

Exhibit A

WATER PERMIT NO. 2261-2

Phone: 842-3217

Name of Applicant: Jorgensen Farms

Post Office Address: HCR 57, Box 91, Ideal SD 57541

Amount of Water Claimed: 60 gpm (0.13 cfs) Total Acres: _____

Source of Water Supply: groundwater

Water to be used for: livestock watering County: Tripp

About 7 miles W, 15N of Winner

PRIORITY Date Received: 2-23-93 Fee: \$150 Remarks: _____

Corrected Application Received: _____ Period of Annual Use: Jan 1 - Dec 31

WATER QUALITY APPROVAL RECEIVED: NA APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES _____ NO _____ REMARKS: _____

Diversion Point: NW 1/4 SE 1/4 Sec 31-T102N-R77W

Land to be Irrigated: _____

			3/		
			⊗		

Well Log: Driller: Sather Drilling, Inc. Licensed YES X NO _____

Depth of Well: 1587' REMARKS: _____

Type of Map: aerial PREPARED BY: Avis Feraurds, ASCS Reviewed and the Number

Assigned on: 2-23-93 By: Karen Schlaak

**SOUTH DAKOTA
WATER PERMIT NO. 2261-2**

Date of first receipt of application February 23, 1993.

The Water Management Board approved Water Permit Application No. 2261-2 on December 1, 1993 for Jorgensen Farms, HCR 57, Box 91, Ideal SD 57541 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. 2261-2 appropriates 60 gallons per minute (0.13 cubic feet of water per second) from one well (Dakota Formation) 1587 feet deep located in the NW 1/4 SE 1/4 Section 31-T102N-R77W.
2. The water appropriated shall be used for the purpose of supplying water to a swine confinement feeding operation and may not exceed the amount of water needed for beneficial use for commercial use.
3. The water is to be used during the following described annual period: January 1 - December 31.
4. The date from which applicant may claim right is February 23, 1993.
5. One-fifth of the construction is to be completed on or before June 1, 1996.
6. All construction is to be completed on or before December 1, 1998.
7. Water is to be put to beneficial use on or before December 1, 2002.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

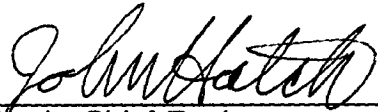
QUALIFICATIONS

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wastewater storage lagoons shall be maintained so that they do not receive surface runoff from the surrounding area.
3. No wastewater may be released from the wastewater lagoon except through a disposal system, unless an extended period of above normal precipitation results in excess stored waters and prevents operation of equipment to lower water levels due to field and weather conditions.
4. Operation of a disposal system, if necessary to dispose of waste and wastewater shall be in a manner that prevents runoff from the disposal sites and from entering the waters of the state. The diffused drainage of natural precipitation on agricultural land resulting from a "non-point source" is not subject to these conditions.

(continued)

5. Approval of Permit No. 2261-2 is subject to compliance with the following existing and applicable Water Management Board rules:
- a. Chapter 74:03:15 Ground Water Quality Standards
 - b. Chapter 74:03:16 Ground Water Discharge Permit
 - c. Chapter 74:03:02 Surface Water Quality Standards
 - d. Chapter 74:03:04 Uses Assigned to Streams
 - e. Chapter 74:03:17 through 74:03:26 Surface Water Discharge Provisions

WATER MANAGEMENT BOARD

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

NOV 14 1994
date

FORM 2: Application for uses other than irrigation

(type or print)

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

No. 2261-2 Hydrologic Unit 10140204
Basin White River
Newspaper Winner Advocate, Box 71, Winner
(office use only)



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

Check use of water:

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

Livestock

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

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

- Name of Applicant Jorgensen Farms Phone 605 842 3217
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address HCR 57 Box 91 Idola State So. Dak 57541
(Street, RR, or Box) (City) (Zip Code)
- Amount of water claimed 0.13 *CFS or 60 **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply well Artisian (Lakota)
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
NW 1/4 SE 1/4 section 31 - Twp 102 N - R 77 W
County Tripp
- County or counties where water will be used Tripp
- Annual period during which water is to be used year around Jan 1 - Dec 31
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

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

STATE OF SOUTH DAKOTA)

County of Tripp)^{SS}

Jorgensen Farms

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

Signed Martin Jorgensen

Subscribed and sworn to before me this 19 day of February 19 93

Brenda Jorgensen
Notary Public

Supplemental Information

(type or print in ink)

(7 7/8 To 502) 4 1/2 To 1587

1. Well Information - Proposed Construction

- a) Drill Hole Diameter 7 7/8 x 4 1/2 Depth 1587 Total Depth
- b) Casing Type Steel To 502 Diameter 5 in Thickness 1/4 in
- c) Screen Type Copper Diameter 2 in Thickness 1/8 in
- d) Gravel Pack Thickness 1 1/2 Length of Gravel Pack 80 ft
- e) Depth to Top of Water Bearing Material 1473
- f) Depth to Water (ground surface to water level) 110
- g) Distance to nearest existing domestic well: one mile
- On applicants property None On property owned by others Glen Gardner

2. Dugout Information

- 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 for each dam. The locations of the dams need to be shown on the map submitted with the application.

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

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

g) X & Y Slope

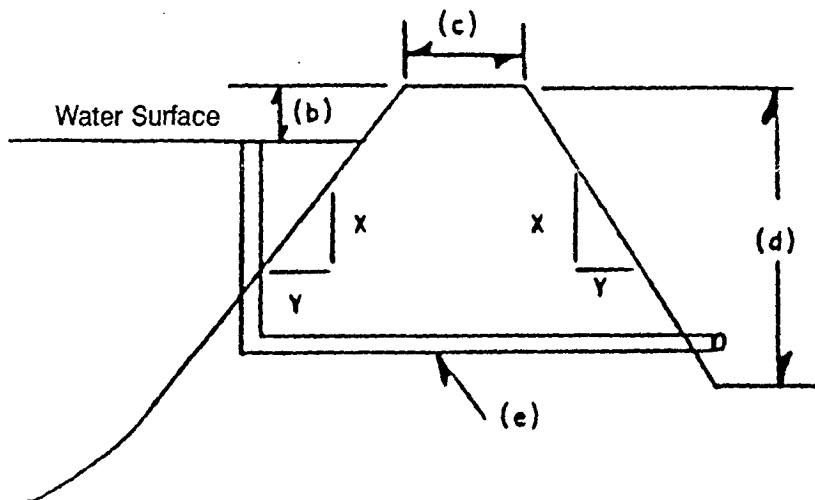
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area above Dam _____ Acres



RECEIPT

413651

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ February 23, 19 93

RECEIVED OF Jorgensen Farms, HCR 57 Box 91, Ideal, SD 57541

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

Fee for Application for Permit No. <u>2261-2</u> to Appropriate Water, to construct 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 _____		

(Any Other Work Provided by Law)	Total	150 00

By John Hatch
Chief Engineer

NOT TO SCALE



T 2201

102.99
(10-R)

31
125.9

New Well
Arist. Zeraurde,
Acting CED
Jrip County ASOS
Shinnel, A.D. 37580
2-19-93
Z

37.1

HEL

HEL

2

102.99

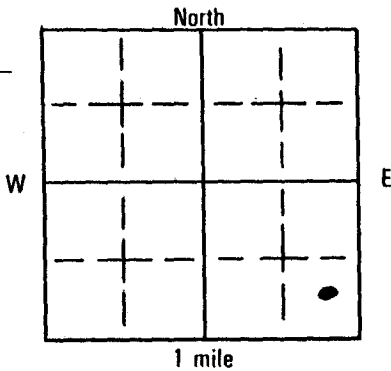
Appl No. 2261-2

SOUTH DAKOTA WATER WELL COMPLETION REPORT

10-85

Location SE 1/4 Sec 31 Twp 102N Rg 77WCounty Tripp

Please mark well location with an "X"

Well Completion Date 12-6-91

PROPOSED USE:

☒ Domestic ☐ Municipal ☐ Test Holes
☐ Irrigation ☐ Industrial ☒ Stock

Method of Drilling:

forward rotary

CASING DATA:

☒ Steel ☐ Plastic ☒ OtherIf other describe 2" K Cop

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUT:

Was the well grouted? ☒ YES ☐ NOTo what depth? 502 FEETWhat is grouting material? CementIf cement, number of sacks? 56Describe grouting procedure pump down threeCasing till it comes up on outside, shut off w/ valveWhat was grout weight? 6 gal. of water LB/GALper bag of cement.SCREEN: ☒ Perforated pipe ☐ ManufacturedDiameter 2" IN Length 20 FEETMaterial 2" K Cop.Slot Size 3/8 Set From 0 Feet To 20 FeetSlot Size 3/8 Set From 20 Feet To 40 FeetSlot Size 3/8 Set From 40 Feet To 60 FeetOther information 3/8 80 80 100 ft.Was a packer or seal used? ☒ YES ☐ NOIf so, what material? rubberDescribe packer(s) and location? 3-1 at bottom of5" 1 at Niobrara 780-8401 at top of LakotaWas well disinfected upon completion? ☒ YES ☐ NOExplain closedBacteriological analysis ☐ YES ☒ NO

Laboratory sent to _____

Well Owner:

Name Jorgensen AngusAddress Martin JorgensenWell Log: Ideal, S. Dak. 57544

Depth

Formation	From	To
shale	100	200
shale	200	300
shale	300	400
shale	400	500
shale	500	600
shale	600	700
shale Niobrara 780-840	700	800
shale rocky ledges	800	900
shale from 1180	900	1000
shale to 1473	1000	1100
shale	1100	1200
shale	1200	1300
shale	1300	1400
shale	1400	1473

STATIC WATER LEVEL sand 110 Feet 1587

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

If other, specify _____

Can well be completely shut in? _____

WELL TEST DATA:

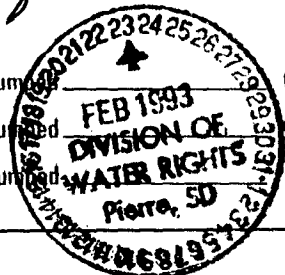
☒ Pumped☐ Bailed☐ OtherDescribes 2 H. 18 GPMGrundfos setting210 ft.

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pump _____ GPM

_____ ft. After _____ Hrs. pump _____ GPM

_____ ft. After _____ Hrs. pump _____ GPM



REMARKS:

Lakota well
 114 ft. sand
 total depth - 1587 ft.
 5" - 7 7/8" hole
 2" - 4 1/4" hole
 502 ft. 5" K Cop. Cemented in
 1085 ft. 2" K Cop.
 Water Temp. - 105°

This well was drilled under license # 9

And this report is true and accurate.

Drilling firm Satter Drilling, Inc.

Signature of License Representative:

Wm. Seachris

Signature of Well Owner:

Jorgensen Angus by Martin JorgensenDate 2-22-93



201005



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DEPARTMENT OF WATER & NATURAL RESOURCES

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

GREAT FACES. GREAT PLACES.

January 25, 1991

Kevin Rath, Western Area Sales Engineer
Sand Livestock Systems, Inc.
1418 25th Street
P.O. Box 948
Columbus, Nebraska 68601

Dear Mr. Rath:

I am writing in response to our discussion on the definition of domestic use of water and whether use of water for a proposed swine production facility would be categorized as domestic use of water.

Domestic use of water as defined by SDCL 46-1-6(4) includes stock watering if the use of water does not exceed eighteen gallons per minute (gpm) on an average daily basis. This definition is further defined by General Rule 74:02:01:01 which states the reasonable domestic use is the use of 18 gpm or less of water on a average daily basis as necessary for domestic purposes, with a maximum pumping capacity of 25 gpm. The proposed swine production facility, as described to me would utilize less than 18 gpm and therefore would not require a water permit.

Secondly, we discussed whether the disposal of the contaminated water by land application would be considered irrigation. The disposal of contaminated water is not considered to be irrigation by definition unless other water is used along with the contaminated water. The Conservation Commission through Department of Agriculture administers the soil/water compatibility permitting process and the decision regarding the need for this permit ultimately rests with them. I recommend that you contact Jim Stukel, Soil/Water Compatibility Permitting Coordinator at (605) 773-3259 to further discuss this matter.

I hope this clarifies our discussion regarding the permitting of water sources.

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352



DEPARTMENT OF WATER & NATURAL RESOURCES

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

March 13, 1991

Kevin Rath
Sand Livestock Systems, Inc.
1418 - 25th Street
P.O. Box 948
Columbus, Nebraska 68601

Dear Mr. Rath:

I am writing regarding your inquiry whether a permit to appropriate water is necessary for the Ideal Pork swine production facility. The use of sixteen gallons of water per minute (gpm) by the proposed swine production facility for flushing purposes would be considered domestic use of water as defined by SDCL 46-1-6(4).

The reasonable domestic use of water in South Dakota does not require a water permit. Administrative Rules of South Dakota 74:02:01:01(1) defines "reasonable domestic use" as the use of 18 gpm or less on an average daily basis (25,920 gallons per day) as necessary for domestic purposes, with a maximum pumping capacity of 25 gallons per minute. If water from the 16 gpm flowing well flows into a storage tank and is repumped, the 25 gpm pump capacity limitation will not be applicable for this project. If the use of water by the facility exceeds reasonable domestic use of water, then the use of water is considered commercial use and a water permit will be required.

If you have any questions regarding the necessity for a water permit, please contact Eric Gronlund at 605 773-3352.

