

Documents involving the Appeal may be found
in the file for Water Right No. 2294-2

This would include the briefs and various other
attorney correspondence

DIVISION - 1

WATER PERMIT NO. 2276-2

Phone: 394-4165

Name of Applicant: City of Rapid City

Post Office Address: 300 6th St, Rapid City SD 57701

Amount of Water Claimed: 2.09 cfs Total Acres: 102

Source of Water Supply: Rapid Creek

Water to be used for: irrigation County: Pennington

About _____ miles _____ of _____

PRIORITY _____ Date Received: 3-24-93 Fee: _____ Remarks: Withdrawal

from FU Permit No. 2276-2

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

WATER QUALITY APPROVAL RECEIVED: ~~NO~~ 10-28-93 APPROVED/CONDITIONAL (Circle one)

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

Diversion Point: _____

Land to be Irrigated: SW 1/4 NE 1/4, E1/2 NE1/4,
N 1/2 SE 1/4, NE 1/4 SW 1/4, SE 1/4 NW 1/4 Sec 9;

NW 1/4 NW 1/4 Sec 10; all in T1N-R7E

Driller: _____ Licensed YES _____ NO _____

Well: _____ REMARKS: _____

Map: topo PREPARED BY: Daniel Bjerke Reviewed and the Number

Date: 3-25-93 By: Karen Schlaak

FORM 2: Application for Irrigation in South Dakota

(type or print)

Mail to:

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

No. 2276-2 Hydrologic Unit 10120110
Basin Upper Cheyenne
Newspaper Rapid City Journal
(office use only)



Application For Soil/Water Compatibility Permit And Permit To Appropriate Water

Type of Application: ☒ New ☐ Vested Right ☐ Amendment/Correction to Permit No. _____
(check one) (Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. acreage change, change diversion point(s), add diversion point(s), etc.)
To appropriate an additional 2.09 cfs from Future Use Permit #1088-2 for the irrigation of land

1. Name of Applicant City of Rapid City Phone (605) 394-4165
Mailing Address 300 Sixth Street, Rapid City State SD 57701
(Street, RR, or Box) (City) (Zip Code)
2. Amount of water claimed 2.09 *CFS or 360 **GPM ***AF Total Acreage 120
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout if applicable)
3. Source of water supply Rapid Creek
4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
S1/2 NE1/4 Sec 9-T1N-R7E
County Pennington

5. County or counties where water will be used Pennington
6. Annual period during which water is to be used May 1 - November 1
7. List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

(Attach sheet if more space is needed)

Land Description	Acres
SW1/4 NE1/4 Sec 9 T1N, R7E	24
NW1/4 SE1/4 " "	10
NE1/4 SE1/4 " "	7
NE1/4 SW1/4 " "	6

Land Description	Acres
SE1/4 NW1/4 Sec 9 T1N, R7E	5
SE1/4 NE1/4 " "	33
NE1/4 NE1/4 " "	9
NW1/4 NW1/4 Sec 10 T1N, R7E	8

Land Description	Acres
SE1/4 NW1/4 Sec 9 T1N, R7E	5
SE1/4 NE1/4 " "	33
NE1/4 NE1/4 " "	9
NW1/4 NW1/4 Sec 10 T1N, R7E	8

Land Description	Acres
SE1/4 NW1/4 Sec 9 T1N, R7E	5
SE1/4 NE1/4 " "	33
NE1/4 NE1/4 " "	9
NW1/4 NW1/4 Sec 10 T1N, R7E	8

8. Type of Irrigation: Gravity: ☐ Towline: ☐ Center Pivot: ☐ Gun: ☐ Other (Specify): Sprinkler (cont)
9. Crops to be irrigated: Turf, grass
10. Give a description of the project. (Attach sheet if more space is needed)

Increase the diversion rate for irrigating Meadowbrook Golf Course; 0.1 cfs will be used as a flow through for golf course pond at #18 green.

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

STATE OF SOUTH DAKOTA)

County of Pennington^{ss}

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

Signed Ed McLaughlin

Subscribed and sworn to before me this 22nd day of March 19 93

Patsy Horton
Notary Public

Land Description	Acres
NW1/4 SW1/4 Sec 10, T1N, R7E	8
SW1/4 NW1/4 " "	10

SOUTH DAKOTA
WATER PERMIT NO. 2276-2 FOR IRRIGATION

Date of first receipt of application March 24, 1994.

The Water Management Board approved Water Permit Application No. 2276-2 on August 31, 1994 for the City of Rapid City, 300 6th St, Rapid City SD 57701 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. 2276-2 increases the authorized diversion rate by 0.23 cubic feet of water per second (cfs), adds 16 irrigated acres, increases the annual volume limitation by 48 acre-feet and changes the location of the irrigated acres claimed by Vested Right Claim No. 2294-2. Vested Water Right No. 2294-2 authorizes 1.48 cfs from Rapid Creek at a point located in the SE 1/4 NE 1/4 Section 9-T1N-R7E (see Vested Water Right No. 2294-2). This permit changes the location of the irrigated acreage and the irrigation of 16 additional acres located in portions of the SW 1/4 NE 1/4, N 1/2 SE 1/4, NE 1/4 SW 1/4, SE 1/4 NW 1/4, E 1/2 NE 1/4 Section 9; W 1/2 NW 1/4, NW 1/4 SW 1/4 Section 10; all in T1N-R7E. This permit places to beneficial use an additional 0.23 cfs appropriated and reserved by Future Use Permit No. 1088-2 (June 28, 1971, priority date) from Rapid Creek. A diversion of 0.1 cfs of the requested diversion rate increases is to be used to provide flow through a golf course pond at the No.18 green. This permit will increase the annual volume limitation authorized by No. 2294-2 by 48 acre-feet for a total of 360 acre-feet of water annually.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 - October 31.
3. The date from which applicant may claim right is June 28, 1971.
4. 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 Chief Engineer shall ensure that the permits and licenses in this case contain accurate reference to the 104 acres which are covered by the vested right.
2. Unappropriated water associated with the June 28, 1971, priority date is available in Rapid Creek to reasonably satisfy this permit only through contract between the City of Rapid City and the Bureau of Reclamation for releases from Deerfield and Pactola Reservoirs.
3. Approval of Permit No. 2276-2 limits irrigation to a rate of 1.71 cfs for 120 acres.
4. A meter shall be installed at the pump site to monitor the volume of water pumped. The amount of water diverted shall be reported to the Chief Engineer, annually, on the irrigation water use questionnaire.

WATER MANAGEMENT BOARD

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

JUN 10 1997

date



STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
IN THE MATTER OF WATER PERMIT	)	CHRONOLOGICAL
APPLICATION NO. 2276-2, CITY	)	ORDER
OF RAPID CITY	)	

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STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	SS	
COUNTY OF PENNINGTON	)	SEVENTH JUDICIAL CIRCUIT
IN THE MATTER OF WATER PERMIT	)	ALPHABETICAL
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RECEIPT

Division of Water Rights

413725

South Dakota Department of Environment and Natural Resources

Pierre, April 8, 19 93

RECEIVED OF City of Rapid City Finance Office, Rapid City SD

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

Fee for Application for Permit No. <u>2276-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	225	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	225 00

By John Hatch
Chief Engineer

K.S

3

Department of Agriculture
WI#1
5/87

SOIL/WATER COMPATIBILITY PERMIT
Division of Conservation

Office Use Only

4792

WR#

OWNERS NAME: CITY OF RAPID CITY OWNERS ADDRESS: 300 SIXTH STREET
RAPID CITY, SD 57701

COUNTY LAND LOCATED IN: DELMONT PHONE: 394-4165

LEGAL DESCRIPTION:

☐ Well

☒ RAPID CREEK
Surface

1. LOCATION: S½ NW¼ 9-T1N-R7E

Depth: _____

Legal Description	Acres	Legal Description	Acres
SW¼ NE¼ 9-T1N-R7E	24	SE¼ NW¼ 9-T1N-R7E	5
NE¼ SE¼ 9-T1N-R7E	10	SE¼ NE¼ 9-T1N-R7E	5
NE¼ NW¼ 9-T1N-R7E	7	NE¼ NE¼ 9-T1N-R7E	4
NE¼ SW¼ 9-T1N-R7E	6	NW¼ NW¼ 10-T1N-R7E	6
NW¼ SW¼ 10-T1N-R7E	8	SW¼ NW¼ 10-T1N-R7E	10

2. TYPE OF IRRIGATION: GRAVITY: _____ TOWLINE: _____ CENTER PIVOT: _____ GUN: _____ OTHER: _____
(Specify) SPRINKLER

3. CROPS TO BE IRRIGATED: TURF, GRASS

WATER QUALITY:

4. WATER SAMPLE NUMBER: RAPID CREEK 7. ADJUSTED (SAR): _____
5. SALINITY (EC X 10⁶): _____ 8. PERCENT SODIUM: _____
6. SODIUM (SAR): _____

Requirements:

Buffer strips of permanent vegetation shall be maintained along Rapid Creek. This area shall not be irrigated.

