

WATER PERMIT NO. 2454-2

Name of Applicant: SD Dept. of Game, Fish and Parks

Address: 523 E Capitol, Pierre SD Phone: 773-3381

Amount of Water Claimed: 3.82 cfs Total Acres: NA

Source of Water Supply: Cleghorn Springs

Water to be used for: fish culture County: Pennington

Type of Waste Disposal System:

Location: Cleghorn Springs fish hatchery

PRIORITY Date Received: 2-13-01 Fee: \$NA

Corrected Application Received: Period of Annual Use: January 1 – December 31

Remarks: Increases the diversion rate authorized by Water Right No. 388-2

Diversion Point: NW ¼ SE ¼ Sec 8-T1N-R7E

Land to be Irrigated: NA

Depth of Well: NA

Well Driller: : NA

Remarks:

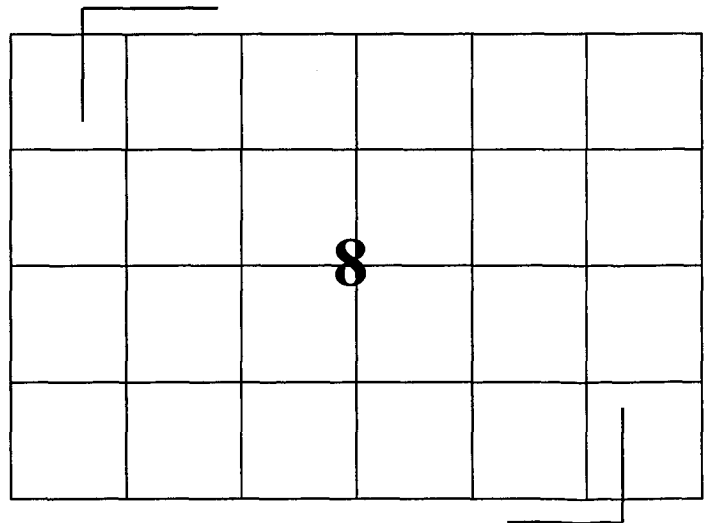
Type of Map:

Prepared by:

Reviewed and the Number Assigned on: 2-13-2001

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



FORM 2: Application for uses other than irrigation
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2454-2</u>	(office use only) Hydrologic Unit <u>10120110</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Rapid City Journal, PO Box 450</u>	
	<u>605 394-8300</u>	<u>Rapid City,</u>



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

Check use(s) of water:

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

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

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

- Name of Applicant South Dakota Department of Game, Fish, Parks Phone (605) 773-3381
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 523 East Capitol Ave, Pierre State SD 57501
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 3.02 *CFS or **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Cleghorn Springs
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) A point located
North 6° 46' East 780 Feet from the SW corner of the NW 1/4 SE 1/4,
Section 8, Township 1 N, Range 7E County Pennington
- County or counties where water will be used Pennington
- Annual period during which water is to be used Year Round Jan 1 - Dec 31
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Fish culture/non-consumptive use.

add'l to WR 388-2

STATE OF SOUTH DAKOTA)
County of Hughes SS

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

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

Subscribed and sworn to before me this 13 day of FEBRUARY 20 01



Douglas R. Hansen
Applicant's signature

[Signature]
Notary Public signature
MY COMMISSION EXPIRES AUGUST 24, 2001

**SOUTH DAKOTA
WATER PERMIT NO. 2454-2**

Date of first receipt of application February 13, 2001.

On December 5, 2001, the Water Management Board moved to reopen the hearing upon request by the city of Rapid City. The application has remained in abeyance until the Department of Game, Fish and Parks and the city of Rapid City entered into a Joint Powers Agreement.

The Water Management Board approved Water Permit No. 2454-2 on July 8, 2009 for the South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 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. 2454-2 appropriates an additional 3.82 cubic feet of water per second (cfs) authorized under Water Right No. 388-2. Water Right No. 388-2 authorizes 6.18 cfs from Cleghorn Springs located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8-T1N-R7E. This permit authorizes increasing the diversion rate from 6.18 cfs to 10.0 cfs to reflect the actual amount of water that flows through the hatchery facility.
2. The water appropriated shall be used for the purpose of fish culture purposes at the Cleghorn Springs State Fish Hatchery and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is February 13, 2001.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

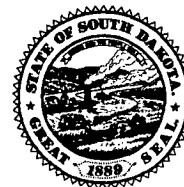
WATER MANAGEMENT BOARD

By: Garland Erbele

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

AUG 14 2009

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2454-2, SD Department of Game, Fish and Parks**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2454-2, SD Department of Game, Fish and Parks, c/o Douglas R. Hanson, 523 E. Capitol Avenue, Pierre SD 57501.

The Chief Engineer is recommending APPROVAL of Application No. 2454-2 because 1) there is reasonable probability that there is water available for non-consumptive appropriation, 2) the proposed diversion has been developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest.

See report on application for additional information.

Garland Erbele, Chief Engineer
March 28, 2001

REPORT ON WATER PERMIT APPLICATION NO. 2454-2

South Dakota Department of Game, Fish, and Parks

March 22, 2001

Application No. 2454-2, South Dakota Department of Game, Fish, and Parks (SDGF&P), proposes to increase the appropriation of non-consumptive use water from Cleghorn Springs authorized by Vested Water Right No. 388-2 by 3.82 cubic feet of water per second (cfs). Vested Water Right No. 388-2 currently authorizes the diversion of 6.18 cfs from Cleghorn Springs Hatchery for fish culture purposes at the Cleghorn Springs State Fish Hatchery. This application proposes to increase the diversion rate from 6.18 cfs to 10.0 cfs to reflect the actual amount of water that flows through and is utilized at the hatchery facility. The diversion point is located in the NW1/4 SE1/4 of Section 8 T1N-R7E. The fish hatchery is located on the west side of Rapid City in Pennington County.

Review of the Proposed Project

Historically, Cleghorn Springs located on the west side of Rapid City upwelled at the surface and ran off into the Rapid Creek. Cleghorn Springs State Fish Hatchery was constructed at the site in 1928. SDGF&P holds Vested Water Right No. 388-2 for 6.18 cfs of non-consumptive use bearing the priority dates of 1877 during the irrigation season and January 1, 1928, during the non-irrigation season. In 1952, SDGF&P filed vested water right claim No. 388-2 with the South Dakota State Engineer for 7.0 cfs. The South Dakota Water Resources Commission approved the vested water right in 1963 for the diversion of 6.18 cfs. In 1971, the Chief Engineer issued Vested Water Right License No. 388-2 for 6.18 cfs.

SDGF&P is requesting an increase in the authorized diversion rate to reflect the actual amount of water that has been historically utilized at the site. In 1972 the fish hatchery was destroyed in the Rapid City flood. Following the flood, SDGF&P rebuilt the fish hatchery to its current configuration. Buried infiltration galleries were installed to collect the spring discharge which is then pumped to supply the raceways at the hatchery. Upwelling springs on the site also feed several other fish hatchery ponds. United States Geological Survey and SDGF&P measured flows to Rapid Creek coming from the Cleghorn Springs complex from 1988-1999. Measurements indicate that approximately 12 cfs gets to Rapid Creek from the spring complex. Of the 12 cfs, approximately 10 cfs is being utilized by SDGF&P at the fish hatchery.

Review of the Water Source and Existing Water Rights

Cleghorn Springs is located adjacent to Rapid Creek approximately 0.5 miles upstream from Canyon Lake. SDGF&P captures flow from the springs and conveys the water through their fish hatchery before allowing it to discharge to Rapid Creek. Adjacent to Cleghorn Springs is Jackson Springs. The City of Rapid City captures water upwelling at Jackson Springs as part of their municipal water supply. Jackson and Cleghorn Springs may be separate springs that originate from the same underground source. The two springs are often referred to as the Jackson-Cleghorn Complex.

SDGF&P holds vested water right No. 388-2 for the non-consumptive use of 6.18 cfs from Cleghorn Springs. The 1877 priority date portion of this water right originated from the Bennett

Right. An August 5, 1901, court decision in the 7th Judicial District Court recognized the Bennett Right as dating from 1877 for the use of 450 miners inches from Rapid Creek with the complex system of springs contributing to the flows. Subsequently this right was transferred to the US Government for use at the Sioux Sanitarium. The US Government released their claim to this water right and a portion of the water right, 0.89 cfs, was transferred to the Cleghorn Springs Water Users Association and is authorized under Vested Water Right No. 504-2. The other portion of the original water right, 6.18 cfs, was transferred to SDGF&P for use at the fish hatchery under Vested Water Right No. 388-2.

The City of Rapid City holds Vested Water Right No. 432-2 bearing a priority date of January 1, 1944 for 7.75 cfs and Water Right No. 2270-2 bearing the priority date of August 22, 1956 for a 2.71 cfs diversion of water from Jackson Springs adjacent to the fish hatchery. The City also holds Future Use Permit No. 439-2 which reserves an additional 995 acre-feet of water annually for future appropriation from Jackson Springs with a priority date of September 22, 1956.

There have been concerns in the past during extremely dry periods that the City's utilization of Jackson Springs may be causing some interference with flows at Cleghorn Springs. SDGF&P, due to their senior priority, would be protected from other appropriative interference for the use of 6.18 cfs. This application for 3.82 cfs, if approved, would be junior in priority to Rapid City's 7.75 cfs and 2.71 for appropriation from Jackson Springs and future use reserve of 995 ac-ft, if developed. SDGF&P is considering making modifications to their collection gallery to reduce the potential for interference.

There are 80 existing water rights/permits appropriating 260.82 cfs from Rapid Creek located downstream from Cleghorn Springs. If this application is approved, it is not expected to adversely affect existing downstream water rights, since this is a non-consumptive use and the proposed increase reflects the actual amount of water that has been historically utilized at the hatchery.

Conclusions

1. This application proposes to increase the appropriation of non-consumptive use water from Cleghorn Springs authorized by Vested Water Right No. 388-2 by 3.82 cubic feet of water per second (cfs). This application increases the diversion rate from 6.18 cfs to 10.0 cfs to reflect the actual amount of water that flows through and has been historically utilized at the Cleghorn Springs State Fish Hatchery facility.
2. This application if approved would not be expected to adversely affect other existing water rights.



Mark D. Rath
Natural Resources Engineering Specialist

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS

County of Pennington)

I, Patricia K. Van Patten

certify that the attached printed Notice was
taken

from the Rapid City Journal

printed and published in Rapid City

County of Pennington and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

April 4, 2001

April 11, 2001

Cost of Printing One hundred thirty -

five dollars and twenty cents (\$135.20)

Patricia K. Van Patten
(Signature)

Legal Advertising Rep.
(Title)

April 11, 2001
(Date Signed)



April 4, 11 L876009

NOTICE OF HEARING ON APPLICATION NO. 2454-2 TO APPROPRIATE WATER

Notice is given that the South Dakota Department of Game, Fish and Parks, 523 E. Capitol, Pierre, SD 57501, has filed an application for a water permit to appropriate an additional 3.82 cubic feet of water per second (cfs) authorized under Water Right No. 388-2. Water Right No. 388-2 authorizes 6.18 cfs from Cleghorn Springs located in the NW¼SE¼ Section 8-T1N-R7E. This application proposes to increase the diversion rate from 6.18 cfs to 10.0 cfs to reflect the actual amount of water that flows through the hatchery facility. The water is used for fish culture purposes at Cleghorn Springs State Fish Hatchery. This is a non-consumptive use of water and after used at the hatchery flows into Rapid Creek.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2454-2 because 1) water is available for this non-consumptive appropriation, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief

Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501, (605-773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 23, 2001. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at the Matthew Training Center, Foss Building, 523 E. Capitol Avenue, Pierre, S.D., at 11:00 a.m. May 2, 2001. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The May 2, 2001, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by April 23, 2001.

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 April 23, 2001, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-24; and Board Rules ARSD 10:01:01 thru 10:01:04.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 28, 2001

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

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 2454-2 to Appropriate Water to be published twice. Please publish the first notice on April 4, 2001 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 South Dakota Game, Fish and Parks, 523 E Capitol, Pierre, SD, 57501 (Ph # 605-773-3381).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 2454-2

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

Date _____

We are in receipt of your letter of March 28, 2001 enclosing Notice of Hearing to Appropriate Water by Application No. 2454-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

March 28, 2001

Douglas R. Hansen
South Dakota Game, Fish and Parks
523 East Capitol Avenue
Pierre, SD 57501

Dear Mr.Hansen:

Water Permit Application No. 2454-2 for fish and wildlife use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Rapid City Journal printed at Rapid City, SD (Ph # 605-394-8300). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

cc: Dennis Unkenholz, Game, Fish & Parks
Ron Koth, Game, Fish & Parks, 3305 West South Street, Rapid City

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

Instruction to Newspaper - Publish first Notice on April 4, 2001 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2454-2 to Appropriate Water

Notice is given that the South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 has filed an application for a water permit to appropriate an additional 3.82 cubic feet of water per second (cfs) authorized under Water Right No. 388-2. Water Right No. 388-2 authorizes 6.18 cfs from Cleghorn Springs located in the NW ¼ SE ¼ Section 8-T1N-R7E. This application proposes to increase the diversion rate from 6.18 cfs to 10.0 cfs to reflect the actual amount of water that flows through the hatchery facility. The water is used for fish culture purposes at Cleghorn Springs State Fish Hatchery. This is a non-consumptive use of water and after used at the hatchery flows into Rapid Creek.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2454-2 because 1) water is available for this non-consumptive appropriation, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 23, 2001. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at The Matthew Training Center, Foss Building, 523 E. Capitol Avenue, Pierre, SD at 11:00 A.M. May 2, 2001. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The May 2, 2001 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by April 23, 2001.

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 April 23, 2001, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 29, 2001

Daniel Bjerke, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701-2724

Dear Mr. Bjerke:

I am writing regarding Water Permit Application No. 2454-2 filed by the Department of Game, Fish and Parks for Cleghorn Springs Fish Hatchery. This application proposes to increase the diversion rate to reflect the actual amount of water that has historically flowed through the hatchery facility. This is a non-consumptive use of water. Once spring water is collected and used in the hatchery's facilities it then flows into Rapid Creek.

Enclosed is a copy of the recommendation, report and notice of hearing on this application. The notice is to be published in the Rapid City Journal on April 4th and 11th scheduling a May 2nd hearing before the Water Management Board.

You called a few weeks ago specifically inquiring whether this application was filed and requested to be informed when the application is public noticed. After reviewing the enclosed information, if you believe it would be beneficial to meet and discuss this application we would welcome a meeting between the City, Dept. of Game, Fish and Parks and DENR.

If you have any questions on this application or would like to set up a meeting, please contact Mark Rath or myself at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 29, 2001

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

Dear Mr. Hammerquist:

I am writing to make you aware of Water Permit Application No. 2454-2 filed by the Department of Game, Fish and Parks for Cleghorn Springs Fish Hatchery. This application proposes to increase the diversion rate to reflect the actual amount of water that has historically flowed through the hatchery facility. This is a non-consumptive use of water. Once spring water is collected and used in the hatchery's facilities it then flows into Rapid Creek.

Enclosed is a copy of the recommendation, report and notice of hearing on this application. The notice is to be published in the Rapid City Journal on April 4th and 11th scheduling a May 2nd hearing before the Water Management Board.

This information is being sent to you because of your past interest and involvement in water right permitting issues along Rapid Creek.

If you have any questions on this application, please contact Mark Rath or myself at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 30, 2001

Cleghorn Springs Water Users Association
2109 Monte Vista
Rapid City SD 57702

Gentleman:

I am writing to make you aware of Water Permit Application No. 2454-2 filed by the Department of Game, Fish and Parks for Cleghorn Springs Fish Hatchery. This application proposes to increase the diversion rate to reflect the actual amount of water that has historically flowed through the hatchery facility. This is a non-consumptive use of water. Once spring water is collected and used in the hatchery's facilities it then flows into Rapid Creek.

Enclosed is a copy of the staff report and notice of hearing on this application. The notice is to be published in the Rapid City Journal on April 4th and 11th scheduling a May 2nd hearing before the Water Management Board.

This information is being sent to your Water Users Association in order to keep you informed of water right permitting issues involving Cleghorn Springs.

If you have any questions on this application, please contact Mark Rath or myself at (605) 773-3352.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

10



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Public Works Department

300 Sixth Street

605-394-4165

FAX 605-394-6636



April 9, 20001

Mr. Eric Gronlund
Water Rights Program
SD Dept. of Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Water Permit Application No. 2454-2
SD Game, Fish and Parks Department
Cleghorn Springs Fish Hatchery

Dear Mr. Gronlund:

The City of Rapid City is hereby petitioning the Water Management Board as a Party of Interest in the above referenced application.

The City of Rapid City has its main water source (Jackson Springs) located adjacent to the Cleghorn Fish Hatchery and Cleghorn Springs. In the past during drought conditions, there have been times when ground water interference has affected the City's ability to fully utilize its appropriated water rights from Jackson Springs. In the past at the request of the Cleghorn Fish Hatchery staff, the City voluntarily cut water production at Jackson Springs to provide the requested flows to the fish hatchery. The City staff has requested Cleghorn Fish Hatchery lower their water collection system to accommodate a lower ground water table between the City's Jackson Springs source and Cleghorn Springs during periods of drought.

The City is in the process of reconstructing the Jackson Infiltration Gallery to fully utilize the City's water rights at Jackson Springs. Based on pumped tests, it appears the City can increase its pumping rate to fully utilize the capacity of Jackson Springs. The City may be requesting additional water rights from Jackson Springs in the near future and would not want the City's new water rights to be junior to any new water rights for Cleghorn Fish Hatchery.

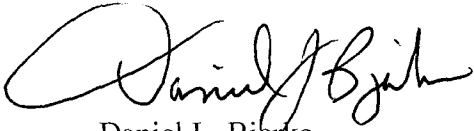


EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

The City of Rapid City would request a delay in considering the Application No. 2454-2 from the Game, Fish and Parks to allow the City time to complete our evaluation of Jackson Springs and to discuss the issue with the Game, Fish and Parks Department.

Respectfully submitted,
CITY OF RAPID CITY

A handwritten signature in black ink, appearing to read "Daniel L. Bjerke". The signature is fluid and cursive, with a large initial "D" and "B".

Daniel L. Bjerke
Public Works Director

LESLIE J. ENGLAND
(ALSO ADMITTED IN COLORADO)

LAW FIRM OF
LESLIE JAMES ENGLAND
P.O. BOX 61
RAPID CITY, SOUTH DAKOTA 57709

TELEPHONE (605) 343-0560
FAX (605) 343-7809

April 23, 2001



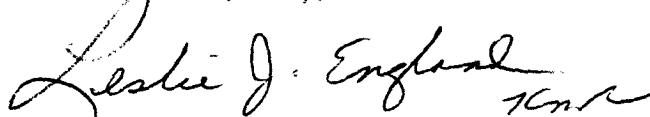
Ron Duvall, Natural Resources Engineer
SD-DENR - Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

Re: Application No. 2454-2, Game, Fish & Parks/Cleghorn Springs

Dear Ron:

Pursuant to SDCL 46-5-1, no landowner may prevent the natural flow of a stream, or of a natural spring from where it starts its definite course, or of a natural spring arising on his land which flows into and constitutes a part of the water supply of a natural stream, nor pursue nor **pollute** any of these, except provided by Section 46-5-2. It is believed that Cleghorn Springs State Fish Hatchery is polluting a primary drinking water source of the City of Rapid City without any mitigation plan. This matter must be resolved by the Water Management Board prior to issuing the requested permit. I am an interested person, resident of Rapid City, and provide this informal petition in support of enhancing Rapid Creek water quality for use by present and future domestic and municipal use.

Yours very truly,


Leslie J. England

LJE:kmr

cc: Ron Koth/Douglas R. Hansen
South Dakota Department of Game, Fish & Parks
523 East Capitol, Pierre, SD 57501



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

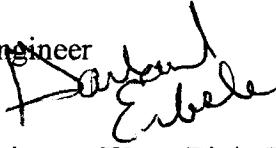
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

April 23, 2001

NOTICE

TO: Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

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

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

SUBJECT: Automatic Delay of Hearing on Water Right Permit Application No. 2454-2 at
Cleghorn Springs State Fish Hatchery

In response to the public notice of hearing in the Rapid City Journal, the city of Rapid City has filed a petition in the matter of Application No. 2454-2 at the Cleghorn Springs State Fish Hatchery. The petition requests an automatic delay of the May 2, 2001, hearing before the Water Management Board. Therefore, the hearing on Application No. 2454-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on May 2, 2001.

The hearing on Application No. 2454-2 will be scheduled for the July 11 and 12, 2001, Water Management Board meeting in Pierre. Future notice of the exact date, time and place of the hearing for Application No. 2454-2 will be provided to all parties of record.

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

c: Diane Best, Assistant Attorney General
Dennis Unkenholz, SD GF&P
Ron Koth, SD GF&P, 3305 West South Street, Rapid City SD 57701

CERTIFICATION

I hereby certify that on April 23, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 23, 2001, regarding Automatic Delay of the Hearing on Water Right Permit Application No. 2454-2, SD Dept. of Game, Fish and Parks, addressed as stated below:

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

Ron Koth
SD GF&P
3305 West South Street
Rapid City SD 57701

A copy of this Notice was hand delivered to:

Douglas R. Hansen, SD GF&P, 523 E. Capitol Avenue, Pierre SD 57501
Dennis Unkenholz, SD GF&P, 523 E. Capitol Avenue, Pierre SD 57501

A copy of this Notice was sent Inter-office to:

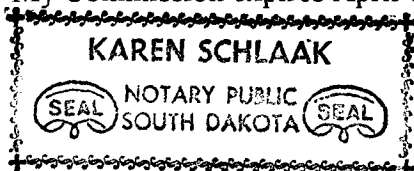
Diane Best, Assistant Attorney General, Capitol Building


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of April 2001.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



CERTIFICATION

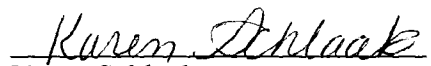
I hereby certify that on April 24, 2001 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 23, 2001 regarding Automatic Delay of Hearing on Water Right Permit Application #2454-2 addressed as stated below:

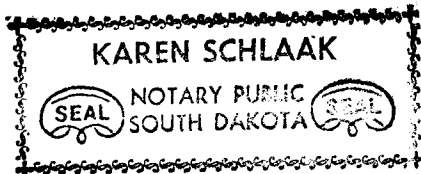
Leslie James England
PO Box 61
Rapid City, SD 57709


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of April, 2001.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 4, 2001

NOTICE

TO: Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

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

Leslie J. England
P.O. Box 61
Rapid City SD 57709

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks.

Water Permit Application No. 2454-2 proposes to appropriate an additional 3.82 cubic feet of water per second (cfs) authorized under Water Right No. 388-2. Water Right No. 388-2 authorizes 6.18 cfs from Cleghorn Springs located in the NW ¼ SE ¼ Section 8-T1N-R7E. This application proposes to increase the diversion rate from 6.18 cfs to 10.0 cfs to reflect the actual amount of water that flows through the hatchery facility. The May 2, 2001 hearing before the Water Management Board was automatically delayed as requested by the city of Rapid City.

The Water Management Board will now consider Application No. 2454-2 on July 11, 2001, at 11:00 AM, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the Notice published April 4 and 11, 2001, in the Rapid City Journal will still apply at the July 11th hearing before the Water Management Board. This hearing is an adversary proceeding. Any party of record has the right to be present and 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.

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

c: Diane Best, Assistant Attorney General
Dennis Unkenholz; SD GF&P
Ron Koth, SD GF&P, 3305 West South Street, Rapid City SD 57701

CERTIFICATION

I hereby certify that on June 4, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 4, 2001, regarding Scheduling of Hearing on Water Right Permit Application No. 2454-2, South Dakota Department of Game, Fish and Parks, addressed as stated below:

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

Leslie J. England
P.O. Box 61
Rapid City SD 57709

Ron Koth
SD Game, Fish & Parks
3305 West South Street
Rapid City SD 57701

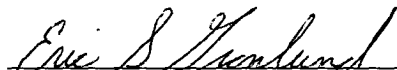
Hand Delivered to:

Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Dennis Unkenholz
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

A copy of the above described Notice was sent Inter-office to:

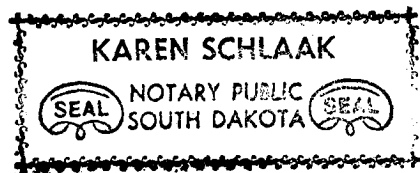
Diane Best, Assistant Attorney General, Capitol Building


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of June, 2001.


Karen Schlaak, Notary Public
My Commission Expires April 1, 2007



BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

In Re:

Consideration of Water Permit
 Application of Department of
 Game, Fish and Parks (Cleghorn
 Springs State Fish Hatchery),

Permit No. 2454-2

HEARING

ORIGINAL

PROCEEDINGS:

July 11, 2001
 Matthews Training Center
 523 E. Capitol
 Pierre, South Dakota

BOARD MEMBERS PRESENT:

Mr. Rodney Freeman
 Mr. Francis E. Brink
 Ms. Marion B. Gunderson
 Mr. Dwayne A. Rollag
 Ms. Bernita Loucks

APPEARANCES:

Representing the Water
 Management Board:

MR. JOHN GUHIN
 Asst. Attorney General
 500 East Capitol
 Pierre, South Dakota 57501

Representing the State
 Division of Water Rights:

MS. DIANE BEST
 Asst. Attorney General
 500 East Capitol
 Pierre, South Dakota 57501

Representing the Game
 Fish and Parks:

MR. GARY L. RICHTER
 Dept. Of Game, Fish & Parks
 523 E. Capital
 Pierre, South Dakota

Representing City of
 Rapid City:

MR. DAN BJERKE
 Public Works Director
 300 Sixth Street
 Rapid City, South Dakota

I N D E XWITNESSES: PAGE

MARK RATH. 4

Recalled 54

RON KOTH 9

DAN BJERKE 17

EXHIBITS: RCVD:

DENR Exhibit No. 1 3

DENR Exhibit No. 2 4

DENR Exhibit No. 3 4

City Exhibit No. A 34

City Exhibit No. B 48

GF&P Exhibit No. 1 53

Wednesday, July 11, 2001

MR. FREEMAN: We will now commence the 11:00 item, Application 2454-2. Ms. Best.