Sincerely,


John Hatch, Chief Engineer
Water Rights Division

cc: Jim Stukel, Division of Conservation



DEPARTMENT OF WATER & NATURAL RESOURCES

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

March 25, 1991

COPY

Kevin Rath
Sand Livestock Systems, Inc.
1418 - 25th Street
P.O. Box 948
Columbus, Nebraska 68601

Dear Mr. Rath:

I am writing as a follow-up to my March 19th meeting with Martin Jorgenson and yourself regarding whether a permit to appropriate water is necessary for a proposed hog confinement operation. Stock watering is defined by SDCL 46-1-6(4) to be a domestic use of water and as stated in previous correspondence a permit to appropriate water is not required in South Dakota for the reasonable domestic use of water.

Administrative Rules of South Dakota 74:02:01:01(1) defines "reasonable domestic use" as the use of 18 gpm or less on an average daily basis (25,920 gallons per day) as necessary for domestic purposes, with a maximum pumping capacity of 25 gallons per minute. If water from the well(s) is pumped into a storage tank in accordance with the reasonable domestic use of water and is repumped, the 25 gpm pumping capacity limitation will not apply to the water being repumped from the storage tank.

The question was asked at the meeting whether two separate buildings of the same confinement operation could be treated each as a separate domestic use of water. Since this is the same livestock confinement operation, each building would not be considered as a separate domestic use of water. The domestic use of water as defined above would apply to the livestock confinement operation as a whole.

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

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352

South Dakota

GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 12, 1991

Martin Jorgensen
HCR 57, Box 91
Ideal SD 57541

Dear Mr. Jorgensen:

I am writing in response to your inquiry as to whether or not a water permit is needed for your proposed hog operation. I understand that you are planning to construct three separate units.

- 1) Ideal Pork, a 7,600 head farrow to finish swine feeding operation to be located in the S1/2 section 13-T102N-R77W with water supplied from one Dakota Formation well.
- 2) A nursery unit located about 3/4 mile from the 7,600 unit with water supplied from one Dakota Formation well.

I understand that there will not be any connection between the 7,600 unit and the nursery unit water supplies.

- 3) Jorgensen Farms No. 2, a 2,700 head farrow to finish swine feeding operation to be located in the SW1/4 section 10-T101N-R76W. The water supply for this unit will consist of two wells, one well to supply the unit and one well for standby purposes.

Stock watering is a domestic use of water as defined by SDCL 46-1-6(4). A water permit is not needed to supply livestock in a confinement feeding operation if the amount of water used does not exceed "reasonable domestic use." Water Management Board Rule 74:02:01:01(1) defines reasonable domestic use as the use of 18 or less gallons of water per minute on an average daily basis (26,000 gallons per day) for domestic purposes with a maximum pumping capacity of 25 gallons per minute. Therefore, each separate unit may use up to the maximum amount of water allowed by the reasonable domestic use definition and not need a water permit. To further clarify, no water permit is needed even if a site has more than one well, provided the combined diversion rate from the wells does not exceed reasonable domestic use.

(continued)

November 12, 1991
Martin Jorgensen
Page 2

You may also want to consider other water supply options. Water from the well or wells may be diverted to a storage tank for each unit at a rate not exceeding reasonable domestic use. Diversions from the storage tank could then be made at whatever peak rate is needed for each unit. A second option, if available, would be connection to the local rural water system. This would allow the facility to use water in any amount assuming the rural water system has the capacity.

Please contact me, if you have any additional questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ron Duvall". The signature is fluid and cursive, with a large loop at the end.

Ron Duvall, Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Division
605 773-3352

RUBEN G. MAULIS

ATTORNEY AND COUNSELLOR AT LAW

P. O. Box 150

338 SOUTH MAIN STREET

WINNER, SOUTH DAKOTA 57580

November 22, 1991



Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

ATTN: Robbie Roberts, Secretary

Re: Tripp County Concerned Citizens and Ideal Pork

Dear Mr. Roberts:

Enclosed herewith are 14 Petitions containing approximately 500 signatures.

From information the Petitioners have, Ideal Pork is proposing a 7600 head farrow to finish swine feeding operation to be located in the South Half (S1/2) of Section Thirty-one (31), Township One Hundred Two (102) North, Range Seventy-seven (77), West of the 5th P.M., Tripp County, South Dakota. The facility will include, among other things, an anaerobic lagoon/treatment pond. The Petitioners are concerned the facility will cause odors, thereby reducing air quality, will result in waste, which may be discharged into either underground or surface waters of the state, thereby reducing water quality and that adequate provision is made to provide for effective and efficient solid waste disposal, i.e., dead hogs.

The Petitioners are also concerned that the agencies of the State of South Dakota that are charged with the responsibility of assuring that the air, water and natural resources are properly protected are not providing the public with the necessary opportunity to object to any permits being issued to Ideal Pork in that said agencies are not providing opportunities for public hearing with adequate public notice in accordance with S.D.C.L. 34A-2-35. The Petitioners are therefore requesting that any permits, whether for water use, waste disposal or otherwise, that any have been issued to Ideal Pork by suspended and the Petitioners be granted an opportunity for a hearing after due notice of the hearing.

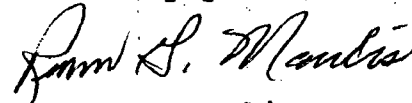
Letter to SD Dept. of
Environment & Natural Resources

Page Two

The Petitioners also request that their complaints be retained as confidential under the requirements of S.D.C.L. 1-27-3 and 34A-2-111. The requirement of confidentiality is very important for the reason that some of the Petitioners have already been threatened. Also, various residents have declined to sign the petition because of the fear of action being taken against them.

I would appreciate if you would direct the enclosed petitions or copies thereof to the appropriate boards or person and if you would indicate to me what action is taken or will be taken.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Ruben G. Maulis".

Ruben G. Maulis

RGM:sbs

Enclosures

PETITION FOR HEARING

TO THE BOARD OF MINERALS AND ENVIRONMENT AND ITS SECRETARY;
THE WATER MANAGEMENT BOARD OF AND ITS SECRETARY AND TO THE BOARD
OF ENVIRONMENT AND NATURAL RESOURCES AND ITS SECRETARY, ALL OF
THE STATE OF SOUTH DAKOTA:

WHEREAS the undersigned, a resident of the County of Tripp, State of South Dakota, has been informed that Ideal Pork, a partnership of which Sand Livestock System, Inc., of Columbus, Nebraska, and Jorgensen Farms of Ideal, South Dakota are majority partners, are proposing to construct, maintain and operate a 2,000 sow/feeder pig complex which will include, among other things, 16 individual buildings, an artesian well, a lagoon for the disposal of wastes and a concrete pit or pits for the disposal of solid wastes consisting of dead animals, all to be situated on the South Half (S1/2) of Section Thirty-one (31), Township One Hundred Two (102) North, Range Seventy-seven (77), West of the 5th P.M., Tripp County, South Dakota, and

WHEREAS it is policy of the State of South Dakota to achieve and maintain reasonable levels of air quality which will, among other things, protect human health and safety, and foster the comfort and convenience of its inhabitants, and

WHEREAS it is the policy of the State of South Dakota that no waste be discharged into any waters of the State without first receiving the necessary treatment or other corrective action to protect the legitimate and beneficial use of such waters thereby protecting the public health and welfare, and

WHEREAS it is the policy of the State of South Dakota that the public health, safety and welfare be protected by an effective and efficient solid waste disposal program, and

WHEREAS, the undersigned has been informed that Ideal Pork has been granted a permit for the construction, maintenance and operation of an artesian well and for the construction of the above mentioned hog confinement facility all without the requirement of a public notice and a hearing.

NOW THEREFORE, the undersigned hereby requests the State of South Dakota, or any of its agencies which have issued any such permits to Ideal Pork, immediately suspend said permits and provide for public notice to be given in the Winner Advocate, a legal newspaper published in Tripp County, South Dakota, that a hearing will be held on the matter of their reinstatement, renewal or issuance of any such permits, and thereby the

undersigned shall have an opportunity to present and hear evidence determining whether the policies of the State of South Dakota, as above set forth, are being fulfilled.

<u>NAME OF PETITIONER</u>	<u>MAILING ADDRESS</u>	<u>DATE</u>
<u>Howard Cole</u>	<u>Rt 2 Box 32 Witter SD</u>	<u>11/2/91</u>
<u>Howard L. Cole</u>	<u>Rt 2 Box 32 Witter SD</u>	<u>11/2/91</u>
<u>Kenneth Schuman</u>	<u>445 West 9th Winner S.D.</u>	<u>11-3-91</u>
<u>Paul Brown</u>	<u>601 E 3rd St Winner SD</u>	<u>11-04-91</u>
<u>Bob Hanig</u>	<u>740 W 9th St Winner S.D.</u>	<u>11-04-91</u>
<u>Harold Chamberlain</u>	<u>113 1/2 W 1st B. Winner S.D.</u>	<u>11-4-91</u>
<u>Robert Bolander</u>	<u>502 W Park St</u>	<u>11-4-91</u>
<u>George Buckholz</u>	<u>817 W 8th St</u>	<u>11-4-91</u>
<u>Alan Bonnet</u>	<u>825 W 8th Winner S.D.</u>	<u>11-4-91</u>
<u>P. L. Arns</u>	<u>712 Adams</u>	<u>11-4-91</u>
<u>Charles A. Allaire</u>	<u>746 West 2nd</u>	<u>11-4-91</u>
<u>Leonard Jones</u>	<u>324 East 6th St</u>	<u>11-4-91</u>
<u>James L. Pavent</u>	<u>234 E 4th St</u>	<u>11-4-91</u>
<u>W. L. Dwyer</u>	<u>Box 88 Box 15 Clarfield SD</u>	<u>11-4-91</u>
<u>G. L. Faulstich</u>	<u>Winner S.D. Dak</u>	<u>11-4-91</u>
<u>David A. Fisher</u>	<u>Winner S.D. Dak</u>	<u>11-4-91</u>
<u>David A. Fisher</u>	<u>Winner S.D. Dak</u>	<u>11-4-91</u>
<u>Margaret Fisher</u>	<u>Winner S.D.</u>	<u>11-4-91</u>
<u>Lill McCright</u>	<u>532 East 7th Winner SD</u>	<u>11-4-91</u>
<u>Marilyn Pederson</u>	<u>Rt 1 Box 7 Winner</u>	<u>11-4-91</u>
<u>Arlene M. Cright</u>	<u>532 E 7th Winner SD</u>	<u>11-4-91</u>



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 11, 1991

Mr. Ruben G. Maulis
Attorney at Law
P.O. Box 150
Winner, SD 57580-0150

Re: Ideal Pork-Petition for Hearing

Dear Mr. Maulis:

This letter acknowledges receipt of your letter of November 22, 1991, and attached Petitions for Hearings.

The Department has reviewed this facility and determined that it does not require permitting under South Dakota Codified Laws Chapter 34A-1 (Air Pollution Control) and Chapter 34A-2 (Water Pollution Control).

The operation in question does not constitute an air pollution source required to be permitted under SDCL 34A-1-21. Odors may be an important factor in zoning, and may even give rise to a private cause of action under nuisance theory, but they do not constitute an air pollution source under state and federal law.

The Department reviewed the plans and specifications of the operation and found that they meet our standards for animal waste management systems. The plans and specifications were also reviewed by the Office of Groundwater Quality which determined that there would be no discharge of pollutants to groundwater and therefore, no water pollution control permit is required under 34A-2-27.

Based upon a preliminary review of this operation, it does not appear that any further water rights will be required. In the event additional water rights are required, that would require public notice and could be granted only after the opportunity for a public hearing before the Water Management Board.

We will keep your attached petitions on file and if it becomes necessary for Ideal Pork to obtain such a water right, your enclosed petitions will be presented to the Water Management Board. In that event, in addition to the public notice, we will also provide a particular notice to your office.

Sincerely,

Robert E. Roberts
Secretary



January 6, 1992

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Martin Jorgensen
HCR 57, Box 91
Ideal SD 57451

Dear Mr. Jorgensen:

I am writing to followup on your November 13, 1991, phone conversation with Ron Duvall, staff engineer, since we have not heard from you. You had called concerning the grower unit of your proposed hog confinement operation.

According to the phone conversation, the grower unit is to consist of 8 to 10 buildings and will require more than 18 gpm on an average daily basis to supply the facility. The issue raised was the distance needed between grower unit buildings before the buildings would be considered as separate units. Mr. Duvall advised that no distance is specified in statute or rule. However, according to SDCL 46-2A-14, an application for a permit to appropriate water shall refer to "one water use system." If the grower unit is split such that the water use systems (water supply and wastewater) of the separate units are not interconnected, then a permit should not be needed assuming the separate units do not individually exceed reasonable domestic use. Separation of the grower units could be further delineated by separate electrical metering and by some physical distance between buildings.

Although no specific distance separation is mandated, interpretation of the intent of the law would be by the Water Management Board and/or the courts. Persons opposed to your project could request a declaratory ruling from the Water Management Board on the need for a water permit. They could do this after construction is started or completed. Any Board decision would be subject to appeal to the courts. The permit question could also be taken directly to the courts.

If you have any questions, please let us know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Hatch".

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

GREAT FACES. GREAT PLACES.

January 8, 1992

Ruben G. Maulis, Attorney
PO Box 150
Winner SD 57580-0150

Dear Mr. Maulis:

I am writing in response to our meeting on December 27, 1991, regarding the proposed Ideal Pork confinement facility. The following are responses to questions raised during our meeting:

- 1) What permits has the Department issued for this operation and to whom were the permits issued?

