

Considered: \_\_\_\_\_

WATER PERMIT NO. 2132-2

Phone: 685-6649

Name of Applicant: Brett Heath, Joy Heath

Post Office Address: HWC 3 Box 20 Martin, SD 57551

Amount of Water Claimed: 0.4

Total Acres: 28.5

Source of Water Supply: 2 spring fed dams

Water to be used for: irrigation

County: Bennett

About 6 miles South

of Tuthill

PROOF OF PUBLICATION: Received \_\_\_\_\_

Not Received \_\_\_\_\_

APPLICATION: Approved \_\_\_\_\_

Subject to \_\_\_\_\_

F.F. & C/.L. Adopted \_\_\_\_\_

Not Approved \_\_\_\_\_

Deferred \_\_\_\_\_

PRIORITY

Date Received: 4/30/90

Fee: \$150

Remarks \_\_\_\_\_

Corrected Application Received 5/7/90

Period of Annual Use April 1 - Nov. 30

WATER QUALITY APPROVAL RECEIVED \_\_\_\_\_

APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES \_\_\_\_\_

NO \_\_\_\_\_

REMARKS \_\_\_\_\_

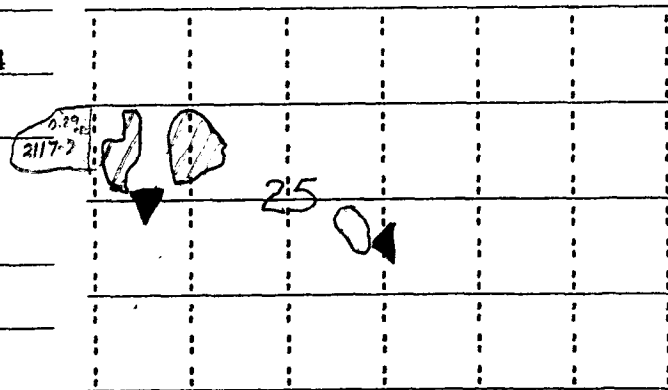
Diversion Point: #1 - S1/2 SW1/4 NW1/4, N1/2

NW1/4 SW1/4; #2 - NW1/4<sup>W1/2</sup> NE1/4 SE1/4, E1/2 NW1/4

SE1/4; all in Section 25 - T36N-R36W

Land to be Irrigated: SW1/4 NW1/4, W1/2 SE1/4

NW1/4, NW1/4 SE1/4 Section 25 - T36N-R36W



Well Log: Driller: N/A

Licensed YES \_\_\_\_\_

NO \_\_\_\_\_

Depth of Well: \_\_\_\_\_

REMARKS \_\_\_\_\_

Type of Map: ASCS Aerial

PREPARED BY: Roger Mueller

Reviewed and the Number

Assigned on 5/29/90

By Eric Gronlund

Pub Day - Wed

Mail to: Water Rights Div.  
523 E. Capitol  
Pierre, SD 57501  
(605) 773-3352

63

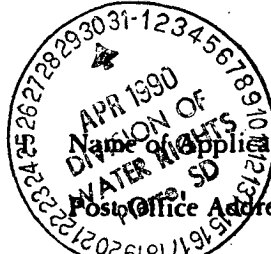
(See instructions)

No. 2132-2 Hydrologic Unit 10140203  
Basin White River  
Newspaper Bennett Co. Booster II, Box 610, Martin, SD  
57551

# Application For Soil/Water Compatibility Permit and Permit To Appropriate Water

Type of Application:

- ☒ New ☐ Vested Right ☐ Amend Permit No. \_\_\_\_\_  
☐ Change Acreage ☐ Change diversion point(s) ☐ Add diversion point(s)  
☐ Add Acreage ☐ Increase diversion rate ☐ Other \_\_\_\_\_



Name of Applicant BRETT A. HEATH & JOY HEATH Phone No. 605-685-6649  
Post Office Address HWC 3 Box 20 (Street, RR or Box) (City) State S.D. Zip Code 57551

2. Amount of water claimed (c.f.s) 145 cfs - 0.40 cfs Total acres irrigated 28.5 Ac  
3. Source of Water supply Spring Fed DAM N<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>  
4. Location of point of diversion DAM #1 S<sup>2</sup> SW<sup>4</sup> NW<sup>4</sup> Sec 25-36-36  
DAM #2 NW<sup>4</sup> NE<sup>4</sup> SE<sup>4</sup> Sec 25-36-36  
W<sup>1</sup>/<sub>2</sub> E<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> County Bennett  
5. Counties where water will be used Bennett  
6. Annual period during which water is to be used April - Nov. 30  
7. List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

| Land Description                                                                   | No. Acres Irr. |
|------------------------------------------------------------------------------------|----------------|
| Field 1 W <sup>1</sup> / <sub>2</sub> SW <sup>4</sup> NW <sup>4</sup> Sec 25-36-36 | 9.4            |
| Field 2 E <sup>1</sup> / <sub>2</sub> SW <sup>4</sup> NW <sup>4</sup> Sec 25-36-36 | 10.2           |
| Field 3 E <sup>1</sup> / <sub>2</sub> NW <sup>4</sup> SE <sup>4</sup> Sec 25-36-36 | 8.9            |

| Land Description                                                                                              | No. Acres Irr. |
|---------------------------------------------------------------------------------------------------------------|----------------|
| SW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> Sect 25-T36N-R36W                               | 14.5           |
| W <sup>1</sup> / <sub>2</sub> SE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> Sect 25-T36N-R36W | 5.1            |
| NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub> Sect 25-T36N-R36W                               | 8.9            |

Attach sheet if more space is needed

8. Type of Irrigation: Gravity: X Towline: \_\_\_\_\_ Center Pivot: \_\_\_\_\_ Gun: \_\_\_\_\_ Other: \_\_\_\_\_ (Specify) \_\_\_\_\_  
9. Crops to be Irrigated: NATIVE GRASS  
10. Give a description of proposed project. (Attach sheet if more space is needed)

*The project consists of using a pump to pull water out of a dam up and onto high ground and have gravity take the water at free will down the sloping terrain.*

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach maps, soils information and any other technical information.

STATE OF SOUTH DAKOTA)  
County of Bennett)<sup>ss</sup>

I, Joy J. Heath, the applicant, certify that I have read this application and examined the attached maps, that the water sample, if needed, has been taken by the required procedures and has not been adulterated or tampered with and is truly representative of the water to be used, and that the matters stated in this application are true and correct.

Signed Joy J. Heath

Subscribed and sworn to before me this 27th day of April 1990

My commission expires: 3/11/93

Luella Cozad  
Notary Public

**SOUTH DAKOTA  
WATER PERMIT No. 2132-2 FOR IRRIGATION**

Date of first receipt of application April 30, 1990.  
Date Soil/Water Compatibility Permit received August 24, 1990.  
Date of return to applicant for corrections, amendments or changes  
May 1, 1990.  
Date of receipt of corrected application May 7, 1990.

The Water Management Board approved Water Permit Application No. 2132-2 on December 5, 1990 for Brett Heath & Joy Heath, HWC 3, Box 20, Martin, SD 57551 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. appropriates 0.40 cubic feet of water per second from 2 existing dams (3.1 acre feet combined storage capacity) to irrigate 28.5 acres. The dams are located in portions of the SW1/4 NW1/4, NW1/4 SW1/4, and N1/2 SE1/4; all in Section 25-T36N-R36W. The irrigated acreage is located in the SW1/4 NW1/4, W1/2 SE1/4 NW1/4, NW1/4 SE1/4 Section 25-T36N-R36W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 - November 30.
3. The date from which applicant may claim right is August 24, 1990.
4. One-fifth of the construction is to be completed on or before June 5, 1993.
5. All construction is to be completed on or before December 5, 1995.
6. Water is to be put to beneficial use on or before December 5, 1999.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

**QUALIFICATIONS**

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. Water may not be pumped from the dams for irrigation until water authorized by U.S. Withdrawal No. 2-2 has been received by the LaCreek National Wildlife Refuge.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

**WATER MANAGEMENT BOARD**

By: \_\_\_\_\_

*John H. Bates*  
Chief Engineer, Water Rights Division  
Department of Water and Natural Resources

MAR 6 1991

\_\_\_\_\_  
(date)

# Supplemental Information

(type or print in ink)



## 1. Well Information - Proposed construction

- Drill Hole Diameter \_\_\_\_\_ Depth \_\_\_\_\_
- Casing Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_
- Screen Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_
- Gravel Pack Thickness \_\_\_\_\_ Length of Gravel Pack \_\_\_\_\_
- Depth to Top of Water Bearing Material \_\_\_\_\_
- Depth to Water (ground surface to water level) \_\_\_\_\_
- Distance to nearest existing domestic well:  
On applicants property \_\_\_\_\_ On property owned by others \_\_\_\_\_

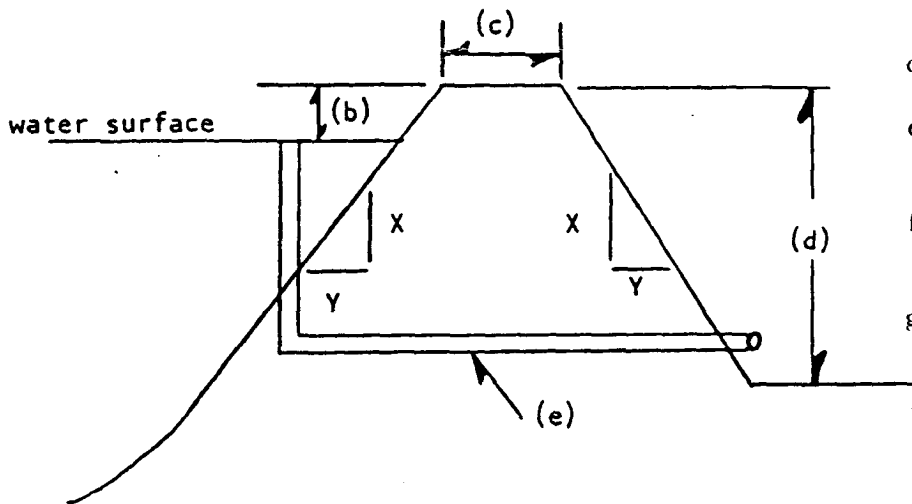
## 2. Dugout Information Estimates

- Surface Dimensions \_\_\_\_\_ Depth \_\_\_\_\_
- Depth to water (ground surface to water level) \_\_\_\_\_

## 3. Water Storage Dams

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

- If a private engineering firm or government agency was involved in the design of this dam please give their name and address  
\_\_\_\_\_  
\_\_\_\_\_

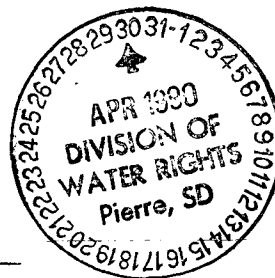


- Freeboard 2'
- Crest Width 20'  
Crest Length 200'
- Height 4'
- Primary Outlet Capacity 55 cfs  
If Pipe, diameter \_\_\_\_\_
- Secondary Spillway Capacity \_\_\_\_\_  
Spillway width \_\_\_\_\_
- X & Y Slope  
Upstream 4:1  
Downstream 2:1
- Surface Area of Impoundment 1.1
- Storage 1.3 acre feet
- Drainage area above dam 50 ac

Brett Heath  
Signature of Applicant

## Supplemental Information

(type or print in ink)



## 1. Well Information - Proposed construction

- a) Drill Hole Diameter \_\_\_\_\_ Depth \_\_\_\_\_
- b) Casing Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_
- c) Screen Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_
- d) Gravel Pack Thickness \_\_\_\_\_ Length of Gravel Pack \_\_\_\_\_
- e) Depth to Top of Water Bearing Material \_\_\_\_\_
- f) Depth to Water (ground surface to water level) \_\_\_\_\_
- g) Distance to nearest existing domestic well:
- On applicants property \_\_\_\_\_ On property owned by others \_\_\_\_\_