MS. BEST: Thank you. The matter to be heard now is an application filed by the Department of Game, Fish and Parks for water use in its Cleghorn Springs Fish Hatchery in Rapid. The parties in this case are the Department of Game, Fish and Parks, the City of Rapid City and then, of course, the DENR.

What I would like to do is just put in some Exhibits right off the bat, so that the parties can go ahead and testify off those Exhibits. And of course the first one is the agency file in this matter. The agency file includes the application filed by Game, Fish and Parks, the newspaper notice of publication and application -- or excuse me, affidavit of publication, the petition to intervene filed by City of Rapid City, and the chief engineer's recommendation, as well as the report of DENR engineer Mark Rath. And I would ask that the file be recognized as Exhibit No. 1 in this proceeding, and I'll just set it here so the parties can refer to it as we proceed.

MR. FREEMAN: We will receive Exhibit 1.

MS. BEST: The second Exhibit is a CV, expert qualifications of DENR engineer Mark Rath. Mark Rath has repeatedly testified before this board regarding matters

1 involving both Game, Fish and Parks and Rapid City; and I
2 would ask that he be recognized as an expert witness in this
3 matter, and that this Exhibit be included as DENR 2.

4 MR. FREEMAN: Any objection to Mr. Rath being
5 qualified as expert and receiving Exhibit 2?

6 Being none, we will receive the CV as Exhibit 2.

7 MS. BEST: And finally, I'm just trying to speed
8 up the process by going through and doing this right off the
9 bat. We have DENR Exhibit 3, and Mark Rath and I expect the
10 other parties will testify off this map, and it was prepared
11 by Mr. Rath and I would ask that it be admitted as DENR 3.

12 MR. FREEMAN: Any objection to Exhibit 3?

13 Hearing none, we will receive Exhibit 3.

14 MS. BEST: With that, we would call Mark Rath to
15 testify
16 Whereupon,

17 MARK RATH,
18 called as a witness, being first duly sworn as hereinafter
19 certified, testified as follows:

20 MR. RATH: Good morning. My name is Mark Rath.
21 I'm a staff engineer with the Water Rights Program within
22 DENR. Today we're here to consider application by the
23 Department of Game, Fish and Parks for a non consumptive use
24 of water from Cleghorn Springs for their fish hatchery,
25 towards the west edge of Rapid City.

1 Currently Game, Fish and Parks holds vested water
2 right number 388-2, for 6.18 cubic feet per second; priority
3 date of 1877 during the irrigation season as a basis to an
4 older water right that was transferred into Game, Fish and
5 Parks back in about 1928. The second portion of the priority
6 date for that water right is 1928, during the non irrigation
7 season.

8 The Department of Game, Fish and Parks is
9 requesting an additional 3.82 cubic feet per second for the
10 fish hatchery, and this is to reflect the actual amount that
11 is utilized at the fish hatchery. The water for this is from
12 the Jackson-Cleghorn Springs complex.

13 On Exhibit 3 here, just to orient the board, the
14 fish hatchery is located on the west edge of Rapid City. It
15 is about a quarter mile west of Canyon Lake, for those
16 familiar with where that is. The City of Rapid City has a
17 collection gallery for their municipal system just to the west
18 of the fish hatchery called Jackson Springs Gallery, and
19 that's part of the issue that we will be discussing today, is
20 the interaction between the galleries there.

21 MR. BRINK: Would that be upstream or
22 downstream?

23 MR. RATH: The Jackson Springs Gallery is
24 upstream. The creek flows in that direction to the
25 northeast. Just to give you a little bit of an idea of the

1 priority dates for the water out of this, there are two, oh,
2 spring areas in this complex. The springs probably, based on
3 information from USGS, probably originate from the same water
4 source. They upwell in this area. Cleghorn Springs upwells
5 over here; Jackson Springs upwells over there to the west.

6 The fish hatchery has a collection gallery system
7 set up on the north side of the fish hatchery and on the west
8 side. Rapid City's is over in this section. They have just
9 redone a portion of this work and the city is here to testify
10 a little bit more on some of the work they did at that site.

11 Based on the priority date of existing rights out
12 there, Game, Fish and Parks holds an 1877 right for non
13 consumptive use during irrigation season, and that's primarily
14 the period of time that's going to be in question here. Rapid
15 City then holds a 1944 priority date for 7.75 cfs. Then Rapid
16 City holds a 1956 priority for an additional 2.71 cfs. They
17 also hold a future use permit for -- specifically for Jackson
18 Springs, for additional 995 acre feet. And if it were
19 converted at 60 percent pumping time, it would be
20 approximately 2.29 cfs, just to give you an idea.

21 And if this application is approved would give
22 Game, Fish and Parks a 2001 priority for 3.82. So we have
23 multiple priority dates. Game, Fish and Parks would hold the
24 oldest. Rapid City holds the middle two, and Game, Fish and
25 Parks would hold the most recent.

1 Game, Fish and Parks is in the process of
2 studying the rehabilitation of the fish hatchery. There's
3 some problems with the system out there, isn't meeting the
4 needs of their long term plans, so they are looking at
5 studying it and doing some work out there to improve the
6 efficiencies and optimize their water utilization.

7 Rapid City at Jackson Springs is looking at
8 expanding their utilization of the Jackson Springs gallery
9 site, and so they have done quite a bit of work out at that
10 site, also. So we have concerns here on how the water is
11 being used, priorities of the water being used, what water is
12 being used. Both Rapid City and Game, Fish and Parks are
13 here.

14 The chief engineer is recommending approval of
15 this application. There were two letters filed by parties
16 voicing concern of this project; one of them being City of
17 Rapid City, the second one being Leslie England, an attorney
18 from Rapid City. Les England called me this morning saying
19 he was not going to be here, but he would like the board to
20 look at his letter, consider his concerns that he voices in
21 his letter, and that has to do with some water quality
22 issues.

23 We have Kelli Buscher from our surface water
24 quality program available to answer and address any concerns
25 that come up concerning water quality issues that Leslie

1 England has brought up. With that, I am open for questions.

2 MR. FREEMAN: Do board members have questions?

3 MS. LOUCKS: Well, would there not be a
4 difference in priority based on domestic versus something
5 else?

6 MR. RATH: The city holds a municipal use --
7 municipal use is a multiple -- you have commercial use, you
8 have industrial use, you have domestic use; so to -- on a
9 specific basis you can't look at it just on domestic.

10 MR. FREEMAN: Any other questions of Mark?

11 Thank you. Anyone else, Diane?

12 MS. BEST: The only thing would be the necessity
13 for calling DENR witness Kelli Buscher on this pollution
14 claim. There was an issue raised by Les England in the letter
15 he's presented to the board, and if the board has any
16 questions about that, we can certainly call Kelli Buscher to
17 address those.

18 The long and short of it is that the Game, Fish
19 and Parks has spent -- the Game, Fish and Parks is not under a
20 violation situation for any circumstances. They are in
21 compliance with the pollution discharge laws of the State of
22 South Dakota, and that there is a periodic -- I think it's a
23 five-year period that you obtain a discharge permit for.

24 At present, that discharge process is under
25 renewal and it has not been reissued yet. In case there was

1 some evidence presented to this board that there was some
2 new surprise out there, why Kelli wanted to obtain that
3 information. But in the absence of anything unique like
4 that, that permit will be advertised and issued in the near
5 future, and we don't see that there is a pollution problem
6 out there.

7 If that prompts anything from the board, I would
8 be happy to call Kelli. But Leslie just made a comment in his
9 letter and we'll stand on that.

10 MR. FREEMAN: Does the board have any questions
11 regarding the pollution issue?

12 MS. GUNDERSON: I don't have any at this time.
13 I'm going to revisit it.

14 MR. FREEMAN: We'll hear from Game, Fish and
15 Parks and Rapid, and if we have questions we can call Kelli.

16 MS. BEST: I have no further witnesses.

17 MR. FREEMAN: Who is going to run the show for
18 Game, Fish and Parks?

19 Whereupon,

20 RON KOTH,

21 called as a witness, being first duly sworn as hereinafter
22 certified, testified as follows:

23 MR. FREEMAN: Would you give her your name and
24 address?

25 MR. KOTH: My name is Ron Koth, K-o-t-h, 3305

1 West South Street, Rapid City, South Dakota, fisheries
2 biologist for Game, Fish and Parks. It's a pleasure to be
3 here again before you all. It's been some time.

4 And to get right to the point, I think that the
5 text of Mark's report is accurate. Our objective in this
6 filing for additional 3.8 cfs of water is to bring our water
7 use at the hatchery under permit as it has been historically
8 used since the 1920s. So it is from our perspective a fairly
9 simple process, that we essentially have been a little bit
10 negligent on in terms of filing.

11 Historic use of water at the hatchery has not
12 changed since 1928 based on all of the information we can
13 collect. By and large there's been about 10 cfs of water
14 flowed through the hatchery and been utilized for such
15 propagation since the 1920s when the hatchery was
16 constructed.

17 Unfortunately during the 1972 flood when the
18 hatchery was completely destroyed, all of the records that
19 were housed there from '28 until '72 were gone -- are gone,
20 so we have no real hard evidence of water use there. We have
21 to rely on information prior to that and information that's
22 been collected since then, fairly extensive information since
23 then, since 1972.

24 There's been a series of gauges and weirs
25 installed trying to monitor flows through the hatchery, as

1 well as general flow from the Cleghorn and Jackson Springs
2 complex, where the USGS and the city have been involved, as
3 well as the Game, Fish and Parks. And by all accounts
4 there's about 21.6 cfs that arise from that complex. And as
5 Mark identified, you know, various portions of that are under
6 permit at various kinds of priority dates.

7 Our water right that exists for 6.18 cfs is a non
8 consumptive right. This additional request is also for non
9 consumptive right for fish propagation, and I just want to
10 make sure that we are clear on this, because I think we're
11 going to diverge into some future use issues here, and some
12 concerns, in discussion on what will happen in the future on
13 various kinds of scenarios for development of the springs in
14 the future. But this is for an existing use, and something
15 that has been historically in place.

16 As Diane said, we are in compliance with our
17 NPDS permit. It is under renewal status right now with the
18 department, and that is not complete at this time, but we
19 don't have anything that is outstanding there that would, at
20 least to us, identify a big concern that would be preclusive
21 to reissuance of an NPDS permit.

22 Also, in regards to some of the text in Mark's
23 report on -- I think it's on the second page, about the third
24 paragraph, there are concerns and there have been instances
25 in the past, during extremely dry periods, when conflicts have

1 arisen between the use of water at Cleghorn Springs hatchery
2 and the pumping of water by the city for their municipal use,
3 and there is a pending action, I guess right now, between the
4 city and the Game, Fish and Parks that is not part of the
5 record right now.

6 But we are working on a joint MOU that would
7 basically direct both the agency and the city to do our best
8 to work together during those times of water shortage,
9 recognizing that that outflow of water from Jackson and
10 Cleghorn is a regional discharge point, and we both have real
11 significant interests in maximizing the beneficial uses of
12 that water.

13 So that's something that is ongoing between the
14 city and the Game and Fish. It's outside the context, I
15 guess, of our request for water right, but it is a pending
16 action. We both recognize that we both have significant
17 interests in that regional discharge point.

18 If you have any questions I would be willing to
19 answer them now or maybe we need to go along further before
20 anything arises.

21 MR. FREEMAN: Does the board have any questions
22 of Ron?

23 MS. GUNDERSON: I guess just curiosity, do you
24 operate the hatchery on the same amount of water twelve months
25 out of the year?

1 MR. KOTH: Same amount of water goes through the
2 facility on a 12-month basis. Our fish production changes
3 somewhat as we cycle fish through the facility, but the water
4 use is essentially the same.

5 There's -- to explain in a real thumbnail sketch
6 how the hatchery water system works is that at the upper end
7 of the hatchery, I guess basically at the upstream end there's
8 a collection gallery, large culverts that are perforated.
9 Water flows by gravity into those culverts and flows down
10 through the hatchery system. We then process the water for
11 some degassing and some oxygen enhancement and pump it back up
12 to the upstream edge and it goes back down through the
13 raceways.

14 So gravity flow into the collection, and flows
15 through the hatchery and then into the pumps. We process it,
16 it goes back up and used for fish culture, runs out through a
17 settling basin and back into Rapid Creek and down through the
18 system. So it's a fairly quick trip, I guess, really through
19 the hatchery, in terms of the water use.

20 The only real interesting thing I guess about
21 that whole area there is that because it is a regional
22 discharge point for the aquifer, there are places where there
23 is more water coming out. For example, at the point
24 identified as Cleghorn Springs and the point identified as
25 Jackson Springs, there are large volumes of water coming out.

1 But all through the hatchery, water upwells into
2 the raceways. And it just comes out of the ground in that
3 area, dependent upon -- somewhat on the groundwater table at
4 that point in time, but it's just water coming up all over
5 through there. So it's a real discharge point for the
6 aquifer.

7 MR. FREEMAN: As I understand it, you're not
8 really going to use any more water than you historically used;
9 you're just cleaning up the permit?

10 MR. KOTH: Correct. This is to try to come into
11 compliance with what we're actually using.

12 MR. FREEMAN: Any other questions?

13 MS. GUNDERSON: Well --

14 MR. BRINK: What do you remove, Ron, in the
15 settling basin?

16 MR. KOTH: The settling basin is primarily a
17 solids removal type process, and we have a hatchery manager
18 here to speak to specifics about that. But we do clean that
19 on a very regular basis, and I think that we now take it to
20 the city treatment plant; is that correct, Greg?

21 MR. GREG: Yes.

22 MR. FREEMAN: Marian, did you have a question?

23 MS. GUNDERSON: I was trying to understand,
24 you're not seeking any -- I read this application for 3.82 cfs
25 would be junior in priority to Rapid City's use?

1 MR. KOTH: Correct. As Mark identified, there
2 are a number of leap-frog priority dates. Game and Fish holds
3 the most senior water right from Cleghorn Springs in that
4 region at that 6.81 cfs. In actuality we've used about 10
5 cfs. How we ever became permitted for 6.18 versus 10 is
6 somewhat unclear. The records are gone. Neither the city or
7 the state has those records to figure out how come it was
8 permitted at 6.18 when we have actually used 10. So there's
9 3.82, given the fact that we have no documentation to show we
10 have continually used that, we are coming in with a priority
11 date of whatever it was, February or something like that, a
12 current priority date versus something back in the '20s.

13 MS. GUNDERSON: Which then would be junior to
14 Rapid City's permit, and would that then require you to shut
15 down a part of your operation should that application not be
16 approved?

17 MR. KOTH: If we -- right now I don't know. We
18 have a mechanism to change how much water goes through the
19 facility. Basically 10 cfs goes through there. We are
20 permitted for 6.18 under the situation that we have now. If
21 there is a water shortage, only the 6.18, you know, is
22 permitted under protection of water law.

23 So then we have to be, you know, working with
24 the city on those water shortage conditions, and hopefully we
25 would see that coming soon enough that we could begin to

1 de-program fish production at the facility. So we would have
2 less water available to us, if they were going to be pumping
3 more for their municipal use, as we would see an approaching
4 dry spell coming.

5 If it comes on in a very rapid manner, which is
6 fairly unlikely, given historical information, then there
7 would be -- we would have a problem with our fish. We would
8 have to get them off and into a stream or lake somewhere.

9 MS. GUNDERSON: Thank you.

10 MR. FREEMAN: Thank you, Ron.

11 MS. LOUCKS: None of your records with the state,
12 they don't have it on record in the department?

13 MR. KOTH: Mark went through -- or somebody in
14 the staff went through all of the microfiche information that
15 was available for the Bennett claim, which this all originates
16 from, all through the current day, and there's really nothing
17 in there other than some kind of anecdotal stuff about how
18 much water was used. The general consensus was that it was
19 about 10 cfs, but there's nothing that really nails it down.

20 And I think the city has gone through their
21 records and we've gone through ours that we have, and there's
22 a really large blank spot from 1928 until about 1972 in terms
23 of quantified water use.

24 MS. LOUCKS: Thank you. I really feel, you know,
25 that both of these entities are important, as important as the

1 other one, and somehow they need to work this out, and you
2 inferred that that's what you're trying to do now?

3 MR. KOTH: Yes, and I have a copy of the letter
4 that our Secretary John Cooper sent to Mr. Bjerke at the city
5 offering an MOU to try and, I guess, further solidify, you
6 know, the working relationship between the city and the
7 state. If you care to look at that, I can certainly offer it
8 into evidence and pass it around, if that's something you
9 wanted to look at; otherwise I can tell you that that is what
10 is ongoing.

11 MS. LOUCKS: That's fine. Okay, thank you.

12 MR. FREEMAN: Anybody else from the department?

13 If not, Dan.

14 Whereupon,

15 DAN BJERKE,

16 called as a witness, being first duly sworn as hereinafter
17 certified, testified as follows:

18 MR. FREEMAN: Give us your name and address.

19 MR. BJERKE: My name is Dan Bjerke, B-j-e-r-k-e.
20 I'm Rapid City public works director and manager of the Rapid
21 City water division. Thank you, Mr. Chairman and members of
22 the board. It's good to see you again, same faces as we've
23 seen many, many times on different issues.

24 This water right application has kind of put the
25 city in a position that we were not real comfortable with,

1 quite honestly, in terms of the priorities of future water
2 use in that particular area. Mr. Rath has given you a brief
3 explanation, I think in rather simplistic terms, of how that
4 system works out there in the Jackson Springs/Cleghorn
5 Springs/Rapid alluvium system works.

6 There's a lot of questions I think that are
7 unknown at this time, even though the city has invested a
8 considerable amount of money with the U.S. Geologic Survey to
9 give us a better understanding of the type of system that
10 we're working with there at Jackson Springs and Cleghorn
11 Springs. There's a few things I think that need to be
12 discussed maybe a little bit more at this hearing,
13 specifically related to Cleghorn Springs.

14 As the application says, Game, Fish and Parks is
15 applying for additional 3.82 cfs from Cleghorn Springs; that
16 their total use has been about 10 cfs from that area
17 historically. That could be. At least I think since the
18 reconstruction of that facility in 1972 that's probably been
19 true.

20 As you've heard testimony before, the records
21 apparently were destroyed at the fish hatchery. We really
22 don't have -- the city does not have records that would
23 indicate what flow is going through the fish hatchery prior to
24 that date, so I guess we really don't know at this time. It
25 could be, could not be.

1 One of the things that we recently have been
2 involved with at Jackson Springs, which is -- I'll just point
3 out again on the drawing here, Jackson Springs is located in
4 this area along Rapid Creek, and Cleghorn Springs area is
5 over in this area. It's downstream, in the hydrologic sense,
6 on the Rapid Creek system from Jackson Springs. We're
7 upstream from their application source today.

8 The Safe Drinking Water Act amendments of 1996
9 have required the city to take a look at all of their water
10 supply sources that we provide water for human consumption in
11 Rapid City. The interest there is to make sure that we are
12 not being influenced by surface water source, and there are
13 different regulations now requiring additional filtration and
14 additional treatment for surface water source. I think most
15 of us are aware of that.

16 Anyway, there's a test called a microscopic
17 particulate analysis test, which is an indicator type of test
18 that would indicate if there is any microorganisms or
19 contaminants from the surface water source getting into a
20 water supply. Our Jackson Springs source, if you've been out
21 there, the pump houses are located very close to Rapid Creek.

22 We have known from past studies that the USGS
23 has done in this particular area, based on their observations
24 and testing, that more than likely there was some type of
25 interference between Rapid Creek and Jackson Springs. We were

1 concerned about that. We knew -- we've known that and used
2 that source for over half a century and have not had any
3 problems.

4 But that doesn't mean that we shouldn't meet the
5 new regulations. So we did find a couple of tests in a
6 seasonal situation there, because there's higher water in the
7 springtime and summer flows and during irrigation season than
8 there is historically during wintertime. So influence of
9 Rapid Creek on the groundwater table in the alluvium changes
10 seasonally.

11 And I think we saw that through our testing
12 program. We have been working very closely with the DENR
13 staff looking at this Jackson Springs situation in terms of
14 trying to maintain that supply as a groundwater supply, one
15 that is not under the influence of Rapid Creek.

16 Just for your information, in the year 2000 the
17 city water division pumped 4.5 billion gallons that we
18 provided to our customers. 1.9 billion gallons, or 42 percent
19 of that water came from this source. So as you can see, it's
20 a very important source for the City of Rapid City. It's also
21 our least costly source, less than six cents a hundred cubic
22 feet. Right now all we're doing as far as treatment is the
23 required treatment for fluoride and for disinfection we add
24 chlorine at that site.

25 So obviously to the City of Rapid City this is

1 worth spending some money on to make sure that we can keep
2 that cost as cheap as possible for our citizens, for the
3 public interest. And so we decided a couple years ago to do
4 some investigative work in that area.

5 The first thing we wanted to do was see if there
6 would be a possibility to switch that over totally to
7 groundwater, to punch large diameter holes down there, put
8 together a manifold system. We do have a pump house there
9 now with a manifold type system that we could pump water to
10 that and pump it straight to our system and kept it as a
11 groundwater source and not dealt with the groundwater table
12 and alluvium there. We sunk a test well about a year and a
13 half ago, going on two years now, and we tested that well and
14 it came up good in terms of the mpa.

15 The one problem that we did find with that
16 particular well is we had a little clarity problem. I think
17 there's a little hay field in that formation. We drilled a
18 well into the Madison formation, about 400 feet down from
19 ground surface to the Madison. We went about 150, 175 feet
20 into the Madison, and it's a pretty high-producing well, but
21 we had a clarity problem.

22 So we decided then to maybe do a little more
23 investigative work on the spring itself. We had one old, old
24 drawing of that whole gallery system that we were able to
25 recover through our records at the water department, and not

1 a very accurate one at that, with a bunch of lines on a sheet
2 of paper. So we thought perhaps before we decide what
3 direction we're going to go, we ought to go out there and
4 start digging out there and see what we got.

5 So we hired a contractor, about a year ago,
6 little less than a year ago, and we went out there last
7 December and started excavating that area. The map that we
8 had showed a line drawing and it showed a spring box, and the
9 spring box was kind of right next to Rapid Creek. It didn't
10 show dimension-wise, but in proximity to Rapid Creek, and
11 maybe that's part of our problem with having interference with
12 Rapid Creek, the fact that that spring is right next to Rapid
13 Creek, or perhaps even under Rapid Creek.

14 And so our contractor went out to Rapid City, and
15 maybe I need to -- I brought along a few slides of this
16 project, and I know this is going to take a little bit of
17 time, but I think it's important because of the interest that
18 the city has in that particular site, as has been testimony
19 before, there is consideration by the USGS technical staff
20 over there that there is a high probability that the springs
21 at Cleghorn Springs and Jackson Springs are coming from the
22 same source, that being the Madison aquifer.

23 MR. FREEMAN: If it is going to take a little
24 while, maybe we should go ahead and break for lunch and
25 reconvene at 1:00.

1 MR. BJERKE: I'm probably going to be up here
2 another 30 minutes, if that's okay.

3 MR. FREEMAN: This would probably be a good time
4 to take a break. So we'll break until 1:00.

5 (A noon recess was taken at this time.)

6 MR. BJERKE: I did think since I was down there,
7 since I think this is an important decision you're going to
8 make today, and I wanted to just touch on what the city has
9 been doing in terms of our water supply out there in that area
10 of Jackson Springs. And so these slides, that I'm going to
11 run through here quickly is just some slides we took during
12 our exploratory work that we did at Jackson Springs that I was
13 telling you about previously.

14 And I'll just walk over here, if you don't mind,
15 and point out, this building right here is our pump house.
16 And as I said before, this is our pump house and the way this
17 thing was constructed was there was a single 24-inch pipe that
18 came out to a manhole located in the vicinity of this Bobcat
19 and the pipe took an angle, took a turn there and angled out
20 toward Rapid Creek. Rapid Creek is right here off the edge of
21 the picture. This is the bike path right here, parallels the
22 creek. If you've ever been out there, you walk right by our
23 pump house.

24 The first thing we had to do, of course, was in
25 order to see what we had there, was to de-water the area. And

1 so as a part of the contract -- actually a large portion of
2 the contract cost, which was in excess of \$200,000, by the
3 way, was to bring in some very high capacity submersible pumps
4 to de-water the area.

5 Okay, there we go. You can see I'm not a high
6 tech guy. So this little manhole right here was the existing
7 manhole that was located alongside the bike path. We started
8 de-watering out of that system, our existing system there with
9 a submersible pump. We pumped it over to a discharge point,
10 and that's an idea of how we went about de-watering it.

11 After we pulled the water down -- by the way, we
12 were pumping water at 11,500 gallons a minute de-watering that
13 area, a little over 25 cfs. So you can see the capacity,
14 hydraulic capacity of this area is pretty high, as I said. We
15 started digging up the site and what you're looking at right
16 here is the area at the end of the collection system, existing
17 collection system, and basically what it was, even though the
18 photo or plan showed a spring box there, really what it was
19 was the end of a pipe, big concrete pipe, and that's where we
20 were getting most of our water.

21 Well, we just kept digging that area, and
22 actually located two springs, not one, two springs, and this
23 is the one that's located along Rapid Creek where our pipe was
24 basically pointed, in that direction, and it's kind of hard to
25 see by this slide, but I mean there was just an upwelling of

1 water coming up out of the hole.

2 We did this pump test in December 2000 and it
3 just so happened that the weather was extremely cold during
4 this period of time. So when we were doing the exploratory
5 work in this area, we took temperatures of the water,
6 groundwater, surface water and the spring water, and it was
7 interesting that the temperature in Rapid Creek was in the 37,
8 38 degree range. The water that was the bank storage part of
9 the groundwater table in the alluvium there was about 44
10 degrees, 43, 44 degrees; and this water coming up out of the
11 ground was 53 or 54 degrees. So that's -- we used that
12 methodology to help locate the springs.

13 As I mentioned, we found two springs instead of
14 one. Here's just another picture of us taking out the
15 collection system. You can see what it was was basically
16 reinforced concrete gasket around the pipe. Once we located
17 the two springs, and I might add that manhole we were pumping
18 out, when we took that out, it actually was placed over a
19 spring that we didn't know about, very interesting. Each one
20 of those springs we were estimating was flowing between four
21 and five thousand gallons a minute, each one of them.

