

FUTURE USE PERMIT NO. 2580-2

Name of Applicant: **Southern Black Hills Water System**

Address: **PO Box 124, Hermosa SD 57744**

Phone: **605 255-4291**

Amount of Water Claimed: ^{1,474.0}
3,074 acre-feet

Total Acres: **NA**

Source of Water Supply: **groundwater (5 wells)**

Water to be used for: **rural water system use**

County: **FA, CU, PE**

Type of Waste Disposal System:

Location:

PRIORITY

Date Received: **3-2-06**

Application/License Fee: ^{50.⁰⁰}
\$82.50

Corrected Application Received:

Period of Annual Use: **January 1 – December 31**

Remarks:

Diversion Points:

~~**W ½ NE ¼ Sec 15-T6W-R6E (Custer Co)**~~

approx center NW ¼ Sec 6-T3S-R8E (Custer Co)

S ½ SE ¼ Sec 16-T6S-R4E (Custer Co)

W ½ NW ¼ Sec 21-T8S-R5E (Fall River Co)

S ½ NW ¼ Sec 24-T6S-R5E (Custer Co)

Depth of Well: **Madison Formation**

Well Driller:

Remarks:

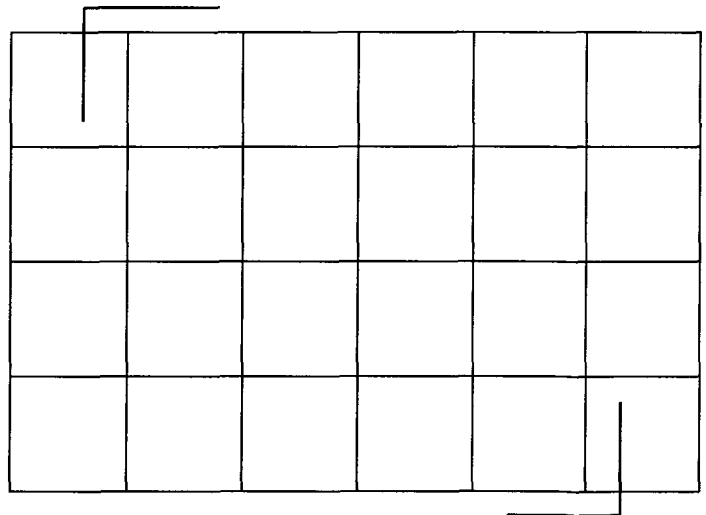
Type of Map: **topo maps**

Prepared by: **Ken W Royse, PE**

Reviewed and the Number Assigned on: **3-3-06**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2580-2</u>	(office use only) Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Attached List</u>	

RECEIVED
MAR - 2 2006
WATER RIGHTS
PROGRAM

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: (check one)

- ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☒ Future Use Reservation
☐ 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.)

Future use reservation for Southern Black Hills Water System

- Name of Applicant Southern Black Hills Water System Phone (605) 255-4291
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address PO Box 124 Hermosa State SD 57744
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed _____ *CFS or _____ **GPM 1,474.0 ***AF 3,074.00
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Madison Formation
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Fall River/Custer/Pennir
see attached maps & List
- County or counties where water will be used Fall River/Custer/Pennington
- Annual period during which water is to be used January 1 to December 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)

System Engineering Report has been previously submitted to SDDENR. System is currently developing a regional supply and delivery system which will utilize water in counties as noted. Water quantity is based on a reasonable expectation of a year 2050 growth condition in area.

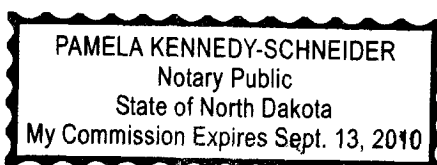
~~NORTH~~
STATE OF ~~SOUTH~~ DAKOTA) SS
County of Burleigh

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, Robert C. Morrison, 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 [Signature]

Subscribed and sworn to before me this 28th day of February 20 06



[Signature]
Notary Public signature

~~Well #1 - W $\frac{1}{2}$ NE $\frac{1}{4}$ Sec 15-T6S-R6E (Custer Co)~~

Well #2 - approximate center NW $\frac{1}{4}$ Sec 6-T3S-R8E (Custer Co)

Well #3 - S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 16-T6S-R4E (Custer Co)

Well #4 - W $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 21-T8S-R5E (Fall River Co)

Well #5 - S $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 24-T6S-R5E (Custer Co)

**SOUTH DAKOTA
FUTURE USE PERMIT NO. 2580-2**

Date of first receipt of application March 2, 2006.

The Water Management Board approved Future Use Permit No. 2580-2 on March 7, 2007 for Southern Black Hills Water System, PO Box 124, Hermosa SD 57744 subject to the following limitations, conditions and qualifications:

1. Future Use Permit No. 2580-2 reserves 1,474 acre-feet of water annually from the Madison Aquifer. The area to be reserved for future use is the approximate center of the NW ¼ Section 6-T3S-R8E (Custer County); S ½ SE ¼ Section 16-T6S-R4E (Custer County); W ½ NW ¼ Section 21-T8S-R5E (Fall River County) and S ½ NW ¼ Section 24-T6S-R5E (Custer County).
2. The water appropriated shall be used for the purpose of future supplies for rural water use in Fall River, Custer and Pennington Counties 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 March 2, 2006.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. That the permit reservation be restricted to 1,474 acre-feet of water annually from the Madison Aquifer.
2. That the permit be subject to review by the Water Management Board upon expiration of seven (7) years and that the permit be subject to cancellation if the Water Management Board determines during the review that the holder cannot any longer demonstrate a reasonable need for the permit.
3. At such a time as Southern Black Hills makes definite plans to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows at Beaver Creek Springs, Cascade Springs, and Hot Springs, and water levels in the cave pools in Wind Cave National Park.

WATER MANAGEMENT BOARD

By: Garland Erbele

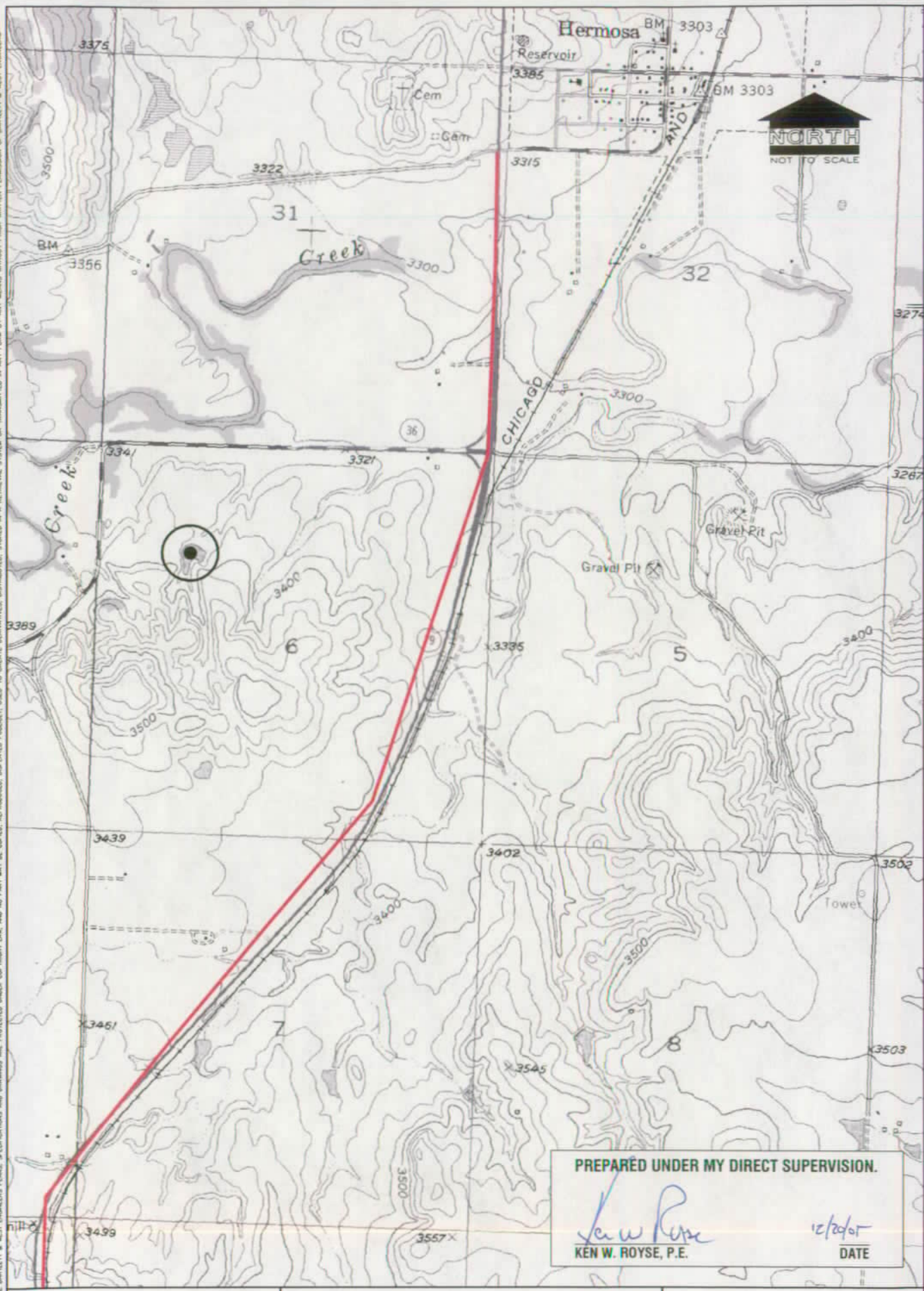
Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

MAY 10 2007

date



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PREPARED UNDER MY DIRECT SUPERVISION.

Ken W. Royse
KEN W. ROYSE, P.E.

12/20/05
DATE

BARTLETT & WEST
ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 2
SEC 6 - T3S - R8E

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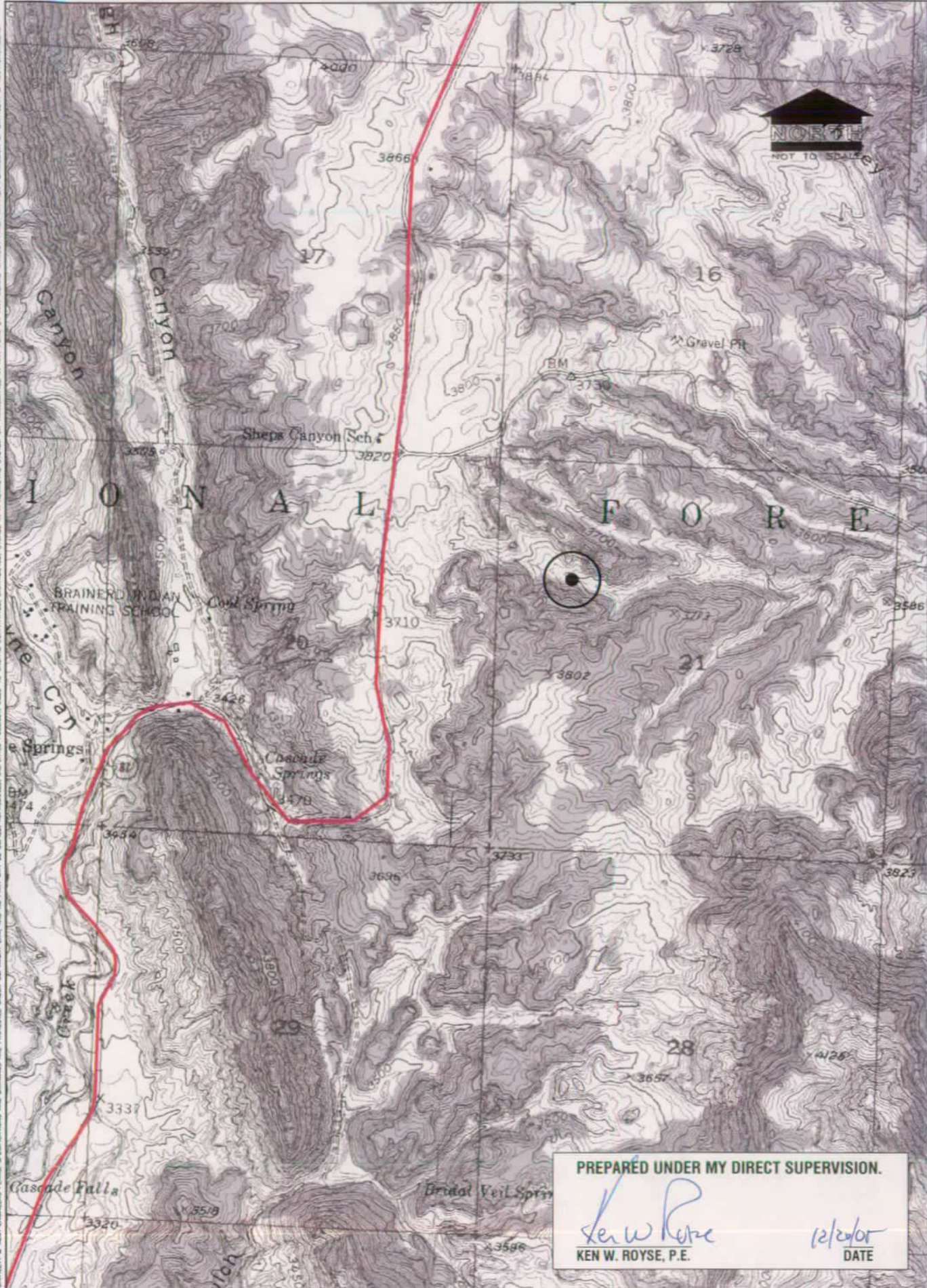


BARTLETT & WEST
ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 3
SEC 16 - T6S - R4E

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Ken W. Royse
KEN W. ROYSE, P.E.

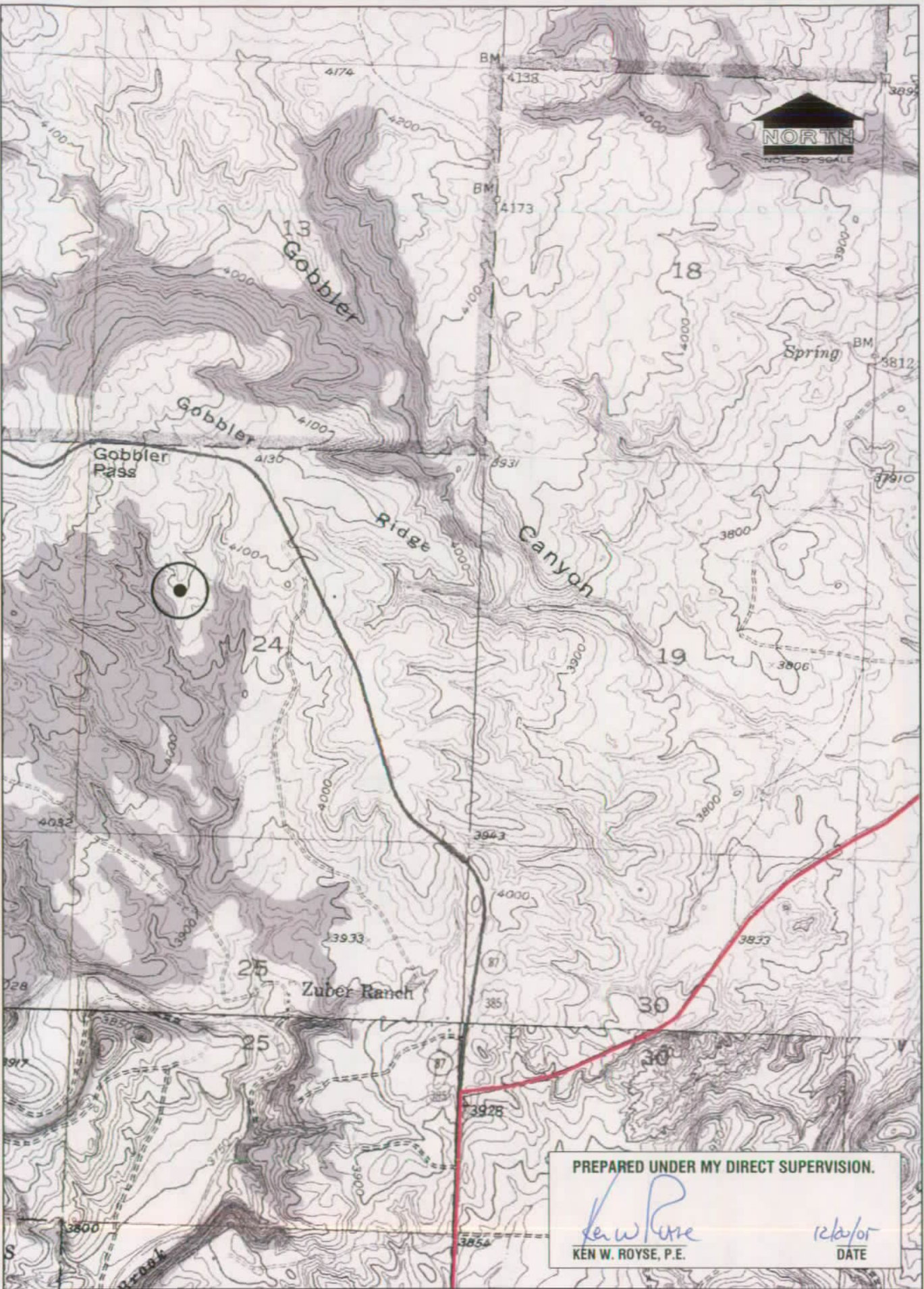
12/24/05
DATE

BARTLETT & WEST
ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 4
SEC 21 - T8S - R5E

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Ken W. Royse
KEN W. ROYSE, P.E.

relay/or
DATE

BARTLETT & WEST
ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 5
SEC 24 - T6S - R5E

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Ken W. Royse
KEN W. ROYSE, P.E.

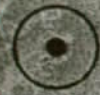
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DATE

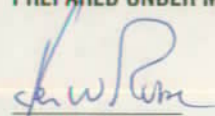
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ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 2
SEC 6 - T3S - R8E

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KEN W. ROYSE, P.E. 12/20/05
DATE

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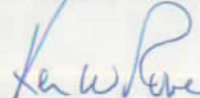
**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 3
SEC 16 - T6S - R4E

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KEN W. ROYSE, P.E.


DATE

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ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 4
SEC 21 - T8S - R5E

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Ken W. Royse
KEN W. ROYSE, P.E.

12/24/08
DATE

BARTLETT & WEST
ENGINEERS

**SOUTHERN BLACK
HILLS WATER SYSTEM**

WELL SITE No. 5
SEC 24 - T6S - R5E

Analysis of Water Needs; Southern Black Hills Water System

- **Estimate of Water Needs (Source: Southern Black Hills Water System, Preliminary Engineering Report, Feb. 2005)**

- Hermosa Segment 360 MGY (Table 8.2.1(A))
- Custer Segment 510 MGY (Table 8.2.2(A))
- Edgemont Segment 132 MGY (Table 8.2.3(A))

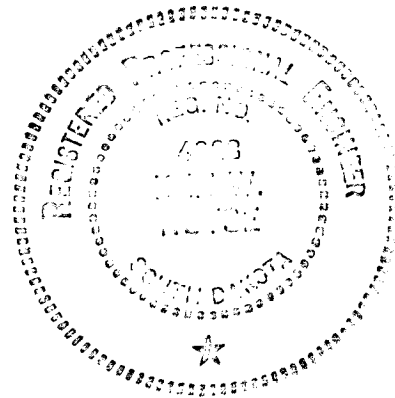
Total Water Needs, Level 2 Service 1,002 MGY
.....3,074 acre ft/yr

Note: Service Level is 'Level 2', as defined by referenced Engineering Report. Engineering Report held by David Ryan, SDDENR.

- **Permit Fees Estimated as follows:**

- First 120 acre ft/year\$150.00
- Second 120 acre ft/year\$75.00
- Each Additional 120 acre ft/year 24 X \$25.00
- Final Inspection/Licensing Fee NA

Subtotal Fee\$825.00
Future Use Adjusted 10%
Total Fee\$82.50




Ken W. Royse, P.E.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date May 15, 20 06

RECEIVED OF Southern Black Hills Water System Inc., PO Box 124, Hermosa SD 57744

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use		
Fee for Application for Permit No. <u>2580-2</u> to Appropriate Water for Future use	50	00
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	50.00

No.

02444

By

Darla S. Eiben
Chief Engineer


Buhler, Ken

From: Erbele, Garland
Sent: Monday, May 01, 2006 11:35 AM
To: Goodman, Jim; Buhler, Ken
Cc: Gronlund, Eric
Subject: FW: SOUTHERN BLACK HILLS WATER SYSTEM

fyi

-----Original Message-----

From: Templeton, Dave
Sent: Monday, May 01, 2006 10:37 AM
To: Erbele, Garland; Iles, Derric; Mayer, Mark
Cc: Feeney, Jim; Ryan, Dave
Subject: FW: SOUTHERN BLACK HILLS WATER SYSTEM

fyi - note discussion of new well.

-----Original Message-----

From: Ryan, Dave
Sent: Monday, May 01, 2006 9:43 AM
To: Templeton, Dave; Feeney, Jim
Subject: FW: SOUTHERN BLACK HILLS WATER SYSTEM

It appears that the Cascade Area project is on hold and the Southern Black Hills Water System is planning to proceed with an Argyle Road/Pringle Area project north of Hot Springs. This new plan includes drilling a new well in the area.

I am still planning to visit with the SBHWS and RD folks next week on the 9th. I will be asking several questions on the changes. Let me know if there is something in particular that you think I should ask about.

David Ryan

-----Original Message-----

From: Ken Royse [mailto:ken.royse@bartwest.com]
Sent: Monday, May 01, 2006 9:03 AM
To: Valer, Jim - Huron, SD
Cc: Lance Rom (Business Fax); Potts, Tim - Rapid City, SD; ctybob@gwtc.net; Ryan, Dave; ptrsn@gwtc.net; gvansco@sdarws.com; Joe Honner; jwbeard@gwtc.net; SDcowboy7@cs.com; cuscoplg@gwtc.net; summersetcity@rushmore.com; tompeg@gwtc.net
Subject: RE: SOUTHERN BLACK HILLS WATER SYSTEM

Jim, thanks for prompt and comprehensive response. Last Thursday the Southern Black Hills Board took two actions which affect this whole discussion--- their actions were as follows:

- They decided to not pursue the Cascade project (that's the one south of town--- subject of letter I sent you) at this time but work the area for more signups with possibility of pursuing this area next year.
- They decided to instead focus on a project north of Hot Springs with following features:
 - A new well project for the water source, rather than Hot Springs city water
 - A line across a local area called Argyle Road over to the town of Pringle, SD
 - Water for about 200-250 users with extra flow included for future expansion to Custer, SD
- The Board also authorized Bartlett and West to act as a Contractor and hire Quality Services of Rapid City to do the necessary EA or CE as may be needed in the area.

By copy of this message I am informing Lance of Quality Services and Tim Potts of this discussion. I will be meeting with Tim Potts on May 9 for further discussion on all this so if you have additional comments please let me know.

Thanks again for your attention to this.

Note to Lance---- I will be forwarding to you several e-mails from Jim on this issue.

05/01/2006

Ken

From: Valer, Jim - Huron, SD [mailto:jim.valer@sd.usda.gov]
Sent: Friday, April 28, 2006 1:03 PM
To: Ken Royse
Subject: FW: SOUTHERN BLACK HILLS WATER SYSTEM

From: Valer, Jim - Huron, SD
Sent: Friday, April 28, 2006 12:46 PM
To: 'kenroyse@bartwest.com'
Cc: tim potts (tim.potts@sd.usda.gov); david adrian (david.adrian@sd.usda.gov); doug roehl (doug.roehl@sd.usda.gov); pat hemen (pat.hemen@sd.usda.gov)
Subject: RE: SOUTHERN BLACK HILLS WATER SYSTEM

KEN: I FORGOT TO SEND THE ATTACHMENTS AND I ALSO WANTED TO PROVIDE SOME ADDITIONAL INFORMATION ON SECTION 106 CONSULTATION.

IN CASES WHERE PIPELINE ROUTES MAY NOT BE NAILED DOWN AT THE ENVIRONMENTAL REPORT STAGE TO THE EXTENT THAT YOU COULD COMPLETE A CULTURAL RESOURCES SURVEY, IT IS POSSIBLE FOR YOU TO REQUEST "PHASED IDENTIFICATION AND EVALUATION" IN ACCORDANCE WITH SECTION 800.4 (b) (2), (36 CFR PART 800) OF THE NATIONAL HISTORIC PRESERVATION ACT (NHPA). TO DO THAT, YOU WOULD HAVE TO HIRE AN ARCHAEOLOGIST TO PERFORM A RECORDS SEARCH AND TO PROPOSE A SURVEY STRATEGY ACCEPTABLE TO THE AGENCY AND THE SHPO. IF APPROVED, YOU WOULD THEN HAVE TO AGREE TO COMPLETE THE "ON-THE-GROUND" SURVEY PRIOR TO THE START OF CONSTRUCTION.

FOR A DEFINITION OF "PHASED IDENTIFICATION" SEE: <http://www.achp.gov/regs-rev04.pdf>

From: Valer, Jim - Huron, SD
Sent: Friday, April 28, 2006 11:34 AM
To: 'kenroyse@bartwest.com'
Cc: tim potts (tim.potts@sd.usda.gov); david adrian (david.adrian@sd.usda.gov); doug roehl (doug.roehl@sd.usda.gov); pat hemen (pat.hemen@sd.usda.gov)
Subject: SOUTHERN BLACK HILLS WATER SYSTEM

**SOUTHERN BLACK HILLS WATER SYSTEM
CASCADE SERVICE AREA**

KEN: THIS WILL RESPOND TO YOUR LETTER OF APRIL 26, 2006 REGARDING THE LEVEL OF ENVIRONMENTAL REVIEW FOR THE CASCADE SERVICE AREA PROJECT. YOU ASKED WHETHER THIS PROJECT WOULD BE CLASSIFIED AS AN RUS 1794 CATEGORICAL EXCLUSION (CE) OR AN ENVIRONMENTAL ASSESSMENT (EA).

YOU INDICATE THAT YOU ARE TARGETING A RURAL SYSTEM OF 200 TO 250 USERS TO BE SERVED WITH PURCHASED WATER FROM HOT SPRINGS, AND THAT BY ITSELF WOULD NORMALLY BE AN RUS 1794 CE. HOWEVER, DESIGNING THE SYSTEM WITH THE CAPACITY TO SERVE EDMONT AND THE SURROUNDING AREA WOULD PROBABLY KICK THE PROJECT UP OVER THE 500 EDU THRESHOLD AND TRIGGER AN RUS 1794 EA.

IT IS IMPORTANT TO NOTE THAT BOTH A CE AND AN EA REQUIRE THE IDENTICAL COMPREHENSIVE RUS BULLETIN 1794A-602 ENVIRONMENTAL REPORT (ER) THE ONLY DIFFERENCE REALLY IS THAT AN EA REQUIRES PUBLICATION OF A "AVAILABILITY OF AN ENVIRONMENTAL REPORT" AND AFTER A 30 DAY PUBLIC REVIEW PERIOD, PUBLICATION OF A "FONSI".

05/01/2006

I SHOULD ALSO NOTE THAT THERE COULD BE PUBLIC NOTICES INVOLVED WITH A CE AS WELL, IF THERE ARE ANY IMPACTS TO IMPORTANT FARMLAND, FLOODPLAINS, WETLANDS, OR CULTURAL RESOURCES.

PART OF THE ER PROCESS INCLUDES SECTION 106 (SHPO) CONSULTATION. TO DO THAT, YOU MUST ASSEMBLE THE INFORMATION (WE NEED TWO PACKETS – ONE FOR US AND ONE TO SEND TO THE SHPO) REQUIRED BY THE ATTACHED SHPO GUIDE, AND SEND IT DIRECTLY TO US. THE SHPO PREFERS THAT ALL INFORMATION BE CHanneLED THROUGH THE FEDERAL AGENCY. THE PACKET WOULD HAVE TO INCLUDE THE REQUIRED CULTURAL RESOURCES SURVEY. I AM ALSO ATTACHING A LIST OF ARCHEOLOGISTS THAT DO THIS KIND OF WORK.

FINALLY KEN: AS I'M SURE YOU ARE AWARE, RURAL DEVELOPMENT DOES HAVE THE AUTHORITY TO ADOPT ANOTHER FEDERAL ASSESSMENT. SO, IF THERE WOULD BE SRF AND/OR CDBG FUNDING IN THE PROJECT AND ANOTHER FEDERAL ASSESSMENT WAS AVAILABLE IN A TIMELY MANNER, WE COULD LIKELY ADOPT IT.

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 8, 2006

Southern Black Hills Water System
c/o Bob Morrison, Chairman
PO Box 124
Hermosa SD 57744

Dear Mr. Morrison:

We have received your request to amend the water permit application submitted March 2, 2006 as well as the additional *Application for a Permit to Appropriate Water* for rural water system use.

We originally received an application filing fee of \$82.50. After reviewing the two applications, it was determined an additional fee of \$542.50 will be required from the system.

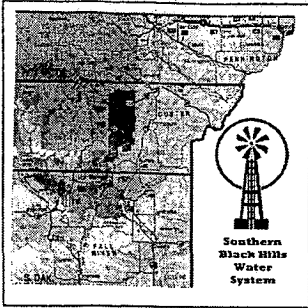
If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

c: Ken Royse

RECEIVED
MAY 15 2006
WATER RIGHTS
PROGRAM



SOUTHERN BLACK HILLS WATER SYSTEM

P.O. Box 124

Hermosa, South Dakota 57744

Phone 605-255-4291

Fax 605-255-4094

424 2066

863-1265

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MAY - 8 2006

WATER RIGHTS
PROGRAM

May 5, 2006

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Advisory
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- ♦ Dave Ryan
Advisory
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605-773-4216
- ♦ Ken Royse
Engineer
Bartlett & West Engineers
701-258-1110

Mr. Eric Grunland
Water Rights Program, DENR
Joe Foss Building 523 East Capitol
Pierre, SD 57501-3181

Re: Southern Black Hills Rural Water
Modification of Future Use Permit Application and
New Permit to Appropriate Water

Dear Eric,

This is a follow-up to recent discussions regarding the pending Southern Black Hills (SBH) Water System Application for a Future Use Reservation of Water.

That application was submitted to your office in late February of this year and had identified five (5) separate potential water withdrawal sites for a total water need of 3,074 acre-ft/year. Please accept this letter as our request to eliminate Well Site No. 1 (located in Sec. 15-T6S-R6E) from the future permit application; please also reduce our water need request from 3,074 acre-ft/year to a revised future use of 1474 acre-ft/year.

With the above modification to the pending Future Use Permit Application please also accept a New Permit to Appropriate Water as attached. This new permit is for Well Site No. 1 (Sec. 15-T6S-R6E) as was deleted from the Future Use Permit. The amount of water requested is 1600 acre-ft/year (also as was deleted from the Future Use Permit).

We understand the fee adjustment created by the modifications to the Future Use Permit may be applied at the fee now due to process the new permit. If you need more on this please contact our engineer (Mr. Ken Royse, 701-258-1110) at your convenience.

Sincerely,

Bob Morrison
Chairman

cc: BW - Ken Royse w/attach.
SBH - Bob Morrison w/attach.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
APPLICATION NO. 2580-2, Southern Black Hills Water System**

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 Future Use Water Permit Application No. 2580-2, Southern Black Hills Water System, Robert Morrison, PO Box 124, Hermosa SD 57744.

The Chief Engineer is recommending APPROVAL of Application No. 2580-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the applicant has demonstrated a reasonable need for the water reserved, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Permit No. 2580-2 reserves 1,474 acre feet of water annually from the Madison Aquifer.
2. That Future Use Permit No. 2580-2 is approved with the stipulation that this Permit is subject to review by the Water Management Board in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to flows of Beaver Spring, Cascade Springs and Hot Springs.

See report on application for additional information.

Garland Erbele, Chief Engineer
June 8, 2006

WATER PERMIT APPLICATION NO. 2580-2
SOUTHERN BLACK HILLS WATER SYSTEM
MAY 11, 2006

Water Permit Application No. 2580-2 proposes to appropriate for future use 1,474 acre-feet of water annually from the Madison aquifer. The areas to be reserved for future water use in Custer County are located: in the approximate center of the NW¼ Sec. 6, T3S-R8E (Hermosa site); S½SE¼ Sec. 16, T6S-R4E (Argyle Site); and the S ½ NW¼ Sec. 24, T6S-R5E (Gobbler Pass Site). The area to be reserved for future water use in Fall River County is the W ½ NW¼ Sec. 21, T8S-R5E (Cascade Springs Site). The water is to be reserved for future water supplies for Southern Black Hills Water System (SBHWS) for rural water system use by the system in Fall River, Custer and Pennington Counties. This application does not authorize construction of works or application of water to beneficial use.

AQUIFER: Madison aquifer (MDSN)

Aquifer Characteristics:

The Madison Limestone, locally known as the Pahasapa Limestone, is a fine to medium crystalline, cavernous limestone and dolomite. The Madison is laterally extensive and underlies much of the western United States. Fall River and Custer Counties are near the south eastern limit of the Madison; (Allen and others, 1985). The Madison underlies approximately 981,120 acres of Fall River County and 736,640 acres of Custer County (Allen and others, 1985). The Madison aquifer contains an estimated 9,811,200 acre-feet of recoverable water in storage in Fall River County and 9,208,000 acre-feet of recoverable water in storage in Custer County (Allen and others, 1985). The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of exposed surfaces, groundwater solution and fracturing, and is considered the Madison aquifer. The average porosity of the Madison is estimated to be 11% and the effective porosity from which recoverable water can be obtained by wells is assumed to be 5% (Rahn, 1979). The conditions expected for each site are shown in table 1 (compiled using (Allen and others, 1985), (Carter and Redden, 1999), and (Strobel and others, 1999)).

Site	Madison top	Madison thickness	Distance to outcrop	Static Water Level
Hermosa NW¼ Sec. 6, T3S-R8E	2600'	300'	5 miles	250'
Argyle SE¼ Sec.16, T6S-R4E	450'	300'	3.5 miles	500'
Gobbler Pass NW¼ Sec.24, T6S-R5E	600'	300'	2.5 miles	400'
Cascade Springs NW¼ Sec.21, T8S-R5E	900'	300'	12 miles	200'

Table 1. Site conditions estimated for the areas proposed by 2580-2

DISCUSSION:

SDCL 46-2A-10 states "A reservation for a future use may be approved only if there is a reasonable probability that unappropriated water is available for appropriation, that the quantity of water reserved will be needed by the entity and that the proposed use will be a beneficial use and in the public interest." The beneficial use and public interest of a future use reservation for rural water system use will not be addressed in this report.

Water Availability:

The availability of unappropriated water in the Madison aquifer can be evaluated by considering SDCL 46-6-3.1 which requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

The Madison is recharged through infiltration of precipitation falling directly on the outcrop area, possibly upward leakage from the Deadwood aquifer, and from streamflow losses. The estimated average annual recharge for the Madison aquifer in South Dakota ranges from 140,000 to 400,000 acre-feet annually (Woodward Clyde, 1981). Average annual recharge from 1931-1998 is estimated to be approximately 137,000 ac-ft/yr (Carter and others, 2001).

The high cost of Madison wells, except very near the outcrop, and the availability of groundwater from shallower aquifers, has limited domestic development and generally restricted usage from the Madison to those uses which require water rights. There are a total of 142 permits/rights which appropriate water from the Madison aquifer in South Dakota (Water Rights, 2006c). In addition, there are three future use permits (1833-2 Weston Heights Home Owners, 2086-2 The City of Rapid City, and 2560-2 Fall River Water User District) that reserve 6,108.8 acre-feet of water annually from the Madison aquifer. The majority of the water rights/permits from the aquifer are from Butte, Lawrence, Meade, Pennington and Fall River Counties. The Madison supplies water for irrigation, geothermal, industrial, and commercial use. However, by far the major use of the aquifer is for common distribution systems (suburban housing development and municipal use). The cities of Spearfish, Belle Fourche, Sturgis, Rapid City, Box Elder, and Edgemont all depend on water from the Madison aquifer.

If the worst case assumptions are made that (1) permits/rights with an annual withdrawal limitation (ac-ft/yr) will use the maximum allowable; and (2) permits/rights that are limited by a diversion rate only, will use 60% of the maximum allowable (considered reasonable for water distribution systems); the total water use from the Madison would be less than 50,000 acre-feet per year. The actual amount of water used from the Madison is considerably less than this estimate. Withdrawals from wells completed into the Madison aquifer were estimated to be 10,990 acre-feet annually from 1987-1996 (Carter and others, 2001).

This application proposes to withdraw 1,474 acre-feet of water annually from the Madison aquifer. Comparison of the estimated annual recharge to the Madison with the

water use estimated from the aquifer indicates unappropriated water is available from the Madison aquifer.

Observation Well Data:

The Water Rights Program monitors 26 observation wells completed into the Madison aquifer in the Black Hills area (Water Rights, 2006b). Figure 1 shows the location of Water Rights' Observation Wells relative to the sites proposed by this application.

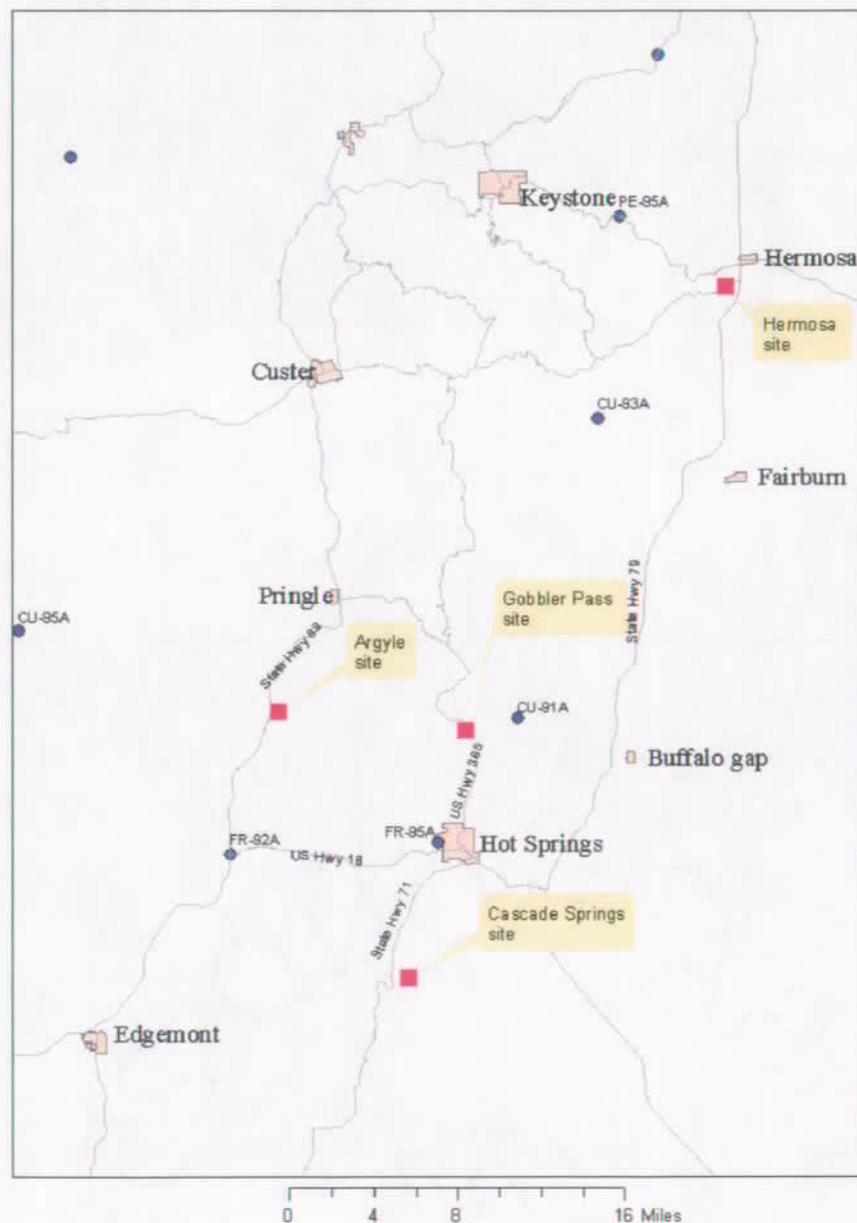


Figure 1. Vicinity Map

Hydrographs for Madison aquifer observation wells near 2580-2 sites are shown in figures 2-7 below.

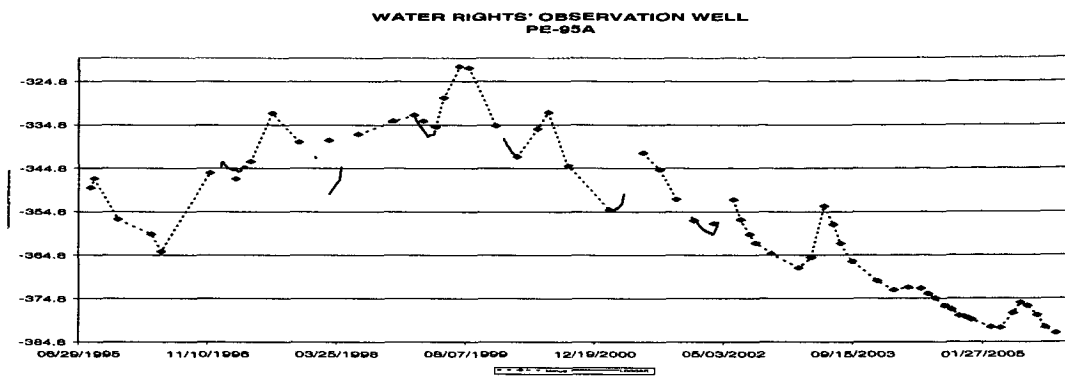


Figure 2. Hydrograph of PE-95A, (see Figure 1 for location)

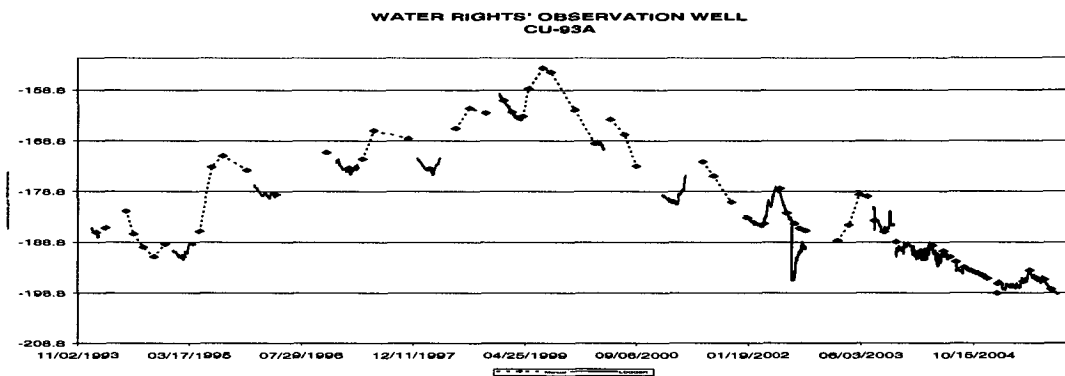


Figure 3. Hydrograph of CU-93A, (see Figure 1 for location)

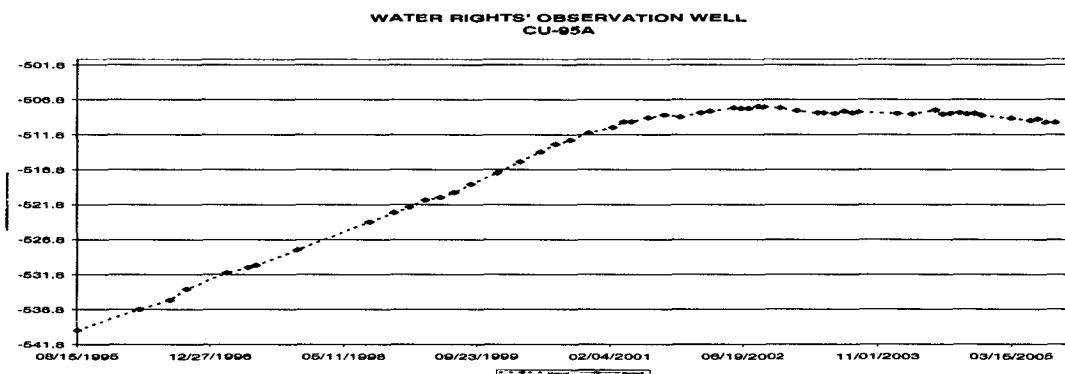


Figure 4. Hydrograph of CU-95A, (see Figure 1 for location)

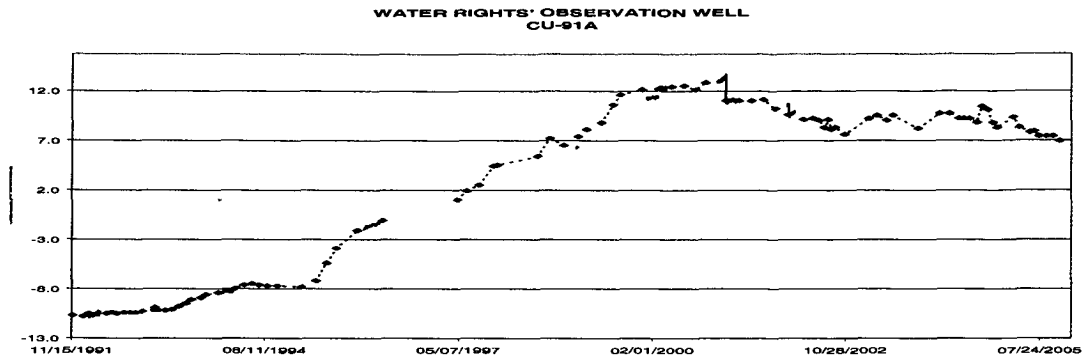


Figure 5. Hydrograph of CU-91A, (see Figure 1 for location)

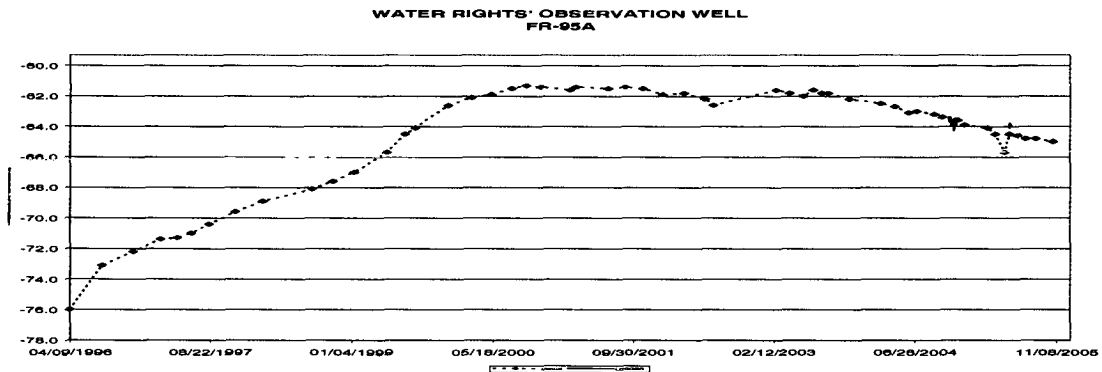


Figure 6. Hydrograph of FR-95A, (see Figure 1 for location)

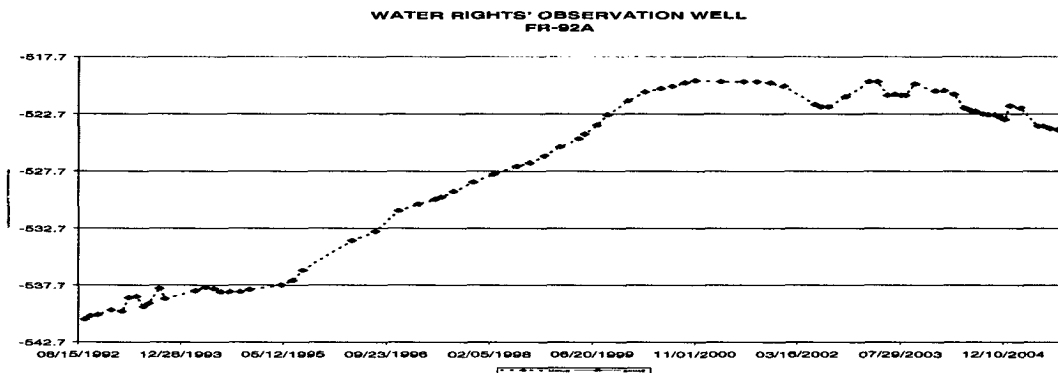


Figure 7. Hydrograph of FR-92A, (see Figure 1 for location)

Records from the observation wells indicate the potentiometric surface of the Madison aquifer fluctuates 15-60 feet at the observation wells in response to seasonal and climatic variations. The hydrographs show the potentiometric surface measured at these sites rose during the late 1990's in response to wet climatic conditions. The water levels have decreased since about 2000 in response to less recharge. The record for these six observation wells does not extend back long enough to include a period with water levels as low or lower than current water levels. However, a comparison of these hydrographs with data from Water Rights' Observation wells completed into the Madison aquifer that have longer periods of record, suggest the fluctuations represented in figures 2-7 are representative of climatic conditions instead of pumping from the aquifer. Long-term water level declines are not apparent from the hydrographs of wells with longer periods of record.

