

Telephone No. (605) 773-6208

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

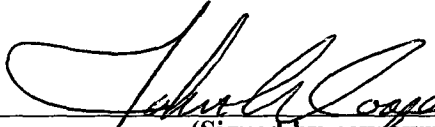
Permit No. 43A-1 adds an additional use for instream flow on a portion of Little Spearfish Creek from a point located in the NE ¼ SE ¼ Section 36, T5N, RE on Little Spearfish Creek to the confluence of Little Spearfish Creek with Spearfish Creek located in the SW ¼ NW ¼ Section 31, T5N, R2E

I/We understand that the validity of Water Permit No. 43A-1 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

We **South Dakota Game, Fish and Parks**, the new owner, certify that the above information is true and correct.


(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 16, 2003

43A-1
43B-1

John Cooper, Secretary
SD Dept of Game, Fish & Parks
523 E Capitol
Pierre SD 57501

Dear Secretary Cooper:

I am writing to acknowledge receipt of the ownership changes you filed for Water Permit Nos. 43A-1 and 43B-1. The transfers have been completed. The water permits formerly listed in the name of Homestake Mining Company are now held by the South Dakota Department of Game, Fish and Parks.

If I can answer any questions for you, please contact me.

Sincerely,

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



Div pt. for 43-1 (hydro 1)
located in Spearfish

prop. duct

Hydro 2 power
plant at Maurice

Div pt. for 137-1 (hydro 2)
on Little Spearfish Cr.
May be abandoned to establish
an instream flow to
confluence w/ Spearfish Cr.

Div pt. for 137-1
(hydro 2) on Spearfish
Creek

prop. duct

5/29/54

142°22'00"

220 000
FEET

T. 5 N.
T. 4 N.

0.9 MI.



43A-1
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

JUN 15 2016

43A-1
43B-1
43C-1

Leslie Murphy
SD Department of Game Fish & Parks
523 E Capitol
Pierre SD 57501

Dear Ms. Murphy:

Enclosed is Water License No. 43C-1. This is the final water right document completing the process of obtaining a Water Right. Included with the license is a map prepared by the staff engineer who conducted the field investigation.

Upon licensing, the applicable portions of Water Permit Nos. 43A-1 and 43B-1 were incorporated into Water License No. 43C-1. As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

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

enclosures