

WATER PERMIT NO. 2654-2

Name of Applicant: **Bureau of Reclamation**

Address: **515 9th St, Room 101, Rapid City SD 57701**

Phone: **605 394-9757**

Amount of Water Claimed: **300 gpm** Total Acres:

Source of Water Supply: **Pactola Reservoir – Rapid Creek**

Water to be used for: **fish & wildlife propagation**

County: **Pennington**

Type of Waste Disposal System:

Location:

PRIORITY Date Received: **7-12-2010**

Application/License Fee: **\$700**

Corrected Application Received:

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

Remarks: **Requesting in-stream flow right to protect fishery releases from Pactola Reservoir to Farmingdale SD**

Diversion Point:

Land to be Irrigated:

Depth of Well: **NA**

Well Driller:

Remarks:

Type of Map: **topo**

Prepared by: **Curtis Anderson, PE**

Reviewed and the Number Assigned on: **7-12-2010**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

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Mail to: PMB 2020 DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	(office use only)	
	No. <u>2654-2</u>	Hydrologic Unit <u>10120110</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Rapid City Journal PO Box</u> <u>605-394-8300 - 57709 450</u>	

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

Check use(s) of water:

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

Type of Application:

(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.)

Reclamation requests an in-stream flow right to protect fishery releases from the 6,000 acre-foot Fisheries, Wildlife, and Recreation pool at Pactola Reservoir. Rapid Creek reach from Pactola to Farmingdale, SD.

- Name of Applicant Bureau of Reclamation Phone 605-394-9757
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 515 9th Street, Room 101 Rapid City SD 57701
(Address) (City) (State) (Zip Code)
- Amount of water claimed *CFS or **GPM 6,000 ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Water stored @ Pactola in Reclamation's Fisheries, Wildlife, and Recreation pool
- Location of point of diversion (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W) County Pennington
Certificate of Withdrawal No. U.S. 581-2 allows Reclamation to store water in Pactola Reservoir. Inflows not called for by prior rights are stored and released for project benefits downstream as needed.
- County or counties where water will be used Pennington
- Annual period during which water is to be used January 1st to December 31st (all year)
- 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)
See Attached sheet and map.

STATE OF SOUTH DAKOTA)
County of _____) SS

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

I, _____, 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 _____

Subscribed and sworn to before me this _____ day of _____ 20 _____

Notary Public signature _____

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I, Dennis E. Breitzman, 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

Dennis E. Breitzman,
Dakotas Area Office Manager

ACKNOWLEDGMENT

STATE OF NORTH DAKOTA)

COUNTY OF Burleigh)

On this 8th day of July, in the year 20 10, before me, a Notary Public, personally appeared Dennis E. Breitzman, DKAO Manager, known to me to be the person who executed the within instrument, and acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Tyler A. Klosterman

Notary Public in and for the

State of North Dakota

Residing at Bismarck, ND

My Commission Expires June 13, 2011

**SOUTH DAKOTA
WATER PERMIT NO. 2654-2**

Date of first receipt of application July 12, 2010.

The Water Management Board approved Water Permit No. 2654-2 on March 9, 2011 for the Bureau of Reclamation, 515 9th St, Room 101, Rapid City SD 57701 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2654-2 authorizes in-stream flow for a portion of Rapid Creek downstream of Pactola Reservoir. This permit provides for an in-stream flow of between 5 to 300 cubic feet of water per second (cfs) in Rapid Creek from natural flows when available or water released from storage in Pactola Reservoir. The stream segment of Rapid Creek associated with this permit is approximately 75 miles from a point immediately below Pactola Dam located in the W1/2 Section 2, T1N, R5E to the SW1/4 Section 19, T1S, R11E (USGS gaging Station No. 06421500, Rapid Creek near Farmingdale).

Bureau of Reclamation currently holds US Withdrawal No. 581-2 authorizing storage of water in Pactola Reservoir. Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This permit defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases from unauthorized diversions within the in-stream flow reach. US Withdrawal No. 581-2 retains its May 5, 1952 priority date for water storage in Pactola Reservoir.

2. The water appropriated shall be used for the purpose of fish and wildlife propagation 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 the Bureau of Reclamation may claim right to in-stream flow from natural flows is July 12, 2010 and the in-stream release from storage set forth in the water storage contract shall be protected as purchased water taking into account proportionate losses set forth in Qualification No. 3.
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. The Bureau of Reclamation shall maintain records and documentation of releases made for in-stream flow purposes from storage in Pactola Reservoir each year and natural flows, if available that are allowed to pass through the reservoir for in-stream flow purposes. These records shall be made available to DENR upon request during normal business hours. Each year's record must be maintained for at least three years.
2. The Bureau of Reclamation shall contact the Rapid Valley Water Master during the irrigation season when in-stream flow releases regarding the amount of the release being made from storage in Pactola Reservoir. Each time a change in the release is made during the irrigation season whether a reduction or increase in the in-stream flow release contact with the Water Master shall be made.

(continued)

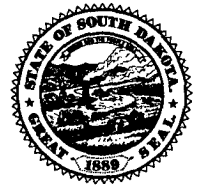
3. The Bureau of Reclamation shall bear the proportionate share of stream losses allocable to releases from Pactola Dam pursuant to Water Permit No. 2654-2.
4. The Bureau of Reclamation shall give 24 hours advanced notice to the Rapid Valley Water Conservancy District, the City of Rapid City and the Rapid Valley Sanitary District prior to the release of water from Pactola Reservoir under Water Permit No. 2654-2.

WATER MANAGEMENT BOARD

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

APR 27 2011

date



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

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

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field)
- b) System Capacity (gallons) _____ Year Constructed _____
- c) Connected to the City of _____ Sanitary System

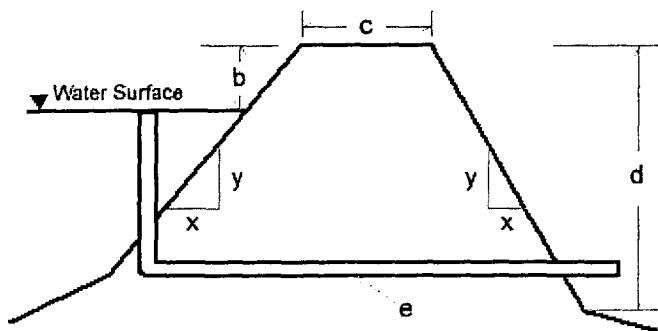
3. Dugout Information

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

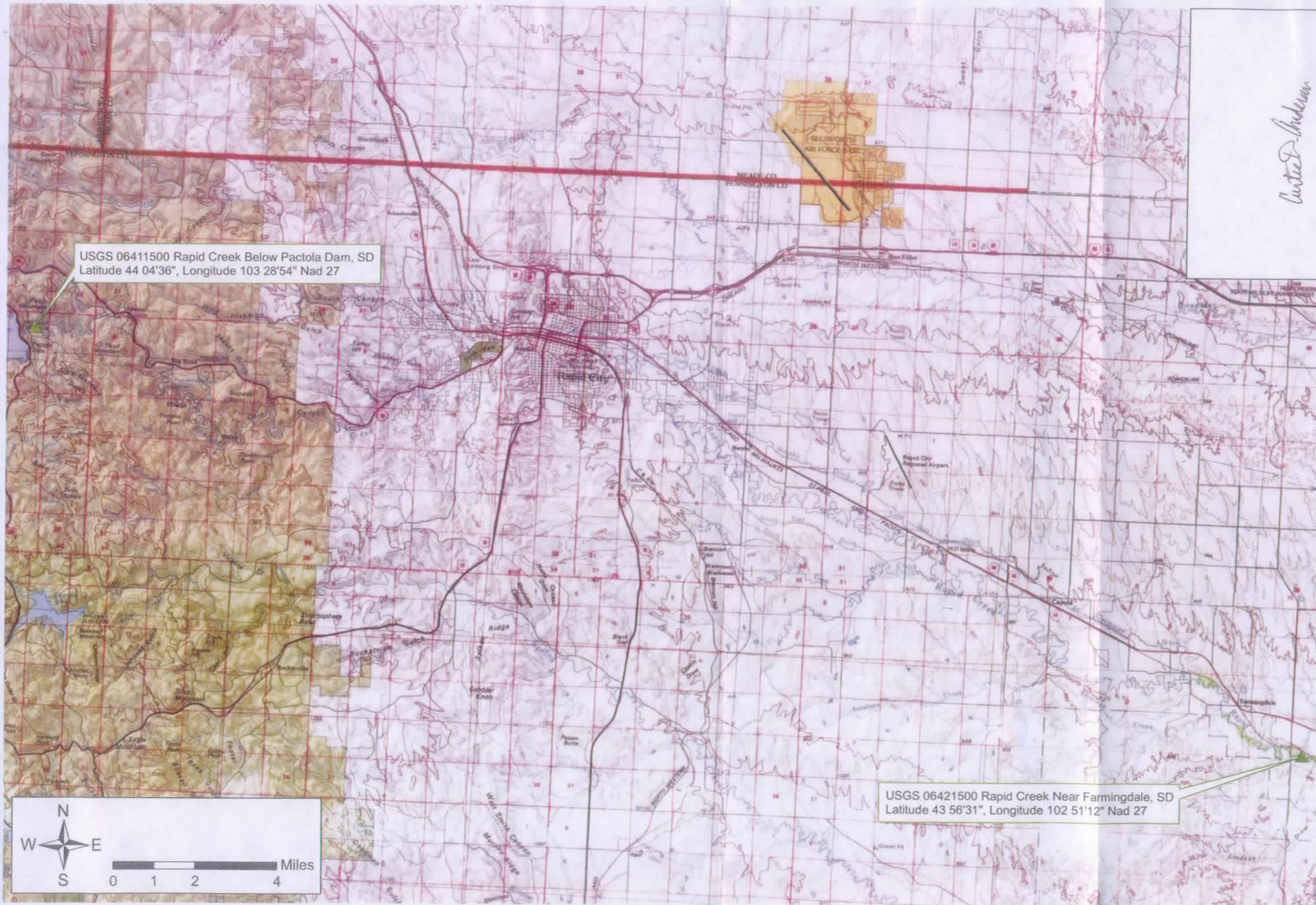
4. Water Storage Dams

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

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



- b) Freeboard _____
- c) Crest Width _____
Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope (e.g. 3 to 1 is a typical slope)
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres



USGS 06411500 Rapid Creek Below Pactola Dam, SD
Latitude 44 04'36", Longitude 103 28'54" Nad 27

USGS 06421500 Rapid Creek Near Farmingdale, SD
Latitude 43 56'31", Longitude 102 51'12" Nad 27

Curtis Anderson

Sheet Description:

Bureau of Reclamation
Pactola Dam - Instream
Flow Right in Rapid Creek

Project:

Rapid Valley Unit
Pactola Dam and Reservoir

Sheet:

1 of 1

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6-28-2010

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South Dakota Department of Environment and Natural Resources

Date 7/12, 20 10

RECEIVED OF Bureau of Reclamation 515 9th St # 101 Rapid City SD 57701

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

Fee for Application for Permit No. <u>2654-2</u> to Appropriate Water, to construct and to put water to beneficial use	500	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2654-2</u>	200	00
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	700 00

No. 04583

By 
Chief Engineer



IN REPLY REFER TO:

DK-7000
WTR 4.10

United States Department of the Interior
BUREAU OF RECLAMATION

Dakotas Area Office
Rapid City Field Office
515 9th St., Room 101
Rapid City, SD 57701

JUL - 9 2010



Mr. Garland Erbele
Chief Engineer
Water Rights Division
South Dakota Department of
Environment and Natural Resources
Attn: Eric Gronlund
523 E. Capitol
Pierre, South Dakota 57501-3181

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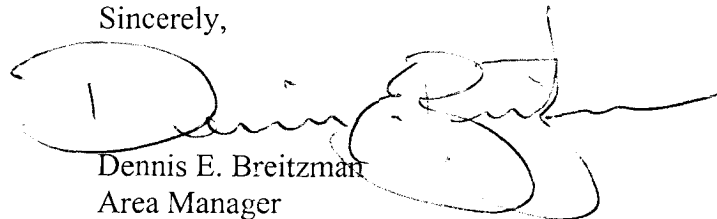
Subject: Request for In-Stream Flow Right in Rapid Creek – Pactola Reservoir Outlet Works to Farmingdale, South Dakota – Pactola Unit, South Dakota

Dear Mr. Erbele:

Reclamation is making application for an in-stream flow right to protect fishery releases made from the 6,000 acre-foot pool at Pactola Reservoir to Rapid Creek. Enclosed is the application for the permit, project description, map, and application fee.

If you have questions, please contact Curt Anderson or me at 605-394-9757.

Sincerely,



Dennis E. Breitzman
Area Manager

Enclosures

cc: Mr. Mark Rath
DENR Water Rights
523 E. Capitol - Foss Bldg.
Pierre, South Dakota 57501

Mr. Aaron Tieman
DENR Water Rights
2050 West Main, Suite 1
Rapid City, South Dakota 57702

Mr. John Wagner
Rapid City Public Works Department
300 Sixth Street
Rapid City, South Dakota 57701

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PROJECT DESCRIPTION:

Reclamation's Application for In-stream Flow Rights in Rapid Creek – Pactola Reservoir to Farmingdale, South Dakota

Pactola Reservoir is located on Rapid Creek above Rapid City, South Dakota. It is a Bureau of Reclamation (Reclamation) facility with an active conservation pool of 55,000 acre-feet. The current water service contract (Contract No. 079D620102) is between the City of Rapid City (City) and Reclamation and was signed July 31, 2007. During the contract renegotiation process the City contracted for 49,000 acre-feet of space and Reclamation retained 6,000 acre-feet of space. The water held in the 6,000 acre-feet space is Reclamation's Fisheries, Wildlife, and Recreation pool (Reclamation's pool).

Water rights for Pactola Reservoir are covered by Certificate of Withdrawal No. U.S. 581-2, executed by the State Engineer on May 5, 1952. Pactola Reservoir is part of the Rapid Valley Unit, Pick-Sloan Missouri Basin Plan.

The 6000 acre-foot storage allocation maintained by Reclamation provides additional water in Pactola for recreation, fish and wildlife, and operational purposes. Currently, Reclamation's pool is primarily used to enhance the fisheries of Rapid Creek by providing increased winter in-stream flows and additional flows in the summer to benefit the fishery.

In so far as there are other beneficial uses of the water that Reclamation releases from our pool, such as municipal and irrigation uses that are valid under SD law, Reclamation currently has no legal method of protecting our releases for the intended in-stream flows or fishery benefits once the water is in Rapid Creek. Reclamation is making application to the Chief Engineer's Office to expand the uses under our current storage water right to include an in-stream flow use that provides protection of the water that Reclamation releases for specific purposes within a certain reach of Rapid Creek. We are proposing that the reach of Rapid Creek identified for this in-stream flow right be designated as extending from the outlet works at Pactola Dam (Latitude 44 degrees 04 minutes 36 seconds, Longitude 103 degrees 28 minutes 54 seconds NAD27) to the Farmingdale Gauge site (Latitude 43 degrees 56 minutes 31 seconds, Longitude 102 degrees 51 minutes 12 seconds NAD27). The in-stream amount to protect will range from 5 cfs to 300 cfs. The rate of in-stream flow to protect will be set by Reclamation in coordination with the Chief Engineer's water master for Rapid Creek.

The water is stored water under the Pick-Sloan Missouri Basin Plan and is covered by water right No. U.S. 581-2 with a May 5, 1952 priority date.



United States Department of the Interior

BUREAU OF RECLAMATION

Dakotas Area Office

P.O. Box 1017

Bismarck, North Dakota 58502



DK-4000

WTR-4.10

JUL 21 2010

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JUL 23 2010

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Mr. Garland Erbele
Chief Engineer Water Rights Division
Attention: Eric Gronlund
South Dakota Department of
Environment and Natural Resources
523 East Capitol
Pierre, SD 57501-3181

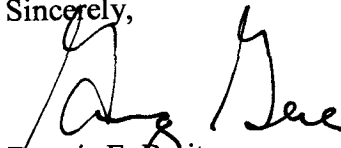
Subject: Request for Amendment of In-Stream Flow Right Application in Rapid Creek –
Pactola Reservoir Outlet Works to Farmingdale, South Dakota – Pactola Unit

Dear Mr. ~~Erbele~~ ^{Garland}:

Bureau of Reclamation has made application for an in-stream flow right to protect fishery releases made from the 6,000 acre-foot pool at Pactola Reservoir to Rapid Creek. We are requesting our application be amended to include natural flows, when available, in addition to our stored source of water.

If you have questions, please contact Curt Anderson or Jeff Nettleton at 605-394-9757.

Sincerely,


Dennis E. Breitzman
for Area Manager

cc: Mr. Mark Rath
Water Rights Division
Department of Environment
and Natural Resources
523 East Capitol
Pierre, SD 57501

Mr. Aaron Tieman
Water Rights Division
Department of Environment
and Natural Resources
2050 West Main, Suite 1
Rapid City, SD 57702

Mr. John Wagner
Rapid City Public Works Department
300 Sixth Street
Rapid City, SD 57701



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2654-2, Bureau of Reclamation**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2654-2, Bureau of Reclamation, c/o Dennis E. Breitzman, Dakotas Area Office Manager, 515 9th Street, Room 101, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2654-2 because 1) stored water appropriated by US Withdrawal No. 581-2 is available for in-stream flow use and water may be available from natural flow when all existing rights are satisfied, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications.

1. The Bureau of Reclamation shall maintain records and documentation of releases made for in-stream flow purposes from storage in Pactola Reservoir each year and natural flows, if available that are allowed to pass through the reservoir for in-stream flow purposes. These records shall be made available to DENR upon request during normal business hours. Each year's record must be maintained for at least three years.
2. Bureau of Reclamation shall contact the Rapid Valley Water Master during the irrigation season when in-stream flow releases regarding the amount of the release being made from storage in Pactola Reservoir. Each time a change in the release is made during the irrigation season whether a reduction or increase in the in-stream flow release contact with the Water Master shall be made.

See report on application for additional information.

Garland Erbele, Chief Engineer
August 26, 2010

REPORT ON WATER PERMIT APPLICATION NO. 2654-2

U.S. Bureau of Reclamation

August 20, 2010

Application No. 2654-2, U.S. Bureau of Reclamation (Reclamation), proposes an in-stream flow for a portion of Rapid Creek downstream from Pactola Reservoir. Reclamation currently holds US Withdrawal No. 581-2 authorizing the storage of water in Pactola Reservoir with water to be used for flood control, irrigation, municipal, industrial, recreation, domestic, and fish and wildlife propagation. This proposal is to provide for an in-stream flow of 5 cubic feet of water per second (cfs) up to 300 cfs in Rapid Creek from natural flow when available or from storage water to be released from Pactola Reservoir. The stream segment of Rapid Creek associated with this request is from a point immediately below Pactola Dam located in the W ½ of Section 2 T1N-R5E to the SW ¼ of Sec19 T1S-R11E at the location of the USGS gaging station No. 06421500, Rapid Creek near Farmingdale. The proposed project is located in north central Pennington County.