The observation well data verifies that unappropriated water is available from the Madison aquifer.

Need for the Proposed Quantity of Water Reservation:

Pursuant to ARSD 74:02:01:24.01:

“Future use applications and future use permits for entities without permits to use water shall be limited to the amount of water actually needed to cover the uses specified in the future use application or future use permit. The board may, at its discretion, limit future use applications and future use permits for entities with permits to use water to two times the annual amount actually put to beneficial use.”

The “Analysis of Water Needs; Southern Black Hills Water System” provided with this application reports the “Total Water Needs, Level 2 Service” is 3,074 acre-ft/yr.

DEVELOPING WATER FROM THE FUTURE USE RESERVATION:

A future use permit is a reservation of a definite amount of water with a specified priority date; it does not authorize construction or putting the water to beneficial use. SDCL 46-5-38.1 requires that before the holder of a future use permit initiates construction of the works to put reserved water to beneficial use, a water permit must be approved. Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if unappropriated water is available for the proposed use, the proposed use will not unlawfully impair existing rights and the proposed use is a beneficial use and in the public interest. It may not be prudent to reserve water for future use, if it is not likely that reservation could be put to beneficial use. There are two potential considerations related to putting water reserved by this proposed future use permit to beneficial use: the affects of existing rights, and the public interest issues related to development.

Affect on Existing Rights:

The proximity of the future use areas proposed by this application to existing water rights/permits appropriating water from the Madison aquifer is shown in table 2.

Site	Nearest Existing Water Right/Permit	Distance (miles)
Hermosa	2532-2 & 2489-2 Hermosa Water Users Assn.	4 miles
Gobbler Pass	419-2 Wind Cave Nat'l Park	3 miles
Argyle	419-2 Wind Cave Nat'l Park	6 miles
Cascade Springs	2392-2 Schwarz Trust	7 miles

Table 2. Nearest Madison aquifer Water Rights/Permits to areas proposed by 2580-2

It is unlikely well interference caused by development at any of the proposed sites would adversely impact existing wells supplying appropriations from the Madison aquifer

In addition to existing wells, Future Use Permit No. 2560-2 held by Fall River Water User District (FRWUD) reserves 750 acre-feet/year for future use from three areas. The Cascade Springs site proposed by this application is approximately two and one-half miles from one FRWUD site and approximately six miles from another FRWUD site. The distance between the future use areas reserved by 2560-2 and the areas proposed by

2580-2 should be sufficient to allow development from either future use permit without adverse impacts. The actual extent of interference between two wells will depend on location of each well and the on-site aquifer characteristics. Water Permits are required before water reserved by the future use permits can be placed to beneficial use. Permits issued from the future use reservations will retain the priority date of the future use permits (e.g. 2005 for 2560-2 and 2006 for 2580-2).

Pursuant to SDCL 46-2A-9, a permit to appropriate water can only be issued if there is reasonable probability that the proposed diversion can be developed without unlawful impairment of existing rights. Approval of a permit that would authorize the construction of a well in an area reserved by Future Use Permit No. 2560-2 could involve considering impacts to an *existing well* that had been constructed to use water that had been reserved by Future Use Permit No. 2580-2, even though Permit No. 2560-2 has the senior priority date. However, once completed, any well constructed to use water that had been reserved by Future Use Permit No. 2580-2 is junior to any well constructed to use water that had been reserved by Future Use Permit No. 2560-2, and may need to control its withdrawals to protect the senior water right.

Public Interest:

The Cascade Springs site is located about one and one-half miles northeast of Cascade Springs, which is the largest single spring in the Black Hills (Rahn and Gries, 1973).

A potential obstacle to development of the Madison aquifer concerns the possibility of affecting discharge from springs that may originate from the Madison aquifer. The water at Cascade Springs contains geochemical and isotopic characteristics of the Madison aquifer (Whalen, 1994). Cascade Springs is classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer" (Rahn and Gries, 1973). A decline of the potentiometric surface in the vicinity of the springs could decrease spring discharge.

Since SD Water Law does not protect artesian head pressure as a means of diversion, well interference resulting in decreased discharge from these "artesian" springs probably could not be considered an adverse impact. However, if the base flows of Cascade Creek decrease as the result of well interference, surface water users (appropriative and domestic) could be affected and the issue of "public interest" as it relates to surface water use versus the groundwater use would have to be considered. The proximity of the Cascade sites to the Cascade springs could lead to specific qualifications on any permit placing water to beneficial use to address any public interest concerns.

The Water Management Board considered potential well interference/spring discharge issues related to Future Use Permit No. 2560-2. The future use permit was approved with the qualification stating:

"At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to

construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows of Beaver Spring, Cascade Springs and Hot Springs.”

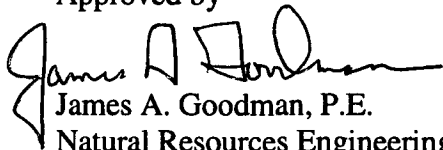
CONCLUSIONS:

1. Water Permit Application 2580-2 proposes to reserve for future use 1,474 acre-feet of water annually from the Madison aquifer.
2. The Madison aquifer is a prolific aquifer that is laterally extensive. Unappropriated water is available for this appropriation.
3. Before the Southern Black Hills Water System initiates construction of the works to put water reserved by this future use permit to beneficial use, a water permit application must be approved. Water permit applications in the areas specified by this future use application may contain specific conditions/qualifications to address any public interest concerns relating impacts of groundwater withdrawals on area springs.



Ken Buhler
Natural Resources Engineering Specialist

Approved by



James A. Goodman, P.E.
Natural Resources Engineering Director

REFERENCES:

- Allen, J.C., Iles, D.L., and Petres, A.K., 1985, Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, Tasks 3A.B.C. and 4A.B.: Groundwater Resource Inventory: South Dakota Department of Water and Natural Resources
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Form 8

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:

June 14, 2006

June 21, 2006

Cost of Printing One hundred eighty-nine
dollars and twenty-eight cents (\$189.28)

Patricia K. Van Patten
(Signature)

06/26/06 Legal Advertising Rep.
(Title)

06/26/06
(Date Signed)

June 14, 21 L2315541

NOTICE OF APPLICATION NO. 2580-2 TO APPROPRIATE AND RESERVE WATER FOR FUTURE USE AND APPLICATION NO. 2585-2 TO APPROPRIATE WATER

Notice is given that South-
ern Black Hills Water System,
c/o Don Peterson, P.O. Box
124, Hermosa, SD 57744, has
filed the following applications.

Application No. 2580-2 pro-
poses to appropriate for future
use 1,474 acre-feet of water
annually from the Madison
Aquifer. The area to be re-
served for future water use is
the approximate center of
NW¼ Section 6, T35-R8E
(Custer County), S¼SE¼ Sec-
tion 16, T6S-R4E (Custer Coun-
ty); W¼NW¼ Section 21, T8S-
R5E (Fall River County), and
S¼NW¼ Section 24, T6S-R5E
(Custer County). The water is
to be reserved for future water
supplies for rural water sys-
tem use by the system in Fall
River, Custer, and Pennington
Counties. This application does
not authorize construction of
works or application of water
to beneficial use.

Pursuant to SDCL 46-2A-2,
the Chief Engineer recom-
mends APPROVAL of Applica-
tion No. 2580-2 because 1) un-
appropriated water is avail-
able, 2) the quantity of water
reserved will be needed by the
rural water system, 3) it is a
beneficial use of water, and 4)
it is in the public interest.

Application No. 2585-2 pro-
poses to appropriate 2,67 cubic
feet of water per second (1,600
acre-feet of water annually)
from the Madison Aquifer lo-
cated in the W¼NE¼ Section
15, T6S-R6E (Custer County).
The water is for rural water
system use in Fall River,
Custer, and Pennington Coun-
ties.

Pursuant to SDCL 46-2A-2,
the Chief Engineer recom-
mends DEFERRAL of Applica-
tion No. 2585-2 until an
aquifer test pump is completed
by the applicant and the effect
to Beaver Creek Springs is
evaluated.

Any person interested in
opposing or supporting these
applications must file a writ-
ten petition with BOTH the
applicant and Chief Engineer.
The applicant must also file a
petition if opposed to the Chief
Engineer's recommendations.
The Chief Engineer's address
is "Water Rights 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
July 3, 2006. The petition may
be informal but must include a
statement describing the peti-
tioner's interest in the applica-
tion, the petitioner's reasons
for opposing or supporting the
applications, and the signature
and mailing address of the
petitioner or the petitioner's
legal counsel, if legal counsel
is obtained.

The Water Management
Board will consider these ap-
plications at 9:30 a.m. on July
12, 2006, in the Matthew Train-
ing Center, Foss Building, 523
E. Capitol Avenue, Pierre,
S.D. The Chief Engineer's re-
commendation is not final or
binding upon the Board. The
Board is authorized to 1) ap-
prove, 2) approve with quali-
fications, 3) defer, or 4) deny
these applications based on the
facts presented at the public
hearing. The July 12, 2006,
hearing date will be
automatically delayed for at
least 20 days upon written
request to the Chief Engineer
from the applicant or any
interested person opposing the
applications. The request for
an automatic delay must be
filed by July 3, 2006.

Any hearing will be an
adversary proceeding. Any
person filing a petition under
the applicant have the right to
be represented by a lawyer
and may present evidence or
cross-examine witnesses ac-
cording to SDCL 1-26. These
and other due process rights
will be forfeited if not exer-
cised. Decisions of the Board
may be appealed to the Circuit
Court and State Supreme
Court as provided by law.
Contact Eric Gronlund by July
3, 2006, at the above Water
Rights Program address to
request copies of information
pertaining to these applica-
tions, to assure access to the
hearing by the handicapped or
to obtain an interpreter for the
hearing impaired.

Since these applications do
not involve a monetary contro-
versy in excess of \$2,500.00 or
termination of a property right
in accordance with SDCL 1-26-
18.3, the Chief Engineer has
determined this contested case
may not be referred to the
Office of Hearing Examiners.
If any party disagrees with
this determination, the Chief
Engineer shall be notified by
July 3, 2006.

These applications are 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

RECEIVED
JUN 23 2006
WATER RIGHTS
PROGRAM

Affidavit of Publication

State of South Dakota)

) ss.

County of Custer

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

Southern Hills Water District
Water Application

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 2 successive week(s), on which said newspaper was regularly published, to wit:

June 14, 2004 ; June 21, 2006 ;

_____, _____, _____;
_____, _____, _____;
_____, _____, _____;

the full amount of the fees for the publication of the annexed notice is \$ 77.33.

Charles W. Najacht

Subscribed and sworn to me before this 21

of June, 2006;

Norma Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2012

NOTICE OF APPLICATION

NO. 2580-2 TO APPROPRIATE AND RESERVE WATER FOR FUTURE USE AND APPLICATION NO. 2585-2 TO APPROPRIATE WATER

Notice is given that Southern Black Hills Water System, c/o Robert G Morrison, PO Box 124, Hermosa SD 57744 has filed the following applications.

Application No. 2580-2 proposes to appropriate for future use 1,474 acre-feet of water annually from the Madison Aquifer. The area to be reserved for future water use is the approximate center of NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is to be reserved for future water supplies for rural water system use by the system in Fall River, Custer and Pennington Counties. This application does not authorize construction of works or application of water to beneficial use.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2580-2 because 1) unappropriated water is available, 2) the quantity of water reserved will be needed by the rural water system, 3) it is a beneficial use of water, and 4) it is in the public interest.

Application No. 2585-2 proposes to appropriate 2.67 cubic feet of water per second (1,600 acre-feet of water annually) from the Madison Aquifer located in the W 1/2 NE 1/4 Section 15-T6S-R6E (Custer County). The water is for rural water system use in Fall

River, Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2585-2 until an aquifer test pump is completed by the applicant and the effect to Beaver Creek Springs is evaluated.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights 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 July 3, 2006. 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 applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider these applications at 9:30 AM, July 12, 2006 in the Matthew Training Center, Foss Building, 523 E Capitol, Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The July 12, 2006 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 July 3, 2006.

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 July 3, 2006, 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.

Since these applications do not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by July 3, 2006.

These applications are 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.

#190, 6/14, 6/21

RECEIVED
JUL 12 2006
WATER RIGHTS
PROGRAM

NORMA NAJACHT
NOTARY PUBLIC
SOUTH DAKOTA

**NOTICE OF APPLICATION NO.
2580-2 TO APPROPRIATE AND
RESERVE WATER FOR FUTURE
USE AND APPLICATION NO. 2585-
2 TO APPROPRIATE WATER**

Notice is given that Southern Black Hills Water System, c/o Robert G Morrison, PO Box 124, Hermosa SD 57744 has filed the following applications.

Application No. 2580-2 proposes to appropriate for future use 1,474 acre-feet of water annually from the Madison Aquifer. The area to be reserved for future water use is the approximate center of NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is to be reserved for future water supplies for rural water system use by the system in Fall River, Custer and Pennington Counties. This application does not authorize construction of works or application of water to beneficial use.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2580-2 because 1) unappropriated water is available, 2) the quantity of water reserved will be needed by the rural water system, 3) it is a beneficial use of water, and 4) it is in the public interest.

Application No. 2585-2 proposes to appropriate 2.67 cubic feet of water per second (1,600 acre-feet of water annually) from the Madison Aquifer located in the W 1/2 NE 1/4 Section 15-T6S-R6E (Custer County). The water is for rural water system use in Fall River, Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 2585-2 until an aquifer test pump is completed by the applicant and the effect to Beaver Creek Springs is evaluated.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights 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 July 3, 2006. 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 applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider these applications at 9:30 AM, July 12, 2006 in the Matthew Training Center, Foss Building, 523 E Capitol, Pierre SD. The Chief

Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The July 12, 2006 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 July 3, 2006.

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Since these applications do not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by July 3, 2006.

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June 13, 20

AFFIDAVIT OF PUBLICATION

State of South Dakota)
) ss.
County of Fall River)

Brett Nachtigall of Hot Springs, Fall River County, South Dakota, being duly sworn, upon oath says that he is the publisher of the Hot Springs Star, is a legal newspaper, as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, and is published at Hot Springs, county and state aforesaid; that the advertisement headed —

278- Notice of
Application

a true printed copy thereof is hereunto annexed, was published in the said Hot Springs Star, in the regular and entire issue of said paper,

for two

successive issues, beginning with the issue dated

June 13, 2006

and ending with the issue dated

June 20, 2006

That the full amount of the fee charged for the publication of said notice is

\$ 101.43, and that

no agreement or understanding, for the division thereof, has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the whole amount insures to the benefit of the publishers of said newspaper.

Subscribed and sworn to before me

this 20 day of June

2006

Notary Public

My Commission Expires
June 4, 2009

RECEIVED
JUN 22 2006
WATER RIGHTS
PROGRAM

OK



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 8, 2006

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

ATTENTION: Legal Public Notice

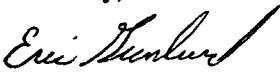
Enclosed is a Notice on Application Nos. 2580-2 and 2585-2 to Appropriate Water to be published twice. Please publish the first notice on June 14, 2006 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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 Southern Black Hills Water System, c/o Robert G Morrison, PO Box 124, Hermosa SD 57744 (Phone No. 605 424-2066).

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-----

Nos. 2580-2 and 2585-2

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

Date _____

We are in receipt of your letter of June 8, 2006 enclosing Notice to Appropriate Water by Application Nos. 2580-2 and 2585-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 8, 2006

Custer Co. Chronicle
PO Box 551
Custer SD 57730-0551

ATTENTION: Legal Public Notice

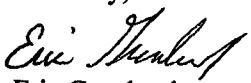
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Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

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

Date _____

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Name

Newspaper



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 8, 2006

Hot Springs Star
PO Box 1000
Hot Spring SD 57747-1000

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application Nos. 2580-2 and 2585-2 to Appropriate Water to be published twice. Please publish the first notice on June 13, 2006 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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 Southern Black Hills Water System, c/o Robert G Morrison, PO Box 124, Hermosa SD 57744 (Phone No. 605 424-2066).

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Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

Nos. 2580-2 and 2585-2

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

Date _____

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Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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 NEWSPAPERS RIGHT AWAY.

June 8, 2006

Southern Black Hills Water System
c/o Robert G Morrison
PO Box 124
Hermosa SD 57744

Dear Mr. Morrison:

Water Permit Application Nos. 2580-2 and 2585-2 have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the following papers: Custer Co Chronicle, 605 673-2217, Rapid City Journal, 605 394-8300 and the Hot Springs Star, 605 745-4170.

You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and reports on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also 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

c: Ken Royse, Bartlett & West Engineers

enclosures

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

Notice of Application No. 2580-2 to Appropriate and Reserve Water for Future Use
and Application No. 2585-2 to Appropriate Water

Notice is given that Southern Black Hills Water System, c/o Robert G Morrison, PO Box 124, Hermosa SD 57744 has filed the following applications.

Application No. 2580-2 proposes to appropriate for future use 1,474 acre-feet of water annually from the Madison Aquifer. The area to be reserved for future water use is the approximate center of NW ¼ Section 6-T3S-R8E (Custer County); S ½ SE ¼ Section 16-T6S-R4E (Custer County); W ½ NW ¼ Section 21-T8S-R5E (Fall River County) and S ½ NW ¼ Section 24-T6S-R5E (Custer County). The water is to be reserved for future water supplies for rural water system use by the system in Fall River, Custer and Pennington Counties. This application does not authorize construction of works or application of water to beneficial use.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2580-2 because 1) unappropriated water is available, 2) the quantity of water reserved will be needed by the rural water system, 3) it is a beneficial use of water, and 4) it is in the public interest.

Application No. 2585-2 proposes to appropriate 2.67 cubic feet of water per second (1,600 acre-feet of water annually) from the Madison Aquifer located in the W ½ NE ¼ Section 15-T6S-R6E (Custer County). The water is for rural water system use in Fall River Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. 2585-2 until an aquifer test pump is completed by the applicant and the effect to Beaver Creek Springs is evaluated.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights 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 July 3, 2006. 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 applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

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Since these applications do not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by July 3, 2006.

These applications are 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**

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

June 9, 2006

Frank Schroth
7 – 11 Ranch
Box 97
Buffalo Gap SD 57722

Dear Mr. Schroth:

Enclosed is a copy of the reports, recommendations and public notice for Future Use Water Permit No. 2580-2 and Water Permit Application No. 2585-2 filed by the Southern Black Hills Water System. The notice will be published in newspapers within the counties proposed to be served by the System. The notice schedules a July 12th hearing before the Water Management Board. Petitions to intervene must be submitted by July 3, 2006.

This information is being sent because the 7 – 11 Ranch has expressed concerns on development impacting Beaver Creek Springs. If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

Enclosures



**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 9, 2006

Randy Scott
Fall River Water Users District
1 Angostura Highland
Hot Springs SD 57747

Dear Mr. Scott:

Enclosed is a copy of the reports, recommendations and public notice for Future Use Water Permit No. 2580-2 and Water Permit Application No. 2585-2 filed by the Southern Black Hills Water System. The notice will be published in newspapers within the counties proposed to be served by the System. The notice schedules a July 12th hearing before the Water Management Board. Petitions to intervene must be submitted by July 3, 2006.

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

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosures

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, June 14, 2006 2:05 PM
To: 'sharla_stevensen@partner.nps.gov'
Subject: Water Permit Application Nos. 2580-2 and 2585-2

As requested, attached are the applications and maps submitted by Southern Black Hills Water System. Also included are the Chief Engineers recommendations and the reports.

If you have questions, please call Eric Gronlund or me.

Karen Schlaak
Water Rights Program
605 773-3352

06/16/2006



**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, 2006

Southern Black Hills Water System
c/o Bob Morrison, Chairman
PO Box 124
Hermosa SD 57744

Ken Royse
Bartlett & West
3456 E Century Avenue
Bismarck ND 57503-0737

Gentleman:

Enclosed is a copy of a petition submitted by Harold Heiney regarding Southern Black Hills Water System's future use and water permit applications.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

enclosure

June 21, 2006
Buffalo Gap, SD

RECEIVED
JUN 26 2006
WATER RIGHTS
PROGRAM

Chief Engineer, Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Dear Sir:

I read with interest the articles concerning the Black Hills Water Right for future use that was printed in the Hot Springs Star, Tuesday, June 20, 2006. Since I am one of the people who use the water that comes from the Madison Aquifer, I thought I needed to express my opinion of the proposal.

In the legal notice, you stated that this does not authorize construction of works or application of water to beneficial use. I am against any drilling for water that bleeds water from the Beaver Creek Springs Water table, since that would affect my use of the water that feeds from the Beaver Creek Spring. I purchased my property 15 Years ago for a retirement home. At that time, I had no water available for human usage, so made arrangements to haul water from the Streeter well when I needed it. .

You said (1) the unappropriated water is available. Just because it has no names on a contract does not mean that it is available. (2) The quantity of water reserved will be needed by the rural water system. What you are saying is that the water I use is needed by the rural water system, so it is there for the taking. (3). It is a beneficial use of water. Beneficial use by whom? Just because this is big business, & people decided to move into this area, does their benefit justify taking my rights to the water so that other people can use it? (4) It is in the public interest. Just who is the "public" that is interested? Certainly not the people who are already using the water. I don't know of any of us that want our rights usurped so that it will satisfy the whims of big business. Who do you consider "the Public". I thought those of us who live along Beaver Creek were part of the "public".

You want a statement describing the petitioner's interest in the application. These are "reasons for opposing (or supporting) the applications". Let me give you a list:

1. The smaller the stream, the less value our land will have.. Right now, it serves as a water source for fish (trout), deer, elk, & other wild life. These are of great value to me. I and my family enjoy watching the wild life, & they will not be here if there is no available water. Your use will eventually bleed the Madison water table & there will be no water for anyone, not even the wildlife. It has happened elsewhere, & it will happen here if the Black Hills Water System has it's way.

2. The temperature of Beaver Creek is ideal now for trout, year round. A loss of water will mean no fishing, as we know it now. They can't endure 75 to 78 degrees. So there would be no fishing for trout by anyone.

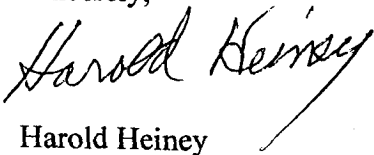
3. Water quality will go down. Taking water from the Madison water table would leave the spring shallow, with a greater per cent of hard water. There would be no irrigation for gardens, or flowers, fruit trees, & other natural usage. This would eventually ruin the soil.

4. The aesthetic value of our property would be a lot less without a stream. The way the water now runs, it is inviting to anyone who wants to come, listen to the water, the rustle of the trees, see wild life & not have to fight traffic. The stream will still be there, but smaller & less inviting.

In reading the article from the Star again, it looks to me like a lot of the decision to sap the Madison Water Aquifer has already been made, with no thought about the future of the stream. The Chief Engineer & the applicant are given a very short time to get the written opposition & the results are probably already decided.

One of the reasons I chose the Black Hills as my retirement home was the abundance of wild life to watch, not a lot of traffic, beautiful trees, hills & mountains to look at, & now, since I am retired because of health, you want to take these things from me. I am opposed to any development of the hills. It detracts from the beauty of the Black Hills that draws tourists from all over the world.

Sincerely,

A handwritten signature in cursive script that reads "Harold Heiney". The signature is written in dark ink and is positioned above the typed name.

Harold Heiney

Box 7

Buffalo Gap, SD 57722

6-29-06

DENR - Water Rights Program
and Chief Engineer

RECEIVED

JUL - 3 2006

WATER RIGHTS
PROGRAM

Dear Sirs,

It is with great concern that we are writing to you in regard to application # 2585-2 and # 2586-2. We are opposed to the drilling of another well, near the existing artesian well, on the Streeter ranch. This is close to the source of Beaver Creek; which supplies several ranches and Trout Haven Fish Hatchery with water. We depend on this water supply for irrigation of alfalfa and other grains for winter livestock feed.

We would like to suggest that the July 12 hearing date be postponed; to allow us time to research this massive project. We are fearful that the flow of Beaver Creek will be diminished or stopped. This is a great worry to us and we would encourage you to consider the detrimental affect this could have on the flow of Beaver Creek and its economic influence on this area.

Please keep each of us on Beaver Creek advised as to what is going on and the date of the hearing.

Respectfully,
Mr & Mrs Paul Fugier
27032 Beaver Valley Rd.
Buffalo Gap, S. D. 57722

RAPID CITY

Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sara L. Larson
Thomas J. Von Wald
Riley J. Wilson

SIOUX FALLS

Michael A. Hauck
John P. Mullen
Brian K. Kirby
Victoria M. Duehr
Patrick J. Knecht

*Attorneys also admitted in
Nebraska, North Dakota,
Iowa and Minnesota.*



Reply to Rapid City Office

Writer's e-mail address: mhhickey@bangsmccullen.com

June 28, 2006

RECEIVED

JUN 29 2006

**WATER RIGHTS
PROGRAM**

Mr. Garland Erbele, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Applications of Southern Black Hills
Water Systems No. 2580-2 and 2585-2*

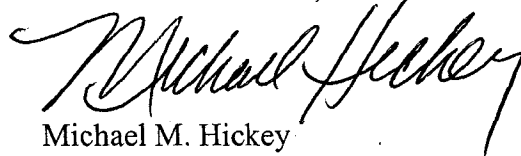
Dear Mr. Erbele:

In accordance with the published notice, please find enclosed the Motion for Continuance and Objection filed on behalf of Trout Haven Ranch in the above-referenced matter. A copy has been sent to Southern Black Hills Water System, which is intended as service by mail.

If you have any questions or comments, please advise. Thank you.

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Michael M. Hickey

RAPID CITY

First Western Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P: (605) 343-1040
F: (605) 343-1503

SIOUX FALLS

100 North Phillips Avenue
Suite 610
P.O. Box 949
Sioux Falls, South Dakota
57101-0949
P: (605) 339-6800
F: (605) 339-6801

mmh:bah:sbh

Enclosure

cc: Client

Mr. Robert G. Morrison

STATE OF SOUTH DAKOTA

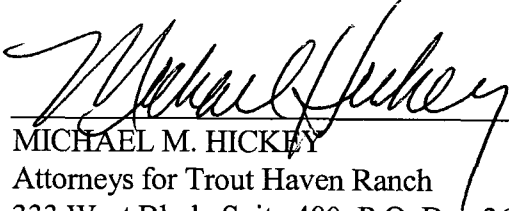
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
APPLICATIONS OF SOUTHERN) **MOTION FOR CONTINUANCE**
BLACK HILLS WATER SYSTEM,)
APPLICATION NO. 2580-2 & 2585-2)

Comes now Trout Haven Ranch, an interested party in the above proceeding, and hereby moves the Chief Engineer to continue the hearing set July 12, 2006, before the Water Management Board. This request is made on the grounds and for the reasons that Trout Haven Ranch needs additional time to review the application and reports prepared in this matter so that it can present evidence and testimony in opposition to the applications filed by Southern Black Hills Water System.

Dated this 28th day of June, 2006.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: 

MICHAEL M. HICKEY

Attorneys for Trout Haven Ranch
333 West Blvd., Suite 400; P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040

CERTIFICATE OF SERVICE

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

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

Southern Black Hills Water System
c/o Robert G. Morrison
P.O. Box 124
Hermosa, SD 57744

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

Dated this 28th day of June, 2006.



MICHAEL M. HICKEY

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
APPLICATIONS OF SOUTHERN)
BLACK HILLS WATER SYSTEM,)
APPLICATION NO. 2580-2 & 2585-2)

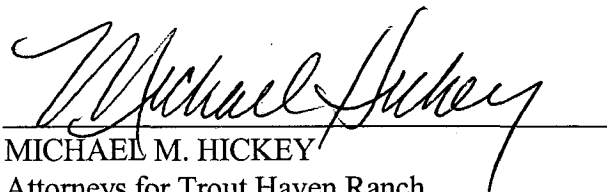
OBJECTION

Comes now Trout Haven Ranch, by and through its undersigned counsel, and hereby objects to the above-described applications to appropriate water filed on behalf of Southern Black Hills Water System. This objection is based upon the grounds and for the reasons that Trout Haven Ranch uses the waters from Beaver Creek and Beaver Creek Springs in the operation of its commercial trout raising business. If the applications are granted, Trout Haven Ranch will be injured and damaged and its operations adversely affected in that the quantity, quality and temperature of water used by Trout Haven Ranch will be detrimentally altered and diminished by the usage envisioned by the applications of Southern Black Hills Water System if approved.

Dated this 28th day of June, 2006.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



MICHAEL M. HICKEY

Attorneys for Trout Haven Ranch
333 West Blvd., Suite 400; P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040

CERTIFICATE OF SERVICE

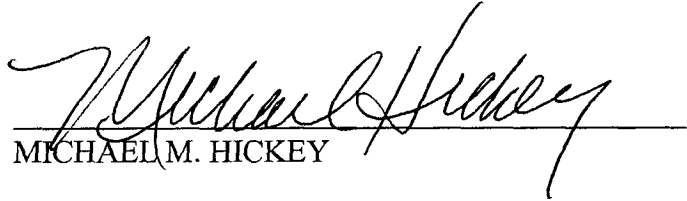
The undersigned hereby certifies that he served a copy of this legal document upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

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

Southern Black Hills Water System
c/o Robert G. Morrison
P.O. Box 124
Hermosa, SD 57744

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

Dated this 28th day of June, 2006.


MICHAEL M. HICKEY



City of Hill City

The Heart of the Hills

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JUN 29 2006

WATER RIGHTS
PROGRAM

324 Main Street, P.O. Box 395 Hill City, South Dakota 57745
Phone: 605.574.2300 Fax: 605.574.4327

June 28, 2006

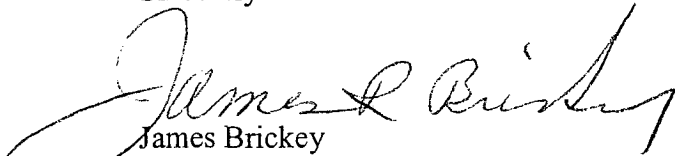
Southern Black Hills Water System
Attn: Bob Morrison Chairman
P.O. Box 124
Hermosa SD 57744

Dear Mr. Morrison:

The City Council of Hill City is submitting this petition of support for Application Number 2580-2, to appropriate water for future use and Application Number 2585-2, to appropriate 2.67 c.f.s. of water from the Madison Aquifer, by Southern Black Hills Water System. The City Council believes that these Applications are extremely important for the health of Hill City residents and for the safe, efficient, and orderly future development.

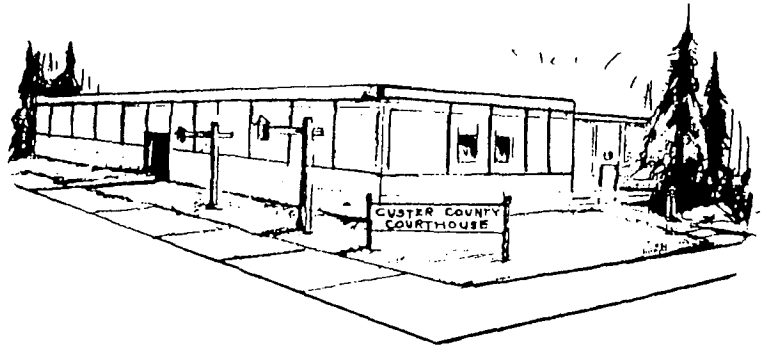
We strongly urge Water Management Board to approve both of these Applications at its July 12th hearing so the Southern Black Hills Water System project may proceed as quickly as possible.

Sincerely


James Brickey
Mayor

Cc: DENR Water Rights Program

CUSTER COUNTY
Board of County Commissioners



★ ★ ★ 420 Mt. Rushmore Road

★ ★ ★ Custer, South Dakota 57730 ★ ★ ★

June 27, 2006

Water Rights Program
Foss Building
523 E Capitol
Pierre, SD 57501

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JUN 29 2006

WATER RIGHTS
PROGRAM

Dear Chief Engineer:

The Board of Commissioners for Custer County is submitting this petition of support for Application Number 2580-2, to appropriate water for future use, and Application Number 2585-2, to appropriate 2.67 c.f.s. of water from the Madison Aquifer, by Southern Black Hills Water System. The Board of Commissioners believes that these Applications are extremely important for the health of Custer County residents and for the safe, efficient, and orderly future development within Custer County.

We strongly urge the Water Management Board to approve both of these Applications at its July 12 hearing so the Southern Black Hills Water System project may proceed as quickly as possible.

Sincerely

Marvin Bishop
Chairman

Cc: Southern Black Hills Water System

To: Water Management Board

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JUN 30 2006

WATER RIGHTS
PROGRAM

I am a rancher and also a director on the Southern Black Hills Water System board. At this time we are experiencing a drought that is starting its 6th year. A rural water system would benefit the ranchers and home owners immensely.

This is a very emotional issue for a few individuals, but the benefits a water system will do for several applicants I believe out weighs the emotions.

I have been hauling water out of the Streeter Well for 28 yrs. along with several other users and feel the area will support a rural system. When the system is up and working entirely there will be more than ~~one~~ water source. Hot Springs, and as many as 4 to 5 wells developed in the Hermosa, Minneka area and along highway 79.

I feel the way to protect our water source is to have a rural system. If you charge for water people will not ~~not~~ waste it. Also development is coming do we want 500 new wells drilled into the Madison or 5 wells drilled into the Madison.

For the benefit of our communities I would ask you to please approve our application.

Thank you

John Beard

13810 Beaver Creek Rd.

Buffalo Gap, S.D. 57722

Knutson Brothers, Inc.
12838 Cold Brook Road
Hot Springs, SD 57747

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JUN 30 2006
WATER RIGHTS
PROGRAM

June 28, 2006

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

Dear Chief Engineer,

The Board of Commissioner for Custer County is submitting this petition of support for Application Number 2580-2, to appropriate water for future use, and Application Number 2585-2, to appropriate 2.67 c.f.s. of water from the Madison Aquifer, by Southern Black Hills Water System. The Board of Commissioners believes that these Applications are extremely important for the health of Custer County residents and for the safe, efficient, and orderly future development within Custer County.

We strongly urge the Water Management Board to approve both of these Application at its' July 12 hearing so the Southern Black Hills Water System project may proceed as quickly as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Knutson". The signature is fluid and cursive, with a large initial "S" and "K".

Steven L. Knutson
President

Cc: Southern Black Hills Water System

6/29/06

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

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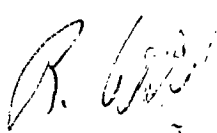
JUL - 3 2006

WATER RIGHTS
PROGRAM

Dear Chief Engineer:

The Argyle Fire Department is submitting this letter in support of the Southern Black Hills Water System Application. This would greatly enhance fire suppression in our coverage area while reducing local homeowners insurance rates due to the availability of water hydrants in proximity to their residence. It would also significantly increase our efforts due to the time it would take to refill water tenders. (currently Pringle is the closest water source).

Sincerely



Roger Willey
Assistant Chief – Argyle Fire Dept.

Cc: Southern Black Hills Water System

June 27, 2006

Tom Porter
Board Member
Southern Black Hills Water Systems
Box Z
Edgemont, SD 57735

Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

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WATER RIGHTS
PROGRAM

Dear Sirs:

I am presently serving on the board of Southern Black Hills Water Systems. I originally became interested in a rural water project for this area even before this board was in existence. As a group, several people in our immediate area were interested in being serviced by a much-needed rural water system.

I am a third generation rancher in the Edgemont area. I am writing in support of water development for rural water users and communities alike to provide a dependable water supply. We view a safe and affordable water supply as the basic element for economic survival and growth. We support SBHWS acquiring the necessary water permit #2580-2 and any additional water permits necessary to service this very important rural water project for Fall River, Custer, and Pennington Counties. It makes more sense to have a few good, sustainable wells than thousands of individual wells, many of which are unsafe and undependable.

As a board member, I feel confident that the State of South Dakota and SBHWS will adequately monitor and address any adverse effects to the surrounding area if a problem should ever arise. However, at this point, we feel we need to proceed with this very important project.

Sincerely,

A handwritten signature in black ink that reads "Tom Porter". The signature is stylized, with the first name "Tom" written in a cursive script and the last name "Porter" written in a more formal, slightly cursive script.

Tom Porter

FRANK SCHROTH
7-11 RANCH

PO Box 97
Buffalo Gap SD 57722
605-533-6391
schroth77@gwic.net

RECEIVED
JUN 30 2006
WATER RIGHTS
PROGRAM

June 29, 2006

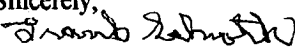
Garland Erbele, Chief Engineer
Dept of Environment & Natural Resources
523 East Capitol
Pierre, South Dakota 57501

To whom it may concern:

7-11 Ranch has concerns on Water Permit Application No. 2585-2. We agree with recommending a DEFERRAL so the effect on Beaver Creek Springs and the present Well can be evaluated. The effect on the Spring & flowing Well could be catastrophic. This appropriation of 2.67 cu. ft. could possibly leave 8.2 cu. ft. flowing. As 7-11 Ranch is allowed 5.4 Sec./ft for irrigation, if this proposed well takes 2.67 cu. ft., that only leaves about 2 cu. ft. in the creek. 1.0 cu. ft. has to be left in the stream, so that only leaves around 1. cu. ft. for the other irrigators. A lowering of the Potentiometric surface of the Madison Aquifer in the vicinity of these Springs could reduce their discharge. Aquifer characteristics have not been determined for the Madison Aquifer in this area and feel strongly that this Permit should be denied. We also don't know the long term effects it would have on the other Springs around the area that are used for livestock watering, besides the head pressure of the present Well.

We also feel that this water should not be sent to Rapid City, as Southern Black Hills Water Users have already signed up people in the Rapid City area. Water is a very precious & vital commodity. Look at some other States that are in trouble now and we need to have the foresight to not let us get in this position.

South Dakota claims Agriculture as it's #1 industry. All of us on Beaver Creek are in agriculture. If the water supply of Beaver Creek is reduced, the effect it will have, hurts everyone here. We will not be able to run the present amount of cattle, due to not having the hay base to support these cattle. There is presently around 1500 head of cattle that depend on the hay that is presently raised from irrigation on Beaver Creek. Lowering this cattle amount lowers everyone's income and drives agriculture out.

Sincerely,

Frank Schroth

LYDA BOWKER TRUST
Lois Emery, Trustee,
HC 52 Box 136A
Hot Springs, SD
57747

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JUN 30 2006
WATER RIGHTS
PROGRAM

Water Rights Program
Foss Building
523 E Capitol
Pierre, SD 57501

As a holder of a down-stream irrigation water right on Beaver Creek, I am concerned about the implications of the well proposed in Water Permit Application No. 2585-2. I would like to go on record approving the recommendation of the Chief Engineer for a Deferral of the Application until an aquifer test pump is completed to evaluate the possible effect of the proposed well on Beaver Creek Springs. I would further contend that a periodic monitoring over a period of several months would give a more accurate evaluation of the effect than a single reading.

I believe a considerable decrease in the flow of Beaver Creek is a threat to an agricultural way of life using water from Beaver Creek for more than a century. Area economics and wildlife are in a position to be adversely affected.

I request information be sent to me concerning any further developments on this issue.

Thank you,



Lois Emery, Trustee,
Lyda Bowker Trust
HC 52 Box 136A
Hot Springs, SD 57747

cc: Southern Black Hills Water System
c/o Robert Morrison
PO Box 124
Hermosa, SD, 57744

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JUL - 3 2006

WATER RIGHTS
PROGRAM

DENR - Water Rights Program, and Chief Engineer,

I'm writing to you with great concern, about Southern Black Hills Water Systems applications, #2580-2 and #2585-2.

I am extremely concerned about any wells being drilled in close proximity to the Beaver Creek Spring, with the intent to service such a large area, as they have proposed.

I fear that this well, will affect the discharge of the Beaver Creek Spring. My family, and many others, rely heavily on Beaver Creek for irrigation purposes. To sustain our ag operation, we must irrigate hay fields, or our ranch will suffer greatly.

I hope you will take into consideration, the detrimental affect this well, will have on the livelihood of the agricultural sector; our families. I oppose the drilling of this well. I would like to ask you to keep me informed on any. Thank you,
thing with this applications and anything that would affect the flow of Beaver Creek Spring, and our water right.

Shawn Fugler

27094 Beaver Valley Rd
Buffalo Gap, SD
57722

833-2780



United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oakridge Drive, Suite 250
Fort Collins, Colorado 80525-5596



IN REPLY REFER TO:

June 30, 2006

L54(2380)
WICA/Water Rights

Mr. Garland Erbele, Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Southern Black Hills Water System
C/o Mr. Robert G. Morrison
P.O. Box 124
Hermosa, SD 57744

Re: Petition to Intervene with regard to Applications 2580-2 and 2585-2 filed by the
Southern Black Hills Water System

Dear Mr. Erbele and Mr. Morrison,

The National Park Service (NPS) is hereby filing a Petition to Intervene in the matters of Future Use Water Permit Application No. 2580-2 and Water Permit Application No. 2585-2, filed by the Southern Black Hills Water System.

Application No. 2580-2 requests to reserve the use of 1,474 acre-feet per year (afy) of ground water from the Madison aquifer. The proposed water use is for a rural water system and the requested reservation is based on estimated growth of the area through the year 2050. The application lists four points of diversion located throughout the Southern Black Hills area.

The NPS is **concerned** about the Chief Engineer's recommendation to approve Application No. 2580-2. The NPS believes that there currently is insufficient data to determine whether the proposed use is in the public interest given the possibility that the proposed withdrawal may adversely affect the water rights and water-related resources of Wind Cave National Park (Wind Cave NP).

Application No. 2585-2 requests to withdraw 1,600 afy of ground water from the Madison aquifer at an instantaneous rate of 2.67 cubic feet per second. The application states the water is to be used for a rural water system for a regional water supply that includes projected future growth in the area. The proposed well will be approximately 1000 feet deep.

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WATER RIGHTS
PROGRAM

The NPS **supports** the Chief Engineer's recommendation to defer action on Application No. 2585-2 until an aquifer test is completed. The NPS requests the opportunity to review and comment on the testing plan.

The NPS also **requests a delay** of the hearing scheduled for July 12, 2006. We would use the additional time to assemble more information about aquifer characteristics. We also would begin working with the Southern Black Hills Water System to share data and identify areas where we can resolve the issues this application raises.

The NPS is concerned about the potential adverse impacts that may result from withdrawals proposed by these applications on the water rights and water-related resources of Wind Cave NP (Figure 1). The following information provides some background on NPS concerns.

Wind Cave NP Water-Related Resources

Wind Cave NP was established on January 9, 1903, (32 Stat. 765) and enlarged several times in the ensuing years. It was the seventh National Park and the first one designated for the protection of cave features. The main park feature is Wind Cave, located in the Madison Limestone near the park Visitor Center. There are over 121 miles of the Cave discovered to date with many more miles likely to be explored in the future. Artesian ground-water flow has been and continues to be the dominant force in cave formation.

Wind Cave was formed within the Madison Limestone of the Black Hills, probably during Paleocene-Eocene times (40-50 million years ago). The cave developed along gypsum deposits and paleokarst zones and is one of the oldest caves in the world. The cave intersects one of the world's best examples of paleofill, ancient sediment that filled caves and sinkholes that existed before Wind Cave formed. The cave has two natural entrances, one of which is modified, and the cave is associated with numerous natural blowholes. More than 121 miles of passages have been explored and mapped making Wind Cave one of the longest caves in the world. Studies of the airflow for which the cave is named suggest that only a tiny fraction of the cave's potential extent has been discovered. Wind Cave is the world's best known example of a complex rectilinear maze cave. At any given point, from three to five interconnecting levels can occur within 250-vertical feet of rock, creating one of the world's premier maze caves.