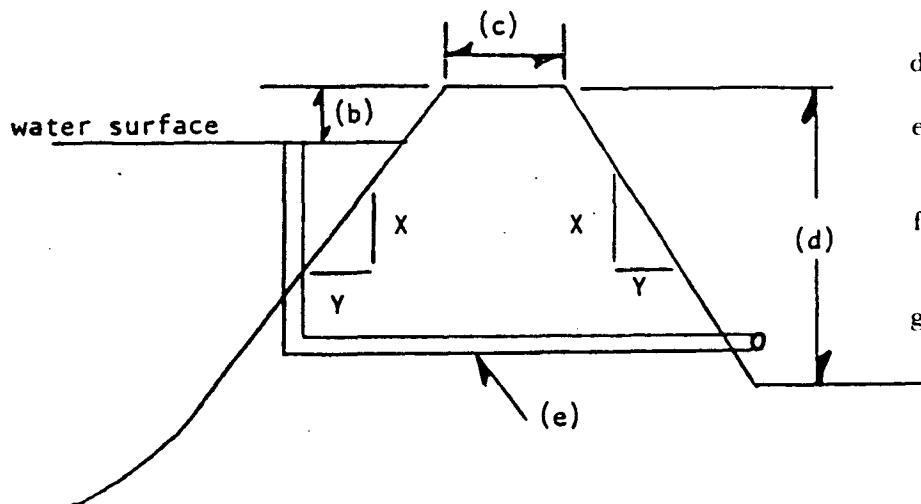
## 2. Dugout Information Estimates

- a) Surface Dimensions \_\_\_\_\_ Depth \_\_\_\_\_
- b) Depth to water (ground surface to water level) \_\_\_\_\_

## 3. Water Storage Dams

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

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



- Dam #2
- b) Freeboard 3'
- c) Crest Width 20'
- Crest Length 200'
- d) Height 6'
- e) Primary Outlet Capacity 90 cfs
- If Pipe, diameter \_\_\_\_\_
- f) Secondary Spillway Capacity -
- Spillway width \_\_\_\_\_
- g) X & Y Slope
- Upstream 4:1
- Downstream 2:1
- Surface Area of Impoundment 1.0 Ac
- Storage 1.8 acre feet
- Drainage area above dam 80 Ac

Brett Heath

Signature of Applicant

Martin, SD

A circular stamp with a black border. Inside the border, the numbers 456789101112131415161718192021222324 are arranged in a circle. In the center of the stamp, the words "WATER RIGHTS" are written in a bold, sans-serif font. Below "WATER RIGHTS", the word "Pierre," is written, followed by "SD" on the next line.

55-12

786

9571

12-445 R. J. J.



0-445-2 Rev.

55-12

1125

U.S. on the way  
to the top

16

QAM

7. 11. 2

120

App/ No. 2132-2

*Rogn Mueller*  
(Joins sheet 67)

Soil Conservation Service  
Martin, SD  
R. 36 W. R. 35 W.  
1:690,000 FEET

77



APR 1990  
DIVISION OF  
WATER RIGHTS  
Pierre, SD

2132-2

May 1, 1990

Brett & Joy Heath  
HWC 3 Box 20  
Martin, SD 57551

Dear Mr. & Mrs. Heath:

This letter is in response to your water permit application received on April 30, 1990. The following information needs to be submitted and/or clarified in order to process your application.

- 1) The correct application fee for irrigating 28.5 acres is \$150.00. I am returning your check for \$200.00, please remit the correct amount.
- 2) The amount of water claimed is normally 1.0 cfs per 70 acres irrigated. This would calculate to 0.40 cfs for your 28.5 acre parcel of land.
- 3) From examining the map you submitted, the points of diversion appears to be as follows.

Dam #1 - S1/2 SW1/4 NW1/4, N1/2 NW1/4 SW1/4 of Section  
25-T36N-R36W

Dam #2 - W1/2 NE1/4 SE1/4, E1/2 NW1/4 SE1/4 of Section  
25-T36N-R36W

- 4) The legal descriptions of the land to be irrigated as shown on the map appears to be as follows:

| Land Description                      | Acres Irrigated |
|---------------------------------------|-----------------|
| SW1/4 NW1/4 Section 25-T36N-R36W      | 14.5            |
| W1/2 SE1/4 NW1/4 Section 25-T36N-R36W | 5.1             |
| NW1/4 SE1/4 Section 25-T36N-R36W      | 8.9             |

Please check these legal descriptions of the lands and let me know if they are accurate. The water permit application can not be considered by the Water Management Board until the application is complete and a Soil/Water Compatibility Permit is issued by the Department of Agriculture. Upon receiving the proper fee and confirmation of the legal descriptions, I will continue processing your permit.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund  
Natural Resources Engineer  
(605) 773-3352

enc.



May 2, 1990

Dear Eric Gronlund

I recieved your letter concerning the legal descriptions of the land & Dams I reviewed these & found them to be correct. I should have gone over them after getting it back from the S.C.S.. In the application it states Brett & Joy Heath, & Joy Heath is my Mother. I am sorry for all the inconvenience.

Sincerely,  
Brett Heath

## Conversation or File Documentation

NAME OF PERSON OR FILE: Brett HeathADDRESS: Martin COUNTY \_\_\_\_\_DATE: 6/19/90 TELEPHONE \_\_\_\_\_

RE: \_\_\_\_\_

## COMMENTS:

I called Mr. Heath to let him know we hadn't received a SW Permit. He said ~~he~~ he hadn't sent in a water sample but that he would get one for each dam sent off immediately. I explained that the WMB could not act on the water permit until a SW permit is obtained. Mr. Heath understood and wanted to go forth with publication of notice.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: \_\_\_\_\_

# RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

445227

Pierre, May 7, 1990

RECEIVED OF Joy J Heath, HWC 3, Box 24B, Martin SD 57551

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

|                                                                                                                                                |       |       |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|
| Fee for Application for Permit No. <u>2132-2</u> to Appropriate Water <sup>x</sup> to construct works and to put water to beneficial use _____ | 150   | 00    |
| Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____                                                             |       |       |
| Fee to retain Future Use Permit No. _____ after period of seven years.                                                                         |       |       |
| Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____                                            |       |       |
| Fee for Filing Transfer Form _____                                                                                                             |       |       |
| Fee for Filing Extension Request _____                                                                                                         |       |       |
| Fee for Certified Copy of _____                                                                                                                |       |       |
| Fee for Print Copy of Map _____                                                                                                                |       |       |
| Fee for Certifying _____                                                                                                                       |       |       |
| Fee for _____                                                                                                                                  |       |       |
| (Any Other Work Provided by Law)                                                                                                               | Total | 15000 |

By Joy J Heath  
Chief Engineer

Department of Agriculture  
WI#1  
5/87

SOIL/WATER COMPATIBILITY PERMIT  
Division of Conservation

Office Use Only

4526

WR#

OWNERS NAME: HEATH, BRETT A. & JOY J.

OWNERS ADDRESS: HWC 3, BOX 20

MARTIN, SD 57551

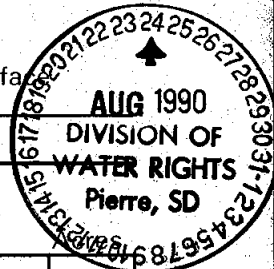
COUNTY LAND LOCATED IN: BENNETT PHONE: 685-6649

LEGAL DESCRIPTION:

1. LOCATION DAM #1: S $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$  25-T36N-R36W & N $\frac{1}{2}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  25-T36N-R36W  
Depth DAM #2: W $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  and E $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$  25-T36N-R36W

☐ Well

☒ Surface



| Legal Description                                              | Acres | Legal Description |
|----------------------------------------------------------------|-------|-------------------|
| SW $\frac{1}{4}$ NW $\frac{1}{4}$ 25-T36N-R36W                 | 14.5  |                   |
| W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ 25-T36N-R36W | 5.1   |                   |
| NW $\frac{1}{4}$ SE $\frac{1}{4}$ 25-T36N-R36W                 | 8.9   |                   |
|                                                                |       |                   |

2. TYPE OF IRRIGATION: GRAVITY: XXX TOWLINE: \_\_\_\_\_ CENTER PIVOT: \_\_\_\_\_ GUN: \_\_\_\_\_ OTHER: (Specify) \_\_\_\_\_

3. CROPS TO BE IRRIGATED: NATIVE GRASS

|                                      |                              |                    |                          |
|--------------------------------------|------------------------------|--------------------|--------------------------|
| WATER QUALITY:                       |                              | DAM #1 & DAM #2    | DAM #1 & DAM #2          |
| 4. WATER SAMPLE NUMBER:              | <u>90-0976 &amp; 90-0975</u> | 7. ADJUSTED (SAR): | <u>0.17 &amp; 0.17</u>   |
| 5. SALINITY (EC X 10 <sup>6</sup> ): | <u>83 &amp; 79</u>           | 8. PERCENT SODIUM: | <u>13.54 &amp; 14.55</u> |
| 6. SODIUM (SAR):                     | <u>0.22 &amp; 0.23</u>       |                    |                          |

Requirements:

The area mapped as Gannett fine sandy loam (GA) is subject to a high water table within 20 inches of the surface throughout the year. The application of water to this area would likely bring the water to the surface and reduce the yield. This area shall not be irrigated.

The areas mapped as Loma silt loam (La) and Loup fine sandy loam (Lo) also have water tables, which may perch if the water is over-applied. Finally, water application and water management shall be required.

[Signature]  
Director, Division of Conservation

August 9, 1990

Date

XXX APPROVED

DISAPPROVED

WAIVER

XXX REQUIREMENTS

Soil/water permits will be recorded by the Department of Agriculture, with the County Register of Deeds.

The method used to calculate the flow on dam # 2

A wood trough 12'' wide , 48'' long and 11'' high was placed in the stream. All the water in the stream was channeled through the trough. The water level in the trough was 2½'' inches high.

The height 2½'' , X width 12'' , X length 48'' = volume in cubic inches = 1440 cubic inches 1440 cubic inches = .83 cubic ft.  
(volume of water in trough.)

A bobber, a twig, and a leaf were floated through the trough. The time for the objects to travel the length of trough was timed with a stop watch. The elapsed time was <sup>approximately</sup> 4 seconds.

$$\frac{(\text{volume}) \text{ cubic ft.}}{\text{seconds}} = \text{cubic ft. / sec.}$$

$$\frac{.8332 \text{ cubic ft.}}{4 \text{ seconds}} = .2083 \text{ cubic ft. / sec.} = 1.558 \text{ gal/sec} = 93.486 \text{ gal/min}$$

$$7.48 \text{ gal/sec.} = 1 \text{ cubic ft. / sec.}$$

$$.8332 \text{ cubic ft.} \times$$

*Jack Brown*  
Civil Engineer

WIDTH X LENGTH X HEIGHT = VOLUME

12'' X 48'' X 2.5'' = 1440 cubic inches

1728 cubic inches = 1 cubic ft.

1440 cubic inches = 8333 cubic ft.

1728 cubic inches

1' X 4' X .2083' = .8333 cubic ft.

velocity = length in ft. = ft / sec.

time sec.

cubic ft. / sec. = volume cubic ft.

time seconds

.8333 =

seconds =

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT  
APPLICATION NO. 2132-2, Brett A Heath and Joy J Heath

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 2132-2, Brett A Heath and Joy J Heath, HWC 3, Box 20, Martin SD.

The Chief Engineer is recommending APPROVAL of Application No. 2132-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. Water may not be pumped from the dams for irrigation until water authorized by U.S. Withdrawal No. 2-2 has been received by the LaCreek National Wildlife Refuge.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

See the attached report for additional information.



JOHN HATCH, Chief Engineer  
June 15, 1990

**NOTE:** This recommendation was prepared prior to receiving an approved Soil/Water Compatibility Application (SWCA) from the Department of Agriculture in order to avoid delaying Application No. 2132-2 until the October, 1990 Water Management Board meeting. Pursuant to General Rule 74:02:01:09, an approved SWCA must be received prior to a hearing being held on a water permit application. If your approved SWCA is not received prior to the July 25 & 26, 1990 hearing, then Application No. 2132-2 will need to be rescheduled for a later hearing date. Approval of the SWCA by the Department of Agriculture is also subject to review by the Conservation Commission. This note is to advise you that authorizing publication of the enclosed notice of hearing may **NOT** result in a hearing at the July, 1990 Water Management Board meeting due to the above described circumstances. In addition, once the application is advertised for hearing, the cost of publication will be an expense incurred if the SWCA is denied by the Department of Agriculture.