Review of the Proposed Project

The applicant proposes an in-stream flow right for an approximate 75 stream mile segment of Rapid Creek from immediately below the Pactola dam outlet works to the USGS gaging station on Rapid Creek near Farmingdale located approximately 17 miles southeast of Rapid City. On July 31, 2007, Reclamation and the City of Rapid City signed a water storage contract for Pactola Reservoir. The City agreed to contract for the storage of up to 49,000 acre-feet while Reclamation retained the rights to 6,000 acre-feet of storage. The designated purpose specified in the contract for Reclamation's 6,000 acre-feet is for fishery releases to supplement existing minimum water release criteria for Rapid Creek, or other beneficial uses compatible with enhancement of fish and wildlife purposes. The intent of this application is to define the stretch of Rapid Creek over which the identified in-stream flows will be protected from unauthorized use under state water law.

Rapid Creek in the area of concern has a recognized fishery. It is designated as a cold water permanent fishery from Pactola Reservoir to a point approximately two miles east of Rapid City. In the remainder of the reach from just east of the City to the Farmingdale gaging station the creek is designated as warm water permanent fishery. Some of the species of fish found in Rapid Creek are: Brown trout, Rainbow trout, Brook trout, Green sunfish, Northern pike, Largemouth bass, Rock bass, Creek chub, Longnose dace, and White sucker.

The source of water for the in-stream flow is from the natural flow in Rapid Creek when available and from release of stored water from Pactola Reservoir when natural flows are not available. Rapid Creek drains a large portion of the north central Black Hills east to the Cheyenne River. The Rapid Creek watershed above Pactola Dam encompasses approximately 320 square miles consisting of four primary streams; the North Fork and South Fork of Rapid Creek, Castle Creek, and Slate Creek. These streams flow into Rapid Creek above Silver City. From Silver City, Rapid Creek flows easterly into Pactola Reservoir. Within this watershed there are two large Reclamation water supply reservoirs. Deerfield Reservoir impounding 15, 655 acre-feet is located on Castle Creek and Pactola Reservoir impounding 55, 972 acre-feet located on the mainstem of Rapid Creek. Reclamation impounds natural flows from Castle Creek in Deerfield Reservoir and from Rapid Creek in Pactola Reservoir during the year when there is not demand for the water downstream.

Operationally for this project, water would be released to the creek at the outlet works of Pactola Reservoir. This water may be attributed to natural flow of Rapid Creek, when available, which

would be passed through Pactola Reservoir or from the 6,000 ac-ft storage account in Pactola Reservoir released to the stream. The applicant is requesting authorization of in-stream flow of 5 cfs up to 300 cfs. Although the normal in-stream flow rate would be much less than the maximum requested amount and would be based upon the flow needed at the time to supplement the fishery flow or enhance conditions for fish and wildlife purposes.

Reclamation addressed water releases when they entered into a 25 year storage contract with Rapid City for Pactola Reservoir in 2007. At that time Reclamation revised their Standard Operating Procedure (SOP) for the targeted minimum releases. The new SOP specifies a minimum release of 20 cfs year round if Pactola Reservoir storage levels are above 29000 ac-ft. If reservoir storage levels are below 29000 ac-ft, for the period October 1 – April 15 target releases are 15 cfs and for the period April 15 to October 1 the target releases are 20 cfs. Under normal operations during the October 1 – April 15 period, water orders from the City, water orders for irrigation from Rapid Valley and from other users like the Rapid Valley Sanitary District the water releases would likely increase the flow in the creek above the minimum release level.

A related flow issue concerning the fishery in Rapid Creek is the periodic need for a relatively short term large flushing flow to help condition the stream to improve fish habitat. Flows needed to provide this flushing flow are in the upper range of the 300 cfs in-stream flow rate requested by the applicant.

A review of gaging station statistical flow data provides an indication of the water that has historically been available in Rapid Creek. Table 1 shows statistical flow data from the USGS gaging station Rapid Creek at Rapid City which is located downstream from any of the City's existing Rapid Creek municipal water system diversion points. This table is broken into the winter time, October – March, and non-winter time, April – September, periods.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Average	37	37	46	71	123	147	101	77	55	43	40	38
Median	30	30	32	46	81	81	83	65	47	33	32	30
25%	24	26	27	28	54	53	64	51	35	25	26	25

Table 1 – Flow hydrograph data for the USGS gaging station Rapid Creek at Rapid City, 46 years of record, 1963 - 2009

The flow measured at the Rapid Creek at Rapid City gage (reflected in Table 1) is from a combination of contributing sources along Rapid Creek. These include water upstream from the Jackson-Cleghorn Springs Complex located adjacent to Rapid Creek on the western edge of Rapid City as well as contributions from the spring complex itself, tributaries, municipal runoff, and alluvial gains to the creek for the reach between the springs complex to the Rapid Creek at Rapid City gage.

The statistical flow data shown in Table 1. reflects the water historically released from Pactola based upon the schedule laid out in the US Bureau of Reclamation SOP plus any gains and losses from the creek in the reach from the reservoir to the gaging station. The ability to change releases from Pactola during the winter months, once they are set, is restricted due to the formation of ice in the creek which limits the ability of the creek to transport the water downstream. Non-winter time releases reflect the base flow plus any supplemental releases for the Pactola and Deerfield storage accounts minus any losses carrying the water in the stream up to the gaging station.

Table 2 shows statistical flow data from the USGS gaging station Rapid Creek near Farmingdale. This gage is located at the end of the stretch of Rapid Creek the applicant is proposing for the in-stream flow right which would supplement the existing flow. If approved the identified in-stream flow would be protected from unauthorized diversion to this point on Rapid Creek.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Average	50	54	76	104	139	158	73	51	44	52	57	52
Median	44	46	58	67	80	73	41	29	32	39	48	43
25%	32	36	43	42	27	27	18	14	20	25	38	34

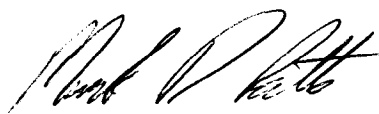
Table 2 – Flow hydrograph data for the USGS gaging station Rapid Creek near Farmingdale, 45 years of record, 1963 – 2009

Review of Existing Water Rights

On Rapid Creek between Pactola Reservoir and the confluence with the Cheyenne River there are 102 existing water rights/permits appropriating 260.13 cfs. Between Pactola Reservoir and the Farmingdale gaging station there are 90 existing rights/permits appropriating 254.20 cfs. During the irrigation season the Rapid Valley Water Master would need to be contacted by the applicant on the amount of water they wished to attribute to the in-stream flow. The Water Master would determine whether the source would be from natural flows or from the storage account. Water protected under an in-stream flow right would be treated similar to other rights from Rapid Creek and be protected in the same manner. Since the applicant has a 6,000 ac-ft storage account in Pactola Reservoir designated for environmental flows, approval of this permit would not adversely affect these existing water rights.

Conclusions

1. This application proposes an in-stream flow water right for 5 to 300 cfs for a 75 miles section of Rapid Creek downstream from Pactola Reservoir to the USGS gaging station Rapid Creek near Farmingdale.
2. In 2007 Reclamation signed a 25 year storage contract with the City of Rapid City for Pactola Reservoir. As part of the contract Reclamation retained the rights to 6,000 acre-feet of storage for the designated purposes of fishery releases to supplement existing minimum release criteria for Rapid Creek, or other beneficial uses compatible with enhancement of fish and wildlife purposes.
3. The water for the in-stream flow may be attributed to either natural flow of Rapid Creek, when available, which would be passed through Pactola Reservoir or from the 6,000 ac-ft storage account in Pactola Reservoir released to the stream.
4. Since the applicant has a 6,000 ac-ft storage account in Pactola Reservoir with one of the designations being fishery enhancement, approval of this permit would not adversely affect these existing water rights.



Mark D. Rath
Natural Resources Engineering Specialist

References:

1. U.S. Bureau of Reclamation, City of Rapid City. 2007. Repayment Contract Between the United States and the City of Rapid City, South Dakota
2. Reiser, D. W., and M. P. Ramey. 1985. Review of flushing flow requirements in regulated streams. Pacific Gas and Electric Company Report. Contract No. Z19-5-120-84. San Ramon, California.
3. Bucholz, Michelle and Wilhite, J. 2009. Statewide Fisheries Surveys, 2008 Survey of Public Waters Part 1 – Streams Region 1. South Dakota Department of Game Fish and Parks.
4. U.S. Bureau of Reclamation. 2007. Standard Operating Procedures Pactola Dam, 1956 Revised 2007.
5. SD DENR Water Rights Program files.

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SEP 13 2010

WATER RIGHTS
PROGRAM

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:

September 3, 2010

September 10, 2010

Cost of Printing Two hundred twenty-three

and eighty-eight cents (\$223.88)

Patricia K. Van Patten
(Signature)

Legal Advertising Rep.
(Title)

09/10/10
(Date Signed)

Sept. 3, 10

L20504074

NOTICE OF HEARING ON APPLICATION NO. 2654-2 FOR IN-STREAM FLOW

Notice is given that Bureau of Reclamation, c/o Dennis E. Breitzman, Dakotas Area Office Manager, 515 9th Street, Room 101, Rapid City, SD 57701, has filed application for in-stream flow for a portion of Rapid Creek downstream of Pactola Reservoir. The application proposes to provide for an in-stream flow of between 5 to 300 cubic feet of water per second (cfs) in Rapid Creek from natural flows when available or water released from storage in Pactola Reservoir. The stream segment of Rapid Creek associated with this application is approximately 75 miles from a point immediately below Pactola Dam located in the W1/2 Section 2, T1N, R5E, to the SW1/4 Section 19, T1S, R11E (USGS gaging Station No. 06421500, Rapid Creek near Farmingdale).

Bureau of Reclamation currently holds US Withdrawal No. 581-2 authorizing storage of water in Pactola Reservoir for flood control, irrigation, municipal, industrial, recreation, domestic and fish and wildlife propagation. Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases from unauthorized diversions within the in-stream flow reach.

If approved, US Withdrawal No. 581-2 will retain its May 5, 1952, priority date for water storage in Pactola Dam. The priority date assigned to the in-stream flow once released from storage will be July 12, 2010.