Wind Cave's length and passage density are enough to put it into the ranks of world-class caves, but the cave is significant for many other reasons. The best known of these is boxwork. Boxwork is rarely found in other caves but is found in Wind Cave in quantities and qualities that are unparalleled in all of the world's known caves. On-going survey projects continually make new discoveries of unusual features in the cave. The cave is known for its rare and unusual variety of minerals and speleothems. These include unusual helictite bushes, quartz formations, large clusters of frostwork, and fragile growths of gypsum. The cave has a simple, but highly specialized ecosystem that operates independently of photosynthesis. The microbial diversity in the cave is significant, with 12 divisions and subdivisions of bacteria found at Rainbow falls,

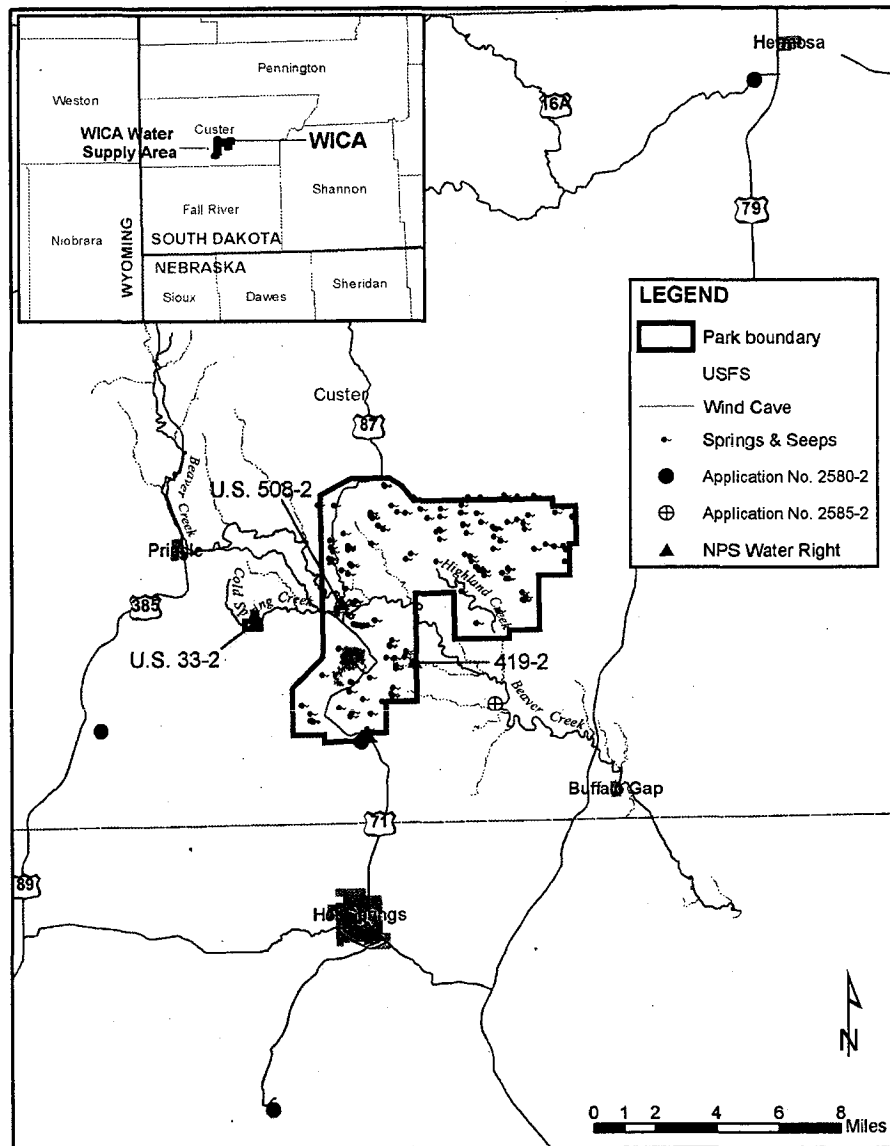


Figure1. Map showing the location of the proposed well sites, NPS water rights, and the water-dependent resources of Wind Cave NP.

including *Proteobacteria* and *Acidobacteria* and 2 divisions of microbes from the kingdom of *Archaea* (Euryarchaea and Crenarchaea).

There are currently several lakes and pools in the lower reaches of Wind Cave that likely define the ground-water table in this region of the aquifer. Other water resources of high value at Wind Cave NP include three perennial streams (Cold Springs, Beaver, and Highland Creeks), many intermittent and ephemeral stream courses, and over 95 seeps and springs (Figure 1). These water sources are not only important for the flora and fauna that live within or adjacent to the water, but also to the bison, elk, deer and pronghorn that require watering. The distribution of water sources throughout the park

allows the large animals to move from place to place and not overgraze any particular area.

Wind Cave NP Water Rights

Wind Cave NP has three state appropriative water rights that are senior to those sought by the applicant.

Number	Name	Point of Diversion	Rate of Diversion	Purpose	Priority date
US 33-2	Cold Springs Creek	Sec. 32 & 28, T5S, R5E	0.2 cfs	Domestic, recreation, wildlife, fire protection	August 23, 1937
US 508-2	Cold Springs Lake	SW ¼ SE ¼ Sec. 26, T5S, R5E	222.08 afy	Stockwater, recreational	November 4, 1939
419-2	Headquarters well	SE ¼ SE ¼ Sec 6, T6S, R6E	0.44 cfs	Park operations	December 29, 1955

These rights are vital to the continued operation and functioning of the park.

Management and Legislation

The mission of the NPS is stated in the NPS Organic Act and provides the overall objectives for managing NPS units which "...is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 U.S.C. 1).

The NPS Statement for Management for Wind Cave NP (National Park Service, 1994) conveys the purpose and legislative intent for the establishment for Wind Cave NP as:

- To preserve and protect the surface and subsurface resources.
- To provide services and facilities necessary and appropriate for public enjoyment and appreciation of the park's resources.

The Statement for Management also lists statements of significance that are provided to capture the essence of Wind Cave NP. This list includes:

- Wind Cave is among the world's longest, oldest, and most three-dimensionally complex cave systems.
- Wind Cave contains the world's largest concentration of boxwork, a cave formation.

- Wind Cave provides a valuable opportunity to observe, study, and interpret the entire hydrologic cycle, especially the hidden part that is the water en route to the aquifer.
- Wind Cave provides a valuable opportunity for visitors to view a mixture of equally significant cave resources and prairie ecosystems and to appreciate the connections between surface and subsurface resources.
- Wind Cave is one of the earliest park areas to be designated a game preserve for the reestablishment of native American bison.
- Wind Cave was one of the earliest national parks and the first to be established to protect a cave.
- Wind Cave is an important part of the region's tourism.

Notable legislation affecting Wind Cave NP includes the National Game Preserve Act (37 Stat. 293) in 1912 which provided for "for the establishment of...the Wind Cave National Game Preserve, upon land embraced within the boundaries of the Wind Cave National Park." This Act created a permanent range for bison to be presented to the American Bison Society. The bison rely on the water sources throughout Wind Cave NP for their survival.

In 1931, the NPS purchased 101 acres in Section 32, T5S, R5E BHB&M to secure a water supply for the park. In 1937, the United States received a State water right permit for use of water originating on this property (U.S. Water Right 33-2).

Public Law 708 expanded the boundaries of Wind Cave NP again in 1946. In addition to creating an area large enough to maintain viable populations of large game animals, the legislation provided that the State allow a minimum of 10,000 gallons per day of water to pass from Custer State Park to Wind Cave NP.

Preliminary Analysis

The NPS has completed a preliminary analysis of potential impacts to the waters and water rights of Wind Cave NP due to the proposed appropriations (see attachment). While the analysis required making simplifying assumptions about a hydrologically complex area, it is a very useful tool in determining the potential effects of the proposed withdrawals. As previously stated, additional time will allow us to better characterize the area's hydrogeology.

The analysis shows that the effects of pumping 1,600 afy from the well site associated with Application No. 2585-2 could potentially affect water levels in the Headquarters Well and Wind Cave within one year of continuous pumping; within 10 years, drawdown of over 40 feet could occur in the Headquarters Well and the cave. This magnitude of drawdown could dewater some lakes and pools within the cave system entirely,

potentially reducing naturally high humidity levels in the cave and impacting biota, speleothems, and mineral resources. In addition, the estimated drawdown could decrease discharge at Wind Cave NP's springs and seeps, which are essential for wildlife management.

The analysis also considered the effects of Future Use Water Permit Application No. 2580-2. The preliminary analysis shows that drawdown due to pumping at one or all of the proposed wells, in addition to the withdrawals outlined in Application No. 2585-2, may be detected at Wind Cave NP sooner and to a larger degree than by Application No. 2585-2 alone. Of particular concern is the close proximity of the proposed Gobbler Pass well site to park water rights and resources.

The NPS is also aware of the potential development of Future Use Application No. 2560-2 by the Fall River Water Users District. This application requested 750 afy from the Madison aquifer in the same general area as the applications proposed by the Southern Black Hills Water System and was approved by the Water Management Board on December 7, 2005. If the water withdrawals proposed by this application are realized, and in combination with the two proposed withdrawals by the Southern Black Hills Water System, it could further reduce the ground-water levels within Wind Cave NP and/or cause the declines to appear sooner.

The State of South Dakota, Water Management Board may approve an application for permit "...only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest" (§46-2A-9 S.D.C.L.). The NPS believes that water-level changes that may result from the withdrawal proposed by these applications may adversely affect the water rights and water-related resources the NPS is required to protect. The NPS believes that injury to NPS water rights and water-related resources would not be in the public interest.

The above statements are intended solely to express the concern of the NPS to the withdrawals proposed by the applicant. The NPS wishes to cooperate with the State and Southern Black Hills Water Supply System in order to ascertain how the applicant may be able to withdraw the amount of water sought without adversely affecting NPS water-related resources and water rights. There may be pumping scenarios or other well locations that may allow the applicant to withdraw water for the proposed beneficial use without impairing Wind Cave NP water-related resources and water rights. Additionally, monitoring selected NPS resources may be necessary.

Summary

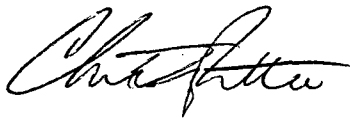
- The NPS is concerned about the Chief Engineer's recommendation to approve Application No. 2580-2. The NPS believes that there currently is insufficient data to determine whether the proposed use is in the public interest given the

possibility that the proposed withdrawal may adversely affect the water rights and water-related resources of Wind Cave National Park.

- The NPS **supports** the Chief Engineer's recommendation to defer action on Application No. 2585-2 until an aquifer test is completed and requests to be involved with review of the aquifer test plan or proposal submitted by the applicant.
- The NPS requests a delay of the hearing on these applications in order to assemble more information about aquifer characteristics.
- The NPS believes that the withdrawal proposed by these applications has the potential to adversely affect the water-related resources and water rights of Wind Cave NP.
- The NPS is willing to cooperate with the Southern Black Hills Water System and the State in attempting to develop a rural water supply system in such a manner that the water-related resources and water rights of Wind Cave NP are protected from impairment.

If you have any questions or concerns related to this matter, please contact me at (970) 225-3505 or Jeff Hughes of my staff at (970) 225-3527.

Sincerely,



Charles W. Pettee
Chief, Water Rights Branch

Cc: (all w\attachment)
WICA – Superintendent
MWRO – Cinnamon

Bcc: SOL (Denver) – Fahmy
2380 (email) – Jackson, Flora, Rosenlieb, Issue File

References Cited

Heakin, Allen J., 2004. Streamflow and Water-Quality Characteristics for Wind Cave National Park, South Dakota, 2002-03. *U.S. Geological Survey SIR 2004-5071*. 68pp.

National Park Service, 1994. Statement for Management, Wind Cave National Park. Technical Information Center, Denver Service Center, National Park Service. 50 pp.

**Calculation of Drawdown with Regard to Permit Application Nos. 2580-2 and 2585-2, Filed
by the Southern Black Hills Water System**
June 27, 2006

Paula A. Cutillo, Ph.D.
Water Rights Branch, Water Resources Division
National Park Service

The Southern Black Hills Water System filed Future Use Water Permit Application No. 2580-2 to appropriate 1,474 acre-ft annually of groundwater from the Madison aquifer in Custer and Fall River Counties, and filed Water Permit Application No. 2585-2 to appropriate 1,600 acre-ft annually of groundwater from the Madison aquifer in Custer County. The National Park Service is concerned that drawdown in the vicinity of Wind Cave National Park will adversely impact the park's water rights and water-dependent resources. The following preliminary analysis was prepared to aid in evaluating potential impacts associated with the proposed appropriations.

Calculation of Drawdown

Wind Cave in Wind Cave National Park is located in the Madison Limestone, and the 787 ft-deep Headquarters Well (Water Right 419-2) is open to about 260 ft of the Madison aquifer. Potential lowering of groundwater levels in the Madison aquifer in the area of Wind Cave National Park was evaluated by estimating the time it would take for the cone of depression produced at the proposed well sites to reach the location of the park's water rights and water-dependent resources. Drawdown due to pumping in a confined aquifer can be calculated using equations developed by Theis (1935). When using the Theis method, several hydrologic and geologic assumptions are made to simplify the mathematical calculations. The major assumptions are that the aquifer properties do not vary with depth or distance in the aquifer, that the aquifer is of uniform thickness and infinite in areal extent, and that the pumping well fully penetrates the aquifer.

To estimate the rate at which the cone of depression may advance, the hydraulic properties of the aquifer material must be known. The Madison aquifer is believed to be confined in the area of the proposed appropriations (Carter et al., 2001). Previous investigations indicate that transmissivity of the Madison aquifer varies several orders of magnitude in the Black Hills area (Carter et al., 2001, Table 14). Greene (1993) estimates (on the basis of aquifer tests) that the transmissivity of the Madison aquifer in the Rapid City area ranges from 1,300 to 56,000 ft²/day, and that the storage coefficient ranges from 0.002 to 0.0004. Carter et al. (2001) (using flows from subarea hydrologic budgets) estimate transmissivity in the area of Wind Cave and the proposed appropriations to be between 90 and 1,500 ft²/day. For the purposes of this analysis, values of transmissivity (T) = 1,300 ft²/day and storage coefficient (S) = 0.0004 were used in the calculation of drawdown to represent confined conditions in the karstic upper part of the Madison Limestone.

The program THWELLS (van der Heijde, 1992) was used to calculate drawdown. THWELLS (van der Heijde, 1992) is a proprietary program distributed by the International Ground Water Modeling Center, Colorado School of Mines, Golden, Colorado, and uses an analytical solution of the Theis relation to calculate drawdown.

Application No. 2585-2 requests 1,600 acre-ft/yr at one well site located on the Streeter Ranch, approximately 4.5 mi from the lakes in Wind Cave and 3 mi from the Headquarters Well. Figure 1 includes estimated drawdown at the location of Wind Cave within the first 10 years of continuous pumping at a pumping rate (Q) of 1,600 acre-ft/yr at the Streeter Ranch well site. Figure 2 shows the estimated extent of the cone of depression produced by the pumping well after 10 years of continuous pumping.

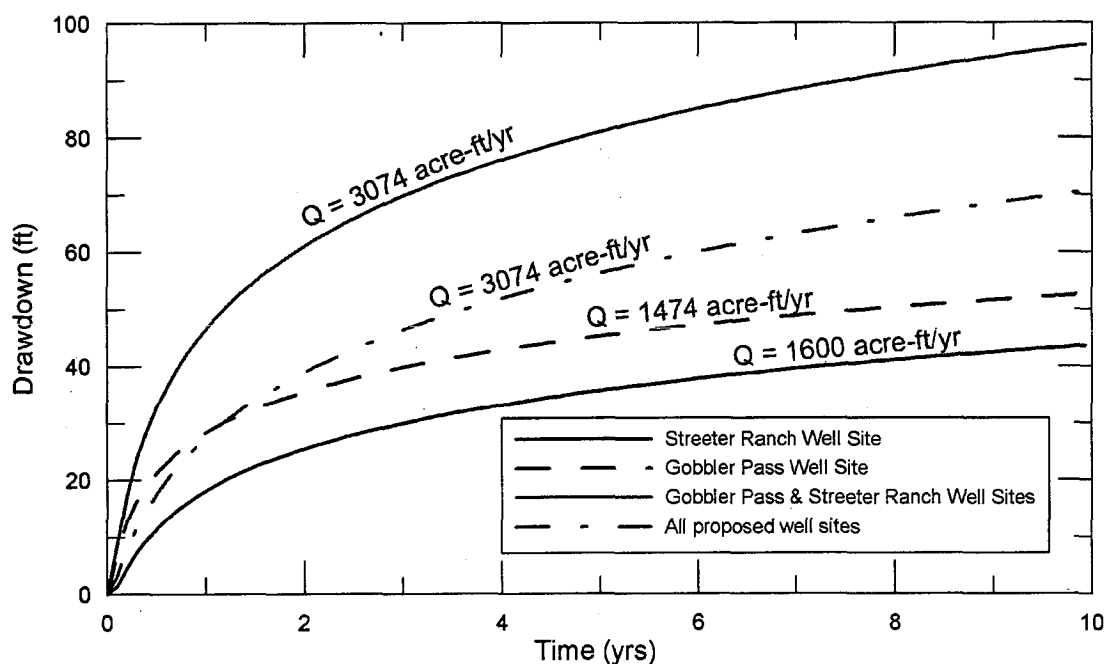


Figure 1. Drawdown over time due to pumping in the area of Wind Cave in Wind Cave National Park. The Streeter Ranch Well site, proposed by Application No. 2585-2, is located approximately 4.5 mi southeast of the lakes in Wind Cave. The Gobbler Pass Well Site, proposed by Application No. 2580-2, is located approximately 2 mi south of the lakes in Wind Cave. The locations of all proposed well sites are shown on Figures 2 through 5. $T = 1,300 \text{ ft}^2/\text{day}$ and $S = 0.0004$ for all pumping scenarios.

Application No. 2580-2 requests 1,474 acre-ft/yr from four well sites, the closest of which is the Gobbler Pass well site, located approximately 2 mi from the lakes in Wind Cave and 3 mi from the park's Headquarters Well. Because the actual pumping rate at each proposed well site is uncertain at this time, drawdown was calculated for a range of pumping scenarios. Figure 1 includes estimated drawdown at Wind Cave within the first 10 years of continuous pumping at a rate of 1,474 acre-ft/yr at the Gobbler Pass well site. Figure 3 shows the estimated extent of the cone of depression produced by the pumping well after 10 years of continuous pumping.

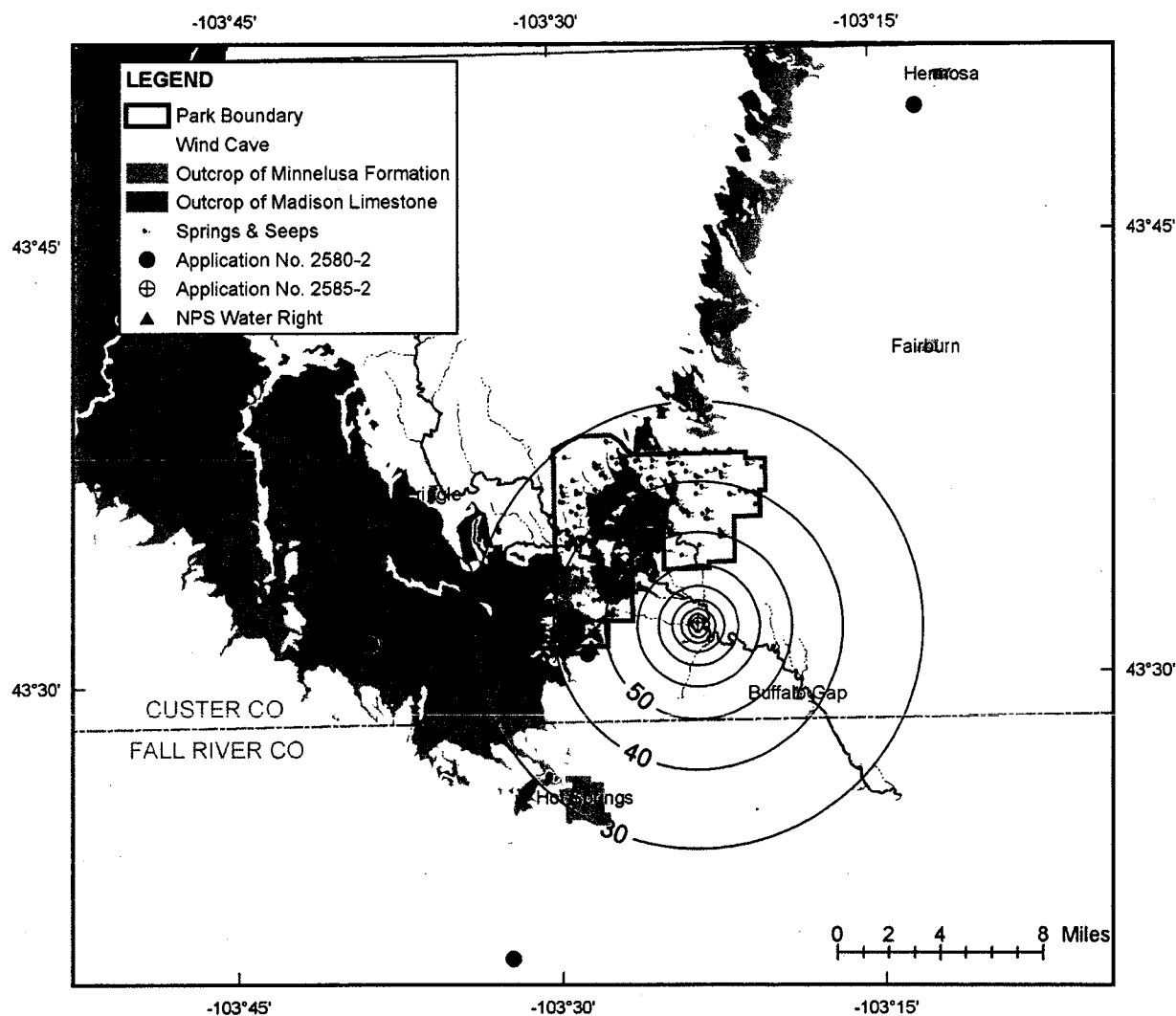


Figure 2. Drawdown (ft) after 10 years of continuous pumping at the Streeter Ranch well site, where $Q = 1,600$ acre-ft/yr, $T = 1,300$ ft²/day, and $S = 0.0004$.

Other pumping scenarios considered in this analysis were drawdown due to continuous pumping at both the Streeter Ranch and Gobbler Pass well sites (Figures 1 & 4), and drawdown due to continuous pumping at all proposed well sites (Figures 1 & 5).

Results

Results of the Theis calculations indicate that groundwater development at the proposed pumping rates has the potential to cause significant declines in groundwater levels in the park within just one year of continuous pumping. The magnitude of estimated drawdown was dependent on the location and number of active pumping wells. The analyses also show that the

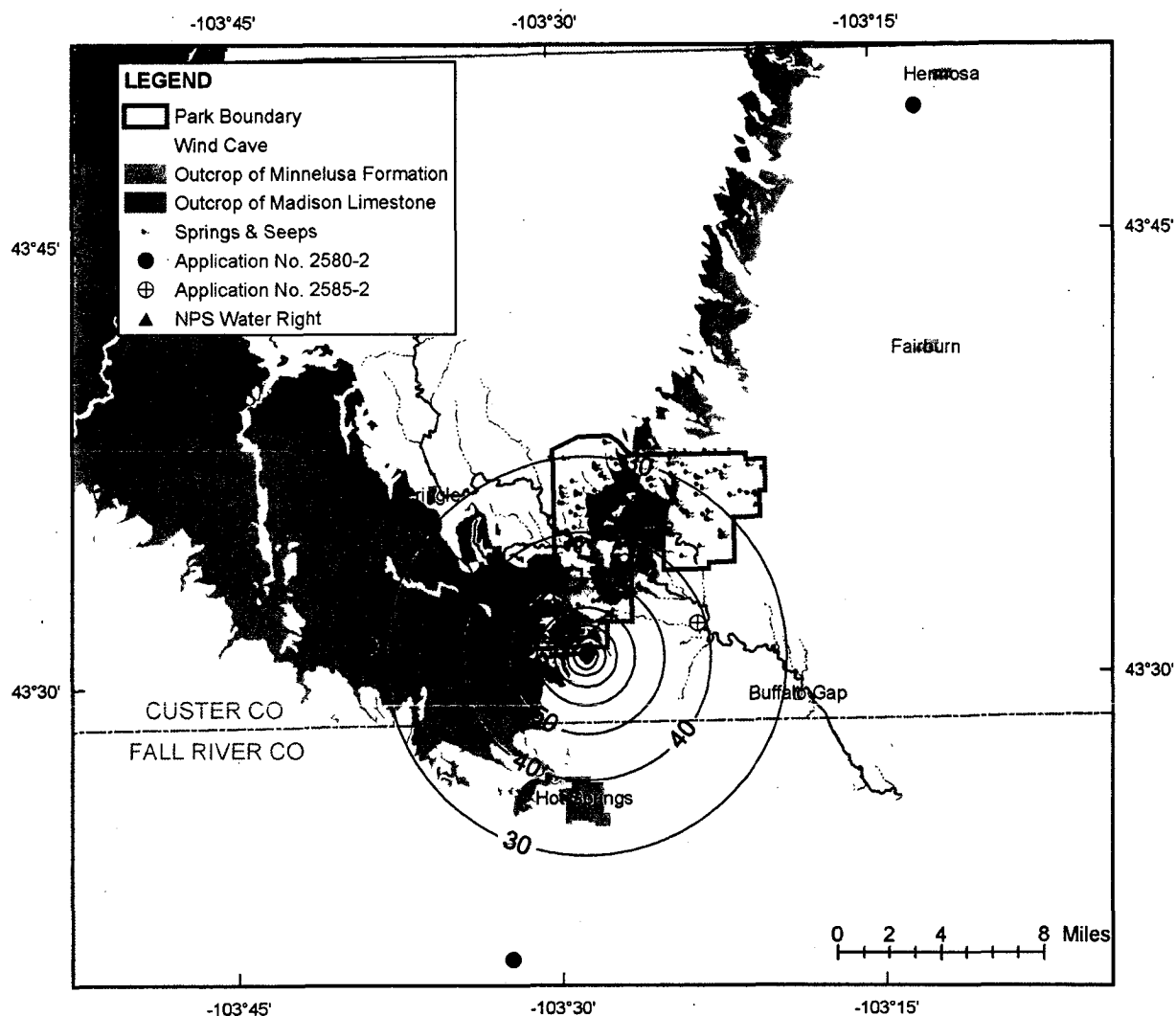


Figure 3. Drawdown (ft) after 10 years of continuous pumping at the Gobbler Pass well site, where $Q = 1,474$ acre-ft/yr, $T = 1,300$ ft²/day, and $S = 0.0004$.

cumulative effects of pumping proposed by both Application Nos. 2580-2 and 2585-2 are greater than single-well pumping scenarios. Drawdown within the area of the cave and the park's water rights could reach over 70 ft within 10 years if all proposed pumping is centered on the two wells located closest to the park. Drawdown will be greater than that calculated above if the pumping wells only partially penetrate the aquifer, due to longer flow paths and the smaller cross-sectional area of the well screen. If an impervious geologic boundary is encountered, drawdown will also be greater than that calculated above.

Factors that would result in less drawdown than that estimated above should also be considered. Drawdown will be less if the aquifer receives recharge during pumping or if the Madison aquifer is more transmissive and/or has higher storage properties than assumed above. The above analyses assumed continuous pumping, whereas pumping during the actual operation

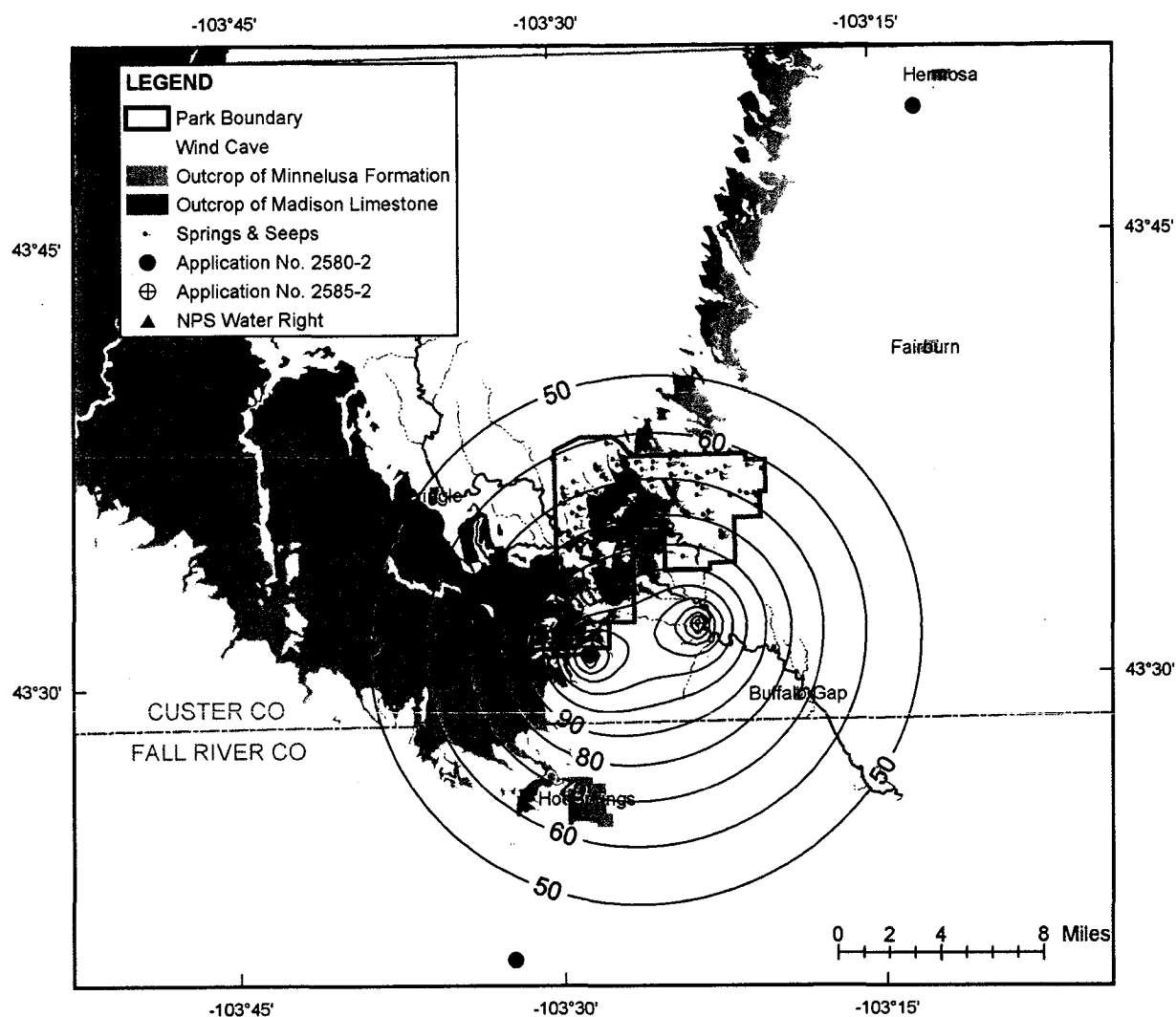


Figure 4. Drawdown (ft) after 10 years of continuous pumping at a rate of 1,474 acre-ft/yr at the Gobbler Pass well site and at a rate of 1,600 acre-ft/yr at the Streeter Ranch well site, where $T = 1,300 \text{ ft}^2/\text{day}$, and $S = 0.0004$.

of the water system may be intermittent. Calculating drawdown due to intermittent pumping is complicated, particularly if the rate and duration of groundwater use are unknown. In general, drawdown will be less than that calculated above if groundwater pumping is not continuous; once a pump is turned off, water levels will begin recovery to the static water level. Complete water-level recovery, however, generally requires considerably more time than the previous pumping period (Driscoll, 1986). Therefore, if the pumping and recovery periods are of equal duration, or if the pumping period is longer than the recovery period, each time the pump is turned back on, drawdown will start from a new level that is slightly below the water level at the start of the previous pumping period, and continued pumping will permanently lower the static water level of the aquifer over time.

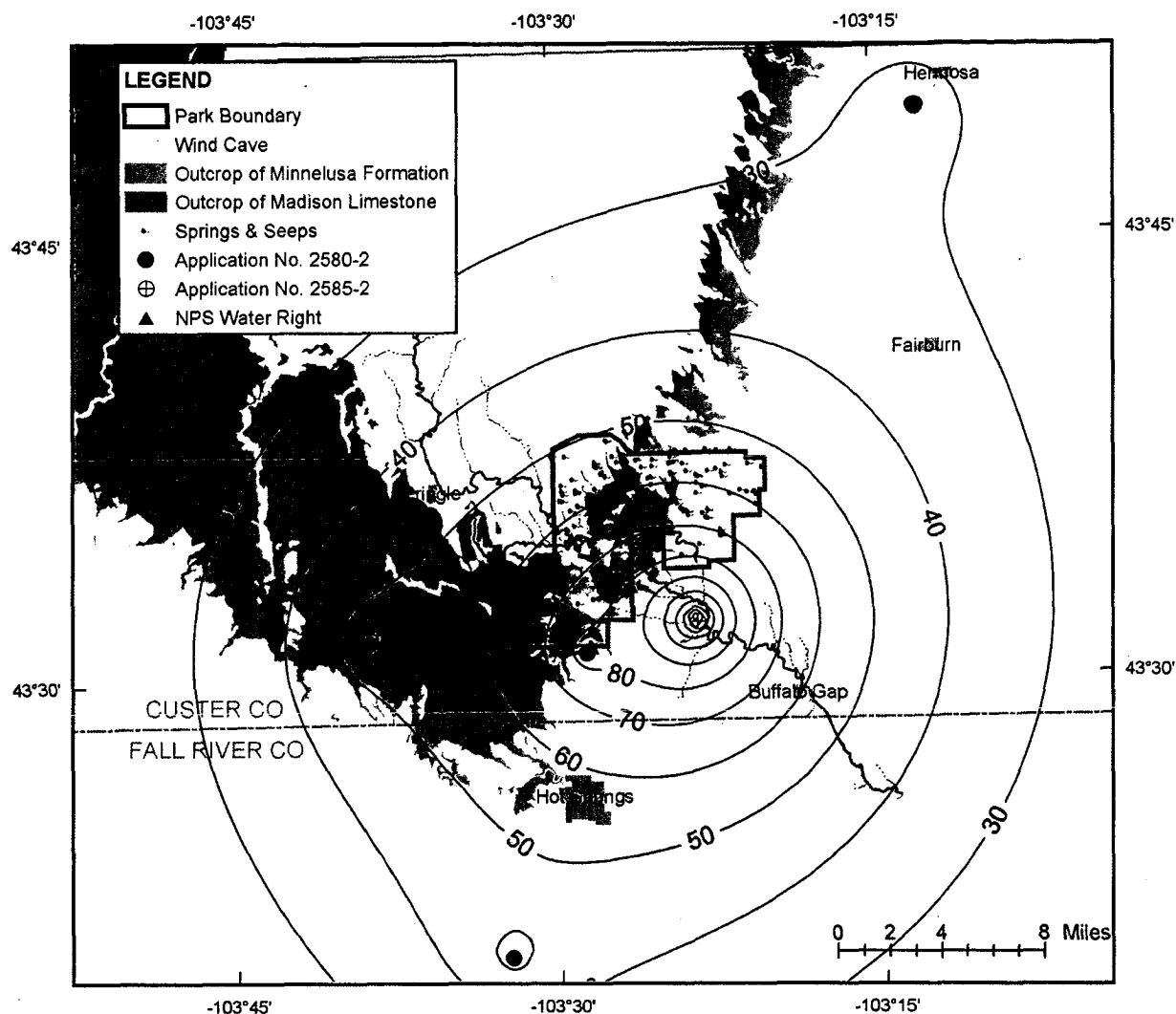


Figure 5. Drawdown (ft) after 10 years of continuous pumping at a rate of 368.5 acre-ft/yr at each well site proposed by Application No. 2580-2, and at a rate of 1,600 acre-ft/yr at the Streeter Ranch well site, where $T = 1,300 \text{ ft}^2/\text{day}$, and $S = 0.0004$.

Summary

The Theis drawdown analyses indicate that the proposed appropriations may adversely impact the water rights and water-dependent resources of Wind Cave National Park. The shapes of the estimated drawdown curves and cones of depression are a function of aquifer properties and pumping scenarios, which are uncertain at this time. Aquifer testing, ground-water monitoring and more detailed knowledge of pumping schedules would aid in decreasing the uncertainty associated with estimated impacts to the Madison aquifer in the area of the park.

References

- Carter, J.M., D.G. Driscoll, G.R. Hamade, and G.J. Jarrell, 2001. Hydrologic Budgets for the Madison and Minnelusa aquifers, Black Hills of South Dakota and Wyoming, water years 1987-96, *U.S. Geological Survey Water-Resources Investigations Report 01-4119*, 53 pp.
- Driscoll, F.G., 1986. *Groundwater and Wells*, Second Edition, Johnson Division, St. Paul Minnesota, 1088 pp.
- Greene, E.A., 1993. Hydraulic properties of the Madison aquifer system in the western Rapid City Area, South Dakota, *U.S. Geological Survey Water-Resources Investigations Report 93-4008*, 56 pp.
- Theis, C. V., 1935. The relation between the lowering of the piezometric surface and rate and duration of discharge of a well using groundwater storage. *Trans. Amer. Geophys. Union*, 2, 519-524.
- van der Heijde, P.K.M., 1992. *THWELLS - Version 4.0: Calculating Drawdown Resulting from Multiple Discharge or Recharge Wells in an Isotropic Homogeneous Aquifer with Regional Flow*, BAS-04, IGWMC, Colorado School of Mines, Golden, Colorado.

DENR
Garland Erberle, Chief Engineer
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

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JUL - 3 2006

WATER RIGHTS
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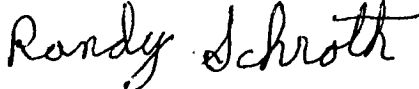
Dear Mr. Erberle;

This letter is in regards to water permit applications numbers 2580-2 and 2585-2.

I have grave concerns of the effect these may have on Beaver Creek Springs. I live on Beaver Creek, and our ranch has a water right on Beaver Creek and depends on it for our livelihood.

Having studied many of the possible effects these permits could have on Beaver creek, springs, and other wells in the county, I strongly urge that Southern Black Hills Water System should be required to do testing and studies before these permits are granted.

I will be unable to attend the hearing in July and would like to petition for an automatic delay. I strongly contest these permits.

Sincerely, 

Randy Schroth
P.O. Box 1
Buffalo Gap, SD 57722
833-6447

Clarence and Carol Foos
PO Box 317
Hermosa, SD 57744

Garland Erberle, Chief Engineer DENR
523 East Capitol
Pierre, SD 57501

Dear Garland:

This letter is written in regard to Water Application # 2585-2 and Future Use Water Permit Application # 2580-2.

The plan to dig a well close to Beaver Creek could destroy the future of Beaver Creek irrigators due to possible water shortages.

3

We are not against progress, but do it right from the beginning. there is adequate water in the Missouri Water System to take care of the above mentioned Applications.

Therefore, we feel that digging this well is only a band aid approach in a major undertaking when there is a more stable source available.

We understand that your office plans to dig a test well. How can a test well determine the supply and demand for such a large project. Why waste taxpayers money on an inadequate water source? Remember, the Hills area has experienced drought for the last 6 to 7 years. Who knows how long this will continue and what effect it could have on water sources?

Sincerely,

Clarence Foos

Clarence Foos

Carol Foos

Carol Foos

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JUL - 3 2006

WATER RIGHTS
PROGRAM



**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 5, 2006

NOTICE

TO: Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744
and Parties of Record (see attached list)

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

SUBJECT: Automatic Delay of Hearing on Future Use Permit Application No. 2580-2 and
Water Right Permit Application No. 2585-2

In response to the notice of hearing published in the Rapid City Journal, Hot Springs Star and Custer Co. Chronicle, petitions have been filed to Southern Black Hills Water System's two applications. Copies of the petitions are enclosed in the applicant's mailing. A number of the petitions requested an automatic delay of the July 12th hearing before the Water Management Board. Therefore, the hearing on Application Nos. 2580-2 and 2585-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 12, 2006.

The hearing to consider Application Nos. 2580-2 and 2585-2 will be scheduled for the Water Management Board meeting on October 4 and 5, 2006 meeting in Pierre. Future notice will be provided to all parties of record of the time, date and location of the meeting.

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

Enclosure (applicant only)

c: Diane Best, Assistant Attorney General
Ken Royse, Bartlett & West, 3456 E. Century Avenue, Bismarck ND 58503-0737

PARTIES OF RECORD

Future Use Permit Application No. 2580-2 and Water Permit Application No. 2585-2

Applicant

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Petitioners

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Marvin Bishop, Chairman
Custer County Commission
420 Mt. Rushmore Road
Custer SD 57730

James Brickey, Mayor
City of Hill City
PO Box 395
Hill City SD 57745

Harold Heiney
Box 7
Buffalo Gap SD 57722

Frank Scroth
7 – 11 Ranch
PO Box 97
Buffalo Gap SD 57722

Steven L. Knutson, President
Knutson Brothers, Inc.
12838 Cold Brook Road
Hot Springs SD 57747

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Lois Emery, Trustee
Lyda Bowker Trust
HC 52 Box 136A
Hot Springs SD 57747

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Clarence and Carol Foos
PO Box 317
Hermosa SD 57744

Tom Porter, Board Member
Southern Black Hills Water System
Box Z
Edgemont SD 57735

Roger Willey
Argyle Rd
Hot Springs SD 57747

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525-5596

Mr. and Mrs. Paul Fugier
27032 Beaver Valley Rd
Buffalo Gap SD 57722

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

CERTIFICATION

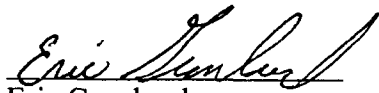
I hereby certify that on July 5, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 5, 2006, regarding Automatic Delay of Hearing on Future Use Application No. 2580-2 and Water Right Permit Application No. 2585-2, Southern Black Hills Water System addressed as stated below and on the Parties of Record list:

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

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

Diane Best, Assistant Attorney General, Capitol Building



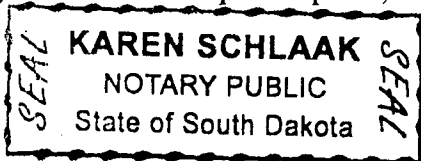
Eric Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of July, 2006.



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

July 24, 2006

NOTICE

TO: Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744
and Parties of Record (see attached list)

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

SUBJECT: Scheduling of Hearing on Future Use Permit Application No. 2580-2 and Water Right Permit Application No. 2585-2, Southern Black Hills Water System

Future Use Permit Application No. 2580-2 proposes to appropriate for future use 1,474 acre-feet of water annually from the Madison Aquifer. The area to be reserved for future water use is the approximate center of NW ¼ Section 6-T3S-R8E (Custer County); S ½ SE ¼ Section 16-T6S-R4E (Custer County); W ½ NW ¼ Section 21-T8S-R5E (Fall River County) and S ½ NW ¼ Section 24-T6S-R5E (Custer County). The water is to be reserved for future water supplies for rural water system use in Fall River, Custer and Pennington Counties.

Water Permit Application No. 2585-2 proposes to appropriate 2.67 cubic feet of water per second (1,600 acre-feet of water annually) from a well completed into the Madison Aquifer located in the W ½ NE ¼ Section 15-T6S-R6E (Custer County). The water is for use in Fall River, Custer and Pennington Counties.

The July 12, 2006 hearing before the Water Management Board was continued at the request of petitioners that intervened in response to the public notice. Previous notice stated the hearing to consider these applications would be at the Board's October 4 and 5, 2006 meeting. However, the Board has altered their meeting schedule and the hearing will now be held at their October 11 and 12, 2006 meeting.

The Water Management Board will consider Application Nos. 2580-2 and 2585-2 on October 11, 2006, at 1:00 PM, 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. Notice will be provided to parties if there is a change in the hearing time or date.

Applicable provisions of the Notice published in the Custer County Chronicle, Rapid City Journal and Hot Springs Starwill still apply at the October 11, 2006 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.

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

c: Diane Best, Assistant Attorney General
Ken Royse, Bartlett & West, 3456 E. Century Avenue, Bismarck ND 58503-0737

PARTIES OF RECORD

Future Use Permit Application No. 2580-2 and Water Permit Application No. 2585-2

Applicant

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Petitioners

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Marvin Bishop, Chairman
Custer County Commission
420 Mt. Rushmore Road
Custer SD 57730

James Brickey, Mayor
City of Hill City
PO Box 395
Hill City SD 57745

Harold Heiney
Box 7
Buffalo Gap SD 57722

Frank Scroth
7 - 11 Ranch
PO Box 97
Buffalo Gap SD 57722

Steven L. Knutson, President
Knutson Brothers, Inc.
12838 Cold Brook Road
Hot Springs SD 57747

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Lois Emery, Trustee
Lyda Bowker Trust
HC 52 Box 136A
Hot Springs SD 57747

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Clarence and Carol Foos
PO Box 317
Hermosa SD 57744

Tom Porter, Board Member
Southern Black Hills Water System
Box Z
Edgemont SD 57735

Roger Willey
Argyle Rd
Hot Springs SD 57747

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525-5596

Mr. and Mrs. Paul Fugier
27032 Beaver Valley Rd
Buffalo Gap SD 57722

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

CERTIFICATION

I hereby certify that on July 24, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 24, 2006, regarding Scheduling of Hearing on Future Use Application No. 2580-2 and Water Right Permit Application No. 2585-2, Southern Black Hills Water System addressed as stated below and on the Parties of Record list:

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

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

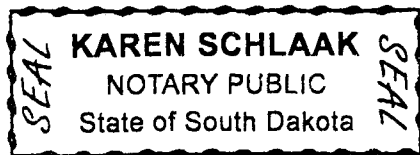
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of July, 2006.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





South Dakota Chapter
P.O. Box 1624, Rapid City, SD 57709-1624
tel 605.348.1345 fax 605.348.1344

October 2, 2006

Water Management Board
SD State Engineer
523 E Capitol
Pierre, SD 57501

RECEIVED

OCT - 4 2006

WATER RIGHTS
PROGRAM

Re: Proposed Southern Black Hills Water System (SBHWS) and Fall River Water Users District (FRWUD)

Dear Board:

We have recently become very concerned with a proposal by SBHWS to appropriate 5.26 cfs from wells and springs for domestic water supply in the southern part of the Black Hills of South Dakota. The water for these would come from ground water and springs in the Madison Limestone in the area near Hot Springs, Cascade Springs, and Beaver Creek. The FRWUD project would utilize 1 cfs from the Madison Limestone wells near Hot Springs.

We understand that preliminary documents filed by the companies involved estimate the cost of these projects would be approximately \$78 million, partially or fully funded by a loan from an agency of the US Government, perhaps the Rural Development Div, USDA.

The environmental impacts of these two water developments have not been thoroughly evaluated, but three large resurgent springs within 8 miles of Hot Springs are in jeopardy: Evans Plunge and other springs along the Fall River, the resurgent spring along Beaver Creek below Wind Cave, and Cascade Spring south of Hot Springs.