To date, no permits have been issued by the Department. There are three types of permits which may be applicable to such an operation; a National Pollutant Discharge Elimination System (NPDES) permit, a Construction Permit, and a permit to appropriate water. South Dakota has not been delegated the administrative authority for the NPDES Program from the U.S Environmental Protection Agency. Therefore, any NPDES permit must be obtained from EPA-Region VIII in Denver. A Construction Permit is required from this Department if groundwater will be impacted. The Groundwater Quality Program assessed potential ground water impacts during their review of the plans and specifications. From this assessment it was concluded there would not be an impact and, as a result, a Construction Permit would not be needed. A permit to appropriate water may or may not be needed for this type of operation depending on the amount of water used (see #4.)

- 2) Whose plans and specifications were approved?

The Division of Environmental Regulation has approved plans and specifications for three different facilities: Ideal Pork, a swine production complex; Jorgensen Farms Number One, a cattle feeding operation; and Jorgensen Farms Number Two, a swine feeding operation. The approval letters were written to Mr. Greg Jorgensen of Jorgensen Farms.

- 3) In approving the plans and specifications, did the Department comply with the last two sentences in SDCL 34A-2-35, added by the 1991 legislature, which require a public hearing?

The last two sentences allow the Secretary to issue permits in uncontested cases. For the surface water discharge and construction permits authorized by this section, the Secretary can issue the permits if they are not contested and the recommendation is for approval or conditional approval.

As mentioned above, South Dakota has not been delegated administrative authority for the NPDES program. Therefore, EPA is the NPDES permitting authority in South Dakota. Federal law would preempt our statutes relating to the NPDES program. These statutes are enabling legislation that will allow the Department to eventually assume authority for the NPDES program. When that time comes, this Department will issue surface water discharge permits. I might add that we will be attempting to receive this authority during the upcoming legislative session. In addition, we have determined that the Construction Permit will not be needed for this particular operation. This decision was based upon our assessment that groundwater would not be impacted (See #1.)

Another question you may have had is whether or not a public hearing is required prior to approval of plans and specifications. There is no statutory provision requiring a public hearing to be held in order for the Department to review and approve plans and specifications. As stated earlier, the Department has approved the plans for this operation.

- 4) In calculating the amount of water required to operate the facility, does the Department include water necessary to flush the sewage system and, if so, does that put the operation over 18 gallons per minute?

During the approval process of the plans and specifications, the total volume of wash water was not considered. The Department allows an alternate method for calculating storage requirements. The designers of this facility opted to use this alternate method. As a result, no figures have been given regarding the total amount of wash water used.

Stock watering is a domestic use of water as defined by SDCL 46-1-6(4). A water permit is not needed to supply livestock in a confinement feeding operation if the amount of water used does not exceed "reasonable domestic use." Water Management Board Rule 74:02:01:01(1) defines reasonable domestic use as the use of 18 or less gpm on an average daily basis (26,000 gallons per day) for domestic purposes with a maximum pumping capacity of 25 gpm. Therefore, each separate unit may use up to the maximum amount of water allowed by the reasonable domestic use definition, including water used for flushing, and not need a water permit. This information has been provided to the proposed operation and no water permit application has been filed.

- 5) What weight does the Department give to odor in these matters?

Odors are not considered in approval of plans and specifications. However, the system must be designed in accordance with the Department's guidelines which may help eliminate some of the odor problems associated with these types of facilities.

The Water Management Board may consider various public interest concerns pursuant to SDCL 46-2A-9 when considering a contested application to appropriate water. However, as stated in #4, a water permit may or may not be needed depending on the amount of water used.

- 6) Has an application for a solid waste permit been made to allow disposal of dead animals and large amounts of veterinary supplies?

The Waste Management Program has not received a solid waste permit application. Solid waste statutes do not prevent an individual from disposing of solid waste from normal farming operations provided disposal is done in an environmentally sound manner and complies with any local ordinances. The owners also have the option of disposing the solid waste generated at this operation at a permitted landfill or on his own land pursuant to SDCL 34A-6-1.14.

These decisions have been made by the Department. While we believe the decisions to be correct, there are administrative means to have them reviewed. According to Water Management Board rule 74:02:01:46, a request for a declaratory ruling may be presented to the Water Management Board. Enclosed for your reference is a copy of Administrative Rules Chapter 74:02:01. Under the Water Pollution Control Act, appeals may be made according to the administrative procedures in SDCL 1-26.

I believe that your real interest in proposing the above questions is to find a means to request a hearing that is held on the construction of this proposed hog operation. Therefore, let me summarize some options that I believe you have, although there certainly may be others.

1) Water right permit - if you believe that this operation should have a water right permit, which is issued depending on the availability of water and whether it is in the public interest, a request for a declaratory ruling from the Water Management Board can be made as per the enclosed administrative rules.

2) Ground water discharge permit, surface water discharge permit, or approval of plans and specifications - if you believe that this operation should be required to have either or both of these permits, or that this Department erred in approving the plans and specifications, a request for a declaratory ruling may be presented to the Water Management Board as per SDCL 1-26, the SD Administrative Procedures Act.

Finally, if it is your belief this agency has failed to require any permit necessary for this operation under state law, SDCL Chapter 21-29 (Mandamus Actions) provides a forum for judicial review of that issue in state circuit court.

I hope this letter adequately answers your questions. If you need further clarification or have other questions, please contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. E. Roberts".

Robert E. Roberts
Secretary

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

2 November 1992

Martin Jorgensen
HCR 57, Box 91
Ideal, SD 57541

Dear Mr. Jorgensen:

I am writing in regards to our recent conversation concerning your proposed animal feeding operations to be built near the town of Ideal. Here are the answers to your questions.

This department has approved the plans and specifications for feedlot pollution control facilities as follows:

- Ideal Pork, a swine production complex for 7,600 head, to be located in the S1/2 of Section 31, T102N, R77W. Approved 23 September 1991;
- Jorgensen Farms Number One, a cattle feeding operation for 1500 head and 11.2 acres, to be located in the SE1/4 of the SW1/4 of Section 10, T101N, R76W. Approved 29 October 1991; and
- Jorgensen Farms Number Two - a swine feeding operation for 2,700 head, to be located in the SW1/4 of Section 10, T101N, R76W. Approved 6 November 1991.

Department approval of these facilities becomes void two years after the date of approval if construction is not started prior to the expiration date. Construction of these facilities may begin provided that the facilities are built according to the approved plans and specifications and in the same locations as originally proposed. However, construction of any of the works for storing or carrying water may not begin until a permit to appropriate water is obtained. A permit to appropriate water may or may not be needed for each facility depending on the amount of water needed. Please refer to the enclosed letters dated November 12, 1991, and January 6, 1992, which outline when a permit to appropriate water is needed for livestock watering.

Martin Jorgensen
2 November 1992
Page 2

In short, you have all the necessary approvals to begin building your feeding operations unless some of the facilities need a permit to appropriate water. For further information on the water permit requirments, please contact John Hatch or Ron Duvall, of my staff, at (605)773-3352.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rt E. Roberts". The letters are cursive and somewhat stylized.

Robert E. Roberts
Secretary

enclosures

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: John Csukker - Sand Livestock

ADDRESS: _____ COUNTY: _____

DATE: 3/16/93 TELEPHONE: 402 564-1211

RE: Regarding water permitting issue for Ideal Pork

COMMENTS:

Rodger Seefeldt talked to me on Monday regarding the Ideal Pork complex. He stated plans now include complex being developed for up to 14,800 head. Rodger wondered whether this required a water permit. He estimated water usage by the facility of 40.4 gpm. I explained that in the past correspondence had gone out to Mr. Jorgensen regarding permitting issues. Rodger stated that a John Csukker with Sand Livestock was his contact on the proposed project.

I called John Csukker regarding whether the facility would require a water permit. I made him aware of the past correspondence that had been sent to Martin Jorgensen on this matter and then tried to brief him on what would require a permit. He stated that he intended to review these letters which were in their files.

I told him the definition of "reasonable domestic use" and how it relates to the proposed facility. Also that grower and nursery unit would need to be separate water use systems that do not exceed "reasonable domestic use".

I stated in the past we received numerous petitions and inquiries opposing the facility. I stated that I'm sure these concerns would resurface and the water permitting issues would have to be addressed.

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: Eric Honlund



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 16, 1993

GREG JORGENSEN
JORGENSEN FARMS
HCR 57 BOX 91
IDEAL SD 57541-9230

Re: 6.27.13 Ideal Pork
Animal Waste Management System Revised P&S

Dear Mr. Jorgenson:

The Department of Environment and Natural Resources (DENR) is in receipt of three (3) copies of the revised plans and specifications (P&S) for your above referenced Animal Waste Management System (AWMS). The AWMS will be located in the South 1/2 of Section 31, Township 102 North, Range 77 West in Tripp County, South Dakota.

This system consists of a holding pond for a 14,800-head/4,546 animal unit (A.U.) farrow to finish swine confinement feeding operation.

The DENR has reviewed and hereby approves the P&S for the above mentioned project contingent upon the following comment(s) or qualification(s) listed below. This approval expires on March 16, 1995, unless construction has been started by that date. One copy of the approved P&S is being retained for our files.

1. Prior to construction of the AWMS, the Department would like to be notified to permit our personnel the opportunity for construction inspections. To notify us, please phone (605) 773-3351 and ask for Rodger Seefeldt.
2. The DENR calculations indicate that the water usage for this facility easily exceeds the 18 gallons per minute (gpm) water right permit requirement. Therefore, it appears that a water right permit will be required for this facility. Please contact Eric Gronlund with the Water Rights Division of the DENR, phone (605) 773-3352, to obtain an application for this permit.
3. Due to the pond depth and for safety, the DENR recommends that a fence be installed around the pond with appropriate gates and locks.
4. Additional information about the two wells (ie: depth, cased/uncased, boring logs, etc.) should be submitted to us for review and inclusion in the file copy of the P&S.
5. To obtain even compaction of the soil around the cleanouts and above the pipe line and to eliminate the potential for the cleanouts to break and become unusable, the DENR recommends that cleanouts be installed as per the enclosed drawing.

6. A nutrient management plan (NMP) was submitted with the P&S for this site. The NMP will allow you to better plan your fertilizer use of the valuable nutrients contained in the solid and liquid wastes, and minimize or eliminate any potential surface and ground-water contamination.
7. Based on the system design, soil boring logs and other published reports and information, it is anticipated that if constructed as designed this system should not impact ground-water. Should the design or operation of the facility change appreciably, new hydrogeological information become available, or any contamination problems be reported, the DENR reserves the right to reassess the need for ground-water monitoring or any possible remedial action.

If any deviations concerning volume and seepage requirements are required from the approved plans, then those addenda and all change orders must be submitted for approval prior to construction. A complete set of as-built P&S shall be submitted within 30 days of completion of the project.

The DENR recommends that an engineer or the Soil Conservation Service (SCS) be retained to oversee the construction of the AWMS to assure that the system will be constructed in accordance with the approved P&S. Upon completion of construction of the AWMS, the engineer or the SCS can complete the appropriate side of the attached Notice of Completion and return it to us. Upon receipt of this notice, we will send you a Certificate of Compliance.

If an engineer or the SCS is not retained to oversee the construction, then a copy of permeability and/or compaction tests shall be submitted to this Department for approval prior to putting the system into operation. To receive a Certificate of Compliance, an engineer or the SCS must be retained to oversee construction of and certify completion of the AWMS in accordance with approved P&S.

Our review is primarily to determine compliance with the minimum sanitary engineering requirements and does not cover items, such as, quality of material, structural soundness, workmanship, electrical and mechanical design features. Approval of the plans and specifications does not in any way release the applicant from the responsibility that the project will be an operable facility when construction is completed.

All local, city, and county governmental agencies should be contacted for their approval and/or comments prior to construction of the AWMS. If a stream, lake, or wetland is located in the construction site, then the Corps of Engineers (COE) and the Fish and Wild Life Service should be contacted for their approval and/or comments prior to construction of the AWMS.

If you have any questions, please let us know.

Sincerely,

Raymond F. Bircham, P.E.

Raymond F. Bircham, P.E.

Staff Engineer

Department of Environment and Natural Resources

Phone: (605) 773-3296

cc: John Csukker, Sand Livestock Systems, Inc., Columbus, NE
Eric Gronlund, DENR, WR, Pierre, SD ✓

SAND LIVESTOCK SYSTEMS, INC.

PHONE: (402) 564-1211
1418 - 25th Street P.O. Box 948
COLUMBUS, NEBRASKA 68601



March 17, 1993

Eric Gronland
Water Rights Division
Department of Water and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Dear Mr. Gronland:

As a follow-up to our phone conversation yesterday, I computed the water usage for Ideal Pork. What I have enclosed is the calculations for 3,150 nursery pigs and 4,250 finishing pigs, which is what Ideal Pork is proposing to build initially.

The reference I used was from Midwest Plan Service;
Structures and Environment Handbook (eleventh edition), Page 570.20.
Table 510-4 (see enclosed copy).