For more information, the staff report on this application may be obtained by contacting the Water Rights Program at (605) 773-3352.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2654-2 because 1) stored water appropriated by US Withdrawal No. 581-2 is available for in-stream flow use and water may be available from natural flow when all existing rights are satisfied, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 24, 2010. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:30 a.m. (CDT) on October 5, 2010, in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The October 5, 2010, 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 September 24, 2010.

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 District Court.

September 24, 2010, at the above Water Rights Program address to request copies of information pertaining to this application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Since this application does 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 September 24, 2010.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

Steven M. Pirner, Secretary
Department of Environment
and Natural Resources.

(Published twice at the total approximate cost of \$223.88.)



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 27, 2010

Rapid City Journal
PO Box 450
Rapid City SD 57701

ATTENTION: Legal Public Notice

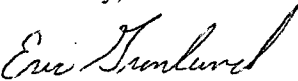
Enclosed is a Notice on Application No. 2654-2 to Appropriate Water to be published twice. Please publish the first notice on September 3, 2010 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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 Bureau of Reclamation, c/o Dennis E. Brietzman, 515 9th St., Room 101, Rapid City SD 57701 (Ph # 605-394-9757).

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

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

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 2654-2

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

Date _____

We are in receipt of your letter of August 27, 2010 enclosing Notice to Appropriate Water by Application No. 2654-2 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
denr.sd.gov

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

August 27, 2010

Bureau of Reclamation
Dennis E Breitzman
515 9th St # 101
Rapid City SD 57701

Dear Mr. Breitzman:

Water Permit Application No. 2654-2 for fish & wildlife use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Rapid City Journal printed at Rapid City SD (Ph # 605-394-8300). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper 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
eric.gronlund@state.sd.us

enclosures

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

Instruction to Newspaper - Publish first Notice on September 3, 2010 with the second publication 7 days later. The applicant 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 on Application No. 2654-2 for In-stream flow

Notice is given that Bureau of Reclamation, c/o Dennis E. Breitzman, Dakotas Area Office Manager, 515 9th Street, Room 101, Rapid City SD 57701 has filed application for in-stream flow for a portion of Rapid Creek downstream of Pactola Reservoir. The application proposes to provide for an in-stream flow of between 5 to 300 cubic feet of water per second (cfs) in Rapid Creek from natural flows when available or water released from storage in Pactola Reservoir. The stream segment of Rapid Creek associated with this application is approximately 75 miles from a point immediately below Pactola Dam located in the W ½ Section 2, T1N, R5E to the SW ¼ Section 19, T1S, R11E (USGS gaging Station No. 06421500, Rapid Creek near Farmingdale).

Bureau of Reclamation currently holds US Withdrawal No. 581-2 authorizing storage of water in Pactola Reservoir for flood control, irrigation, municipal, industrial, recreation, domestic and fish and wildlife propagation. Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases from unauthorized diversions within the in-stream flow reach.

If approved, US Withdrawal No. 581-2 will retain its May 5, 1952 priority date for water storage in Pactola Dam. The priority date assigned to the in-stream flow once released from storage will be July 12, 2010.

For more information, the staff report on this application may be obtained by contacting the Water Rights Program at (605) 773-3352.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2654-2 because 1) stored water appropriated by US Withdrawal No. 581-2 is available for in-stream flow use and water may be available from natural flow when all existing rights are satisfied, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by September 24, 2010. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:30 a.m. (CST) on October 5, 2010 in the Matthew Training Center, Joe Foss Building, 523 E Capitol Ave. Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The October 5, 2010 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 September 24, 2010.

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 September 24, 2010, at the above Water Rights Program address to request copies of information pertaining to this application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Since this application does 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 September 24, 2010.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 27, 2010

Robert Ellis, Public Works Director
City of Rapid City
300 6th Street
Rapid City SD 57701-2724

Dear Mr. Ellis:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2654-2 filed by the Bureau of Reclamation. The application proposes to provide for an in-stream flow in Rapid Creek. The Bureau of Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases.

The public notice is scheduled to be published September 3 and 10, 2010 in the Rapid City Journal for a hearing to be held before the Water Management Board on October 5, 2010.

This information is being sent to you because of the Rapid City's continuing interest in Rapid Creek water right issues. If you have any questions regarding DENR's review of the application, please contact Mark Rath at (605) 773-3352.

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
denr.sd.gov

August 27, 2010

Jim Jester
Rapid Valley Sanitary District
4611 Teak Drive
Rapid City SD 57701

Dear Mr. Jester:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2654-2 filed by the Bureau of Reclamation. The application proposes to provide for an in-stream flow in Rapid Creek. The Bureau of Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases.

The public notice is scheduled to be published September 3 and 10, 2010 in the Rapid City Journal for a hearing to be held before the Water Management Board on October 5, 2010.

This information is being sent to you because of the District's continuing interest in Rapid Creek water right issues. If you have any questions regarding DENR's review of the application, please contact Mark Rath at (605) 773-3352.

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
denr.sd.gov

August 27, 2010

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

Dear Mr. Hammerquist:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2654-2 filed by the Bureau of Reclamation. The application proposes to provide for an in-stream flow in Rapid Creek. The Bureau of Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases.

The public notice is scheduled to be published September 3 and 10, 2010 in the Rapid City Journal for a hearing to be held before the Water Management Board on October 5, 2010.

This information is being sent to you because of your continuing interest in Rapid Creek water right issues. If you have any questions regarding DENR's review of the application, please contact Mark Rath at (605) 773-3352.

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
denr.sd.gov

August 27, 2010

Keith Ham
15567 Hammerquist Road
Caputa SD 57725

Dear Mr. Ham:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2654-2 filed by the Bureau of Reclamation. The application proposes to provide for an in-stream flow in Rapid Creek. The Bureau of Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases.

The public notice is scheduled to be published September 3 and 10, 2010 in the Rapid City Journal for a hearing to be held before the Water Management Board on October 5, 2010.

This information is being sent to you because of your continuing interest in Rapid Creek water right issues. If you have any questions regarding DENR's review of the application, please contact Mark Rath at (605) 773-3352.

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
denr.sd.gov

August 27, 2010

Kevin Ham
Rapid Valley Water Master
3724 Freedom Court
Rapid City SD 57701-7639

Dear Mr. Ham:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2654-2 filed by the Bureau of Reclamation. The application proposes to provide for an in-stream flow in Rapid Creek. The Bureau of Reclamation and the city of Rapid City entered into a water storage contract wherein Reclamation retained the right to 6,000 acre feet of storage designated for fishery releases to supplement existing releases for enhancement of fish and wildlife. This application defines the stretch of Rapid Creek and quantifies proposed release rates to protect these releases.

The public notice is scheduled to be published September 3 and 10, 2010 in the Rapid City Journal for a hearing to be held before the Water Management Board on October 5, 2010.

This information is being sent to you because of your continuing interest and responsibilities as Water Master on Rapid Creek. If you have any questions regarding DENR's review of the application, please contact Mark Rath at (605) 773-3352.

Sincerely,

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

enclosures

Gronlund, Eric

From: Gronlund, Eric
Sent: Friday, September 10, 2010 1:22 PM
To: 'max@bellelaw.com'; Max Main (bellelaw@bellelaw.com)
Subject: Bureau of Reclamation water permit application
Mr. Main:

As per your request, attached is are scanned copies of the Bureau of Reclamation's application and DENR's report and recommendation. If you believe I have omitted anything, please let me know.

Used both email address' I have for you, not remembering which is current.

The Rapid City permit application material went out in today's mail.

Eric Gronlund
Water Rights Program, DENR
Phone: (605) 773-3352
Fax: (605) 773-4068
Email: eric.gronlund@state.sd.us
Web: www.denr.sd.gov

09/10/2010

RECEIVED

SEP 24 2010

WATER RIGHTS
PROGRAM

LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489
TEL (605) 892-2011
FAX (605) 892-4084
EMAIL: bellelaw@bellelaw.com

MAX MAIN*
DWIGHT A. GUBBRUD*
JOHN W. WALLACE
*LICENSED IN SOUTH DAKOTA AND WYOMING

EST. 1908

RETIRED
DONN BENNETT

September 23, 2010

Chief Engineer-Water Rights Program
Foss Building
523 East Capitol Ave.
Pierre, SD 57501

Bureau of Reclamation
c/o Dennis E. Breitzman
Dakotas Area Office Manager
515 Ninth Street, Room 101
Rapid City, SD 57701

**RE: In the Matter of the Application of the Bureau of Reclamation for
In-Stream Flow; Application 2654-2;
Our File No. 4600.011010.**

Dear Mr. Erbele and Mr. Breitzman:

The original of the Petition of Rapid Valley Water Conservancy District in the above-referenced matter is being filed with the Chief Engineer with this letter, and a copy is being served on the Applicant.

Please do not hesitate to contact me if you have any questions.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.



Max Main

MM/ra
Enc.
cc (w/Enc.): Client

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

IN THE MATTER OF THE) APPLICATION OF THE) BUREAU OF RECLAMATION) FOR IN-STREAM FLOW.)	APPLICATION NO. 2654-2 PETITION OF RAPID VALLEY WATER CONSERVANCY DISTRICT
--	---

COMES NOW, the Rapid Valley Water Conservancy District (the “Petitioner”) and files this Petition in the above-referenced matter, alleging as follows:

1. Petitioner stores, transports and delivers water for irrigation purposes in portions of the reach of Rapid Creek affected by the Application.
2. Applicant Bureau of Reclamation (the “Applicant”) should bear all stream losses incurred in transportation of all water pursuant to the Application, if approved.
3. Since the designated purpose of the Applicant’s retained storage rights in Pactola Reservoir is for fishery enhancement, and that is also the beneficial use stated in the Application, it is more appropriate to use gaging station 06416000 to measure the in-stream flow. As stated in the Report of the Water Rights Program on the Application, the portion of Rapid Creek designated as a cold water permanent fishery ends approximately two miles east of Rapid City. Gaging station 06416000 is very close to that designation end point, whereas the Farmingdale gaging station is located approximately 15 miles further downstream. There is no need for fishery enhancement in Rapid Creek downstream from the end of the cold water permanent fishery designation. Further, effluent from the Rapid City sewage treatment station enters Rapid Creek downstream from gaging station 06416000, making Rapid Creek unfit for fishery purposes for most of the distance from there downstream to the Farmingdale gaging station.