After studying the data on these two projects, one presented by Perry H. Rahn, PhD, PE South Dakota School of Mines and Technology, another by geologists from the National Park Service, and several other concerned citizens, The South Dakota Chapter, Sierra Club requests that one (or more) of the Federal agencies involved immediately start the process needed to complete a thorough Environmental Impact Statement of all of the possible impacts of this project. This project is of such a large magnitude the EIS is necessary prior to the approval of any and all Federal or State Agencies involved.

Please acknowledge receipt of this request and put us on your mailing list as an interested party, and possibly as an Intervener at the State level, although this is not a request for formal SD Intervener status at this time.

Sincerely,

Sam N. Clauson, Conservation Chair
SD Chapter, Sierra Club
snbclaus@rushmore.com

cc: US Sen. John Thune; US Sen. Tim Johnson; US Cong. Stephanie Herseth
Wind Cave NP Supt Linda Stoll; USDA Rural Development
Steve Simpson; Perry Rahn; SBHWS



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 3, 2006

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

Dear Mr. Royse:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. In the past the Chief Engineer has typically handed this material out at the time of the meeting. For this Board meeting a new practice is being implemented where the material is being sent to the Board members in advance of the hearing. This packet includes the DENR staff report, Chief Engineer's recommendation and petitions (if any) regarding each case. The same information is also being sent to parties in each respective case.

If you have any questions, please feel free to contact me at (605) 773-3352 or email eric.gronlund@state.sd.us.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 3, 2006

Bob Morrison Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Dear Mr. Morrison:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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If you have any questions, please feel free to contact me at (605) 773-3352 or email eric.gronlund@state.sd.us.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 3, 2006

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Dear Mr. Hickey:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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If you have any questions, please feel free to contact me at (605) 773-3352 or email eric.gronlund@state.sd.us.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 3, 2006

Don Voorhees, Mayor
City of Hill City
PO Box 395
Hill City SD 57745

Dear Mayor Brickey:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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October 3, 2006

Frank Scroth
7 – 11 Ranch
PO Box 97
Buffalo Gap SD 57722

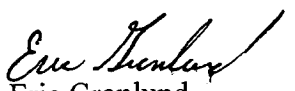
Dear Mr. Scroth:

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Water Rights Program
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October 3, 2006

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Dear Mr. Beard:

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Sincerely,


Eric Gronlund
Water Rights Program
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

October 3, 2006

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Dear Mr Scroth:

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Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

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www.state.sd.us/denr

October 3, 2006

Tom Porter Board Member
Southern Black Hills Water System
Box Z
Edgemont SD 57735

Dear Mr. Porter:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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Sincerely,

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Water Rights Program
605 773-3352

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and NATURAL RESOURCES**

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October 3, 2006

Charles W Pettee Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive Suite 250
Fort Collins CO 80525-5596

Dear Mr. Pettee:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



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and NATURAL RESOURCES**

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www.state.sd.us/denr

October 3, 2006

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

Dear Mr. Fugier:

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Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

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and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

October 3, 2006

Marvin Bishop Chairman
Custer County Commission
420 Mt Rushmore Road
Custer SD 57730

Dear Mr. Bishop:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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Water Rights Program
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October 3, 2006

Harold Heiney
Box 7
Buffalo Gap SD 57722

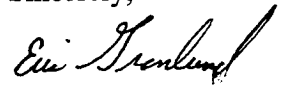
Dear Mr. Heiney:

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Sincerely,


Eric Gronlund
Water Rights Program
605 773-3352

enclosure



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October 3, 2006

Steven L Knutson President
Knutson Brothers Inc
12838 Cold Brook Road
Hot Springs SD 57747

Dear Mr. Knutson:

I am enclosing copies of the reports, recommendations and petitions in the matter of Future Use Application No. 2580-2 and Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. The hearing on this application is scheduled for 1:00 p.m. (Central Standard Time) on October 11, 2006 in the Visitor Center, 650 E Capitol Avenue, Pierre SD. The Visitor Center is located along the west bank of Capitol Lake near the war memorials.

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Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



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www.state.sd.us/denr

October 3, 2006

Lois Emery Trustee
Lyda Bowker Trust
HC 52 Box 136A
Hot Springs SD 57747

Dear Ms Emery:

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Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



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October 3, 2006

Clarence and Carol Foos
PO Box 317
Hermosa SD 57744

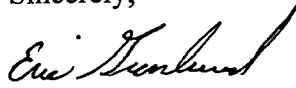
Dear Mr. & Mrs. Foos:

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Eric Gronlund
Water Rights Program
605 773-3352

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

October 3, 2006

Roger Willey
Argyle Rd
Hot Springs SD 57747

Dear Mr. Willey:

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Water Rights Program
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October 3, 2006

Mr & Mrs Paul Fugier
27032 Beaver Valley Rd
Buffalo Gap SD 57722

Dear Mr. & Mrs. Fugier:

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Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure

Gronlund, Eric

From: Lesta [ltconger@gwtc.net]
Sent: Tuesday, October 10, 2006 9:09 AM
To: Gronlund, Eric
Subject: Well permit hearing

Dear Sirs,

We are long standing users of the Streeter Well. And we hold vested water rights on Beaver Creek. We wish to make it known to the Water Rights Board that we stand in opposition to the issuance of this water well permit. The water bearing structures under the Black Hills is very complex. Drawing large quantities of ground water in this area will be very detrimental to the output of surface springs in the Southern Black Hills. It will also be detrimental to the output of the Streeter Well. Which is presently, the source of water for domestic use by a good number of people in the Buffalo Gap area.

Sincerely,

Tom & Lesta Conger
13831 Beaver Creek Road
Buffalo Gap, SD 57722
(605) 833-6345

10/12/2006

COPY

STATE OF SOUTH DAKOTA
DEPARTMENT OF WATER & NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE)
PERMIT APPLICATION #2580-2) TRANSCRIPT OF HEARING
AND WATER PERMIT APPLICATION) BEFORE THE BOARD
#2585-2, SOUTHERN BLACK)
HILLS WATER SYSTEM.) October 11, 2006

PROCEEDINGS REPORTED BY MONA G. WEIGER,
Registered Professional Reporter in and
for the State of South Dakota on the
11th day of October, 2006, at the Capitol
Complex Visitor's Center, Pierre, South
Dakota.

BOARD MEMBERS PRESENT:

MR. EVERETT HOYT
MR. JIM HUTMACHER, Chairman
MS. BERNITA LOUCKS
MR. FRANCIS BRINK

MR. JEFF HALLEM
Assistant Attorney General
1302 E. Hwy 14, Suite 1
Pierre, SD 57501;

Counsel for the Board.

APPEARANCES:

MS. DIANE BEST
Ass't Attorney General
1302 E. Hwy 34
Pierre, SD 57501;

MR. SHANE PENFIELD
Attorney at Law
PO Box 8045
Rapid City, SD 57117;

Counsel for DENR.

Counsel for Southern Black
Hills Water System.

MR. MICHAEL HICKEY
Attorney at Law
PO Box 2670
Rapid City, SD 57709;

MR. PETER FAHMY
Water Rights Branch
1201 Oak Ridge Drive
Ft. Collins, CO 80525;

Counsel for Trout Haven.

Counsel for National
Park Service.

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1 MR. HUTMACHER: This is going to take a
2 while as I go through this list. We did receive
3 in our Board packet the Future Use and the Water
4 Permit Application, both 2585-2, 2580-2.

5 We received letters from the Custer County
6 Commission dated July 14th; Paul Fugier, July 3rd
7 received; Shawn Fugier on July 3rd; Department of
8 Interior received on July 3rd, National Park
9 Service; July 3rd, Randy Schroth; July 3rd, Tom
10 Porter; Frank Schroth on July 3rd; John Baird on
11 June 30th; Clarence Fuoss on July 3rd; Richard
12 Wyly on July 3rd; Knudson Brothers, Steven L.
13 Knudson on June 30th; Lois Emery for the Lydia
14 Bowker Trust on June 30th; another letter from
15 Custer County Commission, June 29th; letter from
16 Bangs, McCullen, Michael Hickey, June 29th; Hill
17 City Mayor, James Brickey on behalf of the City on
18 June 29th; and then I have June 26th from Harold
19 Heiney, Buffalo Gap.

20 And then we also have the two
21 recommendations from the Chief Engineer for Water
22 Permit 2585-2 and the Future Use Permit 2580-2,
23 and a Motion for Continuance by Michael Hickey.

24 I believe that's what we received in our
25 Board packet.

1 MS. BEST: Good afternoon. For the record,
2 my name is Diane Best. I'm counsel for the Chief
3 Engineer, Water Rights Program and the DENR.

4 Pursuant to statute, the Chief Engineer
5 receives the Petitions to Intervene and all
6 pleadings and is required by law to provide those
7 to the Board. And the Petition standard that the
8 Board Chairman just read does reflect what the
9 Chief Engineer provided to the Board.

10 At this time I would also advise the Board
11 that the Chief Engineer did receive two additional
12 letters from interested parties, both of which
13 were filed after the cut-off date for filing
14 Petitions to Intervene in this proceeding.

15 One was filed on October 4th and it was
16 from the Sierra Club. And a second one was sent
17 to the Division by e-mail yesterday, yesterday
18 morning, and that is from Tom and Lesta Conger at
19 Buffalo Gap, South Dakota, and these were filed
20 with the Board. We obviously did not have a
21 chance to give those to the Board yet.

22 The question is whether the Board intends
23 to take any late filed submissions in this matter.
24 The time for intervention, last date was -- I
25 don't even have it in front of me but these were

1 received well after the last date for intervention
2 in this proceeding.

3 MR. HALLEM: Ms. Best, are you objecting to
4 the intervention?

5 MS. BEST: We are objecting. We think that
6 from the Chief Engineer's perspective that they
7 received a number of inquiries from interested
8 people in response to the newspaper notices,
9 provided information to people in response to the
10 newspaper notices.

11 We have the Affidavits of Publication. We
12 know they were timely. And a number of the folks
13 were able to intervene on a timely basis and
14 they're here.

15 To my knowledge, neither one of these
16 parties -- both sent late files and neither one is
17 here. So I would -- I think we have to receive it
18 for the file, but I would ask the Board to deny
19 any purported Petition to Intervene and not
20 consider any evidence presented after the date for
21 intervention has passed.

22 MR. HOYT: Mr. Chairman?

23 Ms. Best, are there any allegations in the
24 late filed Petitions which would state good cause
25 for a late filing?

1 MS. BEST: No. But certainly I would hand
2 them to you for the purposes of --

3 MR. HOYT: Do they allege, you know, any --

4 MS. BEST: No. There are no allegations of
5 not being aware of it previously. In fact, one of
6 them says, "Put us on your mailing list as an
7 interested party and possibly as an Intervenor in
8 the state level, although this is not a request
9 for formal South Dakota Intervenor status at this
10 time." I don't know what that means. That's the
11 Sierra Club one.

12 And the other one is, "We stand in
13 opposition to the issuance," but neither one gives
14 any indication of why they're late filed. And I
15 have to tell you this is unusual. This typically
16 does not happen. In this particular case we
17 received two of them.

18 MR. HUTMACHER: Do any of the other parties
19 have any comments on Ms. Best's motion to reject
20 those last two late filings?

21 MS. LOUCKS: It seems to me if it goes into
22 the file, we still have to make a formal hearing,
23 don't you?

24 MR. HALLEM: You can make it part of the
25 file for appeal purposes on it. But if you accept

1 the motion, it would not be used in consideration
2 of the Board's decision, and they would not be
3 official parties to the action or even named
4 parties to the action.

5 MR. HUTMACHER: Mr. Hickey, did you have a
6 comment on that?

7 MR. HICKEY: No. I have no objection to
8 whatever the Board wants to do with respect to the
9 letters. I think you're right. I think they're
10 part of the record. As to being substantive
11 evidence, I think they're not timely, absent a
12 showing of good cause. I would agree with that.

13 However, I do want to ask you for your
14 indulgence. Fall River Water Users District did
15 not file, as I understand, a formal objection.
16 But they are present here today and would like to
17 present limited testimony, just so that you're
18 aware of it.

19 MR. HUTMACHER: Is there a motion to accept
20 or deny those last two interventions?

21 MR. HOYT: I would move that the late filed
22 interventions be denied.

23 MR. HUTMACHER: Have a motion by Mr. Hoyt
24 to deny.

25 MS. LOUCKS: I second it with just a

1 comment that, you know, if this is standard
2 procedure then we've got to be consistent.

3 MS. BEST: If you're looking for a comment
4 from the DENR perspective, frankly, we were not
5 aware of Fall River Water Users' interest in
6 intervening until right now. So we haven't had a
7 chance to talk to them to find out if they've got
8 some extenuating circumstances, so I don't know if
9 I would make the same motion on that one or not.
10 I guess I'm willing to --

11 MR. HUTMACHER: Is there a further
12 discussion on the motion to deny the two
13 interventions that were late?

14 If not, all in favor, aye. Opposed?
15 Motion carried. Proceed.

16 MS. BEST: Before I talk about what the
17 case is about and who the DENR is going to have
18 testify, there is a position with Fall River Water
19 Users.

20 And, Mike, are you representing them?

21 MR. HICKEY: Randy Scott, their general
22 manager, is here as well as two Board members.
23 They've asked me just to request the Board's
24 indulgence to allow them to make a comment and
25 present, you know, a very limited statement, as I

1 understand it.

2 But I'm happy to do that on their behalf if
3 that's what they wish. But they're asking for
4 formal approval to intervene in this proceeding.

5 MS. BEST: Now would be the time to explain
6 whether you want to intervene and why you -- to
7 make your pitch.

8 MR. HICKEY: Well, they want to intervene
9 because, obviously, they're a future use -- they
10 have a Future Use Permit in this exact same area.
11 And they're concerned about the Board's action
12 with respect to the granting of these applications
13 because they have an interest in that area.

14 They have future plans to develop a system
15 of water distribution and, obviously, that's in
16 the plans for Southern Hills and so they do have
17 an interest in that proceeding.

18 As to good cause, they were never formally
19 notified. The only notice they got was that in
20 the paper. And it's a board and they're not
21 attuned to things as they should have been so
22 that's the -- that's why they're so late in asking
23 permission to intervene. But they did come down
24 here for the purposes of listening to the
25 testimony and offering very limited comments.

1 MR. BRINK: Do they have a Future Use
2 Permit now?

3 MR. HICKEY: Yes, they do.

4 MR. BRINK: So they have a priority date
5 that would be prior to this one?

6 MR. HICKEY: Well, no. We're concerned, as
7 I understand it, whoever puts the first well in,
8 that changes the analysis as to interference with
9 existing rights. So it is kind of a race to sink
10 the first well.

11 MS. BEST: With respect to Fall River Water
12 User District, you know, I'm not in the business
13 of trying to keep people from testifying in
14 administrative cases, but I do want to clear up
15 the record in this.

16 The DENR did send a letter to Randy Scott
17 on June 9th containing the reports,
18 recommendations and the public notices in this
19 case. So the notice scheduled a July 12th hearing
20 date and indicated that the Petitions to Intervene
21 needed to be submitted by July 3rd. And in fact
22 that was the intervention day. It was July 3rd.

23 And then one or more of the Intervenors
24 invoked the automatic delay provision and that
25 brought us forward to October. So that's been the

1 time frame.

2 But from June 9th until today I don't see
3 anything in the record, anyway, that would
4 indicate that Fall River Water User District
5 intended to intervene so I wanted to set the
6 record straight on that.

7 Obviously, it's up to the Board as far as
8 whether they're going to grant or deny that
9 petition to speak here today. And the Chief
10 Engineer takes no position on that matter.

11 MR. HUTMACHER: Okay. We need some Board
12 discussion on that and/or action whether we're
13 going to permit Fall River Water Users to
14 intervene late.

15 MR. HOYT: Is there an objection by the
16 Applicant?

17 MR. PENFIELD: My name is Shane Penfield.
18 I'm an attorney in Rapid City, South Dakota,
19 Gunderson, Palmer. I represent Southern Black
20 Hills.

21 We would see this as an attempt to come in
22 after the intervening time had expired and,
23 therefore, we would request the Board to deny any
24 opportunity at this time to bring forth testimony.

25 MR. BRINK: Mr. Chairman, if people are

1 here, isn't that the purpose for the hearing? If
2 it's been noticed, it's been advertised and
3 they're here, why can't they be heard without
4 having to file?

5 This is a matter -- tell me if I'm wrong.
6 Does the fact that they didn't file a notice to
7 the Department that they intend to intervene, does
8 that deny them any right to speak to this Board?

9 MR. HALLEM: There's two different things
10 on that, Mr. Brink. One is that if somebody
11 called a witness, they could come and testify. So
12 if Mr. Hickey determined that the Water User
13 District had some relevancy to his, he could have
14 them testify.

15 But intervention is actually a party and a
16 party has certain rights, and that right is to
17 contest and appeal any matter that's before it.
18 So there's a difference between being a party to a
19 proceeding versus being a witness to a proceeding.

20 And what the User District is asking for is
21 to be an actual party and so that would give them
22 all appeal rights.

23 MR. BRINK: So they really didn't make the
24 application for that at the proper time.

25 MR. HALLEM: My understanding from the

1 record is that written notice was sent out to
2 them.

3 MR. HUTMACHER: The Board Chairman is Randy
4 Scott; is that right?

5 MS. BEST: We sent it to Randy Scott, Fall
6 River Water Users District, 1 Angostura Highlands,
7 Hot Springs, South Dakota. I do not know what
8 Mr. Scott's title is.

9 MR. HICKEY: General Manager.

10 MR. HALLEM: Do you have any question as to
11 whether that was received?

12 RANDY SCOTT: Yes, we did receive it.

13 MR. HALLEM: So you had notice at least in
14 writing back in June?

15 RANDY SCOTT: Yes.

16 MR. HALLEM: And just for the record, could
17 you state who you are, please.

18 RANDY SCOTT: I'm Randy Scott, General
19 Manager of the Fall River Water District.

20 MR. HOYT: Mr. Chairman, for the purpose of
21 Board discussion -- and I appreciate your comment
22 about our consistency in these matters. However,
23 I did not sense either a statement of cause in the
24 earlier Petitions, late filed Petitions which we
25 rejected, nor did I see perhaps the compelling and

1 more directly affected interest that I would see
2 in the case of Fall River, which does hold a
3 permit for future use which would be affected by
4 the pending application.

5 So in my own instance, I would see more
6 compelling grounds for Fall River to be able to
7 assert its rights as a party to the proceeding and
8 to assist us perhaps in an appropriate
9 determination.

10 MR. BRINK: I guess that's what I was
11 suggesting, the same thing, that they be heard.

12 MR. HALLEM: In that case then, if you want
13 to grant them intervention, that would be the
14 motion. I just wanted to say that there was a
15 difference between it. But if you grant the
16 intervention, they would have full party status.

17 MR. BRINK: Do any of the other parties
18 have to concur or is that up to this Board?

19 MR. HALLEM: It's up to this Board. If one
20 of the parties disagree with it, they could take
21 it up on appeal. But if you denied it, the party
22 that wasn't allowed to intervene could take it up
23 on appeal.

24 MR. BRINK: I make a motion to allow Fall
25 River to intervene.

1 MR. HOYT: Second.

2 MR. HUTMACHER: We have a motion by Francis
3 and second by Everett to let Fall River intervene.
4 Discussion on the motion?

5 My only question is if they received a
6 letter in June, why didn't they send a reply back?
7 They should have done that.

8 But all in favor vote aye.

9 MR. BRINK: Aye.

10 MR. HOYT: Aye.

11 MR. HUTMACHER: Opposed? No.

12 Bernita, you're voting no?

13 MS. LOUCKS: Well, no, I'm not. I'm
14 outvoted anyway. Whatever.

15 MR. HUTMACHER: Well, no. You're the swing
16 vote here.

17 MS. LOUCKS: No, I'm not. It's two against
18 one.

19 MR. BRINK: You can't abstain because we
20 don't have a quorum on it. It's almost unanimous.

21 MR. HUTMACHER: We've got to have three
22 votes to pass a motion. Everett voted no -- or
23 yes. Fran voted yes and I voted no.

24 MS. LOUCKS: Well, I'll vote yes.

25 MR. HUTMACHER: Motion carried.

1 MR. BRINK: Fall River buys supper.

2 MS. BEST: If I may, the Southern Hills
3 applications are, as you can see by your agenda,
4 twofold. There is both a Water Permit Application
5 and an Application for Future Use.

6 The Future Use Application involves several
7 different locations that the Applicant would look
8 for for water in the future.

9 The legal standard of proof in order to
10 obtain the Future Use requires a showing of
11 availability of unappropriated water and future
12 need. Those are the two criteria. That's a
13 lesser criteria than a full permit for water. So
14 I want to make that distinction because we're
15 doing both here.

16 So the Future Use requires only the showing
17 of availability of unappropriated water and future
18 need. And then the third criteria, of course, is
19 that only certain institutional users may apply
20 for a Future Use Permit. And in this case the
21 Applicant is a rural water supply company and does
22 fit that criteria and I think that's undisputed in
23 this case.

24 So we are looking at the Future Use
25 Application and then also, secondly, there is a

1 Water Permit Application.

2 The Water Permit Application is 2585-2.

3 The Water Permit Application is, obviously, also
4 in Fall River County. That one requires a
5 four-part test.

6 Number one, whether there's a reasonable
7 probability there's unappropriated water
8 available. Number two, whether the water can be
9 developed without unlawful impairment of existing
10 rights. Number three, whether the proposed use is
11 a beneficial use. And number four, whether the
12 proposed use is in the public interest.

13 Having said all that, I'm going to just
14 hand out a sheet that has the two legal standards
15 on it so that you all can look at it and have --
16 so there are different legal standards. I want to
17 point that out.

18 The Chief Engineer has recommended approval
19 for the Future Use Application, and is
20 recommending that the Water Permit Application be
21 deferred for future analysis of the aquifer,
22 basically.

23 Having said that, there's a number of
24 parties here, as you know. They all have
25 different points of view.

1 I'm not going to give anything more for an
2 opening statement describing the water use. Ken
3 Buhler is here. He's an expert in groundwater and
4 he is prepared to testify in this matter on behalf
5 of the DENR. And he would also give the Chief
6 Engineer's recommendation as to the approval on
7 the one hand and the deferral on the other hand.

8 I don't know if anyone else wants to give
9 an opening statement first or whether we should
10 proceed with Mr. Buhler's testimony.

11 MR. HICKEY: Diane, are we going to visit
12 about procedurally where we're at in terms of
13 time?

14 MS. BEST: Yeah, I had forgotten. The
15 attorneys in this case all talked a little bit
16 previously. I'm not sure whether we have a
17 consensus or not, but it's looking like time-wise
18 we are in a position where we're going to need,
19 I'm going to say a minimum of five hours.

20 We understand there is not a quorum
21 tomorrow. The DENR is prepared to be fairly
22 expeditious. I think the other parties have
23 indicated that as well but, of course, there's a
24 due process right to be heard and we fully respect
25 that.

1 Some of the parties would advocate that if
2 we're not done today, that we go back, have
3 another round in November when we meet again. I
4 sincerely hope we can get done today, but I might
5 be asking you to proceed with hearing until
6 8 o'clock tonight. So I don't know if you want to
7 take some evidence and then consider the issue or
8 whether you want to rule on that at this time.

9 MR. HUTMACHER: Before we start, can I ask
10 how many attorneys we have that are party to this
11 thing? I know we have Michael. You two. How
12 many more do I have? Is that it?

13 And I assume you guys are on opposite sides
14 here, somebody is.

15 MR. HICKEY: No, Pete and I are on the same
16 side, Your Honor.

17 MR. FAHMY: My name is Peter Fahmy. I'm
18 water rights counsel for the National Park
19 Service.

20 MS. BEST: We understand also that there
21 are several pro se Intervenors and then, of
22 course, Mr. Scott for the Fall River.

23 MR. HUTMACHER: I wondered how many sides I
24 was trying to get to when we were going to do
25 this.

1 Would either one of you gentlemen like to
2 make opening statements or --

3 MR. FAHMY: Mr. Chairman, I prefer to
4 reserve my opening statements at the beginning of
5 our case.

6 MR. PENFIELD: I would also reserve.

7 MR. HICKEY: Me too.

8 MR. HUTMACHER: Good enough.

9 Mr. Buhler, I think you're up.

10 MS. BEST: Before we start with Ken, I'll
11 just take care of some exhibits. I have three
12 exhibits today and I will ask you to accept all
13 three of them at the same time.

14 DENR Exhibit 1 is the agency file in Water
15 Application 2585-2, and that includes the original
16 Application, the Petitions to Intervene, the
17 newspaper notices and Affidavits of Publication,
18 the Chief Engineer's recommendation and
19 Mr. Buhler's report regarding that recommendation.
20 And that's DENR 1.

21 DENR 3 is the agency file in Water Right
22 Application 2580-2. And that contains the same
23 types of documents only with respect to the other
24 application. So that's DENR 1 and 3.

25 And then finally, DENR 2 is a short vitae

1 of the expert qualifications of Ken Buhler. And
2 Ken has testified many times before this Board.

3 And I've indicated to the other parties
4 that if they have no objection, we will not be
5 going into any foundational testimony regarding
6 his qualifications but would instead put in a
7 short exhibit showing his qualifications.

8 And to my knowledge, the parties have
9 stipulated. I'm not real -- there's enough
10 parties here that I might be speaking out of
11 school.

12 MR. HUTMACHER: Okay.

13 MS. BEST: I would ask for admission of 1,
14 2, 3.

15 MR. HUTMACHER: Any objection to admission
16 of DENR 1, 2 and 3, the three exhibits that
17 Ms. Best just referred to?

18 MR. FAHMY: No objection.

19 MR. PENFIELD: No objection.

20 MR. HICKEY: None.

21 MR. HUTMACHER: With that we'll accept into
22 evidence DENR 1, 2 and 3.

23 MS. BEST: At this time I would ask Ken
24 Buhler to come forward and provide testimony both
25 on the deferral recommendation on the new Water

1 Permit Application and also the approval
2 recommendation on the Future Use Application.

3 KEN BUHLER: Mr. Chairman, members of the
4 Board, my name is Ken Buhler, staff engineer.

5 The Chief Engineer is recommending
6 approval, Water Management Board approval of
7 Permit #2580-2 with qualifications. I'm here to
8 give a foundation for that recommendation.

9 The Board should have received a new
10 handout this afternoon, as opposed to what came in
11 your packet. I need to tell you the reason for
12 that is the Figure 1, which is the vicinity map in
13 your original handout, inadvertently came out
14 black and white and it's hard to see what I wanted
15 to show. So the new one is identical except it
16 actually has a color map so you know what I'm
17 talking about.

18 Water Permit Application 2580-2 proposes to
19 appropriate for future use 1,474 acre-feet per
20 year out of the Madison Aquifer. This application
21 proposes to reserve that water from four sites
22 that we'll refer to as the Hermosa Site, the
23 Argyle Site, the Gobbler Pass Site, the Cascade
24 Springs Site. Those sites are shown on Figure 1
25 in the report.

1 I'm also going to show you on this, which
2 is identical to that -- on this map, which is
3 identical to what you have in front of you, the
4 Hermosa Site is up here. Gobbler Pass Site is on
5 385, basically the intersection of 385 and the
6 7-11 Road; Argyle Site over by Argyle, and we have
7 Cascade Springs Site down by Cascade.

8 The Madison Aquifer, of course, locally is
9 known as the Pahasapa Limestone. It's a medium
10 fine crystalline, cavernous limestone dolomite.
11 It's laterally extensive, covers most of western
12 South Dakota -- western United States. Actually,
13 Fall River and Custer County are very near the
14 eastern extent of the Madison.

15 The Madison contains something like 9.8
16 million acre-feet of recoverable water in storage
17 in Fall River County, something like 9.2 million
18 acre-feet of recoverable water in storage in
19 Custer County.

20 I throw those numbers out to the Board just
21 so you recognize the size of this resource. A
22 huge amount of water -- recoverable water in
23 storage.

24 The site conditions at each of these four
25 proposed geographic areas for the future use are

1 shown in Table 1. Based on my analysis, I'm
2 assuming the top of the Madison is going to range
3 anywhere from 450 feet to 2,600 feet below grade.

4 Madison thickness down in the southern
5 Hills here, we're probably only talking 300 feet
6 thick. It gets a lot thicker as you go north, but
7 here it's only 300 feet.

8 Water levels at these sites, and these are
9 generalizations but generally speaking, the water
10 levels at these sites are going to range from 200
11 feet to 500 feet, depending on the site that we're
12 talking about. Just kind of a point of reference
13 of what we're dealing with with these sites.

14 As Ms. Best pointed out, SDCL 46-2A-10
15 states that a future use can only be approved if
16 there's a reasonable probability there's
17 unappropriated water available, the quantity of
18 water reserved is needed for the entity, and it
19 also says the proposed use must be beneficial use
20 and in the public interest.

21 For our purposes, I'm going to discuss the
22 availability of water and the need, as I stated,
23 by the Applicant and the beneficial use of the
24 public water system.

25 I think the Board has been on record time

1 and time again as to a rural water system is a
2 beneficial use of water. With regard to the
3 public interest, I believe that's what the public
4 testimony is about today. I'll let that stand on
5 its own.

6 With regard to water availability, again
7 we're going to go back to that statute. 46-6-31
8 basically says this Board cannot appropriate more
9 water out of an aquifer than what recharge to the
10 aquifer is. To do that we'll go back and look at
11 the numbers on what recharge to the Madison
12 Aquifer is depending on which resources you use.

13 Woodward and Clyde estimate that recharge
14 is somewhere between 140 and 400,000 acre-feet of
15 water per year. A Black Hills hydrology study
16 estimated the average annual recharge between 1931
17 and 1998 was 137,000 acre-feet of water. That's
18 annual recharge.

19 When we look at use out of the Madison
20 Aquifer, the preponderance of use is water that
21 does require appropriative rights. There are some
22 domestic uses out of it, but most of them require
23 appropriative rights. So we can jump straight to
24 talking about how many permits and rights there
25 are out of the Madison.

1 At the time I wrote the report there were
2 142 water permits or water rights appropriating
3 water out of the Madison Aquifer in South Dakota.
4 In addition to that, there's three Future Uses out
5 of the Madison Aquifer; one for Weston Heights,
6 one for the City of Rapid City and one for Fall
7 River Rural Water.

8 These Future Use Permits reserve 6,108.8
9 acre-feet of water per year. So I bring that up
10 because when we talk about how much water is being
11 used out of the Madison Aquifer and compare that
12 with the amount of water that is being recharged,
13 we have to work in that water which is reserved
14 for future use which can, in theory can also be
15 used.

16 Worst case scenario, if everybody is
17 pumping the maximum that they can pump, if they
18 have a limit on how much water they can pump or in
19 terms of a volume -- we discussed volume versus
20 rate earlier. If everybody is pumping their
21 maximum volume or pumping their maximum diversion
22 rate 60 percent of the time, which is pretty heavy
23 use -- this is worst case scenario -- worst we
24 get, we can give you maybe 50,000 acre-feet a year
25 that we're pumping out of the Madison Aquifer.

1 Remember, recharge estimates are in that 140 to
2 400,000.

3 So we're feeling pretty comfortable that
4 there is unappropriated water available from the
5 Madison Aquifer.

6 Also, if you look at the Black Hills
7 Hydrology Study, between 1987 and 1996 they put a
8 number on what withdrawals from the Madison
9 Aquifer were. They put that number at 10,990
10 acre-feet a year. Again, recharge is over ten
11 times that.

12 This Application proposes to reserve for
13 future use 1,474 acre-feet. Add that on to what
14 we already have appropriated, and there's still
15 unappropriated water available from the aquifer.

16 The Water Rights Program monitors 26
17 observation wells in the Madison Aquifer. That
18 Figure 1 in your report, particularly if you look
19 at the colored version of it, points out where
20 these observation wells are with regard to the
21 sites.

22 This exhibit is also going to show that --
23 it's not going to stand up by itself. The blue
24 dots are observation wells in the Madison Aquifer.
25 The ones that are labeled are the ones that are

1 included in the report. The red squares are the
2 future use sites.

3 I've included hydrographs for six of our
4 observation wells in this report. I think they
5 speak fairly well for themselves.

6 They show that the potentiometric surface
7 fluctuates in the Madison Aquifer between 15 and
8 like 60 feet, depending on the well. They show
9 the same thing we can say about any of our
10 observation wells. They show an excellent
11 response to seasonal and climatic conditions.

12 If you look at these, they show the low
13 water levels in, you know, in the early 1990's.
14 They show high water levels in 2000. You start
15 looking at the first two of those hydrographs,
16 Figure 2 and Figure 3 in the report, which is for
17 PE-95A and CU-93A, you can see the individual
18 spikes which would represent the seasonal
19 fluctuations as well as the climatic fluctuations.

20 The records on these hydrographs don't
21 extend back far enough to where the water levels
22 were lower than our current water levels. Simply
23 don't have enough period of record.

24 But when I take the observation well data
25 from -- take the water level data from these

1 observation wells, compare that with other Madison
2 observation wells we have in the Black Hills
3 outside of this area that do have a longer period
4 of record, we can still come back to the Water
5 Management Board and say this is looking good.

6 We're not seeing the effects of pumping.
7 What we're seeing is climatic conditions. Since
8 we're not seeing pumping, we're going to say the
9 observation wells also support that unappropriated
10 water is available for this future use
11 reservation.

12 Again, the Administrative Rules of this
13 Board, 74:02:01:24.01 require that future use show
14 that there's a need. And it limits the need --
15 limits the volume on a future use to what's either
16 going to be needed by that entity or twice what
17 they're already using.

18 You've got a new party involved here.
19 They're limited to what they think they need.
20 They have come in with an analysis that shows they
21 think they need 3,074 acre-feet per year. This
22 again is an application for 1,474 acre-feet per
23 year.

24 As Ms. Best pointed out and as I've tried
25 to point out, there's only three criteria this

1 Board has for approving a Future Use Permit. It
2 does not include protecting -- analyzing the
3 affect on existing water rights.

4 But we've brought this in front of the
5 Board to say it may not be -- and we've done this
6 on other future uses. We say, yes, there's
7 unappropriated water available. They say they're
8 going to need it.

9 And again, when it comes time to look at
10 actual appropriations, we'll come in front of you
11 and talk about whether it's going to adversely
12 impact existing rights.

13 It may not be prudent for this Board to
14 approve a permit for a future use if there's no
15 way that there's going to be a development out of
16 the future use approved. So we wanted to address
17 that a little bit right here and now.

18 Can we actually develop out of this future
19 use? So we include that extra criteria that's
20 required to develop of, is there going to be --
21 what's the effect upon existing water rights going
22 to be?

23 Table 2 of the report shows the site with
24 regard to water rights that are -- or permits that
25 are appropriating water out of the Madison

1 Aquifer.

2 The Hermosa Site is four miles from the
3 nearest Madison permit or water right. The
4 Gobbler Pass Site is three miles. The Argyle Site
5 is six miles, and the Cascade Spring Site is seven
6 miles from the nearest water permit or water right
7 out of the Madison Aquifer.

8 Therefore, it's really unlikely that well
9 interference caused by this pumping would cause an
10 adverse impact on existing water users, on
11 existing wells supplying permits out of the
12 Madison.

13 In addition, we've got Future Use Permit
14 #2560-2, and that's for Fall River Water User
15 District. Fall River Water User District has a
16 future use that reserves 750 acre-feet of water
17 per year from three areas.

18 When we get down to the Cascade Springs
19 Site on this application, that's about two
20 and-a-half miles from one of Fall River's sites
21 and about six miles from another site.

22 The other sites really should be sufficient
23 enough to allow development of future use without
24 adverse impacts. But really, the exact extent of
25 any interference between a well drilled in Fall

1 River's future use versus the impact of a well
2 drilled in Southern Hills' future use would depend
3 on exactly how much water they're going to pump,
4 exactly what the pump rates are, the specifics of
5 that application -- or the specifics of those
6 appropriations. And those specifics would come
7 with permits to develop that would come to this
8 Board.

9 There's a confusing issue, somewhat
10 confusing but it needs to come up. I think
11 it's -- maybe speaking for Fall River, I think
12 this is where they have a dog in this fight.

13 To appropriate water there's got to be a
14 reasonable probability that proposed diversion can
15 be developed without unlawful impairment of
16 existing rights. I underline the word "existing
17 rights" because it doesn't say prior rights. It
18 says existing rights.

19 So what it comes down to is Fall River
20 Water User District has a senior priority date for
21 an area, senior over Southern Hills' priority
22 date. If Southern Hills -- so if Southern Hills
23 comes in to develop out of their future use and
24 there is not a well in the Fall River Water User
25 District future use area -- I want to go the other

1 way.

2 Southern Hills develops a well in their
3 future use area first. It has a 2006 priority
4 date associated with this future use. Fall River
5 Water User District has a 2005 priority date on
6 their future use. However, the well constructed
7 by Southern Hills was constructed first. That is
8 an existing right.

9 Because that's an existing right, the
10 development of Fall River's Water User District to
11 drill their well, we need to consider how that's
12 going to impact this existing well.

13 Once both wells have been built, Southern
14 Hills Water User District is going to need to
15 control their pumping so they don't affect the
16 senior water right of Fall River. There's a
17 flip-flop here.

18 We typically don't do this. In this case
19 we did look at the public interest, as we did on
20 the Fall River one. In particular, because the
21 Cascade Springs Site is located about a mile
22 and-a-half from Cascade Springs. Now we're
23 getting into the same discussion that we had on
24 the -- that the Water Management Board had on the
25 Fall River Water User District site. The

1 development of future use -- or you want a future
2 use next to this spring.

3 Springs, Madison source, are you going to
4 adversely impact the spring? There was a great
5 deal of discussion on that on Permit #2560-2 for
6 Fall River Water User District because if you
7 lower the water level, you're going to decrease --
8 you run the potential of decreasing spring
9 discharge.

10 Since South Dakota Water Law -- we're back
11 to protects the source, not the means of delivery.
12 Therefore, artesian head pressure is not protected
13 as a means of delivery by South Dakota Water Law.

14 So the springs that are emitting out of the
15 Madison Aquifer are actually relying on artesian
16 head pressure as a means of delivery. So if I'm
17 pumping a well next to your spring and it causes
18 your spring to decrease because the artesian head
19 pressure has dropped, we could certainly argue
20 that I have not adversely impacted your rights
21 because you were depending on artesian head
22 pressure.

23 However, we bring this to the Water
24 Management Board saying it may not be in the
25 public interest to steal from Peter to pay Paul,

1 if you will.

2 And with that consideration, to refresh the
3 Board's memory, when we did this on Fall River
4 Water User District, the Water Management Board
5 approved a permit with a qualification that says,
6 "At such time as definite plans are made to
7 construct works and put water reserved by this
8 permit to beneficial use, special application for
9 all or any part of the reserved water must be
10 submitted and approval to the construction of
11 facilities pursuant to SDCL 46-5-38.1, with
12 particular attention given to the flows in Beaver
13 Spring, Cascade Springs and Hot Springs."

14 So I believe the Board addressed the public
15 interest aspect of it by saying, yes, we will look
16 at these springs.

17 With that the Chief Engineer felt
18 comfortable recommending approval of this Water
19 Permit because there is a reasonable probability
20 that there is 1,474 acre-feet of unappropriated
21 water available from the Madison Aquifer.

22 Chief Engineer's qualification also
23 includes a stipulation that this water, as with
24 any future use, it's going to be reviewed after
25 seven years.

1 Also, we felt -- the Chief Engineer felt
2 that approval of this would be in the public
3 interest with the qualification that at such time,
4 we get the particulars where we can evaluate what
5 the pumping at each site would be. When we get
6 those particulars we will pay particular attention
7 to the springs in the area.

8 Therefore, the Chief Engineer is
9 recommending approval of this application.

10 Are there any questions?

11 MR. HUTMACHER: What's the priority date on
12 Fall River's future use?

13 KEN BUHLER: I believe that's 2005. That
14 is a last December permit, I believe. 2005.

15 MR. HUTMACHER: Any more questions of Ken?

16 MR. HOYT: I have one, Mr. Chairman. See
17 how I can frame it here.

18 In a somewhat related application, 2585-2,
19 the Chief Engineer's recommendation is to defer
20 approval or defer recommendation until such time
21 as a test well can be completed and monitored.
22 Was that your understanding?

23 KEN BUHLER: That's correct. Now, I
24 should -- I'm sorry. I should ask right now. Do
25 you want me to go ahead and do my report on 2585-2

1 right away? And then -- or do we want to do
2 question and answer on this and then do 2585-2 and
3 question and answer?

4 MR. HUTMACHER: I would like to keep them
5 together. If we can keep, you know, the stuff
6 pertaining -- it's not going to be any different,
7 the way I see it, the hydrology on actually the
8 future use and/or the permit. It's just the
9 recommendation is different but the hydrology
10 numbers are going to be the same. So I would like
11 to mix them.

12 That's up to the rest of the Board. As
13 long as you guys can stay straight on what we're
14 talking about.

15 KEN BUHLER: With that being the point,
16 should I now address 2585-2 so that we can get
17 into the deferral versus --

18 MR. HOYT: My question, Mr. Chairman, was
19 going to be essentially in substance that very
20 point. Because Mr. Buhler mentioned that it's not
21 recommended that we grant a Future Use Permit,
22 unless there is the likelihood of development of
23 that future use at some point in the future.

24 And is it then your feeling that there is a
25 basis for supply for the future use, though the

1 exact location of the proposed well in 2585-2 may
2 be questionable?

3 KEN BUHLER: Is the cliché --

4 MR. HOYT: In other words, if we don't
5 develop the resources at the location proposed in
6 2585-2, should we still, in your opinion, proceed
7 to grant the future use knowing that there may be
8 another location other than that proposed at which
9 this future use might be put into effect?

10 KEN BUHLER: I'm sorry. I got confused.
11 There are five sites here. There are four future
12 use and they're quarter-section sites somewhere
13 within 160 acres. And then there is a fifth site
14 where there is a spot on the ground where they
15 intend to drill a well.

16 If I may use the cliché, the devil is in
17 the details. I believe that's the reason why we
18 need to defer the one where we have specifics,
19 know exactly where the well is going to be,
20 exactly how much water they intend to pump out of
21 this.

22 With this future use you're looking at four
23 sites and a volume of water. Nothing is said
24 about the rate out of any of these sites. So by
25 mixing and matching, let's say, I mean certainly

1 we would not have the concern of a
2 ten-gallon-a-minute well as opposed to a
3 thousand-gallon-a-minute well at a location.

4 Or if we had a thousand-gallon-a-minute
5 well a hundred feet from a spring, that's a whole
6 different animal than if we had a
7 thousand-gallon-a-minute well 20 miles from a
8 spring. So in this case, there is a reservation
9 of a volume of water.

10 MR. HUTMACHER: I should have asked before
11 I made the assumption that we'd combine those.

12 Is there objection from Counsel as far as
13 taking those permits together?

14 MS. BEST: I think we had all anticipated
15 that we were going to put the case together as we
16 went along. Ken was just pausing for questions
17 from the Board between the two applications and
18 that's fine, too.

19 KEN BUHLER: Again, the devil is in the
20 details. I didn't know what that meant that they
21 were together, how we do this.

22 2585-2 is a permit to appropriate water
23 from a specific site.

24 I apologize. Thought that was going to
25 work.

1 MS. LOUCKS: We have a question here, Ken.

2 MR. BRINK: Procedural more than anything.

3 MS. LOUCKS: Right. You're talking 2585-2
4 and 2580-2 but you're talking 1,474 acre-feet on
5 one and 2.67 cubic feet on the other. Can't you
6 kind of keep it to -- I mean, how many acre-feet
7 are the cubic feet?

8 MR. BRINK: CFS and total consumption.

9 KEN BUHLER: 2.67 acre-feet -- okay, let me
10 start at the beginning on this.

11 2585-2 is a Water Permit Application. The
12 Chief Engineer is recommending the Water
13 Management Board defer for further information.
14 In support of that recommendation I hope to give
15 you by way of this report.

16 This application proposes to appropriate
17 2.67 cfs. That's a diversion rate. They can pump
18 this at a rate of 2.67 cfs. They also are putting
19 a cap on that of 1,600 acre-feet a year. This one
20 has both.

21 With regard to the future use, in theory,
22 you know, we're talking 1,474 acre-feet per year.
23 I mean you could do that, let's say, with several
24 small rate wells or one large rate well or, you
25 know, you pump at a rate until you achieve a

1 volume. And the volume of the future use, there
2 is no number assigned to what rate you may pump
3 that to get that volume.

4 So although there are four sites associated
5 with this, nothing is said about how many wells
6 it's going to take. If I have, you know, a number
7 of wells, I have a lower diversion rate per well.

8 It's like, if you will, it would be like
9 interest and capital, you know, or interest and
10 principal. Principal is what you have in the bank
11 and interest is what rate it's growing. Well, the
12 diversion rate is, you know, they're separate
13 animals.

14 Did that answer that?

15 MR. BRINK: Not for me.

16 MS. LOUCKS: I think so. I defer to
17 Francis.

18 MR. BRINK: You're -- in the permit 2585-2
19 you are actually -- I know you got a double
20 number, 2.67 cfs and you got 1,600 acre-feet.
21 Sixteen hundred acre-feet is more than the Future
22 Use Permit.

23 KEN BUHLER: What? I'm sorry.

24 MR. BRINK: Well, your 1,600 acre-feet in
25 the permit is larger than what they're asking for

1 in the Future Use Permit.

2 KEN BUHLER: If they pump 2.76 acre-feet
3 continuously, we're looking at a number something
4 like 1,933 acre-feet is what that would mean.
5 What they say is they're only going to pump --

6 MR. BRINK: Why did you say 1,600 then?

7 KEN BUHLER: Because they have limited
8 themselves. They want this diversion rate but we
9 don't need the volume. We're only going to pump,
10 in this case, something like 82 percent of the
11 time at this diversion rate, you know, is how
12 these numbers will work out.

13 MR. BRINK: Is that where the 1,600 comes
14 from? Is it 80 percent of the time?

15 KEN BUHLER: I don't know where that came
16 from but that's what it equates to.

17 MR. BRINK: Well, you guys are -- I'm not
18 sure you're leaving a clear paper trail here then.

19 You're saying in the Future Use Permit
20 they're applying for 1,474 acre-feet. You're
21 going to reserve 1,474 acre-feet --

22 KEN BUHLER: Correct.

23 MR. BRINK: -- in the Future Use Permit.

24 KEN BUHLER: Correct.

25 MR. BRINK: What are we doing issuing a

1 permit for 1,600? Or should we just strike out --

2 KEN BUHLER: We have five sites involved
3 here. In four of these sites they intend to
4 reserve up to 1,474 acre-feet per year, a volume
5 of water that each site -- they intend to pump
6 that site. They're going to drill a well there.
7 Their application in front of you is to drill a
8 well and pump it at a rate of 2.67 cfs.

9 MR. BRINK: Maybe my Norwegian is --

10 KEN BUHLER: It would be like a city, for
11 example, that you have to have a diversion
12 authority to pump at a rate.