The following was calculated:

Nursery Pigs

12 - 45 lbs = 6 lbs water/day

$(6 \text{ lbs/day/pig})(1 \text{ gallon}/8.31 \text{ lbs}) = .72 \text{ gallons/day/pig}$
 $(.72 \text{ gallons/day/pig})(3,150 \text{ pigs}) = 2,268 \text{ gallons/day}$
 $(2,268 \text{ gallons/day})(1 \text{ day}/24 \text{ hrs})(1 \text{ hr}/60 \text{ min}) = \underline{1.6 \text{ GPM}}$

Finish Pigs

45-240 lbs = 21 lbs water/day

$(21 \text{ lbs/day/pig})(1 \text{ gallon}/8.31 \text{ lbs}) = 2.5 \text{ gallons/day/pig}$
 $(2.5 \text{ gallons/day/pig})(4,250 \text{ pigs}) = 10,625 \text{ gallons/day}$
 $(10,625 \text{ gallons/day})(1 \text{ day}/24 \text{ hrs})(1 \text{ hr}/60 \text{ min}) = \underline{7.4 \text{ GPM}}$

Powerwash

5 gallons/min

Assume a 6 hour operating day

$(5 \text{ gallons/min})(360 \text{ min/day}) = 1,800 \text{ gallons/day}$
 $(1,800 \text{ gallons/day})(1 \text{ day}/24 \text{ hrs})(1 \text{ hr}/60 \text{ min}) = \underline{1.3 \text{ GPM}}$

Misters

12 gallons/hr/mister

Operates 10 min/hr

Assume a 14 hour operating day

$(10 \text{ min/hr})(1 \text{ hr/60 min})(14 \text{ hr/day}) = 2.33 \text{ hr/day}$

$(2.33 \text{ hr/day})(12 \text{ gallon/mister}) = 28 \text{ gallons/mister/day}$

$(28 \text{ gallons/mister/day})(80 \text{ misters}) = 2,240 \text{ gallons/day}$

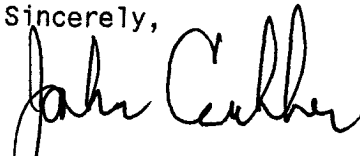
$(2,240 \text{ gallons/day})(1 \text{ day/24 hrs})(1 \text{ hr/60 min}) = \underline{1.6 \text{ GPM}}$

Total Average Daily Water Usage = 11.9 gallons per minute
= 17,136 gallons per day

According to the Administrative Rules of South Dakota 74:02:01:01(1), which defines "Reasonable Domestic Use" as the use of 18 gallons per minute or less on an average daily basis (25,920 gallons per day). Ideal Pork will operate within this limitation and will not require a permit. In the future, when Ideal Pork decides to expand, the commercial water usage permit being applied for now, should be in effect at that time.

If you have any questions, please give me a call

Sincerely,



John Csukker
Project Engineer

/cg

pc: Greg Jorgensen
Rodger Seefeldt

FROM: Gronlund, Eric

TO: Cheryl Frost

DATE: 03-18-93

TIME: 14:52

CC:

SUBJECT: Jorgensen Farms

PRIORITY:

ATTACHMENTS:

Please print out for me. Thanks!

FORWARDED FROM: Gronlund, Eric

FROM: Gronlund, Eric

TO: Seefeldt, Rodger

DATE: 03-18-93

TIME: 14:51

CC: Eric Gronlund

SUBJECT: Jorgensen Farms

PRIORITY:

ATTACHMENTS:

For your file:

Jorgensen Farms did make application to appropriate water for their proposed Ideal Pork facility on February 23, 1993. During our previous conversation, I did not equate our discussion on Ideal Pork needing a water permit with the application that had already been submitted in the name of Jorgensen Farms.

The application proposes to appropriate 60 gpm from one well, 1587 feet deep, located in the NW1/4 SE1/4 Section 31, T102N, R77W. I noticed in Item No. 4 on Ray Birchem's March 16, 1993 letter that two wells for the facility are discussed. I need to contact Mr. Jorgensen to determine the actual number of wells that will be utilized.

Finally, I discussed timeframes with Mr. Jorgensen. He stated that it is his desire to begin construction in May. I stated that it is unlikely that the permit could be issued within this timeframe. If the permit is contested, the issuance of the permit would be subject to adoption of findings of fact, conclusion of law and a final decision on the Water Management Board and this decision could be appealed to the courts. Under this scenario, even if approved the permit would likely not be able to be issued for 6 months.

As you know this facility is planned to be developed in phases, Mr. Jorgensen stated that the first phase would not exceed 18 gpm on an average daily basis. If the facility does not exceed this rate it would not need a permit until such time that this rate was exceeded. I made it perfectly clear to Mr. Jorgensen that if he began construction and the permit was denied, that his water use would be limited to 18 gpm on an average daily basis and this may very well limit his ability to expand to the 14,800 head facility.

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Jorgensen Farms - WP Application No. 2261-2

ADDRESS: _____ COUNTY: _____

DATE: March 18, 1993 TELEPHONE: 605 842-3217

RE: Discussion with Greg Jorgensen regarding number of wells

COMMENTS:

After receiving a copy Ray Birchem's March 16, 1993 letter in which Item No. 4 referred to two well at the proposed facility, I called Greg Jorgensen. Mr. Jorgensen stated that only one well would be utilized at the facility.

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: Evi Henderson

REPORT ON APPLICATION NO. 2261-2
for Jorgensen Farms
April 1, 1993

Application No. 2261-2 proposes to appropriate 60 gpm (0.13 cfs) from one well approximately 1587 feet deep located in the NW 1/4 SE 1/4 of section 31, T102N R77W in Tripp County. The water is for a commercial hog operation.

AQUIFER - DAKOTA FORMATION (DKOT)

The Dakota Formation consists of interbedded sand, silt, clay, shale and sandstone with a thickness of about 400 feet (Schoon, 1971). The Dakota Formation underlies 1.036 million acres and contains an estimated 33.048 million acre feet of recoverable water in storage in Tripp County (Allen, 1984). The Dakota Formation is areally extensive into all counties surrounding Tripp County. The aquifer is confined and under artesian conditions. The driller's log filed with this application indicates a typical Cretaceous section was penetrated. The Dakota was encountered at a depth of 1473 feet and sandstone was drilled to a total depth of 1587 feet below land surface. The report also indicates that the completed well had a static water level of 110 feet below land surface and that an 18 gpm pump was installed.

The Division of Water Rights monitors a Dakota Formation observation well GY-89A located about 33 miles southeast of this site. Water levels for this well have shown a decline of about 2 feet since January of 1990. There have been many reports documenting water level declines in the Dakota Formation. Most of this decline can be attributed to the large number of wells completed into the aquifer which have been allowed to flow uncontrolled and to waste. In general, the rate of decline in water levels has slowed throughout the state. The closest Dakota Formation observation wells show that the measured rate of decline is less than 1 foot per year in this area. The aquifer is capable of sustaining additional withdrawals (Water Rights, 1993).

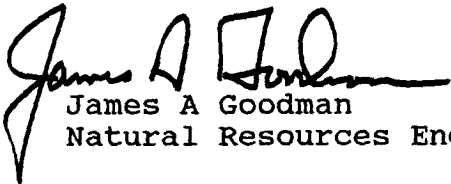
REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are no other existing water permits/rights which obtain water from the Dakota Formation in this area. The closest Water Right is No. 1111-2 for the town of Witten and is located about 10 miles south of this application. Interference will not be a concern. The Dakota Formation is widely used as a source of domestic water in this area. There are a number of free flowing well to the north and to the east where the elevation is low enough.

CONCLUSIONS

1. Water is available from the Dakota Formation.

2. The aquifer is confined and under artesian conditions. Interference is not expected to be a concern.
3. The water levels (head pressure) are declining in the Dakota Formation. This is due primarily to the large number of uncontrolled and abandoned flowing wells allowed to discharge to waste. This decline is not significantly affecting the water supply from the aquifer.
4. Recharge to the Dakota Formation has not been quantified. The Dakota is a tremendous ground water resource. If declining water levels are of paramount importance, then a valuable resource can not be developed or managed.
5. This is a hog confinement facility. The proposal is to eventually expand the facility so that the water requirement is 60 gpm. This requires a water permit, but as long as the water requirements are 18 gpm or less a permit is not required. This application anticipates the expansion of the facility.
6. DENR has reviewed and approved the Plans and Specifications for the Animal Waste Management System for this facility. A memo describing the approval is attached.



James A Goodman
Natural Resources Engineer

BIBLIOGRAPHY

- Allen, J.C., etal, 1984, Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 57069.
- Schoon, R.A., 1971, Geology and Hydrology of the Dakota Formation in South Dakota, Report of Investigations No. 104, SD DENR, SDGS, Vermillion, SD, 57069.
- Water Rights, 1993, Unpublished Observation Well Data for the Dakota Formation, SD DENR, Division of Water Rights, Pierre, SD, 57501.

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2261-2, Jorgensen Farms

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 5739-3, Jorgensen Farms, c/o Greg Jorgensen, HCR 57 Box 91, Ideal, SD 57541.

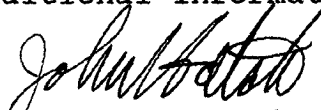
The Chief Engineer is recommending APPROVAL of Application No. 2261-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wastewater storage lagoons shall be maintained so that they do not receive surface runoff from the surrounding area.
3. No wastewater may be released from the wastewater lagoon except through a disposal system, unless an extended period of above normal precipitation results in excess stored waters and prevents operation of equipment to lower water levels due to filled and weather conditions.
4. Operation of a disposal system, if necessary to dispose of waste and wastewater shall be in a manner that prevents runoff from the disposal sites and from entering the waters of the state. The diffused drainage of natural precipitation on agricultural land resulting from a "non-point source" is not subject to these conditions.

5. Approval of Permit No. 2261-2 is subject to compliance with the following existing and applicable Water Management Board rules:

- a. Chapter 74:03:15 Ground Water Quality Standards
- b. Chapter 74:03:16 Ground Water Discharge Permit
- c. Chapter 74:03:02 Surface Water Quality Standards
- d. Chapter 74:03:04 Uses Assigned to Streams
- e. Chapter 74:03:17 through 74:03:26 Surface Water Discharge Provisions

See report on application for additional information.


JOHN HATCH, Chief Engineer
April 16, 1993



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

May 5, 1993

Greg Jorgensen
Jorgensen Farms
HCR 57 Box 91
Ideal, SD 57541-9230

Dear Mr. Jorgensen:

Water Permit Application No. 2261-2 for livestock watering 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 Winner Advocate printed at Winner, SD (Ph # 842-1481). 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 action can be taken on the application.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

cc: John Csukker, Sand Livestock Systems, Inc., PO Box 948, Columbus, NE 68601
Ruben Maulis, Attorney, PO Box 150, Winner, SD 57580



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 5, 1993

Winner Advocate
Box 71
Winner, SD 57580

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. 2261-2 to be published twice. Please publish the first notice on May 12, 1993, 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 Jorgensen Farms, HCR 57 Box 91, Ideal, SD 57541 (Ph # 842-3217).

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. No action may be taken on the permit application until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----
FIRST TRANSMITTAL NOTICE

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

No. _____

Date _____

We are in receipt of your letter of _____ enclosing 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 May 12, 1993, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2261-2 to Appropriate Water

Notice is given that Jorgensen Farms, HCR 57 Box 91, Ideal, SD 57541 has filed an application for a water permit to appropriate 60 gallons per minute (0.13 cubic feet of water per second) from one well (Dakota Formation) 1587 feet deep located in the NW 1/4 SE 1/4 Section 31-T102N-R77W. The water will be used for commercial use at a 14,800 head farrow to finish swinge confinement feeding operation.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2261-2 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.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 25, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Board will consider this application at 1:30 p.m., July 7, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The July 7, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by June 25, 1993.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by June 25, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Tripp) ssI, Carol Bicek

certify that the attached printed Notice was

taken from the WinnerAdvocateprinted and published in WinnerCounty of Tripp and State ofSouth Dakota. The notice was published in
the newspaper on the following two dates:May 12, 1993May 19, 1993Cost of Printing: \$48.15Carol Bicek
(Signature)Office Manager
(Title)May 19, 1993
(Date Signed)Notice of hearing on Application
No. 2261-2 to appropriate water

Notice is given that Jorgensen Farms, HCR 57 Box 91, Ideal, SD 57541 has filed an application for a water permit to appropriate 60 gallons per minute (0.13 cubic feet of water per second) from one well (Dakota Formation) 1587 feet deep located in the NW 1/4 SE 1/4 Section 31-T102N-R77W. The water will be used for commercial use at a 14,800 head farrow to finish swinge confinement feeding operation.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2261-2 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.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre, SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 25, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Board will consider this application at 1:30 p.m., July 7, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The July 7, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by June 25, 1993.

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This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Robert E. Roberts, Secretary, Department of Environment and Natural Resources. (19-20 1897)





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

M E M O R A N D U M

To: Eric Gronlund
From: Rodger Seefeldt *Rodger Seefeldt*
Subject: Ideal Pork Plans & Specifications (P&S)
Date: 28 April 1993

On 16 March 1993, the Department of Environment and Natural Resources (DENR) approved the revised P&S for the Jorgenson Farms - Ideal Pork animal waste management system (AWMS).

The AWMS consists of a holding pond which will collect the wastewater from the 14,800-head/4,546-animal unit (AU) nursery to finish swine confinement feeding operation.

The pond as designed has approximately 1,769,145 cubic feet of storage capacity. The capacity required for the animal wastes and extra water is calculated to be 642,140 cubic feet. The pond also has 1.0-foot of residual depth, a freeboard of 1.5-foot, and 0.5-foot for the 25-year 24-hour storm (the storm of compliance). Therefore, the storage capacity is between elevations 930.0 and 947.0. The pond bottom is at elevation 929.0 and the top of the dikes are at elevation 949.0. The pond also has a minimum 1.0-foot clay liner compacted to proper density (95% of Standard Proctor Density) which should meet the allowable seepage requirements of 1/16 of an inch per day. The pond has been designed for 365 days of storage capacity but would appear to have almost three (3) times that amount. If odors became a problem, the additional capacity could be used for extra water. The extra water would be used for dilution and to reduce the amount of odor present.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 4, 1993

Ruben Maulis
PO Box 150
Winner, SD 57580-0150

Dear Mr. Maulis:

On November 22, 1991, you sent a letter along with petitions to the South Dakota Department of Environment and Natural Resources on behalf of citizens in Tripp County concerned with the proposed Ideal Pork hog confinement facility. Enclosed is a copy of the report, recommendation and notice of hearing to be published in the Winner Advocate regarding Water Permit Application No. 2261-2 for Jorgensen Farms.

