WATER PERMIT NO. 2730-2

Name of Applicant: **United Order of South Dakota**

Address: **11571 Farmer Rd, Pringle SD 57730** Phone: **325 650-8444**

Amount of Water Claimed: **0.46 cfs (205 gpm)** Total Acres: **NA**

Source of Water Supply: **groundwater (1 additional well)**

Water to be used for: ~~**suburban housing development**~~ County: **Custer**

Type of Waste Disposal System:

Location: **9 miles southwest of Pringle**

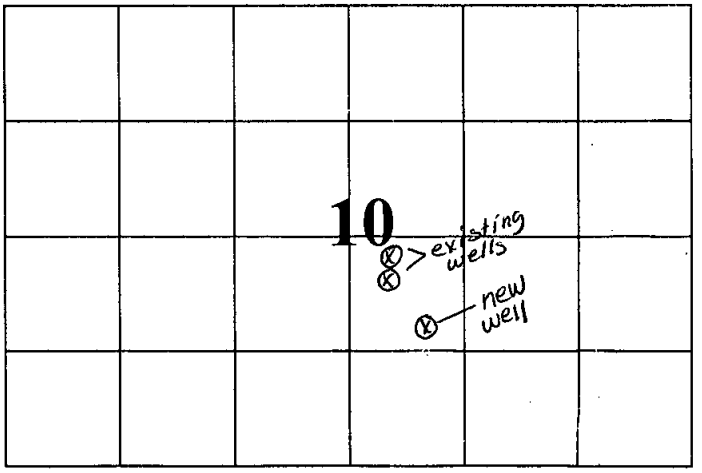
PRIORITY Date Received: **10-14-14** Application/License Fee: **$ 1050**

Corrected Application Received: Period of Annual Use: **Jan 1 – Dec 31**

Remarks: **Additional diversion point and increases the diversion rate authorized by Water Permit No. 2610-2**

Diversion Point: **NW 1/4 SE 1/4 Sec 10-T6S-R3E**

Land to be Irrigated: **NA**



Depth of Well: **1100 feet deep**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **10-14-14** By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SD EForm - 1585LD V4
FORM 2: Application for uses other than irrigation
(type or print)

RECEIVED
OCT 14 2014
WATER RIGHTS PROGRAM

Mail to: PMB 2020 DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	(office use only) No. 2730-2 Hydrologic Unit 10120106 Basin Upper Cheyenne Newspaper Custer Co Chronicle Rapid City Journal

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

Check use(s) of water:

- [ ] Municipal
- [x] Rural Water System
- [x] Domestic (over 18 gpm)
- [ ] Suburban Housing
- [ ] Commercial
- [ ] Industrial
- [ ] Recreational
- [ ] Fish & Wildlife
- [ ] Other
- [ ] Institutional
- [ ] Geothermal Heat

Type of Application: (check one)
- [x] **New**
- [ ] **Vested Right** (Use predates Mar 2, 1955)
- [ ] **Future Use Reservation**
- [ ] **Place to Beneficial Use Water Reserved by Future Use Permit No.**
- [x] ~~**Amendment/Correction to Permit No.** 2610-2~~

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)
Add Diversion Point, Add 205 GPM to the existing 95 GPM permit

1. Name to Appear on Water Permit United Order of South Dakota
   (check one) [x] Owner [ ] Tenant/lessee [ ] Owner's Legal Agent _____ (name and complete address if different than above name)
   Mailing Address ~~11571 Farmer Rd~~ Box 5050 (Address) ~~Pringle~~ Custer (City) SD (State) 57730 (Zip Code)
   Home Phone (605) 673-5274 Cell (325) 650-8444 Email sethsj@gmail.com
2. Amount of water claimed 0.46 *CFS (*Cubic Feet per Second) or 205 gpm add'l 300 **GPM (**Gallons per Minute) ***AF (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Madison Aquafer
4. Location of point of diversion 1 Well in NW1/4 SE1/4 section 10-6~~5~~S-3E (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Custer
   If not a public water supply (e.g. municipal), will water be used outside of the area described above? [ ] Yes [x] No
   If "Yes," where will water be used? _____ (example - NW1/4 section 12-T104N-R53W)
5. County or counties where water will be used Custer
6. Annual period during which water is to be used All year Jan 1 - Dec 31
7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)
   United Order of South Dakota will be upgrading the existing public water system which consists of 4" water mains with 2 wells, 1 of which is inoperative at this time. There is an existing 30,000 gallon underground water tank. The existing mains and water tank will be replaced by 6" and 8" mains and a new above ground tank which will be at least 250,000 gallons. The wells will pump to the tank, and the new mains will distribute to the community.

I, [signature], the applicant, certify that I have read this application, have examined the attached map, and that the matters stated are true.

2012-09

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)

SOUTH DAKOTA
WATER PERMIT NO. 2730-2

Date of first receipt of application October 14, 2014.

The Water Management Board approved Water Permit No. 2730-2 on December 9, 2015 for Isaac S Jeffs, trustee for United Order of South Dakota, Box 5050, Custer SD 57730 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. 2730-2 authorizes the appropriation of an additional 0.236 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This permit appropriates an additional 0.236 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This permit and Water Permit No. 2610-2 will authorize a total diversion rate of 0.446 cfs (60 acre-feet of water annually) from three wells for use in United Order of South Dakota's water system.

2. The water appropriated shall be used for the purpose of a domestic use (over 18 gpm) 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 dates from which applicant may claim right is October 14, 2014 (0.236 cfs) and February 9, 2007 (0.21 cfs and annual volume limit of 60 acre-feet established by Water Permit No. 2610-2).

5. One-fifth of the construction is to be completed on or before June 9, 2018.

6. All construction is to be completed on or before December 9, 2020.

7. Water is to be put to beneficial use on or before December 9, 2024.

8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

(continued)

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

'ATER MANAGEMENT BOARD

:

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

FEB 0 3 2016
date

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

FEB 0 3 2016

Isaac S Jeffs, Trustee
United Order of South Dakota
Box 5050
Custer SD 57730

Dear Mr. Jeffs:

Enclosed is Water Permit No. 2730-2 authorizing construction of an additional well and additional diversion rate authority not to exceed the limits as specified in the Water Permit.

The attached Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use,* must be filed with the Department of Environment and Natural Resources immediately upon completion of the additional well authorized by Water Permit No. 2730-2 and a meter(s) installed as required by Permit Qualification No. 5. A site visit by DENR staff will be scheduled to verify compliance with permit qualifications and for the purpose of issuing a water license to reflect the water distribution system as developed.

An informational sheet *?Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Jeanne Goodman

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

Enclosures

C: Jeff Connolly

Form 2A
(Complete applicable portions only)

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☒ Drilling new well(s) ☐ Using existing well(s)

a) If new wells, how many 1 Have test holes been drilled ☐ Yes ☒ No Drilled by _____
(if yes, please provide copies of logs)

b) If existing wells, how many 2 Provide copy of log(s), if available. Drilled by Taylor Drilling

c) Well Depth 1100 Depth to Top of Water Bearing Material 800ft Depth to Water from Surface 800

d) Distance to nearest existing domestic well:

On applicant's property 900 feet On property owned by others > 1 mile

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

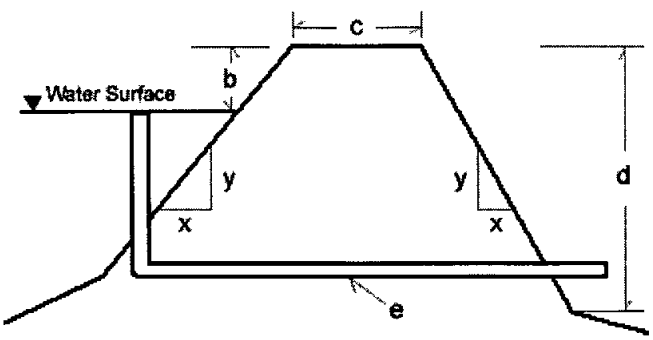
a) Surface Dimensions _____ Depth _____

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 _____

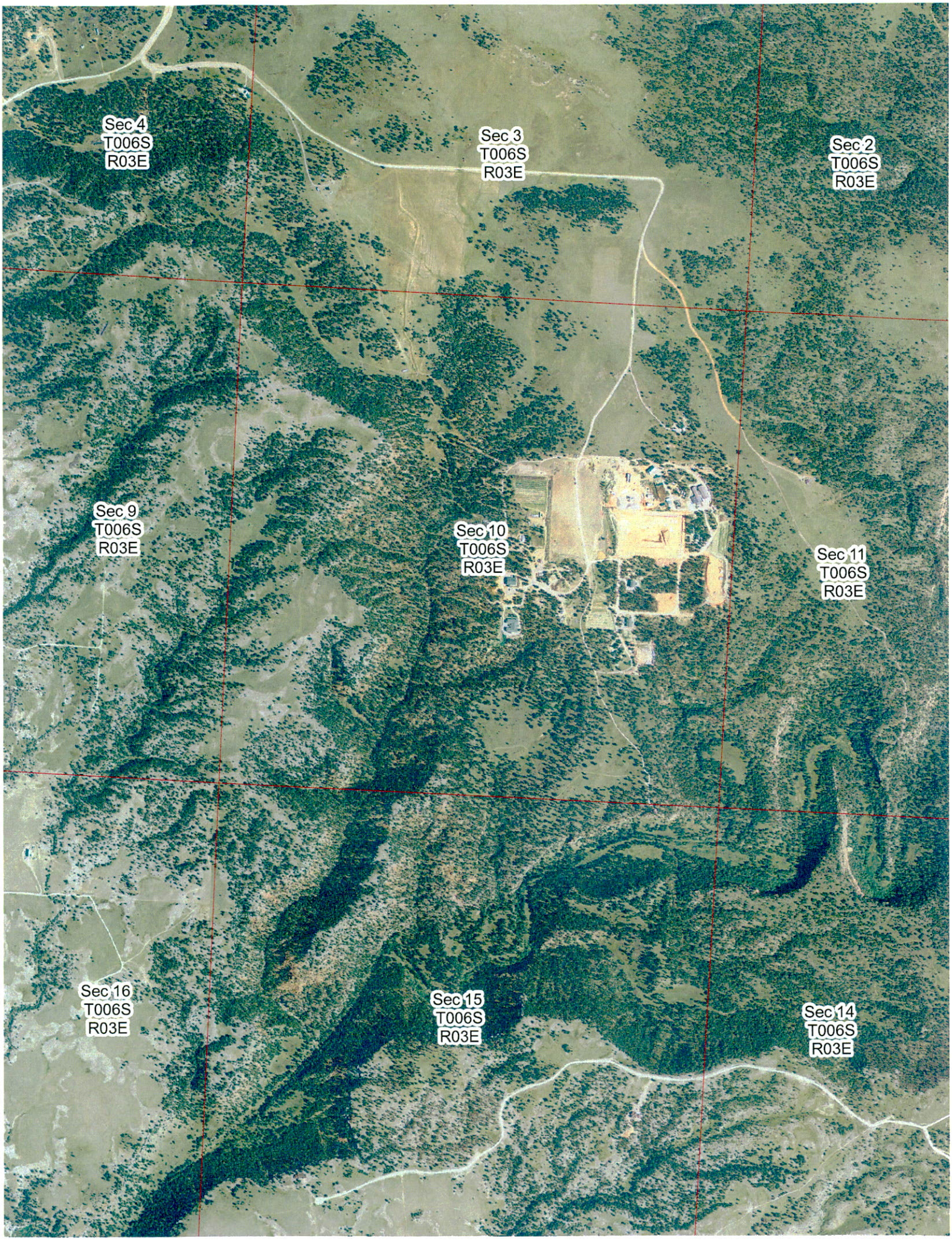
Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres

Custer County, SD
Section 10-06-03


Sec 4
T006S
R03E
Sec 3
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R03E
Sec 2
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R03E
Sec 9
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Sec 10
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Sec 11
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Sec 16
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R03E
Sec 15
T006S
R03E
Sec 14
T006S
R03E

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 10/14, 20 14

RECEIVED OF United Order of South Dakota PO Box 5050 Custer SD 57730

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

Fee for Application for Permit No. 2730-2 to Appropriate Water, to construct and to put water to beneficial use	850	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. 2730-2	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	1050	00

No. 06967

By Jean Goodman
Chief Engineer

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

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. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending Approval of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The new well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer that is authorized by Water Permit Nos. 2610-2 and 2730-2.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
December 5, 2014

WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA
NOVEMBER 12, 2014

Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer at a maximum diversion rate of 0.46 cubic feet of water per second (cfs). Water is to be diverted from two existing wells which were authorized by Water Permit No. 2610-2, and a proposed well. Water Permit No. 2610-2 authorizes diversions of up to 0.21 cfs from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. This application proposes to authorize the construction of a third well, also located in the NW¼ SE¼ of Section 10, T6S-R3E, and authorize a total maximum diversion from the three wells of 0.67 cfs. The water will be used in the United Order of South Dakota's water system.

AQUIFER: Madison aquifer (MDSN)

Aquifer Characteristics:
The Madison aquifer is a regionally extensive aquifer contained within the Madison Limestone, locally known as the Pahasapa Limestone, and the Englewood Limestone. The aquifer underlies portions of North Dakota, South Dakota, Montana, Wyoming, Saskatchewan, Manitoba and Alberta. The Madison aquifer underlies most of western South Dakota and parts of Eastern South Dakota (Figure 1). The Madison aquifer contains an estimated 644,827,200 acre-feet of recoverable water in storage in Western South Dakota (Allen and others, 1985) and 51,512,300 acre-feet of recoverable water in storage in Eastern South Dakota (Hedges and others, 1982).

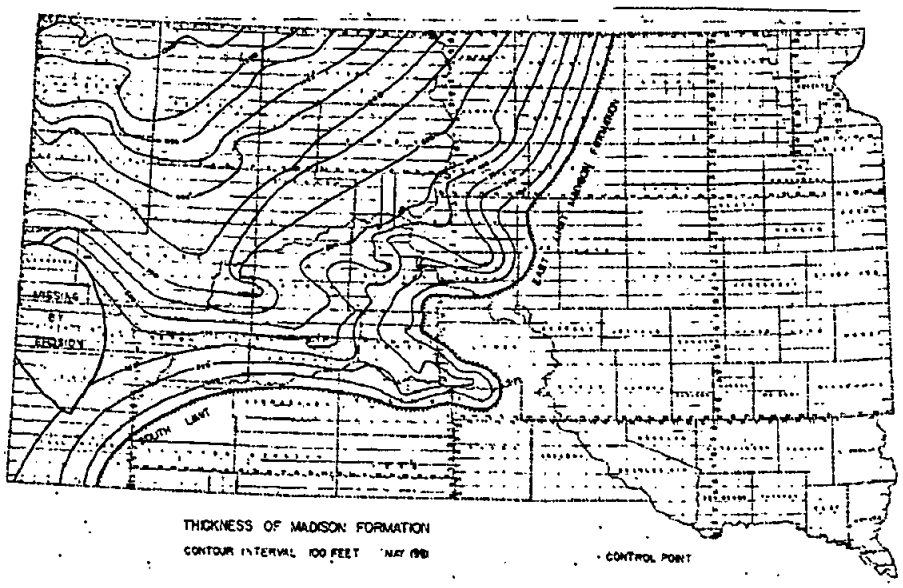

Figure 1. Areal Extent of the Madison Formation in South Dakota: modified from (Gries, 1981).

The Madison aquifer is considered a "mature karst aquifer" (Long and others, 2012) and is composed of a fine to medium crystalline, cavernous limestone and dolomite. The Madison is expected to be approximately 300 feet thick in this area (Carter and Redden, 1999a); and (Carter and Redden, 1999b). The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of

exposed surfaces, groundwater solution and fracturing. The lower part of the Madison Limestone and the Englewood Limestone generally have lower permeability than the upper part of the Madison aquifer in the Black Hill (Greene, 1993). The average porosity of the Madison is estimated to be 11%, and the effective porosity from which recoverable water can be obtained by wells is assumed to be 5% (Rahn, 1979).

The well site proposed by this application is located approximately five miles southwest of the Madison Limestone outcrop (Strobel and others, 1999). In this area, the Madison Limestone dips to the southwest at approximately 240 feet per mile (approximately three degrees) (Carter and Redden, 1999a). The DENR-Water Rights Program has record of three existing wells constructed for the United Order of South Dakota. The top of the Madison was reported to be 785 feet below grade in one well log, 715 feet below grade in a second well log and is inferred to be 719 feet below grade in the third log (Water Rights, 2014c). The static water level of the wells was reported to be 650' (06/05/2005), approximately 800' (10/20/2010) and approximately 800' (10/15/2007) respectively.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The availability of unappropriated water can be evaluated by considering SDCL 46-6-3.1 which requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." The statute provides that "An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems." Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer, a water source that is older than the Greenhorn Formation, and the water is to be used by a water distribution system. Therefore, the Board need not consider the recharge versus withdrawal issue.

Existing Rights:

This applicant has been utilizing wells completed into the Madison aquifer that were authorized by Water Permit No. 2610-2 since 2007 with no significant impact. The additional diversion rate proposed by this application is relatively low and will not likely have a noticeable effect to the Madison aquifer. There are 64 completion reports on file with the DENR-Water Rights Program within approximately five miles of the wells that are to be used to supply this appropriation (Water Rights, 2014c). The majority of these domestic wells appear to be completed into the Minnelusa aquifer and at least two are completed into the Deadwood aquifer. Wells completed into aquifers that are either stratigraphically above or below the Madison aquifer (i.e. Minnelusa and Deadwood respectively) are not expected to be affected by this proposed appropriation since the lower Minnelusa formation can be considered a confining bed that isolates the Madison hydraulically from shallower aquifers, and the bottom portion of the Madison isolates the Madison from lower

aquifers. Only three of the domestic wells on file appear to be completed into the Madison aquifer. Based on the legal location provided on the completion reports, the Madison aquifer wells are all located over three and three quarter miles from the site(s) of Application No. 2730-2.

The diversion point locations for existing water rights and future use permits appropriating water from the Madison aquifer in this area are shown in Figure 2 and identified in Tables 1 and 2.

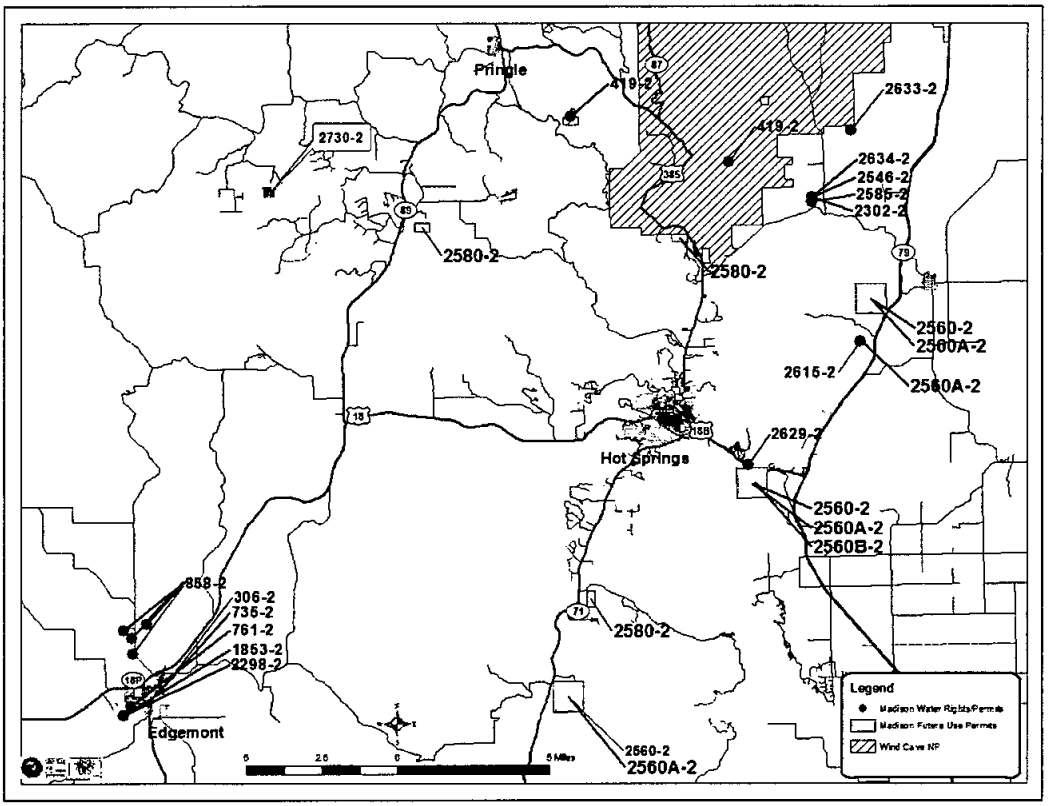

Figure 2. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, diversion points for existing Madison aquifer water rights/permits, and areas of Madison aquifer future use permits in the vicinity (Water Rights, 2014b).

Table 1. Water Rights/Permits appropriating water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS	ACRES	AC-FT /YR
306-2	CITY OF EDGEMONT	12/14/1945	LC	MUN	0.31		
419-2	WIND CAVE NATIONAL PARK	12/29/1955	LC	COM/IRR	0.15		
735-2	TENNESEE VALLEY AUTHORITY	12/26/1961	LC	IND	0.66		
761-2	CITY OF EDGEMONT	04/09/1962	LC	MUN	0.41		
858-2	WYOMING DAKOTA RAILROAD PROPERTIES INC	02/05/1965	LC	IRR	9.36	655.75	
1853-2	CITY OF EDGEMONT	08/23/1983	IL	MUN			
2298-2	CITY OF EDGEMONT	08/28/1993	LC	REC/MUN	1		
2302-2	EBEN W STREETER	02/07/1994	LC	RWS	0.033		
2546-2	EBEN STREETER	01/03/2005	PE	RWS	0.21		
2615-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	0.67		
2629-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	1		
2585-2	SOUTHERN BLACK HILLS WATER SYS	05/08/2006	DF	RWS	2.67		1600
2610-2	UNITED ORDER OF SOUTH DAKOTA	02/09/2007	PE	SHD	0.21		
2633-2	SOUTHERN BLACK HILLS WATER SYSTEM	06/20/2008	PE	RWS	0.67		
2634-2	STREETER FAMILY LIMITED PARTNERSHIP	07/17/2008	PE	RWS	0		

LC= Water License, IL= Incorporated, PE= Water Permit, DF= Deferred, MUN= municipal, COM= Commercial, IRR= Irrigation, IND= Industrial, REC= Recreational, RWS= Rural Water System, SHD= Suburban Housing Development

Table 2. Future Use Permits reserving water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

FUTURE USE PERMIT NO.	NAME	ORIGINAL RESERVATION (AC-FT/YR)	REMAINING RESERVATION (AC-FT/YR)
2560-2	FALL RIVER WATER USERS DISTRICT	750	0
2580-2	SOUTHERN BLACK HILLS WATER SYSTEM	1474	1474
2560A-2	FALL RIVER WATER USERS DISTRICT	*	0
2560B-2	FALL RIVER WATER USERS DISTRICT	*	0

* FUTURE USE PERMIT NOS. 2560A-2 AND 2560B-2 AMEND FUTURE USE PERMIT NO. 2560-2 TO EXPAND THE FUTURE USE AREA AND DO NOT RESERVE ADDITIONAL WATER

Since the Madison is under artesian conditions in this area, drawdown from pumping a well may extend over a fairly large area. The transmissivity of the aquifer is very heterogeneous with values that range over several orders of magnitude (Putnam and Long, 2007). In addition, the aquifer characteristics of the Madison can vary considerably within a short distance (Greene, 1993).

Carter and others (2001) developed hydrologic budgets for the Madison and Minnelusa aquifers combined, using nine subareas to cover the Black Hills. The subareas were identified on the basis

of hypothetical flow paths and were selected with the intent of minimizing flow across the boundaries. The well(s) that is/are to be used to supply this appropriation is/are located in Carter and others' (2001) subarea 8. Carter and others (2001) estimated the transmissivity of the Madison aquifer on the border of the subarea near the well site at 1,463 feet squared per day (ft^2/d). Applying this estimated transmissivity and assuming a storage coefficient of $S= 2x10^{-4}$, the drawdown 1,000 feet from a well pumping 0.46 cfs would be less than 19 feet after one year of continuous pumping based on the Theis Equation (see Figure 3) ("Theis Equation Calculator").

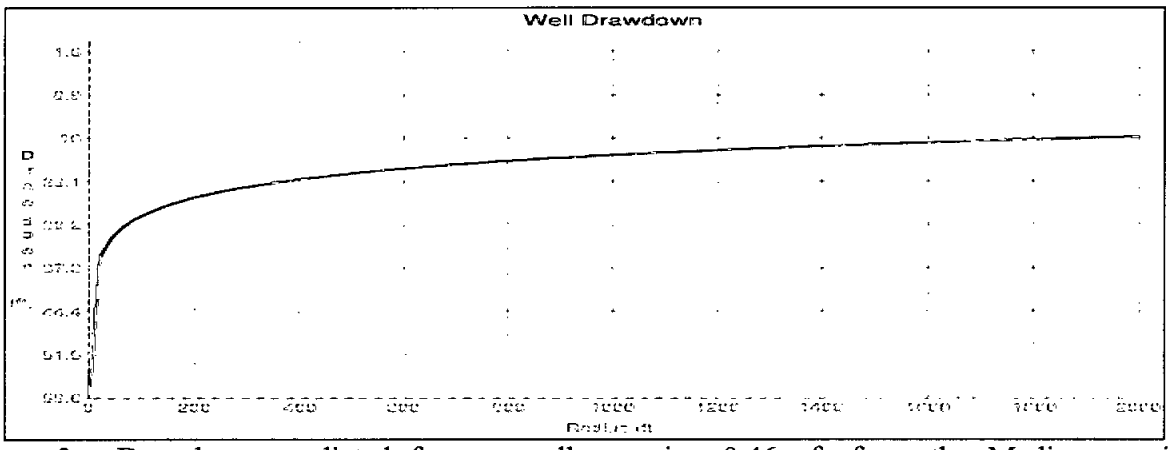

Figure 3. Drawdown predicted from a well pumping 0.46 cfs from the Madison aquifer, continuously for one year, assuming T= 1,463 ft^2/d, S= $2x10^{-4}$. (modified from ("Theis Equation Calculator"))

Assuming the combined diversion rates of Water Permit No. 2610-2 and Water Permit No. 2730-2 (if approved) are pumped from a single well, a transmissivity of 1,463 ft^2/d and a storage coefficient of S= $2x10^{-4}$, the drawdown 1,000 feet from a well pumping 0.67 cfs would be less than 28 feet after one year of continuous pumping based on the Theis Equation (see Figure 4) ("Theis Equation Calculator").

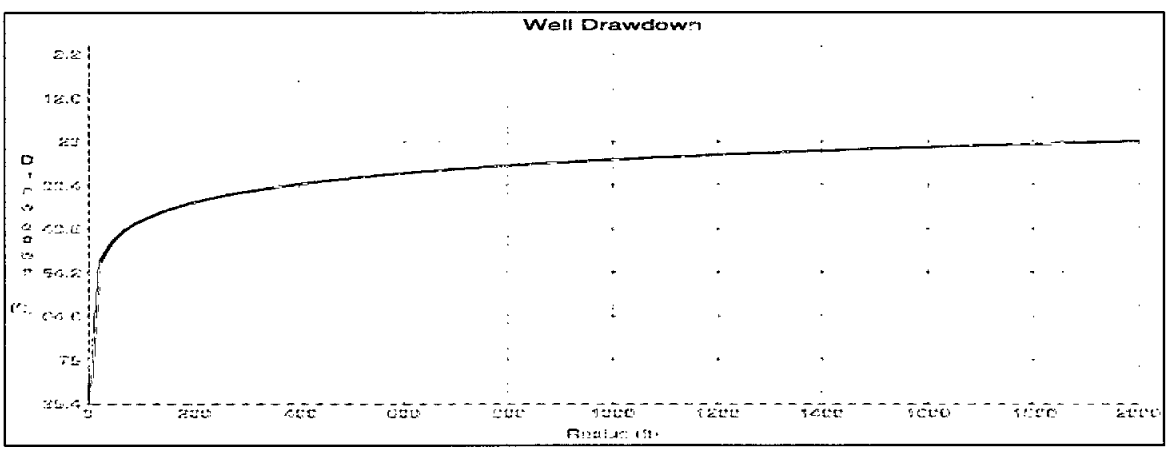

Figure 4. Drawdown predicted from a well pumping 0.67 cfs from the Madison aquifer, continuously for one year, assuming T= 1,463 ft^2/d, S= $2x10^{-4}$. (modified from ("Theis Equation Calculator"))

The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant.

Wells supplying existing Water Rights/Permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure.** Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

If the water levels in the Madison aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

It should be noted however, that well interference (drawdown) measured at Water Rights' observation wells located near high capacity municipal wells in Spearfish, Sturgis and Rapid City has never been significant (i.e. drawdown of only a few feet or tens of feet) (Water Rights, 2014a).

Given the distance between the well(s) that is/are to supply this appropriation and existing Madison wells well interference is not expected to be adverse.

The well sites proposed by this application are located approximately five miles west of the "Argyle" well site proposed by Future Use Permit No. 2580-2. Approval of this application should not hinder development of the future use permit due to the distance involved.

Beneficial Use:

Pursuant to SDCL 46-1-6 (3) beneficial use is defined as:

> "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies;

The applicant has the burden of proof in establishing that an application is a beneficial use of water.

Public Interest Issues:

In the past, there have been two "public interest" issues raised that could potentially be obstacles to developing the Madison aquifer in the Southern Black Hills: the possibility of affecting artesian spring discharge; and the possibility of affecting the water resources at Wind Cave National Park.

Artesian Springs:

The water at a number of springs in the southern Black Hills area contains geochemical and isotopic characteristics of the Madison aquifer (Whalen, 1994). These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer" (Rahn and Gries, 1973). Major springs in the area identified by Naus and others (2001) are shown in Figure 5.

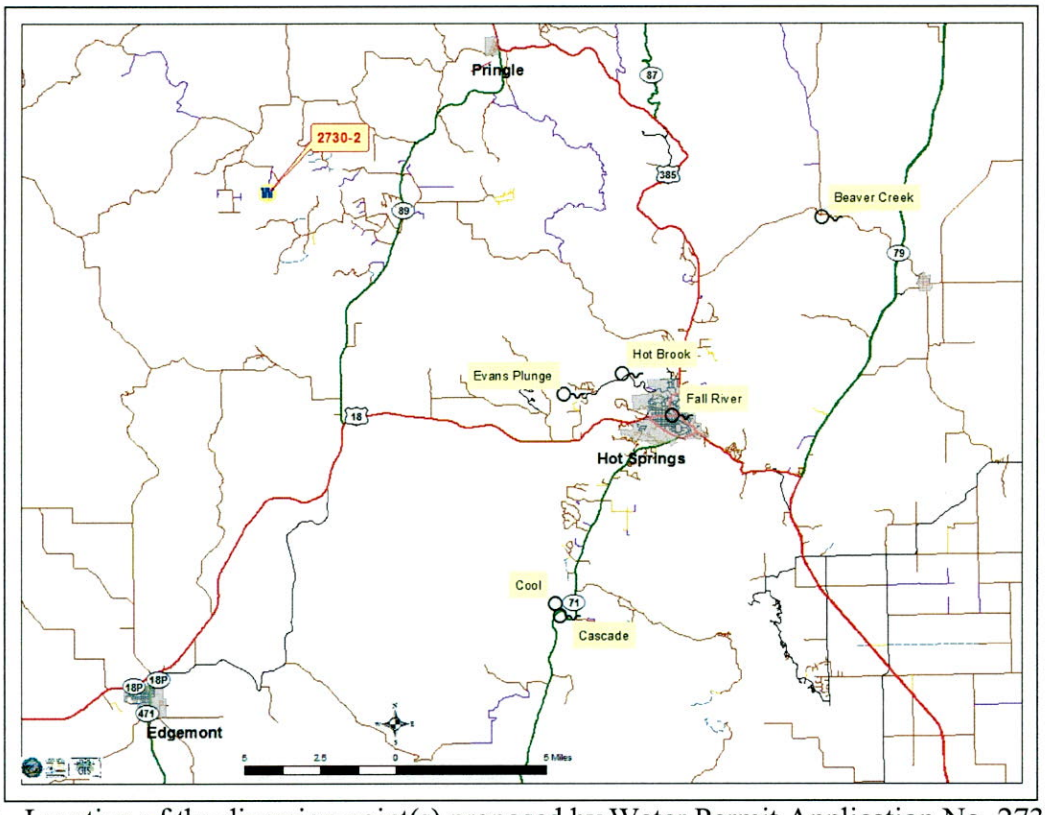

Figure 5. Location of the diversion point(s) proposed by Water Permit Application No. 2730-2, and the location of major springs in the vicinity.

The discharge of one of these springs, Beaver Creek Spring, is measured by National Park Service personnel. The spring is located approximately two and one-quarter miles east of SD DENR-Water Rights' Observation Well CU-91A. A comparison of the discharge of Beaver Creek Springs and the potentiometric surface of the Madison aquifer suggests a relationship may exist between the two (see Figure 6). At this time it is not possible to determine if a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring flow or if the two have similar responses to the same hydrologic conditions. If a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring discharge, a decline of the potentiometric surface in the vicinity of the springs could decrease spring discharge.

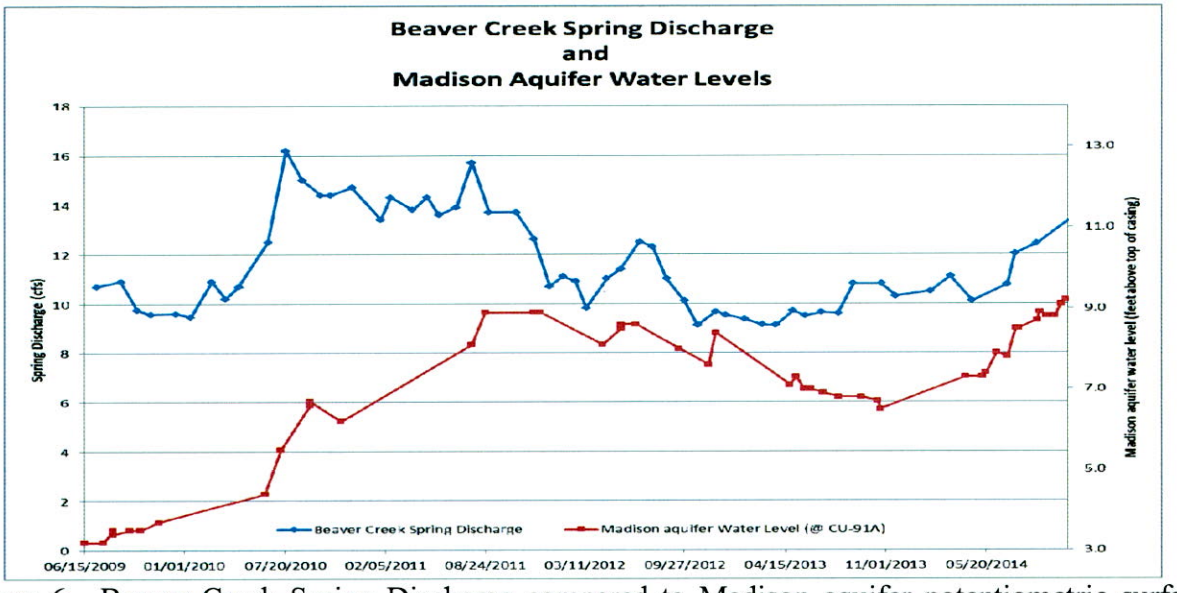

Figure 6. Beaver Creek Spring Discharge compared to Madison aquifer potentiometric surface measured at observation well CU-91A ("Aquarius Web Data Portal."; Water Rights 2014a)

When considering Future Use Permit No. 2560-2 for Fall River Water User District, the Water Management Board accepted that SD Water Law does not protect artesian head pressure as a means of diversion and determined that well interference resulting in decreased discharge from these "artesian" springs could probably not be considered an adverse impact. The Board did however recognize the "public interest" issues of decreased base flows in area streams that could result from decreased spring discharge as the result of well interference. Approval of Future Use Permit No. 2560-2 included the following qualification:

> "At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows of Beaver Spring, Cascade Springs and Hot Springs." (Water Rights, 2014b)

Subsequently, when considering the deferral of Water Permit Application No. 2585-2, Southern Black Hills Water System, the Water Management Board adopted a conclusion of law (No. 11) which states in part "The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria."

The well site(s) proposed by this application is/are located over eleven miles from the nearest major spring (Evens Plunge). A fairly large change in the hydraulic gradient in the vicinity of the springs would be necessary to significantly affect the groundwater flow rates and consequently the spring's discharge. Given the distance involved and the relatively low diversion rate proposed by this application, (0.67 cfs maximum), it is unlikely that drawdown from this well would have a measurable impact on spring discharge.

Wind Cave National Park:

The National Park Service (NPS) has intervened in matters of water permit applications from the Madison aquifer in the past. In 2007, the NPS filed a petition to intervene in the matter of Water Permit Application No. 2610-2. The NPS was concerned that "the Application No. 2610-2, over time and in combination with senior water right applications … will adversely impact Wind Cave National Park (Wind Cave NP) senior water rights and water-dependent resources." The water-related resources cited by the NPS include: lakes and pools in the lower reaches of Wind Cave, three perennial streams (Cold Springs, Beaver, and Highland Creeks), many intermittent and ephemeral stream courses, and over 95 seeps and springs. The NPS later withdrew their opposition to granting the water permit but restated its concerns about the potential impacts of appropriations from the Madison aquifer.

Lakes and Pools:

The lakes and pools in Wind Cave National Park are in hydraulic connection with the Madison aquifer and the water table of the Madison aquifer is accessible at the deepest part of the cave (Long and others, 2012) . The stages of the lakes fluctuate in response to climatic conditions similar to fluctuations in the Madison potentiometric surface measured in DENR-Water Rights' Observation Well CU-91A, (see Figure 7).

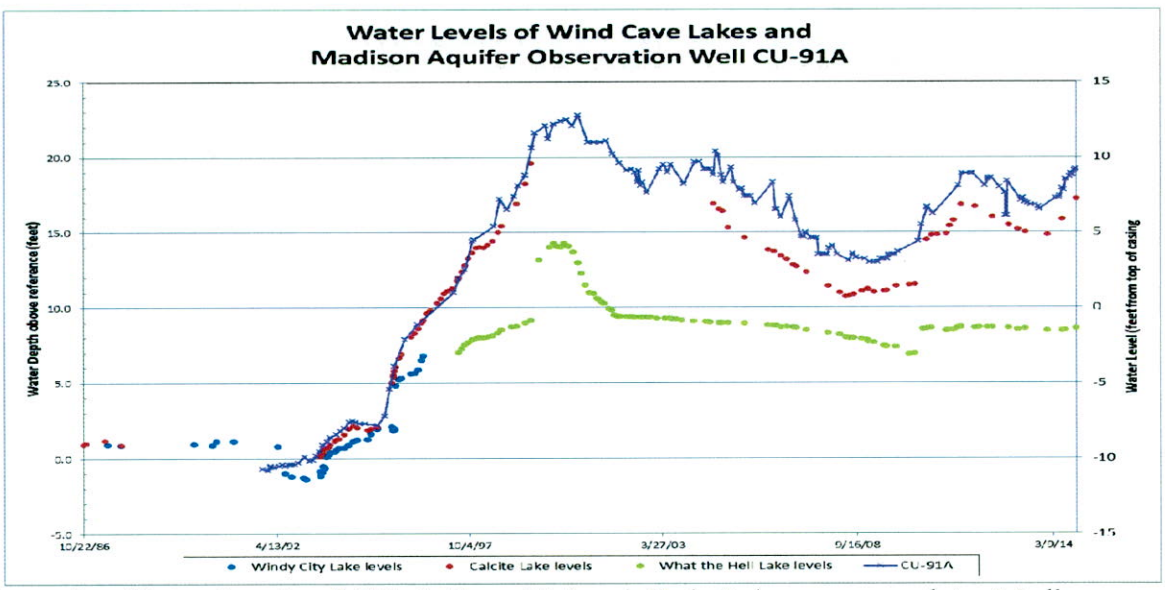

Figure 7. Water Levels of Wind Cave National Park Lakes compared to Madison aquifer potentiometric surface measured at observation well CU-91A (Hughes; Water Rights 2014a)

The lakes and pools in Wind Cave are located approximately thirteen miles east of the well site(s) proposed by this application (see Figure 8).

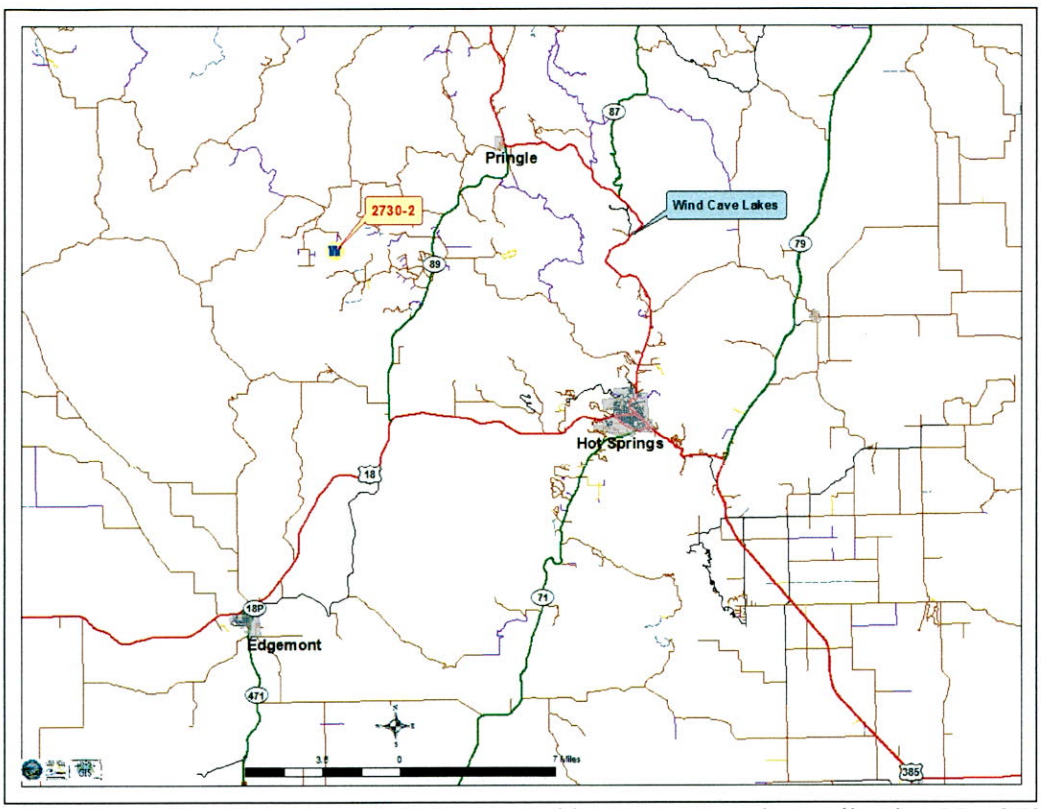

Figure 8. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, and the location of lakes and pools in Wind Cave National Park.

The impacts of pumping the well proposed by this application is expected to be negligible on the Wind Cave Lakes, especially when compared with the natural fluctuations because of the distances involved (>5 miles) and the relatively small diversion rate proposed (0.67 cfs maximum).

Streams (Perennial and Ephemeral):
The NPS identified three perennial streams (Cold Spring, Beaver and Highland Creeks) as "water resources of high value at Wind Cave NP". The entire length of Cold Spring Creek is located on formations that are geologically lower than the Madison and therefore are not expected to be influenced by Madison aquifer withdrawals. Beaver and Highland Creeks are typically dry in their reaches downstream from the loss zone (Madison, Minnelusa and Minnekahata aquifer outcrops) because the upstream flow is usually insufficient to meet or exceed the streams' loss thresholds. Since loss thresholds are assumed to be generally constant (Hortness and Driscoll, 1998), any fluctuations of the groundwater levels caused by pumping will not affect the frequency that the reaches of Beaver Creek and Highland Creek downstream of the loss zones are dry.

Seeps and springs:
The majority of the seeps and springs identified by the NPS are obviously not related to the Madison aquifer. They either surface in geologic formations hydrologically isolated from the Madison at elevations hundreds of feet higher than the water level of the Madison, or in geologic formations older than (below) the Madison. The few seeps or springs identified by the NPS that are actually situated on the Madison outcrop are likely expressions of localized perched conditions that would not be impacted by any changes in water level of the regional system.

TERM LIMITATION:

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing this permit without a term limitation of 20 years.

Conclusions:

1. The Madison aquifer is a viable aquifer in this area.
2. This diversion will not adversely impair existing water rights.
3. Information is not available to approve this application without a 20 year term limit

Ken Buhler
SD DENR-Water Rights Program

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Water Rights Program, 2014b, Water Permit/Right Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

Water Rights Program, 2014c, Well Completion Report Files, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

December 5, 2014

Custer Chronicle
PO Box 551
Custer SD 57730

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 2730-2 to Appropriate Water. Please publish the notice once on December 17, 2014. 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773 (Ph # 605-673-5274 or 325-650-8444).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

December 5, 2014

Rapid City Journal
PO Box 450
Rapid City SD 57701

ATTENTION: Legal Public Notice

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Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

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

December 5, 2014

United Order of South Dakota
Seth Jeffs
11571 Farmer Rd
Pringle SD 57773

Dear Mr. Jeffs:

Water Permit Application No. 2730-2 for water system use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Custer Chronicle printed at Custer SD (Ph # 605-673-2217) and the Rapid City Journal printed at Rapid City SD (Ph # 605-394-8300). You will need to contact the newspaper(s) 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(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. 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
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 the Notice on December 17, 2014. 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 APPLICATION NO. 2730-2 to Appropriate Water

Notice is given that United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773 has filed an application for a water permit to appropriate an additional 0.46 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application proposes to appropriate an additional 0.46 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application, if approved, and Water Permit No. 2610-2 will authorize a total diversion rate of 0.67 cfs (300 gallons per minute) from three wells for use in United Order of South Dakota's water system.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2730-2 subject to a 20-year term limitation because 1) although evidence is not available to justify issuing the permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available, 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. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting 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 December 29, 2014.

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. Information concerning this application is available at http://denr.sd.gov/public. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
Published once at the total approximate cost of_____.

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

December 5, 2014

Sheriff Rick Wheeler
420 Mount Rushmore Road
Custer SD 57730

Dear Sheriff Wheeler:

United Order of South Dakota filed a water permit application with the SD Department of Environment and Natural Resources (DENR) for an additional well and diversion rate authority for the compound's water use near Pringle. The application has been reviewed and is set for public notice in the Custer County Chronicle and Rapid City Journal on December 17th. Attached are the public notice, staff report and Chief Engineer's recommendation regarding this application.

At this time, DENR does not anticipate this application becoming controversial but want your office to be aware of the application in case questions arise.

Please let us know if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us

enclosures

Affidavit of Publication

RECEIVED
JAN 0 2 2015
WATER RIGHTS PROGRAM

State of South Dakota)
)ss.
County of Custer)

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

Water Rights Program (United Order of South Dakota)
Notice of Application No 2730-2
Appropriate Water

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 1 successive week(s), on which said newspaper was regularly published, to wit:

Dec 17, 2014; _____, _____;
_____, _____; _____, _____;
_____, _____; _____, _____;
_____, _____; _____, _____;
_____, _____; _____, _____;

the full amount of the fees for the publication of the annexed notice is $ 27.24.

Charles W. Najacht

Subscribed and sworn to me before this 17th of December, 2014;

Norma Najacht
NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2018

NORMA NAJACHT
NOTARY PUBLIC
SOUTH DAKOTA

NOTICE OF APPLICATION

NO. 2730-2 TO APPROPRIATE WATER

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Published once at an approximate cost of $27.24.

12/17

Schlaak, Karen

From: Gronlund, Eric
Sent: Wednesday, December 17, 2014 10:40 AM
To: Schlaak, Karen
Cc: Duvall, Ron; Buhler, Ken
Subject: United Order of South Dakota

Received a call from Deanne Reyher with the US Forest Service. She indicated USFS received the public notice of this application from Ron's subscription list but now notes that it's not on our web-site. I speculated that since the report, recommendation and notice did not get to the applicant (was returned for not having a mail receptacle) that we may have pulled it from the website. We are currently trying to get a hold of them so that we can get the application public notice as they need to authorize publication. She indicated the Forest Service intends to file a letter but wanted to know if they could get an extension of the December 29th date in the notice. I said that date is likely delayed anyway since the applicant did not authorize publication.

I told her that if this is not correct, that DENR would contact her back. Her phone number is 605 673-9348 and email address is dreyher@fs.fed.us. I also told her we'd email her when the application is sent out for public notice again.

Karen emailed the applicant's representative, Seth Jeffs, in order to get the public notice to him and get them to authorize publication. Not sure when or if we'll get a response.

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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(S) RIGHT AWAY.

December 18, 2014

United Order of South Dakota
c/o Seth Jeffs
Box 5050
Custer SD 57730

Dear Mr. Jeffs:

Water Permit Application No. 2730-2 for water system use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Custer County Chronicle printed at Custer SD (Ph # 605-673-2217) and the Rapid City Journal printed at Rapid City SD (Ph # 605-394-8300). You will need to contact the newspaper(s) 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.

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Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

December 18, 2014

Rapid City Journal
PO Box 450
Rapid City SD 57730

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 2730-2 to Appropriate Water. Please publish the notice once on December 31, 2014. 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is United Order of South Dakota, c/o Seth Jeffs, Box 5050, Custer SD 57730 (Ph # 605-673-5274 or 325-650-8444).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

December 18, 2014

Custer County Chronicle
PO Box 551
Custer SD 57730

ATTENTION: Legal Public Notice

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Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, December 18, 2014 9:38 AM
To: 'sethsj'
Subject: RE: Application for Permit to Appropriate Water

I will be resending the information regarding the public notice in the mail to you today.
Please be sure to contact the Custer County Chronicle and the Rapid City Journal once you receive the information to authorize publication and arrange for payment. We are requesting the notice be published on December 31.

Let me know if you have questions.
Karen

From: sethsj [mailto:sethsj@gmail.com]
Sent: Thursday, December 18, 2014 9:04 AM
To: Schlaak, Karen
Subject: Re: Application for Permit to Appropriate Water

Hi Karen,
The mailing address is
Box 5050
Custer SD 57730
Thank you.

On Dec 16, 2014 7:54 AM, "Schlaak, Karen" <Karen.Schlaak@state.sd.us> wrote:

Mr. Jeffs,

On December 5th , we sent you the information regarding the public notice for Water Application No. 2730-2, United Order of South Dakota. This letter was returned by the post office this morning marked "no mail receptacle". We sent the information to the address on the application which was 11571 Farmer Rd, Pringle SD 57773.

Please acknowledge receipt of this email and let us know what mailing address this information should be sent to.

Thank you,

Karen Schlaak

Water Rights Program

523 E Capitol Ave

Pierre SD 57501

Phone: 605 773-3352

Instruction to Newspaper - Publish the Notice on December 31, 2014. 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 APPLICATION NO. 2730-2 to Appropriate Water

Notice is given that United Order of South Dakota, c/o Seth Jeffs, Box 5050, Custer SD 57730 has filed an application for a water permit to appropriate an additional 0.46 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application proposes to appropriate an additional 0.46 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application, if approved, and Water Permit No. 2610-2 will authorize a total diversion rate of 0.67 cfs (300 gallons per minute) from three wells for use in United Order of South Dakota's water system.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2730-2 subject to a 20-year term limitation because 1) although evidence is not available to justify issuing the permit without a 20 year term limitation, there is reasonable probability that there is unappropriated water available, 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. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting 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 January 12, 2015..

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. Information concerning this application is available at http://denr.sd.gov/public. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.
Published once at the total approximate cost of_____.

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 05, 2015 11:22 AM
To: sethsj@gmail.com
Subject: Publication Notice is the Custer paper
Attachments: Affidavit.pdf

Mr. Jeffs,
Attached is a copy of the Affidavit of Publication received from the Custer County Chronicle. The notice contain errors in the legal description of the well location. Therefore, the notice will be published again on January 7 in the Custer paper at the papers expense.

The date for petitions to be submitted will now be January 19, 2015.

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

Karen Schlaak
Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 05, 2015 10:36 AM
To: Robert.Evans@rapidcityjournal.com
Subject: Notice for United Order of South Dakota

On December 18, 2014, we sent you a Notice of Application No. 2730-2 to Appropriate Water for United Order of South Dakota. The notice was to be published on January 31, 2014. Did this notice get printed? If so, can you send me an Affidavit of Publication.

?

Let me know if you have questions.

Karen Schlaak
Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, January 05, 2015 10:15 AM
To: 'custernews@gwtc.net'
Subject: Notice for United Order of South Dakota
Attachments: 2730-2public.short.docx; Affidavit.pdf

Jason,

Attached is the Notice of Application No. 2730-2 to be published on January 7, 2015. Please send the affidavit ASAP

Because of errors in the legal description of the well location, the notice needs to be readvertised. I have attached the page which shows the errors.

If you have any questions, please let me know.

Thanks,
Karen Schlaak
Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352

Instruction to Newspaper - Publish the Notice on January 7, 2015

NOTICE OF APPLICATION NO. 2730-2 to Appropriate Water

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Published once at the total approximate cost of_____.

RECEIVED
JAN 12 2015
WATER RIGHTS PROGRAM

Affidavit of Publication

State of South Dakota)
)ss.
County of Custer)

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

Notice of Application
Appropriate Water
Seth Jeffs -

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 1 successive week(s), on which said newspaper was regularly published, to wit:

Jan 7, Reprint/Correction;

the full amount of the fees for the publication of the annexed notice is $ NO CHARGE per JASON

Charles W. Najacht

Subscribed and sworn to me before this 7th of January, 2015;

Norma Najacht
NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2018

NORMA NAJACHT
NOTARY PUBLIC
SOUTH DAKOTA

NOTICE OF APPLICATION

NO. 2730-2 TO APPROPRIATE WATER

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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. Information concerning this application is available at http://denr.sd.gov/public. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at an approximate cost of $27.24.

1/7

Dec 31
L20910918

NOTICE OF APPLICATION
NO. 2730-2 to Appropriate Water

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(Published once at the total approximate cost of $64.96).

Affidavit of Publication

RECEIVED
JAN 07 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

County of Pennington SS:

Robert Evans being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each day for one successive day, the first publication there of being on the thirty first day of December that the fees charged for the publication there of are sixty four dollars and ninty six cents.

Robert J Evans

Subscribed and sworn to before me this thirty first day of December, 2014.

Notary public

DUSTIN RICE
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

My Commission Expires
July 1, 2020

My commission expires

RECEIVED
JAN 0 7 2015
WATER RIGHTS
PROGRAM

January 5, 2015

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

RE: Permit # 2730-2 United Order of South Dakota
The name under which The Fundamentalist Church of Jesus Christ of Latterday Saints is known

To Whom It May Concern:

I am writing this because I am the closest neighbor to the above referenced compound. I am very concerned with them applying for a 300 gal. per minute well. They already have two wells, a 6 inch and a 10 inch that goes down to the Madison Aquifer, which draws water at 94 gallons per minute.

They won't tell anyone how many people live at this compound. They do not have any animals there at this time. They got rid of all their animals 2 years ago. Why do they need so much water? How many people are they bringing in to use that much water? What about their septic system, I'm sure that it is not large enough to handle 300 people or more. Are they planning to install a water purification system? I am very concerned about all of this.

Jewel Cave and Wind Cave are in the immediate area, they draw water from the Madison. How many of the towns in this area draw off the Madison. I know the Madison is a large aquifer, but how many other communities take water from it, when is it going to run dry?

We bought 40 acres 25 miles from town to live in the "country", not to have a city move in right next door. I don't want to have to look at an ugly water tower every day, that's why I bought so far out in the country.

Sincerely

Karl R Von Rump
11560 Farmer Rd
Custer, SD 57730

Suzanne K Von Rump

Jan 9, 2015

RECEIVED
JAN 12 2015
WATER RIGHTS PROGRAM

To: Chief of Engineers
Water Rights Program

Please consider this letter as my petition to intervene, ... as the enormous water supply holding tank that is being requested by the F.L.D.S. in Custer County (#2730-2) is suspect of abnormal activity which is determental to our rural community.

We hope the Chief of Engineers will look into this matter and report a public notice of the findings ....
We are concerned citizens of Custer County.

Respectfully,

Mr. & Mrs. David Albrecht

High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer, SD 57730-9109

RECEIVED
JAN 12 2015
WATER RIGHTS
PROGRAM

Please read thoughtfully the enclosed Jan 2, 2015, R.C. Journal report

January 6, 2015

Chief Engineer
State Dept. of Environment
~~Forest~~ & Natural Resources
Foss Bldg, 523 Capitol
Pierre, S.D. 57501

Dear Sir + Dept:
Re: Madison Aquifer
(LTS Permit)

I am sickened + appalled that you as a body to guard our God-given Natural resources would "recommend approval of this request" from this devious group just on the reason: I - "just need more water."

I haven't slept well since this release - to go from 94 gal. to 300 gal. per minute - PLUS increasing their underground 300 gal. tank to 250,000 - 220,000 gal. increase with No substantial reason - "just need more water"!!!! is insane. Think about it + personally. The Madison Aquifer - as well as All resources is Finite - God-Given - not infinite - belongs to ALL people in the Growing Black Hills/W. S. Dak area and beyond. Did you question Why "the taciturn Jeffs declined to elaborate"? Who is "The United Order of South Dakota." Why do they have locks on gates, a "Watch tower" at the entrance, etc.? Do the research on our Aquifers; don't be stupid + dupped

- Tonie Martin

444 Villa Ridge Ct. #122, Rapid City, 57701

Jan. 4, 2015

RECEIVED
JAN 12 2015
WATER RIGHTS PROGRAM

Chief Engineer of Water Rights Program
State of South Dakota

Re: Case # 2730-2

Please consider this as my petition to intervene.

As an adjacent landowner, I am extremely opposed to tripling the water capacity to the FLDS compound.I feel that Custer Co. P and Z is already doing a very poor job with their ignorance of how many people are in there, 100-300?

The rest of us have to deal with density issues but they Don't because of their secretive nature.It's quite obvious that they are planning to move in a whole lot more people. Likely those from their Utah compound that they are shutting down.

A rancher couldn't get water volume like they are requesting. There are so many people around this area who can't drill deep enough to get water. What will this new drain do to the water table of the Madison aquifer? And should that many people be living on so few acres? If Custer County P and Z is going to put it's head in the sand, I guess it will take Pierre to do something before this turns into Waco, Texas.

My Father once owned the FLDS property. He sold it to an individual and then it went on to the FLDS. I sure wish he hadn't sold. As locals, we know what is going on in there and we don't want to see it expand. We value our 12 year old girls in South Dakota. Help us!

Thank-you for your consideration,

Linda Van Dyke Kilcoin

LK/s

RECEIVED
JAN 15 2015
WATER RIGHTS
PROGRAM

January 6, 2015

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

RE: Permit # 2730-2 United Order of South Dakota
The name under which The Fundamentalist Church of Jesus Christ of Latterday Saints is known

To Whom It May Concern:

I am writing this because I am a neighbor to the above referenced compound. I am very concerned with them applying for a 300 gal. per minute well. They already have two wells, a 6 inch and a 10 inch that goes down to the Madison Aquifer, which draws water at 94 gallons per minute. I run an Elk Ranch with 29 Elk and sometimes I run Buffalo also. I am concerned that they will run the aquifer dry and I won't have any water for my Elk and Buffalo.

They won't tell anyone how many people live at this compound. There are no animals there at this time that I know of. They got rid of all their animals about 2 years ago. Why do they need so much water? How many people are they bringing in to use that much water? I am concerned about their septic system, also. Is it large enough to handle 300 people or more. Are they planning to install a water purification system?

Jewel Cave and Wind Cave are in the immediate area, they draw water from the Madison. How many of the towns in this area draw off the Madison. I know the Madison is a large aquifer, but how many other communities take water from it, when is it going to run dry?

Sincerely Douglas L. Lesher
for Robert Bathurst

Doug Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer, SD 57730

USDA United States Department of Agriculture
Forest Service
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730
605-673-9200
FAX: 605-673-9350

RECEIVED
JAN 2 0 2015
WATER RIGHTS PROGRAM

File Code: 2540
Date: January 16, 2015

MS. JEANNE GOODMAN
CHIEF ENGINEER
WATER RIGHTS PROGRAM
JOE FOSS BUILDING
523 E. CAPITOL AVE.
PIERRE, SD 57501

Dear Ms. Goodman:

Re: Petition to Intervene in the Matter of the Application for Permit to Appropriate Water within the State of South Dakota No. 2730-2 Filed By the United Order of South Dakota.

The United States Department of Agriculture, Black Hills National Forest ("Forest"), petitions to intervene in the above referenced application to appropriate water filed by the United Order of South Dakota. This application seeks to amend the withdrawal under Water Permit 2610-2 by 205 gallons per minute (gpm) to a maximum instantaneous rate of 300 gpm (0.67 cubic feet per second) from the Madison aquifer by means of an additional well to be located in the NW ¼ of the SE ¼ of Section 10, Township 6 South, Range 3 East. The water is to be used for domestic purposes in a rural water supply system. The Forest believes this withdrawal, if permitted and developed, and in combination with senior and future use water permits in the same area, may over time adversely affect the rare warm water spring ecosystem at Cascade Springs and along Cascade Creek. These impacts, should they occur – specifically, a reduction in the natural volume of flow – would not be in the public interest. The Forest Service also believes the applicant should clearly demonstrate that it can fully place the total requested diversion of water to the beneficial use described in the application.

Cascade Springs is a group of artesian springs located on the Forest in the NE ¼ of the SE ¼ of the SW ¼, of Section 20, Township 8 South, Range 5 East. These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer". The springs discharge water with a temperature of 67° F producing a rare and limited ecosystem.

There are four rare plant species documented to occur at Cascade Springs and along Cascade Creek that do not occur anywhere else in South Dakota. These plant species include tulip gentian (*Eustoma exaltatum* ssp. *russellianum*), beaked spikerush (*Eleocharis rostellata*), southern maidenhair fern (*Adiantum capillus-veneris*), and stream orchid (*Epipactis gigantea*). Tulip gentian grows natively in warm regions of the southern United States. Southern maidenhair fern is native to the southern half of the United States. Beaked spikerush is most often found in wet, alkaline soils,

associated with warm springs or calcareous fens. Stream orchid is generally abundant along the west coast of the United States. These populations of species at Cascade Springs exist as a unique community in the Black Hills and in South Dakota and, with the exception of beaked spikerush, the plants are outside of their normal range. They apparently occur here due to the microclimate created by the continuous discharge of warm spring water from Cascade Springs. The Forest Service is concerned that reduced water flows at Cascade Springs could adversely affect the survival and viability of these rare plant species. A conservation assessment for the southern maidenhair fern and the stream orchid states that the constant flow of warm water from Cascade Springs is essential to the persistence of the two species in the Black Hills (Hornbeck et al. 2003). Another assessment prepared for beaked spikerush identified that the long-term persistence of that species in the Black Hills is dependent upon the continued maintenance and enhancement of the population along Cascade Creek (Glisson 2003).

Cascade Springs originates in an area of alluvial sediment near the contact between the Spearfish Formation and the underlying Minnekhata Limestone on the west edge of center of the Cascade Anticline. Cascade Springs flows at an average aggregate year-round rate of about 20 cfs originating from six known discrete discharges and is the source of Cascade Creek, a tributary of the Cheyenne River. Available information about the nature and source of Cascade Springs, including the water chemistry and temperature, suggest that the water originates from the Madison (Pahasapa) and Minnelusa Formations, both of which are productive aquifers in the area.

The Madison aquifer consists of carbonate rock of generally low primary permeability containing substantial secondary permeability due to fracturing and development of solution cavities (karst features). The Madison aquifer is dominated by conduit flow through fractures and karst features. Regional information indicates that water in the Madison aquifer flows generally in a north to south or northwest to southeast direction, suggesting that the area of the United Order well may be upgradient of Cascade Springs. There are no known structural features between the area of the well and Cascade Springs that would be expected to isolate the effects of well pumping from the springs. The potential for fracture and karst connectivity from the area of the well southeast to Cascade Springs is unknown, but cannot be dismissed given the nature of the Madison aquifer in the Black Hills.

Assuming conduit connectivity between the well site and Cascade Springs and using available end member aquifer hydraulic values can provide a rough idea of whether there is potential for concern from the proposed increase in well pumping. This rough calculation should not be considered a prediction of the potential effects at the springs; rather it should be considered to be a scoping calculation illustrating the potential for effects at the springs.

Using a web calculator available for the Cooper-Jacob approach to the Theis solution for a pumping well (a similar approach to the one used by DENR), the drawdown effect at Cascade Springs could increase by as much as one foot after 100 days of increased pumping. The consequent change in flow at Cascade Springs is more difficult to estimate, but it is reasonable to conclude that increased drawdown in the aquifer would translate to reduced flow from the springs and reduced flow in the creek downstream.

Reduced flows from the springs and the subsequent negative effects on the four rare plant species documented to occur at Cascade Springs and along Cascade Creek would not be in the public interest.

Should the permit be granted, the Forest requests that the proposed terms and conditions of the permit be adjusted to protect the public interest in the resources at Cascade Springs and along Cascade Creek. Potential adjustments in the terms and conditions could include an initial term of two to five years and detailed monitoring at Cascade Springs to track flow during periods of pumping from the well.

The Forest Service also believes that United Order should clearly demonstrate that it can fully place the total requested diversion of water to the beneficial use stated in the application and that the potential for effects on senior downstream water users in the Cheyenne watershed should be fully evaluated.

Please direct any questions or concerns related to this matter to Deanna Reyher of my staff at (605) 673-9348.

Sincerely,

CRAIG BOBZIEN
Forest Supervisor

cc: Andrea Rogers (aerogers@fs.fed.us), Sherri Schwenke (sschwenke@fs.fed.us), Lois Witte (LOIS.WITTE@OGC.USDA.GOV)

REFERENCES:

DeWitt, Ed, J.A. Redden, David Buscher, and A.B. Wilson. 1989. Geologic map of the Black Hills area, South Dakota and Wyoming, USGS Miscellaneous Investigations Series Map I-1910, 1 plate.

Glisson, Bruce T. 2003. Conservation Assessment of the Beaked Spikerush in the Black Hills National Forest, South Dakota and Wyoming. 40 pages.

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Hornbeck, J. Hope, Reyher, Deanna J., Sieg, Carolyn Hull, and Crook, Reed W. 2003. Conservation Assessment for Southern Maidenhair Fern and Stream Orchid in the Black Hills National Forest South Dakota and Wyoming. 45 pages.

Hortness, Jon E. and Daniel G. Driscoll. 1998. Streamflow Losses in the Black Hills of Western South Dakota, USGS Water-Resources Investigations Report 98–4116, Rapid City, SD. 99 pages.

McKaskey, Jonathan D.R.G. 2013. Hydrogeologic Framework for the Madison and Minnelusa Aquifers in the Black Hills Area, South Dakota School of Mines and Technology, Rapid City, SD. 112 pages.

Naus, Cheryl A., Driscoll, Daniel G., and Janet M. Carter. 2001. Geochemistry of the Madison and Minnelusa Aquifers in the Black Hills Area, South Dakota, USGS Water-Resources Investigations Report 01-4129, Rapid City, SD. 118 pages.

Rahn, P.H. and Gries, J.P. 1973. Large Springs in the Black Hills, South Dakota and Wyoming: SD Geological Survey Report of Investigations No. 107. 46 pages.

Whalen, P.J. 1994. Source Aquifers for Cascade Springs, Hot Springs, and Beaver Creek Springs in the Southern Black Hills of South Dakota: South Dakota School of Mines and Technology Master of Science Thesis, Rapid City, SD. 299 pages.

USDA United States Department of Agriculture
Forest Service
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730
605-673-9200
FAX: 605-673-9350

RECEIVED
JAN 16 2015
WATER RIGHTS PROGRAM

File Code: 2540
Date: January 16, 2015

MS. JEANNE GOODMAN
CHIEF ENGINEER
WATER RIGHTS PROGRAM
JOE FOSS BUILDING
523 E. CAPITOL AVE.
PIERRE, SD 57501

Dear Ms. Goodman:

Re: Petition to Intervene in the Matter of the Application for Permit to Appropriate Water within the State of South Dakota No. 2730-2 Filed By the United Order of South Dakota.

The United States Department of Agriculture, Black Hills National Forest ("Forest"), petitions to intervene in the above referenced application to appropriate water filed by the United Order of South Dakota. This application seeks to amend the withdrawal under Water Permit 2610-2 by 205 gallons per minute (gpm) to a maximum instantaneous rate of 300 gpm (0.67 cubic feet per second) from the Madison aquifer by means of an additional well to be located in the NW ¼ of the SE ¼ of Section 10, Township 6 South, Range 3 East. The water is to be used for domestic purposes in a rural water supply system. The Forest believes this withdrawal, if permitted and developed, and in combination with senior and future use water permits in the same area, may over time adversely affect the rare warm water spring ecosystem at Cascade Springs and along Cascade Creek. These impacts, should they occur – specifically, a reduction in the natural volume of flow – would not be in the public interest. The Forest Service also believes the applicant should clearly demonstrate that it can fully place the total requested diversion of water to the beneficial use described in the application.

Cascade Springs is a group of artesian springs located on the Forest in the NE ¼ of the SE ¼ of the SW ¼, of Section 20, Township 8 South, Range 5 East. These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer". The springs discharge water with a temperature of 67° F producing a rare and limited ecosystem.

There are four rare plant species documented to occur at Cascade Springs and along Cascade Creek that do not occur anywhere else in South Dakota. These plant species include tulip gentian (*Eustoma exaltatum* ssp. *russellianum*), beaked spikerush (*Eleocharis rostellata*), southern maidenhair fern (*Adiantum capillus-veneris*), and stream orchid (*Epipactis gigantea*). Tulip gentian grows natively in warm regions of the southern United States. Southern maidenhair fern is native to the southern half of the United States. Beaked spikerush is most often found in wet, alkaline soils,

associated with warm springs or calcareous fens. Stream orchid is generally abundant along the west coast of the United States. These populations of species at Cascade Springs exist as a unique community in the Black Hills and in South Dakota and, with the exception of beaked spikerush, the plants are outside of their normal range. They apparently occur here due to the microclimate created by the continuous discharge of warm spring water from Cascade Springs. The Forest Service is concerned that reduced water flows at Cascade Springs could adversely affect the survival and viability of these rare plant species. A conservation assessment for the southern maidenhair fern and the stream orchid states that the constant flow of warm water from Cascade Springs is essential to the persistence of the two species in the Black Hills (Hornbeck et al. 2003). Another assessment prepared for beaked spikerush identified that the long-term persistence of that species in the Black Hills is dependent upon the continued maintenance and enhancement of the population along Cascade Creek (Glisson 2003).

Cascade Springs originates in an area of alluvial sediment near the contact between the Spearfish Formation and the underlying Minnekhata Limestone on the west edge of center of the Cascade Anticline. Cascade Springs flows at an average aggregate year-round rate of about 20 cfs originating from six known discrete discharges and is the source of Cascade Creek, a tributary of the Cheyenne River. Available information about the nature and source of Cascade Springs, including the water chemistry and temperature, suggest that the water originates from the Madison (Pahasapa) and Minnelusa Formations, both of which are productive aquifers in the area.

The Madison aquifer consists of carbonate rock of generally low primary permeability containing substantial secondary permeability due to fracturing and development of solution cavities (karst features). The Madison aquifer is dominated by conduit flow through fractures and karst features. Regional information indicates that water in the Madison aquifer flows generally in a north to south or northwest to southeast direction, suggesting that the area of the United Order well may be upgradient of Cascade Springs. There are no known structural features between the area of the well and Cascade Springs that would be expected to isolate the effects of well pumping from the springs. The potential for fracture and karst connectivity from the area of the well southeast to Cascade Springs is unknown, but cannot be dismissed given the nature of the Madison aquifer in the Black Hills.

Assuming conduit connectivity between the well site and Cascade Springs and using available end member aquifer hydraulic values can provide a rough idea of whether there is potential for concern from the proposed increase in well pumping. This rough calculation should not be considered a prediction of the potential effects at the springs; rather it should be considered to be a scoping calculation illustrating the potential for effects at the springs.

Using a web calculator available for the Cooper-Jacob approach to the Theis solution for a pumping well (a similar approach to the one used by DENR), the drawdown effect at Cascade Springs could increase by as much as one foot after 100 days of increased pumping. The consequent change in flow at Cascade Springs is more difficult to estimate, but it is reasonable to conclude that increased drawdown in the aquifer would translate to reduced flow from the springs and reduced flow in the creek downstream.

Reduced flows from the springs and the subsequent negative effects on the four rare plant species documented to occur at Cascade Springs and along Cascade Creek would not be in the public interest.

Should the permit be granted, the Forest requests that the proposed terms and conditions of the permit be adjusted to protect the public interest in the resources at Cascade Springs and along Cascade Creek. Potential adjustments in the terms and conditions could include an initial term of two to five years and detailed monitoring at Cascade Springs to track flow during periods of pumping from the well.

The Forest Service also believes that United Order should clearly demonstrate that it can fully place the total requested diversion of water to the beneficial use stated in the application and that the potential for effects on senior downstream water users in the Cheyenne watershed should be fully evaluated.

Please direct any questions or concerns related to this matter to Deanna Reyher of my staff at (605) 673-9348.

Sincerely,

/s/ Craig Bobzien

CRAIG BOBZIEN
Forest Supervisor

cc: Andrea Rogers (aerogers@fs.fed.us), Sherri Schwenke (sschwenke@fs.fed.us), Lois Witte (LOIS.WITTE@OGC.USDA.GOV)

REFERENCES:

DeWitt, Ed, J.A. Redden, David Buscher, and A.B. Wilson. 1989. Geologic map of the Black Hills area, South Dakota and Wyoming, USGS Miscellaneous Investigations Series Map I-1910, 1 plate.

Glisson, Bruce T. 2003. Conservation Assessment of the Beaked Spikerush in the Black Hills National Forest, South Dakota and Wyoming. 40 pages.

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To whom it may concern:

I live in eastern Custer County and I oppose the application for a water permit #2730-2 by United Order of South Dakota (UOSD) for suburban housing. UOSD currently has 2 wells on their property (roughly 140 acres) permitted to produce 94 gpm. I do not know how many gallons of water a regular/average household uses per month, but I will use 5000 gallons per month as an example below.

94 gpm x 60 minute per hour x 24 hours per day x 30 days per month = 4,060,800 gallons / 5000 gallons = 812.16 households.

Increasing the gpm from 94 to 300 would be capacity for an additional 1779.84 households. I realize these figures are maximum usage levels and that UOSD will probably never continually use this much water, but by permitting that amount means they CAN. I do not believe the Madison Aquifer should be pumped at this amount for this property.

Other concerns of interest:
Where will the wastewater go from this much usage?
Will UOSD be selling water to other water systems, if so, at what cost?
What is the total number of people/households will this water be used for?
Would the water from this well or the two existing wells be used for growing crops?
Will the water from this well be metered?

Thank you,

Rick Fox

Rick Fox
PO Box 35
Hermosa, SD 57744

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January 13, 2015

To Whom It May Concern:

We are writing in opposition of the recent application #2730-2 submitted by Seth Jeff's. We live in the Eastern portion of Custer County. We oppose the increase of 0.46 cfs as well as the addition of another well into the Madison Aquifer. This addition to the existing permit would allow the United Order of South Dakota to pump 300 GPM. After reading the application we have serious concerns related to the use of this water.

The property that will be supplied the 300 GPM, if we are not mistaken, is on a 140 acre parcel of property. We belong to a rural water association that has a Madison well. The permit for that well is 250 GPM. Their supply area is 96 +/- square miles, with 200 +/- miles of pipe servicing over 60 members. Why is the State allowing permits on this 140 +/- parcel to exceed our supply?

The application indicates this water is for "suburban housing". Has a waste water plan been submitted in conjunction? This appears to be an extreme amount of water for the needs of a property this size.

Water in Western South Dakota is a very valuable, tenuous element. We are very concerned about over use, misuse and abuse of this resource.

We respectfully request this permit be declined.

Dean Johnson Delia Johnson

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

Cc: United Order of South Dakota, c/o Seth Jeff's, Box 5050, Custer SD 57730
Water Rights Program, Foss Building, 523 E Capitol, Peirre SD 57501
Attention: Chief Engineer

United States Department of the Interior

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

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IN REPLY REFER TO:

December 19, 2014

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L54(2380)
WICA/Water Rights

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

Mr. Seth Jeffs
United Order of South Dakota
11571 Farmer Rd
Pringle, SD 57773

Re: Petition to Intervene in the matter of Application to Permit Water within the State of South Dakota No. 2730-2 filed by the United Order of South Dakota

Dear Ms. Goodman and Mr. Jeffs,

The National Park Service (NPS) petitions to intervene in the above referenced application to appropriate water filed by the United Order of South Dakota. This application requests to amend the withdrawal under Water Permit 2610-2 by 205 gallons per minute (gpm) to a maximum instantaneous rate of 300 gpm (0.67 cubic feet per second) from the Madison aquifer at a location approximately 13 miles west of Wind Cave National Park (Figure 1). There is no annual volume provided on the application. The water is to be used for a rural water supply system. The NPS believes this withdrawal, if permitted and developed, and in combination with senior permits, may over time adversely affect the water rights and water-dependent resources of the National Park. These impacts, if they occur, would not be in the public interest.

Briefly, the park is responsible for the management of resources dependent on water levels in the Madison aquifer. One of these primary resources is Wind Cave, which is considered one of the most significant caves in the world, as it is one of the longest, most complex, and oldest caves on earth.

Wind Cave's length and passage density are enough to put it into the ranks of world-class caves, but the cave is significant for many other reasons. There are currently several lakes and pools in the lower reaches of Wind Cave that likely define the water table in this region of the Madison aquifer.