4. The proposed maximum release of 300 cfs would cause damage to irrigation pump tubes and other irrigation equipment in the Petitioner's area.

DATED this 23rd day of September, 2010.

BENNETT, MAIN & GUBBRUD, P.C.
Attorneys for Petitioner

By: Max Main
Max Main
618 State Street
Belle Fourche, SD 57717
Telephone 605.892.2011

CERTIFICATE OF SERVICE

I, **MAX MAIN**, one of the attorneys for Petitioner, do hereby certify that on the 23rd day of September, 2010, I caused full, true and complete copies of the foregoing PETITION OF RAPID VALLEY WATER CONSERVANCY DISTRICT to be served upon the following named entity at its last known mailing address, as follows:

Bureau of Reclamation
c/o Dennis E. Breitzman
Dakotas Area Office Manager
515 Ninth Street, Room 101
Rapid City, SD 57701

and the original sent for filing with:

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

by depositing the same in the United States Mail in Belle Fourche, South Dakota with first class postage thereon fully prepaid, in envelopes addressed as above.


MAX MAIN



United States Department of the Interior

BUREAU OF RECLAMATION

Dakotas Area Office
Rapid City Field Office
515 9th St., Room 101
Rapid City, SD 57701



IN REPLY REFER TO:

DK-4000
WTR- 4.10

SEP 28 2010

RECEIVED

SEP 29 2010

**WATER RIGHTS
PROGRAM**

Mr. Garland Erbele
Chief Engineer
Water Rights Division
South Dakota Department of Environment
and Natural Resources
Attn: Eric Gronlund
523 E. Capitol
Pierre, South Dakota 57501-3181

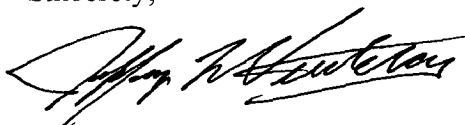
Subject: Request for Automatic Delay of Water Management Board Meeting – Scheduled
October 5, 2010 - Concerning In-Stream Flow Right Application in Rapid Creek,
Pactola Unit

Dear Mr. Erbele:

Reclamation has a scheduled hearing time on October 5, 2010 at 2:00 PM in Pierre with the Water Management Board concerning our In-Stream Flow Permit Application No. 2654-2. We just received a petition to this application dated September 23, 2010 from the attorney representing the Rapid Valley Water Conservancy District and need time to develop a response to their petition. We request an automatic delay, which would move the meeting to early December.

If you have questions, please contact Curt Anderson or me at 605-394-9757.

Sincerely,


For Dennis E. Breitzman
Area Manager

cc: Mr. Mark Rath
DENR Water Rights
523 E. Capitol - Foss Bldg.
Pierre, South Dakota 57501

Mr. Aaron Tieman
DENR Water Rights
2050 West Main, Suite 1
Rapid City, South Dakota 57702

Mr. John Wagner
Rapid City Public Works Department
300 Sixth Street
Rapid City, South Dakota 57701

Mr. Jerry Hammerquist, President
Rapid Valley Water Conservancy District
P.O. Box 26
Caputa, South Dakota 57725

Mr. John Lott
South Dakota Department of Game,
Fish & Parks
523 E. Capitol
Pierre, South Dakota 57501

Mr. Ron Koth
South Dakota Department of Game,
Fish & Parks
3305 West South Street
Rapid City, South Dakota 57702

Mr. Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche, South Dakota 57717-1489



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 29, 2010

NOTICE

TO: Dennis E. Breitzman
Bureau of Reclamation
515 Ninth Street, Room 101
Rapid City SD 57701

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Postponement of Hearing on Water Permit Application No. 2654-2, Bureau of Reclamation

The Bureau of Reclamation has requested postponement of the October 5, 2010 Water Management Board hearing on their Water Permit Application No. 2654-2. This application proposes an in-stream flow for a portion of Rapid Creek downstream from Pactola Reservoir. Mr. Main, counsel for the Rapid Valley Water Conservancy District, has been contacted and verbally agreed to the postponement. Therefore, the hearing on Application No. 2654-2 is continued and will not be held on October 5, 2010.

The hearing to consider Application No. 2654-2 will now be scheduled for the December 8 and 9, 2010 Water Management Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application No. 2654-2 will be provided to parties of record.

If you have any questions, please contact Eric Gronlund at 605 773-3352.

C: Diane Best, Assistant Attorney General

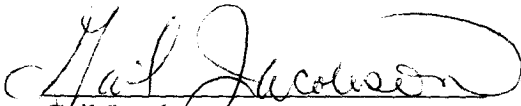
CERTIFICATION

I hereby certify that on September 29, 2010, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated September 29, 2010 regarding the Postponement of Oct. Water Management Board Hearing for Water Permit No. 2654-2 addressed as stated below:

Dennis E Breitzman, Bureau of Reclamation, 515 9th St., # 101, Rapid City SD 57701
Max Main, Bennett, Main & Gubbrud, 618 State St., Belle Fourche SD 57717-1489

A copy of the above described Notice was sent to:

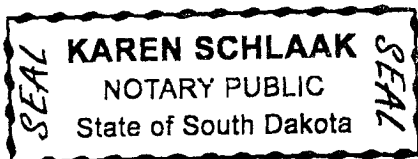
Diane Best, Assistant Attorney General, 300 N Dakota Ave., Suite 403, Sioux Falls SD 57104


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of September, 20 10.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



Gronlund, Eric

From: Anderson, Curtis (Curt) D [CAnderson@usbr.gov]

Sent: Wednesday, October 13, 2010 7:49 AM

To: Gronlund, Eric

Cc: Erger, Patrick J

Subject: RE: BOR's attorneys address

Office of Solicitors

Attn: John Chaffin

316 N 26th St.

Room 3005

Billings, MT 59101

Curt

From: Eric.Gronlund@state.sd.us [mailto:Eric.Gronlund@state.sd.us]

Sent: Tuesday, October 12, 2010 8:35 AM

To: Anderson, Curtis (Curt) D

Subject: BOR's attorneys address

Curt - I am getting a notice ready scheduling the BOR's water permit application for the December hearing. I want to include BOR's attorney "Chaffin" in the mailing so he's in the loop. Can you please send me his address - Thanks Eric

Eric Gronlund

Water Rights Program, DENR

Phone: (605) 773-3352

Fax: (605) 773-4068

Email: eric.gronlund@state.sd.us

Web: www.denr.sd.gov

10/13/2010



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 19, 2010

NOTICE

TO: Dennis E. Breitzman
Bureau of Reclamation
515 Ninth Street, Room 101
Rapid City SD 57701

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing for Water Permit Application No. 2654-2, Bureau of Reclamation

The Water Management Board will conduct a hearing to consider Application No. 2654-2 at 9:30 AM on Wednesday, December 1, 2010 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there is a change to the hearing time or date.

Enclosed is the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 2654-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

The Board has appointed a prehearing chairman for the purpose to rule on any procedural schedules and motions and resolve discovery disputes as necessary. Enclosed is the appointment. If any party files a motion that requires action prior to the scheduled Board meeting, a telephonic conference before Mr. Freeman will be scheduled at his earliest convenience.

Applicable provision of the notice published September 3 and 10, 2010 in the Rapid City Journal still apply at this hearing.

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

c: Diane Best, Assistant Attorney General
John Chaffin, Office of Solicitors, 316 N 26th Street, Room 3005, Billings MT 59101

CERTIFICATION

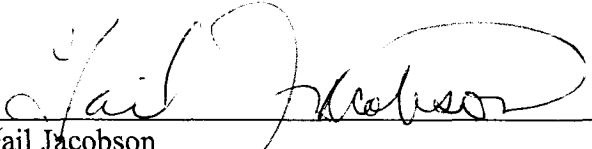
I hereby certify that on October 19, 2010, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 19, 2010, regarding scheduling of hearing on Water Right Permit Application No. 2654-2, as addressed below:

Dennis E. Breitzman
Bureau of Reclamation
515 Ninth Street, Room 101
Rapid City SD 57701

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

Diane Best, Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104

John Chaffin
Office of Solicitors
316 N 26th Street
Room 3005
Billings MT 59101



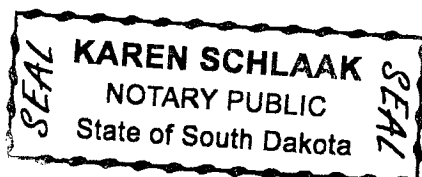
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of October, 2010.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





United States Department of the Interior

OFFICE OF THE SOLICITOR

P.O. Box 31394

Billings, Montana 59107-1394

RECEIVED

NOV 22 2010

WATER RIGHTS
PROGRAM

November 18, 2010

Hughes County Clerk of Court
104 E Capitol Ave # 8
Pierre, SD 57501-2590

Re: Motion by Non-Resident Attorney for Admittance *Pro Hac Vice*

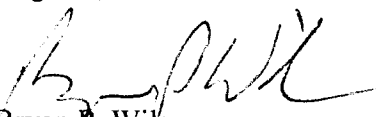
Dear Clerk of Court,

Please find enclosed my Motion by Non-Resident Attorney for Admittance *Pro Hac Vice*. Pursuant to my discussion with your office, I request that the fee be waived as I am representing the United States (acting through the Bureau of Reclamation).

You should also be receiving a supporting motion from Cheryl Schrempp DuPris, Assistant United States Attorney for South Dakota.