Report on Application No. 2132-2  
Brett Heath and Joy Heath  
May 30, 1990

Application No. 2132-2, Brett Heath and Joy Heath, proposes to appropriate 0.40 cubic feet of water per second (cfs) from two existing spring fed dams to irrigate 28.5 acres. Dam #1 has a storage capacity of 1.3 acre-feet (ac-ft) of water and is located in the S1/2 SW1/4 NW1/4 and in the N1/2 NW1/4 SW1/4 of Section 25-T36N-R36W. Dam #2 has a storage capacity of 1.8 ac-ft of water and is located in W1/2 NE1/4 SE1/4 and in the E1/2 NW1/4 SE1/4 in Section 25-T36N-R36W. The acreage to be irrigated is in the SW1/4 NW1/4, the W1/2 SE1/4 NW1/4, and the NW1/4 SE1/4 of Section 25-T36N-R36W. The dams and the proposed irrigated acreage are located approximately 6 miles south of Tuthill, SD.

Water Source

The water source is from surface runoff and springs which flow into the dams. The dams are located on unnamed streams which are tributaries to the LaCreek National Wildlife Refuge which is located approximately 3 miles north of the proposed diversion points.

Review of Existing Water Rights

The United States Department of the Interior, Fish and Wildlife Service holds U.S. Withdrawal Permit No. 2-2 which claims all unappropriated waters of LaCreek and tributaries above Dam No. 10 located in the SE1/4 of Section 25-T37N-R36W. The unnamed streams on which the dams are located, are tributaries to the LaCreek National Wildlife Refuge above Dam No. 10.

Excess water flows out of the refuge and continues on downstream in Lake Creek and on to the Little White River. The U.S. Geological Survey maintains a gaging station on Lake Creek below Dam No. 10. The median of mean yearly discharges past the gaging station is 17 cfs.

There is one existing water right for irrigation from surface water located approximately 1/4 mile west of the proposed project. Interference from this proposed diversion would not be expected.

Conclusion

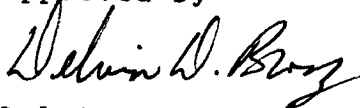
1. There is water available for this application.

2. The permit if approved should include the following qualifications:
- A. Low flow bypass for domestic use.
  - B. There should be no storage or diversion of water until water authorized by U.S. Withdrawal No. 2-2 has been received by the Refuge.
  - C. The irrigation questionnaire must be submitted each year.



Mark D. Rath  
Natural Resources Engineer II

approved by



Delvin D. Brosz  
Natural Resources Engineer IV

Reference

1. U.S. Geological Survey. 1988. Water Resources Data South Dakota Water Year 1988. U.S. Geological Survey Water-Data Report SD-88-1.



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

June 20, 1990

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

Brett A Heath  
Joy J Heath  
HWC 3, Box 20  
Martin SD 57551

Dear Mr. Heath & Mrs. Heath:

Water Permit Application No. 2132-2 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Bennett Co. Booster II printed at Martin SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before the application can be considered by the Water Management Board.

Sincerely,

A handwritten signature in cursive script that reads "Eric Gronlund".

Eric Gronlund  
Natural Resources Engineer  
605 773-3352

enclosures

Note: Please refer to Note on Chief Engineer's Recommendation prior to authorizing publication of this notice of hearing publication.



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

June 20, 1990

Bennett Co. Booster II  
Box 610  
Martin SD 57551

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. 2132-2 to be published twice. Please publish the first notice on or before June 27, 1990 with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Brett A Heath and Joy J Heath, HWC 3 Box 20, Martin SD 57551.

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

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

*Eric Gronlund*

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 Notice of Hearing to Appropriate Water by Application No. \_\_\_\_\_ which was first published in our issue of \_\_\_\_\_. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name \_\_\_\_\_

Newspaper \_\_\_\_\_

Instruction to Newspaper - Publish first Notice on or before June 27, 1990 with 2nd publication 7 days later. The applicant is responsible for payment.

---

NOTICE OF HEARING on Application No. 2132-2 to Appropriate Water

Notice is given that Brett A Heath and Joy J Heath, HWC 3, Box 20, Martin SD 57551 has filed an application for a water permit to appropriate 0.4 cubic feet of water per second from 2 existing dams (3.1 acre feet combined storage capacity) to irrigate 28.5 acres. The dams are located in the SW 1/4 NW 1/4, NW 1/4 SW 1/4 and N 1/2 SE 1/4; all in Section 25-T36N-R36W. The irrigated acreage is located in the SW 1/4 NW 1/4, W 1/2 SE 1/4 NW 1/4, NW 1/4 SE 1/4 Section 25-T36N-R36W.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Application No. 2132-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water and 4) it is in the public interest. This application will be considered by the Water Management Board in the Room 216, Joe Foss Building, 523 E Capitol, Pierre SD on July 25, 1990 at 10:00 am. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer or 4) deny this application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by July 13, 1990. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)". 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 legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. 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. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by July 13, 1990.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 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; 46-5-1 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

# **PROOF OF PUBLICATION**

STATE OF SOUTH DAKOTA )  
 ) ss.  
 County Bennett )

I, Mary E. Long  
 certify that the attached printed Notice was taken  
 from the Bennett County Booster II

A newspaper which during the whole time of publication of  
 said notice herein after stated, has been and is printed and  
 published in the \_\_\_\_\_

\_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Martin \_\_\_\_\_

County of Bennett and State of South Dakota;  
 that the said notice was published in said newspaper on the  
 following two dates:

6/27/90

7/4/90

Mary E. Long  
 (Signature)  
Owner  
 (Title)

7/5/90

(Date Signed)

Cost of Printing: 40.31



## **NOTICE OF HEARING On Application No. 2132-2 To Appropriate Water**

Notice is given that Brett A. Heath and Joy J. Heath, HWC 3, Box 20, Martin, SD 57551 has filed an application for a water permit to appropriate 0.4 cubic feet of water per second from 2 existing dams (3.1 acre feet combined storage capacity) to irrigate 28.5 acres. The dams are located in the SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> and N<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; all in Section 25-T36N-R36W. The irrigated acreage is located in the SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> Section 25-T36N-R36W.

Pursuant to SDCL 46-2A-2, the Chief Engineer of the Water Rights Division recommends APPROVAL of Application No. 2132-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water and 4) it is in the public interest. This application will be considered by the Water Management Board in Room 216, Joe Foss Bldg., 523 E Capitol, Pierre, SD on July 25, 1990 at 10:00 a.m. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer or 4) deny this application based on the facts presented at the public hearing.

Any interested person that intends to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and Chief Engineer by July 13, 1990. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre, SD 57501 (605 773-3352)." 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 legal counsel if legal counsel is obtained. The applicant need not file a petition. Contact the Water Rights Division to request information on this application or to assure access to the hearing by the handicapped.

This hearing is an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer. 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. The time of the hearing will also be automatically delayed for at least twenty days upon written request to the Chief Engineer from the applicant or a petitioner. The request for a delay must be received by July 13, 1990.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 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; 46-5-1 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

21-4

Lawrence E. Long  
ATTORNEY-AT-LAW  
Phone 685-6558 Box 628  
MARTIN, SOUTH DAKOTA 57551

July 9, 1990



Brett A. Heath & Joy J. Heath  
HWC 3 Box 20  
Martin, SD 57551

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Chief Engineer  
Water Rights Division  
Faus Building  
523 E. Capital  
Pierre, SD 57501

RE: Objection to Application No. 2132-2

The undersigned hereby petition the above applicant and Chief Engineer for the right to participate in the hearing on Application No. 2132-2 which is scheduled to be heard on July 25, 1990, at 10:00 A.M. The undersigned object to the issuance of any water permits pursuant to the above Application.

The undersigned are interested in the Application because both of the undersigned are owners and operators of real estate located downstream from the natural flow that is generated by the dams in question.

Specifically, the Gary Hines owns the Northeast Quarter of Section Twenty-five, Township Thirty-six, Range Thirty-six, Bennett County, South Dakota. The undersigned, Don Hines owns and the undersigned, Gary Hines operates the Southwest Quarter of Section Twenty-four, Township Thirty-six, Range Thirty-six, Bennett County, South Dakota.

The undersigned believe that they own existing water rights which will be unlawfully impaired and that the granting of the Application would be contrary to their interests and contrary to the public interest.

The undersigned relies upon the natural flow from the two dams in question and from the springs which feed the two dams in question to water livestock and for the natural irrigation which is provided by the natural flow of the stream. The undersigned land would be detrimentally affected by the granting of the permit. The undersigned therefore oppose the granting of the Application.

The undersigned further request that the hearing be delayed for at least twenty (20) days to allow the undersigned to prepare their presentation and confer with counsel.

Gary Hines HW 63, Box 28, Martin, SD 57551  
Gary Hines

Donald Hines Box 6, Martin, SD 57551  
Donald Hines

Lawrence E. Long  
Counsel for Gary &  
Donald Hines



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

July 11, 1990

Brett Heath  
Joy Heath  
HWC 3 Box 20  
Martin, SD 57551

Dear Mr. Heath & Mrs. Heath:

Attached is a letter of opposition to your water permit application No. 2132-2. This letter was received July 10, 1990.

Sincerely,

Eric Gronlund  
Water Rights Division  
(605) 773-3352

enc.



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

July 11, 1990

## NOTICE

TO: Brett A. Heath & Joy J. Heath  
HWC 3 Box 20  
Martin, SD 57551  
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer  
Water Rights Division  
605 773-3352 *John Duvall for*

SUBJECT: Automatic Delay of Hearing on Water Permit Application  
No 2132-2

A petition opposing Water Permit Application No. 2132-2 has been filed by Lawrence Long, attorney representing Gary Hines and Donald Hines. The petition also requests postponement of the hearing. Therefore, the hearing on Application No. 2132-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 25, 1990.

The Water Management Board will now consider Application No. 2132-2 on October 3, 1990 at 10:30 am, in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of hearing may be later than 10:30 am due to prior agenda items. Applicable provisions of the Notice of Hearing published on June 27 and July 4, 1990 in the Bennett County Booster II will still apply at this hearing.

cc: Water Management Board  
John Guhin, Assistant Attorney General  
John Haak, Assistant Attorney General

CERTIFICATION

I hereby certify that on July 11, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Automatic Delay of Hearing on Water Permit Application No. 2132-2 addressed as stated on the Parties of Record sheet.

*Karen Schlaak*

KAREN SCHLAACK  
Senior Secretary

STATE OF SOUTH DAKOTA )  
                                  ) SS  
COUNTY OF HUGHES        )

Sworn to, before me, this 16<sup>th</sup> day of July, 1990.



*John Hatch*  
Notary Public

7/11/90

(date)

page

Parties of Record before Water Management Board

Brett Heath & Joy Heath 2132-2

Proponents

Brett Heath & Joy Heath  
HWC3 Box 20  
Martin, SD 57551

Opponents

Gary Hines  
HWC3 Box 28  
Martin, SD 57551

Donald Hines  
Box 6  
Martin, SD 57551

~~(Counsel)~~

~~Lawrence Long  
Box 628  
Martin, SD 57551~~

Dan Graves, Attorney  
Box 60  
Pierre SD 57501



United States Department of the Interior  
FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:

BA/EN  
WR  
Mail Stop 60190

MAILING ADDRESS:  
Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225

STREET LOCATION:  
134 Union Blvd.  
Lakewood, Colorado 80228

Chief Engineer  
South Dakota Department of  
Water and Natural Resources  
Water Rights Division  
Foss Building, 523 E. Capitol  
Pierre, South Dakota 57501

RE: NOTICE OF HEARING on Application No. 2132-2 to Appropriate Water

Dear Sir:

The U. S. Fish and Wildlife Service (Service) holds U.S. Withdrawal Permit No. 2-2 which claims all unappropriated waters of Lake Creek and tributaries above Dam No. 10 located on the Lacreek National Wildlife Refuge, to which the source of this application is tributary.

We have reviewed the subject Notice of Hearing and support the Chief Engineer's recommendation to approve with qualifications; specifically Qualification No. 2, which states "Water may not be pumped from the dams for irrigation until water authorized by U.S. Withdrawal No. 2-2 has been received by the LaCreek National Wildlife Refuge."

The Service requests that the Water Management Board approve this application only if this qualification is included.