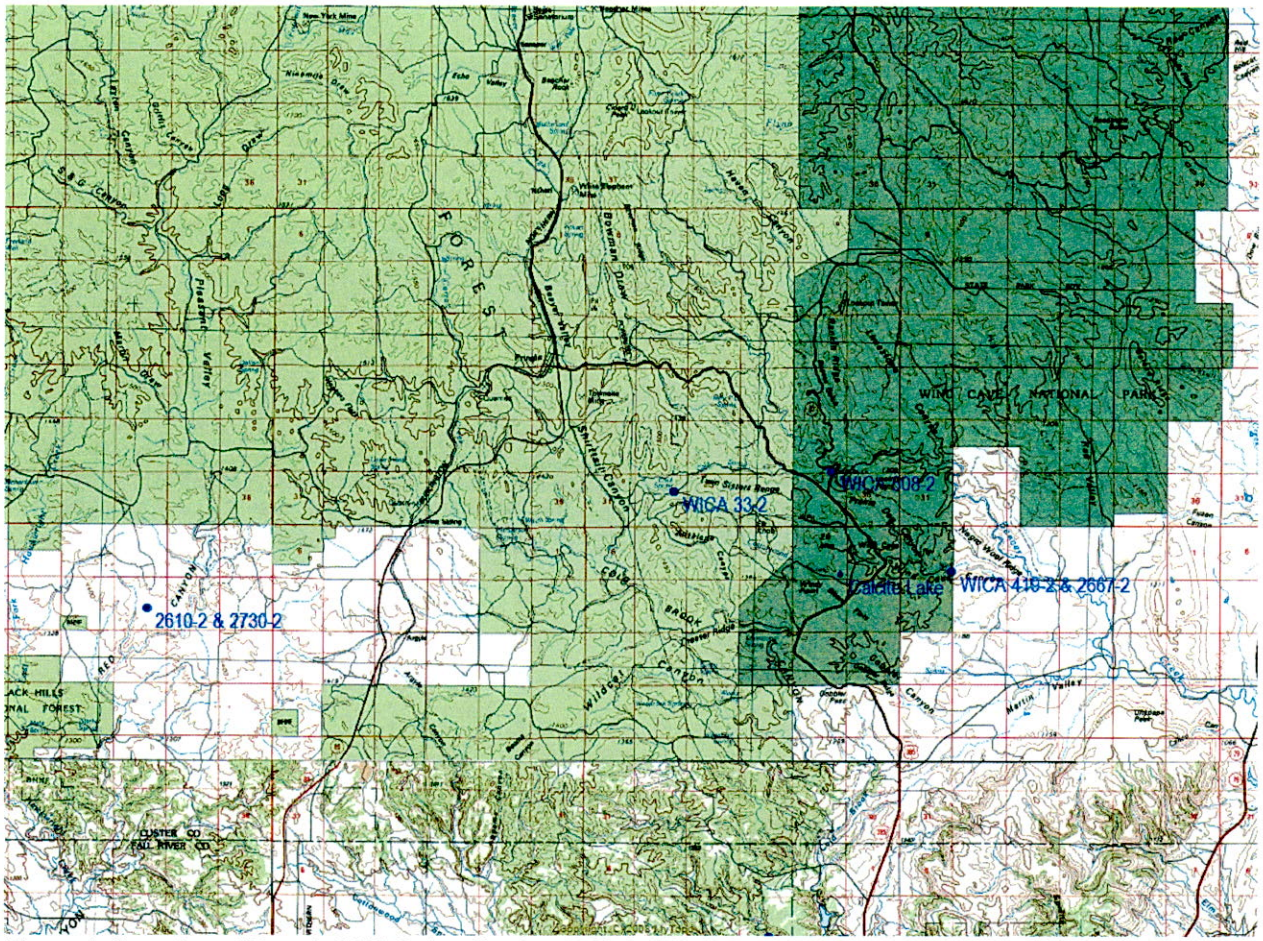

Figure 1. Location of Permit 2610-2, Application 2730-2, Wind Cave NP water rights and Calcite Lake

The largest and one of the most accessible of these are the connected features known as Calcite and Windy City Lakes. Paces and others (2013) describe a history of water table fluctuations in the Madison aquifer within the lower portions of the cave. These fluctuations have resulted in layers of calcite crusts being formed on top of the bedrock and sediment found in the cave.

Biologically, water samples taken from Calcite Lake suggest the lake ecosystem is very unique and unlike any described previously. A preliminary study by Barton (2012) suggests the lakes are a bacterially dominated ecosystem where bacteria species may be the top predators. While a diverse range of species are found, the concentrations of microbial cells found in the cave water may be lower than any other body of water yet found on earth (Barton 2012).

Wind Cave National Park has four state appropriative water rights that are senior to those sought by the applicant (Table 1). Out of the four rights listed, the withdrawal proposed by Application 2730-2 could affect water levels in the well associated with Permit 419-2 since this well is open to the Madison aquifer. This well is completed in the Madison, Englewood, Deadwood, and Precambrian aquifers and supplies water for park operations.

The other three water rights do not derive water from the Madison aquifer and should not be affected by the proposed withdrawal.

Table 1. State appropriative water rights for Wind Cave National Park

Number	Name	Point of Diversion	Rate of Diversion	Purpose	Priority date
US 33-2	Cold Springs Creek	Sec. 32 & 28, T5S, R5E	0.2 cfs	Domestic, recreation, wildlife, fire protection	August 23, 1937
US 508-2	Cold Springs Lake	SW ¼ SE ¼ Sec. 26, T5S, R5E	222.08 afy	Stockwater, recreational	November 4, 1939
419-2	Headquarters well	SE ¼ SE ¼ Sec 6, T6S, R6E	0.44 cfs	Park operations	December 29, 1955
2667-2	Minnelusa Well	SE¼ SE¼ Sec 6, T6S, R6E	0.11 cfs	Park operations	April 11, 2011

The NPS is concerned that water levels in the Madison aquifer within Wind Cave NP will be lowered over time as a result of the pumping proposed under Application 2730-2. The South Dakota Department of Environment and Natural Resources evaluation of Water Permit Application 2730-2, dated November 12, 2014, for the approval of the Chief Engineer (DENR evaluation). The evaluation included two Theis calculations that projected drawdown vs. distance from the pumping well at two different pumping rates over a period of one year. These analyses stopped at distance 2000 feet from the pumping well.

To determine if the cone of depression might extend to the National Park, we extended the DENR evaluation to 13 miles from the pumping well. Table 2 provides the results from this modified DENR evaluation for two continuous pumping scenarios. The following parameters were used:

Transmissivity (T) = 1,463 ft^2/day
Storage coefficient (S) = 0.0002
Radius (r) = 13 miles
Time (t) = 1 to 20 years

Table 2. Drawdown (feet) calculated using the Theis Equation Calculator cited in the DENR evaluation, at a point 13 miles from the pumping well.

Pumping rate	1 year	5 years	10 years	20 years
205 gpm	1.0	3.6	5.0	6.4
300 gpm	1.5	5.3	7.3	9.4

These calculations indicate potential significant adverse effects to water levels within the park from the withdrawal proposed by Application 2730-2. There are also other permitted withdrawals in the Madison aquifer in the vicinity of Wind Cave (2302-2, 2546-2, 2633-2, and 2634-2) and Future Use permit 2580-2. Water-level declines from

pumping wells associated with these senior permits were not considered in the DENR evaluation for Application 2730-2. Water-level changes associated with any combination of these withdrawals could impact the National Park's water rights and water-related resources sooner and by a greater degree than by the withdrawal proposed by this application alone.

The DENR evaluation states that "The impacts of pumping the well proposed by this application is expected to be negligible on the Wind Cave Lakes, especially when compared with the natural fluctuations because of the distances involved (>5 miles) and the relatively small diversion rate proposed (0.67 cfs maximum)." As cited in the DENR evaluation, the water-level record from stage readings in Calcite Lake show over 20 feet of fluctuation since the mid-1980s. Any water-level decline due to pumping wells will be superimposed on the natural variation in water levels. This means that water levels will still fluctuate, but at lower overall levels. The frequency and duration of dry periods in parts of the cave would therefore increase. These impacts could significantly affect the cave forming processes now occurring within Wind Cave. Any adverse effects to the park's water rights and water-related resources would not be in the public interest.

The NPS is concerned about the Chief Engineer's recommendation to approve Application No. 2730-2 with no conditions or qualifications other than the term limitation of twenty years. The applicant has not produced information in support of its application that demonstrates the proposed use from this site will not have significant adverse effects on Wind Cave National Park water rights and water-dependent resources over long periods of pumping. This deficiency is acknowledged by the statement in the DENR evaluation that "Evidence is not available to justify issuing this permit without a term limitation of 20 years." Therefore, the NPS believes that any approval of Application 2730-2 should be conditioned on the collection of scientific data to allow such a determination to be made.

The NPS is willing to meet with representatives from the United Order of South Dakota to see if an alternative exists that allows the applicant to withdraw the water required for their beneficial use while still protecting the water rights and water-related resources of Wind Cave National Park.

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

Sincerely,

Jeff C. Hughes

for William R, Hansen
Chief, Water Rights Branch

References:

Barton, H. 2012. Accessible Microbial Flora of the Madison aquifer: Investigations in Calcite Lake, Wind Cave, Wind Cave National Park [FINAL REPORT]. Report to the NPS Water Resources Association. University of Akron, OH. 15p.

Paces, J.B., A.N. Palmer and M.V. Palmer. 2013. History of Late Pleistocene Water Table Fluctuations in Wind Cave, Wind Cave National Park. Progress Report, February 2013.

United States Department of the Interior

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

RECEIVED
JAN 2 0 2015
WATER RIGHTS PROGRAM

IN REPLY REFER TO:

January 15, 2015

2380
WICA/Water Rights

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

Mr. Seth Jeffs
United Order of South Dakota
P.O. Box 5050
Custer, SD 57770

Re: Amendment to Petition to Intervene in the matter of Application to Permit Water within the State of South Dakota No. 2730-2 filed by the United Order of South Dakota

Dear Ms. Goodman and Mr. Jeffs,

On December 19, 2014, the National Park Service (NPS) submitted a petition to intervene in the matter of the above-referenced application to appropriate water filed by the United Order of South Dakota (United Order). Since that time, NPS has conducted further investigations regarding the above-referenced application and reexamined Water Permit No. 2610-2, issued to United Land Management. These investigations have led NPS to conclude that the above-referenced application may contain errors or be incomplete based on the following:

1. Water Permit No. 2610-2 (Attachment A) was issued to United Land Management on August 1, 2007, and authorized the withdrawal of groundwater at a rate of 0.21 cubic feet per second (cfs) for the purpose of a suburban housing development. The NPS had timely filed a letter in opposition to this application, but subsequently withdrew its objection after United Land Management agreed to provide copies of any well logs, pump test data, and water use data to the NPS. According to the minutes of the July

11, 2007 meeting of the Water Management Board, a representative of the applicant, Richard Allred, testified as follows:

> In response to a question from Ms. Best, Mr. Allred stated that at the present time there are more than 25 people living at this location because of construction, and there may be more than 25 people living in the development once it is completed." Mr. Allred also testified "that United Land Management will submit well logs, pump test data, and water use data to the National Park Service as it is obtained. (see pages 9 and 10 of Attachment B)

As of the date of this letter, the NPS has not received any well logs, pump test data, and water use from United Land Management.

The maximum amount of groundwater that the applicant is permitted to withdraw pursuant to Water Permit No. 2610-2 on an annual basis is 152 acre-feet. Based on a U.S. Geological Survey estimate that average domestic use per person in South Dakota in 2005 was 99 gallons per day, this amount is sufficient to support a suburban housing development with a total of 1,370 residents.

United Land Management operates a community public water system, which according to its 2013 drinking water report serves a system population of 75 people and has 11 service connections. The report lists Seth Jeffs as the "certified operator" of the system (see Attachment C). Mr. Jeffs also submitted Application No. 2730-2 on behalf of the United Order of South Dakota.

2. According to a "Notice of Transfer of Ownership" filed by United Land Management with the Chief Engineer on December 31, 2009, United Land Management transferred ownership of Water Permit No. 2610-2 to the United Order of South Dakota, a Common Law Trust, on December 23, 2009 (see Attachment D). As of January 14, 2015, the records of the South Dakota Secretary of State indicate that United Land Management last filed an annual corporate report in 2009 and the status of United Land Management is listed as "Cancellation Pending", which suggests that the administrative dissolution of United Land Management may be imminent (see Attachment E). No information regarding the "United Order of South Dakota" was found on the website of the South Dakota Secretary of State. It is unclear what the legal status of the United Order of South Dakota is under South Dakota law and what, if any, affect this uncertainty has on Application No. 2730-2.

3. Application No. 2730-2 seeks the issuance of a permit to withdraw an additional 0.46 cfs of groundwater from approximately the same point of diversion as that authorized by Water Permit No. 2610-2 for the following beneficial uses: "rural water system" and "domestic (over 18 gpm)".

However, the application does not provide any evidence that the United Order of South Dakota either operates a legally-recognized "rural water system" or is authorized to operate such a system. Furthermore, the application fails to provide any information as to the need by the United Order of South Dakota, for an additional amount of groundwater over and above the 0.21 cfs that it currently has rights to use pursuant to Water Permit No. 2610-2. If the permit for the groundwater sought by Application No. 2730-2 is granted, the United Order of South Dakota would possess groundwater withdrawal permits sufficient to supply the domestic needs of 4,372 people (based on the 2005 USGS estimate of per capita domestic water use in South Dakota). For the sake of comparison, according to the 2010 census the population of Custer, which is the largest town in Custer County, was 2,067 residents.

4. The annual water use reported by the United Order of South Dakota and its predecessor in title to the Chief Engineer under Water Permit No. 2610-2 is as follows:

Year	Use (acre-feet/year)
2009	19
2010	26
2011	41
2012	33
2013	10.5
Average	25.9

Based on the foregoing information, the NPS believes that Application No. 2730-2 is wholly speculative and that the applicant may be seeking to appropriate groundwater for other than traditional domestic uses. Therefore, the NPS respectfully requests that the Water Management Board deny the application on the basis that the proposed water use is purely speculative and, therefore, not in the public interest. However, if Application No. 2730-2 is not denied, the NPS requests that the Water Management Board qualify Water Permit No. 2730-2 and limit the annual amount of water that can be withdrawn cumulatively pursuant to both permits to the historic average groundwater withdrawal of 25.9 acre-feet per year. This amount is sufficient to meet the customary domestic needs of 234 persons, which is roughly three times the number of persons currently being served by the existing community public water system.

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

Sincerely,

Wm. R. Hansen

William R, Hansen
Chief, Water Rights Branch

Attachments: Attachment A - Water Permit No. 2610-2
Attachment B - WMB Meeting Minutes (July 11, 2007)
Attachment C - United Land Management Drinking Water Information
Attachment D - Notice of Transfer of Ownership
Attachment E – Secretary of State Business Entity Website Information

cc: (via email only)
Wind Cave National Park

SOUTH DAKOTA
WATER PERMIT NO. 2610-2

Date of first receipt of application February 9, 2007.
Date of return to applicant for corrections, amendments or changes February 9, 2007.
Date of receipt of corrected application February 20, 2007.

The Water Management Board approved Water Permit No. 2610-2 on July 11, 2007 for United Land Management, c/o Richard Allred, Box 54, Rapid City SD 57709 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. 2610-2 appropriates 0.21 cubic feet of water per second from two wells to be completed into the Madison Aquifer (approximately 1000 feet deep) located in the NW ¼ SE ¼ Section 10-T6S-R3E.

2. The water appropriated shall be used for the purpose of suburban housing development and may not exceed the amount of water needed for beneficial use.

3. The water is to be used during the following described annual period: January 1 – December 31.

4. The date from which applicant may claim right is February 9, 2007.

5. One-fifth of the construction is to be completed on or before January 11, 2010.

6. All construction is to be completed on or before July 11, 2012.

7. Water is to be put to beneficial use on or before July 11, 2016.

8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2610-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20–year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2610-2 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The wells authorized by Permit No. 2610-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. United Land Management shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

WATER MANAGEMENT BOARD

By: Garland Erbele

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

AUG 0 1 2007
date

Attachment A

RESOLUTION ON STATEMENT OF REASONS TO DENY PETITION TO DESIGNATE SPEARFISH CREEK AS AN OUTSTANDING STATE RESOURCE WATER: Jeanne Goodman, DENR Surface Water Quality Program, participated via telephone conference call.

On May 9, 2007, the board held a public hearing and denied amendments to 74:51:01:39.01 – to designate Spearfish Creek in Lawrence County as an outstanding state resource water. On May 25, 2007, Nancy Hilding, personally and on behalf of the Prairie Hills Audubon Society, submitted a written request by electronic mail pursuant to SDCL 1-26-7.1 requesting a statement of reasons as to why the board denied the proposed rule change in response to the petition to designate Spearfish Creek as an Outstanding State Resource Water.

Ms. Goodman noted that the resolution, Statement of Reasons, Ms. Hilde's request for a Statement of Reasons, and the minutes from the May 9, 2007, public hearing were sent to the Water Management Board prior to today's meeting.

Ms. Goodman provided a summary of the resolution and Statement of Reasons and requested board approval of the resolution adopting the Statement of Reasons.

Motion by Hoyt, seconded by Brink, to adopt the Resolution adopting the Statement of Reasons prepared pursuant to SDCL 1-26-7.1. Motion carried.

The Statement of Reasons will be sent to the Legislative Research Council, and the Interim Rules Review Committee, and the petitioner.

REQUEST PERMISSION TO ADVERTISE RULES ON SURFACE WATER QUALITY STANDARDS: Ms. Goodman requested permission to advertise for a public hearing in October 2007 to consider amendments to the Surface Water Quality Standards.

Motion by Brink, seconded by Hoyt, to authorize staff to advertise for a public hearing to consider amendments to the Surface Water Quality Standards. Motion carried.

WATER PERMIT APPLICATION NO. 2610-2, UNITED LAND MANAGEMENT: Ken Buhler presented his report on the application.

Water Permit Application No. 2610-2 proposes to appropriate 0.21 cfs (95 gpm), from two wells to be completed into the Madison aquifer, approximately 1000 feet deep in Custer County for a suburban housing development.

The Chief Engineer recommended approval for a 20 year term with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2610-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20–year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2610-2 may also be cancelled for non-construction, forfeiture,

Attachment B

abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.

2. United Land Management shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

Mr. Buhler reported that the Madison Limestone, locally known as the Pahasapa Limestone, is a fine to medium crystalline, cavernous limestone and dolomite. The aquifer is laterally extensive and underlies much of the western United States. The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of exposed surfaces, groundwater solution and fracturing, and is considered the Madison aquifer. This well site is located about five miles from the outcrop of the aquifer, and the top of the Madison is expected to be approximately 760 feet below grade. The Madison is expected to be approximately 300 feet thick in this area.

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

Recharge to the Madison aquifer occurs through streamflow losses and direct infiltration of precipitation at the outcrop area. Recharge for the entire Madison aquifer in South Dakota has been estimated to range from 140,000 to 400,000 acre-feet per year. Average annual recharge from 1931-1998 was estimated to be approximately 137,000 ac-ft/yr.

Mr. Buhler stated that water is available from the aquifer, however, a water budget is not intended to suggest that all of the water that is in storage in the Madison or that all of the recharge is available for this appropriation, merely to demonstrate that in general the Madison aquifer is an immense resource that is relatively untapped.

The Water Rights Program monitors 26 observation wells completed into the Madison aquifer in the Black Hills area. Three of those observation wells are within eight to 15 miles away from this site. Hydrographs of these observation wells are included in Mr. Buhler's report.

Observation well data suggest that at the existing level of development, natural influences dominate the water levels of the aquifer and the effects of pumping as yet are not obvious.

The Water Rights Program has record of a number of domestic wells in this area. The majority of these domestic wells appear to be completed into the Minnelusa aquifer and at least two are completed into the Deadwood aquifer. Wells completed into aquifers that are either stratigraphically above or below the Madison aquifer are not expected to be affected by this proposed appropriation since the lower Minnelusa aquifer can be considered a confining bed that isolates the Madison hydraulically from shallower aquifers, and the bottom portion of the Madison isolates the Madison from lower aquifers. There are no completion reports on file for

wells completed into the Madison aquifer within approximately five miles of the well sites proposed by this application.

There are no wells supplying Water Rights/Permits within approximately nine miles of the well site proposed by this application. The nearest Water Right supplied by a well completed into the Madison aquifer, Water Right No. 419-2, Wind Cave National Park, is located approximately 10 miles east-northeast of the well sites proposed by this application.

Well interference resulting from this appropriation is not expected to be an issue to either domestic wells or wells supplying appropriative rights due to the distance between wells and the relatively low diversion rate proposed by this application.

Mr. Buhler noted that the well site proposed by this application is located approximately five miles west of the "Argyle" well site proposed by Future Use Permit No. 2580-2. Approval of this application should not hinder development of the future use permit due to the distance between wells.

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing this permit without a term limitation of 20 years.

Mr. Buhler concluded that the Madison aquifer is a viable aquifer in this area, this diversion will not adversely impair existing water rights, and information is not available to approve this application without a 20-year term limit.

Mr. Buhler noted that on June 11, 2007, the National Park Service (Wind Cave National Park) submitted a letter in opposition to the application. On June 29, 2007, the National Park Service withdrew their opposition. If the permit is granted, the National Park Service requests copies of any well logs, pump test data, and water use data from the applicant.

Richard Allred was administered the oath by Chairman Hutmacher.

In response to a question from Mr. Hoyt, Mr. Allred testified that United Land Management will submit well logs, pump test data, and water use data to the National Park Service as it is obtained.

Chairman Hutmacher asked if this will be a public water supply. Mr. Allred answered that he is not sure if this will be a public water system.

Ms. Best asked how many people currently live at this location. Mr. Allred stated that this is ongoing construction and people are always coming and going.

In response to a question from Ms. Best, Mr. Allred stated that at the present time there are more than 25 people living at this location because of construction, and there may be more than 25 people living in the development once it is completed.

Motion by Brink, seconded by Holzbauer, to approve Water Permit Application No. 2610-2, United Land Management, subject to the qualifications set forth by the chief engineer. Motion carried.

WATER PERMIT APPLICATION NO. 2560A-2 AND 2615-2, FALL RIVER WATER USERS DISTRICT: Ms. Best reported that Application No. 2560A-2 proposes to expand the future use area that was authorized by Future Use Permit No. 2560-2. Water Permit Application No. 2615-2 proposes to complete a well into the Madison aquifer and place 400 acre-feet of water to beneficial use annually at a maximum diversion rate of 0.67 cfs.

The National Park Service filed a petition to intervene in the matter of Water Permit Application No. 2615-2. The National Park Service was concerned about potential adverse impacts that may result from withdrawals proposed by the application on the water rights and water-related resources of Wind Cave National Park.

Ms. Best stated that the parties negotiated a settlement agreement, which provides that Fall River Water Users District undergo a pump test and that water quality testing occur at this location. Fall River Water Users District has provided DENR with written notice that they will comply with these conditions.

The chief engineer recommended approval of Application No. 2560A-2 with the following qualifications:

1. Permit Nos. 2560-2 and 2560A-2, combined, reserve 750 acre feet of water annually from the Madison Aquifer.

2. That Future Use Permit Nos. 2560-2 and 2560A-2 are approved with the stipulation that this Permit is subject to review by the Water Management Board in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.

3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-

United Land Management Drinking Water Information

(System Information, Sampling Requirements, and Compliance Report)

2013 Certificate of Achievement Award.

Population Served:	75	**System Population:**	75
Certified Operator:	Mr Seth Jeffs PO Box 5050 Custer, SD 57730-5050	**Work Phone:** **Home Phone:** **Cell Phone:** **Fax:** **Email:**	 (605)673-5274 ssjmail2@gmail.com
Financial Contact:	Mr Seth Jeffs PO Box 5050 Custer, SD 57730	**Work Phone:** **Home Phone:** **Cell Phone:** **Fax:** **Email:**	(605)673-5274
Other Contacts:	Mr Preston Barlow PO Box 5050 Custer, SD 57730	**Work Phone:** **Home Phone:** **Cell Phone:** **Fax:** **Email:**	 preston@reliance.bz
Last Inspection:	June 11, 2014		
Type of System:	Community	**Area Served:**	Custer County
Number of Service Connections:	11	**Contamination Risk:**	low

Water Produced And Used By The United Land Management Public Water System

PWS Owner Type:	Private Ownership	**Service Area:**	Residential Area
Contract Laboratory:		Energy Laboratory	

Attachment C

After Recording Return To:
Stephen P. Harker, Trustee
11571 Farmer Road
Pringle, SD 57773

STATE OF SOUTH DAKOTA,
COUNTY OF CUSTER-SS 51279
Filed this 24 Day of Dec 2009 at 10:15 O'clock ~~PM~~ AM
BOOK 49 OF DEED PAGE 330
/S/ Pamela J Johnson
REGISTER OF DEEDS FEE $ 22.00 N/S PD chg DEPUTY

[Space Above This Line For Recording Data]

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT: FOR VALUABLE CONSIDERATION OF TEN DOLLARS ($10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged and confessed, and for which no lien, express or implied, does or shall exist United Land Management, LLC, a Limited Liability Company organized and existing under the laws of the State of South Dakota, Grantor, has GRANTED, SOLD, CONVEYED AND WARRANTED, and by these presents does hereby GRANT, SELL, CONVEY AND WARRANT unto Stephen P. Harker, Trustee of the United Order of South Dakota, a Common Law Trust dated of even date hereof, Grantee, all that certain tract of land lying and being situated in the County of Custer, State of South Dakota, and more particularly described as follows, to-wit:

See the Attached Exhibit "A" for Complete Legal Description.

TOGETHER WITH all improvements, easements, and appurtenances thereunto belonging. SUBJECT TO all easements, restrictions, reservations, rights of way, and items currently appearing of record, if any.

~~TRANSFER FEE PAID $~~
EXEMPT FROM TRANSFER FEE

EXEMPT from Transfer Fee 43-4-22(18)

WITNESS the hand of said grantor, this 23rd day of December, 2009.

Witnesses:

United Land Management, LLC

Jerold Williams (Seal)
Jerold Williams, Manager and Member

STATE OF Utah
COUNTY OF Washington

This instrument was acknowledged before me on December 23rd, 2009 by Jerold Williams, Manager and Member of United Land Management, LLC, a South Dakota Limited Liability Company on behalf of said Limited Liability Company.

NOTARY PUBLIC
BOYD KNUDSON
1020 West Utah Avenue
Hildale, UT 84784
My Commission Expires
January 24th, 2011
STATE OF UTAH

Boyd Knudson
Notary Public
Commission Expires: 1/24/11

RECEIVED
DEC 3 1 2009
WATER RIGHTS PROGRAM

SD EForm - 0495 V2

NOTICE OF TRANSFER OF OWNERSHIP

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

Water Right/Permit No. 2610-2

Date: 12/29/09

I/We request that Water Right/Permit No. 2610-2 formerly owned by:
United Land Management be transferred to:

New Owner Name: United Order of South Dakota
Address: 11571 Former road PO Box 5050
City, State, Zip Custer SD 57730 Telephone No. 605-673-5274

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

Water Permit No. 2610-2

☑ I understand that the validity of Water Right/Permit No. 2610-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

A fee of Fifty Dollars ($50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, United Order of South Dakota, the new owner, certify that the above information is true and correct. By Stephen P. Harter Trustee

United Order of South Dakota
by Stephen P. Harter Trustee
(Signed by new owner)

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

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

2009/07

(Copy of land deed transfer enclosed also)
Attachment D

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

CMI

Date 12-31, 20 09

RECEIVED CMI, 1430 Haines Ave, Suite 108, 360, Rapid City SD 57701

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use		
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form Water Permit No. 2610-2	50	00
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	50.00	

No. 04505

By _____

Chief Engineer

EXHIBIT "A"

Parcel # 6359: The South Half of the North Half of the Southwest Quarter of the Northeast Quarter (S½ N½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6360: The South Half of the Southwest Quarter of the Northeast Quarter (S½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6361: The South Half of the North Half of the Southeast Quarter of the Northeast Quarter (S½ N½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6362: The South Half of the Southeast Quarter of the Northeast Quarter (S½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6364: The West Half of the East Half of the Northwest Quarter of the Southeast Quarter (W½ E½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6365: The West Half of the Northwest Quarter of the Southeast Quarter (W½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6366: The East Half of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ NE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6367: The West Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (W½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6368: The East Half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (E½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Southeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ SE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. This parcel contains 40 acres, more or less.

Entity Detail File Annual Report Statement of Change Forms

Name	**UNITED LAND MANAGEMENT, LLC**
Corporate ID	**DL007311**
Incorporation/Qualification Date	**5/7/2004**
Home State	**SOUTH DAKOTA**
Status	**Cancellation Pending**
Last Annual Report	**2009**
Corporation Type	**Domestic LLC**
Stock Info	**CONT. $1,000**

Registered Agent Documents Officers

Registered Agent Name & Address

JEROLD WILLIAMS
11571 FARMERS RD
CUSTER, SD 57730-8147

Attachment E

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

January 21, 2015

NOTICE OF HEARING

TO: Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer SD 57730
and Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 2730-2, United Order of South Dakota

Petitions opposing approval of Water Permit Application No. 2730-2 have been filed in response to the Notice of Application published in the Custer County Chronicle and Rapid City Journal. This notice schedules a hearing on the application before the South Dakota Water Management Board.

Water Permit Application No. 2730-2 proposes to appropriate an additional 0.46 cubic feet of water per second (cfs) and an additional well. Water Permit No. 2610-2 authorizes 0.21 cfs from two wells located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application proposes to appropriate an additional 0.46 cfs and authorizes one additional well to be completed into the Madison Aquifer (1100 feet deep) located in the NW 1/4 SE 1/4 Section 10-T6S-R3E. This application, if approved, and Water Permit No. 2610-2 will authorize a total diversion rate of 0.67 cfs (300 gallons per minute) from three wells for use in the United Order of South Dakota's water system.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2730-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 2730-2 at 8:30 AM (Central Standard Time) on Thursday, March 5, 2015, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time, date or location.

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 after it reaches a conclusion based on the facts presented at the public hearing.

The March 5, 2015, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer (Joe Foss Building, 523 E Capitol Avenue, Pierre SD 57501) from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by February 23, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing, and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Eric Gronlund at the above Chief Engineer's address to request copies of the staff report, recommendation, application or any other information. 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.

Enclosed is the staff report, recommendation, affidavits of publication and petitions in the matter of Water Permit Application No. 2730-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being 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.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is February 2, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of $2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosures

c: Ann Mines-Bailey, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:
Seth Jeffs United Order of South Dakota
PO Box 5050
Custer SD 57730

PETITIONERS:

William R Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins CO 80525
Original Petition received – 12/22/2014
Amended Petition received – 01/20/2015

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730
Petition received - 01072015

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109
Petition received – 01/12/2015

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701
Petition received – 01/12/2015

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City SD 57745
Petition received – 01/12/2015

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer SD 57730
Petition emailed – 01/16/2015
Petiton received by mail – 01/20/2015

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA
NOVEMBER 12, 2014

Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer at a maximum diversion rate of 0.46 cubic feet of water per second (cfs). Water is to be diverted from two existing wells which were authorized by Water Permit No. 2610-2, and a proposed well. Water Permit No. 2610-2 authorizes diversions of up to 0.21 cfs from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. This application proposes to authorize the construction of a third well, also located in the NW¼ SE¼ of Section 10, T6S-R3E, and authorize a total maximum diversion from the three wells of 0.67 cfs. The water will be used in the United Order of South Dakota's water system.

AQUIFER: Madison aquifer (MDSN)

Aquifer Characteristics:
The Madison aquifer is a regionally extensive aquifer contained within the Madison Limestone, locally known as the Pahasapa Limestone, and the Englewood Limestone. The aquifer underlies portions of North Dakota, South Dakota, Montana, Wyoming, Saskatchewan, Manitoba and Alberta. The Madison aquifer underlies most of western South Dakota and parts of Eastern South Dakota (Figure 1). The Madison aquifer contains an estimated 644,827,200 acre-feet of recoverable water in storage in Western South Dakota (Allen and others, 1985) and 51,512,300 acre-feet of recoverable water in storage in Eastern South Dakota (Hedges and others, 1982).

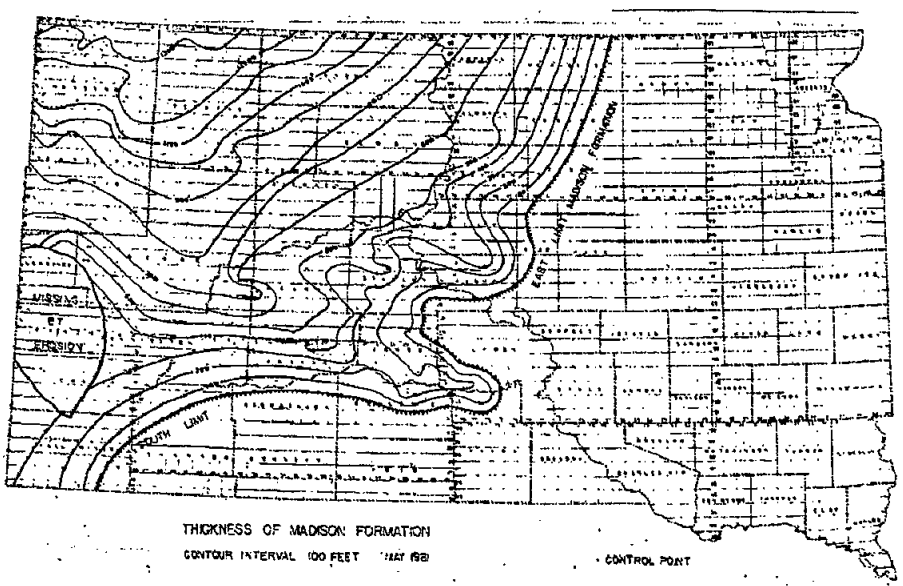

Figure 1. Areal Extent of the Madison Formation in South Dakota: modified from (Gries, 1981).

The Madison aquifer is considered a "mature karst aquifer" (Long and others, 2012) and is composed of a fine to medium crystalline, cavernous limestone and dolomite. The Madison is expected to be approximately 300 feet thick in this area (Carter and Redden, 1999a); and (Carter and Redden, 1999b). The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of

exposed surfaces, groundwater solution and fracturing. The lower part of the Madison Limestone and the Englewood Limestone generally have lower permeability than the upper part of the Madison aquifer in the Black Hill (Greene, 1993). The average porosity of the Madison is estimated to be 11%, and the effective porosity from which recoverable water can be obtained by wells is assumed to be 5% (Rahn, 1979).

The well site proposed by this application is located approximately five miles southwest of the Madison Limestone outcrop (Strobel and others, 1999). In this area, the Madison Limestone dips to the southwest at approximately 240 feet per mile (approximately three degrees) (Carter and Redden, 1999a). The DENR-Water Rights Program has record of three existing wells constructed for the United Order of South Dakota. The top of the Madison was reported to be 785 feet below grade in one well log, 715 feet below grade in a second well log and is inferred to be 719 feet below grade in the third log (Water Rights, 2014c). The static water level of the wells was reported to be 650' (06/05/2005), approximately 800' (10/20/2010) and approximately 800' (10/15/2007) respectively.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The availability of unappropriated water can be evaluated by considering SDCL 46-6-3.1 which requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." The statute provides that "An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems." Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer, a water source that is older than the Greenhorn Formation, and the water is to be used by a water distribution system. Therefore, the Board need not consider the recharge versus withdrawal issue.

Existing Rights:

This applicant has been utilizing wells completed into the Madison aquifer that were authorized by Water Permit No. 2610-2 since 2007 with no significant impact. The additional diversion rate proposed by this application is relatively low and will not likely have a noticeable effect to the Madison aquifer. There are 64 completion reports on file with the DENR-Water Rights Program within approximately five miles of the wells that are to be used to supply this appropriation (Water Rights, 2014c). The majority of these domestic wells appear to be completed into the Minnelusa aquifer and at least two are completed into the Deadwood aquifer. Wells completed into aquifers that are either stratigraphically above or below the Madison aquifer (i.e. Minnelusa and Deadwood respectively) are not expected to be affected by this proposed appropriation since the lower Minnelusa formation can be considered a confining bed that isolates the Madison hydraulically from shallower aquifers, and the bottom portion of the Madison isolates the Madison from lower

aquifers. Only three of the domestic wells on file appear to be completed into the Madison aquifer. Based on the legal location provided on the completion reports, the Madison aquifer wells are all located over three and three quarter miles from the site(s) of Application No. 2730-2.

The diversion point locations for existing water rights and future use permits appropriating water from the Madison aquifer in this area are shown in Figure 2 and identified in Tables 1 and 2.

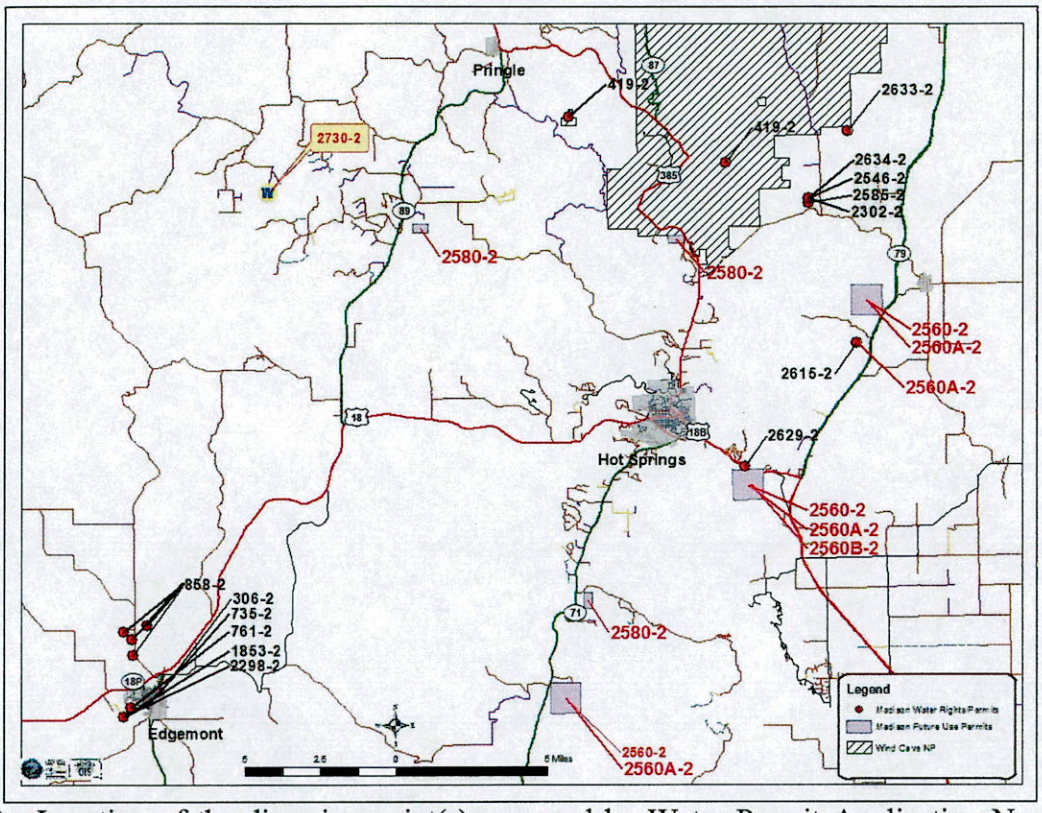

Figure 2. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, diversion points for existing Madison aquifer water rights/permits, and areas of Madison aquifer future use permits in the vicinity (Water Rights, 2014b).

Table 1. Water Rights/Permits appropriating water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS	ACRES	AC-FT /YR
306-2	CITY OF EDGEMONT	12/14/1945	LC	MUN	0.31		
419-2	WIND CAVE NATIONAL PARK	12/29/1955	LC	COM/IRR	0.15		
735-2	TENNESEE VALLEY AUTHORITY	12/26/1961	LC	IND	0.66		
761-2	CITY OF EDGEMONT	04/09/1962	LC	MUN	0.41		
858-2	WYOMING DAKOTA RAILROAD PROPERTIES INC	02/05/1965	LC	IRR	9.36	655.75	
1853-2	CITY OF EDGEMONT	08/23/1983	IL	MUN			
2298-2	CITY OF EDGEMONT	08/28/1993	LC	REC/MUN	1		
2302-2	EBEN W STREETER	02/07/1994	LC	RWS	0.033		
2546-2	EBEN STREETER	01/03/2005	PE	RWS	0.21		
2615-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	0.67		
2629-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	1		
2585-2	SOUTHERN BLACK HILLS WATER SYS	05/08/2006	DF	RWS	2.67		1600
2610-2	UNITED ORDER OF SOUTH DAKOTA	02/09/2007	PE	SHD	0.21		
2633-2	SOUTHERN BLACK HILLS WATER SYSTEM	06/20/2008	PE	RWS	0.67		
2634-2	STREETER FAMILY LIMITED PARTNERSHIP	07/17/2008	PE	RWS	0		

LC= Water License, IL= Incorporated, PE= Water Permit, DF= Deferred, MUN= municipal, COM= Commercial, IRR= Irrigation, IND= Industrial, REC= Recreational, RWS= Rural Water System, SHD= Suburban Housing Development

Table 2. Future Use Permits reserving water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

FUTURE USE PERMIT NO.	NAME	ORIGINAL RESERVATION (AC-FT/YR)	REMAINING RESERVATION (AC-FT/YR)
2560-2	FALL RIVER WATER USERS DISTRICT	750	0
2580-2	SOUTHERN BLACK HILLS WATER SYSTEM	1474	1474
2560A-2	FALL RIVER WATER USERS DISTRICT	*	0
2560B-2	FALL RIVER WATER USERS DISTRICT	*	0

* FUTURE USE PERMIT NOS. 2560A-2 AND 2560B-2 AMEND FUTURE USE PERMIT NO. 2560-2 TO EXPAND THE FUTURE USE AREA AND DO NOT RESERVE ADDITIONAL WATER

Since the Madison is under artesian conditions in this area, drawdown from pumping a well may extend over a fairly large area. The transmissivity of the aquifer is very heterogeneous with values that range over several orders of magnitude (Putnam and Long, 2007). In addition, the aquifer characteristics of the Madison can vary considerably within a short distance (Greene, 1993).

Carter and others (2001) developed hydrologic budgets for the Madison and Minnelusa aquifers combined, using nine subareas to cover the Black Hills. The subareas were identified on the basis

of hypothetical flow paths and were selected with the intent of minimizing flow across the boundaries. The well(s) that is/are to be used to supply this appropriation is/are located in Carter and others' (2001) subarea 8. Carter and others (2001) estimated the transmissivity of the Madison aquifer on the border of the subarea near the well site at 1,463 feet squared per day (ft^2/d). Applying this estimated transmissivity and assuming a storage coefficient of $S= 2x10^{-4}$, the drawdown 1,000 feet from a well pumping 0.46 cfs would be less than 19 feet after one year of continuous pumping based on the Theis Equation (see Figure 3) ("Theis Equation Calculator").

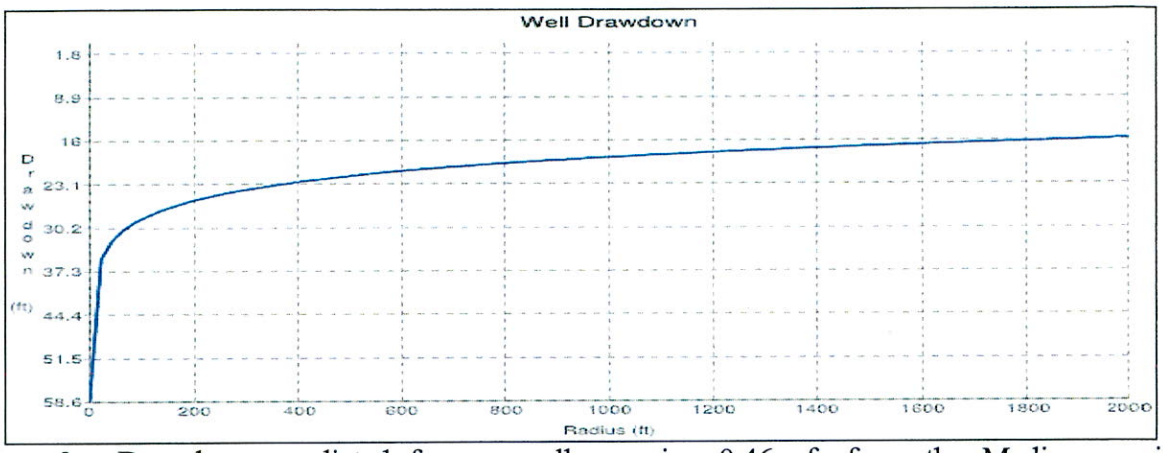

Figure 3. Drawdown predicted from a well pumping 0.46 cfs from the Madison aquifer, continuously for one year, assuming T= 1,463 ft^2/d, S= $2x10^{-4}$. (modified from ("Theis Equation Calculator"))

Assuming the combined diversion rates of Water Permit No. 2610-2 and Water Permit No. 2730-2 (if approved) are pumped from a single well, a transmissivity of 1,463 ft^2/d and a storage coefficient of $S= 2x10^{-4}$, the drawdown 1,000 feet from a well pumping 0.67 cfs would be less than 28 feet after one year of continuous pumping based on the Theis Equation (see Figure 4) ("Theis Equation Calculator").

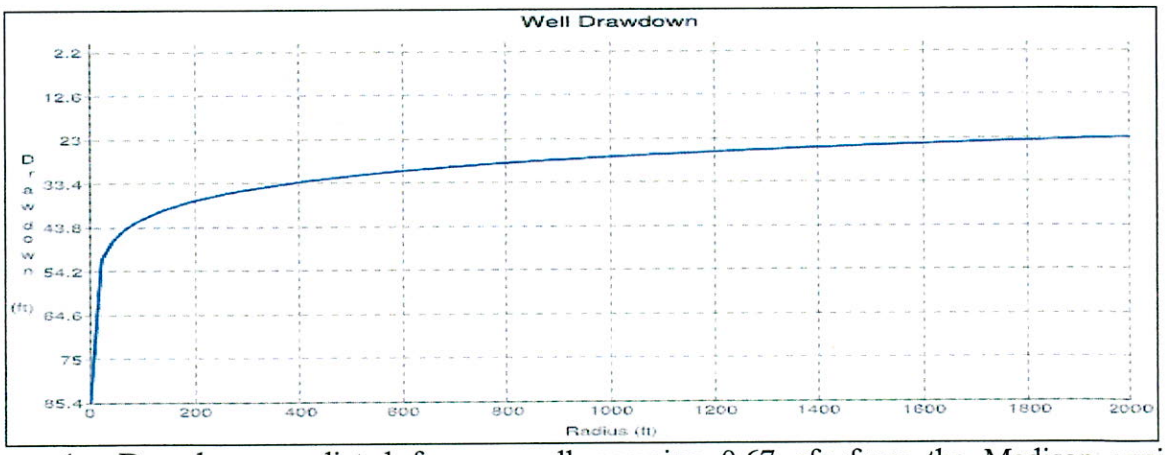

Figure 4. Drawdown predicted from a well pumping 0.67 cfs from the Madison aquifer, continuously for one year, assuming T= 1,463 ft^2/d, S= $2x10^{-4}$. (modified from ("Theis Equation Calculator"))

The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant.

Wells supplying existing Water Rights/Permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure.** Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

If the water levels in the Madison aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

It should be noted however, that well interference (drawdown) measured at Water Rights' observation wells located near high capacity municipal wells in Spearfish, Sturgis and Rapid City has never been significant (i.e. drawdown of only a few feet or tens of feet) (Water Rights, 2014a).

Given the distance between the well(s) that is/are to supply this appropriation and existing Madison wells well interference is not expected to be adverse.

The well sites proposed by this application are located approximately five miles west of the "Argyle" well site proposed by Future Use Permit No. 2580-2. Approval of this application should not hinder development of the future use permit due to the distance involved.

Beneficial Use:
Pursuant to SDCL 46-1-6 (3) beneficial use is defined as:

> "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies;

The applicant has the burden of proof in establishing that an application is a beneficial use of water.

Public Interest Issues:
In the past, there have been two "public interest" issues raised that could potentially be obstacles to developing the Madison aquifer in the Southern Black Hills: the possibility of affecting artesian spring discharge; and the possibility of affecting the water resources at Wind Cave National Park.

Artesian Springs:

The water at a number of springs in the southern Black Hills area contains geochemical and isotopic characteristics of the Madison aquifer (Whalen, 1994). These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer" (Rahn and Gries, 1973). Major springs in the area identified by Naus and others (2001) are shown in Figure 5.

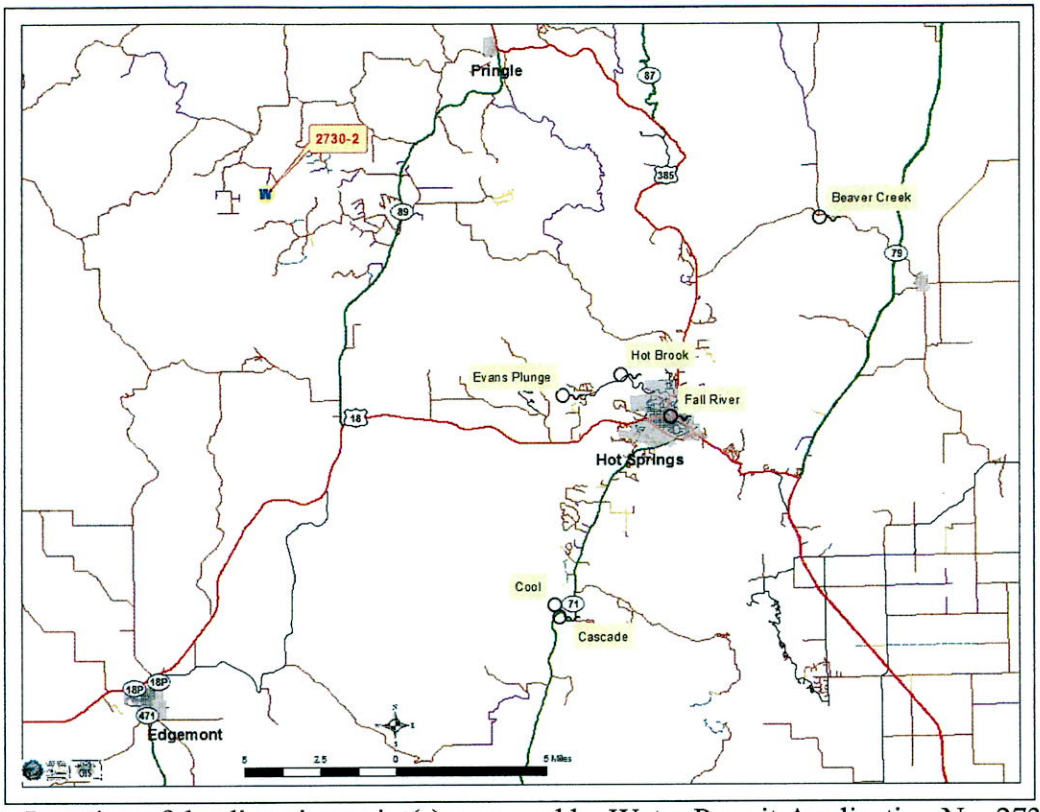

Figure 5. Location of the diversion point(s) proposed by Water Permit Application No. 2730-2, and the location of major springs in the vicinity.

The discharge of one of these springs, Beaver Creek Spring, is measured by National Park Service personnel. The spring is located approximately two and one-quarter miles east of SD DENR-Water Rights' Observation Well CU-91A. A comparison of the discharge of Beaver Creek Springs and the potentiometric surface of the Madison aquifer suggests a relationship may exist between the two (see Figure 6). At this time it is not possible to determine if a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring flow or if the two have similar responses to the same hydrologic conditions. If a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring discharge, a decline of the potentiometric surface in the vicinity of the springs could decrease spring discharge.

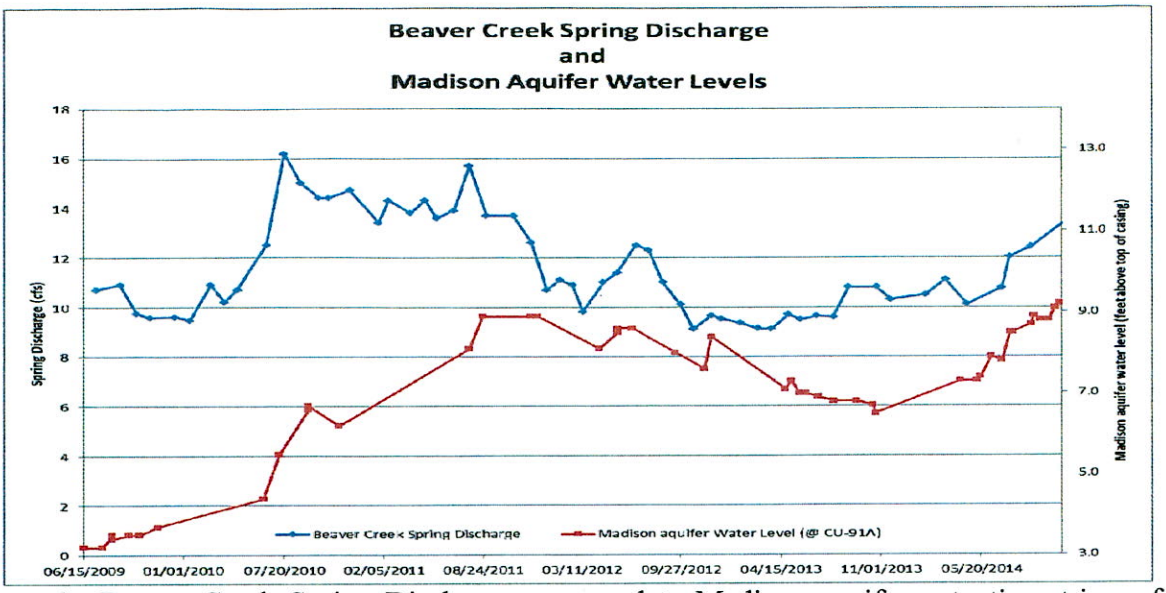

Figure 6. Beaver Creek Spring Discharge compared to Madison aquifer potentiometric surface measured at observation well CU-91A ("Aquarius Web Data Portal."; Water Rights 2014a)

When considering Future Use Permit No. 2560-2 for Fall River Water User District, the Water Management Board accepted that SD Water Law does not protect artesian head pressure as a means of diversion and determined that well interference resulting in decreased discharge from these "artesian" springs could probably not be considered an adverse impact. The Board did however recognize the "public interest" issues of decreased base flows in area streams that could result from decreased spring discharge as the result of well interference. Approval of Future Use Permit No. 2560-2 included the following qualification:

> "At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows of Beaver Spring, Cascade Springs and Hot Springs." (Water Rights, 2014b)

Subsequently, when considering the deferral of Water Permit Application No. 2585-2, Southern Black Hills Water System, the Water Management Board adopted a conclusion of law (No. 11) which states in part "The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria."

The well site(s) proposed by this application is/are located over eleven miles from the nearest major spring (Evens Plunge). A fairly large change in the hydraulic gradient in the vicinity of the springs would be necessary to significantly affect the groundwater flow rates and consequently the spring's discharge. Given the distance involved and the relatively low diversion rate proposed by this application, (0.67 cfs maximum), it is unlikely that drawdown from this well would have a measurable impact on spring discharge.

Wind Cave National Park:

The National Park Service (NPS) has intervened in matters of water permit applications from the Madison aquifer in the past. In 2007, the NPS filed a petition to intervene in the matter of Water Permit Application No. 2610-2. The NPS was concerned that "the Application No. 2610-2, over time and in combination with senior water right applications … will adversely impact Wind Cave National Park (Wind Cave NP) senior water rights and water-dependent resources." The water-related resources cited by the NPS include: lakes and pools in the lower reaches of Wind Cave, three perennial streams (Cold Springs, Beaver, and Highland Creeks), many intermittent and ephemeral stream courses, and over 95 seeps and springs. The NPS later withdrew their opposition to granting the water permit but restated its concerns about the potential impacts of appropriations from the Madison aquifer.

Lakes and Pools:

The lakes and pools in Wind Cave National Park are in hydraulic connection with the Madison aquifer and the water table of the Madison aquifer is accessible at the deepest part of the cave (Long and others, 2012) . The stages of the lakes fluctuate in response to climatic conditions similar to fluctuations in the Madison potentiometric surface measured in DENR-Water Rights' Observation Well CU-91A, (see Figure 7).

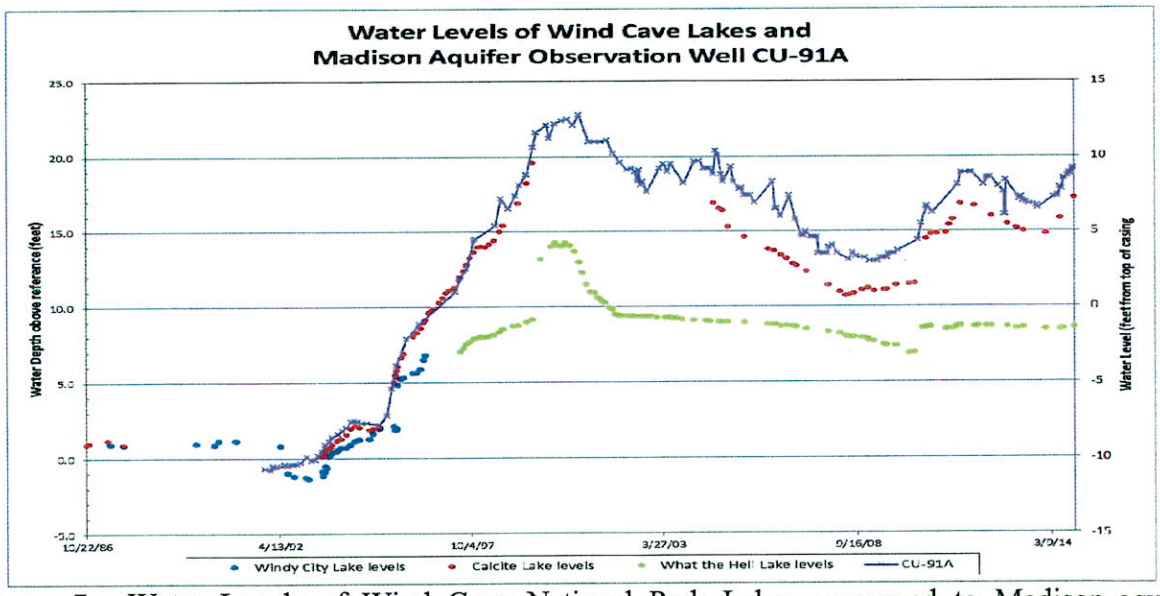

Figure 7. Water Levels of Wind Cave National Park Lakes compared to Madison aquifer potentiometric surface measured at observation well CU-91A (Hughes; Water Rights 2014a)

The lakes and pools in Wind Cave are located approximately thirteen miles east of the well site(s) proposed by this application (see Figure 8).

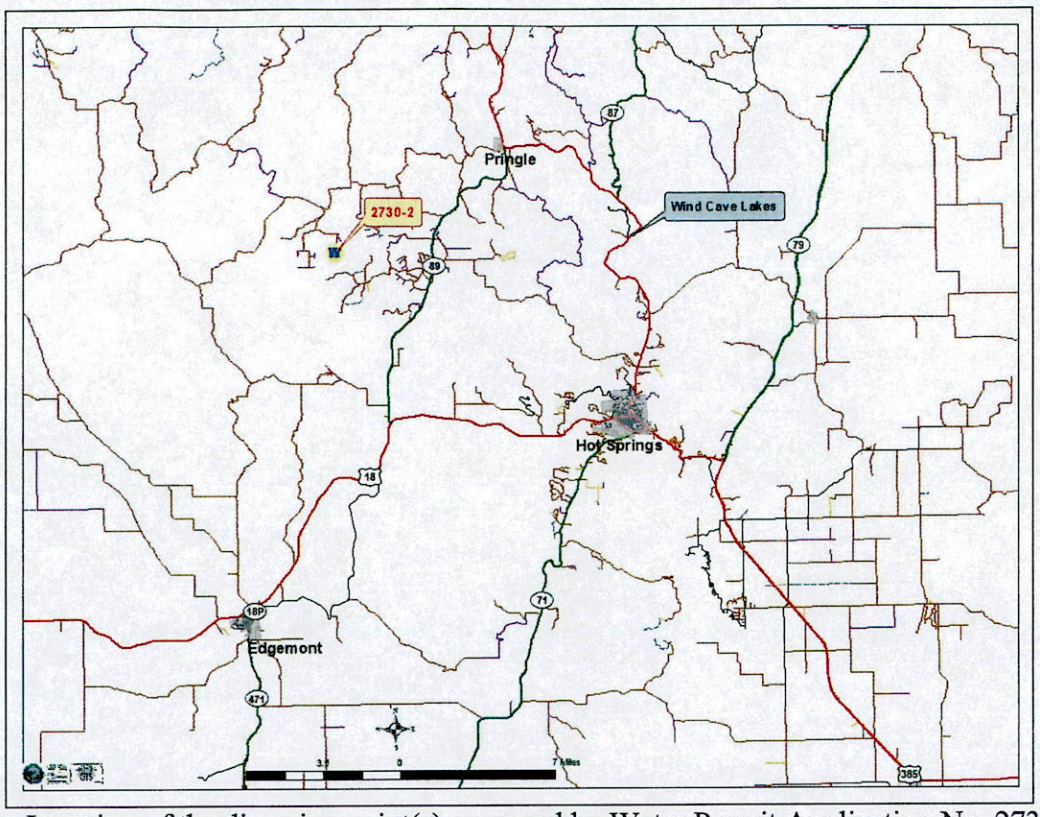

Figure 8. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, and the location of lakes and pools in Wind Cave National Park.

The impacts of pumping the well proposed by this application is expected to be negligible on the Wind Cave Lakes, especially when compared with the natural fluctuations because of the distances involved (>5 miles) and the relatively small diversion rate proposed (0.67 cfs maximum).

Streams (Perennial and Ephemeral):
The NPS identified three perennial streams (Cold Spring, Beaver and Highland Creeks) as "water resources of high value at Wind Cave NP". The entire length of Cold Spring Creek is located on formations that are geologically lower than the Madison and therefore are not expected to be influenced by Madison aquifer withdrawals. Beaver and Highland Creeks are typically dry in their reaches downstream from the loss zone (Madison, Minnelusa and Minnekahata aquifer outcrops) because the upstream flow is usually insufficient to meet or exceed the streams' loss thresholds. Since loss thresholds are assumed to be generally constant (Hortness and Driscoll, 1998), any fluctuations of the groundwater levels caused by pumping will not affect the frequency that the reaches of Beaver Creek and Highland Creek downstream of the loss zones are dry.

Seeps and springs:
The majority of the seeps and springs identified by the NPS are obviously not related to the Madison aquifer. They either surface in geologic formations hydrologically isolated from the Madison at elevations hundreds of feet higher than the water level of the Madison, or in geologic formations older than (below) the Madison. The few seeps or springs identified by the NPS that are actually situated on the Madison outcrop are likely expressions of localized perched conditions that would not be impacted by any changes in water level of the regional system.

TERM LIMITATION:

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing this permit without a term limitation of 20 years.

Conclusions:

1. The Madison aquifer is a viable aquifer in this area.
2. This diversion will not adversely impair existing water rights.
3. Information is not available to approve this application without a 20 year term limit

Ken Buhler
SD DENR-Water Rights Program

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DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

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. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending Approval of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The new well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer that is authorized by Water Permit Nos. 2610-2 and 2730-2.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
December 5, 2014

Ken Buehler · Water Permit
App. 2730-2

An aerial survey over U.S.
Compound estimated 436 acres
(nearly three quarter sections) of land
in the Compound has recently been
disturbed/plowed - for what? That is
a lot of land to support 70 people -
or is it to be 300+? What is truth?
Considering the recent application for
more water from the Madison Aquifer.
(Personal Note - told to me by business
friends relocated to Black Hills from TX.)
Interested in their new Black Hills area
home, they explored our drives different
areas. One afternoon, having neither
map nor direction, they were on a
gravel roadway meandering at the
Magnificently beautiful Red Canyon
area of Custer County. Suddenly, they
realized they were being approached by
2 men on 2 ATV's, each with a shoulder-
slung rifle. They turned around - no fearous
encounter - realizing later they were

unknowingly on the border road of the FLDS Compound!! - terrorists as our own South Dakota!!!!

I have travelled all over our Western + NW United States - including Utah + N. AZ. + Colo + can tell you the LDS Community is isolated, I picked up + read a pocket book - written by a young woman who escaped the Compound + her life there was hell; A Cult.

Please: born, raised + live as a steward of our natural resources + same - Orderly way of life, I urge the S.D. DENR to deny this application for an increase in water from our precious Medicine. We do NOT want more of this demonic cult in our State.

When first asked "Why", Jeff's answer: "Just because" ???! - later, he revealed they have 2 wells - one Not Working. Would it make sense to repair it first?

Please Consider this humanoid

Recent information from Atty. Geoffrey Connelly makes reference to three 3 wells on the LDS Compound, in recent months. Keith Jeffs - LDS Spokesman - admitted one of two current wells is inoperable. Would it, therefore, be reasonable that well should be brought on line and repaired?

I appreciated your return phone call twice this afternoon - No response.

My question: Does the DWR have an historic record of these aquifers? Most especially, the Ogallala - Madison in the 1930's. My family gave thanks to God that we lived on the Ogallala - I now do for the Madison. Look at CAL - we must take care of our Natural Resources for our heirs.

Have you followed R.C. Journal's reporter, Seth Tupper, on this issue the recent six months? If not, may I suggest the issues?

April 28 - May 17, 2015

RC Journal 394-8300

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PROGRAM

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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

January 28, 2015

Mr. Seth Jeffs
United Order of South Dakota
Box 5050
Custer, SD 57730

RE: *Water Permit Application No. 2730-2*

Dear Mr. Jeffs,

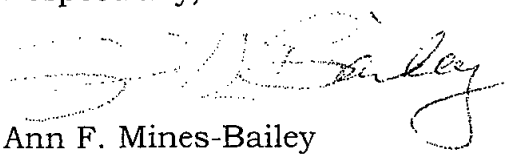
By way of introduction, I am the Assistant Attorney General assigned to represent the Water Rights Program of the Department of Environment and Natural Resources. I have been reviewing your application and wish to ensure that we have the proper paperwork on file. Water Permit Application No. 2730-2 requests an increased diversion rate based on the water appropriated and wells permitted under Water Permit No. 2610-2. Our records show that Water Permit No. 2610-2 was originally issued to the United Land Management, LLC, c/o Richard Allred. The Water Rights Program's records additionally reflect that this permit was transferred to Stephen P. Harker, Trustee of the United Order of South Dakota, a common law trust. Thus, before we may proceed, we need a copy of the trust documents demonstrating that you have the authority to act on behalf of Mr. Harker or that you have been appointed trustee of the United Order of South Dakota.

Also, it is my understanding that you spoke with Eric Gronlund regarding the hearing on your application and whether you would need legal representation at the hearing. Under the laws of the State of South Dakota, entities such as trusts, corporations, and limited liability companies are required to have legal representation when appearing before the courts and administrative agencies. *See Smith v. Rustic Home Builders, LLC*, 2013 S.D. 9, 826 N.W.2d 357; *Sunflour R.R., Inc. v. Paulson*, 2003 S.D. 122, 670 N.W.2d 518; and Opinion dated August 8, 1989 from the South Dakota Unauthorized Practice of Law Committee. *See also* SDCL § 16-16-1. Though I have not seen your entity's

origination documents, I believe that your organization falls into this category and that your organization must be represented by a licensed attorney authorized to practice in South Dakota when you appear before the Water Management Board.

Please feel free to contact me if you have any questions or concerns.

Respectfully,



Ann F. Mines-Bailey
Assistant Attorney General

AMB/rar

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Michael M. Hickey
Terry L. Hofer
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RAPID CITY
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BANGS McCULLEN
LAW FIRM

RECEIVED
FEB 23 2015
WATER RIGHTS PROGRAM

Reply to Rapid City Office

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

February 19, 2015

Sent by U.S. Mail and Facsimile
Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: ***In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2***

Dear Ms. Goodman:

Please find enclosed the original of Linda Van Dyke Kilcoin's *Motion for Intervention and Continuance* in the above-referenced matter. A copy of this document has been sent to the United Order of South Dakota, and to all the interested parties, which is intended as service by U.S. Mail.

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

Sincerely,

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

Michael M. Hickey

MMH:bah
Enclosure
cc: Client; Eric Gronlund; Seth Jeffs; William R. Hansen/Jeff Hughes; Craig Bobzien; Mr. and Mrs. David Albrecht; Toni Martin; Doug Lesher; Rick Fox; Dean & Delia Johnson; Karl R. Von Rump/Suzanne K. Von Romp

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	**Motion for Intervention and Continuance**

Comes now Linda Van Dyke Kilcoin ("Kilcoin"), an interested party in the above proceeding, and who has earlier filed her petition to intervene in this proceeding in opposition to the recommendation of the Chief Engineer. Petitioner hereby opposes the application of United Order of South Dakota and requests that the hearing originally set for March 5, 2015, be continued in order to allow Petitioner additional time to prepare for the hearing in this matter before the Water Management Board.

Dated this 19th day of February, 2015.

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

BY: Michael Hickey

MICHAEL M. HICKEY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
ATTORNEYS FOR LINDA VAN DYKE KILCOIN

CERTIFICATE OF SERVICE

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

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

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

Facsimile: (605) 773-4068

and by depositing copies thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in envelopes addressed to said addressees, to wit:

Seth Jeffs
United Order of South Dakota
P.O. Box 5050
Custer, SD 57730

William R. Hansen
Jeff Hughes
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 19th day of February, 2015.

MICHAEL M. HICKEY

Seth S. Jeffs

United Order of South Dakota
PO Box 5050
Custer, SD 57730

February 18, 2015

RECEIVED
FEB 23 2015
WATER RIGHTS PROGRAM

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

National Park Service Water Resources Division
William R. Hansen
and Jeff C. Hughes
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

Black Hills National Forest
Craig Bobzien
1019 North 5th Street
Custer, SD 57730

RE: NPS and National Forest Petition to Intervene in South Dakota Water Permit Application No. 2730-2

Dear Ms. Goodman, Mr. Hansen and Mr. Bobzien,

I am the water operator for the water system owned and operated by the United Order of South Dakota. I was grateful for the opportunity to talk to the representatives of the National Park Service on February 13, which included William Hansen, Jeff Hughes, and Peter Fahmy. I was also grateful to talk to Craig Bobzien on February 17th. In both of the phone conversations I described what is contained in this letter.

I take this opportunity to describe the reason why we are asking for more water rights. I have included the well log data that we agreed to give to the NPS. During the years 2008-2010 the records were much more detailed. The yearly reporting to the State of South Dakota Water Rights is the only record we have for the years 2011-2014. I have recently reported to the Water Rights Division that we used 8,323,600 gallons of water in the year 2014, which is 25.5 acre feet of water.

There are currently two permitted wells, one of which is operative, pumping at less than 94 GPM when the water is needed. I will call this well #1. This well will only pump at 94 GPM when there is no head pressure, when the storage tank is empty. When the tank has water in it, and is being filled, the rate goes down to around 50-70 GPM. Most of the time this is the average rate at which the well is pumping.

The second well is inoperative at this time. When installed, it did not produce the water flow that was desired. It runs dry in a few minutes of pumping at less than 90 GPM. This well was installed as a backup to the only operating well. We anticipate that this well is only capable of producing from 10-20 GPM. We will be installing a smaller pump and use it as a supplement to the larger well. I will call this well #2.

At this time the community has a 30,000 gallon water storage tank to compliment the water distribution system. The water distribution comes through 4" water mains. This system was installed as a temporary system to fill the need until we are able to install a more adequate water distribution system.

During the summer months the 30,000 gallon water tank runs dry and the buildings are often left without water. Well #1 is not able to keep up with the additional demand of watering gardens, orchards, landscape, and feeding animals during the spring and summer months. **We are asking for the privilege to drill another well (well #3) and also to have the privilege to pump at a higher rate because of the higher demand for water during the spring and summer months.**

The three wells will operate on a staged demand basis. When the demand for water is low, well #1 will be able to take care of the need. If the demand for water is high all three wells will be used. This is the only time that we would be pumping at a peak demand rate of around 200 GPM. The only other events that would require the peak rate would be the event of a fire or troubles with the water distribution system like a break in any of the water lines.

As you can see by the attachments, the greatest demands are during the months from the end of May to the beginning of September. The rest of the year the demand is only a fraction of what is used in those five months. Well #1 will easily be able to keep up with the need and will only be pumping for a short time each day for about seven months out of the year.

The United Order of South Dakota is currently permitted to use up to 153 acre feet of water per year if the wells run at 95 GPM for the entire year. Cumulatively, we do not expect to use more than what we are currently allowed to use under permit # 2610-2.

The number of gardens and orchards will increase as the community is able to bring more of the land into cultivation; also the needs for animals in the future will increase the demand for water. We request that we at least be allowed to displace up to the currently allowed 153 acre feet of water per year, that there be no cumulative limitation placed on what is already allowed under permit # 2610-2.

The need for fire protection is also a great concern. Currently there is no dependable fire protection. Engineers recommend at least 6"+ water mains with a minimum of at least 20 psi, with fire hydrants spread through the community. There is a demand of thousands of gallons per minute during that critical time when the water is needed most. The likelihood of a fire is much greater in the summer months when most water is being used and the reserves would be at the lowest levels.

Adequate fire protection requires water in storage, ready for the event of a fire. We will be installing a larger water tank and distribution system to meet this need. Part of this need is to have adequate wells feeding the water distribution system at an adequate rate to not only keep up with the demand, but also make sure that there is always water in storage. With hydrants in place there will be a need to flush the lines at regular intervals during the year to keep the system clean and free of bacteria and other normally harmful elements that collect in a water distribution system. This will also increase the cumulative amount of water that will be needed, but not significantly.

We need to be able to perform maintenance work on well #1 but are unable to because we do not have another adequate backup well.

There is no way to know how much water future well #3 will be able to produce. To be safe we asked for an additional 205 GPM, so that we can run all three wells at the same time without exceeding the peak rate limit of the United Order of South Dakota's water rights.

This is my formal request to the Water Rights Program of South Dakota to alter the permit application number 2730-2 to reflect a total peak rate of 200 GPM instead of 300 GPM, which is an addition of 105 GPM, instead of 205 GPM to the permit number 2610-2 which allows the United Order of South Dakota to use 95 GPM.

In summary, the Chief Engineer has recommended that the United Order of South Dakota be permitted to displace more water based on the fact that there is unused water available. It has been shown that it will not have an impact on any of the needs of those around us. The NPS and the Forest Service suggest that we will be using 300 GPM all the time for the entire year, which would be impractical and impossible for this community to do. There will only be a need to pump at a peak rate of 200 GPM at short times usually during the spring and summer months.

Though we do not anticipate the need to displace much more water cumulatively, we need to be able to displace water at a higher rate at certain times of the year when the need exists. We humbly and respectfully ask for the privilege to drill another well and also to be able to pump water at a higher rate when it is needed. We also request that we be allowed to use no less than the cumulative total amount of water that we are currently allowed to use under permit #2610-2.

We hope this relieves your fears and concerns.

Sincerely

Seth S. Jeffs
Water Operator
United Order of South Dakota

Attachments: Attachment A – SD Water Well Completion Report 10/15/07 (Well #1)
Attachment B – Monthly Well Log Data for 2008-2010
Attachment C – SD Water Well Completion Report 10/20/10 (Well #2)
Attachment D – Monthly Well Log Data from June, 2014

Attachment A

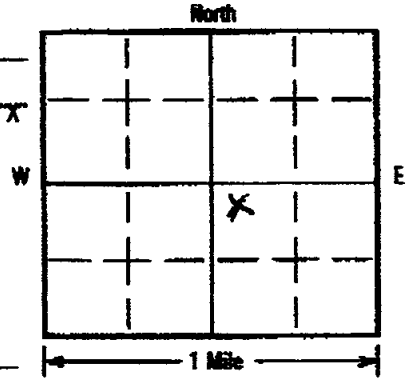
SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NW ¼ SE ¼ Sec 10 Twp 65 Rg 3E

County Custer

Please mark well location with an "X"



Well Completion Date

10-15-07

LOCATION:
Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? >100 ft. from Septic System (identify source)

PROPOSED USE:
☒ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:
Air rotary + DHH

CASING DATA: ☒ Steel ☐ Plastic ☐ Other
If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
28 LB/FT	8 5/8 IN	0 FT	930 FT	11 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	270	15 lb./gal	0 ft.	930 ft.
		lb./gal	ft.	ft.

Describe grouting procedure pressure grouted through casing

SCREEN: ☐ Perforated pipe ☐ Manufactured
Diameter IN Length FEET
Material
Slot Size Set From Feet to Feet
Other information

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO
If so, what material?
Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?
X YES, How: chlorine solution
NO, Why Not?

Laboratory sent to for water quality analysis

Did not set pump

Well Owner:
Business Name: United Land Management
Address:

WELL LOG:

FORMATION	DEPTH FROM	DEPTH TO
mostly SS yel. some shale	0	115
LS, SS + shale red to pink	115	248
LS shaley red to gray	248	307
SS yellow	307	344
LS gray, pink + white	344	597
LS white w/ purp shale	597	701
shale red	701	719
LS light gray to buff	719	1085

STATIC WATER LEVEL ≈ 800 Feet
If flowing: closed in pressure PSI
GPM flow through inch pipe
Controlled by ☐ Valve ☐ Reducers ☐ Other
Reduced Flowrate GPM
Can well be completely shut in?

WELL TEST DATA:
☐ Pumped Describe:
☐ Bailed air developed
☐ Other

Pumping Level Below Land Surface
1085 ft. After 2 Hrs. pumped 50 GPM
ft. After Hrs. pumped GPM
If pump installed, pump rate GPM

REMARKS

This well was drilled under license # 331
And this report is true and accurate.
Drilling firm Taylor Drilling Co.
Signature of License Representative: Clark Taylor
Signature of Well Owner or Equitable Property Holder:

Date:

Attachment B · Page 1

United Order of South Dakota (formerly United Land Management)

2008

MONTH	Water Usage(gallons)	Meter Reading
January	79,000	
February	79,000	
March	79,000	new meter -0-
April	65,600	64,000
May	271,200	129,600
June	532,200	400,800
July	717,300	933,000
August	918,500	1,650,300
September	406,700	2,568,800
October	249,100	2,975,500
November	152,300	3,224,600
December	140,000	3,376,900
		3,516,900
Total Water Used in 2008	2,813,520	

Attachment B Page 2

United Order of South Dakota		
2009		
MONTH	Water Usage (gallons)	Meter Reading (end of month)
		3,516,900
January	126,100	3,643,000
February	147,000	3,790,000
March	110,000	3,900,000
April	145,600	4,045,600
May	630,700	4,676,300
June	1,407,200	6,083,500
July	1,048,400	7,131,900
August	1,134,200	8,266,100
September	814,600	9,080,700
October	205,900	9,286,600
November	203,600	9,490,200
December	234,200	9,724,400
Total Water Used in 2009	6,207,500	

water rights from state = .21 cfs = 1.57 gps = 94.25gpm = 5,655 gal/hr

135,720 gallons per day = 49,537,800 gallons per year

(1,136 acre feet per year)

we used 142.5

Attachment B Page 3

United Order of South Dakota			
2010			
	MONTH	Water Usage (gallons)	Meter Reading (end of month)
			9,724,400
	January	223,300	9,947,700
	February	105,100	10,052,800
	March	97,200	10,150,000
	April	150,200	10,300,200
	May	458,700	10,758,900
	June	530,100	11,289,000
	July	1,946,000	13,235,000
	August	2,040,500	15,275,500
	September	1,371,300	16,646,800
	October	603,200	17,250,000
	November	200,000	17,450,000
	December	281,300	17,731,300
	Total Water Used in 2010	8,006,900	

water rights from state = .21 cfs = 1.57 gps = 94.25gpm = 5,655 gal/hr

135,720 gallons per day = 49,537,800 gallons per year

(1,136 acre feet per year)

Attachment C Page 1

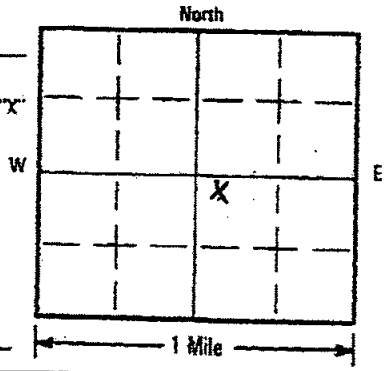
SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NW ¼ SE ¼ Sec 10 Twp 65 Rg 3E

County Custer

Please mark well location with an "X"



Well-Completion Date

10-20-10

Well Owner: United Land Mgmt

Business Name:

Address:

WELL LOG:

FORMATION	DEPTH FROM	DEPTH TO
see atachment		

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? > 100 ft. from Septic System (identify source).