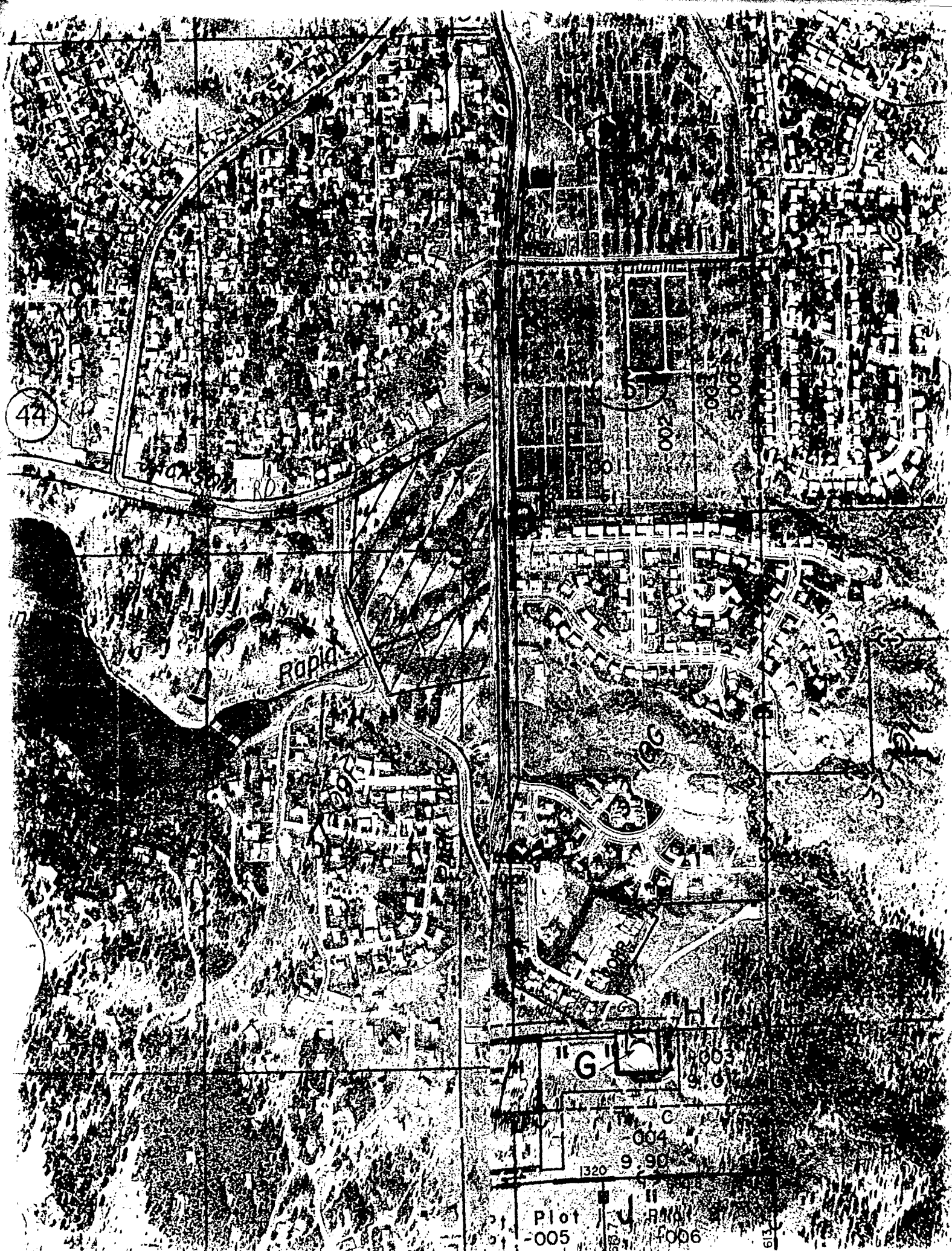


Russell J. Stone
Director, Division of Conservation

APPROVED REQUIREMENTS
DISAPPROVED
WAIVER

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

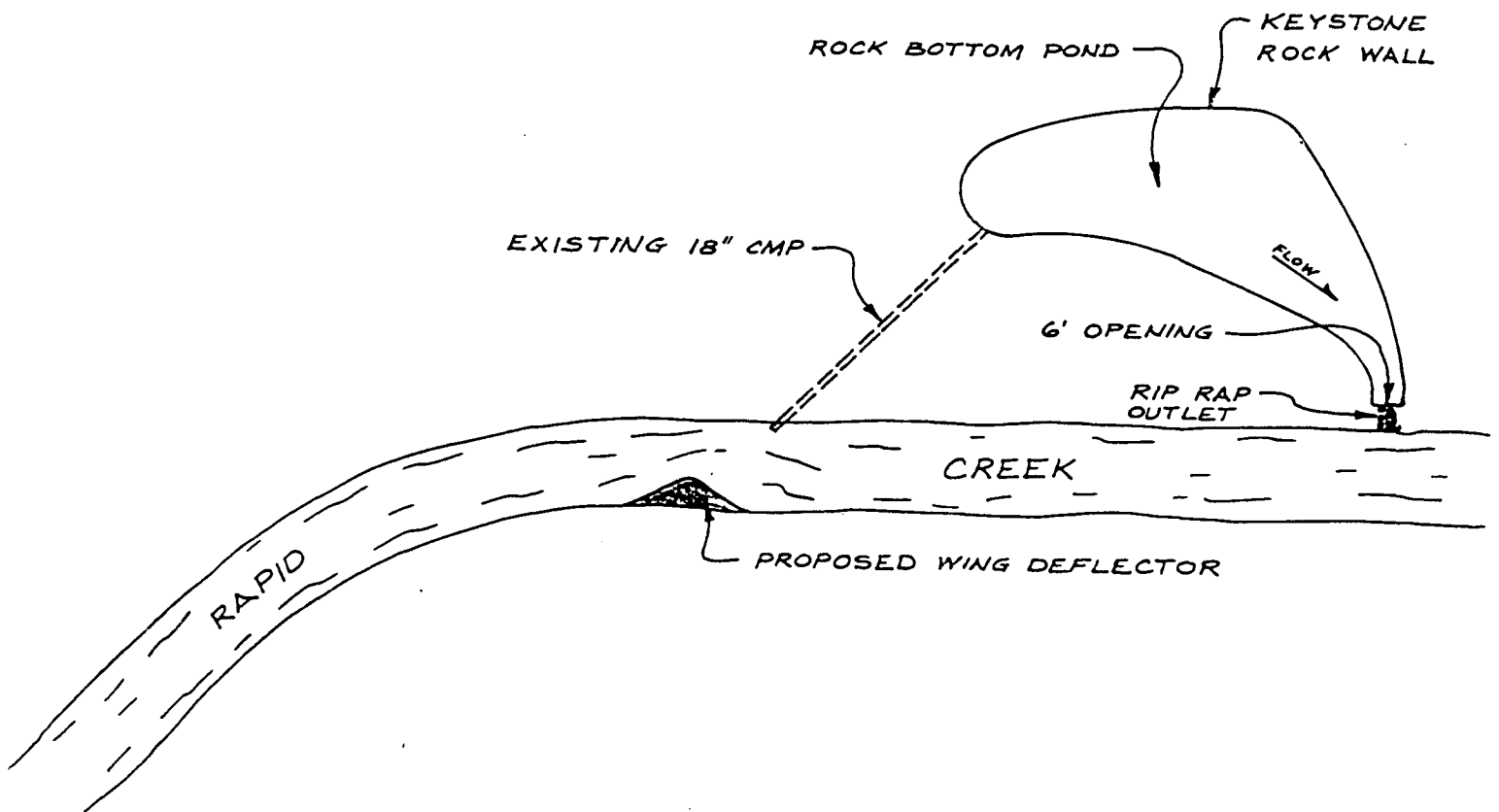
October 23, 1993
Date



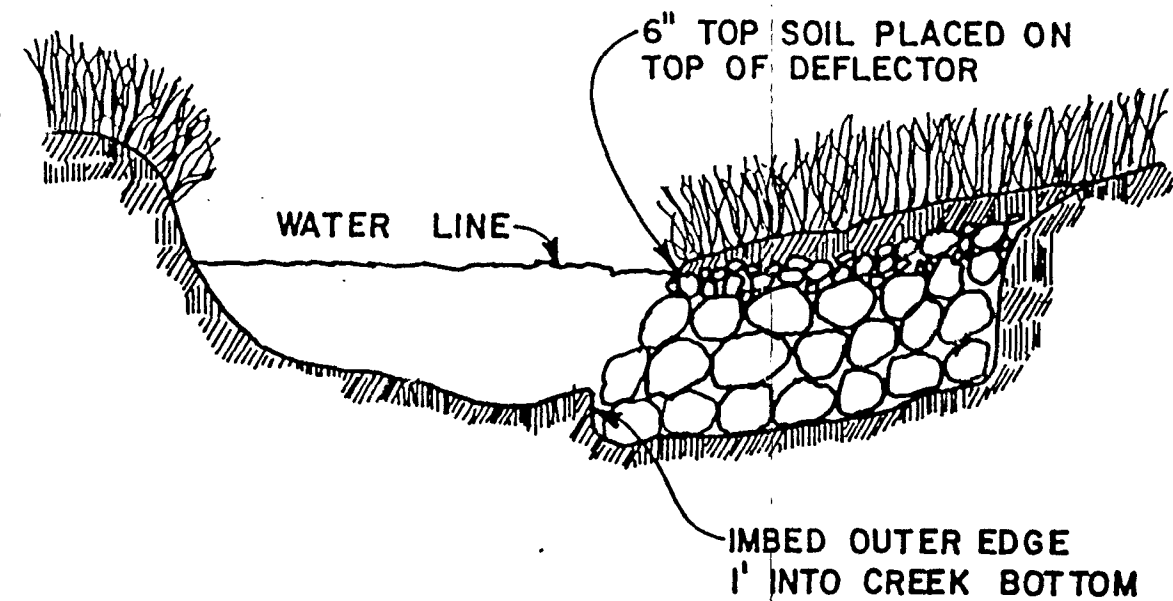
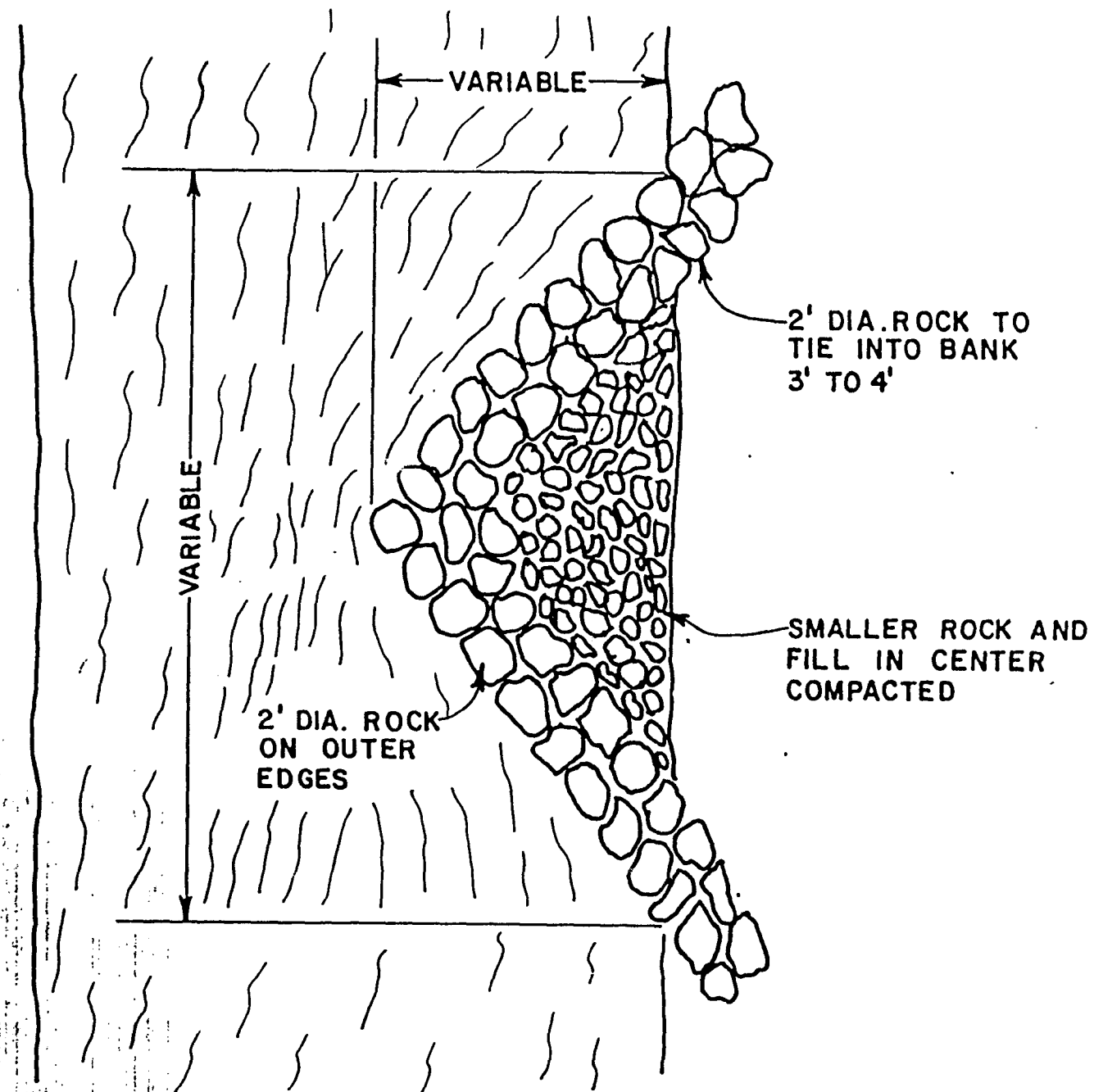
MEADOWBROOK
GOLF COURSE

SCALE 1"=60'

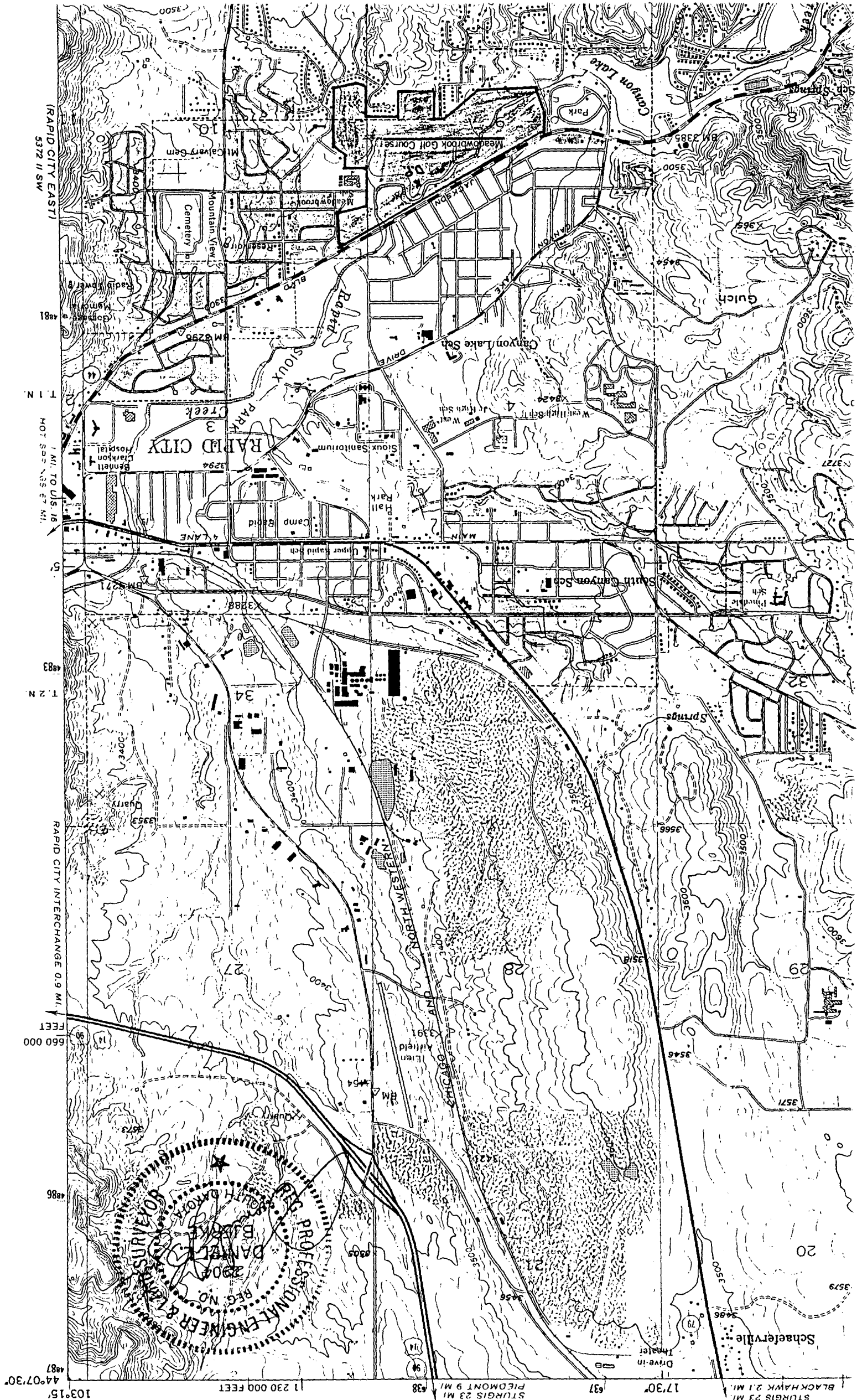
No. 18
GREEN



TYPICAL WING DEFLECTOR



RAPID CITY WEST QUADRANGLE
SOUTH DAKOTA-PENNINGTON CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)
5372 II
(RAPID CITY)



STURGIS 23 MI.
BLACK HAWK 21 MI.
17°30'
637
STURGIS 23 MI.
PIEDMONT 9 MI.
638
103°15'
44°07'30"

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 10, 1993

Dan Bjerke
City of Rapid City
300 6th St
Rapid City, SD 57701

Dear Mr. Bjerke:

This letter is in reference to the water permit applications the City has submitted. I am enclosing the reports for the Madison Formation applications for your review. If you have any comments concerning our proposals please contact either Eric Gronlund or myself.

I am also enclosing a vested water right claim application for Meadowbrook Golf Course. When reviewing the City's water permit application to make corrections to Meadowbrook's diversion rate and irrigated land, we found that the recognized vested water right for the golf course was never advertised nor validated. The procedure to clear this up is to have the City file a new vested right claim for the original vested right portion, proceed with the validation and then make corrections using the water permit application the City has already filed. The vested right and water permit applications can be advertised at the same time, with the changes proposed in the water permit application dependent upon the validation of the vested water right.

I am enclosing copies of the files from No. 0646-2, Leedy Ditch; and Nos. 0646-2A and 1998-2, Meadowbrook Gallery. The City will need to file an affidavit to support the claimed April 1, 1877 priority date. These files should help to support this claim.