22 So what we decided to do was to replace the
23 spring boxes, per se, with new and bigger ones, and actually
24 set those right over the top of the springs where it came
25 upwelling out of the ground. That's what it looked like.

1 Here's a photo of the contractor setting the new
2 spring box on top of the spring. These are 24-inch outlets,
3 reinforced concrete spring box. Here's the old manhole made
4 out of brick sitting right over the top of the other spring we
5 found. There you can see part of the de-watering system that
6 we had. We had five pumps there pumping at one time h this is
7 that spring box we were just looking at that was set, this is
8 where -- right here is where the pipe went back towards the
9 pump house, and so we put a control structure in here so we
10 could bring flow in from both the springs.

11 Another picture of the control structure. You
12 can see right here is the 24-inch rcp reinforced concrete pipe
13 that comes from the pump house over to this spring location.
14 One thing we found when we were pumping that, as I mentioned
15 that is a non gasketed pipe, so we had a lot of water coming
16 back up this pipe because it was leaking in the joints. We
17 had sealed it off at the pump house so there was quite a bit
18 of leakage coming into the pipe itself.

19 This is the second spring box that we set over
20 the spring that was located at the old manhole, the brick
21 manhole. The first spring box we showed you is covered up
22 over here. You can see all the de-watering pumps that are
23 still working to keep the water out of the area. Once we had
24 the system inter-tied, covered back up, we went back in there
25 and actually test pumped up each one of the springs, giving us

1 an idea how much water was coming out of each one and put in
2 some valves, and we just started doing pump tests on each of
3 these with both springs operating at the same time.

4 Just to give you an idea of what the de-watering
5 or test pumping looked like, now these are the control valves
6 that were installed in the control structure so we could
7 isolate flow from both springs, and also from the pipe going
8 to the pump house. This is the pump house here. Our pump
9 house sitting in the background. This actually is located
10 over on the fish hatchery property. What we found out through
11 this test pumping is that those two springs will actually
12 produce around 8000 to 8500 gallons a minute. That's
13 somewhere 19, 20 cfs.

14 The city, the last few years anyway during the
15 summertime we've been pumping around six to seven million
16 gallons a day out of the pump house. So you can see that
17 we're quite a bit short from what the capacity -- of what we
18 think the capacity of this spring is. And of course we had
19 the USGS folks out observing this thing just to get their
20 input, too. And again, Fish and Parks folks were also onsite
21 to observe this also.

22 This is kind of the finished product, as we put
23 the bike path back in. This is the control structure. The
24 new spring box is located right over here, and the old manhole
25 is located right here at the edge of the tree. And again, you

1 can see our pump house. This is around -- close to 200 feet
2 away upstream from the pump house. I bring this forward just
3 so you have an idea what our system looks like and how it
4 operates. Are there any questions?

5 MR. ROLLAG: So you measured the temperature of
6 the water in Rapid Creek and from the springs and you know
7 that there wasn't any water coming in from Rapid Creek in any
8 of your tests?

9 MR. BJERKE: What we did is we isolated that off
10 using plastic, basically an impermeable layer, and as part of
11 the construction we did that, too, in order to keep Rapid
12 Creek from flowing into that spring, we put some barriers in
13 there to keep that water from going into that source. And we
14 were hoping that that will allow that source to be not
15 interfered from Rapid Creek.

16 We have been working, as I said before, with DENR
17 staff. They would like us to go through a testing program for
18 about a year or so, just to make sure that it is not
19 influenced during different seasonal changes that I mentioned
20 before. There are some seasonal variation in this area
21 because -- mainly because of the stream flow.

22 One of the things that we -- when we met with
23 USGS technical staff and Game, Fish and Parks were there --
24 they feel that there probably isn't a lot of variation in the
25 stream flow itself. We do know there is quite a bit of

1 variation in the alluvial flow based on the elevation of Rapid
2 Creek, and their studies that they have done previously that
3 show that.

4 So anyway, that's where we are right now. We
5 haven't began the testing program. My point being is the
6 timing on this water right application isn't the best thing
7 for the city in terms of what we need to decide to do with
8 this water supply in the near future. If the city is going to
9 end up being junior to the Game, Fish and Parks, it may lead
10 us in another direction. And economically, from an economic
11 standpoint because when we are in a drought situation we need
12 the water and we don't have it available, there's an economic
13 value to that in terms of the city being able to provide the
14 needs that the City of Rapid City is going to have.

15 MS. GUNDERSON: According to our narrative for
16 the 2.18 or 3.18.

17 MR. BJERKE: 3.82.

18 MS. GUNDERSON: They would be junior to you.

19 MR. BJERKE: That is just based on what we have
20 for existing water rights. As I said, this has capability of
21 producing up to, under today's hydrologic conditions, about
22 19 cfs. We right now have about ten point -- is it 10.42? I
23 think it's 10.42 cfs water right. Some of that is senior.
24 All of that would be senior to this one that you're
25 considering today.

1 MR. FREEMAN: But don't you have a future use
2 reserved?

3 MR. BJERKE: Yes, and I think that's another nine
4 point cfs. I think we would have a maximum of 13 cfs there
5 with our existing water right and future use right. There's
6 992 acre feet.

7 MR. FREEMAN: 995.

8 MR. BJERKE: Future use, and what does that
9 equate to, 2.29. So it's a little bit less than 13 cfs that
10 we would be able to take at a maximum rate out of that source
11 under our existing water rights.

12 MR. FREEMAN: But --

13 MR. BJERKE: That's all senior to the Game and
14 Fish.

15 MR. FREEMAN: That would be senior to Game, Fish
16 and Parks.

17 MR. BJERKE: Not all of it.

18 MR. FREEMAN: Well, I realize the original six
19 point, but this new 3.8 we are giving is going to be junior to
20 your guys 13.

21 MR. BJERKE: Let me make my point here. You
22 know, we feel we can get more water out of this, and we will
23 be junior to their -- to this water right that you're
24 considering today with Game, Fish and Parks, if we fully
25 develop that source.

1 MR. FREEMAN: If you come back in, say a year
2 from now and finish your tests?

3 MR. BJERKE: Did you all get a copy of my
4 letter?

5 MR. FREEMAN: Yes.

6 MR. BJERKE: That's our primary concern now. We
7 are going to be junior to Game, Fish and Parks. It would have
8 been better if we could have sat down, I think, and worked
9 something out with the Game, Fish and Parks as we develop this
10 source. I think timing was not good in terms of what we're
11 trying to do out there.

12 You know, we've had discussions with Game, Fish
13 and Parks, and obviously it's pretty clear what our position
14 is on that. Really, I think what our goal would be today
15 would be to ask the board to wait until we see what we can do
16 with this before we would like to come in with a water right
17 priority the same as theirs.

18 Any other questions on what we did out there?

19 MR. FREEMAN: Any other questions?

20 MR. BJERKE: Now, okay, let me just.

21 MS. GUNDERSON: I guess I have one question.
22 Just guessing, how much more water do you think there is
23 besides what you already lay claim to under permits for?

24 MR. BJERKE: Right now when we test pump those it
25 will produce somewhere between 19 and 20 cfs out of Jackson

1 Springs.

2 MS. GUNDERSON: So that's six to seven?

3 MR. BJERKE: Six to seven more under the ability
4 that we have right now. Our next step up there in this
5 process was that we were going to go in and seal up that
6 24-inch, ungasketed -- non gasketed pipe in order to eliminate
7 any influence from Rapid Creek.

8 The other thing is that pump house does not have
9 a bottom -- it's a gravel bottom. We have water coming in
10 the bottom. We are going to seal that up in order to minimize
11 any potential effect of Rapid Creek on that particular supply,
12 and it is going to take an investment of dollars. Like I
13 said, we've spent over \$300,000 on just what we have right
14 there, with the thought that we were potentially able to get
15 some additional water. Now it puts us in a decision having
16 to decide what to do, with this water right application in
17 front of me.

18 We've met a couple times with Game, Fish and
19 Parks and they have been very up front with us, and we have --
20 you know, we're not here in an adversarial position. I want
21 to make that perfectly clear. We've had a wonderful position
22 with Game, Fish and Parks being neighbors up there. But there
23 are some things that aren't rock solid here today with this
24 permit, and I'll just tell you what they are.

25 One of the things that wasn't pointed out earlier

1 was in 1956 the City of Rapid City applied for a water right
2 on Cleghorn Springs and was denied by the water commission,
3 this board. The other thing was that in 1952 -- this was
4 talked about earlier -- was that the Game, Fish and Parks had
5 applied for vested water right in the amount of 7 cfs from
6 Cleghorn Springs. They were only given 6.18 cfs. Why was
7 that? Was there enough water coming out of Cleghorn Springs
8 at that time, or what was the reason for that.

9 To me if water was available in 1952, if the
10 water was available in 1956 when the City of Rapid City
11 applied for a water right and was denied, why is that 3.82 cfs
12 available today. There has been no studies to my knowledge
13 done on Cleghorn Springs to actually measure the flow coming
14 out of the springs itself.

15 Quite honestly, in our discussion with the USGS,
16 and based on the configuration of the hatchery itself, if I
17 may address the board, this is a diagram of the property. The
18 fish hatchery has the gallery on the west end, collection
19 gallery that goes towards Rapid Creek, and of course we're
20 located over here. The springs is located in this area.

21 The question I am asking is is all the water
22 being collected in that gallery coming out of Cleghorn
23 Springs, or is some of that coming out of alluvium, or
24 perhaps even Jackson Springs. I don't think there's anybody
25 here today that can answer that. I certainly can't. I don't

1 think there's enough technical data available to answer that.

2 MS. BEST: I would just like to interject, was
3 this intended for an exhibit?

4 MR. BJERKE: You can have this whole book if you
5 like.

6 MS. BEST: As far as whether you are intending
7 the board to have this as part of there official record, or if
8 that was just a demonstrative type --

9 MR. BJERKE: I would like to, if I could --

10 MS. BEST: Put it into evidence?

11 MR. BJERKE: Page 28 of this report done by U.S.
12 Geologic Survey, prepared in cooperation with City of Rapid
13 City and Game, Fish and Parks when we were trying to figure
14 out how this system actually works in the area, it's very
15 complex as you can see.

16 MR. FREEMAN: If there's no objection, we'll
17 receive that as City Exhibit A.

18 MS. BEST: No objection.

19 MR. BJERKE: And I will present that to you after
20 my discussion then.

21 MR. FREEMAN: Yes.

22 MR. BJERKE: But anyway, my point being, I think
23 there's a very high probability that the water that is flowing
24 through the fish hatchery is not a hundred percent Cleghorn
25 Springs water, based on research that the USGS has provided

1 for the hydro geology in that area.

2 And the other point and reason I mentioned those
3 other two water rights is there must have been some reason
4 why the board at those two days did not approve the request.
5 Probably they didn't think that much water was available out
6 of Cleghorn Springs. It's never been test pumped, like we did
7 for Jackson Springs. We didn't know up until a few months ago
8 actually how much that would produce.

9 So I think that is the question that I have, that
10 perhaps many of you should ask somebody. Another reason that
11 I think -- we, the city thinks that is the case that, you
12 know, we went through an extended drought period in 1980 and
13 there was some water shortage in that time and the city was
14 pumping at our capacity.

15 And there were times when the fish hatchery was
16 apparently running short of water and their manager at the
17 time was communicating with our water supply staff and had
18 asked us to shut down some of our pumps because they were,
19 what he thought, short of water. We don't -- there was no
20 flow measuring at that time that is accurate over there. We
21 talked to you a little bit about that earlier. I think
22 Mrs. Gunderson, you asked that, or maybe it was you Bernita
23 asked that question about the flow measuring at the fish
24 hatcheries. It's really not that precise.

25 At that time, during the drought there was very

1 little water in Rapid Creek, very little. As a matter of
2 fact in front of this area there was less than five cfs, as a
3 matter of fact down to as low as two or one cfs in this area
4 during the worst part of that drought.

5 And if you recall, the City of Rapid City got
6 involved. In order to maintain the fishery there, we released
7 some of our water, some of the water that we had under
8 contract with the bureau down Rapid Creek in order to help
9 maintain the fishery.

10 And what was happening then is the bank storage
11 in Rapid Creek and the alluvium was being depleted, was
12 dropping. That was apparent all the way up and down Rapid
13 Creek. We have two other sources. We have the galleries at
14 Meadowbrook golf course and galleries at Jackson Springs, what
15 we call the Girl Scout gallery, experienced reductions in flow
16 out of the alluvium.

17 So bank storage was being lost out of Rapid
18 Creek because of low flow. This tells me, because they were
19 running short of water, that there was not enough flow in the
20 spring to maintain the 10 cfs. I'm surmising that, not based
21 on accurate flow measurements, but based on actions between
22 the Game, Fish and Parks staff and our staff, and the fact
23 that they asked us to shut pumps down because they were short
24 of water. I don't know what volume of water, and I think that
25 ties in to that exhibit that I just showed you on the

1 configuration of the galleries.

2 Now one of the problems I think they have over
3 there, and there's been some discussion about it at the time,
4 is at what elevation that gallery is in relationship to their
5 overall water collection system. Because it's my
6 understanding that collection system on the west end of the
7 galleries is at a higher end than the one on the north side,
8 that parallels the north side. So they were running short on
9 the west end because of the system, the drawdown of the
10 alluvium, which was, in effect, probably caused by some our
11 pumping in that area.

12 Now keep in mind that the -- at that time I
13 think our piping system out there was not real efficient. I
14 think the amount of water that we were able to collect with
15 that old system out there probably let a lot of water go by
16 that was actually coming out of the springs.

17 As I said before, the USGS believes the variation
18 in the spring flow there is not that much, even during
19 extended drought periods. There is a head in the Madison
20 there. We found that out when we built the test well. It's
21 under pressure there, so that's where the artesian conditions
22 are coming from.

23 So I think the city's position today is in terms
24 of the volume of water that they are requesting is that
25 there's not enough technical information available out of

1 Cleghorn Springs to have 3.82 cfs. I don't think there's
2 enough technical data available to substantiate that amount of
3 water. I believe -- we believe that there is -- some of that
4 water is going to be coming from the alluvium, which is
5 probably being recharged by Rapid Creek.

6 What we would like to see is that this
7 application be delayed, at least until a time that the City
8 of Rapid City can have a better handle on what we're going to
9 do with Jackson Springs. If, in fact, those two systems are
10 tied together, obviously one is going to affect the other. We
11 don't want to draw more water out of that system than is going
12 to affect the water flow to Cleghorn Springs.

13 I think we've proven that in the past, that we
14 have shut our pumps down when they asked us to shut the pumps
15 down, because we understand the importance of the fish
16 hatchery to Rapid City and the Black Hills area and to the
17 tourists that come to Rapid City. It's good for the economy.

18 I agree with you, Bernita, they are both
19 important, but this puts us in a tough position at this
20 point. And quite honestly, I'm not real happy that I had to
21 come down here and give this testimony today, because we have
22 a good relationship with Game, Fish and Parks, and I'm sure
23 we'll continue to have a good relationship with Game, Fish
24 and Parks. I think the memorandum of understanding Mr. Koth
25 talked about is a good thing to have between the city and

1 Game, Fish and Parks, how to manage.

2 Right now there's not a problem, all kinds of
3 water running through it. So that's my testimony today from
4 the City of Rapid City's position.

5 I want to make one comment on the water quality.
6 You know the city has had -- has taken -- has had some
7 discussions with the Game, Fish and Parks about the discharge
8 point of the effluent coming out of the fish hatchery because
9 there are increased nutrient loads in the water, and there's
10 been studies that have proven that, and we think that it does
11 have an affect on the loading in the Canyon Lake.

12 And I don't think there's any, to my knowledge
13 any treatment plant in the state of South Dakota that's
14 allowed to discharge to a surface lake, except for this one.
15 If there is, I would like to know, but I don't think there
16 is. A municipality would not be able to discharge to Canyon
17 Lake.

18 We have had some past discussions with the Game,
19 Fish and Parks about the possibility, at least, discharging
20 that effluent downstream from Canyon Lake and, you know, I
21 think that is a concern of the city's. It's a concern of some
22 of the citizens of Rapid City. To me that should be dealt
23 with separately than this water right, though. We didn't come
24 down here to make an issue on water quality on this water
25 right issue; it's more in terms of the volume of water.

1 Are there any further questions of me?

2 MS. LOUCKS: Well, I don't know if you had
3 answered it or Game, Fish and Parks, but maybe there's
4 something I don't understand here, and if so I would like to
5 have it clarified. This application, it says, is merely going
6 to reflect what the actual amount of water that flows in there
7 now; is that what I'm reading?

8 So they've been using like 10 all along because
9 they don't have any way of controlling the amount that's going
10 in, right? So even at the drought times, if that minimizes
11 the ten so that you have a problem and you come to the city,
12 what's going to happen then? You know, if the -- are you
13 going to be able to get your water somewhere? I guess this is
14 kind of a hypothetical thing, but I just need to know, giving
15 them ten right now, how it's going to affect you.

16 MR. BJERKE: Well, I hope this memorandum of
17 understanding will address some of that. Quite honestly the
18 city felt because of that 6.18 water right, that they had back
19 in 1928, that we had to shut our pumps down, I think this was
20 the city's understanding, and certainly mine, and I was the
21 manager of the water system then.

22 I think there's been some things that have
23 changed since then. I don't think we actually would have had
24 to shut our pumps down, but that's not the way to do
25 business. You know, if the city has other sources to go to,

1 I think we would look at other sources to go rather than to
2 not allow the fish hatchery to have enough water to meet
3 their needs.

4 I think something needs to be put down in
5 writing so everybody understands, because their staff is
6 going to be gone in ten years, and I'm going to be gone in
7 ten years, and we'll have other people trying to figure out
8 what we got out there. There's not a good track record, so
9 we need -- I think we need to try we have an opportunity to
10 try to minimize those kind of conflicts in the future.

11 MR. FREEMAN: Any other questions of Dan?

12 Thanks, Dan.

13 MR. RICHTER: Are you talking about just from the
14 board or from --

15 MR. FREEMAN: I guess if Game, Fish and Parks has
16 some questions, this would be the time to do it, I suppose.

17 MR. RICHTER: I just have a few questions. Gary
18 Richter, Department of Game, Fish and Parks.

19 EXAMINATION

20 BY MR. RICHTER:

21 Q. You referred to some studies that were done on the
22 nutrients; are you privy to the studies?

23 A. Yes.

24 Q. They were done by the City of Rapid City, and Game,
25 Fish and Parks has those copies, prior to Canyon Lake

1 restoration project?

2 A. And I only mention that because --

3 Q. This is -- my understanding it's not part of your
4 objection, you just put it in?

5 A. There was a question on water quality that came up
6 earlier, and I threw it in, more or less. We had not
7 intended to make a position on that, because I think when it
8 comes to looking at the discharge permit, that's the time and
9 place to discuss that.

10 Q. That's another matter?

11 A. That's another matter, yes.

12 Q. Now you understand through the prior testimony that
13 all of our records were destroyed from 1972 earlier?

14 A. Yes.

15 Q. And do you have any records that the use of our flows,
16 other than what you have alluded to, maybe you want to expand
17 on it, but that -- the fact that our -- not only our records,
18 but historically Mr. Koth's testimony is that we've been using
19 the same amount of water since 1928 as we are today, and
20 whatever evidence you have that this has adversely affected
21 any of your existing permits?

22 A. The use of 10 cfs?

23 Q. Right, of your existing permits?

24 A. I can stand up here and I can't tell you if you've
25 used 10 cfs since 1928. It's my understanding you don't.

1 Q. Well, I'll let Mr. Koth's record stand on that, and
2 maybe he'll come up again, but I think his testimony is --

3 MS. LOUCKS: You're going to have to talk
4 louder.

5 A. The question that he asked me was do I have any
6 records, or have I seen any records that would basically, I
7 guess, question Mr. Koth's statement to the Board that Game,
8 Fish and Parks historically used 10 cfs since 1928, and my
9 comment is that because there aren't any records, I've not
10 been able to find any records of the fish hatchery, not that
11 we necessarily have those, but you know our records would
12 have been involved with our water right situation, not the
13 Game, Fish and Parks, but I have not seen, and from what
14 Mr. Koth said in his testimony is that there aren't any
15 records that show that they actually used 10 cfs in 1928.
16 They may have only been using 6 cfs.

17 And again, my point was more they may have been
18 using that much but where is that water coming from? Is it
19 coming from Cleghorn Springs or coming from a combination of
20 Cleghorn Springs alluvial water and Jackson Springs water.

21 Q. Well, maybe we can address some of this through
22 Mr. Koth, too, but my recollection of the recommendation from
23 the engineer was that this perhaps is a combination of the
24 water, I believe.

25 A. That's not what your permit is for; that's not what

1 you're applying for.

2 Q. Are you asking that we are to separate the waters?

3 A. Your permit is for 3.28 cfs from Cleghorn Springs; am
4 I right?

5 MR. FREEMAN: Well, he should be asking you
6 questions, and then if you want to put in more testimony you
7 can, but I think we're wandering here.

8 Q. (By Mr. Richter) My question then was whether or not
9 the use of the water from 1928 to the present time, other than
10 you testified to some, but to what adverse affect has this had
11 on your existing permits?

12 A. We have had to shut our pumps down in the late 1980s
13 at your request, because you were short of water. So it has
14 had an adverse -- under drought conditions has had adverse
15 conditions on our ability to use our full water right, because
16 we were using our full water right at that time.

17 Q. Now since then you've also acquired now a future use
18 permit?

19 A. No, we had it at that time.

20 Q. You had it at that time?

21 A. What was the year, Mark? Can I ask a question for
22 Mark?

23 MR. FREEMAN: Sure?

24 A. What was the date on the future use permit Jackson
25 Springs for the city.

1 MR. RATH: That's the 1956 prior.

2 Q. (By Mr. Richter) 1956?

3 A. That was late '80s when I was there. I went to work
4 for the city in '89, and we shut down twice that I know of
5 after I went to work for the city. I think it was once or
6 twice in '89 and maybe once or twice in '90.

7 Q. My understanding you're not asking for denial, you're
8 asking for delay?

9 A. Yes. And I might add, sir -- what was your name
10 again?

11 Q. Gary Richter.

12 A. For your information, our informal discussion before
13 this hearing we had talked about, and I asked if the Game,
14 Fish and Parks would consider doing that, just to let us
15 finish our testing program out there and have a little better
16 handle on what we're going to do with that water supply. If
17 it turns out that we are going to have to put filtration
18 equipment on that thing, it may be a moot point. We may have
19 to look at another source. But right now, today, I can't
20 answer that.

21 MS. LOUCKS: Mr. Chairman, I have one more
22 question. How long do you anticipate this study, or whatever
23 you're doing, how long until that would be completed?

24 A. We've been asked by the DENR staff drinking water, for
25 example, that we go through a full year of tests out there

1 throughout different seasons to see if we have any influence
2 from Rapid Creek. And one of the things that we have not been
3 able to do now is because of this pending issue today is
4 whether we're going to go ahead and spend additional dollars
5 to describe -- to seal our system up.

6 We haven't done that yet, so it's going to take
7 probably another year, close to a year, I would say, in order
8 for us to accomplish that. But, you know, looming out there
9 is the possibility that we may have to go to filtration
10 equipment. If it is, that will be a huge expense to us. We
11 may look at a different source.

12 MR. FREEMAN: Any other questions?

13 MR. ROLLAG: I was going to ask Dan, so you think
14 it will take about a year to seal everything up. Is that
15 enough time also to gather all the information about where the
16 water is coming from to the fish hatchery as well as to
17 Jackson Springs?

18 A. Well, we're not going to be involved with -- if they
19 are looking at Cleghorn Springs, the City of Rapid City is not
20 going to do the same thing we did over there. We have stayed
21 away from Cleghorn Springs since 1956 so, you know, they are
22 the ones that are asking for additional water out there. I
23 would think that would be their responsibility in order to
24 prove to this board that there is that water available.

25 As I said, I have some questions in my own mind

1 whether there is actually that much water coming out of that
2 spring. Maybe what they ought to be doing is applying for a
3 combination, you know, not just Cleghorn Springs.

4 MR. BRINK: That leads me to my question why
5 don't you trade your spring water for Rapid Creek water and
6 let them -- is that acceptable water quality in the hatchery,
7 out of Rapid Creek surface water?

8 A. For the fish hatchery?

9 MR. BRINK: Yes.

10 A. I can't answer that. You could ask the staff, Game,
11 Fish and Parks staff. I don't know.

12 MR. KOTH: There are some problems and we can
13 speak to those.

14 MR. BRINK: I think that would interest me,
15 whether surface water would work in the hatchery.

16 MS. BEST: I have one final question, Dan. The
17 photographs that you presented to the board, do you have paper
18 copies for submission into the record?

19 A. Yes, I do have them with me, if you would like a copy.

20 MS. BEST: I think the board has seen them and
21 you testified off them; that would be appropriate as city
22 Exhibit B?

23 A. I have them here.

24 MS. BEST: And so stipulated.

25 MR. FREEMAN: They will be received then; that's

1 City B.

2 MR. BJERKE: Thank you, Mr. Chairman.

3 MR. FREEMAN: Game, Fish and Parks have
4 rebuttal?

5 MR. KOTH: Just a couple comments maybe. See if
6 I can get these organized so they make some chronological
7 sense. First off, in answer to Mr. Brink's question about the
8 utility of surface water versus groundwater for hatchery
9 production, there are some difficulties in swapping that out,
10 so to speak, as you suggested.

11 First off, as Mr. Bjerke indicated, during some
12 of their testing they found that there was significant
13 differences in alluvial water, which would probably equate
14 very simply to surface water in terms of temperature regime
15 that changes the ability of the hatchery to produce fish if
16 it's colder water there are seasonal variations versus fairly
17 constant spring temperature of 52 to 54 degrees.

18 There's also the difficulty with the potential
19 introduction of surface water pathogens, just as the city is
20 concerned with their drinking water supply, into the
21 hatchery. The groundwater supply is relatively free of
22 pathogens, and there's not that danger of having those
23 problems with surface -- if we use surface water.

24 So there are some significant problems, along
25 with pH and some other fairly technical things in terms of

1 fish production that the spring water is far and away the
2 best source for fish production. We have also discussed
3 those kinds of possibilities.