PROPOSED USE:

☒ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:

Air Rotary + DHH

CASING DATA: ☒ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
40.50 LB/FT	10 3/4 IN	0 FT	933 FT	14 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	700	15 lb./gal	0 ft.	933 ft.
		lb./gal	ft.	ft.

Describe grouting procedure cement pressure grouted through casing

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter IN Length FEET

Material

Slot Size Set From Feet to Feet

Other information

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material?

Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?

X YES, How: chlorine solution

Laboratory sent to for water quality analysis ___ NO, Why Not?

pump not installed

STATIC WATER LEVEL ≈ 800 Feet

If flowing: closed in pressure PSI

GPM flow through inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced Flowrate GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe:
☐ Bailed air developed
☐ Other

Pumping Level Below Land Surface

1080 ft. After 2 Hrs. pumped 25 GPM

ft. After Hrs. pumped GPM

If pump installed, pump rate GPM

REMARKS

RECEIVED
FEB 11 2011
WATER RIGHTS PROGRAM

This well was drilled under license # 331

And this report is true and accurate.

Drilling firm Taylor Drilling Co.

Signature of License Representative: Ralph Taylor

Signature of Well Owner or Equitable Property Holder:

Date:

Lithology for United Land Management water well completed October 20, 2010

0	to	92	SS, yellow, orange & tan
92	to	205	mostly LS, some SS & Shale, red, pink, lavender & white
205	to	220	Shale, red
220	to	300	LS, Shaley, red to gray
300	to	332	SS, yellow
332	to	602	LS, gray, pink & white
602	to	620	Shale, red to purple
620	to	695	LS, white
695	to	715	Shale, red
715	to	1078	LS, light gray to buff (Madison)
1078	to	1081	Siltstone, lavender (Englewood)

Attachment D

Well Water Meter Log Well # 1 *United Order of South Dakota*

Date	Time	Meter Reading	Taken By
6/30/14	1:00 PM	47403000	
7/18/14	9:27 PM	482477 - -	
7/26/14	1:43 PM	483679	
7/28/14	6:05 AM	483928 - -	
8/4/14	10:38 AM	489898 - -	
8/22/14	7:53 AM	505429 - -	
8/27/14	1:20 PM	509660 - -	
9/17/14	10:19 AM	518310 - -	
9/26/14	3:18 PM	523438 - -	
10/10/14	7:20 AM	525215 - -	
10/13/14	2:24 PM	525584 - -	
10/17/14	2:53 PM	525843 - -	
10/22/14	6:07 PM	526644 - -	
10/28/14	5:46 PM	527201 - -	
10/31/14	1:00 PM	527361 - -	
11/4/14	3:06 PM	527786 - -	
11/24/14	8:00 AM	528935 - -	
11/27/14	6:10 PM	529020 - -	
12/2/14	12:46 PM	529242 - -	
12/11/14	6:10 PM	529634 - -	
1/3/15	5:19 AM	530610 - -	
1/24/15	7:02 AM	532421 - -	
1/26/15	1:10 PM	532628 - -	
2/7/15	11:36 AM	533296 - -	
2/16/15	6:06 PM	533692 - -	

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

February 24, 2015

NOTICE OF HEARING

TO: Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer SD 57730
and Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of March 5, 2015, Hearing on Water Permit Application No. 2730-2, United Order of South Dakota

Petitions in opposition were received in response to the public notice for Water Permit Application No. 2730-2 filed by United Order of South Dakota in Custer County. Notice of hearing was sent to parties of record scheduling a March 5, 2015, hearing before the Water Management Board. In response to that notice, Michael Hickey, legal counsel for Linda Van Dyke Kilcoin made formal request (copy enclosed) for postponement of the March 5, 2015, hearing date before the Water Management Board. Therefore, the hearing on Application No. 2730-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on March 5, 2015.

The hearing to consider Application No. 2730-2 will now be scheduled for a future Board meeting at a date, time and location to be determined. Future notice of the time and place of the hearing for Application No. 2730-2 will be provided to all parties of record.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on February 24, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 24, 2015, regarding automatic delay of the March 5, 2015, hearing for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer SD 57730

Sent Inter-office to:

Ann Mines- Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of February, 2015

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:
Seth Jeffs United Order of South Dakota
PO Box 5050
Custer SD 57730

PETITIONERS:

William R Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins CO 80525

represented by: Peter A Fahmy
National Park Service
12795 W Alameda Parkway
Suite 198
Lakewood CO 80228

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City SD 57745

represented by: Michael M Hickey
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	**Motion for Intervention and Continuance**

Comes now Linda Van Dyke Kilcoin ("Kilcoin"), an interested party in the above proceeding, and who has earlier filed her petition to intervene in this proceeding in opposition to the recommendation of the Chief Engineer. Petitioner hereby opposes the application of United Order of South Dakota and requests that the hearing originally set for March 5, 2015, be continued in order to allow Petitioner additional time to prepare for the hearing in this matter before the Water Management Board.

Dated this 19th day of February, 2015.

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

BY:

MICHAEL M. HICKEY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
ATTORNEYS FOR LINDA VAN DYKE KILCOIN

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 19th day of February, 2015.

MICHAEL M. HICKEY

374504

Attorney General

FEB 25 2015

Seth S. Jeffs

PO Box 5050
Custer, SD 57730

Anne F. Mines-Bailey

1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Phone: (605) 773-4106

Dear Anne,

Enclosed is the information you requested in your letter of January 28, 2015. Stephen Harker resigned a few years ago. Isaac Jeffs is a current trustee. We will be retaining an attorney for the hearing. Please let me know if there is anything else I can do for you.

Sincerely,

Seth S. Jeffs
Water Operator
United Order of South Dakota
2/23/2015

LETTER OF AUTHORITY
TO SETH S. JEFFS
FROM THE BOARD OF TRUSTEES OF THE
UNITED ORDER OF SOUTH DAKOTA

As a current Trustee of the United Order of South Dakota, a South Dakota common law trust organized by Declaration of Trust dated December 23, 2009 ("Trust"), I, the undersigned, acting on behalf of the Board of Trustees, hereby authorize you, Seth S. Jeffs, to represent the Trust on all matters relating to water and water rights. Please sign any and all documents relating to Trust water in your capacity as "authorized representative" of the Trust.

IN WITNESS WHEREOF, I have executed this Letter of Authority to Seth S. Jeffs from the Board of Trustees of the United Order of South Dakota on the 18th day of February, 2015.

Isaac S. Jeffs, Trustee
United Order of South Dakota

STATE OF UTAH)
: ss.
COUNTY OF WASHINGTON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Isaac S. Jeffs, personally known to me to be the person whose name is subscribed to the foregoing Letter of Authority to Seth S. Jeffs from the Board of Trustees of the United Order of South Dakota, appeared before me in person and acknowledged that he executed the same in the capacity therein stated.

WITNESS my hand and official seal this 18th day of February, 2015.

BOYD KNUDSON
NOTARY PUBLIC, STATE OF UTAH
COMMISSION #680940
MY COMMISSION EXPIRES
JANUARY 24, 2019

Notary Public
Commission Expires: 1/24/19

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

February 27, 2015

Mr. Seth Jeffs
United Order of South Dakota
Box 5050
Custer, SD 57730

RE: Water Permit Application No. 2730-2

Dear Mr. Jeffs:

Thank you for your correspondence dated February 23, 2015. I am in receipt of your statement of authority executed by Mr. Isaac Jeffs. We are, however, in need of additional information.

As I stated in my letter dated January 28, 2015, the records of the Water Rights Program show that the original permit was held by United Land Management, LLC, and that the permit was then transferred to Stephen P. Harker, trustee of the United Order of South Dakota, a common law trust. I understand from your correspondence that Mr. Harker has resigned his position as trustee. However, because the water permit was transferred to Mr. Harker as trustee, before I can accept your statement of authority executed by Mr. Isaac Jeffs as binding, I need documentation that Mr. Isaac Jeffs is now the trustee of the United Order of South Dakota and has the authority to appoint you to exercise that portion of his authority as trustee. I believe the trust documents would establish, or indicate how to verify, Mr. Isaac Jeffs' status as trustee and if there are limitations on the delegation of his authority. If you believe there is another way to establish that Mr. Isaac Jeffs has succeeded Mr. Harker, I would be open to suggestion.

Please feel free to contact me with any questions or concerns.

Respectfully,

Ann F. Mines-Bailey
Assistant Attorney General

AFMB/jmm

Stephen G. Levy,
Of Counsel
Certified as an Elder Law Attorney
by the National Elder Law
Foundation of Counsel

DAVID L. GANJE
ATTORNEY AT LAW
GANJE LAW OFFICES

Law Clerks:
Debra Roseth
Piko Mbolekwa
Michael Fleming
Joseph C. Smith

1830 West Fulton Street, Suite 201
Rapid City, South Dakota 57702
Phone: (605) 385-0330
Website: http://www.ganjelaw.com

21 Everett Road Extension
Albany, New York 12205
Phone: (518) 437-9000
Website: http://www.ganjelaw.com

RECEIVED
MAR 1 6 2015
WATER RIGHTS
PROGRAM

March 11, 2014

Water Management Board
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2

Dear Chairman and Members:

I write this letter to introduce myself as counsel representing the applicant with regard to the above-identified application. Enclosed with this letter is the original Notice of Appearance of Counsel. An affidavit of service reflecting service of the Notice of Appearance and service of a copy of this letter on all parties in interest will be separately mailed to you. I appear in this matter somewhat *in medias res* but will acquaint myself with the facts and documents as soon as possible and provide any further required information to the Board.

I understand that a notice was recently issued adjourning the hearing originally scheduled for March 5, 2015. The notice stated that the hearing will be rescheduled at a date, time, and location to be determined. With regard to a rescheduled hearing on this matter, I ask that the scheduling officer kindly contact me so that we can coordinate calendars. I have some obligations in May that may conflict, but we do desire to proceed with the matter at all reasonable speed. I also respectfully request that the Board hold the hearing in Rapid City, which will be a more convenient forum for the applicant and the Petitioners

The file I have to date indicates certain objecting parties. Objecting parties under the rules are identified as Petitioners. I understand that the following parties have filed petitions:

- Forest Service
- National Park Service
- Rick Fox
- Linda Van Dyke Kilcoin
- Dean & Delia Johnson

- Douglas Lesher
- David Albrecht
- Toni Martin
- Karl & Suzanne Von Rump

I have spoken with Deputy Attorney General Ann Mines-Bailey, who is representing the DENR and she has indicated that she will agree as between her office and my office that we may serve papers electronically. I ask for the same consideration from any other counsel of record in this matter, which will help reduce costs and paper. Original documents would still be filed directly with the Board.

Concerning the application papers of my client, if there are any further requirements or any other information that the Board or DENR may request, please advise. By this letter, I also advise the Petitioners that I am available at any time to discuss their concerns regarding this application.

Thank you.

Sincerely,

/s/ _____
David L. Ganje

Cc via email: United Order of South Dakota
Ann Mines-Bailey, Esq.
Peter H. Fahmy, Esq.
Michael M. Hickey, Esq.
Eric Gronlund

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given of the entry of the undersigned as counsel for the above-described applicant in the above-entitled proceeding.

Attorney's name: David L. Ganje

Email address: davidganje@ganjelaw.com

Firm name: Ganje Law Offices

Mailing Address: 1830 West Fulton Street
Rapid City, SD 57702

DATED: 3/11/15

David L. Ganje
Ganje Law Offices
1830 West Fulton Street
Rapid City, SD 57702
(605) 385-0330
davidganje@ganjelaw.com

AUTHORIZATION OF APPLICANT: _____

Stephen G. Levy,
Of Counsel
Certified as an Elder Law Attorney
by the National Elder Law
Foundation of Counsel

DAVID L. GANJE
ATTORNEY AT LAW
GANJE LAW OFFICES

Law Clerks:
Debra Roseth
Piko Mbolekwa
Michael Fleming
Joseph C. Smith

1830 West Fulton Street, Suite 201
Rapid City, South Dakota 57702
Phone: (605) 385-0330
Website: http://www.ganjelaw.com

21 Everett Road Extension
Albany, New York 12205
Phone: (518) 437-9000
Website: http://www.ganjelaw.com

RECEIVED
MAR 1 6 2015
WATER RIGHTS
PROGRAM

March 12, 2014

Water Management Board
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2

Dear Chairman and Members:

Please find enclosed an Affidavit of Mailing for the service of documents on all parties in the above-described matter.

Thank you.

Sincerely,

Zachary A. Waksman

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2

AFFIDAVIT OF MAILING

STATE OF MASSACHUSETTS)
COUNTY OF BRISTOL) SS.:

Zachary A. Waksman, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside at 23 Walden Drive, South Easton, MA 02375. On the 12th day of March, 2015, I mailed this original Affidavit to the Water Management Board and served true copies of the Applicant's March 11, 2015 **Notice of Appearance of Counsel** and a **Letter from David Ganje** dated March 11, 2015 by putting them in a stamped envelope and mailing them by First Class U.S. mail to:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer, SD 57730

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Toni Martin
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Linda Van Dyke Kilcoin
23470 Paradise Drive
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Water Rights Program
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Pierre, SD 57501

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14585 East French Creek Road
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Peter H. Fahmy, Esq.
National Park Service
12795 West Alameda Highway
Lakewood, CO 80228

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Ann Mines-Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Zachary A. Weksman
Signature *(Print name below signature.)*
Zachary A. Weksman

Sworn to before me this 12 day
of March, 2015

Notary Public

PATRICK C. DIESCO
Notary Public
Commonwealth of Massachusetts
My Commission Expires June 1, 2018

United States Department of the Interior

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

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
L54 (2380)
WICA/Water Rights

March 17, 2015

Mr. Seth Jeffs
Water Operator
United Order of South Dakota
Box 5050
Custer, SD 57730

Re: Application for Water Permit No. 2730-2 - Request for Common Law Trust Documentation for the United Order of South Dakota.

Dear Mr. Jeffs,

The National Park Service (NPS) has received your letter dated February 18, 2015, in which you request that the South Dakota Water Rights Program reduce the instantaneous rate of withdrawal associated with Application 2730-2 from 300 gallons per minute (gpm) to 200 gpm. The NPS is in the process of re-evaluating the potential effects of this change in withdrawal rate on Madison aquifer water levels and underground lakes within Wind Cave National Park in order to make recommendations to park managers.

The NPS has received a copy of the correspondence between you and Ms. Ann Mines-Bailey of the South Dakota Attorney General's Office concerning the State's request for documentation of the authority of various individuals to represent the United Order of South Dakota under its designation as a common law trust. The NPS shares the concerns of the State with regard to the issue of who may legally represent the interests of the United Order of South Dakota as the NPS must have assurances that any potential settlement that it may enter into would be legally enforceable. Therefore, the NPS would appreciate receiving a copy of any documentation that you provide to the State in response to their request. If you have any questions concerning this request, please feel free to contact Peter Fahmy of my staff at (970) 231-4961.

Sincerely,

Wm. R. Hansen

William R. Hansen
Chief, Water Rights Branch

Cc via email: South Dakota Attorney General's Office – Ms. Ann Mines-Bailey
South Dakota DENR – Ms. Jeanne Goodman
Ganje Law Offices – Mr. David Ganje
Bang McCullen Law Firm – Mr. Michael Hickey

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MAR 1 9 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	REPLY OF APPLICANT TO PETITIONS OF MR. AND MRS. DAVID ALBRECHT AND LINDA VAN DYKE KILCOIN

Reserving Applicant's rights to present legal and factual responses to all arguments, petitions, and objections filed in this matter, Applicant through the undersigned counsel herein replies to certain allegations and arguments made by the above-named Petitioners. The above-named Petitioners submit arguments regarding the pending application in this matter which are inflammatory, irrelevant, and immaterial to the matter before the Water Management Board (herein the "Board").

The United Order of South Dakota (the "United Order" or "Applicant") is a religious trust. In her Petition and objections to the application, Petitioner Linda Van Dyke Kilcoin refers to the United Order of South Dakota as a "secretive" organization. "As locals, we know what is going on in there and we don't want to see it expand," she writes. "We value our 12 year old girls in South Dakota. Help us!" Petitioners Mr. and Mrs. David Albrecht in their Petition and objections state that the Applicant's request is "suspect of abnormal activity which is detrimental to our rural community." These statements regarding Applicant's pending water rights submission before the Board are immaterial, inflammatory, accusatory, and irrelevant to the contents of the submission.

The Board has "general supervision of the waters of the state, including measurement, appropriation, and distribution thereof." SDCL 46-2-9. The Board is empowered to hear issues and challenges to applications pursuant to SDCL 46-2-11, which states that the Board shall "regulate and control the development, conservation, and allocation of the right to use the waters

of the state according to the principles of beneficial use and priority of appropriation established by this title." Under SDCL 46-2A-9, a permit to appropriate water in South Dakota may only be issued if:

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

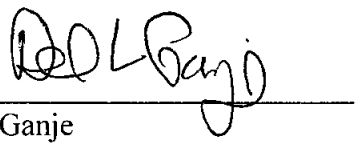
The statutory requirement that the water permit application be in the *public interest*, as found in SDCL 46-2A-9, does not mean the Board should consider Petitioners' "private opinions" concerning the Applicant. The Board's consideration of the *public interest* criterion concerning a water application includes reviewing the proposed use of the water, determining the extent to which the proposed use is a suitable use of the existing water supply, and determining the extent to which the use may prejudice other existing uses of the water body. *See e.g.*, *Fraser v. Water Rights Comm'n of the Dep't of Natural Res. Dev.*, 294 N.W.2d 784, 789 (S.D. 1980).

The United Order's pending application is for an increase of its existing right to appropriation of water from the Madison aquifer and for authorization to construct a new well to serve this purpose. The assertions of the Albrechts and Ms. Kilcoin are an attempt to use this forum for other purposes. The law of South Dakota does not allow prejudice in judgment to have a place before this Board. The South Dakota Supreme Court has stated that prejudice arises when "the record [shows that] under the evidence the [finder of fact] might and probably would have returned a different verdict if the alleged error had not occurred." *Sander v. Geib, Elston, Frost Prof'l Ass'n*, 506 N.W.2d 107, 113 (S.D. 1993) (citations omitted). It may be said under

other authority that, "Do not be a witness against your neighbor without cause." *Proverbs* 24:28.

By making the stated assertions, the Albrechts and Ms. Kilcoin are propagating prejudice by asserting matters not relevant or material to the issues before the Board. The Board in this matter sits as a fact-finding and adjudicative body. The anticipated hearing is not the proper forum in which to entertain such prejudicial, inflammatory and irrelevant allegations. *See* SDCL 1-26-19 (1); 19-12-2; 19-12-3. To consider, admit into the record, and include such allegations in any findings of fact or conclusions of law would act to deny the Applicant its right to due process of law. SDCL 1-26-36 (1), (2), (6); *see also* U.S. Const. amend. XIV, § 1; S.D. Const. art. VI, § 2.

DATED: 3/15/15



David L. Ganje
Attorney for Applicant
Ganje Law Offices
1830 West Fulton Street
Rapid City, SD 57702
(605) 385-0330
davidganje@ganjelaw.com

Stephen G. Levy,
Of Counsel
Certified as an Elder Law Attorney
by the National Elder Law
Foundation of Counsel

DAVID L. GANJE
ATTORNEY AT LAW
GANJE LAW OFFICES

Law Clerks:
Debra Roseth
Piko Mbolekwa
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Website: http://www.ganjelaw.com

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WATER RIGHTS
PROGRAM

March 16, 2014

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

Re: In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2

Dear Ms. Goodman:

I write this letter to advise you that I have enclosed with this letter the original Affidavit of Mailing showing service of the Applicant's Reply of Applicant to Petitions of Mr. and Mrs. David Albrecht and Linda Van Dyke Kilcoin dated March 15, 2015 upon all parties in interest. I have also sent copies of the same via email to the parties listed at the bottom of this letter. The original Reply will be submitted for filing with the Board by Mr. Ganje via U.S. Mail. If you have any questions, please feel free to contact either Mr. Ganje or myself.

Thank you.

Sincerely,

Zachary A. Waksman

Cc via email: United Order of South Dakota
Ann Mines-Bailey, Esq.
Peter H. Fahmy, Esq.
Michael M. Hickey, Esq.

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2

AFFIDAVIT OF MAILING

STATE OF MASSACHUSETTS)
COUNTY OF BRISTOL) SS.:

Zachary A. Waksman, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside at 23 Walden Drive, South Easton, MA 02375. On the 16 day of March, 2015, I mailed this original Affidavit to the Chief Engineer and served true copies of the Applicant's March 15, 2015 **Reply of Applicant to Petitions of Mr. and Mrs. David Albrecht and Linda Van Dyke Kilcoin** by putting them in a stamped envelope and mailing them by First Class U.S. mail to:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer, SD 57730

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Toni Martin
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Rapid City, SD 57701

Linda Van Dyke Kilcoin
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Hill City, SD 57745

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Jeanne Goodman, Chief Engineer
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Rick Fox
PO Box 35
Hermosa, SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Peter H. Fahmy, Esq.
National Park Service
12795 West Alameda Highway
Lakewood, CO 80228

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Ann Mines-Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Zachary A. Watsman
Signature *(Print name below signature.)*
Zachary A. Watsman

Sworn to before me this 16 day
of March, 2015

Notary Public

PATRICK C. PIESCO
Notary Public
Commonwealth of Massachusetts
My Commission Expires June 1, 2018

Stephen G. Levy,
Of Counsel
Certified as an Elder Law Attorney
by the National Elder Law
Foundation of Counsel

DAVID L. GANJE
ATTORNEY AT LAW
GANJE LAW OFFICES

Law Clerks:
Debra Roseth
Piko Mbolekwa
Michael Fleming
Joseph C. Smith

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Albany, New York 12205
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RECEIVED
MAR 3 0 2015
WATER RIGHTS
PROGRAM

March 23, 2014

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

Re: In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2

Dear Ms. Goodman:

I have enclosed with this letter a copy of a Notice of Withdrawal of Counsel dated March 23, 2015 and an original Affidavit of Mailing showing service of the same upon all parties in interest. I have also sent copies of the Notice via email to the parties listed at the bottom of this letter. The original Notice of Withdrawal is being mailed to your office by separate mailing. If you have any questions, please feel free to contact either Mr. Ganje or myself.

Thank you.

Sincerely,

Zachary A. Waksman

Cc via email: United Order of South Dakota
Ann Mines-Bailey, Esq.
Peter H. Fahmy, Esq.
Michael M. Hickey, Esq.

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	NOTICE OF WITHDRAWAL OF COUNSEL

Notice is hereby given of the withdrawal of the undersigned as counsel for the above-described applicant in the above-entitled proceeding.

Attorney's name: David L. Ganje

Email address: davidganje@ganjelaw.com

Firm name: Ganje Law Offices

Mailing Address: 1830 West Fulton Street
Rapid City, SD 57702

Until it obtains substitute counsel, the Applicant may be served with papers at its last known mailing address:

United Order of South Dakota
P.O. Box 5050
Custer, SD 57730

The undersigned has informed his client of his intent to withdraw pursuant to an agreement between client and the undersigned.

DATED: 3/20/15

David L. Ganje
Ganje Law Offices
1830 West Fulton Street
Rapid City, SD 57702
(605) 385-0330
davidganje@ganjelaw.com

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2

AFFIDAVIT OF MAILING

STATE OF MASSACHUSETTS)
COUNTY OF BRISTOL) SS.:

Zachary A. Waksman, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside at 23 Walden Drive, South Easton, MA 02375. On the 23rd day of March, 2015, I mailed this original Affidavit to the Chief Engineer and served true copies of the enclosed **Notice of Withdrawal of Counsel** dated March 23, 2015 by putting them in a stamped envelope and mailing them by First Class U.S. mail to:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer, SD 57730

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court #122
Rapid City, SD 57701

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Douglas L. Lesher
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Stone Meadow Ranch
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Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
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Rick Fox
PO Box 35
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Dean and Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Peter H. Fahmy, Esq.
National Park Service
12795 West Alameda Highway
Lakewood, CO 80228

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Ann Mines-Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Signature *(Print name below signature.)*
Zachary A. Waksman

Sworn to before me this 23 day
of March, 2015

Notary Public

SUSAN K. SINNOTT
Notary Public
Commonwealth of Massachusetts
My Commission Expires July 02, 2015

RECEIVED
MAR 2 6 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2

NOTICE OF WITHDRAWAL OF COUNSEL

Notice is hereby given of the withdrawal of the undersigned as counsel for the above-described applicant in the above-entitled proceeding.

Attorney's name: David L. Ganje

Email address: davidganje@ganjelaw.com

Firm name: Ganje Law Offices

Mailing Address: 1830 West Fulton Street
Rapid City, SD 57702

Until it obtains substitute counsel, the Applicant may be served with papers at its last known mailing address:

United Order of South Dakota
P.O. Box 5050
Custer, SD 57730

The undersigned has informed his client of his intent to withdraw pursuant to an agreement between client and the undersigned.

DATED: 3/20/15

David L. Ganje
Ganje Law Offices
1830 West Fulton Street
Rapid City, SD 57702
(605) 385-0330
davidganje@ganjelaw.com

Stephen G. Levy,
Of Counsel
Certified as an Elder Law Attorney
by the National Elder Law
Foundation of Counsel

DAVID L. GANJE
ATTORNEY AT LAW
GANJE LAW OFFICES

Law Clerks:
Debra Roseth
Piko Mbolekwa
Michael Fleming
Joseph C. Smith

1830 West Fulton Street, Suite 201
Rapid City, South Dakota 57702
Phone: (605) 385-0330
Website: http://www.ganjelaw.com

21 Everett Road Extension
Albany, New York 12205
Phone: (518) 437-9000
Website: http://www.ganjelaw.com

March 23, 2014

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

Re: In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2

Dear Ms. Goodman:

I have enclosed with this letter a copy of a Notice of Withdrawal of Counsel dated March 23, 2015 and an original Affidavit of Mailing showing service of the same upon all parties in interest. I have also sent copies of the Notice via email to the parties listed at the bottom of this letter. The original Notice of Withdrawal is being mailed to your office by separate mailing. If you have any questions, please feel free to contact either Mr. Ganje or myself.

Thank you.

Sincerely,

Zachary A. Waksman

Cc via email: United Order of South Dakota
Ann Mines-Bailey, Esq.
Peter H. Fahmy, Esq.
Michael M. Hickey, Esq.

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	NOTICE OF WITHDRAWAL OF COUNSEL

Notice is hereby given of the withdrawal of the undersigned as counsel for the above-described applicant in the above-entitled proceeding.

Attorney's name: David L. Ganje

Email address: davidganje@ganjelaw.com

Firm name: Ganje Law Offices

Mailing Address: 1830 West Fulton Street
Rapid City, SD 57702

Until it obtains substitute counsel, the Applicant may be served with papers at its last known mailing address:

United Order of South Dakota
P.O. Box 5050
Custer, SD 57730

The undersigned has informed his client of his intent to withdraw pursuant to an agreement between client and the undersigned.

DATED: 3/20/15

David L. Ganje
Ganje Law Offices
1830 West Fulton Street
Rapid City, SD 57702
(605) 385-0330
davidganje@ganjelaw.com

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2

AFFIDAVIT OF MAILING

STATE OF MASSACHUSETTS)
COUNTY OF BRISTOL) SS.:

Zachary A. Waksman, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside at 23 Walden Drive, South Easton, MA 02375. On the 23rd day of March, 2015, I mailed this original Affidavit to the Chief Engineer and served true copies of the enclosed **Notice of Withdrawal of Counsel** dated March 23, 2015 by putting them in a stamped envelope and mailing them by First Class U.S. mail to:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer, SD 57730

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court #122
Rapid City, SD 57701

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

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

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Peter H. Fahmy, Esq.
National Park Service
12795 West Alameda Highway
Lakewood, CO 80228

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Ann Mines-Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Signature *(Print name below signature.)*
Zachary A. Waksman

Sworn to before me this 23 day
of March, 2015

Notary Public

SUSAN K. SINNOTT
Notary Public
Commonwealth of Massachusetts
My Commission Expires July 02, 2015

RECEIVED
APR 13 2015
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 9, 2015

Mr. Seth Jeffs
United Order of South Dakota
Box 5050
Custer, SD 57730

RE: *Water Permit Application No. 2730-2*

Dear Mr. Jeffs,

I received notice on March 23, 2015, that Mr. Ganje has withdrawn as counsel for your organization. While we are in receipt of your statement of authority to act on behalf of Mr. Isaac Jeffs, trustee for the United Order of South Dakota, a common law trust, we do still need the documentation required to show the transfer of ownership of Water Permit No. 2610-2. Our records show that the permit was transferred to Stephen P. Harker, trustee for the United Order of South Dakota, a common law trust. Thus, Mr. Harker held the permit on behalf of the United Order of South Dakota for their benefit. We do not have any documentation demonstrating that the permit has been subsequently transferred. South Dakota Codified Law, section 46-5-30.3 requires that notice of such transfers be filed with the Chief Engineer. In my letter dated February 27, 2015, I suggested that providing the trust documents would enable us to determine how authority and trust assets are transferred to a successor trustee and thus, what specific document will demonstrate the transfer of the permit from Mr. Stephen P. Harker to Mr. Isaac Jeffs. As I previously stated, if you believe there is another way to establish that Mr. Isaac Jeffs has succeeded Mr. Harker as to the transfer of Water Permit No. 2610-2, I would be open to suggestion.

I also wished to inform you that we are in receipt of your letter requesting an amendment to Water Permit Application No. 2730-2. The Chief Engineer will be amending her recommendation to account for your change in request and add any additional qualifications or conditions as necessary.

Additionally, I feel the need to remind you that your organization will need legal representation at the Water Management Board hearing. The hearing on this permit was originally scheduled to be conducted on March 5, 2015. We have not rescheduled your application for hearing as we have not received the documentation as to ownership of Water Permit No. 2610-2 and because we wished to give you time to secure counsel. The Water Management Board is scheduled to meet next on May 6-7, 2015. They will not meet again until July 2015. While we wish to give you sufficient time to secure counsel and gather the necessary documents, we have an obligation to timely deal with the applications and petitions which have been filed. If you can remit the paperwork to us on or before the close of business on April 15, 2015, we would be able to notice the Amended Recommendation of the Chief Engineer and schedule the matter for hearing at the May meeting. If that is not possible, we request that you provide the documentation on or before the close of business June 16, 2015, which would allow us to properly notice and schedule the matter for the July meeting. If we do not receive the paperwork by that date, it will be the recommendation of the Chief Engineer that the application be denied.

Please feel free to contact me with any questions or concerns.

Respectfully,

AFM Bailey

Ann F. Mines-Bailey
Assistant Attorney General

AFM/rar

cc: Jeanne Goodman
Douglas L. Lesher
William R. Hansen
Karl & Suzsnne Von Rump
Craig Bobzien
Mr. & Mrs. David Albrecht
Rick Fox
Toni Martin
Linda Van Dyke Kilcoin
Dean & Delia Johnson
Peter H. Fahmy
Michael M. Hickey

April 16, 2015

United Order of South Dakota

PO Box 5050
Custer, SD 57730

Ann F. Mines-Bailey

1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Phone: (605) 773-3215

RE: Water Permit Application No. 2730-2

Dear Ann,

I just received your letter dated April 9, 2015 and thank you for letting us know what is needed and expected. I am sending you a document provided by the trustees of the United Order of South Dakota signed by Stephen P. Harker. Let me know what other documents need to be signed by Isaac S. Jeffs to show that he is now holding the water rights in behalf of the United Order of South Dakota. If the documents need to be signed by Stephen P. Harker and notarized, I can follow it through. We want to make sure everything is done properly.

In the future, please also email any documents or correspondence you have to me at sethsj@gmail.com. We should have an attorney retained within the next week.

We also have a report written by Mr. Arden Davis of the School of Mines in Rapid City. We have retained Mr. Davis as an expert. I will be sending this to the Chief Engineer through the attorney that will be retained. We ask that water permit application 2730-2 be scheduled in the July hearing.

Respectfully,

United Order of South Dakota
Water Operator
Seth S. Jeffs
4/16/2015

AFFIDAVIT
OF FORMER TRUSTEE OF THE
UNITED ORDER OF SOUTH DAKOTA

I, the undersigned Stephen P. Harker, constituting a former Trustee of the United Order of South Dakota, hereby certify, confirm, affirm and reaffirm the following information:

1. I was an original Trustee of the United Order of South Dakota, a common law trust, organized by Declaration of Trust executed on December 23, 2009.
2. Article I of the Declaration of Trust provides that "The Board of Trustees may designate representatives to perform one or more of these functions on its behalf."
3. I have resigned as Trustee of the United Order of South Dakota.
4. Isaac S. Jeffs is a current Trustee of the United Order of South Dakota and, as a successor in trust, holds the same rights, powers, privileges and authority in relationship to the Trust that I previously held.

IN WITNESS WHEREOF, I have executed this Affidavit of Former Trustee of the United Order of South Dakota on the 6th day of March, 2015.

Stephen P. Harker, Former Trustee

STATE OF UTAH)
: ss.
COUNTY OF IRON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Stephen P. Harker, personally known to me, or proved upon satisfactory evidence, to be the person whose name is subscribed to the foregoing Affidavit of Former Trustee of the United Order of South Dakota, appeared before me in person and, being by me first duly sworn, acknowledged the statements therein contained and that he executed the same in the capacity therein stated.

WITNESS my hand and official seal this 6th day of March, 2015.

BOYD KNUDSON
NOTARY PUBLIC, STATE OF UTAH
COMMISSION #680940
MY COMMISSION EXPIRES
JANUARY 24, 2019

Notary Public
Commission Expires: 1/24/19

US Department of Justice

Randolph J. Seiler
Acting United States Attorney
District of South Dakota

RECEIVED
MAY 14 2015
WATER RIGHTS PROGRAM

225 South Pierre Street, Suite 337
Pierre, SD 57501
605.224.5402
FAX 605.224.8305

May 7, 2015

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

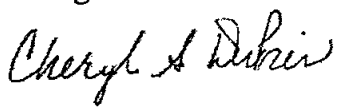
Re: National Park Service v. United Order of South Dakota
Sixth Judicial Circuit Court / Water Permit Application No. 2730-2

Ladies and Gentlemen:

Enclosed is the 1) Motion by Non-Resident Attorney for Admittance Pro Hac Vice for Peter Fahmy, 2) Motion in Support of Motion, and 3) proposed Order. Please consider this as service by mail upon you. Thank you.

Sincerely,

Randolph J. Seiler
Acting United States Attorney



Cheryl Schrempp DuPris
Assistant U.S. Attorney

/mkp
Enclosure

RECEIVED
MAY 14 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL DISTRICT

NATIONAL PARK SERVICE	)	BEFORE THE WATER MANAGEMENT BOARD STATE OF SOUTH DAKOTA
Petitioner,	)	
v.	)	Water Permit Application No. 2730-2
UNITED ORDER OF SOUTH DAKOTA,	)	
Applicant.	)	

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

COMES NOW Peter A. Fahmy, a non-resident attorney, and 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 National Park Service (NPS) in the captioned water permit proceeding before the State Water Management Board. In support of this motion, Petitioner offers the following:

1. Mailing Address Of Non-Resident Attorney: National Park Service, Water Rights Branch, 1201 Oakridge Drive, Suite 250, Fort Collins, CO 80525.

2. Name And Address Of Licensed South Dakota Attorney With Whom Non-Resident Attorney Will Associate: Cheryl Schrempp DuPris, Assistant United States Attorney, 225 South Pierre Street, Suite 337, 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 (Colorado #15975). I have previously been admitted *pro hac vice* by this Court in 2006 to serve as counsel for the Petitioner in a hearing before the Water Management

Board involving a water permit application. I have also represented the NPS in water rights hearings before the Nevada State Engineer, the Oklahoma Water Resources Board, and the Utah State Engineer.

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 (Colorado), 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 an attorney deputized by the Office of the Solicitor, U.S. Department of the Interior, to appear in the above-captioned case on behalf of the National Park Service, U.S. Department of the Interior. My appearance before the State Water Management Board will be part of my regular duties as an employee of the National Park Service, and I will not receive any additional compensation for this appearance.

8. Other: To the best of my knowledge, the Applicant is without counsel and, therefore, has not been consulted regarding the substance of this motion.

DATED this 28th day of April, 2015.

Peter A. Fahmy, CO #15975
Counsel for National Park Service
Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins, CO 80525
(970) 225-3555 (Phone)
(970) 231-4961 (Cell)
(970) 225-9965 (FAX)
Peter_A_Fahmy@nps.gov

VERIFICATION

STATE OF COLORADO)
) SS
COUNTY OF LARIMAR)

I, Peter A. Fahmy, state under oath that the foregoing statements are true and correct to the best of my knowledge and belief.

Peter A. Fahmy

SUBSCRIBED AND SWORN to before me this 28th day of April, 2015.

Notary Public
Commission Expires 4/10/2019

JOSEPH F CHAVEZ
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20154014606
My Commission Expires 4/10/2019

[SEAL]

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2015, true and correct copy of the foregoing MOTION BY NON-RESIDENT ATTORNEY FOR ADMITTANCE PRO HAC was mailed postage pre-paid in the United States Mail to:

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs, McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Cheryl Schrempp DuPris
Assistant United States Attorney
United States Attorney's Office
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL DISTRICT

NATIONAL PARK SERVICE,	)	BEFORE THE WATER MANAGEMENT BOARD
	)	STATE OF SOUTH DAKOTA
Petitioner,	)	
	)	
v.	)	Water Permit Application No. 2730-2
	)	
UNITED ORDER OF	)	
SOUTH DAKOTA,	)	
	)	
Applicant.	)	
	)	

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

COMES NOW, Cheryl Schrempp DuPris, Assistant United States Attorney, and pursuant to S.D.C.L. § 16-18-2 (as amended), hereby supports the motion of Peter A. Fahmy, a non-resident attorney, to be admitted *pro hac vice* as counsel for the Petitioner (National Park Service) in the captioned water permit proceeding before the State 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 with Mr. Fahmy, on behalf of the National Park Service, United States Department of the Interior, in any hearings on the captioned water permit application before the Board.

3. Based on my association with Mr. Fahmy, I find him to be a reputable and competent attorney, and for purposes of this case, recommend his admission to practice before the Board.

DATED this 7th day of May, 2015.

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

Cheryl Schrempp DuPris

Cheryl Schrempp DuPris
Assistant United States Attorney
United States Attorney's Office
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2015, true and correct copy of the foregoing Motion in Support of Motion by Non-Resident Attorney for Admittance *Pro Hac Vice* were mailed postage pre-paid in the United States Mail to:

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
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Mr. & Mrs. David Albrecht
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4141 Villa Ridge Court, #122
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Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Cheryl Schrempp DuPris

Cheryl Schrempp DuPris

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL DISTRICT

NATIONAL PARK SERVICE	)	BEFORE THE WATER MANAGEMENT BOARD, STATE OF SOUTH DAKOTA
Petitioner,	)	
v.	)	Water Permit Application No. 2730-2
UNITED ORDER OF SOUTH DAKOTA,	)	
Applicant.	)	

ORDER ADMITTING NON-RESIDENT ATTORNEY *PRO HAC VICE*

This matter having come before the Court pursuant to S.D.C.L. § 16-18-2 (as amended) upon the motion of Peter A. Fahmy, a non-resident attorney, to be admitted *pro hac vice* to represent the National Park Service in the captioned water rights proceeding before the State Water Management Board; and

Mr. Fahmy's motion being supported by Cheryl Schrempp DuPris, Assistant United States Attorney, of Pierre, South Dakota, an attorney licensed to practice in this State; and,

There appearing to be no objections to Mr. Fahmy's motion; and,

The Court having fully examined the motion and the records and files herein, and now being sufficiently advised in the premises with good cause appearing therefor, hereby

ORDERS, ADJUDGES, and DECREES that Mr. Fahmy is admitted *pro hac vice* to represent the National Park Service in the captioned water rights hearing before the State Water Management Board.

DATED this ___ day of May, 2015.

BY THE COURT:

_____

CIRCUIT COURT JUDGE

Supreme Court **State of Colorado**

ATTORNEY REGISTRATION

This is to certify that **2015**

PETER ANDREW FAHMY

15975

is on the roll of attorneys eligible to practice law in the state of Colorado

ACTIVE

Only Active members in good standing can practice law
Confirm status at www.coloradosupremecourt.us

Christopher T. Ryan
Clerk of the Supreme Court

RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri

BANGS McCULLEN
LAW FIRM

RECEIVED
MAY 15 2015
WATER RIGHTS PROGRAM

Reply to Rapid City Office

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

May 12, 2015

Ms. Jeanne Goodman, Chief Engineer
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2*

Dear Ms. Goodman:

Please find enclosed a copy of *Interrogatories and Requests for Production of Documents to Applicant, United Order of South Dakota* in the above-referenced matter. A copy of this document has been sent to the United Order of South Dakota, and to all the interested parties, which is intended as service by U.S. Mail.

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

Sincerely,

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

Michael M. Hickey

MMH:ke
Enclosure
cc: Client; Eric Gronlund; Ann Mines-Bailey; Jeff Connolly; Seth Jeffs; William R. Hansen/Jeff Hughes/Peter Fahmy; Cheryl Schrempp DuPris; Craig Bobzien; Mr. and Mrs. David Albrecht; Toni Martin; Doug Lesher; Rick Fox; Dean & Delia Johnson; Karl R. Von Rump/Suzanne K. Von Romp

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

SIOUX FALLS
5919 S. Remington Place
Suite 100
P.O. Box 88208
Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

RECEIVED
MAY 15 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2

Interrogatories and Requests for Production of Documents to Applicant, United Order of South Dakota

---

TO: APPLICANT, UNITED ORDER OF SOUTH DAKOTA, and its ATTORNEY, JEFFERY R. CONNOLLY:

YOU AND EACH OF YOU, PLEASE TAKE NOTICE AND BE ADVISED that the Intervener, Linda Kilcoin, in the above matter, pursuant to SDCL § 15-6-33, Rules of Civil Procedure, and any acts amendatory thereof, demands answers, under oath, to the following written Interrogatories within thirty (30) days of service upon you of said Interrogatories.

These Interrogatories shall be deemed to be continuing, and, if information is discovered by or becomes known to Applicant, United Order of South Dakota, its Attorney, or to anyone acting on Applicant's behalf after answering the same and before hearing which would change or add to the answers given, and such additional or supplemental information is not timely furnished to the undersigned, then, and in that event, at the hearing or during the course thereof, the undersigned will move the Hearing Officer for an order suppressing the testimony of undisclosed witnesses and the use of undisclosed evidence should you, or any of you, attempt to use the same. WHEN DOCUMENTS ARE

IDENTIFIED (AS DEFINED BELOW), THERE IS HEREBY AN AUTOMATIC DEMAND FOR PRODUCTION, MADE PURSUANT TO SDCL § 15-6-34, WITH AN OPITION TO YOU TO PRODUCE COPIES IN LIEU OF THE FORMAL INSPECTION.

DEFINITIONS AND INSTRUCTIONS

(a) "You" or "your" means the Applicant, United Order of South Dakota, (hereinafter "Applicant"), Applicant's attorneys, agents, servants, employees, representatives, private investigators, and all other persons acting or purporting to act on behalf of the Applicant and any other entity which is aligned in interest in the Applicant's Petition in this proceeding.

(b) As used herein, the term "document" shall mean the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, e-mail, text message, memorandum, telegram, report, record, study, written note, working paper, chart, paper, index, tape, data sheet, data processing card, or any other written, recorded, transcribed, punched, taped, filmed, graphic, electronic or digital material, however produced or reproduced, to which you have or have had access.

(c) The terms "identify" or "identification" when used with reference to an individual person, shall mean to state his or her full name, address, phone number, present employment position or business affiliation, any prior positions or affiliations, and relationship if any to the Applicant. The terms "identify" or "identification" when used with reference to a document, shall mean to state the date and author or signor, as the case may be, the addressee, the type of document, its present or last known location or custodian and all means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a motion for its production, pursuant to SDCL § 15-6-34 of the South Dakota Rules of Civil Procedure. If any such document was, but is no longer in your possession or subject to your control, state the substance of the document, the disposition which was made of it, the reason for such disposition and the date thereof.

(d) The term "property" means real property, buildings, fixtures and other improvements located at 11571 Farmer Road, Custer County, South Dakota.

If you object to answering any of these interrogatories, or withhold any document from production under a claim of privilege or other exemption from discovery, state in detail the grounds for the nature of the objection and, for responses to requests for production, the title and nature of the document, and furnish a list signed by the attorney of record giving the following information with respect to each document withheld:

A. The name and title of the author and/or sender and the name and title of the recipient;

B. The date of the document's origination;

C. The name of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the document;

D. The name and position, if any, of each person to whom the contents of the documents have heretofore been communicated by copy, exhibition, reading, or substantial summarization;

E. A statement of the specific basis on which privilege is claimed and whether or not the subject matter or the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice; and

F. The identity and position, if any, of the person or persons supplying the attorney signing the list with the information requested in subparagraphs above.

INTERROGATORIES

INTERROGATORY NO. 1: Prior to answering these interrogatories, have you made due and diligent search of your books, records, and papers, and due and diligent inquiry of all agents of the Applicant, with a view to eliciting all information available in this action?

INTERROGATORY NO. 2: Please state the identify of all the individuals who participated in or were involved in answering these Interrogatories and Requests for Production of Documents and identify which interrogatory or request for production each individual supplied information for.

INTERROGATORY NO. 3: As to the Applicant, please state the following:

a. The legal nature of the Applicant;
b. The state under which the Applicant is organized;
c. The date the Applicant was created;
d. The identity of the individuals who formed the Applicant;
e. The identity of the current leader, president, principal, trustee and/or beneficiaries of the Applicant; and
f. Please produce copies of all documents which show the nature of the Applicant, its creation, organizational chart, and its current internal policies, operations or bylaws.

INTERROGATORY NO. 4: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, how many persons were being served by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 5: As of the date these Interrogatories and Requests for Production of Documents were served, how many persons are served by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 6: Are there current plans by the Applicant to increase the number of persons who may be served by the water supply system operated by the Application? If so, please state the additional number of persons who may be served within the next five (5) and ten (10) years. Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 7: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, how many head and what type of livestock were being watered using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 8: As of the date these Interrogatories and Requests for Production of Documents were served, how many head and what type of livestock are being watered using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 9: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, how many acres of noncommercial family gardens, trees, shrubbery, or orchards were being irrigated using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 10: As of the date these Interrogatories and Requests for Production of Documents were served, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are being irrigated using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 11: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, what was the total water storage capacity available for the water supply system operated by the Applicant? As of that date, how much water was being stored by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 12: As of the date these Interrogatories and Requests for Production of Documents were served, what is the total water storage capacity available for the water supply system operated by the Applicant? As of that date, how much water is being stored by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 13: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, what was the total volume of wastewater that was generated as a result of the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 14: As of the date these Interrogatories and Requests for Production of Documents were served, what is the total volume of wastewater that is being generated as a result of the water supply system

operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 15: As of the date these Interrogatories and Requests for Production of Documents were served, how many gallons of groundwater will the Applicant need to withdraw annually from the Madison aquifer under Application 2730-2 to meet all of the present needs of the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 16: How has the Applicant beneficially used the groundwater withdrawn pursuant to Water Permit No. 2610-2 for the purpose of suburban housing development? Please produce copies of any documents which establish the beneficial use of groundwater withdrawn or which was reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 17: Has the Applicant ever submitted a Subdivision Review Application to the Custer County Planning Department? If so, for which parcels owned by the Applicant and on what date(s)? Please produce a copy of any such applications or any other documents reviewed or utilized by you to answer this interrogatory.

INTERROGATORY NO. 18: Please identify and state the occupation, profession and field of specialization of each person whom you expect to call as an expert witness at the hearing, and as to each such person, please state:

a. The subject matter on which the expert is expected to testify;
b. A complete statement of the facts and opinions to which the expert is expected to testify;
c. The basis and reasons for all of the opinions upon which the expert is expected to testify;
d. The facts, data or other information provided to or considered by the witness in forming the opinions;
e. Any exhibits that will be used to summarize or support the opinions;
f. The title, author, copyright date and publisher's name and address of any book, medical or scientific treatise upon which such expert shall rely or which such expert will utilize in the preparation of and the presentation of his testimony;
g. The qualifications of the witness, including a listing of all publications authored in the previous ten (10) years;
h. A list of all other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years;

i. A statement of the compensation to be paid for the study and testimony in this case; and
j. Please attach a copy of any report prepared by each such expert.

INTERROGATORY NO. 19: Has the Applicant submitted any documents to Dr. Arden Davis? If so, describe each document and produce a copy of each document that was provided and the date on which it was submitted to Dr. Arden Davis.

INTERROGATORY NO. 20: Has the Applicant or any one acting on its behalf, prepared and/or submitted to the Custer County School District or any other local school board or other governmental entity an Application for Excuse From School Attendance for any child residing on the property for each year between 2007 and the present time? If so, please produce a copy of each such Application and Certificate of Excuse.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Any and all documents pertaining to the purposes, formation, composition, and operation of the common law trust known as the United Order of South Dakota.

REQUEST NO. 2: Any and all documents associated with the preparation by the United Order of South Dakota of the "2014 Drinking Water Report."

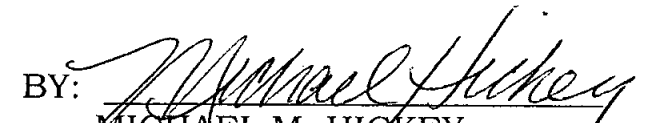
REQUEST NO. 3: Any and all documents requested in Interrogatories 1 through 20 above.

REQUEST NO. 4: Any and all documents sent to or received from the South Dakota Department of Environment and Natural Resources between the years 2007 and the present time.

REQUEST NO. 5: Any and all documents sent to or received from Custer County between the years 2007 and the present time.

Dated this 12th day of May, 2015.

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

BY: 

MICHAEL M. HICKEY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
ATTORNEYS FOR LINDA VAN DYKE KILCOIN

CERTIFICATE OF SERVICE

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

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

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

Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, SD 57501

Jeffrey R. Connolly
Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709
Attorney for United Order of South Dakota

United Order of South Dakota
P.O. Box 5050
Custer, SD 57730

William R. Hansen
Jeff Hughes
Peter A. Fahmy
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Cheryl Schrempp DuPris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
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Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 12th day of May, 2015.

MICHAEL M. HICKEY

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WATER RIGHTS PROGRAM

GUNDERSON, PALMER, NELSON & ASHMORE, LLP
ATTORNEYS AT LAW
506 SIXTH STREET
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078
www.gundersonpalmer.com
ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA,
WYOMING, MONTANA, MINNESOTA,
COLORADO, KENTUCKY, AND PENNSYLVANIA

J. CRISMAN PALMER
JAMES S. NELSON
DANIEL E. ASHMORE
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
JENNIFER TRUCANO
DAVID E. LUST
TERRI LEE WILLIAMS
SARA FRANKENSTEIN
JASON M. SMILEY

QUENTIN L. RIGGINS
RONALD G. SCHMIDT
JEFFREY R. CONNOLLY
REBECCA L. MANN
ANDREW J. KNUTSON
KYLE L. WIESE
JANA SMOOT WHITE
TYLER C. WETERING
NATHAN R. CHICOINE

WYNN A. GUNDERSON
Of Counsel

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

May 13, 2015

Jeanne Goodman
Department of Environment and National Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Ms. Goodman:

Enclosed is a Notice of Appearance of Counsel.

Sincerely yours,

Jeffrey R. Connolly

JRC:bmp
Enclosure
cc: Seth Jeffs
Michael Hickey
Eric Gronlund
William Hansen
Craig Bobzien
Cheryl Schrempp Dupris
Karl Von Rump
Mr. and Mrs. David Albrecht
Toni Martin
Doug Lesher
Rick Fox
Dean & Delia Johnson

915456 / 12414.0002

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**Notice of Appearance of Counsel**

Notice is Hereby Given of the entry of the undersigned as counsel for the above-described applicant in the above-entitled proceeding.

Attorney's name: Jeffrey R. Connolly

Email address: jconnolly@gpnalaw.com

Firm name: Gunderson, Palmer, Nelson & Ashmore, LLP

Mailing address: 506 Sixth Street
Rapid City, SD 57702

Dated this 1 day of May, 2015.

Jeffrey R. Connolly
Gunderson, Palmer, Nelson & Ashmore, LLP
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

Authorization of Applicant:

CERTIFICATE OF SERVICE

I hereby certify on this 13th day of May, 2015, I mailed by first-class U.S. mail, a true and correct copy of a Notice of Appearance to the following:

Jeanne Goodman, Chief Engineer
Water Rights Program
Foes Building
523 East Capitol
Pierre, SD 57501

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

William Hansen
Jeff Hughes
Peter A. Fahmy
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Cheryl Schrempp Dupris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Michael Hickey
Bangs McCullen Butler Foye
& Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct. #122
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Doug Lesher
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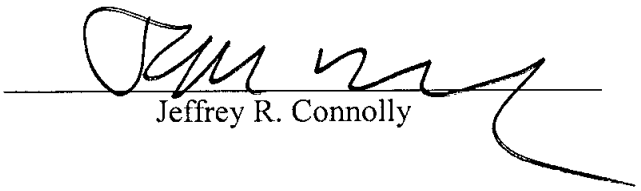
Rick Fox
PO Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP



Jeffrey R. Connolly

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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May 19, 2015

Eric Gronlund
Department of Environment
and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501

Re: *In the Matter of Water Application No. 2730-2, United Order,*

Dear Eric:

Enclosed for filing, please find the original signed Procedural and Scheduling Order and Certificate of Service regarding the above-referenced matter.

Sincerely,

Matt Naasz
Assistant Attorney General

MN/rar
Enclosures
cc: Water Board Members
Parties Listed on Certificate of Service

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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	PROCEDURAL AND SCHEDULING ORDER

Upon consideration of the Motion for Procedural and Scheduling Order filed by the Department of Environment and Natural Resources, the following Order shall be entered in the above captioned action.

It is ORDERED:

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.

2. The following pre-hearing schedule and obligations apply to Applicant, DENR, and all other parties:

a.) Discovery requests must be initiated (served upon the applicable party) by May 22, 2015. The parties shall attempt to informally resolve any discovery dispute. If a discovery dispute cannot be resolved a party may file a motion with the Prehearing Chair in the same manner as provided 2(h) below.

b.) Discovery shall be completed by June 26, 2015.

c.) Each party shall disclose in writing the names of any expert that party intends to call as a witness at the hearing of this matter on or before June 1, 2015. This disclosure must include copies of any *curricula vitae*, along with copies of any expert report the party intends to offer.

d.) Each party shall disclose in writing the name, address, and contact information for any and all witnesses that party expects to call during the hearing of this matter on or before July 1, 2015. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

e.) Each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing and copies of said exhibits on or before July 1, 2015. The copies may be provided by electronic means.

f.) All exhibits shall be marked in advance of contested proceedings by each party. Each party shall contact Eric Gronlund, DENR Water Rights Program, (605) 773-3352 or at Eric.Gronlund@state.sd.us, to obtain a block of exhibit numbers.

g.) Each party shall provide a sufficient number of copies of exhibits for use at the contested case hearing, including 10 copies for use by the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

h.) All original pleadings and prehearing motions shall be sent by first class mail to Eric Gronlund, DENR Water Rights Program, Foss Building, 523

E. Capitol Avenue, Pierre, South Dakota 57501-3182. Parties must also serve copies of all pleadings and motions on all other parties, including the Hearing Chair, Chad Comes, and Board Counsel, Assistant Attorney General Matt Naasz.

i.) Copies of all discovery requests, discovery responses, and any items identified in subsections c), d) and e) above, shall be served on all parties, with the originals to be filed with the Department.

Dated this 18 day of May, 2015

Rodney Freeman,
Prehearing Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Procedural and Scheduling Order in the above-entitled matter were served upon each of the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota on this 19th day of May, 2015:

Jeff Connolly
Gunderson, Palmer, Nelson & Ashmore
P.O. Box 8045
Rapid City, SD 57709

William R Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive Ste 250
Ft. Collins, CO 80525

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer, SD 57730

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Mr & Mrs David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Rd
Custer, SD 57730-9109

Michael M Hickey
Bangs McCullen Law Firm
P.O. Box 2670
Rapid City, SD 57709-2670

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
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Craig Bobzien, Forest Supervisor
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1019 N 5th Street
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Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean and Delia Johnson
14585 E French Creek Road
Fairburn, SD 57738

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Cheryl Schrempp Dupris
Assistant U.S. Attorney
P.O. Box 7240
Pierre, SD 57501

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St, Room 309
Golden, CO 80401-4720

Peter Fahmy
National Park Service
12795 W Alameda Parkway, Ste 198
Lakewood, CO 80228

Ann F. Mines-Bailey
Assistant Attorney General
Hand delivered

And on the same date, the original was filed with Jeanne Goodman, Chief Engineer, DENR Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501.

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

US Department of Justice

Randolph J. Seiler
Acting United States Attorney
District of South Dakota

225 South Pierre Street, Suite 337 *605.224.5402*
Pierre, SD 57501 *FAX 605.224.8305*

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May 19, 2015

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
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Rapid City, SD 57709

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

Jeff Connolly
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Rapid City, SD 57709

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Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

William Hansen
Water Resource Division, NPS
1201 Oak Ridge Drive, Suite 250
Ft. Collins, CO 80525

Re: National Park Service v. United Order of South Dakota
Sixth Judicial Circuit Court / Water Permit Application No. 2730-2

Ladies and Gentlemen:

Enclosed is the 1) Motion by Non-Resident Attorney for Admittance Pro Hac Vice for Lois Witte, 2) Motion in Support of Motion, and 3) proposed Order. Please consider this as service by mail upon you. Thank you.

Sincerely,

Randolph J. Seiler
Acting United States Attorney

Cheryl S DuPris

Cheryl Schrempp DuPris
Assistant U.S. Attorney

/mkp
Enclosure

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL DISTRICT

UNITED STATES FOREST SERVICE,	)	BEFORE THE WATER MANAGEMENT BOARD STATE OF SOUTH DAKOTA
Petitioner,	)	
v.	)	Water Permit Application No. 2730-2
UNITED ORDER OF SOUTH DAKOTA,	)	
Applicant.	)	

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

COMES NOW Lois Witte, a non-resident attorney, and 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 United States Department of Agriculture, United States Forest Service, in the captioned water permit proceeding before the State Water Management Board. In support of this motion, Petitioner offers the following:

1. Mailing Address Of Non-Resident Attorney: 740 Simms Street, Suite 309, Golden, CO 80401.

2. Name And Address Of Licensed South Dakota Attorney With Whom Non-Resident Attorney Will Associate: Cheryl Schrempp DuPris, Assistant United States Attorney, 225 South 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 (Colorado #11665).

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 (Colorado), 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 an attorney employed by the Office of the General Counsel, United States Department of Agriculture, United States Forest Service. My appearance before the State Water Management Board will be part of my regular duties as an employee of the Forest Service, and I will not receive any additional compensation for this appearance.

8. Other: To the best of my knowledge, the Applicant is without counsel and has no authorized representative that may be consulted regarding the substance of this motion.

DATED this 11 day of May, 2015.

Lois G. Witte
Counsel for U.S.D.A. Forest Service
740 Simms St, Suite 309
Golden, CO 80401
(303) 275-5535 (Phone)
(303) 275-5557 (FAX)
Lois.Witte@ogc.usda.gov

VERIFICATION

STATE OF COLORADO)
) SS
COUNTY OF JEFFERSON)

I, Lois G. Witte, state under oath that the foregoing statements are true and correct to the best of my knowledge and belief.

Lois G. Witte

SUBSCRIBED AND SWORN to before me this 11 day of May, 2015.

MILLICENT I HAUPT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114042740
MY COMMISSION EXPIRES JULY 12, 2015

Notary Public
Commission Expires 7/12/2015

[SEAL]

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL DISTRICT

UNITED STATES FOREST SERVICE,	)	BEFORE THE WATER MANAGEMENT BOARD STATE OF SOUTH DAKOTA
Petitioner,	)	
v.	)	Water Permit Application No. 2730-2
UNITED ORDER OF SOUTH DAKOTA,	)	
Applicant.	)	

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

COMES NOW, Cheryl Schrempp DuPris, Assistant United States Attorney, and pursuant to S.D.C.L. § 16-18-2 (as amended), hereby supports the motion of Lois G. Witte, a non-resident attorney, to be admitted *pro hac vice* as counsel for the Petitioner (United States Forest Service) in the captioned water permit proceeding before the State 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 with Ms. Witte, on behalf of the United States Forest Service, in any hearings on the captioned water permit application before the Board.

3. Based on my association with Ms. Witte, I find her to be a reputable and competent attorney, and for purposes of this case, recommend her admission to practice before the Board.

DATED this 19th day of May, 2015.

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2015, a true and correct copy of the Motion By Non-Resident Attorney for Admittance *Pro Hac Vice* and Motion in Support of Motion by Non-Resident Attorney for Admittance *Pro Hac Vice* were mailed postage pre-paid in the United States Mail to:

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Jeff Connolly
Gunderson, Palmer, Nelson & Ashmore
P.O. Box 8045
Rapid City, SD 57709

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Peter Fahmy
National Park Service
12795 W. Alameda Parkway, Ste 198
Lakewood, CO 80228

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

William Hansen
Water Resource Division, NPS
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Cheryl Schrempp DuPris

Cheryl Schrempp DuPris

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS	
COUNTY OF HUGHES	)	SIXTH JUDICIAL DISTRICT

UNITED STATES FOREST SERVICE,	)	BEFORE THE WATER MANAGEMENT BOARD, STATE OF SOUTH DAKOTA
Petitioner,	)	
v.	)	Water Permit Application No. 2730-2
UNITED ORDER OF SOUTH DAKOTA,	)	
Applicant.	)	

ORDER ADMITTING NON-RESIDENT ATTORNEY *PRO HAC VICE*

This matter having come before the Court pursuant to S.D.C.L. § 16-18-2 (as amended) upon the motion of Lois G. Witte, a non-resident attorney, to be admitted *pro hac vice* to represent the United States Department of Agriculture, United States Forest Service in the captioned water rights proceeding before the State Water Management Board; and

Ms. Witte's motion being supported by Cheryl Schrempp DuPris, Assistant United States Attorney, of Pierre, South Dakota, an attorney licensed to practice in this State; and,

There appearing to be no objections to Ms. Witte's motion; and,

The Court having fully examined the motion and the records and files herein, and now being sufficiently advised in the premises with good cause appearing therefor, hereby

ORDERS, ADJUDGES, and DECREES that Ms. Witte is admitted *pro hac vice* to represent the United States Forest Service in the captioned water rights hearing before the State

Water Management Board.

DATED this ___ day of May, 2015.

BY THE COURT:

_____

CIRCUIT COURT JUDGE

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WATER RIGHTS PROGRAM

GUNDERSON, PALMER, NELSON & ASHMORE, LLP
ATTORNEYS AT LAW
506 SIXTH STREET
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078
www.gundersonpalmer.com
ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA,
WYOMING, MONTANA, MINNESOTA,
COLORADO, KENTUCKY, AND PENNSYLVANIA

J. CRISMAN PALMER
JAMES S. NELSON
DANIEL E. ASHMORE
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
JENNIFER TRUCANO
DAVID E. LUST
TERRI LEE WILLIAMS
SARA FRANKENSTEIN
JASON M. SMILEY

QUENTIN L. RIGGINS
RONALD G. SCHMIDT
JEFFREY R. CONNOLLY
REBECCA L. MANN
ANDREW J. KNUTSON
KYLE L. WIESE
JANA SMOOT WHITE
TYLER C. WETERING
NATHAN R. CHICOINE

WYNN A. GUNDERSON
Of Counsel

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

May 22, 2015

Michael M. Hickey
Bangs McCullen Butler Foye & Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Mike:

Enclosed and intended as service by mail is a true and correct copy of Interrogatories and Requests for Production of Documents to Intervener, Linda Van Dyke Kilcoin.

Sincerely yours,

Jeffrey R. Connolly

JRC:amb
Enclosure
cc: Jeanne Goodman
Eric Gronlund
Ann F. Mines Bailey
Lois G. Witte
William R. Hansen
Rick Fox
Karl R. VonRump
Cheryl Schrempp DuPris
Craig Bobzien
Mr. and Mrs. David Albrecht
Toni Martin
Doug Lesher
Dean and Delia Johnson

919098 / 12414.0002

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	**Interrogatories and Requests for Production of Documents to Intervener, Linda Van Dyke Kilcoin**

TO: INTERVENER, LINDA VAN DYKE KILCOIN, AND HER ATTORNEY, MICHAEL HICKEY:

Be Advised that the Applicant, United Order of South Dakota in the above matter, pursuant to SDCL §§ 15-6-33 and 15-6-34, Rules of Civil Procedure, and any acts amendatory thereof, demands answers, under oath, to the following written Interrogatories and Request for Production of Documents within thirty (30) days of service upon you of said Interrogatories and Request for Production of Documents.

These Interrogatories shall be deemed to be continuing, and, if information is discovered by or becomes known to Applicant, United Order of South Dakota, its Attorney, or to anyone acting on Applicant's behalf after answering the same and before hearing which would change or add to the answers given, and such additional or supplemental information is not timely furnished to the undersigned, then, and in that event, at the hearing or during the course thereof, the undersigned will move the Hearing Officer for an order suppressing the testimony of undisclosed witnesses and the use of undisclosed evidence should you, or any of you, attempt to use the same. WHEN DOCUMENTS ARE IDENTIFIED (AS DEFINED BELOW), THERE IS HEREBY AN AUTOMATIC DEMAND FOR PRODUCTION, MADE PURSUANT TO SDCL § 15-6-34, WITH AN OPTION TO YOU TO PRODUCE COPIES IN LIEU OF THE FORMAL INSPECTION.

DEFINITIONS AND INSTRUCTIONS

These interrogatories and requests for production shall be deemed to be continuing. If information is discovered by or becomes known to Intervener Linda Van Dyke Kilcoin, Intervener Linda Van Dyke Kilcoin's attorneys, or to anyone acting on Intervener Linda Van Dyke Kilcoin behalf, after answering and before the hearing, which would change or add to the answers given, you are hereby directed and requested to furnish the information, under oath, to undersigned in a timely manner. It is intended that any

information held by any persons acting on behalf of Intervener will be revealed in the answers hereto.

Demand is also made that when any document is identified in your answers to these interrogatories, you produce the document for inspection and copying at a mutually agreed upon time, date, and place after service of your response hereto. In lieu of such formal inspection, you may submit a legible copy of such document with your answers, and we shall pay you the reasonable cost of reproduction of such document.
In this document:

1. "You" and "your" means the Intervener Linda Van Dyke Kilcoin and her predecessors in interest, if any, and all other persons acting or purporting to act on behalf of Intervener Linda Van Dyke Kilcoin.

2. "Document" includes any written, recorded, or graphic matter, however produced or reproduced; including, but not limited to, correspondence, e-mails, telegrams, or other written communications, photographs, drawings, contracts, agreements, notes, memorandums, work papers, diaries, minutes of meetings, or any other writing.

3. "Identify" means, with respect to a document, to set forth the following information:

a. Its nature (e.g., letter, memorandum, report, etc.);
b. The date it bears, or if undated, the date it was written or created;
c. The identity of the person(s) who wrote or created it;
d. The identity of the person(s) who received it;
e. Its file number or other identifying mark or code;
f. Its general subject matter; and
g. Its present or last-known location and custodian.

In all cases where identification of a document is requested, in lieu of such specification, you may supply a legible copy of such document.

4. "Identify" means, with respect to a natural person, to set forth the following information:

a. Full name and home address;
b. Present or last-known job title and business address;
c. Present or last-known employer; and
d. If not now the same as shown in items b. and c., his/her job title and employer at the time of the events involved in this lawsuit.

5. "Identify" means, with respect to an entity other than a natural person, to set forth the full name or title of the entity and the address and principal business or activity of such entity.

6. "Identify" means, with respect to an oral communication or other event, to set forth the following information:

a. Its general nature (e.g., telephone call, conference, luncheon):
b. The date it occurred and the time;
c. The place it occurred;
d. For a communication, the identity of each originator and recipient; for an event, the identity of each person present; and
e. The identity of all persons present when the communication or event occurred.

7. "Date" means the exact day, month, and year if ascertainable; if not, the closest approximation.

8. The term "property" means real property, buildings, fixtures and other improvements located at 11571 Farmer Road, Custer County, South Dakota.

INTERROGATORIES

INTERROGATORY NO. 1: Prior to answering these interrogatories, have you made due and diligent search of your books, records, and papers, and due and diligent inquiry of all agents of the Applicant, with a view to eliciting all information available in this action?

INTERROGATORY NO. 2: Please state the identify of all the individuals who participated in or were involved in answering these Interrogatories and Requests for Production of Documents and identify which interrogatory or request for production each individual supplied information for.

INTERROGATORY NO. 3. State the names and addresses of any persons who you believe have or may purport to have any knowledge or information pertaining to this matter, your intervention or the Applicant's application, and state, insofar as you know, the nature of such knowledge or information.

INTERROGATORY NO. 4. State and explain every reason you oppose Applicant's application 2730-2.

INTERROGATORY NO. 5. Identify and water right you claim or ownership in any water right you claim anywhere in south Dakota.

INTERROGATORY NO. 6. Do you allege that there is not reasonable probability that there is unappropriated water available in the Madison Aquifer for the applicant's proposed use? If so, explain why.

INTERROGATORY NO. 7. Do you allege that the proposed diversion requested in the Applicant's application can not be developed without unlawful impairment of existing rights? If so, explain how so and specifically identify what water rights would be impaired and how they would be impaired.

INTERROGATORY NO. 8. Do you allege that the proposed use of water requested in the Applicant's application is not in the public interest? If so, explain why not.

INTERROGATORY NO. 9. Do you allege that the proposed use of water sought by the Applicant is not a beneficial use as defined by SDCL § 46-1-6(3)? If so, explain why not.

INTERROGATORY NO. 10. List the names, addresses, official titles, if any, of all witnesses, who, it is contemplated, will be called upon to testify in support of your claim in this matter, indicate the nature and substance of the testimony which it is expected will be given by each witness, and if any such prospective witnesses are related to you, state the relationship.

INTERROGATORY NO. 11. List, identify, and describe the contents of each document which it is contemplated will be offered in support of your claim in this action.

DEMAND IS HEREBY MADE TO PRODUCE COPIES OF ANY AND ALL SUCH DOCUMENTS.

INTERROGATORY NO. 12. If it will be claimed that, after the incident in question, the defendant, its agents, or employees spoke or were heard to speak about the cause or result of the incident, state the substance of what the defendant, its agents, or employees said, to whom he, she, or they spoke, and when and where.

INTERROGATORY NO. 13: Please identify and state the occupation, profession and field of specialization of each person whom you expect to call as an expert witness at the hearing, and as to each such person,

please state:

a. The subject matter on which the expert is expected to testify;
b. A complete statement of the facts and opinions to which the expert is expected to testify;
c. The basis and reasons for all of the opinions upon which the expert is expected to testify;
d. The facts, data or other information provided to or considered by the witness in forming the opinions;
e. Any exhibits that will be used to summarize or support the opinions; and
f. The title, author, copyright date and publisher's name and address of any book, medical or scientific treatise upon which such expert shall rely or which such expert will utilize in the preparation of and the presentation of his testimony.

INTERROGATORY NO. 14. For every residence in Custer County or Fall river County, South Dakota you reside in, or are domiciled at, please identify all your sources of water.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Any and all documents requested in Interrogatories 1 through 14 above.

REQUEST NO. 2: Any document relied upon to answer any interrogatory above.

Dated May 22, 2015.

GUNDERSON, PALMER,
NELSON & ASHMORE, LLP

By _____

Jeffrey R. Connolly
Attorneys for Defendants
P.O. Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

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

Michael M. Hickey
Bangs McCullen Butler Foye & Simmons, L.L.P.
P.O. Box 2670
Rapid City, SD 57709-2670
Attorney for Intervener, Linda Van Dyke Kilcoin
Also via Email to: *mhickey@bangsmccullen.com*

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

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

Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, SD 57501

Lois G. Witte
U.S.D.A. Forest Service
740 Simms St. Suite 309
Golden, CO 80401

William R. Hansen
Jeff Hughes
Peter A. Fahmy
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Cheryl Schrempp DuPris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 22nd day of May, 2015.

Jeffrey R. Connolly

918769 / 12414.0002

US Department of Justice

Randolph J. Seiler
Acting United States Attorney
District of South Dakota

225 South Pierre Street, Suite 337 *605.224.5402*
Pierre, SD 57501 *FAX 605.224.8305*

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WATER RIGHTS PROGRAM

May 28, 2015

United Order of South Dakota
PO Box 5050
Custer, SD 57730

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1302 East Highway 14, Suite 1
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Water Rights Program
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Pierre, SD 58501

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Black Hills National Forest
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11560 Farmer Road
Custer, SD 57730

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Rapid City, SD 57709

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

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PO Box 35
Hermosa, SD 57744

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4141 Villa Ridge Court, #122
Rapid City, SD 57701

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Dean & Delia Johnson
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Fairburn, SD 57738

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Re: National Park Service v. United Order of South Dakota
Sixth Judicial Circuit Court / Water Permit Application No. 2730-2

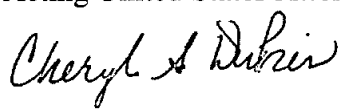
Ladies and Gentlemen:

Enclosed is the 1) Notice of Appearance of Counsel, and 2) USFS's Disclosure of Expert.

Please consider this as service by mail upon you. Thank you.

Sincerely,

Randolph J. Seiler
Acting United States Attorney



Cheryl Schrempp DuPris
Assistant U.S. Attorney

/mkp
Enclosure

Cc: Peter Fahmy
Lois Witte

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	NOTICE OF APPEARANCE OF COUNSEL

Notice is Hereby Given of the entry of the undersigned as counsel for the above-described Petitioner in the above-entitled proceeding.

Attorney's name: Cheryl Schrempp DuPris

Email address: Cheryl.Dupris@usdoj.gov

Firm name: United States Attorney's Office

Mailing address: PO Box 7240, Suite 337, 225 South Pierre Street, Pierre, SD 57501

Attorney's name: Peter A. Fahmy (pro hac vice May 17, 2015)

Email address: Peter_A_Fahmy@nps.gov

Firm name: National Park Service, Water Rights Branch

Mailing address: 1201 Oakridge Drive, Suite 250, Fort Collins, CO 80525

Attorney's name: Lois G. Witte (pro hac vice motion pending)

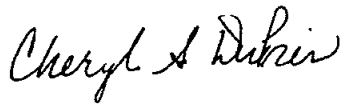
Email address: Lois.Witte@ogc.usda.gov

Firm name: United States Department of Agriculture, Forest Service

Mailing address: 740 Simms St, Suite 309, Golden Colorado, 80401

DATED this 28 day of May, 2015.

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY



Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2015, a true and correct copy of the foregoing **Notice of Appearance of Counsel** and **USFS's Disclosure of Expert**, were mailed postage pre-paid in the United States Mail to:

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive Ste 250
Ft. Collins, CO 80525

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
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Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

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14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St. Room 309
Golden, CO 80401-4720

And on the same date, the original was mailed to Jeanne Goodman, Chief Engineer, DENR Water Rights Program, Joe Foss Building, 523, E. Capitol Avenue, Pierre, SD, 57501.

Cheryl A DuPris

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240, 225 S. Pierre St, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**US Forest Service's Disclosure of Experts**

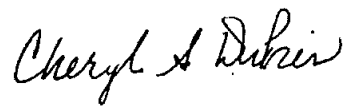
Pursuant to the Procedural and Scheduling Order dated May 18, 2015, the United States Forest Service discloses the names of any experts that party intends to call as a witness at the hearing on this matter as follows:

1. Jerome A. Krueger, Deputy Forest Supervisor, Black Hills National Forest, 1019 N. Fifth St., Custer, SD 57730 (605) 673-9202

A copy of the expert's curricula vitae, along with copies of any expert report, if any, the party intends to offer is attached.

DATED this 28th day of May, 2015.

RANDOLPH J. SEILER
ACTING US ATTORNEY



Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
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(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
http://atg.sd.gov/

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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WATER RIGHTS PROGRAM

June 1, 2015

All Parties of Record Noted in Certificate of Service Mailing List

Re: *In the Matter of Water Application No. 2730-2, United Order of South Dakota*

To Whom It May Concern:

Enclosed please find true and correct copies of DENR's Disclosure of Experts including copies of said attachments, and an accompanying Certificate of Service. The originals of these pleadings are being sent to the Department.

Sincerely,

Ann Mines Bailey
Assistant Attorney General

AFM/jm
Enclosures

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	DENR'S DISCLOSURE OF EXPERTS

Pursuant to the Procedural and Scheduling Order dated May 18, 2015, DENR hereby provides the names of its expert witnesses:

1. Ken Buhler, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. A copy of his initial report and the supplemental report regarding the application and upon which the Chief Engineer's recommendation is based is attached herewith.

2. Jeanne Goodman, Chief Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. The Chief Engineer's initial recommendation and revised recommendation are attached hereto.

Dated this 19 day of June, 2015

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the DENR's Disclosure of Experts in the above-entitled matter were served upon each of the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota on this 1st day of June, 2015:

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Lakewood, CO 80228

And on the same date, the original was filed with Jeanne Goodman, Chief Engineer, DENR Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501.