I have not sent copies of the report, recommendation and notice of hearing to all the citizens who signed the petitions. If you no longer represent these citizens, please contact me so that I may forward a copy of the water permit application to the appropriate person.

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

Sincerely,

Eric Gronlund
Water Rights Division
605 773-3352

enclosure

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 2261-2, Jorgensen Farms

ADDRESS: _____ COUNTY: Tripp

DATE: June 11, 1993 TELEPHONE: _____

RE: Phone call to Ruben Maulis, Attorney

COMMENTS:

I called Mr. Ruben Maulis, Attorney from Winner regarding the notice of hearing, report and recommendation I sent him on Application No. 2261-2. Mr. Maulis was the attorney representing citizens opposed to the proposed hog confinement facility back in 1991. Petitions with numerous signatures opposing the facility were received.

Mr. Maulis was not in the office but I talked to his secretary about whether Mr. Maulis has forwarded the information on the pending application to any of the citizens who organized the opposition back in 1991. She said that Mr. Maulis had contacted them and that she remembered making copies and sending out the notice, report and recommendation to a number of people.

I stated we had not heard from anyone on the pending application since it had been published for hearing and that it is unusual on a application like this for this office not to get some inquiries. I told her to have Mr. Maulis to give me a call.

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: Eric Stromlund

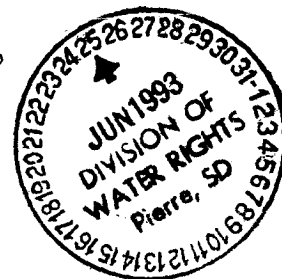
RUBEN G. MAULIS

ATTORNEY AND COUNSELLOR AT LAW

TELEPHONE (605) 842-2737

P. O. Box 150
338 SOUTH MAIN STREET
WINNER, SOUTH DAKOTA 57580

June 24, 1993



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

ATTN: Chief Engineer

RE: Application No. 2261-2
Jorgensen Farms

Dear Sir:

Enclosed herewith at the request of the petitioners, are two sets of petitions setting forth objections to the above application.

Sincerely yours,

Ruben G. Maulis

RGM/sbs

CC w/enc: Jorgensen Farms



PETITION OPPOSING APPLICATION NO. 2261-2

The undersigned, being the owners of real property and in conjunction with the use thereof, utilizing artesian water from either the Dakota or Madison formation do hereby state that they are opposed to the issuance of application #2261-2 made by Jorgensen Farms, HCR 57, Box 91, Ideal, South Dakota 57541, which would authorize said applicants to appropriate 60 gallons per minute from one well located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 102 North, Range 77, West of the 5th P.M., Tripp County, South Dakota, in conjunction with the commercial use of a 14,800 head farrow to finish swine confinement feeding operation for the following reasons:

1. The appropriation of that amount of water would result in excessive draw-down of the water supply available to the undersigned in the artesian well owned by the undersigned.

2. The environmental impact of the swine confinement feeding operation would be detrimental to the environment of the area. The undersigned represents that an environmental impact determination should be made by the applicant or the State of South Dakota to determine the impact upon the local environment and be made available to the undersigned.

The undersigned do, therefore, and hereby request that application #2261-2 be denied. The undersigned further reserves the right to present additional facts at the hearing.

<u>DATE</u>	<u>SIGNATURE</u>	<u>MAILING ADDRESS</u>
<u>6/24/93</u>	<u>Vern E. Collins</u>	<u>R.R. 2-Box 62</u> <u>Carter, S.D.</u>
<u>6-24-93</u>	<u>Paulena Collins</u>	<u>Carter, S.D.</u>
<u>6-24-93</u>	<u>Keith Rowe</u>	<u>Carter S.D.</u>
<u>6-24-93</u>	<u>Gloria Lowe</u>	<u>Carter, S.D.</u>
<u>6-24-93</u>	<u>Frank Moulton</u>	<u>Carter S.D.</u> <u>BB II 575216</u>



PETITION OPPOSING APPLICATION NO. 2261-2

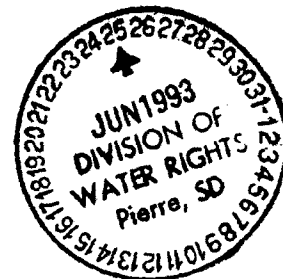
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<u>DATE</u>	<u>SIGNATURE</u>	<u>MAILING ADDRESS</u>
<u>6-24-93</u>	<u>Edward Fay</u>	<u>RR 2 Box 74</u> <u>Witten, S.D. 57584</u>
<u>6-24-93</u>	<u>Martin M. Best</u>	<u>Box 77</u> <u>Witten SD 57584</u>
<u>6-24-93</u>	<u>Ray Haganka</u>	<u>Witten SD. 57584</u> <u>Box 73</u>
<u>6-24-93</u>	<u>Joe Maules</u>	<u>RR 2 Box 68</u> <u>WITTEN, SD 57584</u>
<u>6-24-93</u>	<u>Allen Miller</u>	<u>Box 65</u> <u>Witten S. Dak 57584</u>



Petition

DATE

8-24-93

SIGNATURE

Adam Handman

MAILING ADDRESS

P.R. 2, Box 75
Hutton, S. Dak 57584



PETITION OPPOSING APPLICATION NO. 2261-2

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<u>DATE</u>	<u>SIGNATURE</u>	<u>MAILING ADDRESS</u>
<u>6-24-93</u>	<u>James Sell</u>	<u>Box 205</u> <u>Witten, S.D.</u>
<u>6-24-93</u>	<u>Raymond Burtz</u>	<u>HC 57 Box 41</u> <u>Winner S.D.</u>
<u>6-24-93</u>	<u>Betty Seeland</u>	<u>HC 57 Box 32</u> <u>Winner S.D.</u>
<u>6-24-93</u>	<u>Dean Burtz</u>	<u>HC 57 Box 30</u> <u>Winner SD</u>
<u>6-24-93</u>	<u>Beverly Burtz</u>	<u>HC 57 Box 37</u> <u>Winner, S.D.</u>
<u>6-24-93</u>	<u>Mr Burtz</u>	<u>Winner S.D.</u> <u>HC 57 Box 37</u>



PETITION OPPOSING APPLICATION NO. 2261-2

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DATE _____

SIGNATURE

MAILING ADDRESS

6-24-93

SIGNATURE
Frank E. Mueller

RR 2 Carter, So Dak.

57526

6-24-93

Esther Moeller

R.R.2. Carter S.P. 57526

6-24-93

Vern E. Collins

N.R. 2-Box 62

Carter, S.D. 57526



PETITION OPPOSING APPLICATION NO. 2261-2

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<u>6-24-93</u>	<u>James Sell</u>	<u>Box 205</u> <u>Witten, S. Dak</u>
<u>6-24-93</u>	<u>Keith Swedlund</u>	<u>HC 57 Winner S. Dak</u>
<u>6-24-93</u>	<u>Dale Swedlund</u>	<u>HC 57 Winner</u> <u>Sa. Dak</u>
<u>6-24-93</u>	<u>A. P. Johnson</u>	<u>Box 52</u> <u>Fresho SD</u>
_____	_____	_____
_____	_____	_____



Petition

DATE

SIGNATURE

MAILING ADDRESS

624-93

Esther Moeller

Carter S. D. BB-57526

6-24-93 Ralph Gardner

525 Lincoln 6th
Winner, 3d

ALEX LUNDERMAN, SR.
President

NORMAN WILSON
Vice-President

Rosebud Sioux Tribe

ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57570

P.O. BOX 430
Phone 605-747-2381 - Fax 605-747-2243

CHARLES WHITE PIPE, JR.
Treasurer

GERRI GORDAN
Secretary

JOHN ARCOREN, SR.
Sargeant at Arms

June 24, 1993

John Hatch, Chief Engineer
Water Rights Division, DENR
Joe Foss Building
523 East Capital
Pierre, SD 57501-33181



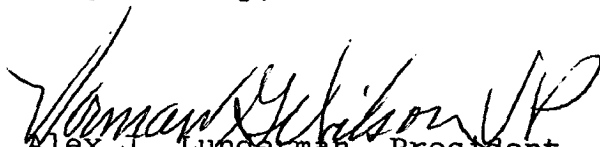
Dear Mr. Hatch:

As in the past the Office of Water Resources, which represents the Rosebud Sioux Tribe in a similar capacity as the Department of Environment and Natural Resources Water Rights Division represents the Great State of South Dakota, wishes to present opposition testimony on behalf of the trust lands owned by the Rosebud Sioux Tribe and its members that could be directly effected by Water Permit Application # 2261-2.

The Rosebud Sioux Tribe respectfully requests the automatic delay for at least twenty (20) days of the July 7, 1993 proceedings to prepare opposition testimony to Permit # 2261-2.

Your cooperation with this matter would be deeply appreciated.

Respectfully;


Alex J. Lunderman, President
Rosebud Sioux Tribe

ajl/JDW
cc/file



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 25, 1993

Tim Engel
MAY, ADAM, GERDES & THOMPSON
PO Box 160
Pierre, SD 57501-0160

RE: Water Permit Application No. 2261-2,
Jorgensen Farms

Dear Mr. Engel:

Enclosed is the information you requested in regard to the above-referenced matter. If you have any questions, please contact Eric Gronlund at (605)773-3352.

Sincerely,

Jaci R. Konop
Senior Secretary
Water Rights Division

Enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 29, 1993

NOTICE

TO: Martin Jorgensen
Jorgensen Farms
HCR 57 Box 91
Ideal, SD 57541
and Parties of Record (see attached list)

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

SUBJECT: Hearing to Consider Water Permit Application No. 2261-2,
Jorgensen Farms

Petitions in opposition to Water Permit Application No. 2261-2 have been filed by the Rosebud Sioux Tribe and Ruben Maulis, attorney representing a number of area citizens. A copy of the petitions is enclosed. The Rosebud Sioux Tribe's petition also requested an automatic delay of the hearing. Therefore, the hearing on Application No. 2261-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 7, 1993.

The Water Management Board will now consider Water Permit Application No. 2261-2 at their September 1 and 2, 1993 meeting to be held in Pierre. Future notice of the date, time and place of the hearing for Application No. 2261-2 will be provided to the parties of record.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

enclosures

cy: Diane Best, Assistant Attorney General
Tim Engel, attorney
John Csukker
John Whiting, RST, Office of Water Resources

CERTIFICATION

I hereby certify that on June 29, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 29, 1993, regarding Hearing to Consider Water Permit Application No. 2261-2, Jorgensen Farms, along with a copy of the Parties of Record addressed as stated below:

Martin Jorgensen, Jorgensen Farms, HCR 57, Box 91, Ideal, SD 57541.

Tim Engel, Attorney, P.O. Box 160, Pierre, SD 57501.

John Csukker, Sand Livestock Systems, Inc., P.O. Box 948, Columbus, NE 68601.

John Whiting, RST, Office of Water Resources, Rosebud Indian Reservation, P.O. Box 430, Rosebud, SD 57570.

Alex J. Lunderman, President, Rosebud Sioux Tribe, Rosebud Indian Reservation, P.O. Box 430, Rosebud, SD 57570.

Ruben G. Maulis, Attorney and Counsellor at Law (representing petitioners), P.O. Box 150, 338 South Main Street, Winner, SD 57580.

Copy Sent Inter-office To:

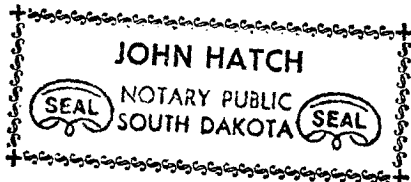
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of June, 1993.



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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

20 July 1993

GREG JORGENSEN
JORGENSEN FARMS
HCR 57 BOX 91
IDEAL SD 57541-9230

Re: Compaction Tests for Ideal Pork/Jorgensen Pork, Inc. Lagoon

Dear Mr. Jorgensen:

The Department of Environment and Natural Resources (DENR) is in receipt of one copy of the above referenced information.

The DENR has reviewed the test results and hereby indicates that they meet the minimum requirements and the lagoon should therefore meet the minimum seepage requirements as allowed.

You may therefore begin to use the lagoon in your operation.

If you wish to receive a Certificate of Compliance for the completed animal waste management system (AWMS), please have the Notice of Completion form filled out by the design engineer or the engineer that overseen the construction of the AWMS. If you do not have a copy of the Notice of Completion form, please let me know and I will send you a copy.

If you have any questions, please let us know.

Sincerely,

Raymond F. Birchem, P.E.

Raymond F. Birchem, P.E.
Staff Engineer
Department of Environment and Natural Resources
Phone: (605) 773-3296

cc: John Csukker, Sand Livestock Systems, Inc., Columbus, NE
Eric Gronlund, DENR, WR, Pierre, SD ✓



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 9, 1993

NOTICE

TO: Martin Jorgensen
Jorgensen Farms
HCR 57, Box 91
Ideal, SD 57541
and Parties of Record (see attached list)

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

SUBJECT: Rescheduling of Hearing for Water Permit Application No.
2261-2, Jorgensen Farms

The Water Management Board will consider Water Permit Application No. 2261-2 on September 2, 1993 at 8:30 am in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501. The actual time of the hearing may be later than 8:30 am due to prior agenda items. The July 7, 1993 hearing on this application was automatically delayed by petitioners to the application.