Sincerely,

Mark D Rath
Natural Resources Engineer
Water Rights Division
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 4, 1994

Jerry Marsh
Rapid Valley Water Conservancy District
HCR 36 Box 35
Caputa, SD 57725

Dear Mr. Marsh:

This letter is in reference to a vested water right claim and a water permit application the City of Rapid City has submitted and is scheduled to be brought before the Water Management Board on April 6, 1994. Both the vested water right claim and the water permit application are the result of a water permit inspection I made of Meadowbrook Golf Course. At the time I made the inspection I found the system was not constructed as permitted and subsequently I found the vested water right had never been validated. The procedure that is being followed concerning the separate vested right claim and application is similar to that which was used for the Elks Club golf course applications two years ago. I am enclosing a copy of the report and the Chief Engineer's recommendation. If you have any questions concerning these, feel free to contact me.

Sincerely,

Mark D. Rath
Natural Resources Engineer
Water Rights Division
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 4, 1994

Jerry Hammerquist
Rapid Valley Water Conservancy District
Box 26
Caputa, SD 57725

Dear Mr. Hammerquist:

This letter is in reference to a vested water right claim and a water permit application the City of Rapid City has submitted and is scheduled to be brought before the Water Management Board on April 6, 1994. Both the vested water right claim and the water permit application are the result of a water permit inspection I made of Meadowbrook Golf Course. At the time I made the inspection I found the system was not constructed as permitted and subsequently I found the vested water right had never been validated. The procedure that is being followed concerning the separate vested right claim and application is similar to that which was used for the Elks Club golf course applications two years ago. I am enclosing a copy of the report and the Chief Engineer's recommendation. If you have any questions concerning these, feel free to contact me.

Sincerely,

Mark D. Rath
Natural Resources Engineer
Water Rights Division
(605) 773-3352

enclosures

Report on Vested Water Right Claim No. 2294-2
and Water Permit Application No. 2276-2
City of Rapid City
November 15, 1993

Vested Water Right Claim No. 2294-2

The City of Rapid City, requests validation of Vested Water Right Claim No. 2294-2 for the irrigation of 104 acres with a diversion rate of 1.48 cubic feet of water per second (cfs) from the natural flows of Rapid Creek and an annual volume limitation of 312 acre feet (ac-ft). Irrigation was authorized by Recognized Vested Water Right No. 0646-2A having a priority date of April 1, 1877 for irrigation of Meadowbrook Golf Course. The diversion point is located in the SE1/4 NE1/4 of Section 9-T1N-R7E.

Review of the Vested Right Claim

Recognized Vested Water Right No. 0646-2A was originally associated with irrigation from Leedy Ditch. The original notice of water appropriation for this vested right claim was filed for record in Book E, Page 287 of the Location Certificates in Pennington County. The date of the recording was the 18th day of April 1883. The original claim for Leedy Ditch was for 1600 miners inches dating from April, 1877. In a lawsuit, Sickler vs. George Bennett, the court decreed 400 miners inches for the Leedy Ditch as reported by Lund (1942). The irrigation system was constructed in 1877 and water was first put to beneficial use in June 1881, water has been reported to be continuously used since that time (SDDENR, 1987).

On January 17, 1957, the Water Resources Commission approved the transfer of water rights of record for Water Right No. 0646-2A for the City of Rapid City. This action designated 1.48 cfs for the irrigation of 104 acres of Meadowbrook Golf Course to be separated from Water Right No. 0646-2, Leedy Ditch. On December 10, 1986, the Water Management Board approved Water Permit No. 1998-2 to change the point of diversion from the Leedy Ditch diversion point to a point on Rapid Creek located in the S1/2 NE1/4 of Section 9 T1N-R7E. A July 15, 1992, water permit inspection found the location of some of the irrigated land to have been changed and the addition of 16 irrigated acres. This requested change is discussed in a later section concerning Application No. 2276-2.

This vested right claim claims a priority date of April 1, 1877. This priority date would be the same as the priority date for Vested Water Right No. 2023-2, Leedy Ditch, and these would be the second oldest priority dates on Rapid Creek.

Application No. 2276-2

Application No. 2276-2, City of Rapid City, proposes to increase the authorized diversion rate by 2.09 cfs, add 16 irrigated

acres, increase the annual volume limitation by 48 ac-ft and change the location of other irrigated acres claimed by Vested Water Right Claim No. 2294-2 for Meadowbrook Golf Course. This application also requests that 0.01 cfs of the requested diversion rate increase be used as a flow through for a golf course pond at the No. 18 green. Vested Right Claim No. 2294-2 claims a priority date of April 1, 1877, and appropriates 1.48 (cfs) from Rapid Creek for irrigating 104 acres with an annual volume limitation of 312 ac-ft.

A July 15, 1992, inspection of Recognized Vested Water Right No. 0646-2A and Water Permit No. 1998-2 found that the golf course was capable of diverting water at a rate 2.09 cfs greater than the amount allowed. The inspection also found the irrigation of an additional 16 acres and a change in the location of other irrigated acres. Table (1) shows the location of the irrigated acreage associated with this application:

Table 1. Irrigated Acreage Associated with Meadowbrook Golf Course.

Location of Acreage All In T1N-R7E	Recognized Vested Water Right No. 0646-2A	Claimed by Vested Water Right Claim No. 2294-2	Requested by Water Permit Application No. 2276-2
SW1/4 NE1/4 S 9			24
NW1/4 SE1/4 S 9			10
NE1/4 SE1/4 S 9	21	21	7
NE1/4 SW1/4 S 9			6
SE1/4 NW1/4 S 9			5
SE1/4 NE1/4 S 9	39	39	33
NE1/4 NE1/4 S 9			9
NW1/4 NW1/4 S 10			8
NW1/4 SW1/4 S 10	14	14	8
SW1/4 NW1/4 S 10	30	30	10
TOTAL	104	104	120

Review of the Proposed Project

Application No. 2276-2 proposes to place to beneficial use an additional 2.09 cfs of water appropriated and reserved by Future Use Permit No. 1088-2 (June 28, 1971, priority date) from Rapid Creek. The total diversion rate for the irrigation of the 120 acres would be 3.57 cfs which is beyond the statutory limit of 1 cfs per 70 acres as specified in SDCL 46-5-6. The City of Rapid City would be limited in the amount of time they are allowed to pump from the creek during a 24 hour period. If approved, the total diversion rate allowed would be 3.57 cfs. At this diversion rate the City will have to limit the amount of pumping time to 11.5 hours each day. The annual volume of water limitation for the irrigation of the 120 acres would be 3 ac-ft per acre for a total of 360 ac-ft. A meter should be installed at the pump site to monitor withdrawals from the creek, so that the 360 ac-ft volume limitation will be adhered to.

Review of Existing Water Rights

There are 72 existing water rights/permits appropriating 259.19 cfs from Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River. There are 65 existing water rights/permits appropriating 247.85 cfs having priority dates junior to April 1, 1877, and located downstream from the claimed diversion point. There are 21 existing water rights/permits appropriating 80.12 cfs having priority dates that would be junior to June 28, 1971, and located downstream from the proposed diversion point. The availability of water for the portion of this application associated with the increase in the diversion rate and addition of 16 acres is through the City's utilization of the Deerfield and Pactola contracts with the US Bureau of Reclamation. Adverse effects caused by this application to existing water rights/permits are not expected.

Conclusions

1. Vested Water Right Claim No. 2294-2 requests validation for irrigation of 104 acres and a diversion rate of 1.48 cfs with a priority date of April 1, 1877.
2. Application No. 2276-2 proposes to increase the diversion rate, add acres and change the location of acres for Meadowbrook Golf Course as authorized by Recognized Vested Water Right No. 0646-2A and Water Permit No. 1998-2. The increase in the diversion rate would be 2.09 cfs, for a total diversion rate of 3.57 cfs. The number of acres irrigated would increase by 16 acres to a total of 120 acres.
3. Water for the proposal to increase the diversion rate and add acres has been reserved by Future Use Permit No. 1088-2, priority date of June 28, 1971.
4. If approved, the water remaining in reserve authorized by Future Use Permit No. 1088-2 should be reduced by 48 ac-ft.
5. Adverse effects on existing water rights are not expected.
6. If approved this permit should contain the following qualifications:

Unappropriated water associated with the June 28, 1971, priority date is available in Rapid Creek to reasonably satisfy this permit only through contract between the City of Rapid City and the Bureau of Reclamation for releases from Deerfield and Pactola Reservoirs.

Approval of Permit No. 2276-2 limits the number of hours of irrigation per day to a corresponding equivalent time period as if irrigating at a rate of 1.71 cfs for 120 acres. At a pumping rate of 3.57 cfs,

the pumping time may not exceed 11.5 hours per day. The total amount of water applied shall not exceed 3 acre-feet per acre per year.

A meter shall be installed at the pump site to monitor the volume of water pumped. The amount of water diverted shall be reported to the Chief Engineer, annually, on the irrigation water use questionnaire.



Mark D. Rath
Natural Resources Engineer III

Approved by,



Delvin D. Brosz
Natural Resources Engineer IV

References

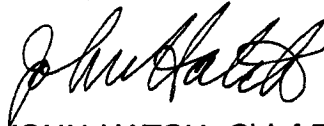
1. Lund. 1942. Report on Water Filings on Rapid Creek for Irrigation Purposes. Raymond F. Lund, Office of the State Engineer, July 1942.
2. Wright Water Engineers, Inc. 1992. Engineering Report for Transfer of Stromer Property Portion of South Side Ditch Water Rights. Wright Water Engineers, Inc. Engineering Consultants, Denver, Colorado.
2. U.S. Bureau of Reclamation. 1990. Rapid Valley Water Management Study. U.S. Bureau of Reclamation, Belle Fourche Projects Office, Newell, South Dakota.
3. S.D. Department of Environment and Natural Resources. Division of Water Rights Records.

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2276-2, City of Rapid City**

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. 2276-2, City of Rapid City, c/o Dan Bjerke, 300 6th Street, Rapid City, SD 57701.

The Chief Engineer is recommending DEFERRAL of Application No. 2276-2 to allow additional time to review the application.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", written in a cursive style.

JOHN HATCH, Chief Engineer
December 6, 1993

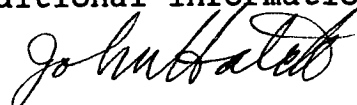
REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER
PERMIT APPLICATION NO. 2276-2, City of Rapid City

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. 2276-2, City of Rapid City, c/o Dan Bjerke, 300 6th Street, Rapid City, SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2276-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) in the public interest with the following qualifications:

1. Unappropriated water associated with the June 28, 1971, priority date is available in Rapid Creek to reasonably satisfy this permit only through contract between the City of Rapid City and the Bureau of Reclamation for releases from Deerfield and Pactola Reservoirs.
2. Approval of Permit No. 2276-2 limits the number of hours of irrigation per day to a corresponding equivalent time period as if irrigating at a rate of 1.71 cfs for 120 acres. At a pumping rate of 3.57 cfs, the pumping time may not exceed 11.5 hours per day. The total amount of water applied shall not exceed 3 acre-feet per acre per year.
3. A meter shall be installed at the pump site to monitor the volume of water pumped. The amount of water diverted shall be reported to the Chief Engineer, annually, on the irrigation water use questionnaire.

See report on application for additional information.


JOHN HATCH, Chief Engineer
December 20, 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.**

March 3, 1994

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701

Dear Mr. Bjerke:

Vested Water Right Application No. 2294-2 and Water Permit Application Nos. 2271-2, 2272-2 and 2273-2, 2275-2 and 2276-2 for irrigation and municipal use have 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 Rapid City Journal printed at Rapid City, SD (Ph # 394-8300). For your information, a copy of the notice, the recommendations of the Chief Engineer and the reports on the applications 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 applications.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendations, 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 applications.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 3, 1994

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

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Vested Water Right Application No. 2294-2 and Water Permit Application Nos. 2271-2, 2272-2 and 2273-2, 2275-2 and 2276-2 to be published twice. Please publish the first notice on March 9, 1994, 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 the City of Rapid City, 300 6th Street, Rapid City, SD 57701 (Ph # 393-4165).

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 applications until proof of publication has been received.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

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

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

Instruction to Newspaper - Publish first Notice on March 9, 1994, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 2294-2 and Application
Nos. 2271-2, 2272-2, 2273-2, 2275-2 and 2276-2 to Appropriate Water

Notice is given that the City of Rapid City, 300 6th St, Rapid City, SD 57701 has filed several applications. These applications were filed to bring several existing systems of the City, which were not developed as authorized by their associated water permits/rights, into compliance with water rights law. The vested water right claim, water permit applications, and chief engineer's recommendations are as follows:

Vested Right Claim No. 2294-2 requests validation of 1.48 cubic feet of water per second (cfs) from Rapid Creek and an annual volume limitation of 312 acre-feet. The diversion point is located in the SE 1/4 NE 1/4 Section 9 to irrigate 104 acres located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 9 and the SW 1/4 NW 1/4, NW 1/4 SW 1/4 Section 10; all in T1N-R7E. Irrigation was authorized by Recognized Vested Water Right No. 0646-2A for Meadowbrook Golf Course. The water use has a claimed priority date of April 1, 1877. (Also see Water Permit Application No. 2276-2 below).

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2294-2 because 1) water has been appropriated as described for irrigation of 104 acres with a claimed priority date of April 1, 1877, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest.