Ann F. Mines-Bailey
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Telephone: (605) 773-3215

KEN BUHLER

EDUCATION

B.S. Geological Engineering, South Dakota School of Mines and Technology, 1981

CAREER EXPERIENCE

Engineer III - SD Dept of Environment and Natural Resources, Water Rights Program: Responsibilities: Conducting ground water investigations and investigating complaints, managing the Observation Well Network, compiling water well data, preparing and reviewing reports for new ground water permit applications, providing technical assistance to the Chief Engineer and providing expert testimony to the Water Management Board on contested water permit applications. Responsible for the management of the state's water well construction program, including licensure and regulation of well drillers operating in South Dakota and administration of the SD Well Construction Standards. Monitor water use, investigate violation complaints and conduct water permit reviews for licensing. Provide technical assistance to the Water Management Board through evaluating ground water permit applications and through interpretation of data from the statewide observation well network.

District Field Engineer – Western Company of North America: Designed oil well stimulation and cementing programs and ensured QA/QC for the District's services.

SPECIAL PROJECTS

Provided technical assistance to the Steering committees for the Black Hills Hydrology Study and the Black Hills Water Management Study.

Provided technical assistance and expert testimony before the South Dakota Water Management Board for Well Construction Rules promulgation, well construction enforcement and well driller licensing issues since 1985.

TESTIMONY

Testified as an expert witness before the South Dakota Water Management Board since 1985. Cases since March 7, 1990 include:

- Water Permit Applications form the Tulare: Western Spink Hitchcock Aquifer: Nos. 7858-3 and 7859-3-Brad Peterson; No. 7860-3-Oscar Inc; No. 7894-3-Van Buskirk Farms
- Water Permit Applications from the Tulare: East James Aquifer: Nos. 7875-3, 7876-3 and 7877-3- Lenny Peterson; Nos. 7878-3, 78779-3, 7880-3, 7881-3, 7882-3 and 7884-3- Oscar Inc.
- Water Permit Application No. 8032-3, Arthur Olsen
- Water Permit Application No. 2078A-3, Riverside Hutterian Brethren
- Water Permit Application Nos. 7369A-3, 7369B-3 and 7369C-3, Huron Hutterian Brethren
- Water Permit Application No. 8068-3, Thunder Ridge RE LLC
- Consideration of Water Permit Application No. 8013-3, Riverside Hutterian Brethren
- Consideration of Water Permit Application No. 4134-3, Bixler Farms
- Consideration of Deferred Applications from Upper Vermillion: Missouri aquifer Application

- No. 7725-3, Lenny Peterson; Nos. 7752-3, 7755-3, 7756-3, 7757-3, Lenny Peterson; Nos. 7726-3, 7727-3, 7753-3, 7754-3, 7759-3, Oscar Inc.; Nos. 7733-3, 7734-3, 7735-3, 7736-3, Van Buskirk Farms LLP
- Renewal of South Dakota Well Driller License No. 740, Brechtel & Sons Drilling
- South Dakota Well Driller License Application for RCS Construction
- South Dakota Well Pump Installer License Application for Babby Solar Pump Co.
- Well Driller License No. 473, Babby Well Drilling
- Application No. 7685-3, Michael Watson; No. 7716-3 Denis and Craig Slepikas; Nos. 7717-3, 7718-3, 7720-3, 7721-3, Terry Wieting; No. 7719-3, Marshall Brothers; Nos. 7722-3, 7723-3, 7724-3, Bren/Leland Kleinssaser; Nos. 7725-3, 7752-3, 7755-3, 7756-3, 7757-3, Lenny Peterson; Nos. 7726-3, 7727-3, 7753-3, 7754-3, 7759-3, Oscar Inc.; Nos. 7733-3, 7734-3, 7735-3, 7736-3, Van Buskirk Farms LLP
- Application No. 7747-3 Gordie Hofer
- Application No. 7551-3, Wayne Binger, Nos. 7570-3, 7571-3, 7572-3, 7574-3,7575-3, 7637-3, 7638-3, 7639-3, 7640-3, Gary Marshall; No. 7620-3, Oscar, Inc.
- Application No. 7441-3, Gary or Julie Peterson; No. 7442-3, Gary or Julie Peterson; No. 7452-3, Jerome Hult; No. 7466-3, Bethel Hagen Trust; No. 7535-3, Donald D Benson; No. 7467-3, Cleland Hagen Trust; No. 7468-3, Cleland Hagen Trust; No. 7558-3, Cleland Hagen Trust; No. 7587-3, Paul Petersen; No. 7588-3, Paul Petersen; No. 7600-3, Michael D Stevens; No. 7601-3, Michael D Stevens; No. 7602-3, Michael D Stevens; No. 7603-3, Michael D Stevens; No. 7623-3, Darrell Osborn; No. 7633-3, Brad Farrar; No. 7653-3, Jeremiah Welsh
- Application No. 7386-3, Brian Gatzke; No. 7537-3, Bret Fliehs; No. 7541-3 Roger Schuelke; No. 7555-3 Craig Bass
- Application No. 7373-3, Terry Wieting; No. 7620-3, Oscar, Inc
- Application No. 7649-3, POET
- Application No. 7295-3, William St. Clair; No. 7348-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; No. 7370-3, Huron Colony
- Application No. 7345-3, Jack Schmidt
- Application No.7289-3, Bixler Farms; Nos. 7290-3 and 7291-3, Lee Gatzke; No. 7293-3, Jefferey Gatzke and No. 7292-3, Allen Gatzke
- Well Driller License No. 722, Stretch's Well Service
- Consider Application to renew SD Well Driller's License No. 672, Millbrook Industries
- Consider Application for a SD Well Driller's License, Ekern HomeEquipment Co. Inc
- Application No. 7165-3, Paul Buckneberg
- Appeal of Chief Engineer's Decision in the matter of a pond along Spring Creek
- Consider Application for a SD Well Driller's License, Aaron Marshall
- Application No. 2629-2, Fall River Water User District
- Application No. 2633-2, Southern Black Hills Water System
- Application No. 5156-3, Lincoln County Rural Water System, Inc.
- Application No. 2623-2, Colonial Pine Hills Sanitary District
- Application No. 6823-3, TM Rural Water District
- Application No. 1883-1, Pro Eco Energy
- Application No. 2610-2, United Land Management
- Application Nos. 2560A-2 & 2615-2, Fall River Water User District
- Application No. 6846-3, Otter Tail Corporation
- Application No. 1872-1, City of Spearfish
- Application No. 1864-1, Hay Creek Ranch
- Application No. 1858-1, Glencoe Camp Resort
- Application No. 1865-1, Jay Allen

- Application Nos. 2580-2 & 2585-2, Southern Black Hills Water System
- Application No. 2591-2, Larry and Geri Gustafson
- Application No. 1707E-1, Frawley Ranches
- Application No. 2560-2, Fall River Water Users District
- Application No. 2559-2, John Markus
- Application No. 2549-2, City of Custer
- Application No. 2544-2, Timmerman Brothers Ranch Co.
- Application No. 1707D-1, City of Spearfish
- Application No. 1803-1, Albert & Ryett Harty
- Application No. 1789-1, Sturgis Water Department
- Application No. 1779-1, City of Spearfish
- Application No. 1775-1, Alben, Inc
- Application No. 1769-1, DuWayne Mahlen
- Application No. 1772-1, Fisher Sand and Gravel Company
- Application No. 1758-1, No Name City RV & Cabins
- Application No. 2475-2, City of Rapid City
- Application No. 1756-1, Frawley Ranches, Inc
- Application No. 2466-2, Black Hills Generation
- Application No. 2461-2, Colonial Pine Hills Sanitary District
- Application No. 2459-2, Anita Cregut
- Application No. 2458-2, Red Rock Development
- Application No. 6245-2, Shamrock Colony
- Application No. 1707-1, Frawley Ranches
- Application No. 1733-1, Frawley Ranches
- Application No. 6070-3, Spencer Quarries
- Application No. 2427-2, Daniel and Gary Velder
- Application No. 6166-3, Oscar Inc.
- Application No. 1689-1, Jack Marler
- Application No. 6121-3, John Swanson
- Application No. 2418-2, Fall River RWS
- Application No. 1676-1, Stagebarn Subdivision
- Application No. 1674-1, Black Hawk Water User District
- Application No. 6094-3, Dan Christensen
- Application No. 6007-3, Bob's Resort, Inc.
- Application No. 6091-3, Brentwood Colony
- Application No. 2396-2, Flintstone Bedrock City
- Application No. 1670-1, Lyndon & Jane Kok
- Application No. 1666-1, Golden Reward
- Application No. 2400-2, Karlen Family Partnership
- Application No. 2395-2, Roy Alexander
- Application No. 6027-3, City of Brandon
- Application No. 2386-2, Town of Keystone
- Application No. 5996-3, Myrl & Roy's Paving
- Application No. 1650-1, Melvin Delzer
- Application No. 2385-2, Roger Robbins
- Application Nos. 5966-3 & 5967-3, Michael Williams
- Application No. 5965-3, Rodney Hofer
- Application No. 2313-2, Coca Cola bottling of the Black Hills
- Application No. 5797-3, Heartland Pork
- Application No. 2299-2, Custer School District 16-1

- Application No. 2235-2, The Fort
- Application No. 2204-2, Flintstone Bedrock City
- Application No. 5521-3, City of Sioux Falls
- Application No. 5522-3, City of Sioux Falls
- Application No. 5533-3, City of Sioux Falls
- Application No. 5556-3, City of Sioux Falls
- Application No. 2137-2, Frank Simpson
- Application Nos. 2155-2 & 2156-2, City of Rapid City
- Application No. 1478-1 Pete Lien & Sons, Inc
- Consideration of Alleged Seepage Problems with Hawthorne Ditch

Testified as an expert witness before the Sixth Circuit Court in the matter of Stretch's Well Service, Inc./Chuck Ross (Scattergun Lodge) well.

Testified as an expert witness before the Pierre City Council in the matter of flooding related groundwater issues

JEANNE GOODMAN, P.E.
CHIEF ENGINEER

EDUCATION

Bachelor of Science Degree in Geological Engineering, South Dakota School of Mines and Technology 1979

REGISTRATIONS, PROFESSIONAL SOCIETIES, AND AWARDS

1. South Dakota Registered Professional Engineer
2. South Dakota Engineering Society
3. Central Chapter SD Engineering Society Outstanding Engineer of 1995
4. Central Chapter SD Engineering Society Young Engineer of the Year 1986

CAREER EXPERIENCE

April 2013 – present – Chief Engineer, Water Rights Program, DENR. Administer the Program, which coordinates the appropriation of water resources in South Dakota to protect the public welfare and interest in the development of the water resources and determine in what way the water of the state should be developed for the greatest public benefit.

2000 – 2013 - Natural Resources Administrator, Surface Water Quality Program, DENR. Administer the Surface Water Quality program, which coordinates the prevention, reduction, measurement, and control of water pollutants to maintain water quality that is protective of the public's health and safety and the beneficial uses of the state's lakes and streams.

1997 – 2000 - Natural Resources Administrator, Air Quality Program, DENR. Administer the Air Quality program, which coordinates the prevention, reduction, measurement, and control of air pollutants to maintain air quality that is protective of the public's health and safety.

1987 – 1997 – Natural Resources Engineer IV, Ground Water Quality Program, DENR. Team Leader for ground-water discharge plans and enforcement of ground-water quality standards, Underground Injection Control, pesticides in Ground Water, and Wellhead Protection staff. Review storage tank plans and specifications. Supervise special water quality studies and the review of numerous regulated substance release assessments and remediations.

1981 – 1987 – Natural Resources Engineer/Hydrologist, Ground Water Quality Program, DWNR. Participated in writing Rural Clean Water Program/Comprehensive Monitoring and Evaluation proposal and workplan; reviewed mineral exploration permits for impacts to ground water; identified aquifers and compiled well data for Corps studies. Supervised staff and participated in ground water studies and investigations by installing and sampling monitoring wells; contributed sections to the Big Sioux Aquifer Water Quality study; prepared all contracts for Comprehensive Monitoring and Evaluation project, and assisted in installation of monitoring systems.

1979 – 1980 – Natural Resources Engineer I, Water Rights Program, DWNR. Investigated water rights complaints; reviewed water right applications; supervised installation of observation wells; prepared a report on flowing artesian wells.

TESTIMONY

Board of Water Management – In various capacities and responsibilities with DENR, provided testimony regarding permit application review and water use, water quality, and water monitoring relative to water right permit applications, General Water Pollution Control Permits for Concentrated Animal Feeding Operations, and ground water discharge plan applications, and proposed and modifications to Administrative Rules of South Dakota for ground water and surface water quality standards, beneficial use classifications for water bodies in South Dakota, and ground water and surface water discharge permits.

Board of Minerals and Environment – In various capacities and responsibilities with DENR, provided testimony regarding water use, water quality, and water monitoring relative to mineral and oil and gas exploration and development permits.

Court matters since 2008 - In re: *Veblen West Dairy, LLP, Chapter 11, Debtor. Bankr. No. 10-10071.* United States Bankruptcy Court, D. South Dakota (court testimony).
Storbeck, et. al. v. State of South Dakota, Third Judicial Circuit, Kingsbury County Civ. No. 07-69 (deposition).

MAJOR PUBLICATIONS

1. "South Dakota Ground-Water Quality" w/ Koch and Lawrence -USGS USGS Open-file Report 87-0752, Goodman and Pirner - SDDWNR
2. "Agricultural Sources of Nitrate Contamination in a Shallow Sand and Gravel Aquifer in Eastern South Dakota", in Perspectives on Nonpoint Source Pollution, EPA 440/5-85-001.
3. "Non-Point Source Pesticide Contamination of Shallow Ground Water', ASTM Paper No. 892529, St. Joseph, Missouri, Kimball and Goodman.
4. "Nitrate and Pesticide Occurrence in Shallow Groundwater During the Oakwood Lakes-Poinsett RCWP Project", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006.
5. "Coordination is the Project Cornerstone", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006, Kuck and Goodman.
6. "Ground Water Monitoring – A Guide to Monitoring for Agricultural Nonpoint Source Pollution Projects", USDA-FSA, Huron, SD. Goodman, German, and Bischoff, January 1996.

DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

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. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending Approval of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The new well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer that is authorized by Water Permit Nos. 2610-2 and 2730-2.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
December 5, 2014

WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA
NOVEMBER 12, 2014

Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer at a maximum diversion rate of 0.46 cubic feet of water per second (cfs). Water is to be diverted from two existing wells which were authorized by Water Permit No. 2610-2, and a proposed well. Water Permit No. 2610-2 authorizes diversions of up to 0.21 cfs from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. This application proposes to authorize the construction of a third well, also located in the NW¼ SE¼ of Section 10, T6S-R3E, and authorize a total maximum diversion from the three wells of 0.67 cfs. The water will be used in the United Order of South Dakota's water system.

AQUIFER: Madison aquifer (MDSN)

Aquifer Characteristics:
The Madison aquifer is a regionally extensive aquifer contained within the Madison Limestone, locally known as the Pahasapa Limestone, and the Englewood Limestone. The aquifer underlies portions of North Dakota, South Dakota, Montana, Wyoming, Saskatchewan, Manitoba and Alberta. The Madison aquifer underlies most of western South Dakota and parts of Eastern South Dakota (Figure 1). The Madison aquifer contains an estimated 644,827,200 acre-feet of recoverable water in storage in Western South Dakota (Allen and others, 1985) and 51,512,300 acre-feet of recoverable water in storage in Eastern South Dakota (Hedges and others, 1982).

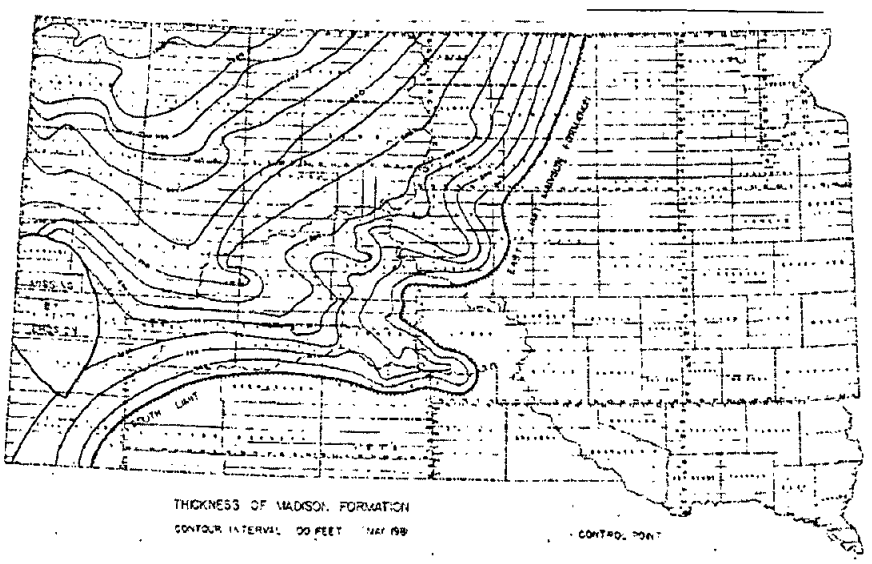

Figure 1. Areal Extent of the Madison Formation in South Dakota: modified from (Gries, 1981).

The Madison aquifer is considered a "mature karst aquifer" (Long and others, 2012) and is composed of a fine to medium crystalline, cavernous limestone and dolomite. The Madison is expected to be approximately 300 feet thick in this area (Carter and Redden, 1999a); and (Carter and Redden, 1999b). The upper portion of the Madison Limestone is karstic, therefore it contains randomly distributed zones of secondary porosity and permeability formed by weathering of

exposed surfaces, groundwater solution and fracturing. The lower part of the Madison Limestone and the Englewood Limestone generally have lower permeability than the upper part of the Madison aquifer in the Black Hill (Greene, 1993). The average porosity of the Madison is estimated to be 11%, and the effective porosity from which recoverable water can be obtained by wells is assumed to be 5% (Rahn, 1979).

The well site proposed by this application is located approximately five miles southwest of the Madison Limestone outcrop (Strobel and others, 1999). In this area, the Madison Limestone dips to the southwest at approximately 240 feet per mile (approximately three degrees) (Carter and Redden, 1999a). The DENR-Water Rights Program has record of three existing wells constructed for the United Order of South Dakota. The top of the Madison was reported to be 785 feet below grade in one well log, 715 feet below grade in a second well log and is inferred to be 719 feet below grade in the third log (Water Rights, 2014c). The static water level of the wells was reported to be 650' (06/05/2005), approximately 800' (10/20/2010) and approximately 800' (10/15/2007) respectively.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The availability of unappropriated water can be evaluated by considering SDCL 46-6-3.1 which requires that "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." The statute provides that "An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems." Water Permit Application No. 2730-2 proposes to appropriate water from the Madison aquifer, a water source that is older than the Greenhorn Formation, and the water is to be used by a water distribution system. Therefore, the Board need not consider the recharge versus withdrawal issue.

Existing Rights:

This applicant has been utilizing wells completed into the Madison aquifer that were authorized by Water Permit No. 2610-2 since 2007 with no significant impact. The additional diversion rate proposed by this application is relatively low and will not likely have a noticeable effect to the Madison aquifer. There are 64 completion reports on file with the DENR-Water Rights Program within approximately five miles of the wells that are to be used to supply this appropriation (Water Rights, 2014c). The majority of these domestic wells appear to be completed into the Minnelusa aquifer and at least two are completed into the Deadwood aquifer. Wells completed into aquifers that are either stratigraphically above or below the Madison aquifer (i.e. Minnelusa and Deadwood respectively) are not expected to be affected by this proposed appropriation since the lower Minnelusa formation can be considered a confining bed that isolates the Madison hydraulically from shallower aquifers, and the bottom portion of the Madison isolates the Madison from lower

aquifers. Only three of the domestic wells on file appear to be completed into the Madison aquifer. Based on the legal location provided on the completion reports, the Madison aquifer wells are all located over three and three quarter miles from the site(s) of Application No. 2730-2.

The diversion point locations for existing water rights and future use permits appropriating water from the Madison aquifer in this area are shown in Figure 2 and identified in Tables 1 and 2.

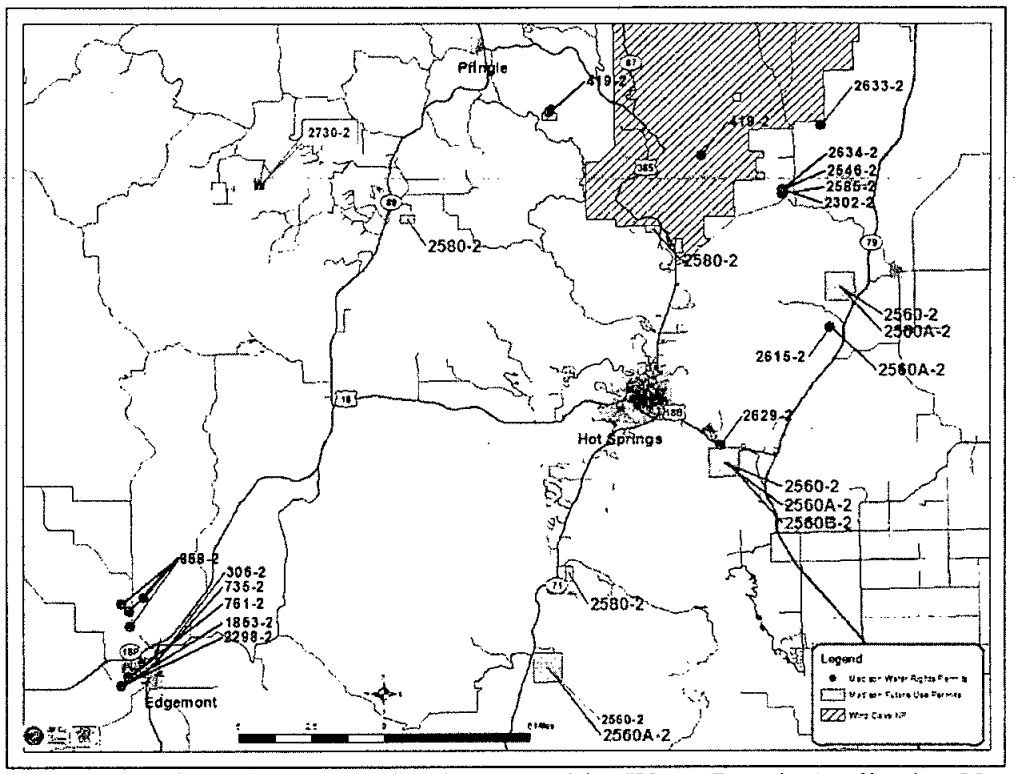

Figure 2. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, diversion points for existing Madison aquifer water rights/permits, and areas of Madison aquifer future use permits in the vicinity (Water Rights, 2014b).

Table 1. Water Rights/Permits appropriating water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS	ACRES	AC-FT /YR
306-2	CITY OF EDGEMONT	12/14/1945	LC	MUN	0.31		
419-2	WIND CAVE NATIONAL PARK	12/29/1955	LC	COM/IRR	0.15		
735-2	TENNESEE VALLEY AUTHORITY	12/26/1961	LC	IND	0.66		
761-2	CITY OF EDGEMONT	04/09/1962	LC	MUN	0.41		
858-2	WYOMING DAKOTA RAILROAD PROPERTIES INC	02/05/1965	LC	IRR	9.36	655.75	
1853-2	CITY OF EDGEMONT	08/23/1983	IL	MUN			
2298-2	CITY OF EDGEMONT	08/28/1993	LC	REC/MUN	1		
2302-2	EBEN W STREETER	02/07/1994	LC	RWS	0.033		
2546-2	EBEN STREETER	01/03/2005	PE	RWS	0.21		
2615-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	0.67		
2629-2	FALL RIVER WATER USERS DISTRICT	05/16/2005	PE	RWS	1		
2585-2	SOUTHERN BLACK HILLS WATER SYS	05/08/2006	DF	RWS	2.67		1600
2610-2	UNITED ORDER OF SOUTH DAKOTA	02/09/2007	PE	SHD	0.21		
2633-2	SOUTHERN BLACK HILLS WATER SYSTEM	06/20/2008	PE	RWS	0.67		
2634-2	STREETER FAMILY LIMITED PARTNERSHIP	07/17/2008	PE	RWS	0		

LC= Water License, IL= Incorporated, PE= Water Permit, DF= Deferred, MUN= municipal, COM= Commercial, IRR= Irrigation, IND= Industrial, REC= Recreational, RWS= Rural Water System, SHD= Suburban Housing Development

Table 2. Future Use Permits reserving water from the Madison aquifer in the vicinity of the diversion points proposed by Application No. 2730-2(Water Rights, 2014b).

FUTURE USE PERMIT NO.	NAME	ORIGINAL RESERVATION (AC-FT/YR)	REMAINING RESERVATION (AC-FT/YR)
2560-2	FALL RIVER WATER USERS DISTRICT	750	0
2580-2	SOUTHERN BLACK HILLS WATER SYSTEM	1474	1474
2560A-2	FALL RIVER WATER USERS DISTRICT	*	0
2560B-2	FALL RIVER WATER USERS DISTRICT	*	0

* FUTURE USE PERMIT NOS. 2560A-2 AND 2560B-2 AMEND FUTURE USE PERMIT NO. 2560-2 TO EXPAND THE FUTURE USE AREA AND DO NOT RESERVE ADDITIONAL WATER

Since the Madison is under artesian conditions in this area, drawdown from pumping a well may extend over a fairly large area. The transmissivity of the aquifer is very heterogeneous with values that range over several orders of magnitude (Putnam and Long, 2007). In addition, the aquifer characteristics of the Madison can vary considerably within a short distance (Greene, 1993).

Carter and others (2001) developed hydrologic budgets for the Madison and Minnelusa aquifers combined, using nine subareas to cover the Black Hills. The subareas were identified on the basis

of hypothetical flow paths and were selected with the intent of minimizing flow across the boundaries. The well(s) that is/are to be used to supply this appropriation is/are located in Carter and others' (2001) subarea 8. Carter and others (2001) estimated the transmissivity of the Madison aquifer on the border of the subarea near the well site at 1,463 feet squared per day (ft^2/d). Applying this estimated transmissivity and assuming a storage coefficient of $S= 2x10^{-4}$, the drawdown 1,000 feet from a well pumping 0.46 cfs would be less than 19 feet after one year of continuous pumping based on the Theis Equation (see Figure 3) ("Theis Equation Calculator").

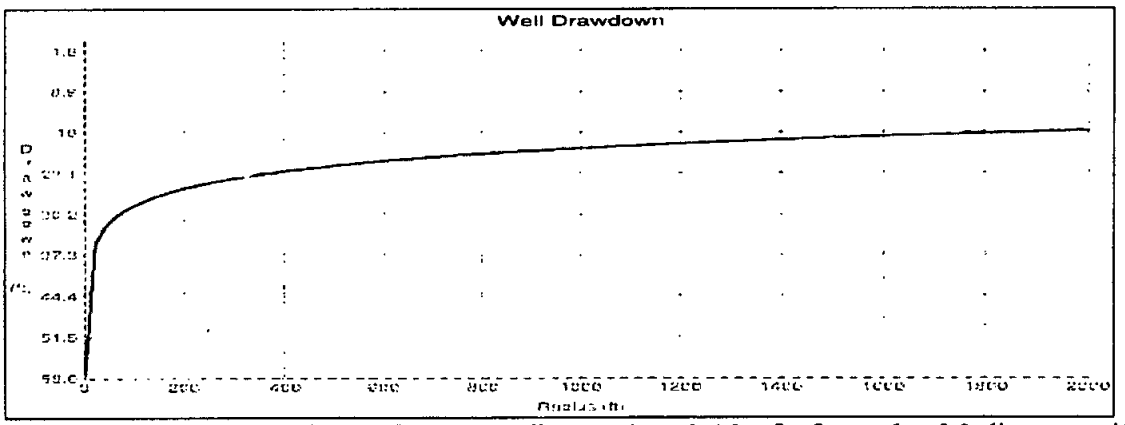

Figure 3. Drawdown predicted from a well pumping 0.46 cfs from the Madison aquifer, continuously for one year, assuming T= 1,463 ft^2/d, S= $2x10^{-4}$. (modified from ("Theis Equation Calculator"))

Assuming the combined diversion rates of Water Permit No. 2610-2 and Water Permit No. 2730-2 (if approved) are pumped from a single well, a transmissivity of 1,463 ft^2/d and a storage coefficient of $S= 2x10^{-4}$, the drawdown 1,000 feet from a well pumping 0.67 cfs would be less than 28 feet after one year of continuous pumping based on the Theis Equation (see Figure 4) ("Theis Equation Calculator").

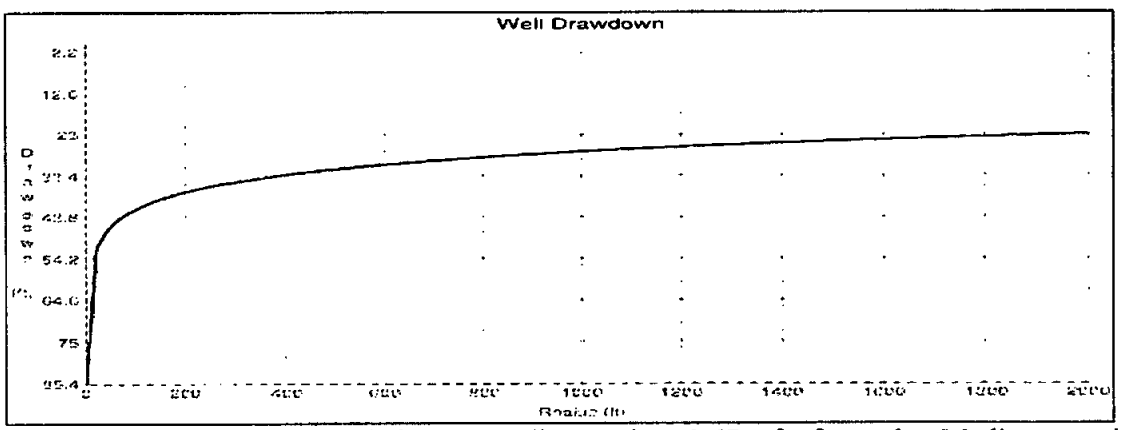

Figure 4. Drawdown predicted from a well pumping 0.67 cfs from the Madison aquifer, continuously for one year, assuming T= 1,463 ft^2/d, S= $2x10^{-4}$. (modified from ("Theis Equation Calculator"))

The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant.

Wells supplying existing Water Rights/Permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure.** Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

If the water levels in the Madison aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

It should be noted however, that well interference (drawdown) measured at Water Rights' observation wells located near high capacity municipal wells in Spearfish, Sturgis and Rapid City has never been significant (i.e. drawdown of only a few feet or tens of feet) (Water Rights, 2014a).

Given the distance between the well(s) that is/are to supply this appropriation and existing Madison wells well interference is not expected to be adverse.

The well sites proposed by this application are located approximately five miles west of the "Argyle" well site proposed by Future Use Permit No. 2580-2. Approval of this application should not hinder development of the future use permit due to the distance involved.

Beneficial Use:
Pursuant to SDCL 46-1-6 (3) beneficial use is defined as:

> "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies;

The applicant has the burden of proof in establishing that an application is a beneficial use of water.

Public Interest Issues:
In the past, there have been two "public interest" issues raised that could potentially be obstacles to developing the Madison aquifer in the Southern Black Hills: the possibility of affecting artesian spring discharge; and the possibility of affecting the water resources at Wind Cave National Park.

Artesian Springs:

The water at a number of springs in the southern Black Hills area contains geochemical and isotopic characteristics of the Madison aquifer (Whalen, 1994). These springs are classified as Type 2 springs by Rahn and Gries (1973), meaning "The springs do not dry up and serve as points of permanent discharge from the carbonate aquifer" (Rahn and Gries, 1973). Major springs in the area identified by Naus and others (2001) are shown in Figure 5.

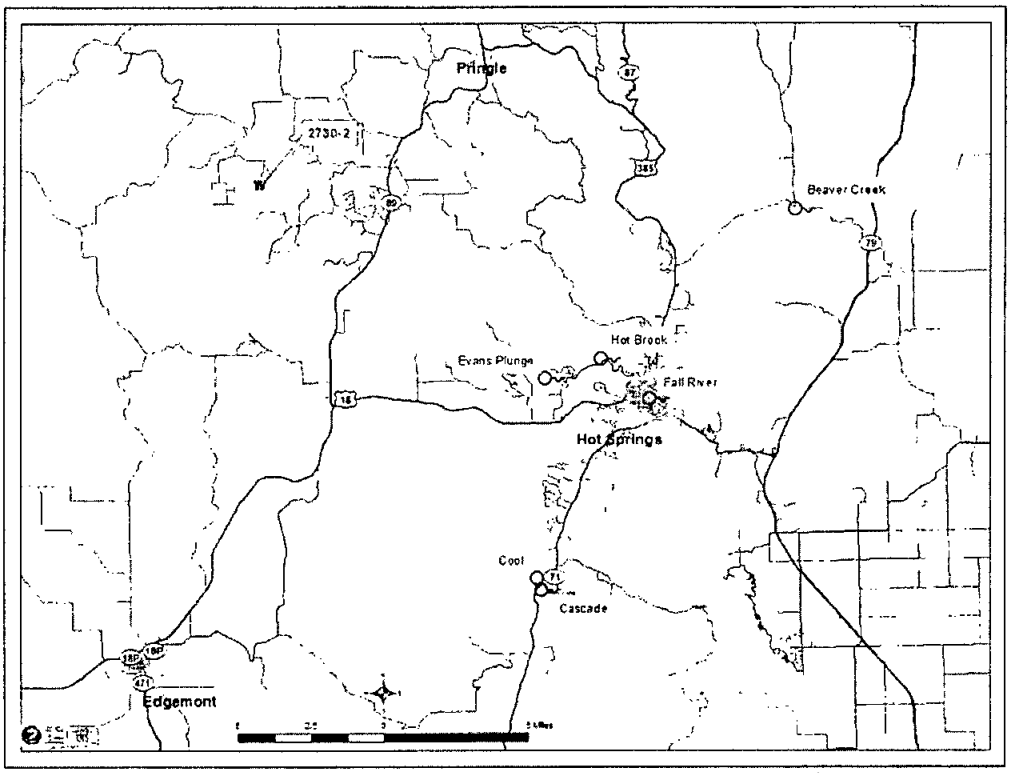

Figure 5. Location of the diversion point(s) proposed by Water Permit Application No. 2730-2, and the location of major springs in the vicinity.

The discharge of one of these springs, Beaver Creek Spring, is measured by National Park Service personnel. The spring is located approximately two and one-quarter miles east of SD DENR-Water Rights' Observation Well CU-91A. A comparison of the discharge of Beaver Creek Springs and the potentiometric surface of the Madison aquifer suggests a relationship may exist between the two (see Figure 6). At this time it is not possible to determine if a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring flow or if the two have similar responses to the same hydrologic conditions. If a cause and effect relationship exists between the Madison aquifer potentiometric surface and the spring discharge, a decline of the potentiometric surface in the vicinity of the springs could decrease spring discharge.

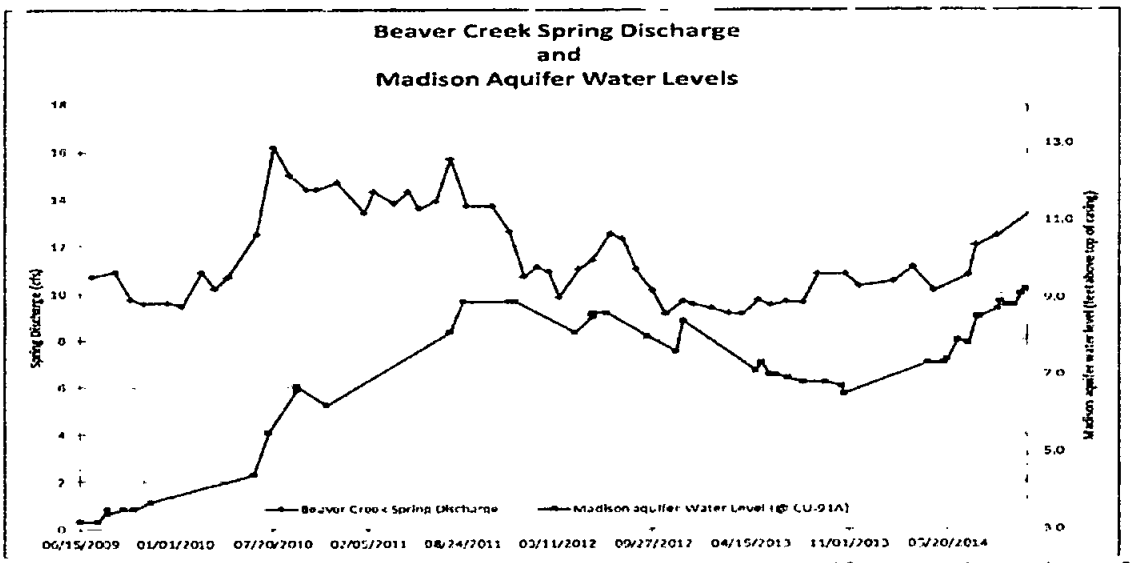

Figure 6. Beaver Creek Spring Discharge compared to Madison aquifer potentiometric surface measured at observation well CU-91A ("Aquarius Web Data Portal."; Water Rights 2014a)

When considering Future Use Permit No. 2560-2 for Fall River Water User District, the Water Management Board accepted that SD Water Law does not protect artesian head pressure as a means of diversion and determined that well interference resulting in decreased discharge from these "artesian" springs could probably not be considered an adverse impact. The Board did however recognize the "public interest" issues of decreased base flows in area streams that could result from decreased spring discharge as the result of well interference. Approval of Future Use Permit No. 2560-2 included the following qualification:

> "At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1 with particular attention given to the flows of Beaver Spring, Cascade Springs and Hot Springs." (Water Rights, 2014b)

Subsequently, when considering the deferral of Water Permit Application No. 2585-2, Southern Black Hills Water System, the Water Management Board adopted a conclusion of law (No. 11) which states in part "The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria."

The well site(s) proposed by this application is/are located over eleven miles from the nearest major spring (Evens Plunge). A fairly large change in the hydraulic gradient in the vicinity of the springs would be necessary to significantly affect the groundwater flow rates and consequently the spring's discharge. Given the distance involved and the relatively low diversion rate proposed by this application, (0.67 cfs maximum), it is unlikely that drawdown from this well would have a measurable impact on spring discharge.

Wind Cave National Park:

The National Park Service (NPS) has intervened in matters of water permit applications from the Madison aquifer in the past. In 2007, the NPS filed a petition to intervene in the matter of Water Permit Application No. 2610-2. The NPS was concerned that "the Application No. 2610-2, over time and in combination with senior water right applications ... will adversely impact Wind Cave National Park (Wind Cave NP) senior water rights and water-dependent resources." The water-related resources cited by the NPS include: lakes and pools in the lower reaches of Wind Cave, three perennial streams (Cold Springs, Beaver, and Highland Creeks), many intermittent and ephemeral stream courses, and over 95 seeps and springs. The NPS later withdrew their opposition to granting the water permit but restated its concerns about the potential impacts of appropriations from the Madison aquifer.

Lakes and Pools:

The lakes and pools in Wind Cave National Park are in hydraulic connection with the Madison aquifer and the water table of the Madison aquifer is accessible at the deepest part of the cave (Long and others, 2012) . The stages of the lakes fluctuate in response to climatic conditions similar to fluctuations in the Madison potentiometric surface measured in DENR-Water Rights' Observation Well CU-91A, (see Figure 7).

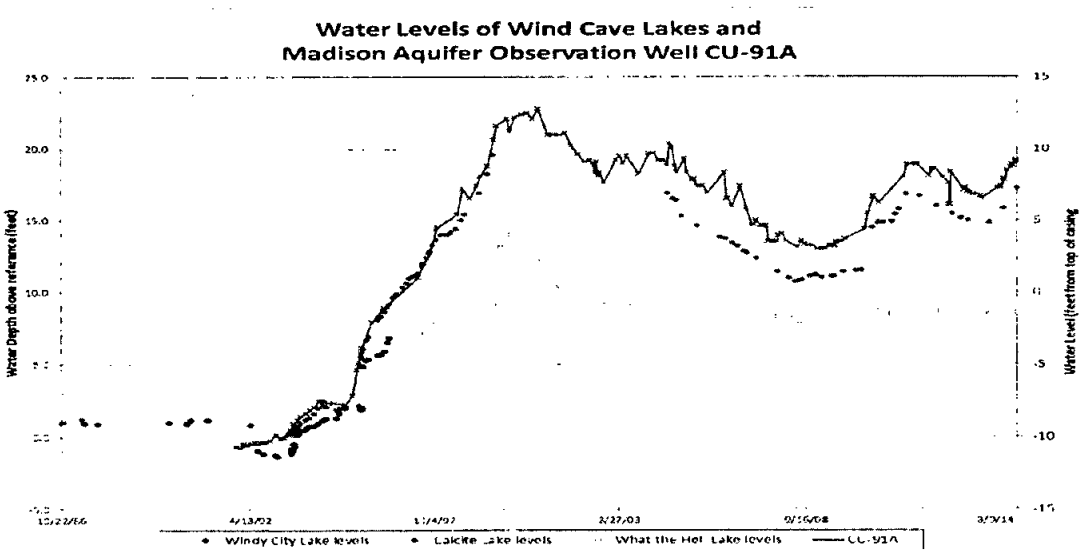

Figure 7. Water Levels of Wind Cave National Park Lakes compared to Madison aquifer potentiometric surface measured at observation well CU-91A (Hughes; Water Rights 2014a)

The lakes and pools in Wind Cave are located approximately thirteen miles east of the well site(s) proposed by this application (see Figure 8).

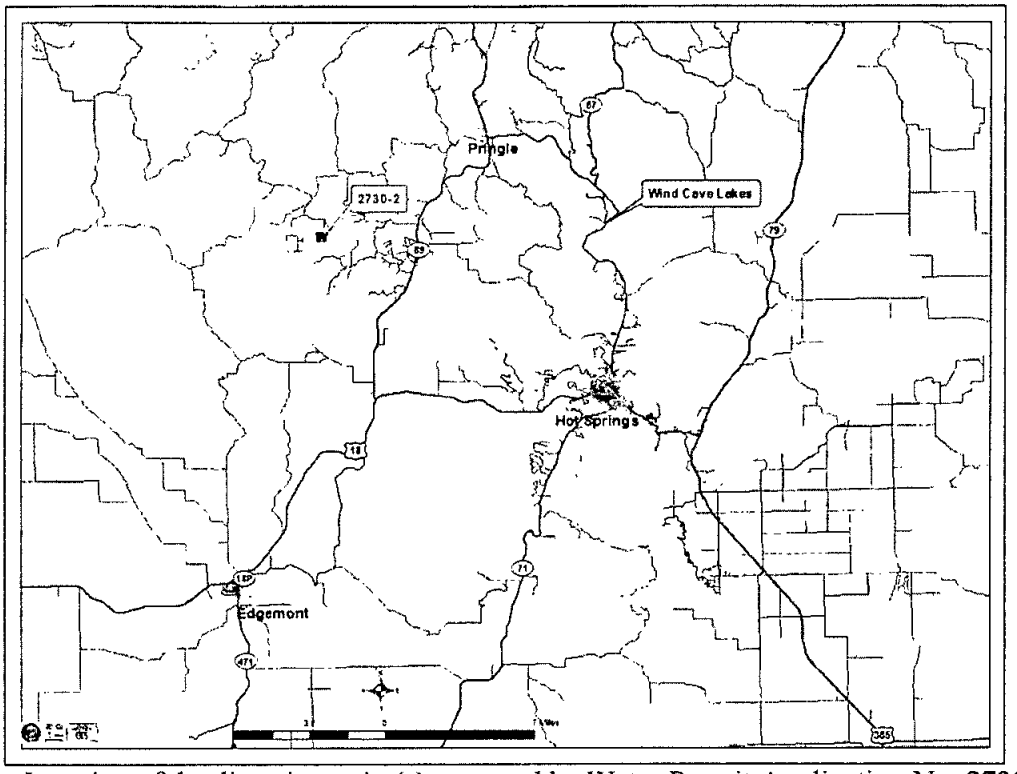

Figure 8. Location of the diversion point(s) proposed by Water Permit Application No. 2730-3, and the location of lakes and pools in Wind Cave National Park.

The impacts of pumping the well proposed by this application is expected to be negligible on the Wind Cave Lakes, especially when compared with the natural fluctuations because of the distances involved (>5 miles) and the relatively small diversion rate proposed (0.67 cfs maximum).

Streams (Perennial and Ephemeral):
The NPS identified three perennial streams (Cold Spring, Beaver and Highland Creeks) as "water resources of high value at Wind Cave NP". The entire length of Cold Spring Creek is located on formations that are geologically lower than the Madison and therefore are not expected to be influenced by Madison aquifer withdrawals. Beaver and Highland Creeks are typically dry in their reaches downstream from the loss zone (Madison, Minnelusa and Minnekahata aquifer outcrops) because the upstream flow is usually insufficient to meet or exceed the streams' loss thresholds. Since loss thresholds are assumed to be generally constant (Hortness and Driscoll, 1998), any fluctuations of the groundwater levels caused by pumping will not affect the frequency that the reaches of Beaver Creek and Highland Creek downstream of the loss zones are dry.

Seeps and springs:
The majority of the seeps and springs identified by the NPS are obviously not related to the Madison aquifer. They either surface in geologic formations hydrologically isolated from the Madison at elevations hundreds of feet higher than the water level of the Madison, or in geologic formations older than (below) the Madison. The few seeps or springs identified by the NPS that are actually situated on the Madison outcrop are likely expressions of localized perched conditions that would not be impacted by any changes in water level of the regional system.

TERM LIMITATION:

SDCL 46-2A-20 requires that "... no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing this permit without a term limitation of 20 years.

Conclusions:

1. The Madison aquifer is a viable aquifer in this area.
2. This diversion will not adversely impair existing water rights.
3. Information is not available to approve this application without a 20 year term limit

Ken Buhler
SD DENR-Water Rights Program

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending APPROVAL of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
June 1, 2015

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA C/O SETH JEFFS
MAY 14, 2015

Water Permit Application No. 2730-2 was received by the Department of Environment and Natural Resources-Water Rights Program (DENR-WR) on October 14, 2014. The application proposed authorization to complete a new well into the Madison aquifer (approximately 1100 feet deep) in the NW¼ SE¼ of Section 10, T6S-R3E. in Custer County. The application proposed to divert water from the new well and from two existing wells, authorized by Water Permit No. 2610-2, at a combined maximum diversion rate of 0.67 cfs (approximately 300 gallons per minute (gpm)). Water Permit No. 2610-2 currently authorizes diversions of up to a maximum rate of 0.21 cfs (approximately 94 gpm) from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. Therefore, Application No. 2730-2 proposed an increased diversion rate from the Madison aquifer of 0.46 cfs (approximately 206 gpm). The water is to be used in the United Order of South Dakota's water system.

Water Permit Application No. 2730-2 was public noticed and several interveners filed petitions in opposition to granting the permit. On February 18, 2015, the Water Rights Program received a request from the applicant to modify Application No. 2730-2 to a reduced diversion rate. Application No. 2730-2, as revised, proposes to appropriate water from the Madison aquifer at an additional maximum diversion rate of 0.236 cfs (approximately105.9 gpm) and authorize a total maximum diversion rate from a new well and the two existing wells of 0.446 cfs (approximately 200 gpm).

CURRENT WATER USAGE:

Water Permit No. 2610-2 was approved August 1, 2007, and included a qualification (No. 4) that requires the applicant to report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. A summary of the United Order of South Dakota's reported water use is shown in Table 1.

Table 1. Annual water usage associated with Water Permit No. 2610-2, as reported to the Chief Engineer (Water Rights, 2015).

Water Use Reported by United Order of South Dakota		
Year	**Gallons (Reported)**	**Acre-feet (Converted)**
2007	150,500	0.46
2008	2,813,000	8.63
2009	6,207,000	19.05
2010	8,600,900	26.40
2011	13,205,800	40.53
2012	10,635,920	32.64
2013	3,447,480	10.58
2014	8,323,600	25.54

Water Permit No. 2610-2 authorizes the use of water for the purpose of "suburban housing development" and may not exceed the amount of water needed for beneficial use. Suburban housing development use typically includes water for drinking, washing, sanitary and culinary purposes, in addition to incidental irrigation. In a February 18, 2015, letter addressed to the Chief Engineer, The National Park Service Water Resources Division and The Black Hills National Forest, Mr. Seth S. Jeffs, the United Order of South Dakota water operator, indicated the community's beneficial use of water includes "watering gardens, orchards, landscape, and feeding animals during the spring and summer months".

Drinking, washing, sanitary and culinary uses:

2014 Drinking Water Survey

An on-site evaluation at the United Order of South Dakota public water system was conducted by the Department of Environment and Natural Resources-Drinking Water Program on June 11, 2014. The evaluation report identified the system as a "Community Water System" with a total population served of 75. The on-site evaluation reported that well No.1, which was constructed in 2007, was the only well connected to the water system, and it was capable of diverting 80 gpm. The on-site evaluation reported the system was capable of supplying 95 gpm (Holan, 2014).

Watering Gardens, Orchards, Landscape, and Feeding Animals:

The areas within the United Order of South Dakota's development that appear to be cultivated or landscaped were identified by evaluating June 29, 2014, imagery available through Google Earth 7.1.2.2014. The areas, shown as polygons outlined in dark green in Figure 1, digitized using Esri® ArcGIS 10.2, total approximately seven acres. Assuming an application rate of two acre-feet per acre per year, the total annual water use at the development for watering gardens, orchards and landscape is estimated to be less than 14 acre-feet per year. Livestock watering uses cannot be estimated at this time.

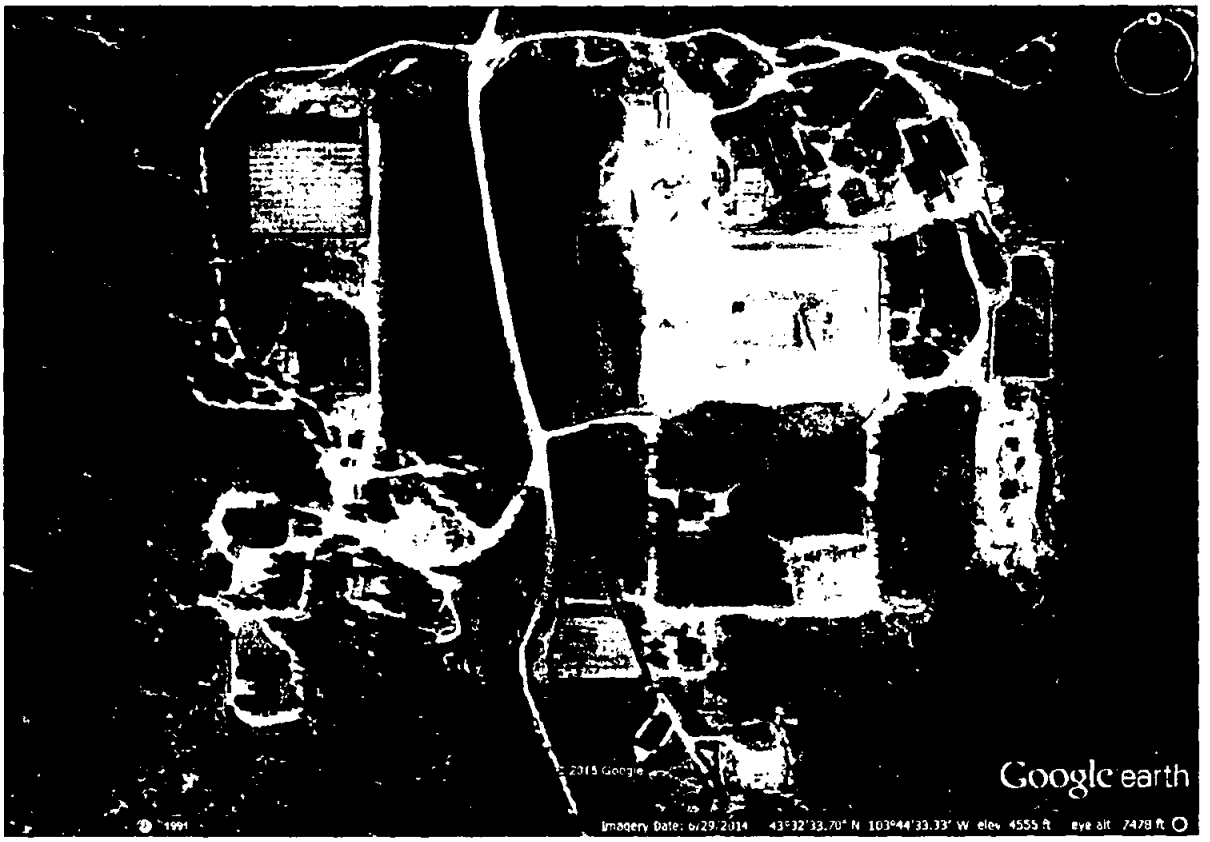

Figure 1. Gardens, orchards and landscaping apparent from Google Earth

FUTURE NEEDS:
In his February 18, 2015 letter, Mr. Jeffs stated that "the number of gardens and orchards will increase as the community is able to bring more of the land into cultivation"; "the needs for animals in the future will increase the demand for water"; and "the need for fire protection is also a great concern."

Drinking, washing, sanitary and culinary uses:
Onsite Wastewater System Approvals
The DENR has approved four onsite wastewater systems for the United Order of South Dakota community. The specifics for these systems are shown in Table 2. The wastewater systems are limited to capacities approved: therefore the total maximum daily flow (MDF) for the four systems is limited to 7,560 gallons per day (gpd). Assuming 7,560 gpd for 365 days equates to total volume of 8.47 acre-feet per year.

Table 2. Onsite wastewater systems approved by DENR for the United Order of South Dakota compound. (Hipple)

ESTABLISHMENT	APPROVAL DATE	REMARKS
United Land Management	09/14/2005	Basic system, 2,160 MDF, 18-bedroom residence
United Land Management	06/28/2007	Basic system, 1,560 MDF, 13-bedroom residence
United Land Management	09/10/2007	Basic drainfield for two duplexes, total of 14 bedrooms, 1,600 MDF
United Order of SD (United Land Management)	03/03/2010	Basic system, 2160 MDF, 18-bedroom residence
MDF=maximum daily flow		

The designed wastewater flow rate used in the review of United Land Management's residential septic systems was based on 60 gallons a person per day and a maximum of 2 persons per bedroom (Hipple, 2015). Based on the onsite wastewater systems approved for the community, (i.e. maximum daily flow of 7,560 gpd, and 63 bedrooms), the onsite wastewater system capacity is 126 people.

The total future system residential demand based on a population limited by the community's onsite wastewater system capacity (126) and a per capita demand for residential use of a maximum of 130 gallons per capita per day (Lindeburg, 2012) is estimated to be 18 ac-ft/yr.

Watering Gardens, Orchards, Landscape, and Animal needs:
Increased acreage of gardens, orchards and landscape areas is difficult to predict. However, two areas, totaling approximately 14 acres, (identified in yellow in Figure 2.) were considered potentially irrigable lands based on topography and groundcover. The addition of 14 acres of gardens, orchards and landscaping, would result in a tripling of the acreage currently estimated for that use. Assuming 21 acres of gardens, orchards and landscaping, irrigated at a rate of two acre-feet per acre per year results in an estimated "irrigation" use of 42 acre-feet per year. Future animal needs cannot be estimated with the information currently available.

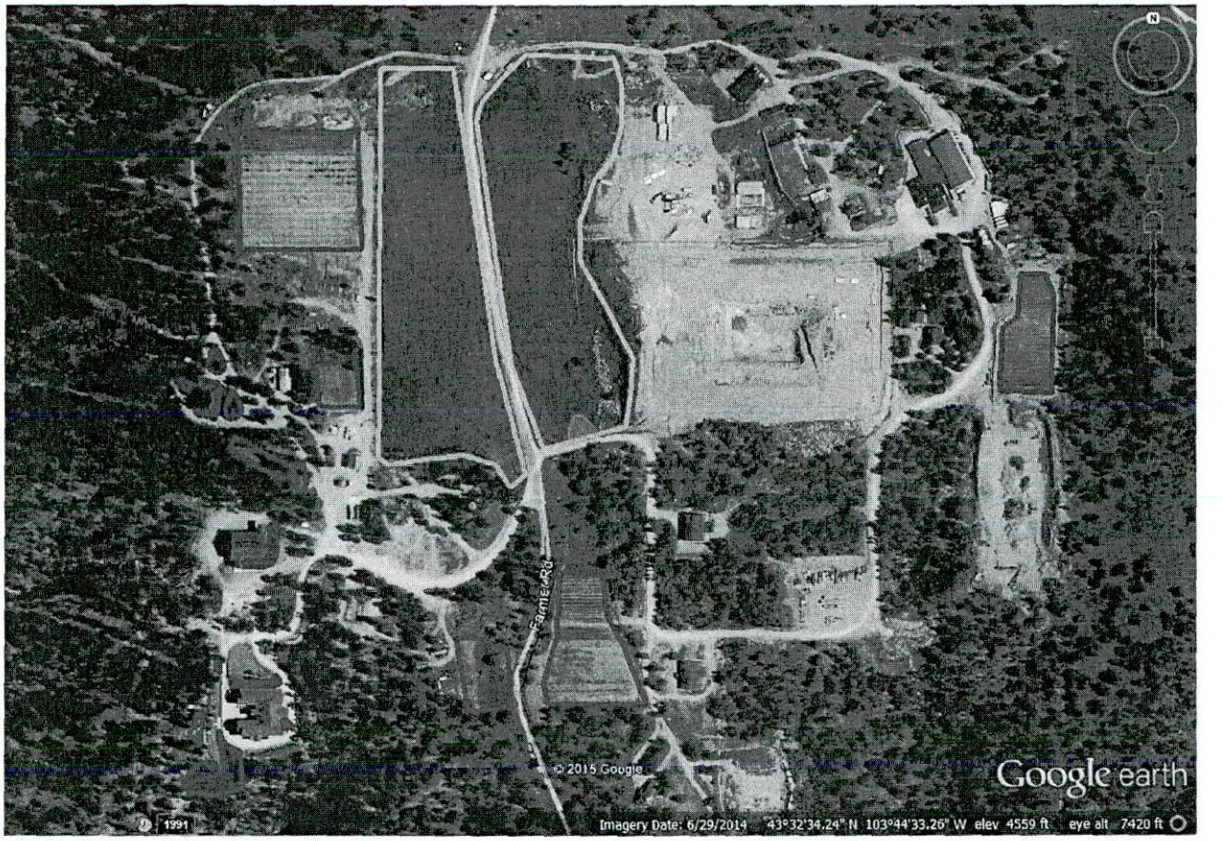

Figure 2. Gardens, orchards and landscaping apparent from Google Earth (shown in dark green polygons) and potentially irrigable acreage (shown in yellow polygons).

Fire Protection

"Based on United Order of South Dakota's Water Right Application stating that they will be constructing at least a 250,000 gal storage tank and the Insurance Service Office (ISO) minimum requirements for fire suppression of 1000gpm at 20psi for 2hours; the 250,000 gal storage will supply adequate domestic and fire suppression storage. The ISO required fire suppression storage should not affect annual drawdown" (Dreis, 2015).

Projected Total Future Water Use:

Future water use at the United Order of South Dakota community is estimated on an average per capita water use of 130 gallons per person per day for the maximum population capacity of the onsite wastewater systems (126), plus the irrigation of 21 acres at a maximum rate of two acre-feet per acre. This total demand is estimated to be less than 60 ac-ft/yr.

ESTIMATED IMPACTS:

In the report to the Chief Engineer titled "Water Permit Application No. 2730-2, United Order of South Dakota, November 12, 2014" (Buhler, 2014), the Theis Equation was used to compare the theoretical impact of an increase in the total pumping rate at the community of 0.67 cfs compared to 0.46 cfs. Drawdown 1000 feet from a pumped well would have increased with the increased diversion rate on the order of nine feet. The assumption of continuous pumping at the

maximum diversion rate, for one year, with no recharge, is an unrealistic assumption. As stated in the report, "The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant."

The instantaneous diversion rate proposed by this application has been revised and the drawdown that would result would be less. The impact of this application's proposed withdrawals was evaluated considering well withdrawals more likely for this community. Drawdown was evaluated at a distance of 1000 feet from a production well after one year, assuming: A. a transmissivity of 10,943.2 GPD/F; B. a Storativity of 0.0002; and C. a difference between 40.53 acre-feet per year (maximum reported pumping) and 60 acre-feet per year (projected pumping). With the assumptions above and again, assuming no recharge, drawdown can be expected to be in the vicinity of 1.1 feet ("Theis Equation Calculator").

Ken Buhler
SD DENR-Water Rights Program

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Water Rights, 2015, Non-irrigation Yearly Reports, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

July 6, 2015

Re: Madison Aquifer - FLDS
(enclosed)

When the leader of this esoteric (Not religious) group requested additional water rights from the Madison Aquifer, he was asked "Why?" - His Answer (of record): "just because"!! How can that be interpreted as - - "of beneficial use and in the public interest" ???

These people find it easy to lie + break the laws of democracy + morality - some of their males call themselves "god heaven" - impregnate their own young girls - lock themselves in + the world out; defend threatening passersby with rifles if necessary etc. Their leader is in prison in Texas; Texas ran them out. You represent So. Dakotans + are guardians of our natural resources.

Do this prejudice? So increased water request for increased population in their "Compound"? Maybe. Please! Think!

Tonie Martin - R. Co.

www.wellsfargo.com/advantagefunds

GNS1003

July 25, 2015

To S.D. Water Management Board

Perhaps you'll find this info. interesting. It was sent to me from my sister, who is from S.D., but has lived in the S. Lake area for years.

Sincerely, S Perry

HUMANE SOCIETY
WILDLIFE LAND TRUST

Encourage wildlife-friendly practices in your community!

Flocks of ducks, geese, warblers, robins, waxwings and other migratory birds are safe from any future exploitation of their land on the Humane Society Wildlife Land Trust's 597-acre Shanagolden and 80-acre Chimney Rock Wildlife Sanctuaries in Wisconsin.

Living With Wildlife Tip: Help migratory birds by planting a variety of native trees, shrubs and plants, and remember to offer a source of water.

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Titmice

Photo by Shutterstock

RECYCLED PAPER

WL45P1N4

S. Dakota tells FLDS sect to bring details for water

Polygamy » Seth Jeffs says he doesn't know how many people live at the compound.

By JAMES NORD
The Associated Press

Pierre, S.D. » A secretive polygamous group will have to provide South Dakota regulators with more information before they will decide whether to allow the sect to draw water more quickly at a compound in the Black Hills.

The South Dakota Water Management Board voted Thursday that the group needs to come back with more details after Seth Jeffs, the brother of imprisoned sect leader Warren Jeffs, didn't provide clear answers to questions about the group and its compound.

Seth Jeffs and members of the United Order of South Dakota, a religious trust run by the Fundamentalist Church of Jesus Christ of Latter-Day Saints, or FLDS, has asked to double the rate of water it can draw on the compound.

The group says the water is for houses, gardens and orchards at its 140-acre property, but nearby landowners are concerned the request means an influx of members is looming.

The FLDS is headquartered in a community along the Arizona-Utah border. Members believe polygamy brings exaltation in heaven. Warren Jeffs, considered by the group to be a prophet who speaks for God, is serving a life sentence for assaulting two of his child brides, and other leaders have been convicted of similar crimes.

A lawyer for the sect had asked that evidence about its faith, information about the trust and personal details of members be barred from the water hearing, saying those issues weren't relevant to the water application.

Although the board disagreed, Seth Jeffs seemed reluctant to answer questions, drawing the board's ire and skepticism.

Jeffs repeatedly said he doesn't know how many people live at the compound, though he spends almost all of his time there. He said he would need the authorization of the trust's leaders to conduct a census at the compound and that he doesn't "walk into people's houses and intrude on their privacy."

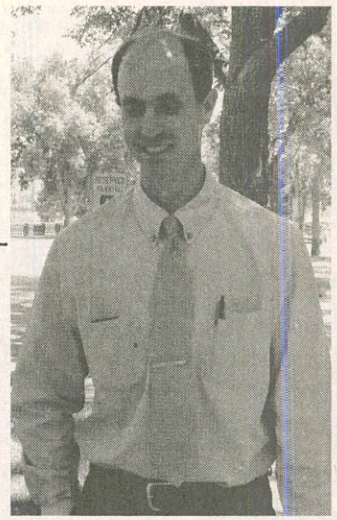
Board member Rodney Freeman, who supported the water application, told him, "I don't want anybody to think for a minute that I believe your testimony that you don't know how many people are up there, or at least a good ballpark estimate."

Jeffs' attorney Jeffrey Connolly argued that municipalities or rural water organizations wouldn't have to disclose the exact number of people using their water.

"We'll just take it as it comes," Jeffs said, shaking his head when a reporter asked if he knew who would come with him to answer the board's remaining questions.

The group's fenced-in compound, complete with a guard tower, sits on hilly, rugged land it bought about a decade ago. Several buildings dot the complex, including seven large residences, a chapel and school, greenhouse, and farm buildings.

A state Department of Environment and Natural Resources staff recommendation said the water application should be approved.



JAMES NORD | *The Associated Press*
FLDS leader Seth Jeffs leaves a state water board hearing in Pierre, S.D., on Thursday.

Jeffs said in a document filed ahead of Thursday's hearing that the number of people at the compound is within the limits of wastewater permits. The system has a 126-person capacity.

Sam Brower, a private investigator who has researched the FLDS, has said Jeffs is considered royalty among devout members.

But Jeffs said he doesn't know much about the leadership, or even where his brother Isaac Jeffs, a trustee, lives.

Michael Hickey, an attorney for nearby landowner Linda Van Dyke Kilcoin, who opposes the water application, said Jeffs is a felon and that granting the request wasn't in the public interest. Jeffs pleaded guilty in 2006 to harboring Warren Jeffs as a fugitive.

"You've got a convicted felon over there who takes orders from the prophet, and if you think that if the prophet says something and tells you to do something different than South Dakota law, that he's going to follow South Dakota law? He's not," Hickey said.

Woman tries to run down constable during evictions at polygamous Short Creek

Courts » The officer was enforcing legal notices served in May.

THE ASSOCIATED PRESS

Hildale, Utah » Tensions are growing among the polygamous sect that straddles the Utah-Arizona border and officials enforcing a slate of eviction notices.

Local officials say a woman attempted to run into a constable with her vehicle after he questioned her Tuesday, the Spectrum of St. George reported.

The constable was trying to enforce 10 eviction notices served in May by a trust called the United Effort Plan, which owns most of the land in the twin towns of Hildale, Utah, and Colorado City, Arizona.

The towns are collectively known as the Short Creek community, home to many members of polygamous leader Warren Jeff's Fundamentalist Church of Jesus Christ of Latter-Day Saints.

Trust employee Isaac Wyler said he was visiting homes with Constable Michael Hoggard on Tuesday when they spotted a woman sitting in a van outside a home.

They tried to find out if she lived there, but she wouldn't speak to them, Wyler said.

The constable then told her that law enforcement was on the way to force an eviction and turned toward the house.

"He was walking right in front of the van when she gunned it," Wyler said.

"She was on gravel and she spun out - she didn't get any traction. Otherwise, he wouldn't have been able to get out of the way."

A Mohave County sheriff's deputy arrived and spent about an hour talking to the woman, Wyler said.

Trish Carter, a spokeswoman for the sheriff's office, said Ethel Jessop was cited for misdemeanor reckless driving.

The trust is evicting residents who have outstanding debts dating back to 2009. Many also owe thousands in property taxes.

The trust began charging residents monthly "occupancy fees" to cover its mounting legal bills.

The trust's previous managers dodged legal disputes and it came to be controlled by Utah courts. It has been the subject of several lawsuits in the years since.

> *"We've been having a real problem with FLDS people even after we've had the property for weeks and months. They've gone in and changed the locks."*
>
> ISAAC WYLER
> *Employee of the United Effort Plan Trust, which owns most of the land in the twin towns of Hildale, Utah, and Colorado City, Arizona.*

Some FLDS residents have appealed to the courts, saying the evictions are religious discrimination.

But trust officers have said they would prefer not to evict the residents and simply have them pay the fees instead.

Even after eviction, some FLDS residents try to stymie trust representatives.

"We've been having a real problem with FLDS people even after we've had the property for weeks and months," said Wyler. "They've gone in and changed the locks."

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

June 2, 2015

NOTICE OF HEARING

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing and Revised Recommendation in the matter of Water Permit Application No. 2730-2, United Order of South Dakota

Seth Jeffs, Water Operator for United Order of South Dakota made a formal request on February 18, 2015, to alter permit application number 2730-2 to reflect a total peak rate of 200 gallons per minute (gpm) instead of 300 gpm. This is an addition of 106 gpm to their current permitted amount of 94 gpm authorized by Water Permit No. 2610-2. In terms of cubic feet of water per second (cfs), this is a request to appropriate 0.236 cfs which is an increase in the peak diversion rate authority from 0.21 cfs to 0.446 cfs. The application continues to request to drill an additional well (well #3).

The Water Management Board will conduct the hearing to consider Application No. 2730-2 at 8:30 AM (Central Time) on Thursday, July 9, 2015, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate. Future notice will be provided to all parties if there is a change to the hearing time or date.

Pursuant to SDCL 46-2A-2, the Chief Engineer revised recommendation is for APPROVAL of Application No. 2730-2 for a volume of 60 acre feet of water annually with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. The Chief Engineer's revised 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 after it reaches a conclusion based on the facts presented at the public hearing.

Applicable provisions of the notices published January 7, 2015, in the Custer County Chronicle, December 31, 2014 in the Rapid City Journal and the Notice of Hearing sent to parties of record dated January 21, 2015, still apply at this hearing.

Questions regarding the hearing process may be directed to Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215 or Eric Gronlund, Water Rights Program at (605) 773-3352.

c: Ann Mines-Bailey, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:
Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:
Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
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Fort Collins CO 80525

Lois Witte,Counsel for United States Forest Service
740 Simm St, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
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Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
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Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
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Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

CERTIFICATION

I hereby certify that on June 2, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated June 2, 2015, regarding scheduling the hearing for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Seth Jeffs
United Order of South Dakota
PO Box 5050
Custer SD 57730

Sent Inter-office to:

Ann Mines- Bailey, Assistant Attorney
General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of June, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

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REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending APPROVAL of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
June 1, 2015

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA C/O SETH JEFFS
MAY 14, 2015

Water Permit Application No. 2730-2 was received by the Department of Environment and Natural Resources-Water Rights Program (DENR-WR) on October 14, 2014. The application proposed authorization to complete a new well into the Madison aquifer (approximately 1100 feet deep) in the NW¼ SE¼ of Section 10, T6S-R3E, in Custer County. The application proposed to divert water from the new well and from two existing wells, authorized by Water Permit No. 2610-2, at a combined maximum diversion rate of 0.67 cfs (approximately 300 gallons per minute (gpm)). Water Permit No. 2610-2 currently authorizes diversions of up to a maximum rate of 0.21 cfs (approximately 94 gpm) from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. Therefore, Application No. 2730-2 proposed an increased diversion rate from the Madison aquifer of 0.46 cfs (approximately 206 gpm). The water is to be used in the United Order of South Dakota's water system.

Water Permit Application No. 2730-2 was public noticed and several interveners filed petitions in opposition to granting the permit. On February 18, 2015, the Water Rights Program received a request from the applicant to modify Application No. 2730-2 to a reduced diversion rate. Application No. 2730-2, as revised, proposes to appropriate water from the Madison aquifer at an additional maximum diversion rate of 0.236 cfs (approximately105.9 gpm) and authorize a total maximum diversion rate from a new well and the two existing wells of 0.446 cfs (approximately 200 gpm).

CURRENT WATER USAGE:

Water Permit No. 2610-2 was approved August 1, 2007, and included a qualification (No. 4) that requires the applicant to report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. A summary of the United Order of South Dakota's reported water use is shown in Table 1.

Table 1. Annual water usage associated with Water Permit No. 2610-2, as reported to the Chief Engineer (Water Rights, 2015).

Water Use Reported by United Order of South Dakota		
Year	**Gallons (Reported)**	**Acre-feet (Converted)**
2007	150,500	0.46
2008	2,813,000	8.63
2009	6,207,000	19.05
2010	8,600.900	26.40
2011	13,205,800	40.53
2012	10,635,920	32.64
2013	3,447,480	10.58
2014	8,323,600	25.54

Water Permit No. 2610-2 authorizes the use of water for the purpose of "suburban housing development" and may not exceed the amount of water needed for beneficial use. Suburban housing development use typically includes water for drinking, washing, sanitary and culinary purposes, in addition to incidental irrigation. In a February 18, 2015, letter addressed to the Chief Engineer, The National Park Service Water Resources Division and The Black Hills National Forest, Mr. Seth S. Jeffs, the United Order of South Dakota water operator, indicated the community's beneficial use of water includes "watering gardens, orchards, landscape, and feeding animals during the spring and summer months".

Drinking, washing, sanitary and culinary uses:

2014 Drinking Water Survey

An on-site evaluation at the United Order of South Dakota public water system was conducted by the Department of Environment and Natural Resources-Drinking Water Program on June 11, 2014. The evaluation report identified the system as a "Community Water System" with a total population served of 75. The on-site evaluation reported that well No.1, which was constructed in 2007, was the only well connected to the water system, and it was capable of diverting 80 gpm. The on-site evaluation reported the system was capable of supplying 95 gpm (Holan, 2014).

Watering Gardens, Orchards, Landscape, and Feeding Animals:

The areas within the United Order of South Dakota's development that appear to be cultivated or landscaped were identified by evaluating June 29, 2014, imagery available through Google Earth 7.1.2.2014. The areas, shown as polygons outlined in dark green in Figure 1, digitized using Esri® ArcGIS 10.2, total approximately seven acres. Assuming an application rate of two acre-feet per acre per year, the total annual water use at the development for watering gardens, orchards and landscape is estimated to be less than 14 acre-feet per year. Livestock watering uses cannot be estimated at this time.

Figure 1. Gardens, orchards and landscaping apparent from Google Earth

FUTURE NEEDS:

In his February 18, 2015 letter, Mr. Jeffs stated that "the number of gardens and orchards will increase as the community is able to bring more of the land into cultivation"; "the needs for animals in the future will increase the demand for water"; and "the need for fire protection is also a great concern."

Drinking, washing, sanitary and culinary uses:

Onsite Wastewater System Approvals

The DENR has approved four onsite wastewater systems for the United Order of South Dakota community. The specifics for these systems are shown in Table 2. The wastewater systems are limited to capacities approved; therefore the total maximum daily flow (MDF) for the four systems is limited to 7,560 gallons per day (gpd). Assuming 7,560 gpd for 365 days equates to total volume of 8.47 acre-feet per year.

Table 2. Onsite wastewater systems approved by DENR for the United Order of South Dakota compound. (Hipple)

ESTABLISHMENT	APPROVAL DATE	REMARKS
United Land Management	09/14/2005	Basic system, 2,160 MDF, 18-bedroom residence
United Land Management	06/28/2007	Basic system, 1,560 MDF, 13-bedroom residence
United Land Management	09/10/2007	Basic drainfield for two duplexes, total of 14 bedrooms, 1,600 MDF
United Order of SD (United Land Management)	03/03/2010	Basic system, 2160 MDF, 18-bedroom residence
MDF=maximum daily flow		

The designed wastewater flow rate used in the review of United Land Management's residential septic systems was based on 60 gallons a person per day and a maximum of 2 persons per bedroom (Hipple, 2015). Based on the onsite wastewater systems approved for the community, (i.e. maximum daily flow of 7,560 gpd, and 63 bedrooms), the onsite wastewater system capacity is 126 people.

The total future system residential demand based on a population limited by the community's onsite wastewater system capacity (126) and a per capita demand for residential use of a maximum of 130 gallons per capita per day (Lindeburg, 2012) is estimated to be 18 ac-ft/yr.

Watering Gardens, Orchards, Landscape, and Animal needs:
Increased acreage of gardens, orchards and landscape areas is difficult to predict. However, two areas, totaling approximately 14 acres, (identified in yellow in Figure 2.) were considered potentially irrigable lands based on topography and groundcover. The addition of 14 acres of gardens, orchards and landscaping, would result in a tripling of the acreage currently estimated for that use. Assuming 21 acres of gardens, orchards and landscaping, irrigated at a rate of two acre-feet per acre per year results in an estimated "irrigation" use of 42 acre-feet per year. Future animal needs cannot be estimated with the information currently available.

Figure 2. Gardens, orchards and landscaping apparent from Google Earth (shown in dark green polygons) and potentially irrigable acreage (shown in yellow polygons).

Fire Protection

"Based on United Order of South Dakota's Water Right Application stating that they will be constructing at least a 250,000 gal storage tank and the Insurance Service Office (ISO) minimum requirements for fire suppression of 1000gpm at 20psi for 2hours; the 250,000 gal storage will supply adequate domestic and fire suppression storage. The ISO required fire suppression storage should not affect annual drawdown" (Dreis, 2015).

Projected Total Future Water Use:

Future water use at the United Order of South Dakota community is estimated on an average per capita water use of 130 gallons per person per day for the maximum population capacity of the onsite wastewater systems (126), plus the irrigation of 21 acres at a maximum rate of two acre-feet per acre. This total demand is estimated to be less than 60 ac-ft/yr.

ESTIMATED IMPACTS:

In the report to the Chief Engineer titled "Water Permit Application No. 2730-2, United Order of South Dakota, November 12, 2014" (Buhler, 2014), the Theis Equation was used to compare the theoretical impact of an increase in the total pumping rate at the community of 0.67 cfs compared to 0.46 cfs. Drawdown 1000 feet from a pumped well would have increased with the increased diversion rate on the order of nine feet. The assumption of continuous pumping at the

maximum diversion rate, for one year, with no recharge, is an unrealistic assumption. As stated in the report, "The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant."

The instantaneous diversion rate proposed by this application has been revised and the drawdown that would result would be less. The impact of this application's proposed withdrawals was evaluated considering well withdrawals more likely for this community. Drawdown was evaluated at a distance of 1000 feet from a production well after one year, assuming: A. a transmissivity of 10,943.2 GPD/F; B. a Storativity of 0.0002; and C. a difference between 40.53 acre-feet per year (maximum reported pumping) and 60 acre-feet per year (projected pumping). With the assumptions above and again, assuming no recharge, drawdown can be expected to be in the vicinity of 1.1 feet ("Theis Equation Calculator").

Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Buhler, K.A., 2014, "Water Permit Application No. 2730-2 United Order of South Dakota November 12, 2014": DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

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Water Rights, 2015, Non-irrigation Yearly Reports, DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501

RECEIVED
JUN - 3 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**United Order of South Dakota's Disclosure of Expert Witness**

Pursuant to the Court's May 18, 2015 Scheduling Order, United Order of South Dakota hereby discloses the name of any expert that it intends to call as an expert witness as follows:

1. Arden D. Davis, Ph.D., P.E., 1014 Milwaukee Street, Rapid City, South Dakota 57701. A copy of Mr. Davis' March 27, 2015 expert report and his curriculum vitae is attached.

Dated this 1st day of June, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly
Attorneys for United Order of South Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

I hereby certify on this 16 day of June, 2015, I mailed by first-class U.S. mail, a true and correct copy of a United Order of South Dakota's Designation of Expert Witness to the following:

Jeanne Goodman, Chief Engineer
Water Rights Program
Foes Building
523 East Capitol
Pierre, SD 57501

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

William Hansen
Jeff Hughes
Peter A. Fahmy
National Park Service
Water Resources Division
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Fort Collins, CO 80525-5596

Craig Bobzien
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Black Hills National Forest
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Cheryl Schrempp Dupris
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Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly

RECEIVED
JUN - 3 2015
WATER RIGHTS PROGRAM

Groundwater in the Madison Aquifer

With Regard to Water Permit Application No. 2730-2

Arden D. Davis, Ph.D., P.E.
1014 Milwaukee Street
Rapid City, South Dakota 57701

March 27, 2015

Introduction

This report was prepared in regard to Water Permit Application No. 2730-2, which under the Applicant's revised application requests 0.23 cubic feet per second (cfs) of water from the Madison aquifer. The request for 0.46 cfs was modified to 0.23 cfs by the applicant in a letter of February 18, 2015. A new Madison well would be constructed to augment production from two existing wells that were authorized in a previous permit (Water Permit 2610-2). The wells are in the NW ¼ SE ¼ of Section 10, T. 6 S., R. 3 E., in Custer County, South Dakota. The new well would be about 900 feet from the existing wells at the site.

The Madison aquifer underlies much of the southern Black Hills area and contains abundant groundwater supplies. The Madison aquifer, at the site of Water Permit Application No. 2730-2, is understood by current scientific literature to be fully saturated (Carter et al., 2002), as shown on Figure 1. Groundwater in the Madison aquifer is an under-utilized and almost undeveloped resource in the vicinity of the requested withdrawals. In the S.D. DENR review of Water Permit Application No. 2730-2, Mr. Buhler

(2014) noted no other existing water rights/permits for the Madison aquifer within ten miles or more of the applicant site. Additional evidence of the under-utilized nature of the Madison aquifer, in the area of the requested permit, is available in reports of the U.S. Geological Survey. A potentiometric map of the Madison aquifer in the Black Hills (Strobel et al., 2000) showed no Madison wells for water-level contours in the entire 36 square mile area of T. 6 S., R. 3 E. (Figure 2). Therefore there are no other water permit demands for the aquifer within the 36 square miles.

Concerns Raised by the National Park Service

The National Park Service filed a petition in 2014 to intervene in the matter of Application No. 2730-2. In its petition letter, the National Park Service cited a concern about water levels in the Madison aquifer within Wind Cave National Park. The letter showed calculated values of predicted drawdown at a distance of 13 miles from the site of the requested Water Permit Application No. 2730-2. Assumptions underlying the use of the equations appear to be faulty. The petitioner's assumed values of the aquifer properties used in the calculations are quite variable. For example, the calculations used a storage coefficient value of 0.0002 in trying to predict drawdown at a distance of thirteen miles, from the site of the requested water permit to Wind Cave, even though the outcrop of the Madison Limestone (i.e., part of its recharge area) is exposed between Wind Cave and the site of Water Permit Application No. 2730-2. The aquifer would receive recharge at its outcrop area, but the Theis equation assumes that no recharge occurs during drawdown calculations. Recharge to the aquifer would reduce any drawdown from pumping.

At the outcrop area and eastward toward Wind Cave, the aquifer would be under water-table (unconfined) conditions. It is not appropriate to use a small storage coefficient value such as 0.0002 (which is typical of a confined aquifer) in such an area. The groundwater in Wind Cave and its lakes is under atmospheric pressure and is not confined by the overlying weight of rocks, because the cave is open to the atmosphere. Therefore, the Madison aquifer is not a confined (artesian) aquifer at the cave, and the water is not under pressure by an overlying confining layer. A very small storage coefficient of 0.0002 implies confined conditions (Freeze and Cherry, 1979) and is not suitable for predicting drawdowns at the Wind Cave lakes. A storage coefficient value of 0.0002 would give inappropriately large calculated values of drawdown at Wind Cave, compared to values of drawdown calculated with a storage coefficient value that would be typical of an unconfined (water-table) aquifer at the cave. For areas where an aquifer is unconfined, a storage value much larger than 0.0002 normally should be used. Accordingly, calculated drawdowns from pumping would be less.

The deep lakes at Wind Cave are mainly at the eastern and southeastern side of the cave, approximately 13 miles or more from the site of Water Permit Application No. 2730-2. This is a long distance (more than 68,000 feet) for extrapolating drawdowns; it is noted that in his review of the application, Mr. Buhler (2014) extended his extrapolated drawdowns to a distance of 2000 feet away, which is much more reasonable than a longer distance, because of variability of aquifer properties and uncertainty about hydrologic conditions.

The transmissivity and storage coefficient values of the Madison aquifer are not known with certainty in the Black Hills and can be quite

variable. It is at best speculative to assert that drawdowns of 6 to 9 feet or more would occur at Wind Cave because of pumping occurring about 13 miles away at the site from Water Permit Application No. 2730-2.

It is also important to report that the site of requested applicant withdrawals does not appear to be upgradient from Wind Cave and therefore would be less likely to result in an adverse effect at the cave.

Concerns Raised by the Black Hills National Forest

The United States Department of Agriculture, Black Hills National Forest, in January of 2015 filed a petition to intervene in the matter of Application No. 2730-2. In its letter, the National Forest expressed concern that withdrawals could over time affect the warm water spring ecosystem at Cascade Springs. However, Cascade Springs are approximately 17 miles from the site of requested applicant withdrawals from the Madison aquifer, which is a very long distance for extrapolating effects of pumping. In addition, water at the site of Water Permit Application No. 2730-2 is approximately 54° F, which is much cooler than the warm spring water at Cascade Springs (about 68° F). There is no close hydraulic connection between the applicant's site and Cascade Springs.

The Forest Service letter petition states that there are no known structural features between the area of the well and Cascade Springs that would be expected to isolate the effects of well pumping from the springs. However, U.S. Geological Survey maps by Driscoll et al. (2002) and Strobel et al. (2000) show a long, synclinal fold between the well site and Cascade Springs, which limits any hydraulic connection across this distance (see Figure 3). The axis of a synclinal fold normally is an area of compression in which fractures tend to remain closed, which would limit permeability and

thus limit hydraulic connection between the applicant's well site and Cascade Springs.

Evans Plunge is a warm-springs swimming pool (approximately 87° F) that is fed by springs along the Fall River in Hot Springs (see Figure 3). The springs at Evans Plunge are more than 15 miles from the area of the applicant's site. The source of the springs is believed to be the Madison aquifer (Carter and others, 2002). According to research by Back et al. (1983) the calculated age of water at Evans Plunge was 1,900 years before present. Back et al. (1983) did not calculate an age for the water at Cascade Springs, because of problems with possible mixing of water from the Minnelusa or other aquifers, and Cascade Springs is farther south than Evans Plunge. We can conclude that a very long travel time would be involved for water that emerges at Cascade Springs, indicating that it is extremely unlikely that pumping at the applicant's site would affect the springs.

Conclusions

Groundwater in the Madison aquifer is an under-utilized and almost undeveloped resource in the vicinity of the requested withdrawal for Water Permit Application No. 2730-2. The Madison aquifer is generally understood to be fully saturated at the site. No existing water rights for Madison aquifer wells appear to be within approximately ten miles of the applicant's site. The requested additional diversion of 0.23 cubic feet per second is not expected to have any adverse effect on other Madison wells, or the water at Wind Cave, or Cascade Springs, because of the distances (12 miles or more) that are involved. The requested withdrawals from the Madison aquifer are reasonable for their intended use.

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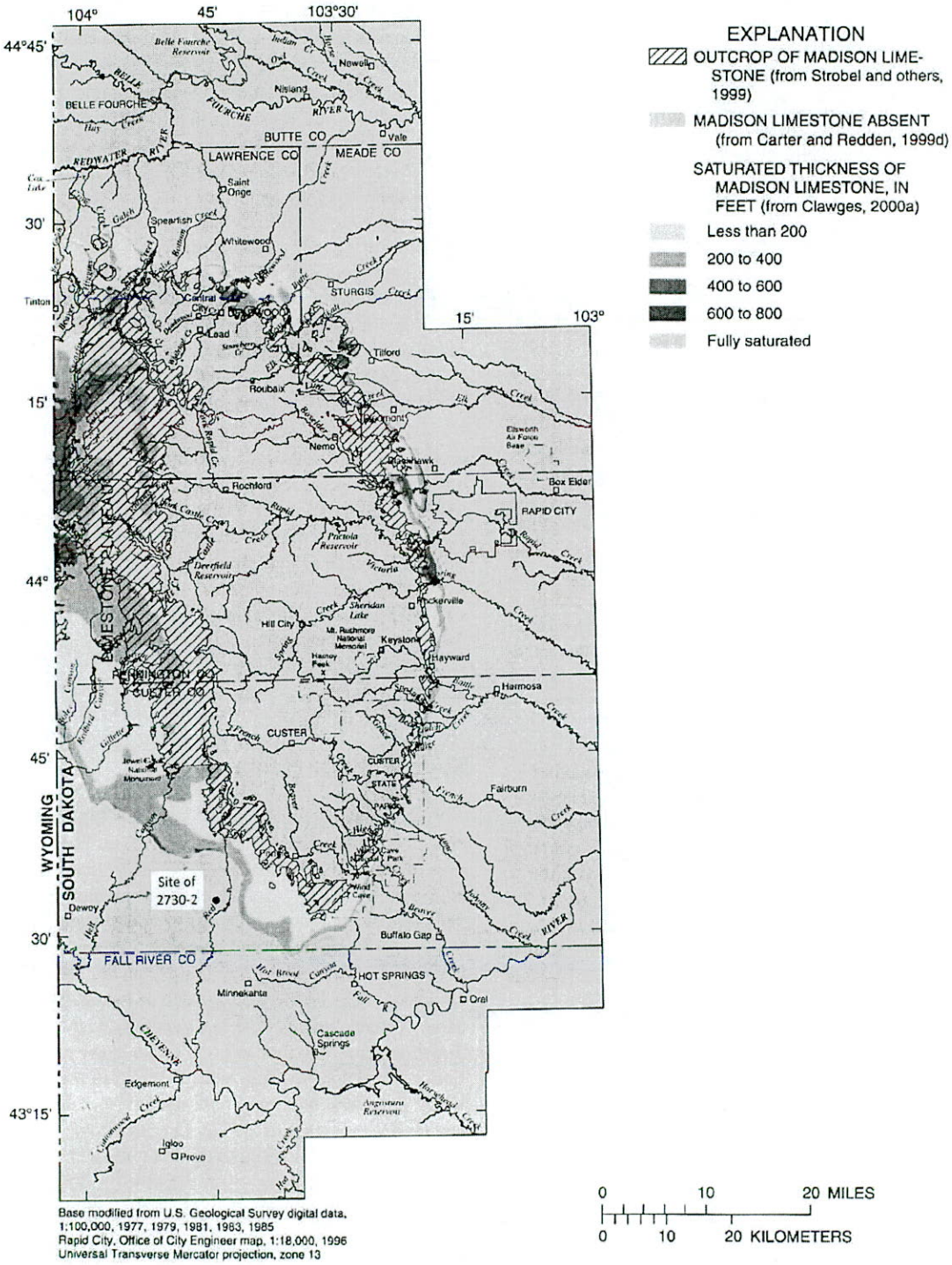

Figure 1. Saturated thickness of the Madison aquifer in the Black Hills (from Driscoll et al., 2002).

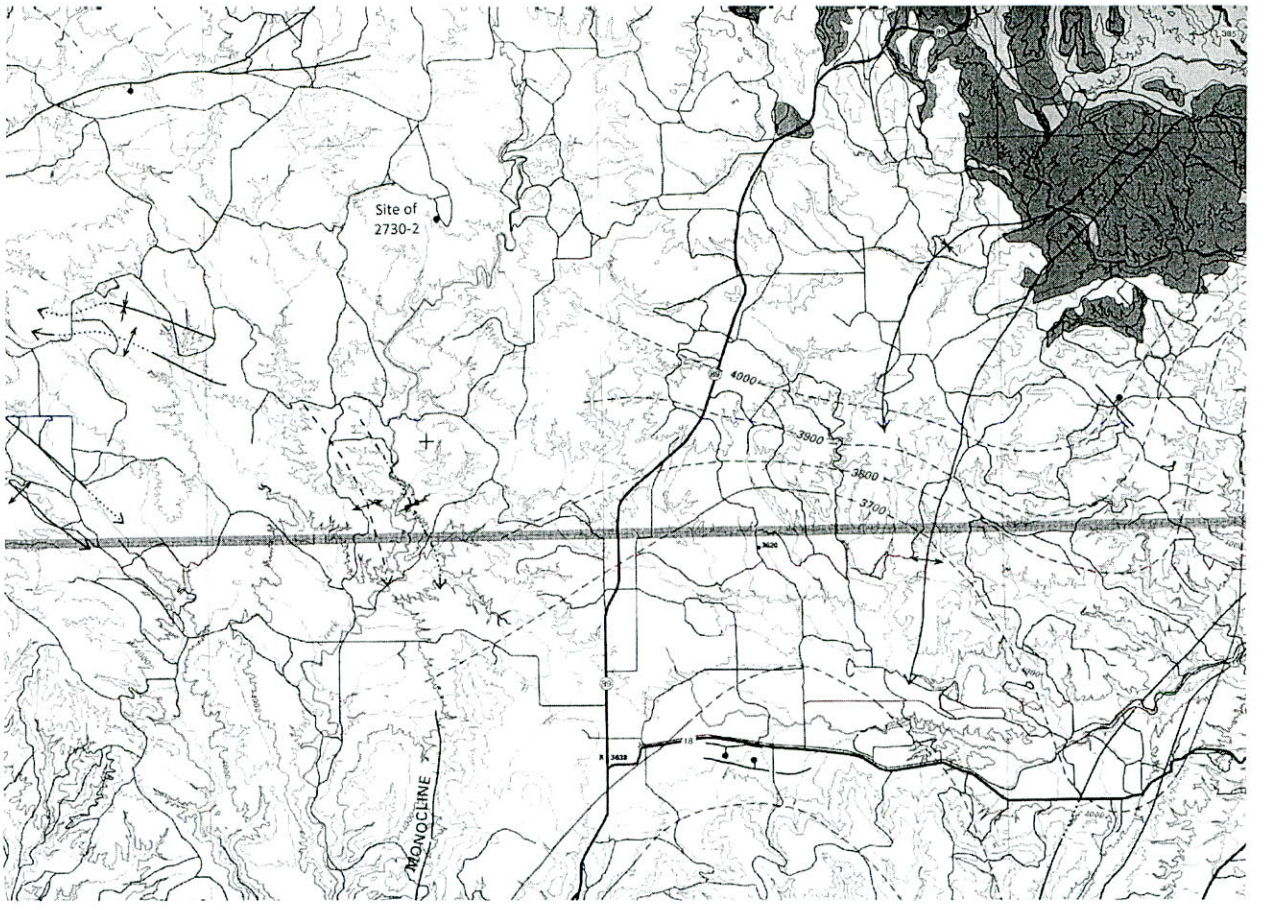

Figure 2. Potentiometric map of the Madison aquifer (from Strobel et al., 2000) showing few or no Madison wells near the site of Water Permit Application 2730-2.

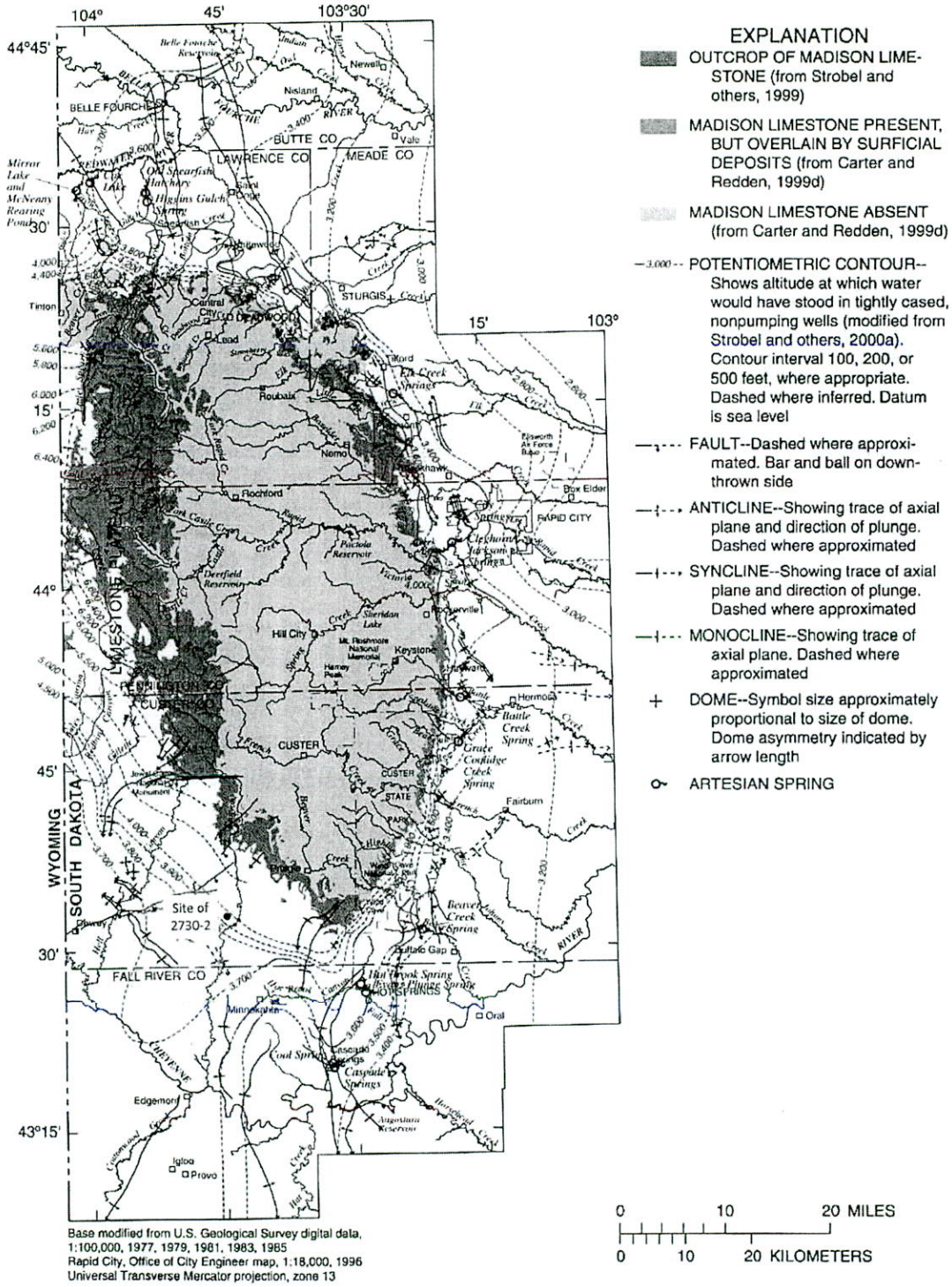

Figure 3. Madison aquifer in the Black Hills area (from Driscoll et al., 2002).

Arden D. Davis

Arden Davis received a B.A. degree in geology from the University of Minnesota and M.S. and Ph.D. degrees in geological engineering from South Dakota School of Mines and Technology.

Dr. Davis currently is Professor in the Department of Geology and Geological Engineering at South Dakota School of Mines and Technology. Since 1982 he has served as Instructor, Assistant Professor, Associate Professor, Professor, and Chairman of the Department of Geology and Geological Engineering. During that time he has worked on digital modeling of ground-water flow as well as transport and dispersion of subsurface contaminants. He teaches courses in ground water, digital modeling of ground-water flow and contaminant transport, ground-water geochemistry, analytical methods in ground water, and geological engineering design.

Dr. Davis is a Registered Professional Engineer in South Dakota. He also is a member of the Society for Mining, Metallurgy, and Exploration (SME). He has served as associate editor and reviewer for the journal of Ground Water, and as a book reviewer for the Bulletin of the Association of Engineering Geologists. He has served as chairman of the Council of Education and the Accreditation and Curricular Issues Committee of the Society for Mining, Metallurgy, and Exploration. From 2002 to 2007, Dr. Davis served on the Engineering Accreditation Commission of ABET. In 2007, he was appointed to the ABET Board of Directors and served a three-year term. In 2010, he was re-appointed to the ABET Board of Directors.

During his career at South Dakota School of Mines and Technology, Dr. Davis has worked extensively on ground-water projects and geological engineering site evaluations. He has been an investigator in more than fifty funded research projects. As a consultant he has provided expert witness testimony in cases involving environmental contamination and disposal of waste. He also has given technical assistance to the South Dakota Department of Environment and Natural Resources in the review of mining plans and ground-water contamination problems, including Superfund sites. He and his co-researchers hold a U.S. patent for removal of arsenic from water, and they have applied for a second patent for removal of metals from water.

In his service to South Dakota School of Mines and Technology, Dr. Davis has acted as Geological Engineering Program Coordinator and ABET Coordinator for geological engineering accreditation. This included revision of the geological engineering curriculum, origination and teaching of new engineering design courses, and preparation of ABET reports. He also is active in ground-water protection efforts, and in 1998 received the Virginia Simpson Award for community service in the Rapid City area. In 2007, he received the Ennenga Award for Excellence in Teaching. In 2014 he received the Ivan Rahn Education Award from SME, and in 2015 he was presented with the Distinguished Service Award of the Environmental Division of SME.

Arden D. Davis

Academic rank:	Professor, Department of Geology and Geological Engineering	
Education:	B.A. - 1971	University of Minnesota (Geology)
	M.S. - 1979	South Dakota School of Mines and Technology (Geological Engineering)
	Ph.D.- 1983	South Dakota School of Mines and Technology (Geological Engineering)

Registered Professional Engineer (South Dakota; No. 4663)

Experience:	2006 - present	Professor S.D. School of Mines and Technology
	2002 - 2006	Chairman Dept. of Geology and Geological Engineering S.D. School of Mines and Technology
	1995 - 2002	Professor S.D. School of Mines and Technology
	1989 - 1994	Associate Professor S.D. School of Mines and Technology
	1984 - 1989	Assistant Professor S.D. School of Mines and Technology
	1982	Instructor
	1976-1982	Teaching and Research Assistant
	1978	Shell Development (Shell Oil Company)

Teaching:	Digital Modeling of Ground-Water Flow Systems, Ground Water, Ground-Water Geochemistry, Geochemistry, Analytical Methods in Ground Water, Advanced Ground Water, Engineering Field Geology, Geological Engineering Design Project I
Consulting:	Ground-water hydrologist and geological engineering consultant for numerous projects over past thirty years involving ground-water contamination, aquifer evaluation, low-level radioactive waste site evaluation, spring-flow measurements, and mine site development.
Funded research:	Projects involving ground-water contamination, ground-water resource evaluation, aquifer vulnerability, water quality, and mine waste.
Community service:	Ground-water protection efforts (see following pages).
Theses:	Forty eight M.S. theses and twelve Ph.D. dissertations supervised.

Consulting:

2015	Siting of pipeline; water rights application
2014	Spring discharges
2013	Spring discharges
2012	Expert witness testimony – proposed pipeline
2011	Spring discharges
2010	Madison aquifer well for municipal water supply.
2009	Expert witness testimony: springs and potential effects of nearby wells.
2008	Ground-water model for permit application.
2007	Siting of new Madison wells for public water supplies in the Black Hills.
2006	Modeling of ground-water flow and biodegradation of benzene.
2005	Modeling of ground-water flow and gasoline contamination.
2004	Ethylene dibromide contamination; expert witness.
2003	Alliance of Architects and Engineers; expert witness.
2002	Alliance of Architects and Engineers; expert witness.
2001	Consolidated Engineers & Materials Testing; GeoTek; expert witness.
2000	Hillcrest Spring Water; Rapid City Landfill; expert witness.
1999	Boyd County LLW Monitoring Committee; Gill Landfill modeling.
1998	Boyd County LLW Monitoring Committee; Rapid City Landfill.
1997	Boyd County LLW Monitoring Committee; Terra, Inc., modeling.
1996	Terra, Inc., modeling; Boyd County LLW Monitoring Committee.
1995	Terra, Inc.; modeling for City of Ida Grove, Iowa; Vogel Paint and Wax.
1994	Keystone Gold Project, Keystone, South Dakota. Dunbar Resort: proposed railroad grade, Deadwood, South Dakota. Vogel Paint and Wax Superfund Site, Maurice, Iowa.
1993	Keystone Gold Project, Keystone, South Dakota. Vogel Paint and Wax Superfund Site, Maurice, Iowa. Low-level radioactive waste site evaluation and modeling.
1992	City of Rapid City: criteria for private wastewater disposal facilities. Nitrate contamination from mine waste.
1991	Corrosion problems during geothermal heating.
1990	Low-level radioactive waste site evaluation. South Dakota Department of Environment and Natural Resources: cyanide contamination.
1989	Wastewater facility site evaluation. South Dakota Department of Environment and Natural Resources: review of mine plan, northern Black Hills.
1988	Expert witness: gasoline contamination of ground water.
1987	South Dakota Department of Environment and Natural Resources: modeling of gasoline contamination. Utility Engineering Company: aquifer test evaluation. Gasoline contamination of ground water.
1986	South Dakota Department of Environment and Natural Resources.
1985	South Dakota Department of Environment and Natural Resources: ground-water contamination.

1983 Rosebud Sioux Tribe: aquifer evaluation.
1981 Save Wyoming Water: drawdown calculations.
South Dakota Public Utilities Commission: aquifer evaluation.
1981 Evans Plunge, Hot Springs, South Dakota: spring discharges.
1979 U.S. Environmental Protection Agency; Engineering Science, Inc.

Community Service:

Assisted City of Rapid City and Pennington County in determining aquifer vulnerability in the Rapid City area. Assisted U.S. Environmental Protection Agency and South Dakota Department of Environment and Natural Resources as member of Technical Advisory Team, Gilt Edge Superfund Site.

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Davis, A.D., and Long, A.J., 1998, Ground-water issues in the coupling of a subsurface flow model to atmospheric and surface-water models in complex terrain: GEWEX Continental-Scale International Project, Annual Meeting, St. Louis, Missouri.

Davis, A.D., Webb, C.J., and Nelson, K.C., 2004, Acid rock drainage and the potential for impacts at selected abandoned mine sites in the Black Hills National Forest. Presented at 2004 SME Annual Meeting, Denver, Colorado.

Webb, C.J., and Davis, A.D., Arsenic remediation of drinking water using modified limestone: American Chemical Society, Anaheim, California.

Miller, S.L., Davis, A.D., and Lisenbee, A.L., Long, A.J., Putnam, L.D., Lester, J.D., and Hargrave, R.G., 2004, Vulnerability mapping of the Madison aquifer near Rapid City area, South Dakota: Western South Dakota Hydrology Conference, Rapid City, South Dakota, April, 2004.

Lisenbee, A.L., Davis, A.D., Paterson, C.J., Stetler, L.D., Miller, S.L., and Hargrave, R.G., 2004, Geologic atlas of the Rapid City West 7.5-minute quadrangle: Western South Dakota Hydrology Conference, Rapid City, South Dakota, April, 2004.

Davis, A.D., and Webb, C.J., 2005, Progress toward a National Underground Science and Engineering Laboratory at the Homestake Mine in Lead, South Dakota: Annual Meeting, Society for Mining, Metallurgy, and Exploration, Salt Lake City, Utah, February, 2005.

Davis, A.D., Webb, C.J., Dixon, D.J., and Sorensen, J.L., 2006, Arsenic removal from drinking water by limestone-based material: SME Annual Meeting, Technical Program: Limestone – Nature's Miracle Rock; March, 2006, St. Louis, Missouri.

Davis, A.D., 2006, Modeling of natural biodegradation of gasoline contamination at a site in eastern South Dakota: Presented at 18th Annual Environmental and Ground Water Quality Conference, March, 2006, Pierre, South Dakota.

Sorensen, J.L., Davis, A.D., Dixon, D.J., and Webb, C.J., 2006, Development of an agglomeration process to increase the efficiency of limestone-based material for removing metals from drinking water: Presented at 18th Annual South Dakota Ground-Water Quality Conference, March, 2006, Pierre, South Dakota.

Sorensen, J.L., Davis, A.D., Dixon, D.J., and Webb, C.J., Controlling factors on arsenic removal from water by limestone-based material: Western South Dakota Hydrology Conference, April, 2006, Rapid City, South Dakota.

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Johnson, D., Lisenbee, A.L., and Davis, A.D., 2007, Aquifer characteristics of Precambrian basement rocks in the Pactola Dam quadrangle, South Dakota: Western South Dakota Hydrology Conference, April 19, 2007, Rapid City, South Dakota.

Lisenbee, A.L., Francisco, E.M., Davis, A.D., and Pellowski, C., 2007, Vulnerability of the Inyan Kara aquifer, Hermosa and Hermosa NW quadrangles, Black Hills Development Corridor: Western South Dakota Hydrology Conference, April 19, 2007, Rapid City, South Dakota.

Francisco, E.M., Lisenbee, A.L., and Davis, A.D., 2007, Aquifer vulnerability in the Blackhawk quadrangle, South Dakota: Western South Dakota Hydrology Conference, April 19, 2007, Rapid City, South Dakota.

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Valder, J.F., and Davis, A.D., 2007, Pumping tests in the Deadwood aquifer at Jewel Cave National Monument, Custer County, South Dakota: Western South Dakota Hydrology Conference, April 19, 2007, Rapid City, South Dakota.

Davis, A.D., and Elifrits, C.D., 2011, ABET Geological Engineering and Mining Engineering Criteria Training: Society for Mining, Metallurgy, and Exploration, February 26, 2011, Denver, Colorado.

Davis, A.D., Webb, C.J., Sorensen, J.L., and Dixon, D.J., 2013, Thermodynamic constraints on arsenic and heavy-metals removal from water with limestone-based material: Annual Meeting, Society for Mining, Metallurgy and Exploration, Denver, Colorado, February, 2013.

Davis, A.D., Lisenbee, A.L., Price, M.H., Aurand, A., Bednar, J., and Tekle, M., 2013, Water-quality sampling of Precambrian crystalline aquifers in the central Black Hills: Western South Dakota Hydrology Conference, Rapid City, South Dakota, April 18, 2013.

Davis, A.D., and Elifrits, C.D., The importance of ABET engineering accreditation to SME: Presented to the SME Board of Directors, February, 2013.

Davis, A.D., Elifrits, C.D., Keaton, J.R., and Sweigard, R., SME Program Evaluator Training: Presented to geological engineering and mining engineering program evaluators, SME Annual Meeting, Denver, Colorado, February, 2013.

Davis, A.D., Lisenbee, A.L., and Price, M.H., Smith, G.R., Walega, E.A., and Tiruneh, H.W., Groundwater quality in Precambrian crystalline aquifers of the central Black Hills: Western South Dakota Hydrology Conference, Rapid City, South Dakota, April, 2014.

Davis, A.D., Groundwater resources and potential issues in northwestern South Dakota: New Horizons Oil and Gas Conference, Rapid City, South Dakota, April, 2014.

Davis, A.D., Elifrits, C.D., Skaggs, G.L., and Sweigard, R., SME Program Evaluator Training: Presented to geological engineering and mining engineering program evaluators, SME Annual Meeting, Denver, Colorado, February, 2014.

U.S. Patent:

Webb, Cathleen Joyce, Arden Duane Davis, and David John Dixon, "Method and composition to reduce the amounts of arsenic in water," United States Patent 7,790,653, 7 September 2010.

Provisional U.S. Patent Application:

Webb, Cathleen Joyce, Arden Duane Davis, and David John Dixon, "Method and composition to reduce the amounts of heavy metal in water," United States Patent and Trademark Office, Provisional application for patent, SDSM-1064434, Serial no. 61/393,806.

Related research:

Grainger Prize for Sustainability: HydroTech Engineering and Rohm & Haas (collaboration): Limestone-based arsenic-removal method; selected for Round II of competition.

Recent Research Funding:

National Science Foundation: SGER: Characterization of the Precambrian Aquifer at the Homestake DUSEL: Dr. Larry D. Stetler, Dr. Arden D. Davis, and Dr. Rohit Salve (Lawrence Berkeley Laboratory), $75,000.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Acidic Leaching Tests to Determine Arsenic Mobility from Concrete-Encapsulated Limestone Waste: Dr. Arden D. Davis, Dr. M.R. Hansen, and Dr. David J. Dixon, $12,131.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Investigation of Arsenic Removal from Water by Microbiologically Induced Calcite Precipitation: Dr. Arden D. Davis, Dr. Sookie S. Bang, and Dr. David J. Dixon, $13,983.

U.S. Bureau of Land Management: Belle Eldridge Mine Sampling and Monitoring, Phase III, $4,500 (additional); Arden D. Davis, Principal Investigator.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Development of an agglomeration process to increase the efficiency of limestone-based material to remove metals from drinking water: Dr. Arden D. Davis and Dr. David J. Dixon, $10,897.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Fixed-bed adsorption column studies and engineering scale-up design of a limestone-based metals removal technology for small water supply systems: Dr. Arden D. Davis and Dr. David J. Dixon, $12,918.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Leaching tests for encapsulation of waste after arsenic removal from drinking water: Dr. Arden D. Davis, Dr. David J. Dixon, and Dr. M.R. Hansen; $11,873.

U.S. Department of the Interior, National Park Service; Jewel Cave Pumping Test; Dr. Arden D. Davis, Principal Investigator; $8,800.

U.S. Bureau of Land Management: Belle Eldridge Mine Sampling and Monitoring, Phase III, $4,500 (additional); Arden D. Davis, Principal Investigator.

West Dakota Water Development District: Determination of historic ground water pollution problems, Part II: Pactola Dam, Rapid City West, and the North One-Half of Rockerville quadrangles; $9,162; Dr. Alvis L. Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Aquifer susceptibility study of the Pactola Dam quadrangle, South Dakota: Part II – Precambrian: $9,112; Dr. Alvis L. Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Aquifer mapping (1:24,000) of the Hermosa NW quadrangle; $13,538; Dr. Alvis L. Lisenbee, Principal Investigator; Dr. Arden D. Davis and Dr. Larry Dr. Stetler, Co-Principal Investigators.

West Dakota Water Development District: Preliminary aquifer vulnerability and susceptibility study of the Blackhawk quadrangle; $15,988; Dr. Alvis Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Geologic mapping of the Mt. Rushmore quadrangle, South Dakota; $14,970; Dr. Alvis Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Aquifer vulnerability study of the Rockerville quadrangle, South Dakota; $14,763; Dr. Alvis Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

Phase I Small Business Innovation Research Grant, U.S. Environmental Protection Agency, Limestone-Based Material for Arsenic Removal from Drinking Water: Dr. Cathleen J. Webb, Dr. Arden D. Davis, Dr. David J. Dixon, and Dr. Terrence L. Williamson; $100,000.

Phase II Small Business Innovation Research Grant, U.S. Environmental Protection Agency, Limestone-Based Material for Arsenic Removal from Drinking Water: Dr. Cathleen J. Webb, Dr. Arden D. Davis, Dr. David J. Dixon, and Dr. Terrence L. Williamson; $225,000.

National Science Foundation, Statewide Partnership to Support Technology Innovation and Entrepreneurship in South Dakota (PFI), University of South Dakota: Arsenic Removal from Drinking Water; John C. Lofberg, Dr. Arden D. Davis, and Dr. David J. Dixon; $35,826.

West Dakota Water Development District: Crystalline Aquifers of the Central Black Hills, South Dakota: Phase IV: Dr. Alvis L. Lisenbee, Dr. Arden D. Davis, and Dr. Maribeth Price; $44,000.

West Dakota Water Development District: Crystalline Aquifers of the Central Black Hills, South Dakota: Phase III: Dr. Alvis L. Lisenbee, Dr. Arden D. Davis, and Dr. Maribeth Price; $41,000.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Investigation of the Contribution of Coliform Contamination in Runoff from Scoured Bed Sediments: Dr. Jennifer L. Benning, Dr. Scott J. Kenner, and Dr. Arden Davis, $14,913.

West Dakota Water Development District: Crystalline Aquifers of the Central Black Hills, South Dakota: Phase II; Dr. Laurie Anderson, Principal Investigator; Dr. Alvis L. Lisenbee, Dr. Arden D. Davis, and Dr. Maribeth H. Price, Co-Principal Investigators; $33, 020.

Pete Lien and Sons, Inc: Optimization and characterization of iron-loaded limestone as a medium for the removal of arsenic from drinking water; Dr. Arden D. Davis, Principal Investigator; Dr. David J. Dixon, Co-Principal Investigator; $8,800.

City of Custer, South Dakota: Water Sampling of Crystalline and Alluvial Aquifers at Custer, South Dakota: Dr. Arden D. Davis, Principal Investigator; Dr. J. Foster Sawyer, Dr. Alvis L. Lisenbee, and Dr. Maribeth H. Price, Co-Principal Investigators; $25,000.

U.S. Department of the Interior, Bureau of Land Management: Environmental Monitoring of the Belle Eldridge Mine: Dr. Arden D. Davis, Principal Investigator; $5,000.

US Department of Justice

Randolph J. Seiler
Acting United States Attorney
District of South Dakota

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JUN - 5 2015
WATER RIGHTS PROGRAM

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May 29, 2015

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William R. Hansen, Chief
Water Rights Branch
National Park Service
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Ft. Collins, CO 80525

Re: National Park Service v. United Order of South Dakota
Sixth Judicial Circuit Court / Water Permit Application No. 2730-2

Ladies and Gentlemen:

Enclosed is the 1) NPS's Disclosure of Expert, 2) Curriculum Vitae of Jeffrey C. Hughes, 3) Curriculum of Andrew J. Long, PhD, 4) Curriculum of Rod Horrocks, 5) Expert Witness Powerpoint of Jeffrey C. Hughes, 6) Expert Witness Powerpoint of Andrew J. Long, PhD, and 7) Expert Witness Poweroint of Rod Horrocks.

Please consider this as service by mail upon you. Thank you.

Sincerely,

Randolph J. Seiler
Acting United States Attorney

Cheryl A DuPris

Cheryl Schrempp DuPris
Assistant U.S. Attorney

/rla
Enclosures

Cc: Peter Fahmy
Lois Witte

RECEIVED
JUN - 5 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**National Park Service's Disclosure of Experts**

Pursuant to the Procedural and Scheduling Order dated May 18, 2015, the National Park Service discloses the following names of persons that may testify as expert witnesses at the hearing on the above-captioned matter:

1. Jeffrey C. Hughes, 3221 Honeysuckle Court, Fort Collins, CO 80521
2. Dr. Andrew J. Long, 1608 Mountain View Rd, Rapid City, SD 57702
3. Rodney D. Horrocks, 2201 Wilson Ave. Hot Springs, SD 57747

A copy of each expert's *curricula vitae* and presentation, which will be offered into evidence in the event that the expert testifies at the hearing on the above-captioned matter, is attached.

DATED this 29th day of May, 2015.

RANDOLPH J. SEILER
ACTING US ATTORNEY

Cheryl A DuPris

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
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Cheryl.Dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2015, a true and correct copy of the foregoing **NPS's Disclosure of Expert, Curriculum Vitaes of Jeffrey C. Hughes, Dr. Andrew Long, and Rodney D. Horrocks, and Expert Witness Powerpoints of Jeffrey C. Hughes, Dr. Andrew J. Long, and Rodney D. Horrocks**, were mailed postage pre-paid in the United States Mail to:

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And on the same date, the original was mailed to Jeanne Goodman, Chief Engineer, DENR Water Rights Program, Joe Foss Building, 523, E. Capitol Avenue, Pierre, SD, 57501.

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Curriculum Vitae

Jeffrey C. Hughes
3221 Honeysuckle Court
Fort Collins, CO 80521

Present position: Hydrologist, National Park Service
Water Resources Division
1201 Oakridge Drive, Suite 250
Fort Collins, CO 80525
(970) 225-3527

Education: B.S. – Watershed Management, Colorado State University (1981)
M.S. – Watershed Sciences, Colorado State University (1983)

Employment:

1988 – Present	Hydrologist, GS 9/11/12, National Park Service Water Resources Division
1986 – 1988	Research Associate, Colorado State University, working for the National Park Service, Water Resources Division
1986	Hydrologist, Resource Consultants, Inc.
1985 –1986	Hydrologist, U.S. Forest Service
1984 – 1985	Research Associate, Resource Consultants, Inc.
1984	Hydrologic Technician, Simons Li, and Associates
1983	Hydrologic Technician, U.S. Forest Service
1981 – 1983	Research Assistant, Colorado State University

Honors: National Park Service Fast Track Award, 1990; Unit Award for Excellence of Service (Water Rights Branch), 1992; Special Achievement Award, 1994; Star Award, 1996; Quality Step Increase, 1999; On-the-Spot Award, 2000; Time Off Award, and On-The-Spot Awards, 2001, Individual Cash Award, 2009; Individual Time-Off Award, 2010; Star Award, 2011; Individual Cash Award, 2014; Individual Time-Off Award 2014

Current Duties: Project Leader for the National Park Service, Water Resources Division, Water Rights Branch. Responsible for evaluating water right applications near NPS units and determining if the proposed

water development will adversely affect NPS water rights and water-dependent resources. File protests and objections when necessary. Also design and conduct studies to determine and protect NPS water rights and water-dependent resources. Oversee contracts and agreements with other private entities and other Federal agencies to perform work for the NPS. Provide water rights technical assistance to parks as needed.

Groundwater-related work:

Since 1994, evaluate water right permit applications to determine if proposed groundwater withdrawals will remove groundwater hydrologically connected to surface water within five NPS units within Montana (Glacier National Park, Yellowstone National Park, Big Hole National Battlefield, Little Bighorn Battlefield National Monument, and Bighorn Canyon National Recreation Area) as required by the Water Rights Compact between the State of Montana and the United States, National Park Service. This Compact also established the Yellowstone Controlled Groundwater Area, which is a designated basin surrounding the park within Montana for the protection of the Yellowstone geothermal system. Represent the NPS, Water Resources Division in meetings with the state of Montana concerning the management of the Controlled Groundwater Area. Also responsible for evaluating applications to appropriate groundwater for potential impacts to Florissant Fossil Beds National Monument, Colorado National Monument, Bent's Old Fort National Historic Site, Wind Cave National Park, and assist other NPS hydrologists on similar evaluations for Zion National Park, Great Basin National Park, and Lake Mead National Recreation Area. File objections when required.

Manage agreements and contracts with federal agencies and private consultants for groundwater-related work to increase our understanding of groundwater flow systems important to NPS units in Nevada, Arizona, Utah and South Dakota. Evaluate claims in the ongoing water rights adjudication in Montana for potential injury to Montana NPS water rights.

Publications:

Hughes, J.C., M.G. Cavendish, and M.D. Flora. 1986. A Summary of Water Quality for the Menard Creek Corridor Unit, Lancer Rosier Unit, and Little Pine Island Bayou Unit of the Big Thicket National Preserve, Texas (1975-1983). Technical Report 86-8. National Park Service, Water Resources Division, Fort Collins, CO. 69 pp.

Hughes, J.C., M.D. Flora and J.C. Woods. 1987. Big Thicket National Preserve: Water Quality Report 1984-1986. Water Resources Report 97-2. National Park Service, Water Resources Division, Fort Collins, CO. 80 pp.

Williams, O.R., J.S. Albright, P.K. Christensen, W.R. Hansen, J.C. Hughes, A.E. Johns, D.J. McGlothlin, C.W. Pettee, and S.L. Ponce. 1996. Water Rights and Devils Hole Pupfish at Death Valley National Monument. **In** Science and Ecosystem Management in the National Parks. W.L. Halvorson and G.E. Davis, editors. University of Arizona Press, Tucson, AZ. 364 pp.

Diaz, G.E., O. Elbadawy, J.C. Hughes and J.D. Salas. 1995. In search of Hydrologic Similarity: A Case Study on Molokai, Hawaii. **In** Proceedings of the Summer Symposium, American Water Resources Association. June 25-28, 1995. Edited by R. Herrmann, W. Black, R.C. Sidle and A.I. Johnson. Honolulu, HI. 496 pp.

Ayers, P.D. and J.C. Hughes. 2010. Underwater video habitat mapping at Obed Wild and Scenic River. Park Science, Vol. 27, No 2. p 24 – 25.

Hughes, J.C., J.R. Duncan, R.R. Knight, B.C. Harrold, and W.J. Wolfe, 2014. Challenges and Opportunities in Protecting the Obed Wild and Scenic River. Presses Universitaires de Bordeaux et LGPA-Editions, Bordeaux, *Dynamiques Environmentales*, 31, pp 67 – 79

Curriculum Vitae

Andrew J. Long, PhD
Research Hydrologist
U.S. Geological Survey
South Dakota Water Science Center (SDWSC)
1608 Mountain View Rd, Rapid City, South Dakota 57702

Office: 605-355-3237
Cell: 605-381-1251
Email: ajlong@usgs.gov
https://profile.usgs.gov/ajlong

Summary

My background includes over 20 years of experience modeling groundwater flow using MODFLOW, as well as developing new models for research. Currently, I am the lead modeler for a USGS groundwater availability study of the Williston and Powder River basins[1] and Project Chief for a regional model of the Madison and Minnelusa aquifers in the Northern Great Plains[2]. My role on many projects is that of team leader, coordinating the work of as many as six hydrologists and student employees. Informally, I mentor several younger hydrologists in my office, advising them in proposal and report writing, funding strategies, and career development.

My research has involved development and computer coding of new mathematical models to better understand and simulate dual-porosity flow and transport in karst aquifers (e.g., RRAWFLOW[3]). Inverse parameter estimation is an important component of all my models, and I have great interest in uncertainty analysis. I collaborate with hydrologists, biologists, and atmospheric scientists in the USGS and several universities, including Colorado State University; University of Texas; University of Rouen, France; and South Dakota School of Mines and Technology (SDSMT). One such interdisciplinary project involves climate-change effects on species that are dependent on karst aquifers[4]. Other research includes the development of groundwater age-dating models, multivariate analysis of hydrochemical data, and heat transport in karst conduits. My data-collection experience includes geophysical methods, hydrochemical sampling, age-dating tracers, dye tracing, aquifer pumping tests, and field electronics. I am an Adjunct Assistant Professor at SDSMT and have served on several graduate advisory committees.

Education

Ph.D., Geological Engineering (hydrology), 2000, South Dakota School of Mines and Technology
M.S., Geological Engineering (hydrology), 1995, South Dakota School of Mines and Technology
B.S, Geological Engineering, 1993, South Dakota School of Mines and Technology

[1] http://wy-mt.water.usgs.gov/projects/WaPR/
[2] http://sd.water.usgs.gov/projects/BHFlowModel/BHFlowModel.html
[3] http://sd.water.usgs.gov/projects/RRAWFLOW/RRAWFLOW.html
[4] https://nccwsc.usgs.gov/display-project/4f8c652fe4b0546c0c397b4a/52d5615ae4b0f19e63da8647

Positions Held

Hydrologist, Rapid City Water Department (1994-1995)
I worked in collaboration with the USGS to simulated groundwater flow in the karstic Madison aquifer using MODFLOW.

Research assistant, South Dakota School of Mines and Technology (SDSMT) (1995–1998)
I developed and wrote the FORTRAN computer code for a three-dimensional groundwater flow model for dual-porosity karst aquifers. Related to this, I collaborated with a team of researchers on the design of a numerical model to simulate surface-water and groundwater flow, dynamically linked to atmospheric processes. Also, I designed and applied a GIS-based analysis to assess karst aquifer vulnerability.

Consultant (1994–1998)
I conducted GIS analysis and groundwater modeling with MODFLOW related to a proposed low-level nuclear-waste site in Boyd County, Nebraska for the Boyd County Monitoring Committee, a consortium of local residents. I consulted for Terra Nitrogen in Sergeant Bluff, Iowa and simulated groundwater flow and transport with MODFLOW, MOC, and GIS analysis to assess the movement of ammonia contamination.

Hydrologist, USGS South Dakota Water Science Center (SDWSC) (Jan 1999 – Oct 2009)
This largely involved numerical modeling of groundwater flow and solute transport, dye tracing experiments in karst aquifers, conducting aquifer tests, geospatial aquifer analyses, and development of new research models.

Adjunct Assistant Professor, SDSMT (Oct 2005 – present)
I have served on the graduate advisory committees for five M.S. students and three Ph.D. students. Seven of these students were employed by the USGS and did their research primarily under my direction as part of their USGS work. I frequently give guest lectures at SDSMT.

Research Hydrologist, USGS SDWSC (Nov 2009 – present)
This includes development of innovative methods to better understand, quantify, and test hypotheses related to groundwater flow and transport in karst aquifers. Groundwater age dating, lumped-parameter models, aquifer classification, hydrochemical evaluation, heat transport, and groundwater recharge are some areas of my research.

Technical Skills

Scripting and Programming

- MATLAB scripting
- R scripting
- FORTAN programming
- Microsoft shell scripting

Data Analysis and Modeling

- MODFLOW groundwater modeling

- PEST inverse parameter estimation
- MATLAB & R
- Modeling groundwater age
- Principal component analysis
- Time-series analysis
- Heat-transport and geochemical modeling
- Groundwater Vistas
- ArcGIS

Field Skills

- Microgravity surveying – Scintrex CG-5 relative gravity meter
- Hydrochemical sampling of groundwater and surface water
- Aquifer pumping tests
- Dye tracing
- Field electronics
- Sampling in caves
- Streamflow measurement
- Some experience in ground-penetrating radar, seismic, and electromagnetic surveying

Sharing of Expertise

National Research Council (NRC) (Jan 2014 – present)

Currently, I serve on a national committee of university and government scientists to evaluate the implementation of the Edwards Aquifer Habitat Conservation Plan (http://www.eahcp.org/). This will result in one or more NRC reports to document the committee's evaluation and recommendations.

National Park Service (NPS) projects and advisory roles

- *Wind Cave National Park* (2007 – present) – I was Principle Investigator for two water-quality projects and a groundwater flow model. I conducted the groundwater and surface-water flow modeling for a fourth project and collaborated with biologists and climate scientists. I regularly advise NPS on hydrologic data collection for the park.
- *Niobrara National Scenic River* – I am advising NPS on the effectiveness of an existing groundwater flow model to evaluate interaction of groundwater and surface water.
- *Yellowstone National Park* – I am advising NPS on the potential to apply geophysical methods to better understand the hydrothermal system.

University Lectures and Seminars – I regularly give guest lectures at SDSMT classes and seminars, including:

- Integration of GIS with MODFLOW, Feb 2001, Mar 2003, Jan 2004
- Dual-porosity theory and modeling, Mar 2002
- Current research on age dating and tracer methods at the USGS, Apr 2004
- New methods for modeling karst aquifers, Feb 2005
- Artificial and natural tracers for the Madison aquifer, Jan 2006
- Environmental tracers as indicators of fast groundwater flow paths and potential anthropogenic influence in the karstic Madison aquifer, Mar 2006

- Environmental tracers as indicators of subaqueous karst-conduit flow paths and anthropogenic influence, Nov 2006
- Environmental tracers and dating karst groundwater: Madison aquifer, Feb 2007
- Understanding pore networks and chemical transport in karst aquifers, Nov 2007
- Karst groundwater studies at the USGS (ecology course), Nov 2009
- Dye tracing in the Madison aquifer (undergraduate groundwater course), Nov 2010
- Convolution and heat-transfer modeling of karst aquifers, Feb 2011
- Multivariate analyses and end-member mixing to characterize groundwater flow (ecology course), Nov 2011
- Groundwater modeling approaches and classification of karst aquifers (graduate groundwater modeling), Mar 2013
- Hydrochemical multivariate analyses to characterize groundwater flow (ecology course), Nov 2013
- Principal component analysis applied to chemical and hydraulic groundwater parameters (statistics for hydrology graduate course), Feb 2014
- Time-series modeling of groundwater and surface-water flow and transport: an underused toolset, SDSMT Earth Science Seminar Series, 7 Feb 2014
- Multivariate analysis to understand groundwater flow (ecology course), Nov 2014

Journal Referee

Journal referee for Journal of Hydrology, Water Resources Research, Journal of Geophysical Research—Earth Surface, Ground Water, Hydrogeology Journal, Contaminant Hydrology, Hydrological Processes, Hydrology and Earth System Sciences, Geoscientific Model Development.

Awards

- Four-time runner up—2011, 2012, 2013, and 2014—for best USGS groundwater report from a Water Science Center (http://water.usgs.gov/usgs/ogw/best-report/). I was first author on all four publications.
- Outstanding Recent Graduate Award, South Dakota School of Mines & Technology (SDSMT), for professional achievement within 10 years after graduation, 2004.
- Edward L. Tullus Academic Award for achieving high academic standards, SDSMT Dept. of Geological Engineering. Cash award with engraved Brunton compass, 1993.
- Outstanding Participation in the Field of Academic Achievement, SDSMT, 1992.
- Addison Wesley Mathematics Award, Normandale Community College, for excellence in mathematics, 1991.

News Media Highlights

- I was interviewed for a 2014 article in the Black Hill Pioneer about regional groundwater modeling of the Madison aquifer: http://www.bhpioneer.com/local_news/article_6355536e-077f-11e4-a517-0019bb2963f4.html.
- Lead author of a 2014 USGS report that was highlighted on a national USGS web site: http://www.usgs.gov/blogs/features/usgs_top_story/water-flows-and-energy-grows/
- I was interviewed for a May 2013 story on South Dakota Public Radio concerning water

demands and possible contamination from petroleum production in the Williston basin, North Dakota.

- I was Interviewed by the Rapid City Journal in 2005 for an article concerning declining water levels in the Madison aquifer.
- I was interviewed by South Dakota Public Broadcasting for a 2007 television story highlighting USGS dye-tracing activities and environmental-tracer studies in the Black Hills area, which raised awareness of the vulnerability of Wind Cave National Park to nearby development.
- I appeared on local television news in an interview about a water-quality of Wind Cave National Park, February 2012.

Technical Training Courses

- Advanced Modeling of Groundwater Flow, USGS National Training Center (NTC), 5 days, October 2000.
- Calibration and Uncertainty of Models, USGS NTC, 5 days, March 2002.
- Statistical Methods for Data Analysis, USGS NTC, 5 days, September 2003.
- Microgravity Workshop, USGS Arizona Water Science Center, 5 days, October 2004.
- Aquatic Chemistry, USGS NTC, 5 days, January 2005.
- Principles and Applications of Estimating the Age of Young Groundwater, USGS NRP, Reston, 3 days, April 2006.
- Multivariate Analysis for Hydrological, Biological, and Chemical Data, USGS NTC, 4 days, March 2009.
- Groundwater/Surface-Water Interactions USGS NTC, 5 days, February 2014.

Memberships in Professional Societies

- American Geophysical Union (AGU), 1997-present.
- European Geosciences Union (EGU), 2010-present.
- Union of Concerned Scientists, 2007-Present.

Community Leadership

Nov 2013 – present
Founder and Chair, Scientists Advocacy League, USGS SDWSC – This group was established to facilitate collaboration, mentor and share skills, coordinate common resources, provide a forum to discuss workplace concerns, and give scientists a collective voice to influence the functioning of their organization. Accomplishments include establishing a central GIS library and a standardized file-directory tree for all projects for the SDWSC.

2002, Mar 2014 – present
Twice served on Board of Directors – Breadroot Natural Foods Co-op, Rapid City, South Dakota.

2010 – present
Black Hills Runners Club – I regularly organize and lead group trails runs in the Black Hills of South Dakota.

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Available upon request.

Publications

Journal Articles

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Davis, A.D., Long, A.J., Wireman, M., 2002, KARSTIC: a sensitivity method for carbonate aquifers in karst terrain: Environmental Geology v. 42, no. 1, p. 65-72. [Link]

Long, A.J. and Derickson, R.G., 1999. Linear systems analysis in a karst aquifer. Journal of Hydrology, v. 219, p. 206-217. [Link]

Other Publications

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National Research Council, 2015, Review of the Edwards aquifer Habitat Conservation Plan: Report 1, The National Academies Press, Washington, D.C., 156 p.

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Long, A.J. and Putnam. L.D., 2004. Spatial and temporal scale issues in modeling karst *at* The Effect of Scale on the Magnitude of Formation Properties Governing Fluid Movement and Chemical Transport Workshop. USGS National Ground-Water Meeting, Denver, June 2004.

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Long, A.J., 2012, Simulating future hydraulic responses to precipitation for the Madison aquifer and Wind Cave: Climate Friendly Parks Midwest Region Workshop, April 3-5, 2012, Rapid City, South Dakota.

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Rod Horrocks Biography

Rod Horrocks worked as a cartographer and fossil preparator for six years while working on his Bachelor and then Master of Science degrees. The title of his thesis was, "A Comparison between Two Computer-Aided Cartographic Systems, With an Analysis of Their Work Flow ". He began his National Park Service career in 1992 and has worked for the National Park Service as a Physical Scientist for 22 years. He began his career at Timpanogos Cave National Monument, followed by a stint at Great Basin National Park in 1996. He was the first Cave Management Specialist at each of these parks. His co-lateral duties have included cartographer, museum technician, fossil preparator, geologic technician, hydrological technician, and air quality technician. In 1999, he moved to Wind Cave National Park, where he has been for sixteen years. Rod specializes in digital cave cartography, cave lighting design, paleontological field work, fossil preparation and curation, cave tour-route development, and cave restoration. He has been a member of the National Speleological Society for 32 years and is a Fellow of that Society. He was awarded the Certificate of Merit by them, and was the Chairman of the Cave Conservation and Management Section for 11 years, Chairman of the Survey and Cartography Section for two years, and Chairman of the Timpanogos Grotto for ten years. He was also the editor of the *Underground News* newsletter for 9 years, the *Utah Caver* for 6 years, and the *Inside Earth* newsletter for 6 years. He has had seven peer-reviewed articles published in journals and books and 36 other cave and karst-related articles published in newsletters, magazines, books, and conference proceedings.

Work History:

* Wind Cave National Park (Physical Scientist)	1999-Present
* Great Basin National Park (Cave Management Specialist)	1996-1998
* Timpanogos Cave National Monument (Cave Mgmt. Specialist)	1992-1996

Peer-reviewed Articles Authored:

1) 2015. *"Wind Cave, Guidebook to the Geology of the Black Hills"*. John Lufkin, Jack Redden, Alvis Lisenbee, Editors. Golden Publishers.
2) 2009. *"Developing a Cave Potential Map for Wind Cave, Caves and Karst of the USA"*, Arthur N. Palmer and Margaret V. Palmer, Editors. National Speleological Society, Huntsville, Alabama, p. 218-220.
3) 2006, *"Removing Artificial Fill from Developed Caves, Cave Conservation and Restoration"*, National Speleological Society, Huntsville, AL, p. 367-380.
4) 2006, *"Cave Lint and Dust Removal Projects, Cave Conservation and Restoration"*, National Speleological Society, Huntsville, AL, p. 351-362.

5) 2002, *"Using Geographic Information Systems to Develop a Cave Potential Map for Wind Cave, South Dakota"*, Journal of Cave and Karst Studies, Vol. 64, no. 1, April, p. 63-70.

6) 1995, *"Materials and Methods Used in Mapping the Cleveland-Lloyd Dinosaur Quarry."* BYU Geology Studies, vol. 41.

7) 1982, *"A New Hexactalinid Sponge from the Permian of West-Central Texas."* Journal of Paleontology, March 1982, vol. 56, p. 315-323.

National Park Service
U.S. Department of the Interior

Application 2730-2 by the United Order of South Dakota

Jeff Hughes, Hydrologist
National Park Service – Water Resources Division

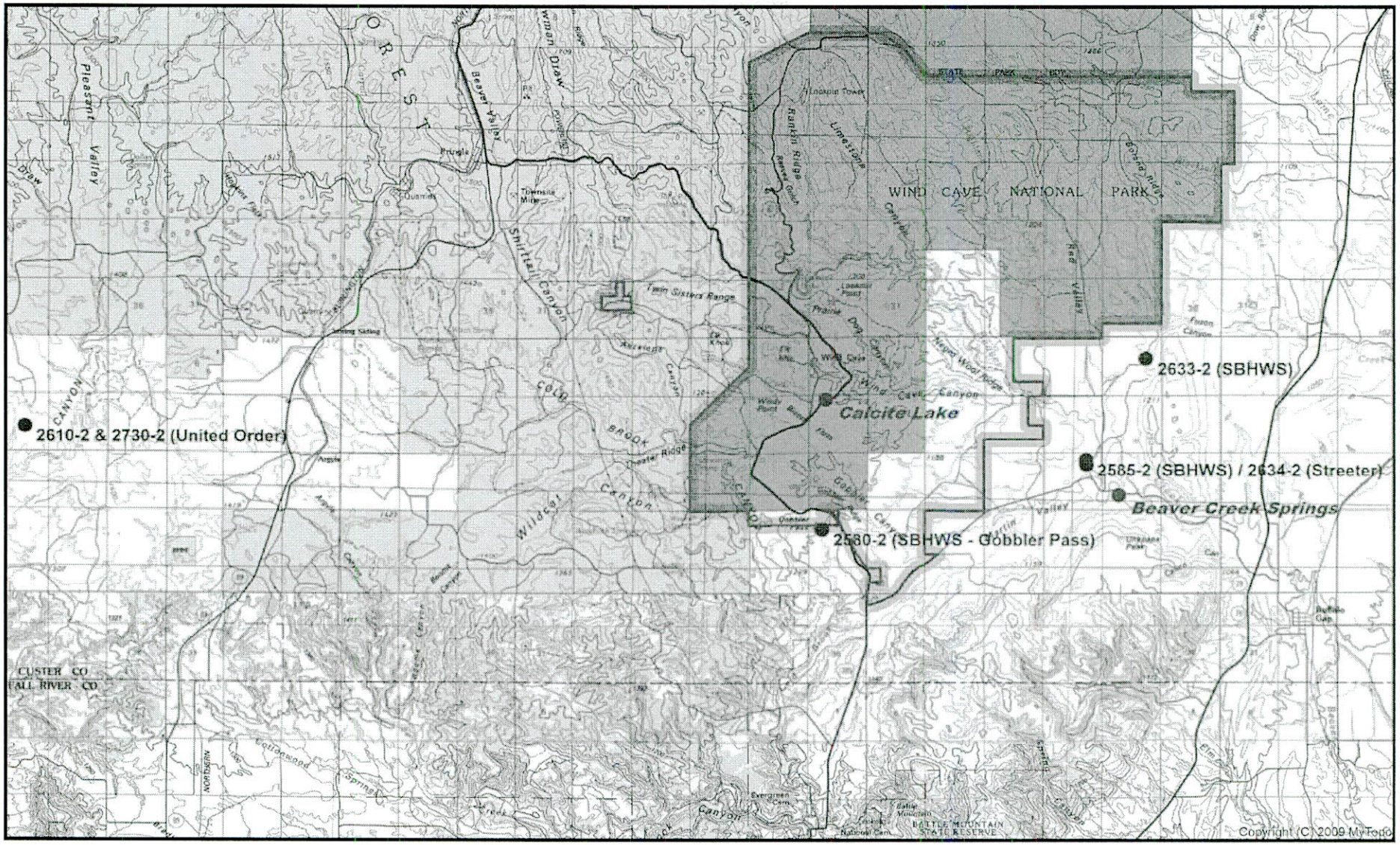


Figure 1: THWELLS Location Map

SCALE 1:140000

0 1 2 3 4 5 6

MILES

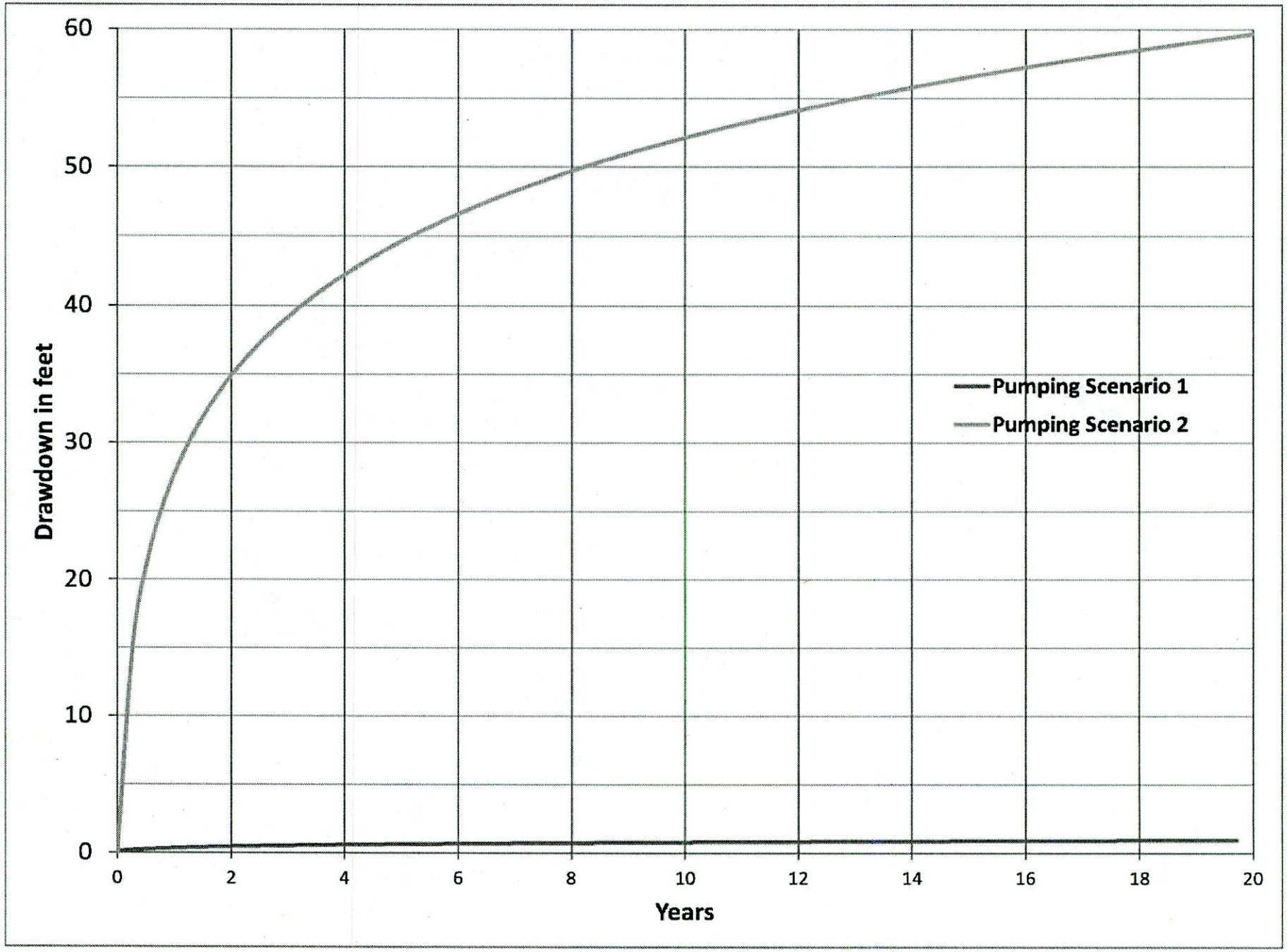
CONTOUR INTERVAL 50 METERS

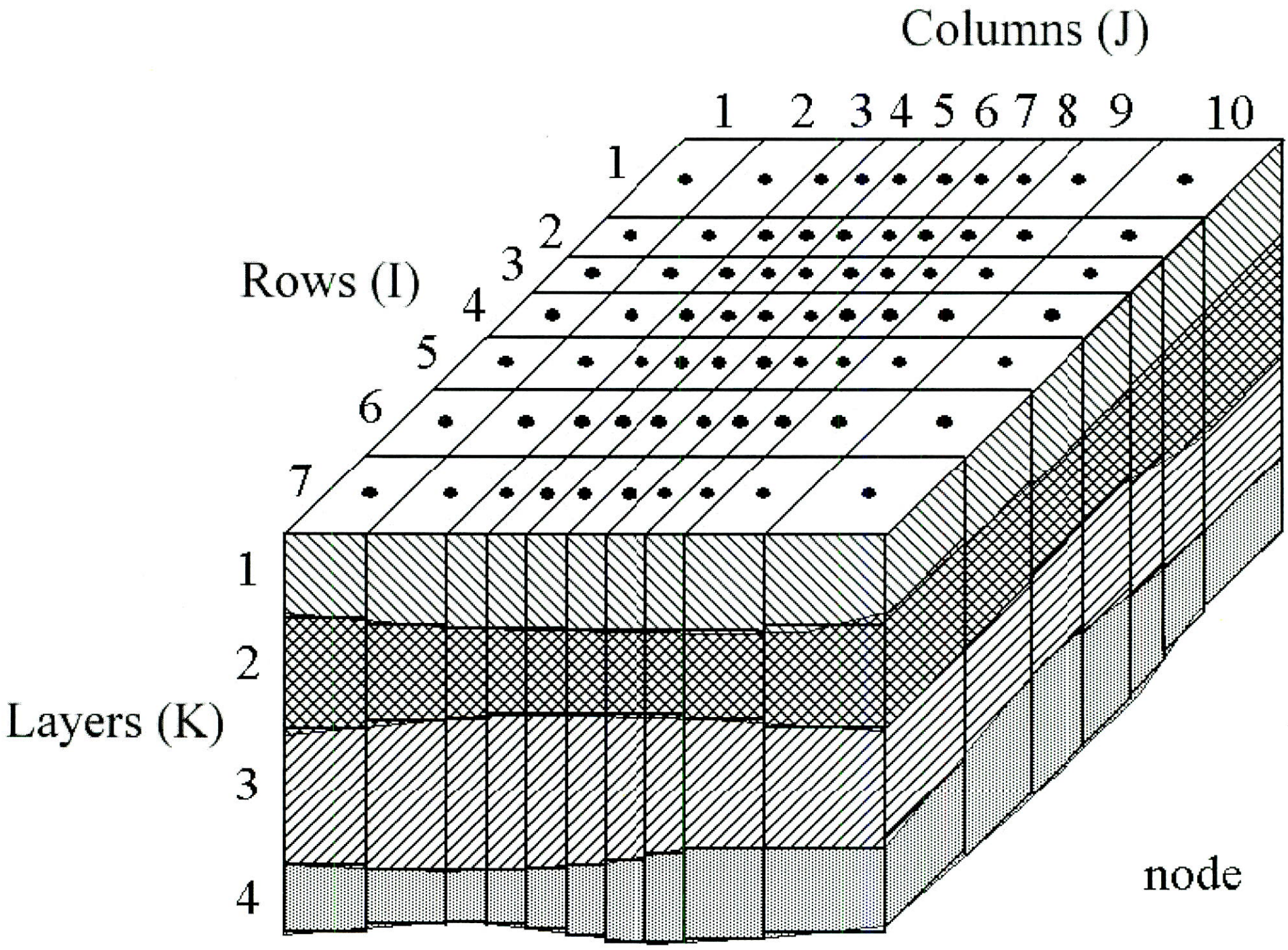
NATIONAL GEODETIC VERTICAL DATUM 1929

LEGEND

- Approximate Well Location
- Approximate Water Body Location
- NPS Boundary

- Theis analysis
  - Scenario 1 – Existing withdrawals
    - 2610-2 (United Order of SD) 25.8 afy
    - 2634-2 (Mr. Streeter & SBHWS, Inc.) 12.5 afy
  - Scenario 2 – Potential withdrawals
    - 2730-2 (United Order of SD) 153 afy
    - 2634-2 (Mr. Streeter only) 4.08 afy
    - 2585-2 (SBHWS, Inc.) 720 afy
    - 2580-2 (SBHWS, Inc. – Gobbler Pass well) 228 afy


60
50
40
30
20
10
0
Drawdown in feet
0
2
4
6
8
10
12
14
16
18
20
Years
Pumping Scenario 1
Pumping Scenario 2


Columns (J)
1 2 3 4 5 6 7 8 9 10
Rows (I)
1
2
3
4
5
6
7
Layers (K)
1
2
3
4
node

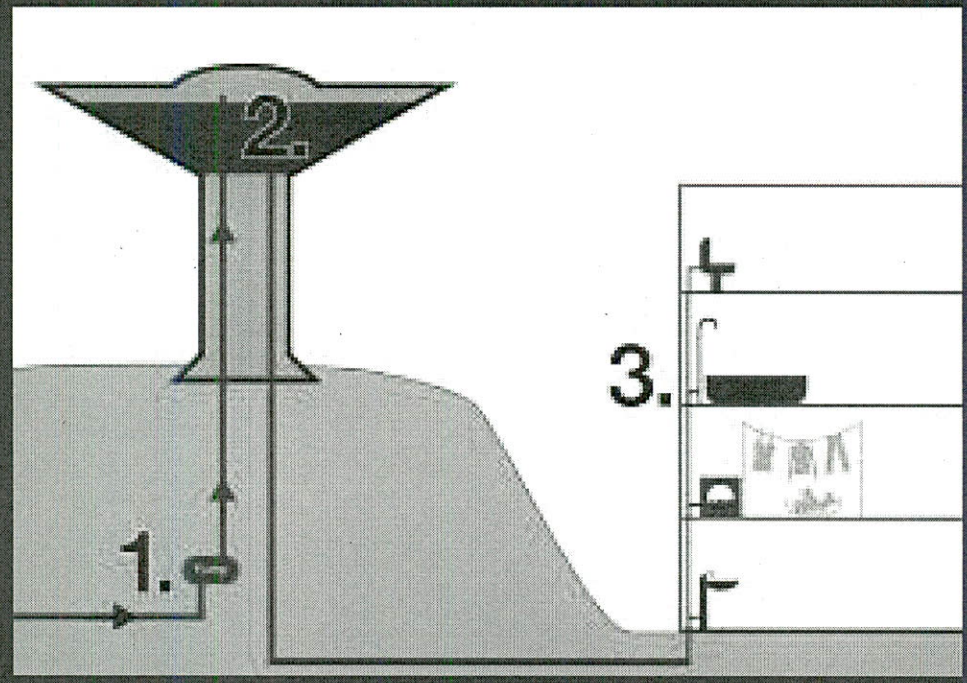
USGS
science for a changing world

Groundwater principals and the Black Hills

Andy Long, USGS

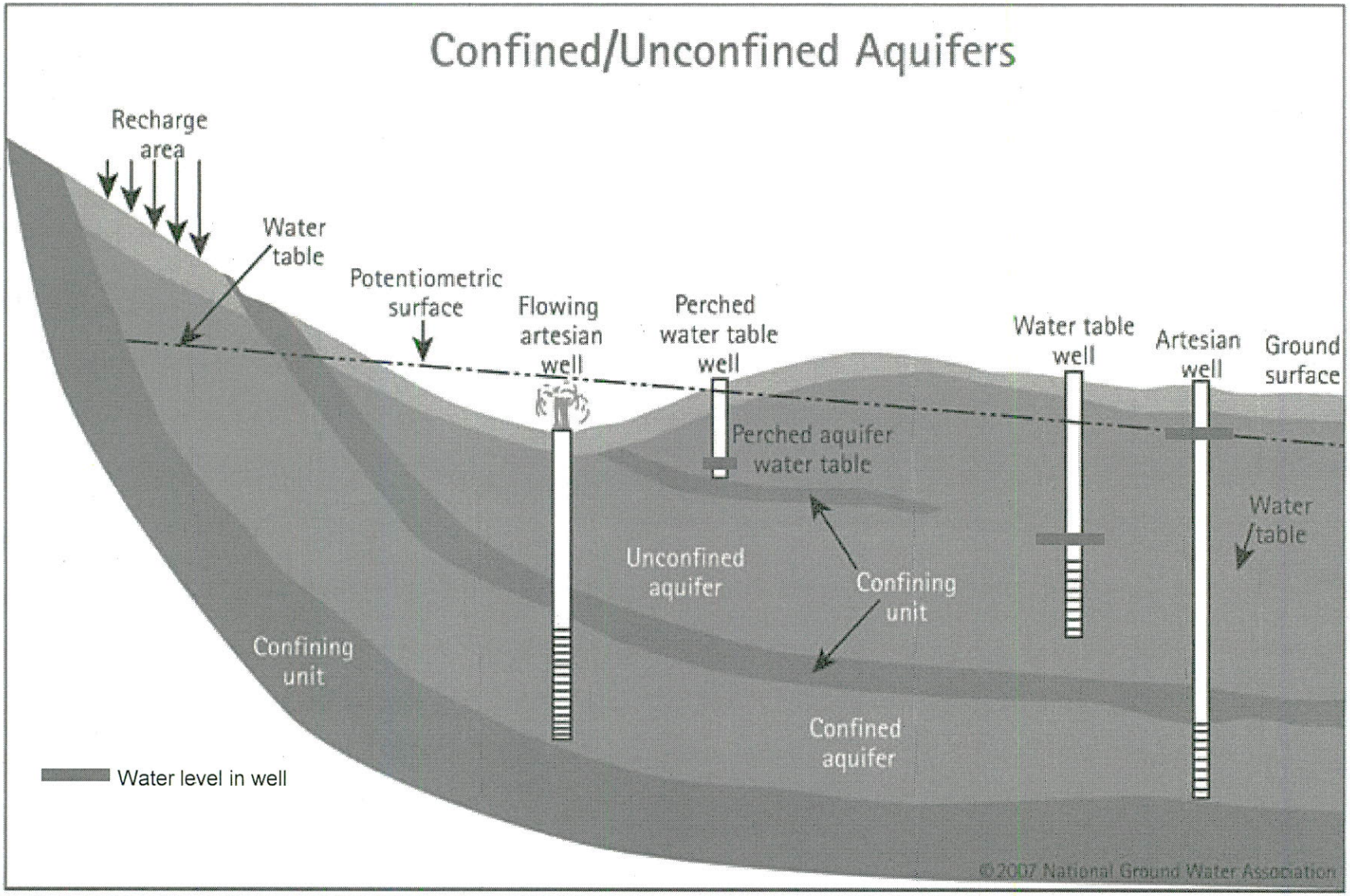
U.S. Department of the Interior
U.S. Geological Survey