4 Mr. Bjerke brought up a number of different
5 things and talked to a lot of different areas. I think one of
6 the things I wanted to come back to was that Mr. Rath's report
7 in regards to the water availability there today, based on the
8 current state of knowledge of the USGS report that has been
9 entered into evidence, 984214, and that indicates that there
10 is about 21.6 cfs of water discharged from the Cleghorn
11 Springs regional discharge point -- from the Jackson/Cleghorn
12 Springs regional discharge point from the Madison aquifer. I
13 think that's a key factor, and on page 37 of that very report
14 there's a table on there, and I'm going to speak to it versus
15 trying to demonstrate, but they did some isotope studies there
16 with USGS involvement, and they found that Cleghorn
17 Springs/Jackson Springs water is essentially identical in
18 terms of radio isotopes, is very much a regional discharge
19 point, and the waters do, in fact, likely mix and come from
20 the same source. When looked in comparison to other water
21 sources, like the alluvium and surface water in that area,
22 there's very distinct differences between those waters and
23 Cleghorn Springs/Jackson Springs outlet. So I think it is
24 true, that it is a regional discharge point, and there's a
25 great possibility that what one entity would do in terms of

1 pumping, for example in case of the city, could affect the
2 gravity flow system that the hatchery has.

3 So there are some conflicts there, and I think
4 that in the future we do hope to figure out a way to deal
5 with those times of drought, recognizing that we do have a
6 regional discharge point, that we both have to be very careful
7 on how we use. So that's the one thing there is that there is
8 availability of water there based on our best knowledge. We
9 have a historic use of water there that stems from the
10 origination of the hatchery in 1928.

11 And even prior to that, the Bennett claim gives
12 us some indication that there was, in fact, somewhere in the
13 vicinity of 9 or 10 cfs allocated to the Cleghorn Springs
14 diversion. The Seventh Judicial Court, I believe in -- let's
15 see, in 1901 acknowledged that there was 450 miners inches
16 diverted in the vicinity of Cleghorn Springs. That's about
17 9.02 cfs, and that's where that Cleghorn Springs water right
18 really comes from.

19 In terms of our historic documentation, we are
20 unfortunately a little short. We had that very early
21 information from the 1901 decision, which went back to the
22 1877 Bennett claim, and I would like to be able to introduce
23 these in as some information that would be useful to the
24 board, as well as have them in the record.

25 There is a picture of the pre-flood hatchery

1 configuration, as well as a post-flood hatchery configuration,
2 and it kind of demonstrates in a very graphic way that there's
3 been very little change, really, in the way that water is
4 utilized and run through the hatchery. The ponds that you see
5 in the pre-flood photo have been replaced by longer raceways
6 in the post-flood photo. But essentially the utilization of
7 water for fish production is identical to how it has been
8 historically throughout the life of the hatchery, and even
9 going back to the Bennett claim.

10 So I think we're looking at, again, going back
11 to the water availability and historic use. I think we have
12 as good of information as possible there to acknowledge that
13 10 cfs water, thereabouts, plus or minus a fraction of a cfs,
14 has been utilized for fish production historically.

15 Mr. Bjerke indicated that right now the city is
16 getting 42 percent of their water supply from Jackson Springs
17 and has been doing so for some time. We have only run into
18 those problems where we have conflicts between what the city
19 pumps and what the hatchery gets via gravity flow during times
20 of extreme drought, last experienced in the 1980s. We hope
21 that in the future, with a MOU we can address that. But we
22 don't see where looking at the existing situation today there
23 is any indication that acknowledging the use of your water at
24 10 cfs rate would be a problem.

25 He brought up a number of things about future

1 cost versus what they are going to do in terms of development
2 of their system. We also are at an impasse there to some
3 degree. We're looking at a significant change in the way we
4 may operate the hatchery and develop infrastructure there.
5 We have a draft consultant's report right now, basically on
6 our desk, and it suggests many different options that -- ways
7 we could go to maximize efficiency in the way we utilize our
8 water.

9 One of the things we need to know there, and we
10 need to have basically permitted before we can go forward,
11 again significant expenditures of money, is a surety that our
12 water right is, in fact, going to be what it has been
13 historically at 10 cfs in terms of the design of that system.
14 So we are also looking at considerations of expenditures of
15 money based on the outcome of the historical water use there
16 at Cleghorn Springs.

17 He briefly made reference to some NPDS concerns
18 and water quality concerns, and I would agree that those
19 kinds of discussions are more germane to the time when we do,
20 in fact, come before the board for an NPDS permit. I think
21 there's some significant differences in the way that we
22 interpret the reports that he indicates are on line. This
23 indicates Cleghorn Springs hatchery discharge is significant
24 contributor to the way in which Canyon Lake functions.

25 I guess that's enough said about that. I think

1 it's not germane to this particular discussion. I guess
2 that's all I have right now. I wanted to again restate those
3 few points and show that our small amount of historical
4 evidence that shows very little different in the way that we
5 run the hatchery since it was begun. If you have any
6 questions for me before I sit down, I would sure try to
7 answer them.

8 MR. FREEMAN: On your photos you submitted, I'm
9 going to mark them GF&P 1; any objection to these being
10 introduced?

11 Then we will receive those two photos. Any
12 questions of Ron?

13 MS. LOUCKS: Would it upset your total plan or
14 create a hardship here if this would be postponed for a year
15 until we got all this evidence.

16 MR. KOTH: The way I understand Mr. Bjerke is
17 that he would like to see some type of water right with the
18 same priority date. We have already filed and I'm not sure
19 whether or not there's any feeling within Game and Fish that
20 there is a need to, or desire to retract our filing and
21 re-file again for a different priority date.

22 We do have an interest in developing an MOU to
23 use water during times of shortage. It would cause a hardship
24 for us in terms of the way that we proceed with development of
25 our infrastructure at the hatchery. We currently have a

1 pumping system there that is, I guess to say the least,
2 antiquated. And on frequent occasions it goes down. We lose
3 fish. We send people there on a very frequent basis to try to
4 put band-aids on it, and we're very much looking forward to
5 moving forward with a retrofit of that hatchery pumping
6 system.

7 We feel it's very important for us before we do
8 that to have permitted the historical use of water at the
9 hatchery, so that we can, in fact, go forward with design and
10 construction and feel comfortable that we're going to have
11 that historical use of water under permit.

12 MR. FREEMAN: Any other questions of Ron?

13 Thank you.

14 MR. FREEMAN: Anybody else have anything?

15 MS. BEST: DENR has a little bit of rebuttal.
16 We'll keep it short

17 Whereupon,

18 MARK RATH,

19 recalled as a witness, being first duly sworn as hereinafter
20 certified, testified as follows:

21 EXAMINATION

22 BY MS. BEST:

23 Q. Mark, questions were raised during --

24 MS. GUNDERSON: Can you wait just a minute, we're
25 having a conference with our attorney.

1 MR. FREEMAN: Thank you.

2 Q. Questions were raised, Mark, during Dan Bjerke's
3 testimony regarding the responsiveness of these water systems
4 to climatic conditions. Can you testify further regarding
5 what you see as the stability of these systems in terms of
6 changing climate?

7 A. One of the things that we looked at, and the chief
8 engineer looked at before making the recommendation, is the
9 availability of water for the uses, the two competing uses
10 out here. And I guess we'll have to go with the period from
11 1972, since the hatchery was reconstructed to the present.
12 We don't -- we really, as has been stated before, we don't
13 have a record of what was done, whether the 10 cfs was used
14 before that or not. We have a difference of opinions on
15 that.

16 But since '72, it's probably pretty much been
17 assumed that, yes, the hatchery has been using the 10 cfs,
18 and in that period of time both entities have pretty much
19 co-existed without any problems, except for one period of
20 time, and that was in the late '80s when we were in a drought
21 situation.

22 At that time we've got -- we had some concerns
23 whether or not the city was required to shut off or not, if
24 we -- if they would have been operating under strict priority
25 dates, the hatchery would have had -- would have had priority

1 on the 6.18 cfs for the oldest priority. I believe at the
2 time, the city and Game, Fish and Parks, there was some
3 discussions. I know in meetings we've had between the city
4 and Game, Fish and Parks there were things that Game, Fish
5 and Parks were doing to reduce the amount of use they had,
6 and there were things going on with the city on use.

7 And I think from previous hearings on Rapid
8 Creek at that time the city had a less than desirable water
9 collection system overall for -- in which they recognized at
10 that time as being a problem, and that's why the well program
11 that they have developed since, the transfer program that
12 they have gone into because of the problems with water.

13 Well, what I'm trying to get to is at that time
14 the two entities worked together, and Rapid City did reduce
15 back there pumps at Jackson Springs because of some problems
16 at the fish hatchery for water flow. But it wasn't an
17 ordered shut-off, per se, on a priority date system.

18 But other than that, through the period of time
19 there has been water availability for both entities, and
20 that's what the chief engineer looked at when he made his
21 recommendation.

22 Q. There is an issue as to whether, if push comes to
23 shove and on one of the water rights -- or on the water right,
24 I think a board member raised the question, if I remember
25 correctly, about replacement water. I don't know that I

1 have -- I jotted a little note here. I don't know exactly
2 what the question asked, about replacement water for --

3 MR. FREEMAN: I think that was addressed by Ron
4 about getting the surface water from Rapid Creek.

5 A. Well, anyway, replacement water, one of the
6 qualifications that Rapid City has had at their Jackson
7 Springs use is that they have been required to replace one
8 for one the amount of water that was used at the gallery with
9 flow in Rapid Creek, and that is because with the 1944
10 priority date, downstream water rights would have priority
11 use prior use to -- claim to this water.

12 Well, if they are going to take the water before
13 it gets to the creek, the requirement is that you have to
14 replace that water. In the past that has been purchase water
15 coming out of Pactola Reservoir, specifically for the flow in
16 Rapid Creek. As I kind of indicated before, as transfer
17 water; that's what that has been used for, replacement water
18 at the gallery site. So water from Jackson Springs not
19 getting to the creek is replaced by water coming down the
20 creek from Pactola Reservoir, natural flow now at least as
21 part of their transfer program.

22 So back in the '80s I think there was -- at the
23 time, like I said, I know there were days, especially the hot
24 days when Rapid City had to take some water that probably was
25 purchased water for the irrigators, and that was a big

1 concern, and that has lead to Rapid City's expanded water
2 production from the wells and from other sources, and from the
3 transfers. I mean there were some problems back in the '80s
4 that probably doesn't have to deal with today because of
5 things that Rapid City has done.

6 Q. And finally, another question was raised and it
7 related to the intake system that's managed by Game, Fish and
8 Parks at Cleghorn Springs. Could you address whether DENR has
9 taken a look at that system or reviewed how it works?

10 A. We became aware of a problem with the intake system
11 in, I believe it was 1996. Myself and two former employees
12 were out onsite, met with the hatchery manager and assistant
13 manager, and one of the concerns was the intake system. They
14 have a collection gallery, essentially a horizontal pipe that
15 collects gravity flows from that pipe through a closed pipe to
16 another collection pipe, and then from that pipe into the
17 point where they have their pumps to take care of their -- the
18 gaseous problems that they indicated earlier. Our
19 understanding is that the connection between the two
20 perforated collection pipes, there is a hump because of
21 construction means. There was a large outcrop, rock or
22 something like that, the pipe went up over the top, because of
23 that problem when water levels in the alluvium went down or
24 springs went down weren't able to get water over the top down
25 to their pump. So in 1999 John Hatch, former chief engineer,

1 sent a memo up to Secretary Cooper with Game, Fish and Parks,
2 which essentially stated that they would need to address that
3 problem with their collection system before we could or would
4 enforce the priority dates; that if there was a problem with
5 -- under a priority claim of water, if there were a shortage,
6 that engineering construction problem needed to be addressed
7 so -- and it was my understanding, as with the fish hatchery's
8 program right now to look at rehabing the system, this
9 collection system is one of the issues that they are looking
10 at.

11 MS. LOUCKS: If I understood you correctly,
12 Mr. Hatch had said that they need to repair the collection
13 system before they got their permit?

14 A. No, they had the permit, but what would happen is if
15 we ended up in a drought situation where there was -- there's
16 a water shortage and the fish hatchery was trying to make a
17 priority claim on the water, that they needed to fix -- if it
18 needed to have adequate collection system that could
19 efficiently take the water and it wasn't -- it was due to
20 actual water shortage and not due to a mechanical problem.

21 MS. LOUCKS: Okay, thank you.

22 MR. FREEMAN: Anything else, Diane?

23 MS. BEST: Nothing further. Thank you.

24 MR. FREEMAN: Any other board members have
25 questions?

1 Thank you, Mark.

2 MS. GUNDERSON: Where is Solomon when we need
3 him.

4 MR. FREEMAN: What is the pleasure of the board?

5 MR. BRINK: Bernita, that's home for you. What
6 are you thinking, eat it or drink it?

7 MS. LOUCKS: This is kind of a rock and a hard
8 place; I can see both. If I made a motion I would -- probably
9 wouldn't get a second anyway.

10 MR. ROLLAG: I have a question. Ron mentioned
11 that they have a filing date already recorded. If we were to
12 delay this for a year, would that filing date still be -- have
13 a priority over the city, if the city filed later on.

14 MR. RATH: Yes.

15 MR. ROLLAG: So --

16 MR. FREEMAN: But I guess from my part, I can
17 understand Game, Fish and Parks saying we need to go ahead and
18 rehabilitate and begin that process, and you know the only
19 evidence in the record that we have is that they have been
20 using the 10 cfs, basically since the hatchery was there in
21 1928. And I think we're -- all we're doing is cleaning up.

22 And I realize there may be more water available
23 that the city wants to get, but I still don't think it's
24 going to stop the city from getting it, and while your
25 priority may be below Game, Fish and Parks, it's only going

1 to be below it for what you get in the future, because you're
2 already -- the city is already going to be prior to this
3 3.82.

4 So I guess from my part, I understand the city's
5 position, I just don't think anything is really gained by
6 delaying it. And I think we have to make the same decision
7 all over again.

8 MR. BRINK: This reminds me an awful lot of our
9 discussions on Homestake when we went through capacities of
10 flumes and slopes and the whole ball of wax and piles and
11 piles of records to show that Homestake had been using all
12 this water, and that was all we had, and so we granted it and
13 we got beat and we came back.

14 MS. BEST: If I may comment on that, I realize
15 that you are in a deliberation mode here, but the evidence
16 presented in this new permit hearing, there was some historic
17 evidence presented just to show -- it's my understanding to
18 show during the period of record we do have what has happened
19 in the past.

20 But a new permit was filed for this case, so we
21 have to look -- I mean this is a forward looking deal. The
22 Homestake case we were looking at 120 years of historic record
23 because they were claiming vested rights for a 1877 and 78
24 time period, and so that was the significant difference.

25 MR. FREEMAN: The reason Homestake got bounced on

1 us, Fran, is that one pipe in the collection system where
2 everything fit into it, that was only so big, and it only had
3 so much capacity, and that's the only thing we got overruled
4 on was because we granted them for everything it could collect
5 up there instead of granting them what actually went through
6 that one pipe that fit into the mine system.

7 MR. BRINK: But haven't we simply lost all the
8 records and now just going on what --

9 MR. FREEMAN: Sworn testimony and evidence that
10 they have been historically using 10 cfs.

11 MR. BRINK: As measured now.

12 MR. KOTH: Could I make one comment? We have
13 flow measurements originating in 1971 to present from the
14 hatchery done by Game, Fish and Parks, done by USGS and done
15 by USGS and Game, Fish and Parks that indicates that same 10
16 cfs.

17 MR. BRINK: Have you entered those into the
18 record?

19 MR. FREEMAN: They are part of the record.

20 MR. BJERKE: I don't think there was any evidence
21 presented prior to reconstruction, prior to the USGS putting
22 improvements and measuring flowing that would indicate that
23 10 cfs was used in 1928. I have not seen it.

24 MR. FREEMAN: I would agree, but we do have the
25 Court decision back in 1901 that I think is about as close to

1 10 cfs as you can get when you look at it in miners inches and
2 accuracy that go with that sort of decision. You also have
3 testimony that's uncontradicted that the hatchery operation
4 has not changed in its use of water over the years. So I
5 think from that, at least in my own mind, I can conclude that
6 at least in 1901 they were probably using from that Bennett
7 claim about 10 cfs; 1971 through the present they are using
8 it, and the operation hasn't changed since 1928.

9 So I guess in my own feeble mind, that's about
10 as good as you can get when you lose a bunch of records
11 because of an act a nature. I mean I don't mean to be
12 argumentative. I'm trying to give everybody a picture of how
13 things kind of got put together in my mind.

14 MR. BRINK: Not only that, but if we're going to
15 have a decision, that's the information that we need to have.

16 MR. FREEMAN: That's what John needs for
17 findings.

18 MR. ROLLAG: I have one question, too, that I'm
19 not clear in my mind. This 10 cfs for Game, Fish and Parks,
20 is that water coming from Cleghorn Springs.

21 MR. KOTH: As I indicated, tried to draw your
22 attention to, it's on page 37 of the USGS report. There's a
23 table there that indicates an isotope study that was done on
24 waters in the Cleghorn/Jackson Springs complex, as well as
25 your surrounding waters from the surface, Jackson Springs

1 Cleghorn Springs show almost identical ionic composition,
2 radio isotope stuff.

3 It's a regional discharge point, convention has
4 named Jackson Springs and convention has named Cleghorn
5 Springs. The reality of it is the Madison aquifer discharges
6 at that point. They are essentially very much the same point
7 of discharge from the Madison.

8 MR. ROLLAG: So this is ground water formation
9 that is being drawn from two different places, but it's out of
10 the same formation.

11 MR. FREEMAN: Aren't they two separate springs,
12 but we figure they are connected underneath.

13 MS. GUNDERSON: The question that I kept having,
14 when you were pumping to the rates you were pumping, did you
15 see any of that pumping decrease the amount of water that you
16 had.

17 MR. KOTH: I think that's some of the information
18 that we hope to gain in the future, so if the city does or
19 plans to come in or future development we can say that with
20 some surety. We saw some things happen at the hatchery with
21 our manometer, there's also some things happening at different
22 well locations downstream of the fish hatchery that may or may
23 not have been correlated with pumping.

24 I don't think we have that full information, but
25 history of the discharge there is by and large about 21 or 22

1 cfs. If Mr. Bjerke's pumping was, in fact, pumping 21 cfs or
2 19 or 20 cfs, there's some information that yet has to be
3 gained about what's going on there. The alluvial
4 distribution, the actual discharge of those springs at
5 artesian head versus what's happening with pumped flow, there
6 are many questions there that I think are unanswered in terms
7 of the future development of water resources. I think what we
8 do have is, you know, the ground, gravity discharge, we have
9 that fairly well quantified.

10 MS. GUNDERSON: And that's at 10 cfs.

11 MR. KOTH: That's at roughly 22 cfs at that
12 regional discharge point.

13 MS. GUNDERSON: Oh, I see.

14 MR. KOTH: When it's just an artesian head.
15 There's probably a difference.

16 MR. ROLLAG: That's the sum of the flows from
17 both of the springs.

18 MR. KOTH: Correct. And in that report that is
19 in the record it identified clearly that it's very difficult
20 to differentiate between those two springs because they are
21 almost identical in chemical nature, a regional discharge
22 point. The two places they have found in the spring boxes are
23 two fairly high volume. Cleghorn Springs is another fairly
24 high volume discharge point.

25 That whole area, though, is a discharge point,

1 as is evidenced by some of the testimony that Mr. Bjerke made
2 about water infiltrating into the bottom of their pump house.
3 Where that comes from, no one is for sure. Maybe it is
4 alluvium water. Maybe it's groundwater coming into the pipe
5 from the spring boxes to the pump house. We have water coming
6 into our raceways that are not concrete lined. There's just
7 water coming up there generally all over with some large
8 points.

9 MS. GUNDERSON: I guess I want to ask members of
10 the board, we have city permit or permits. We have fish
11 hatchery permit or permits -- permit and application. We have
12 no present city permit other than the future use permit; is
13 that correct?

14 MR. BJERKE: That's correct.

15 MS. GUNDERSON: So if we recognize this permit
16 for the fish hatchery today, according to your testimony you
17 might be in for another permit, either to the extent of your
18 future use permit, or to as much water as is proven that you
19 have there under present day conditions. But if we were to
20 defer this you would still have a permit by the fish hatchery,
21 junior to one of your permits, but your permit being applied
22 for later than this permit would still be junior to them; is
23 that correct?

24 MR. FREEMAN: Right.

25 MS. GUNDERSON: Then I will make a motion that we

1 grant the permit for the fish hatchery today.

2 MR. FREEMAN: Subject to the qualifications?

3 MS. GUNDERSON: Subject to qualifications.

4 MR. FREEMAN: Is there a second?

5 MR. BRINK: I'll second.

6 MR. FREEMAN: We have a motion and a second; any
7 discussion?

8 All in favor say aye.

9 MS. GUNDERSON: Aye.

10 MR. BRINK: Aye.

11 MR. FREEMAN: Aye. Opposed?

12 MR. ROLLAG: Aye.

13 MS. LOUCKS: Aye.

14 MR. FREEMAN: It looks like the permit has been
15 granted, or the application has been granted. Thank you,
16 folks. We will prepare findings and conclusions.

17 (End of proceedings regarding this matter.)

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1 STATE OF SOUTH DAKOTA)

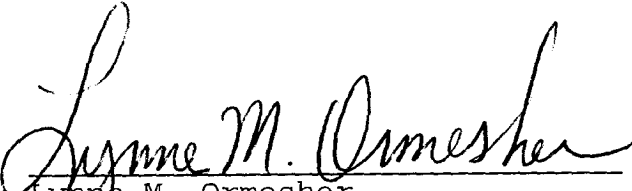
CERTIFICATE

2 COUNTY OF HUGHES)

3
4
5 I, Lynne M. Ormesher, Registered Professional Reporter
6 and Notary Public, South Dakota, duly commissioned to
7 administer oaths certify that I placed the witness under oath
8 before the witness testified; that the foregoing testimony of
9 said witness was taken by me in shorthand, and that the same
10 has been reduced to typewritten form under my supervision;
11 that the foregoing transcript is a true transcript of the
12 questions asked, of the testimony given, and of the
13 proceedings had.

14 I further certify that I am not related to, employed by,
15 or in any way associated with any of the parties to this
16 action, or their counsel, and have no interest in its event.

17 Witness my hand at Pierre, South Dakota this 1st day of
18 October, 2001.

19
20
21 
22 Lynne M. Ormesher
23 Registered Professional Reporter
24
25



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

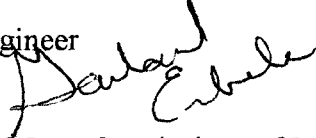
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 20, 2001

NOTICE

TO: Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

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

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

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

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application No. 2454-2 filed by SD Dept. of Game, Fish and Parks for the Cleghorn Springs State Fish Hatchery. The Board will consider the proposed Findings, Conclusions and Final Decision at 9:00 AM on September 5, 2001 in the Conference Room, Kelly Inn, 1607 E. Highwater 50, Yankton SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Parties of Record (names listed above) by August 16, 2001. 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 (mailing list enclosed) and all Parties of Record by August 27, 2001.

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 September 5, 2001. The public hearing was completed July 11, 2001. No additional testimony will be received on September 5, 2001.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Dennis Unkenholz, SD GF&P
Ron Koth, SD GF&P, 3305 West South Street, Rapid City SD 57701.

CERTIFICATION

I hereby certify that on July 20, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 20, 2001, regarding preparation of proposed findings of fact, conclusions of law and final decision on Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below:

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

Ron Koth
SD Dept. of Game Fish and Parks
3305 West South Street
Rapid City SD 57701

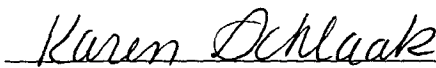
A copy of the above described Notice was sent Inter-office to:

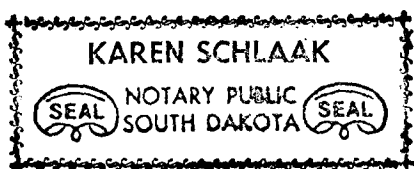
John Guhin, Deputy Attorney General, Capitol Building
Diane Best, Assistant Attorney General, Capitol Building
Dennis Unkenholz, SD Game, Fish and Parks, Joe Foss Building, Pierre SD
Douglas R. Hansen, SD Game, Fish and Parks, Joe Foss Building, Pierre SD


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 23rd day of July, 2001.


Karen Schlaak
Notary Public

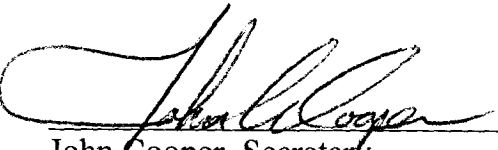


Memorandum of Understanding

between

City of Rapid City and the Department of Game, Fish and Parks

This Memorandum of Understanding (MOU) between the Department of Game, Fish and Parks (GFP) and the City of Rapid City (RC) recognizes the opportunity to jointly manage water from the Cleghorn/Jackson Spring complex. Both agencies are currently working on studies that will direct future operational development at the Jackson Spring pumping facility and the Cleghorn Hatchery. To that end the GFP and RC agree to work toward a long-term MOU that will guide water use at both facilities during times of extended drought.