Water Permit Application No. 2271-2 proposes to transfer the diversion authority for 2.23 cfs from one well (City Well No. 7 [which was not developed]) authorized by Water Permit No. 2125-2 to three wells (City Well Nos. 5, 6 and 9) which are authorized by Water Permit No. 2085-2. Water Permit No. 2125-2 authorized construction and placement to beneficial use 2.23 cfs (800 acre-feet of water annually) from one well (Madison Formation) located on the quarter section line of the NE 1/4 SW 1/4 and NW 1/4 SE 1/4 of Section 1-T1N-R7E reserved by Future Use Permit No. 2086-2. Water Permit No. 2085-2 appropriated 8.01 cfs from six Madison wells. An inspection of Permit No. 2085-2 found three wells developed and capable of producing 12.42 cfs located in the SE 1/4 NE 1/4 Section 32-T2N-R7E; SW 1/4 NW 1/4 Section 10-T1N-R7E and the NW 1/4 NW 1/4 Section 3-T1N-R7E. This application, if approved, would transfer the diversion authority from the one well authorized by Water Permit No. 2125-2 to the three wells developed under Water Permit No. 2085-2.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2271-2 with qualifications because, 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Water Permit Application No. 2272-2 proposes to transfer the diversion authority for 0.44 cfs from one well (City Well No. 8) authorized by Water Permit No. 2124-2 to three wells (City Well Nos. 5, 6 and 9) which are authorized by Water Permit No. 2085-2. Water Permit No. 2124-2 appropriated 2.23 cfs from one well (Madison Formation) located in the NE 1/4 SE 1/4 Section 23-T2N-R7E. An inspection of Permit No. 2124-2 found the works capable of diverting 1.79 cfs. Water Permit No. 2085-2 appropriated 8.01 cfs from six Madison wells. An inspection of Permit No. 2085-2 found three wells developed and capable of producing 12.42 cfs located in the SE 1/4 NE 1/4 Section 32-T2N-R7E; SW 1/4 NW 1/4 Section 10-T1N-R7E and the NW 1/4 NW 1/4 Section 3-T1N-R7E. This application, if approved, would transfer the diversion authority for 0.44 cfs authorized by Water Permit No. 2124-2 to the three wells developed under Water Permit No. 2085-2.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2272-2 with qualifications because, 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Water Permit Application No. 2273-2 proposes to increase the authorized diversion rate of 1.74 cfs (756 acre-feet of water annually) from the three wells developed under Water Permit No. 2085-2 by placing to beneficial use water reserved by Future Use Permit No. 2086-2. The three wells developed under Water Permit No. 2085-2 (previously described) are capable of diverting 12.42 cfs. Water Permit Application Nos. 2271-2 and 2272-2, combined, propose to transfer diversion authority for 2.67 cfs to the three wells authorized by Water Permit No. 2085-2. The increased diversion rate of 1.74 cfs (756 acre-feet of water annually) proposed by this application is the amount of water necessary to authorize additional pumping by the three wells authorized by Water Permit No. 2085-2, up to existing pumping capacity of 12.42 cfs.

Pursuant to SDCL 46-1-14 and 46-2A-20, the Chief Engineer recommends APPROVAL of Application No. 2273-2 for a 20-year term because 1) although evidence is not available to justify issuing this permit without a 20-year term limitation, there is reasonable

probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest.

Water Permit Application No. 2275-2 proposes to place to beneficial use 1.33 cfs (491 acre-feet of water annually) from one well authorized by Water Permit No. 2155-2. Water Permit No. 2155-2 authorizes construction and placement to beneficial use 2.67 cfs (1160 acre-feet of water annually) of water appropriated and reserved by Future Use Permit No. 2086-2 from one well (Madison Formation) located in the NW 1/4 SE 1/4 Section 27-T2N-R7E. An inspection of Permit No. 2155-2 found the well capable of producing 3.80 cfs. This application, if approved, would authorize the increase of 1.33 cfs in the diversion rate from this well to the existing diversion rate of 3.80 cfs from the well.

Pursuant to SDCL 46-1-14 and 46-2A-20, the Chief Engineer is recommends APPROVAL of Application No. 2275-2 for a 20-year term because 1) although evidence is not available to justify issuing this permit without a 20-year term limitation, there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest.

Water Permit Application No. 2276-2 proposes to increase the authorized diversion rate by 2.09 cfs, add 16 irrigated acres, increase the annual volume limitation by 48 acre-feet and change the location of other irrigated acres claimed by Vested Right Claim No. 2294-2. Approval of this application is contingent on validation of Vested Right Claim No. 2294-2. This application, if approved, will authorize the change in location of the irrigated acreage and the irrigation of 16 additional acres located in portions of the SW 1/4 NE 1/4, N 1/2 SE 1/4, NE 1/4 SW 1/4, SE 1/4 NW 1/4, E 1/2 NE 1/4 Section 9; W 1/2 NW 1/4, NW 1/4 SW 1/4 Section 10; all in T1N-R7E. This application proposes to place to beneficial use an additional 2.09 cfs appropriated and reserved by Future Use Permit No. 1088-2 (June 28, 1971, priority date) from Rapid Creek. A diversion of 0.1 cfs, of the requested diversion rate increase is to be used to provide flow through a golf course pond at the No. 18 green. This application also proposes to increase the annual volume limitation authorized by No. 2294-2 by 48 acre-feet for a total of 360 acre-feet.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2276-2 with qualifications because, 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by March 28, 1994. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider these applications at 10:00 a.m., April 6, 1994, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The April 6, 1994, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by March 28, 1994.

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 March 28, 1994, at the above Water Rights Division address to request copies of information pertaining to these applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These application are made pursuant to SDCL 46-1-1 thru 46-1-10, 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 thru 46-2A-18, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-37, 46-5-37.1, 46-5-49; 46-6-1 thru 46-6-2, 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, 74:02:01:20 thru 74:02:01:22, 74:02:01:37 thru 74:02:01:37.02. Russell L. Stone, Acting Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Pennington) SSI, Helena M. Bauer

certify that the attached printed Notice was

taken from the Rapid City Journalprinted and published in Rapid CityCounty of Pennington and State ofSouth Dakota. The notice was published in
the newspaper on the following two dates:March 9, 1994March 16, 1994Cost of Printing: 29 9/16 inch @ 5.10Per inch run 2 times \$301.56

Helena M. Bauer
(Signature)

Bookkeeper

(Title)

March 16, 1994

(Date Signed)

March 9, 1994

L436

NOTICE OF HEARING TO VALIDATE VESTED WATER RIGHT

APPLICATION NO. 2294-2
AND APPLICATION NOS. 2271-2,
2272-2, 2273-2, 2275-2 AND 2274-2
TO APPROPRIATE WATER

Notice is given that the City of Rapid City, 300 6th St., Rapid City, SD 57701 has filed several applications. These applications were filed to bring several existing systems of the City, which were not developed as authorized by their associated water permits/rights, into compliance with water rights law. The vested water right claim, water permit applications, and chief engineer's recommendations are as follows:

Vested Right Claim No. 2294-2 requests validation of 1.48 cubic feet of water per second (cfs) from Rapid Creek and an annual volume limitation of 312 acre-feet. The diversion point is located in the SE¼ NE¼ Section 9, to irrigate 104 acres located in the SE¼ NE¼, NE¼ SE¼ Section 9 and the SW¼ NW¼, NW¼ SW¼ Section 10; all in T1N-R7E. Irrigation was authorized by Recognized Vested Water Right No. 0646-2A for Meadowbrook Golf Course. The water use has a claimed priority date of April 1, 1877. (Also see Water Permit Application No. 2274-2 below).

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2294-2 because 1) water has been appropriated as described for irrigation of 104 acres with a claimed priority date of April 1, 1877, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest.

Water Permit Application No. 2271-2 proposes to transfer the diversion authority for 2.23 cfs from one well (City Well No. 7 [which was not developed]) authorized by Water Permit No. 2125-2 to three wells (City Well Nos. 5, 6 and 9) which are authorized by Water Permit No. 2085-2. Water Permit No. 2125-2 authorized construction and placement to beneficial use 2.23 cfs (800 acre-feet of water annually) from one well (Madison Formation) located on the quarter section line of the NE¼ SW¼ and NW¼ SE¼ of Section 1-T1N-R7E reserved by Future Use Permit No. 2084-2. Water Permit No. 2085-2 appropriated 8.01 cfs from six Madison wells. An inspection of Permit No. 2085-2 found three wells developed and capable of producing 12.42 cfs located in the SE¼ NE¼ Section 32-T2N-R7E; SW¼ NW¼ Section 10-T1N-R7E; and the NW¼ NW¼ Section 3-T1N-R7E. This application, if approved, would transfer the diversion authority from the one well authorized by Water Permit No. 2125-2 to the three wells developed under Water Permit No. 2085-2.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2271-2 with qualifications because, 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Water Permit Application No. 2272-2 proposes to transfer the diversion authority for 0.44 cfs from one well (City Well No. 8) authorized by Water Permit No. 2124-2 to three wells (City Well Nos. 5, 6 and 9) which are authorized by Water Permit No. 2085-2. Water Permit No. 2124-2 appropriated 2.23 cfs from one well (Madison Formation) located in the NE¼ SE¼ Section 22-T2N-R7E. An inspection of Permit No. 2124-2 found the works capable of diverting 1.79 cfs. Water Permit No. 2085-2 appropriated 8.01 cfs from six Madison wells. An inspection of Permit No. 2085-2 found three wells developed and capable of producing 12.42 cfs located in the SE¼ NE¼ Section 32-T2N-R7E; SW¼ NW¼ Section 10-T1N-R7E and the NW¼ NW¼ Section 3-T1N-R7E. This application, if approved, would transfer the diversion authority for 0.44 cfs authorized by Water Permit No. 2124-2 to the three wells developed under Water Permit No. 2085-2.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2272-2 with qualifications because, 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Water Permit Application No. 2273-2 proposes to increase the authorized diversion rate of 1.74 cfs (756 acre-feet of water annually) from the three wells developed under Water Permit No. 2085-2 by placing to beneficial use water reserved by Future Use Permit No. 2086-2. The three wells developed under Water Permit No. 2085-2 (previously described) are capable of diverting 12.42 cfs. Water Permit Application Nos. 2271-2 and 2272-2, combined, propose to transfer diversion authority for 2.67 cfs to the three wells authorized by Water Permit No. 2085-2. The increased diversion rate of 1.74 cfs (756 acre-feet of water annually) proposed by this application is the amount of water necessary to authorize additional pumping by the three wells authorized by Water Permit No. 2085-2, up to existing pumping capacity of 12.42 cfs.

Pursuant to SDCL 46-1-14 and 46-2A-20, the Chief Engineer recommends APPROVAL of Application No. 2273-2 for a 20-year term because 1) although evidence is not available to justify issuing this permit without a 20-year term limitation, there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest.

Water Permit Application No. 2275-2 proposes to place to beneficial use 1.33 cfs (491 acre-feet of water annually) from one well authorized by Water Permit No. 2155-2. Water Permit No. 2155-2 authorizes construction and placement to beneficial use 2.67 cfs (1160 acre-feet of water annually) of water appropriated and reserved by Future Use Permit No. 2086-2 from one well (Madison Formation) located in the NW¼ SE¼ Section 17-T2N-R7E. An inspection of Permit No. 2155-2 found the well capable of producing 3.80 cfs. This application, if approved, would authorize the increase of 1.33 cfs in the diversion rate from this well to the existing diversion rate of 3.80 cfs from the well.

Pursuant to SDCL 46-1-14 and 46-2A-20, the Chief Engineer recommends APPROVAL of Application No. 2275-2 for a 20-year term because 1) although evidence is not available to justify issuing this permit without a 20-year limitation, there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest.

Water Permit Application No. 2276-2 proposes to increase the authorized diversion rate by 2.09 cfs, add 16 irrigated acres, increase the annual volume limitation by 48 acre-feet and change the location of other irrigated acres claimed by Vested Right Claim No. 2294-2. Approval of this application is contingent on validation of Vested Right Claim No. 2294-2. This application, if approved, will authorize the change in location of the irrigated acreage and the irrigation of 16 additional acres located in portions of the SW¼ NE¼, NW¼ SE¼, NE¼ SW¼, SE¼ NW¼, E¼ NE¼ Section 9; W¼ NW¼, NW¼ SW¼ Section 10; all in T1N-R7E. This application proposes to place to beneficial use an additional 2.09 cfs appropriated and reserved by Future Use Permit No. 1088-2 (June 28, 1971, priority date) from Rapid Creek. A diversion of 0.1 cfs of the requested diversion rate increase is to be used to provide flow through a golf course pond at the No. 18 green. This application also proposes to increase the annual volume limitation authorized by No. 2294-2 by 48 acre-feet for a total of 360 acre-feet.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2274-2 with qualifications because, 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 East 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 March 28, 1994. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel. If legal counsel is obtained.

The Water Management Board will consider these applications at 10:00 a.m., April 6, 1994, Floyd Matthews Training Center, Joe Foss Building, 523 East Capitol, Pierre, S.D. The Chief Engineer's recommendation are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The April 6, 1994, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by March 28, 1994.

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. Contract Eric Gronlund by March 28, 1994, at the above Water Rights Division address to request copies of information pertaining to these applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These applications are made pursuant to SDCL 46-1-1 thru 46-1-10, 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 thru 46-2A-18, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-37, 46-5-37.1, 46-5-49; 46-6-1 thru 46-6-2, 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, 74:02:01:20 thru 74:02:01:22, 74:02:01:37 thru 74:02:01:37.02.

Russell L. Stone
Acting Secretary
Department of Environment
and Natural Resources



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 4, 1994

Dear :

Enclosed is a copy of the Notice of Hearing for Vested Water Right Application No. 2294-2 and Water Permit Application Nos. 2271-2, 2272-2, 2273-2, 2275-2 and 2276-2 for the City of Rapid City. The Notice of Hearing is scheduled to be published in the Rapid City Journal for two consecutive weeks beginning March 9, 1994.

A copy of the notice of hearing on the applications is being sent to you because of your previous interest in Rapid City's water permit applications.

If you have any questions or would like to request a copy of the report on any of the applications, please feel free to contact mark rath or myself at 773-3352.