Sincerely,

William A. Godby  
Regional Engineer



 **Department of  
Water & Natural Resources**

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

July 16, 1990

Brett Heath  
Joy Heath  
HWC 3, Box 20  
Martin, SD 57551

Dear Mr. Heath & Mrs. Heath:

Attached is a copy of a letter received by this office from the U.S. Fish and Wildlife Service regarding your permit. I believe you may want this for your files.

As stated in the recent notice sent to you, consideration of your permit application has been automatically delayed and will now be heard on October 3, 1990 at 10:30 am.

If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund  
Water Rights Division  
(605) 773-3352

enc.



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

August 23, 1990

## NOTICE

TO: Brett Heath and Joy Heath  
HWC 3, Box 20  
Martin, SD 57551  
and Parties of Record (see attached list)

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

SUBJECT: Change in Location of the Hearing by the Water Management Board  
on Water Permit Application No. 2132-2

The location of the hearing by the Water Management Board to consider Water Permit Application No. 2132-2 has been changed. This application will now be considered by the Water Management Board in the Brule County Courthouse, Community Room, 300 South Courtland, Chamberlain, SD on October 3, 1990 at 10:30 am.

The agenda time is an estimate. The actual time of hearing may be later than 10:30 am due to prior agenda items. Applicable provisions of the Notice of Hearing published on June 27 and July 4, 1990 in the Bennett County Booster II will still apply at this hearing.

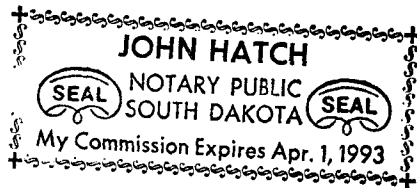
## CERTIFICATION

I hereby certify that on August 23, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice on Change in Location of Hearing on Water Permit Application No. 2132-2 addressed as stated on the notice.

*Karen Schlaak*  
KAREN SCHLAACK  
Senior Secretary

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

Sworn to, before me, this 27<sup>th</sup> day of August, 1990.



*John Bald*  
Notary Public

## Conversation or File Documentation

NAME OF PERSON OR FILE: BRETT & JOY HEATH (ATTORNEY FOR OPPOSITION)ADDRESS: \_\_\_\_\_ COUNTY BENNETTDATE: 9/21/90 TELEPHONE \_\_\_\_\_RE: OPPOSITION TO APPLICATION 2132-2

## COMMENTS:

<sup>(DAN CURVES)</sup>  
THE ATTORNEY FOR GARY HINDS (DOWNSTREAM LAND OWNER)  
CALLED SAID THAT HIS CLIENT WAS CONCERNED ABOUT  
THE BYPASS OF WATER FOR LIVESTOCK AND NATURAL IRRIGATION.  
I TOLD HIM THAT ~~THE~~<sup>THAT</sup> RECOMMENDED QUALIFICATIONS INCLUDED  
THE LOW FLOW BYPASS WHICH WOULD NOT ALLOW  
IRRIGATION WHEN ~~THE~~ REASONABLE DOMESTIC USE WATER WAS  
NEEDED.

HE WANTED TO KNOW IF THERE WERE ANY DATA  
SHOWING FLOWS FROM THAT TRIBUTARY. I TOLD HIM  
THAT THERE WAS NO DATA FOR THAT STREAM.

HE WANTED TO KNOW IF THERE WAS ANY WAY TO GET  
THE FLOWS NOW. I TOLD HIM THAT A PORTABLE FLOWMETER  
COULD BE USED.

File in Permit or other file as necessary. Use to document conversations and  
what the other party was told; why action or decision was made.

NAME: Mary D. Heath

## Conversation or File Documentation

NAME OF PERSON OR FILE: BT GARY HINES (Brett Hines)ADDRESS: \_\_\_\_\_ COUNTY BENNETTDATE: 9/21/90 TELEPHONE \_\_\_\_\_RE: OPPOSITION TO WP 2132-2

## COMMENTS:

MR HINES CALLED ASKING WHETHER WE WOULD  
CHANGE OUR RECOMMENDATION ON ~~THE~~ APPLICATION  
2132-2. I EXPLAINED TO HIM THAT ACCORDING  
TO THE DATA THAT WE HAVE THAT THERE IS WATER  
AVAILABLE WITHOUT EFFECTING DOWNSTREAM WATER RIGHTS  
AND IF THERE IS A PROBLEM WITH LOW FLOWS  
THAT THERE WILL BE A LOW FLOW BYPASS QUALIFICATION  
ON THE PERMIT IF THE WATER BOARD PASSES IT

HE SAID THAT HE WAS WORRIED BECAUSE THERE  
WAS NO LOW FLOW BYPASS STRUCTURES ON THE DAMS AND  
THAT THE DAMS WOULD NEED TO FAIL BEFORE WATER  
WOULD FLOW DOWNSTREAM. I TOLD HIM TO BRING  
UP HIS CONCERNS BEFORE THE WATER BOARD.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Mark D. [Signature]



# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

September 25, 1990

Mr. Gary Hines  
HWC 3, Box 28  
Martin, SD 57551

Dear Mr. Hines:

Enclosed is the information you requested regarding Brett Heath and Joy Heath's water permit application. As I stated in our phone conversation the application sheet did not copy very well, so the legal description and number of acres irrigated is most readable off the Soil/Water Compatibility Permit.

If you have any additional questions, please feel free to contact me.

Sincerely,

Eric Gronlund  
Water Rights Division  
605 773-3352

enc.

## Conversation or File Documentation

NAME OF PERSON OR FILE: T. Dan GRAVES (Attorney for Gary Huns)  
ADDRESS: \_\_\_\_\_ COUNTY BENNETT  
DATE: 9/28/90 TELEPHONE \_\_\_\_\_  
RE: WP 2132-3

## COMMENTS:

MR GRAVES CALLED SAID THAT FLOWS WERE MEASURED IN THE CREEK BUT FIELD METHOD WAS IMPROPER THE NUMBER THEY GOT WAS 0.35 CFS (137.5 gpm) I miscalculated AND TOLD HIM THAT IT WAS 97 gpm.

HE WONDERED IF WE WOULD GO DOWN AND MEASURE FLOWS IN THE STREAM. I TOLD HIM THAT IT PROBABLY WOULD NOT DO ANY GOOD SINCE WE WOULD ~~NOT~~ GET A ONE TIME ~~PER~~ FLOW WHICH WE WOULD NOT KNOW IF IT WAS TYPICAL.

I TOLD HIM THE RECOMMENDATION WAS FOR APPROVAL WITH THE LOW FLOW BYPASS QUALIFICATION AND THAT IF HE AND HIS CLIENT DID NOT FEEL COMFORTABLE WITH THAT QUALIFICATION THAT THEY SHOULD BRING THEIR CONCERNS BEFORE THE WATER MANAGEMENT BOARD AND LET THEM DECIDE.

HE WANTED TO KNOW HOW LONG THE PERMIT WAS VALID FOR. I TOLD HIM FOREVER AS LONG AS IRRIGATION IS PERFORMED UNDER THE WATER PERMIT.

HE WANTED TO KNOW THAT IF THERE IS A PROBLEM ~~with~~ IF THE PERMIT WAS APPROVED WHO SHOULD THEY CONTACT. I TOLD HIM TO CONTACT THIS OFFICE

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: M. J. P. [Signature]

 **Department of  
Water & Natural Resources**

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

October 5, 1990

**NOTICE**

TO: Brett Heath & Joy Heath  
HWC 3, Box 20  
Martin SD 57551  
and Parties of Record (see attached sheet)

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



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

The Water Management Board has directed John Guhin, the Board's attorney to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision approval of Water Permit Application No. 2132-2. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 pm, December 5, 1990, Deerfield Room, Hilton Inn, 445 Mt. Rushmore Road, Rapid City SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and all Parties of Record and their attorneys (copy enclosed) by November 15, 1990. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney and all Parties of Record and their attorneys by November 26, 1990.

The public hearing was completed on October 3, 1990. No additional testimony will be received on December 5, 1990.

cc: John Guhin, Deputy Attorney General  
John Haak, Assistant Attorney General

**CERTIFICATION**

I hereby certify that on October 5, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice to Prepare Findings of Fact, Conclusions of Law and a Final Decision on Water Permit Application No. 2132-2 addressed as stated on the Parties of Record sheet.

Karen Schlaak

KAREN SCHLAAK  
Senior Secretary

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

Sworn to, before me, this 9<sup>th</sup> day of October, 1990.

John Bates

Notary Public





Gary Hines  
HWC 3, Box 28  
Martin, SD 57551

November 19, 1990

State of South Dakota  
Water Management Board

Dear Board Member:

We have received your Findings of Fact in the matter of the application for water permit #2132-2 / Brett A. Heath and Joy J. Heath. I have looked at it closely and have some important questions that need to be clarified before final approval is given.

Is the applicant allowed to pump .40 cfs. out of each dam, or .27 cfs. out of Dam #1 and .13 cfs. out of Dam #2? Are there any restrictions on the amount that may be pumped or how big an area applicant is allowed to irrigate? I also request information on the time span of the annual irrigation period and any additional requirements applicant is to follow during this time period.

Who is responsible for monitoring the water for domestic use when it is needed, and if this diversion of water interferes with my domestic right, will the Board take immediate action to see that my right is protected? What procedure should I follow to report to the water commission if my rights are impaired?

If the effect of irrigation causes my property to be less productive (if my loss is greater than applicants' gain), what action can I take?

On a personal side, I strongly feel that when a petition is filed against an application for irrigation, the Department of Water and Natural Resources should be as concerned for the petitioners' rights as those of the applicant. Even if they have recommended approval, at the very least there should be a required on-site inspection on any application petition so that the Department of Water and Natural Resources has a better understanding of the situation. I feel slighted as far as any of the Department's involvement before and during the actual hearing.

I would appreciate a response from the Board to the above questions before December 3, 1990. Thank you for your time and attention.

Respectfully,

*Gary Hines*  
GARY HINES

CHURCHILL, MANOLIS, FREEMAN, KLUDT & KAUFMAN  
ATTORNEYS AT LAW

FARMERS AND MERCHANTS BANK BUILDING

P.O. BOX 176

HURON, SOUTH DAKOTA 57350

IRWIN A. CHURCHILL 1882-1961  
JOHN P. SAUER 1901-1965  
WILLIAM S. CHURCHILL  
GEORGE N. MANOLIS  
RODNEY FREEMAN, JR.  
DOUGLAS E. KLUDT  
GERALD L. KAUFMAN, JR.

TELEPHONE  
605-352-8624

FAX  
605-352-2205

November 21, 1990

Mr. Gary Hines  
HWC 3, Box 28  
Martin, South Dakota 57551

Re: State Water Management Board

Dear Mr. Hines:

I received your letter of November 19, 1990 and would advise that at least on the part the Board, we are unable, by Administrative Rule and State law, to discuss particular cases with individual parties. Thus, for me to respond to your inquiries would be not only improper but in violation of Administrative Rules and State law.

However, I am sending a copy of this letter to Mr. Hatch and I feel that he may be in a position to discuss your concerns.

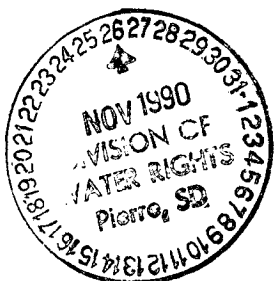
Thank you.

Very truly yours,  
**Original signed by**  
**Rodney Freeman, Jr.**

Rodney Freeman, Jr.  
of Churchill, Manolis, Freeman, Kludt & Kaufman

RF/ps

pc: Mr. John Hatch ✓





# Department of Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

November 27, 1990

Gary Hines  
HWC 3, Box 28  
Martin, SD 57551

Dear Mr. Hines:

This letter is in response to your concerns regarding Water Permit Application No. 2132-2 which was approved at the October 3, 1990, Water Management Board meeting. For your convenience, I have attached a copy of South Dakota Water Law which is referenced many times in the following response.