John Cooper, Secretary
Department of Game, Fish and Parks
Date 6/29/01

Dan Bjerke, Director
Public Works Department
Rapid City, South Dakota
Date _____



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

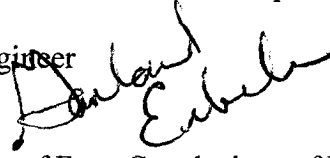
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 18, 2001

NOTICE

TO: Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

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

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

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

On September 5th, the Water Management Board deferred consideration of Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application No. 2454-2 filed by the SD Department of Game, Fish and Parks. The Board will now consider Findings, Conclusions and Final Decision at 8:45 AM on December 5, 2001 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

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 (mailing list enclosed) and all Parties of Record by November 15, 2001. The public hearing was completed July 11, 2001. No additional testimony will be received on December 5, 2001.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Gary Richter
Dennis Unkenholz, SD GF&P
Ron Koth, SD GF&P, 3305 West South Street, Rapid City SD 57701

CERTIFICATION

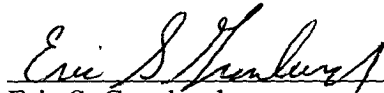
I hereby certify that on September 18, 2001, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 18, 2001, regarding consideration of findings of fact, conclusions of law and final decision on Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below:

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

Ron Koth
SD Dept. of Game Fish and Parks
3305 West South Street
Rapid City SD 57701

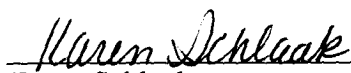
A copy of the above described Notice was sent Inter-office to:

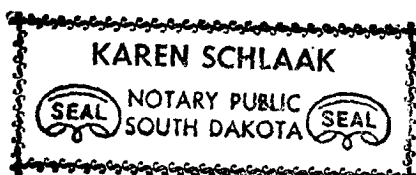
Douglas R. Hansen, SD Dept. of Game, Fish and Parks, Joe Foss Building, Pierre SD
John Guhin, Deputy Attorney General, Capitol Building
Diane Best, Assistant Attorney General, Capitol Building
Dennis Unkenholz, SD Game, Fish and Parks, Joe Foss Building, Pierre SD
Gary Richter, Joe Foss Building


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of September 2001.


Karen Schlaak
Notary Public



Filed
9-5-01

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION)	RESPONSE TO PROPOSED
FOR WATER PERMIT NO. 2454-2)	FINDINGS OF FACT.
SOUTH DAKOTA DEPARTMENT OF)	CONCLUSIONS OF LAW,
GAME, FISH AND PARKS)	AND FINAL DECISION

Comes now the City of Rapid City to make its response to the Proposed Finding of Fact, Conclusions of Law and Final Decision.

1. In the matter of the Game, Fish and Parks Water Permit No. 2454-2, Findings of Fact No. 15 states that since the flood of 1972 and after reconstruction of the Cleghorn Springs Hatchery, 10.0 cfs has been used on a consistent basis. This Fact is true only to the effect that in order to maintain a minimum flow of 10.0 cfs through the Cleghorn Fish Hatchery; the City of Rapid City's Jackson Springs Infiltration Gallery needed to cut its pumping rate.

During the drought of the late 1980's Cleghorn Springs was not able to produce the 10 cfs required by the Hatchery and Hatchery staff called the City of Rapid City Water Division and asked Rapid City to reduce its pumping rate in order to satisfy the Hatchery water needs. The United States Geological Survey publication entitled "Ground-Water and Surface-Water Interactions along Rapid Creek near Rapid City, South Dakota" that was entered into the record in this hearing clearly shows the interaction of flows from the City's Jackson Springs source to the volume of water flowing through the Cleghorn Fish Hatchery. On page 82, 1987 flow tests show that while Rapid City was pumping between 6 and 7 cfs, approximately 10.5 cfs was measured at the outfall from Cleghorn Springs. After the Rapid City pumps were shut down, the flow increased by approximately 2 cfs at the Hatchery outfall. This clearly shows that flows from the City's Jackson Springs source affects the flows through the Fish Hatchery. If the City had been pumping at their full water right from Jackson Springs of 10.46 cfs at the time, there would have been less than 10.0 cfs available to the Hatchery. If the City fully develops and uses the Jackson Springs source including its Future Use of 2.29 cfs for a total production of 12.75 cfs, under drought conditions there will not be 10.0 cfs available for the Hatchery.

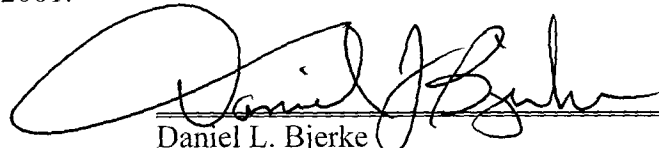
2. Findings of Fact No. 17 states the essence of the Rapid City theory is that the Board should not grant the Application for 3.82 cfs of water, because some unknown part of this 3.82 cfs of water might be from the Rapid Creek alluvium. The Board rejects this theory as speculation.

On page 33 of the above referenced USGS publication, the USGS scientists conclude that the outfall from Cleghorn Springs Fish Hatchery is affected by the rate of streamflow within Rapid Creek, although this effect is less pronounced than the effect from pumping of the Jackson Springs Gallery. Larger releases from Pactola Reservoir during summer irrigation months (May through September) generally correspond to increased outfall flows from the hatchery. Streamflow and volumes of water in the Rapid Creek alluvium are directly related and have been quantified as closely as the flow measuring allows.

The evidence shows that the water currently used by the Cleghorn Fish Hatchery is a combination of Cleghorn Springs water, Rapid Creek water transported through the alluvium and Jackson Springs water (previously referenced in the USGS publication). Under drought conditions and when Rapid City is fully using their existing water rights from Jackson Springs, there will be less than 10.0 cfs available for Cleghorn Fish Hatchery.

3. Findings of Fact failed to address the fact that the City of Rapid City applied for a Water Permit from Cleghorn Springs in 1956 in the amount of 1.54 cfs and was denied the permit. Now some 45 years later, the South Dakota Game, Fish and Parks Department is applying for a water right of 3.82 cfs which is more water than the City of Rapid City was denied by this same process.

Dated this 4th day of September, 2001.

A handwritten signature in black ink, appearing to read "Daniel L. Bjerke", is written over a horizontal line.

Daniel L. Bjerke
Public Works Director
City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701
Telephone: (605) 394-4165



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Office of the City Attorney

300 Sixth Street
Rapid City, South Dakota 57701-2724
Telephone: 605-394-4140
FAX: 605-394-6633

November 8, 2001

DENR
Attn.: Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Application for Water Permit No. 2454-2



Dear Mr. Erbele:

On behalf of the City of Rapid City, I am enclosing for filing the City of Rapid City's Objections to Findings of Fact, Conclusions of Law, and Final Decision. We are also asking that the City of Rapid City's Proposed Findings of Fact, Conclusions of Law and Final Decision be filed. We have served these documents on the other parties to this application and the members of the Water Management Board.

Thank you for your consideration of our concerns.

Very truly yours,

Tamara M. Pier
City Attorney

TMP/map

Enclosures

cc: Water Management Board Members
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General



EQUAL OPPORTUNITY EMPLOYER

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION	)	OBJECTIONS TO FINDINGS OF
FOR WATER PERMIT NO. 2454-2,	)	FACT, CONCLUSIONS OF LAW,
SOUTH DAKOTA DEPARTMENT OF	)	AND FINAL DECISION
GAME, FISH AND PARKS	)	

1. The City objects to proposed finding No. 1 because the South Dakota Department of Game, Fish and Parks has failed to show with reasonable probability that the increase diversion rate of 3.82 is in fact available from Cleghorn Springs.

2. The City of Rapid City objects to proposed finding No. 11 because: 1) the study of the Jackson Springs/Cleghorn Springs complex was conducted by the U.S. Geological Survey, the findings of which are found in "Ground-Water and Surface-Water Interactions along Rapid Creek, near Rapid City, South Dakota" published in 1999. This study on pp. 32 and 33 found that waters measured at the discharge from Cleghorn Fish Hatchery consisted of water contributed from Cleghorn Springs, Rapid Creek alluvium, and Jackson Springs.

3. The City of Rapid City objects to proposed Finding of Fact No. 14 because the Board should find that based on testimony and evidence presented and the above-referenced U.S. Geological Survey document, that the water flowing through Cleghorn Springs Fish Hatchery is water contributed from Rapid Creek alluvium, Jackson Springs, and Cleghorn Springs.

4. The City of Rapid City objects to Finding of Fact No. 15 because a portion of that 10 cfs is water from Jackson Springs that the City has senior priority to and that

during the drought of the 1980's, the 10 cfs would not have been available if the City used its full water right.

5. Rapid City objects to Finding of Fact No. 16 because the testimony of Game, Fish and Parks witness was based on speculation and not actual flow measurements and the Game, Fish and Parks is asking for more than the 9.02 cfs validated by the Seventh Circuit Court in 1877 from the Bennett claim. The Cleghorn Springs Water Company currently uses .89 cfs of that claim, and according to Water Permit No. 1823-2, the Bennett Ditch still has a vested right in .50 cfs of that claim with a priority date of June 30, 1905, and the Games, Fish and Parks uses 6.18 cfs of that claim. Even based on the rationale of the amount of water available under the Bennett claim, at most only 1.45 cfs is potentially available.

6. Rapid City objects to proposed Finding of Fact No. 17 because it improperly implies that the burden of proof for establishing that the source of the water flow is with the objector City of Rapid City rather than the applicant. Rapid City has demonstrated by sound evidence, rather than speculation, that a portion of the 3.82 cfs of water applied for by the Game, Fish and Parks is from Rapid Creek alluvium and Jackson Springs waters.

7. Rapid City objects to Findings of Fact No. 18 because the Game, Fish and Parks has not shown with reasonable probability that the flow rate is, in fact, from Cleghorn Springs to the Fish Hatchery, rather than a combination of flows from Rapid Creek alluvium, Jackson Springs, and Cleghorn Springs.

8. The City objects to Findings of Fact No. 19 because the above-referenced U.S. Geological Survey publication clearly establishes that there is contribution from

Rapid Creek alluvium and Jackson Springs that flows through Cleghorn Springs Fish Hatchery.

The City of Rapid City objects to the following Conclusions of Law:

1. The City of Rapid City objects to proposed Conclusion of Law No. 2 because the Game, Fish and Parks has not met their burden of proof that there is additional water available from Cleghorn Springs in the amount of 3.82 cfs for the non-consumptive use sought by their application for water permit No. 2454-2.

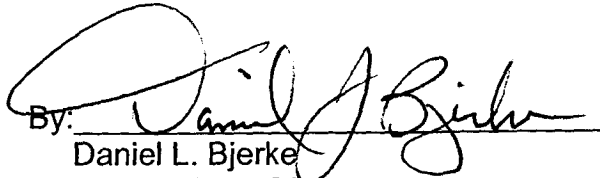
2. The City of Rapid City objects to proposed Conclusion of Law No. 3 because the proposed diversion would unlawfully impair the City of Rapid City's existing water rights.

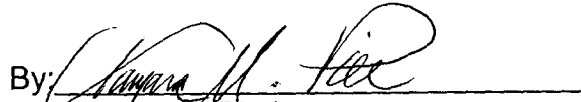
3. The City of Rapid City objects to proposed Conclusion of Law No. 5 because the proposed use is not in the public interest since it sets up a potential future conflict between the City of Rapid City and the Game, Fish and Parks on the existing water rights of each entity.

4. The City objects to the proposed Final Decision because the Water Permit No. 2454-2 should be granted in the reduced amount of only 1.45 cfs or the Game, Fish and Parks should be required to measure the actual flow rate from Cleghorn Springs to assure adequate flows before the permit is granted.

Dated this 8 day of November, 2001.

CITY OF RAPID CITY

By: 
Daniel L. Bjerke
Public Works Director

By: 
Tamara M. Pier
City Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Objections to Findings of Fact, Conclusions of Law, and Final Decision In the Matter of Application for Water Permit No. 2454-2, South Dakota Department of Game, Fish and Parks were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Rapid City, South Dakota, on this 8th day of November, 2001.

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

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

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

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

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

Leslie J. England
P.O. Box 61
Rapid City, SD 57709

Francis E. Brink
1214 South Wells St.
Aberdeen, SD 57401-7351

Ron Koth
SD Game, Fish and Parks
3305 West South Street
Rapid City, SD 57702

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

Department of Environment and
Natural Resources
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

CITY OF RAPID CITY

By: 

Tamara M. Pier
City Attorney
300 Sixth Street
Rapid City, SD 57701

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION	)	CITY OF RAPID CITY'S PROPOSED
FOR WATER PERMIT NO. 2454-2,	)	FINDINGS OF FACT, CONCLUSIONS
SOUTH DAKOTA DEPARTMENT OF	)	OF LAW AND FINAL DECISION
GAME, FISH AND PARKS	)	

1. This is an application by South Dakota Game, Fish and Parks to appropriate 3.82 cubic feet of water per second from Cleghorn Springs, located in the NW¼, SE¼, Section 8-T1N-R7E, in Pennington County. Game, Fish and Parks currently holds Vested Water Right No. 388-2, which authorizes the withdrawal of 6.18 cfs from Cleghorn Springs. This application proposes to increase that diversion rate from 6.18 cfs to 10.0 cfs.

2. The 3.82 cfs of water is requested for use in the Cleghorn Springs Fish Hatchery for fish culture. The water is obtained through large perforated culverts. Water flows by gravity through the culverts to the hatchery system. The water is degassed and oxygenated and is then pumped back to the upstream edge of the hatchery. It flows through the raceways and then runs out through a sediment basin into Rapid Creek.

3. Game, Fish and Parks describes its pumping system as antiquated.

4. In fact, uncontradicted evidence indicates that the Water Rights Program has informed Game, Fish and Parks that it will not enforce Vested Right No. 388-2 because of problems in its pumping system. Game, Fish and Parks, therefore, seeks to

update its pumping system to protect its present vested right. Game, Fish and Parks, however, also states that it seeks the security of a permit to protect its expanded right to use water before making that investment.

5. Rapid City testified about, and the Board recognizes, the forward looking actions of the City to assure that water is available for its expanding population. Thus the City has sought to modernize its system and to acquire irrigation rights to provide for the future.

6. Rapid City's interest in the water developed at the site in question is well defined. Rapid City acquires over forty percent of the water it uses in its municipal system from Jackson Springs at a location approximately four hundred feet from the Game, Fish and Parks' Cleghorn Springs operation. Rapid City has become concerned that its Jackson Springs site, which is utilized as a ground water site, might be influenced by water from the Rapid Creek alluvium. Rapid City is quite interested in confining the input from the Jackson Springs area to only ground water. This is because ground water is much less expensive and less problematic to use in the municipal water system.

7. To address this potential problem, Rapid City has devoted a substantial amount of money and time in investigating the source of flow at Jackson Springs and in attempting to assure that the water the City uses at the Jackson Springs location is only from underground sources. In particular, Rapid City has invested approximately \$200,000 in a project by which the Jackson Springs site was dewatered. As a result of this investigation, Rapid City discovered that its Jackson Springs site actually consisted

of not one spring, as it had believed, but two. The two springs together produce approximately 19 to 20 cfs as part of this project. Rapid City, in addition, is replacing its collection system at this site.

8. The relative priorities of the parties, at present, are as follows:

a. Game, Fish and Parks has an 1877 priority for 6.18 cfs during the irrigation season at Cleghorn Springs.

b. Game, Fish and Parks has a priority of 1928 for 6.18 cfs during the non-irrigation season at Cleghorn Springs.

c. Rapid City has a 1944 priority for 2.71 cfs throughout the year at Jackson Springs.

d. Rapid City has a 1956 priority for 2.71 cfs throughout the year at Jackson Springs.

e. Rapid City has a Future Use for Jackson Springs for an additional 995 acre-feet. If converted at a 60% pumping rate, this amounts to approximately 2.29 cfs.

9. Rapid City advised the Board that, because the flow of Jackson Springs now has been measured by the City of Rapid City at 19 to 20 cfs, and because the City of Rapid City has expanding water needs, it may desire to file additional applications to appropriate more of this water.

10. Rapid City does not, however, desire to file such applications until it has established, to its own confidence and the confidence of the state regulators, that its

ground water supply is not being influenced by surface water supply. This will encompass at least another year of study. Rapid City thus requests a continuance in the present proceeding of one year.

11. Rapid City asserts that the Cleghorn Springs Fish Hatchery has been able to consistently use 10 cfs of water from the Cleghorn Springs only as a result of accommodations by the City of Rapid City, not because these flows were available from Cleghorn Springs.

12. Rapid City maintains that on several occasions during the drought of the 1980's the Cleghorn Springs Fish Hatchery requested that the City of Rapid City cut its pumping rate in order to accommodate the Hatchery's need for water and to the detriment of the City's needs. This is substantiated in the U.S. Geological Survey publication entitled, "Ground-Water and Surface-Water Interactions Along Rapid Creek Near Rapid City, South Dakota."

13. This above-referenced U.S. Geological Survey publication on page 33 also evidences the fact that U.S. Geological Survey scientists concluded that the outfall from Cleghorn Springs Fish Hatchery is affected by the rate of streamflow within Rapid Creek, although this effect is less pronounced than the effect from pumping of the Jackson Springs Gallery. Larger releases from Pactola Reservoir during summer irrigation months (May through September) generally correspond to increased outfall flows from the hatchery. Streamflow and volumes of water in the Rapid Creek alluvium are directly related and have been quantified as closely as the flow measuring allows.

14. Rapid City's evidence shows that the water currently used by the Cleghorn Fish Hatchery is a combination of Cleghorn Springs water, Rapid Creek water

transported through the alluvium, and Jackson Springs water (previously referenced in the U.S. Geological Survey publication). Under drought conditions and when Rapid City is fully using their existing water rights from Jackson Springs, there will be less than 10.0 cfs available from Cleghorn Springs for Cleghorn Fish Hatchery.

15. Rapid City argues that there is evidence that a portion of the water being used by Game, Fish and Parks comes from the alluvium, and not from Cleghorn Springs, because the bank storage in the alluvium was depleted all along Rapid Creek during the water shortage of the 1980's. Rapid City points to the fact that its galleries at Meadowbrook and at the Girl Scout collection points experienced reduction in bank storage because of the low flow in Rapid City during those periods.

16. Rapid City also argues that it is possible that some of the water being utilized by Game, Fish and Parks is actually from the Jackson Springs source developed by Rapid City and that this water had escaped because of the nature of the present Rapid City system and that Rapid City was not using its full water right from Jackson Springs.

17. The Bennett claim, as validated by the South Dakota Seventh Circuit Court in 1887, provides evidence that 10 cfs of water is not available for use as applied for by the Game, Fish and Parks. The relative priorities for that 1887 claim of 9.02 cfs are as follows:

- a. Cleghorn Springs Water Company has an 1877 priority for .89 cfs;
- b. Bennett Ditch has a 1905 priority for .5 cfs;
- c. Game, Fish and Parks has an 1877 priority for 6.18 cfs during the irrigation season.

As a result, the only water available under the 1887 Bennett claim is for 1.45 cfs, 2.37 cfs less than the 3.82 cfs for which the Game, Fish and Parks has made application.

18. The City of Rapid City applied for a water permit from Cleghorn Springs in 1956 in the amount of 1.54 cfs and was denied the permit based on the availability of water from Cleghorn Springs. Now some 45 years later, the South Dakota Game, Fish and Parks Department is applying for a water right of 3.82 cfs which is 2.28 cfs more water than the City of Rapid City was denied by this same process.

19. Rapid City contends that the Applicant has not shown a reasonable probability that there is water available from its proposed source--Cleghorn Springs.

CONCLUSIONS OF LAW

1. This Board has jurisdiction of this matter.
2. That Game, Fish and Parks has failed to prove with reasonable probability that there is water available from Cleghorn Springs for the non-consumptive appropriation of 3.82 cfs.
3. That the proposed diversion would unlawfully impair the City of Rapid City's existing rights.
4. That the proposed use for fish culture purposes is a beneficial use.
5. The proposed use, although beneficial, is not in the public interest because it could impair the City of Rapid City's beneficial use of its existing water rights and would likely result in a conflict in the future between the two public entities.

FINAL DECISION

The Application for Water Permit No. 2454-2 is granted but only in the amount of 1.45 cfs. In the alternative, the hearing on Water Permit No. 2454-2 is continued until

such date provided by the Game, Fish and Parks when it can provide a study substantiating the flow rate of Cleghorn Springs.

BY THE BOARD:

Chairman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of City of Rapid City's Proposed Findings of Fact, Conclusions of Law, and Final Decision In the Matter of Application for Water Permit No. 2454-2, South Dakota Department of Game, Fish and Parks were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Rapid City, South Dakota, on this 8th day of November, 2001.

Marian Gunderson
811 West Third St.
Yankton, SD 57078-3702

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

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

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

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

Leslie J. England
P.O. Box 61
Rapid City, SD 57709

Francis E. Brink
1214 South Wells St.
Aberdeen, SD 57401-7351

Ron Koth
SD Game, Fish and Parks
3305 West South Street
Rapid City, SD 57702

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

Department of Environment and
Natural Resources
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

CITY OF RAPID CITY

By: 

Tamara M. Pier
City Attorney
300 Sixth Street
Rapid City, SD 57701

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD



IN THE MATTER OF APPLICATION	)	PROTESTANT'S PROPOSED
FOR WATER PERMIT NO. 2454-2,	)	FINDING OF FACTS,
SOUTH DAKOTA DEPARTMENT OF	)	CONCLUSIONS OF LAW
GAME, FISH AND PARKS	)	AND FINAL DECISION

1. Game, Fish and Parks (GFP) currently holds Vested Water Right No. 388-2, which authorizes the withdrawal of 6.18 cfs from Cleghorn Springs. This application proposes to increase that diversion rate to 10.0 cfs.

2. GFP enforced a fine exceeding \$200,000 against Rapid City after the Westberry fire from Canyon Lake drainage.

3. Applicant has not shown a reasonable probability that there is water available from its proposed source - Cleghorn Springs.

CONCLUSIONS OF LAW

1. Pursuant to SDCL 46-5-1, no landowner may prevent the natural flow of a stream, or of a natural spring from where it starts its definite course, or of a natural spring arising on his land which flows into and constitutes a part of the water supply of a natural stream, nor pursue nor pollute any of these.

2. Cleghorn Springs State Fish Hatchery is polluting Rapid Creek, a primary drinking water source for Rapid City, and Canyon Lake. This matter must be resolved by the Water Management Board prior to issuing the requested permit.

FINAL DECISION

The Application for Water Permit No. 2454-2 is continued until such date provided by Game, Fish and Parks when it can provide evidence of non-pollution.

BY THE BOARD:

Chairman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Protestant's Proposed Findings of Fact, Conclusions of Law, and Final Decision in the Matter of Application for Water Permit No. 2454-2, South Dakota Department of Game, Fish and Parks, were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail at Rapid City, South Dakota, on this 15th day of November, 2001.

Marian Gunderson
811 West Third Street
Yankton, SD 57078-3702

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

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 Lane South
Brookings, SDS 57006-2741

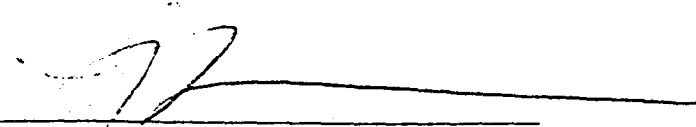
Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

Tamara M. Pier
City Attorney
City of Rapid City
300 Sixth Street
Rapid City, SD 57701

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

DENR
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181



LESLIE J. ENGLAND, Protestant
P.O. Box 61
Rapid City, SD 57709
(605) 343-0560

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF APPLICATION)	RESPONSE TO PROPOSED
FOR WATER PERMIT NO. 2454-2,)	FINDINGS OF FACT,
SOUTH DAKOTA DEPARTMENT OF)	CONCLUSIONS OF LAW,
GAME, FISH AND PARKS)	AND FINAL DECISION



COMES NOW the Department of Environment and Natural Resources, Water Rights Program, and makes its Response to the Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter:

1. Finding of Fact 4 addresses the potential for future problems regarding the Game, Fish and Parks pumping system. The DENR submits that the language should be changed to indicate that the DENR ". . . will not ~~enforce~~ protect Vested Right No. 388-2 from impairment because of problems . . ." This change is designed to more specifically describe the position taken by the Water Rights Program with respect to the pumping system at Cleghorn Springs.

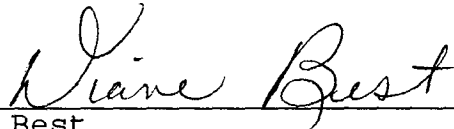
2. Finding of Fact 7 addresses the investigation conducted by city of Rapid City at its Jackson Springs site. According to the evidence there may be more than two springs at this site, but at least two have been identified. Accordingly, the DENR proposes that the third and fourth sentences read "As a result of this investigation, Rapid City discovered that its Jackson Springs site actually consisted of not one spring, as it had believed, but at least two. The two identified springs together produce approximately 19 to 20 cfs as part of this project."

3. Finding of Fact 8 addresses the respective priority dates of the GFP and city of Rapid City. The DENR submits that

item 8e. should reflect that "Rapid City has a Future Use permit bearing a 1956 priority date for Jackson Springs . . ." This change includes a priority date to make it more consistent with the remainder of the paragraph.

4. Paragraph 19 contains a typographical error at the top of page 7. The first word should be changed from "even" to "event."

Dated this 22nd day of August, 2001.



Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Response to Findings of Fact, Conclusions of Law, and Final Decision in the matter of The Application for Water Permit No. 2454-2, South Dakota Department of Game, Fish and Parks, was served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 32nd day of August, 2001:

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

Bernita Loucks
210 42nd Street
Rapid City, SD 57702-2123

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

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

Marian Gunderson
811 W. 3rd
Yankton, SD 57078-3702

Leslie J. England
P.O. Box 61
Rapid City, SD 57709

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

Ron Koth
SD Dept of Game, Fish & Parks
3305 West South Street
Rapid City, SD 57701

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

By interoffice mail upon:

Garland Erbele, Chief Engineer
Department of Environment and
Natural Resources
Water Rights Program
Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181

Douglas R. Hansen
SD Dept of Game, Fish
and Parks
523 East Capitol Avenue
Pierre, SD 57501

Dennis Unkenholz
SD Dept of Game, Fish and Parks
523 East Capitol Avenue
Pierre, SD 57501

By hand-delivery upon:

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



Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

pld.db (In the Matter of App. for Water Permit No. 2454-2) (jmm)



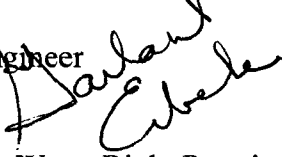
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 28, 2002

NOTICE

TO: Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501
and Parties of Record (see attached list)

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Right Permit Application No. 2454-2, SD Dept. of Game,
Fish and Park (Cleghorn State Fish Hatchery)

On December 5, 2001, the Water Management Board moved to reopen the hearing on Water Permit Application No. 2454-2 and asked that the hearing be scheduled for their March meeting.

Water Permit Application No. 2454-2 proposes to appropriate an additional 3.82 cubic feet of water per second (cfs) to the amount authorized by Water Right No. 388-2. Water Right No. 388-2 authorizes 6.18 cfs from Cleghorn Springs located in the NW ¼ SE ¼ Section 8-T1N-R7E.