13 MR. HALLEM: Could I ask a clarification
14 question?

15 KEN BUHLER: Please.

16 MR. HALLEM: Is the total amount of water
17 acre-feet per year under the two permits that
18 they're seeking would be 3,074 acre-feet?

19 KEN BUHLER: Yes, sir.

20 MR. HALLEM: So that's the total amount of
21 water on the two permits in acre-feet they're
22 looking at.

23 KEN BUHLER: A volume.

24 MR. HALLEM: Volume. 1,474 is future use;
25 1,600 would be current use.

1 KEN BUHLER: Correct.

2 MR. HALLEM: Does that --

3 MR. BRINK: Say that again now.

4 MR. HALLEM: Southern Black Hills Water
5 System, through the two permits, is seeking 3,074
6 acre-feet. In permit 2585-2 they're seeking a
7 current permit to pump and obtain 1,600 acre-feet.
8 They are reserving in 2580-2 the ability to pump
9 and obtain an additional 1,474 acre-feet so
10 that's --

11 MR. BRINK: That's where the numbers come
12 together.

13 MR. HALLEM: That's right. So it's 3,074
14 feet total. Does that clarify?

15 MR. HOYT: Can we go off the record?

16 (Off-the-record discussion was held.)

17 MR. HALLEM: The Board is having some
18 concerns about combining the two, the Future Use
19 and the current application, as it's related to
20 some of the questions on -- they're concerned
21 about an adequate record and especially depending
22 upon how the Board rules, one or more of them may
23 be appealed on it.

24 And combining the two, unless there is a
25 darn good reason to do so, may create more

1 confusion than it would to solve things, given the
2 questions.

3 So the question that the Board had was that
4 given the different standards between the
5 application itself, which is current usage, that
6 the Board would like to go first with that and
7 deal with the current usage permit and go through
8 with it.

9 And then, based upon how the Board does
10 here, could look at the Future Use and it deals
11 with some of the questions that the Board had and,
12 hopefully, avoid some confusion. And more
13 importantly, have a clean record so that none of
14 the parties are prejudiced on it.

15 I think we could -- we're to a point right
16 now where we could recess 2580-2 and then go
17 forward with 2585-2. And then go through that in
18 its entirety and then go back with it and,
19 hopefully, we'd have a little bit cleaner record.

20 MS. BEST: Quite frankly, in preparing for
21 our case, we were back and forth on which way to
22 do it because you have the same parties and
23 similar testimony, whether to put them together or
24 whether to separate them out. So we are just fine
25 with separating them out.

1 MR. HALLEM: Separating them out may work
2 just to clean up the record also, given the
3 different standards and the different locations of
4 the potential well versus the actual well.

5 Did I accurately reflect the Board's
6 concerns?

7 MS. LOUCKS: Right.

8 MR. HOYT: So we would recess 2580-2 and
9 begin the hearing on 2585-2.

10 MR. HALLEM: And then what we do is we
11 treat them separately. If somebody wanted to
12 refer to evidence to facilitate the record,
13 they're more than able to do so.

14 I'm looking for comment from Counsel.

15 MS. BEST: If we would do that, I'd ask for
16 admission of the previous testimony into the
17 record on the new permit hearing as background,
18 you know, just background on the Chief Engineer's
19 recommendation and where we're at and how the two
20 fit together. And then we'd proceed with the new
21 application.

22 MR. HALLEM: Any of the other counsel have
23 any objection to that?

24 MR. FAHMY: No objection.

25 MR. HALLEM: Then what we would do is we'd

1 begin with 2585-2, and then as for part of the
2 record the Board agreed to Ms. Best's request
3 about stipulating the record, prior testimony of
4 Mr. Buhler.

5 MR. HUTMACHER: That should be fine with
6 us. What we're going to do is recess the hearing
7 on the Future Use Permit and we'll start on
8 2585-2, which is the actual water permit.

9 MR. HALLEM: And we would rely on the
10 evidence that's already been submitted in 2580-2
11 as for part of the Board's determination.

12 MS. BEST: Thank you.

13 MR. HALLEM: Mr. Buhler, do you understand
14 where we're at?

15 MS. BEST: Can you, Ken, please give your
16 report on the new permit.

17 KEN BUHLER: 2585-2, Chief Engineer is
18 recommending deferral of this application until an
19 aquifer test can be conducted and evaluated to
20 determine if there would be any effect on Beaver
21 Creek Spring.

22 By way of foundation for that, let me
23 present our report. 2585-2 is an application to
24 appropriate 2.67 cfs. That's like 1,200 gallons a
25 minute, a volume of 1,600 acre-feet a year from a

1 well that's to be completed in the Madison Aquifer
2 in the West Half of the Northeast Quarter of
3 Section 15, Township 6 South, Range 6 East in
4 Custer County.

5 The water is going to be used or is
6 proposed to be used for rural water system use in
7 Fall River, Custer and Pennington County.

8 Again, the Madison underlies 19 million
9 acres of western South Dakota, contains 644
10 million acre-feet of recoverable water in western
11 South Dakota. Tremendous resource.

12 The importance of the Madison is, as an
13 aquifer is primarily because you have these really
14 well developed zones of secondary porosity
15 impermeability, i.e., caves and things that were
16 created by weathering and groundwater solution on
17 unexposed surfaces.

18 The Madison in this area is probably in the
19 neighborhood of, depending on the author you look
20 at, somewhere between 250 and 400 feet thick.

21 This area, by the way, I'd like to show you
22 on this map. I suppose we need to get it admitted
23 as part of the record, DENR exhibit something.

24 MS. BEST: I'd ask for the admission of
25 DENR 4.

1 KEN BUHLER: Hot Springs is located right
2 here.

3 MR. HUTMACHER: Excuse me just a second.
4 Is there any objection to admission of
5 DENR 4?

6 MR. FAHMY: No objection.

7 MR. PENFIELD: No.

8 MR. HICKEY: No objection.

9 MR. HUTMACHER: We'll accept DENR 4.
10 Go ahead.

11 KEN BUHLER: We've got Hot Springs right
12 down here. Highway 79 going to Rapid City. The
13 town of Buffalo Gap is located right here. If
14 you're intimate with the area, you have the Trout
15 Haven cut-across from 79 over to Highway 385.
16 Wind Cave National Park.

17 This application proposes to pump a well
18 located right here. And the legal location of
19 right here is the West Half of the Northwest of
20 Section 15, 6 South, 6 East.

21 MR. HOYT: Excuse me, Mr. Buhler, but while
22 you're there, if you can, could you indicate where
23 Beaver Creek is on that map?

24 KEN BUHLER: Yes. Beaver Creek is a creek
25 that flows through here, and of particular

1 importance to this application is Beaver Creek
2 Springs.

3 Beaver Creek Springs is located right at
4 the end of this blue arrow. This application
5 proposes a well right at the end of the red arrow.
6 Get into the particulars of that as we get a
7 little bit further.

8 This well site is kind of interesting, if
9 you look at the geology of it. There's some neat
10 structure here. There's an anticline here which
11 is beds draped, making a mound. That's probably
12 the reason why an oil test was drilled here called
13 the Streeter Well. And because of this geologic
14 structure here, the anticline, you probably have
15 some areas of some increased permeability and
16 faulting and things like that which make this
17 maybe a little more prolific.

18 Well, for example, the Streeter Well, which
19 is 500 feet from where this application proposes
20 to drill a well, then we penetrate the Madison
21 Aquifer 10 feet and this well flows 150 gallons a
22 minute. Very prolific here.

23 So that structure may have some influence
24 on -- the geologic structure may have an influence
25 on the well. It may also have an influence on why

1 Beaver Creek Spring is located where it's located.

2 The top of the Madison Aquifer is about a
3 thousand feet below grade in this neighborhood.
4 We're looking at hot water here. It's going to be
5 something like 100 degrees Fahrenheit probably.
6 It's going to be fairly hard water but it's going
7 to be relatively low in total dissolved solids.
8 In general, it's going to be a good quality water.

9 Water availability, again there are four
10 criteria for approval of a permit. Is there
11 unappropriated water available? To look at that,
12 is there going to be an adverse impact on existing
13 rights, public interest and beneficial use.

14 To look at the availability of water we
15 again go to 46-6-3A which says the Water
16 Management Board can't approve a permit of an
17 aquifer if withdrawals from the aquifer are going
18 to exceed recharge to the aquifer.

19 The numbers again are pumping no more
20 than -- I mean if everybody -- worst case
21 scenario, we're pumping 50,000 acre-feet, probably
22 talking in the 10 to 15,000 acre-feet per year
23 that we're pumping. Recharge in the 140 to
24 400,000. We're not even close with regard to
25 recharge to this aquifer and what's being

1 withdrawn from it.

2 We do have 142 permits that are withdrawing
3 water and the future use. We've taken that into
4 account in looking at the simple water balance of
5 the numbers.

6 With regard to is there available water,
7 we're talking 1,600 acre-feet here. In these
8 gross numbers we are dealing with 10 to 15,000
9 that we're using, 140 to 400,000 that we got.
10 Yeah, there's water available for 1,600 acre-feet.

11 Again, water availability, we look at
12 observation well data. We've got 26 observation
13 wells in this area in the Black Hills in the
14 Madison Aquifer.

15 The nearest one is an observation well
16 called CU-91A. And that well is located about a
17 mile and three quarters west-southwest of this
18 proposed well site. We've included a hydrograph
19 of that observation well.

20 As the name would imply, the well was
21 constructed in 1991. The water -- the last water
22 level on this hydrograph would be current at the
23 time of drafting the report in June. You can see
24 that water levels fluctuated 25 feet. This is in
25 response to seasonal and climatic conditions.

1 The hydrograph shows that during the late
2 '90s water levels came up, as they did everywhere.
3 They peaked out in 2001 and have been on somewhat
4 of a decline since 2001 in response to less
5 recharge.

6 Observation well data indicates that at the
7 existing level of development the natural
8 influences or the natural influences to the
9 hydrograph so dominate any effects of pumping in
10 the area that without that effect of pumping being
11 obvious, we can say that the observation well data
12 also shows that there's a reasonable probability
13 there's unappropriated water available.

14 Now, there's six water rights or water
15 permits appropriating water within five miles of
16 this proposed well site. I'm showing those water
17 rights in Table 1 on page 3 of our report.

18 You can see that they're in various
19 aquifers; the Minnelusa, Madison, Inyan Kara,
20 Deadwood and Madison. There's always debate on
21 whether there's a hydrologic connection between
22 the Madison and the shallower aquifers. There's
23 certainly a potential there.

24 For example, at the site of our observation
25 well CU-91A, we also have two other observation

1 wells, CU-91B and CU-94A. One's in the Minnelusa
2 Aquifer. One's in the Minnekahta Aquifer. If
3 there were going to be a hydrologic connection
4 between the deeper aquifer and the shallower
5 aquifers, you would see it first in the
6 relationship between the Madison and the
7 Minnelusa.

8 At this particular site the water level in
9 the Minnelusa is something like 160 feet lower
10 than the water level in the Madison. Higher water
11 levels in the Madison would indicate there is a
12 potential for leakage from the Madison up into the
13 Minnelusa, granted. However, there's 160 feet of
14 water level difference in between the two.

15 We need to look at this from a common sense
16 perspective. If there was a hydrologic
17 connection, how in the world -- you know, it gets
18 very difficult to maintain 160 foot of head
19 difference between the two. So I think that this
20 can be used as evidence to show that in this area
21 there's not any great hydrologic connection here
22 and they are distinct aquifers.

23 Above the Minnelusa we have even more
24 confining layers so there's not going to be any
25 leakage from up in the Minnekahta or the Inyan

1 Kara Aquifer. Therefore, any appropriation that
2 this Board were to make out of the Madison Aquifer
3 in this area is not likely to impact shallower
4 appropriations.

5 Now, the lower portion of the Madison --
6 the Madison, when we talk about the impact we
7 almost always talk about the upper portion of the
8 limestone or the Madison Formation because the
9 lower formation is dolomitized. And that
10 crystallization makes it less of a host aquifer,
11 if you will.

12 The lower part of the Madison is typically
13 not considered an aquifer, typically. So in
14 general we say that the lower portion of the
15 Madison is a hydrologic barrier between it and the
16 lower beds. So that's why we're going to come to
17 you and say if there are wells in shallower
18 aquifers than the Madison, they're not going to be
19 affected by this pumping.

20 Now, the Madison is under a thousand feet
21 of artesian pressure. It's confined. The top of
22 the aquifer is a thousand feet. Water level is
23 going to flow in as well.

24 Drawdown in an artesian aquifer does extend
25 over a fairly large area. At this time, because

1 that drawdown is so aquifer characteristic
2 dependent, at this time I'm not able to come to
3 you and say this is how much drawdown there is
4 going to be from this well here or here, because
5 the aquifer characteristics of the Madison Aquifer
6 fluctuate. They're highly variable.

7 It's been documented by researcher after
8 researcher the variability of the aquifer. Not
9 only that, but it's really variable in, if you
10 pump a well you might get more drawdown in one
11 direction than in another direction. So that
12 variability is really well documented.

13 Although I can't come in and tell you how
14 much drawdown I'm going to get on your well, if
15 you pump this well, how much drawdown is going to
16 be on the well at a given distance, I can come and
17 tell you that we do not believe there will be an
18 adverse impact on existing wells because,
19 remember, we have a thousand feet of artesian head
20 pressure.

21 South Dakota Water Law protects the source,
22 not the means of delivery.

23 If a domestic user needs to lower his pump,
24 that's not an adverse impact. This thousand feet
25 of head pressure -- and in fact the Board has

1 ruled in the past that if we're going to protect
2 that artesian head pressure, then that could be in
3 conflict with SDCL 46-1-4 which says we're going
4 to put water to maximum beneficial use. So that's
5 why the rules are set up the way they're set up
6 to, yeah, you need to lower your pump.

7 So therefore, we don't feel groundwater
8 rights would be adversely impacted. I can tell
9 you that even without the details of this, that
10 it's probable they would not be impacted.

11 It's unlikely that any domestic well that's
12 completed in the Madison Aquifer would experience
13 interference that would be considered adverse. So
14 we don't think that would be a probability.

15 But now the proximity to this site to
16 Beaver Creek Springs. We have a spring located
17 three quarters of a mile -- again on the map,
18 Beaver Creek Springs is located in Section 14 and
19 this proposed well site is in Section 15. Less
20 than three quarters of a mile away is this spring
21 that discharges an estimated 10 to 15 cubic feet
22 per second.

23 It's probably a Madison source spring.
24 There's no reason to argue that it's not a Madison
25 source spring, and lots of reasons to argue that

1 it is.

2 This 10 to 15 cfs constitutes the base flow
3 for Beaver Creek Spring -- for Beaver Creek, I'm
4 sorry. The 10 to 15 cfs discharging from this
5 spring constitutes the base flow for Beaver Creek.
6 As you can see on Figure 3, we have a flow
7 duration curve for Beaver Creek below -- and this
8 is below Beaver Creek Spring, and the flows in the
9 spring -- or the flows in Beaver Creek pretty much
10 all coming out of Beaver Creek Spring. Okay.

11 So if something is done that would diminish
12 the discharge of Beaver Creek Spring, it could
13 lead to less water in Beaver Creek. This wouldn't
14 necessarily be an adverse impact because Beaver
15 Creek Spring, remember, is an artesian spring.
16 It's artesian head pressure dependent.

17 But the question we bring to the Board is,
18 is it in the public interest to deplete the -- or
19 the question we want you to consider is, would it
20 be in the public interest to decrease the stream
21 flows? And possibly some of the downstream water
22 rights would not have -- there may not be water
23 for appropriative rights or domestic rights from
24 Beaver Creek if Beaver Creek Spring's discharge
25 decreases. They're not adversely impacted.

1 However, it certainly may be a public interest if
2 the Board chooses to make it a public interest
3 issue.

4 The other thing we need to look at with
5 regard to, is approval of this water right going
6 to adversely impact existing water rights. We get
7 down to what we discussed. I talked -- never
8 mind.

9 Fall River Water User District has a future
10 use. This future use is permit 2560-2. It's for
11 750 acre-feet from three areas. And the well
12 proposed by this location is two and a third miles
13 northwest of one of these areas. So the extent of
14 interference between this well and that future use
15 area would depend on the exact location of where
16 Fall River wanted to put their well, so on and so
17 forth.

18 But back to 46-2A-9 which says you need to
19 protect existing rights, if this well was
20 constructed it may -- what's the word I want to
21 use? It may obstruct Fall River Water Users
22 ability to develop anywhere they want to develop
23 within their future use.

24 Because remember, for them to develop
25 within their future use which has a 2005 priority

1 date, we need to look at whether it's going to
2 impact existing users.

3 The well, if it was constructed first, it's
4 an existing user. There could be -- approval of
5 this permit could impact how and if and when they
6 would develop that.

7 So to try to sum this up, the Madison
8 Aquifer is a prolific aquifer. There's reasonable
9 probability that there's unappropriated water
10 available. The Madison is a confined aquifer or
11 artesian in this condition. Drawdown from pumping
12 a well at 2.67 cfs could extend over a fairly
13 large area.

14 The extent of the proposed drawdown can't
15 be evaluated. I mean I can't put a number on how
16 much water or how much drawdown this is going to
17 cause. However, I can say that it's not likely
18 that existing water rights would be adversely
19 impacted.

20 The impact of this drawdown on Beaver Creek
21 Spring and, consequently, Beaver Creek is unknown.

22 Discharge -- or I'm sorry -- decreased flow
23 of Beaver Creek would amount to -- could affect a
24 number of users, both downstream water rights and
25 downstream domestic users.

1 Again this permit could affect the
2 development from Future Use Permit 2560-2.

3 As we're routine, information is not
4 available to approve this without a 20-year term
5 limit on it. And the Water Management Board must
6 determine the public interest aspects of this
7 application.

8 Therefore, the Chief Engineer is
9 recommending the Water Management Board defer
10 Water Permit Application 2585-2 until an aquifer
11 test pump can be completed by the Applicant, the
12 effect of Beaver Creek Spring can be evaluated.
13 That aquifer test pump proposal must be submitted
14 to Water Rights for review and approval prior to
15 it being conducted.

16 Is there any questions?

17 MS. LOUCKS: Is there an estimated time
18 frame here or are we just waiting until --

19 KEN BUHLER: I could give you my estimate.
20 I believe they probably have their own estimate.
21 I think we're talking in the, realistically,
22 before this Board would see this again, I would
23 say two years realistically.

24 They may have a different number but those
25 are based on funding, drilling observation.

1 You're going to drill a well, determine how hard
2 you're going to pump it, therefore, how deep or
3 how far away your observation wells are going to
4 be.

5 So you need the funding, then you need to
6 drill the well, then you need to come up with an
7 aquifer test, then you need to evaluate the
8 aquifer test. This is -- what people are telling
9 me and what I'm putting together in my head is a
10 year and-a-half, two years.

11 MR. HOYT: Mr. Buhler, do you have any
12 record that you have available to you at the
13 present time as to downstream water rights and
14 domestic users below Beaver Creek Springs on
15 Beaver Creek?

16 KEN BUHLER: I think so.

17 MR. HOYT: You may have provided it.

18 KEN BUHLER: I don't believe it's in this
19 report. I do not have that at my fingertips.
20 What I can tell you is Beaver Creek Spring is
21 overappropriated. Beaver Creek is
22 overappropriated. Not the spring. Take the word
23 spring out of that.

24 There are more water rights to use water
25 than there is median flow. I want to say it's in

1 the 18 cfs neighborhood, 21 cfs, something like
2 that. I want to say there's like 11 of these
3 water rights. I looked at that but I didn't bring
4 it.

5 MR. HOYT: And then in addition to those,
6 would there be domestic users?

7 KEN BUHLER: Yes, sir, which would include
8 stock wells.

9 MR. HOYT: We may be dealing with a fairly
10 substantial number of people in this instance,
11 users of Beaver Creek?

12 KEN BUHLER: Yes.

13 MR. HOYT: I know substantial is subject to
14 definition, but somewhere between 30 and 50?

15 KEN BUHLER: I'm sorry. I don't have a
16 real good feel for the domestic use on Beaver
17 Creek. I think once you get past Highway 79, I'm
18 really struggling on what exactly domestic use is
19 there. I think your number is a little high
20 but --

21 MR. HOYT: Ms. Best, could that number for
22 existing rights, water rights and domestic users
23 be provided for the record?

24 MS. BEST: We would have -- for domestic
25 users, we would have domestic users for which a

1 well log has been filed. And I don't know that we
2 necessarily know of all the users. We certainly
3 would have had the appropriative water users, as
4 well as the exact amount of the appropriations.

5 The domestic ones, in fact, Ken had given
6 it to one of the other experts who will testify
7 here today. So he's got some notes now on that.

8 KEN BUHLER: What I want to do, I want to
9 qualify this thing. Dr. Rahn asked me to provide
10 him this answer. I had Ron Duvall of our office
11 send him the water right information. That
12 information was compiled in a report that I
13 believe Dr. Rahn is going to be presenting.

14 In that we're talking -- and so I'm
15 assuming that he has correctly represented it
16 here. I have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
17 12. Twelve water rights from Beaver Creek. And
18 4, 9, 13, 16, 17, 29 -- call it 34 cfs. I didn't
19 add it up exactly but those are the kind of
20 numbers we're dealing with.

21 Domestic use I think is real variable,
22 certainly not what this is but domestic has been
23 primarily livestocked.

24 MR. HUTMACHER: Any more questions from the
25 Board?

1 If not, I guess I would have one. The
2 aquifer test that you want them to do, I'm
3 assuming we're going to drill one hole and test
4 pump with observation wells in a circle outside of
5 it some given distance? Is that what you're
6 looking at?

7 KEN BUHLER: That would be the minimum of
8 what we would need. You would have to have a well
9 that you would pump and measure the stress of that
10 pumping on another well so that you can get these
11 two values we always throw at you, transmissivity
12 and storativity of the aquifer.

13 And from that we can make some predictions
14 on how far the drawdown will extend and what the
15 drawdown will extend both in time and distance.

16 MR. HUTMACHER: What the impression is
17 going to be, in other words, from the well at a
18 given --

19 KEN BUHLER: At a given time, rate and
20 distance.

21 MR. HUTMACHER: Have you conveyed that
22 information to them, what you want? In other
23 words, distance or I mean what the minimum is you
24 will accept. Do they know what that is?

25 KEN BUHLER: I think they do. We've dealt

1 with their consultants on this a little bit on the
2 phone on a very informal basis. I don't think
3 that there has been anything in writing between
4 us, but I mean that's industry standard.

5 MR. HUTMACHER: Yeah, I understand that.
6 But I'm just wondering if they understand.

7 KEN BUHLER: And certainly by the time that
8 the pencil comes to the paper there would be some
9 clarification of, you know, everybody's going to
10 be on the same page.

11 MR. HUTMACHER: Okay. Further questions
12 from anyone else for Mr. Buhler?

13 MR. FAHMY: I have a series of questions
14 for Mr. Buhler if Ms. Counsel for the --

15 MS. BEST: Well, if I may, because of the
16 status of the record, I find myself in a situation
17 where I need to make sure that we've admitted the
18 proper exhibits into the record.

19 I would ask that DENR 1, 2 and 4 be
20 admitted into the record for this case. I think I
21 already asked for them to be admitted into the
22 record and I think that record is the future use
23 case. And I just want them admitted into the
24 recorded for this case.

25 MR. HUTMACHER: Diane, number 3 was the

1 Application for the Future Use, right?

2 MR. HALLEM: And DENR 1 is the file and 2
3 is the vitae.

4 MR. HUTMACHER: And 4 is the map up there.

5 MS. BEST: So it would be 1, 2 and 4 I
6 would ask for.

7 MR. HUTMACHER: Is there any objection to
8 introduction of DENR 1, 2 and 4? One is the file
9 for the Water Permit and the Petitioners and the
10 Intervenors. Number two is Mr. Buhler's
11 background. Number 4 is this map up here.

12 MR. FAHMY: No objection.

13 MR. PENFIELD: No objection.

14 MR. HICKEY: No objection.

15 MR. HUTMACHER: With that we'll accept it
16 into evidence.

17 MS. BEST: I have no additional questions
18 of Mr. Buhler.

19 KEN BUHLER: Can I add one thing here that
20 I screwed up on?

21 In that water appropriation out of Beaver
22 Creek I threw the number out there, something like
23 34 cfs. Eleven cfs of that number is a
24 non-consumptive use so we really need to talk
25 about taking 11 off of that. Talking the 23

1 neighborhood instead of the 34 neighborhood.

2 Sorry about that.

3 MR. HUTMACHER: Okay. Any more questions
4 of the Board?

5 Counsel. Mr. Fahmy.

6 MR. FAHMY: Yes. Ms. Best, you have no
7 questions, I take it.

8 MS. BEST: I have none.

9 MR. FAHMY: I guess the order of the
10 procedure, I mean I'm new here so isn't it the
11 Applicant would then have the next opportunity
12 perhaps in the cross-examination?

13 MR. PENFIELD: We have no questions.

14 MR. FAHMY: If Mr. Hickey doesn't object.

15 CROSS-EXAMINATION

16 BY MR. FAHMY:

17 Q. Mr. Buhler, first I want to commend you on your
18 report before the Board. I just have some
19 questions related to the contents of the report
20 and with the recommendation.

21 And first of all, I want to make it clear
22 that the National Park Service does not have any
23 objection to the recommendation that has been made
24 to the Board by the Chief Engineer.

25 But I think there were some questions that

1 the Board posed to you with regards to this
2 aquifer stress test that you're recommending. And
3 you said you've had some conversations with the
4 consulting engineers or geologists from the
5 Southern Black Hills District. Is that fair?

6 A. That's correct.

7 Q. Now, with regards to those parameters, I think you
8 testified that what you would be looking for is
9 some valid numbers with regards to storage
10 coefficient and transmissivity, correct?

11 (Brief pause in the proceedings.)

12 So I was asking you about the values, what
13 you hope to get out of this stress test. Was it
14 your earlier testimony the values, the most
15 important values you're looking for is storage
16 coefficient and transmissivity?

17 A. Yeah, those would be -- those would certainly be
18 two of the most important values, yeah.

19 Q. You had earlier testified that there was an
20 existing well, I believe the Streeter Well is how
21 you --

22 A. Yes.

23 Q. Which is within, I think you said 500 feet?

24 A. That's the best information I got.

25 Q. In your opinion, would that constitute a possible

1 observation point, or is there problems with use
2 of that well as an observation point relative to
3 the aquifer stress test that you're recommending?

4 A. The devil is in the details again. In my opinion,
5 were I the Applicant, I'd look really careful at
6 the Streeter Well, whether I'm using it.

7 This well was constructed in 1949, not too
8 long ago. When was this -- before 1994 anyway,
9 the well was recased. There was a Dakota
10 Geophysics out of Dickinson, North Dakota, ran a
11 log on this. They couldn't get their
12 inch-and-a-quarter probe below 230 feet on this
13 well.

14 Warren Dowlen (sp), our driller out of
15 Rapid City, went and had to reline this well,
16 relined it and cemented it. Presumably had to
17 reline it because of casing failure.

18 Now, what is the exact, you know, would I
19 be willing personally -- I mean this is what the
20 hydrologic consultants are getting paid to figure
21 out. Personally, would I rely heavily on this
22 well? I'd need to know a lot more about it and
23 I'd need to put a lot more consideration into the
24 construction of that well.

25 Q. Would the fact -- I think you earlier testified

1 that this well is completed in the first, I think
2 ten feet?

3 A. Yeah, that's the information we got. In the top
4 ten feet of the Madison.

5 Q. So it's a partially completed well. It's not
6 fully penetrating; correct?

7 A. That's correct.

8 Q. Would that bear into your consideration as to
9 whether it would be a valid site for an
10 observation well?

11 A. With the hydrologic background, you're going to
12 say yes, absolutely, you need to have a fully
13 penetrating well to get a good aquifer test. That
14 just gets hammered on you. That's necessary.

15 However, the Water Rights Program has
16 constructed a number of observation wells. I'm
17 going to give you an example of four of them in
18 the City of Rapid City. PE-89A -- five of them --
19 A, B, C, D and E.

20 These wells were all used as part of the
21 Rapid City aquifer testing that was done by the
22 USGS, along with another well that we drilled for
23 the USGS that was fully penetrating because
24 they're true hydrologists and wanted this
25 absolutely fully penetrating.

1 At the end of the day it didn't matter
2 whether it was fully penetrating or partially
3 penetrating. So would I consider that on the
4 Streeter Well or throw it out because it's not
5 fully penetrating? No.

6 Q. Do you have any opinion with regards to what the
7 thickness of the Madison Formation might be at the
8 site of this proposed --

9 A. Yeah. I believe I cited that. According to
10 Allen -- I used two sources on that, Allen and
11 others. You know, they're talking about 250 feet
12 thick.

13 The Black Hills hydro study, if you take
14 Carter and Redden, if you take the structure
15 contour map of the top of the Madison and the
16 structure contour map of the top of the Deadwood,
17 you're going to get 500 feet in between there.
18 Now, how much Englewood and stuff, you know, it
19 sits somewhere between 500 and 250.

20 Q. Okay. Thank you.

21 With regards to the number of observation
22 points around this proposed well, what in your
23 estimation would be the minimum number necessary
24 to get valid values for storage coefficient and
25 transmissivity?

1 A. You got some words in there that kind of -- valid
2 and all this stuff and the other.

3 In theory you need a test well and -- you
4 need a test well and a production well -- a
5 monitoring well. And because everything that
6 everybody is going to use is going to say we've
7 got an anisotropic homogeneous aquifer which
8 behaves the same no matter which direction we do
9 it until you prove otherwise.

10 And so all the assumptions any hydrologist
11 is going to use is going to assume that. So
12 therefore, minimum you're going to need a
13 monitoring well and a production well.

14 Would I come in front of this Board with
15 one monitoring well and one production well?
16 Probably not. But in answer to what do you need,
17 you need two wells; pump one and measure the
18 other.

19 Q. What would you come in front of this Board and
20 recommend in terms of number of observation
21 points?

22 A. Depends on whose money I'm spending. But if -- I
23 mean there's that engineering economic factor that
24 I'm not privy to with Southern Hills' permit. But
25 I think that it would behoove them to have

1 certainly at least two observation wells, one in
2 each direction.

3 Q. Thank you. With regards to -- I think you
4 testified about an existing observation well you
5 have. I believe you termed it CU-91A?

6 A. Correct.

7 Q. And I'm just curious. With regards to the
8 hydrograph, how frequently do you measure water
9 levels in this particular observation well?

10 A. Once per hour.

11 Q. Once per hour?

12 A. Oh, yes. That observation well, we have three
13 observation wells at that site, as I referred to.
14 Now, as that site -- I want to point out on the
15 map exactly where that's at so that we're all
16 clear here.

17 That site is essentially the intersection
18 of Sections 16, 17, 20 and 22. Therefore,
19 approximately a mile and-a-half to the southwest,
20 west of this proposed site.

21 We have continuous recording equipment on
22 those wells that are measuring water levels
23 hourly. We also field truth those, measure --
24 have seasonal help that's measuring that
25 approximately once every three weeks. And during

1 the rest of the year we're going to get it about
2 once a month.

3 And if you want to -- if you want to
4 measure it, I'll give you my key and you can
5 measure it anytime you want. I'm not being
6 facetious but what I'm saying is those wells are
7 available for most people to use.

8 Q. So you said there were three wells there in
9 completely, in different formations?

10 A. Right. Right. We have a well in the Minnelusa.
11 That is CU-91A is completed in the Minnelusa -- in
12 the Madison Aquifer. CU-91B is completed in the
13 Minnelusa Aquifer. And then I think it's 94A,
14 might be 95A is completed in the Minnekahta
15 Aquifer, because we really wanted to see whether
16 there's a hydrologic connection.

17 We wanted to compare those aquifers at that
18 site. So I think we have 18 or 19 of these
19 co-located sites through the Black Hills where we
20 have wells.

21 Q. Thank you. Earlier in your testimony you were
22 talking about the recharge. And I want to explore
23 with you your testimony with regards to
24 availability.

25 And I think you testified that there was

1 something on the order of 644 million acre-feet of
2 recoverable water in storage.

3 A. Sure. In South Dakota.

4 Q. Yes. So but that's a gross estimate for the
5 entire Madison Aquifer; isn't that the case?

6 A. Yes. If we want to talk -- if we want to break it
7 down to just Fall River County, then we'd probably
8 talk something like 9.8 million acre-feet of
9 recoverable water in storage.

10 But the only reason why we're throwing
11 these numbers out is just to say this is a huge
12 resource. You can put a number on huge. That's
13 the way I put my number on it.

14 Q. But you're not suggesting that the entire amount
15 of water can be recoverable?

16 A. Is pumpable here, no.

17 Q. So are you familiar with -- I think you had
18 testified about the Black Hills Hydrologic Study
19 earlier.

20 A. Yes.

21 Q. And are you familiar with the USGS publications
22 associated with that study?

23 A. Yes. I was on the steering committee for that.

24 Q. So are you familiar with the fact that in that
25 context of the study the USGS developed hydrologic

1 budgets?

2 A. Yes.

3 Q. And in that study did they not break down the
4 Madison Aquifer and the Minnelusa into sub areas?

5 A. Yeah.

6 Q. And so isn't it true that there are recharge
7 numbers -- we're comfortable, I guess the better
8 term would be recoverable water in storage numbers
9 for those sub areas that are substantially less
10 than the overall gross estimate for the Madison
11 Aquifer?

12 A. Yeah. But I think to get to the end of the day
13 here, I think what you're asking me is, is it
14 possible. And I'm putting words in your mouth and
15 I apologize.

16 But I think where we want to talk about is,
17 we have this tremendous resource. There's a lot
18 of water here. Is it possible that we could have
19 a water short area? Yeah, we talk these gross
20 numbers and what recharge is. Can we have a water
21 short area?

22 Certainly we could have a water short area.
23 But would that come before we had impairment of
24 rights? Probably not. So that's why I did not
25 break it down, you know, and talk about these sub

1 areas and water short areas.

2 Q. I think earlier in your testimony you talked about
3 springs.

4 A. Pardon me?

5 Q. You talked about springs.

6 A. Yes.

7 Q. And you talked about the role of artesian pressure
8 in springs. And I guess it's my understanding,
9 though I'm not a hydrologist, that the very
10 existence of springs is dependent on artesian
11 pressure; is it not?

12 A. No, not necessarily. In this case certainly
13 but --

14 Q. But in this case, that's what I'm referring to.

15 A. To reference Dr. Rahn's report which -- help me
16 out. I need the number on it. Large Springs.

17 It's RI 107. I believe there are three types of
18 springs that they categorize there. And you have
19 some springs which are drainage and, yeah, but we
20 want to talk artesian springs here.

21 Q. But Beaver Creek Springs is one of those artesian
22 springs; is it not?

23 A. Probably, yes.

24 Q. So its bare existence depends on the maintenance
25 of artesian pressure?

1 A. Yes.

2 Q. Following your preparation of the report that was
3 submitted to the Board did you review any
4 additional technical or scientific reports or
5 data?

6 A. Say that again.

7 Q. You prepared a report on this particular
8 application; correct?

9 A. Yes.

10 Q. After preparation of that report did you review
11 any other scientific or technical information that
12 might have come to your attention?

13 A. Yes. We have from the United States Department of
14 Interior a letter dated June 30, 2006, which
15 includes a hydrologic analysis and I did review
16 that.

17 In addition to that, Dr. Rahn submitted a
18 white paper on this, which I don't have in front
19 of me at the time, which I reviewed both before,
20 during and after this preparation.

21 Q. In looking at the material that you reviewed, did
22 it in any way influence your opinion with regards
23 to the necessity for conducting an aquifer stress
24 test?

25 A. Oh, no. I think it all supports that this is a --

1 I'm going to use my word, nobody else's. This is
2 a sensitive area or could be considered a
3 sensitive area from a public interest aspect and,
4 therefore, we need some more information before we
5 could recommend. But I think everything is
6 supporting data to that.

7 Q. Finally, Mr. Buhler, in your discussion with
8 regards to existing water rights and the public
9 interest that you talked about in your report, did
10 you consider any water related resources within
11 the National Park?

12 Did you have any knowledge of any water
13 related resources in the National Park that you
14 considered in making that analysis, such as water
15 in Wind Cave National Park?

16 A. What I considered was Water Permit 419-2 for the
17 National Park, which when it was -- yes, whether
18 that water right would be impaired.

19 Q. So it was just whatever was on record in the
20 offices of the Chief Engineer is what you looked
21 at in terms evaluating impairment to existing
22 water rights?

23 A. There would be the domestic component of that,
24 too, which is assumed not -- you know, so I took
25 into account any domestic uses which would include

1 livestock, things like that.

2 So I don't think it's fair to say the only
3 thing I looked up is 419-2. You have the other
4 component, too.

5 Q. But you, for instance, wouldn't have considered
6 anything with regards to effect on the water in
7 the cave itself, which is not a matter of public
8 record in the offices of the Chief Engineer?

9 A. I've considered it. I don't remember whether it
10 was before, during or after. Yeah, that was
11 considered.

12 Q. But you're not sure whether you considered it
13 before you prepared this report to the Board?

14 A. Sure. Sure, because we've looked at this in other
15 water permits and what is going to be the impact
16 on a cave, what's going to be -- yeah.

17 Q. All right. I wasn't sure what extent of your, you
18 know, the consideration was in this case.

19 Finally, one question. And you may not
20 know the answer to this.

21 Do you have any information with regards
22 to -- I think you mentioned water quality in the
23 Streeter Well. Do you have any information with
24 regards to the water quality characteristics and
25 whether they meet standards that have been set for

1 safe drinking water such as arsenic. Do you have
2 any information about that or is that part of your
3 analysis whatsoever?

4 A. Streeter Well information I've got on file with
5 the -- there are two Water Permits for the
6 Streeter Well. Okay? There's 2302-2 and Water
7 Permit 2546-2.

8 In the public record the files on those
9 permits is a water quality analysis from the
10 Streeter Well shows calcium 41 parts per million,
11 fluoride, 24.7 parts per million. I was just
12 going to throw it out and say this shows it's a
13 good quality water.

14 Q. But is there any information with regard to
15 arsenic in the water?

16 A. I haven't seen anything, no.

17 Q. And I think this will be my final question, and
18 I'm skipping around a little bit.

19 But getting back to the aquifer stress
20 test, which I think is central to the
21 recommendation that the Chief Engineer is giving,
22 given the amount of head on the Streeter Well, I
23 think you said it flowed at 150 gpm.

24 A. When it was first built, yeah.

25 Q. Given the amount of head that exists in the

1 Streeter Well, how does that influence, let's say
2 the duration of the aquifer testing?

3 Do you think you need to pump for a
4 substantially long time in order to see what the
5 effect would be or does that --

6 A. That would depend on the rate you're pumping the
7 well, the distance between the wells and the
8 aquifer characteristics, what impact there would
9 be measurable on the Streeter Well.

10 Q. I don't know if you can answer this, but would the
11 Chief Engineer's office have any objection or
12 concern if other -- if the Petitioners in this
13 case such as the National Park Service were to
14 wish to participate in the formulation of the
15 aquifer stress test parameters?

16 A. I'm going to have to give that some thought. I'm
17 not clear on that.

18 Q. Perhaps get back to us.

19 MR. HOYT: Is that an offer of funding?

20 MS. BEST: I was just waiting until break
21 time to put my hand out.

22 MR. FAHMY: For the record, I think I can
23 state that funding will perhaps -- much of the
24 funding may come from a norm of federal government
25 in the rural utility service. So we certainly

1 would think we would have some input in this
2 important process.

3 Thank you. I have no further questions.

4 MR. HUTMACHER: Does anyone else have
5 questions of Mr. Buhler?

6 MR. HICKEY: Just a couple, Your Honor.
7 Thank you.

8 CROSS-EXAMINATION

9 BY MR. HICKEY:

10 Q. Mr. Buhler, I represent Steve Simpson, Trout
11 Haven.

12 Would you show the Board where Trout Haven
13 is vis-a-vis first Beaver Creek Springs and then
14 the well that's being proposed?

15 A. Okay. Beaver Creek Springs is located in
16 Section 14. Downstream of that, actually down the
17 road, I'm going to say a half a mile-ish from
18 Beaver Creek Spring down, I'm going to call it the
19 Trout Haven cut-across road, one half mile in
20 Section 14, the east half of Section 14, is Trout
21 Haven Ranch.

22 Beaver Creek Spring is located in the west
23 half of Section 14. Both of those are right along
24 the cut-across road. And approximately three
25 quarters of a mile to the northwest of Beaver

1 Creek Spring in Section 15, the Northeast Quarter
2 of Section 15 is the proposed well site.

3 Q. So approximately three quarters of a mile from the
4 well site to the springs and maybe a mile from the
5 well site to --

6 A. I think we're less than a mile.

7 Q. And as I understand it, the origin of Beaver Creek
8 is the springs; correct?

9 A. Yeah. Numbers really look that way once you get
10 below this point.

11 Q. So all of the uses, all of the domestic uses and
12 the appropriative uses on Beaver Creek are
13 dependent upon the existence of that spring; true?

14 A. That's correct.

15 Q. So if there's a lot of artesian pressure so that
16 that spring dries up, all of the appropriators on
17 that creek are not going to be able to have water?

18 A. Right. And therein lies our concern and why we
19 are recommending deferral.

20 Q. And that's why you think the Board -- or that's
21 why you're asking the Board to determine the
22 public interest with respect to those users on
23 that stream?

24 A. That's why we're saying -- I think that's why
25 we're saying, Board, if you wish this to be a

1 public interest issue, we're there with you and
2 would like to run an aquifer test so we can
3 address the public interest issue.

4 Q. And I want to know, during the time that the test
5 is being administered, what kind of protections
6 are you going to have for the people on Beaver
7 Creek so that the test itself doesn't adversely
8 impact and affect their operations?

9 A. Adverse impact from a water rights perspective I
10 don't think is going to happen. You know, again,
11 as I went over in my report, I don't believe
12 there's, from a Water Law perspective, I don't
13 believe there would be an adverse impact.

14 But from the public interest side of
15 things, would this be detrimental? What kind of
16 safeguards would there be in there? I see no
17 reason in the world why we couldn't work that in.
18 We, of course, get to review that test plan. I
19 see no reason in the world we couldn't incorporate
20 something into that.

21 Q. For example, my client raises trout. You're aware
22 of that; correct?

23 A. Yes.

24 Q. And the importance of water, not only the
25 temperature of water, the pH of water, the flow of

1 water, all of those things are vitally important
2 to him; correct?

3 A. Correct.

4 Q. And normally you wouldn't care much about the pH
5 of water or the temperature of water. You mostly
6 care about the flow of water; right?

7 A. Right.

8 Q. So the test could basically be putting my client
9 out of business while you guys are testing, making
10 a stress test of the aquifer; correct?

11 A. After this discussion I don't think that would be
12 correct. I think that -- and under the guise of
13 public interest, now that we're aware that that is
14 a component, that's something that it would
15 certainly be foolish for us to come in front of
16 the Board saying we've adopted this plan that
17 didn't look at that after you made a point of it.
18 So I think we could work that in.

19 Q. I guess that's my question. I didn't see anyplace
20 in your report where you addressed any of those
21 legitimate concerns of my client with respect to
22 his livelihood and his operation.

23 And now you're saying that you're willing
24 to consider that, I guess?

25 A. I'm going to step back just a second and defend

1 our report procedure.

2 Typically what we look at is, is there
3 unavailable water -- is there water available for
4 the appropriation? Is it going to have an impact
5 on existing rights?

6 The other two components of approving a
7 permit, the beneficial use and public interest,
8 historically, we have always allowed public
9 testimony to determine public interest.

10 In this case, we did throw that red flag
11 up. We didn't throw every public interest red
12 flag up.

13 Q. But that's an obligation of the Applicant, is it
14 not, to show that this usage is in the public
15 interest; correct?

16 MS. BEST: Objection. Calls for a legal
17 conclusion.

18 MR. HUTMACHER: Sustained.

19 BY MR. HICKEY:

20 Q. The other question I have is what, if any,
21 accommodations have you made to measure the flow
22 at Beaver Creek Springs while you're doing this
23 test? Are you envisioning weirs or measuring
24 devices?

25 A. We are not going to be doing the test. You meant

1 "you" generically. I just want to make sure the
2 record is clean. DENR is not operating the test.
3 The consultants, Leggette, Brashears & Graham out
4 of Sioux Falls, I have not seen any details on a
5 test. In fact, I don't believe they even have
6 details on a test.

7 But in light of our public interest
8 concern, certainly we would look for a component
9 on adequate measure in Beaver Creek.

10 Q. The same question as Mr. Fahmy. Are you going to
11 allow Intervenors and other parties an opportunity
12 to have some input into the parameters of that
13 test and how that's going to be monitored so that
14 it doesn't put my client out of business over the
15 next year and-a-half or two years before we get
16 back to this Board?

17 A. I think that's up to the Applicant. I sensed they
18 will be more than happy to. But I don't know that
19 we can dictate to them, You need to let Mr. Hickey
20 tell you how much money your test is going to
21 cost.

22 Q. No, that's not my question.

23 A. But I think that's -- and that's a question for
24 Leggette, Brashears & Graham. But I think they're
25 going to take that into consideration.

1 Q. You agree that this Board can set whatever
2 conditions --

3 A. Certainly.

4 Q. -- and qualifications on a test --

5 A. Certainly.

6 Q. -- that they think is relevant and important,
7 including the opportunity to allow the
8 Intervenor --

9 A. Absolutely.

10 Q. -- a voice in that; correct?

11 A. Absolutely. I would not argue with that.

12 Q. I didn't think you would but I just --

13 A. No. The question you asked was different than --
14 I wish I would have just answered it, the Board
15 can qualify this permit any way they choose to
16 qualify it.

17 Q. And there isn't any question in your mind that the
18 source of the Beaver Creek water is the Madison
19 Formation?

20 A. Would I argue that it's not Madison water? No, I
21 wouldn't.

22 Is there any question in my mind? See,
23 determining that it's Madison water depends on
24 geochemistry. And geochemistry is one of these
25 strange black boxes that you need to take on face

1 value and there's nothing intuitive about it.and
2 so when the geochemists tell me that it's Madison
3 water, I need to accept that.

4 Is it definite? No.

5 Do I think it is? Yes.

6 Q. I think your report says "in all probability."

7 A. Yeah. I want to keep it at that.

8 MR. HICKEY: Thank you. That's all the
9 questions I have.

10 MR. PENFIELD: Mr. Chairman, I had a couple
11 of questions.

12 CROSS-EXAMINATION

13 BY MR. PENFIELD:

14 Q. There was some confusion at the beginning of the
15 hearing regarding the two permits.

16 I want to make clear, your recommendation
17 for the future appropriation is not dependent upon
18 the approval of the current well permit for 2585?