Please file the motion and return a file-stamped copy to me in one of the enclosed envelopes addressed to my office. If and when an order granting my motion is entered, please mail a copy of it to me and to the other interested parties using the remaining enclosed envelopes. If you have questions or concerns, please call me at 406-247-7764.

Regards,



Bryan P. Wilson

cc: Diane Best
Max Main
Cheryl Schrempp DuPris
Chief Engineer, Water Rights Program

Enclosures

RECEIVED

NOV 22 2010

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

)

COUNTY OF HUGHES

)

SIXTH JUDICIAL DISTRICT

BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

IN THE MATTER OF THE
APPLICATION OF THE
BUREAU OF RECLAMATION
FOR IN-STREAM FLOW

)

)

)

)

)

Water Permit Application
No. 2654-2

MOTION BY NON-RESIDENT ATTORNEY FOR ADMITTANCE *PRO HAC VICE*

Bryan P. Wilson, a non-resident attorney, pursuant to S.D. C.L. § 16-18-2 (as amended), hereby moves the Court to be admitted *pro hac vice* as counsel for the Bureau of Reclamation in the captioned water permit proceeding before the Water Management Board. In support of this motion:

1. Mailing Address of Non-Resident Attorney: Office of the Field Solicitor, Rocky Mountain Region, P. O. Box 31394, Billings, MT 59107-1394.
2. Name and Address of Licensed South Dakota Attorney With Whom Non-Resident Attorney Will Associate: Cheryl Schrempp DuPris, Assistant United States Attorney, 225 S. Pierre Street, Suite 337, P.O. Box 7240, Pierre, SD 57501.
3. Statement of Good Standing: I am currently a member in good standing of the bar of the state of my residence (Montana, #7471).

4. Disciplinary Actions: During the preceding five years, I have not been the subject of any disciplinary action(s) by the bars or courts of the state of my residence (Montana), or any other state.

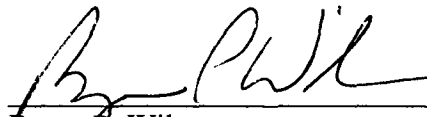
5. Denial of Admission to Other Courts: During the preceding five years, I have never been denied admission to any state or Federal court.

6. Rules of the State Bar Of South Dakota: I am familiar with the rules of the State Bar of South Dakota governing the conduct of members of the State Bar, and so long as the subject case is pending and I have not withdrawn as counsel, I will at all times abide by and comply with such rules.

7. Statement Concerning Compensation: I am not in private practice. I am appearing as a full-time staff attorney of the Office of the Solicitor, U.S. Department of the Interior, on behalf of the Bureau of Reclamation, U.S. Department of the Interior. My appearance before the State Water Management Board will be part of my regular duties as such a staff attorney, and I will not receive any additional compensation for this appearance.

8. Other: I am authorized to represent to the Court that counsel for the South Dakota Department of Environment and Natural Resources, Diane Best, and counsel for the petitioning intervener Rapid Valley Water Conservancy District, Max Main, do not object to the instant motion.

DATED this 18 day of November 2010.



Bryan P. Wilson
Counsel for Applicant, Bureau of Reclamation
Office of the Solicitor
Rocky Mountain Region
P.O. Box 31394
Billings, MT 59107-1394
(406) 247-7583
(406) 247-7587 (fax)

VERIFICATION

STATE OF MONTANA

)

) ss.

COUNTY OF YELLOWSTONE

)

I, Bryan P. Wilson, state under oath that the foregoing statements are true and correct to the best of my knowledge and belief.


Bryan P. Wilson

SUBSCRIBED AND SWORN to before me this 18th day of November, 2010.



Notary Public for the State of Montana



MARJORIE L. BELL AZURE
NOTARY PUBLIC for the State of Montana
Residing at Billings, Montana
Yellowstone County
My Commission Expires
September 08, 2012

Marjorie L. Bell Azure
[Print Name]

Residing at Billings, Montana

My Commission Expires Sept 8, 2012

CERTIFICATE OF SERVICE

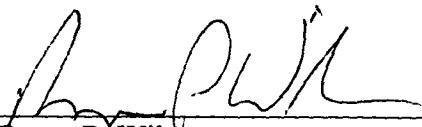
I hereby certify that on this 18 day of November, 2010, true and correct copies of the foregoing Motion for Appearance by Non-Resident Attorney were mailed postage pre-paid in the United States Mail to:

Diane Best
Assistant Attorney General
Counsel for Dept. of Environment &
Natural Resources, Div. of
Environmental Regulation
500 East Capitol Ave.
Pierre, SD 57501

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

Max Main
Bennett, Main & Gubbrud, P.C.
618 State St.
Belle Fourche, SD 57717

Cheryl Schrempp DuPris
Assistant United States Attorney
225 S. Pierre Street, Suite 337
P.O. Box 7240
Pierre, SD 57501


Bryan P. Wilson



US Department of Justice

Brendan V. Johnson
United States Attorney
District of South Dakota

RECEIVED

NOV 23 2010

WATER RIGHTS
PROGRAM

225 South Pierre Street, Room 337 605.224.5402
Pierre, South Dakota 57501-2489 FAX: 605.224.8305

November 22, 2010

Hughes County Clerk of Court
104 East Capitol Avenue, #8
Pierre, South Dakota 57501

Re: Water Permit Application No. 2654-2

Dear Clerk of Court:

Enclosed is a Motion in Support of Bryan Wilson's Motion by Non-Resident Attorney for Admittance Pro Hac Vice.

Please file the Motion and return a file-stamped copy to me. I have enclosed a self-addressed stamped envelope.

Thank you.

Sincerely,

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY

Cheryl Schrempp DuPris
Cheryl Schrempp DuPris
Assistant United States Attorney

CSD:hms

cc: Bryan Wilson
Diane Best
Max Main
Chief Engineer, Water Rights Program

Enclosure

RECEIVED

STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL DISTRICT

NOV 23 2010

WATER RIGHTS
PROGRAM

BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)
APPLICATION OF THE)
BUREAU OF RECLAMATION)
FOR IN-STREAM FLOW)
)

Water Permit Application
No. 2654-2

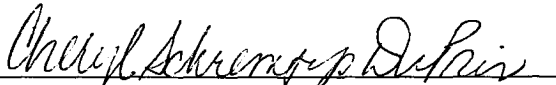
**MOTION IN SUPPORT OF MOTION BY NON-RESIDENT
ATTORNEY FOR ADMITTANCE *PRO HAC VICE***

COMES NOW Cheryl Schrempp DuPris, and pursuant to S.D.C.L. § 16-18-2 (as amended), hereby supports the Motion of Bryan P. Wilson, a non-resident attorney, to be admitted *pro hac vice* as counsel for the Bureau of Reclamation in the above captioned water permit proceeding before the Water Management Board (Board). The grounds for this Motion are as follows:

1. I am a resident practicing attorney of the State of South Dakota.
2. I will be associated and personally participating with Mr. Wilson in the hearing on the above captioned water permit application before the Board.
3. Mr. Wilson is a full-time staff attorney of the Office of the Solicitor, Bureau of Reclamation, United States Department of the Interior and his appearance before the Board will be part of his regular duties as such staff attorney.
4. Based on my association with Mr. Wilson, I find him to be a reputable and competent attorney, and for purposes of this case, I recommend his admission to practice before the Board.

DATED this 22nd day of November 2010.

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY


Cheryl Schrempp DuPris
Assistant United States Attorney
P.O. Box 7240
Pierre, South Dakota 57501
(605) 224-5402
FAX: (605) 224-8305
cheryl.dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November 2010, true and correct copies of the foregoing Motion in Support of Motion by Non-Resident Attorney for Admittance Pro Hace Vice were mailed, first class, postage pre-paid to:

Diane Best, Assistant Attorney General
Counsel for Department of Environment
and Natural Resources
Division of Environmental Regulation
500 East Capitol Avenue
Pierre, SD 57501

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

Max Main
Bennett, Main & Gubbrud, P.C.
618 State Street
Belle Fourche, SD 57717

Bryan P. Wilson
US Department of the Interior
Office of the Solicitor
P.O. Box 31394
Billings, MT 59107


Cheryl Schrempp DuPris
Assistant United States Attorney

Gronlund, Eric

From: Wilson, Bryan [bryan.wilson@sol.doi.gov]
Sent: Tuesday, November 30, 2010 11:20 AM
To: Gronlund, Eric; dwight@bellelaw.com; max@bellelaw.com; Best, Diane; Rath, Mark
Cc: Cheryl.Dupris@usdoj.gov; Tieman, Aaron; Chaffin, John; Anderson, Curtis (Curt) D; Nettleton, Jeffrey; Erger, Patrick J; Guenthner, R S (Scott)
Subject: RE: Bureau of Reclamation Application

Eric, Diane, Mark, Dwight, and Max,

Max told me by telephone this morning that while neither he nor Dwight will appear at the hearing tomorrow, the District is not withdrawing their objection and it will remain of record (Max, please correct me if I am misstating anything).

Under these circumstances, with continuing uncertainty about the District's objection, Reclamation contends that there is no agreement and therefore wishes to have the hearing postponed pursuant to the e-mail chain below. Please let us know if that is acceptable, and if so, when the next meeting will be.

Thanks to Eric, Diane, and Mark for your flexibility.

Regards,

Bryan P. Wilson, Attorney-Advisor
Office of the Field Solicitor
U. S. Department of the Interior
316 N. 26th Street, Room 3005
P.O. Box 31394
Billings, MT 59107-1394
main 406.247.7583
direct 406.247.7764
fax 406.247.7587
bryan.wilson@sol.doi.gov

This e-mail (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Eric.Gronlund@state.sd.us [mailto:Eric.Gronlund@state.sd.us]
Sent: Wednesday, November 24, 2010 10:36 AM
To: Wilson, Bryan; dwight@bellelaw.com; Diane.Best@state.sd.us; Mark.Rath@state.sd.us
Cc: Cheryl.Dupris@usdoj.gov; Aaron.Tieman@state.sd.us; Chaffin, John; Anderson, Curtis (Curt) D; Nettleton, Jeffrey; Erger, Patrick J; Guenthner, R S (Scott)
Subject: RE: Bureau of Reclamation Application

I have put a copy of this email string in the administrative record. DENR views this as a request for postponement to be implemented only if agreement is not reached prior to the Board hearing. As long as everyone agrees with this approach, which appears to be the case, that is all the more formal we need to get at this time and we'll see what early next week brings.