Sincerely,

Eric Gronlund
Natural Resources Engineer III
Water Rights Division

enclosure

(Vested Water Right Application No. 2294-2)
(Water Permit Application Nos. 2271-2, 2272-2, 2273-2, 2275-2, 2276-2)

THE ATTACHED LETTER WAS SENT TO THE FOLLOWING:

Bruce Laymon, Project Manager
Bureau of Reclamation
P.O. Box 226
Newell, SD 57760

Harry Morris
116580 S. Buxton Rd.
Butte, MT 59750-9717

Rapid Valley Water Company, Inc.
Rt 2, Box 160
Rapid City, SD 57701

Keith Ham, President
St. Germain Ditch
HCR 36, Box 34
Caputa, SD 57725

Walter Jones, Secretary
Lone Tree Water Company
RR 2, Box 4970
Rapid City, SD 57701

Don Jundt
South Side Ditch
Rt 2, Box 4920A
Rapid City, SD 57701

Michael M. Hickey, Attorney
818 St. Joseph Street
P.O. Box 2670
Rapid City, SD 57709-2670

Charles Johnson
Hawthorne Ditch Company
1500 East 27th Street
Rapid City, SD 57701

David Lamb
RR 2, Box 223
Rapid City, SD 57701

Melvin Brassfield
Box 24
Caputa, SD 57725

A. Carl Ham
Ham Ranch, Inc.
HCR 36, Box 34
Caputa, SD 57725

Robert Dustman
Dustman Ranch Partnership
Box 53
Caputa, SD 57725

THE ATTACHED LETTER WAS SENT INTER-OFFICE TO THE FOLLOWING:

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

PARTIES OF RECORD LIST
WATER PERMIT APPLICATION NO. 2276-2
AND VESTED WATER RIGHT APPLICATION NO. 2294-2
CITY OF RAPID CITY

Applicant

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701

Opposition

Jerry Hammerquist, President
Rapid Valley Water Conservancy Dist.
Box 26
Caputa, SD 57725

Jerry Marsh
Marsh Hereford Ranch, Inc.
HCR 36, Box 35
Caputa, SD 57725

Attorney for Opposition

Joseph Butler
P.O. Box 2670
Rapid City, SD 57709

March 28, 1994

Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, S. D. 57501

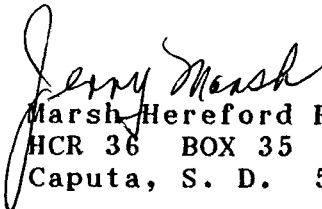


Dear Sir:

We are filing this petition in objection to the approval of the Validation of Vested Water Right Application 2294-2 permitting an annual volume limitation of 312 acre-feet of water with an 1887 priority. We believe that any increase in the volume of water over and above the 2 acre-feet per acre allowed under statute, should be drawn from Rapid City's Pactola account and not an increase in the 1877 priority.

We also object to provisions in Water Permit Application 2276-2, which proposes to increase the authorized diversion rate by 2.09 cubic feet per second to a total diversion rate of 3.57 cfs for a 120 acre permit. Statute in 46-5-6 clearly limits the diversion rate of irrigation water to 1 cfs for each 70 acres or the equivalent thereof.

We respectfully request that the Water Management Board hearings of the Applications be delayed to a later date.


Marsh Hereford Ranch Inc.
HCR 36 BOX 35
Caputa, S. D. 57725

cc: Rapid City

Box 26
Caputa, SD 57725



Chief Engineer
Water Rights Division
Department of Environment & Natural Resources
Foss Building
523 E. Capitol
Pierre, SD 57501

The Rapid Valley Water Conservancy District wishes to petition Water Rights Division concerning Rapid City's application numbers 2294-2 and 2276-2. We oppose these applications for the reasons that one cubic foot per second per 70 acres and the two acre feet per acre limitation should be used.

Sincerely,

Jerry Hommesguist
Jerry Hommesguist

Jerry Hammerquist
President
Rapid Valley Water Conservancy
District



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 30, 1994

NOTICE

TO: Daniel L. Bjerke
Public Works Director of Design/Utilities
City of Rapid City
300 Sixth Street
Rapid City, SD 57701-2724
and Parties of Record (see attached list)

FROM: *for* John Hatch, Chief Engineer
Water Rights Division *William W. Brozy*
605 773-3352

SUBJECT: Automatic Delay of Hearing for Vested Water Right
Application No. 2294-2 and Water Permit Application No.
2276-2, City of Rapid City

Petitions in opposition to Vested Water Right Application No. 2294-2 and Water Permit Application No. 2276-2 have been filed with the Water Rights Division. The petitions also requested an automatic delay of the hearing. Therefore, the hearing on Application Nos. 2294-2 and 2276-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on April 6, 1994.

The Water Management Board will still consider Application Nos. 2271-2, 2272-2, 2273-2 and 2275-2 at the April 6, 1994 beginning at 10:00 am at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501. Petitions were not filed on these applications.

The Water Management Board will now consider Application Nos. 2294-2 and 2276-2 at their July 6 and 7, 1994 meeting. Future notice of the date, time and place of the hearing for Application Nos. 2294-2 and 2276-2 will be provided to the parties of record.

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

c: Diane Best, Assistant Attorney General
Joseph Butler, P.O. Box 2670, Rapid City, SD 57709

CERTIFICATION

I hereby certify that on March 30, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 30, 1994, along with a copy of the Parties of Record List, regarding Automatic Delay of Hearing for Vested Water Right Application No. 2294-2 and Water Permit Application No. 2276-2, City of Rapid City, addressed as stated below:

Daniel L. Bjerke, Public Works Director of Design/Utilities, City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-2724.

Jerry Hammerquist, President, Rapid Valley Water Conservancy Dist., Box 26, Caputa, SD 57725.

Jerry Marsh, Marsh Hereford Ranch, Inc., HCR 36, Box 35, Caputa, SD 57725.

Joseph Butler, P.O. Box 2670, Rapid City, SD 57709.

Copy Sent Inter-office to:

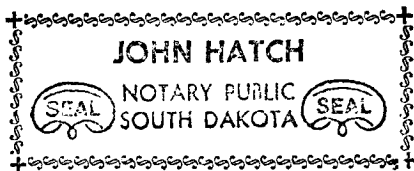
Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of April, 1994.



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

May 12, 1994

NOTICE

TO: Daniel L. Bjerke,
Public Works Director of Design/Utilities
City of Rapid City
300 Sixth Street
Rapid City, SD 57701-2724
and Parties of Record (see attached list)

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

SUBJECT: Rescheduling Consideration of Vested Water Right Application No. 2294-2
and Water Permit Application No. 2276-2, City of Rapid City

The Water Management Board will consider Vested Water Right Application No. 2294-2 and Water Permit Application No. 2276-2 on June 28, 1994 at 1:30 pm in Gallery D, Ramkota Inn - Best Western, 920 West Sioux Ave., Pierre, SD. The actual time of the hearing may be later than 1:30 pm due to prior agenda items. The April 6, 1994 hearing on this application was automatically delayed by petitioners in opposition to the applications.

Applicable provisions of the Notice of Hearing published March 9 and 16, 1994 in the Rapid City Journal 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 June 21, 1994 at (605) 773-3352 to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on May 12, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 12, 1994, regarding Rescheduling Consideration of Vested Water Right Application No. 2294-2 and Water Permit Application No. 2276-2, City of Rapid City, along with a copy of the Parties of Record List addressed as stated below and on the attached list:

Daniel L. Bjerke, Public Works Director of Design/Utilities, City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-2724.

Copy Sent Inter-office to:

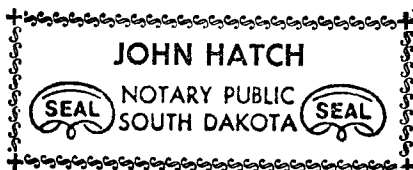
Diane Best, Assistant Attorney General, Capitol Building.

Eric Gronlund

Eric Gronlund
Natural Resources Engineer III

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of May, 1994.



John Hatch

Notary Public

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



July 1, 1994

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTICE

TO: Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701-2724
(and Parties of Record)

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

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

The Water Management Board has directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision to approve Water Permit Application No. 2276-2 and Vested Water Right Application No. 2294-2, City of Rapid City. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 p.m., August 31, 1994, Floyd Matthew Training Center, 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 (names and addresses enclosed) by August 9, 1994. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision, are to be mailed to each Board member, the Board attorney and all Parties of Record by August 19, 1994.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision, may be made on August 31, 1994. The public hearing was completed June 28, 1994. No additional testimony will be received on August 31, 1994.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Bob Jackson, Attorney, City of Rapid City, 300 6th St, Rapid
City, SD 57701

CERTIFICATION

I hereby certify that on July 1, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated July 1, 1994, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision (Water Permit Application No. 2276-2 and Vested Water Right Application No. 2294-2, City of Rapid City) addressed to:

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701-2724
and Parties of Record (as shown on the attached list)

A copy of the Notice was sent to:

Bob Jackson, Attorney, City of Rapid City, 300 6th St, Rapid
City, SD 57701

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

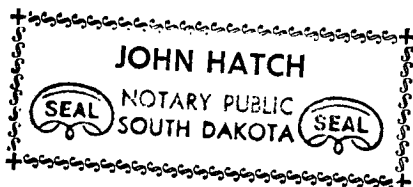
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

Jaci R Konop

JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of July, 1994.



John Bates
Notary Public

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

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

August 5, 1994

MEMORANDUM

TO: Members of the Water Management Board, and all
interested parties

FROM: John P. Guhin, Deputy Attorney General *John P. Guhin*

RE: Matter of Vested Water Right Claim No. 2294-2 and Water
Permit Application No. 2276-2; City of Rapid City

Enclosed find a copy of proposed Findings of Fact, Conclusions of Law and Final Decision; and Certificate of Service in the above-referenced matter.

This is considered service by mail upon you as required by law.

JPG:do

Enc.

cc/enc: Water Management Board
Dan Bjerke
Bob Jackson
Jerry Marsh
Jerry Hammerquist
Joseph Butler
John Hatch ✓
Diane Best

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VESTED WATER)	FINDINGS OF FACT,
RIGHT CLAIM NO. 2294-2 AND)	CONCLUSIONS OF LAW AND
WATER PERMIT APPLICATION NO.)	FINAL DECISION
2276-2; CITY OF RAPID CITY)	

FINDINGS OF FACT IN RELATION TO
VESTED WATER RIGHT CLAIM NO. 2294-2

1. The City of Rapid City requests validation of Vested Water Right Claim No. 2294-2 for the irrigation of 104 acres at the diversion rate of 1.48 cubic feet per second from the natural flows of Rapid Creek and an annual volume limitation of 312 acre feet.

2. The claim for water under this application arises from the Leedy Ditch irrigation system which was constructed in 1877 and a subsequent location certificate filed in Pennington County in 1883. The case of Sickler v. Bennett decreed 400 miner's inches for Leedy Ditch.

3. After establishment of the water right, it was split into several segments.

4. One segment of the right, for 1 c.f.s. and 19.5 acres was validated with an April 1, 1877, priority date by way of Vested Right No. 2023-2 on March 2, 1988.

5. The second portion of the original Leedy Ditch water right is that at issue here. That second portion was transferred to the City of Rapid City by way of Water Right No. 0646-2A on January 17, 1957, by way of Water Resource Commission approval. That action approved 1.48 c.f.s. for irrigation of 104 acres of the Meadowbrook Golf Course.

6. On December 10, 1986, the Water Management Board approved Water Permit No. 1998-2 to change the point of diversion for the water right at issue here from the Leedy Ditch diversion point to a point on Rapid Creek.

7. The vested right claim at issue here asserts a priority date of April 1, 1877, the same priority date previously approved for Vested Right No. 2023-2, which also originated in the Leedy Ditch irrigation right.

8. Evidence in the record, including that of the report of the Division, is to the effect that water has been continually used since the irrigation system was put into operation. There is no conflicting evidence in the record.

9. The volume of water available annually under this permit is three feet per acre annually.

CONCLUSIONS OF LAW
WITH REGARD TO VESTED WATER RIGHT CLAIM NO. 2294-2

1. The Board has jurisdiction of this matter.

2. This water has been appropriated as described for irrigation use with a priority date of April 1, 1887.

3. The use has been developed without unlawful impairment of existing rights.

4. The use to irrigate a golf course is a beneficial use.

5. The use is in the public interest in that it promotes recreation in the city of Rapid City.

6. The Board specifically rejects the assertion that SDCL 46-5-6 precludes the recognition of a vested right to apply

three acre feet of water under this vested right. First, the claimed right was developed at the rate of three acre feet of water per acre rate and the volume limitation was not in effect at the time of the development of the right. In particular, the three acre feet volume limitation did not appear in South Dakota law until 1957. See S.L. 1957, ch. 490, § 2. A two acre feet per acre limitation did not appear in South Dakota law until 1978. See S.L. 1978, ch. 308. The Board concludes that the legislature did not intend to apply either the two or three acre feet volume limitation to a water right which had been fully developed, had been recognized by court decree, and had originated prior to the passage of the 1957 and 1978 acts and prior to the passage of the critical 1907 South Dakota Water Act.

FINAL DECISION
AS TO VESTED WATER RIGHT CLAIM NO. 2294-2

The application for validation of Vested Water Right Claim No. 2294-2 is granted for the irrigation of the 104 acres identified in the application.

FINDINGS OF FACT
WITH RELATION TO WATER PERMIT APPLICATION NO. 2276-2

1. This is an application by the City of Rapid City to build upon the vested right claim No. 2294-2. The application proposes to place to beneficial use an additional 2.09 c.f.s. of water appropriated and reserved by Future Use Permit No. 1088-2 from Rapid Creek. This Future Use Permit has a priority date of June 28, 1971.

2. In particular, the city proposes to increase the diversion rate authorized by the vested right by an additional 2.09 c.f.s., to add 16 acres of land to be irrigated and to increase the annual volume limitation by 48 acre feet. The application also seeks to change the location of irrigated acres authorized by Vested Right No. 2294-2 in Meadowbrook Golf Course. In addition, the application requests that 0.01 c.f.s. of the requested diversion rate increase be used as a flow-through for a golf course pond on the No. 18 green.

3. The effect of approval of this application would be to increase the allowable diversion rate for the project from 1.48 cubic feet per second by 2.09 cubic feet per second to a total of 3.57 cubic feet per second.

4. SDCL 46-5-6 states that "the amount [of water] allowed shall not be in excess of the rate of one cubic feet of water per second for each seventy acres, or the equivalent thereof. . . ." The present application seeks one c.f.s. per 33.6 acres on an instantaneous basis. The daily pumping time will be restrained by the Final Decision to 11.5 hours per day. Thus, the application of water to the land will be at the rate of one c.f.s. per 70 acres on a daily basis or the same amount as allowed by SDCL 46-5-6.

5. The application, as noted, also seeks to add an additional 16 acres of irrigated land. In addition, it seeks to allow irrigation of those 16 acres at a rate of three acre feet per year. The increased acreage cannot, of course, be considered

part of the water right created in 1877 and therefore the strictures of SDCL 46-5-6 are applicable to it.

6. The Board finds that the application of three acre feet per year on a golf course is reasonable and allowable under SDCL 46-5-6.