Permit No. 2132-2 appropriates a total of 0.40 cubic feet of water per second (cfs) from two existing dams to irrigate 28.5 acres. Dam No. 1 located in the SW1/4 NW1/4, NW1/4 SW1/4 proposes to irrigate 19.6 acres located in the the SW1/4 NW1/4, SE1/4 NW1/4; all in Section 25, T36N, R36W. Dam No. 2 located in the NE1/4 SE1/4, NW1/4 SE1/4 proposes to irrigate 8.9 acres located in the NW1/4 SE1/4; all in Section 25, T36N, R36W. Pursuant to South Dakota Codified Law (SDCL) 46-5-6 the amount of water appropriated shall not be in excess of the rate of one cfs for each seventy acres irrigated, or the equivalent thereof, and the volume of water diverted for use shall not exceed two acre-feet per acre, delivered on the land for a specified time each year. Based on this statute, the maximum diversion rate from dam No. 1 and No. 2 shall not exceed 0.28 cfs and 0.13 cfs, respectively and the combined diversion rate may not exceed 0.40 cfs.

The annual period during which water may to be used is April 1 thru November 30. Also, this permit was approved with the following qualifications.

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. Water may not be pumped from the dams for irrigation until water authorized by U.S. Withdrawal No. 2-2 has been received by the LaCreek National Wildlife Refuge.
3. This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Gary Hines  
November 27, 1990  
Page 2

Finally, your primary concern appears to be that a livestock water supply will be impaired by irrigation authorized by this permit. Under South Dakota law the use of water for domestic purposes is the highest use of water and takes precedence over all appropriative rights such as irrigation. Domestic use of water as defined in SDCL 46-1-6(4) includes stock watering. If you believe your domestic use of water is being impaired, you may register a complaint with the Chief Engineer at (605) 773-3352. In accordance with SDCL 46-2-17 and 46-2-18, the Chief Engineer may investigate the use of water to ensure compliance with water permit provisions and after appropriate investigation may issue an order to shut off or limit use of water if your domestic use of water is unlawfully impaired. It is important to note that any incidental irrigation benefit you may receive by water flowing in the creek channel across your land is not considered a domestic use of water.

The proposed Findings of Fact, Conclusion of Law, and Final Decision on Water Permit No. 2132-2 are scheduled to be considered by the Water Management Board at 1:00 pm on December 5, 1990, in the Deerfield Room, Hilton Inn, 445 Mt. Rushmore Road, Rapid City, SD. No additional testimony will be taken at that time.

Very truly yours,



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

attachment

cc: John Haak, Assistant Attorney General



MAR 6 1991

DEPARTMENT OF WATER & NATURAL RESOURCES

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

Brett Heath & Joy Heath  
HWC 3 Box 20  
Martin, SD 57551

Dear Mr. & Mrs. Heath:

Enclosed is Water Permit No. 2132-2 For Irrigation as approved by the Water Management Board authorizing you to construct your water diversion system and put the water to beneficial use, not exceeding the limits as specified in the Water Permit.

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water License may be issued, thus completing your acquisition of a Water Right.

Very truly yours,

JOHN HATCH, Chief Engineer  
Water Rights Division  
605 773-3352

enclosures

**PLEASE NOTE:** Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period - i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.



# Water & Natural Resources

Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501-3181

December 7, 1990

## NOTICE

TO: Brett Heath & Joy Heath  
HWC 3, Box 20  
Martin, SD 57551  
and Parties of Record (see attached sheet)

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

A handwritten signature in dark ink, appearing to read "John Hatch". The signature is written in a cursive, flowing style.

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

This is to notify you that a Final Decision, including Findings of Fact, Conclusions of Law were adopted by the Water Management Board for Water Permit Application No. 2132-2 which was considered at the October 3, 1990, meeting.

A copy of the signed final Decision, Findings and Conclusion is enclosed for the applicant. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that the decision of the Board may be appealed to the Courts.

cc: John Haak, Assistant Attorney General

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

|                                  |   |                            |
|----------------------------------|---|----------------------------|
| IN THE MATTER OF THE APPLICATION | ) | BOARD ATTORNEY'S RESPONSE  |
| FOR WATER PERMIT NO. 2132-2,     | ) | TO HINES' OBJECTION TO     |
| BRETT A. HEATH AND JOY J. HEATH. | ) | PROPOSED FINDINGS OF FACT, |
|                                  | ) | CONCLUSIONS OF LAW         |
|                                  | ) | AND FINAL DECISION         |

RESPONSE TO FINDINGS OF FACT

V. Reject. The proposed finding accurately analyses the evidence and assigns it appropriate weight, especially in light of proposed Finding of Fact No. VI and Conclusion of Law II and III.

VI. Reject. The essence of the Proposed Finding No. VI is that there is a reasonable probability that there is water available because Hines does not desire to use the water for domestic purposes on a continual basis. Therefore, at the times when the water use for domestic purposes is not occurring, there certainly will be water available for the applicant regardless of the total amount of water in the streams. The Board has concluded that water need not be available at all times to meet the requirement of the statute that there is a reasonable probability that there is inappropriate water available through the applicant's proposed use.

VII. Reject paragraph 1. The proposed finding correctly states that the diversion can be made without unlawful impairment of an existing, domestic and other rights. The objection correctly recognized that the domestic use has priority. Therefore, proposed Finding VII

follows because when there is conflict, the use of water by the applicant must give way to the use of water for domestic purposes. It is, moreover, not correct to imply that there are no provisions in law for controlling the Applicants' withdrawal of water because, pursuant to SDCL 46-2-18 the chief engineer may order a user to discontinue water because of interference with higher priority. Moreover, should this remedy be inadequate, the objector may apply to the Board for amendment of the permit to require a measuring device pursuant to SDCL 46-7-2. The objector, however, has presented no evidence to suggest that the applicant will use water when it is needed for Hines' priority domestic use downstream and this Board now finds that under the circumstances that this situation will not be difficult for the applicant and objector to monitor, there is no reason to now demand a measuring device pursuant to SDCL 46-7-2.

VII, paragraph 2. Reject. The evidence is sufficient as set forth above.

VII, paragraph 3. Reject. The objector has failed to demonstrate that, in the circumstances before the Board, it is necessary to require the placement of a flow meter to determine "amount of water flowing in the two streams in question." The critical point is whether there is a reasonable probability that there is water available for the applicant under the circumstances presented to the Board. As pointed out in proposed Finding of Fact No. VI, there is, adequate water available under the facts as shown

in this record. See also, response to VII, paragraph 1,  
above.

Dated this 3<sup>d</sup> day of December, 1990.

  
\_\_\_\_\_  
John P. Guhin

Deputy Attorney General  
500 East Capitol  
Pierre, South Dakota 57501-5080  
Telephone (605) 773-3215

STATE OF SOUTH DAKOTA

WATER MANAGEMENT BOARD

|                              |   |                    |
|------------------------------|---|--------------------|
| IN THE MATTER OF THE         | ) | FINDINGS OF FACT,  |
| APPLICATION FOR WATER PERMIT | ) | CONCLUSIONS OF LAW |
| NO. 2132-2, BRETT A. HEATH   | ) | AND                |
| AND JOY J. HEATH             | ) | FINAL DECISION     |

FINDINGS OF FACT

I

The applicants have applied for a water permit to appropriate .40 cfs of water from two existing dams to irrigate 28.5 acres in Bennett County.

II

The first dam has a storage capacity of 1.3 acre feet and the second dam has a storage capacity of 1.8 acre feet. Each dam is on a separate creek and each dam will supply water to irrigate a portion of the 28.5 acres.

III

Mr. Hines, the opponent of the application, is an owner of land a short distance downstream. Mr. Hines relies on water which now passes over the two small dams for domestic purposes and for natural irrigation of pasture and hay land. Mr. Hines does not claim a water permit for the natural irrigation of the pasture and the hay land.

IV

At present, water overflows the dams on a virtually continual basis. Mr. Hines is concerned that the use of the water for irrigation will bring the water level below the top of the dams and that it will not, therefore, flow downstream for his use.

V

Mr. Hines conducted an experiment with a civil engineer to gauge the amount of water actually flowing. The flow was concluded to be .2083 cfs for one of the streams. There are, however, two streams involved. Moreover, the reading was taken only at one time and is admitted not to be conclusive of the amount of water even in that stream.

VI

The Board finds that, despite the reading on one of the two streams taken by Mr. Hines, there is nonetheless a reasonable probability that there is water available for the use of the applicant because Mr. Hines does not desire to use this water for domestic purposes on a continual basis; his domestic use is in a livestock operation and the cattle are rotated from pasture to pasture. Therefore, at regular intervals, he will not need or demand the water for domestic purposes and the water will be available for irrigation.

VII

The Board finds that this diversion can be made without unlawful impairment of existing domestic and other rights. Applicant must, under this permit and under statute, control his withdrawals so as not to interfere with the Hines domestic right. Moreover, Applicant must refrain from the use of water until U.S. Withdrawal 2-2 is satisfied.

## **CONCLUSIONS OF LAW**

### **I**

This Board has jurisdiction of this matter.

### **II**

There is a reasonable probability that there is unappropriated water available for the applicant's proposed use. The Board concludes that water need not be available at all times to meet the requirement of the statute set forth in the sentence above.

### **III**

A proposed diversion can be developed without unlawful impairment of existing rights as set forth more fully in the Final Decision.

### **IV**

The proposed use for irrigation purposes is a beneficial use.

### **V**

The proposed use is in the public interest when developed as set forth in the Final Decision.

## **FINAL DECISION**

The Application for Water Permit 2132-2 is approved with the following conditions:

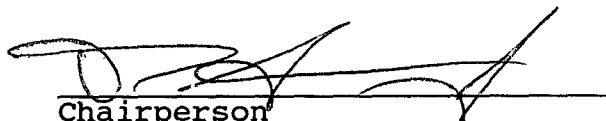
1. Low flows as needed for downstream domestic use, including livestock water and prior water rights, must be bypassed.

2. Water may not be pumped from the dams for irrigation until authorized by U.S. Withdrawal No. 2-2 has been received by the LaCreek National Wildlife Refuge.

3. This permit is approved subject to irrigation water use questionnaire being submitted each year.

Dated this 5<sup>th</sup> day of December, 1990.

BY THE BOARD:

  
Chairperson  
Water Management Board

jj

## CERTIFICATION

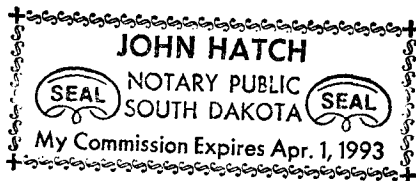
I hereby certify that on December 10, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Adoption of Findings of Fact, Conclusions of Law and Final Decision for Water Permit Application No. 2132-2 addressed as stated on the attached sheet.

  
Marie R. Arthur  
Secretary

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

Sworn to, before me, this 13<sup>th</sup> day of December, 1990.

*John Hatch*  
Notary Public





2132-2  
DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

January 19, 2001

NOTICE

TO: BRETT A & JOY J HEATH, HWC 5 BOX 20, MARTIN, SD 57551  
FROM: Ron Duvall, Natural Resources Engineer  
for Garland Erbele, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2000 Irrigation Questionnaire(s)

Our records indicate that the 2000 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 20, 2000. The Water Management Board has directed that owners of water permits who have not submitted the 2000 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 10:00 am, March 7, 2001 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before March 2, 2001, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

2132-2

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                    |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> |  | <p>A. Received by (Please Print Clearly) <u>Beverly Heath</u> B. Date of Delivery <u>1-27-01</u></p> <p>C. Signature <u>Beverly Heath</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> |  |
| <p>1. Article Addressed to:</p> <p><b>BRETT A &amp; JOY J HEATH</b><br/>HWC 5 BOX 20<br/>MARTIN SD 57551</p>                                                                                                                                                                                                                     |  | <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>                                                                  |  |
| <p>2. Article Number (Copy from service label)</p> <p><u>7000 0600 0026 9814 2478</u></p>                                                                                                                                                                                                                                        |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>                                                                                                                                                                                                                                                                                                 |  |

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/deriv](http://www.state.sd.us/deriv)

January 31, 2001

2132-2

Brett & Joy Heath  
HWC 5 Box 20  
Martin, SD 57551

Dear Mr. & Mrs. Heath:

I am writing to acknowledge receipt of your 2000 irrigation questionnaire. You may disregard the January 19, 2001, "Notice" concerning reporting requirements for Water Permit No. 2132-2.

I completed a questionnaire for you based on our January 31<sup>st</sup> telephone conversation. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

Thank you for calling and if you have any questions, please contact me.