The Water Management Board will consider Application No. 2454-2 at 2:00 PM (Central Time) on Wednesday, March 13, 2002, in the Visitor Center (west side of Capitol Lake), 650 E. Capitol Avenue, Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items. The hearing may continue on Thursday morning if necessary to consider all the testimony. Parties should plan accordingly.

Applicable provisions of the Notice published April 4 and 11, 2001, in the Rapid City Journal and the original hearing conducted July 11, 2001 will still apply at the March 13th hearing before the Water Management Board. This hearing is an adversary proceeding. Any party of record has the right to be present and 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.

Please contact Diane Best, Assistant Attorney General at (605) 773-3215 or Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General, 500 E. Capitol Ave., 57501-5070
Dennis Unkenholz, SD GF&P, 523 E. Capitol Ave., Pierre SD 57501-3182
Ron Koth, SD GF&P, 3305 West South Street, Rapid City SD 57702-8160

CERTIFICATION

I hereby certify that on January 28, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated January 28, 2002, regarding scheduling of hearing for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below and on the attached parties of record list:

Ron Koth
SD Dept. of Game Fish and Parks
3305 West South Street
Rapid City SD 57701

A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building

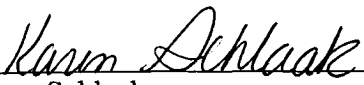
A copy of the above described Notice was hand delivered to:

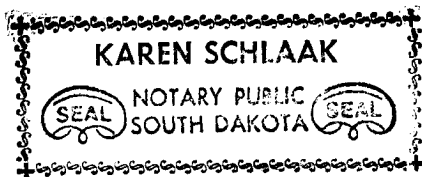
Douglas R. Hansen, SD Dept. of Game, Fish and Parks, Joe Foss Building, Pierre SD
Dennis Unkenholz, SD Game, Fish and Parks, Joe Foss Building, Pierre SD
Gary Richter, SD Dept. of Game, Fish and Parks, Joe Foss Building, Pierre SD


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of January, 2002.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



PARTIES OF RECORD

WATER PERMIT APPLICATION No. 2454-2, SD Dept. of Game, Fish and Parks

Applicant

Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Represented by:
Gary Richter
SD Game, Fish and Parks
523 E. Capitol Avenue
Pierre, SD 57501

Petitioners

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

Represented by:

City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701-2724

Tamara Pier
DeMersseman Jensen Law Firm
PO Box 1820
Rapid City SD 57709

Leslie England
P.O. Box 61
Rapid City SD 57709

CERTIFICATION

I hereby certify that on February 1, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated January 28, 2002, regarding scheduling of hearing for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below.

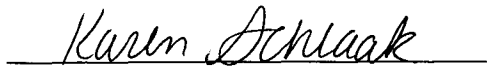
Leslie England
807 Sycamore St.
Rapid City, SD 57701-7503



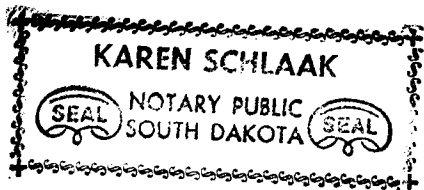
Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of February, 2002.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



RECEIVED

FEB 20 2002

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	NOTICE OF ABEYANCE OF
APPLICATION FOR WATER PERMIT	)	HEARING ON APPLICATION
NO. 2454-2 SOUTH DAKOTA	)	NO.2454-2
DEPARTMENT OF GAME, FISH,	)	
AND PARKS	)	

Applicant in the above entitled water permit Application, the South Dakota Department of Game, Fish and Parks, gives notice of its decision and request that the evidentiary Hearing on the above Application for Water Permit No. 2454-2 set for Wednesday, March 13, 2002, in the Visitor Center, 650 East Capitol Avenue, Pierre, South Dakota be held in abeyance, postponed, and be cancelled by the chief engineer. The Hearing thereon shall be postponed and cancelled until such time as the "Application For Permit To Appropriate Water Within The State Of South Dakota", a copy of which is attached hereto and made a part hereof by reference, requesting a Vested Right of 3.82 CFS of water with a priority date of July, 1928 is considered, heard, and a final determination has been made thereon.

The pending Application for a "new" Water Permit No. 2454-2 dated February 13, 2001 was originally filed on February 13, 2001 wherein the Applicant claimed 3.82 CFS of water from Cleghorn Springs from a point designated in the referenced Application on file herein to be used year round for fish culture/a non-consumptive use at its fish hatchery having a priority date of February 13, 2001.

Following filing of the Application the first of several Hearings was conducted in Pierre, South Dakota in July, 2001 at which time following the evidentiary hearing a decision was made by the Water Management Board to grant the Application and its attorney was directed to draft and propose Findings of Fact, Conclusions of Law, and Decision.

Hearing on the proposed Findings of Fact, Conclusions of Law, and Decision was to be conducted in September, 2001 in Yankton, South Dakota. At the Hearing in September, 2001 over the objection of the Applicant the Water Management Board considered Rapid City's Objections to the Board's proposed Findings of Fact, Conclusions of Law, and Decision. At the conclusion of the September Hearing the Water Management Board granted additional time for the parties to file further Objections to

the Board's proposed Findings of Fact, Conclusions of Law, and Decision.

Hearing was conducted in December, 2001 on adoption of Findings of Fact, Conclusions of Law, and Decision. Findings of Fact, Conclusions of Law, and Decision were not adopted by the Water Management Board but at such time the said Board entered an Order directing evidentiary hearings on the Application. Pursuant to NOTICE of the chief engineer, the evidentiary hearing has been scheduled for March 13, 2002.

In the January 28, 2002 NOTICE of Hearing from the chief engineer of the Water Rights Program the parties were advised that "Applicable provisions of the Notice published April 4 and 11, 2001, in the Rapid City Journal and the original hearing conducted July 11, 2001 will still apply at the March 13th hearing before the Water Management Board."

Based on the information and direction provided to the parties at the December, 2001 Hearing before the Water Management Board, a new Hearing was to be conducted at which time new testimony may be presented in support of and in opposition to the Application No. 2454-2 as well as presenting testimony previously furnished the Board at its prior evidentiary Hearing. In essence the evidentiary Hearing to be conducted on March 13, 2002 will be treated as an original Hearing.

This written notice to the chief engineer is being filed at least ten (10) days prior to the date set for Hearing and is timely.

The notice of abeyance and postponement is without prejudice to any party appearing herein and any delay will accommodate parties hereto who have indicated that further studies were being conducted.

The notice of abeyance and postponement is being made for the further reason that the Application No. 2454-2 is requesting a new water right of 3.82 CFS with a priority date of February 13, 2001 whereas the attached Application is for a vested water right of 3.82 CFS with a priority date of July, 1928 - same water, same source, same use, just a different priority date as it is a vested water right application.

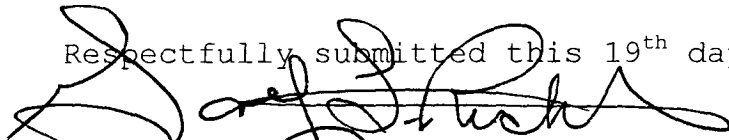
It is more appropriate to conduct the required Hearings on the attached vested water right Application for the same water (3.82 CFS from the same source) than is pending in the Application No.

2454-2. In the event that the attached vested water right Application is granted then such decision would make Application No. 2454-2 moot and that Hearing thereon would not be necessary. In addition the time permitted by this notice will permit the Applicant and the City of Rapid City, who has filed and has appeared in opposition to the Application, time to attempt to come to some type of acceptable management agreement on the public waters in contention to the mutual benefit of all parties concerned, in particular the public.

The written notice of abeyance and postponement of Hearing on Application No. 2454-2 is not a withdrawal of or cancellation of the Application.

Based thereon the chief engineer is requested to provide notice to all interested parties of the cancellation of the Hearing on Application No. 2454-2 and reschedule the Hearing before the Water Management Board as specified herein.

Respectfully submitted this 19th day of February, 2002.

A handwritten signature in black ink, appearing to read "Gary L. Richter", is written over a horizontal line.

Gary L. Richter
Attorney for the Applicant
Department of Game, Fish and Parks
523 East Capitol
Pierre, South Dakota 57501
(605) 773-3718

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only) No. _____ Hydrologic Unit _____
	Basin _____
	Newspaper _____

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

Check use(s) of water:

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

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

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

1. Name of Applicant **South Dakota Department of Game, Fish & Parks** Phone **(605) 773-3381**
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address **523 East Capitol Avenue; Pierre** State **South Dakota**
(Street, RR, or Box and City) (Zip Code)

2. Amount of water claimed **3.82** *CFS or ****GPM** ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable

3. Source of water supply **Groundwater arising at the Madison aquifer discharge area commonly known as Cleghorn Springs.**

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) **Cleghorn Springs- N 6° 46' East**
780 feet from the SW corner of the NW1/4SE1/4, Section 8, Township 1N, Range 7E
County **Pennington**

5. County or counties where water will be used **Pennington**

6. Annual period during which water is to be used **Year-round / continuous**

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

Fish culture/ non-consumptive use.

STATE OF SOUTH DAKOTA) SS

County of Hughes

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

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

Applicant's signature

Douglas R. Hansen

Subscribed and sworn to before me this

19th day of

February

2002

[Signature]
Notary Public signature

Affidavit of Water Use

Form 2B

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit is needed to document historical water use, primarily with vested right claims.

Affidavit Of Construction Of Water Use System And Application Of Water To Beneficial Use

Name of Applicant (Same as Form 2) South Dakota Department of Game, Fish & Parks

Mailing Address 523 East Capitol Avenue; Pierre, South Dakota 57501

(Street, RR or Box)

(City)

(State)

(Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

Date of Recording _____ Recording Date _____

B. Date of start of construction of water supply system 1927

C. Date that water was first applied to beneficial use July 1928

D. Name of owner of original water supply system State of South Dakota, SD GFP

E. Amount of water originally applied to beneficial use 10 cfs (3.82 cfs this application)

F. Present use of water - amount of water now being used 10 cfs (3.82 cfs this application)

Date that this water was first used July 1928

G. Chronological History of Water Use

The Cleghorn Springs State Fish Hatchery was completed in 1928 and, as a riparian user of groundwater, has had a continuous use of 10 cfs or more of water except for the 1972-flood event, at which time the hatchery was temporarily shut down. The amount of water now licensed is 6.18 cfs. This amount was licensed as a result of difficulties in measurement of discharge of water from the springs, surrounding discharge area and other unknown factors.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota

SS

County of Hughes)

I, Douglas R. Hansen
(print or type)

the applicant, certify that I have read the foregoing and that the matters therein are true.

Signed

Douglas R. Hansen

Subscribed and sworn to before me

February 19, 2002
[Signature]
Notary Public

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein are true.

Heidi Unkenhoh 2-19, 20 02
(Sign Name)

Cleghorn Springs Fish Hatchery

Rapid City, South Dakota

Gulch

Point of Diversion

Cleghorn Sch. Springs

Canyon Lake

Park

Meadowbrook Golf Course

Sicux Sanitorium

Rapid



Jeffrey D. Coates



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 26, 2002

NOTICE

TO: Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501
and Parties of Record (see attached list)

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Continuance of the March 13, 2002 Hearing on Water Right Permit Application No. 2454-2,
SD Dept. of Game, Fish and Parks (Cleghorn State Fish Hatchery)

The South Dakota Department of Game, Fish and Parks has filed a request that the March 13, 2002, hearing on Application No. 2454-2 be held in abeyance, postponed and cancelled by the Chief Engineer. Based on this request, the Chief Engineer grants a continuance of the hearing on Application No. 2454-2. The Water Management Board will not consider Application No. 2454-2 on March 13, 2002.

Future notice will be provided to all parties of record when this application is rescheduled before the Water Management Board.

Please contact Diane Best, Assistant Attorney General at (605) 773-3215 or Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General, 500 E. Capitol Ave., 57501-5070
Dennis Unkenholz, SD GF&P, 523 E. Capitol Ave., Pierre SD 57501-3182
Ron Koth, SD GF&P, 3305 West South Street, Rapid City SD 57702-8160

PARTIES OF RECORD

WATER PERMIT APPLICATION No. 2454-2, SD Dept. of Game, Fish and Parks

Applicant

Douglas R. Hansen
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Represented by:
Gary Richter
SD Game, Fish and Parks
Sioux Falls Regional Office
4500 S Oxbow Avenue
Sioux Falls SD 57106

Petitioners

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

Represented by:
City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701-2724

Tamara Pier
DeMersseman Jensen Law Firm
PO Box 1820
Rapid City SD 57709

Leslie England
P.O. Box 61
Rapid City SD 57709

CERTIFICATION

I hereby certify that on February 27, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 27, 2002, regarding continuance of the hearing for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below and on the attached parties of record list:

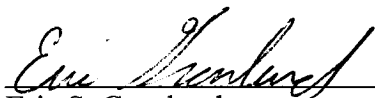
Ron Koth
SD Dept. of Game Fish and Parks
3305 West South Street
Rapid City SD 57702-8160

A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building

A copy of the above described Notice was hand delivered to:

Douglas R. Hansen, SD Dept. of Game, Fish and Parks, Joe Foss Building, Pierre SD
Dennis Unkenholz, SD Game, Fish and Parks, Joe Foss Building, Pierre SD
Gary Richter, Joe Foss Building (delivered to Jeanette Gourneau, GF&P senior secretary and mailed to Sioux Falls address)



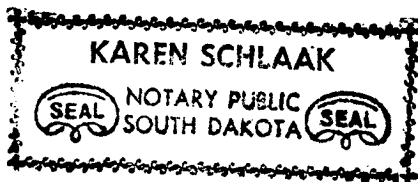
Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of February, 2002.



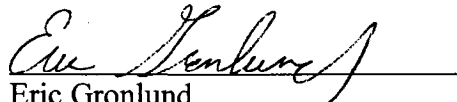
Karen Schlaak
Notary Public
My Commission expires April 1, 2007



CERTIFICATION

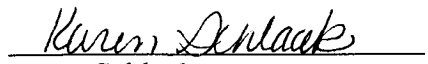
I hereby certify that on March 4, 2002 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 26, 2002 regarding Continuance of March 13, 2002 Hearing on Water Right Permit #2454-2 addressed as stated below:

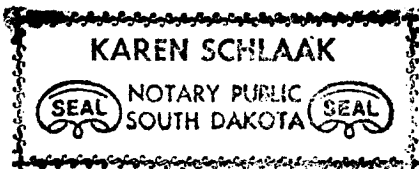
Leslie England
807 Sycamore St.
Rapid City, SD 57701-7503


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of March, 2002.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 17, 2003

NOTICE

TO: Dennis Unkenholz
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501
and Parties of Record (see attached list)

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Scheduling of Hearing on Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks.

Water Permit Application No. 2454-2 filed by the SD Department of Game, Fish and Parks proposes to appropriate an additional 3.82 cubic feet of water per second (cfs) from Cleghorn Springs for use at Cleghorn Springs State Fish Hatchery. Water Right No. 388-2 currently authorizes 6.18 cfs from Cleghorn Springs located in the NW ¼ SE ¼ Section 8-T1N-R7E. Parties to the proceeding before the Board are the SDGFP, the city of Rapid City and Leslie England.

A hearing on Application No. 2454-2 was held before the Water Management Board on July 11, 2001. The Board later motioned to reopen the hearing on the application. The application has remained on pending status. SD Department of Game, Fish and Parks has requested that Application No. 2454-2 be scheduled for hearing before the Board.

The Water Management Board will consider Application No. 2454-2 on July 10, 2003, at 9:00 AM, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD.

Applicable provisions of the Notice published April 4 and 11, 2001, in the Rapid City Journal and the original hearing conducted July 11, 2001 will still apply at this hearing before the Water Management Board. This hearing may be an adversarial proceeding. Any party of record has the right to be present and 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.

c: Diane Best, Assistant Attorney General, 500 E. Capitol Ave., 57501-5070
Leslie Petersen, Dept. of Game Fish and Parks, 523 E. Capitol Ave., Pierre SD 57501

PARTIES OF RECORD

WATER PERMIT APPLICATION No. 2454-2, SD Dept. of Game, Fish and Parks

Applicant

Dennis Unkenholz
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Represented by:
Gary Richter
SD Game, Fish and Parks
Sioux Falls Regional Office
4500 S Oxbow Avenue
Sioux Falls SD 57106

Petitioners

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

Represented by:
City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701-2724

Tamara Pier
DeMersseman Jensen Law Firm
PO Box 1820
Rapid City SD 57709

Leslie England
P.O. Box 61
Rapid City SD 57709

CERTIFICATION

I hereby certify that on June 17, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 17, 2003, regarding scheduling of the hearing for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below and on the attached parties of record list:

A copy hand delivered to:

Dennis Unkenholz, SD Dept. of Game, Fish and Parks, 523 E. Capitol Avenue, Pierre SD 57501
Leslie Petersen, SD Dept. of Game Fish and Parks, 523 E. Capitol Ave., Pierre SD 57501

A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building



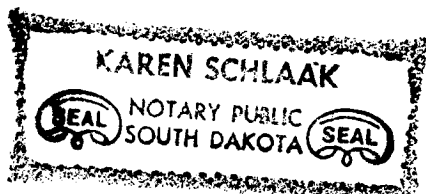
Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of June, 2003.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



CERTIFICATION

I hereby certify that on June 27, 2003 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 17, 2003 regarding Scheduling of Hearing on Water Right Permit Application No. 2454-2 addressed as stated below:

Leslie England
807 Sycamore St
Rapid City SD 57701-7503



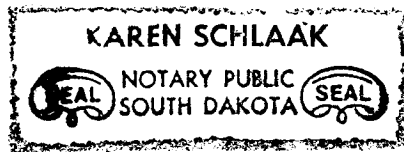
Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of June, 2003.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





DEPARTMENT OF GAME, FISH AND PARKS

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

June 16, 2003

Garland Erbele, Chief Engineer
Water Rights Program, Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: Water Rights Hearing on Application No. 2454-2
Cleghorn Springs Fish Hatchery, Rapid City, South Dakota

Dear Mr. Erbele:

The South Dakota Department of Game, Fish and Parks respectfully requests that the hearing on Water Right Application Number 2454-2 be scheduled for the July 2003 Water Management Board Meeting. At this time, we would also like to withdraw our vested water right application that is currently being held by your department.

Thank you for your reconsideration. If you have any questions, please contact me at (605) 773-6208.

Sincerely,

Leslie Petersen
Aquatic Resource Coordinator

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 2454-2, Dept. of GF&P

ADDRESS: COUNTY: Pennington

DATE: July 1, 2003 TELEPHONE:

RE: Phone call from Dennis Unkenholz

COMMENTS:

Mr. Unkenholz called regarding GF&P's pending application for Cleghorn State Fish Hatchery. He said he has been unable to reach Dan Bjerke with Rapid City to discuss the mutual agreement and has not received Rapid City's comments to the first draft of the agreement. Therefore, he does not believe that it is realistic that the agreement will be in place prior to the scheduled July 10th hearing. He asked that the application be put on hold until the October meeting. I said I would send the proper notice to parties of record.

NAME: Eric Handlund



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 2, 2003

NOTICE

TO: Dennis Unkenholz
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501
and Parties of Record (see attached list)

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Postponing of Hearing on Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks.

The hearing on Application No. 2454-2 for the Cleghorn State Fish Hatchery was scheduled for July 10, 2003, at 9:00 AM, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD. The Department of Game, Fish and Parks has requested the application be put on hold until the Board's October meeting. Based on their request, the hearing on this application is postponed and it will not be considered by the Water Management Board on July 10, 2003.

Future notice of the time, date and place of the October 1st or 2nd hearing on the application will be provided to all parties.

c: Diane Best, Assistant Attorney General, 500 E. Capitol Ave., 57501-5070
Leslie Petersen, Dept. of Game Fish and Parks, 523 E. Capitol Ave., Pierre SD 57501

PARTIES OF RECORD

WATER PERMIT APPLICATION No. 2454-2, SD Dept. of Game, Fish and Parks

Applicant

Dennis Unkenholz
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Represented by:
Gary Richter
SD Game, Fish and Parks
Sioux Falls Regional Office
4500 S Oxbow Avenue
Sioux Falls SD 57106

Petitioners

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

Represented by:
City Attorney
City of Rapid City
300 Sixth Street
Rapid City SD 57701-2724

Tamara Pier
DeMersseman Jensen Law Firm
PO Box 1820
Rapid City SD 57709

Leslie England
807 Sycamore Street
Rapid City SD 57701-7503

CERTIFICATION

I hereby certify that on July 2, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 2, 2003, regarding postponing of the hearing for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below and on the attached parties of record list:

A copy hand delivered to:

Dennis Unkenholz, SD Dept. of Game, Fish and Parks, 523 E. Capitol Avenue, Pierre SD 57501
Leslie Petersen, SD Dept. of Game Fish and Parks, 523 E. Capitol Ave., Pierre SD 57501

A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building

Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this _____ day of July, 2003.

Karen Schlaak
Notary Public
My Commission expires April 1, 2007



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Public Works Department

300 Sixth Street

Telephone: (605) 394-4165

FAX: (605) 355-3083

Web: www.rcgov.org

RECEIVED

MAY 27 2009

WATER RIGHTS
PROGRAM

May 20, 2009

Water Management Board
PMB 2020
Water Rights
Joe Foss Building
Pierre, SD 57501

Dear Chairman Hoyt:

In December 2001, the Water Management Board re-opened South Dakota Department of Game Fish and Parks Water Permit Application No. 2454-2 at the request of the City of Rapid City in order to consider additional information. Since that time SDGF&P and the City have entered into a Joint Powers Agreement to address how potential water management issues at the Cleghorn/Jackson Springs complex would be handled.

With the signing of the JPA, the City of Rapid City withdraws all objections and now supports the Water Management Board issuance of Water Permit No. 2454-2 bearing a priority date of February 13, 2001 for 3.82 cubic feet per second of water from Cleghorn Springs.

Sincerely,

Robert Ellis, P.E.
Public Works Director
City of Rapid City
300 6th Street
Rapid City, SD 57701
(605) 394-4154

cc: Mr. Mark Rath
Mr. John Lott



EQUAL OPPORTUNITY EMPLOYER

April 22, 2009

PW033109-08

JOINT POWERS AGREEMENT

This JOINT POWERS AGREEMENT (AGREEMENT) is entered into by and between the State of South Dakota, acting through its Department of Game, Fish and Parks (STATE); and the City of Rapid City, South Dakota, a municipal corporation (CITY), acting by and through its duly elected Mayor and Acting Public Works Director.

RECITALS:

WHEREAS, STATE and CITY acknowledge that each has the separate statutory authority to enter into and undertake certain activities described herein and the provisions of SDCL 1-24 permit such activities to be jointly undertaken; and

WHEREAS, the South Dakota Department of Game, Fish and Parks (GFP) and the City of Rapid City, South Dakota, (City) share a joint interest in the long-term permitted use of the regional discharge of the Madison aquifer located at Jackson/Cleghorn Springs, and further, both parties have historically permitted uses of this water beginning as early as 1877 which are more fully described as follows: the City has water rights #504-2 (Jan. 1, 1877) for .89 cfs and #432-2 (Jan. 1, 1944) for 7.75 cfs and #2270-2 (August 22, 1956) for 2.71 cfs and future use permit #439-2 for 995 AF annually (September 22, 1956) lawfully issued by the State of South Dakota; and GFP has water right #388-2 (1877 during irrigation season and January 1, 1928 non-irrigation season) for 6.18 cfs of non-consumptive use lawfully issued by the State of South Dakota; and

WHEREAS, GFP has a documented non-consumptive use of 10.0 cfs from Cleghorn Springs for operation of its Cleghorn Springs State Fish Hatchery (Hatchery); and

WHEREAS, GFP must properly license water use at the Hatchery for the actual rate and volume of water used in fish culture; and

WHEREAS, quantification of the regional discharge at Jackson/Cleghorn show water flows between 21.6 and 23.3 cfs during measurements in 1988-89 and again in 2002 and 15.0-19.2 cfs during 2004-05; and

WHEREAS, the mean discharge from Cleghorn Springs measured at USGS weir(s), i.e., USGS gage #06412810, has been 11.2 cfs (WY88-92) and 12.1 cfs (WY93-2000) and 10.1 cfs (WY2000-2006): two dry periods and a wet period; and

WHEREAS, the City and GFP seek to effectively co-manage the regional discharge of Jackson/Cleghorn Springs to the maximum extent possible by cooperatively monitoring water availability as determined by water flow over the USGS weirs, flow of water through each facility, and elevation of water in monitoring wells on site and Rapid Creek stage elevation; and

WHEREAS, STATE and CITY believe that it is a more efficient use of public resources to enter into this joint undertaking;

NOW, THEREFORE, in consideration of the covenants and AGREEMENTs contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this AGREEMENT, the parties agree as follows:

AGREEMENT

1. The AGREEMENT shall commence upon its execution by the parties, shall continue in effect indefinitely, and may be terminated only by mutual agreement of the parties.
2. That if water volumes measured at USGS gage #06412810 (Cleghorn Springs at Rapid City) drop below 10.0 cfs, the following measures will be implemented:
 - a.) Cleghorn Hatchery staff, and City Water Division staff, respectively appointed by the Secretary of GFP and the Public Works Director of the City, will immediately confer to determine potential causes of the drop in flow volume and, if necessary; staff from the USGS, Rapid City and the Department of Environment and Natural Resources (DENR) will be contacted.
 - b.) Pending the conclusions reached at the joint meeting identified in 2(a) as to the potential reasons for the USGS gage #06412810 being at or below 10cfs, the City and Hatchery will act to reduce water demands at the Jackson/Cleghorn site or other sites (City) as deemed most appropriate. The goal of such actions will be to 1) reduce hatchery needs for water, 2) reduce City use of groundwater demands in an effort to preclude the flow at USGS gage #06412810 from further decline.
 - c.) If flows cooperatively monitored, continue to be at or below 10 cfs for a period longer than one month, staff from the City and Hatchery (GFP) will seek to meet with the USGS and DENR to examine potential trends/causes/ timelines for the observed reduction in water yield and to plan for future water management/hatchery production contingencies in an effort to maintain the Jackson/Cleghorn discharge at a minimum of 10 cfs as measured at USGS gage #06412810.
 - d.) Regular communications between the City, Hatchery (GFP), DENR, and USGS will continue as long as water yields are inadequate and water use reductions by the City and Hatchery (GFP) at the regional discharge are ongoing. These communications will be directed at maintaining adaptive management strategies at the two sites.