19 A. Approval of the future use is not dependent on the
20 outcome of this permit?

21 Q. Correct.

22 A. That's correct.

23 MR. PENFIELD: Thank you.

24 MR. HUTMACHER: Any more questions of
25 Mr. Buhler?

1 Our court reporter will appreciate that.

2 Thank you.

3 We're going to take about a 10-minute
4 break.

5 (A recess was taken.)

6 MR. HUTMACHER: Call this hearing back to
7 order again. Diane?

8 MS. BEST: Thank you. As I indicated at
9 the beginning of the presentations regarding these
10 Southern Hills applications, the parties are aware
11 that a Board quorum will not be available tomorrow
12 to finish this case.

13 The time is now 5:45 and the first witness
14 has completed his testimony. We've got
15 approximately, in my best guess, we've got about
16 five more hours of testimony based on what the
17 different parties have told me that they have to
18 offer.

19 A number of us have met. A number of the
20 parties certainly have no objection to continuing
21 the matter until the next Board meeting. And
22 there are some of the parties who feel quite
23 strongly that they would like to be heard yet
24 today.

25 So I'm here to tell you we don't have a

1 consensus but DENR would make a motion to ask for
2 delay at this time until the next Board meeting,
3 at which time we would -- it would be
4 November 29th and 30th that we would ask to go
5 forward.

6 I guess I'll leave it up to any other party
7 to state their position.

8 MR. HUTMACHER: I guess we can start with
9 whoever.

10 MR. PENFIELD: All right. I believe that
11 this is the proper route to go, considering the
12 late hour, the amount of testimony that remains to
13 be put into the record.

14 I think it would also give the parties some
15 time to use their best efforts in order to come up
16 with a stipulation on this issue, which I think
17 would be a good time well served for everyone
18 involved. So we do support the motion to continue
19 to the 29th and 30th.

20 MR. FAHMY: I would agree. I just want to
21 clarify what Mr. Penfield said about this issue.

22 I think the issue is the parameters for an
23 aquifer stress test. What my client is willing to
24 do, respond to a proposal that would be made by
25 the Southern Black Hills Water System with regards

1 to how an aquifer stress test would be conducted.

2 We would respond in a timely fashion,
3 whether we thought that was acceptable. And if
4 there were differences in opinion, we would agree
5 to probably meet on a telephone conference call to
6 see if we can hash out those differences.

7 That, hopefully, would include
8 representatives of the Chief Engineer's office,
9 from Trout Haven Ranch and from the Southern Black
10 Hills, of course, to see if we can come to some
11 agreement, using our best efforts, by
12 November 29th on the terms and conditions for an
13 aquifer stress test on Application #2585-2.

14 And we would fully support the continuance
15 of the hearing on the Future Use reservation
16 Application 2580-2 until November 29th and 30th.

17 MR. HUTMACHER: Mr. Hickey.

18 MR. HICKEY: On behalf of Trout Haven, we
19 would agree with those conditions. And we would
20 use our best efforts to participate and,
21 hopefully, and come back here with a settled
22 agreement for your approval or we will present
23 testimony if we weren't able to reach an
24 agreement.

25 In view of the fact that there may be some

1 pro se litigants, I would have no objection to the
2 Board allowing them to make their testimony or
3 their statements so that if they didn't want to
4 come back on the 29th, they wouldn't have to.

5 I'm not exactly sure who has objections.
6 But from our standpoint, we don't care if you want
7 to go ahead on that limited basis and allow that
8 to happen.

9 MS. BEST: Yeah, I think the parties back
10 here -- I don't know how many parties it is that wish
11 to speak or how much time they need to take yet
12 today. But it's been conveyed to me that we have
13 folks that drove on icy roads all the way from the
14 Black Hills to Pierre. They came to talk and they
15 want to.

16 MR. HALLEM: I guess the best way would be
17 is if you're a party Intervenor, if you would come
18 up and identify yourself and the party that you're
19 representing on it. And if you have any comments
20 and if you want to speak, any of the other
21 parties. Because if we don't hear anything, all
22 we've heard right now is that a continuance should
23 be granted.

24 Any other Intervenor want to have anything
25 to say? Please, come on up.

1 RANDY SCHROTH: My name is Randy Schroth.
2 I live on Beaver Creek --

3 MR. HUTMACHER: Hold it. If we're going to
4 do this, we need to swear you in.

5 MR. HALLEM: Well, his position first on
6 the motion.

7 RANDY SCHROTH: I have no problem with a
8 continuance.

9 My name is Randy Schroth. I live on Beaver
10 Creek on a ranch down there.

11 MR. HUTMACHER: Would you rather come back
12 when we're doing the full blown thing or do you
13 want to --

14 RANDY SCHROTH: I'd just as soon come back
15 because I would like to be a party to the deal.

16 MR. HALLEM: Any other parties, Intervenors
17 wish to speak?

18 MR. HUTMACHER: Or your option is to come
19 back the 29th.

20 MR. HICKEY: On behalf of Fall River, they
21 would be willing to come back on the 29th if we
22 were not able to reach an agreement as well.

23 MR. HUTMACHER: Okay. With that, we are
24 going to -- oh, wait a minute.

25 SHAWN FUGIER: I just have a question. Is

1 this going to be -- the 29th we're going to be
2 through with this or are we going to carry it
3 overnight into the next day? I mean there's a lot
4 of us that ranch there and we have cattle to feed.

5 MR. HUTMACHER: How is the best -- Eric?
6 What we're going to schedule is a two-day meeting
7 for the 29th and 30th probably and --

8 ERIC GRONLUND: Is it okay for me to --

9 MR. HUTMACHER: Yeah.

10 ERIC GRONLUND: My name is Eric Gronlund.
11 I do a lot of the scheduling for the Board.

12 My proposal right now would be -- I don't
13 think we have a very large agenda set right now
14 for the November meeting. This morning we just --
15 the Board moved it to the 29th and the 30th.

16 What I would propose right now to do would
17 be to set a Board meeting to start, in all
18 likelihood, the afternoon of the 29th for the
19 other business. And then set aside that Thursday
20 morning, the 30th, to hit the ground rolling with
21 the Southern Black Hills applications.

22 MR. HALLEM: And that could go the full day
23 then.

24 ERIC GRONLUND: Knowing that that could go
25 the full day. And that way we wouldn't get caught

1 in the position we obviously got caught in today.

2 MR. HALLEM: Does that answer your
3 question?

4 SHAWN FUGIER: Well, if that's what you're
5 going to do, yeah.

6 MR. HUTMACHER: That seems like the most
7 workable solution because I was thinking about
8 something similar so we didn't get caught in an
9 overnight situation. And we would if we tried to
10 do it all in one day. We're not going to make it.

11 MR. BRINK: What do we call it,
12 Mr. Chairman, a continuance or --

13 MR. HUTMACHER: We are calling a
14 continuance on the hearing.

15 MR. HALLEM: Recess both hearings and have
16 a continuance until the morning of November 30th.

17 MR. HUTMACHER: Is that okay, Diane?

18 MS. BEST: Eric was talking to me at the
19 same time. I'm sorry.

20 MR. HUTMACHER: If we recess the one Future
21 Use Permit until later today, we need to recess
22 both hearings, schedule a continuance for 8:30 on
23 the 30th.

24 MS. BEST: The DENR certainly has no
25 objection to that. We've got a couple of

1 procedural things that we can bring up.

2 One of the things, Mike made this offer of
3 if there is somebody here that feels like driving
4 in to Pierre on November 30th is going to be a
5 hardship, and they've got a short piece of
6 testimony to give and they want to speak their
7 piece today, his point is well taken. We
8 certainly don't object to that either.

9 MR. HALLEM: I think we could do that
10 before the recess, if anybody has something they
11 want to say today.

12 MR. HUTMACHER: If you can't be back on
13 November 30th or don't want to make the trip, take
14 the chance, we'll gladly take your testimony here
15 today if you're here to do it. I mean that's --
16 we're trying to be as accommodating as we can.

17 SHAWN FUGIER: Yeah, I guess I'd like to
18 address the Board.

19 MR. HUTMACHER: I need to swear you in
20 first. Do you swear to tell the truth, the whole
21 truth and nothing but the truth?

22 SHAWN FUGIER: I do.

23 MR. HUTMACHER: State your name and address
24 for the court reporter, please.

25 SHAWN FUGIER: My name is Shawn Fugier,

1 27094 Beaver Valley Road, Buffalo Gap.

2 Decided maybe I better say something now in
3 case we got a storm. I'll try and keep it short
4 here.

5 Just a little bit of history. Myself and
6 my folks, we operate a ranch. We irrigate off of
7 Beaver Creek. We have to irrigate hay fields in
8 order to feed cows all winter long. We don't have
9 enough pasture ground to carry cattle all winter.
10 The snow gets kind of deep sometimes.

11 There's several water rights holders on the
12 creek. It was brought up earlier there was 12.
13 This stuff that was sent to me from you guys was
14 there was 13 but that's...

15 I've got a concern about the wells being
16 drilled in the area of Beaver Creek Springs and
17 the effect it would have on those springs. I'm
18 afraid that it's going to greatly affect the flow
19 of those springs that supply Beaver Creek.

20 Right now -- you were talking about the,
21 earlier, that the creek is overappropriated. The
22 Water Rights department will call from time to
23 time if that creek level gets too low. We as
24 irrigators will adjust our outtake of that creek
25 to keep an adequate flow in the creek. You know,

1 that's what -- we work together to try and make
2 everybody happy and so that we can still irrigate.

3 I guess I have a question as to what's
4 going to happen if a well is drilled there and it
5 diminishes the flow of that creek in any form.
6 It's going to be less water going down the creek
7 for us to divvy up.

8 The other thing, I guess, that's a concern
9 with the well there is the creek, the water in
10 that creek is fairly hard at this time. The way I
11 understand it from what I've been told, it runs
12 about 2,000 parts per million.

13 And I understand that at 3,000 parts per
14 million that alfalfa won't grow. You can't
15 irrigate with that kind of water.

16 And I guess things I've picked up along the
17 way, it sounds like, you know, this well may be
18 taking some of the deeper water which is the
19 softer water, leaving us with -- as water rights
20 holder on that creek with hard water. Even if
21 there's water there, it isn't going to do us any
22 good.

23 There's four of the ranches that have put
24 in an extensive buried pipe from the creek to
25 their ranches to irrigate with. Previously it was

1 open ditch. Our ranch is included in this. We
2 put in a buried pipe so we can conserve the water
3 from Beaver Creek.

4 We've cut down on evaporation and seepage
5 and loss from the creek. We've got quite a little
6 money tied up in that.

7 Another thing, if they put a well in this
8 vicinity, anywhere in the vicinity of these
9 springs, I'm afraid that that is going to deplete
10 the flow of that creek.

11 We do have water rights on that creek. We
12 talked about, you know, water right holders and
13 the rights of water right holders earlier here.

14 I know on Rapid Creek the City of Rapid
15 City had to buy the water rights from the farmers
16 down Rapid Valley, if they were willing to sell to
17 them.

18 I guess in my opinion, if a well is stuck
19 close to this spring, that's basically going to be
20 stealing water, stealing our water rights. No
21 one's approached us about wanting to sell our
22 water rights, not that we would.

23 You know, I can go back to some of these
24 statistics here that were sent to me from, I
25 believe Eric Gronlund sent this stuff to me in

1 this packet.

2 Just to touch on a couple things. The
3 drawdown from this appropriation, which is 2585-2,
4 this is the one I'm quoting from here, "...could
5 extend over a fairly large area. And that a
6 lowering of the potentiometric surface of the
7 Madison Aquifer in the vicinity of these springs
8 could reduce their discharge and, consequently,
9 the flow in Beaver Creek." It's right in here.
10 That's from you guys, really.

11 Another consideration is the trout hatchery
12 that is on Beaver Creek. Trout Haven has been a
13 long-time business, a family business, an ag
14 business. It's very sensitive to the water
15 quality, temperature. There's a number of things
16 that I'm sure will be touched on on the 30th.

17 It comes down to all of these businesses,
18 you know, whether it be a ranch or the trout
19 hatchery, they're all valuable to these area towns
20 and cities. It takes a lot of money for a ranch
21 or hatchery to operate and, you know, we spend a
22 lot of money in the businesses in town.

23 I guess I'd like to ask you to keep the ag
24 sector in mind. The last I knew, it was the
25 number one state industry. Here's a chance to

1 protect it and protect the creek, protect the
2 streams of the Black Hills and keep them flowing.

3 It only stands to reason, if you start
4 sucking water out, these streams are going to dry
5 up all over the Hills, not just Beaver Creek.
6 We're talking Fall River, Cascade, any of them.

7 There's already, you know, a couple other
8 water systems in place up there that I think could
9 handle the need for the water. That's just my
10 opinion.

11 But I'd ask you to please keep us in mind
12 in your decisions here. That's all I have.

13 MR. HUTMACHER: Thank you.

14 Are there questions of the Board?

15 MR. HOYT: Just a follow-up, perhaps, on
16 your statement that there are other water systems
17 that provide water to potential customers. What
18 would they be? Who would they be?

19 SHAWN FUGIER: Well, there's Fall River
20 Water Users District is already in place down
21 there. They're mainly in Fall River County and
22 they're looking to expand north.

23 There's a system up -- I don't know the
24 exact name of it, but Hermosa, maybe it's Hermosa
25 Water Users. They have a system in place already.

1 There's also a small one over by Ardmore,
2 Edgemont area.

3 MR. HOYT: Do you know whether they would
4 currently have water supplies sufficient to --

5 SHAWN FUGIER: I have no idea.

6 MR. HUTMACHER: Any other questions of the
7 Board?

8 If not, Counsel?

9 MR. PENFIELD: No questions.

10 MR. FAHMY: No questions.

11 MS. BEST: I have one question. You
12 referred to a document that Eric Gronlund had sent
13 you. Is that the -- can I take a look at it?

14 SHAWN FUGIER: Um-hum.

15 MS. BEST: Okay. That is the report.

16 I'd like the record to reflect that the
17 document that this witness referred to is the
18 report developed by Ken Buhler that he has been
19 provided for this hearing. I just wanted to make
20 sure we have the same document.

21 MR. HUTMACHER: Anyone else have further
22 questions? If not, thank you.

23 SHAWN FUGIER: Thank you.

24 MR. HUTMACHER: Is there anyone else who
25 would like to testify that won't be back on the

1 30th or worried about the weather? Last call.
2 Anyone else?

3 Otherwise, I'll entertain a motion to
4 recess the Future Use Permit hearing 2580-2 and
5 the Water Permit Application 2585-2 until
6 November 30th, 8:30 a.m.

7 MR. BRINK: Mr. Chairman, I so move.

8 MS. LOUCKS: Second.

9 MR. HUTMACHER: Motion by Francis, second
10 by Bernita.

11 All in favor vote aye. Opposed? Motion
12 carried.

13 MS. BEST: I have a point of order that I
14 needed. There are Board members that are not
15 present at today's meeting. It's assumed that
16 those Board members would be present for Board
17 proceedings in late November.

18 And it would be the DENR's intention to get
19 those folks a transcript of this proceeding and
20 ask them to be involved in the consideration of
21 this case.

22 I'm just clearing the air so before we're
23 sending Board members transcripts, I want them all
24 to know that that's what our intention was and we
25 would ask them to do that. And if there are some

1 objections in that regard, I suppose now would be
2 the time to do so.

3 MR. FAHMY: We think that would be proper
4 and fitting.

5 MR. HICKEY: I think it would. After
6 what's been said, I think they have to have a
7 transcript.

8 MR. PENFIELD: No objection.

9 MR. HUTMACHER: Okay.

10 MR. BRINK: Are we adjourned?

11 MR. HUTMACHER: Yes.

12 (Proceedings concluded.)

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

2 COUNTY OF HUGHES)

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I, Mona G. Weiger, Registered Professional
Reporter and Official Court Reporter in and for the
State of South Dakota, do hereby certify that the
Transcript of Board Meeting contained on the foregoing
pages was reduced to stenographic writing by me and
thereafter transcribed; that said proceedings commenced
on the 11th day of October, 2006, in the Capitol Complex
Visitor's Center, Pierre, South Dakota, and that the
foregoing is a full, true and complete transcript of my
shorthand notes of the proceedings had at the time and
place set forth above.

15

Dated this 13th day of November, 2006.

16

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Mona G. Weiger, RPR
Official Court Reporter

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 16, 2006

NOTICE

TO: Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744
and Parties of Record (see attached list)

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

SUBJECT: Future Use Permit Application No. 2580-2 and Water Right Permit Application
No. 2585-2, Southern Black Hills Water System

The Water Management Board recessed the hearing on Application Nos. 2580-2 and 2585-2 on October 11, 2006 after Water Right staff engineer Ken Buhler and petitioner Shawn Fugier concluded their testimony. It was evident that there was not sufficient time at the October meeting for all parties to complete their testimony.

The Water Management Board will reconvene the hearings on Application Nos. 2580-2 and 2585-2 on November 30, 2006, at 8:30 AM (CDT), in the Pierre Chamber of Commerce meeting room, 800 West Dakota Avenue, Pierre SD. The Chamber of Commerce building is located by turning right immediately upon crossing the Missouri River coming into Pierre. Notice will be provided to parties if there is a change in the hearing time or date.

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

c: Diane Best, Assistant Attorney General
Ken Royce, Bartlett & West, 3456 E. Century Avenue, Bismarck ND 58503-0737

PARTIES OF RECORD

Future Use Permit Application No. 2580-2 and Water Permit Application No. 2585-2

Applicant

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Shane Penfield, Attorney
PO Box 8045
Rapid City SD 57709

Petitioners

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Marvin Bishop, Chairman
Custer County Commission
420 Mt. Rushmore Road
Custer SD 57730

Peter A. Fahmy
Water Rights Branch
National Park Service
1201 Oak Ridge Drive
Ft. Collins, CO 80525

James Brickey, Mayor
City of Hill City
PO Box 395
Hill City SD 57745

Harold Heiney
Box 7
Buffalo Gap SD 57722

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

Frank Scroth
7 – 11 Ranch
PO Box 97
Buffalo Gap SD 57722

Steven L. Knutson, President
Knutson Brothers, Inc.
12838 Cold Brook Road
Hot Springs SD 57747

Randy Scott, Manager
Fall River Water User District
1 Angostura Highland
Hot Springs SD 57747

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Lois Emery, Trustee
Lyda Bowker Trust
HC 52 Box 136A
Hot Springs SD 57747

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Clarence and Carol Foos
PO Box 317
Hermosa SD 57744

Tom Porter, Board Member
Southern Black Hills Water System
Box Z
Edgemont SD 57735

Roger Willey
Argyle Rd
Hot Springs SD 57747

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525-5596

Mr. and Mrs. Paul Fugier
27032 Beaver Valley Rd
Buffalo Gap SD 57722

CERTIFICATION

I hereby certify that on October 16, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 16, 2006, regarding Scheduling of Hearing on Future Use Application No. 2580-2 and Water Right Permit Application No. 2585-2, Southern Black Hills Water System addressed as stated below and on the Parties of Record list:

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

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

Diane Best, Assistant Attorney General, Capitol Building

Eric Tronrud

Eric Gronlund
Water Rights Program

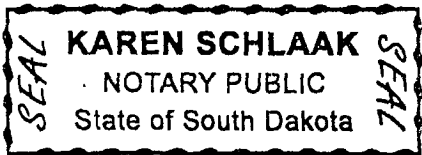
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Sworn to, before me, this 17th day of October, 2006.

Karen Aclack

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

October 17, 2006

Tom & Lesta Conger
13831 Beaver Creek Road
Buffalo Gap, SD 57722

Dear Mr. and Mrs. Conger:

I am writing to inform you that your email submitted in the matter of Southern Black Hills Water System's water permit and future use applications was presented to the Water Management Board. The Board denied you intervention status based on the fact the email was not filed within the timeframe set to petition to intervene.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 17, 2006

Sam N. Clauson
SD Chapter, Sierra Club
PO Box 1624
Rapid City SD 57709-1624

Dear Mr. Clauson:

I am writing to inform you that Sierra Club's letter in the matter of Southern Black Hills Water System's water permit and future use applications was presented to the Water Management Board. The Board denied intervention status to the Sierra Club based on the fact the letter was not filed within the timeframe set to petition to intervene.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us

Town of Keystone

P.O. Box 689
Keystone, South Dakota 57751
605/6664827

RECEIVED

NOV 17 2006

WATER RIGHTS
PROGRAM

November 13, 2006

Water Management Board
Floyd Mathews Training Center
523 East Capitol Avenue
Pierre, South Dakota 57501

Dear Members of the Board.

As Board President, I want you to know that we enthusiastically support the efforts of the Southern Black Hills Rural Water System to provide fresh clean water to our Community. I believe that establishment of the water rights to the Streeter Well is a key to the success of this project. I represent a Community of 311 people who know that we must act now to provide a source of water for the future of our Community and for the ranchers and homeowners in the area who have a need for this water.

Thank you for your time and attention with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Raynold", written over a horizontal line.

HC 83 BOX 74
Custer State Park
Custer, SD 57730
605-255-4772
FAX 605-255-4706
Reservations: 1-800-658-3530



Operators of
Blue Bell Lodge & Resort
Legion Lake Resort
State Game Lodge & Resort
Sylvan Lake Lodge & Resort
in the Black Hills of South Dakota

RECEIVED
NOV 16 2006
WATER RIGHTS
PROGRAM

November 13, 2006

Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Dear Members of the Board,

As a resident of Custer County, I want you to know that I enthusiastically support the efforts of the Southern Black Hills Rural Water System to provide fresh clean water to our Community. I believe that the establishment of the water rights to the Streeter Well is a key to the success of this project. I represent a Community of Custer people who know that we must act now to provide a source of water for the future of our Community and for the ranchers and homeowners in the area who have a need for this water.

As a businessman, homeowner, and civic leader; I encourage the Water Management Board to act now to secure water for the Southern Black Hills.

Sincerely,


Phil Lampert



Town of Keystone

P.O. Box 689
Keystone, South Dakota 57751
605/6664827

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NOV 17 2006

WATER RIGHTS
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WATER RIGHTS
PROGRAM

November 15, 2006

Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Attn: Water Management Board
c/o Garland Erberle, Chief Engineer
RE: Southern Black Hills Water System
Future User Permit No. 2580-2

Dear Mr. Erberle,

Please accept this letter as support from The Town of Keystone for the permit applications noted above as submitted to your office by the Southern Black Hills Water System.

The Southern Black Hills Water System represents a comprehensive approach and effort to resolve the critical water supply and distribution needs of our part of the State within Fall River, Custer, and Pennington Counties. Our community, as well as many others in this area, have been strong supporters and financial contributors to this effort since inception of the group and we continue to view the efforts of the SBH as the most practical and most likely means of resolving the water issue of this area. In addition to our own community financial support for this project we are also aware that approximately 700 rural residents of Fall River, Custer, and Pennington counties have made financial commitments to this project in the form of a good intention fee.

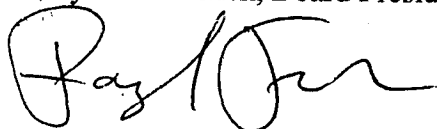
We believe the SBH accurately represents the needs of area and has a broad base of support from the users of the area which your Water Management Board should be aware.

Please follow the recommendations of your technical and legal staff in granting approval of the Future Water Permit No. 2680-2 and Deferral of Water Permit No. 2585-2.

Sincerely,

Vanessa Row, Finance Officer


Raymond French, Board President



RAPID CITY

Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sara L. Larson
Thomas J. Von Wald
Riley J. Wilson

SIOUX FALLS

Michael A. Hauck
John P. Mullen
Brian K. Kirby
Victoria M. Duehr
Patrick J. Knecht

*Attorneys also admitted in
Nebraska, North Dakota,
Iowa and Minnesota.*

BANGSMcCULLEN
— LAW FIRM —

Reply to Rapid City Office

Writer's e-mail address: mhhickey@bangsmccullen.com

November 15, 2006

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NOV 16 2006
WATER RIGHTS
PROGRAM

Mr. Garland Erbele, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Applications of Southern Black Hills
Water Systems No. 2580-2 and 2585-2*

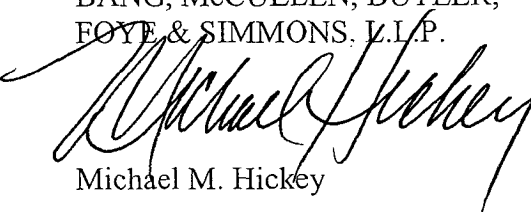
Dear Mr. Erbele:

Please find enclosed the Objections filed on behalf of Fall River Water Users District for the above-referenced matters. A copy has been sent to Southern Black Hills Water System, which is intended as service by mail.

If you have any questions or comments, please advise. Thank you.

Sincerely,

BANG, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.


Michael M. Hickey

RAPID CITY

First Western Gateway
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, South Dakota
57709-2670
P: (605) 343-1040
F: (605) 343-1503

SIOUX FALLS

100 North Phillips Avenue
Suite 610
P.O. Box 949
Sioux Falls, South Dakota
57101-0949
P: (605) 339-6800
F: (605) 339-6801

mmh:bah:sbh

Enclosures

cc: Client; Bob Morrison; Diane Best; Shane Penfield; Ken Royse; James Brickey; Frank Scroth; John Beard; Roger Wiley; Mr. and Mrs. Paul Fugier; Randy Scroth; Tom Porter; Charles W. Pettee; Shawn Fugier; Marvin Bishop; Harold Heiney; Steve L. Knutson; Lois Emery; Clarence & Carol Foos; Scott A. Roetzel; Steve Simpson

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
APPLICATIONS OF SOUTHERN)
BLACK HILLS WATER SYSTEM,)
APPLICATION NO. 2585-2)

OBJECTION

Comes now Fall River Water Users District, by and through its undersigned counsel, and hereby objects to the above-described application to appropriate water filed on behalf of Southern Black Hills Water System. This objection is based upon the grounds and for the reasons that Fall River Water Users District has a future use permit (Future Use Permit No. 2560-2) which may be adversely impacted and interfered with by the application of Southern Black Hills Water System if approved.

Fall River Water Users District also objects to this application on the grounds that any well allowed by this application will interfere with and adversely affect existing water rights and is not in the public interest.

Dated this 15th day of November, 2006.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



MICHAEL M. HICKEY
Attorneys for Fall River Water Users District
333 West Blvd., Suite 400; P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040

CERTIFICATE OF SERVICE

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

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa, SD 57744

Diane Best, Esq.
Assistance Attorney General
Counsel for Dept. of Environment &
Natural Resources, Div. Of Environmental
Regulation
500 East Capitol Avenue
Pierre, SD 57501

Shane Penfield
Gunderson, Palmer, Goodsell &
Nelson, LLP
PO Box 8045
Rapid City, SD 57709-8045

Ken Royse
Barlett & West
3456 East Century Avenue
Bismarck, ND 58503-0737

James Brickey, Mayor
City of Hill City
PO Box 395
Hill City, SD 57745

Frank Scroth
7-11 Ranch
PO Box 97
Buffalo Gap, SD 57722

John Beard
3810 Beaver Creek Road
Buffalo Gap, SD 57722

Randy Scroth
PO Box 1
Buffalo Gap, SD 57722

Tom Porter, Board Member
Southern Black Hills Water System
Box Z
Edgemont, SD 57735

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins, CO 80525-5596

Shawn Fugier
27094 Beaver Valley Road
Buffalo Gap, SD 57722

Marvin Bishop, Chairman
Custer County Commission
429 Mt. Rushmore Road
Custer, SD 57730

Harold Heiney
Box 7
Buffalo Gap, SD 57722

Steve L. Knutson, President
Knutson Brothers, Inc.
12838 Cold Brook Road
Hot Springs, SD 57747

Lois Emery, Trustee
Lyda Bowker Trust
HC 52 Box 136A
Hot Springs, SD 57747

Roger Willey
Argyle Road
Hot Springs, SD 57747

Clarence and Carol Foos
PO Box 317
Hermosa, SD 57744

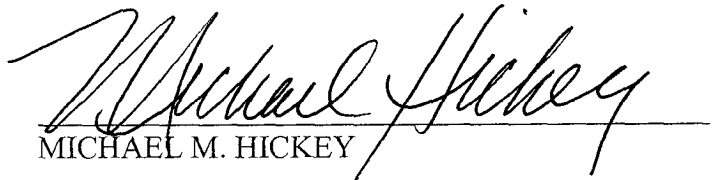
Mr. and Mrs. Paul Fugier
27032 Beaver Valley Road
Buffalo Gap, SD 57722

Scott A. Roetzel
Assistant United States Attorney
United States Attorney's Office
Federal Building; PO Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501

Mr. Steve Simpson
PO Box 147
Buffalo Gap, SD 57722

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

Dated this 15th day of November, 2006.



MICHAEL M. HICKEY



City of Hill City

The Heart of the Hills

324 Main Street, P.O. Box 395 Hill City, South Dakota 57745
Phone: 605.574.2300 Fax: 605.574.4327

November 17, 2006

Water Management Board
Floyd Malthews Training Center
523 East Capitol Avenue
Pierre, SD 57501

RECEIVED

NOV 21 2006

**WATER RIGHTS
PROGRAM**

Dear Members of the Board:

As Mayor, I want you to know that we enthusiastically support the efforts of the Southern Black Hills Rural Water System to provide fresh clean water to our community. I believe that establishment of the water rights to the Streeter Well is a key to the success of this project. I represent a community of 850 people who know that we must act now to provide a source of water for the future of our community and for the ranchers and homeowners in the area who have a need for this water.

Thank you for your time and attention with this matter.

Sincerely,

Don Voorhees
Mayor of Hill City



You Should See The Hills From Here!

November 27, 2006

Water Management Board
Floyd Mathews Training Center
523 East Capitol Avenue
Pierre, SD 57501

RECEIVED
NOV 29 2006
WATER RIGHTS
PROGRAM

Dear Members of the Board,

As Executive Director of the Custer Area Chamber of Commerce, I want you to know that we enthusiastically support the efforts of the Southern Black Hills Rural Water System to provide fresh water to our community. I believe that establishment of the water rights to the Streeter Well is a key to the success of this project. We represent an area of 8500 people who know that we must act now to provide a source of water for the future of our area and our community.

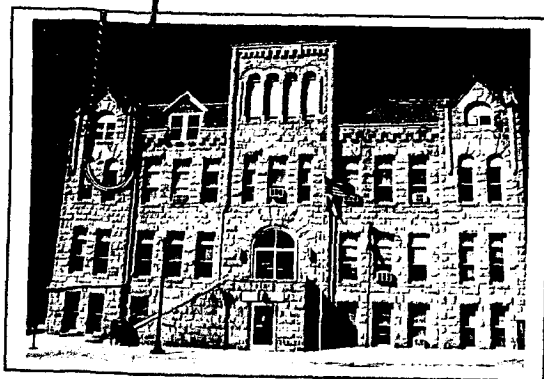
We hope you will see the necessity and the concerns we are faced with. Thank you for your time and attention with this matter.

Sincerely,

David Ressler
Executive Director

CUSTER AREA CHAMBER OF COMMERCE

615 Washington Street ♦ Custer, South Dakota 57730 ♦ (605)673-2244 ♦ 800-992-9818
Web Site: www.custersd.com ♦ E-Mail: info@custersd.com ♦ Fax: (605)673-3726



FALL RIVER COUNTY COUNTY COMMISSIONERS

COURTHOUSE
906 NORTH RIVER ST
HOT SPRINGS, SOUTH DAKOTA 57747
PHONE: (605) 745-5132

11-27-06

State of South Dakota
Department of Environment and
Natural Resources
PMB 2020
Joe Foss Building
523 East Capital
Pierre, SD 57501-3182

RECEIVED
NOV 29 2006
WATER RIGHTS
PROGRAM

Re: Southern Black Hills Water System, Inc
Permit to drill well

Mr. Garland Eberle:

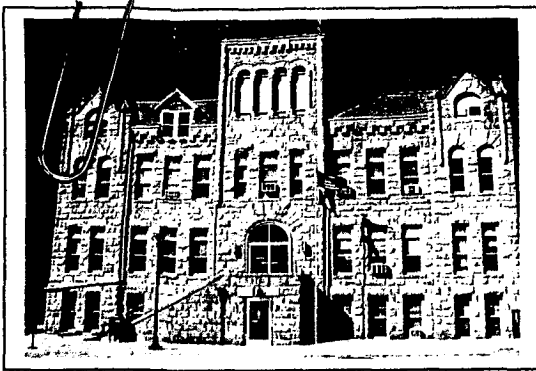
The Fall River Board of County Commissioners met in Hot Springs, SD on November 21st, 2006. In action taken by the Board, the following motion was approved and passed:

“Motion by Falkenburg, seconded by Ortner to support the Southern Black Hills Water System Inc. in conducting a pumping test on the Streeter well, which is near the proposed well site. With no further discussion, and all voting yes, the motion carried.”

If you have any questions, please contact me at 605-745-5132.

Sincerely,

Glen Reaser
Chairman of the Board
Fall River County



FALL RIVER COUNTY COUNTY COMMISSIONERS

COURTHOUSE
906 NORTH RIVER ST
HOT SPRINGS, SOUTH DAKOTA 57747
PHONE: (605) 745-5132

November 28, 2006

RECEIVED
NOV 29 2006
WATER RIGHTS
PROGRAM

To Whom It May Concern:

I fully support Southern Black Hills Water System, Inc. efforts to build and operate a regional water system to serve the Southern Black Hills. I believe that a regional system in the long run will be cheaper to build, serve many more consumers, have more affordable rates, do a better job of getting water to consumers and be more efficient than several smaller individual systems. I am very disappointed to see important water projects being jeopardized by what seems to be personality and power conflicts among the involved individuals. At the present time there are communities, homeowners, farms, ranches and their livestock in our area that are in great need of good water.

I believe that our present aquifers can handle the proposed well by Southern Black Hills Water System, Inc. and support their conducting a pumping test of the aquifer from the Streeter well, permit number 2585-2, that is close to the proposed well site. I applaud their efforts in this regard to protect the aquifer, not diminish the stream flow in Beaver Creek and protect the water for Wind Cave. If the pumping test does not confirm this, they should be required to find an alternate well site.

Sincerely,

Michael P. Ortner
Vice Chairman
Fall River County Commission
PO Box 629
Hot Springs SD 57747

November 28, 2006

Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Attn: Water Management Board
c/o Garland Erberle, Chief Engineer

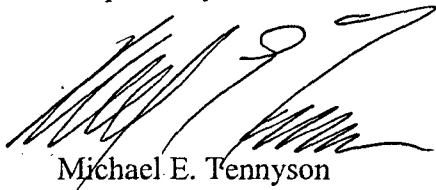
Dear Mr. Erberle,

This letter is being provided as support for the Southern Black Hills Water System with their pending Future Water Permit No. 2580-2 and Water Permit No. 2585-2.

I support the Southern Black Hills Water System in their efforts to address and resolve the water supply and delivery problems of this part of the State. As a commercial and residential developer, I can attest to the necessity of obtaining a good and clean water supply for residential areas and an adequate supply for commercial ventures.

Please follow the recommendations of your technical and legal staff in granting Approval of the Future Water Permit No. 2580-2 and Deferral of Water Permit No. 2585-2.

Respectfully,



Michael E. Tennyson

cc: Southern Black Hills Water System

RECEIVED
NOV 29 2006
WATER RIGHTS
PROGRAM



DEPARTMENT OF GAME, FISH AND PARKS
DIVISION OF PARKS AND RECREATION
CUSTER STATE PARK
13329 US HWY 16A
CUSTER, SOUTH DAKOTA 57730-9705
TELEPHONE: (605) 255-4515 FAX: (605) 255-4460

RECEIVED

DEC - 5 2006

WATER RIGHTS
PROGRAM

November 29, 2006

Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Attn: Water Management Board
c/o Garland Erbele, Chief Engineer

RE: Southern Black Hills Water System
Future User Permit No. 2580-2
Water Permit No. 2585-2

Dear Mr. Erberle:

Please accept this letter as support from Custer State Park for the continued study and pursuit of a rural water system in the southern Black Hills.

The Southern Black Hills Water System represents a comprehensive approach and effort to resolve the critical water supply and distribution needs of our part of the State within Fall River, Custer, and Pennington Counties. Custer State Park, in addition to other communities in this area, has been a supporter and financial contributor to this effort since inception of the group and we continue to view the efforts of the SBH as practical and a likely means of resolving the water issues of this area. In addition to our own financial support for the study of this project we also understand that approximately 700 rural residents of Fall River, Custer, and Pennington counties have also made financial commitments to this project.

We believe the SBH represents the needs of the area and has a broad base of support from the users of the area which your Water management Board should be aware.

Sincerely,

Richard W. Miller
Superintendent



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 5, 2006

NOTICE

TO: Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744
and Parties of Record (see attached list)

Talbot Wieczorek, Attorney
PO Box 8045
Rapid City SD 57709

FROM: Garland Erbele, Chief Engineer
Water Rights Program

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

The Water Management Board directed Talbot Wieczorek, counsel for Southern Black Hills Water System, to prepare proposed Findings of Fact, Conclusions of Law and the Final Decisions in the approval of Future Use Permit Application No. 2580-2 and deferral of Water Permit Application No. 2585-2. The Board will consider adoption of Findings, Conclusions and Final Decisions at 1:00 PM (CDT) on Wednesday, March 7, 2007, in the meeting room of the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD 57501. Notice will be provided to parties if there is a change in the hearing time.

The Board requested that a copy of the proposed Findings, Conclusions and the Final Decisions be mailed to each Board member and parties by January 25, 2007. Written objections or comments in support of the proposed Findings, Conclusions and the Final Decisions, or alternative Findings, Conclusions and Final Decisions are to be mailed to each Board member, the Board attorney (mailing list enclosed) by February 23, 2007.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decisions, or alternative Findings, Conclusions and Final Decisions may be made on March 7, 2007. The public hearing was completed on November 29, 2006. No additional testimony will be received on March 7, 2007.

Any party having questions about the findings process, may contact Eric Gronlund at (605) 773-3352 or Diane Best, Assistant Attorney General at (605) 773-3215.

Enclosure

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Ken Royse, Bartlett & West, 3456 E. Century Avenue, Bismarck ND 58503-0737

PARTIES OF RECORD

Future Use Permit Application No. 2580-2 and Water Permit Application No. 2585-2

Applicant

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Talbot Wieczorek, Attorney
PO Box 8045
Rapid City SD 57709

Petitioners

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Peter A. Fahmy
Water Rights Branch
National Park Service
1201 Oak Ridge Drive
Ft. Collins, CO 80525

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

Randy Scott, Manager
Fall River Water User District
28298 Angostura Road, Suite 2
Hot Springs SD 57747

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525-5596

CERTIFICATION

I hereby certify that on December 5, 2006, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 5, 2006, 2006, regarding preparation of Findings of Fact, Conclusions of Law and Final Decision in the matters of approval of Future Use Application No. 2580-2 and the deferral of Water Right Permit Application No. 2585-2, Southern Black Hills Water System addressed as stated below and on the Parties of Record list:

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

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

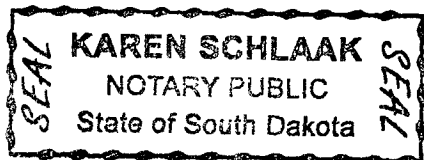
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501
Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501

Eric Gronlund
Eric Gronlund
Water Rights Program

[illegible]

Sworn to, before me, this 6th day of December, 2006.

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





**Black Hills
Electric Cooperative, Inc.**

P.O. Box 792
Custer, South Dakota 57730-0792

Telephone: (605) 673-4461
Toll Free: (800) 742-0085
E-mail: bhec@bhec.coop

January 4, 2007

RECEIVED

JAN - 5 2007

WATER RIGHTS
PROGRAM

Mr. Garland Erberle, Water Management Board
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre SD 57501-3182

Dear Mr. Erbele,

On behalf of the of the Board of Directors of Black Hills Electric Cooperative I would like to express the cooperative's support for the Southern Black Hills Water System.

Black Hills Electric Cooperative provides electric service to several small communities in the southern Black Hills and to hundreds of homes, businesses, ranches, and farms in the area. The cooperative supports the Southern Black Hills Water System in their efforts to help solve the water supply and delivery problems of this part of the state.

In much of the cooperative's service territory in the southern Black Hills, water wells are impractical because of the depth required or the uncertainty of finding a source of suitable flow and quality. Many cooperative members have inadequate supplies of domestic and/or livestock water, or they are forced to use poor quality water. Many haul water, which has become an increasing hardship with the ongoing drought and escalating fuel costs.

Black Hills Electric Cooperative supports the Water Management Board's decisions on Permits No. 2580-2 and 2585-2 and encourages continued support for the objectives of the Southern Black Hills Water System.

Thank you.

Sincerely,

BLACK HILLS ELECTRIC COOPERATIVE, INC.

Daniel E. Hutt
General Manager and Executive V.P.

CC: Southern Black Hills Water System
BHEC Board of Directors



GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

J. CRISMAN PALMER
G. VERNE GOODSSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUTNN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
MARK J. CONNOT
JENNIFER K. TRUCANO
DAVID E. LUST

ASSURANT BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045
TELEPHONE (605) 342-1078 • FAX (605) 342-0480
www.gundersonpalmer.com

ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, IOWA, NEBRASKA
COLORADO, MONTANA, WYOMING & MINNESOTA

THOMAS E. SIMMONS
TERRI LEE WILLIAMS
PAMELA SNYDER-VARNS
SARA FRANKENSTEIN
AMY K. KOENIG
JASON M. SMILEY
SHANE C. PENFIELD
JONATHAN M. OOSTRA
MATTHEW E. NAASZ

WYNN A. GUNDERSON
Of Counsel

January 25, 2007

Garland Erbele
Chief Engineer
Water Rights Program
DENR
523 East Capitol
Pierre, SD 57501-3182

RECEIVED

JAN 26 2007

WATER RIGHTS
PROGRAM

RE: Findings of Fact, Conclusions of Law and Final Decisions
Southern Black Hills Water System Future Use Permit Application No. 2580-2
and deferral of Water Permit Application No. 2585-2
GPGN File No. 7653.040635

Dear Mr. Erbele:

Pursuant to your December 5, 2006 Notice, enclosed please find a copy of Southern Black Hills Water System's Proposed Findings of Fact, Conclusions of Law and Final Decisions in both matters as referenced above. I have provided a copy to all Board members and parties of record.

If you have any questions, please contact me.

Sincerely,



Talbot J. Wieczorek

TJW:klw

Enclosures

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Board Members and All Parties
Ken Royse
Clients

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION #2585-2,)
and)
IN THE MATTER OF FUTURE USE)
PERMIT APPLICATION #2580-2)
SOUTHERN BLACK HILLS WATER)
SYSTEM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **25th** day of **January, 2007**, I mailed, via U. S. First Class Mail, postage paid, a true and correct copy of Applicant's Proposed Findings of Fact, Conclusions of Law and Final in the above-entitled matters to:

Michael Hickey Bangs McCullen Law Firm PO Box 2670 Rapid City SD 57709	Peter A. Fahmy Water Rights Branch, NPS 1201 Oak Ridge Drive Ft. Collins CO 80525	Charles W. Pettee, Chief Water Rights Branch, NPS 1201 Oak Ridge Drive Ft. Collins CO 80525
Shawn Fugier 27094 Beaver Valley Road Buffalo Gap SD 57722	Randy Scott, Manager Fall River Water User District 28298 Angostura Rd, Suite 2 Hot Springs, SD 57747	Randy Scroth PO Box 1 Buffalo Gap SD 57722
John Beard 3810 Beaver Creek Road Buffalo Gap SD 57722	Bob Morrison, Chairman Southern Black Hills Water System PO Box 124 Hermosa, SD 57744	Ken Royse Bartlett & West 3456 E. Century Avenue Bismarck ND 58503-0737
Francis E. Brink 1214 S Wells Street Aberdeen SD 57401-7351	Leo Holzbauer PO Box 877 Wagner, SD 57380-9681	Rodney Freeman, Jr. PO Box 176 Huron SD 57350-0176
Everett Hoyt 4422 Carriage Hills Drive Rapid City SD 57702-6874	Jim Hutmacher 802 E 7 th Street Oacoma SD 57365	Bernita Loucks 219 42 nd Street Rapid City SD 57702-0240
Jeff Halem, Asst Attorney General Office of the Attorney General Natural Resources Section Geo. S. Michelson Criminal Justice Center 1302 W Hwy 14, Suite 1 Pierre SD 57501	Garland Erbele, Chief Engineer Water Rights Program Joe Foss Bldg 523 W Capitol Pierre SD 57501-3181	Diane Best, Assistant Attorney General Office of the Attorney General Natural Resources Section Geo. S. Michelson Criminal Justice Center 1302 W Hwy 14, Suite 1 Pierre SD 57501


Talbot J. Wiczorek

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE	)	APPLICANT'S PROPOSED
PERMIT APPLICATION #2580-2,	)	FINDINGS OF FACT,
SOUTHERN BLACK HILLS WATER	)	CONCLUSIONS OF LAW AND
SYSTEM	)	FINAL DECISION

FINDINGS OF FACT

1. This is an Application of the Southern Black Hills Water System, Inc.'s (hereinafter "Southern Black Hills") for a Future Use Permit for 1,464 acre-feet of water per year from the Madison aquifer.
2. The Madison aquifer is a massive limestone aquifer that underlies most of the western United States and is reliably estimated that the aquifer contains at least 640 million acre-feet recoverable water in the state. The Madison aquifer is recharged through infiltration by precipitation and through losses to the aquifer.
3. The application for the Future Use Permit proposes to reserve water for future use from four sites, generally referred to as the Hermosa site, the Argyle site, Gobbler Pass Site, the Cascade Springs site.
4. The Madison aquifer is very prolific in this area. The Madison aquifer contains approximately 9.8 million acre-feet of recoverable water in storage in Fall River county and approximately 9.2 million acre-feet of recoverable water in storage in Custer County. The Madison aquifer constitutes a well recognized source of recoverable water.
5. The estimated recharge of the Madison formation in South Dakota has been reliably estimated to be between 140,000 to 400,000 acre-feet of water per year. A Black Hills

Hydrology study estimated the average annual recharge between 1931 and 1998 at approximately 137,000 acre-feet of water.

6. There are currently 132 water permits or water rights appropriating water out of the Madison aquifer in South Dakota. There are also three Future Use Permits out of the Madison aquifer. These three other Future Use Permits reserve approximately 6,108.8 acre-feet of water per year.

7. Under what would be deemed the worst case scenario, where pumping maximum volume or maximum diversion at a rate of 60% of the time, there are only 50,000 acre-feet per year from the Madison aquifer that would constitute appropriated water.

8. The Black Hills Hydrology study that was conducted between 1987 and 1996 put the actual number on withdrawals from the Madison aquifer at approximately 10,990 acre-feet per year.