Applicable provisions of the Notice of Hearing published May 12 and 19, 1993 in the Winner Advocate will still apply at this hearing. This hearing is an adversary proceeding. Any party of record 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 State Supreme Court as provided by law.

Contact Eric Gronlund by August 20, 1993 at 773-3352 to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

cy: Diane Best, Assistant Attorney General
John Csukker

CERTIFICATION

I hereby certify that on August 9, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 9, 1993, regarding Rescheduling of Hearing for Water Permit Application No. 2261-2, Jorgensen Farms, along with a copy of the Parties of Record addressed as stated below, and on the attached list:

Martin Jorgensen, Jorgensen Farms, HCR 57, Box 91, Ideal, SD 57541.

John Csukker, Sand Livestock Systems, Inc., P.O. Box 948, Columbus, NE 68601.

Copy sent inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

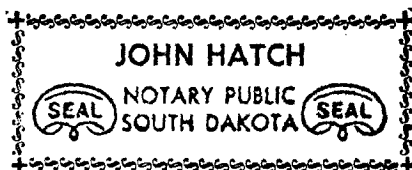
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of August, 1993.

John Hatch

Notary Public



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

PARTIES OF RECORD LIST
WATER PERMIT APPLICATION NO. 2261-2

APPLICANT

Martin Jorgensen
Jorgensen Farms
HCR 57, Box 91
Ideal, SD 57541

APPLICANTS ATTORNEY

Tim Engel
P.O. Box 160
Pierre, SD 57501

PETITIONER

Alex J. Lunderman, President
Rosebud Sioux Tribe
Rosebud Indian Reservation
P.O. Box 430
Rosebud, SD 57570

ATTORNEY FOR PETITIONERS LISTED BELOW

Ruben G. Maulis
Attorney and Counsellor at Law
P.O. Box 150
338 South Main Street
Winner, SD 57580

PETITIONERS

Vern E. Collins
RR 2, Box 62
Carter, SD 57526

Paulena Collins
Carter, SD 57526

Keith Rowe
Carter, SD 57526

Gloria Rowe
Carter, SD 57526

Frank C. Moeller
RR 2
Carter, SD 57526

Edward Pajl
RR 2, Box 74
Witten, SD 57584

Marion G. Best
Box 77
Witten, SD 57584

Roy Hazuka
Box 73
Witten, SD 57584

Joe Maulis
RR 2, Box 68
Witten, SD 57584

Glenn Gardner
RR 2, Box 75
Witten, SD 57584

Keith and Dale Swedlund
HC 57
Winner, SD 57580

T. J. Knutson
Box 52
Presho, SD 57568

Esther Moeller
RR 2
Carter, SD 57526

Ralph Gardner
525 Lincoln 6th
Winner, SD 57580

James Sell
Box 205
Witten, SD 57584

Raymond Burtz
HC 57, Box 41
Winner, SD 57580

Betty Swedlund
HC 57, Box 33
Winner, SD 57580

Dan Burtz
HC 57, Box 30
Winner, SD 57580

Beverly and Wm Burtz
HC 57, Box 37
Winner, SD 57580

Frank C. and Esther Moeller
RR 2
Carter, SD 57526

Donnie Farley
RR 2, Box 64
Witten, SD 57584

Leonard Gardner
HC 57, Box 28
Winner, SD 57580

Vern E. Collins
RR 2, Box 62
Carter, SD 57526

Allen M. Lee
RR 2, Box 65
Witten, SD 57584



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 3, 1993

NOTICE

TO: Martin Jorgensen
Jorgensen Farms
HCR 57 Box 91
Ideal, SD 57541
(and Parties of Record)

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

SUBJ: 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 to approve Water Permit Application No. 2261-2, Jorgensen Farms. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 p.m., December 1, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, 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 10, 1993. 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 22, 1993.

The public hearing was completed September 2, 1993. No additional testimony will be received on December 1, 1993.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Tim Engel, May, Adam, Gerdes & Thompson, PO Box 160, Pierre,
SD 57501-0160
Ruben G. Maulis, Attorney at Law, PO Box 150, Winner, SD
57580

CERTIFICATION

I hereby certify that on September 3, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated September 3, 1993, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision (Water Permit Application No. 2261-2, Jorgensen Farms) addressed to:

Martin Jorgensen, Jorgensen Farms, HCR 57 Box 91, Ideal, SD
57541

and Parties of Record (as shown on the attached list)

A copy of the Notice was sent to:

Tim Engel, May, Adam, Gerdes & Thompson, PO Box 160, Pierre, SD
57501-0160

Ruben G. Maulis, Attorney at Law, PO Box 150, Winner, SD 57580

A copy of the Notice was also sent inter-office to:

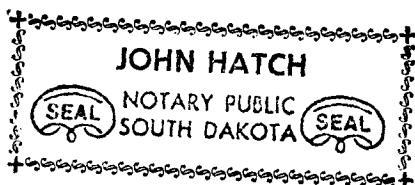
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

Jaci R Komop

JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of September, 1993.



John H. [Signature]
Notary Public

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 22, 1993

NOTICE

TO: Martin Jorgensen
Jorgensen Farms
HCR 57 Box 91
Ideal, SD 57541
(and Parties of Record)

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

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 and Conclusions of Law, was adopted by the Water Management Board for Water Permit Application No. 2261-2, Jorgensen Farms at the December 1, 1993, meeting.

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

cc: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on December 22, 1993, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 22, 1993, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision, along with a copy of these Findings and a copy of the Parties of Record addressed as stated below:

Martin Jorgensen, Jorgensen Farms, HCR 57, Box 91, Ideal, SD 57541.

Copy of the Notice & Parties of Record List were sent to the individuals stated on the attached list.

Copy of Notice & Parties of Record List sent inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

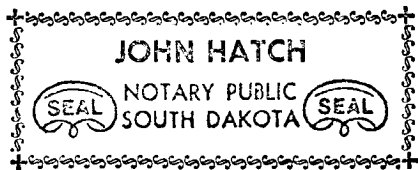
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of January, 1994.



John Hatch
Notary Public

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

IN THE MATTER OF THE	)	
WATER PERMIT APPLICATION	)	BRIEF IN OPPOSITION
OF JORGENSEN FARMS	)	TO WATER PERMIT
NO. 2261-2	)	

I. INTRODUCTION

Pursuant to the recommendation of the Chief Engineer to grant Water Permit Application No. 2261-2 for livestock watering use, the Parties of Record filed a Petition with the Water Management Board opposing the issuance of the water permit to Jorgensen Farms. The Parties of Record received notice of the rescheduled Hearing on the application on August 9, 1993.

On March 16, 1993, the Department of Environment and Natural Resources (DENR) approved revised plans and specifications for the Jorgensen Farms/Ideal Pork animal wastes management system. The Parties of Record received no notice or hearing on the matter. Sometime in November, 1991, a Petition for Hearing had been submitted requesting notice and a hearing before the issuance of any permit involving the construction of a hog confinement facility by Ideal Pork.

II. THE WATER MANAGEMENT BOARD SHOULD DENY APPLICATION NO. 2261-2 AND ALLOW A HEARING CONCERNING THE APPROVAL OF THE REVISED PLANS AND SPECIFICATIONS FOR THE IDEAL PORK ANIMAL WASTE MANAGEMENT SYSTEM

SDCL 46-5-10 provides:

Any person intending to acquire a right to beneficial use of water shall, before starting construction or placement of works for that purpose or before taking the water from any constructed works, make an application to the water management board for a permit to appropriate water in the form required by rules promulgated pursuant to chapter 1-26 by the board.

SDCL 46-2A-9 states:

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

SDCL 46-2A-7 provides in part that if the Water Management Board determines that the requirements for the permit "have not been met or that the evidence is insufficient to support a determination, they shall disapprove the application or defer it for further study." SDCL 46-6-3.1 mandates that "(n)o application to appropriate ground water may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a ground water source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." SDCL 46-6-6 provides that the public interest requires "the collection, preservation and publication of data with respect to the occurrence, quantity, quality and hydraulic characteristics of underground water and the nature and identity of the subsurface geological formations in which it occurs."

In the conclusions made by Natural Resources Engineer James A. Goodman, in his report on Application No. 2261-2 for Jorgensen Farms, on April 1, 1993, he states that "the water levels (head pressure) are declining in the Dakota formation." He further states that "the recharge to the Dakota formation has not been quantified. The Dakota is a tremendous ground water resource. If declining water levels are of paramount importance, then a valuable

resource cannot be developed or managed." Because the Natural Resource Engineer himself admits to declining water levels, and to the fact that no data exists as to the recharge of water to the ground water source, this Board is required by SDCL 46-6-3.1 to reject the Application for the permit and to collect data on the recharge to the underground water system as mandated by SDCL 46-6-6. The permit should also be dismissed under the requirement of SDCL 46-2A-7 because there is insufficient information to support any determination by the Water Management Board.

In order to properly assess whether to grant the water permit, the Water Management Board should allow for a public hearing on the prior approval of the plans and specifications for the animal waste management system for this facility. Whether an appropriation of water is proper in this case is dependent upon the amount of water allocated to the waste management system of this facility so as to insure that the water quality of both the groundwater and the surface water in the area is maintained. Because water quality may be adversely affected by the design of this facility's waste management system, the approval of the plans and specifications should be subject to a public hearing, and the issuance of a water permit should be denied until a determination has been made as to the amount of water required to dilute the animal waste. In the absence of a hearing on these plans and specifications, it cannot be determined that the proposed use of the appropriated water is a beneficial use and in the public interest as required by SDCL 46-2A-9.

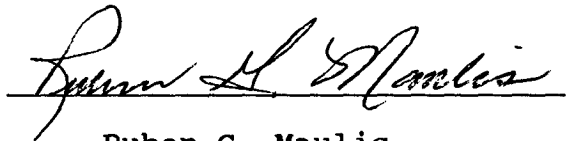
A hearing on the plans and specifications of the animal waste

management system can be founded on the basic mandates of the South Dakota Administrative Procedures Act in SDCL 1-26. According to SDCL 1-26-16, "(i)n a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice." SDCL 1-26-27 provides that when the grant of a license is involved and "an applicant, a party, or an agency requests a hearing, the provisions of this chapter concerning contested cases apply." Under SDCL 1-26-1(4), "license" by definition includes "the whole or part or any agency permit, . . . approval, . . . or similar form of permission required by law." The approval of the plans and specification is by definition a "license" because agency permission is involved. The grant of this "license" causes the provisions on contested cases to apply, specifically SDCL 1-26-16 which requires notice and a hearing. For this reason, notice and a hearing should be given on the matter.

Furthermore, the approval of the plans and specifications for the waste management system should have been viewed as a contested case from the beginning because the November, 1991 Petition for Hearing which was submitted clearly placed the DENR on notice that persons existed who disagreed with the environmental safety of the proposed hog confinement facility and who desired to contest any form of approval needed from the State to construct this type of facility. Therefore, the failure to provide an opportunity for the Parties of Record with notice and an opportunity for a hearing on matters involving the water usage and waste disposal system for this facility is contrary to the requirement of SDCL 1-26-16.

III. CONCLUSION

The Water Management Board should deny the application made by Jorgensen Farms for the appropriation of water for use by the hog confinement facility because there is insufficient evidence that such appropriation meets the requirements of SDCL 46-2A-9. In addition, the Board should allow the Parties of Record an opportunity for a hearing concerning the approval of the revised plans and specifications for the animal waste management system of this facility because this is a contested case and should comply with the mandate of SDCL 1-26-16.

A handwritten signature in cursive script, reading "Ruben G. Maulis", is written over a horizontal line.

Ruben G. Maulis
Attorney for Tripp County
Concerned Citizens Coalition

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	FINDINGS OF FACTS
WATER PERMIT APPLICATION	)	CONCLUSIONS OF LAW
NO. 2261-2;	)	AND FINAL DECISION
JORGENSEN FARMS	)	

FINDINGS OF FACT

I

This is an application to appropriate sixty gallons per minute (0.13 cfs) from one well approximately 1500 to 1600 feet deep located in Tripp County. The water is to be used for a commercial hog operation.

II

The source of the water is the Dakota Formation. The Dakota Formation consists of interbedded sand, silt, clay, shale and sandstone with a thickness of about four hundred feet. The Dakota Formation underlies 1.036 million acres and contains an estimated 33.048 million acre feet of recoverable water in storage in Tripp County.

III

The Dakota Aquifer is confined and under artesian conditions.

IV

Water levels or head pressure are declining in the Dakota Formation. The Board finds the decline is due primarily to the large number of uncontrolled and abandoned flowing wells which discharge to waste. As a historical matter, wells have been drilled into the Dakota Formation since at least the turn of the century and were, during that period, frequently allowed to

flow uncontrolled. It is only in more recent years that serious efforts have been made to control old and abandoned wells. The Department of Environment and Natural Resources sponsors a program to control such wells. It investigates, on a regular basis, charges of uncontrolled flowing wells and has participated in the plugging of such wells.

V

As a result of the departmental action and of the general public awareness and attention to flowing wells, the rate of decline in the head pressure in the Dakota Formation has slowed. The measured rate of decline is now less than one foot per year in head pressure.

VI

In light of the very substantial amount of recoverable water in the Dakota Formation in Tripp County (over thirty three million acre feet), the Board finds that there is a reasonable probability that there is unappropriated water available for the applicants proposed use.