3. This AGREEMENT provides for use of water between the parties without regard to the specific priority dates for the water rights involved. The agreement to forego priority dates for purposes of this AGREEMENT is limited to the terms of this AGREEMENT and is not intended to transfer, convey, assign, or waive any legal rights to water or priority dates except as specifically contained herein. Further, to the extent that Rapid City foregoes any water use authorized by its water rights and allows for use of said water by the GFP, Rapid City does not intend to abandon such water permit or right and instead, intends to preserve the water right by allowing for continuous beneficial use by GFP. To the extent that GFP foregoes any water use authorized by its water rights and allows for use of said water by Rapid City, GFP does not intend to abandon such water permit or right and instead, intends to preserve the water right by allowing for continuous beneficial use by Rapid City.
4. Upon the written request of either party, and for reasonable cause, this AGREEMENT may be amended at any time; provided, however, that this AGREEMENT may not be amended except in writing which shall be signed by an authorized representative of each of the parties hereto.
5. The parties shall negotiate in good faith the terms of any other AGREEMENT that is determined to be necessary or desirable to carry out the terms of this AGREEMENT.
6. Time is of the essence of this AGREEMENT and all of its covenants, terms, conditions, and provisions.
7. The "Recitals" to this AGREEMENT are considered to be an integral part of this AGREEMENT and enforceable as such.
8. This AGREEMENT and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, successors in interest, and assigns of the respective parties hereto.
9. The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this AGREEMENT, and that the cooperative undertaking herein described shall be administered by the Director of the Division of Wildlife for STATE and the Public Works Director for CITY or their authorized designees.
10. All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the following addresses:

CITY:

City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701
Attention: Public Works Director

STATE:

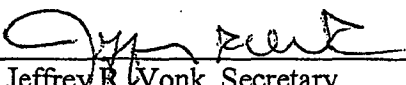
S.D. Department of Game, Fish and Parks
523 E. Capitol
Pierre, SD 57501
Attention: Director, Division of Wildlife

The parties, by notice given hereunder, may designate any further or different methods of notification and addresses to which notices and communications shall be provided.

12. In the event that any court of competent jurisdiction in the state of South Dakota shall hold any provision of this AGREEMENT unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
13. This AGREEMENT is intended to only to govern the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.
14. The parties acknowledge that a true copy of this AGREEMENT will be filed with the Office of Attorney General and the Legislative Research Council within fourteen (14) days of the execution hereof, as required by law.
15. By the signature of their representative below, STATE and CITY certify that approval of this AGREEMENT by ordinance, resolution or other appropriate means has been obtained by that governmental body's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representatives are authorized to sign on the party's behalf. A copy of any authorizing resolution or ordinance is attached to this AGREEMENT and incorporated herein by reference

IN WITNESS WHEREOF, the parties have executed the same effective on the date of their respective signatures.

South Dakota Department of Game, Fish and Parks

By  Date 4/21/09
Jeffrey R. Vonk, Secretary

By Anthony P. Leif Date 4/21/09
Anthony P. Leif, Director of the Wildlife Division

City of Rapid City, South Dakota

By Alan Hanks Date 4/6/09
Alan Hanks, Mayor

Attest:

By: Jim Preston Date 4/6/09
Jim Preston, Finance Officer

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

JPC 3-18-09
Attorney Date



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 1, 2009

NOTICE

TO: John Lott
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Robert Ellis, P.E.
Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Leslie J. England
2023 Ivy Avenue
Rapid City SD 57701-5608

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Hearing on Water Permit Application No. 2454-2, SD Department of Game, Fish and Parks

Water Permit Application No. 2454-2 filed by the SD Department of Game, Fish and Parks (SDGFP) proposes to appropriate an additional 3.82 cubic feet of water per second (cfs) from Cleghorn Springs for use at Cleghorn Springs State Fish Hatchery. Water Right No. 388-2 authorizes 6.18 cfs from Cleghorn Springs located in the NW ¼ SE ¼ Section 8, T1N, R7E. Parties to the proceeding before the Water Management Board are SDGFP, city of Rapid City and Leslie England.

A hearing on Application No. 2454-2 was held before the Water Management Board on July 11, 2001 and the Board made an oral ruling that the permit ought to be granted. The Board, at their December 2001 meeting, agreed to reopen the hearing upon request of the city of Rapid City. The application has remained on pending status since that time. The city of Rapid City has now filed a letter on May 27, 2009 withdrawing all objections and now supporting the Water Management Board's issuance of Application No. 2454-2.

The Water Management Board will consider Application No. 2454-2 at 11:00 AM on July 8, 2009 in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue Pierre SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2454-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with

qualifications, 3) defer, or 4) deny the application based on the evidence presented at the public hearing.

Applicable provision of the Notice published April 4 and 11, 2001, in the Rapid City Journal and the original evidentiary hearing conducted July 11, 2001 will still apply at this hearing before the Water Management Board. This hearing may be an adversarial proceeding. Any party of record has the right to be present and 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.

Enclosed is a copy of the original report, recommendation, affidavit of publication, petitions to intervene and the letter withdrawing the city's objection in the matter of Water Permit Application No. 2454-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the July hearing, along with a copy of the transcript from the Board's July 11, 2001 hearing and the draft findings of fact, conclusions of law and final decision. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

Diane Best, counsel for DENR, will prepare a Memorandum of Law prior to the hearing regarding this application. This will be sent to Water Management Board members, the Board's counsel and served on parties to this application prior to the July 8th hearing.

Notice is further given to persons with disabilities that this hearing is being held in a physically accessible place and that interpreter services will be provided, upon request, during the hearing. Please notify Eric Gronlund at (605) 773-3352 by June 29, 2009, if you have any questions about the hearing process or have special disability needs for which special arrangements must be made at the hearing.

Please contact Eric Gronlund, Water Rights Program at (605) 773-3352, if you have any questions.

enclosures

c: Diane Best, Assistant Attorney General
Leslie Petersen, Dept. of Game Fish and Parks, 523 E. Capitol Avenue, Pierre SD 57501

CERTIFICATION

I hereby certify that on June 1, 2009, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 1, 2009, regarding the scheduling a hearing for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below:

John Lott
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

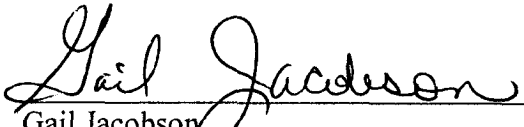
Robert Ellis, P.E.
Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Leslie J. England
2023 Ivy Avenue
Rapid City SD 57701-5608

Diane Best
Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104-6032

A copy of the above described Notice was sent Inter-office to:

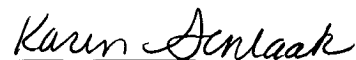
Leslie Petersen, Dept. of Game Fish and Parks, 523 E. Capitol Avenue, Pierre SD 57501



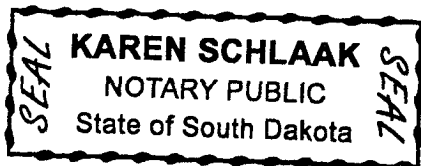
Gail Jacobson
Water Right Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of June, 2009.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





OFFICE OF ATTORNEY GENERAL

300 N. Dakota Avenue, Suite 403
Sioux Falls, South Dakota 57104-6032
Phone (605) 367-5880
Fax (605) 367-5886
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY

RECEIVED
JUN 15 2009
WATER RIGHTS
PROGRAM

June 11, 2009

Dick Neill
South Dakota GFP
Foss Building
523 E. Capitol
Pierre, SD 57501

Leslie England
2023 Ivy Avenue
Rapid City, SD 57701-5608

City Attorney Jason Green
300 Sixth Street
Rapid City, SD 57701

Re: *Matter of Cleghorn Springs Water Permit Application No. 2454-2, South Dakota Department of Game, Fish and Parks*

Dear Counsel:

Enclosed is a short brief in the above referenced matter. This matter has been noticed for hearing on July 8, 2009 at 11:00 a.m. at the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre, SD. The Chief Engineer is sending the Notice of Hearing and other materials to it's contacts for this proceeding to John Lott (GFP), Robert Ellis (Rapid City) and Leslie England. This Brief and associated materials will also be provided to the Board pursuant to SDCL 46-2A-6.

Sincerely,

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

Diane Best
Assistant Attorney General

RECEIVED
JUN 15 2009
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR
PERMIT APPLICATION	)	MEMORANDUM OF LAW
NO. 2454-2, GAME, FISH, AND	)	
PARKS (CLEGHORN SPRINGS)	)	

Comes now the Department of Environment and Natural Resources, Water Rights Program (DENR) and files its Memorandum of Law. This Memorandum is designed to explain the background on this matter, much of which appears to be undisputed.

PROCEDURAL BACKGROUND

Water Permit Application No. 2454-2 was filed by the South Dakota Department of Game, Fish and Parks (GFP) in 2001. It proposes to appropriate 3.82 cubic feet of water per second (cfs) from Cleghorn Springs for use at Cleghorn Springs State Fish Hatchery. This is in addition to existing GFP Water Right No. 388-2, which authorizes 6.18 cfs from Cleghorn Springs. According to GFP, the hatchery had been using up to 10.0 cfs of water for some time and this permit was designed to update the water permits for that use.

The Chief Engineer recommended approval of the GFP application in 2001. The matter was published and an opportunity was afforded for intervention. Two parties intervened: the City of Rapid City and Leslie England, a private citizen.

A hearing was held before the Water Management Board on July 11, 2001. GFP presented evidence in support of its application. The Chief

Engineer presented evidence supporting the recommendation of approval. The City of Rapid City asserted that insufficient evidence was available to support granting the application, particularly in light of the water use at the City's own nearby water right for Jackson Springs. Intervenor Leslie England did not appear.

As a result of evidence presented at hearing, the Board made an oral ruling that the permit ought to be granted. The Board ordered proposed Findings of Fact and Conclusions of Law and scheduled its final deliberations for a future meeting.

During deliberations on December 5, 2001, the City of Rapid City opposed the Board's Findings of Fact and Conclusions of Law and requested that the matter be reopened for further hearing. The Board agreed to reopen the hearing.

Subsequent to December 5, 2001, GFP requested that the matter be held in abeyance pending further study. Since then, GFP and Rapid City have advised DENR that they were reviewing the capacity and usage of Jackson Springs and Cleghorn Springs and were also engaged in discussion with one another. Further, the GFP has upgraded facilities at Cleghorn Springs Fish Hatchery. The application has, therefore, remained on pending status since 2001.

The City of Rapid City filed a letter with DENR on May 27, 2009, withdrawing all objections and now supports the Water Management Board's

issuance of Application No. 2454-2. The City and GFP have entered into a Joint Powers Agreement to assist in management of the two water sources.

As seen, the matter now appears to be undisputed. It appears that a lengthy evidentiary hearing is unnecessary. On the other hand, scheduling only a motion hearing is probably not proper, due to the fact that: (a) this matter engendered vigorous Board debate and consideration in 2001, (b) there has been turn over in the Board's membership (and Board Counsel) since 2001, and (c) the matter is one of public interest.

DENR submits that consideration of the prior record and holding a short evidentiary hearing is proper. For that reason, DENR has scheduled an evidentiary hearing for its regularly scheduled meeting on July 8, 2009. Notice has been provided to all parties, including Leslie England, who did not appear in the initial proceeding.

Further, pursuant to SDCL 46-2A-6, DENR is providing the Board members (and Board counsel) and the parties with copies of the following documents prior to hearing and copies of the same have been provided to counsel:

1. Report and Recommendation of the Chief Engineer;
2. Affidavits of publication showing publication on April 4 and 11, 2001, in the Rapid City Journal;
3. Petitions to intervene;
4. Board Counsel's 2001 Draft Findings of Fact and Conclusions of Law;
5. Letter withdrawing the City's objection in the matter of Water Permit Application No. 2454-2.

6. Agreement between Rapid City and Game, Fish, and Parks
7. Transcript of the Board's July 11, 2001, hearing
8. Minutes from the Board's December 5, 2001, hearing. (This hearing was not transcribed.)

LEGAL AND FACTUAL BACKGROUND

The Chief Engineer recommends APPROVAL of Application No. 2454-2 because: (1) unappropriated water is available; (2) existing rights will not be unlawfully impaired; (3) it is a beneficial use of water; and (4) it is in the public interest. See also, Report of Mark Rath dated March 22, 2001.

During the previous round of hearings, evidence focused on the first two criteria. As to the second two criteria, the evidence is fairly clear that GFP use of water for a fish hatchery would be consistent with the public interest and would be a beneficial use.

1. Availability of Water

Cleghorn Springs is adjacent to the city's water collection gallery at nearby Jackson Springs. The water priority dates are staggered for these springs. At the time of the 2001 hearing Cleghorn Springs Water Users (not a party to this case) held a vested right for .89 cfs with a priority date of February 28, 1877. This water right has now been transferred to the City of Rapid City. GFP holds a vested right for 6.18 cfs with a priority dates of February 28, 1877 (irrigation season) and 1928 (nonirrigation season). The City holds a 1944 vested right in Jackson Springs for 7.75 cfs. City also holds an August 1956 water right at Jackson Springs for 2.71 cfs. City further holds a future use

permit with a priority of September 1956 for 995 AF annually from Jackson springs.

An issue of concern in the 2001 proceeding was whether there was enough total water available from the Cleghorn Springs/Jackson Springs complex to meet all uses under the existing permits as well as the proposed additional GFP use at Cleghorn. GFP asserted there would not be a change in operations that would increase actual current use and that this permit was designed to clarify what it was using during recent years. As for the actual historical usage prior to 1972, many records were destroyed in the 1972 flood.

The Water Rights Program analyzed the overall water availability and determined that there was a reasonable probability that there was water available. This was based on the analysis of DENR witness Mark Rath, who studied the hydrology of the area as well as available historical water use data from the springs in question, and information available from a number of USGS and DENR studies. See Report of Mark Rath dated March 22, 2001.

The reasonable probability standard is the applicable legal standard under SDCL 46-2A-9 and the Chief Engineer supported granting the GFP application.

Rapid City was concerned that there was not enough water available for all the permits when considering all the permits currently in use as well as the future use permit held by the city. City's concern was based on its pumping analysis of Jackson Springs and ongoing review of its usage of Jackson

Springs. Hearing Transcript, p. 17-32 The City ultimately took the position was that there wasn't enough data to support granting the application.

2. Impairment of existing rights.

As seen above, Rapid City's use at Jackson springs (1944 and 1956 priority dates) would be senior to water rights granted under the proposed permit (2001 priority date). To the extent Rapid City is senior, it would be protected. The new GFP use could not trump the city's existing rights. This situation meets the standard in SDCL 46-2A-9 and would not result in impairment of existing rights.

The recent history of these springs shows that there has generally not been significant conflict in the actual use of water, but occasional situations have arisen. For example, during the dry cycle in the 1980's, there was a situation where Rapid City voluntarily decreased its usage from Jackson Springs due to diminished supply at the GFP fish hatchery. Hearing Transcript p. 55-56 Mark Rath testified that it was unclear whether Rapid City was legally required to reduce pumping at that time. Since the GFP held a water right for 6.18 cfs, Rapid City was required to reduce pumping to make sure the GFP senior right of 6.18 cfs was satisfied, but wouldn't have had to reduce pumping beyond that level. It was unclear at the time whether the GFP was then using over or under 6.18 cfs. Hearing Transcript p. 55-56

The DENR also examined the intake system at Cleghorn Springs in the 1990's and advised GFP that a change should be made in the piping. Hearing

Transcript at 58 -59 Since the 2001 hearing, changes have been made to the collection system as part of the fish hatchery remodel.

At the hearing in 2001, the City was concerned about future impairment. City asserted that it might want to develop Jackson Springs in the future. City has a September 22, 1956 future use reserve of 995 AF annually specifically for Jackson springs. When City seeks authority to develop that future use, it will need to apply for a permit. In the permitting process, it will need to show that its uses will not impair existing rights including the use in question here (assuming this application is granted). However, once City actually obtains the new permit to use its future use reserve, the priority system kicks in and City would have the senior priority date of 1956 over the permit in question here due to the fact that City obtained its future use permit in 1956.

There was still another aspect to this issue. City indicated that, depending on its current studies, it may wish to develop Jackson Springs even beyond the future use reserve. Hearing Transcript, p. 29 While the presently pending application required examination of existing water rights, there was no requirement to protect water users that had not even submitted an application.

In sum, the GFP request met the standard under SDCL 46-2A-9 for its Cleghorn Springs water right, but there were several issues that Rapid City presented at hearing that prompted the Board to reopen the case.

The Chief Engineer recommended approval of the GFP application in 2001 and still recommends approval.

The Agreement.

Since 2001 City and GFP worked out a Joint Powers Agreement. The agreement is included in the materials provided to the Board and the parties. The GFP and Rapid City have mutually addressed the administration of water use at the Cleghorn/Jackson Springs complex. They intend to coordinate with one another and, under certain conditions, it appears that one water right holder may agree to subordinate its use of water in favor of the other on a temporary basis from time to time. Because this agreement does not change priority dates or places of diversion or transfer water rights, no action is required on the part of the board with respect to approving the agreement.

The agreement of the parties obviously gives them flexibility to administer the water. The agreement is consistent with the best utilization of the water and is in the public interest.

Dated this 11th day of June, 2009.


Diane Best
Assistant Attorney General
300 N. Dakota Ave., Suite 403
Sioux Falls, SD 57104
Telephone: (605) 367-5880
Counsel for South Dakota DENR
Water Rights Program

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION	)	CERTIFICATE OF SERVICE
NO. 2454-2, GAME, FISH, AND	)	
PARKS (CLEGHORN SPRINGS)	)	

The undersigned hereby certifies that a true and correct copy of
Memorandum of Law in the above-referenced matter was served by United
States mail, first class, postage prepaid upon the following on June 11, 2009:

Dick Neill
South Dakota GFP
Foss Building
523 E. Capitol
Pierre, SD 57501

Jason Green
City Attorneys Office
300 Sixth Street
Rapid City, SD 57701

Leslie England
2023 Ivy Avenue
Rapid City, SD 57701-5608

And was filed with Chief Engineer Garland Erbele on the same date for
distribution to the South Dakota Management Board pursuant to SDCL 46-2A-
6.



Diane Best
Assistant Attorney General
300 N. Dakota Ave. , Suite 403
Sioux Falls, South Dakota 57104
Telephone: (605) 367-5880



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 26, 2009

NOTICE

TO: John Lott
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Robert Ellis, P.E.
Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Leslie J. England
2023 Ivy Avenue
Rapid City SD 57701-5608

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Change of Hearing Time on Water Permit Application No. 2454-2, SD Department of
Game, Fish and Parks

The hearing time before the Water Management Board to consider Water Permit Application No. 2454-2 has changed from 11:00 AM to 2:15 PM on Wednesday, July 8, 2009.

The Water Management Board will now consider Water Permit Application No. 2454-2 at **2:15 PM**, on July 8, 2009, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD.

Applicable provisions of the Notice dated June 1, 2009 still apply.

c: Diane Best, Assistant Attorney General
Leslie Petersen, Dept. of Game Fish and Parks, 523 E. Capitol Avenue, Pierre SD 57501

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- A. DENR Memorandum of Law authored by Diane Best
- B. Staff Report and Chief Engineer's Recommendation
- C. Affidavit of Publication
- D. Petitions to Intervene
 - city of Rapid City
 - Leslie J. England
- E. Transcript of July 11, 2001 Water Management Board hearing
- F. Excerpt of Water Management Board minutes from July 11, 2001
- G. Exhibits from Board hearing (note that DENR 1 is the administrative record and DENR 3 is an area map that is not included)
- H. Proposed Findings of Fact, Conclusions of Law and Final Decision drafted by Board counsel
- I. Responses to FOF, COL & FD
 - city of Rapid City
 - Leslie J. England
 - DENR
- J. Joint Power Agreement entered into by Game, Fish and Park and Rapid City
- K. City of Rapid City's withdrawal of objection and support of application
- L. Notice scheduling July 8, 2009 hearing

CERTIFICATION

I hereby certify that on June 26, 2009, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 26, 2009, regarding the change of hearing time for Water Right Permit Application No. 2454-2, SD Department of Game, Fish and Parks, addressed as stated below:

John Lott
SD Dept. of Game, Fish and Parks
523 E. Capitol Avenue
Pierre SD 57501

Robert Ellis, P.E.
Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701

Leslie J. England
2023 Ivy Avenue
Rapid City SD 57701-5608

Diane Best
Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104-6032

A copy of the above described Notice was sent Inter-office to:

Leslie Petersen, Dept. of Game Fish and Parks, 523 E. Capitol Avenue, Pierre SD 57501



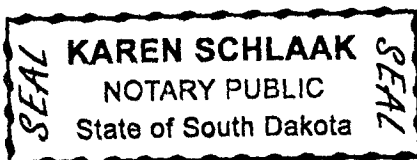
Gail Jacobson
Water Right Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of June, 2009.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

AUG 14 2009

SD Dept of Game Fish & Parks
John Lott
523 E Capitol Ave
Pierre SD 57501

Dear Sir:

Enclosed is Water Permit No. 2454-2 authorizing your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

We will schedule an inspection so that the Water License may be issued to you, thus completing your acquisition of a Water Right.

Sincerely,

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

enclosures

SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER MANAGEMENT BOARD

= = = = =

WATER PERMIT APPLICATION
NO. 2454-2

ORIGINAL

= = = = =

Transcript of Proceedings

July 8, 2009

= = = = =

A P P E A R A N C E S

DIANE BEST,
SOUTH DAKOTA ATTORNEY GENERAL'S OFFICE,
Deputy Attorney General, 300 North Dakota
Avenue, Suite 403,
Sioux Falls, South Dakota 57104,
appearing on behalf of the Department of
Environment and Natural Resources;

RICHARD J. NEILL,
SOUTH DAKOTA ATTORNEY GENERAL'S OFFICE,
Assistant Attorney General, 523 East Capitol
Avenue,
Pierre, South Dakota 57501,
appearing on behalf of the Department of
Game, Fish & Parks.

Reported by Cheri McComsey Wittler, RPR, CRR

1 MS. BEST: Thank you. If I may, the matter at
2 hand today involves the water right for -- supplemental
3 water right for Cleghorn Springs, Department of Game,
4 Fish & Parks. I'll refer the board to the red binder
5 that was sent to them.

6 As indicated, the DENR sent out -- or the chief
7 engineer sent out a red binder with various information
8 from the previous hearing on this matter. It includes
9 the DENR Memorandum of Law that I authored that just
10 basically explains the procedural background of this
11 matter, which is now eight years old, at least eight
12 years old.

13 It also includes the staff report and chief
14 engineer's recommendation of approval from eight years
15 ago, and that recommendation remains the same today.

16 It includes the Affidavit of Publication. It
17 includes the Petition to Intervene of the City of
18 Rapid City, and Leslie J. England. It includes the
19 transcript of the July 11, 2001 Water Management Board
20 hearing where this matter was initially heard.

21 It includes the exhibits from the board
22 hearing -- or the lion's share of the exhibits from the
23 board hearing except those which -- except DENR 1 and 3,
24 which are voluminous. It includes the previous proposed
25 Findings of Fact, Conclusions of Law, and Final Decision

1 drafted by board counsel and then the responses to those
2 Findings of Fact and Conclusions of Law. It includes a
3 Joint Power Agreement entered into by the Department of
4 Game, Fish & Parks and the City of Rapid City, which was
5 entered into I believe earlier this year.

6 It includes the City of Rapid City's withdrawal
7 of its objection and its support of Game, Fish & Parks'
8 application. And then finally it includes the Notice
9 scheduling today's hearing.

10 As I indicated, the procedure occurred sometime
11 ago. I wrote a short brief describing the procedure
12 today.

13 To very briefly summarize, the Game, Fish &
14 Parks had applied for a new water right to supplement its
15 existing water right at Cleghorn Springs on the west side
16 of Rapid City. They already had a water right for
17 6.18 CFS, and that water right is one of the earliest
18 water rights held in South Dakota. It's an 1877 water
19 right.

20 Game, Fish & Parks operated the hatchery for
21 many years. In recent years, at least, they have used
22 10 CFS and testified to that at hearing. They needed
23 more -- they had the right for 6.18. They sought the
24 3.82 to make up that difference and to clarify that they
25 would be entitled to use that. It was a new permit

1 application. The City of Rapid City intervened because
2 they were concerned about use of their water from the
3 Jackson Springs, which is basically -- it's their
4 adjoining neighbor, their -- several yards apart.

5 Rapid City appeared at hearing and testified
6 regarding its concerns. Leslie England, a lawyer from
7 Rapid City, who has been very involved in water issues
8 and has appeared before this board in the past
9 intervened. He did not appear at the hearing in 2001.
10 We have provided him with notice of today's hearing, and
11 he has -- he is not appearing today either.

12 In 2001 the board voted to grant the Game, Fish
13 & Parks' permit and ordered Findings of Fact, Conclusions
14 of Law. Deliberations then later were held later in
15 December of 2001 and at the December meeting Rapid City
16 approached the board and requested that the board hearing
17 be open, that they give more consideration to the issues
18 of these competing issues at Rapid City's Jackson Springs
19 facility where it holds water rights and the Cleghorn
20 Springs water rights next door at Game, Fish & Parks.

21 The board agreed to order a re-opener. It was
22 on reopening status. In the meantime, though, the City
23 was undertaking at that time and subsequently a review of
24 its facilities at Jackson Springs to determine the extent
25 to which it intended to use Jackson Springs. And it

1 undertook testing for safe drinking water purposes, and
2 that testing requires -- has to be done on a quarterly
3 basis and a periodic basis to -- to meet the safe
4 drinking water criteria. And it was trying to determine
5 basically whether the water would be suitable for
6 continued use or whether they needed to build a
7 filtration plant. So there's a number of planning issues
8 that arose with respect to the City's use of its
9 facility.