Sincerely,

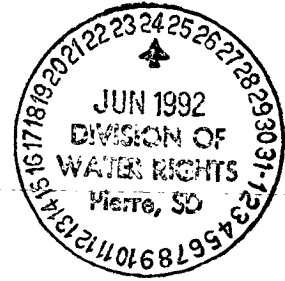
Genny McMath  
Environmental Scientist  
Water Rights Program  
(605) 773-3352

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL  
Pierre, South Dakota 57501-5070  
Phone (605) 773-3215



**MARK W. BARNETT**  
ATTORNEY GENERAL

June 24, 1992

**LAWRENCE E. LONG**  
CHIEF DEPUTY ATTORNEY GENERAL

Eric Gronlund  
Division of Water Rights  
DENR  
Foss Building  
Pierre, SD 57501

RE: **Brett A. Heath/Water Permit #2132-2**

Dear Eric:

I am enclosing a December 3, 1990, document in the above-referenced matter. This original document was, I believe, inadvertently included in a different file in the Office of Attorney General. Please file this document in the Heath file.

Sincerely,

*Diane Best*

Diane Best  
Assistant Attorney General

DB:hs  
Enc.



January 22, 1999

2132-2  
**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3181  
[www.state.sd.us/denn](http://www.state.sd.us/denn)

**NOTICE**

TO: BRETT A & JOY J HEATH, HWC 5 BOX 20, MARTIN, SD 57551

FROM: Ron Duvall, Natural Resources Engineer  
for John Hatch, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 1998 Irrigation Questionnaire(s)

Our records indicate that the 1998 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 16, 1998. The Water Management Board has directed that owners of water permits who have not submitted the 1998 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 9:45 am, March 3, 1999 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before March 1, 1999, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

BRETT A & JOY J HEATH  
HWC 5 BOX 20  
MARTIN SD 57551

4a. Article Number

Z 119 141 567

4b. Service Type

- ☐ Registered ☒ Certified  
☐ Express Mail ☐ Insured  
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

1-28-99

5. Received By: (Print Name)

Beverly Heath

6. Signature: (Addressee or Agent)

X Beverly Heath

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3181  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 28, 1999

2132-2

Brett & Joy Heath  
HWC 5 Box 20  
Martin, SD 57551

Dear Mr. & Mrs. Heath:

I am writing to acknowledge receipt of your 1998 irrigation questionnaire. You may disregard the January 22, 1999, "Notice" concerning reporting requirements for Water Permit No. 2132-2.

A questionnaire was completed for you based on your January 28<sup>th</sup> telephone conversation with Ron Duvall. The questionnaire reflects no irrigation took place in 1998 due to adequate rainfall. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

Thank you for calling and if you have any questions, please contact me.

Sincerely,

Genny McMath  
Environmental Scientist  
Water Rights Program  
(605) 773-3352

2132-2



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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

January 17, 2003

NOTICE

TO: BRETT A & JOY J HEATH, HWC 5 BOX 20, MARTIN, SD 57551  
FROM: Ron Duvall, Natural Resources Engineer  
for Garland Erbele, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2002 Irrigation Questionnaire(s)

Our records indicate that the 2002 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 11, 2002. The Water Management Board has directed that owners of water permits who have not submitted the 2002 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 8:30 am, March 5, 2003 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

- 1 Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before **February 28, 2003**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



2132-2

## Track & Confirm

### Delivery Status

You entered 2301 0370 0000 7540 5249

Your item was delivered at 2:29 pm on January 22, 2003 in MARTIN, SD 57551. The item was signed for by B HEATH.

[Request Delivery Record >](#)

### Track & Confirm

Enter label number:

[Track & Confirm FAQs](#)

POSTAL INSPECTORS  
Preserving the Trust

[site map](#) [contact us](#) [government services](#)  
Copyright © 1999-2002 USPS. All Rights Reserved. [Terms of Use](#) [Privacy Policy](#)

## U.S. Postal Service Signature Confirmation Receipt

SIGNATURE CONFIRMATION NUMBER:

2301 0370 0000 7540 5249

BRETT A & JOY J HEATH  
HWC 5 BOX 20  
MARTIN SD 57551

Postmark  
Here

### POSTAL CUSTOMER:

Keep this receipt. For inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)  
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☐ Priority Mail  
☐ Package Services

(See Reverse)

PS Form 153, February 2001



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

February 6, 2003

2132-2

Brett A & Joy J Heath  
HWC 5 Box 20  
Martin SD 57551

Dear Mr. & Mrs. Heath:

I am writing to acknowledge receipt of your 2002 irrigation questionnaire. You may disregard the January 17, 2003, "Notice" concerning reporting requirements for Water Permit No. 2132-2.

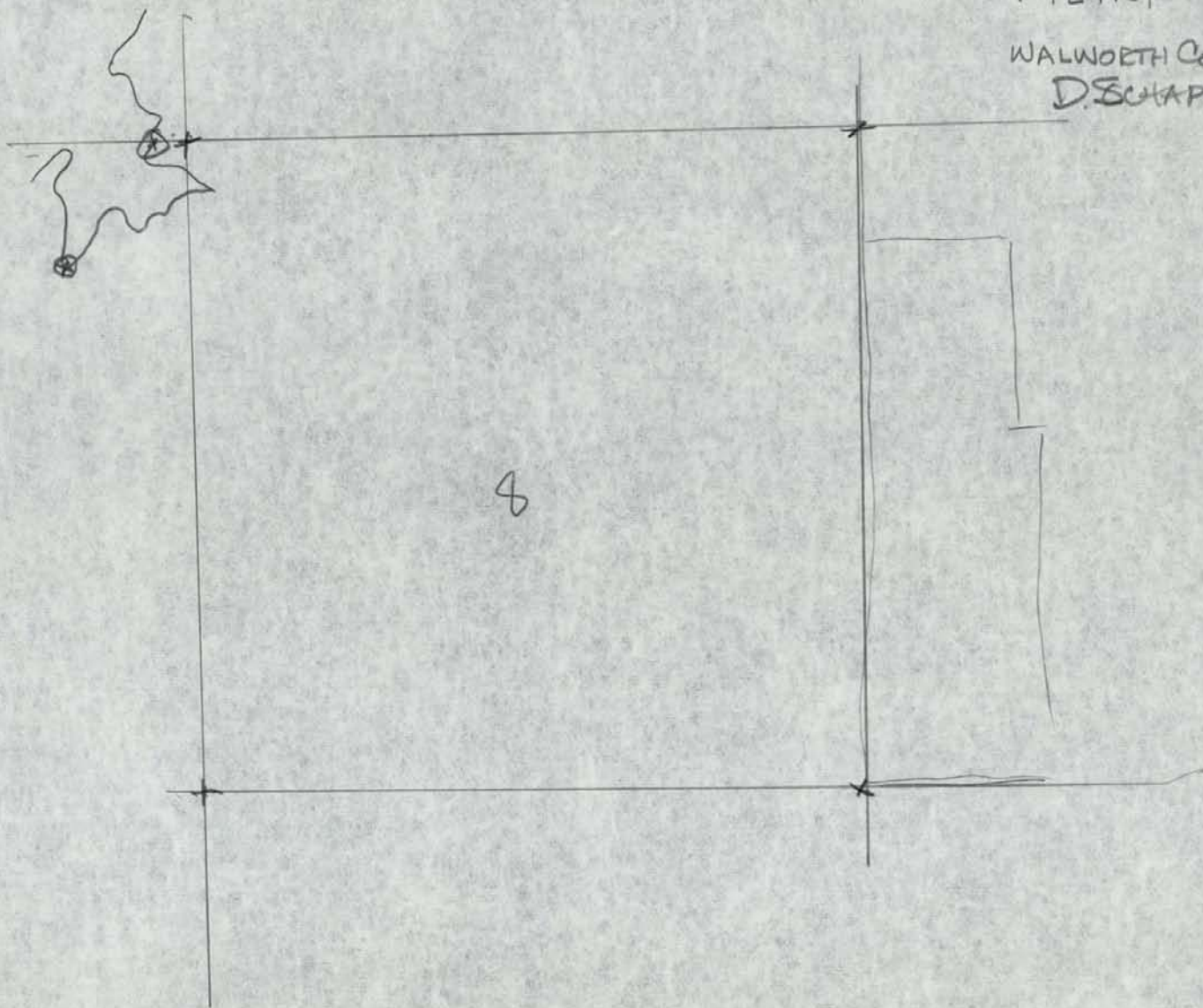
The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath  
Environmental Scientist  
Water Rights Program  
(605) 773-3352

T124N, R79W  
WALWORTH CO SCS  
D. SCHAPERHAHN



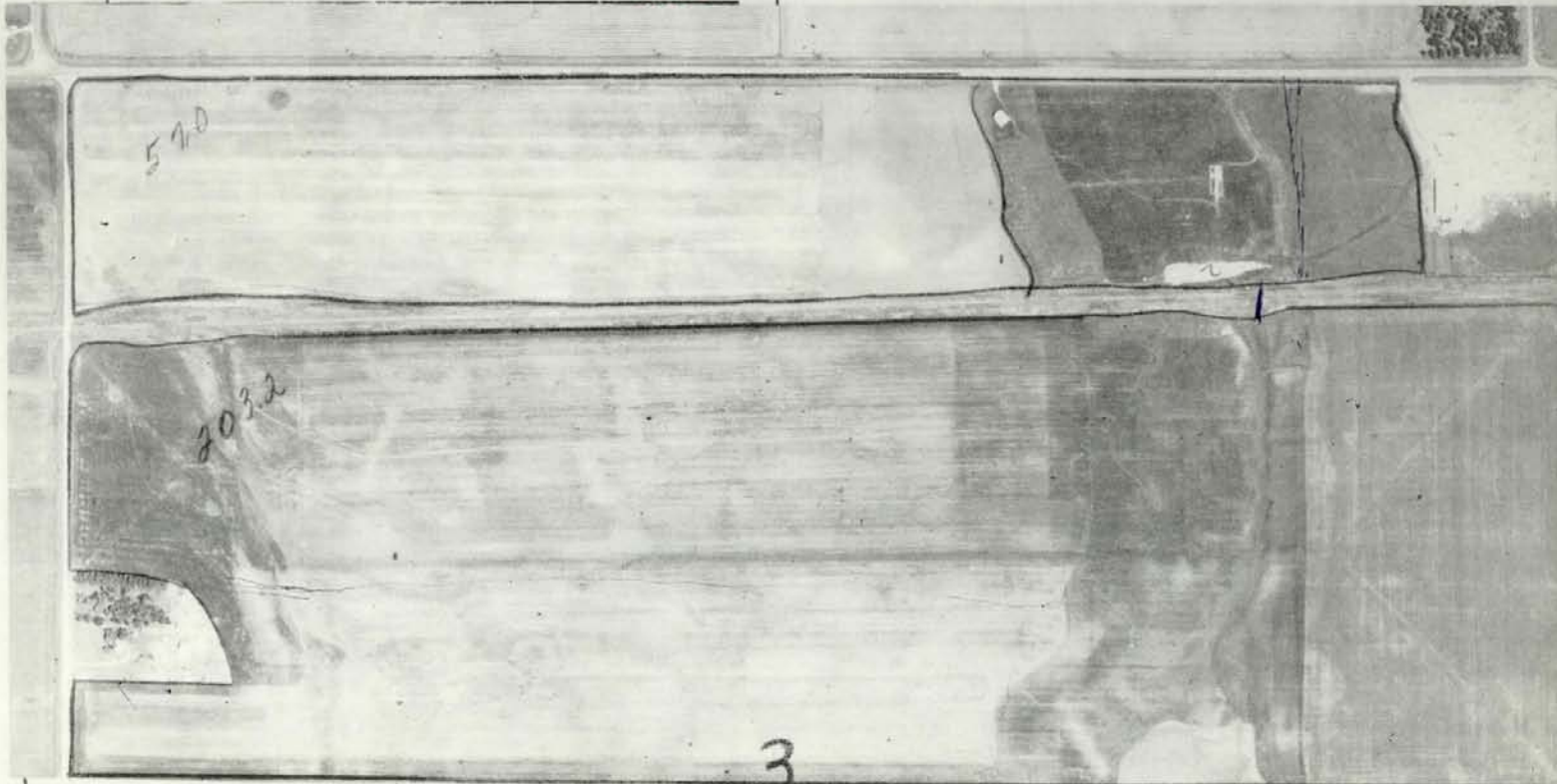
FARM NO. NAME AND ADDRESS FARM LAND CROPLAND  
OPERATOR