VII

No evidence has been presented to the Board to demonstrate that the quantity of water withdrawn through permits or vested rights from the Dakota Formation will exceed the quantity of average estimated annual recharge of water to the ground water source.

VIII

The closest water right to the proposed right is No. 111-2 for the town of Witten located about ten miles south of

this proposed permit. Utilization of this permit should not cause interference with the Witten water right.

IX

The Dakota Formation is widely used as a source of domestic water in this area. There is a substantial probability that utilization of the proposed permit will cause a decline of one to two feet per year in head pressure to nearby domestic users. The result will be that the users will merely have to pump the water that additional distance to the surface. There is no reasonable possibility or probability that any user of an adequate domestic well will be deprived of water.

X

The applicant's proposed operation is likely to have a positive economic impact on the surrounding community. The operation should use approximately two hundred and twenty thousand bushels of grain annually. It should employ eight employees in the swine production facility. Furthermore, establishment of large swine operations may well encourage packers to build plants closer to this operation thereby making it more economical for surrounding swine producers to market their own pigs.

XI

This Board, in the past, has found that if odor will be generated by the permit applicant so as to impede the recreational or economic use of South Dakota's natural resources, the grant of the permit would not be in the public interest. In re Application for Water Permit No. 4580A-3 (October 29, 1986).

No such impact has been demonstrated, with regard to this permit and the recreational or economic use of South Dakota's natural resources. The Board may also consider, under the public interest criterion, the creation of unpleasant living or working conditions for those in the vicinity of a proposed permit. In this case, the closest neighbor is a Mr. Gardner whose 'home place' is located one-half mile south and one-half mile east of the well, and one-half mile south and three-fourths mile east of the lagoon associated with the swine operation.

XII

The evidence indicates that the odors will ordinarily travel in an opposite direction from the Gardner place. The evidence also indicates that Mr. Gardner spends only his daytime hours on the farm. During that period he is already exposed to the odor of his ranching operation which includes approximately 100 cow/calf cattle operation and machinery. Mr. Gardner apparently sleeps at his house in Winner at night.

XIII

The major factors which are considered to favor granting of this permit under the public interest criterion are that it will support the statutory goal of putting the water resources of the State to the beneficial use to the fullest extent of which they are capable." SDCL 46-1-4. Furthermore, the development of the swine operation will most likely aid the surrounding economy. The major factors weighing against the public interest are the small annual decline in head pressure

which will be experienced by nearby domestic users and the potential for increased odor with regard to at least one person.

XIV

The Board finds that the grant of the permit, considering all factors, would be in the public interest. The development of the waters of the State serves a high public interest and the development of the economy of the area and of the State also serves such an interest. The factors which tend to weigh against the grant of the permit in the public interest are not persuasive. Refusing to grant permits because of a small decline in water pressure is not in the public interest because it would entirely tie up future development of an aquifer with over thirty three million acre feet of recoverable water in Tripp County alone. Furthermore, the Board is not persuaded that the threat of increased odors to one other location which is itself is a cattle operation, is serious or significant. Moreover, it is noted that the facility which will receive waste water is substantially larger than is necessary under the present operating plan and additional waters could be used to dilute, the water and to abate any odor problem.

XV

Plans and Specifications for the waste water discharge system were approved by the Department of Environment and Natural Resources staff without hearing. This process was in accord with statute. The Board finds, nonetheless, that the opponents to the permit were not precluded from testing the adequacy of the plans

and specifications in the hearing held on the water right with regard to this matter.

XVI

Mandatory compliance with existing regulations adopted by the Water Management Board as noted in the qualifications to the permit will adequately protect the ground water in the area. The opponents to the permit have not indicated to the satisfaction of the Board how the Plans and Specifications for the discharge plan are inadequate or that the qualifications to the permit are inadequate to protect the ground water of the area.

CONCLUSIONS OF LAW

I

The Board has jurisdiction of this matter.

II

There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

III

The proposed diversion can be developed without unlawful impairment of existing rights. Neither the slight probable decline in head pressure to surrounding domestic users nor the possibility of increased odor to at least one neighbor unlawfully deprives those persons of their existing rights.

IV

The proposed use in a swine production facility is a beneficial use.

V

The proposed use is in the public interest when the factors are weighed as set forth in the findings of fact above.

VI

No state law or regulation requires a hearing before Plans and Specification are approved with regard to a facility such is at issue here. Pursuant to SDCL 1-26-1(2) a contested case hearing is required to be held only in such cases in which the legal rights of a party "are required by law to be determined by an agency after an opportunity for a hearing. . . ." The opponents to the permit have not directed the attention of the Board to any such requirement with regard to approval of Plans or Specifications at issue here.

VII

SDCL 46-6-3.1 does not preclude the grant of this permit. First, the annual recharge of the Dakota aquifer has not been quantified, and therefore it cannot be found that it is probable that the quantity of the water withdrawn annually from the ground water source will exceed the quantity of average estimated annual recharge of water to the ground water source. Second, because the "quantity of water withdrawn annually" referred to in SDCL 46-6-3.1 includes only that water withdrawn under valid permits or diversions, and because a large portion of the water flowing from this aquifer is being discharged from illegally flowing wells, the statute has not been shown to be applicable to these facts. Third, in the alternative, the Board finds, consistent with its decision entitled In the Matter of the

Rehearing of the Water Permit Application No. 4432A-3, Hanson Rural Water System. (January 4, 1990) that because the water to be withdrawn here is entirely under artesian head pressure, it is not "withdrawn . . . from a ground water source" under the meaning of the statute.

FINAL DECISION

The application for Water Permit No. 2261-2 is granted with the following qualifications.

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wastewater storage lagoons shall be maintained so that they do not receive surface runoff from the surrounding area.
3. No wastewater may be released from the wastewater lagoon except through a disposal system, unless an extended period of above normal precipitation results in excess stored waters and prevents operation of equipment to lower water levels due to field and weather conditions.
4. Operation of a disposal system, if necessary to dispose of waste and wastewater shall be in a manner that prevents runoff from the disposal sites and from entering the waters of the state. The diffused drainage of natural precipitation on agricultural land resulting from a "non-point source" is not subject to these conditions.
5. Approval of Permit No. 2261-2 is subject to compliance with the following existing and applicable Water Management Board rules:
 - a. Chapter 74:03:15 Ground Water Quality Standards
 - b. Chapter 74:03:16 Ground Water Discharge Permit

- c. Chapter 74:03:02 Surface Water Quality Standards
- d. Chapter 74:03:04 Uses Assigned to Streams
- e. Chapter 74:03:17 through 74:03:26 Surface Water Discharge Provisions

Dated this 17th day of December, 1993.

BY THE BOARD


Chairman

c-pld13.jpg

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON
503 SOUTH PIERRE STREET
P. O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966
WARREN W. MAY
THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW

TELEPHONE
605 224-8803
TELECOPIER
605 224-6289

September 7, 1994



Mr. Eric Gronlund
Department of Water & Natural Resources
500 East Capitol
Pierre, SD 57501

RE: JORGENSEN PORK, INC.
OUR FILE: 11984.1

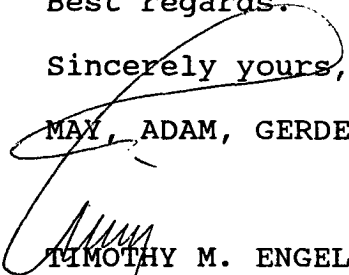
Dear Eric:

Enclosed please find an original Notice of Transfer of Ownership of Water Permit/Right, as well as our firm check in the amount of \$2.50 for filing fees. If you have any questions, concerning this matter, please do not hesitate to contact me.

Best regards.

Sincerely yours,

MAY, ADAM, GERDES & THOMPSON


TIMOTHY M. ENGEL

TME:jk
Enclosure
cc/encl: Brenda Jorgensen
Mark Heier
George Manolis
Kirk Friedrich

RECEIPT

414267

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ September 8, 19 94

RECEIVED OF May, Adam, Gerdes & Thompson, Pierre, SD 57501 (Jorgensen Pork, Inc)
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 <u>Water Permit No. 2261-2</u>	2	50
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	2 50

By John Hatch
Chief Engineer



NOTICE OF TRANSFER OF OWNERSHIP

NO. 2261-2

TO: CHIEF ENGINEER
WATER RIGHTS DIVISION, DWNR
523 EAST CAPITOL
PIERRE, SD 57501

We request that Water Permit/Right No. 2261-2 formerly owned by Jorgensen Farms, HCR 57, Box 91, Ideal, SD 57541, be transferred to Jorgensen Pork, Inc., HCR 57, Box 91, Ideal, SD 57541, (telephone no.) (605) 842-3217. Title to the following described land(s)/property has been transferred as described above:

Lot A in the SE $\frac{1}{4}$ and Lot B in the SW $\frac{1}{4}$ of Section 31, Township 102 North, Range 77 West of the fifth P.M., Tripp County, South Dakota, according to the recorded plat thereof, and including the well located on the above described real estate, and appurtenances related thereto.

We understand that the validity of Water Permit/Right No. 2261-2 has not been determined by this transfer action. If we have any questions on validity, we understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

A fee of Two Dollars and Fifty Cents (\$2.50) is attached to cover the filing fees as required under SDCL 46-2-13.

State of South Dakota)
) ss
County of Tripp)

We, Martin Jorgensen, Jr. and Gregory Jorgensen, being first duly sworn on our oath depose and say that our relation to the above described undertaking is that of Owner, that we have read the foregoing statement, and that we know or our own personal knowledge that the information herein stated is true.

Martin Jorgensen, Jr.

Martin Jorgensen, Jr.

Gregory Jorgensen

Gregory Jorgensen

Subscribed and sworn to before me this 31 day of August, 1994.

Brenda Jorgensen

Notary Public

Notary Print Name: Brenda Jorgensen
My Commission Expires: 11-12-2000

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a water right. A water right may be lost for three reasons:

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





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 19, 1994

No. 2261-2

Timothy M. Engel
May, Adam, Gerdes & Thompson
P.O. Box 160
Pierre, SD 57501-0160

Dear Mr. Engel:

Enclosed is a receipt in the amount of \$2.50 which you paid for the transfer of Water Permit No. 2261-2.

Our records now show Jorgensen Pork, Inc. as the owner of Water Permit No. 2261-2.

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Division
(605) 773-3352

enclosure

c: Martin Jorgensen, Jorgensen Pork, Inc.

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON
503 SOUTH PIERRE STREET
P. O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966
WARREN W. MAY
THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW

TELEPHONE
605 224-8803
TELECOPIER
605 224-6289

November 17, 1994

Mr. John Hatch
Chief Engineer
Water Rights Division
500 East Capitol
Pierre, SD 57501



RE: JORGENSEN PORK, INC.
OUR FILE: 1184.1

Dear Mr. Hatch:

I am in receipt of a copy of your November 14 letter to Martin Jorgensen, concerning Water Permit No. 2261-2. Please note that we previously filed with your office a Notice of Transfer of that water permit. The permit has been transferred to Jorgensen Pork, Inc., a South Dakota farm corporation.

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

Best regards.

Sincerely yours,

MAY, ADAM, GERDES & THOMPSON

TIMOTHY M. ENGEL

TME:jk

cc: Martin Jorgensen



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOV 14 1994

Martin Jorgensen
Jorgensen Farms
HCR 57 Box 91
Ideal, SD 57541

Dear Mr. Jorgensen:

Enclosed is Water Permit No. 2261-2 authorizing construction of your water diversion system and beneficial use of the water, 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.

c: Tim Engel, May, Adam, Gerdes & Thompson, PO Box 160, Pierre, SD 57501
Ruben Maulis, Attorney at Law, PO Box 150, Winner, SD 57580



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 1, 1994

2261-2

Timothy M Engel
MAY, ADAM, GERDES & THOMPSON
PO Box 160
Pierre, SD 57501-0160

RE: Jorgensen Pork, Inc.

Dear Mr. Engel:

I am writing in reference to your letter of November 17, 1994 concerning ownership of Water Permit No. 2261-2.

You are correct, the water permit has been transferred to Jorgensen Pork, Inc. The "Notice of Transfer" was filed and became effective on September 8, 1994. The permit was approved and written up for signature prior to the filing of the transfer form. The Chief Engineer signed the permit after the transfer form had been filed, however, due to an oversight, we did not change the name on permit prior to signature.

After a permit is issued and signed by the Chief Engineer, we do not change the name of the actual permit, but file the transfer form with the permit and it becomes part of the file.

If you have any questions, please contact me.

Sincerely,

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

MORRISON ENTERPRISES

3303 West 12th Street • Post Office Box 609 • Hastings, Nebraska 68902-0609
Telephone (402) 463-3191 • Fax (402) 462-8542

27 May 2004

Chief Engineer
Water Rights Program
DNER
523 East Capitol
Pierre, SD 57501-3181

RECEIVED
JUN 01 2004
WATER RIGHTS
PROGRAM

RE: Water Right Numbers 5879-3, 2261-2

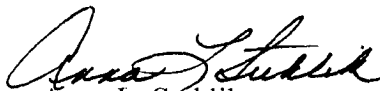
Dear Sir:

Enclosed are Notices of Transfer of Ownership with reference to the real estate on which these water rights are located.

We also enclose a check for your fees. If any other information is needed, please contact us.