9. Observation wells run by DENR that are in the Madison aquifer and observations at the cave in Wind Cave National Park show that the water level in the Madison can fluctuate from year-to-year based on recharge and weather conditions. The State's observation wells showed higher levels in 2000 than they did in the early 1990s. The observations in Wind Cave's water levels show higher levels of water today than they were in the early 1990s. Today's measurement of the cave lakes in Wind cave is higher than it was when the observation measurements began in the 1960s.

10. The change in the levels observed in the observation wells and the water levels in the Wind Cave are a result of climatic conditions over a large area and not from the pumping of water from the Madison aquifer. Levels are higher than the early 1990s even though the three-county project area have been and continue to be in a seven year drought.

11. SDCL § 46-2A-10 provides that future use permit can be approved if there is a reasonable probability there is unappropriated water available, the quantity of water reserved is needed for the entity, and that the proposed use is beneficial use and in the public interest.

12. Southern Black Hills has presented an analysis that shows that it needs 3,074 acre-feet per year to serve the regional water system. This application is for less than that amount.

13. The proposed Hermosa Site is four miles from the nearest Madison permit or water right. The proposed Gobbler Pass site is three miles. The proposed Argyle site is six miles and the proposed Cascade Springs site is seven miles from the nearest water right out of the Madison aquifer. It is unlikely that well interference would occur from pumping from these sites or have an adverse impact on water users existing wells. In addition, before the wells could be constructed, Southern Black Hills would have to seek a water permit in front of the Board.

14. The Department of Environmental and Natural Resources (DENR) Chief Engineer has recommended approval of the proposed Future Use Permit with the qualification that any future use would be reviewed after seven years. The Chief Engineer also recommended that at the time Southern Black Hills would apply for a permit to appropriate water at a site, that Southern Black Hills would be required to meet the statutory requirements of 46-5-38.1.

15. The purpose of this Application is to provide for future water supplies for a regional water system supplying a large area in the southern Black Hills of South Dakota. This area includes parts of Fall River County, Custer County, the Pennington County, the Cities of Custer, Hermosa, Edgemont, Hill City, Keystone, and Custer State Park, Mt. Rushmore National Monument and many other rural users.

16. Southern Black Hills is a South Dakota non-profit corporation founded for the purpose of bringing quality water to the southern Black Hills for domestic use to established residences, municipalities, ranches and for future residential and commercial development.

17. The region Southern Black Hills will service has a number of residential areas that have to haul in water for potable water and a number of the other existing residences on cisterns or that use shallow wells for general water use, but the water is of poor quality.

18. The City of Custer and other communities of the area have similar problems. While the City of Custer has been able to maintain a water supply, the future growth of the Custer area is constrained by the lack of availability and quality of water. The City of Custer needs a new reliable water source.

19. The proposed project will provide livestock and pasture water service in an area of the state currently in a long term drought condition and under severe economic hardship because of the lack of water to farms and ranches in the area.

20. Area wide water supply problems are evidenced by the numerous and continuous requests for funds to various state and federal programs for water projects. The state DENR has received recent water source request for funding from Edgemont, Custer, Hermosa, Hermosa Rural Water, Fall River Rural Water, Pringle and other communities in the area.

21. Unappropriated water is available from the Madison aquifer to supply this Application.

22. There were several intervenors that filed petitions to intervene concerning this permit and a companion permit that has been filed by Southern Black Hills for a Water Permit Application, Application No. 2585-2. Testimony on these intervenors was generally taken in the same proceeding where both permits were addressed.

23. One intervenor appeared and testified that it opposed the Future Water Permit. A representative of Fall River Water Users District, Mr. Craig DeBoer stated the position of the Fall River Water Users District was that no Future Use Permit should be granted until Fall River Water Users District had appropriated all the water it desires under its existing Future Use Permit from the Madison aquifer. Mr. DeBoer, Chairman of the Fall River Water Users District, could not give a date certain when Fall River Water Users District would build out its system and add wells that would use all its future appropriation.

24. Mr. DeBoer stated Fall River Water Users District did not have a desire to go into areas that Southern Black Hills will be serving. The Fall River Water Users District provided no evidence showing that granting of the Future Use Permit would be harmful to water resources in the state, the general public, any specific individual or its existing permits.

25. This Board has considered Fall River Water Users District's position. Under the Fall River Water Users District position, there could be no Future Use Permit or appropriations of water granted from the Madison aquifer until Fall River Water Users District had completely exhausted its Future Use Permit.

26. The Board finds that the Fall River Water Users' position is contrary to the public good and contrary to the beneficial use of water supplies.

27. The Board finds that Fall River Water Users' existing future water use permit does not require this Board to withhold granting future use permits until Fall River Water appropriates all its reserved water.

28. Unappropriated water is available from the Madison aquifer to supply this Application.

29. No witness or expert challenged the DENR expert opinion that there was sufficient water available from the Madison aquifer for this Application; and, in fact, witnesses on behalf of the intervenor testified also that they believed there was available water in the Madison.

30. This Future Use Application is for the beneficial use of reserving water for a rural water system, including the provision of drinking water. The reservation of water for future use would be beneficial to the appropriator in that it would allow for orderly development to suit the needs of the subscribers of the system. In particular, the reservation of a future use allows for planning and financing a water distribution system for the provision of an adequate and safe water supply. Further, this use would, if permitted, and constructed, provide for the maximum utilization of water. This Future Use Permit is consistent with the interest of the public and in the best utilization of water supplies.

31. There is a continuing and growing need for water in the southern hills. Development continues to push in this area and there is a high demand for quality water.

32. Currently, a number of the residential developments have come in the area. The southern hills has a high need for water.

33. The Southern Black Hills Water has already collected commitments for almost 500 lot hookups and has interests for more. The first phase of the Southern Black Hills System Water's build out already has approximately 250 hookups committed to hooking up and it is projected that another 200 would sign on once the project begins.

34. As the regional system planned and designed by Southern Black Hills continues to build out, there will be a need for the water being reserved pursuant to this permit.

35. There is a reasonable probability that unappropriated water is available for this appropriation.

36. The use of the water would be a beneficial use.

37. The Southern Black Hills Water's use of this water would be in the public interest and it would be in the public interest to reserve the amount pursuant to this permit for future use by Southern Black Hills Water.

38. The provision of this water by Southern Black Hills Water will be reasonable, useful and beneficial to Southern Black Hills Water and its members and is consistent with the interest of the public of this state and the best utilization of water supplies.

39. To the extent that any of these Findings of Fact are determined to be Conclusions of Law, they should be deemed Conclusions of Law.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.
2. There is unappropriated water available for the applicant's proposed use.
3. There is reasonable probability that 1,464 acre-feet of water per year will be needed to supply the areas to be served by Southern Black Hills.
4. The proposed use for domestic purposes, municipal purposes, residential purposes and agricultural purposes is a beneficial use.
5. The proposed use is in the public interest.
6. The proposed domestic, municipal, residential and agricultural and commercial uses are beneficial and they are reasonable and useful and beneficial to the Southern Black Hills, and are also consistent with the interests of the public of this state in the best utilization of water supplies. SDCL 46-1-6(3).

7. Artesian head pressure is not protected as a means of delivery by South Dakota law.

8. The South Dakota Water Management Board conducted a hearing on this application for future appropriation of water under the authority of SDCL Ch. 46-2 and Ch. 46-2A.

9. Southern Black Hills Water System is one of several water systems in the State of South Dakota that has been recognized by the legislature as a system necessary for the general welfare of the people of the state and is a preferred priority objective of the state. SDCL 46A-1-2.1

10. Southern Black Hills Water System is a non-profit rural water supply company as defined by SDCL 10-36A-1. SDCL 46-5-38.

11. Unappropriated water is available and the water to be withdrawn annually from the groundwater source does not exceed the quantity of the average estimated annual charge of the water. SDCL 46-5-38 and SDCL 46-6-3.1.

12. There exists a present and future need for the Southern Black Hills Water System. SDCL 46-5-38.

13. This Board has carefully considered the positions of the various parties in this matter. SDCL 46-1-4 requires that South Dakota water resources be put to beneficial use to the fullest extent of which they are capable. Further, the beneficial use criteria requires consideration of the best utilization of the water supply. SDCL 46-5-38 provides a nonprofit rural water supply company the ability to reserve and appropriate water for future need.

14. The future use permit applied for by the Southern Black Hills Water System should be granted by the Water Management Board.

15. Although this future use water permit should be granted as requested, the Board recognizes the that Beaver Spring, Cascade Springs and Hot Springs are in the general region Southern Black Hills water will serve. Due to the locations of these springs in the region, any application to appropriate water from this future use may require attention to the effect of the permit on those water sources.

16. To the extent that any of these Conclusions of Law should be deemed Findings of Fact, it should be considered a Finding of Fact.

DECISION

The Application for the Future Water Permit 2580-2 submitted by Southern Black Hills is approved, subject to the following qualifications:

1. That the permit reservation be restricted to 1,474 acre-feet of water annually from the Madison aquifer.

2. That the permit be subject to review by the Water Management Board upon the expiration of seven (7) years and that the permit be subject to cancellation if the Water Management Board determines during the review that the holder cannot any longer demonstrate a reasonable need for the permit.

3. At such a time as Southern Black Hills makes definite plans to construct works and put the water reserve by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1.

BY THE BOARD:

DATED: _____

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION #2585-2)
and)
IN THE MATTER OF FUTURE USE)
PERMIT APPLICATION #2580-2)
SOUTHERN BLACK HILLS)
WATER SYSTEM)

CERTIFICATE
OF
SERVICE

The undersigned hereby certifies that a true and correct
copy of DENR Response to Proposed Findings of Fact, Conclusions
of Law and Final Decision In the Matter of Water Permit
Application #2585-2, and In the Matter of Future Use Permit
Application #2580-2 Southern Black Hills Water System, was
served by United States mail, first class, postage prepaid, upon
the following this 16th day of February, 2007.

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cos DB 02 15 07 Application #2585-2 (Southern Black Hills) kak

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— LAW FIRM —

Reply to Rapid City Office

Writer's e-mail address: mhhickey@bangsmccullen.com

February 23, 2007

RECEIVED

FEB 26

WATER RIGHTS
PROGRAM

Mr. Garland Erbele, Chief Engineer
 Department of Environment and National Resources
 Water Rights Program
 Joe Foss Building
 523 East Capitol
 Pierre, SD 57501-3182

Re: *In the Matter of the Applications of Southern Black Hills
 Water Systems No. 2580-2 and 2585-2*

Dear Mr. Erbele:

Pursuant to your Notice dated December 5, 2006, please find enclosed the following documents filed on behalf of Fall River Water Users District:

1. Fall River Water Users District Proposed Findings of Fact, Conclusions of Law and Final Decision; and
2. Fall River Water Users District's Objection to Applicant's Proposed Findings of Fact, Conclusions of Law and Final Decision.

By copy of this letter, copies have been sent to all Board members and parties of record, which is intended as service by mail upon them.

If you have any questions or comments, please advise. Thank you.

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Sincerely,

BANG, McCULLEN, BUTLER,
 FOYE & SIMMONS, L.L.P.

Michael M. Hickey

mmh:bah

Enclosures

cc/encl: Mr. Talbot J. Wiczorek; Mr. Peter A. Fahmy; Mr. Charles W. Pettee; Shawn Fugier; Randy Scott; Randy Scroth; John Beard; Bob Morrison; Ken Royse; Francis Brink; Leo Holzbauer; Rodney Freeman, Jr.; Everett Hoyt; Jim Hutmacher; Bernita Loucks; Jeff Halem; Diane Best

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	FALL RIVER WATER USERS
APPLICATIONS OF FUTURE USE	)	DISTRICT'S OBJECTION TO
PERMIT APPLICATION NO. 2580-2	)	APPLICANT'S PROPOSED FINDINGS
SOUTHERN BLACK HILLS	)	OF FACT, CONCLUSIONS OF LAW AND
WATER SYSTEM	)	FINAL DECISION

COMES NOW, Fall River Water Users District, and hereby makes its objections to the Findings of Fact, Conclusions of Law and Final Decision proposed by the Applicant, Southern Black Hills Water System, Inc.

FINDINGS OF FACT

1. Fall River Water Users District hereby objects to Findings of Fact 1 through 39 on the grounds and for the reasons that such proposed findings are contrary to the evidence introduced at the time of the hearing and the same are clearly erroneous.
2. Finding of Fact 2 is misleading and is clearly erroneous in that it overstates the amount of water available for appropriation in Fall River and fails to consider the existence of sub areas within the aquifer that limits and restricts the amount of available water.
3. Finding of Fact 4 is clearly erroneous in that it fails to consider the existence of sub areas within the aquifer that limits and restricts the amount of available water.
4. Finding of Fact 5 is clearly erroneous as the same is sheer conjectural and speculation and not relevant to the specific application under consideration in the present case.
5. Finding of Fact 13 is clearly erroneous and is not supported by any evidence in this record.
6. Finding of Fact 23 is clearly erroneous and is not supported by the record herein.
7. Finding of Fact 26 is clearly erroneous and is not supported by the record herein.

8. Finding of Fact 27 is clearly erroneous and is not supported by the record herein.
9. Finding of Fact 29 is clearly erroneous and is not supported by the record herein.
10. Finding of Fact 33 is clearly erroneous and not supported by the evidence in this record. Exhibit 3 contains the names of approximately 471 potential customers who paid between \$50 and \$150 “good intention fees”. No commitments have been made by any party to either supply or purchase water. In point of fact, Southern Black Hills Water System, Inc. has no customers and has no contracts for the supply of water.
11. Finding of Fact 34 is clearly erroneous and is not supported by the record herein.
12. Finding of Fact 37 is clearly erroneous and is not supported by the record herein.
13. Conclusion of Law 3 is in violation of statutory provisions and affected by other error of law.
14. Conclusion of Law 5 is contrary to the evidence and in violation of statutory provisions and affected by other error of law.
15. As set forth in Conclusion of Law 5, this proposed use is not in the public interest and the Applicant has failed to meet its burden of proof herein.
16. Conclusion of Law 7 is contrary to law, is in violation of statutory provisions and is otherwise affected by error of law.
17. The reference to SDCL 46-1-4 has no application in the present proceeding, as there is no evidence in this record that any water from any flow of water, natural stream or watercourse has been wasted or not put to reasonable and beneficial use.
18. Conclusion of Law 14 is contrary to the evidence and law herein, is in violation of statutory provisions and is otherwise affected by error of law.

19. Conclusion of Law 15 is contrary to the evidence and law herein as the proposed use is not in public interest and impairs existing rights.

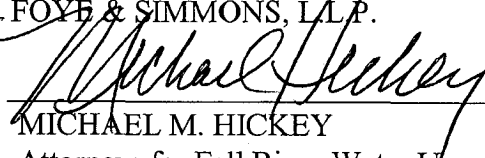
20. Objects to Final Decision as proposed by the Applicant in it fails to provide for and require the protection of flows originating at Beaver Creek Springs, Cascade Springs and Hot Springs and related steams.

Dated this 23rd day of February, 2007.

Respectfully submitted,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:



MICHAEL M. HICKEY

Attorneys for Fall River Water Users District
333 West Blvd., Suite 400; P.O. Box 2670
Rapid City, SD 57709-2670
Phone: (605) 343-1040

CERTIFICATE OF SERVICE

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

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Diane Best, Asst. Attorney General
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1302 W. Hwy 14, Suite 1
Pierre, SD 57501

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

Dated this 23rd day of February, 2007.


MICHAEL M. HICKEY

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE	)	NATIONAL PARK SERVICE'S
PERMIT APPLICATION #2580-2,	)	RESPONSE TO APPLICANT'S
SOUTHERN BLACK HILLS WATER	)	PROPOSED FINDINGS OF FACT,
SYSTEM	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION

COMES NOW, the National Park Service (NPS), Water Resources Division, on behalf of Wind Cave National Park, and makes its response to the Applicant's Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above-referenced matter.

FINDINGS OF FACT

The NPS urges adoption of the Applicant's proposal with the following changes:

1. Finding of Fact 4. The Chief Engineer's Report for this application states these numbers are estimates. Please change the statement to begin "It is estimated that the Madison aquifer..."

2. Finding of Fact 6. The Chief Engineer's Report for this application states there are 142 permits/rights. Please use the figure from the Chief Engineer's report.

3. Finding of Fact 8. Contrary to the proposed finding and according to Carter et al. (2001), average annual water use in the Madison aquifer is 10,990 thousand gallons per day, which is equivalent to about 12,323 acre-feet per year. Please use the correct value.

4. Finding of Fact 9. The text states "Today's measurement of the cave lakes in Wind cave is higher than it was when the observation measurements began in the 1960s." Wind Cave water level measurements by the NPS that refer to a datum began in

1986. There are some qualitative measurements at earlier times but these can not be referenced to any datum. Please state that observations begun began in the "mid 1980s."

5. Finding of Fact 10. The high water levels during the 1990s was likely due to an increase in precipitation during that period. Since 2000, the water levels in the Wind Cave lakes have dropped as much as 7 feet and continue to do so. Please delete the implied correlation between a rise in lake levels and drought.

6. Finding of Fact 15 implies that Mt. Rushmore National Monument will be supplied water by the Southern Black Hills Water System. The understanding of the NPS is that there is currently no agreement or any indication that Mt. Rushmore National Monument will become a user of water from the Southern Black Hills Water System at this or any time in the future. Please remove Mt. Rushmore from this finding.

7. Finding of Fact 28 is a duplicate of Finding No. 21. Please delete one of these.

8. Finding of Fact 29. Contrary to the proposed finding, the NPS challenged the opinion on water availability and testified that water proposed to be withdrawn from the Madison aquifer by this application will eventually result in a reduction in aquifer storage and discharge equal to that withdrawn from someplace else in the aquifer. Please delete this statement.

9. Finding of Fact 35. This finding is a small variation of findings 21 and 28. Please include only one of these.

10. Conclusion of Law 6. Please combine conclusions 4, 5 and 6 to avoid redundant findings.

11. Conclusion of Law 11. This Conclusion should be changed to "The Board concludes, based on the Chief Engineer's report, that there is unappropriated water available for withdrawal from the Madison Aquifer."

12. Conclusion of Law 14. This Conclusion should be deleted.

In addition to the above comments on the draft Findings of Fact, Conclusions of Law, and Final Decision, the NPS submits these additional items to be included in the Findings of Fact section. (Note: Page and line numbers refer to the locations of the statements in the official transcripts of the November 30, 2006 Hearing on this matter.)

13. Wind Cave National Park (Wind Cave NP) was established on January 9, 1913 in order to, among other things, protect the cave system. (Page 206, lines 5 - 8). Wind Cave NP is to be managed to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner as will leave them unimpaired for the enjoyment of future generations (Page 208, lines 20 - 24).

14. Water was crucial to formation of Wind Cave and remains so. The cave was formed 50-60 million years ago when the water table was higher than the cave. The water level started draining 470,000 years ago and has been draining at a rate of 1.3 ft/1,000 years, eventually leaving behind several dozen lake sites within Wind Cave. (Page 208, lines 10 - 14 and Page 235, lines 1 and 2). At this rate, it would take 15,000 years for the lakes to completely disappear. (Page 228, lines 1-11; Page. 229, lines 8-14). Water continues to support the caves' environmental, mineralogical, or biological systems (Page 229, lines 15-23). Accelerated drainage of the lakes due to pumping will

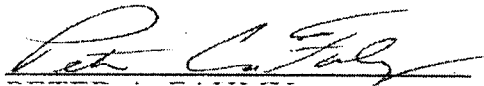
likely impair these systems, and lead to at least a partial defeat of the purposes for which Wind Cave was established.

15. Wind Cave uses a well completed in the Madison, Englewood and Deadwood formations to support park purposes. (Page 245, lines 5 - 7). This use is permitted by South Dakota Water Right License 419-2 for 0.15 cfs with a priority date of December 29, 1955 (Page 244, lines 10 - 16). Wind Cave NP is also entitled to Federal reserved water rights to support the purposes for which the park was created. The right is presently inchoate and unquantified and has a priority date of January 9, 1903 (Page 246, lines 6 - 10).

16. Analyses presented by NPS showed that it is possible for the proposed wells to lower water levels in Wind Cave, and to capture artesian springflow for which water rights have been appropriated, at pumping rates far less than the rate of natural recharge to the Madison aquifer. [Pages 181-184; Written Testimony of Cutillo, p 3]

Dated this 22nd day of February, 2007.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Peter A. Fahmy", is written over a horizontal line.

Peter A. Fahmy
Water Rights Attorney
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RECEIVED
FEB 26 2007
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION #2585-2)
and)
IN THE MATTER OF FUTURE USE)
PERMIT APPLICATION #2580-2)
SOUTHERN BLACK HILLS)
WATER SYSTEM)

CERTIFICATE
OF
SERVICE

The undersigned hereby certifies that a true and correct copy of NPS Response to Proposed Findings of Fact, Conclusions of Law and Final Decisions In the Matter of Water Permit Application #2585-2, and In the Matter of Future Use Permit Application #2580-2 Southern Black Hills Water System, was served by United States mail, first class, postage prepaid, upon the following this 22nd day of February, 2007.

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Bartlett & West
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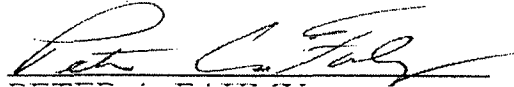
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By Hand Delivery:

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NPS/Water Rights Branch
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A handwritten signature in black ink, appearing to read "Peter Fahmy", written over a horizontal line.

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STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE) DENR RESPONSE TO APPLICANT'S
PERMIT APPLICATION #2580-2,) PROPOSED FINDINGS OF FACT
SOUTHERN BLACK HILLS) CONCLUSIONS OF LAW
WATER SYSTEM) AND FINAL DECISION

COMES NOW, the South Dakota Department of Environment and Natural Resources, Water Rights Program (DENR) and makes its response to the Applicant's Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above-referenced matter.

FINDINGS OF FACT

The DENR urges adoption of the proposed Finding of Fact, Conclusions of Law, and Final Decision with the following exceptions:

1. Proposed Finding of Fact 2 addresses the sources of recharge to the Madison aquifer. The DENR proposes that the last line be revised to include the word "streamflow" between the words "through" and "losses to the aquifer." This proposed change is consistent with evidence presented at hearing.

2. Finding of Fact 6 addresses the number of currently existing water permits from the Madison aquifer in South Dakota. Rather than the number given, the Finding of Fact should reflect that there are currently 142 water permits or water rights

appropriating water from the Madison aquifer. This factual matter is undisputed.

3. Finding of Fact 7 summarizes expert testimony offered at hearing regarding the estimated withdrawals of water on an annual basis from the Madison aquifer. The DENR proposes that the Finding be changed as follows:

Under what would be deemed the worst case scenario, where pumping maximum volume or maximum diversion at a rate of 60% of the time, there are ~~only~~ 50,000 acre-feet per year from the Madison aquifer that would constitute ~~appropriated water~~ estimated withdrawals.

4. Finding of Fact 8 characterizes the Black Hills Hydrology Study. Although the Finding of Fact is basically correct, the Finding of Fact should reflect that the calculated volume of withdrawals from the Madison aquifer in that study reflected the time period from 1987 through 1996. Accordingly, the DENR would propose the following change to this Finding of Fact:

The Black Hills Hydrology Study ~~that was conducted~~ estimated that between 1987 and 1986, ~~put~~ the actual number on withdrawals from the Madison aquifer ~~at~~ was approximately 10,990 acre-feet per year.

5. Finding of Fact 18 addresses the continued availability of water for the Custer area. The DENR asks that the Finding of Fact reflect that the testimony offered concerning the city of Custer was offered by the City of Custer.

6. Finding of Fact 23 addresses the Fall River Water Users District. The second sentence of this proposed Finding indicates that the Fall River Water Users District is taking the position that Southern Hills should not receive a permit until such time as Fall River Water Users Districts had appropriated all the water it desires under the future use permit. The testimony at hearing by Mr. DeBoer appeared, however, to go even further. At hearing, the Fall River Water Users District took the position that no future water use permit should be granted to Southern Hills until Fall River Water Users District had not only sought and received permits under the Fall River Future Use permit, but also put that water to beneficial use under its existing future use permit. The DENR would propose that this finding of fact be changed as follows:

One intervenor appeared and testified that it opposed the Future Water Permit. A representative of Fall River Water Users District, Mr. Craig DeBoer stated the position of the Fall River Water Users District was that no Future Use Permit should be granted until Fall River Water Users District had fully appropriated and put to beneficial use all the water it desires under its existing Future Use Permit from the Madison aquifer. Mr. DeBoer, Chairman of the Fall River Water

Users District, could not give a date certain when Fall River Water Users District water would build out its system and add wells that would use all its future ~~appropriation~~ use reservation.

7. Finding of Fact 25 refers to Fall River Water Users District's development of its future use permit. Rather than the word "exhausted" in the last line, the DENR asserts that the more appropriate word in this context would be "developed."

8. Finding of Fact 27 also addresses Fall River Water Users Future Use Permit. Similar to the above recommendation, the DENR would propose as follows:

The Board finds that Fall River Water Users existing Future Use Permit does not require this Board to withhold granting future use permits until Fall River Water appropriates and puts to beneficial use all its reserved water.

9. Findings of Fact 28 and 35 are redundant of Finding of Fact 21.

10. Finding of Fact 38 refers, in the first sentence, to the "provision" of water. The DENR asserts that the word "appropriation" would be more proper in this context.

11. Conclusions of Law 4 and 6 list the proposed uses. In addition to the uses given, these conclusions should also reflect that one of the proposed uses is rural water system use.

12. For the Final Decision, item 3, the DENR recommends a revision. This proposed revision is consistent with the Board's

earlier determination in granting a future use permit to Fall
River Water Users District and is also consistent with the Chief
Engineer's recommendation in this proceeding:

At such time as Southern Black Hills makes definite
plans to construct works and put water the reserved by
this permit to beneficial use, specific application
for all or any part of the reserved water must be
submitted and approved prior to construction
facilities pursuant to SDCL 46-5-38.1 with particular
attention given to flows at Beaver Springs, Cascade
Springs and Hot Springs.

Dated this 16th day of February, 2007.

Respectfully submitted,

Diane Best

Diane Best
Assistant Attorney General
Office of Attorney General
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STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE	)	WATER MANAGEMENT
PERMIT APPLICATION #2580-2,	)	BOARD RULINGS ON APPLICANT'S
SOUTHERN BLACK HILLS WATER	)	PROPOSED FINDINGS OF FACT,
SYSTEM	)	CONCLUSIONS OF LAW AND FINAL
	)	DECISION; DENR AND NPS'S
	)	RESPONSES TO APPLICANT'S
	)	PROPOSED FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND FINAL
	)	DECISION; AND TROUT HAVEN RANCH
	)	AND FALL RIVER WATER USER
	)	DISTRICT'S OBJECTIONS TO
	)	APPLICANT'S PROPOSED FINDINGS
	)	OF FACT, CONCLUSIONS OF LAW
	)	AND FINAL DECISION

Pursuant to the directions of the Water Management Board, counsel for Applicant timely submitted Applicant's Proposed Findings of Fact, Conclusions of Law and Final Decision. Subsequently, counsel for the Department of Environment and Natural Resources (DENR) submitted DENR's Response to Applicant's Proposed Findings of Fact, Conclusions of Law and Final Decision; counsel or Intervenor National Park Service (NPS) submitted National Park Service's Response to Applicant's Proposed Findings of Fact, Conclusions of Law and Final Decision; counsel for Intervenor Trout Haven Ranch submitted Trout Haven Ranch's Objections to Applicant's Proposed Findings of Fact, Conclusions of Law and Final Decision; and counsel for Intervenor Fall River Water Users District submitted Fall River Water Users District's Objections to Applicant's Proposed

Findings of Fact, Conclusions of Law and Final Decision. The Board, upon review of the parties submissions and the administrative record, and having orally entered its decision, hereby enters the following rulings:

A. Applicant's proposed Finding of Fact Nos. 1, 3, 5, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 24, 26, 30, 31, 32, 33, 34, 36, 37, and 39 are hereby accepted by the Board.

B. Applicant's proposed Finding of Fact No. 2 is accepted by the Board as modified below to more accurately reflect the administrative record:

2. The Madison aquifer is a massive limestone aquifer that underlies much of the western United States and it is reliably estimated that this aquifer contains at least 640 million acre-feet of recoverable water in the state. The Madison aquifer is recharged through infiltration by precipitation and through stream flow losses to the aquifer.

C. Applicant's proposed Finding of Fact No.4 is accepted by the Board as modified below to more accurately reflect the administrative record:

4. The Madison aquifer is very prolific in this area. It is estimated that the Madison aquifer contains approximately 9.8 million acre-feet of recoverable water in storage in Fall River County and

approximately 9.2 million acre-feet of recoverable water in storage in Custer County. The Madison aquifer constitutes a well recognized source of recoverable water.

D. Applicant's proposed Finding of Fact No. 6 is accepted by the Board as modified below to more accurately reflect the administrative record:

6. There are currently 142 water permits or water rights appropriating water out of the Madison aquifer in South Dakota. There are also three future use permits out of the Madison aquifer. These three existing future use permits reserve approximately 6,108.8 acre-feet of water per year.

E. Applicant's proposed Finding of Fact No. 7 is accepted by the Board as modified below to more accurately reflect the administrative record:

7. Under what would be deemed the worst case scenario, where pumping maximum volume or maximum diversion at a rate of 60% of the time, the estimated withdrawals from the Madison aquifer would be 50,000 acre-feet per year.

F. Applicant's proposed Finding of Fact No. 8 is accepted by the Board as modified below to more accurately reflect the administrative record:

8. The Black Hills Hydrology study estimated that that between 1987 and 1996 the withdrawals from the Madison aquifer were approximately 12,310 acre-feet per year.

G. Applicant's proposed Finding of Fact No. 9 is accepted by the Board as modified below to more accurately reflect the administrative record:

9. Observation wells run by DENR that are in the Madison aquifer and observations at Wind Cave in Wind Cave National Park show that the water level in the Madison aquifer can fluctuate from year-to-year based on recharge and weather conditions. The State's observation wells showed higher levels in 2000 than they did in the early 1990s. The observations of Wind Cave's water levels show higher levels of water today than the levels in the early 1990s. Today's measurement of water level in the cave pools in Wind Cave is higher than the level when the observation measurements began in the mid-1980s.

H. Applicant's proposed Finding of Fact No. 10 is accepted by the Board as modified below. The deleted portion of the Proposed Finding of Fact is unnecessary for the Board's decision and may have a tendency to mislead:

10. The change in the levels observed in the observation wells and the water levels in Wind Cave are a result of climatic conditions over a large area and not from the pumping of water from the Madison aquifer.

I. Applicant's proposed Finding of Fact No. 15 is accepted by the Board as modified by deleting "Mt. Rushmore National Monument" in the second sentence. There was no evidence submitted by Intervenor NPS of discussions or commitments that Mount Rushmore National Monument is to be supplied with water by Applicant.

J. Applicant's proposed Finding of Fact No. 18 is accepted by the Board as modified below to more accurately reflect the administrative record:

18. The City of Custer and other communities of the area have similar problems. Custer city officials stated that while the City of Custer has been able to maintain a water supply, the future growth of the Custer area is constrained by the lack of availability and quality of water. The City of Custer needs a new reliable water source.

K. Applicant's proposed Finding of Fact No. 23 is accepted by the Board as modified below to more accurately reflect the administrative record:

23. One intervenor appeared and testified in opposition to the future use permit application. The Chairman of Fall River Water Users District stated that the position of Fall River Water Users District was that no future use permit should be granted to Southern Black Hills in the areas applied for until Fall River Water Users District had fully appropriated and put to beneficial use all the water it desires under its existing future use permit from the Madison aquifer. The Chairman could not give a date certain when Fall River Water Users District would build out its system and add wells that would use all of its future use reservation.

L. Applicant's proposed Finding of Fact No. 25 is accepted by the Board as modified below to more accurately reflect the administrative record and Board's decision:

25. The Board has considered Fall River Water Users District's position. Under this position, the Board would be unable to grant a future use permit or water permit from the Madison aquifer in the general vicinity of Fall River Water Users District's proposed future use well sites until the District had completely developed its future use permit.

M. Applicant's proposed Finding of Fact No. 27 is accepted by the Board as modified below to more accurately reflect the Board's decision:

27. The Board finds that Fall River Water Users District's existing future use permit does not require this Board to withhold the granting of other future use permits until the Fall River Water Users District appropriates and puts to beneficial use all of its reserved water.

N. Applicant's proposed Finding of Fact Nos. 28 and 35 are refused by the Board as being duplicative of proposed Finding of Fact No. 21 that was accepted.

O. Applicant's proposed Finding of Fact No. 29 is accepted by the Board as modified below to more accurately reflect the administrative record:

29. No witness or expert provided evidence or expert opinion that there was not sufficient unappropriated water from the Madison aquifer so as to preclude granting Southern Black Hills Future Use Permit Application.

P. Applicant's proposed Finding of Fact No. 38 is accepted by the Board as modified below to more accurately reflect the Board's decision:

38. The appropriation of this water by Southern Black Hills will be reasonable, useful, and beneficial to Southern Black Hills and its members, and is consistent with the interest of the public of this State and the best utilization of water supplies.

Q. That Applicant's proposed Conclusions of Law Nos. 1, 2, 3, 5, 7, 9, 10, 11, 12, 13 and 16.

R. Applicant's Proposed Conclusion of Law No. 4 is accepted by the Board as modified below to be consistent with the administrative record and its decision:

4. Southern Black Hills proposed use of the water; for domestic, municipal, residential, rural water system and agricultural purposes, constitutes a beneficial use of the water.

S. Applicant's proposed Conclusion of Law No. 6 is accepted by the Board as modified below to more accurately reflect the administrative record:

6. The proposed domestic, municipal, residential, rural water system, agricultural and commercial uses are beneficial and they are reasonable and useful and beneficial to the Southern Black Hills, and are also consistent with the interests of the public of this State in the best utilization of water supplies. SDCL 46-1-6(3).

T. Applicant's proposed Conclusion of Law No. 8 is accepted by the Board as modified below to more accurately reflect the administrative record:

8. The South Dakota Water Management Board conducted a hearing on Southern Black Hills Future Use Permit Application under the authority of SDCL Ch. 46-2 and Ch. 46-2A and ARSD Ch. 74:02:01.

U. Applicant's proposed Conclusions of Law 14 and 15 are accepted by the Board as combined and modified below to more accurately reflect the administrative record and Board's decision:

14. Based upon the foregoing Findings of Fact and Conclusions of Law, Southern Black Hills Future Use Permit Application No. 2580-2 should be granted subject to the qualifications recommended by the State Engineer. In particular the Board recognizes that Beaver Creek Springs, Cascade Springs, and Hot Springs, and the cave pools in Wind Cave National Park are in the general region of Southern Black Hills proposed well sites and that due to the location of these springs and cave pools any application to appropriate water from the granted future use permit will require particular attention given to the affect

of putting the water reserved to beneficial use may have on those water sources.

V. That Applicant's proposed Final Decision is accepted by the Board with modification to qualification No. 3 as provided below to more accurately reflect the Board's oral decision:

3. At such a time as Southern Black Hills makes definite plans to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserve water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows at Beaver Creek Springs, Cascade Springs, and Hot Springs, and water levels in the cave pools in Wind Cave National Park.

W. DENR's Response Nos. 1 to 10 proposing modifications to Applicant's proposed Findings of Fact are substantively accepted as set forth in the Board's rulings on the applicable Applicant's proposed Findings as set forth above.

X. DENR's Response No. 11 proposing modifications to Applicant's Conclusions of Law Nos. 4 and 6 are substantively accepted as set forth in the Board's ruling on the applicable Applicant's proposed Conclusion as set forth above.

Y. DENR's Response No. 12 proposing modification to Applicant's proposed Final Decision qualification "3" is accepted by the Board as set forth in its above stated ruling.

Z. National Park Service's Response Nos. 1, 2, 3, 4, 5, 6, 7 and 9 proposing modifications to Applicant's proposed Findings of Facts are substantively accepted as set forth in the Board's rulings on the applicable proposed Finding as set forth above.

AA. National Park Service's Response No. 8 proposing the deletion of Applicant's proposed Finding of Fact No. 29 is refused. The Board has modified Finding of Fact No. 29 to be consistent with the record as it relates to the Future Use Permit Application. No NPS expert or other witness testified that there would not be sufficient unappropriated water available from the Madison formation to satisfy the amount of water requested for reserve.

BB. National Park Service's Response No. 10 proposing modifications to Applicant's proposed Conclusions of Law Nos. 4, 5, and 6 is refused. Combination of these Conclusions is unneeded.

CC. National Park Service's Response No. 11 proposing modification to Applicant's proposed Conclusion of Law No. 11 is refused. The Board's conclusion of law regarding unappropriated

water available for withdrawal from the Madison aquifer is based upon the Board's review of the entire administrative record.

DD. National Park Service's Response No. 12 proposing deletion of Conclusion of Law No. 14 is refused as the Board has restated and accepted the Conclusion as set forth in its ruling above.

EE. National Park Service's Response Nos. 12, 13, 14, 15, and 16 proposing various additional findings are refused by the Board. The proposed additional Findings are not necessary for the Board to reach any of its Conclusions of Law nor its Final Decision to grant Applicant's requested Future Use Permit.

FF. Trout Haven Ranch's and Fall River Water Users District's Objections Nos. 1 through 12 are refused. The Applicant's proposed Findings of Fact being objected to are consistent with the evidence submitted, said Findings are not clearly erroneous, misleading, nor sheer conjecture. Further, to the extent the objections may have merit, such objections have been rectified by the Board's modifications of Applicant's Findings as set forth in its rulings above.

GG. Trout Haven Ranch's and Fall River Water User District's Objections Nos. 13, 14, 15, 16, 17, 18 and 19 are refused. The proposed Conclusions of Law being objected to are supported by the Board's accepted Findings of Fact, the evidence submitted at the hearing, and are consistent with State law.

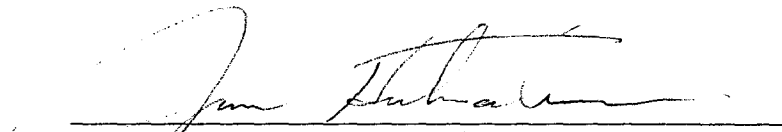
Applicant has satisfied its burden of meeting the criteria for granting the Future Use Permit Application in this matter.

HH. Trout Haven Ranch's and Fall River Water User District's Objection No. 20 is accepted by the Board to the extent that the Board has modified Applicant's proposed Final Decision in its rulings above.

The Board attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Decision consistent with above rulings to be executed by the Chairman of the Board or Board designee without further motion or hearing.

Dated this 19 day of March, 2007.

SOUTH DAKOTA WATER MANAGEMENT BOARD


James Hutmacher, Chairman

j-pld_jph(js)

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED
MAR 14 2007
WATER RIGHTS
PROGRAM

IN THE MATTER OF FUTURE USE	)	FINDINGS OF FACT
PERMIT APPLICATION #2580-2,	)	CONCLUSIONS OF LAW,
SOUTHERN BLACK HILLS WATER	)	AND
SYSTEM	)	FINAL DECISION

FINDINGS OF FACT

1. This is an Application of the Southern Black Hills Water System, Inc.'s (hereinafter "Southern Black Hills") for a Future Use Permit for 1,474 acre-feet of water per year from the Madison aquifer.

2. The Madison aquifer is a massive limestone aquifer that underlies much of the western United States and it is reliably estimated that this aquifer contains at least 640 million acre-feet of recoverable water in the state. The Madison aquifer is recharged through infiltration by precipitation and through stream flow losses to the aquifer.

3. The application for the Future Use Permit proposes to reserve water for future use from four sites, generally referred to as the Hermosa site, the Argyle site, Gobbler Pass site, the Cascade Springs site.

4. The Madison aquifer is very prolific in this area. It is estimated that the Madison aquifer contains approximately 9.8 million acre-feet of recoverable water in storage in Fall River County and approximately 9.2 million acre-feet of recoverable

water in storage in Custer County. The Madison aquifer constitutes a well recognized source of recoverable water.

5. The estimated recharge of the Madison formation in South Dakota has been reliably estimated to be between 140,000 to 400,000 acre-feet of water per year. A Black Hills Hydrology study estimated the average annual recharge between 1931 and 1998 at approximately 137,000 acre-feet of water.

6. There are currently 142 water permits or water rights appropriating water out of the Madison aquifer in South Dakota. There are also three future use permits out of the Madison aquifer. These three existing future use permits reserve approximately 6,108.8 acre-feet of water per year.

7. Under what would be deemed the worst case scenario, where pumping maximum volume or maximum diversion at a rate of 60% of the time, the estimated withdrawals from the Madison aquifer would be 50,000 acre-feet per year.

8. The Black Hills Hydrology study estimated that that between 1987 and 1996 the withdrawals from the Madison aquifer were approximately 12,310 acre-feet per year.

9. Observation wells run by DENR that are in the Madison aquifer and observations at Wind Cave in Wind Cave National Park show that the water level in the Madison aquifer can fluctuate from year-to-year based on recharge and weather conditions. The State's observation wells showed higher levels in 2000 than they

did in the early 1990s. The observations of Wind Cave's water levels show higher levels of water today than the levels in the early 1990s. Today's measurement of water level in the cave pools in Wind Cave is higher than the level when the observation measurements began in the mid-1980s.

10. The change in the levels observed in the observation wells and the water levels in Wind Cave are a result of climatic conditions over a large area and not from the pumping of water from the Madison aquifer.

11. SDCL 46-2A-10 provides that future use permit can be approved if there is a reasonable probability there is unappropriated water available, the quantity of water reserved is needed for the entity, and that the proposed use is beneficial use and in the public interest.

12. Southern Black Hills has presented an analysis that shows that it needs 3,074 acre-feet per year to serve the regional water system. This application is for less than that amount.

13. The proposed Hermosa site is four miles from the nearest Madison permit or water right. The proposed Gobbler Pass site is three miles. The proposed Argyle site is six miles and the proposed Cascade Springs site is seven miles from the nearest water right out of the Madison aquifer. It is unlikely that well interference would occur from pumping from these sites

or have an adverse impact on water users existing wells. In addition, before the wells could be constructed, Southern Black Hills would have to seek a water permit in front of the Board.

14. The Department of Environmental and Natural Resources (DENR) Chief Engineer has recommended approval of the proposed Future Use Permit with the qualification that any future use would be reviewed after seven years. The Chief Engineer also recommended that at the time Southern Black Hills would apply for a permit to appropriate water at a site, that Southern Black Hills would be required to meet the statutory requirements of 46-5-38.1.

15. The purpose of this Application is to provide for future water supplies for a regional water system supplying a large area in the southern Black Hills of South Dakota. This area includes parts of Fall River County, Custer County, the Pennington County, the cities of Custer, Hermosa, Edgemont, Hill City, Keystone, and Custer State Park, and many other rural users.

16. Southern Black Hills is a South Dakota non-profit corporation founded for the purpose of bringing quality water to the southern Black Hills for domestic use to established residences, municipalities, ranches and for future residential and commercial development.

17. The region Southern Black Hills will service has a number of residential areas that have to haul in water for potable water and a number of the other existing residences on cisterns or that use shallow wells for general water use, but the water is of poor quality.

18. The City of Custer and other communities of the area have similar problems. Custer city officials stated that while the City of Custer has been able to maintain a water supply, the future growth of the Custer area is constrained by the lack of availability and quality of water. The City of Custer needs a new reliable water source.

19. The proposed project will provide livestock and pasture water service in an area of the state currently in a long term drought condition and under severe economic hardship because of the lack of water to farms and ranches in the area.

20. Area wide water supply problems are evidenced by the numerous and continuous requests for funds to various state and federal programs for water projects. The state DENR has received recent water source request for funding from Edgemont, Custer, Hermosa, Hermosa Rural Water, Fall River Rural Water, Pringle and other communities in the area.

21. Unappropriated water is available from the Madison aquifer to supply this Application.

22. There were several intervenors that filed petitions to intervene concerning this permit and a companion permit that has been filed by Southern Black Hills for a Water Permit Application, Application No. 2585-2. Testimony on these intervenors was generally taken in the same proceeding where both permits were addressed.

23. One intervenor appeared and testified in opposition to the future use permit application. The Chairman of Fall River Water Users District stated that the position of Fall River Water Users District was that no future use permit should be granted to Southern Black Hills in the areas applied for until Fall River Water Users District had fully appropriated and put to beneficial use all the water it desires under its existing future use permit from the Madison aquifer. The Chairman could not give a date certain when Fall River Water Users District would build out its system and add wells that would use all of its future use reservation.

24. Mr. DeBoer stated Fall River Water Users District did not have a desire to go into areas that Southern Black Hills will be serving. The Fall River Water Users District provided no evidence showing that granting of the Future Use Permit would be harmful to water resources in the state, the general public, any specific individual or its existing permits.

25. The Board has considered Fall River Water Users District's position. Under this position, the Board would be unable to grant a future use permit or water permit from the Madison aquifer in the general vicinity of Fall River Water Users District's proposed future use well sites until the District had completely developed its future use permit.

26. The Board finds that the Fall River Water Users' position is contrary to the public good and contrary to the beneficial use of water supplies.

27. The Board finds that Fall River Water Users District's existing future use permit does not require this Board to withhold the granting of other future use permits until the Fall River Water Users District appropriates and puts to beneficial use all of its reserved water.

28. No witness or expert provided evidence or expert opinion that there was not sufficient unappropriated water from the Madison aquifer so as to preclude granting Southern Black Hills' Future Use Permit Application.

29. This Future Use Application is for the beneficial use of reserving water for a rural water system, including the provision of drinking water. The reservation of water for future use would be beneficial to the appropriator in that it would allow for orderly development to suit the needs of the subscribers of the system. In particular, the reservation of a

future use allows for planning and financing a water distribution system for the provision of an adequate and safe water supply. Further, this use would, if permitted, and constructed, provide for the maximum utilization of water. This Future Use Permit is consistent with the interest of the public and in the best utilization of water supplies.

30. There is a continuing and growing need for water in the southern hills. Development continues to push in this area and there is a high demand for quality water.

31. Currently, a number of the residential developments have come in the area. The southern hills have a high need for water.

32. The Southern Black Hills Water has already collected commitments for almost 500 lot hookups and has interests for more. The first phase of the Southern Black Hills System Water's build out already has approximately 250 hookups committed to hooking up and it is projected that another 200 would sign on once the project begins.

33. As the regional system planned and designed by Southern Black Hills continues to build out, there will be a need for the water being reserved pursuant to this permit.

34. The use of the water would be a beneficial use.

35. The Southern Black Hills Water's use of this water would be in the public interest and it would be in the public

interest to reserve the amount pursuant to this permit for future use by Southern Black Hills Water.

36. The appropriation of this water by Southern Black Hills will be reasonable, useful, and beneficial to Southern Black Hills and its members, and is consistent with the interest of the public of this State and the best utilization of water supplies.