7. While the opponents to the permit have made general allegations that the allowance of the 3.57 c.f.s. instantaneous diversion will be harmful to them they have not demonstrated this to be the case. The Board especially takes note of the fact that the diversion under this permit will take place during the evening and nighttime hours and that the diversion for irrigation systems most commonly takes place during the day. This should alleviate the potential of interference.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.

2. SDCL 46-5-6 allows the Board to authorize the application of water at a rate in excess of one cubic feet per second for each 70 acres on an instantaneous basis if, and only if, the rate is not in excess of one cubic feet of water per second on a daily basis. The rate of water approved by this permit is at the statutorily allowable rate of one cubic feet per second for each 70 acres on a daily basis.

3. The Board has authority under SDCL 46-5-6 to grant a new permit to allow up to three c.f.s. for water to accommodate particular irrigation requirements and conditions. Those conditions have been met in this case.

4. The Board has today simultaneously validated 104 acres as covered by the additional water right and has also allowed the change in the location of those 104 acres. Nonetheless, only 104 acres are covered by the vested water right. The Final Permit issued to the applicant and the license issued to the applicant shall specify which 104 acres are covered by the vested water right. This will ensure an orderly shut-down in times of water shortage, should such occur.

FINAL DECISION

The Application for Water Right No. 2276-2 to increase the diversion rate, add acres and change the location of acres irrigated in Meadowbrook Golf Course is granted as qualified below.

1. The Chief Engineer shall ensure that the permits and licenses in this case contain accurate reference to the 104 acres which are covered by the vested right.

2. Unappropriated water associated with the June 28, 1971, priority date is available in Rapid Creek to reasonably satisfy this permit only through contract between the City of Rapid City and the Bureau of Reclamation for releases from Deerfield and Pactola Reservoirs.

3. Approval of Permit No. 2276-2 limits the number of hours of irrigation per day to a corresponding equivalent time period as if irrigating at a rate of 1.71 c.f.s. for 120 acres. At a pumping rate of 3.57 c.f.s., the pumping time may not exceed

11.5 hours per day. The total amount of water applied shall not exceed 3 acre feet per acre per year.

4. A meter shall be installed at the pump site to monitor the volume of water pumped. The amount of water diverted shall be reported to the Chief Engineer, annually, on the irrigation water use questionnaire.

Dated this ____ day of _____, 1994.

BY THE BOARD:

d-wmb7.jpg(deo)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VESTED WATER)
RIGHT CLAIM NO. 2294-2 AND) CERTIFICATE OF SERVICE
WATER PERMIT APPLICATION NO.)
2276-2; CITY OF RAPID CITY)

The undersigned hereby certifies that true and correct copies of proposed Findings of Fact, Conclusions of Law, and Final Decision of the Water Management Board in the above-captioned matter were served by first class United States mail, postage prepaid, on this 5th day of August, 1994, upon the following:

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

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

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

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

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

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

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

Dan Bjerke
300 6th Street
Rapid City, SD 57701

Bob Jackson
City Attorney
300 6th Street
Rapid City, SD 57701

Jerry Marsh
Marsh Hereford Ranch, Inc.
HCR 36, Box 35
Caputa, SD 57725

Jerry Hammerquist, President
Rapid Valley Water Cons. Dist.
Box 26
Caputa, SD 57725

Joseph Butler
Attorney at Law
P.O. Box 2670
Rapid City, SD 57709

and sent by inter-office mail to:

John Hatch, Chief Engineer
Division of Water Rights
523 East Capitol
Pierre, SD 57501

and hand-delivered to:

Diane Best
Assistant Attorney General
500 East Capitol
Pierre, SD 57501-5070

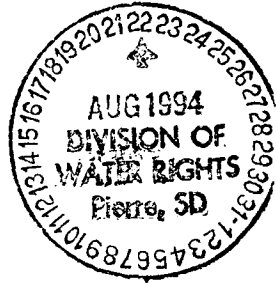

John P. Guhin
Deputy Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

d-wmb7.jpg(dco)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VESTED WATER) DIVISION RESPONSE TO
RIGHT CLAIM NO. 2294-2 AND) PROPOSED FINDINGS OF FACT,
WATER PERMIT APPLICATION NO.) CONCLUSIONS OF LAW AND
2276-2; CITY OF RAPID CITY) FINAL DECISION



COMES NOW the Division of Water Rights (hereinafter Division), and makes the following response in regard to the proposed Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter:

Division requests that the final two sentences of Finding of Fact 7 (page 5) (relating to water application 2276-2) be deleted from the Board's Findings of Fact and Conclusions of Law. Based on evidence presented by Division at hearing, it is Division's position that opponent's irrigation rights will not be interfered with regardless of the time of day of diversion by City of Rapid City. In other words, the daytime/nighttime distinction should not bear upon whether the application should be granted. Neither the application nor the ultimate grant of authority in this matter purports to strictly limit the timing for this water use application to evening and nighttime hours. Finding of Fact 7 appears to suggest that a limitation exists on timing for this application or for other irrigators and would be, therefore be inconsistent with the final decision in this matter and with the authority already granted to other irrigators.

Dated this 19th day of August, 1994.


Diane Best
Assistant Attorney General
Office of Attorney General
500 E. Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VESTED WATER)
RIGHT CLAIM NO. 2294-2 AND) CERTIFICATE OF SERVICE
WATER PERMIT APPLICATION NO.)
2276-2; CITY OF RAPID CITY)

The undersigned hereby certifies that true and correct copies of Division's Response to Proposed Findings of Fact, Conclusions of Law, and Final Decision of the Water Management Board in the above-captioned matter were served by first class United States mail, postage prepaid, on this 19th day of August, 1994, upon the following:

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

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

Marian Gunderson
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Dan Bjerke
300 6th Street
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Bob Jackson
City Attorney
300 6th Street
Rapid City, SD 57701

Jerry Marsh
Marsh Hereford Ranch, Inc.
HCR 36, Box 35
Caputa, SD 57725

Jerry Hammerquist, President
Rapid Valley Water Cons. Dist.
Box 26
Caputa, SD 57725

Joseph Butler
Attorney at Law
P.O. Box 2670
Rapid City, SD 57709

and sent by inter-office mail to:

John Hatch, Chief Engineer
Division of Water Rights
523 East Capitol
Pierre, SD 57501

and hand-delivered to:

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



Diane Best
Assistant Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

d-wmb7.db(deo)

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Ronald E. Clabaugh
Charles L. Riter
Allen G. Nelson
James P. Hurley
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Rodney W. Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd

*Also admitted in Minnesota,
Nebraska and North Dakota

George A. Bangs, Of Counsel
W.A. McCullen (1943-1987)

MEMORANDUM

Recycled Paper 

TO: Members of the Water Management Board, and all interested parties

FROM: Joseph Butler

DATE: August 10, 1994

RE: Matter of vested Water Right Claim No. 2294-2 and Water Permit Application No. 2276-2; City of Rapid City

Enclosed are Proposed Findings of Fact, Conclusions of Law, and Certificate of Service in connection with Water Permit Application No. 2276-2.

This is considered as service by mail upon you.

JMB/rp
Enclosure





OFFICE OF ATTORNEY GENERAL

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

MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

August 29, 1994

MEMORANDUM

TO: Water Management Board

FROM: John P. Guhin, Deputy Attorney General *John Guhin*

RE: In the Matter of Vested Water Right Claim No. 2294-2
and Water Permit Application No. 2276-2; City of Rapid
City

1. The Division has recommended that the final two sentences of paragraph 7 on page 5 of the proposed Findings of Fact and Conclusions of Law be deleted. On re-examination of my notes and on re-examination of the report of the engineer on this controversy, I conclude that any evidence as to nighttime watering of the golf course was fleeting and should not be relied upon here. I therefore recommend that the final two sentences of paragraph 7 on page 5 be deleted.

2. I also recommend that the Conclusions of Law set out on pages 5-6 with regard to Water Permit Application No. 2276-1 be expanded by adding the following other conclusions:

- No. 5. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
- No. 6. The proposed diversion can be developed without unlawful impairment of existing rights.
- No. 7. The proposed use on a golf course is a beneficial use.
- No. 8. The proposed use is in the public interest when qualified in the Final Decision.

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a:m-mem011.jpg

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VESTED WATER)	FINDINGS OF FACT,
RIGHT CLAIM NO. 2294-2 AND)	CONCLUSIONS OF LAW AND
WATER PERMIT APPLICATION NO.)	FINAL DECISION
2276-2; CITY OF RAPID CITY)	

FINDINGS OF FACT IN RELATION TO
VESTED WATER RIGHT CLAIM NO. 2294-2

1. The City of Rapid City requests validation of Vested Water Right Claim No. 2294-2 for the irrigation of 104 acres at the diversion rate of 1.48 cubic feet per second from the natural flows of Rapid Creek and an annual volume limitation of 312 acre feet.
2. The claim for water under this application arises from the Leedy Ditch irrigation system which was constructed in 1877 and a subsequent location certificate filed in Pennington County in 1883. The case of Sickler v. Bennett decreed 400 miner's inches for Leedy Ditch.
3. After establishment of the water right, it was split into several segments.
4. One segment of the right, for 1 c.f.s. and 19.5 acres was validated with an April 1, 1877, priority date by way of Vested Right No. 2023-2 on March 2, 1988.
5. The second portion of the original Leedy Ditch water right is that at issue here. That second portion was transferred to the City of Rapid City by way of Water Right No. 0646-2A on January 17, 1957, by way of Water Resource Commission approval. That action approved 1.48 c.f.s. for irrigation of 104 acres of the Meadowbrook Golf Course.

6. On December 10, 1986, the Water Management Board approved Water Permit No. 1998-2 to change the point of diversion for the water right at issue here from the Leedy Ditch diversion point to a point on Rapid Creek.

7. The vested right claim at issue here asserts a priority date of April 1, 1877, the same priority date previously approved for Vested Right No. 2023-2, which also originated in the Leedy Ditch irrigation right.

8. Evidence in the record, including that of the report of the Division, is to the effect that water has been continually used since the irrigation system was put into operation. There is no conflicting evidence in the record.

9. The volume of water available annually under this permit is three feet per acre annually.

CONCLUSIONS OF LAW
WITH REGARD TO VESTED WATER RIGHT CLAIM NO. 2294-2

1. The Board has jurisdiction of this matter.

2. This water has been appropriated as described for irrigation use with a priority date of April 1, 1887.

3. The use has been developed without unlawful impairment of existing rights.

4. The use to irrigate a golf course is a beneficial use.

5. The use is in the public interest in that it promotes recreation in the city of Rapid City.

6. The Board specifically rejects the assertion that SDCL 46-5-6 precludes the recognition of a vested right to apply

three acre feet of water under this vested right. First, the claimed right was developed at the rate of three acre feet of water per acre rate and the volume limitation was not in effect at the time of the development of the right. In particular, the three acre feet volume limitation did not appear in South Dakota law until 1957. See S.L. 1957, ch. 490, § 2. A two acre feet per acre limitation did not appear in South Dakota law until 1978. See S.L. 1978, ch. 308. The Board concludes that the legislature did not intend to apply either the two or three acre feet volume limitation to a water right which had been fully developed, had been recognized by court decree, and had originated prior to the passage of the 1957 and 1978 acts and prior to the passage of the critical 1907 South Dakota Water Act.

FINAL DECISION
AS TO VESTED WATER RIGHT CLAIM NO. 2294-2

The application for validation of Vested Water Right Claim No. 2294-2 is granted for the irrigation of the 104 acres identified in the application.

FINDINGS OF FACT
WITH RELATION TO WATER PERMIT APPLICATION NO. 2276-2

1. This is an application by the City of Rapid City to build upon the vested right claim No. 2294-2. The application proposes to place to beneficial use an additional 2.09 c.f.s. of water appropriated and reserved by Future Use Permit No. 1088-2 from Rapid Creek. This Future Use Permit has a priority date of June 28, 1971.

2. In particular, the city proposes to increase the diversion rate authorized by the vested right by an additional 2.09 c.f.s., to add 16 acres of land to be irrigated and to increase the annual volume limitation by 48 acre feet. The application also seeks to change the location of irrigated acres authorized by Vested Right No. 2294-2 in Meadowbrook Golf Course. In addition, the application requests that 0.01 c.f.s. of the requested diversion rate increase be used as a flow-through for a golf course pond on the No. 18 green.

3. The effect of approval of this application would be to increase the allowable diversion rate for the project from 1.48 cubic feet per second by 2.09 cubic feet per second to a total of 3.57 cubic feet per second.

4. SDCL 46-5-6 states that "the amount [of water] allowed shall not be in excess of the rate of one cubic feet of water per second for each seventy acres, or the equivalent thereof. . . ." The present application seeks one c.f.s. per 33.6 acres on an instantaneous basis. The daily pumping time will be restrained by the Final Decision to 11.5 hours per day. Thus, the application of water to the land will be at the rate of one c.f.s. per 70 acres on a daily basis or the same amount as allowed by SDCL 46-5-6.

5. The application, as noted, also seeks to add an additional 16 acres of irrigated land. In addition, it seeks to allow irrigation of those 16 acres at a rate of three acre feet per year. The increased acreage cannot, of course, be considered

part of the water right created in 1877 and therefore the strictures of SDCL 46-5-6 are applicable to it.

6. The Board finds that the application of three acre feet per year on a golf course is reasonable and allowable under SDCL 46-5-6.

7. While the opponents to the permit have made general allegations that the allowance of the 3.57 c.f.s. instantaneous diversion will be harmful to them they have not demonstrated this to be the case.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.

2. SDCL 46-5-6 allows the Board to authorize the application of water at a rate in excess of one cubic feet per second for each 70 acres on an instantaneous basis if, and only if, the rate is not in excess of one cubic feet of water per second on a daily basis. The rate of water approved by this permit is at the statutorily allowable rate of one cubic feet per second for each 70 acres on a daily basis.

3. The Board has authority under SDCL 46-5-6 to grant a new permit to allow up to three c.f.s. for water to accommodate particular irrigation requirements and conditions. Those conditions have been met in this case.

4. The Board has today simultaneously validated 104 acres as covered by the additional water right and has also allowed the change in the location of those 104 acres. Nonetheless, only 104 acres are covered by the vested water

right. The Final Permit issued to the applicant and the license issued to the applicant shall specify which 104 acres are covered by the vested water right. This will ensure an orderly shut-down in times of water shortage, should such occur.