Yours truly,

MORRISON ENTERPRISES



Anna L. Stehlik
Attorney

ALS/l
Enclosures

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date June 1, 2004

RECEIVED OF Danbrod Production Partnership, PO Box 99, Seward NE 68434

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	2	50
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 <u>2261-2</u>		
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. _____	2	50
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

001337

By

Darland Ebele
Chief Engineer

SD EForm - 0495 V1 NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

Water Right/Permit No. 2261-2

Date: May 27, 2004

I/We request that Water Right/Permit No. 2261-2 formerly owned by:
Jorgensen Pork, Inc. be transferred to:

New Owner Name: Danbred Production Partnership
Address: PO Box 99, 1341 285th Road
City, State, Zip Seward NE 68434 Telephone No. 402-463-3191

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

NE1/4NE1/4 of Section 13, Township 114, Range 78, Sully County, South Dakota---

NW 1/4 SE 1/4 SECTION 31, T102N, R77W, TRIPP COUNTY, SOUTH DAKOTA

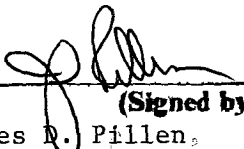
☐ I understand that the validity of Water Right/Permit No. 2261-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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 Two Dollars and Fifty Cents (\$2.50) is included to cover the filing fee as required by SDCL 46-2-13.

I, Danbred Production Partnership, the new owner, certify that the above information is true and correct.

DANBRED PRODUCTION PARTNERSHIP

By: 

(Signed by new owner)

James D. Pillen.

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

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

RECEIVED

JUN 01 2004

WATER RIGHTS
PROGRAM



2261-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 1, 2004

2261-2
5879-3

James D Pillen
Danbred Production Partnership
PO Box 99
Seward NE 68434

Anna L Stehlik, Attorney
Morrison Enterprises
PO Box 609
Hastings NE 68902-0609

Dear Mr. Pillen and Ms. Stehlik:

I am writing to acknowledge receipt of the "Notice of Transfer of Ownership" forms and filing fees submitted for transferring ownership of Water Permit No. 2261-2 and Water Right No. 5879-3. The transfers have been completed. The water permit and water right, formerly held by Jorgensen Pork, Inc are now listed in the name of Danbred Production Partnership.

The transfer form for Water Permit No. 2261-2 contained an error in legal description. I reviewed the water permit and corrected the form by typing in the description for the diversion point in Tripp County (as opposed to the description for the unit in Sully County). Enclosed is a corrected copy. I called and confirmed the need for the correction with Ms. Stehlik.

Enclosed are your Receipt Nos.. 001336 and 001337 in the amount of \$2.50 each. If I can answer any questions for you, please contact me.

Sincerely,

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

enclosures

Permit No. 2261-2
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 this day, 8/23/2011, made a thorough examination of the water use system constructed by **Danbred Production Partnership of 1341 285th Rd., Seward NE 68434** holder of Permit No. 2261-2, bearing the priority of 2/23/1993 authorizing the diversion of 0.13 cu. ft. per second of the waters of the **Dakota Formation Aquifer** for **commercial use** purposes, in **Tripp** County.

Inspection contact & relationship **Kim Meyer, Manager**
to permit holder, if applicable:

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Sather Drilling, Inc.
- 2) No. of Wells 1
- 3) Depth(s) 1587 feet
- 4) Well log is available Yes
- 5) Comment: Well log available—see file

Casing:

- 1) Diameter 2 inches
- 2) Length 1085 feet
- 3) Type K Cap

Screen:

- 1) Type Perforated Pipe
- 2) Length 100 feet
- 3) Static water level NA feet

Pump: NA

Motor: NA

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

- 1) Type PVC
- 2) Size 2 inches
- 3) Length ~2300 feet

Chemigation Equipment: NA

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes
- 2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period NA
- 3) Exceptions to compliance are: none

The system is in good condition with the point of diversion located as follows: 1,940 feet north and 1,930 feet west of the SE corner of Section 31, Township 102 North, Range 77 West, lat/long N 43.59208 W -100.08828.

The works are capable of diverting and conveying to the place of use 0.13 cu. ft. per second of water which is to be used for commercial use in a swine confinement feeding operation. Water has been put to beneficial use to the maximum extent as follows:

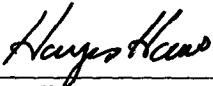
-SEE QUALIFICATIONS IN PERMIT

and the license should be issued for 0.13 cfs.

All structures, wells and lands on map YES

Comments or other permit(s) associated with the project:

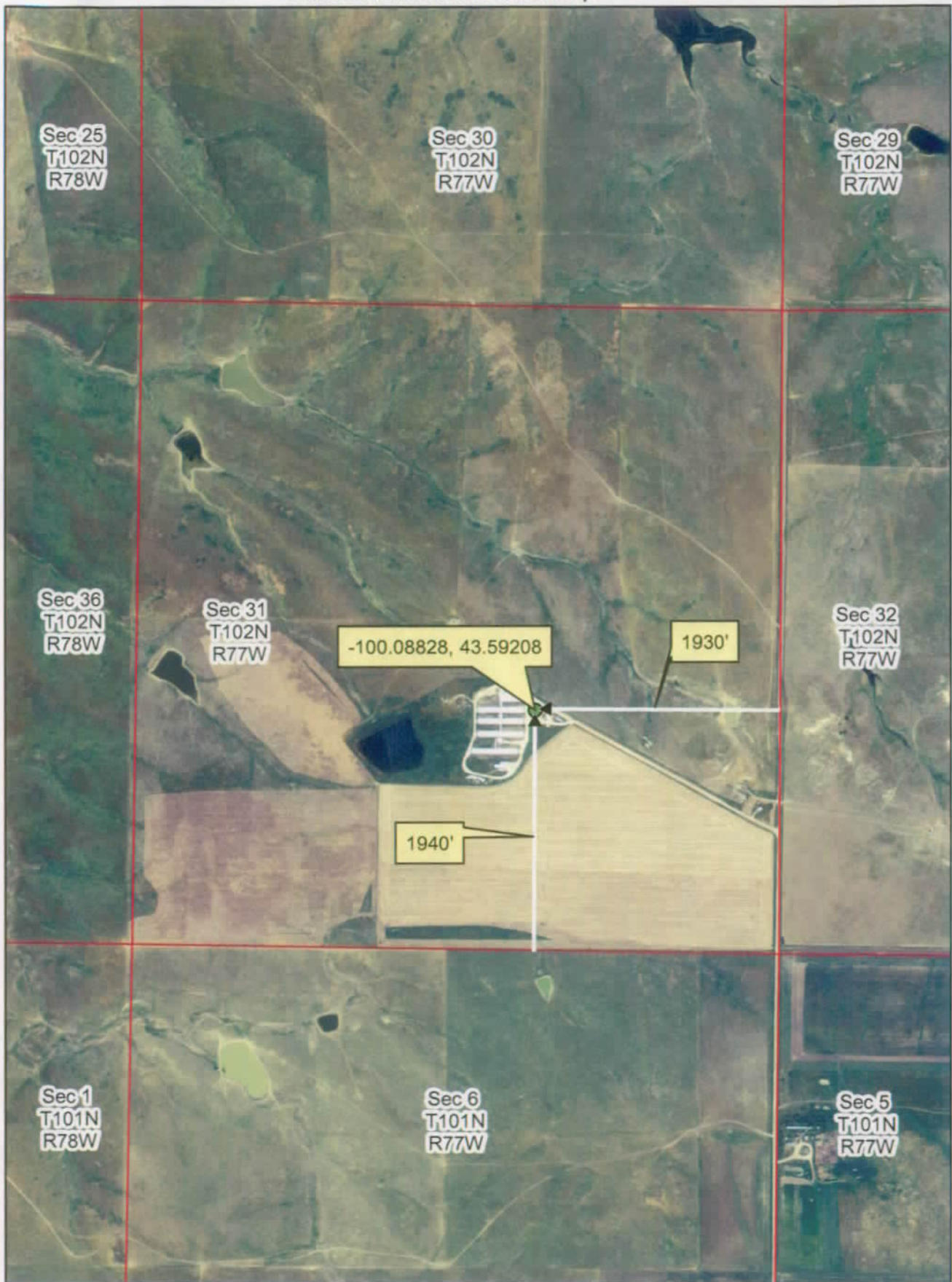
-SEE QUALIFICATIONS IN PERMIT



Hayes Haas
Natural Resources Engineer
DENR, Water Rights Program

Date report completed: 12/8/2011

2261-2
Danbred Production Partnership



August 2011
Hayes Haas
Natural Resources Engineer
Water Rights Program

Hayes Haas

0.5
Miles





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

MAY 02 2012

2261-2

Danbred Production Partnership
PO Box 99
Seward NE 68434

Dear Sir:

Enclosed is Water License No. 2261-2. This is the final water right document completing your process of obtaining a Water Right. Also, included with your license is a map prepared by the staff engineer who conducted the investigation.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

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

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 2261-2

(1) Jorgensen Farms, Ideal SD made Application No. 2261-2, February 23, 1993 for a water permit to divert 0.13 cubic feet of water per second from groundwater (one well), Tripp County, South Dakota for commercial use purposes. Permit No. 2261-2, with a priority date of February 23, 1993 was approved December 1, 1993 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before December 1, 1998 and for the application to beneficial use of water on or before December 1, 2002.

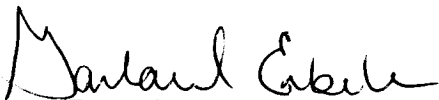
On June 1, 2004, Water Permit No. 2261-2 was transferred to Danbred Production Partnership, PO Box 99, Seward NE 68434.

(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 holder and/or owner of Water Right No. 2261-2 is issued a license, bearing a priority date of February 23, 1993 to appropriate 0.13 cubic feet of water per second from groundwater (one well) for commercial use in a swine confinement feeding operation.

The diversion point is located: 1,940 feet north and 1,930 feet west of the southeast corner of Section 31-T102N-R77W (NW ¼ SE ¼).

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 2261-2 including the following now applicable qualifications:

- The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- The wastewater storage lagoons shall be maintained so that they do not receive surface runoff from the surrounding area.
- No wastewater may be released from the wastewater lagoon except through a disposal system, unless an extended period of above normal precipitation results in excess stored waters and prevents operation of equipment to lower water levels due to field and weather conditions.
- Operation of a disposal system, if necessary to dispose of waste and wastewater shall be in a manner that prevents runoff from the disposal sites and from entering the waters of the state. The diffused drainage of natural precipitation on agricultural land resulting from a "non-point source" is not subject to these conditions.
- Permit No. 2261-2 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions



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

MAY 02 2012

date



WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Danbred Production Partnership

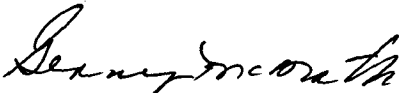
DATE: May 10, 2012 TELEPHONE: 402 564-0407

RE: address change for 2261-2

The water license for 2261-2 was mailed to the address on file of PO Box 99, Seward NE. The post office returned the mail but did not give a forwarding address. The Surface Water Quality had a contact person and phone # of the company. I called and spoke with a representative of the company and obtained the following updated contact information for Danbred.

Mail all correspondence to:

Dr. James D Pillen
Danbred Production Partnership
3214 25th St
Columbus NE 68601



Genny McMath
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

May 10, 2012

2261-2

Dr. James D Pillen
Danbred Production Partnership
3214 25th St
Columbus NE 68601

Dear Dr. Pillen:

The enclosed water license was returned to us by the post office for an incorrect address. I contacted your company and was told all correspondence for Danbred Production Partnership could be directed to the Columbus Nebraska address.

I have changed our records accordingly. If you have any questions concerning the enclosed water license, 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
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosure

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

RECEIVED

DEC 16 2013

WATER RIGHTS
PROGRAM

Mail to: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 2261-2Date: December 6, 2013

I/We request that Water Right/Permit No. 2261-2 formerly owned by:
Danbred North America be transferred to:

New Owner Name: DNA Production, LLCAddress: 3214 25th StreetCity, State, Zip Columbus NE 68601 Telephone No. 402-564-0407

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

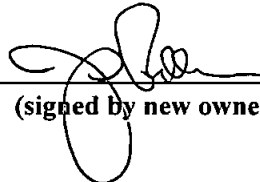
South ½ of Section 31, Township 102 North, Range 77 West

☒ I understand that the validity of Water Right/Permit No. 2261-2 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, Dr. James D. Pillen, the new owner, certify that the above information is true and correct.


(signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 12/16, 20 13

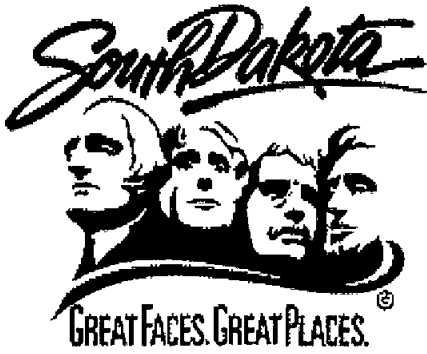
RECEIVED OF DNA Productions LLC 2415 13th St Columbus NE 68601

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. _____		
Fee for Filing Transfer Form <u>2261-2</u>		
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. _____	50	00
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. **06532**

By *James Goodman*
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

December 18, 2013

2261-2

Dr. James D Pillen
DNA Production LLC
3214 25th St
Columbus NE 68601

Dear Dr. Pillen:

I am writing to acknowledge receipt of the transfer form and filing fee you submitted for changing ownership on Water Right No. 2261-2.

The ownership change has been completed. Water Right No. 2261-2 formerly held by Danbred Production Partnership is now listed in the name of DNA Production LLC.

Enclosed for your records is Receipt No. 06532 in the amount of \$50. 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

enclosure