11/30/2010

Eric Gronlund

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

From: Wilson, Bryan [mailto:bryan.wilson@sol.doi.gov]

Sent: Wednesday, November 24, 2010 10:06 AM

To: 'Dwight Gubbrud'; Best, Diane; Rath, Mark; Gronlund, Eric

Cc: Cheryl.Dupris@usdoj.gov; Tieman, Aaron; Chaffin, John; Anderson, Curtis (Curt) D; Nettleton, Jeffrey; Erger, Patrick J; Guenthner, R S (Scott)

Subject: RE: Bureau of Reclamation Application

All,

To answer Diane's question, Reclamation requests a postponement only in the event the District's objection is not resolved. So, if the District informs Reclamation and DENR by Tuesday morning that it no longer objects to Reclamation's application, Reclamation is prepared to go forward with an unopposed hearing. On the other hand, if we do not hear from the District, Reclamation requests a postponement.

Dwight Gubbrud has indicated his consent below, so I ask that this e-mail serve as written confirmation of an unopposed request for a postponement. Eric, please let us know if you need something more formal.

Dwight, please let us know the District's position as soon as possible. Reclamation's representatives plan to from Rapid City to Pierre on Tuesday, so they will need to know no later than Tuesday morning in order to cancel their plans.

Please respond to this e-mail if there are any problems, or need for clarification or additional information. Thank you all, and have a happy and safe Thanksgiving.

Regards,

Bryan Wilson

Counsel for Bureau of Reclamation

From: Dwight Gubbrud [mailto:dwight@bellelaw.com]

Sent: Wednesday, November 24, 2010 8:07 AM

To: Diane.Best@state.sd.us; Wilson, Bryan; Mark.Rath@state.sd.us; Eric.Gronlund@state.sd.us

Cc: Cheryl.Dupris@usdoj.gov; Aaron.Tieman@state.sd.us; Eric.Gronlund@state.sd.us; Chaffin, John; Anderson, Curtis (Curt) D; Nettleton, Jeffrey; Erger, Patrick J; Guenthner, R S (Scott)

Subject: RE: Bureau of Reclamation Application

Bryan,

I will agree to a continuance for the Bureau of Reclamation matter if we are not able to reach an agreement. Unfortunately, due to the weather my client has not been able to hold a meeting of its members.

Dwight

From: Diane.Best@state.sd.us [mailto:Diane.Best@state.sd.us]

Sent: Wednesday, November 24, 2010 7:04 AM

To: bryan.wilson@sol.doi.gov; dwight@bellelaw.com; Mark.Rath@state.sd.us; Eric.Gronlund@state.sd.us

Cc: Cheryl.Dupris@usdoj.gov; Aaron.Tieman@state.sd.us; Eric.Gronlund@state.sd.us;

11/30/2010

John.Chaffin@sol.doi.gov; CAnderson@usbr.gov; JNettleton@usbr.gov; PErger@usbr.gov;
RGuenthner@usbr.gov
Subject: RE: Bureau of Reclamation Application

Bryan,

Are you asking for a postponement contingent on not settling? In other words if there is no opposition and just a settlement to present--you would want to leave it on the docket?

Or are you asking for a postponement either way?

Regardless, here's the procedure. If the parties are all in agreement and get written confirmation of that to Eric Gronlund for the file, the the Chief Engineer won't stand in the way of a delay. In fact, he'll just postpone without needing a board order.

If there is an objection, we'll need to schedule a telephonic hearing with Rodney Freeman, the Board member appointed to act on continuances.

Original Message-----

From: Wilson, Bryan [mailto:bryan.wilson@sol.doi.gov]

Sent: Tuesday, November 23, 2010 5:59 PM

To: Best, Diane; dwight@bellelaw.com; Rath, Mark; Gronlund, Eric

Cc: 'Dupris, Cheryl (USASD)'; Tieman, Aaron; Gronlund, Eric; Chaffin, John; Anderson, Curtis (Curt) D; Nettleton, Jeffrey; Erger, Patrick J; Guenther, R S (Scott)

Subject: RE: Bureau of Reclamation Application

All,

Please find attached the United States' Witness and Exhibit Disclosure.

Also, Dwight has informed me that the District may continue to object to Reclamation's application on the grounds stated in Paragraph 3 of their petition (i.e. the issue of which gauge the in-stream flow would end at). However, I understand that the District is going to consider the matter further at an evening meeting this coming Monday, November 29 (the Nov. 22 meeting was postponed due to weather).

If the District still intends to contest Reclamation's application, and especially if the District may not make a final decision regarding its position until Monday evening, then Reclamation would like to seek to postpone the December 1 hearing.

Diane, Dwight, Mark, and Eric: if possible, can you please let me know whether the District, the State, and the Board can agree to postpone the hearing? Thanks very much.

Regards,

Bryan P. Wilson, Attorney-Advisor
Office of the Field Solicitor
U. S. Department of the Interior
316 N. 26th Street, Room 3005
P.O. Box 31394
Billings, MT 59107-1394

main 406.247.7583
direct 406.247.7764
fax 406.247.7587
bryan.wilson@sol.doi.gov

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From: Diane.Best@state.sd.us [mailto:Diane.Best@state.sd.us]
Sent: Tuesday, November 23, 2010 11:23 AM
To: Wilson, Bryan; dwight@bellelaw.com
Cc: Mark.Rath@state.sd.us; Aaron.Tieman@state.sd.us; Eric.Gronlund@state.sd.us
Subject: Bureau of Reclamation Application

<<DENR Exh. 4 -BOR App.pdf>> <<DENR 2--BOR App. Rath-CV.pdf>> <<DENR Ex. 3- Rapid Creek_Basin.pdf>>

Attached are DENR Exhibits 2-4 for the BOR application to be heard next week.

In addition I would mark the agency file as Exhibit 1. It contains the application, publication notices, affidavit of publication, and petitions to intervene.

Even if the matter settles, Mark Rath will need to provide short background and the Chief Engineers' Recommendation for Approval of the settlement.

So he would use Exhibits 3 and 4 in any event, I expect.

RECEIVED

DEC 22 2010

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF HUGHES

SIXTH JUDICIAL DISTRICT

BEFORE THE WATER MANAGEMENT BOARD

STATE OF SOUTH DAKOTA

IN THE MATTER OF THE
APPLICATION OF THE
BUREAU OF RECLAMATION
FOR IN-STREAM FLOW

Water Permit Application
No. 2654-2

ORDER GRANTING MOTION BY NON-RESIDENT
ATTORNEY FOR ADMITTANCE *PRO HAC VICE*

In consideration of the Motion of Bryan P. Wilson, a non-resident attorney, pursuant to S.D. C.L. § 16-18-2 (as amended), to be admitted *pro hac vice* as counsel for the Bureau of Reclamation in the captioned water permit proceeding before the Water Management Board, and good cause appearing therefor,

IT IS HEREBY ORDERED that Bryan P. Wilson is admitted to practice before the Water Management Board *pro hac vice*.

DATED this 15 day of December, 2010.


DISTRICT JUDGE

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

DEC 21 2010

 Clerk
By _____ Deputy



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 7, 2010

NOTICE

TO: Bryan P. Wilson, Attorney-Advisor
Office of the Field Solicitor
U. S. Department of the Interior
P.O. Box 31394
Billings, MT 59107-1394

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

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

SUBJECT: Postponement of Hearing and Rescheduling for Water Permit Application No.
2654-2, Bureau of Reclamation

By agreement of parties, the December 1, 2010 hearing on Water Permit Application No. 2654-2 filed by the Bureau of Reclamation proposing an instream flow for a portion of Rapid Creek downstream of Pactola Reservoir was postponed.

The Water Management Board will now conduct a hearing to consider Application No. 2654-2 at 1:30 PM AM on Wednesday, March 9, 2011 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Future notice will be provided to all parties if there is a change to the hearing time or date.

Applicable provision of the notice published September 3 and 10, 2010 in the Rapid City Journal still apply at this hearing.

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

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on December 7, 2010, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 7, 2010, regarding scheduling of hearing on Water Right Permit Application No. 2654-2, as addressed below:

Bryan P. Wilson, Attorney-Advisor
Office of the Field Solicitor
U. S. Department of the Interior
P.O. Box 31394
Billings, MT 59107-1394

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

Diane Best, Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104

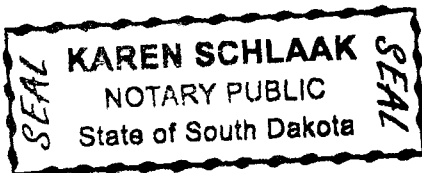
1


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of December, 2010.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

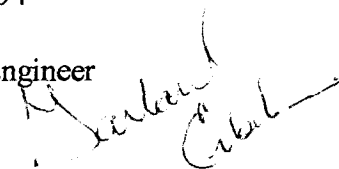
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 22, 2011

NOTICE

TO: Bryan P. Wilson
Office of the Field Solicitor
U. S. Department of the Interior
P.O. Box 31394
Billings, MT 59107-1394

Max Main
Bennett, Main & Gubbrud
618 State Street
Belle Fourche SD 57717-1489

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Hearing for Water Permit Application No. 2654-2, Bureau of Reclamation

This notice is a reminder that the Water Management Board will conduct a hearing to consider Application No. 2654-2 at 1:30 PM on Wednesday, March 9, 2011 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

Applicable provisions of the notice published September 3 and 10, 2010 in the Rapid City Journal and subsequent personal notice sent to parties of record still apply at the hearing. The notice dated October 19, 2010 included the report, recommendation, affidavit of publication and petition in the matter of Water Permit Application No. 2654-2. This is the same information that is sent to the Water Management Board members in advance of the hearing. If any party needs replacement copy sent to them, please contact the Water Rights Program.