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

6. The proposed diversion can be developed without unlawful impairment of existing rights.

7. The proposed use on a golf course is a beneficial use.

8. The proposed use is in the public interest when qualified in the Final Decision.

FINAL DECISION

The Application for Water Right No. 2276-2 to increase the diversion rate, add acres and change the location of acres irrigated in Meadowbrook Golf Course is granted as qualified below.

1. The Chief Engineer shall ensure that the permits and licenses in this case contain accurate reference to the 104 acres which are covered by the vested right.

2. Unappropriated water associated with the June 28, 1971, priority date is available in Rapid Creek to reasonably satisfy this permit only through contract between the City of Rapid City and the Bureau of Reclamation for releases from Deerfield and Pactola Reservoirs.

3. Approval of Permit No. 2276-2 limits the number of hours of irrigation per day to a corresponding equivalent time period as if irrigating at a rate of 1.71 c.f.s. for 120 acres. At a pumping rate of 3.57 c.f.s., the pumping time may not exceed 11.5 hours per day. The total amount of water applied shall not exceed 3 acre feet per acre per year.

4. A meter shall be installed at the pump site to monitor the volume of water pumped. The amount of water diverted shall be reported to the Chief Engineer, annually, on the irrigation water use questionnaire.

Dated this 9th day of September, 1994.

BY THE BOARD:

Dwayne Kelley

d-wmb7.jpg(deo)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 12, 1994

NOTICE

TO: Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701-2724
(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 approval of Water Permit Application No. 2276-2 and Vested Water Right Application No. 2294-2, City of Rapid City at the August 31, 1994, 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
Bob Jackson, Attorney, City of Rapid City, 300 6th St, Rapid City, SD 57701

CERTIFICATION

I hereby certify that on September 12, 1994, I have personally deposited with the United States Mail at Pierre, South Dakota, First Class postage, prepaid envelopes containing a Notice dated September 12, 1994, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision for approval of Water Permit Application No. 2276-2 and Vested Water Right Application No. 2294-2, City of Rapid City addressed to:

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701-2724
and Parties of Record (as shown on the attached list)

A copy of the Notice was sent to:

Bob Jackson, Attorney, City of Rapid City, 300 6th St, Rapid
City, SD 57701

A copy of the Notice was also sent by Inter-Office mail to:

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

Jai R Konop

JACI R. KONOP
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of September, 1994.



John Hatch
Notary Public

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

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Patrick K. Duffy

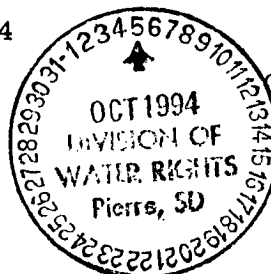
818 St. Joe Street
Mailing Address P.O. Box 2670
Rapid City, South Dakota 57709-2670
605-343-1040

Telecopier 605-343-1503
October 4, 1994

Rodney W. Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Bowen

*Also Admitted in Minnesota,
Nebraska and North Dakota

Ms. Bonnie Fitzgerald
Clerk of Circuit Court
P.O. Box 230
Rapid City, SD 57709



George A. Bangs, Of Counsel
W.A. McCullen (1943-1987)

Recycled Paper

Re: Marsh Hereford Ranch, Inc., and Rapid Valley Water
Conservancy District v. State of South Dakota
Acting as the Water Management Board of the
Department of Environment and Natural Resources

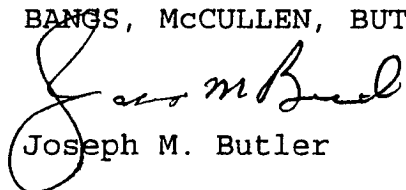
Dear Bonnie:

In regard to the above-referenced matter, please find
enclosed Appellant's Notice of Appeal.

By copy of this letter, a copy of this document has been
mailed to John P. Guhin, Deputy Attorney General; Diane Best,
Assistant Attorney General; Bob Jackson, City Attorney; Dan Bjerke,
City of Rapid City; Water Management Board; Dwayne Rollag, Water
Management Board Chairman; Francis Brink; Bernita Loucks; Marian
Gunderson; Rodney Freeman; Leo Holzbauer; and Joel Rickenbach.
This is intended as service by mail.

Sincerely,

BANGS, MCCULLEN, BUTLER, FOYE & SIMMONS


Joseph M. Butler

JMB:pkw

Enclosure

cc: John P. Guhin

Diane Best

Bob Jackson

Dan Bjerke

Water Management Board

Dwayne Rollag

Francis Brink

Bernita Loucks

Marian Gunderson

Rodney Freeman

Leo Holzbauer

Joel Rickenbach

Jerry Hammerquist

Jerry Marsh

STATE OF SOUTH DAKOTA)
 SS
PENNINGTON COUNTY)

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
CIV. NO. _____

MARSH HEREFORD RANCH, INC.,)
and RAPID VALLEY WATER)
CONSERVANCY DISTRICT,)
)
 Appellants,)

vs.)

REVISED
NOTICE OF APPEAL

STATE OF SOUTH DAKOTA ACTING AS)
THE WATER MANAGEMENT BOARD OF THE)
DEPARTMENT OF ENVIRONMENT AND)
NATURAL RESOURCES,)
)
 Respondent.)

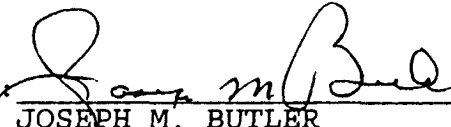
TO: RESPONDENT, THE STATE OF SOUTH DAKOTA ACTING AS THE WATER
MANAGEMENT BOARD OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES:

Please take notice that the above-named Appellants, pursuant
to SDCL §§ 1-26-30 through 1-26-37 hereby appeal to the Circuit
Court within and for the County of Pennington, State of South
Dakota, Seventh Judicial Circuit, from a decision of the South
Dakota Water Management Board of the Department of Natural
Resources, in re the matter of Application for Vested Water Right
Claim No. 2294-2 and Water Permit Application No. 2276-2, both
applications having been made by the City of Rapid City.

The final decision of the South Dakota Water Management Board
of the Department of Environment and Natural Resources was rendered
on September 9, 1994. Notice of that decision was served on
Appellants on September 13, 1994.

Dated this 4 day of October, 1994.

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

BY: 
JOSEPH M. BUTLER

BY: 
VERONICA L. BOWEN
attorneys for
all above-named Appellants
818 St. Joseph Street; P.O. Box 2670
Rapid City, SD 57709

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to each said addressee, to wit:

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

Diane Best
Assistant Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070

Bob Jackson
City Attorney
300 6th Street
Rapid City, SD 57701

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701

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

Dwayne Rollag
Chairman, Water Management Board
320 Lincoln Lane South
Brookings, SD 57006

Francis Brink
1214 S. Wells Street
Aberdeen, SD 57401

Bernita Loucks
219 42nd Street
Rapid City, SD 57702

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811 West 3rd
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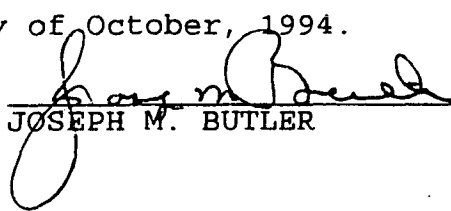
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Huron, SD 57350

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

Joel Rickenbach
P.O. Box 97
Oelrichs, SD 57763

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 4 day of October, 1994.

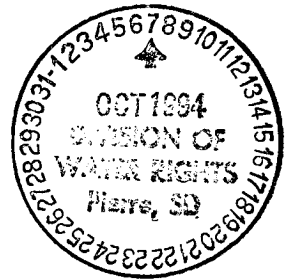


JOSEPH M. BUTLER



OFFICE OF ATTORNEY GENERAL

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



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

October 6, 1994

Veronica L. Bowen
Bangs, McCullen, Butler,
Foye & Simmons
Attorneys at Law
P.O. Box 2670
Rapid City, SD 57709-2670

Re: Marsh Hereford Ranch, et al. v. State

Dear Ms. Bowen:

I received the revised Notice of Appeal on October 4, 1994. The Division of Water Rights will be preparing the certification and transmittal of the administrative record.

When the South Dakota Water Management Board made deliberations on the Findings of Fact and Conclusions of Law, board counsel Guhin referred to Findings offered by Marsh Hereford Ranch. Although at least one of your clients appears to have sent proposed Findings to the individual board members and those Findings were indeed considered by the board, I don't believe they were filed with the Division. Please provide a copy of the proposed Findings as well as any certificate of service. These matters will need to be included in the administrative agency's file in this matter.

Thank you in advance for your prompt consideration.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best
Assistant Attorney General

DB:do

cc: Mark Rath ✓

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Patrick K. Duffy

818 St. Joe Street
Mailing Address P.O. Box 2670
Rapid City, South Dakota 57709-2670
605-343-1040

Telecopier 605-343-1503

October 11, 1994

Rodney W. Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Bowen

*Also Admitted in Minnesota,
Nebraska and North Dakota

George A. Bangs, Of Counsel
W.A. McCullen (1943-1987)

Ms. Bonnie Fitzgerald
Clerk of Circuit Court
P.O. Box 230
Rapid City, SD 57709



Recycled Paper



Re: Marsh Hereford Ranch, Inc., and Rapid Valley Water
Conservancy District v. State of South Dakota Acting as the
Water Management Board of the Department of Environment and
Natural Resources

Dear Bonnie:

In regard to the above-referenced matter, please find enclosed
Appellant's Statement of Issues on Appeal.

By copy of this letter, a copy of this document has been mailed to
John P. Guhin, Deputy Attorney General; Diane Best, Assistant Attorney
General; Bob Jackson, City Attorney; Dan Bjerke, City of Rapid City;
Water Management Board; Dwayne Rollag, Water Management Board Chairman;
Francis Brink; Bernita Loucks; Marian Gunderson; Rodney Freeman; Leo
Holzbauer; and Joel Rickenbach. This is intended as service by mail.

Sincerely,

BANGS, MCCULLEN, BUTLER, FOYE & SIMMONS

Joseph M. Butler
Joseph M. Butler

JMB: pkw
Enclosure

cc: John P. Guhin
Diane Best
Bob Jackson
Dan Bjerke
Water Management Board
Dwayne Rollag
Francis Brink
Bernita Loucks
Marian Gunderson
Rodney Freeman
Leo Holzbauer
Joel Rickenbach
Jerry Hammerquist
Jerry Marsh

STATE OF SOUTH DAKOTA)
 SS
PENNINGTON COUNTY)

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
CIV. NO. _____

MARSH HEREFORD RANCH, INC.,)
and RAPID VALLEY WATER)
CONSERVANCY DISTRICT,)

Appellants,)

vs.)

STATE OF SOUTH DAKOTA ACTING AS)
THE WATER MANAGEMENT BOARD OF THE)
DEPARTMENT OF ENVIRONMENT AND)
NATURAL RESOURCES,)

Respondent.)

**STATEMENT OF ISSUES
ON APPEAL**

Appellants, the Marsh Hereford Ranch, Inc. and Rapid Valley Water Conservancy District, for their Statement of Issues on Appeal pursuant to SDCL § 1-26-31.4 submit the following:

I

Whether the Water Management Board erred in its interpretation of the flow limit of one cubic foot of water per second for seventy acres, which limit is set forth in SDCL § 46-5-6.

II

Whether the finding of the Water Management Board that the granting of the City of Rapid City's requests would not unlawfully impair existing rights is sufficient to provide meaningful judicial review under SDCL § 1-26-25.

III

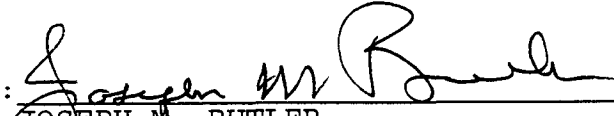
Whether the finding of the Water Management Board that the proposed purposes to which the City of Rapid City would put its requested water constitute a beneficial use is sufficient to provide meaningful judicial review under SDCL § 1-26-25.

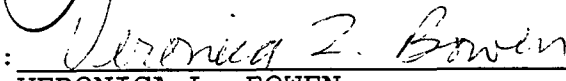
IV

Whether the finding of the Water Management Board that the granting of the City of Rapid City's requests would be in the public interest is sufficient to provide meaningful judicial review under SDCL § 1-26-25.

Dated this ____ day of October, 1994.

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

BY: 
JOSEPH M. BUTLER

BY: 
VERONICA L. BOWEN
attorneys for
all above-named Appellants
818 St. Joseph Street; P.O. Box 2670
Rapid City, SD 57709

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to each said addressee, to wit:

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

Diane Best
Assistant Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070

Bob Jackson
City Attorney
300 6th Street
Rapid City, SD 57701

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701

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

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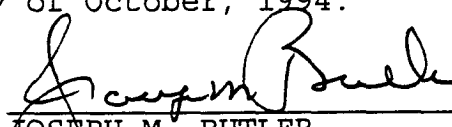
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P.O. Box 176
Huron, SD 57350

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

Joel Rickenbach
P.O. Box 97
Oelrichs, SD 57763

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 11th day of October, 1994.



JOSEPH M. BUTLER

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



IN THE MATTER OF VESTED WATER
RIGHT CLAIM NO. 2294-2 AND
WATER PERMIT APPLICATION NO.
2276-2; CITY OF RAPID CITY

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW

The opponents, Jerry Marsh, individually and as an officer, stockholder and director of Marsh Hereford Ranch, Inc., a corporation and on behalf of the Rapid Valley Water Conservancy District, and Jerry Hammerquist, individually and on behalf of the Rapid Valley Water Conservancy District, propose the following findings of fact and conclusions of law.

FINDINGS OF FACT
WITH RELATION TO WATER PERMIT APPLICATION NO. 2276-2

I.

The effect of the approval of this application would be to approve one c.f.s. per second for 33.6 acres.

II.

Opponents Marsh Hereford Ranch, Inc., a corporation and Jerry Hammerquist are the owners of irrigation water rights in the natural flows of Rapid Creek. If the permit is granted, the applicant can divert during any 11.5 hours in the day and there is no evidence in the record that irrigators on the creek irrigate only in the daytime.

III.