Basic hydraulics



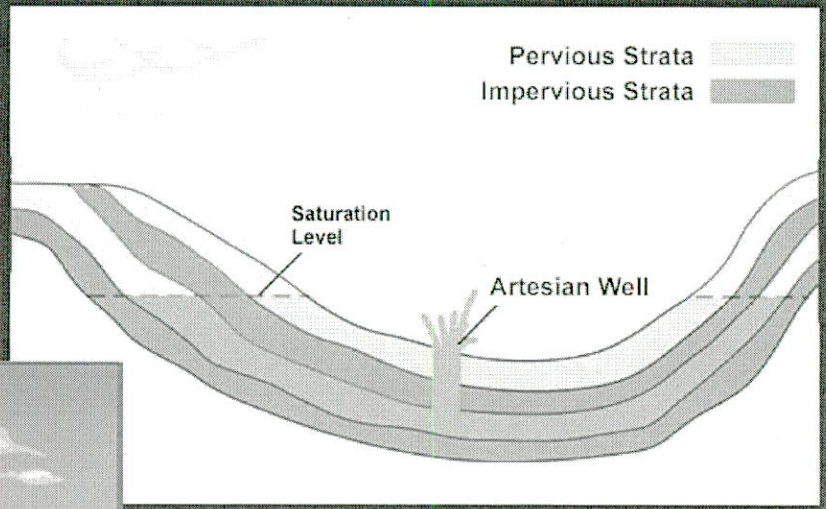
USGS

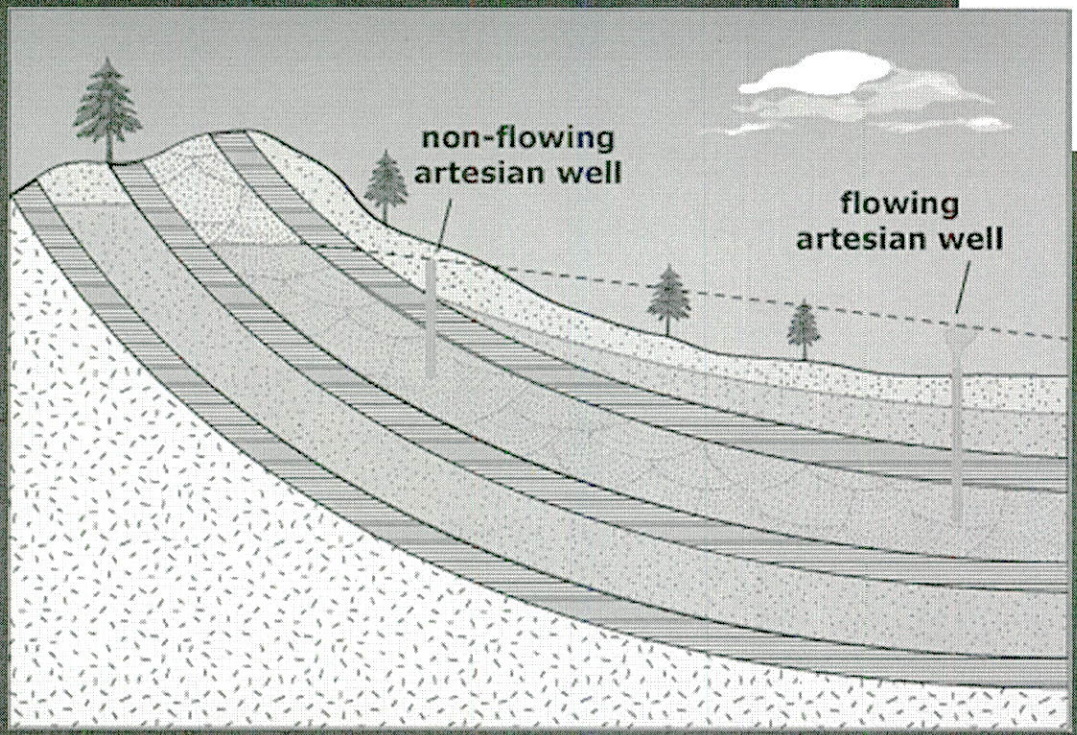
Groundwater hydraulics

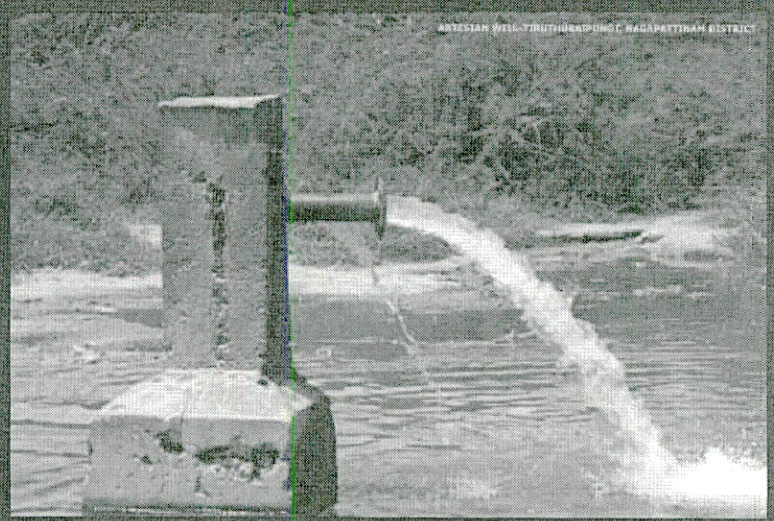


USGS

Artesian pressure

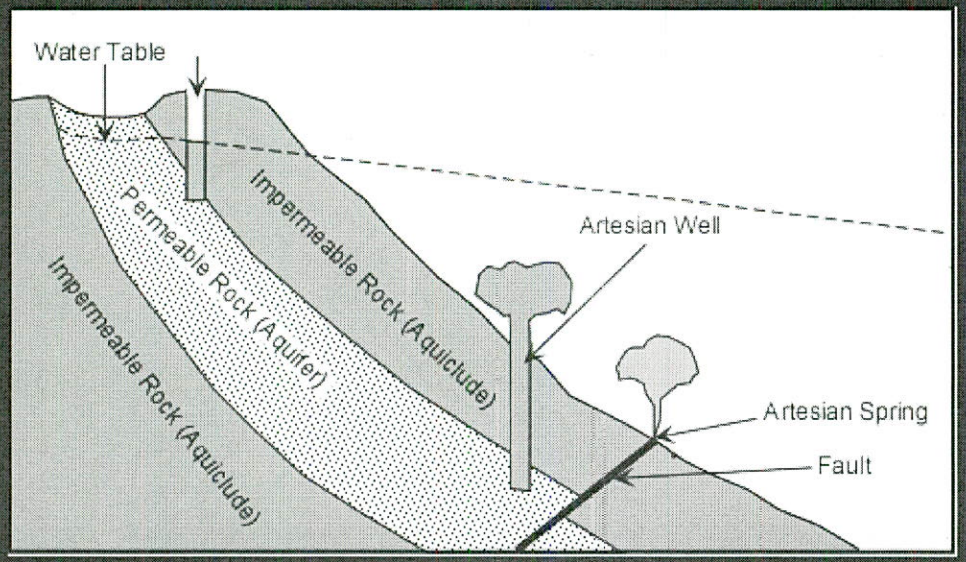


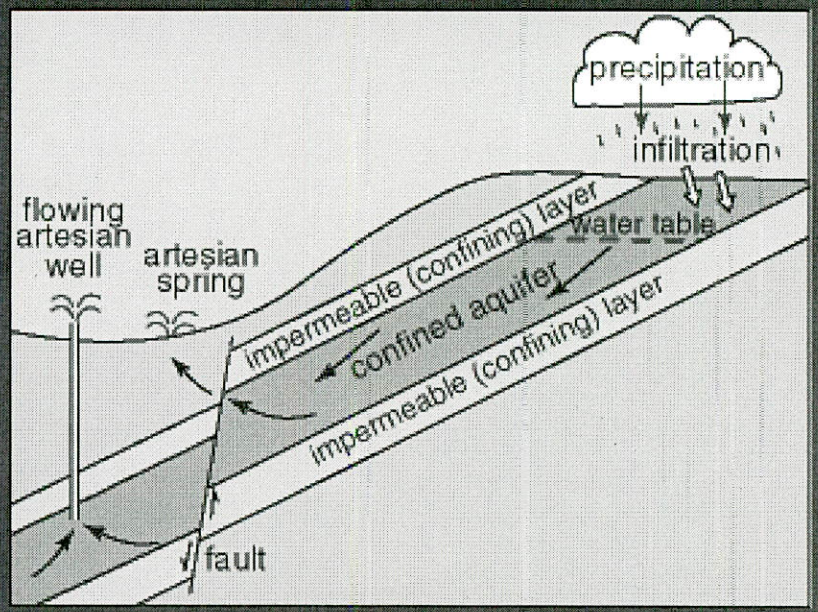




USGS

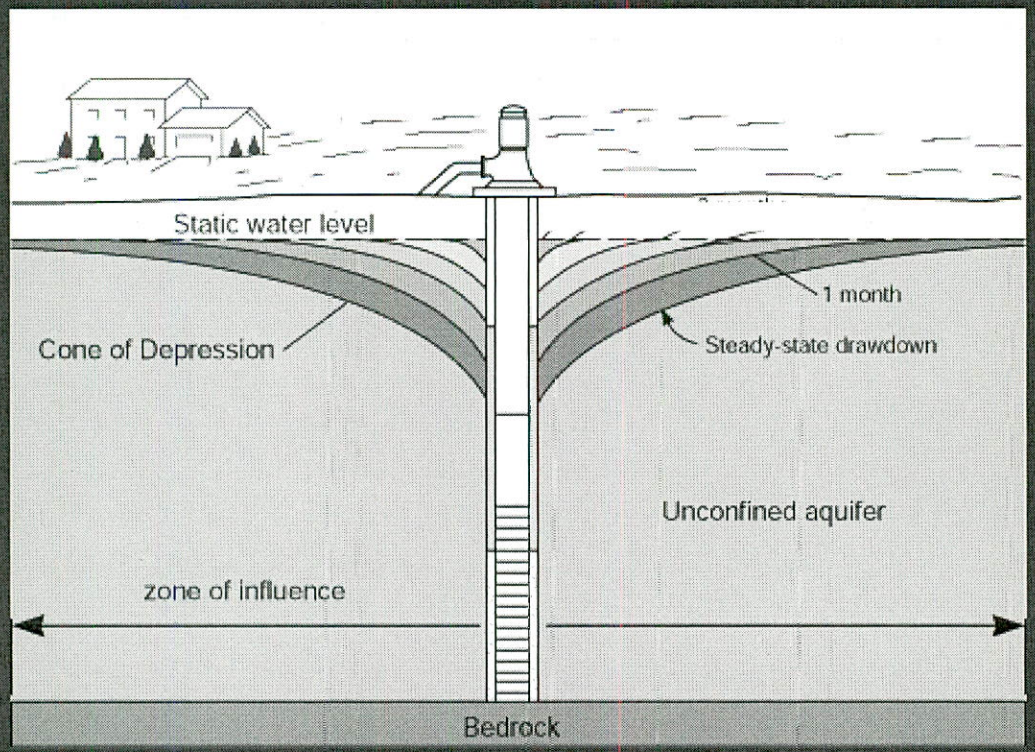
Artesian springs





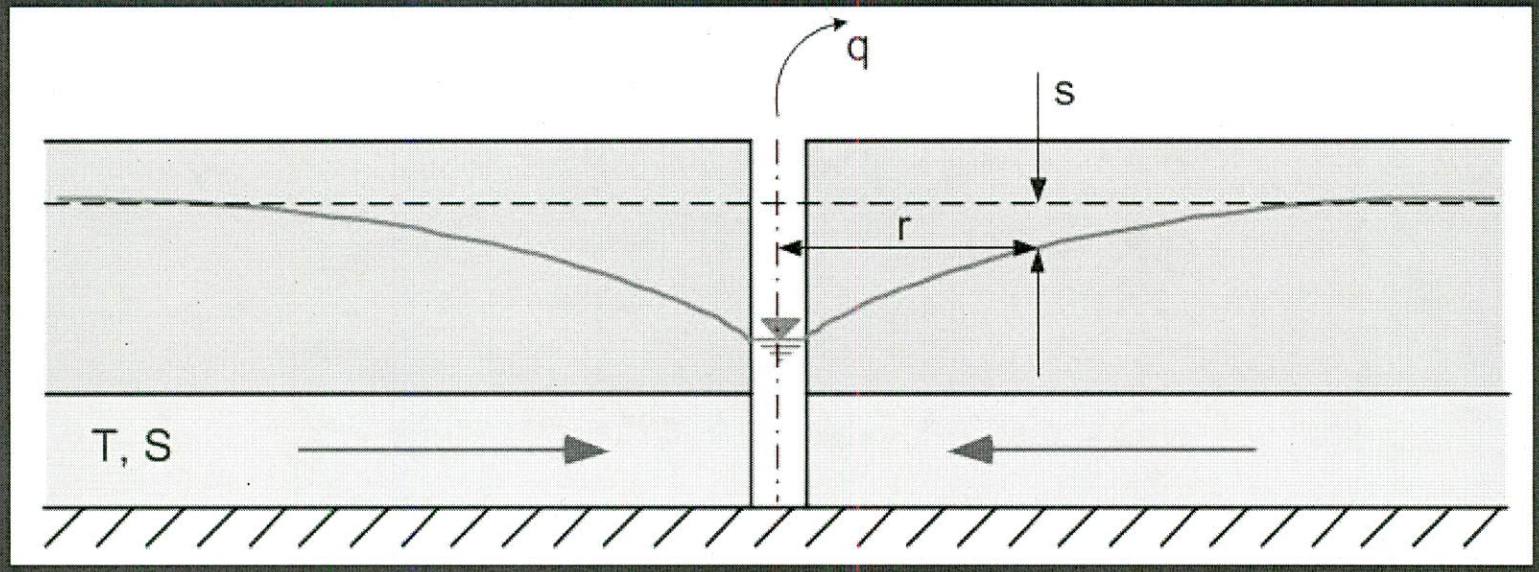
USGS

Water-table drawdown (unconfined aquifer)



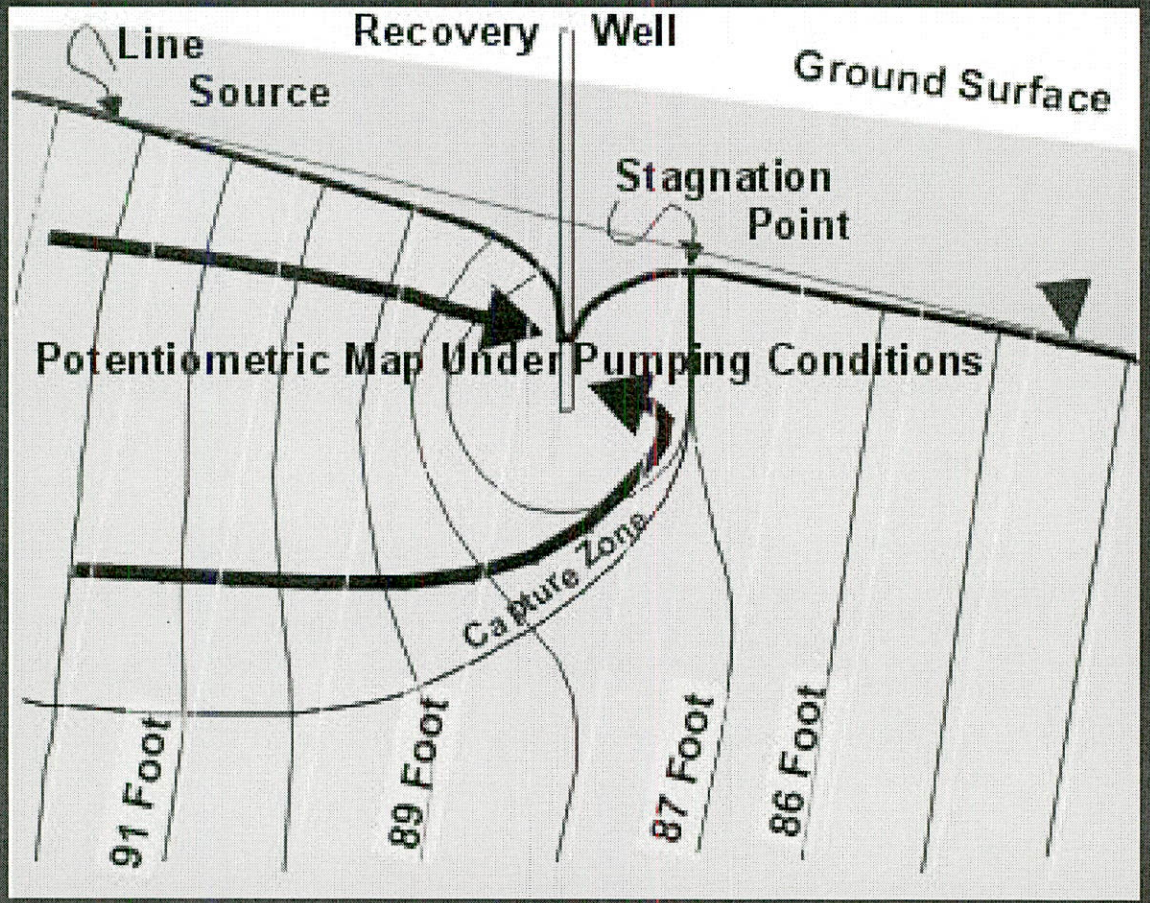
USGS

Pressure-head drawdown (confined aquifer)



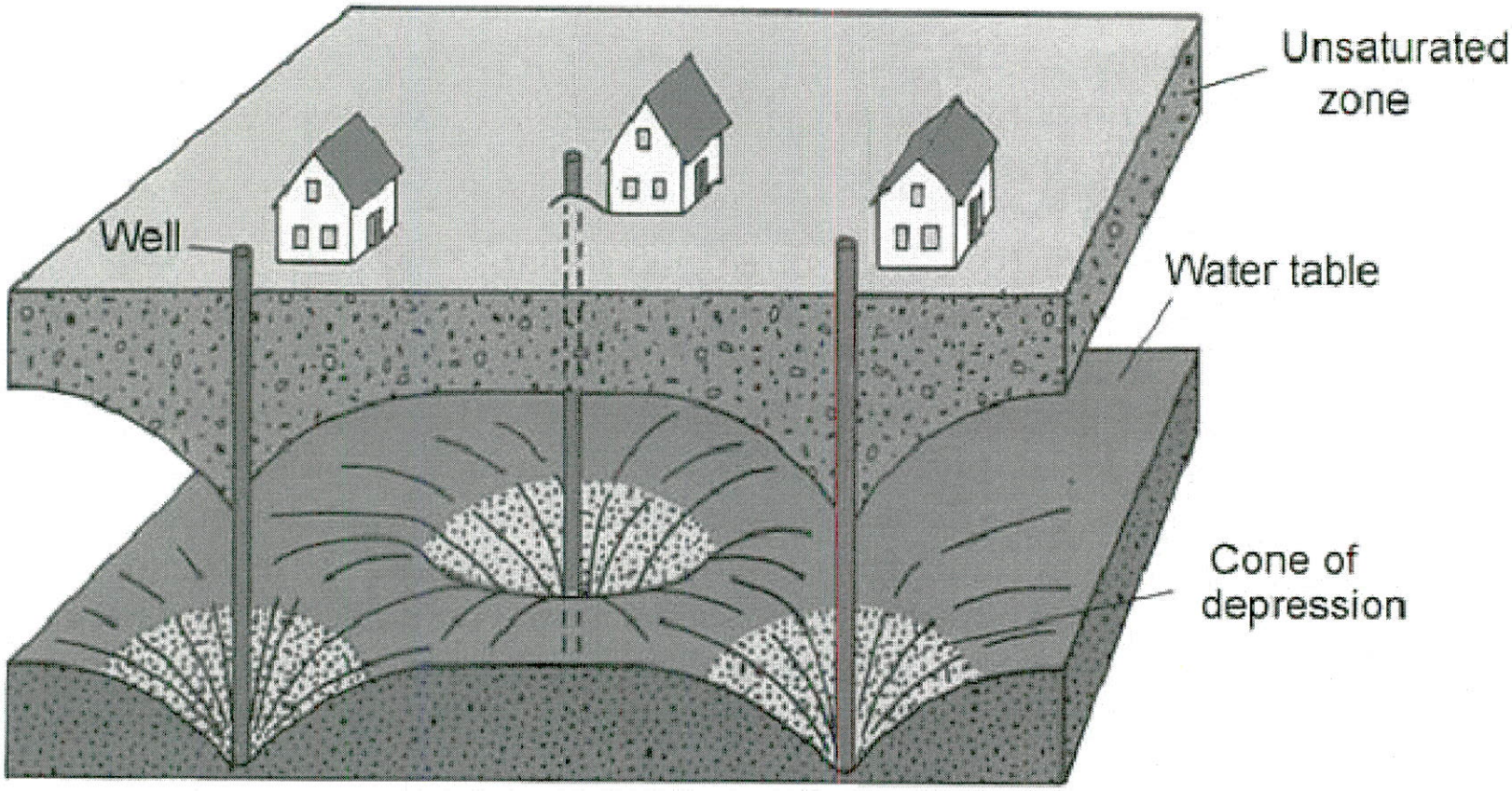
USGS

Sloping water table



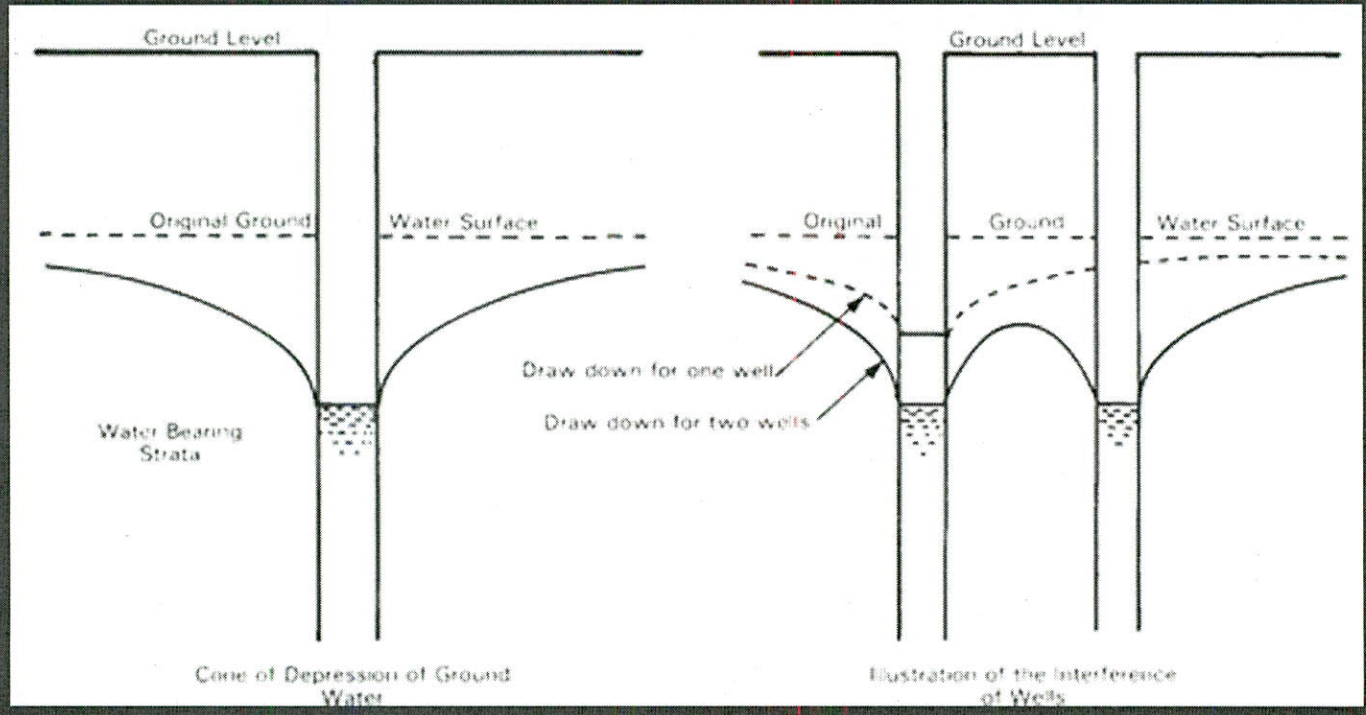
USGS

Well interference



USGS

Well interference

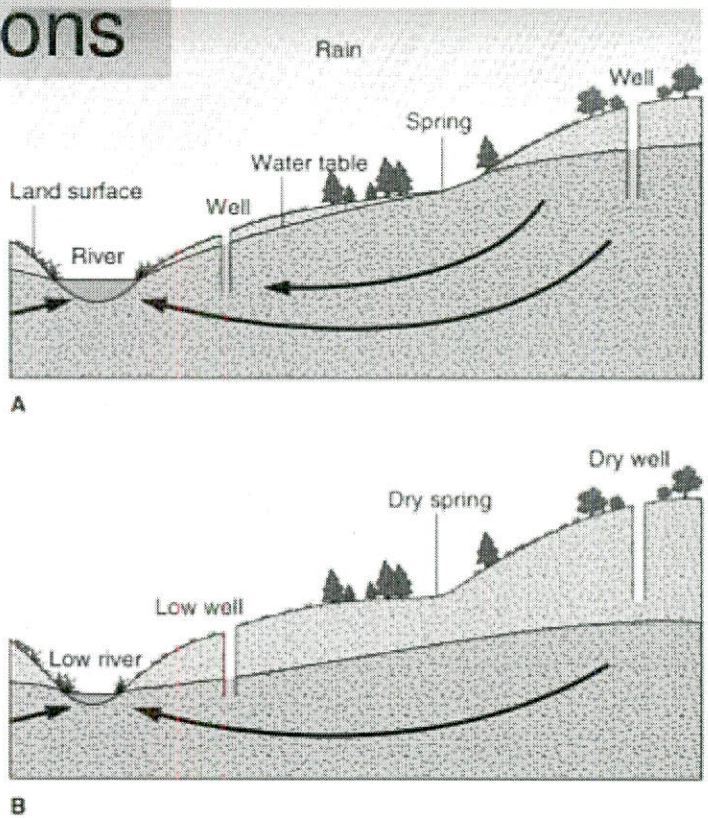


USGS

Natural water-table fluctuation

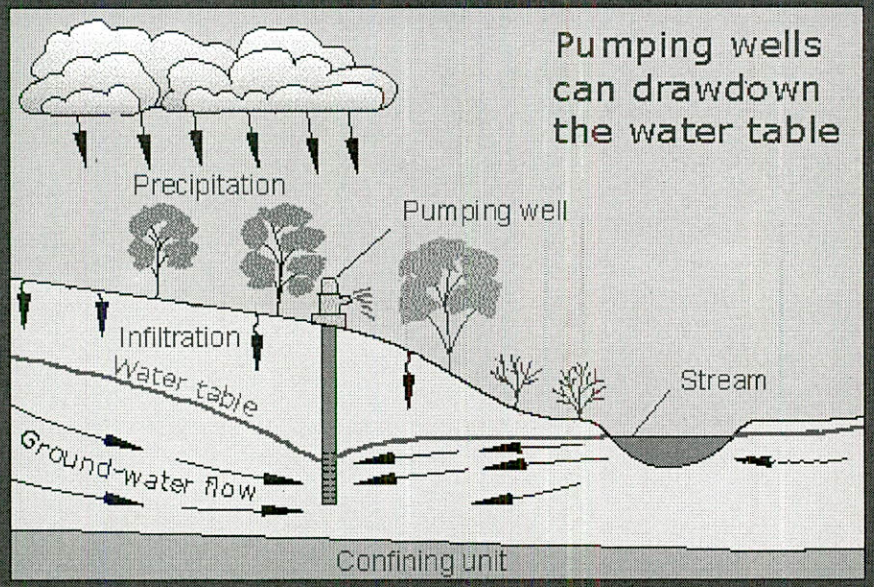
Natural Water Table Fluctuations

- Reduction of infiltration causes water table to drop
  - Wells go dry
  - Springs go dry
  - Discharge of rivers drops
- Artificial causes
  - Pavement
  - Drainage



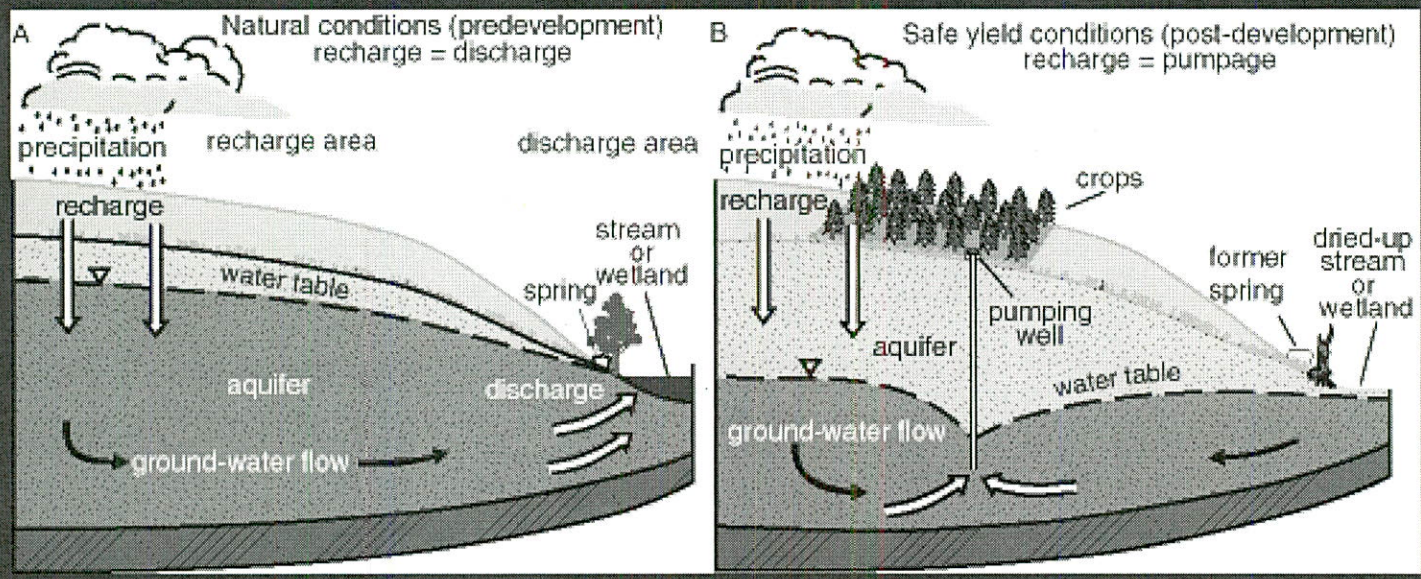
USGS

Influence of pumping



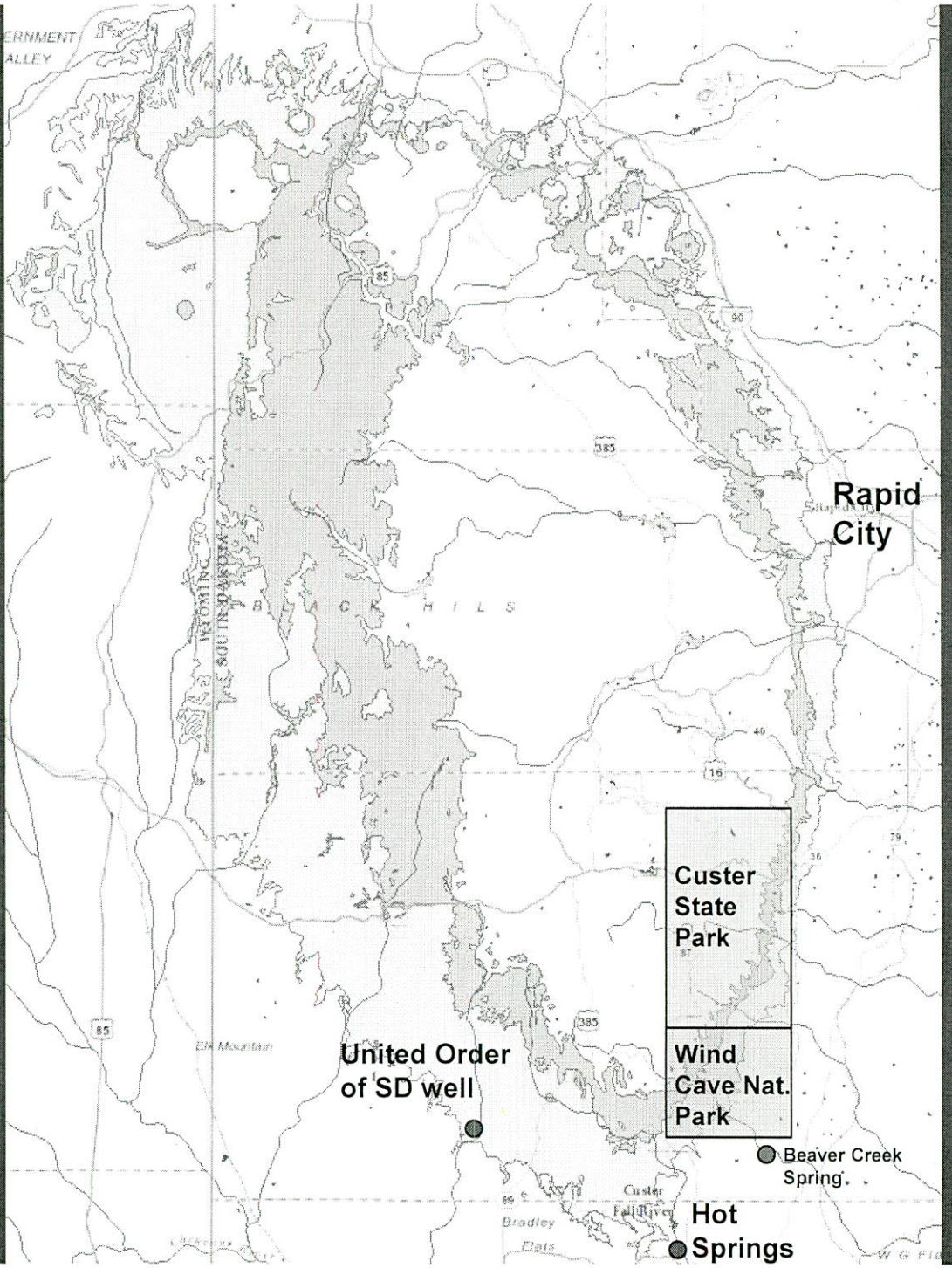
USGS

Influence of pumping



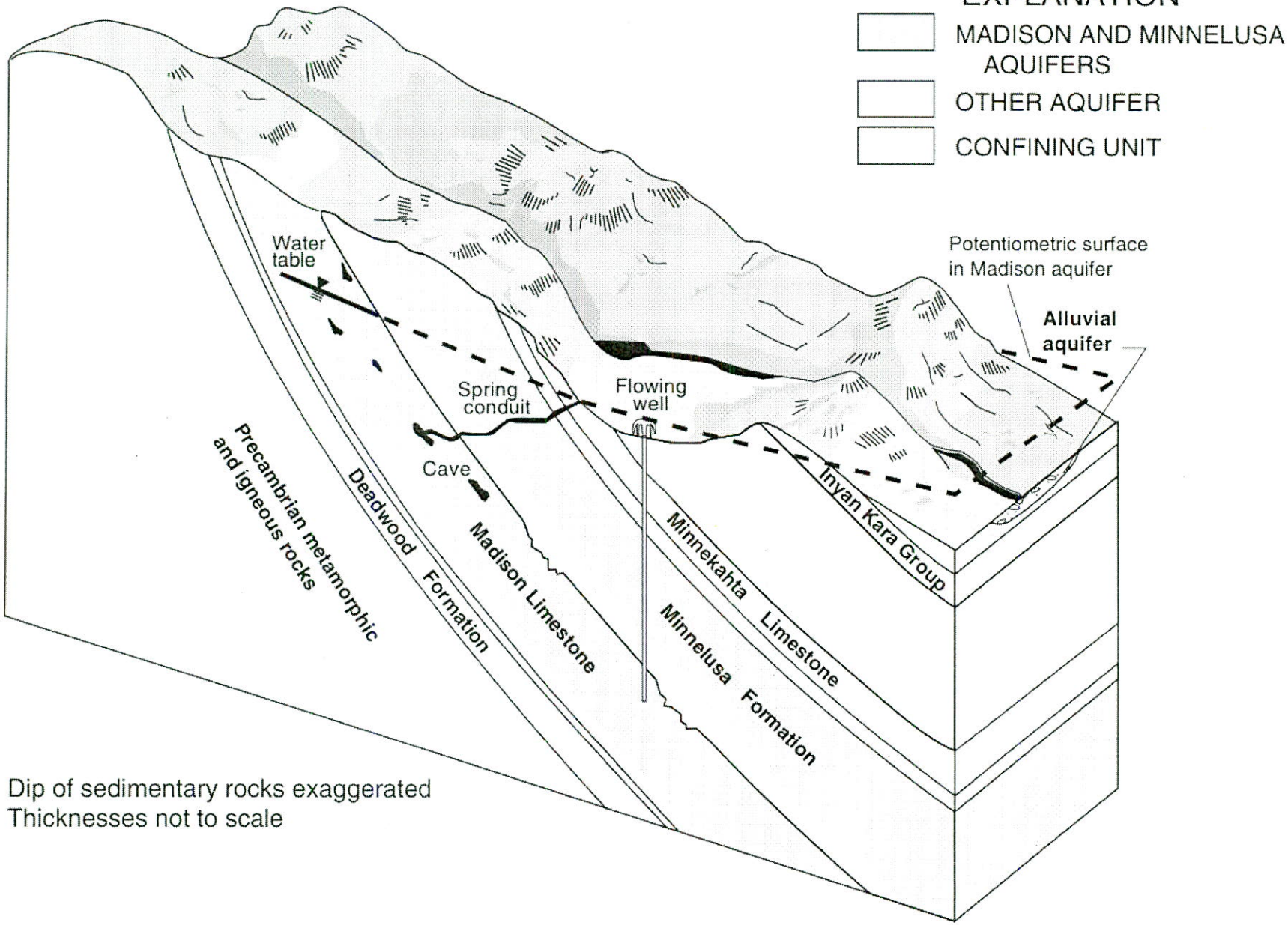
USGS

Map of Black Hills showing outcrops of the Madison and Minnelusa aquifers

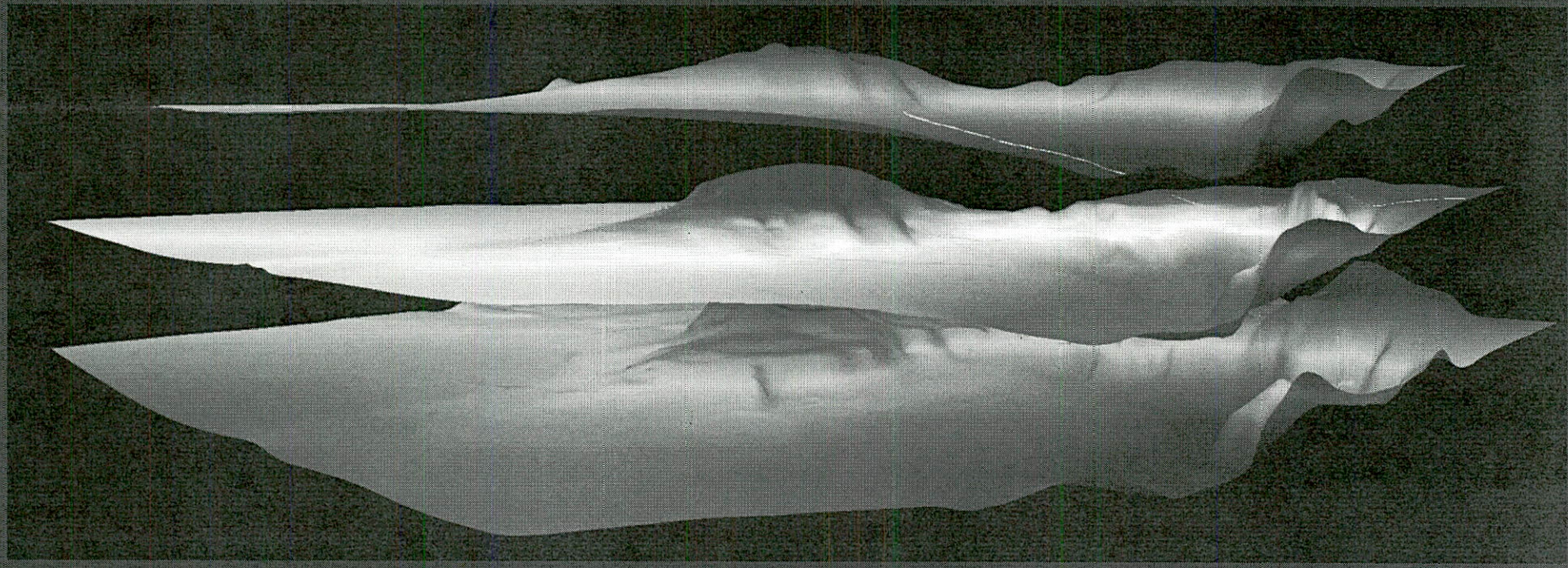


USGS

Block diagram of major aquifers

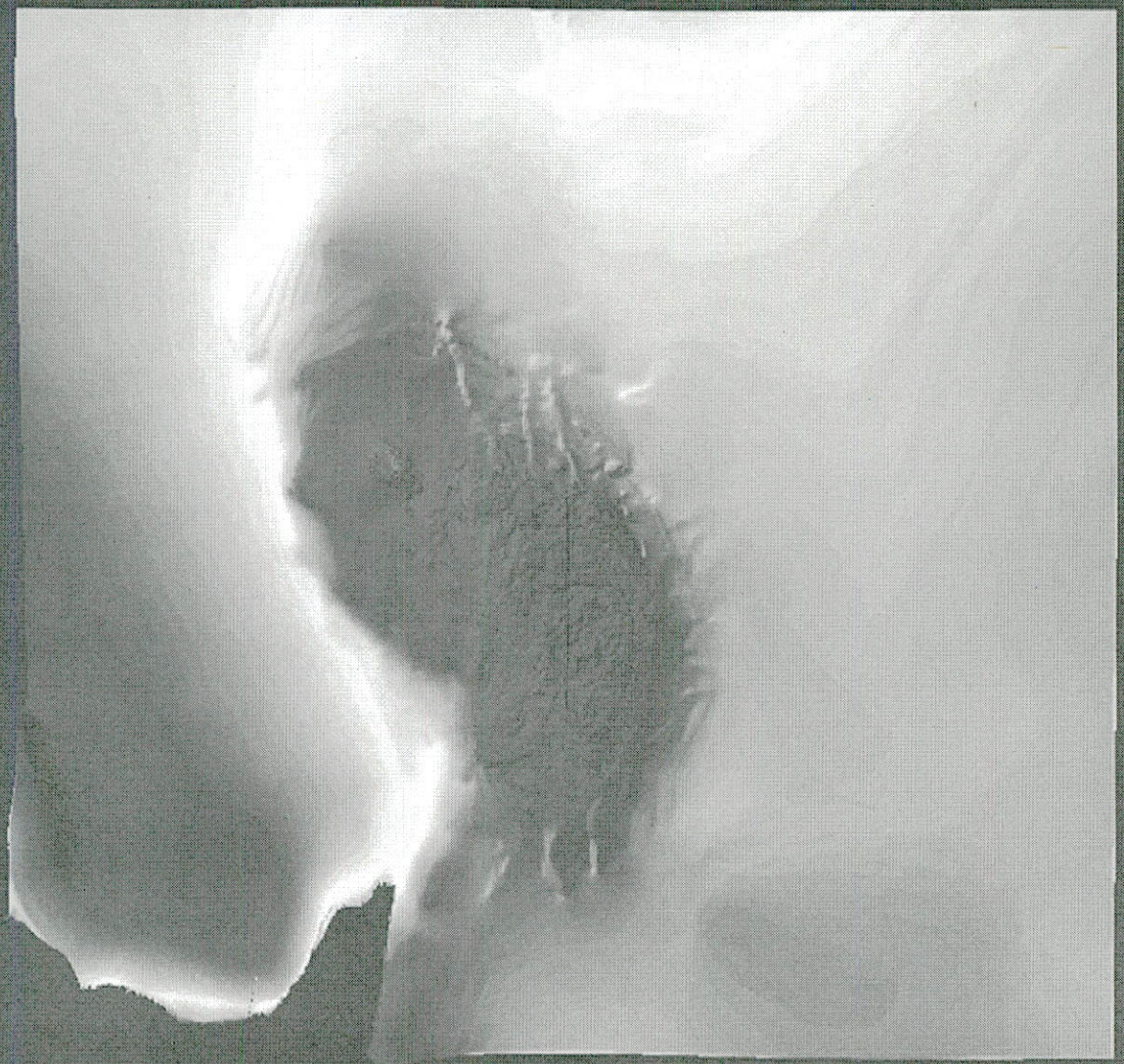


3-D Hydrogeologic Framework



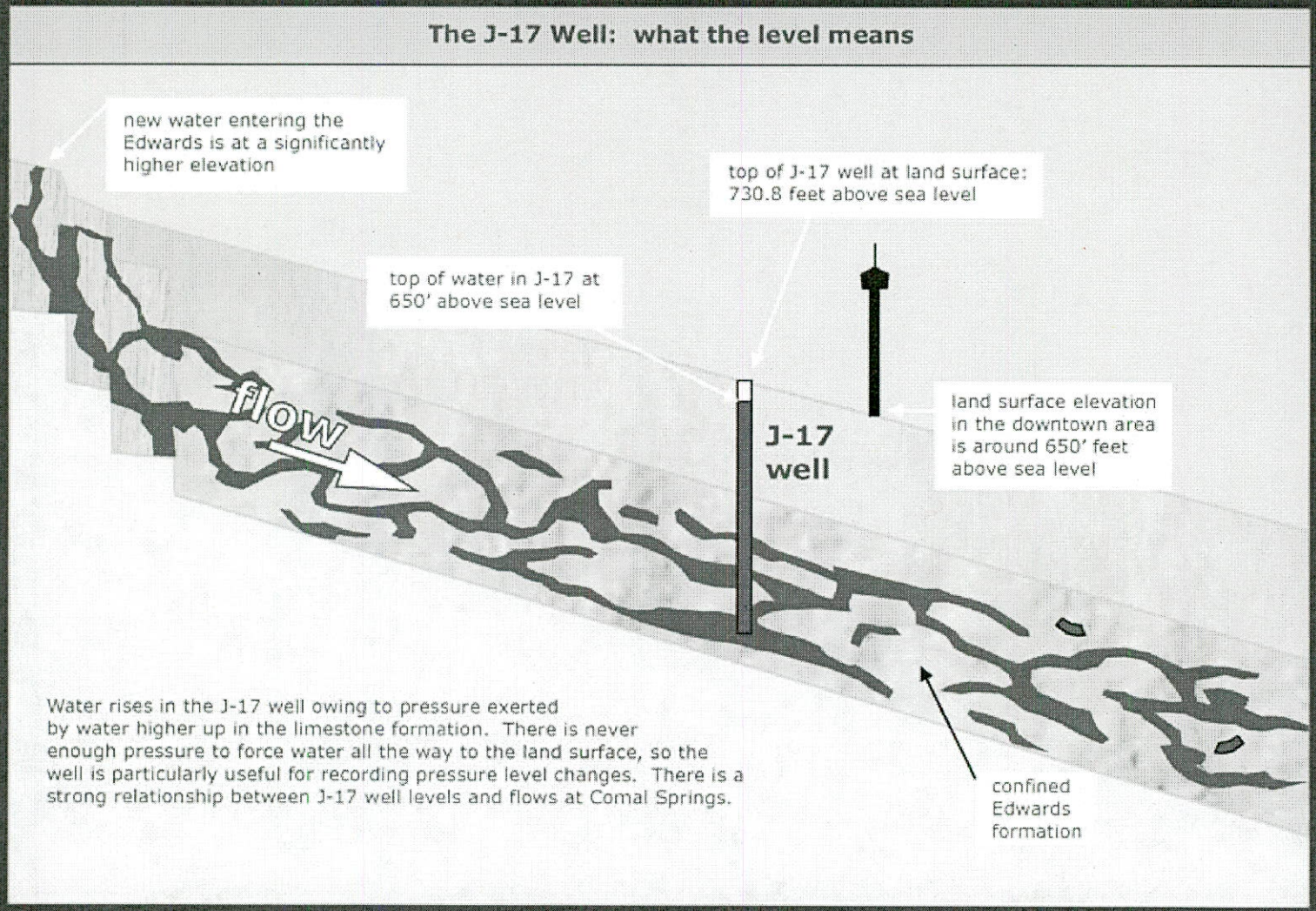
USGS

3-D Hydrogeologic Framework:



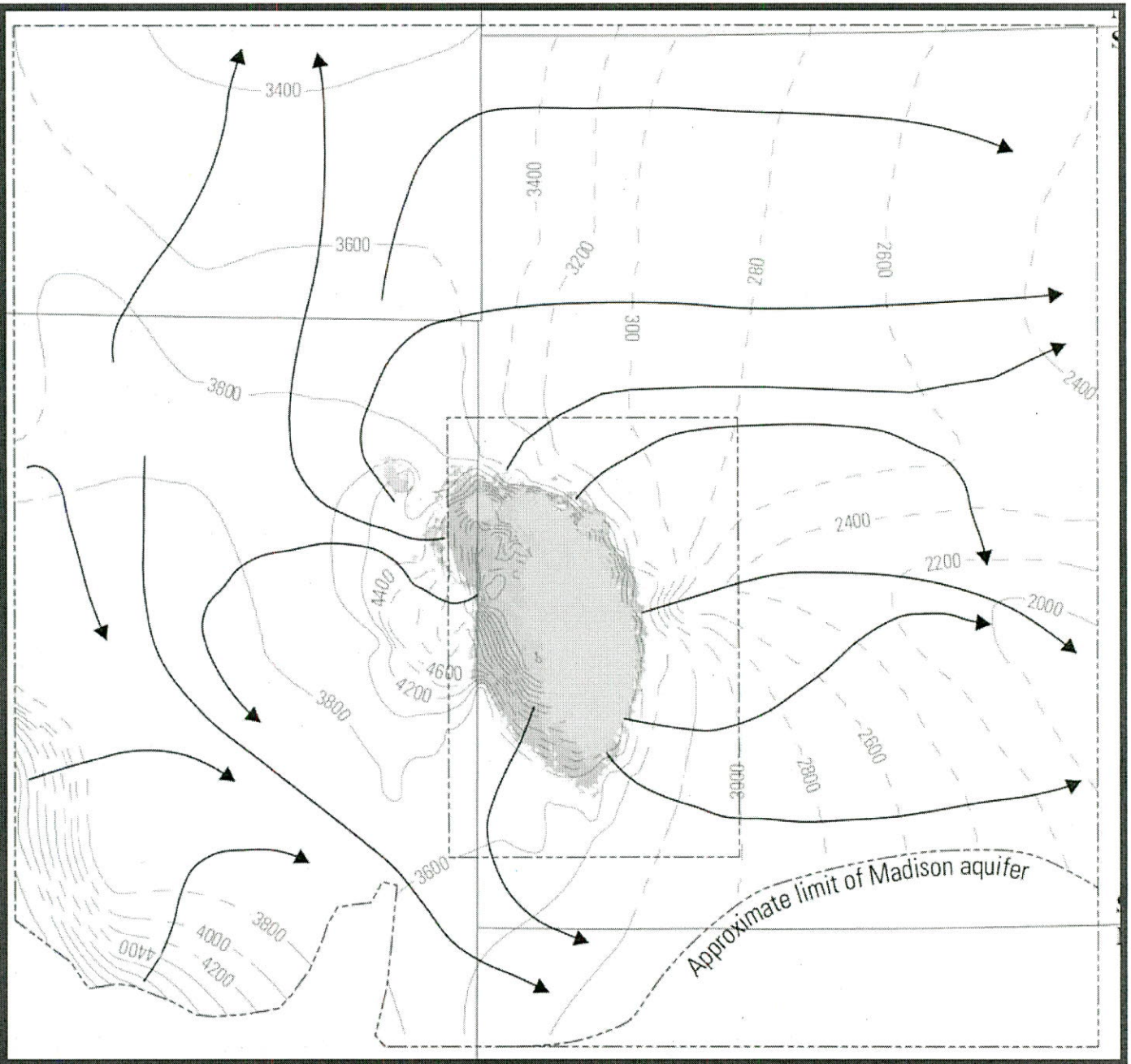
USGS

Caves, conduits, and fractures in the Madison aquifer



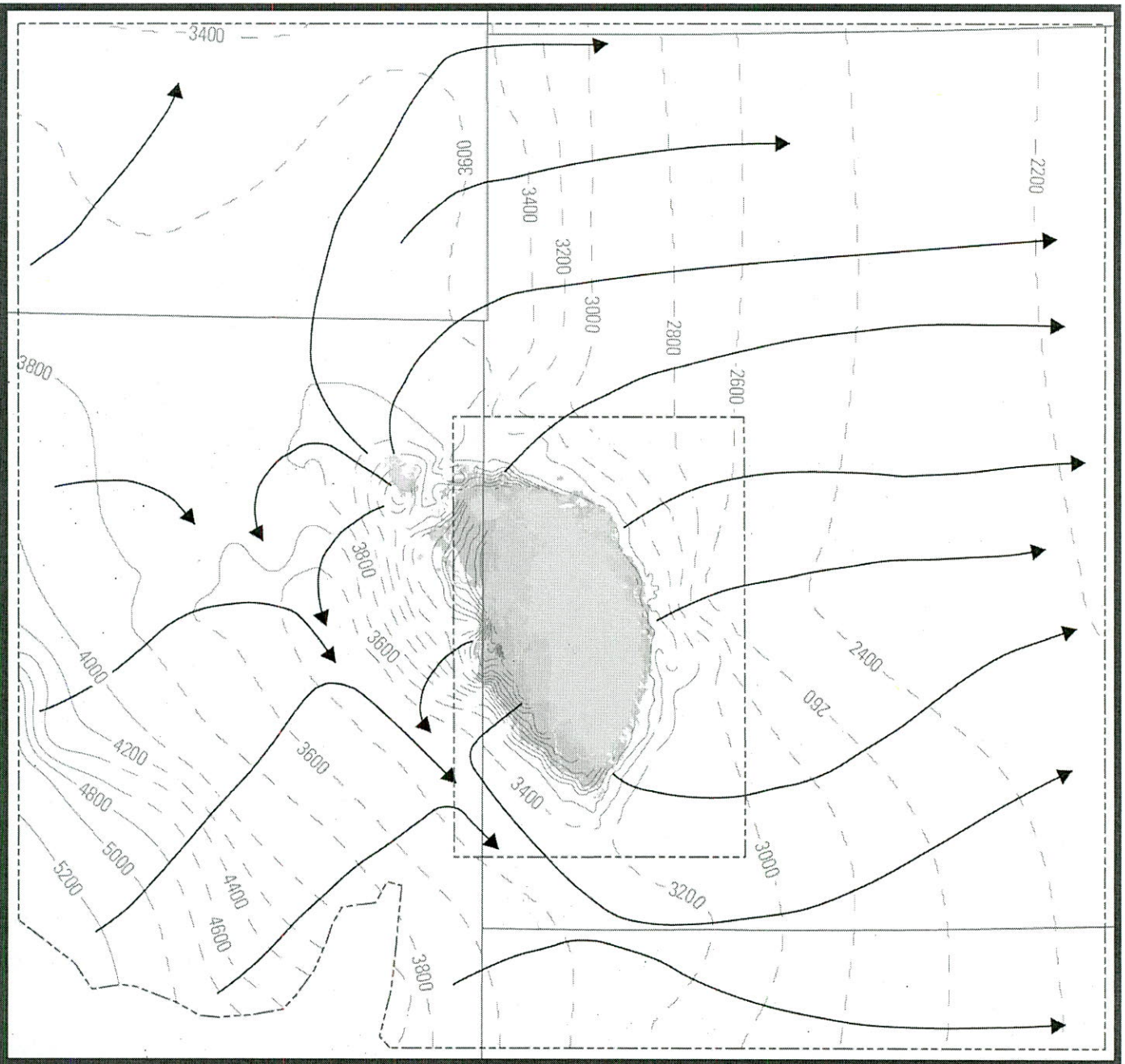
USGS

Groundwater flow in Madison aquifer



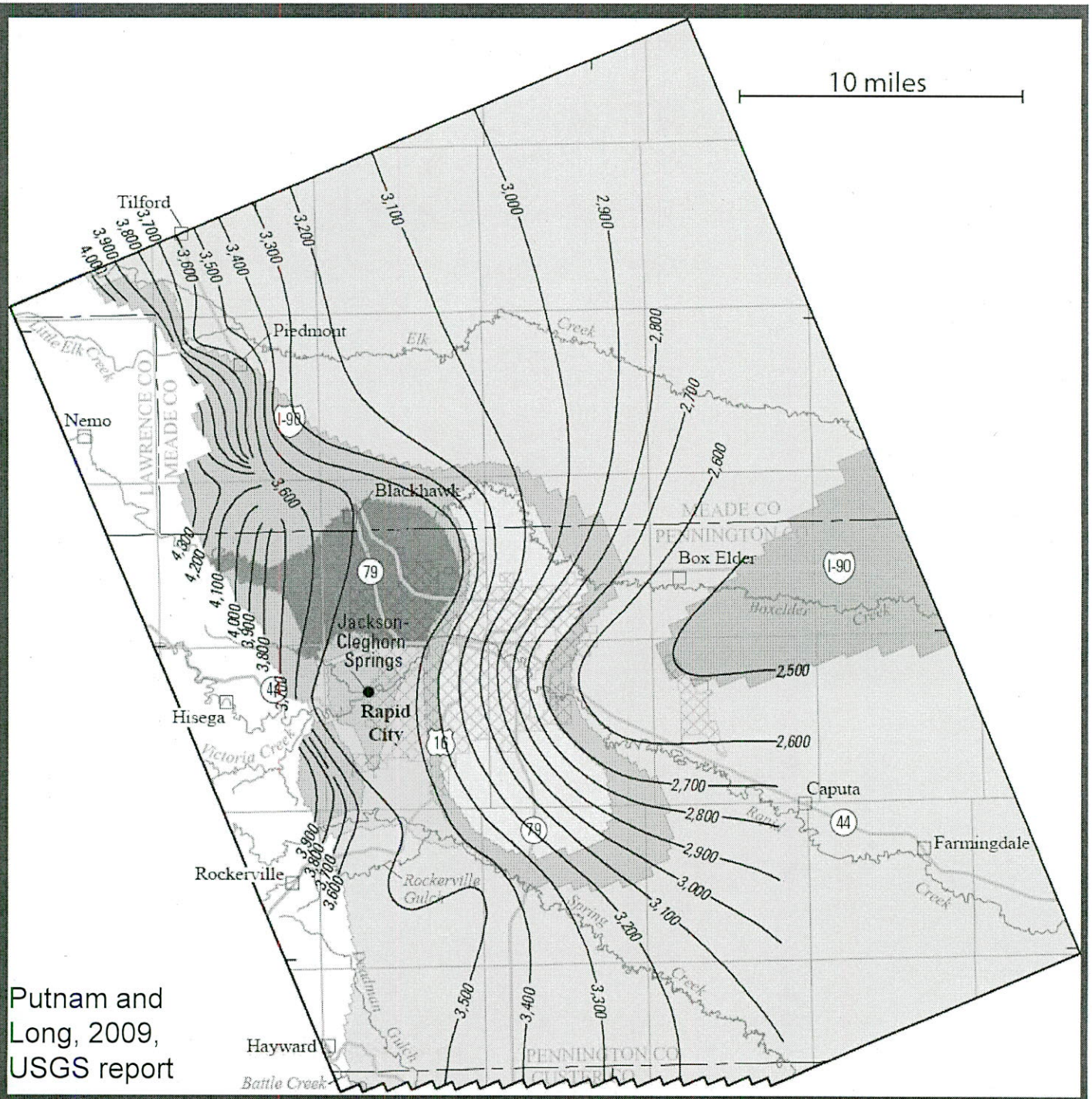
USGS

Groundwater flow in Minnelusa aquifer



USGS

Permeability is spatially variable in the Madison aquifer



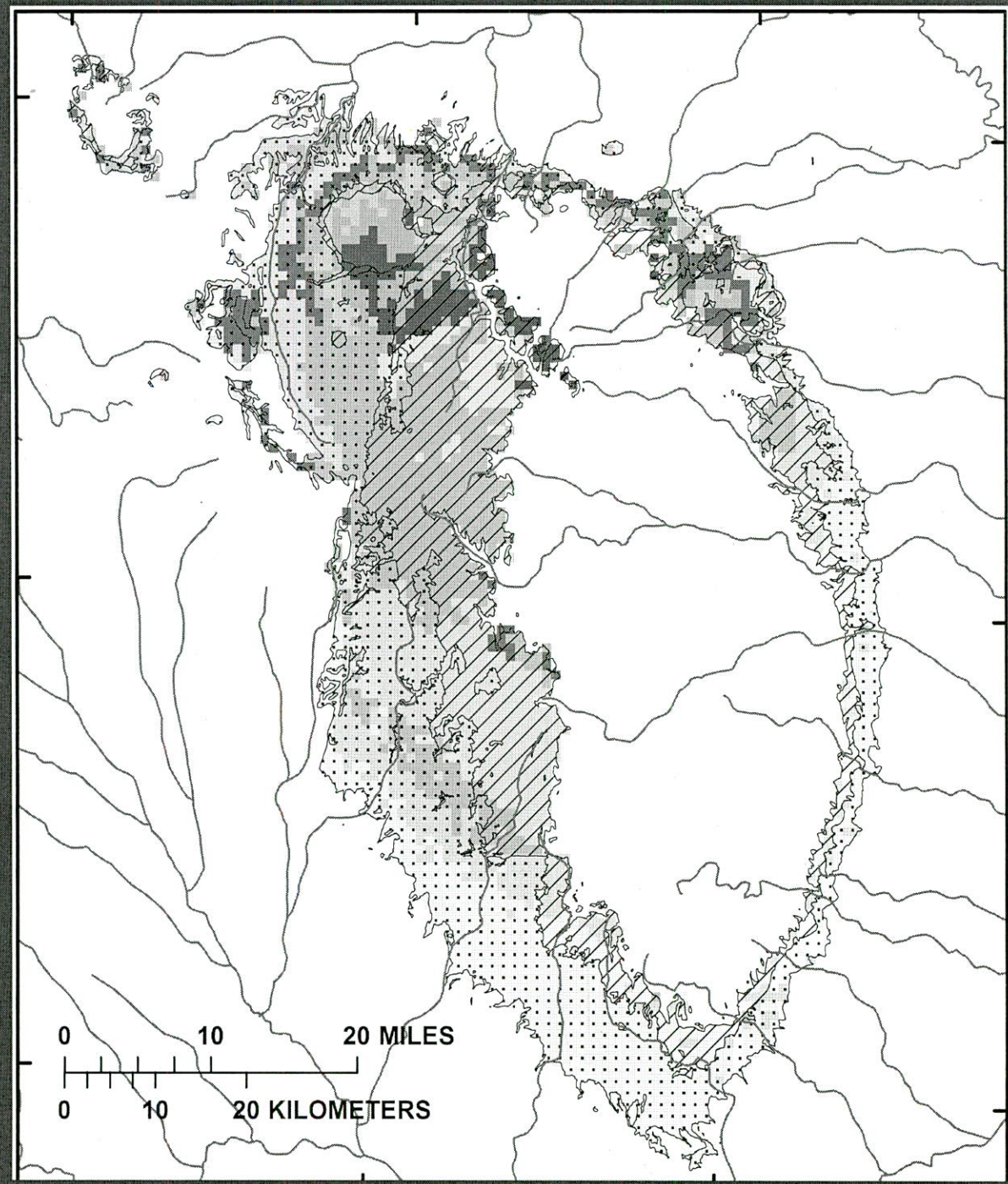
Putnam and Long, 2009, USGS report

USGS

Precipitation recharge

AVERAGE ANNUAL RECHARGE in INCHES

- Less than 1
- Between 1 and 2
- Between 2 and 3
- Between 3 and 4
- Between 4 and 5
- Between 5 and 6
- Between 6 and 7
- Between 7 and 8
- Greater than 8



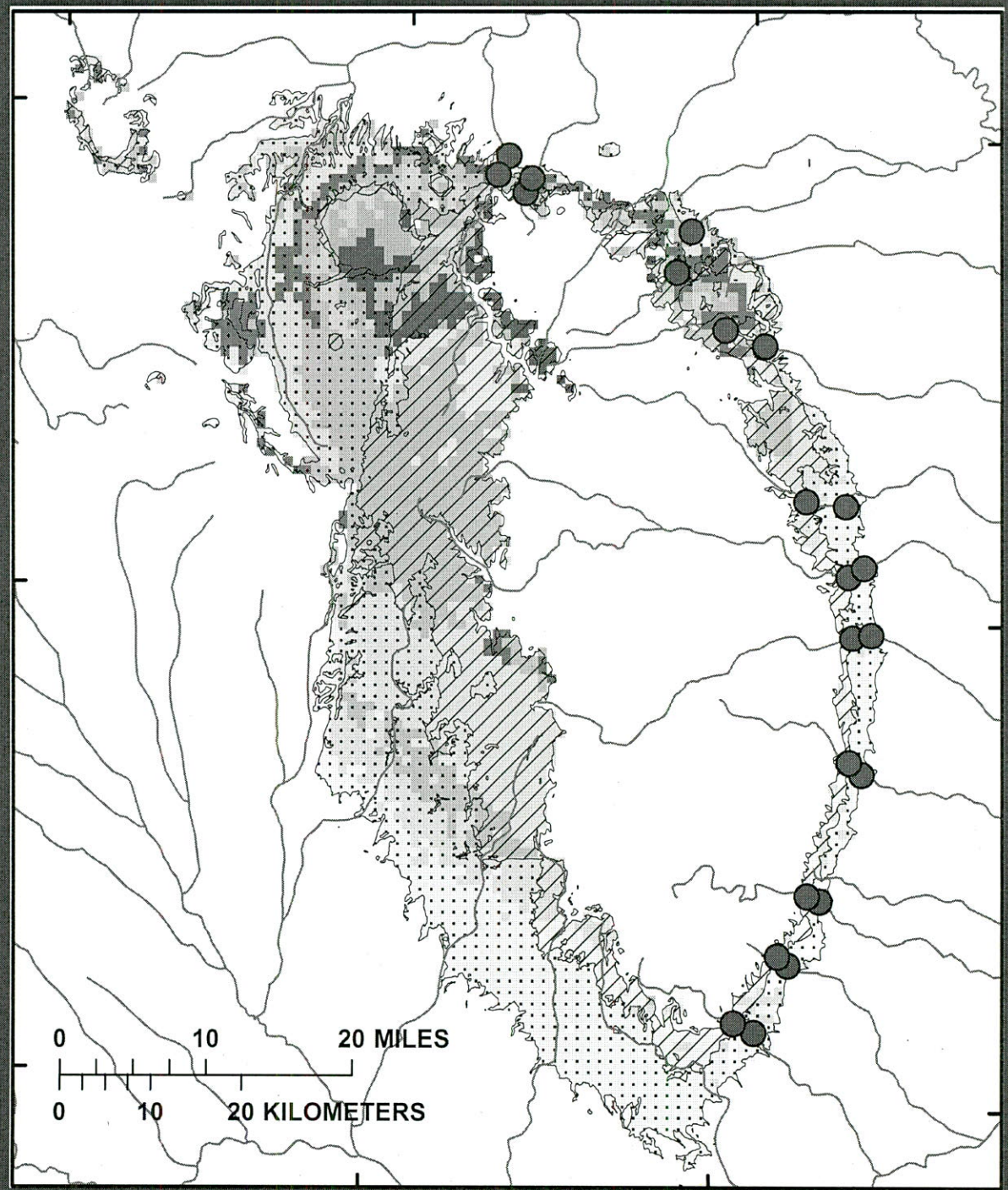
USGS

Stream recharge

AVERAGE ANNUAL RECHARGE in INCHES

- Less than 1
- Between 1 and 2
- Between 2 and 3
- Between 3 and 4
- Between 4 and 5
- Between 5 and 6
- Between 6 and 7
- Between 7 and 8
- Greater than 8

- Stream Recharge Locations
- Springs



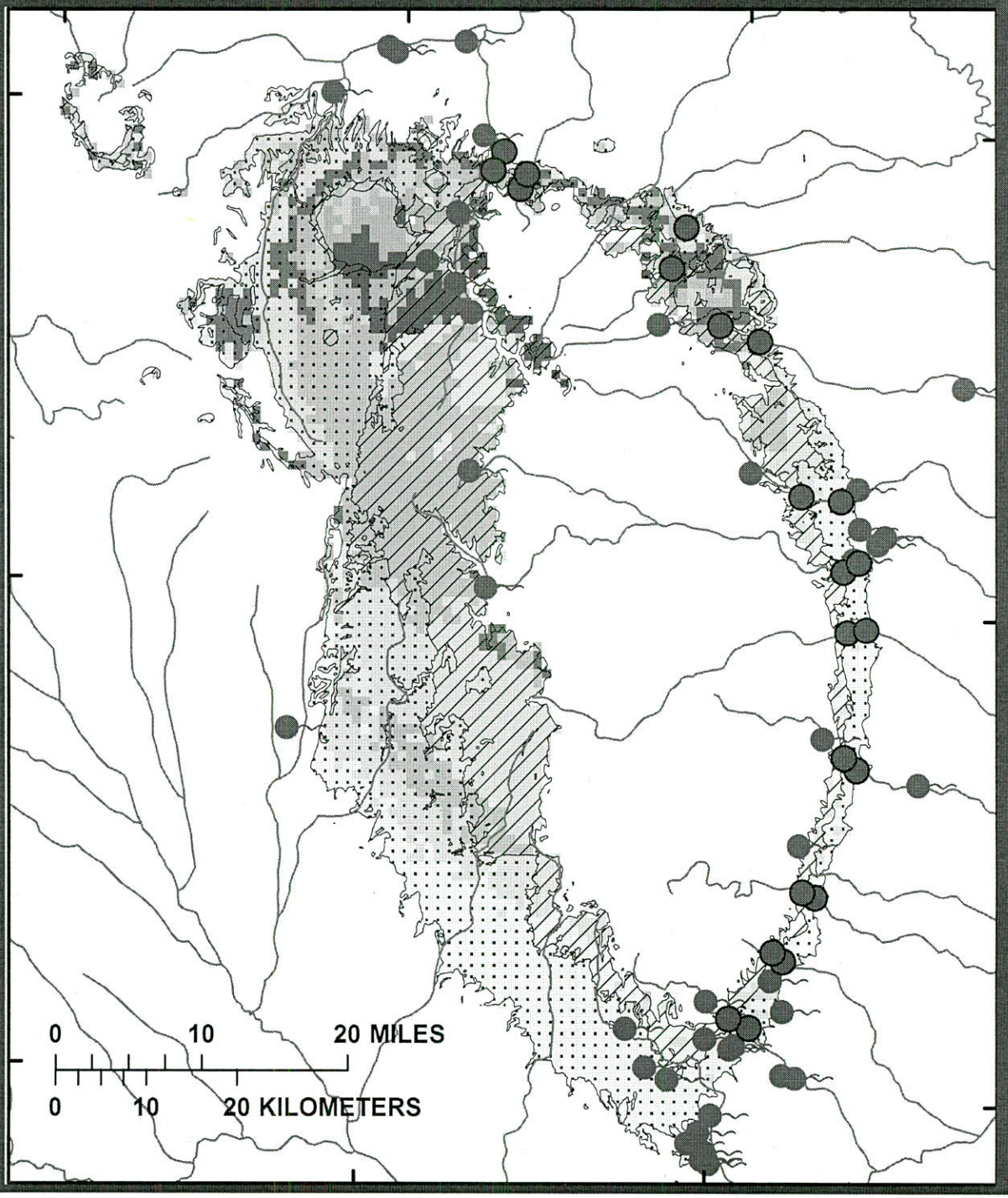
USGS

Spring discharge

AVERAGE ANNUAL RECHARGE in INCHES

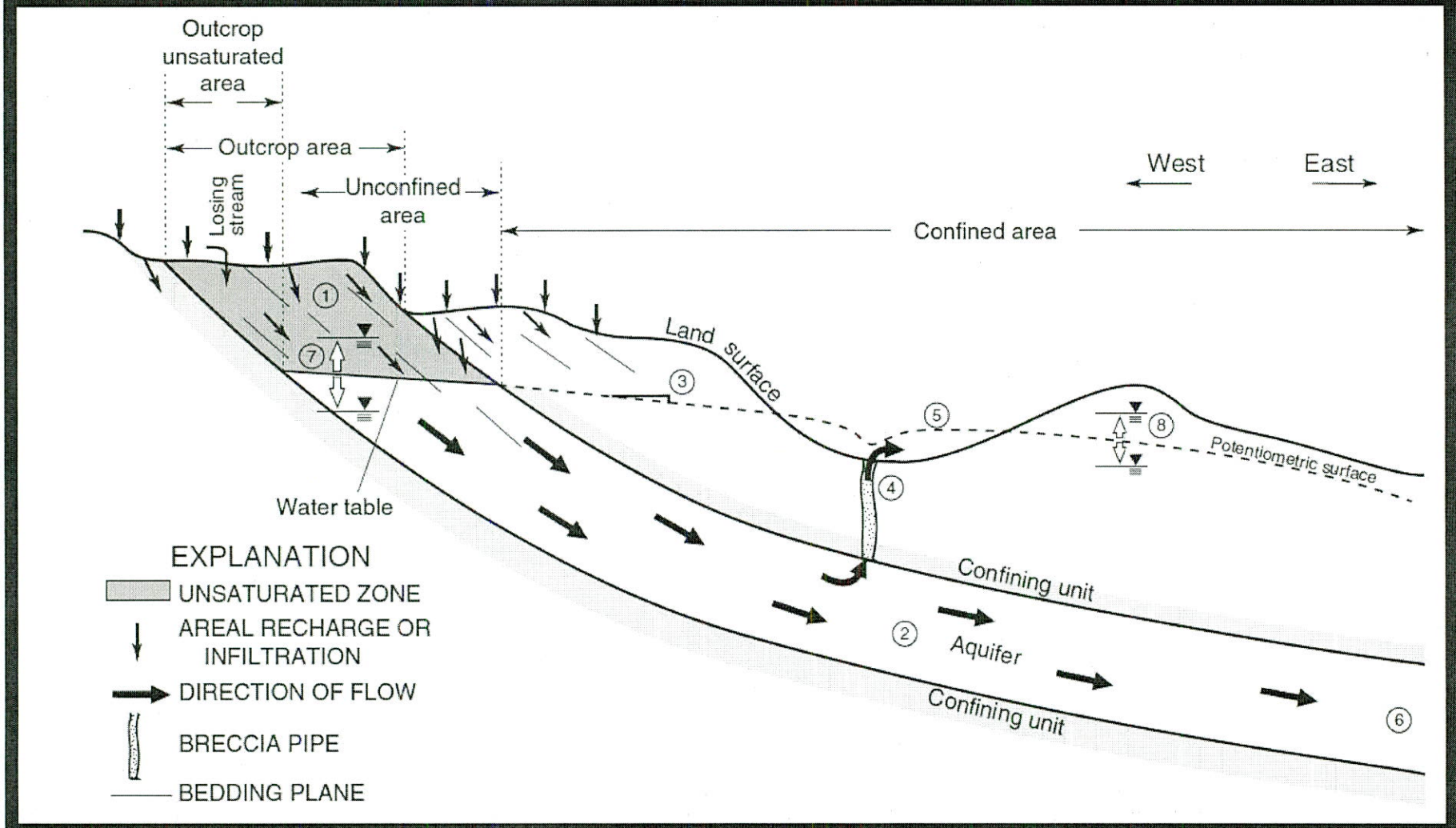
- Less than 1
- Between 1 and 2
- Between 2 and 3
- Between 3 and 4
- Between 4 and 5
- Between 5 and 6
- Between 6 and 7
- Between 7 and 8
- Greater than 8