OWNER

Tract No. 222  
4-200  
Farm No. 4-227 4M-124  
Operator \_\_\_\_\_  
Owner R. E. Kohnke

Map 15793

1968



|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|  |  |  |  |

Legal Description N 1/2 - 3 - 116 - 53

1973 A 1974

124-79

44

46.3

81.1

9

124-79

MAP NO 1529-3 APPENDIX 2132-3

**Permit No. 2132-2**  
**White River - Water District**  
**Report Of Examination Of Works And/Or Application of Water To Beneficial Use**

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have these days, **October 25, 2005**, made a thorough examination of the water use system constructed by **Brett Heath and Joy Heath, HWC 3 Box 20, Martin SD 57551** holder of Permit No. **2132-2**, bearing the priority of **August 24, 1990** authorizing the diversion of **0.40** cu. ft. per second of the waters from two spring fed dams and impoundment of **3.1 acre feet of water** for **irrigation** purposes, in **Bennett** County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

**Two small spring-fed dams are in place and a 5.5 hp Honda portable pump is used)**

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

**Plastic pipe was located unassembled (broke down for winter) at Dam site 1.**

C. Works used to apply water to beneficial use:

**Water is diverted from the dams and convey by the pipeline to the upgradient. Water the flood irrigates the hay meadows.**

The system is in the following condition **good**. The point of diversion is located **Dam #1 is located approximately 2,260 feet south and 600 feet east of the NW corner (SW 1/4 NW 1/4) of Section 25, T36N, R36W Lat/Lon N43.06837 W-101.51193. Dam #2 is located approximately 2,380 feet north and 1,220 feet west of the SE corner (NE 1/4 SE 1/4) of Section 25, T36N, R36W Lat/Lon N43.06652 W-101.49973** The works are capable of diverting and conveying to the place of use **0.4** cu. ft. per second of water which is to be used for **irrigation**. Water has been put to beneficial use to the maximum extent as follows:

| Legal                           | Acres      | Legal                           | Acres   |
|---------------------------------|------------|---------------------------------|---------|
| NW 1/4 SE 1/4 Sec. 25 T36N R36W | 9 acres    | SE 1/4 NW 1/4 Sec. 25 T36N R36W | 5 acres |
| SW 1/4 NW 1/4 Sec. 25 T36N R36W | 14.5 acres |                                 |         |

comprising a total of **28.5** acres of land and the license should be issued for **0.4** cfs and storage of up to **3.1 acre feet of water\***.

\* this is an estimate of capacity

Applicable permit qualifications have been complied with: Yes

Exceptions to compliance are: none

Date Report Completed: **October 27, 2005**



Eric Gronlund

Natural Resources Engineer

DENR, Water Rights Program

## FIELD INVESTIGATION REPORT FOR PERMIT NO. 2132-2

|                                                                                          |                                                                                                        |
|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| DATE OF INVESTIGATION:                                                                   | <b>October 25, 2005</b>                                                                                |
| NAME & ADDRESS OF INVESTIGATION CONTACT/<br>RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE | <b><u>Brett Heath and Joy Heath</u></b><br><b><u>HWC 3 Box 20</u></b><br><b><u>Martin SD 57551</u></b> |
| NAME & ADDRESS OF PERMIT HOLDER                                                          | <b>Same</b>                                                                                            |

DIVERSION POINT LEGAL LOCATION: **Dam #1 is located approximately 2,260 feet south and 600 feet east of the NW corner (SW 1/4 NW 1/4) of Section 25, T36N, R36W Lat/Lon N43.06837 W-101.51193. Dam #2 is located approximately 2,380 feet north and 1,220 feet west of the SE corner (NE 1/4 SE 1/4 of Section 25, T36N, R36W. Lat/Lon N43.06652 W-101.49973**

The portable pump was a

|                                      |  |
|--------------------------------------|--|
| <b>Pump/Motor – Honda</b>            |  |
| Pump Make – Monarch (listed on pump) |  |
| Model – 5BSGF-8H                     |  |
| Serial -- 0495                       |  |
| Size – 3"                            |  |
| Capacity – 275 gpm with no head *    |  |
| HP 5.5 hp                            |  |

\* according to Honda website for similar 5 hp 3" pump. Mr. Heath said when pumping under head he believe it produces in the neighborhood of 150 gpm. I feel comfortable licensing from the permitting amount of 0.4 cfs (180 gpm)

### DISTRIBUTION LINES OR CANALS: from well to center pivot

1) Type plastic      2) Size 3 inches      3) Length above ground from dams to a point approximately 300 feet away to the flood irrigate hay meadow. The flood irrigation pipe was not in place at time of licensing investigation. However, it was on site.

### DAM INFORMATION: These are spring fed dams

- 1) Height to crest #1 - 6 #2 - 10 feet
- 2) Height to primary spillway #1 – 4 #2 - 5 feet
- 3) Height to secondary spillway #1 - none #2 – approx. 6 ft
- 4) Crest width #1 & 2 - approx. 25 feet
- 5) Crest length #1 & #2 - approx. 200 feet

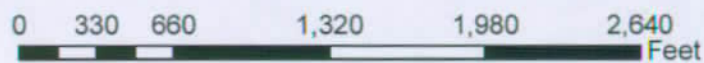
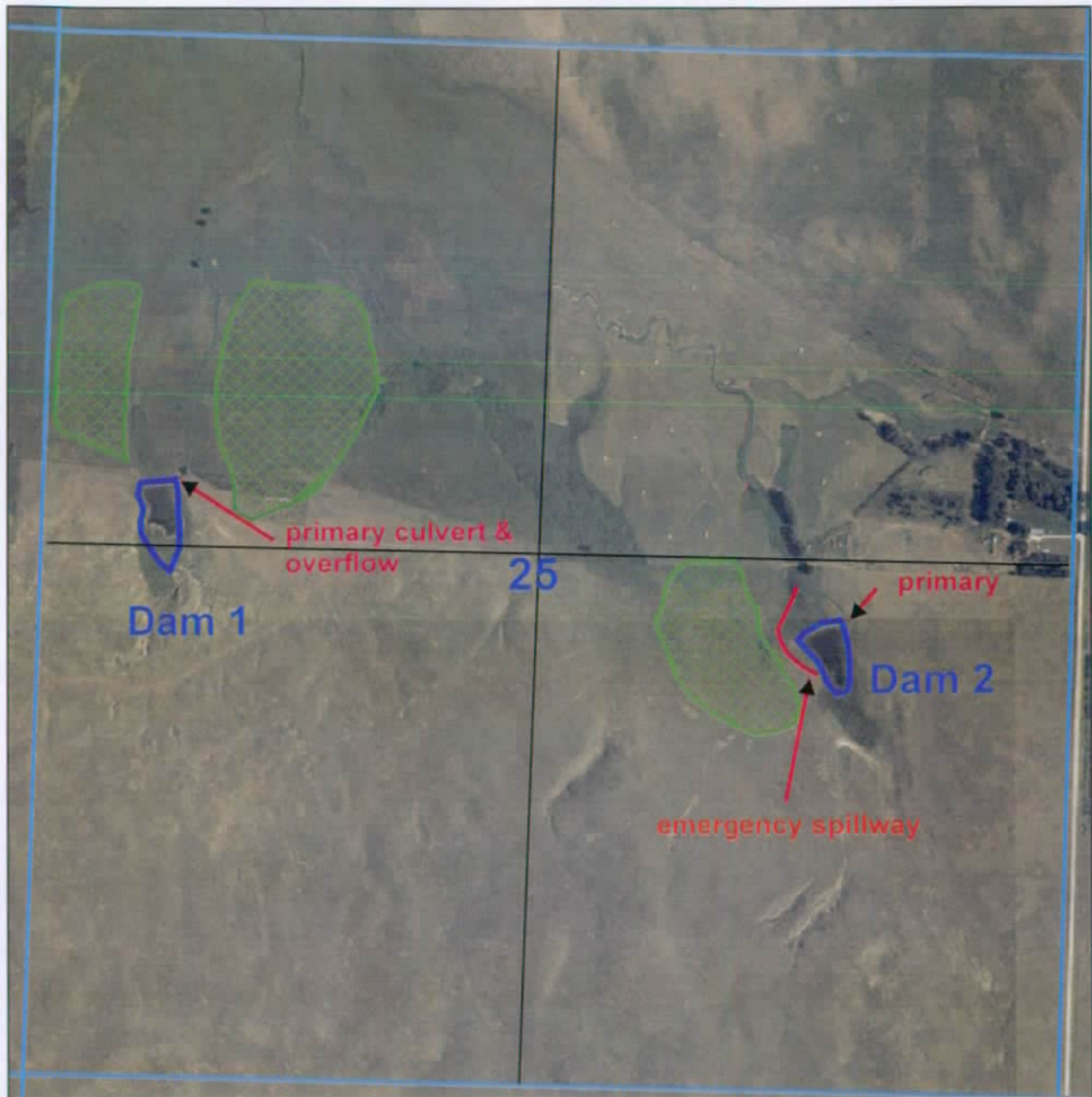
- 6) Spillway length #1 - none #2 - 300 feet
- 7) Spillway width #1 - N/A #2 - approx. 8 feet
- 8) Approx. storage #1 - approx. 1.5 #2 - approx. 1.6 ac-ft
- 9) Approx. storage to crest #1 - approx. 4 #2 - approx. 6 ac-ft
- 10) Date constructed:

\* Dam # 1 has a 24" inch culvert which acts at the primary outlet. Dam # 2 has no culvert. It's primary outlet is a cut in the dam. Mr. Heath said he has not had trouble with the outlet eroded.

**CHEMIGATION EQUIPMENT: no chemigation at time of licensing investigation**

**PERMIT QUALIFICATIONS:**

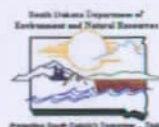
- 1) Special qualifications to permit being abided by Yes -
- 2) All structures, wells and lands on map Yes
- 3) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes



Dam 1 is located approximately 2,260 feet south and 600 feet east of the NW corner (SW 1/4 NW 1/4) of Section 25, T36N, R36W  
Lat/Lon N43.06837 W-101.51193

Dam 2 is located approximately 2,380 feet north and 1,220 feet west of the SE corner (NE 1/4 SE 1/4 of Section 25, T36N, R36W  
Lat/Lon N43.06652 W-101.49973

Irrigated acres designation is an approximation. This is a pump and flood irrigate system.



*Eric Gronlund*  
Eric Gronlund  
Water Rights Program, DENR  
Licensing Investigation - October 25, 2005



Dam No. 1 (looking west)



Dam # 2 (looking east)



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

PMB 2020  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

November 1, 2005

2132-2

Brett Heath & Joy Heath  
HWC 5, Box 20  
Martin SD 57551

Dear Mr. Heath & Ms. Heath:

On October 25, 2005 the investigation of your water use system, including the extent of application of water to beneficial use, as developed under Water Permit No. 2132-2, was completed by Eric Gronlund, a staff engineer with our program. Your final water right document, the water license, can now be issued.

State law requires that we charge a \$50.00 fee for the investigation and issuance of the water license. Upon receipt of the \$50.00 fee from you, we will complete processing your water license. The check or money order for the fee should be made payable to the "Water Rights Program".

Your licensed water right will be similar to a property right that can not be lost as long as the water use continues and you abide by the permit requirements.

If you have any questions regarding the water permit, investigation of your water use system or payment of the fee, please contact Genny McMath with our program at (605) 773-3352.