Please contact Eric Gronlund, Water Rights Program at (605) 773-3352 or Diane Best, Attorney General's office at (605) 367-5880 ext. 105, if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on February 22, 2011, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 22, 2011, regarding scheduling of hearing on Water Right Permit Application No. 2654-2, as addressed below:

Bryan P. Wilson
Office of the Field Solicitor
U. S. Department of the Interior
P.O. Box 31394
Billings, MT 59107-1394

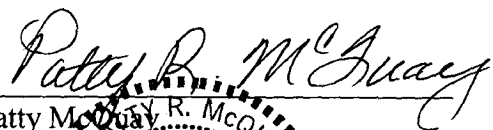
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618 State Street
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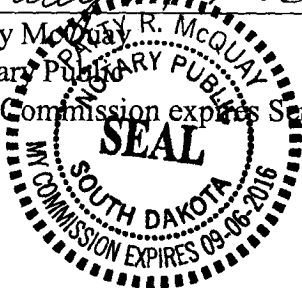
Diane Best, Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of February, 2011.


Patty R. McQuay
Notary Public
My Commission expires September 6, 2016



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

300 N. Dakota Avenue, Suite 403
Sioux Falls, South Dakota 57104-6032
Phone (605) 367-5880
FAX (605) 367-5886
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY

January 4, 2011

Bryan P. Wilson
Office of the Solicitor
Rocky Mountain Region
P.O. Box 31394

Max Main
618 State Street
Belle Fourche, SD 57717

Re: In the Matter of Water Permit Application 2654-2, Bureau of Reclamation (instream flow)

Dear Bryan and Max:

This letter responds to the proposed stipulation. We suggest one minor change. Please delete "shall be included with the" in the second line and insert "are agreed upon by the parties for submission to the South Dakota Water Management Board." This is intended to defer to the Board. With that change, I suggest that you both sign the agreement and then mail it to the Chief Engineer for his signature and filing.

With this agreement, the matter will still come before the Board's regular meeting in March. Mark Rath will still present testimony giving the background of the application. We would also present the Stipulation at that time.

While these stipulated conditions would apply only to the instream flow permit referenced above, we would expect, as a courtesy matter, that the Bureau of Reclamation would provide notice of any other releases that it may find necessary for its operations.

The Chief Engineer's agreement applies to the specific application at issue here. Any future applications would, of course, be subject to separate review and consideration.

Sincerely,

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

Diane Best
Assistant Attorney General

cc: Garland Erbele, Chief Engineer

RECEIVED

FEB 25 2011

WATER RIGHTS
PROGRAM

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

IN THE MATTER OF THE	)	
APPLICATION OF THE	)	Water Permit Application
BUREAU OF RECLAMATION	)	No. 2654-2
FOR IN-STREAM FLOW	)	
	)	

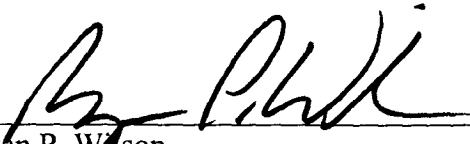
THE UNITED STATES' NOTICE OF APPEARANCE BY TELEPHONE

The United States of America gives notice that its attorney, Bryan P. Wilson of the Billings, Montana office of the Department of the Interior Field Solicitor, will appear at the March 9, 2011 hearing on this matter by telephone, as approved by Assistant Attorney General Diane Best.

Reclamation makes this motion based in part on the representation by counsel for the Rapid Valley Water Conservancy District that it will not present exhibits or testimony at the hearing.

Witnesses for Reclamation will still be appearing in person.

DATED this 22nd day of February, 2011.


Bryan P. Wilson
Counsel for Applicant, Bureau of Reclamation
Office of the Solicitor
Rocky Mountain Region
P.O. Box 31394
Billings, MT 59107-1394
(406) 247-7583
(406) 247-7587 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2011, a true and correct copy of the foregoing United States' Notice of Appearance by Telephone was mailed, first-class postage prepaid, to:

Diane Best
Assistant Attorney General
Counsel for Dept. of Environment &
Natural Resources, Div. of
Environmental Regulation
500 East Capitol Ave.
Pierre, SD 57501

Chief Engineer
c/o Mark D. Rath
Water Rights Program
Foss Building
523 East Capitol Ave.
Pierre, SD 57501

Max Main
Dwight Gubbrud
Bennett, Main & Gubbrud, P.C.
618 State St.
Belle Fourche, SD 57717

Cheryl Schrempp DuPris
Assistant United States Attorney
225 S. Pierre Street, Suite 337
P.O. Box 7240
Pierre, SD 57501

Eric Gronlund
Water Rights Division
523 East Capitol Ave.
Pierre, SD 57501


Rita Graeber
Legal Technician

LAW OFFICES OF
BENNETT, MAIN & GUBBRUD
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717-1489
TEL (605) 892-2011
FAX (605) 892-4084
EMAIL: bellelaw@bellelaw.com

RECEIVED
MAR 02 2011

MAX MAIN*
DWIGHT A. GUBBRUD*
JOHN W. WALLACE
*LICENSED IN SOUTH DAKOTA AND WYOMING

EST. 1908

RETIRED
DONN BENNETT

February 28, 2011

Diane Best, Assistant Attorney General
Office of the Attorney General
300 N. Dakota Ave., #403
Sioux Falls, SD 57104

RE: Water Management Board App. No. 2654-2.

Dear Diane:

Enclosed is the original Stipulation signed and initialed by Bryan Wilson and myself. After the Chief Engineer has signed and initialed, please send a copy to me.

Thank you for your assistance.

Sincerely,

BENNETT, MAIN & GUBBRUD, P.C.



Max Main

MM/njo
cc: Bryan Wilson (letter only)
clients (w/ enc.)

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

IN THE MATTER OF THE	)	APPLICATION NO. 2654-2
APPLICATION OF THE	)	
BUREAU OF RECLAMATION	)	STIPULATION
FOR IN-STREAM FLOW.	)	

IT IS HEREBY STIPULATED, that the following two qualifications are agreed upon by the parties for submission to the South Dakota Water Management Board:

1. The Bureau of Reclamation shall bear the proportionate share of stream losses allocable to releases from Pactola Dam pursuant to Water Permit No. 2654-2.

2. The Bureau of Reclamation shall give 24 hours advanced notice to the Rapid Valley Water Conservancy District, the City of Rapid City, and the Rapid ~~City~~^{Valley} Sanitary District prior to the release of water from Pactola Reservoir under Water Permit No. 2654-2.

DATED this 11 day of February, 2011.



BRYAN B. WILSON
Counsel for Applicant
Bureau of Reclamation
Office of the Solicitor
Rocky Mountain Region
P. O. Box 31394
Billings, MT 59107-1394

*non
BLW
K*

DATED this 5th day of January, 2011.

BENNETT, MAIN & GUBBRUD, P.C.
Counsel for Petitioner, Rapid Valley Water
Conservancy District

By: Max Main
Max Main
618 State Street
Belle Fourche, SD 57717

DATED this _____ day of _____, 2011.

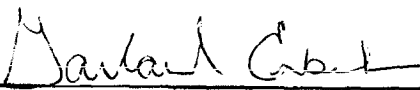
GARLAND ERBELE
Chief Engineer
Water Rights Program
Foss Building, 523 E. Capitol Avenue
Pierre, SD 57501

DATED this _____ day of _____, 20____.

BENNETT, MAIN & GUBBRUD, P.C.
Counsel for Petitioner, Rapid Valley Water
Conservancy District

By: _____
Max Main
618 State Street
Belle Fourche, SD 57717

DATED this 28 day of February, 20 11.



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

RECEIVED

MAR - 2 2011

WATER RIGHTS
PROGRAM

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

IN THE MATTER OF THE	)	
APPLICATION OF THE	)	Water Permit Application
BUREAU OF RECLAMATION	)	No. 2654-2
FOR IN-STREAM FLOW	)	
	)	

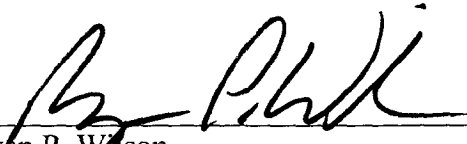
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DATED this 22nd day of February, 2011.


Bryan P. Wilson
Counsel for Applicant, Bureau of Reclamation
Office of the Solicitor
Rocky Mountain Region
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Billings, MT 59107-1394
(406) 247-7583
(406) 247-7587 (fax)

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Pierre, SD 57501

Chief Engineer
c/o Mark D. Rath
Water Rights Program
Foss Building
523 East Capitol Ave.
Pierre, SD 57501

Max Main
Dwight Gubbrud
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618 State St.
Belle Fourche, SD 57717

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Assistant United States Attorney
225 S. Pierre Street, Suite 337
P.O. Box 7240
Pierre, SD 57501

Eric Gronlund
Water Rights Division
523 East Capitol Ave.
Pierre, SD 57501


Rita Graeber
Legal Technician



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

APR 27 2011

Bureau of Reclamation
c/o Dick Long
515 9th St, Room 101
Rapid City SD 57701

Dear Mr. Long:

Enclosed is Water Permit No. 2654-2 authorizing in-stream flow for a portion of Rapid Creek downstream of Pactola Reservoir, not exceeding the limits as specified in the Water Permit.

We will schedule an inspection so that the Water License may be issued to the Bureau, thus completing the acquisition of a Water Right.

If you have any questions, please contact this office.

Sincerely,

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

enclosure