- Stream Recharge Locations
- Springs



USGS

Profile view of an artesian spring in the Black Hills

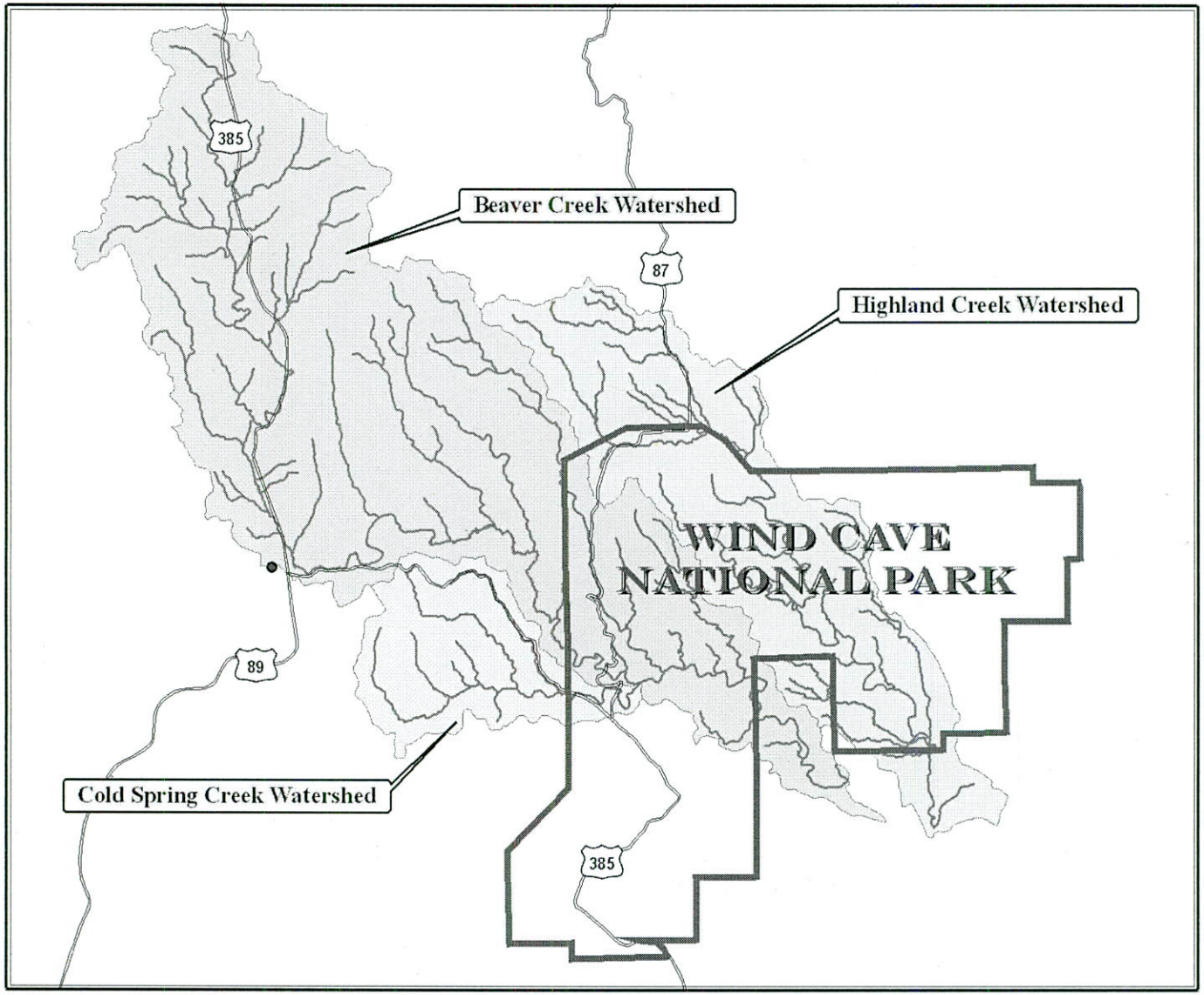


USGS

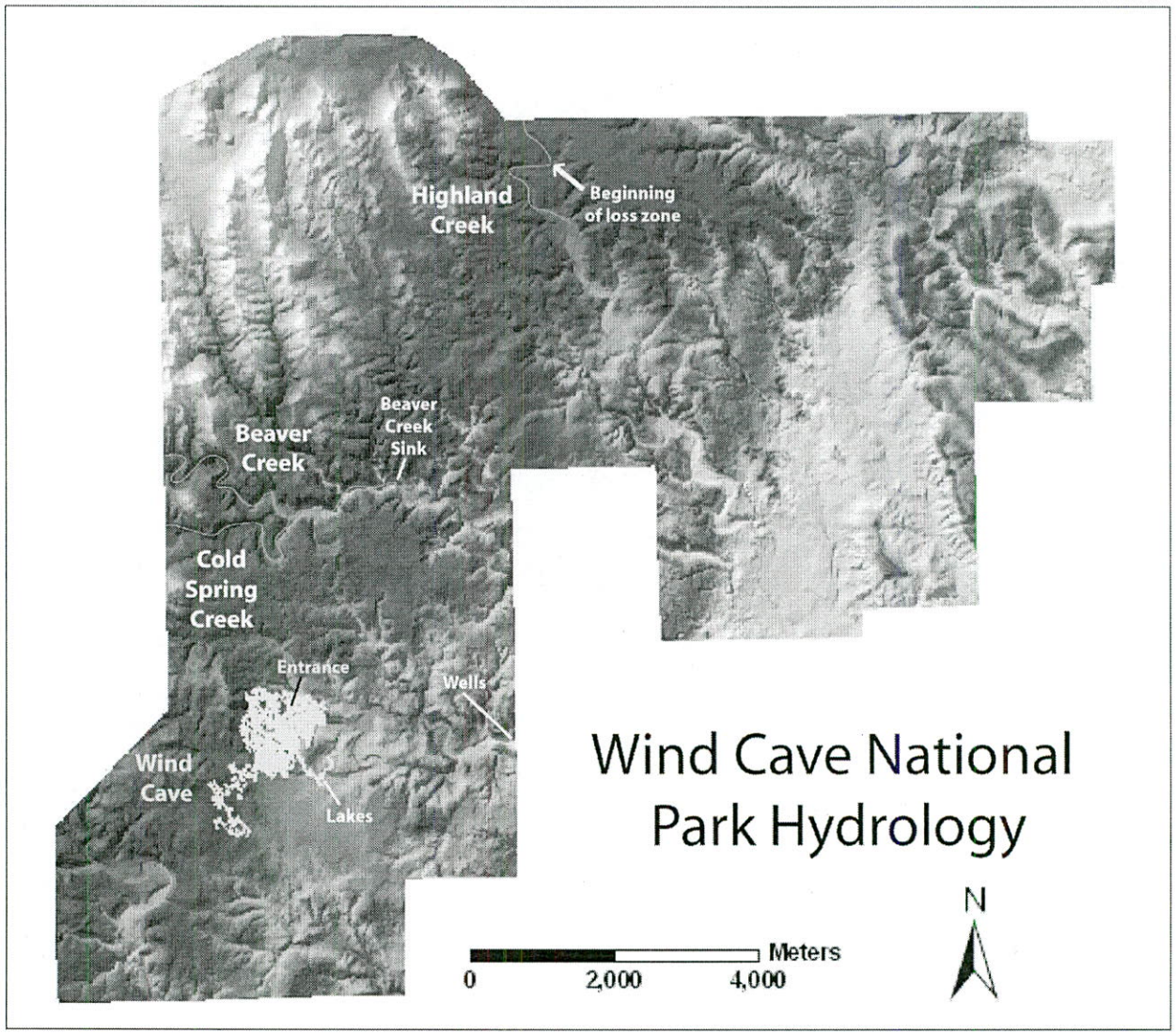
The Significance of the Wind Cave Lakes

Rodney D. Horrocks, Physical Science Specialist, Wind Cave National Park

Wind Cave National Park



Wind Cave National Park



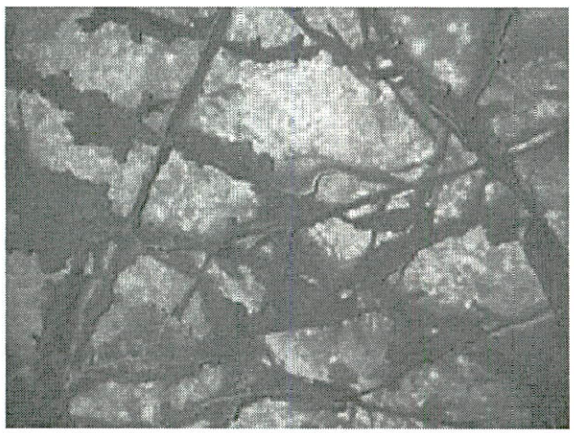
Wind Cave National Park

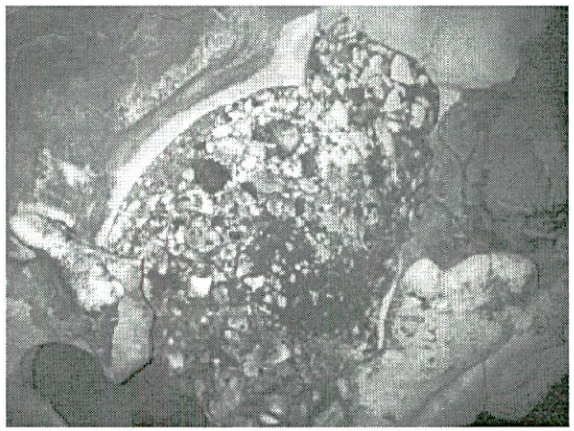
The most complex cave in the world was created by water

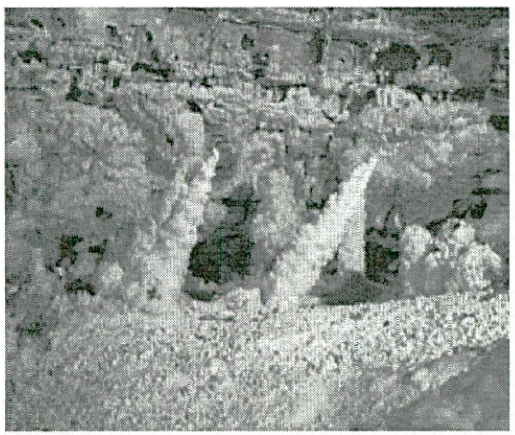
122.12 Miles of Surveyed Passage

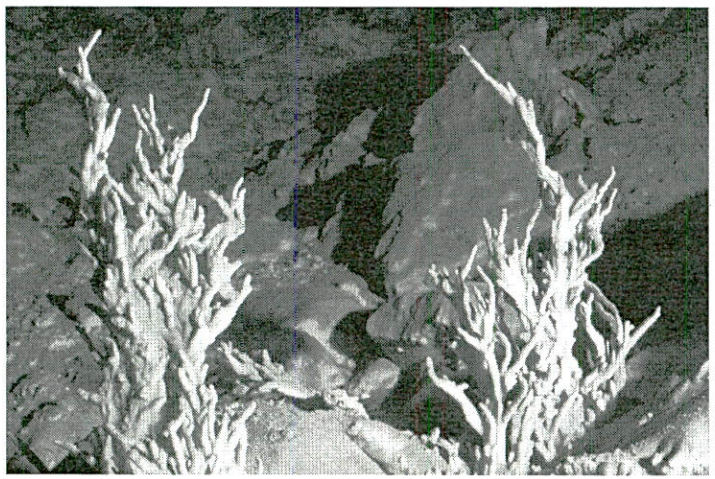
Wind Cave National Park

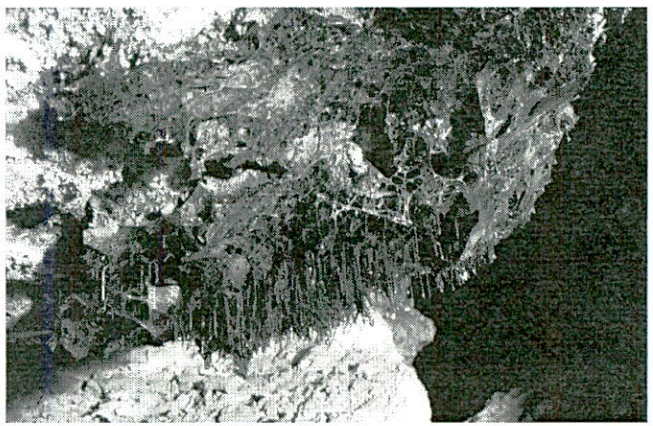
Significant Water Related Features Found in Wind Cave





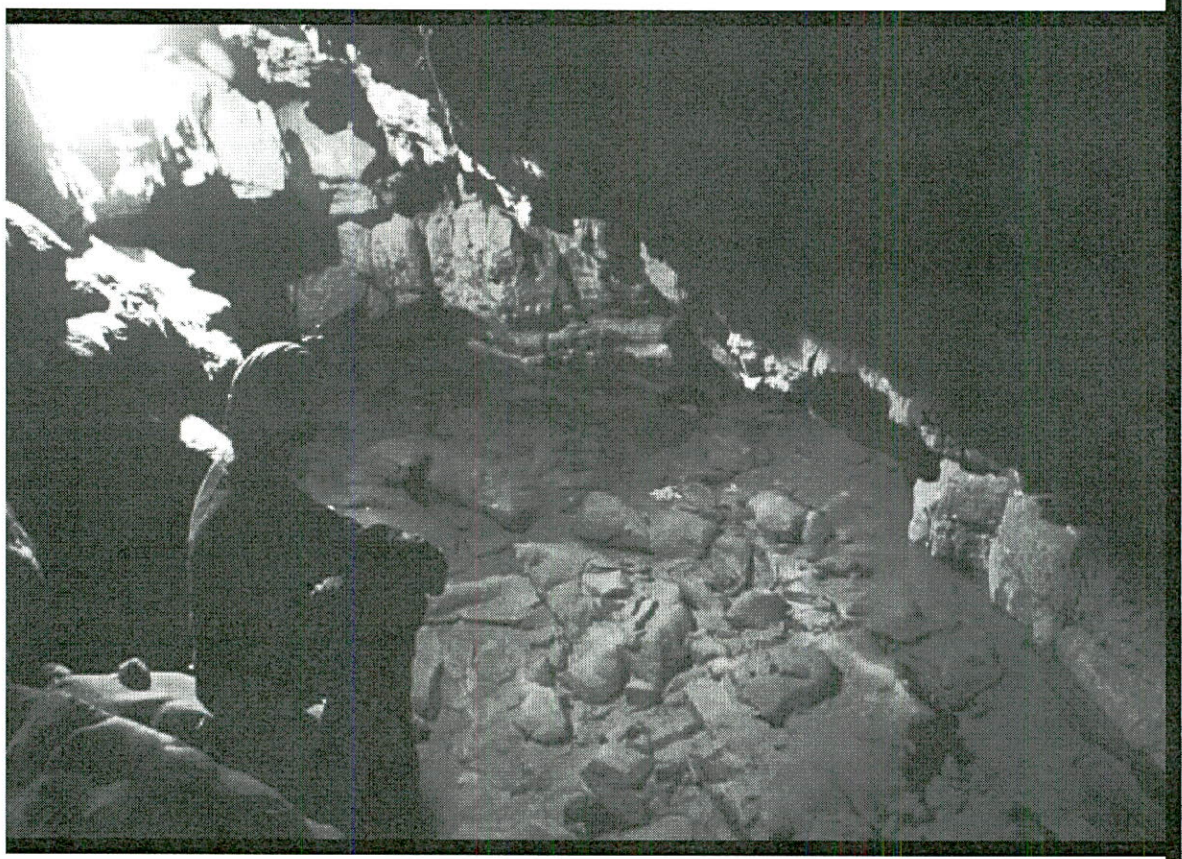


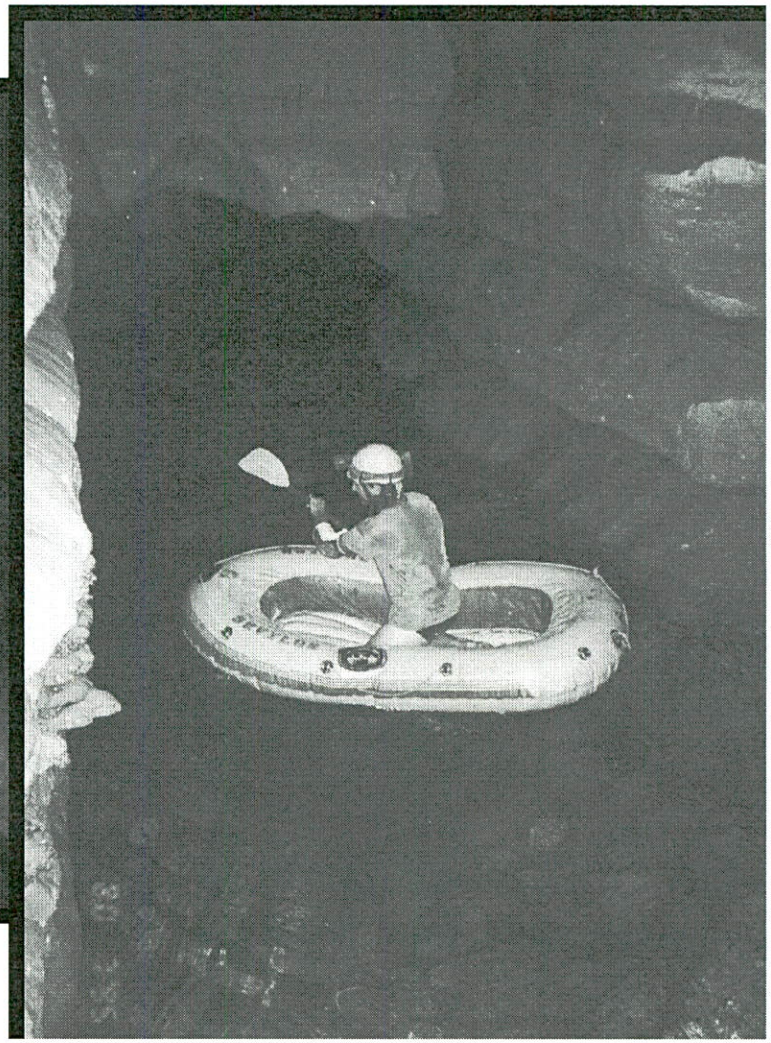




Wind Cave National Park

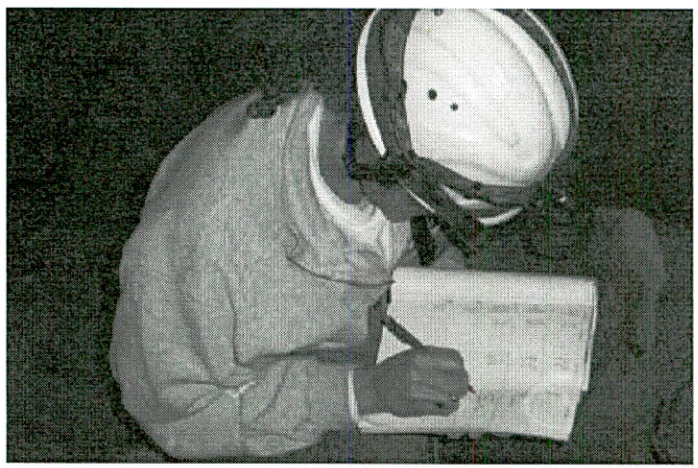
Wind Cave Currently Intersects the Water Table





Wind Cave National Park

Hydrological Research in Wind Cave



Wind Cave National Park

Published Hydrological Research to Date:

Alexander, E. Calvin, Jr. and Davis, Marsha. 1988. Water Budget for Wind and Jewel Caves. University of Wyoming NPS Research Center: 175-179.

Gries, John Paul. 1959. Preliminary Report on the Potential Ground Water Within the Boundaries of Wind Cave National Park, Custer County, South Dakota 17 p.

Heakin, Alan J. 2004. Streamflow and Water-Quality Characteristics for Wind Cave National Park, South Dakota, 2002-2003. USGS Scientific Investigations Report 2004-5071, 68 p. with CD.

Millen, T.E. & D.N. Dickey. 1987. A Stable Isotopic Investigation of Waters and Speleothems and in Wind Cave, South Dakota: An Application Of Isotope Paleothermometry. National Speleological Society Bulletin 49: 10-14.

Miller, T.E. 1989. Evidence of Quaternary Tectonic Activity, and for Regional Aquifer Flow at Wind Cave, South Dakota. National Speleological Society Bulletin 51: 111-119.

Ford, D.C., A.N. Palmer, & others. 1993. Uranium-Series Dating of the Draining of an Aquifer: The Example of Wind Cave, Black Hills, South Dakota. *Geological Society of America Bulletin 105*: 241-250.

Schroeder, W. 1989. Report on Location and Quantitative Water Measurements of Surface Water Resources within Wind Cave National Park Fall 1987 to Winter 1988. 15 p.

Whalen, P.J. 1994. Source Aquifers for Cascade Springs, Hot Springs, and Beaver Creek Springs in the Southern Black Hills of South Dakota. MS Thesis, South Dakota School of Mines and Technology, 299 p.

Wind Cave National Park

Hydrologic Profile of Wind Cave

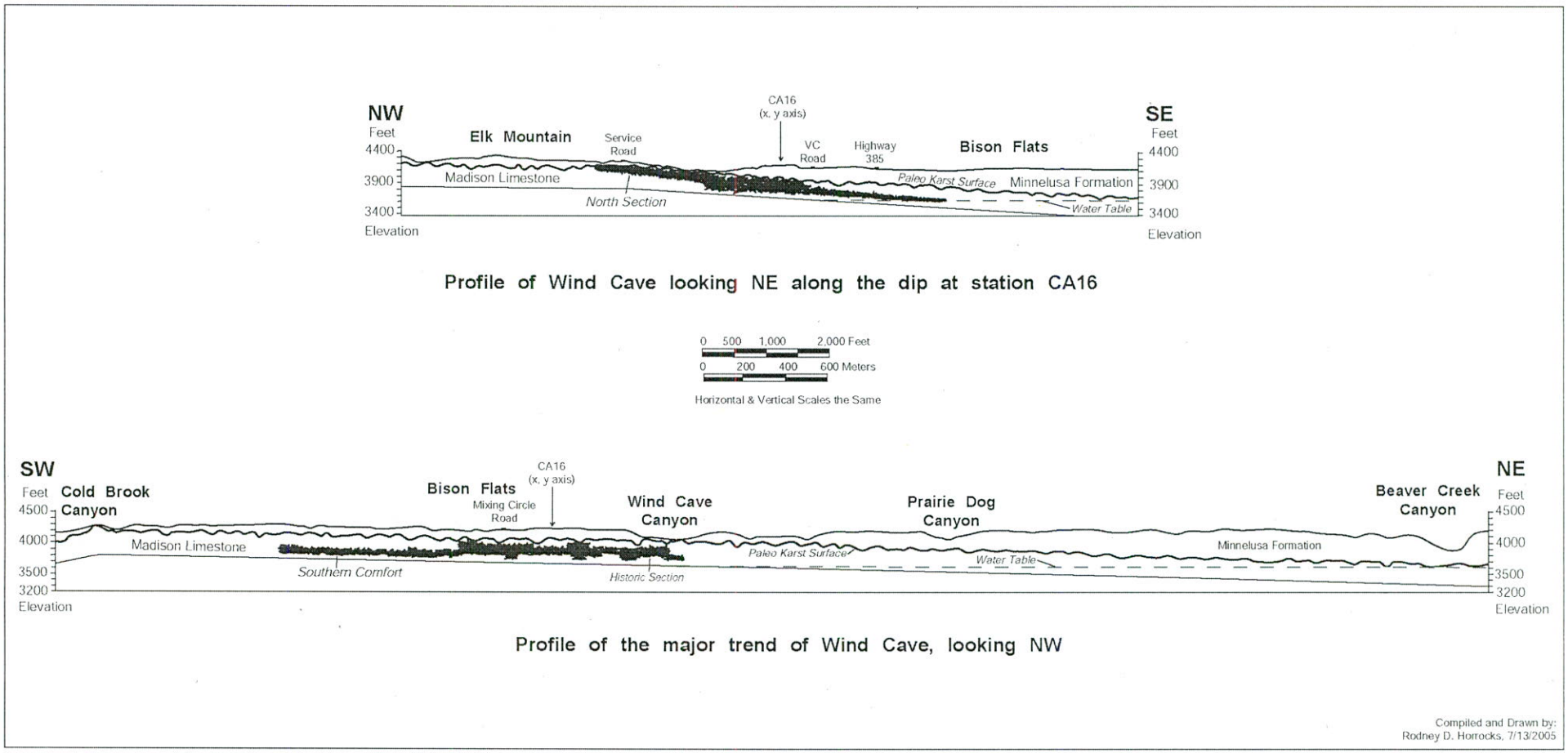
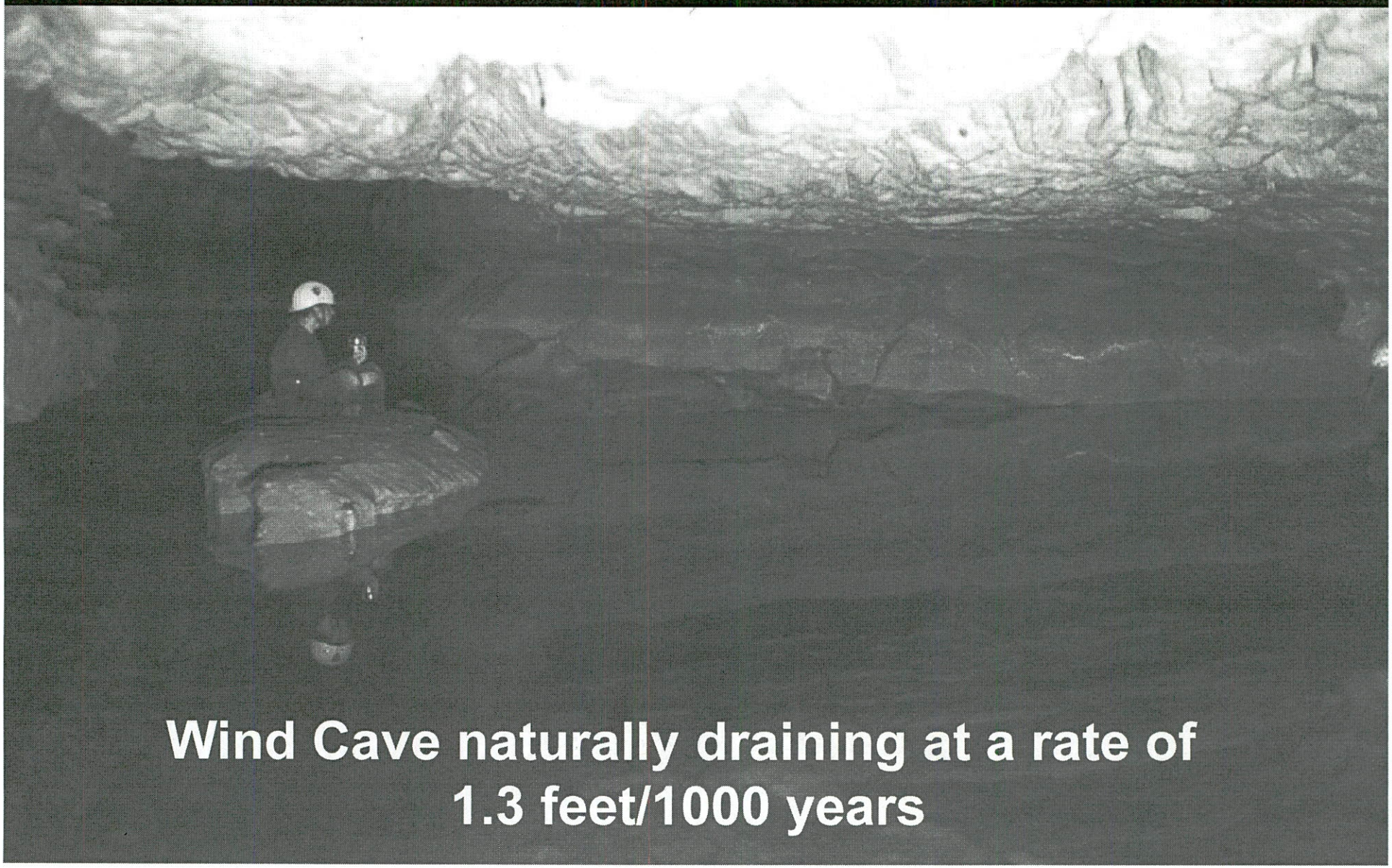


Fig. 4, Profiles showing the relationship of surveyed passages in Wind Cave with structural geological and hydrological factors.

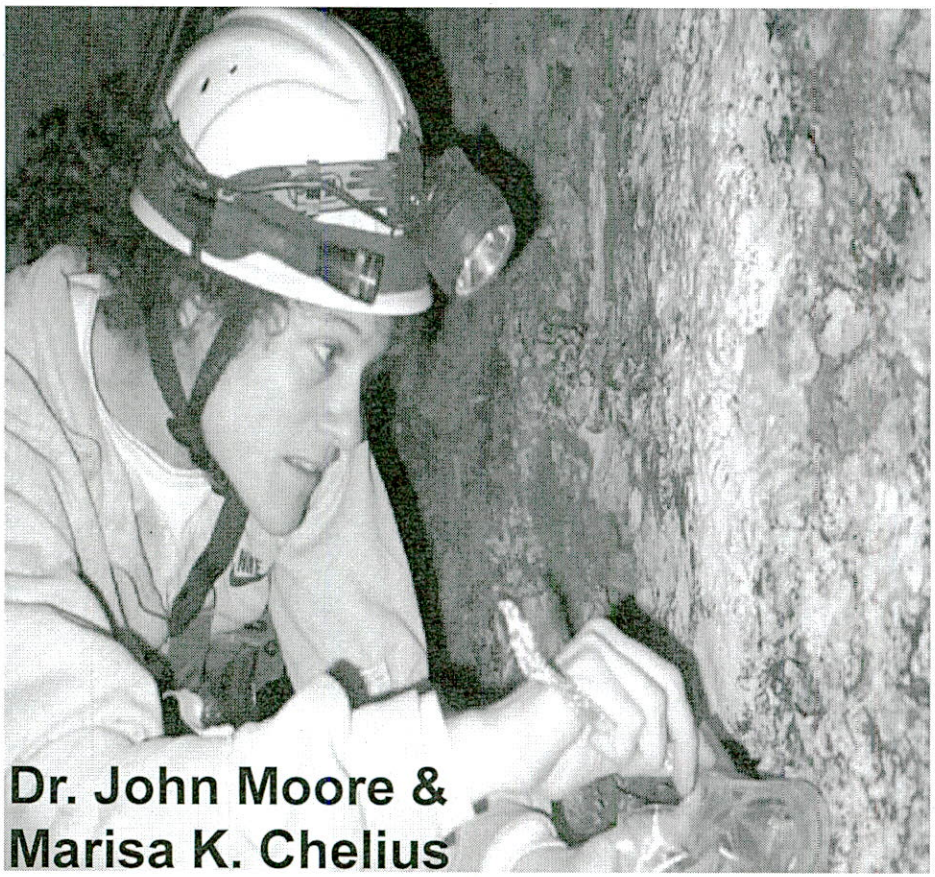
Wind Cave National Park

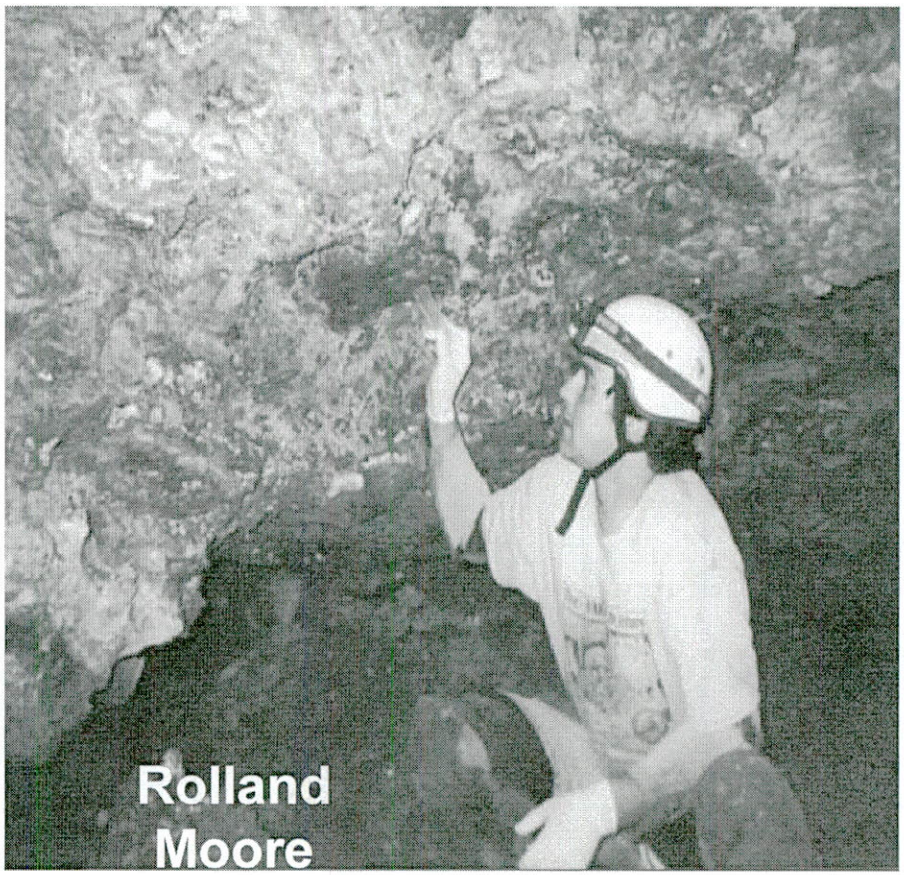


Wind Cave naturally draining at a rate of 1.3 feet/1000 years

Wind Cave National Park

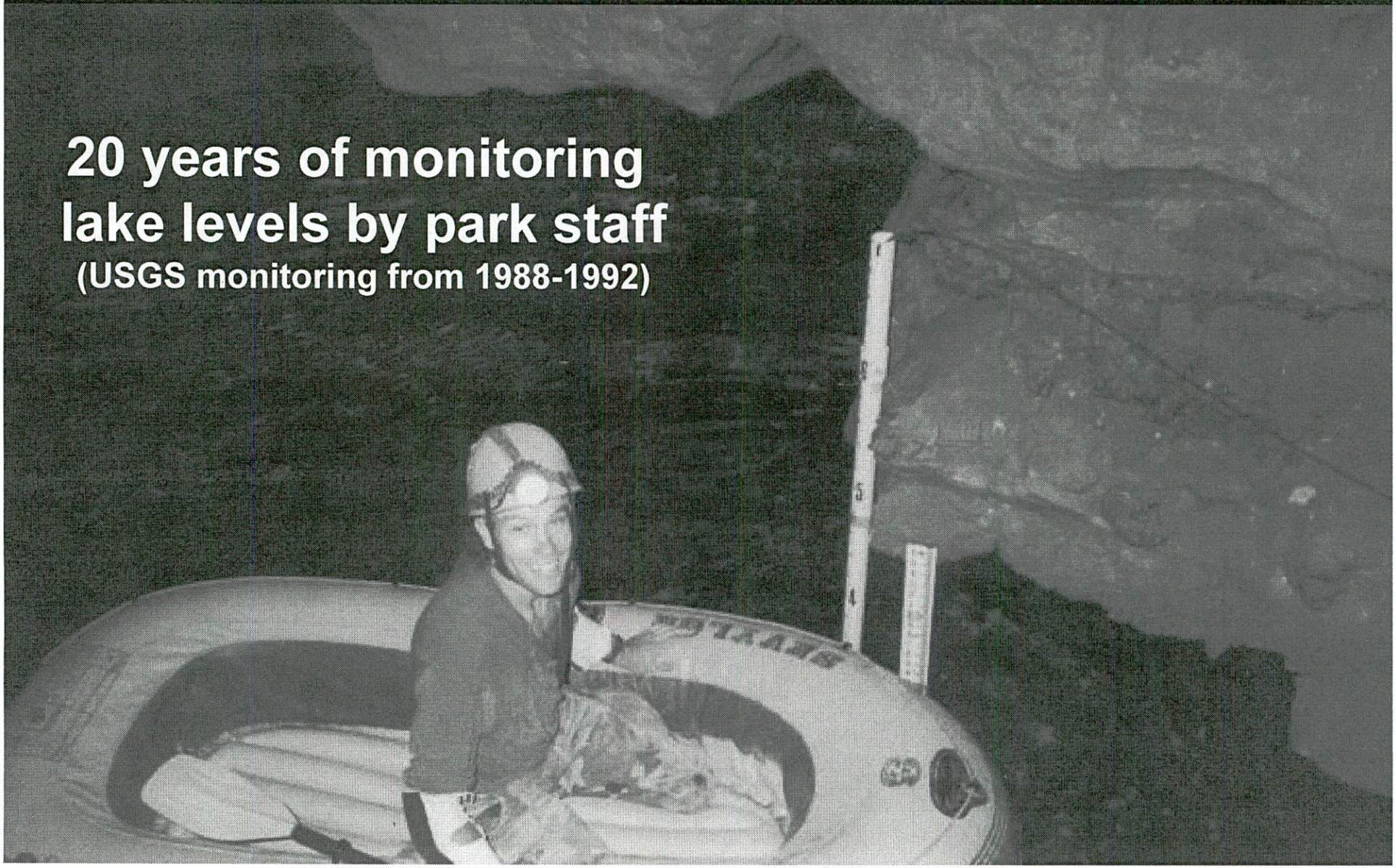
Microbial research started in Wind Cave, but not in the Lakes





The Lakes are the only place to access the water table in the Black Hills

Wind Cave National Park



20 years of monitoring lake levels by park staff

(USGS monitoring from 1988-1992)

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

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JANA SMOOT WHITE
TYLER C. WETERING
NATHAN R. CHICOINE

WYNN A. GUNDERSON
Of Counsel

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

June 12, 2015

RECEIVED
JUN 15 2015
WATER RIGHTS PROGRAM

Michael M. Hickey
Bangs McCullen Butler
Foye & Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Mike:

Enclosed is Applicant United Order of South Dakota's Answers to Intervener Linda Kilcoin's Interrogatories and Requests for Production of Documents.

Sincerely yours,

Jeffrey R. Connolly

JRC:amb
Enclosure
cc: Jeanne Goodman
Eric Gronlund
Ann F. Mines Bailey
Lois G. Witte
William R. Hansen
Rick Fox
Karl and Suzanne VonRump
Cheryl Schrempp Dupris
Craig Bobzien
Mr. and Mrs. David Albrecht
Toni Martin
Doug Lesher
Dean and Delia Johnson
Rodney Freeman

919098 / 12414.0002

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	**Applicant United Order of South Dakota's Answers to Intervener, Linda Kilcoin's Interrogatories and Requests for Production of Documents to**

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: Prior to answering these interrogatories, have you made due and diligent search of your books, records, and papers, and due and diligent inquiry of all agents of the Applicant, with a view to eliciting all information available in this action?

ANSWER: **Yes.**

INTERROGATORY NO. 2: Please state the identify of all the individuals who participated in or were involved in answering these Interrogatories and Requests for Production of Documents and identify which interrogatory or request for production each individual supplied information for.

ANSWER: **Seth Jeffs, Water Operator, United Order of South Dakota, PO Box 5050, Custer SD 57730.**

INTERROGATORY NO. 3: As to the Applicant, please state the following:

a. The legal nature of the Applicant;
b. The state under which the Applicant is organized;
c. The date the Applicant was created;
d. The identity of the individuals who formed the Applicant;
e. The identity of the current leader, president, principal, trustee and/or beneficiaries of the Applicant; and
f. Please produce copies of all documents which show the nature of the Applicant, its creation, organizational chart, and its current internal policies, operations or bylaws.

Answer:

A. A Common Law Trust.

B. South Dakota.

C. December 23, 2009.

D. Applicant objects to this requests as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.

E. **Applicant objects to this requests as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

F. **Applicant objects to this requests as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

INTERROGATORY NO. 4: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, how many persons were being served by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **Applicant objects to this request as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

Notwithstanding the objection, the operator does not know that exact number, but it is within the number allowed by the current wastewater permits.

INTERROGATORY NO. 5: As of the date these Interrogatories and Requests for Production of Documents were served, how many persons are served by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **See Answer to Interrogatory No. 4.**

INTERROGATORY NO. 6: Are there current plans by the Applicant to increase the number of persons who may be served by the water supply system operated by the Application? If so, please state the additional number of persons who may be served within the next five (5) and ten (10) years. Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **To the operator's knowledge, there are no current plans to increase the number of persons served by the water supply system beyond the maximum allowed by current wastewater permits.**

INTERROGATORY NO. 7: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, how many head and what type of livestock were being watered using

water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **None.**

INTERROGATORY NO. 8: As of the date these Interrogatories and Requests for Production of Documents were served, how many head and what type of livestock are being watered using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **None.**

INTERROGATORY NO. 9: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, how many acres of noncommercial family gardens, trees, shrubbery, or orchards were being irrigated using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **About 5 Acres.**

INTERROGATORY NO. 10: As of the date these Interrogatories and Requests for Production of Documents were served, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are being irrigated using water supplied by the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **About 5 Acres.**

INTERROGATORY NO. 11: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, what was the total water storage capacity available for the water supply system operated by the Applicant? As of that date, how much water was being stored by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **About 30,000 Gallons.**

INTERROGATORY NO. 12: As of the date these Interrogatories and Requests for Production of Documents were served, what is the total water storage capacity available for the water supply system operated by the Applicant? As of that date, how much water is being stored by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **About 30,000 Gallons.**

INTERROGATORY NO. 13: As of October 14, 2014, the date the Applicant filed Application No. 2730-2, what was the total volume of wastewater that was generated as a result

of the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **Applicant does not meter or record the flow into the septic systems, but applicant does not exceed the limits discussed in the Supplemental Report to the Chief Engineer, dated May 14, 2015, UOSD ## 3-4.**

INTERROGATORY NO. 14: As of the date these Interrogatories and Requests for Production of Documents were served, what is the total volume of wastewater that is being generated as a result of the water supply system operated by the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **Applicant does not meter or record the flow into the septic systems, but applicant does not exceed the limits discussed in the Supplemental Report to the Chief Engineer, dated May 14, 2015, UOSD ## 3-4.**

INTERROGATORY NO. 15: As of the date these Interrogatories and Requests for Production of Documents were served, how many gallons of groundwater will the Applicant need to withdraw annually from the Madison aquifer under Application 2730-2 to meet all of the present needs of the Applicant? Please produce copies of any documents reviewed or utilized by you to answer this interrogatory.

Answer: **Unknown at this time, but within the 60 acre feet limit discussed in the Supplemental Report to the Chief Engineer, dated May 14, 2015 UOSD ## 1-6.**

INTERROGATORY NO. 16: How has the Applicant beneficially used the groundwater withdrawn pursuant to Water Permit No. 2610-2 for the purpose of suburban housing development? Please produce copies of any documents which establish the beneficial use of groundwater withdrawn or which was reviewed or utilized by you to answer this interrogatory.

Answer: **Applicant objects to this request as it calls for a legal conclusion.**

Notwithstanding the objection, the Applicant has used groundwater in the past for watering gardens, watering orchards, watering landscaping, feeding animals, drinking, washing, sanitary use, and culinary use.

INTERROGATORY NO. 17: Has the Applicant ever submitted a Subdivision Review Application to the Custer County Planning Department? If so, for which parcels owned by the Applicant and on what date(s)? Please produce a copy of any such applications or any other documents reviewed or utilized by you to answer this interrogatory.

Answer: **Applicant objects to this request as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to**

the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case. Notwithstanding the objection, the Operator is not aware any.

INTERROGATORY NO. 18: Please identify and state the occupation, profession and field of specialization of each person whom you expect to call as an expert witness at the hearing, and as to each such person, please state:

a. The subject matter on which the expert is expected to testify;
b. A complete statement of the facts and opinions to which the expert is expected to testify;
c. The basis and reasons for all of the opinions upon which the expert is expected to testify;
d. The facts, data or other information provided to or considered by the witness in forming the opinions;
e. Any exhibits that will be used to summarize or support the opinions;
f. The title, author, copyright date and publisher's name and address of any book, medical or scientific treatise upon which such expert shall rely or which such expert will utilize in the preparation of and the presentation of his testimony;
g. The qualifications of the witness, including a listing of all publications authored in the previous ten (10) years;
h. A list of all other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years; A statement of the compensation to be paid for the study and testimony in this case; and
i. Please attach a copy of any report prepared by each such expert.

Answer: **See Expert Disclosure dated June 1, 2015 and attachments.**

INTERROGATORY NO. 19: Has the Applicant submitted any documents to Dr. Arden Davis? If so, describe each document and produce a copy of each document that was provided and the date on which it was submitted to Dr. Arden Davis.

Answer: **Objection, Attorney-client Privilege and Work Product. Notwithstanding the objection, Arden Davis reports that he has received no documents from the Applicant by mail. Arden Davis reports that he has received the following privileged documents from the Applicant's prior attorney, David Ganje by email:**

Date	Description
03/11/2015	Zip files containing current permit and pending permit
03/13/2015	Scan of July 2007 Water Board minutes
03/17/2015	Arden Davis retainer agreement
03/18/2015	Retainer agreement signed by client
03/21/2015	Draft report by Davis with editing comments by Mr. Ganje
03/21/2015	Retainer agreement signed by all three parties
03/21/2015	Second comments by Mr. Ganje – draft report

Arden Davis reports he has received the following privileged emails from Seth Jeffs:

Date	Description
03/23/2015 through 4/17/2005	Email chain regarding report and discussing application hearing.

INTERROGATORY NO. 20: Has the Applicant or any one acting on its behalf, prepared and/or submitted to the Custer County School District or any other local school board or other governmental entity an Application for Excuse From School Attendance for any child residing on the property for each year between 2007 and the present time? If so, please produce a copy of each such Application and Certificate of Excuse.

Answer: **Applicant objects to this request as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

ANSWERS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Any and all documents pertaining to the purposes, formation, composition, and operation of the common law trust known as the United Order of South Dakota.

Answer: **Applicant objects to this request as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

REQUEST NO. 2: Any and all documents associated with the preparation by the United Order of South Dakota of the "2014 Drinking Water Report."

Answer: **None possessed by Applicant. Applicant submitted water samples to Energy Laboratories, who then reported testing results directly to the Department of Environmental and Natural Resources.**

REQUEST NO. 3: Any and all documents requested in Interrogatories 1 through 20 above.

Answer: **See bates nos. Applicant 1-33.**

REQUEST NO. 4: Any and all documents sent to or received from the South Dakota Department of Environment and Natural Resources between the years 2007 and the present time.

Answer: **Applicant objects to this request as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

REQUEST NO. 5: Any and all documents sent to or received from Custer County between the years 2007 and the present time.

Answer: **Applicant objects to this request as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.**

SIGNATURE PAGES TO FOLLOW

State of South Dakota)
) ss.
County of Pennington)

Seth Jeffs, being first duly sworn, deposes and states that he is the Water Operator for the United Order of South Dakota and is familiar with the facts and circumstances of the matters referred to hereinabove and states that these Answers to Interrogatories and Requests for Production of Documents and the facts stated therein are true and correct to the best of his knowledge and belief.

UNITED ORDER OF SOUTH DAKOTA,
A COMMON LAW TRUST

By Seth S. Jeffs, Water Operator, Acting on Authority of the Board of Trustees

Subscribed and sworn to before me the 11th day of June 2015.

Notary Public, South Dakota

(SEAL)

ERIN A. ERNEST NOTARY PUBLIC SEAL SOUTH DAKOTA MY COMMISSION EXPIRES 2-20-2016

My Commission Expires: February 20th 2016

AS TO OBJECTIONS:

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By

Jeffrey R. Connolly
Attorneys for United ~~Order of South~~ Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

I hereby certify on this 12th day of June, 2015, I mailed by first-class U.S. mail, a true and correct copy of Applicant United Order of South Dakota's Answers to Intervener, Linda Kilcoin's Interrogatories and Requests for Production of Documents to the following:

Jeanne Goodman, Chief Engineer
Water Rights Program
Foes Building
523 East Capitol
Pierre, SD 57501

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

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

Toni Martin
4141 Villa Ridge Ct. #122
Rapid City, SD 57701

William Hansen
Jeff Hughes
Peter A. Fahmy
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Douglas Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Cheryl Schrempp Dupris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Michael Hickey
Bangs McCullen Butler Foye
& Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Lois Witt
United States Dept. of Agriculture
Forest Service
740 Simms St., Suite 309
Golden, Colorado 80401

Ann Mines-Bailey
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly

SUPPLEMENTAL REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2730-2
UNITED ORDER OF SOUTH DAKOTA C/O SETH JEFFS
MAY 14, 2015

Water Permit Application No. 2730-2 was received by the Department of Environment and Natural Resources-Water Rights Program (DENR-WR) on October 14, 2014. The application proposed authorization to complete a new well into the Madison aquifer (approximately 1100 feet deep) in the NW¼ SE¼ of Section 10, T6S-R3E, in Custer County. The application proposed to divert water from the new well and from two existing wells, authorized by Water Permit No. 2610-2, at a combined maximum diversion rate of 0.67 cfs (approximately 300 gallons per minute (gpm)). Water Permit No. 2610-2 currently authorizes diversions of up to a maximum rate of 0.21 cfs (approximately 94 gpm) from two wells located in the NW¼ SE¼ of Section 10, T6S-R3E, Custer County. Therefore, Application No. 2730-2 proposed an increased diversion rate from the Madison aquifer of 0.46 cfs (approximately 206 gpm). The water is to be used in the United Order of South Dakota's water system.

Water Permit Application No. 2730-2 was public noticed and several interveners filed petitions in opposition to granting the permit. On February 18, 2015, the Water Rights Program received a request from the applicant to modify Application No. 2730-2 to a reduced diversion rate. Application No. 2730-2, as revised, proposes to appropriate water from the Madison aquifer at an additional maximum diversion rate of 0.236 cfs (approximately105.9 gpm) and authorize a total maximum diversion rate from a new well and the two existing wells of 0.446 cfs (approximately 200 gpm).

CURRENT WATER USAGE:
Water Permit No. 2610-2 was approved August 1, 2007, and included a qualification (No. 4) that requires the applicant to report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. A summary of the United Order of South Dakota's reported water use is shown in Table 1.

Table 1. Annual water usage associated with Water Permit No. 2610-2, as reported to the Chief Engineer (Water Rights, 2015).

Water Use Reported by United Order of South Dakota		
Year	Gallons (Reported)	Acre-feet (Converted)
2007	150,500	0.46
2008	2,813,000	8.63
2009	6,207,000	19.05
2010	8,600,900	26.40
2011	13,205,800	40.53
2012	10,635,920	32.64
2013	3,447,480	10.58
2014	8,323,600	25.54

Water Permit No. 2610-2 authorizes the use of water for the purpose of "suburban housing development" and may not exceed the amount of water needed for beneficial use. Suburban housing development use typically includes water for drinking, washing, sanitary and culinary purposes, in addition to incidental irrigation. In a February 18, 2015, letter addressed to the Chief Engineer, The National Park Service Water Resources Division and The Black Hills National Forest, Mr. Seth S. Jeffs, the United Order of South Dakota water operator, indicated the community's beneficial use of water includes "watering gardens, orchards, landscape, and feeding animals during the spring and summer months".

Drinking, washing, sanitary and culinary uses:

2014 Drinking Water Survey

An on-site evaluation at the United Order of South Dakota public water system was conducted by the Department of Environment and Natural Resources-Drinking Water Program on June 11, 2014. The evaluation report identified the system as a "Community Water System" with a total population served of 75. The on-site evaluation reported that well No.1, which was constructed in 2007, was the only well connected to the water system, and it was capable of diverting 80 gpm. The on-site evaluation reported the system was capable of supplying 95 gpm (Holan, 2014).

Watering Gardens, Orchards, Landscape, and Feeding Animals:

The areas within the United Order of South Dakota's development that appear to be cultivated or landscaped were identified by evaluating June 29, 2014, imagery available through Google Earth 7.1.2.2014. The areas, shown as polygons outlined in dark green in Figure 1, digitized using Esri® ArcGIS 10.2, total approximately seven acres. Assuming an application rate of two acre-feet per acre per year, the total annual water use at the development for watering gardens, orchards and landscape is estimated to be less than 14 acre-feet per year. Livestock watering uses cannot be estimated at this time.

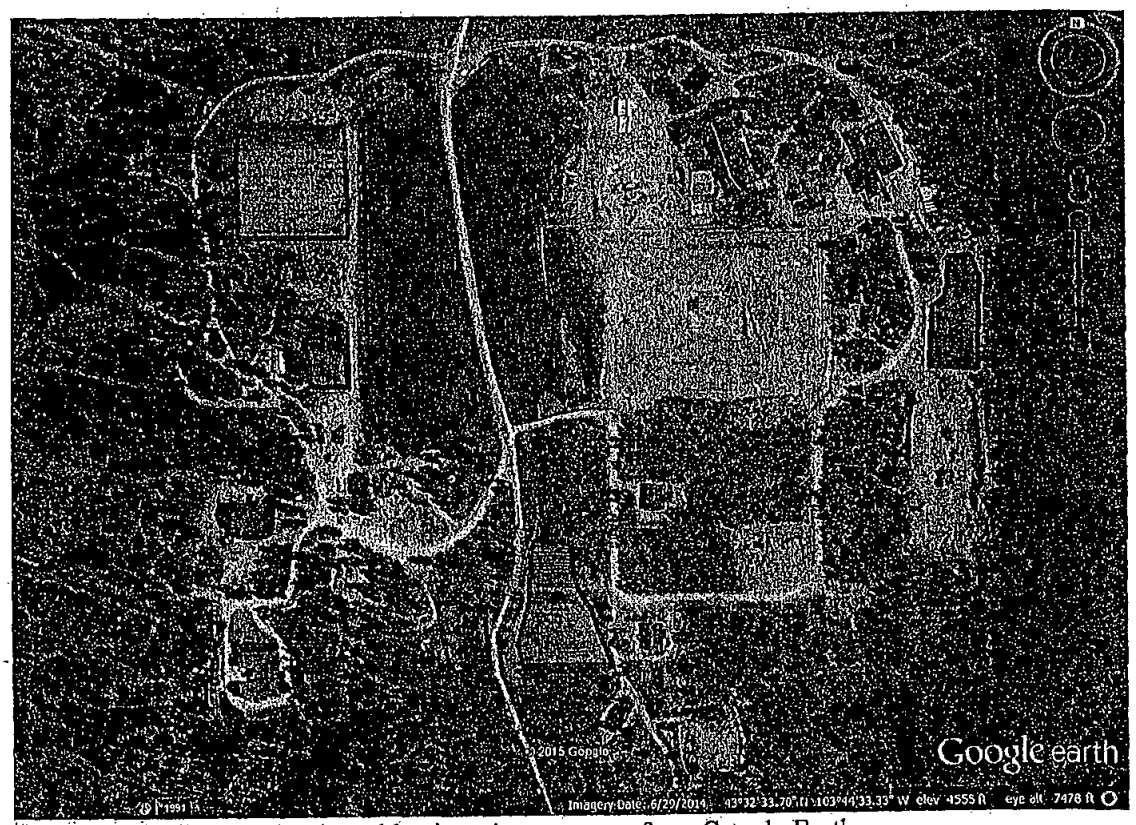

Figure 1. Gardens, orchards and landscaping apparent from Google Earth

FUTURE NEEDS:
In his February 18, 2015 letter, Mr. Jeffs stated that "the number of gardens and orchards will increase as the community is able to bring more of the land into cultivation"; "the needs for animals in the future will increase the demand for water"; and "the need for fire protection is also a great concern."

Drinking, washing, sanitary and culinary uses:
Onsite Wastewater System Approvals
The DENR has approved four onsite wastewater systems for the United Order of South Dakota community. The specifics for these systems are shown in Table 2. The wastewater systems are limited to capacities approved; therefore the total maximum daily flow (MDF) for the four systems is limited to 7,560 gallons per day (gpd). Assuming 7,560 gpd for 365 days equates to total volume of 8.47 acre-feet per year.

Table 2. Onsite wastewater systems approved by DENR for the United Order of South Dakota compound. (Hipple)

ESTABLISHMENT	APPROVAL DATE	REMARKS
United Land Management	09/14/2005	Basic system, 2,160 MDF, 18-bedroom residence
United Land Management	06/28/2007	Basic system, 1,560 MDF, 13-bedroom residence
United Land Management	09/10/2007	Basic drainfield for two duplexes, total of 14 bedrooms, 1,600 MDF
United Order of SD (United Land Management)	03/03/2010	Basic system, 2160 MDF, 18-bedroom residence
MDF=maximum daily flow		

The designed wastewater flow rate used in the review of United Land Management's residential septic systems was based on 60 gallons a person per day and a maximum of 2 persons per bedroom (Hipple, 2015). Based on the onsite wastewater systems approved for the community, (i.e. maximum daily flow of 7,560 gpd, and 63 bedrooms), the onsite wastewater system capacity is 126 people.

The total future system residential demand based on a population limited by the community's onsite wastewater system capacity (126) and a per capita demand for residential use of a maximum of 130 gallons per capita per day (Lindeburg, 2012) is estimated to be 18 ac-ft/yr.

Watering Gardens, Orchards, Landscape, and Animal needs:
Increased acreage of gardens, orchards and landscape areas is difficult to predict. However, two areas, totaling approximately 14 acres, (identified in yellow in Figure 2.) were considered potentially irrigable lands based on topography and groundcover. The addition of 14 acres of gardens, orchards and landscaping, would result in a tripling of the acreage currently estimated for that use. Assuming 21 acres of gardens, orchards and landscaping, irrigated at a rate of two acre-feet per acre per year results in an estimated "irrigation" use of 42 acre-feet per year. Future animal needs cannot be estimated with the information currently available.

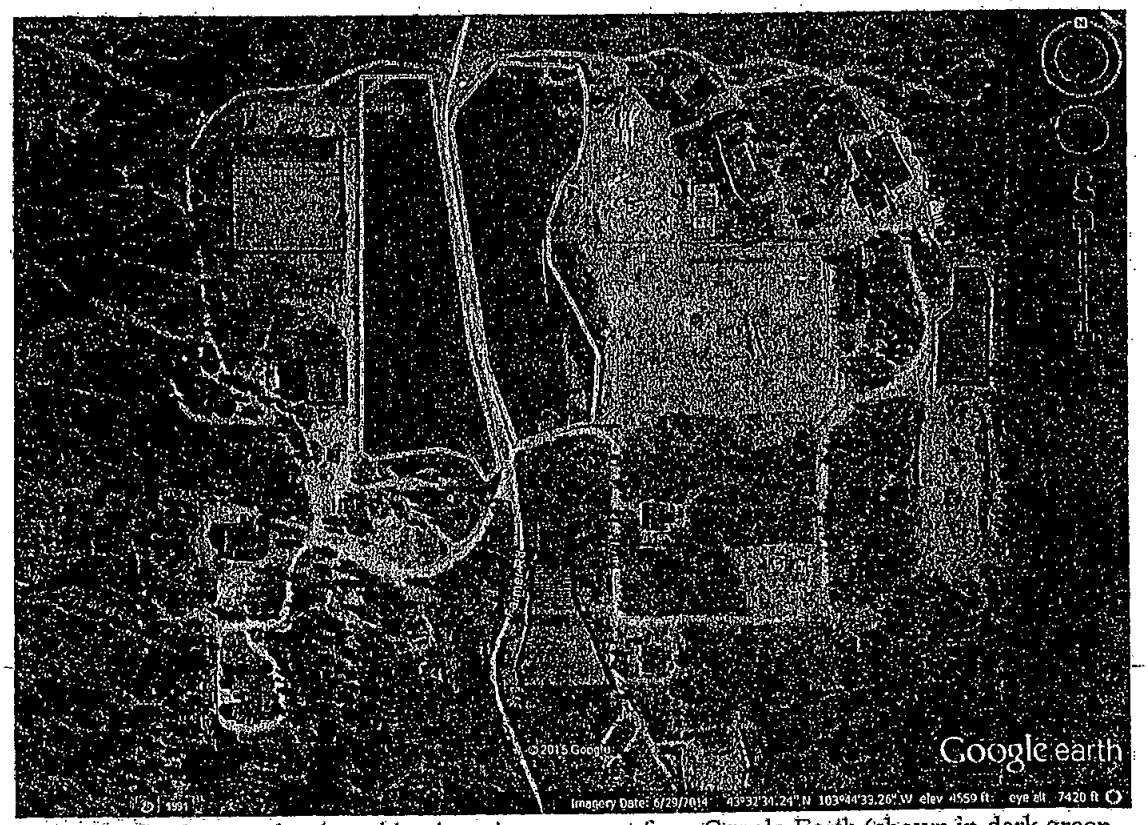

Figure 2. Gardens, orchards and landscaping apparent from Google Earth (shown in dark green polygons) and potentially irrigable acreage (shown in yellow polygons).

Fire Protection

"Based on United Order of South Dakota's Water Right Application stating that they will be constructing at least a 250,000 gal storage tank and the Insurance Service Office (ISO) minimum requirements for fire suppression of 1000gpm at 20psi for 2hours; the 250,000 gal storage will supply adequate domestic and fire suppression storage. The ISO required fire suppression storage should not affect annual drawdown" (Dreis, 2015).

Projected Total Future Water Use:

Future water use at the United Order of South Dakota community is estimated on an average per capita water use of 130 gallons per person per day for the maximum population capacity of the onsite wastewater systems (126), plus the irrigation of 21 acres at a maximum rate of two acre-feet per acre. This total demand is estimated to be less than 60 ac-ft/yr.

ESTIMATED IMPACTS:

In the report to the Chief Engineer titled "Water Permit Application No. 2730-2, United Order of South Dakota, November 12, 2014" (Buhler, 2014), the Theis Equation was used to compare the theoretical impact of an increase in the total pumping rate at the community of 0.67 cfs compared to 0.46 cfs. Drawdown 1000 feet from a pumped well would have increased with the increased diversion rate on the order of nine feet. The assumption of continuous pumping at the

maximum diversion rate, for one year, with no recharge, is an unrealistic assumption. As stated in the report, "The Theis equation requires a number of simplifying assumptions, some of which may not apply in this case; however, the solution is still useful to show that drawdown should not be significant."

The instantaneous diversion rate proposed by this application has been revised and the drawdown that would result would be less. The impact of this application's proposed withdrawals was evaluated considering well withdrawals more likely for this community. Drawdown was evaluated at a distance of 1000 feet from a production well after one year, assuming: A. a transmissivity of 10,943.2 GPD/F; B. a Storativity of 0.0002; and C. a difference between 40.53 acre-feet per year (maximum reported pumping) and 60 acre-feet per year (projected pumping). With the assumptions above and again, assuming no recharge, drawdown can be expected to be in the vicinity of 1.1 feet ("Theis Equation Calculator").

Ken Buhler
SD DENR-Water Rights Program

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**United Order of South Dakota's Disclosure of Expert Witness**

Pursuant to the Court's May 18, 2015 Scheduling Order, United Order of South Dakota hereby discloses the name of any expert that it intends to call as an expert witness as follows:

1. Arden D. Davis, Ph.D., P.E., 1014 Milwaukee Street, Rapid City, South Dakota 57701. A copy of Mr. Davis' March 27, 2015 expert report and his curriculum vitae is attached.

Dated this 1st day of June, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly
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CERTIFICATE OF SERVICE

I hereby certify on this 16 day of June, 2015, I mailed by first-class U.S. mail, a true and correct copy of a United Order of South Dakota's Designation of Expert Witness to the following:

Jeanne Goodman, Chief Engineer
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Foes Building
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Pierre, SD 57501

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Custer, SD 57730-9109

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Water Rights Program
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523 East Capitol
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Groundwater in the Madison Aquifer

With Regard to Water Permit Application No. 2730-2

Arden D. Davis, Ph.D., P.E.
1014 Milwaukee Street
Rapid City, South Dakota 57701

March 27, 2015

Introduction

This report was prepared in regard to Water Permit Application No. 2730-2, which under the Applicant's revised application requests 0.23 cubic feet per second (cfs) of water from the Madison aquifer. The request for 0.46 cfs was modified to 0.23 cfs by the applicant in a letter of February 18, 2015. A new Madison well would be constructed to augment production from two existing wells that were authorized in a previous permit (Water Permit 2610-2). The wells are in the NW ¼ SE ¼ of Section 10, T. 6 S., R. 3 E., in Custer County, South Dakota. The new well would be about 900 feet from the existing wells at the site.

The Madison aquifer underlies much of the southern Black Hills area and contains abundant groundwater supplies. The Madison aquifer, at the site of Water Permit Application No. 2730-2, is understood by current scientific literature to be fully saturated (Carter et al., 2002), as shown on Figure 1. Groundwater in the Madison aquifer is an under-utilized and almost undeveloped resource in the vicinity of the requested withdrawals. In the S.D. DENR review of Water Permit Application No. 2730-2, Mr. Buhler

(2014) noted no other existing water rights/permits for the Madison aquifer within ten miles or more of the applicant site. Additional evidence of the under-utilized nature of the Madison aquifer, in the area of the requested permit, is available in reports of the U.S. Geological Survey. A potentiometric map of the Madison aquifer in the Black Hills (Strobel et al., 2000) showed no Madison wells for water-level contours in the entire 36 square mile area of T. 6 S., R. 3 E. (Figure 2). Therefore there are no other water permit demands for the aquifer within the 36 square miles.

Concerns Raised by the National Park Service

The National Park Service filed a petition in 2014 to intervene in the matter of Application No. 2730-2. In its petition letter, the National Park Service cited a concern about water levels in the Madison aquifer within Wind Cave National Park. The letter showed calculated values of predicted drawdown at a distance of 13 miles from the site of the requested Water Permit Application No. 2730-2. Assumptions underlying the use of the equations appear to be faulty. The petitioner's assumed values of the aquifer properties used in the calculations are quite variable. For example, the calculations used a storage coefficient value of 0.0002 in trying to predict drawdown at a distance of thirteen miles, from the site of the requested water permit to Wind Cave, even though the outcrop of the Madison Limestone (i.e., part of its recharge area) is exposed between Wind Cave and the site of Water Permit Application No. 2730-2. The aquifer would receive recharge at its outcrop area, but the Theis equation assumes that no recharge occurs during drawdown calculations. Recharge to the aquifer would reduce any drawdown from pumping.

At the outcrop area and eastward toward Wind Cave, the aquifer would be under water-table (unconfined) conditions. It is not appropriate to use a small storage coefficient value such as 0.0002 (which is typical of a confined aquifer) in such an area. The groundwater in Wind Cave and its lakes is under atmospheric pressure and is not confined by the overlying weight of rocks, because the cave is open to the atmosphere. Therefore, the Madison aquifer is not a confined (artesian) aquifer at the cave, and the water is not under pressure by an overlying confining layer. A very small storage coefficient of 0.0002 implies confined conditions (Freeze and Cherry, 1979) and is not suitable for predicting drawdowns at the Wind Cave lakes. A storage coefficient value of 0.0002 would give inappropriately large calculated values of drawdown at Wind Cave, compared to values of drawdown calculated with a storage coefficient value that would be typical of an unconfined (water-table) aquifer at the cave. For areas where an aquifer is unconfined, a storage value much larger than 0.0002 normally should be used. Accordingly, calculated drawdowns from pumping would be less.

The deep lakes at Wind Cave are mainly at the eastern and southeastern side of the cave, approximately 13 miles or more from the site of Water Permit Application No. 2730-2. This is a long distance (more than 68,000 feet) for extrapolating drawdowns; it is noted that in his review of the application, Mr. Buhler (2014) extended his extrapolated drawdowns to a distance of 2000 feet away, which is much more reasonable than a longer distance, because of variability of aquifer properties and uncertainty about hydrologic conditions.

The transmissivity and storage coefficient values of the Madison aquifer are not known with certainty in the Black Hills and can be quite

variable. It is at best speculative to assert that drawdowns of 6 to 9 feet or more would occur at Wind Cave because of pumping occurring about 13 miles away at the site from Water Permit Application No. 2730-2.

It is also important to report that the site of requested applicant withdrawals does not appear to be upgradient from Wind Cave and therefore would be less likely to result in an adverse effect at the cave.

Concerns Raised by the Black Hills National Forest

The United States Department of Agriculture, Black Hills National Forest, in January of 2015 filed a petition to intervene in the matter of Application No. 2730-2. In its letter, the National Forest expressed concern that withdrawals could over time affect the warm water spring ecosystem at Cascade Springs. However, Cascade Springs are approximately 17 miles from the site of requested applicant withdrawals from the Madison aquifer, which is a very long distance for extrapolating effects of pumping. In addition, water at the site of Water Permit Application No. 2730-2 is approximately 54° F, which is much cooler than the warm spring water at Cascade Springs (about 68° F). There is no close hydraulic connection between the applicant's site and Cascade Springs.

The Forest Service letter petition states that there are no known structural features between the area of the well and Cascade Springs that would be expected to isolate the effects of well pumping from the springs. However, U.S. Geological Survey maps by Driscoll et al. (2002) and Strobel et al. (2000) show a long, synclinal fold between the well site and Cascade Springs, which limits any hydraulic connection across this distance (see Figure 3). The axis of a synclinal fold normally is an area of compression in which fractures tend to remain closed, which would limit permeability and

thus limit hydraulic connection between the applicant's well site and Cascade Springs.

Evans Plunge is a warm-springs swimming pool (approximately 87° F) that is fed by springs along the Fall River in Hot Springs (see Figure 3). The springs at Evans Plunge are more than 15 miles from the area of the applicant's site. The source of the springs is believed to be the Madison aquifer (Carter and others, 2002). According to research by Back et al. (1983) the calculated age of water at Evans Plunge was 1,900 years before present. Back et al. (1983) did not calculate an age for the water at Cascade Springs, because of problems with possible mixing of water from the Minnelusa or other aquifers, and Cascade Springs is farther south than Evans Plunge. We can conclude that a very long travel time would be involved for water that emerges at Cascade Springs, indicating that it is extremely unlikely that pumping at the applicant's site would affect the springs.

Conclusions

Groundwater in the Madison aquifer is an under-utilized and almost undeveloped resource in the vicinity of the requested withdrawal for Water Permit Application No. 2730-2. The Madison aquifer is generally understood to be fully saturated at the site. No existing water rights for Madison aquifer wells appear to be within approximately ten miles of the applicant's site. The requested additional diversion of 0.23 cubic feet per second is not expected to have any adverse effect on other Madison wells, or the water at Wind Cave, or Cascade Springs, because of the distances (12 miles or more) that are involved. The requested withdrawals from the Madison aquifer are reasonable for their intended use.

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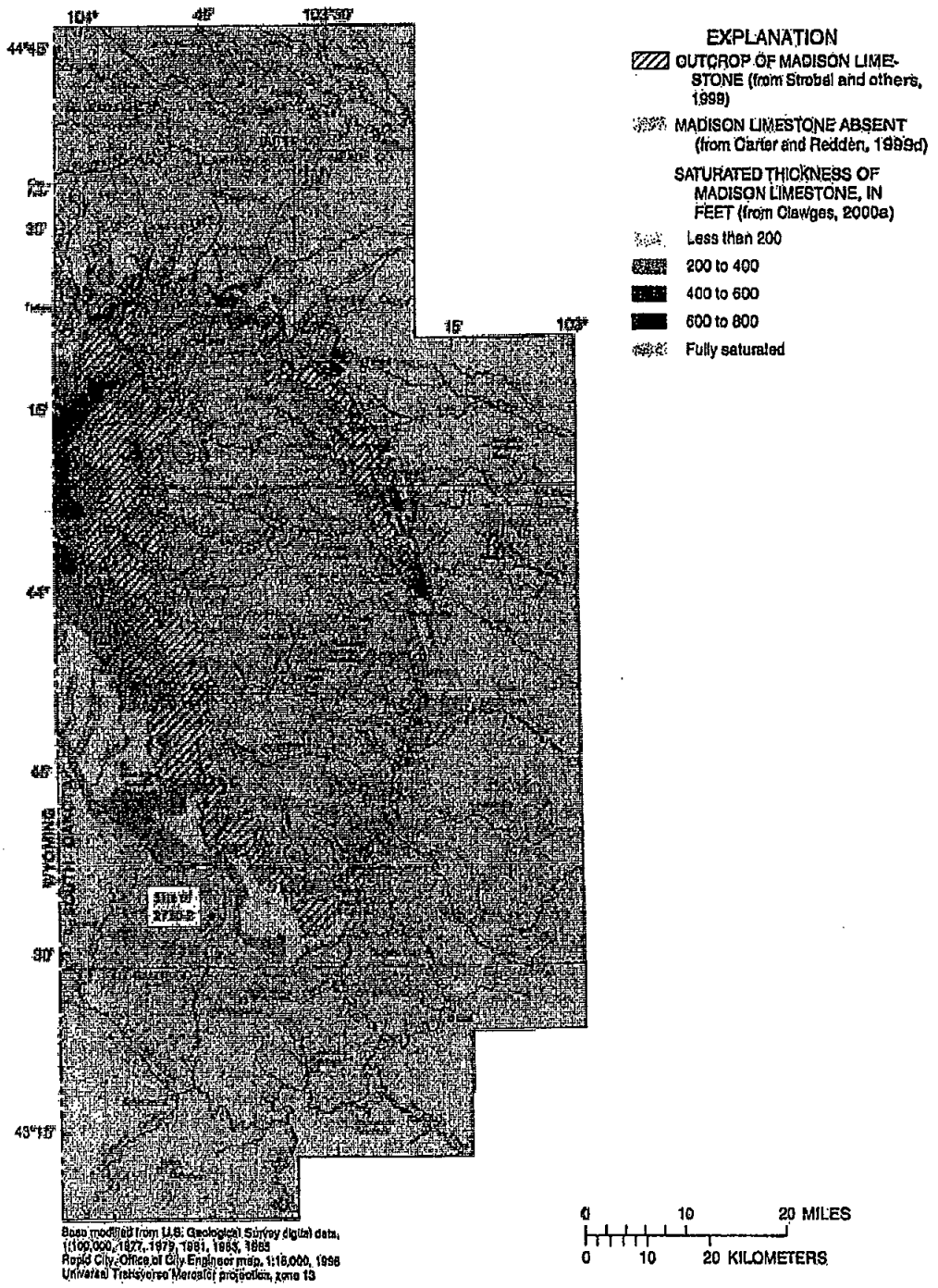

Figure 1. Saturated thickness of the Madison aquifer in the Black Hills (from Driscoll et al., 2002).

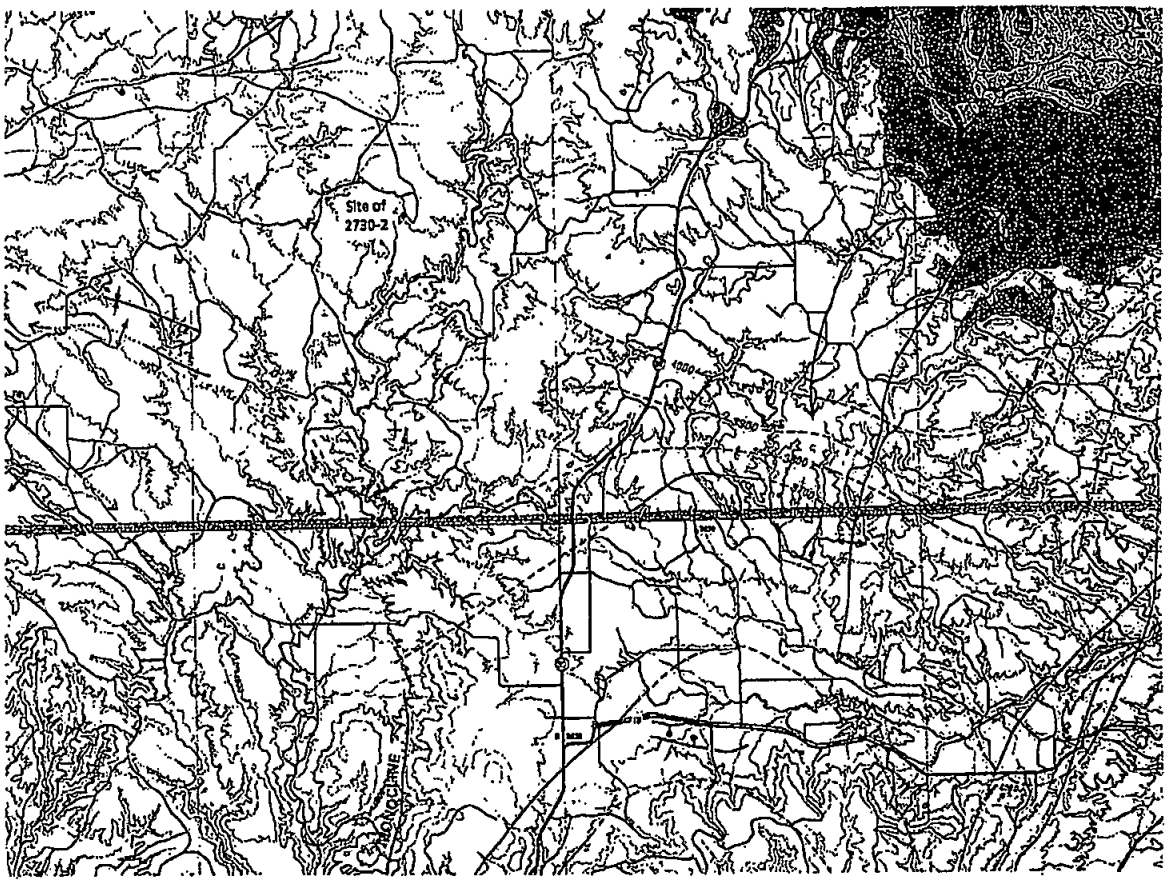

Figure 2. Potentiometric map of the Madison aquifer (from Strobel et al., 2000) showing few or no Madison wells near the site of Water Permit Application 2730-2.

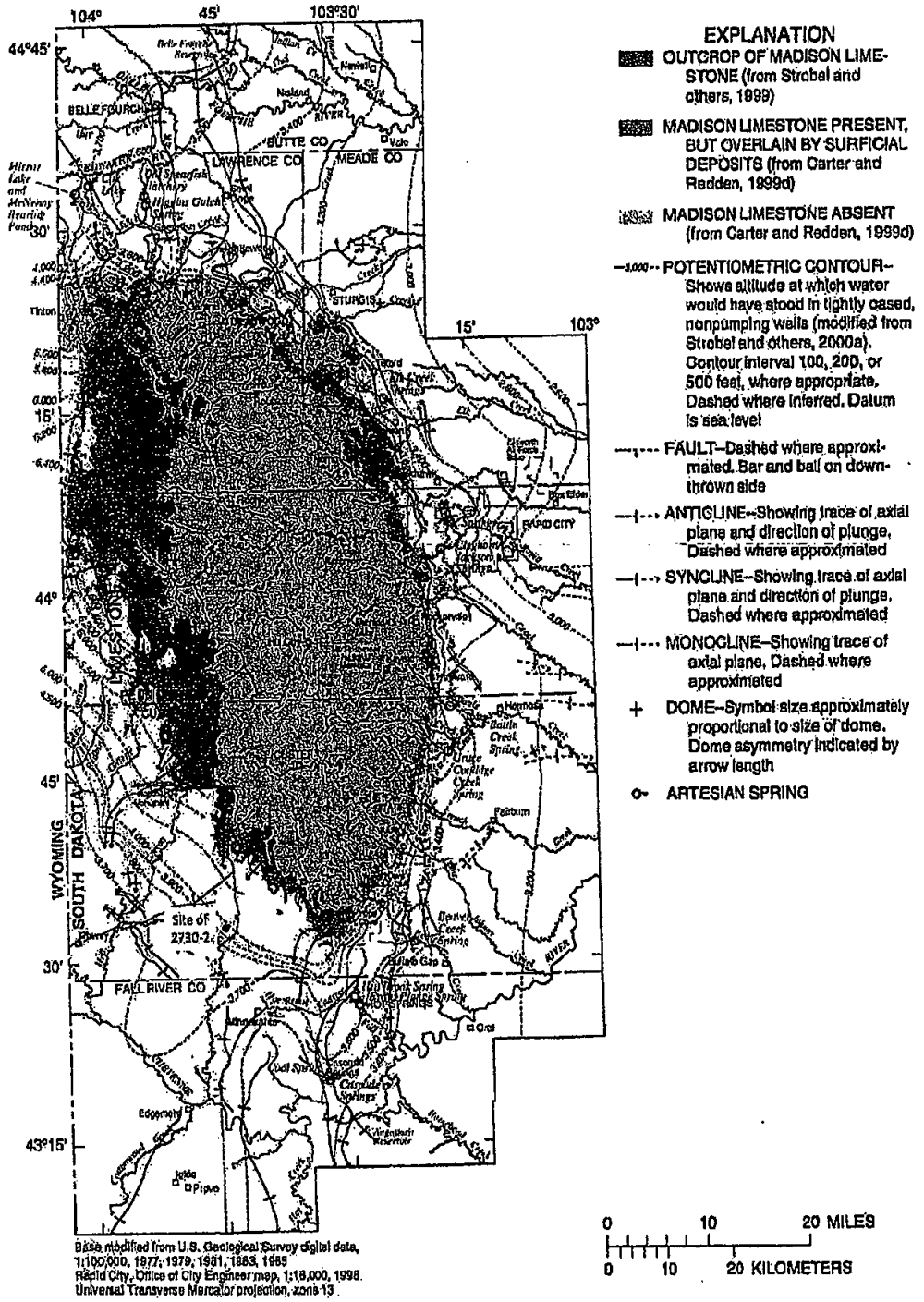

Figure 3. Madison aquifer in the Black Hills area (from Driscoll et al., 2002).