10 At the same time Game, Fish & Parks revamped its
11 facilities at Cleghorn on the hatchery.

12 And I bring this up because we're eight years
13 down the road, and I wanted to explain, you know, why
14 weren't we on this in the eight years. Game, Fish &
15 Parks asked for continued delay because of both entities
16 needing to really take a serious look at their
17 facilities, deciding what they needed to use for water,
18 and then they also engaged in serious discussions between
19 the two parties to try and figure out some ways to
20 mutually cooperate, using those two water sources at --
21 both in terms of timing or in terms of one sacrificing
22 the use to another if need be on an emergency basis.

23 They engaged in those discussions. They sent us
24 a settlement that they had entered into, and it's in your
25 red binder. And I'm happy to say that I don't think we

1 have a dispute today. This was hotly disputed eight
2 years ago, and today the parties have spent a lot of
3 work, both on their own facilities and a lot of work
4 engaging in the dialogue.

5 So there's a settlement with that. But, of
6 course, the board reopened the matter. We previously
7 offered testimony that the water's available and
8 Mark Rath is available today to provide very short
9 testimony regarding availability of water at the source
10 and what he sees this dynamic being for Cleghorn Springs.

11 And then Game, Fish & Parks is available as
12 well. And I know Leslie's here, and she's been sitting
13 in the back row itching to talk to the board about the
14 new facilities at Cleghorn and where they see it going
15 with this. We're very hopeful we can keep it quite short
16 today.

17 MR. HALLEM: Before we begin, could other
18 counsel and parties make their appearances noted?

19 MR. NEILL: Richard Neill, Assistant Attorney
20 General for the Department of Game, Fish & Parks appears
21 with Leslie Peterson in support of the application.

22 MR. HALLEM: Is anybody here from Rapid City?

23 Okay. I'd like to have the record reflect that
24 nobody appeared from the City of Rapid City at this
25 hearing.

1 CHAIRMAN BJORK: Mr. Rath. Mr. Rath, were you
2 here when we swore in the rest of the staff this morning
3 earlier today?

4
5 MR. RATH: Yes, I was.

6 CHAIRMAN BJORK: Okay. Thank you.

7 MR. RATH: Good afternoon. My name is Mark
8 Rath, and I am a staff engineer with the Water Rights
9 Program.

10 As Diane indicated, this is an issue we brought
11 up, oh, eight years ago. I believe the board has a copy
12 of the report that I wrote in 2001. Most of it is still
13 pretty current. There have been a few changes, and I'll
14 talk a little bit about that.

15 This application with Game, Fish & Parks
16 proposed to increase their nonconsumptive use, water from
17 the Cleghorn Springs authorize -- they already had one
18 right for 388-2. By increasing the diversion rate by
19 3.82 CFS to reflect the actual amount utilized at the
20 hatchery.

21 This water's from the Jackson Cleghorn Springs
22 complex. And as Diane indicated, it's a -- they're
23 neighbors on the creek, but the complex itself is
24 difficult for anybody to say where the one starts and
25 where the other one ends. It's kind of all-encompassing.

1 Just for you who are familiar with Rapid City,
2 it's on the west edge of town just to the west of
3 Canyon Lake. On the north side of the creek is where the
4 Jackson Cleghorn Springs complex is. Okay.

5 One of the difficult things about this is
6 because -- is the multiple water rights, multiple
7 priority dates, and then the joint use. One of the
8 things that have changed since 2001 is -- and I'll go
9 through these, the existing water rights.

10 The first water right that I've got listed is
11 priority date of January 1, 1877 held by Rapid City for
12 0.89 CFS. In 2001 that was held by Cleghorn Springs
13 water users. Rapid City has since reached an agreement,
14 purchased that water right, and it is now part of their
15 system. They're servicing that Cleghorn Springs water
16 users system, people on their system. So Rapid City now
17 has a right -- that right.

18 With the same priority date, Game, Fish & Parks
19 had 6.18 CFS during the summer irrigation season, and
20 then it has a priority date of January 1, 1928 for the
21 nonirrigation season. So that actually corresponded to
22 when the actual fish hatchery was originally constructed.
23 At that time the Game, Fish & Parks got a right separate
24 from an irrigation right, and that had an 1877 priority
25 date.

1 Rapid City also holds a January 1, 1944 priority
2 date, 7.75 CFS. Then they've got a second right for
3 2.71 CFS, 1956 priority date. Rapid City also holds a
4 future use in which they have reserved 995 acre feet from
5 that Jackson Springs -- and it's a little bit different
6 for a future use than what most of our future use permits
7 are where they reserve it in an area. This is point
8 specific.

9 So that's one thing there. That's in reserve.
10 That's not one that's being utilized at this point. But
11 with what's going on out there it's one that's going to
12 be under consideration that Rapid City may need to use.

13 And then finally with this pending application
14 Game, Fish & Parks addressed the 3.82 CFS. So the total
15 appropriation if this one is approved is 21.35 CFS with
16 the potential, depending on how Rapid City -- if they
17 were to utilize this, it would be between 1 to 2 and a
18 half CFS is what they would be looking at if they were to
19 come in for the total amount of acre foot available under
20 that future use.

21 Now the U.S.G.S. gave measurements out of the
22 Springs area in the late '80s, the early 2000s, and the
23 mid-2000s, and they found that the discharges that they
24 measured ranged between 15 and 23.3 CFS. Now that
25 doesn't mean that's the absolute range. It just happened

1 to be that during the time frames they were doing their
2 measurement that's the range they found. Probably pretty
3 close to what is out there.

4 It's climatically driven. Whether it's on the
5 low end, or it's wet, it's on the higher end. So you can
6 see that if you get -- if Rapid City comes in for the
7 additional amount, they're going to be right up there on
8 that upper end of what the measurements have said is
9 available out there.

10 Because of that, the Game, Fish & Parks and
11 Rapid City have signed a Joint Powers Agreement to
12 facilitate their coexistence out there. They both
13 realize that they both kind of need each other and to the
14 point that, you know, anything that happens out there
15 they've got to be able to work together. I believe
16 Leslie Peterson can address what's in that Joint Powers
17 Agreement.

18 Another thing that has happened and I believe
19 Leslie will talk about is over the last about three years
20 the Game, Fish & Parks has rehabilitated the fish
21 hatchery. They redesigned and quite a bit of
22 construction out there. Went into production again
23 probably about -- oh, probably about sometime last year.

24 And Rapid City is looking at expanding their
25 utilization of Jackson Springs gallery site with the

1 construction of a water treatment facility out there.
2 And I don't know that that's set in stone at this point.
3 But we have had discussions with their City people and
4 their consultants on what they're looking at doing out
5 there.

6 So, you know, this Joint Powers Agreement can be
7 an important thing for both entities to be able to manage
8 the water supply out there.

9 The chief engineer is recommending approval of
10 this permit. Does the board have any questions?

11 CHAIRMAN BJORK: With that, Ms. Best, do you
12 have any direct?

13 MS. BEST: I have no follow up. Thank you.

14 CHAIRMAN BJORK: Okay.

15 MR. NEILL: I have no questions, Mr. Chairman.

16 MR. BRINK: Just one. Very short. It involves
17 a term "nonconsumptive" use. We have upwelling, and if
18 allowed to flow into the stream, would probably be
19 nonconsumptive. But as long as you're running it through
20 the fish hatchery, aren't you including some processed
21 water in its discharge, feces, the food and all of that
22 thing?

23 THE WITNESS: Yeah. There is some of that that
24 would be --

25 MR. BRINK: But everybody's accepted the term

1 "nonconsumptive" as far as a water balance? Is that what
2 we're talking about?

3 THE WITNESS: Uh-huh. Yes. And what -- except
4 for the two -- the 1877 priority date rights on this,
5 there's a -- another thing that kind of comes into play
6 and that's the fact that you do have all the senior
7 downstream users, all the irrigators that have been in
8 front of this board many times.

9 So what has happened is the predecessor, Water
10 Resources Commission, predecessor to this board back in
11 1964 put in a requirement that any consumptive use has to
12 be replaced with water coming out of Pactola.

13 MR. BRINK: Okay.

14 THE WITNESS: And there's a methodology that was
15 laid out in 1964 of how that has to occur. So
16 essentially the downstream water rights don't even know,
17 I mean, that this is -- anything is occurring out there.
18 It's for protection for them.

19 So essentially the two entities, the Game, Fish
20 & Parks and the City of Rapid City have to be the ones
21 that have to -- and anything that's happened there
22 affects the two of them, not so much the other ones
23 downstream.

24 MR. BRINK: I see. Thank you.

25 CHAIRMAN BJORK: Any other questions?

1 Okay. Thank you, Mr. Rath.

2 Diane, do you have any other witnesses you want
3 to present today?

4 MS. BEST: I do not.

5 CHAIRMAN BJORK: Okay. Mr. Neill.

6 MR. NEILL: The Department would ask Leslie
7 Peterson to testify.

8 CHAIRMAN BJORK: Ms. Peterson, I want to have
9 you sworn in because of the totally contentious nature of
10 this in the past.

11 (The witness is sworn by the court reporter)

12 CHAIRMAN BJORK: State your name.

13 THE WITNESS: My name is Leslie Peterson. I
14 work for Department of Game, Fish & Parks. I'm the
15 aquatic resource coordinator.

16 As Mark said Game, Fish & Parks currently holds
17 Water Right 388-2, which authorizes 6.18 CFS from
18 Cleghorn Springs. And we are appearing before the board
19 today requesting an additional 3.82 CFS from Cleghorn
20 Springs, which would bring the total appropriation value
21 at Cleghorn Springs Fish Hatchery to 10 CFS.

22 And Cleghorn Springs State Fish Hatchery was
23 dedicated by the South Dakota Game, Fish & Parks in 1930
24 and has reared trout and salmon for stocking in state
25 waters ever since. Every year the hatchery stocks about

1 300,000 fish weighing in at about 70,000 pounds total
2 into waters open to public fishing. And this number
3 accounts for about 60 percent of the cold water fish
4 production of South Dakota. And the hatchery has
5 historically and nonconsumptively used 10 CFS of water
6 for fish rearing purposes.

7 Fish from the Cleghorn Hatchery are distributed
8 into cold water habitats across the state, and the bulk
9 of the production does go into waters in the Black Hills.
10 And the hatchery underwent a 7 million renovation project
11 in 2006 and 2007 to ensure the production of high quality
12 trout and salmon into the future. The renovations were
13 aimed at replacing failing infrastructure, increasing
14 energy and labor efficiencies and safeguarding fish
15 production from disease and predation.

16 New technologies for fish rearing were
17 incorporated into the facility design which reduces the
18 chance of systems failure and loss of production.

19 And this project and all hatchery operations are
20 paid for with fishing license fees and with federal aide
21 sport fish restoration dollars.

22 And in your red book -- and I'm not sure where
23 it's at -- there is a Joint Powers Agreement in there,
24 and that basically is a document that was signed by our
25 Department Secretary, our Division Director, and the

1 Mayor of Rapid City, and the finance officer of
2 Rapid City. And basically this is an agreement that
3 basically says that we will work together as the City and
4 the State agency -- you know, if there's any drop -- ever
5 a drop in water flows out there, we're going to work
6 together to figure it out.

7 And basically what we've told the city all along
8 has been if there's a drought condition or something's
9 wrong with the waters that they're really low out there,
10 is there's not going to be any waters to stock as many
11 fish anyway so our production would most likely decrease
12 anyway.

13 And also in your red book there is a letter from
14 the City of Rapid City dated May 20 to -- addressed to
15 Chairman Hoyt. And that letter basically states that the
16 City is withdrawing all objections and is now supporting
17 the Water Management Board issuance of Water Permit No.
18 2454-2.

19 And with all opposition removed from the
20 application, Game, Fish & Parks would also respectfully
21 request that Application No. 2454-2 be approved.

22 CHAIRMAN BJORK: Thank you.

23 THE WITNESS: You're welcome.

24 CHAIRMAN BJORK: Mr. Neill, do you have any
25 questions?

1 MR. NEILL: No, sir.

2 CHAIRMAN BJORK: Ms. Best.

3 MS. BEST: Nothing.

4 CHAIRMAN BJORK: Questions from the board.

5 MR. FREEMAN: Just nice to see you again.

6 THE WITNESS: Yeah. It's been a while.

7 MR. HOLZBAUER: Under different terms.

8 CHAIRMAN BJORK: What are the wishes of the
9 board?

10 MR. HOYT: Mr. Chairman, I would be pleased to
11 move that Application 2454-2 be approved with the
12 recommendation of the chief engineer.

13 CHAIRMAN BJORK: A motion and a second.

14 MR. BRINK: Second.

15 CHAIRMAN BJORK: Any further discussion by the
16 board?

17 Hearing none, all those in favor signify by
18 saying aye.

19 (All indicate aye)

20 CHAIRMAN BJORK: Opposed, same sign.

21 (No audible response)

22 CHAIRMAN BJORK: Motion carried.

23 MR. NEILL: Thank you very much.

24 MR. HALLEM: Ms. Best and Mr. --

25 CHAIRMAN BJORK: Excuse us just one second

1 before we go.

2 MR. HALLEM: Ms. Best, Mr. Neill, my question is
3 is this: Because there's no longer any parties that have
4 objected to it, do either of you feel there needs to be
5 Findings of Fact and Conclusions of Law?

6 MS. BEST: We do not. And, you know, if we
7 need -- decide we need a historical record on it, it's
8 been approved here, we can order the transcript. But, I
9 mean, that would be DENR's point.

10 MR. HALLEM: Do you want to just to clarify
11 purposes on it, make this submission an exhibit, or is it
12 already part of the record?

13 MS. BEST: It's part of the DENR agency file
14 already.

15 MR. HALLEM: Which is part of the record of this
16 case?

17 MS. BEST: Right.

18 MR. HALLEM: So if anything did happen, we have
19 an official record of everything.

20 MS. BEST: Right. Right.

21 MR. NEILL: I agree. I see no reason for formal
22 written.

23 MR. HALLEM: I didn't either, but I wanted to
24 make sure that the parties agreed. Okay.

25

1 STATE OF SOUTH DAKOTA)

2 :SS

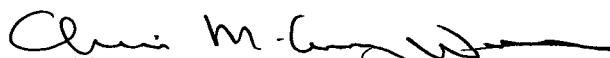
CERTIFICATE

3 COUNTY OF HUGHES)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 8th day of July,
11 2009, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 1st day of
14 September, 2009.

15
16
17 

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter
22
23
24
25

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 2454-2

I have this day, **June 27, 2017** made a thorough examination of the water use system constructed by **South Dakota Department of Game Fish and Parks, 523 E. Capitol, Pierre, SD 57501** of Permit No. **2454-2**, bearing the priority of **2/13/2001** authorizing the diversion of **3.82** cu. ft. per second additional water from **Cleghorn Springs** for **fish culture** purposes, in **Pennington** County.

Inspection contact & relationship to permit holder, if applicable:

Cody Treft, Resource Biologist

Tabor Martin, Resource Biologist

605-394-4100

4725 Jackson Blvd. Rapid City, SD 57702

A. Works used to divert and transport water to place of use

Water is collected at the Cleghorn Springs with a gallery of buried perforated pipes which collect the spring flow and pipe it to twin pump stations each containing two 10 hp high volume/low head pumps. Each of these pump stations has the capacity to supply the total flow required by the hatchery rearing pavilion. All of the pumps are operated simultaneously under normal conditions using a variable frequency drive to assure flow to the rearing tanks even if one of the pump stations malfunctions. Each of these 4 pumps typically operates at 700-800 gpm. Spring flow not pumped to the rearing pavilion is diverted to a by-pass pipeline which leads to a pump station supplying the hatchery building. The hatchery pump station has two pumps which operate simultaneously, typically at 200-250 gpm each. Flow in excess of that being used at the hatchery building is by-passed around the facility in an open channel.

Total volume of flow leaving the hatchery is measured at a Parshall flume at the east end of the hatchery facility. Total Cleghorn Spring volume collected by the gallery, which includes flow by-passed around the hatchery and flow used for fish production is measured at a 6 ft. weir monitored by USGS and located immediately upstream of flow entry into Rapid Creek. Flow measured 6/27/17 at the Parshall flume was **7.94 cfs** and at the USGS weir was **11.71 cfs**.

B. Works used to apply water to beneficial use:

Water use at the fish hatchery includes the rearing pavilion containing 32 circular tanks, 4 raceways outside, 32 circular tanks in the hatchery building, twelve 190 liter experimental tanks in the hatchery building, 10 vertical flow incubators that are used about 2 months out of the year (not currently in use) in the hatchery building and 2 settling ponds outside.

C. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by **Yes**

list any extended period of nonuse: **none**

- 2) Exceptions to compliance are: **none**

D. Condition and Location:

1. The system is in good condition with the point of diversion (approximate center of collection gallery) located as follows:
1,977' N and 2,210' W of the SE corner Section 8 T1N R7E (44.058455, -103.300559).
2. The works are capable of diverting and conveying to the place of use 10.0 cu. ft. per second of water which is to be used for fish culture use and the license should be issued for 10.0 cfs
3. All structures, wells and lands on map Yes

F. Comments or other permit(s) associated with the project: Water Right No. 388-2 authorized 6.18 cfs from Cleghorn Springs in the NW ¼ SE ¼ Section 8 T1N R7E. Water Permit No. 2454-2 appropriated an additional 3.82 cfs increasing the diversion rate to a total of 10.0 cfs



Steven Quissell
Water Rights Inspector
DENR Water Rights Program

Date Report Completed: **June 28, 2017**



Area of collection gallery and rearing pavilion pumps



Hatchery building (upper left) and pump station



Parshall flume (left) and settling ponds



USGS weir



By-pass flow outlet to open channel



Rearing pavilion pumps

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Right No. 388-2 & Permit No. 2454-2, Game, Fish & Parks

ADDRESS: COUNTY: Pennington County

DATE: August 2, 2017 TELEPHONE:

RE: Priority Date

A licensing investigation was conducted by Steve Quissell of Permit No. 2454-2 which appropriates 3.88 cubic feet of water per second (cfs) from Cleghorn Springs. Vested Water Right No. 388-2 appropriates 6.18 cfs also from Cleghorn Springs. All total 10 cfs is appropriated from Cleghorn Springs for use at the fish hatchery.

For licensing purposes, Vested Water Right No. 388-2 is to be incorporated into No. 2454-2. However a question on the priority date for No. 388-2 came into question.

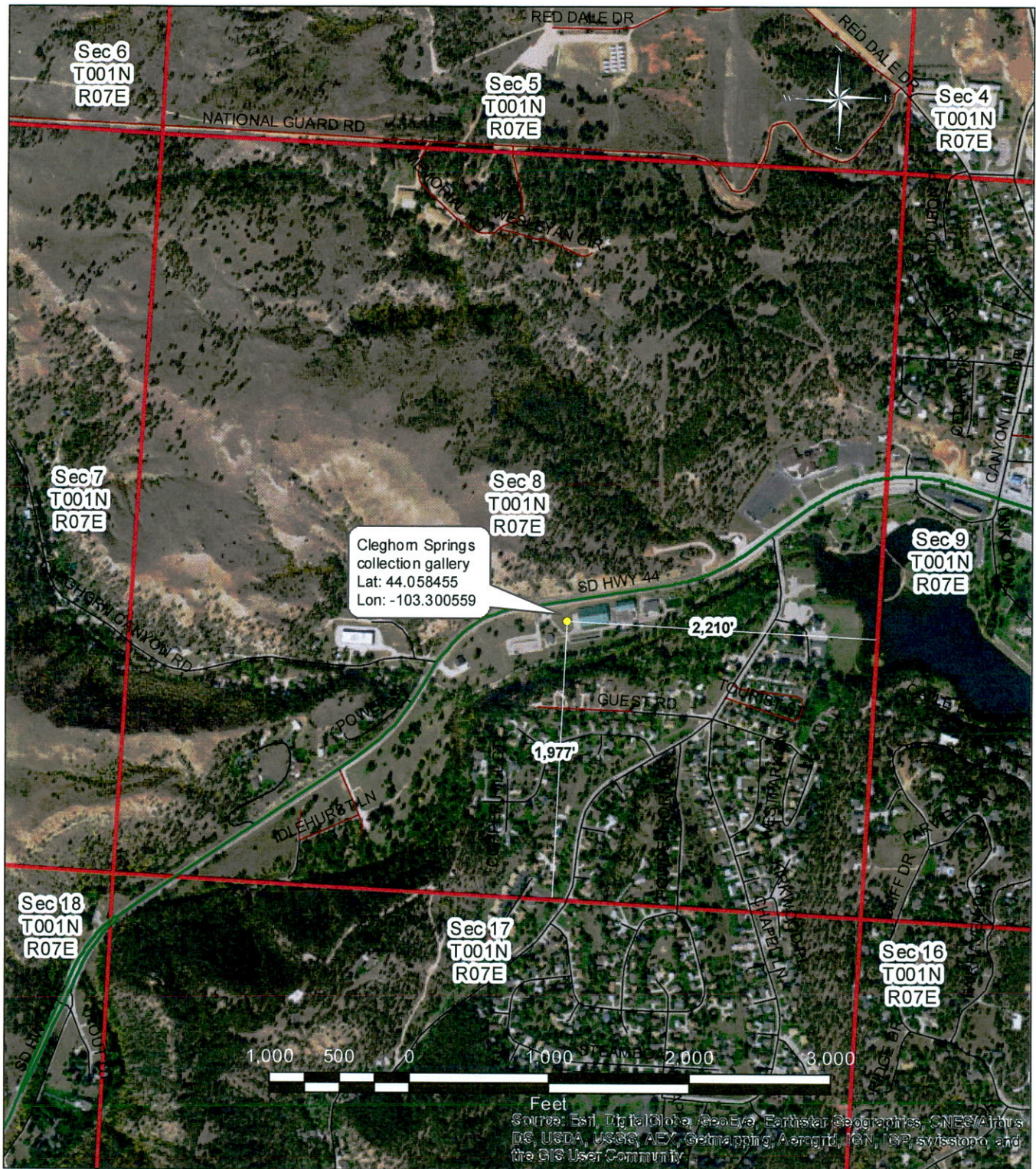
Vested Water Right No. 388-2 has a 1877 priority date for the irrigation season and a 1928 priority date for the non-irrigation season. However, the dates of the irrigation season is not defined. Mark Rath and I looked into this matter and while the defined irrigation season varies for other ditches in the Rapid City area, a common irrigation season is April 15th through November 1st of each calendar year.

For the purpose of licensing, I would propose using the April 15th through November 1st dates to define the irrigation season that would get the 1877 priority date and the remaining portion of the year have the 1928 priority.

While this is a logical approach to defining the periods associated with the two priority dates for the 6.18 cfs under No. 388-2, I fully recognize this may need to be revisited if an issue arises or additional information becomes available.

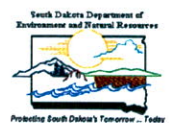
NAME: Eric Hundlund

Water Right #2454-2
Department of Game Fish and Parks
6/27/2017



Steven Quissell

Steven Quissell
Water Rights Inspector
DENR Water Rights Program



Water Right #2454-2
SD Department Game Fish and Parks
6/27/2017

Sec 8
T001N
R07E

SD HWY 44

44

Open Channel by-pass

Hatchery Pumps

USGS weir

Rearing Pavilion Supply Pumps
and Head Box

Cleghorn Springs
collection gallery

by-pass pipe

Rearing Pavilion

Hatchery
Building

Spring flow enters
Rapid Creek

Hatchery Parshall Flume

raceway

Rapid Creek



Steven Quissell
Water Rights Inspector
DENR Water Rights Program

GUEST RD

CHAPEL LN



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

OCT 12 2017

388-2
2454-2

Leslie Murphy
SD Game Fish & Parks Department
523 E Capitol
Pierre SD 57501

Dear Ms. Murphy:

Enclosed is Water License No. 2454-2. This is the final water right document completing the process of obtaining a Water Right. Included with the license are maps prepared by the staff engineer who conducted the field investigation.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

Note: Upon licensing, the applicable portions of Vested Water Right No. 388-2 were incorporated into No. 2454-2.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 2454-2

(1) The South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 made Application No. 2454-2, February 13, 2001 for a water permit to divert an additional 3.82 cubic feet of water per second (cfs) from Cleghorn Springs, Pennington County, South Dakota for fish culture purposes. Permit No. 2454-2, with a priority date of February 13, 2001 was approved July 8, 2009 and issued to the applicant for diversion of water with construction of the described water supply system and the application to beneficial use of said water completed.

Vested Water Right No. 388-2, with priority dates of 1877 and 1928, authorizes 6.18 cfs of water from Cleghorn Springs for use at the fish hatchery. Water Permit No. 2454-2 authorized the additional 3.82 cfs to bring the total up to the 10.0 cfs actually flowing through the hatchery facility.

The applicable portions of Vested Water Right No. 388-2 are incorporated into Water License No. 2454-2. Priority dates are as follows:

- **January 1, 1877** for 6.18 cfs during the irrigation season (as established under No. 388-2);
- **January 1, 1928** for 6.18 cfs during the remainder of the year (as established under No. 388-2)
- **February 13, 2001** for 3.82 cfs (as established under No. 2454-2)

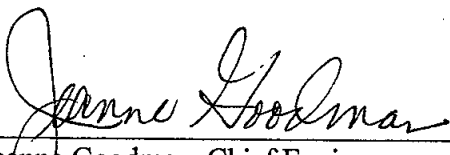
(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the water supply system and is entitled to divert 10.0 cubic feet of water per second for beneficial use. The location of the diversion point is as follows:

- (Approximate center of the gallery) 1,977'N and 2,210'W of the SE corner of Section 8, T1N, R7E in the NW ¼ SE ¼ Section 8 (44.058455, -103.300559).

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use. Water use at the fish hatchery includes the rearing pavilion containing 32 circular tanks, 4 raceways outside, 32 circular tanks in the hatchery building, twelve 190 liter experimental tanks in the hatchery building, 10 vertical flow incubators that are used about 2 months out of the year in the hatchery building and 2 settling ponds outside.

(4) Pursuant to South Dakota Water Law 46-5-30.1 the South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 the holder and/or owner of Partial Vested Water Right No. 2454-2 is issued a license to appropriate water, the right to use 10.0 cubic feet of water per second from Cleghorn Springs with priority dates of January 1, 1877, January 1, 1928 and February 13, 2001 from the location specified in (2) of this license for fish culture purposes at the Cleghorn Springs State Fish Hatchery.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Partial Vested Water Right No. 2454-2.


Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

OCT 12 2017
date