The natural flows in Rapid Creek will be less during the hours when the applicant diverts 1 c.f.s. for 33.6 acres than they would be if diversion were at the rate of 1 c.f.s. per second for 70 acres.

CONCLUSIONS OF LAW

I.

Water Permit Application No. 2276-2 should be denied to the extent that applicant's request exceeds the statutory limit of 1 c.f.s. per 70 acres. See SDCL 46-5-6. The statute does not contemplate that a permit could be issued which would allow more than 1 c.f.s. for 70 acres under any circumstances and it does not contemplate that a permittee can divert more than 1 c.f.s per 70

acres, even if he makes up for it by not diverting in the next second. That is in essence what the applicant is requesting.

Dated this _____ day of _____, 1994

BY THE BOARD

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

IN THE MATTER OF VESTED WATER
RIGHT CLAIM NO. 2294-2 AND
WATER PERMIT APPLICATION NO.
2276-2; CITY OF RAPID CITY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Proposed Findings of Fact, Conclusions of Law in the above-referenced matter were served by first class United States mail, postage prepaid on this 10th day of August, 1994, upon the following:

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

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

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

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

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

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

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

Dan Bjerke
300 Sixth Street
Rapid City, SD 57701

Bob Jackson
City Attorney
300 Sixth Street
Rapid City, SD 57701

Jerry Marsh
Marsh Hereford Ranch, Inc.
HCR 36, Box 35
Caputa, SD 57725

Jerry Hammerquist, President
Rapid Valley Water Cons. Dist.
Box 26
Caputa, SD 57725

John P. Guhin
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 10th day of August, 1994.

Joseph M. Butler

Bangs, McCullen, Butler, Foye & Simmons

Lawyers

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Mark F. Marshall
Terry L. Hofer
Patrick K. Duffy

818 St. Joe Street
Mailing Address P.O. Box 2670
Rapid City, South Dakota 57709-2670
605-343-1040
Telecopier 605-343-1503

Rodney W. Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Bowen

*Also Admitted in Minnesota,
Nebraska and North Dakota

October 7, 1994

DB
Attorney General
119760
OCT 11 1994

George A. Bangs, Of Counsel
W.A. McCullen (1943-1987)

Recycled Paper



Office of Attorney General
Diane Best
Assistant Attorney General
500 East Capitol
Pierre, SD 57501-5070

Re: Marsh Hereford Ranch, et al. v. State

Dear Ms. Best:

As requested in your letter of October 6, 1994, I am enclosing a copy of the proposed Findings of Fact and Conclusions of Law submitted by our clients to the Water Management Board during the administrative proceedings in the above-captioned case. Also enclosed is a copy of the Certificate of Service for the proposed findings and conclusions.

If I can be of further assistance, please let me know.

Sincerely,

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

Veronica L. Bowen

Veronica L. Bowen

VLB:pkw
enclosure
cc: Jerry Hammerquist
Jerry Marsh



Bangs, McCullen, Butler, Foye & Simmons

Lawyers

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
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Rodney W. Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Bowen

*Also Admitted in Minnesota,
Nebraska and North Dakota

March 31, 1995



George A. Bangs, Of Counsel
W.A. McCullen (1943-1987)

Recycled Paper



Ms. Bonnie Fitzgerald
Clerk of Circuit Court
P.O. Box 230
Rapid City, SD 57709

Re: Marsh Hereford Ranch, Inc., and Rapid Valley Water
Conservancy District v. State of South Dakota Acting as the
Water Management Board of the Department of Environment and
Natural Resources

Dear Bonnie:

In regard to the above-referenced matter, enclosed is a Notice of
Entry of Order and a copy of the Court's March 29, 1995, Order.

By copy of this letter, a copy of these documents has been mailed
to John P. Guhin, Deputy Attorney General; Diane Best, Assistant
Attorney General; Bob Jackson, City Attorney; Dan Bjerke, City of Rapid
City; Water Management Board; Dwayne Rollag, Water Management Board
Chairman; Francis Brink; Bernita Loucks; Marian Gunderson; Rodney
Freeman; Leo Holzbauer; and Joel Rickenbach. This is intended as
service by mail.

Sincerely,

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

Veronica L. Bowen
Veronica L. Bowen

VLB:pkw
Enclosure
cc w/enc:

John P. Guhin
Bob Jackson
Water Management Board
Francis Brink
Marian Gunderson
Leo Holzbauer
Jerry Hammerquist

Diane Best
Dan Bjerke
Dwayne Rollag
Bernita Loucks
Rodney Freeman
Joel Rickenbach
Jerry Marsh

STATE OF SOUTH DAKOTA

)
SS

IN CIRCUIT COURT

PENNINGTON COUNTY

)

SEVENTH JUDICIAL CIRCUIT

Court File No. C95-289

MARSH HEREFORD RANCH, INC. and
RAPID VALLEY WATER CONSERVANCY DISTRICT,

Appellants,

vs.

STATE OF SOUTH DAKOTA ACTING AS THE
WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,

Appellee.

APPEAL TO THE CIRCUIT COURT, SEVENTH JUDICIAL
CIRCUIT, PENNINGTON COUNTY, SOUTH DAKOTA,
FROM THE DECISION OF THE WATER MANAGEMENT
BOARD OF THE DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES GRANTING THE APPLICATION
OF THE CITY OF RAPID CITY REGARDING
VESTED WATER RIGHT CLAIM NO. 2294-2 AND
WATER PERMIT APPLICATION NO. 2276-2

THE HONORABLE MERTON B. TICE, JR., PRESIDING JUDGE

NOTICE OF ENTRY OF ORDER

YOU ARE HEREBY notified that on the 29th day of March
1995, the Circuit Court of Pennington County, South Dakota, entered
an Order in the above-captioned action, reversing in part a
decision of the Water Management Board of the State of South Dakota
and amending a water permit issued by that board. A true and

correct copy of the Order is attached hereto and incorporated herein by reference.

Dated this 31st day of March 1995.

BANGS, McCULLEN, BUTLER, FOYE & SIMMONS

By: Veronica L. Bowen
Veronica L. Bowen
Attorneys for Appellants
818 St. Joe St.; P.O. Box 2670
Rapid City, SD 57709
(605) 343-1040

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of this legal document upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to each said addressee, to wit:

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

Diane Best
Assistant Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070

Bob Jackson
City Attorney
300 6th Street
Rapid City, SD 57701

Dan Bjerke
City of Rapid City
300 6th Street
Rapid City, SD 57701

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

Dwayne Rollag
Chairman, Water Management Board
320 Lincoln Lane South
Brookings, SD 57006

Francis Brink
1214 S. Wells Street
Aberdeen, SD 57401

Bernita Loucks
219 42nd Street
Rapid City, SD 57702

Marian Gunderson
811 West 3d
Yankton, SD 57078

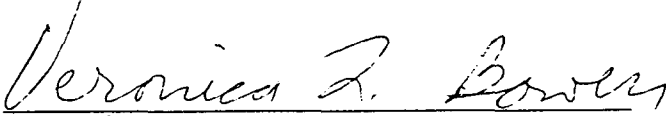
Rodney Freeman
P.O. Box 176
Huron, SD 57350

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

Joel Rickenbach
P.O. Box 97
Oelrichs, SD 57763

which addresses are the last addresses of the addressees known to the subscriber.

Dated this 31st day of March 1995.


Veronica L. Bowen

STATE OF SOUTH DAKOTA
PENNINGTON COUNTY

)
SS
)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

Court File No. C95-289

MARSH HEREFORD RANCH, INC. and
RAPID VALLEY WATER CONSERVANCY DISTRICT,

Appellants,

vs.

STATE OF SOUTH DAKOTA ACTING AS THE
WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,

Appellee.

APPEAL TO THE CIRCUIT COURT, SEVENTH JUDICIAL
CIRCUIT, PENNINGTON COUNTY, SOUTH DAKOTA,
FROM THE DECISION OF THE WATER MANAGEMENT
BOARD OF THE DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES GRANTING THE APPLICATION
OF THE CITY OF RAPID CITY REGARDING
VESTED WATER RIGHT CLAIM NO. 2294-2 AND
WATER PERMIT APPLICATION NO. 2276-2

THE HONORABLE MERTON B. TICE, JR., PRESIDING JUDGE

ORDER REVERSING AND AMENDING WATER PERMIT

This Court has been presented with Appellants' request to reverse or remand the decision of the South Dakota Water Board pursuant to SDCL § 1-26-36. This Court has reviewed the briefs submitted by all parties and has heard and considered the argument presented to the Court at a hearing held on March 17, 1995. The Court has determined that Appellants' request for reversal should

be granted, but that Appellants' request for remand should be denied. Good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED that the decision of the Water Board on September 9, 1994, validating the City of Rapid City's Vested Water Right Claim No. 2294-2 for the irrigation of 104 acres on Meadowbrook Golf Course, with a diversion rate of 1.48 cubic feet per second (c.f.s.) from the natural flows of Rapid Creek, is affirmed in all respects; and it is further

ORDERED, ADJUDGED AND DECREED that the decision of the Water Board on September 9, 1994, granting the City of Rapid City's Water Permit Application No. 2276-2, is reversed insofar as it attempts to authorize the City to divert water from Rapid Creek at a rate in excess of the instantaneous statutory diversion rate of 1 c.f.s per 70 acres provided for in SDCL § 46-5-6; and it is further

ORDERED, ADJUDGED AND DECREED that Water Permit No. 2276-2 be and hereby is amended to provide for an instantaneous diversion of water from the natural flows of Rapid Creed at a rate no greater than 1 c.f.s. per 70 acres; and it is further

ORDERED, ADJUDGED AND DECREED that Water Permit No. 2276-2 be and hereby is amended by lifting the restriction that the City may only pump for 11 and 1/2 hours out of every 24 hours; and it is further

ORDERED, ADJUDGED AND DECREED that Water Permit No. 2276-2 is affirmed in all respects other than the diversion rate

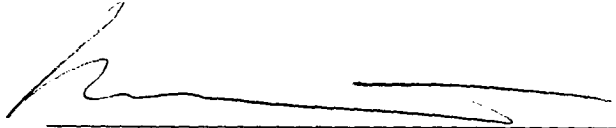
established therein and the limit on the number of hours the City may pump in a day; and it is further

ORDERED, ADJUDGED AND DECREED that the Appellants' request for remand is denied as the Court has determined that the findings of fact entered by the Water Board in support of its issuance of Water Permit No. 2276-2 meet the statutory requirements of SDCL § 1-26-25; and it is further

ORDERED, ADJUDGED AND DECREED that the Court has determined that the record demonstrates that Appellants are entitled to pursue this appeal of the decision of the Water Board pursuant to SDCL § 1-26-36 in that Appellants' substantial rights have been prejudiced because the administrative decision is in violation of statutory provisions.

Dated this 29 day of March 1995.

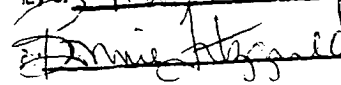
BY THE COURT:


THE HONORABLE MERTON B. TICE, JR.
PRESIDING JUDGE OF THE CIRCUIT COURT
7TH JUDICIAL CIRCUIT

ATTEST:


Deputy Bonnie Itzard
CLERK OF COURTS
(SEAL)

Pennington County, S.D.
FILED
IN THE CIRCUIT COURT
MAR 29 1995 BT

State of South Dakota }
County of Pennington }
I hereby Certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on record in my office this 29
day of March, 1995
 Deputy

STATE OF SOUTH DAKOTA)
 SS
PENNINGTON COUNTY)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

Court File No. C95-289

MARSH HEREFORD RANCH, INC. and
RAPID VALLEY WATER CONSERVANCY DISTRICT,

Appellants,

vs.

STATE OF SOUTH DAKOTA ACTING AS THE
WATER MANAGEMENT BOARD OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,

Appellee.

APPEAL TO THE CIRCUIT COURT, SEVENTH JUDICIAL
CIRCUIT, PENNINGTON COUNTY, SOUTH DAKOTA,
FROM THE DECISION OF THE WATER MANAGEMENT
BOARD OF THE DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES GRANTING THE APPLICATION
OF THE CITY OF RAPID CITY REGARDING
VESTED WATER RIGHT CLAIM NO. 2294-2 AND
WATER PERMIT APPLICATION NO. 2276-2

THE HONORABLE MERTON B. TICE, JR., PRESIDING JUDGE

STIPULATION TO DISMISS

Come now the parties, by and through their attorneys of record, and stipulate to the
dismissal of the above-entitled action for the reason that the issues involved are now
moot.

Dated this 25th day of Sept. ~~August~~, 1996.

Veronica L. Bowen

JOSEPH M. BUTLER
VERONICA L. BOWEN
Bangs, McCullen, Butler,
Foye & Simmons
818 St. Joseph St.; P.O. Box 2670
Rapid City, SD 57709
(605) 343-1040

Robert R. Jackson

ROBERT R. JACKSON
City Attorney
City of Rapid City
300 6th Street
Rapid City, SD 57701
(605) 394-4140

Diane Best

DIANE BEST
Assistant Attorney General
Attorney General's Office
500 E. Capitol
Pierre, SD 57501



JUN 10 1997

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Daniel L. Bjerke
Public Works Director of Engineering/Utilities
City of Rapid City
300 6th St
Rapid City SD 57701-2724

Dear Mr. Bjerke:

Enclosed are Water Permit Nos. 2234-2, 2276-2, 2316-2, 2317-2 and Vested Right No. 2294-2 issued to the City of Rapid City.

As long as the City uses the water beneficially, as stated in the various permits, State Water Laws provide that the City of Rapid City has a continuing right to use the water.

Very truly yours,

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

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

AUG 5 1999

Daniel Bjerke
City of Rapid City
300 6th St
Rapid City, SD 57701

Dear Mr. Bjerke:

Enclosed is your Reissued Water Right License No. 2294-2. The original water license has been reissued to include the applicable portions of Water Right Filing No. 0646-2A and Water Permit Nos. 1998-2 and 2276-2. This was done to consolidate all the permits/rights pertaining to irrigation of the Meadowbrook Golf Course.

As long as you beneficially use the water as described in Water License No. 2294-2, South Dakota Water Laws provide that you have a continuing right to the use of the water.

If you have any questions concerning the enclosed license, please contact Mark Rath with our program at (605) 773-3352.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program

enclosure