37. To the extent that any of these Findings of Fact are determined to be Conclusions of Law, they should be deemed Conclusions of Law.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.
2. There is unappropriated water available for the applicant's proposed use.
3. There is reasonable probability that 1,474 acre-feet of water per year will be needed to supply the areas to be served by Southern Black Hills.
4. Southern Black Hills proposed use of the water; for domestic, municipal, residential, rural water system and agricultural purposes, constitutes a beneficial use of the water.
5. The proposed use is in the public interest.
6. The proposed domestic, municipal, residential, rural water system, agricultural and commercial uses are beneficial

and they are reasonable and useful and beneficial to the Southern Black Hills, and are also consistent with the interests of the public of this State in the best utilization of water supplies. SDCL 46-1-6(3).

7. Artesian head pressure is not protected as a means of delivery by South Dakota law.

8. The South Dakota Water Management Board conducted a hearing on Southern Black Hills Future Use Permit Application under the authority of SDCL Ch. 46-2 and Ch. 46-2A and ARSD Ch. 74:02:01.

9. Southern Black Hills Water System is one of several water systems in the State of South Dakota that has been recognized by the legislature as a system necessary for the general welfare of the people of the state and is a preferred priority objective of the state. SDCL 46A-1-2.1

10. Southern Black Hills Water System is a non-profit rural water supply company as defined by SDCL 10-36A-1. SDCL 46-5-38.

11. Unappropriated water is available and the water to be withdrawn annually from the groundwater source does not exceed the quantity of the average estimated annual charge of the water. SDCL 46-5-38 and SDCL 46-6-3.1.

12. There exists a present and future need for the Southern Black Hills Water System. SDCL 46-5-38.

13. This Board has carefully considered the positions of the various parties in this matter. SDCL 46-1-4 requires that South Dakota water resources be put to beneficial use to the fullest extent of which they are capable. Further, the beneficial use criteria requires consideration of the best utilization of the water supply. SDCL 46-5-38 provides a nonprofit rural water supply company the ability to reserve and appropriate water for future need.

14. Based upon the foregoing Findings of Fact and Conclusions of Law, Southern Black Hills Future Use Permit Application No. 2580-2 should be granted subject to the qualifications recommended by the State Engineer. In particular the Board recognizes that Beaver Creek Springs, Cascade Springs, and Hot Springs, and the cave pools in Wind Cave National Park are in the general region of Southern Black Hills proposed well sites and that due to the location of these springs and cave pools any application to appropriate water from the granted future use permit will require particular attention given to the affect of putting the water reserved to beneficial use may have on those water sources.

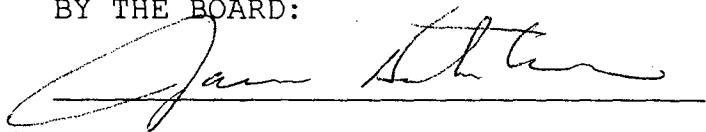
16. To the extent that any of these Conclusions of Law should be deemed Findings of Fact, it should be considered a Finding of Fact.

DECISION

The Application for the Future Water Permit 2580-2 submitted by Southern Black Hills is approved, subject to the following qualifications:

1. That the permit reservation be restricted to 1,474 acre-feet of water annually from the Madison aquifer.
2. That the permit be subject to review by the Water Management Board upon the expiration of seven (7) years and that the permit be subject to cancellation if the Water Management Board determines during the review that the holder cannot any longer demonstrate a reasonable need for the permit.
3. At such a time as Southern Black Hills makes definite plans to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserve water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows at Beaver Creek Springs, Cascade Springs, and Hot Springs, and water levels in the cave pools in Wind Cave National Park.

BY THE BOARD:



DATED: 3-19-07



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 22, 2007

NOTICE

TO: Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744
and Parties of Record (see attached list)

FROM: Garland Erbele, Chief Engineer
Water Rights Program

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

This is to notify you that the Board's rulings and the Final Decisions, including Findings of Fact and Conclusions of Law, were adopted March 7, 2007, by the Water Management Board approving Future Use Permit No. 2580-2 and deferring Water Permit Application No. 2585-2 filed by Southern Black Hills Water System. A copy of the Board rulings and signed Findings of Fact, Conclusions of Law and Final Decisions are enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosures

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Ken Royse, Bartlett & West, 3456 E. Century Avenue, Bismarck ND 58503-0737

PARTIES OF RECORD

Future Use Permit Application No. 2580-2 and Water Permit Application No. 2585-2

Applicant

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Talbot Wieczorek, Attorney
PO Box 8045
Rapid City SD 57709

Petitioners

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Peter A. Fahmy
Water Rights Branch
National Park Service
1201 Oak Ridge Drive
Ft. Collins, CO 80525

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

Randy Scott, Manager
Fall River Water User District
28298 Angostura Road, Suite 2
Hot Springs SD 57747

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525-5596

CERTIFICATION

I hereby certify that on March 22, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 22, 2007, regarding the Board's rulings and adoption of Findings of Fact, Conclusions of Law and Final Decision in the matters of approval of Future Use Application No. 2580-2 and the deferral of Water Right Permit Application No. 2585-2, Southern Black Hills Water System addressed as stated below and on the Parties of Record list:

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

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

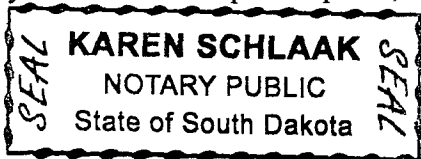
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501
Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501


Eric Gronlund
Water Rights Program

[illegible]

Sworn to, before me, this 22nd day of March, 2007.

Karen Schlaak
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

March 28, 2007

NOTICE

TO: Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744
and Parties of Record (see attached list)

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

SUBJECT: Water Management Board's Ruling in the matter of Future Use Permit No. 2580-2,
Southern Black Hills Water System

The March 22nd notice sent to parties inadvertently omitted the Board's ruling in the matter of Southern Black Hills Water System's Future Use Permit Application No. 2580-2. Enclosed is the Board's ruling issued for Future Use Permit No. 2580-2.

Enclosure

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Ken Royse, Bartlett & West, 3456 E. Century Avenue, Bismarck ND 58503-0737

PARTIES OF RECORD

Future Use Permit Application No. 2580-2 and Water Permit Application No. 2585-2

Applicant

Bob Morrison, Chairman
Southern Black Hills Water System
PO Box 124
Hermosa SD 57744

Talbot Wieczorek, Attorney
PO Box 8045
Rapid City SD 57709

Petitioners

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Peter A. Fahmy
Water Rights Branch
National Park Service
1201 Oak Ridge Drive
Ft. Collins, CO 80525

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

Randy Scott, Manager
Fall River Water User District
28298 Angostura Road, Suite 2
Hot Springs SD 57747

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Charles W. Pettee, Chief
Water Rights Branch
National Park Service
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525-5596

CERTIFICATION

I hereby certify that on March 28, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 28, 2007, regarding the Board's rulings in the matter of approval of Future Use Application No. 2580-2 for Southern Black Hills Water System addressed as stated below and on the Parties of Record list:

Ken Royse
Bartlett & West
3456 E. Century Avenue
Bismarck ND 58503-0737

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

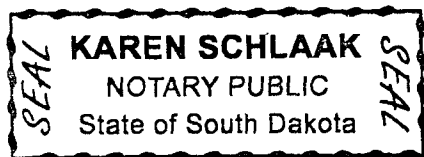
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501
Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501


Eric Gronlund
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of March, 2007.


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

MAY 10 2007

SOUTHERN BALCK HILLS WATER SYSTEM
PO BOX 124
HERMOSA SD 57744

Dear Sir:

Enclosed is Future Use Permit No. 2580-2, as approved by the Water Management Board.

When plans for facilities are prepared to put any portion of the water granted in the future use permits to beneficial use, an application covering such facilities and water use should be submitted to this office before construction is initiated.

Sincerely,

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

enclosure



2580-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

November 15, 2013

Southern Black Hills Water System Inc.
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

I am writing in regard to the seven year review of Future Use Water Permit No. 2580-2 from the Madison Aquifer held by the Southern Black Hills Water System Inc. By law, all future use permits are to be reviewed by the Water Management Board every seven years to determine whether a reasonable need exists for the reserved water. The permit reserves water for future water supply needs for the water system. Currently, our records show that 1,474 acre-feet remain in reserve under this future use permit that was issued in 2007.

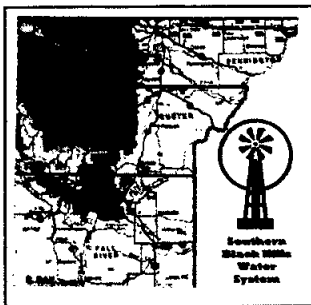
Please respond in writing by January 1, 2014 regarding the system's intention for the future use permit. If the system plans to retain the permit, then the response should outline a reasonable need for retaining the future use permit, including an estimate of future needs.

Permit No. 2580-2 will then be public noticed at the system's expense and scheduled for review before the Water Management Board pursuant to SDCL 46-5-38.1. Notice will be given of the hearing time and place at a future date. The purpose of this review is to determine if a reasonable need exists for retaining the permit. A fee will be charged if the Board allows the permit to remain in effect after the hearing. The fee to be assessed will be dependent upon the amount of water allowed to remain in reserve. If the entire 1,474 acre-feet remain in reserve, the fee will be \$185.00.

Please contact Eric Gronlund, if you have any questions.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us



Directory

- ♦ **John Beard**
Chairman
Rapid City, SD
605-718-0890
- ♦ **Jay Smith**
Vice-Chairman
Hermosa, SD
605-341-5610
- ♦ **Ted Wick**
Treasurer
Hot Springs, SD
605-745-4164
- ♦ **Don Kraus**
Secretary
Custer, SD
605-673-2027
- ♦ **Bob Baird**
Member
Hot Springs, SD
605-745-7470
- ♦ **Mike Fleming**
Member
Pringle, SD
605-745-3284
- ♦ **Bob Peplinski**
Member
Pringle, SD
605-745-7674
- ♦ **Steve Sewell**
Member
Hot Springs, SD
605-745-2232
- ♦ **George Vansco**
Advisory
SD Rural Water
605-642-4031
- ♦ **Ken Royse**
Engineer
Bartlett & West, Inc.
701-258-1110
- ♦ **Don Peterson**
Manager
605-745-4669

SOUTHERN BLACK HILLS WATER SYSTEM

26858 Highway 385
Hot Springs, South Dakota 57747
Phone 605-745-4669

December 13, 2013

RECEIVED

DEC 27 2013

WATER RIGHTS
PROGRAM

Karen Schlaak
DENR-Water Rights Program
523 E. Capitol Ave.
Pierre, SD 57501-3182

Dear Ms. Schlaak:

This letter is in response to your letter of November 15, 2013, wherein you requested a summary of Southern Black Hills Water System, Inc.'s (Southern Black Hills) intentions for the Future Use Water Permit #2580-2 and whether it was still needed by Southern Black Hills.

At the time of the application for the Future Use Permit (FUP), Southern Black Hills was not yet an operating rural water system. Southern Black Hills had been formed in 2005 in an effort to bring much needed rural water service into the Southern Black Hills area, an area with a need for potable water. Southern Black Hills formed to serve a large portion of the Southern Black Hills area to include parts of Fall River County, Custer County and Pennington County using a multi-year, multi-phased rollout of services.

Permit #2580-2 provides that there is reserved to Southern Black Hills the amount of 1,474 acre feet of water per year to be drawn from the Madison Aquifer. The original application references four general sites that are referred to in the Water Management Board's March 19, 2007, Findings of Facts as the Hermosa site, the Argyle site, Gobbler Pass Site, and the Cascade Road (State Highway 71) site.

While at the time Southern Black Hills sought and received the FUP, it was not yet an operating system. Southern Black Hills is now an operating rural water system. To save costs in the initial construction of the system, Southern Black Hills acquired the right to purchase water through a third party's existing well and Southern Black Hills currently provides water to its users using that well. Phase One of the water system was built out in the area primarily north of Hot Springs area, following along U.S. Highway 385. A treatment facility and reservoir system were established. The current well sits on the extreme eastern edge of the water system. The fact that the well is the only current water supply, it is Southern Black Hills' desire to establish additional wells, then move this third party well into a

backup mode. In looking for this future well, the sites identified in the FUP will be considered.

Additionally, the current well authorized and appropriated withdrawal rate is only 109 gallons per minute. While this is sufficient to serve Southern Black Hills' first two phases, it will not be sufficient in the long term or for any additional expansions. This also necessitates the addition of wells on the system.

Southern Black Hills' Phase Two is currently being constructed. This phase runs along Argyle Road, a county road in northern Fall River county and southern Custer county, to State Highway 89. The water line then crosses State Highway 89 providing water to a number of homes in that area that haul water. Both Phase One and Phase Two are close to both the Argyle site area and Gobbler Pass site area, leaving these sites as viable locations to locate future wells.

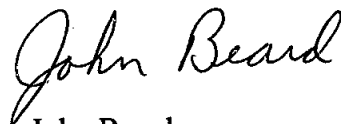
Moreover, the future expansion of Southern Black Hills' system is still being pursued. This includes running lines north to the Custer City area and potentially further north, building out the pipeline in the State Highway 71 area and extending services along U.S. Highway 79 in the Hermosa area.

Southern Black Hills is currently having conversations with various homeowners regarding the construction of an extension along State Highway 71, making the site in that area a necessary location. Expansion into the Hermosa area is further off but remains as a projected future project.

As Southern Black Hills expands and grows, there will be future needs for additional wells and water from the Madison Aquifer. Southern Black Hills acknowledges and understands that before appropriating water at any of these sites it will have to come back and seek a permit for the appropriation.

Southern Black Hills respectfully requests that the Water Management Board allow the permit to remain in effect and schedule it for review in seven (7) years. If the Department of Environmental and Natural Resources needs further information from Southern Black Hills, please feel free to contact the Southern Black Hills Manager, Don Peterson at 605-745-4669.

Sincerely,

A handwritten signature in cursive script that reads "John Beard".

John Beard
Chairman of the Board



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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



**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 2580-2, Southern Black Hills Water Systems Inc.**

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 Future Use Water Permit No. 2580-2, Southern Black Hills Water Systems Inc., c/o Don Peterson, Manager, 26858 Hwy 385, Hot Springs SD 57747.

The Chief Engineer is recommending that Future Use Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 2580-2, 2) the water system has demonstrated a reasonable need for the water reserved by Permit No. 2580-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 2580-2 is subject to payment of the \$185.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the water system after the Board hearing.

Jeanne Goodman, Chief Engineer
January 13, 2014

Instruction to Newspaper-Publish the following Notice on January 21 or 22, 2014. The permit owner is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by Southern Black Hills Water System, c/o Don Peterson, Manager, 26858 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 currently reserves 1,474 acre feet from the Madison Aquifer. The area reserved for future use is the approximate center of NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 9:00 am on March 6, 2014 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 24, 2014. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 2580-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 24, 2014. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 24, 2014. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the approximate cost of _____.



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



January 14, 2014

Hot Springs Star
PO Box 1000
Hot Springs SD 57747

Dear Sir:

Enclosed is a Notice of Hearing to Review Future Use Water Permit No. 2580-2 to be published on January 21, 2014. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at 605 773-3352 or email karen.schlaak@state.sd.us

The applicant must verify to you that the notice is to be published. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Southern Black Hills Water System, Inc., c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 (605 745-4669).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



January 14, 2014

Custer County Chronicle
PO Box 551
Custer SD 57730

Dear Sir:

Enclosed is a Notice of Hearing to Review Future Use Water Permit No. 2580-2 to be published on January 22, 2014. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at 605 773-3352 or email karen.schlaak@state.sd.us

The applicant must verify to you that the notice is to be published. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Southern Black Hills Water System, Inc., c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 (605 745-4669).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



January 14, 2014

Rapid City Journal
PO Box 450
Rapid City SD 57701

Dear Sir:

Enclosed is a Notice of Hearing to Review Future Use Water Permit No. 2580-2 to be published on January 22, 2014. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at 605 773-3352 or email karen.schlaak@state.sd.us

The applicant must verify to you that the notice is to be published. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Southern Black Hills Water System, Inc., c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 (605 745-4669).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

January 14, 2014

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

Southern Black Hills Water System Inc.
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

Future Use Permit No. 2580-2 will be reviewed for progress in the development and future plans for use of the water reserved. Water rights law requires publication of a notice in each county where water will be diverted or used. The notice of this review has been sent to the Publishers of the Hot Springs Star (605 745-4170), Custer County Chronicle (605 673-2217) and the Rapid City Journal (605 394-8300). For your information, a copy of the Chief Engineer's recommendation is enclosed. Please review this notice prior to publication and notify this office, if you have any corrections or questions.

BE SURE TO CONTACT THE ABOVE NEWSPAPERS IMMEDIATELY TO AUTHORIZE PUBLICATION OF THE NOTICE OF HEARING AND TO ARRANGE FOR PAYMENT. Early contact with the papers can eliminate delays. The publishers have been instructed to publish this notice on January 21 or 22, 2014. We must receive Proof of Publication before the future use review can be considered by the Water Management Board.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

Jan. 22
L20841382

NOTICE OF HEARING TO
REVIEW FUTURE USE WATER
PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by Southern Black Hills Water System, c/o Don Peterson, Manager, 2685 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 currently reserves 1,474 acre feet from the Madison Aquifer. The area reserved for future use is the approximate center of NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN IN EFFECT for 1,474 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 9:00 am on March 6, 2014 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 24, 2014. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 2580-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 24, 2014. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 24, 2014. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication

RECEIVED

FEB 14 2014

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

County of Pennington

SS:

Brandyn Crawford being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each _____ for _____ successive _____, the first publication there of being on the _____ day of _____ that the fees charged for the publication there of are _____ dollars and _____ cents.

Subscribed and sworn to before me this _____ day of _____, _____.



Notary public

Lorraine K. Cummings
Dec. 18, 2016
My commission expires

IN THE _____ COURT
COUNTY OF PENNINGTON

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

Filed in the office of _____ on
the _____ day of _____
20 _____

Attorney for _____



RECEIVED

FEB - 4 2014

Affidavit of Publication

State of South Dakota)

)ss.

WATER RIGHTS
PROGRAM

County of Custer)

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that he

Dept - of Environment & Natural Resources
Notice of Hearing

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 1 successive week(s), on which said newspaper was regularly published, to wit:

Jan 22, 2014; _____;
_____; _____;
_____; _____;
_____; _____;

the full amount of the fees for the publication of the annexed notice is \$ 35.95

Charles W. Najacht

Subscribed and sworn to me before this 22

of January, 2014;

Norma Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2018

NOTICE OF HEARING

TO REVIEW FUTURE USE
WATER PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by Southern Black Hills Water System, c/o Don Peterson, Manager, 26858 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 currently reserves 1,474 acre feet from the Madison Aquifer. The area reserved for future use is the approximate center of NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually

because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 9:00 am on March 6, 2014 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

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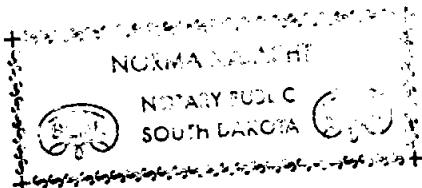
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Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 24, 2014. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 24, 2014. Steven M. Pimer, Secretary, Department of Environment and Natural Resources.

Published once at an approximate cost of \$35.95..

1/22



RECEIVED

JAN 24 2014

Form 8

WATER RIGHTS
PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Fall River) SS

I, Brett Nachtigall

certify that the attached printed Notice was taken

from the Hot Springs star

printed and published in Hot springs, S.D.

County of Fall River and

state of South Dakota. The notice was published

in the newspaper on the following date:

Tuesday, January 21, 2014

Cost of Printing \$ 38.92

Brett Nachtigall
(Signature)

Publisher
(Title)

1-21-14
(Date Signed)

380

**NOTICE OF HEARING TO
REVIEW FUTURE USE
WATER PERMIT NO. 2580-2**

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by Southern Black Hills Water System, c/o Don Peterson, Manager, 26858 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 currently reserves 1,474 acre feet from the Madison Aquifer. The area reserved for future use is the approximate center of NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 9:00 am on March 6, 2014 at Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according

to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 24, 2014. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holders mailing address is given above. The petition may be informal, but it must include a statement describing the petitioners interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 2580-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Eric Gronlund, Water Rights Program, (605 773-3352) by February 24, 2014. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 24, 2014.

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

Published once at the total approximate cost of \$38.92.

Jan. 21



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

January 15, 2014

Michael Hickey
Attorney for Trout Haven Ranch
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709

Peter A Fahmy
Water Rights Branch
National Park Service
1201 Oak Ridge Drive
Ft Collins CO 80525

Shawn Fugier
27094 Beaver Valley Rd
Buffalo Gap SD 57722

Keith Neugebauer, Manager
Fall River Water user District
PO Box 321
Oral SD 57766

John Beard
3810 Beaver Creek Rd
Buffalo Gap SD 57722

Randy Scroth
PO Box 1
Buffalo Gap SD 57722

Gentlemen:

The Southern Black Hills Water System (SBHWS) holds Future Use Permit No. 2580-2 reserving a total of 1,474 acre feet of water from the Madison Aquifer at the following locations for rural water use serving users in Fall River, Custer and Pennington Counties.

- NW 1/4 Section 6-T3S-R8E (Custer County)
- S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County)
- W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County)
- S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County)

State law provides that permits for future use shall be reviewed by the Water Management Board every seven years to determine if there remains a reasonable need for the future use permit. SBHWS has requested to retain the future use permit. Please find enclosed the recommendation and a notice scheduling a hearing to review the future use permit. This notice is scheduled to be published in the Hot Springs Star, Custer County Chronicle and Rapid City Journal on January 21 or 22, 2014. The hearing is scheduled to be held Thursday, March 6, 2014, in Pierre SD.

This is being sent to you as a party of record to the original hearing on this application. If you have questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us

enclosures

RECEIVED

FEB 18 2014

WATER RIGHTS
PROGRAM

February 13, 2014

Water Rights Program
Joe Foss Bldg
523 E Capitol Bldg
Pierre, SD 57501

Chief Engineer,

In regards to the Future Use Permit 2580-2, held by Southern Hills Water for 1474 acre feet from the Madison, we are 100% against a well in S1/2NW1/4, Sec 24 T6S R5E....have no opinion of the other 2 locations. As a water right holder on Beaver creek, I feel a well at this listed location will impact Beaver Creek, Wind Cave Nat'l Park, & monitor well CU91A.

CU91A has shown a downward curve since Southern Hills has started pumping, even with the added moisture of the previous year. I've monitored Beaver Creek for over 50 years & since they have been pumping, the main spring has lost it's hydraulic head pressure & is coming up 6 feet lower in elevation down the creek.

Southern Hills Water has not followed what was required of them as far as doing a Pump test when they received permit 2634-2, for the Streeter well. Again, we feel that a Future Use Permit in Section 24 should be denied.

Sincerely,

Frank Schroth, 7-11 Ranch
PO Box 97
Buffalo Gap, SD 57722

Randy Schroth, 7-11 Ranch
PO Box 1
Buffalo Gap, SD 57722



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



February 18, 2014

Southern Black Hills Water System Inc.
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

Enclosed is a copy of a petition we received from Frank Schroth and Randy Schroth regarding the review of Future Use Permit No. 2580-2.

As stated in the notice, the Water Management Board will conduct the hearing to review the future use permit at 9:00 am CST on March 6, 2014 at the Floyd Mathew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352
eric.gronlund@state.sd.us

enclosure



United States
Department of
Agriculture

Forest
Service

Black Hills National Forest
Supervisor's Office

www.fs.usda.gov/blackhills

1019 N. 5th Street
Custer SD 57730-8214
Tel. 605/673-9200
FAX 605/673-9350

File Code: 2540

Date: February 21, 2014

CHIEF ENGINEER
WATER RIGHTS PROGRAM
SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE.
PIERRE, SD 57501

The Black Hills National Forest is concerned with the Future Water Use Permit No. 2580-2. The primary concern is with one of the potential future wells at; W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County). This well location is approximately one mile northeast of Cascade Springs. If this well is developed, it could affect the flow levels from the warm water springs at Cascade Springs, as well as the stream water levels along the entire length of Cascade Creek to where it drains into the Cheyenne River. The flow levels at Cascade Springs and along Cascade Creek support a rare warm water groundwater dependent ecosystem. Currently, there are four rare plant species documented to occur at Cascade Springs and along Cascade Creek that do not occur anywhere else in South Dakota and that we are required to protect.

These plant species include tulip gentian (*Eustoma exaltatum* ssp. *russellianum*), beaked spikerush (*Eleocharis rostellata*), southern maidenhair fern (*Adiantum capillus-veneris*), and stream orchid (*Epipactis gigantea*). They occur here due to the availability of year-round open water. Our concern is if the flows are reduced at Cascade Springs, the reduced availability of water could be expected to affect the survival and viability of these rare plant species. The United States Geological Survey (USGS) had operated a water gaging station located immediately below Cascade Springs (upstream of Alabaugh Canyon). The operation of the gaging station had been discontinued by USGS but had remained in place in case funding had become available again. Through an agreement developed with USGS, the Forest has been providing funding to support the operation of the USGS Gaging Station since 2008. This was based on national, regional and local Forest direction for conservation and management of rare groundwater dependent ecosystems, such as what occurs in this location, as well as for the rare species that occur here.



The Black Hills National Forest hereby requests that this proposed well in Fall River County be removed from Future Water Use Permit No. 2580-2.

Sincerely,

/s/ Dennis L. Jaeger (for):
CRAIG BOBZIEN
Forest Supervisor

cc:

Leslie Gonyer, Andrea E Rogers,

Southern Black Hills Water System
c/o Don Peterson
26858 Hwy 385
Hot Springs, SD 57747



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



March 7, 2013

NOTICE

Southern Black Hills Water System Inc.
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

I am writing in response to action taken by the Water Management Board at the hearing on March 6, 2014 to review Future Use Permit No. 2580-2. The Board allowed the permit to remain in effect for 1,474 acre-feet of water annually. Future Use Permit No. 2580-2 is subject to another review in seven years.

The fee for maintaining the effectiveness of Future Use Permit No. 2580-2 is \$185.00 pursuant to SDCL 46-2-13(2). Please remit the fee within 60 days.

Please contact Eric Gronlund, staff engineer, if you have any questions.

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
605 773-3352

CERTIFICATION

I hereby certify that on March 7, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated March 7, 2014 regarding Future Use Permits addressed as stated below:

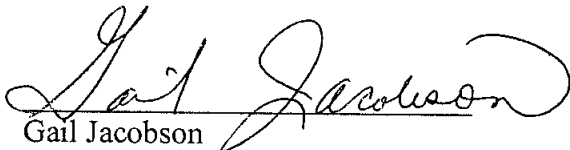
City of Spearfish, T Callaway, 625 N 5th St, Spearfish SD 57783 # **1872-1**

Southern Black Hills WS, Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 # **2580-2**

Watertown Municipal Utilities, J DeVille, 901 4th Ave SW, Watertown SD 57201 # **5862-3**

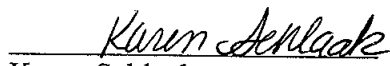
City of Brandon, B Read, PO Box 95, Brandon SD 57005 # **4002-3**

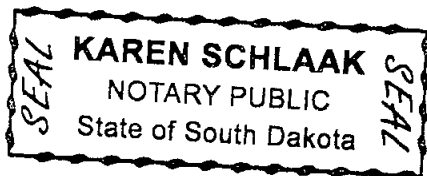
Minnehaha Community Water, S J Buss, 47381 248th St, Dell Rapids SD 57022
#s **4838A-3, 5063A-3 & 5716-3**


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of March, 2014.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 3/31, 20 14

RECEIVED OF Southern Black Hills Water System Inc 26858 Hwy 385 Hot Springs SD

57747

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	185	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. <u>2580-2</u> after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	185 00

No. **06801**

By J. M. Headman Jr.
Chief Engineer



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 6, 2021

Southern Black Hills Water System
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

I am writing in regard to the seven year review of Future Use Water Permit No. 2580-2 from the Madison Aquifer held by Southern Black Hills Water System. By law, all future use permits are to be reviewed by the Water Management Board every seven years to determine whether a reasonable need exists for the reserved water. The permit reserves water for future water supply needs for the system. Currently, our records show that 1,474 acre-feet remain in reserve under this future use permit that was issued in 2007 and last reviewed in 2014.

Please respond in writing by February 1, 2021 regarding the system's intention for the future use permit. If the system plans to retain the permit, then the response should outline a reasonable need for retaining the future use permit, including an estimate of future needs.

Permit No. 2580-2 will then be public noticed at the system's expense and scheduled for review before the Water Management Board pursuant to SDCL 46-5-38.1. Notice will be given of the hearing time and place at a future date. The purpose of this review is to determine if a reasonable need exists for retaining the permit. A fee will be charged if the Board allows the permit to remain in effect after the hearing. The fee to be assessed will be dependent upon the amount of water allowed to remain in reserve. If the entire 1,474 acre-feet remain in reserve, the fee will be \$265.00.

Please contact Ron Duvall or me, if you have any questions.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us



PAID
FEB 3 2021
Ck# 98354

GUNDERSON | PALMER | NELSON | ASHMORE LLP

RECEIVED

FEB 03 2021

WATER RIGHTS
PROGRAM

506 Sixth Street
Post Office Box 8045
Rapid City, South Dakota 57709
Main: (605) 342-1078
Fax: (605) 342-9503

www.gpna.com

January 27, 2021

Matthew E. Naasz
Email: mnaasz@gpna.com
Direct Dial: (605) 719-3424

VIA US MAIL AND EMAIL

DENR – South Dakota
Attn: Karen Schlaak
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

Re: Southern Black Hills Water System, Inc. – Future Use Permit #2580-2

Dear Ms. Schlaak:

Our firm represents Southern Black Hills Water System, Inc. ("Southern Black Hills"). This letter is in response to your letter of January 6, 2021, wherein you requested a summary of Southern Black Hills' intentions for Future Use Water Permit #2580-2 and whether it is still needed by Southern Black Hills. Please consider this Southern Black Hills' request to maintain Future Use Permit #2580-2 at the currently reserved level of one thousand four hundred and seventy four (1,474) acre feet per year and for that permit to be reviewed in seven (7) years.

At the time of the application for the Future Use Permit (FUP), Southern Black Hills was not yet an operating rural water system. Southern Black Hills was formed in 2005 in an effort to bring much needed rural water service into the Southern Black Hills area, an area with a need for potable water. Southern Black Hills formed to serve a large portion of the Southern Black Hills area to include parts of Fall River County, Custer County and Pennington County using a multi-year, multi-phased rollout of services.

Permit #2580-2 provides that there is reserved to Southern Black Hills the amount of 1,474 acre feet of water per year to be drawn from the Madison Aquifer. The original application references four (4) general sites that are referred to in the Water Management Board's March 19, 2007, Findings of Facts as the Hermosa site, the Argyle site, Gobbler Pass Site, and the Cascade Road (State Highway 71) site.

While at the time Southern Black Hills sought and received the FUP, it was not yet an operating system; Southern Black Hills is now an operating rural water system. To save costs in the initial construction of the system, Southern Black Hills acquired the right to purchase water through a third party's existing well and Southern Black Hills currently provides water to its users using that well. Phase One of the water system was built out in the area primarily north of Hot Springs

Offices in Rapid City and Pierre, South Dakota

Attorneys licensed to practice in South Dakota, North Dakota, Nebraska, Wyoming, and Montana

area, following along U.S. Highway 385. A treatment facility and reservoir system were established.

Southern Black Hills' Phase Two has been constructed and is expanding. This phase runs along Argyle Road, a county road in northern Fall River County and southern Custer County, to State Highway 89. The water line then crosses State Highway 89 providing water to a number of homes in that area that haul water. Both Phase One and Phase Two are close to both the Argyle site area and Gobbler Pass site area, leaving these sites as viable locations to locate future wells.

The future expansion of Southern Black Hills' system is still being pursued. This includes running lines north to the Custer City area and potentially further north, building out the pipeline in the State Highway 71 area and extending services along U.S. Highway 79 in the Hermosa area.

As Southern Black Hills expands and grows, there will be future needs for additional wells and water from the Madison Aquifer. Southern Black Hills acknowledges and understands that before appropriating water at any of these sites it will have to come back and seek a permit for the appropriation.

Southern Black Hills respectfully requests that the Water Management Board allow the Permit to remain in effect and schedule it for review in seven (7) years. Please find enclosed a check in the amount of Two Hundred Sixty Five Dollars (\$265.00) for the fee for the Permit. If the Department of Environmental and Natural Resources needs further information from Southern Black Hills, please feel free to contact the Southern Black Hills Manager, Don Peterson at 605-745-4669.

Sincerely,



Matthew E. Naasz

MEN:eah

cc: Don Peterson, Southern Black Hills Water System

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date February 3, 2021

RECEIVED OF Gunderson Palmer Nelson & Ashmore LLP PO Box 8045 Rapid City SD 57709

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$
Fee to retain Future Use Permit No. <u>2580-2</u> after period of seven years.	\$265.00
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	\$
Fee for Filing Transfer Form _____	\$
Fee for _____	\$
Fee for Issuing New Well Driller's License No. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law) - TOTAL	\$265.00

By *Eric Gunderson*
Chief Engineer

vm



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
NO. 2580-2, Southern Black Hills Water System, Hot Springs SD**

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 Future Use Water Permit No. 2580-2, Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747.

The Chief Engineer is recommending that Future Use Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) there is reasonable probability that there may be development of the water reserved under Permit No. 2580-2, 2) the system has demonstrated a reasonable need for the water reserved by Permit No. 2580-2, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

Maintaining the effectiveness of Future Use Permit No. 2580-2 is subject to payment of the \$265.00 fee pursuant to SDCL 46-2-13(2) within 60 days of notice to the system after the Board hearing.

A handwritten signature in cursive script, reading "Eric Gronlund".

Eric Gronlund, Chief Engineer
February 2, 2021

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, February 2, 2021 11:14 AM
To: ads.frcherald@gmail.com
Subject: 2580-2, Southern Black Hills Water System
Attachments: 2580-2 pub notice.doc; FORM8.FRM.doc

Attached is a notice to be published on February 11, 2021.

Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 (605 745-4669) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, February 2, 2021 8:17 AM
To: Rapid City Journal (legals@rapidcityjournal.com)
Subject: 2580-2, Southern Black Hills Water System
Attachments: 2580-2 pub notice.doc; FORM8.FRM.doc

Attached is a notice to be published in both the Rapid City Journal and the Hot Springs Star on February 10, 2021.

Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 (605 745-4669) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavits or return the attached Proof of Publication forms ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak
Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, February 2, 2021 8:19 AM
To: 'custerchronicle@gwtc.net'
Subject: 2580-2, Southern Black Hills Water System
Attachments: 2580-2 pub notice.doc; FORM8.FRM.doc

Attached is a notice to be published in your paper on February 10, 2021.

Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 (605 745-4669) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavits or return the attached Proof of Publication forms ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, February 2, 2021 8:27 AM
To: sbh@goldenwest.net
Cc: mnaasz@gpna.com
Subject: Future Use Permit No. 2580-2
Attachments: 0483.pdf

Attached is a copy of the chief engineer recommendation and information regarding the public notice for review of Future Use Permit No. 2580-2. As stated in the letter, please contact the papers as soon as possible to authorize publication and arrange for payment. This information is being mailed to Mr. Peterson today.

Karen Schlaak
Water Rights Program
(605) 773-3352



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SOUTH DAKOTA



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SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 2, 2021

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

Southern Black Hills Water System
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

Future Use Permit No. 2580-2 will be reviewed for progress in the development and future plans for use of the water reserved. Water rights law requires publication of a notice in the counties where water will be diverted or used. Notice of this review has been sent to the following papers.

Rapid City Journal 605 394-8336
Hot Springs Star (contact Rapid City Journal for publication in Hot Springs Star)
Custer County Chronicle 605 673-2217

For your information, a copy of the Chief Engineer's recommendation is enclosed. Please review this notice prior to publication and notify this office, if you have any corrections or questions.

BE SURE TO CONTACT THE ABOVE NEWSPAPERS IMMEDIATELY TO AUTHORIZE PUBLICATION OF THE NOTICE OF HEARING AND TO ARRANGE FOR PAYMENT. Early contact with the papers can eliminate delays. The publishers have been instructed to publish this notice on February 10, 2021. We must receive Proof of Publication before the future use review can be considered by the Water Management Board.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352

enclosures

c: Matthew E Naasz

Instruction to Newspaper - Publish the following Notice on February 10, 2021. The Southern Black Hills Water System is responsible for payment.

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by the Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 and currently reserves 1,474 acre-feet from the Madison Aquifer. The area reserved for future use is the approximate center of the NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer, and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 10:00 am central time, March 3, 2021 in the Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 22, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 2580-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by February 22, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 22, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by February 22, 2021. Published once at the approximate cost of _____.

Form 8

RECEIVED

FEB 16 2021

WATER RIGHTS
PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of FALL RIVER)^{SS}
I, SHERYL GRIMES

certify that the attached printed Notice was taken
from the FALL RIVER COUNTY
HERALD-STAR

printed and published in HOT SPRINGS
County of FALL RIVER and

state of South Dakota. The notice was published
in the newspaper on the following date:
FEBRUARY 11, 2021

Cost of Printing \$51.00

Sheryl Grimes
(Signature)

PRODUCTION MANAGER
(Title)

2-11-21
(Date Signed)

Notice of Hearing
to Review Future Use Water Permit No. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by the Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 and currently reserves 1,474 acre-feet from the Madison Aquifer. The area reserved for future use is the approximate center of the NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer, and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 10:00 am central time, March 3, 2021 in the Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision

Thursday, February 11, 2021 **B7**

and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 22, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit No. 2580-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by February 22, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 22, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by February 22, 2021.

Published once at the total approximate cost of \$51.06

Published: Feb. 11, 2021

Affidavit of Publication

STATE OF SOUTH DAKOTA
COUNTY OF LINCOLN

TERESA ZOMER

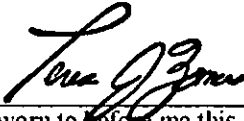
being first duly sworn on his oath says; that the Sioux Valley News is a legal weekly newspaper of general circulation as required by South Dakota Code of Nineteen Hundred Thirty-Nine, and any acts amendatory thereto, printed and published by the Sioux Valley News, Inc., in Canton, in said county and State, and has been such legal newspaper during the time hereinafter mentioned; that he is and during all of said time was publisher of said newspaper and has personal knowledge of the facts stated in this affidavit: that the advertisement headed:

Water Management Board Notice of Hearing

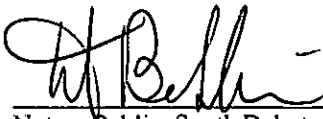
a printed copy of which is hereto attached, was printed and published in said newspaper for ONE successive week(s) upon the following dates, to-wit:

February 4, 2021

that the full amount of the fees charged for publishing the same to-wit: the sum of \$52.70 inures solely to the benefit of the publishers of said newspaper; that no agreement or understanding for any division of this sum has been made with any other person; and that no part of said sum has been agreed to be paid to any person whomsoever.

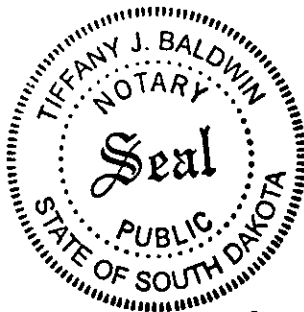


Ascribed and sworn to before me this 4th day of
February, 2021



Notary Public, South Dakota

(Seal)



My Commission Expires
January 12, 2024

RECEIVED

FEB 22 2021

**WATER RIGHTS
PROGRAM**

NOTICE OF HEARING TO REVIEW FUTURE USE WATER PERMITS

Notice is given that the Water Management Board will review Future Use Permit Nos. 4838A-3, 5063A-3 and 5716-3 held by the Minnehaha Community Water Corp. c/o Scott J Buss, Director, 47381 248th St, Dell Rapids SD 57022 for progress made in the development of the water reserved by the permits and future plans for development of the water reserved by the permits. The permits supply water for rural water system use in Minnehaha, Lincoln, Lake, Moody, Turner and McCook Counties and were last reviewed in 2014.

Permit No. 4838A-3 reserves water from the Sioux Falls Management Unit of the Big Sioux Aquifer to be located in the NE 1/4 NE 1/4 Section 32 and S 1/2 SE 1/4 Section 29; all in T104N-R49W. A review of the permit indicates 33 acre-feet of water remains in reserve by Permit No. 4838A-3.

Permit No. 5063A-3 reserves water from wells less than 70 feet deep to be located in the NE 1/4 Section 17-T104N-R49W. A review of the permit indicates 717 acre-feet of water remains in reserve by Permit No. 5063A-3.

Permit No. 5716-3 reserves water from the Sioux Falls Management Unit of the Big Sioux Aquifer to be located in the NE 1/4 NE 1/4 Section 32 and S 1/2 SE 1/4 Section 29; all in T104N-R49W. A review of the permit indicates that 750 acre-feet of water remains in reserve by Permit No. 5716-3.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 4838A-3 remain in effect for 33 acre-feet annually, Permit No. 5063A-3 remain in effect for 717 acre-feet annually and Permit No. 5716-3 remain in effect for 750 acre-feet annually because 1) the

reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review these future use permits at 10:00 am central time, March 3, 2021, in the Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permits to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permits for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 22, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permits, the reasons for petitioner's opposition to or support of continuing the future use permits, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

The hearing to review Future Use Permit Nos. 4838A-3, 5063A-3 and 5716-3 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru

74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendations, further information on the permits, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by February 22, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permits. The request for a delay must be filed with the Chief Engineer by February 22, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by February 15, 2021.

Published in the Sioux Valley News on February 4, 2021 at the total approximate cost of \$52.70.

RECEIVED

FEB 22 2021

WATER RIGHTS
PROGRAM

Affidavit of Publication

State of South Dakota)

)ss.

County of Custer)

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

Southern Black Hills Water System

Notice of Hearing
Future Use Water Permit No 2580-2

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for one successive week(s), on which said newspaper was regularly published, to wit:

Feb 10, 2021; _____;

_____; _____;

_____; _____;

_____; _____;

the full amount of the fees for the publication of the annexed notice is \$ 40.58.

Charles W. Najacht

Subscribed and sworn to me before this 10th

of February, 2021;

Danna Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2024

NOTICE OF HEARING

TO REVIEW FUTURE USE WATER PERMIT NO. 2580-2

Notice is given that the Water Management Board will review Future Use Permit No. 2580-2 held by the Southern Black Hills Water System, c/o Don Peterson, 26858 Hwy 385, Hot Springs SD 57747 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by Permit No. 2580-2. This permit was approved 2007 and currently reserves 1,474 acre-feet from the Madison Aquifer. The area reserved for future use is the approximate center of the NW 1/4 Section 6-T3S-R8E (Custer County); S 1/2 SE 1/4 Section 16-T6S-R4E (Custer County); W 1/2 NW 1/4 Section 21-T8S-R5E (Fall River County) and S 1/2 NW 1/4 Section 24-T6S-R5E (Custer County). The water is reserved for rural water use serving users in Fall River, Custer, and Pennington Counties.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Program recommends that Permit No. 2580-2 REMAIN in EFFECT for 1,474 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will conduct the hearing to review Future Use Permit No. 2580-2 at 10:00 am central time, March 3, 2021 in the Floyd Matthew Training Center, Joe Foss Bldg, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the permit owner and the Chief Engineer by February 22, 2021. The Chief Engineer's address is "Water Rights Program", Joe Foss Building, 523 E Capitol Ave, Pierre SD 57501 (605 773-3352) and the permit holder's mailing address is given above. The petition may be informal, but it must include a statement describing the petitioner's interest in the future use permit, the reasons for petitioner's opposition to or support of continuing the future use permit, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The permit owner need not file a petition.

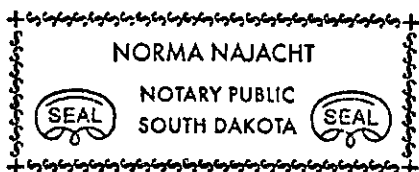
The hearing to review Future Use Permit No. 2580-2 will be conducted pursuant to the provisions of SDCL 46-1-14, 46-2-5, 46-2-9, 46-2-11, 46-5-38.1; Board Rules ARSD 74:02:01:25.01 thru 74:02:01:25.03 and contested case procedures contained in SDCL 1-26.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this permit, to assure access to the hearing by the handicapped or obtain an interpreter for the hearing impaired may contact Ron Duvall, Water Rights Program, (605 773-3352) by February 22, 2021. The time of the hearing will be automatically delayed for at least 20 days upon written request of the permit owner or any person who has filed a petition to oppose or support continuance of the Future Use Permit. The request for a delay must be filed with the Chief Engineer by February 22, 2021.

According to SDCL 1-26-18.3, parties to a contested case may use the Office of Hearing Examiners to conduct a hearing if either a property right is being terminated or the dollar amount in controversy exceeds \$2,500.00. If any party chooses to use the Office of Hearing Examiners rather than the hearing procedure described above, then you need to notify the Chief Engineer (Water Rights Program 523 E Capitol Ave, Pierre SD) by February 22, 2021.

Published once at the approximate cost of \$40.58.





DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 4, 2021

NOTICE OF ENTRY OF ORDER

Southern Black Hills Water System
c/o Don Peterson
26858 Hwy 385
Hot Springs SD 57747

Dear Mr. Peterson:

I am writing in response to action taken by the Water Management Board at the hearing on March 3, 2021 to review Future Use Permit No. 2580-3. The Board allowed the permit to remain in effect for 1,474 acre-feet of water annually. Future Use Permit No. 2580-2 is subject to another review in seven years.

The fee for maintaining the effectiveness of Future Use Permit No. 2580-2 is \$265.00 pursuant to SDCL 46-2-13(2). Our records indicate this amount was paid February 3, 2021 (receipt enclosed).

Please contact Karen Schlaak, if you have any questions.

Sincerely,

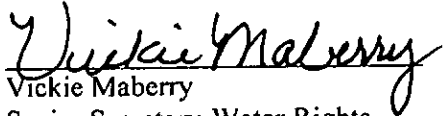
Eric Gronlund, Chief Engineer
Water Rights Program
605 773-3352

c: Matthew E Naasz

CERTIFICATION

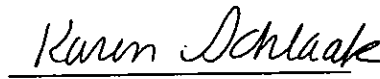
I hereby certify that on March 4, 2021, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated March 4, 2021, regarding Future Use Review addressed as stated below:

City of Spearfish, Brandy Kean, Public Works Director, 625 5th St., Spearfish SD 57783
Southern Black Hills Water System, C/O Don Peterson, 26858 Hwy 385, Hot Springs SD 57747
Matthew E Naasz, Gunderson Palmer Nelson & Ashmore, PO Box 8045, Rapid City SD 57709
Tami Jansma, City Engineer, City of Brandon, PO Box 95, Brandon SD 57005
Scott Buss, Manager, Minnehaha Community Water Corp., 47281 248th St., Dell Rapids SD 57022-5305


Vickie Maberry
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of March, 2021.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025