Sincerely,

Karen Schlaak  
Water Rights Program  
(605) 773-3352

# RECEIPT

## WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date November 7, 2005

RECEIVED OF LaCreek Valley Ranch, Beverly Heath, EC 5 Box 20, Martin SD 57551

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

|                                                                                                                |       |       |
|----------------------------------------------------------------------------------------------------------------|-------|-------|
| Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use | 50 00 |       |
| Fee for Application for Permit No. _____ to Appropriate Water for Future use                                   |       |       |
| Fee to retain Future Use Permit No. _____ after period of seven years.                                         |       |       |
| Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2132-2</u>    |       |       |
| Fee for Filing Transfer Form _____                                                                             |       |       |
| Fee for _____                                                                                                  |       |       |
| Fee for Issuing New Well Driller's License No. _____ for C.Y. _____                                            |       |       |
| Fee for Renewal of Well Driller's License No. _____ for C.Y. _____                                             |       |       |
| Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____                                         |       |       |
| Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____                                      |       |       |
| (Any Other Work Provided by Law)                                                                               | TOTAL | 50.00 |

No. **001904**

By

*David E. Ebel*

Chief Engineer

*gm*



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

PMB 2020  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

DEC 16 2005

2132-2

Brett Heath & Joy Heath  
HC 5 Box 20  
Martin SD 57551

Dear Mr. & Ms. Heath:

Enclosed is Water License No. 2132-2. This is the final water right document completing your process of obtaining a Water Right. Enclosed is Receipt No. 001994 in the amount of \$50.00 which you paid for the investigation and issuance of the Water License.

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,

Garland Erbele, Chief Engineer  
Water Rights Program  
(605) 773-3352

enclosures

# STATE OF SOUTH DAKOTA

## WATER LICENSE NO. 2132-2

(1) Brett Heath and Joy Heath, HC 5 Box 20, Martin SD 57551 made Application No. 2132-2, April 30, 1990 for a water permit to divert 0.4 cubic feet of water per second from two dams (3.1 acre-feet storage capacity), Bennett County, South Dakota for irrigation purposes. Permit No. 2132-2, with a priority date of August 24, 1990 was approved December 5, 1990 and issued to the applicants for diversion of water with construction of the described water supply system to be completed on or before December 5, 1995 and for the application to beneficial use of water on or before December 5, 1999.

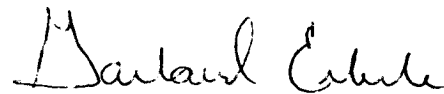
(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holders and/or owners of Water Right No. 2132-2 is issued a license, bearing a priority date of August 24, 1990 to appropriate 0.4 cubic feet of water per second from two dams (3.1 acre-feet storage capacity) to irrigate 28.5 acres.

The diversion points are located: Dam #1 – 2,260 feet south and 600 feet east of the northwest corner (SW ¼ NW ¼) Section 25-T36N-R36W; Dam #2 – 2,380 feet north and 1,220 feet west of the southeast corner (NE ¼ SE ¼) Section 25-T36N-R36W. The acres authorized for irrigation are as follows:

|                             |           |            |
|-----------------------------|-----------|------------|
| <b>Section 25-T36N-R36W</b> | NW ¼ SE ¼ | 9 acres    |
|                             | SW ¼ NW ¼ | 14.5 acres |
|                             | SE ¼ NW ¼ | 5 acres    |
| <b>Total 28.5 acres</b>     |           |            |

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 2132-2 including the following now applicable qualifications:

- Lows flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
- Water may not be pumped from the dams for irrigation until water authorized by U.S. Withdrawal No. 2-2 has been received by the LaCreek National Wildlife Refuge.
- This permit is approved subject to the irrigation water use questionnaire being submitted each year.



Garland Erbele, Chief Engineer  
Water Rights Program  
Department of Environment and Natural Resources

DEC 16 2005

date





2132-2

DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
PMB 2020  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 24, 2013

NOTICE

TO: BRETT A & JOY J HEATH, 29857 CEDAR CREEK RD, MARTIN, SD 57551 6500

FROM: Ron Duvall, Natural Resources Engineer  
for Garland Erbele, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2012 Irrigation Questionnaire(s)

Our records indicate that the 2012 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 12, 2012. The Water Management Board has directed that owners of water permits who have not submitted the 2012 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **8:30 am, March 7, 2013** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is (are) received in this office on/or before **March 4, 2013**, you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at [genny.mcmath@state.sd.us](mailto:genny.mcmath@state.sd.us). If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
PMB 2020  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
[www.denr.sd.gov](http://www.denr.sd.gov)

March 8, 2013

2132-2

BRETT A & JOY J HEATH  
29857 CEDAR CREEK RD  
MARTIN, SD 57551 6500

Dear Brett and Joy:

I am writing to acknowledge receipt of your 2012 irrigation questionnaire.

You may disregard the January 24, 2013, "Notice" concerning reporting requirements for Water Permit No. 2132-2. The information was received in our office prior to the Water Management Board meeting and your name was deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Genny McMath". The signature is written in a cursive, flowing style.

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



2132-2  
DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
PMB 2020  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

January 20, 2017

NOTICE

TO: BRETT A & JOY J HEATH, 29857 CEDAR CREEK RD, MARTIN, SD 57551 6500

FROM: Ron Duvall, Natural Resources Engineer  
for Jeanne Goodman, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2016 Irrigation Questionnaire(s)

Our records indicate your 2016 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 21, 2016. The Water Management Board has directed that owners of water permits who have not submitted the 2016 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 1, 2017 at 11:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is (are) received in this office before the **March 1, 2017** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at [genny.mcmath@state.sd.us](mailto:genny.mcmath@state.sd.us). If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

[denr.sd.gov](http://denr.sd.gov)

February 23, 2017

2132-2

Brett & Joy Heath  
29857 Cedar Creek Rd  
Martin SD 57551 6500

Dear Mr. & Mrs. Heath:

I am writing to acknowledge receipt of the information for your 2016 irrigation questionnaire. A questionnaire was completed for you based on your phone conversation with Eric Gronlund. The questionnaire reflects no irrigation was done in 2016 due to the excessive rainfall in your area.

You may disregard the January 20, 2017, "Notice" concerning reporting requirements for Water Right No. 2132-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

January 20, 2022

### NOTICE

TO: BRETT A & JOY J HEATH, 29857 CEDAR CREEK RD, MARTIN, SD 57551 6500

FROM: Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2021 Irrigation Questionnaire(s)

Our records indicate your 2021 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 22, 2021. The Water Management Board has directed that owners of water permits who have not submitted the 2021 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 2, 2022 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is (are) received in this office before the **March 2, 2022** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at [genny.mcmath@state.sd.us](mailto:genny.mcmath@state.sd.us). **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: DHAQPP**

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

February 22, 2022

2132-2

Brett & Joy Heath  
29857 Cedar Creek Rd  
Martin SD 57551-6500

Dear Mr. & Mrs. Heath:

I am writing to acknowledge receipt of your 2021 irrigation questionnaire.

You may disregard the January 20, 2022, "Notice" concerning reporting requirements for Water Right No. 2132-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath  
Water Rights Program  
605 773-3352  
Genny.mcmath@state.sd.us



DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

January 20, 2023

### NOTICE

TO: BRETT A & JOY J HEATH, 29857 CEDAR CREEK RD, MARTIN, SD 57551 6500

FROM: Ron Duvall, Water Rights Permitting Administrator  
for Eric Gronlund, Chief Engineer  
Water Rights Program

SUBJECT: Reporting Requirement for 2022 Irrigation Questionnaire(s)

Our records indicate your 2022 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2132-2. The request for the Questionnaire was dated October 21, 2022. The Water Management Board has directed owners of water permits who have not submitted the 2022 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2132-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 8, 2023 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2132-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is (are) received in this office before the **March 8, 2023** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at [genny.mcmath@state.sd.us](mailto:genny.mcmath@state.sd.us). **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: TANMIQ**

**NOTE:** Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**  
JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

February 28, 2023

2132-2

Brett & Joy Heath  
29857 Cedar Creek Rd  
Martin SD 57551-6500

Dear Mr. & Mrs. Heath:

I am writing to acknowledge receipt of your 2022 irrigation questionnaire.

You may disregard the January 20, 2023, "Notice" concerning reporting requirements for Water Right No. 2132-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath  
Water Rights Program  
605 773-3352  
Genny.mcmath@state.sd.us



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

December 4, 2025

2132-2

Brett Heath  
29857 Cedar Creek Rd  
Martin SD 57551

Dear Mr. Heath:

This letter is intended to follow up on this afternoon's conversation regarding ownership of Water Right No. 2132-2. It is my understanding that you wish to change the names the Water Right is held under.

For your convenience I have enclosed a partially completed "Notice of Transfer of Ownership" form for your review. Once you've completed the highlighted portions, the form can be returned in the postage-paid envelope with a check (payable to SD Water Rights) in the amount of \$50.00.

Please let me know if you have any additional questions or concerns.

Sincerely,

Amanda Dewell  
Permitting Administrator  
Water Rights Program  
Amanda.Dewell@state.sd.us  
605-773-3352

*enclosures*

PAID

DEC 18 2025

Ck# 2490

Rec't# \_\_\_\_\_

**NOTICE OF TRANSFER OF OWNERSHIP**

For assistance call (605) 773-3352

Mail to: SD DANR, Water Rights Program  
523 E Capitol Ave  
Pierre, SD 57501-3182

Water Right/Permit No. 2132-2

Date: 12-12-2025

RECEIVED

DEC 18 2025

I/We request that Water Right/Permit No. 2132-2 formerly owned by:  
Brett Heath & Joy Heath - Martin SD

be transferred to: OFFICE OF WATER

New Owner Name: Brett HEATH & Beverly HEATH  
Address: 29857 Cedar Creek Rd mobile: 605-685-5062  
City, State, Zip: MARTIN S.D. 57551 email: HEATH@GWTC.NET

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

Section 25-T36N-R36W  
NW 1/4 SE 1/4 - 9 acres  
SW 1/4 NW 1/4 - 14.5 acres  
SE 1/4 NW 1/4 - 5 acres  
TOTAL: 28.5 acres

☒ I understand that the validity of Water Right/Permit No. 2132-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Brett & Beverly HEATH, the new owner, certify that the above information is true and correct.

Brett Heath  
Beverly Heath  
(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, an inspection is conducted to issue a water right license for the project as developed. A water permit/right may be cancelled for one or more of the following reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three-year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

# RECEIPT

## WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date December 18, 2025

RECEIVED OF Brett Heath & Beverly Heath 29857 Cedar Creek Rd Martin SD 57551

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

|                                                                                                                |                 |
|----------------------------------------------------------------------------------------------------------------|-----------------|
| Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use | \$ _____        |
| Fee for Application for Permit No. _____ to Appropriate Water for Future use                                   | \$ _____        |
| Fee to retain Future Use Permit No. _____ after period of seven years.                                         | \$ _____        |
| Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____            | \$ _____        |
| Fee for Filing Transfer Form #2132-2                                                                           | \$ <u>50.00</u> |
| Fee for _____                                                                                                  | \$ _____        |
| Fee for Issuing New Well Driller's License No. _____                                                           | \$ _____        |
| Fee for Renewal of Well Driller's License No. _____                                                            | \$ _____        |
| Fee for Issuing Well Pump Installer's License No. _____                                                        | \$ _____        |
| Fee for Renewal of Well Pump Installer's License No. _____                                                     | \$ _____        |
| (Any Other Work Provided by Law)                                                                               |                 |
| TOTAL                                                                                                          | \$ <u>50.00</u> |

By  \_\_\_\_\_  
Chief Engineer



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

December 22<sup>nd</sup>, 2025

2132-2

Brett Heath & Beverly Heath  
29857 Cedar Creek Rd  
Martin, SD 57551

Dear Mr. Heath & Ms. Heath:

The South Dakota Water Rights Program is in receipt of the "Notice of Transfer of Ownership" form and the required fees you submitted for Water Right No. 2132-2. Enclosed is a receipt of payment for your records.

Water Right No. 2132-2, previously held by Brett Heath & Joy Heath, is now listed under Brett Heath & Beverly Heath. I have also updated your contact information in our system.

As a reminder, so long as you use the water beneficially, as stated in the License (copy enclosed), State Water Laws provide that you have a continuing right to use the water. Should the water not be put to beneficial use for a period longer than 3 consecutive years, without legal excuse, the License will be subject to cancellation.

If you have any questions, please contact me.

Sincerely,

Shannon Konst  
Water Rights Program  
605 773-3352  
Shannon.konst@state.sd.us

**NOTE:** The validity of Water Right No. 2132-2 has not been determined by this transfer action. Only the Water Management Board has the authority to determine if a water permit/right is valid.

*enclosure*