Arden D. Davis

Arden Davis received a B.A. degree in geology from the University of Minnesota and M.S. and Ph.D. degrees in geological engineering from South Dakota School of Mines and Technology.

Dr. Davis currently is Professor in the Department of Geology and Geological Engineering at South Dakota School of Mines and Technology. Since 1982 he has served as Instructor, Assistant Professor, Associate Professor, Professor, and Chairman of the Department of Geology and Geological Engineering. During that time he has worked on digital modeling of ground-water flow as well as transport and dispersion of subsurface contaminants. He teaches courses in ground water, digital modeling of ground-water flow and contaminant transport, ground-water geochemistry, analytical methods in ground water, and geological engineering design.

Dr. Davis is a Registered Professional Engineer in South Dakota. He also is a member of the Society for Mining, Metallurgy, and Exploration (SME). He has served as associate editor and reviewer for the journal of Ground Water, and as a book reviewer for the Bulletin of the Association of Engineering Geologists. He has served as chairman of the Council of Education and the Accreditation and Curricular Issues Committee of the Society for Mining, Metallurgy, and Exploration. From 2002 to 2007, Dr. Davis served on the Engineering Accreditation Commission of ABET. In 2007, he was appointed to the ABET Board of Directors and served a three-year term. In 2010, he was re-appointed to the ABET Board of Directors.

During his career at South Dakota School of Mines and Technology, Dr. Davis has worked extensively on ground-water projects and geological engineering site evaluations. He has been an investigator in more than fifty funded research projects. As a consultant he has provided expert witness testimony in cases involving environmental contamination and disposal of waste. He also has given technical assistance to the South Dakota Department of Environment and Natural Resources in the review of mining plans and ground-water contamination problems, including Superfund sites. He and his co-researchers hold a U.S. patent for removal of arsenic from water, and they have applied for a second patent for removal of metals from water.

In his service to South Dakota School of Mines and Technology, Dr. Davis has acted as Geological Engineering Program Coordinator and ABET Coordinator for geological engineering accreditation. This included revision of the geological engineering curriculum, origination and teaching of new engineering design courses, and preparation of ABET reports. He also is active in ground-water protection efforts, and in 1998 received the Virginia Simpson Award for community service in the Rapid City area. In 2007, he received the Ennenga Award for Excellence in Teaching. In 2014 he received the Ivan Rahn Education Award from SME, and in 2015 he was presented with the Distinguished Service Award of the Environmental Division of SME.

Arden D. Davis

Academic rank:	Professor, Department of Geology and Geological Engineering	
Education:	B.A. - 1971	University of Minnesota (Geology)
	M.S. - 1979	South Dakota School of Mines and Technology (Geological Engineering)
	Ph.D.- 1983	South Dakota School of Mines and Technology (Geological Engineering)

Registered Professional Engineer (South Dakota; No. 4663)

Experience:	2006 - present	Professor S.D. School of Mines and Technology
	2002 - 2006	Chairman Dept. of Geology and Geological Engineering S.D. School of Mines and Technology
	1995 - 2002	Professor S.D. School of Mines and Technology
	1989 - 1994	Associate Professor S.D. School of Mines and Technology
	1984 - 1989	Assistant Professor S.D. School of Mines and Technology
	1982	Instructor
	1976-1982	Teaching and Research Assistant
	1978	Shell Development (Shell Oil Company)

Teaching:	Digital Modeling of Ground-Water Flow Systems, Ground Water, Ground-Water Geochemistry, Geochemistry, Analytical Methods in Ground Water, Advanced Ground Water, Engineering Field Geology, Geological Engineering Design Project I
Consulting:	Ground-water hydrologist and geological engineering consultant for numerous projects over past thirty years involving ground-water contamination, aquifer evaluation, low-level radioactive waste site evaluation, spring-flow measurements, and mine site development.
Funded research:	Projects involving ground-water contamination, ground-water resource evaluation, aquifer vulnerability, water quality, and mine waste.
Community service:	Ground-water protection efforts (see following pages).
Theses:.	Forty eight M.S. theses and twelve Ph.D. dissertations supervised.

Consulting:

2015	Siting of pipeline; water rights application
2014	Spring discharges
2013	Spring discharges
2012	Expert witness testimony – proposed pipeline
2011	Spring discharges
2010	Madison aquifer well for municipal water supply.
2009	Expert witness testimony: springs and potential effects of nearby wells.
2008	Ground-water model for permit application.
2007	Siting of new Madison wells for public water supplies in the Black Hills.
2006	Modeling of ground-water flow and biodegradation of benzene.
2005	Modeling of ground-water flow and gasoline contamination.
2004	Ethylene dibromide contamination; expert witness.
2003	Alliance of Architects and Engineers; expert witness.
2002	Alliance of Architects and Engineers; expert witness.
2001	Consolidated Engineers & Materials Testing; GeoTek; expert witness.
2000	Hillcrest Spring Water; Rapid City Landfill; expert witness.
1999	Boyd County LLW Monitoring Committee; Gill Landfill modeling.
1998	Boyd County LLW Monitoring Committee; Rapid City Landfill.
1997	Boyd County LLW Monitoring Committee; Terra, Inc., modeling.
1996	Terra, Inc., modeling; Boyd County LLW Monitoring Committee.
1995	Terra, Inc.; modeling for City of Ida Grove, Iowa; Vogel Paint and Wax.
1994	Keystone Gold Project, Keystone, South Dakota. Dunbar Resort: proposed railroad grade, Deadwood, South Dakota. Vogel Paint and Wax Superfund Site, Maurice, Iowa.
1993	Keystone Gold Project, Keystone, South Dakota. Vogel Paint and Wax Superfund Site, Maurice, Iowa. Low-level radioactive waste site evaluation and modeling.
1992	City of Rapid City: criteria for private wastewater disposal facilities. Nitrate contamination from mine waste.
1991	Corrosion problems during geothermal heating.
1990	Low-level radioactive waste site evaluation. South Dakota Department of Environment and Natural Resources: cyanide contamination.
1989	Wastewater facility site evaluation. South Dakota Department of Environment and Natural Resources: review of mine plan, northern Black Hills.
1988	Expert witness: gasoline contamination of ground water.
1987	South Dakota Department of Environment and Natural Resources: modeling of gasoline contamination. Utility Engineering Company: aquifer test evaluation. Gasoline contamination of ground water.
1986	South Dakota Department of Environment and Natural Resources.
1985	South Dakota Department of Environment and Natural Resources: ground-water contamination.

1983 Rosebud Sioux Tribe: aquifer evaluation.
1981 Save Wyoming Water: drawdown calculations.
South Dakota Public Utilities Commission: aquifer evaluation.
1981 Evans Plunge, Hot Springs, South Dakota: spring discharges.
1979 U.S. Environmental Protection Agency; Engineering Science, Inc.

Community Service:

Assisted City of Rapid City and Pennington County in determining aquifer vulnerability in the Rapid City area. Assisted U.S. Environmental Protection Agency and South Dakota Department of Environment and Natural Resources as member of Technical Advisory Team, Gilt Edge Superfund Site.

Selected Publications:

Davis, A.D., 1986, Deterministic modeling of dispersion in heterogeneous permeable media: Ground Water, v. 24, no. 5, p. 609-615.

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Related research:

Grainger Prize for Sustainability: HydroTech Engineering and Rohm & Haas (collaboration): Limestone-based arsenic-removal method; selected for Round II of competition.

Recent Research Funding:

National Science Foundation: SGER: Characterization of the Precambrian Aquifer at the Homestake DUSEL: Dr. Larry D. Stetler, Dr. Arden D. Davis, and Dr. Rohit Salve (Lawrence Berkeley Laboratory), $75,000.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Acidic Leaching Tests to Determine Arsenic Mobility from Concrete-Encapsulated Limestone Waste: Dr. Arden D. Davis, Dr. M.R. Hansen, and Dr. David J. Dixon, $12,131.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Investigation of Arsenic Removal from Water by Microbiologically Induced Calcite Precipitation: Dr. Arden D. Davis, Dr. Sookie S. Bang, and Dr. David J. Dixon, $13,983.

U.S. Bureau of Land Management: Belle Eldridge Mine Sampling and Monitoring, Phase III, $4,500 (additional); Arden D. Davis, Principal Investigator.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Development of an agglomeration process to increase the efficiency of limestone-based material to remove metals from drinking water: Dr. Arden D. Davis and Dr. David J. Dixon, $10,897.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Fixed-bed adsorption column studies and engineering scale-up design of a limestone-based metals removal technology for small water supply systems: Dr. Arden D. Davis and Dr. David J. Dixon, $12,918.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Leaching tests for encapsulation of waste after arsenic removal from drinking water: Dr. Arden D. Davis, Dr. David J. Dixon, and Dr. M.R. Hansen; $11,873.

U.S. Department of the Interior, National Park Service; Jewel Cave Pumping Test; Dr. Arden D. Davis, Principal Investigator; $8,800.

U.S. Bureau of Land Management: Belle Eldridge Mine Sampling and Monitoring, Phase III, $4,500 (additional); Arden D. Davis, Principal Investigator.

West Dakota Water Development District: Determination of historic ground water pollution problems, Part II: Pactola Dam, Rapid City West, and the North One-Half of Rockerville quadrangles; $9,162; Dr. Alvis L. Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Aquifer susceptibility study of the Pactola Dam quadrangle, South Dakota: Part II – Precambrian: $9,112; Dr. Alvis L. Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Aquifer mapping (1:24,000) of the Hermosa NW quadrangle; $13,538; Dr. Alvis L. Lisenbee, Principal Investigator; Dr. Arden D. Davis and Dr. Larry Dr. Stetler, Co-Principal Investigators.

West Dakota Water Development District: Preliminary aquifer vulnerability and susceptibility study of the Blackhawk quadrangle; $15,988; Dr. Alvis Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Geologic mapping of the Mt. Rushmore quadrangle, South Dakota; $14,970; Dr. Alvis Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

West Dakota Water Development District: Aquifer vulnerability study of the Rockerville quadrangle, South Dakota; $14,763; Dr. Alvis Lisenbee, Principal Investigator; Dr. Arden D. Davis, Co-Principal Investigator.

Phase I Small Business Innovation Research Grant, U.S. Environmental Protection Agency, Limestone-Based Material for Arsenic Removal from Drinking Water: Dr. Cathleen J. Webb, Dr. Arden D. Davis, Dr. David J. Dixon, and Dr. Terrence L. Williamson; $100,000.

Phase II Small Business Innovation Research Grant, U.S. Environmental Protection Agency, Limestone-Based Material for Arsenic Removal from Drinking Water: Dr. Cathleen J. Webb, Dr. Arden D. Davis, Dr. David J. Dixon, and Dr. Terrence L. Williamson; $225,000.

National Science Foundation, Statewide Partnership to Support Technology Innovation and Entrepreneurship in South Dakota (PFI), University of South Dakota: Arsenic Removal from Drinking Water; John C. Lofberg, Dr. Arden D. Davis, and Dr. David J. Dixon; $35,826.

West Dakota Water Development District: Crystalline Aquifers of the Central Black Hills, South Dakota: Phase IV: Dr. Alvis L. Lisenbee, Dr. Arden D. Davis, and Dr. Maribeth Price; $44,000.

West Dakota Water Development District: Crystalline Aquifers of the Central Black Hills, South Dakota: Phase III: Dr. Alvis L. Lisenbee, Dr. Arden D. Davis, and Dr. Maribeth Price; $41,000.

U.S. Geological Survey 104b Grant Program / South Dakota Water Resources Institute: Investigation of the Contribution of Coliform Contamination in Runoff from Scoured Bed Sediments: Dr. Jennifer L. Benning, Dr. Scott J. Kenner, and Dr. Arden Davis, $14,913.

West Dakota Water Development District: Crystalline Aquifers of the Central Black Hills, South Dakota: Phase II; Dr. Laurie Anderson, Principal Investigator; Dr. Alvis L. Lisenbee, Dr. Arden D. Davis, and Dr. Maribeth H. Price, Co-Principal Investigators; $33, 020.

Pete Lien and Sons, Inc: Optimization and characterization of iron-loaded limestone as a medium for the removal of arsenic from drinking water; Dr. Arden D. Davis, Principal Investigator; Dr. David J. Dixon, Co-Principal Investigator; $8,800.

City of Custer, South Dakota: Water Sampling of Crystalline and Alluvial Aquifers at Custer, South Dakota: Dr. Arden D. Davis, Principal Investigator; Dr. J. Foster Sawyer, Dr. Alvis L. Lisenbee, and Dr. Maribeth H. Price, Co-Principal Investigators; $25,000.

U.S. Department of the Interior, Bureau of Land Management: Environmental Monitoring of the Belle Eldridge Mine: Dr. Arden D. Davis, Principal Investigator; $5,000.

RECEIVED
JUN 2 4 2015
WATER RIGHTS PROGRAM

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June 12, 2015

Michael M. Hickey
Bangs McCullen Butler Foye & Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Mr. Hickey:

I am sending you additional documents in this case subject to our discussion last week when we met and conferred regarding my client's initial responses to your client's interrogatories and requests for production. Please find enclosed Bates stamped numbers Applicant 034-257. I will prepare a formal supplement to your discovery requests and will send that in the next day or so. However, I wanted to get you these documents as soon as possible. Please let me know if you have any questions.

Sincerely yours,

Jeffrey R. Connolly

JRC:klk
Enclosure
cc: Jeanne Goodman
Eric Gronlund✓
Ann F. Mines Bailey
Lois G. Witte
William R. Hansen
Rick Fox
Karl and Suzanne VonRump
Cheryl Schrempp Dupris
Craig Bobzien
Mr. and Mrs. David Albrecht
Toni Martin
Doug Lesher
Dean and Delia Johnson
Rodney Freeman

919098 / 12414.0002

US Department of Justice

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District of South Dakota

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June 15, 2015

Ann Mines-Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, SD 57501

HAND DELIVERED

Re: Water Management Board Water Application No. 2730-2

Dear Ann:

Enclosed is an executed original and 20 copies of the Stipulation for Withdrawal of Petitions To Intervene. It is my understanding that you will offer the Stipulation as an exhibit at the July 9, 2015 hearing on the above-entitled water permit application.

By copy of this letter, I am sending one original to Jeffrey Connolly, attorney for United Order of South Dakota. We have not served the stipulation upon others, and the enclosed copies are intended for that purpose.

Please contact me with any questions or concerns.

Sincerely,

RANDOLPH J. SEILER
Acting United States Attorney

Cheryl Schrempp DuPris
Cheryl Schrempp DuPris
Assistant U.S. Attorney

Enclosure
cc: Jeffrey Connolly (letter and one original Stipulation)

STIPULATION FOR WITHDRAWAL OF PETITIONS TO INTERVENE

This Stipulation is made and entered into between United Order of South Dakota, common law trust ("United Order"), the United States Department of the Interior, National Park Service ("NPS"), and United States Department of Agriculture, Forest Service ("FS") (collectively "the Parties").

RECITALS

A. On October 14, 2014, the United Order filed an "Application for Permit to Appropriate Water within the State of South Dakota" with the South Dakota Department of Environment and Natural Resources, Water Rights Program. The application was assigned No. 2730-2. The application requested that a previously-issued permit (No. 2610-2), which is owned by the United Order, be amended to add a new point of diversion and increase the rate of withdrawal to 300 gallons per minute (gpm) of groundwater from the Madison aquifer.

B. On December 5, 2014, the Chief Engineer of the State of South Dakota (Chief Engineer) issued a Recommendation recommending approval of Application No. 2730-2.

C. On December 19, 2014, the NPS submitted a petition to intervene to the Chief Engineer, wherein the NPS advised the Chief Engineer about its concerns regarding the potential adverse effects of Application No. 2730-2 on the water rights and water-dependent resources of Wind Cave National Park.

D. On January 15, 2015, the NPS submitted an amendment to its petition to intervene to the Chief Engineer, wherein the NPS raised additional issues of concern. On the basis of its assertion that Application No. 2730 was speculative, the NPS requested that the South

Dakota Water Management Board (Water Management Board) deny Application No. 2730-2.

E. On January 16, 2015, the FS submitted a petition to intervene to the Chief Engineer, wherein the FS advised the Chief Engineer about its concerns regarding the potential adverse effects of Application No. 2730-2 on the water-dependent resources of Cascade Springs and Cascade Creek and the possible speculative nature of the application.

F. By way of a letter to the Chief Engineer, dated February 18, 2015, the United Order requested that Application No. 2730-2 be amended by reducing the maximum instantaneous diversion rate from 300 gpm to 200 gpm.

G. On June 1, 2015, the Chief Engineer issued a Revised Recommendation for Water Permit Application No. 2730-2. Among other recommendations, the Revised Recommendation included two (2) qualifications that the NPS and the FS believe should substantially reduce any adverse effects from the applicant's proposed groundwater withdrawals on the water rights and water-dependent resources of the NPS and the FS. Those qualifications are as follows:

1. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.466 cubic feet of water per second; and,
2. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer. The report shall be submitted each January and provide a

month by month breakdown of water withdrawn for the previous calendar year.

H. The Water Management Board has set an administrative hearing to consider the Application No. 2730-2 as amended, the Revised Recommendation of the Chief Engineer, and the petitions to intervene, which is scheduled for July 9th, 2015.

I. The Parties acknowledge that other entities and individuals have lodged petitions to intervene to the Application No. 2730-2, but such other entities and individuals are not Parties to or in any way bound or prejudiced by this Stipulation.

J. The Parties desire to resolve the issues raised by the petitions to intervene filed by the NPS and the FS according to the terms and conditions contained in this Stipulation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

1. The United Order hereby expressly agrees that it shall take no actions of any kind to contest the Revised Recommendation of the Chief Engineer, dated June 1, 2015, including but not limited to refraining from interposing any objections to the Revised Recommendation during any proceedings before the Water Management Board, and shall in no way oppose the attachment of the qualifications set forth in the Revised Recommendation to Water Permit Nos. 2610-2 and 2730-2.

2. The United Order hereby expressly agrees to affirmatively support the Revised Recommendation of the Chief Engineer for Water Permit Application No. 2730-2, dated June 1, 2015, in all proceedings before the Water Management Board.

3. The NPS and FS hereby expressly agree to withdraw their petitions to intervene in the matter of the Application No. 2730-2 within five (5) business days of the complete execution of this Stipulation.

4. The Parties agree that this Stipulation shall be submitted to the Chief Engineer within five (5) business days following the complete execution of this Stipulation for submission to the Water Management Board and incorporation into the administrative record for Water Permit Nos. 2610-2 and 2730-2.

5. The Parties agree that, at any time following the complete execution of this Stipulation, the NPS and the FS, at their sole discretion, may issue press releases or other types of official statements to the general media setting forth the scientific, technical, policy, and legal reasons associated with each federal agency's determination to withdraw its petition to intervene.

6. The Parties expressly acknowledge that this Stipulation is binding only upon the Parties hereto and their successors, transferees and assigns, and shall not bind or seek to bind or prejudice any other interveners.

7. This Stipulation does not waive any authorities of the NPS and the FS or the United States of America, including any other agency or bureau not specified in this Stipulation, nor relieve the United Order from complying with any applicable state and federal laws and any and all rules and regulations thereunder.

8. The Parties expressly acknowledge that the Water Management Board has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of South Dakota and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.

9. In the event that the United Order transfers or assigns its interest in Water Permit No. 2610-2 and/or Water Permit Application 2730-2 prior to a final determination of the Water Management Board on Water Permit Application 2730-2, the United Order shall provide written notice to the NPS and FS within three (3) business days of the transfer or assignment. As a condition to any such transfer or assignment, the United Order shall obtain from the transferee and/or assignee an express written confirmation that the transferee and/or assignee is bound by all of the terms and conditions of this Stipulation and shall deliver such express written confirmation to the NPS and the FS not later than seven (7) business days following the transfer or assignment.

10. If notice is required to be sent to the NPS and the FS by the United Order, the addresses are as follows:

Chief, Water Right Branch
National Park Service
1201 Oakridge Drive
Fort Collins, CO 80525

Forest Supervisor, Black Hills National Forest
U.S. Forest Service
1019 North 5th Street
Custer, SD 57730

11. This Stipulation shall be governed in accordance with the laws of the State of South Dakota to the extent not inconsistent with federal law.

12. By entering into this Stipulation, the NPS and the FS do not become a party to any proceeding other than the administrative proceeding of the Water Management Board regarding Application No. 2730-2, nor do they waive their immunity from suit or consent to or acknowledge the jurisdiction of any other court or tribunal. Nothing in this Stipulation shall affect any state permitted or federal reserved water rights of the United

States or the United States on behalf of any Indian Tribe or individual Indian, and the NPS and the FS by entering into this Stipulation do not waive or prejudice any such rights. The NPS and the FS reserve all legal rights, of any kind, they possess pursuant to or derived from Executive Orders, Acts of Congress, judicial decisions, or regulations promulgated pursuant thereto, including but not limited to, the filing of petitions to intervene in the future in response to Recommendations of the Chief Engineer issued on any and all new applications for permits or changes to existing permits to appropriate water filed by the United Order.

13. This Stipulation may be amended by mutual agreement of the Parties.

14. This Stipulation sets forth the entire agreement of the Parties and supersedes all prior discussions, negotiations, understandings, or agreements. No alteration or variation of this Stipulation shall be valid or binding unless expressly agreed to in writing by the Parties.

15. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, transferees and assigns.

16. The Parties may execute this Stipulation in two or more counterparts, which shall in the aggregate be signed by all Parties; each counterpart shall be deemed an original as against any party who has signed it.

17. Other entities may become Parties to this Stipulation by mutual assent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation as of the date(s) written below.

Date: 6/15/2015

ON BEHALF OF THE NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, AND THE UNITED STATES FOREST SERVICE, DEPARTMENT OF AGRICULTURE

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

Cheryl Schrempp DuPris

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

Date: 6/11/2015

UNITED ORDER OF SOUTH DAKOTA, A COMMON LAW TRUST

By Seth S. Jeffs
Title: Water Operator, Acting on Authority of the Board of Trustees

State of South Dakota)
) ss.
County of Pennington)

On this 11 day of June, 2015, before me, the undersigned officer, personally appeared Seth S. Jeffs, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(SEAL)
My Commission Expires: February 20th 2016

ERIN A. ERNEST NOTARY PUBLIC SEAL SOUTH DAKOTA MY COMMISSION EXPIRES 2-20-2016

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

In reply use:
L54 (2380)
WICA/Water Rights

June 22, 2015

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

Re: Withdrawal of Petition to Intervene Submitted by the National Park Service in the matter of Application for Permit to Appropriate Water within the State of South Dakota No. 2730-2 by the United Order of South Dakota

Dear Ms. Goodman,

Pursuant to paragraph three (3) of a Stipulation entered into by the U.S. Forest Service, the National Park Service, and the United Order of South Dakota, the National Park Service is required to withdraw its petition to intervene, which was submitted to you on December 19, 2014, and subsequently amended on January 15, 2015. Therefore, on behalf of Wind Cave National Park and the National Park Service, I hereby request that the afore-mentioned petition and its subsequent amendment be formally withdrawn. Thank you for your assistance and the assistance of your counsel, Ms. Ann Mines Bailey, in addressing the novel issues presented by this matter.

Sincerely,

Wm. R. Hansen

William R. Hansen
Chief, Water Rights Branch

cc: Jeff Connolly (counsel for the United Order of South Dakota)
Vidal Davila (Superintendent, Wind Cave National Park)

USDA United States Department of Agriculture
Forest Service
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730
605-673-9200
FAX: 605-673-9350

File Code: 2530
Date: June 24, 2015

JEANNE GOODMAN
CHIEF ENGINEER
WATER RIGHTS PROGRAM
FOSS BUILDING
523 E. CAPITOL
PIERRE, SD 57501

Dear Ms. Goodman:

Pursuant to paragraph three (3) of a Stipulation entered into by the U.S. Forest Service, the National Park Service, and the United Order of South Dakota, the U.S. Forest Service is required to withdraw its petition to intervene, which was submitted to you on January 16, 2015. Therefore, on behalf of the Black Hills National Forest and the U.S. Forest Service, I hereby request that the afore-mentioned petition be formally withdrawn.

Thank you for your assistance and the assistance of your counsel, Ms. Ann Mines Bailey, in addressing the novel issues presented by this matter.

Sincerely,

CRAIG BOBZIEN
Forest Supervisor

cc: Regional Forester - R2, Cheryl DuPris, Deanna Reyher, Lois Witte, Ann Mines-Bailey, Esq., Jeff Connolly

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	NOTICE OF APPEARANCE OF COUNSEL

Notice is Hereby Given of the entry of the undersigned as counsel for the above-described Petitioner in the above-entitled proceeding.

Attorney's name:	Cheryl Schrempp DuPris
Email address:	Cheryl.Dupris@usdoj.gov
Firm name:	United States Attorney's Office
Mailing address:	PO Box 7240, Suite 337, 225 South Pierre Street, Pierre, SD 57501
Attorney's name:	Peter A. Fahmy (pro hac vice May 17, 2015)
Email address:	Peter_A_Fahmy@nps.gov
Firm name:	National Park Service, Water Rights Branch
Mailing address:	1201 Oakridge Drive, Suite 250, Fort Collins, CO 80525
Attorney's name:	Lois G. Witte (pro hac vice motion pending)
Email address:	Lois.Witte@ogc.usda.gov
Firm name:	United States Department of Agriculture, Forest Service
Mailing address:	740 Simms St, Suite 309, Golden Colorado, 80401

DATED this 28 day of May, 2015.

RANDOLPH J. SEILER
ACTING UNITED STATES ATTORNEY

_____
Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240
225 S. Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of May, 2015, a true and correct copy of the foregoing **Notice of Appearance of Counsel** and **USFS's Disclosure of Expert**, were mailed postage pre-paid in the United States Mail to:

United Order of South Dakota
PO Box 5050
Custer, SD 57730

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Jeanne Goodman, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 58501

Ann Mines-Bailey, Esq.
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Michael M. Hickey, Esq.
Bangs McCullen Law Firm
PO Box 2670
Rapid City, SD 57709

William R. Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive Ste 250
Ft. Collins, CO 80525

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Toni Martin
4141 Villa Ridge Court, #122
Rapid City, SD 57701

Jeff Connolly
Gunderson, Palmer,Nelson & Ashmore
P.O. Box 8045
Rapid City, SD 57709

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Douglas L. Lesher
Acting Manager
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St. Room 309
Golden, CO 80401-4720

And on the same date, the original was mailed to Jeanne Goodman, Chief Engineer, DENR Water Rights Program, Joe Foss Building, 523, E. Capitol Avenue, Pierre, SD, 57501.

_____

Cheryl Schrempp DuPris
Assistant United States Attorney
P. O. Box 7240, 225 S. Pierre St, Suite 337
Pierre, SD 57501
(605) 224-5402
FAX: (605) 224-1805
Cheryl.Dupris@usdoj.gov

RECEIVED
JUN 2 9 2015
WATER RIGHTS PROGRAM

GUNDERSON, PALMER, NELSON & ASHMORE, LLP
ATTORNEYS AT LAW
506 SIXTH STREET
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078
www.gundersonpalmer.com
ATTORNEYS LICENSED TO PRACTICE IN SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA, WYOMING, MONTANA, MINNESOTA, COLORADO, KENTUCKY, AND PENNSYLVANIA

J. CRISMAN PALMER
JAMES S. NELSON
DANIEL E. ASHMORE
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
JENNIFER TRUCANO
DAVID E. LUST
TERRI LEE WILLIAMS
SARA FRANKENSTEIN
JASON M. SMILEY

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RONALD G. SCHMIDT
JEFFREY R. CONNOLLY
REBECCA L. MANN
ANDREW J. KNUTSON
KYLE L. WIESE
JANA SMOOT WHITE
TYLER C. WETERING
NATHAN R. CHICOINE

WYNN A. GUNDERSON
Of Counsel

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

June 23, 2015

Michael M. Hickey
Bangs McCullen Butler Foye & Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Mr. Hickey:

In follow up to my correspondence of June 22, 2015 and the documents I forwarded to you, I am enclosing an unsigned copy of *Applicant United Order of South Dakota's Supplemental Answers to Intervener Linda Kilcoin's Interrogatories and Requests for Production of Documents*. I will forward the signature pages once I have obtained my client's signature.

Sincerely yours,

Jeffrey R. Connolly

JRC:klk
Enclosure
cc: Jeanne Goodman✓
Eric Gronlund
Ann F. Mines Bailey
Lois G. Witte
William R. Hansen
Rick Fox
Karl and Suzanne VonRump
Cheryl Schrempp Dupris
Craig Bobzien
Mr. and Mrs. David Albrecht
Toni Martin
Doug Lesher
Dean and Delia Johnson
Rodney Freeman

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	**Applicant United Order of South Dakota's Supplemental Answers to Intervener, Linda Kilcoin's Interrogatories and Requests for Production of Documents to**

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 3: As to the Applicant, please state the following:

a. The legal nature of the Applicant;
b. The state under which the Applicant is organized;
c. The date the Applicant was created;
d. The identity of the individuals who formed the Applicant;
e. The identity of the current leader, president, principal, trustee and/or beneficiaries of the Applicant; and
f. Please produce copies of all documents which show the nature of the Applicant, its creation, organizational chart, and its current internal policies, operations or bylaws.

Answer:

A. A Common Law Trust.

B. South Dakota.

C. December 23, 2009.

D. Applicant objects to this requests as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.
Supplement: **See bates nos. Applicant 034-046**

E. Applicant objects to this requests as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.
Supplement: **Notwithstanding the objection, see bates nos. Applicant 047-048.**

F. Applicant objects to this requests as it is overbroad, vague, and the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. In addition, the plaintiffs have not shown they have a substantial need for the requested materials in the preparation of their case.

Supplement: **Notwithstanding the objection, see bates nos. Applicant 034-048**

INTERROGATORY NO. 19: Has the Applicant submitted any documents to Dr. Arden Davis? If so, describe each document and produce a copy of each document that was provided and the date on which it was submitted to Dr. Arden Davis.

Answer: **Objection, Attorney-client Privilege and Work Product. Notwithstanding the objection, Arden Davis reports that he has received no documents from the Applicant by mail. Arden Davis reports that he has received the following privileged documents from the Applicant's prior attorney, David Ganje by email:**

Date	Description
03/11/2015	Zip files containing current permit and pending permit
03/13/2015	Scan of July 2007 Water Board minutes
03/17/2015	Arden Davis retainer agreement
03/18/2015	Retainer agreement signed by client
03/21/2015	Draft report by Davis with editing comments by Mr. Ganje
03/21/2015	Retainer agreement signed by all three parties
03/21/2015	Second comments by Mr. Ganje – draft report

Arden Davis reports he has received the following privileged emails from Seth Jeffs:

Date	Description
03/23/2015 through 4/17/2005	Email chain regarding report and discussing application hearing.

Supplement: **See bates nos. Applicant 049-257. Objection, SDCL § 15-6-26(b)(4)(C).**

Date	Description
03/21/2015	Draft report by Davis with editing comments by Mr. Ganje
03/21/2015	Second comments by Mr. Ganje – draft report

SUPPLEMENTAL ANSWERS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 3: Any and all documents requested in Interrogatories 1 through 20 above.

Answer: **See bates nos. Applicant 001-257.**

SIGNATURE PAGES TO FOLLOW

State of South Dakota)
) ss.
County of Pennington)

Seth Jeffs, being first duly sworn, deposes and states that he is the Water Operator for the United Order of South Dakota and is familiar with the facts and circumstances of the matters referred to hereinabove and states that these Answers to Interrogatories and Requests for Production of Documents and the facts stated therein are true and correct to the best of his knowledge and belief.

UNITED ORDER OF SOUTH DAKOTA,
A COMMON LAW TRUST

_____
By Seth S. Jeffs, Water Operator, Acting on Authority of the Board of Trustees

Subscribed and sworn to before me the _____ day of _____ 2015.

_____
Notary Public, South Dakota

(SEAL)

My Commission Expires:

AS TO OBJECTIONS:

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By_____

Jeffrey R. Connolly
Attorneys for United Order of South Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

I hereby certify on this _____ day of _____, 2015, I mailed by first-class U.S. mail, a true and correct copy of Applicant United Order of South Dakota's Supplemental Answers to Intervener, Linda Kilcoin's Interrogatories and Requests for Production of Documents to the following:

Jeanne Goodman, Chief Engineer
Water Rights Program
Foes Building
523 East Capitol
Pierre, SD 57501

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

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

Toni Martin
4141 Villa Ridge Ct. #122
Rapid City, SD 57701

William Hansen
Jeff Hughes
Peter A. Fahmy
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Douglas Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Rick Fox
PO Box 35
Hermosa, SD 57744

Cheryl Schrempp Dupris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Michael Hickey
Bangs McCullen Butler Foye
& Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Lois Witt
United States Dept. of Agriculture
Forest Service
740 Simms St., Suite 309
Golden, Colorado 80401

Ann Mines-Bailey
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501

Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

_____
Jeffrey R. Connolly

RECEIVED
JUN 2 4 2015
WATER RIGHTS PROGRAM

GUNDERSON, PALMER, NELSON & ASHMORE, LLP
ATTORNEYS AT LAW
506 SIXTH STREET
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078
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ANDREW J. KNUTSON
KYLE L. WIESE
JANA SMOOT WHITE
TYLER C. WETERING
NATHAN R. CHICOINE

WYNN A. GUNDERSON
Of Counsel

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

June 12, 2015

Michael M. Hickey
Bangs McCullen Butler Foye & Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Mr. Hickey:

I am sending you additional documents in this case subject to our discussion last week when we met and conferred regarding my client's initial responses to your client's interrogatories and requests for production. Please find enclosed Bates stamped numbers Applicant 034-257. I will prepare a formal supplement to your discovery requests and will send that in the next day or so. However, I wanted to get you these documents as soon as possible. Please let me know if you have any questions.

Sincerely yours,

Jeffrey R. Connolly

JRC:klk
Enclosure
cc: Jeanne Goodman
Eric Gronlund
Ann F. Mines Bailey
Lois G. Witte
William R. Hansen
Rick Fox
Karl and Suzanne VonRump
Cheryl Schrempp Dupris
Craig Bobzien
Mr. and Mrs. David Albrecht
Toni Martin
Doug Lesher
Dean and Delia Johnson
Rodney Freeman

919098 / 12414.0002

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

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JUN 2 9 2015
WATER RIGHTS PROGRAM

In reply use:
L54 (2380)
WICA/Water Rights

June 22, 2015

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

Re: Withdrawal of Petition to Intervene Submitted by the National Park Service in the matter of Application for Permit to Appropriate Water within the State of South Dakota No. 2730-2 by the United Order of South Dakota

Dear Ms. Goodman,

Pursuant to paragraph three (3) of a Stipulation entered into by the U.S. Forest Service, the National Park Service, and the United Order of South Dakota, the National Park Service is required to withdraw its petition to intervene, which was submitted to you on December 19, 2014, and subsequently amended on January 15, 2015. Therefore, on behalf of Wind Cave National Park and the National Park Service, I hereby request that the afore-mentioned petition and its subsequent amendment be formally withdrawn. Thank you for your assistance and the assistance of your counsel, Ms. Ann Mines Bailey, in addressing the novel issues presented by this matter.

Sincerely,

Wm. R. Hansen

William R. Hansen
Chief, Water Rights Branch

cc: Jeff Connolly (counsel for the United Order of South Dakota)
Vidal Davila (Superintendent, Wind Cave National Park)

USDA United States Department of Agriculture
Forest Service
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730
605-673-9200
FAX: 605-673-9350

File Code: 2530
Date: June 24, 2015

RECEIVED
JUN 2 9 2015
WATER RIGHTS PROGRAM

JEANNE GOODMAN
CHIEF ENGINEER
WATER RIGHTS PROGRAM
FOSS BUILDING
523 E. CAPITOL
PIERRE, SD 57501

Dear Ms. Goodman:

Pursuant to paragraph three (3) of a Stipulation entered into by the U.S. Forest Service, the National Park Service, and the United Order of South Dakota, the U.S. Forest Service is required to withdraw its petition to intervene, which was submitted to you on January 16, 2015. Therefore, on behalf of the Black Hills National Forest and the U.S. Forest Service, I hereby request that the afore-mentioned petition be formally withdrawn.

Thank you for your assistance and the assistance of your counsel, Ms. Ann Mines Bailey, in addressing the novel issues presented by this matter.

Sincerely,

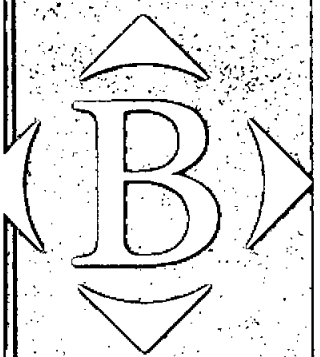
CRAIG BOBZIEN
Forest Supervisor

cc: Regional Forester - R2, Cheryl DuPris, Deanna Reyher, Lois Witte, Ann Mines-Bailey, Esq., Jeff Connolly

RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri



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

SIOUX FALLS
5919 S. Remington Place
Suite 100
P.O. Box 88208
Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

BANGS McCULLEN
LAW FIRM

RECEIVED
JUN 2 9 2015
WATER RIGHTS PROGRAM

Reply to Rapid City Office

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

June 24, 2015

Jeffrey R. Connolly
Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709-8045

Re: ***In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2***

Dear Jeff:

I enclose an unsigned copy of *Linda Van Dyke Kilcoin's Answers and Responses to Interrogatories and Requests for Production of Documents.* The original signature page has been sent to the client. Upon receipt of the fully executed signature page, it will be forwarded to you. Please consider this as service by mail upon you.

If you have any questions or concerns, please give me a call.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, LLP

Michael M. Hickey

MMH:ke
Enc.
Cc: Jeanne Goodman
Matt Naasz
Rodney Freeman
William R. Hansen
Peter A. Fahmy
Craig Bobzien
Toni Martin
Rick Fox
Karl & Suzanne Von Rump
Eric Gronlund
Ann F. Mines Bailey
Chad Comes, P.E.
Cheryl Schrempp Dupris
Lois Witte
Mr. and Mrs. David Albrecht
Doug Lesher
Dean and Delia Johnson
Client

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATION OF THE UNITED ORDER OF SOUTH DAKOTA, APPLICATION NO. 2730-2	**Linda Van Dyke Kilcoin's Answers and Responses to Interrogatories and Requests for Production of Documents**

Intervener, Linda Van Dyke Kilcoin, hereby answers and responds to the *Interrogatories and Requests for Production of Documents to Intervener, Linda Van Dyke Kilcoin* as follows:

INTERROGATORIES

INTERROGATORY NO. 1. Prior to answering these interrogatories, have you made due and diligent search of your books, records, and papers, and due and diligent inquiry of all agents of the Applicant, with a view to eliciting all information available in this action?

ANSWER: Yes.

INTERROGATORY NO. 2. Please state the identify of all the individuals who participated in or were involved in answering these Interrogatories and Requests for Production of Documents and identify which interrogatory or request for production each individual supplied information for.

ANSWER: Linda Van Dyke Kilcoin.

INTERROGATORY NO. 3. State the names and addresses of any persons who you believe have or may purport to have any knowledge or information pertaining to this matter, your intervention or the Applicant's application, and state, insofar as you know, the nature of such knowledge or information.

ANSWER: I believe the other parties to this proceeding have knowledge, the exact nature of which is unknown to me.

INTERROGATORY NO. 4. State and explain every reason you oppose Applicant's application 2730-2.

ANSWER: The request for additional water usage by the applicant will be determined at the hearing. It is my belief that the granting of this water right is not in the public interest.

INTERROGATORY NO. 5. Identify and water right you claim or ownership in any water right you claim anywhere in South Dakota.

ANSWER: Unknown to me at the present time.

INTERROGATORY NO. 6. Do you allege that there is not reasonable probability that there is unappropriated water available in the Madison Aquifer for the applicant's proposed use? If so, explain why.

ANSWER: Objection. This question is objected to as it calls for a legal conclusion. Notwithstanding this objection, as a lay person, I am not qualified to answer this question.

INTERROGATORY NO. 7. Do you allege that the proposed diversion requested in the Applicant's application can not be developed without unlawful impairment of existing rights? If so, explain how so and specifically identify what water rights would be impaired and how they would be impaired.

ANSWER: Objection. This question is objected to as it calls for a legal conclusion. Notwithstanding this objection, as a lay person, I am not qualified to answer this question.

INTERROGATORY NO. 8. Do you allege that the proposed use of water requested in the Applicant's application is not in the public interest? If so, explain why not.

ANSWER: Objection. This question is objected to as it calls for a legal conclusion. It is my belief, however, that the issuance of this permit is not in the public interest as a common law trust is not a legal entity recognized under South Dakota law capable of holding a water right and the past history of the applicant establishes a disregard for the rules and regulations of the State.

INTERROGATORY NO. 9. Do you allege that the proposed use of water sought by the Applicant is not a beneficial use as defined by SDCL § 46-1-6(3)? If so, explain why not.

ANSWER: Objection. This question is objected to as it calls for a legal conclusion. Notwithstanding this objection, if all of the information concerning applicant's density is true and accurate, then it may constitute a beneficial use.

INTERROGATORY NO. 10. List the names, addresses, official titles, if any, of all witnesses, who, it is contemplated, will be called upon to testify in support of your claim in this matter, indicate the nature and substance of the testimony which it is expected will be given by each witness, and if any such prospective witnesses are related to you, state the relationship.

ANSWER: Objection. This question is objected to as it seeks information protected by attorney work product. The identity of all witnesses and the nature of their testimony will be disclosed in accordance with the directives of the hearing officer.

INTERROGATORY NO. 11. List, identify, and describe the contents of each document which it is contemplated will be offered in support of your claim in this action.

ANSWER: Objection. This question is objected to as it seeks information protected by attorney work product. All exhibits will be disclosed in accordance with the directives of the hearing officer.

INTERROGATORY NO. 12. If it will be claimed that, after the incident in question, the defendant, its agents, or employees spoke or were heard to speak about the cause or result of the incident, state the substance of what the defendant, its agents, or employees said, to whom he, she, or they spoke, and when and where.

ANSWER: It appears that this request for production relates to an incident that has no application in the present case.

INTERROGATORY NO. 13: Please identify and state the occupation, profession and field of specialization of each person whom you expect to call as an expert witness at the hearing, and as to each such person, please state:

a. The subject matter on which the expert is expected to testify;
b. A complete statement of the facts and opinions to which the expert is expected to testify;
c. The basis and reasons for all of the opinions upon which the expert is expected to testify;
d. The facts, data or other information provided to or considered by the witness in forming the opinions;
e. Any exhibits that will be used to summarize or support the opinions; and
f. The title, author, copyright date and publisher's name and address of any book, medical or scientific treatise upon which such expert shall rely or which such expert will utilize in the preparation of and the presentation of his testimony.

ANSWER: **No expert witness will be called by me.**

INTERROGATORY NO. 14. For every residence in Custer County or Fall River County, South Dakota you reside in, or are domiciled at, please identify all your sources of water.

ANSWER: **I obtain water from various wells and springs on my property.**

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Any and all documents requested in Interrogatories 1 through 14 above.

RESPONSE: **This question is objected to as it seeks information protected by attorney work product.**

REQUEST NO. 2: Any document relied upon to answer any interrogatory above.

RESPONSE: **This question is objected to as it seeks information protected by attorney work product.**

Dated this _____ day of _____, 2015.

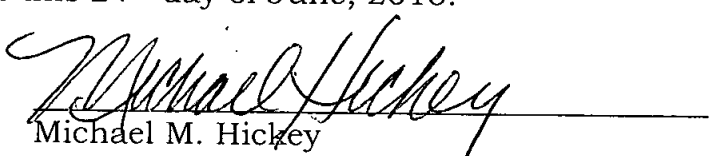
_____
Linda Van Dyke Kilcoin

STATE OF SOUTH DAKOTA :
SS
COUNTY OF PENNINGTON :

Subscribed and sworn to before me this ___ day of _____, 2015.

_____
Notary Public, State of South Dakota
(SEAL) My commission expires: _____

Signed as to objections this 24th day of June, 2015.



Michael M. Hickey

CERTIFICATE OF SERVICE

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

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

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

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Chad Comes, PE
Hearing Chair/Water Mgmt Bd.
c/o The City of Madison
116 West Center Street
Madison, SD 57042

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Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709

William R. Hansen
Jeff Hughes
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Cheryl Schrempp DuPris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

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12795 W. Alameda Parkway, Ste. 198
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Office of the General Counsel
Mountain Region
740 Simms St., Room 309
Golden, CO 80401-4720

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
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Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

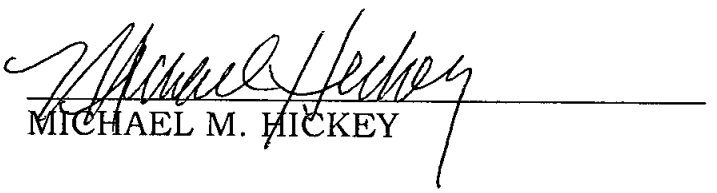
Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 24th day of June, 2015.

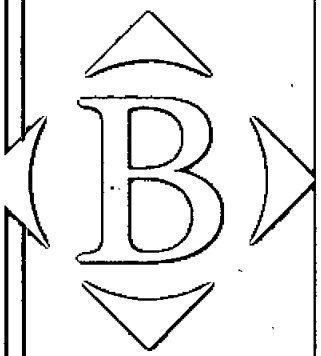


MICHAEL M. HICKEY

RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri



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57109-8208
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F. (605) 339-6801

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JUL 06 2015
WATER RIGHTS PROGRAM

Reply to Rapid City Office

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

July 1, 2015

Jeffrey R. Connolly
Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709-8045

Re: ***In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2***

Dear Jeff:

Please find enclosed a copy of the signature page (page 4) of *Linda Van Dyke Kilcoin's Answers and Responses to Interrogatories and Requests for Production of Documents* regarding the above-entitled matter.

If you have any questions or comments, please advise.

Sincerely,

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

Michael M. Hickey

MMH:ke
Enclosure
Cc: Jeanne Goodman
Matt Naasz
Rodney Freeman
William R. Hansen
Peter A. Fahmy
Craig Bobzien
Toni Martin
Rick Fox
Karl & Suzanne Von Rump
Eric Gronlund
Ann F. Mines Bailey
Chad Comes, P.E.
Cheryl Schrempp Dupris
Lois Witte
Mr. and Mrs. David Albrecht
Doug Lesher
Dean and Delia Johnson
Client

ANSWER: **No expert witness will be called by me.**

INTERROGATORY NO. 14. For every residence in Custer County or Fall River County, South Dakota you reside in, or are domiciled at, please identify all your sources of water.

ANSWER: **I obtain water from various wells and springs on my property.**

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Any and all documents requested in Interrogatories 1 through 14 above.

RESPONSE: **This question is objected to as it seeks information protected by attorney work product.**

REQUEST NO. 2: Any document relied upon to answer any interrogatory above.

RESPONSE: **This question is objected to as it seeks information protected by attorney work product.**

Dated this 30 day of June, 2015.

Linda Van Dyke Kilcoin

STATE OF SOUTH DAKOTA :
SS
COUNTY OF PENNINGTON :

Subscribed and sworn to before me this 30 day of June, 2015.

Notary Public, State of South Dakota
My commission expires: 11-18-2020

(SEAL)

KRISTA SCHRIER NOTARY SEAL PUBLIC STATE OF SOUTH DAKOTA

As to objections this 24th day of June, 2015.

Michael M. Hickey

RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri

BANGS McCULLEN
LAW FIRM

Reply to Rapid City Office

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

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WATER RIGHTS PROGRAM

July 1, 2015

Via E-Mail and U.S. Mail
Eric Gronlund
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2*

Dear Eric:

Please find enclosed our original document titled *Linda Van Dyke Kilcoin's Witness and Exhibit Disclosures* regarding the above-entitled matter. By copy of this letter, all interested parties have been served.

Pursuant to the *Procedural and Scheduling Order*, I am emailing you a copy of our exhibits at this time. The exhibits will be provided to the Board, counsel, court reporter and all parties at the time of the hearing.

If you have any questions or comments, please advise.

Sincerely,

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

Michael M. Hickey

MMH:ke
Enclosure
Cc: Jeanne Goodman; Matt Naasz; Ann F. Mines Bailey
Rodney Freeman; Chad Comes, P.E.; William R. Hansen
Cheryl Schrempp Dupris; Peter A. Fahmy; Jeff Connolly;
Lois Witte; Craig Bobzien; Mr. and Mrs. David Albrecht;
Toni Martin; Doug Lesher; Rick Fox; Dean and Delia Johnson;
Karl & Suzanne Von Rump; and Client

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA.

Linda Van Dyke Kilcoin's Witness and Exhibit Disclosures

In accordance with the provisions of the Procedural and Scheduling Order, set forth below is a listing of the witnesses and exhibits which Linda Van Dyke Kilcoin, intends to offer.

Witnesses:

Michael Fleming
P.O. Box 65
26850 Stage Stop Road
Pringle, SD 57779

Mr. Fleming is the president of the Canyon Rim Ranch Homeowners Association and will testify concerning the adverse impact the proposed application would have on owners of the property.

James Farmer
6600 Dark Canyon Road
Rapid City, SD 57702

Mr. Farmer owns property near the location of the proposed well and will testify concerning the adverse impact the proposed application would have on his property.

Linda Van Dyke Kilcoin
23470 Paradise Drive
Hill City, SD 57745

Ms. Kilcoin will testify concerning the adverse impact the proposed application would have on her springs and property.

Exhibits:

1. Exhibit 21, Declaration of Trust of United Order of the United Order of South Dakota;
2. Exhibit 22, Affidavit of Stephen P. Harker;
3. Exhibit 23, Letter of Authority; and
4. Any exhibits designated by any other party.

Dated this 1st day of July, 2015.

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

BY: _____

MICHAEL M. HICKEY
333 West Blvd., Suite 400
P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040
mhickey@bangsmccullen.com
Attorneys for Linda Van Dyke Kilcoin

CERTIFICATE OF SERVICE

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

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Eric Gronlund
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501
Via e-mail: Eric.Gronlund@state.sd.us

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
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Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Jeffrey R. Connolly
Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709

Cheryl Schrempp DuPris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St., Room 309
Golden, CO 80401-4720

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

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Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Dean & Delia Johnson
14585 East French Creek Road
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Chad Comes, PE
Hearing Chair
Water Management Bd.
% The City of Madison
116 West Center Street
Madison, SD 57042

William R. Hansen
Jeff Hughes
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Peter A. Fahmy
National Park Service
12795 W. Alameda Parkway, Ste. 198
Lakewood, CO 80228

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 1st day of July, 2015.

MICHAEL M. HICKEY

EXHIBIT
21

STATE OF SOUTH DAKOTA,
COUNTY OF CUSTER-SS 51278
Filed this 24 Day of Dec 20 09 at 10:15 O'clock AM
BOOK 43 OF MISC PAGE 400
/S/ Pamela J. Johnson
REGISTER OF DEEDS FEE $ 44.00 PD DEPUTY
N/S

RECEIVED
JUL 06 2015
WATER RIGHTS
PROGRAM

DECLARATION OF TRUST
OF THE
UNITED ORDER OF SOUTH DAKOTA

KNOW ALL MEN BY THESE PRESENTS: That we, the subscribers and Trustees hereto, have this 23rd day of December, 2009, entered into an agreement and contract to create a Trust under which the appointed and constituted Trustees hereunder shall be empowered to operate as hereinafter set forth.

To this end the subscribers associate themselves together in the formation of a religious Trust for the purposes hereinafter stated, and without personal liability to the Members hereof or to the public. It is intended and proposed that all others than the subscribers hereto who may become Members in this association ipso facto agree to accept the terms of this instrument and Declaration of Trust to all intents and purposes as if they were the original subscribers hereto. Further, it is understood and agreed that we and such other Members as may hereafter come into said association are associated together merely and solely for the purpose of being cesti que trustents of the Trust hereby created.

The association shall be known as the United Order of South Dakota.

The United Order of South Dakota (hereinafter referred to as "The Order") is a religious society worshiping the Lord and living the Holy United Order. It exists to preserve and advance the religious doctrines and goals of The Fundamentalist Church of Jesus Christ of Latter-Day Saints, a religious society (hereinafter referred to as the "FLDS Church"). The doctrines and laws of the Holy United Order are found in the Book of Mormon, the Doctrine and Covenants, the Pearl of Great Price, and the Holy Bible; and are the guiding tenets by which the Trustees of the United Order of South Dakota shall act.

(Doctrine and Covenants 59:5-6)

5. "Wherefore, I give unto them a commandment, saying thus: Thou shalt love the Lord thy God with all thy heart, with all thy might, mind, and strength; and in the name of Jesus Christ thou shalt serve him.

6. "Thou shalt love thy neighbor as thyself."

(Doctrine and Covenants 29:34)

34. "Wherefore, verily I say unto you that all things unto me are spiritual, and not at any time have I given unto you a law which was temporal; neither any man, nor the children of men; neither Adam, your father, whom I created."

(Doctrine and Covenants 42:29-42, 53, 55)

29. "If thou lovest me thou shalt serve me and keep all my commandments.

30. "And behold, thou wilt remember the poor, and consecrate of thy properties for their support that which thou hast to impart unto them, with a covenant and a deed which cannot be broken.

31. "And inasmuch as ye impart of your substance unto the poor, ye will do it unto me; and they shall be laid before the bishop of my church and his counselors, two of the elders, or high priests, such as he shall appoint or has appointed and set apart for that purpose.

32. "And it shall come to pass, that after they are laid before the bishop of my church, and after that he has received these testimonies concerning the consecration of the properties of my church, that they cannot be taken from the church, agreeable to my commandments, every man shall be made accountable unto me, a steward over his own property, or that which he has received by consecration, as much as is sufficient for himself and family.

33. "And again, if there shall be properties in the hands of the church, or any individuals of it, more than is necessary for their support after this first consecration, which is a residue to be consecrated unto the bishop, it shall be kept to administer to those who have not, from time to time, that every man who has need may be amply supplied and receive according to his wants.

34. "Therefore, the residue shall be kept in my storehouse, to administer to the poor and the needy, as shall be appointed by the high council of the church, and the bishop and his council;

35. "And for the purpose of purchasing lands for the public benefit of the church, and building houses of worship, and building up of the New Jerusalem which is hereafter to be revealed—

36. "That my covenant people may be gathered in one in that day when I shall come to my temple. And this I do for the salvation of my people.

37. "And it shall come to pass, that he that sinneth and repenteth not shall be cast out of the church, and shall not receive again that which he has consecrated unto the poor and the needy of my church, or in other words, unto me—

38. "For inasmuch as ye do it unto the least of these, ye do it unto me.

39. "For it shall come to pass, that which I spake by the mouths of my prophets shall be fulfilled; for I will consecrate of the riches of those who embrace my gospel among the Gentiles unto the poor of my people who are of the house of Israel.

40. "And again, thou shalt not be proud in thy heart; let all thy garments be plain, and their beauty the beauty of the work of thine own hands;

41. "And let all things be done in cleanliness before me.

42. "Thou shalt not be idle; for he that is idle shall not eat the bread nor wear the garments of the laborer.***

53. "Thou shalt stand in the place of thy stewardship.***

55. "And if thou obtainest more than that which would be for thy support, thou shalt give it into my storehouse, that all things may be done according to that which I have said."

(Doctrine and Covenants 51:9, 19)

9. "And let every man deal honestly, and be alike among this people, and receive alike, that ye may be one, even as I have commanded you.***

19. "And whoso is found a faithful, a just, and a wise steward shall enter into the joy of his Lord, and shall inherit eternal life."

(Doctrine and Covenants 70:7-10, 14)

7. "Nevertheless, inasmuch as they receive more than is needful for their necessities and their wants, it shall be given into my storehouse;

8. "And the benefits shall be consecrated unto the inhabitants of Zion, and unto their generations, inasmuch as they become heirs according to the laws of the kingdom.

9. "Behold, this is what the Lord requires of every man in his stewardship, even as I, the Lord, have appointed or shall hereafter appoint unto any man.

10. "And behold, none are exempt from this law who belong to the church of the living God;***

14. "Nevertheless, in your temporal things you shall be equal, and this not grudgingly, otherwise the abundance of the manifestations of the Spirit shall be withheld."

(Doctrine and Covenants 78:1-8, 11)

1. "The Lord spake unto Joseph Smith, Jun., saying: Hearken unto me, saith the Lord your God, who are ordained unto the high priesthood of my church, who have assembled yourselves together;

2. "And listen to the counsel of him who has ordained you from on high, who shall speak in your ears the words of wisdom, that salvation may be unto you in that thing which you have presented before me, saith the Lord God.

3. "For verily I say unto you, the time has come, and is now at hand; and behold, and lo, it must needs be that there be an organization of my people, in regulating and establishing the affairs of the storehouse for the poor of my people, both in this place and in the land of Zion—

4. "For a permanent and everlasting establishment and order unto my church, to advance the cause, which ye have espoused, to the salvation of man, and to the glory of your Father who is in heaven;

5. "That you may be equal in the bonds of heavenly things, yea, and earthly things also, for the obtaining of heavenly things.

6. "For if ye are not equal in earthly things ye cannot be equal in obtaining heavenly things;

7. "For if you will that I give unto you a place in the celestial world, you must prepare yourselves by doing the things which I have commanded you and required of you.

8. "And now, verily thus saith the Lord, it is expedient that all things be done unto my glory, by you who are joined together in this order;***

11. "Wherefore, a commandment I give unto you, to prepare and organize yourselves by a bond or everlasting covenant that cannot be broken."

(Doctrine and Covenants 82:11-21)

11. "Therefore, verily I say unto you, that it is expedient for my servants*** to be bound together by a bond and covenant that cannot be broken by transgression, except judgment shall immediately follow, in your several stewardships—

12. "To manage the affairs of the poor, and all things pertaining to the bishopric both in the land of Zion and in the land of Kirtland;

13. "For I have consecrated the land of Kirtland in mine own due time for the benefit of the saints of the Most High, and for a stake to Zion.

14. "For Zion must increase in beauty, and in holiness; her borders must be enlarged; her stakes must be strengthened; yea, verily I say unto you, Zion must arise and put on her beautiful garments.

15. "Therefore, I give unto you this commandment, that ye bind yourselves by this covenant, and it shall be done according to the laws of the Lord.

16. "Behold, here is wisdom also in me for your good.

17. "And you are to be equal, or in other words, you are to have equal claims on the properties, for the benefit of managing the concerns of your stewardships, every man according to his wants and his needs, inasmuch as his wants are just—

18. "And all this for the benefit of the church of the living God, that every man may improve upon his talent, that every man may gain other talents, yea, even an hundred fold, to be cast into the Lord's storehouse, to become the common property of the whole church—

19. "Every man seeking the interest of his neighbor, and doing all things with an eye single to the glory of God.

20. "This order I have appointed to be an everlasting order unto you, and unto your successors, inasmuch as you sin not.

21. "And the soul that sins against this covenant, and hardeneth his heart against it, shall be dealt with according to the laws of my church, and shall be delivered over to the buffetings of Satan until the day of redemption."

(Doctrine and Covenants 85:3-5)

3. "It is contrary to the will and commandment of God that those who receive not their inheritance by consecration, agreeable to his law, which he has given, that he may tithe his people, to prepare them against the day of vengeance and burning, should have their names enrolled with the people of God.

4. "Neither is their genealogy to be kept, or to be had where it may be found on any of the records or history of the church.

5. "Their names shall not be found, neither the names of the fathers, nor the names of the children written in the book of the law of God, saith the Lord of Hosts."

(Doctrine and Covenants 104:1-2, 11-16, 54-57)

1. "Verily I say unto you, my friends, I give unto you counsel, and a commandment, concerning all the properties which belong to the order which I commanded to be organized and established, to be a united order, and an everlasting order for the benefit of my church, and for the salvation of men until I come—

2. "With promise immutable and unchangeable, that inasmuch as those whom I commanded were faithful they should be blessed with a multiplicity of blessings;***

11. "It is wisdom in me; therefore, a commandment I give unto you, that ye shall organize yourselves and appoint every man his stewardship;

12. "That every man may give an account unto me of the stewardship which is appointed unto him.

13. "For it is expedient that I, the Lord, should make every man accountable, as a steward over earthly blessings, which I have made and prepared for my creatures.

14. "I, the Lord, stretched out the heavens, and built the earth, my very handiwork; and all things therein are mine.

15. "And it is my purpose to provide for my saints, for all things are mine.

16. "But it must needs be done in mine own way; and behold this is the way that I, the Lord, have decreed to provide for my saints, that the poor shall be exalted, in that the rich are made low.***

54. "And again, a commandment I give unto you concerning your stewardship which I have appointed unto you.

55. "Behold, all these properties are mine, or else your faith is vain, and ye are found hypocrites, and the covenants which ye have made unto me are broken;

56. "And if the properties are mine, then ye are stewards; otherwise ye are no stewards.

57. "But, verily I say unto you, I have appointed unto you to be stewards over mine house, even stewards indeed."

(Acts 4:32)

32. "...the multitude of them that believed were of one heart and of one soul; neither said any of them that ought of the things which he possessed was his own; but they had all things common."

(4 Nephi 2-3)

2. "...there were no contentions and disputations among them, and every man did deal justly one with another.

3. "And they had all things common among them; therefore there were not rich and poor, bond and free, but they were all made free, and partakers of the heavenly gift."

We do now covenant and declare that the following are and shall be the fundamental articles of said Trust by which we and all persons who at any time hereafter may transact any business with said Trustees pertaining to the Trust shall be bound and concluded. The contracting parties and Trustees herein signify and confirm by their signatures to this instrument their acceptance of all its terms and their obligation to perform and discharge the duties imposed by this instrument.

ARTICLE I

To carry out its religious mission, the Trust shall be administered by a Board of Trustees consisting of not less than three nor more than seven Trustees.

Stephen P. Harker Vaughan E. Taylor Boyd W. Roundy

are hereby designated Trustees of said Trust, with powers and duties as hereinafter set forth. The Board of Trustees shall act by majority vote, except where herein otherwise provided, of the number of Trustees in office and shall have all rights, powers, and privileges of an absolute owner in carrying out the purposes of the Trust, including without limitation all powers of trustees under South Dakota law. The Board of Trustees may designate representatives to perform one or more of these functions on its behalf.

ARTICLE II

The Trust is designated a non-profit association. The purpose and object of the United Order of South Dakota is primarily for religious worship which includes an actual living of the Holy United Order by Members accepted into The Order. The central principle of The Order requires the gathering together of faithful religious Members on consecrated and sacred lands to establish as one pure people the Kingdom of God on earth under the guidance of the FLDS Church leadership. The Order shall have a common treasury and may appoint stewardships including stewardships to engage in any and all kinds of legitimate business ventures including but not limited to agriculture and manufacturing; provided however, that such endeavors or adventures of whatsoever name or nature shall in no wise conflict with the Constitution of the United States, or the constitutional laws of the land where such operations may be carried on. The proceeds arising from the operations of the trust estate shall be used by the Trustees for the performance of this Trust as herein provided, and any increase arising from the conduct of the business shall become part of the corpus of the trust fund so that there shall be no distributable profits. The Board of Trustees, in their sole discretion, shall administer the Trust consistent with its religious purpose to provide for FLDS Church members who are accepted as Members of The Order, according to their wants and their needs, insofar as their wants are just (Doctrine and Covenants, Section 82:17-21); and provided, that the Trustees may render needed assistance to the FLDS Church or to non-members of the Trust when deemed wise by them.

A consecration is an unconditional dedication to a sacred purpose. Consecration of real estate to the United Order of South Dakota is accomplished by a deed of conveyance. All properties now included or hereafter added to the trust estate are

APPLICANT 039

consecrated and sacred lands, dedicated to the Trust's religious purpose. Accepted Members also consecrate their time, talents, money, and materials to the Lord's storehouse, to become the property of The Order. All consecrations made to or for the benefit of the United Order of South Dakota are dedicated to the sacred purpose of The Order and without any reservation or claim of right and/or ownership. Improvements made by persons living on Trust property become the property of the Trust and are consecrations to the Trust. Members may own, in their own names, any real or personal property not consecrated to The Order.

The privilege to be a Member of the United Order of South Dakota and/or live upon the lands and in the buildings of The Order is by appointment to that mission by the FLDS Church from among its members and is granted, and may be revoked at any time, by the Board of Trustees. Those who seek that privilege commit themselves and their families to live their lives according to the principles of The Order and the FLDS Church, and they and their families consent to be governed by the FLDS Church leadership and the Board of Trustees. They must consecrate their lives, times, talents and resources to the building and establishment of the Kingdom of God on earth under the direction of the FLDS Church leadership and its appointed officers. They must act in the spirit of charity.

(Moroni 7:6-10, 45-48)

6. "For behold, God hath said a man being evil cannot do that which is good; for if he offereth a gift, or prayeth unto God, except he shall do it with real intent it profiteth him nothing.

7. "For behold, it is not counted unto him for righteousness.

8. "For behold, if a man being evil giveth a gift, he doeth it grudgingly; wherefore it is counted unto him the same as if he had retained the gift; wherefore he is counted evil before God.

9. "And likewise also is it counted evil unto a man, if he shall pray and not with real intent of heart; yea, and it profiteth him nothing, for God receiveth none such.

10. "Wherefore, a man being evil cannot do that which is good; neither will he give a good gift.***

45. "And charity suffereth long, and is kind, and envieth not, and is not puffed up, seeketh not her own, is not easily provoked, thinketh no evil, and rejoiceth not in iniquity but rejoiceth in the truth, beareth all things, believeth all things, hopeth all things, endureth all things.

46. "Wherefore, my beloved brethren, if ye have not charity, ye are nothing, for charity never faileth. Wherefore, cleave unto charity, which is the greatest of all, for all things must fail—

47. "But charity is the pure love of Christ, and it endureth forever; and whoso is found possessed of it at the last day, it shall be well with him.

48. "Wherefore, my beloved brethren, pray unto the Father with all the energy of heart, that ye may be filled with this love, which he hath bestowed upon all who are true followers of his Son, Jesus Christ; that ye may become the sons of God; that when he shall appear we shall be like him, for we shall see him as he is; that we may have this hope; that we may be purified even as he is pure. Amen."

They must live in the true spirit of brotherhood.

(Mathew 22:36-40)

36. "Master, which is the great commandment in the law?

37. "Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.

38. "This is the first and great commandment.

39. "And the second is like unto it, Thou shalt love thy neighbour as thyself.

40. "On these two commandments hang all the law and the prophets."

There shall be no disputations among them.

(3 Nephi 18:34)

34. "And I give you these commandments because of the disputations which have been among you. And blessed are ye if ye have no disputations among you."

The Trust is most firmly committed to these goals. People who are granted the privilege to be a Member of the United Order of South Dakota and/or the privilege to live on Trust property acknowledge by their presence upon the land their acceptance of the terms of this Trust. Parents may consent to membership on behalf of their minor children to the extent allowed under applicable state law.

Membership in the United Order of South Dakota and/or use of property owned by The Order is not and does not become a right or claim of anyone who may benefit in any way from the Trust. The Order shall not be liable for liabilities of or claims against the FLDS Church or any Trustee or Member of The Order. Use of Trust property must be within rules and standards set by the Board of Trustees. The Board of Trustees may require individuals and their families to relocate to different locations on Trust property or to share a location with others. Participants who, in the opinion of the Board of Trustees, do not honor their commitments to live their lives according to the principles of The Order and the FLDS Church shall remove themselves from the Trust property and, if they do not, the Board of Trustees may, in its discretion, cause their removal. Any Member thus expelled or excluded from the association shall have no claim upon the trust estate. At such time as they reform their lives and the lives of their family members and are again approved by the FLDS Church and the Board of Trustees they may again be permitted to participate in The Order. The Board of Trustees shall have no obligation whatsoever to return all or any part of consecrated property back to a consecrator or to his or her descendants.

ARTICLE III

Stephen P. Harker, Trustee, shall be President of the Board of Trustees until incapacitated by removal, resignation or death, with powers, duties, authority, and rights to do all things necessary in assisting to carry out the purposes of said Trust as herein set out, or as in the future amended; and said Trustee, as President, is hereby empowered to execute any necessary documents on behalf of the Trust, including contracts, deeds, transfers, assignments, and other instruments to pass title to property and otherwise bind the trust estate; provided, however, that in the absence of the President, or in the event of his inability to act through sickness or otherwise, the Vice-President may act in such capacity, unless the Board of Trustees designates one or more Trustees to execute such documents.

ARTICLE IV

Vaughan E. Taylor, Trustee, shall act as Vice-President of the Board of Trustees.

ARTICLE V

Boyd W. Roundy, Trustee, is to fill the office of Secretary of the Board of Trustees and shall perform such other duties as are necessary and usually performed by such officer in a similar association.

ARTICLE VI

The Trustees aforesaid and their successors in trust shall hold the legal title to all property that may be acquired by or for the benefit of the trust estate, and shall have and exercise exclusive management, disposition and control of the same via the appointed officers of The Order, subject to the terms and provisions of this Declaration of Trust.

ARTICLE VII

The sole Manager and Treasurer of The Order is an appointed Bishop and/or Counselor(s) to the Bishop. The Bishop and Bishop's Counselors are appointed or dismissed by the FLDS Church and are upheld by a unanimous vote of the Board of Trustees.

ARTICLE VIII

The Trustees shall not be liable to the Members of the trust estate for error in judgment in prosecuting and managing the Trust property, interest or business, nor for any act done by them, or either of them in the course of such management, nor for omission to act in the execution of this Trust, except such acts as involve bad faith on their part; nor shall they be liable for the acts or omissions of each other, nor for the acts or omissions of any officer, agent, or servant appointed or acting for them; and should they or either of them be held personally liable on any tort or breach of contract in the prosecution of the trust estate, they or either of them will be entitled to indemnity out of the trust estate to the extent of such liability.

ARTICLE IX

A Trustee or other officer may be removed at any time without cause or for cause, misconduct, or breach of trust, by a majority vote of said Trustees at a special meeting called for the purpose; and upon the death, removal, or resignation of any Trustee or other officer, such vacancy or vacancies may be filled by the remaining members of the Board of Trustees. Dismissal of a Trustee shall be by a written notice, effective on the date the notice is executed. A Trustee may resign by written notice to the Board of Trustees. Each successor Trustee shall have the same powers and authority, and shall be subject to the same duties and restrictions, as predecessor Trustees.

ARTICLE X

Membership in the trust estate is established for the signers of this instrument, and who form the first Board of Trustees, by the conveyance to the trust estate of the following described property, situated in Custer County, State of South Dakota, to-wit:

Parcel # 6359: The South Half of the North Half of the Southwest Quarter of the Northeast Quarter (S½ N½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6360: The South Half of the Southwest Quarter of the Northeast Quarter (S½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6361: The South Half of the North Half of the Southeast Quarter of the Northeast Quarter (S½ N½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6362: The South Half of the Southeast Quarter of the Northeast Quarter (S½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6364: The West Half of the East Half of the Northwest Quarter of the Southeast Quarter (W½ E½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6365: The West Half of the Northwest Quarter of the Southeast Quarter (W½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6366: The East Half of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ NE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6367: The West Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (W½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6368: The East Half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (E½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Southeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ SE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. This parcel contains 40 acres, more or less.

TOGETHER WITH all improvements, easements, and appurtenances thereunto belonging.

SUBJECT TO all easements, restrictions, reservations, rights of way, and items currently appearing of record, if any.

Evidence of membership shall be shown in the books of the association. A membership certificate may, in the discretion of the Trustees, be issued to each Member; but such certificate shall not be transferable, nor carry title to any of the property or assets of the Trust.

ARTICLE XI

Membership in said association shall not entitle the Member to any part of the Trust property, either personal, real or mixed; nor to the right to call for a partition or division of the same, or for an accounting; nor shall any Member have any right to amend, alter, or terminate this Trust.

Further, it is declared that any person who shall accept a membership in said Trust ipso facto becomes a party to this Declaration of Trust and shall be bound and concluded by all the terms and conditions thereof.

The Trustees shall have no power to bind the Members personally, and the Members and all parties whosoever extending credit to, contracting with, or having any claim against the Trust, shall look only and solely to the funds and property of the Trust for payment under such contract or claim, or for any debt, damage, judgments or decrees, or for any money or property that may otherwise be due or become due or payable to them from the Trustees, so that neither the Trustees or Members at any time shall be personally liable by themselves, or by any contract which any officer or agent of the Trust shall give or enter into.

ARTICLE XII

The United Order of South Dakota is intended to meet the requirements of Internal Revenue Code Section 501(d) as a religious or apostolic association; accordingly, the Members hereof must include (each year at the time of filing their returns) in their gross income their entire pro rata shares of the taxable income of this association; additionally, contributions to The Order are not deductible as charitable contributions.

ARTICLE XIII

This Declaration of Trust may be amended at any time and from time to time by unanimous vote of the Trustees.

ARTICLE XIV

This Trust is intended to be of perpetual duration, but may be terminated sooner by the Trustees, if they deem it advisable so to do, in the best interest of the trust estate and the Members thereof.

ARTICLE XV

The death of a Member or Trustee during the continuance of this Trust shall in no wise operate to terminate the Trust, nor shall it entitle the legal representative of the deceased Member or Trustee to an accounting or to take any action in court or elsewhere against the Trustees.

ARTICLE XVI

The original of this Declaration of Trust shall remain a part of the files of the Board of Trustees. It may, however, be recorded in the offices of the county recorders in the states wherein the property of the Trust may be located. The general office of the Trust shall be at Pringle, South Dakota, unless and until it is moved elsewhere by act of the Board of Trustees. The Trust may also establish branch offices by action of the Trustees.

ARTICLE XVII

In the event of discontinuance of this Trust by dissolution or otherwise, whether by the Board of Trustees or by reason of law, the assets of the Trust Estate at that time shall become the property of the South Dakota Stake of Zion, a religious society, organized by Declaration of Trust dated of even date hereof, a church qualified for exemption under Section 501(c)(3) of the Internal Revenue Code, as amended.

IN WITNESS WHEREOF, we, constituting all of the Trustees and original contracting parties under the Declaration of Trust, have executed this Declaration of Trust on the 23rd day of December, 2009.

Stephen P. Harker

Vaughan E. Taylor

Boyd W. Roundy

STATE OF Utah)
: ss.
COUNTY OF Washington)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Stephen P. Harker, Vaughan E. Taylor, and Boyd W. Roundy, personally known to me to be the persons whose names are subscribed to the foregoing Declaration of Trust, appeared before me in person and acknowledged that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official seal this 23rd day of December, 2009.

NOTARY PUBLIC
BOYD KNUDSON
1020 West Utah Avenue
Hildale, UT 84784
My Commission Expires
January 24th, 2011
STATE OF UTAH

Notary Public

Commission Expires: 1/24/11

EXHIBIT
22

AFFIDAVIT
OF FORMER TRUSTEE OF THE
UNITED ORDER OF SOUTH DAKOTA

I, the undersigned Stephen P. Harker, constituting a former Trustee of the United Order of South Dakota, hereby certify, confirm, affirm and reaffirm the following information:

1. I was an original Trustee of the United Order of South Dakota, a common law trust, organized by Declaration of Trust executed on December 23, 2009.
2. Article I of the Declaration of Trust provides that "The Board of Trustees may designate representatives to perform one or more of these functions on its behalf."
3. I have resigned as Trustee of the United Order of South Dakota.
4. Isaac S. Jeffs is a current Trustee of the United Order of South Dakota and, as a successor in trust, holds the same rights, powers, privileges and authority in relationship to the Trust that I previously held.

IN WITNESS WHEREOF, I have executed this Affidavit of Former Trustee of the United Order of South Dakota on the 6th day of March, 2015.

Stephen P. Harker, Former Trustee

STATE OF UTAH)
: ss.
COUNTY OF IRON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Stephen P. Harker, personally known to me, or proved upon satisfactory evidence, to be the person whose name is subscribed to the foregoing Affidavit of Former Trustee of the United Order of South Dakota, appeared before me in person and, being by me first duly sworn, acknowledged the statements therein contained and that he executed the same in the capacity therein stated.

WITNESS my hand and official seal this 6th day of March, 2015.

BOYD KNUDSON
NOTARY PUBLIC, STATE OF UTAH
COMMISSION #680940
MY COMMISSION EXPIRES
JANUARY 24, 2019

Notary Public
Commission Expires: 1/24/19

EXHIBIT
23

LETTER OF AUTHORITY
TO SETH S. JEFFS
FROM THE BOARD OF TRUSTEES OF THE
UNITED ORDER OF SOUTH DAKOTA

As a current Trustee of the United Order of South Dakota, a South Dakota common law trust organized by Declaration of Trust dated December 23, 2009 ("Trust"), I, the undersigned, acting on behalf of the Board of Trustees, hereby authorize you, Seth S. Jeffs, to represent the Trust on all matters relating to water and water rights. Please sign any and all documents relating to Trust water in your capacity as "authorized representative" of the Trust.

IN WITNESS WHEREOF, I have executed this Letter of Authority to Seth S. Jeffs from the Board of Trustees of the United Order of South Dakota on the 18th day of February, 2015.

Isaac S. Jeffs, Trustee
United Order of South Dakota

STATE OF UTAH)
: ss.
COUNTY OF WASHINGTON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Isaac S. Jeffs, personally known to me to be the person whose name is subscribed to the foregoing Letter of Authority to Seth S. Jeffs from the Board of Trustees of the United Order of South Dakota, appeared before me in person and acknowledged that he executed the same in the capacity therein stated.

WITNESS my hand and official seal this 18th day of February, 2015.

BOYD KNUDSON
NOTARY PUBLIC, STATE OF UTAH
COMMISSION #680940
MY COMMISSION EXPIRES
JANUARY 24, 2019

Notary Public
Commission Expires: 1/24/19

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JUL 06 2015
WATER RIGHTS PROGRAM

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TALBOT J. WIECZOREK
JENNIFER TRUCANO
DAVID E. LUST
TERRI LEE WILLIAMS
SARA FRANKENSTEIN
JASON M. SMILEY

QUENTIN L. RIGGINS
RONALD G. SCHMIDT
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WYNN A. GUNDERSON
Of Counsel

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

July 1, 2015

Eric Gronlund
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: United Order of South Dakota Re: Water Rights – Application #2730-2
GPNA File No. 12414.0002

Dear Eric:

Enclosed please find United Order of South Dakota's Witness List and United Order of South Dakota's Motion in Limine.

Sincerely yours,

Jeffrey R. Connolly

JRC:klk
Enclosures
cc: Dean & Delia Johnson
Jeanne Goodman, Water Rights Program
Rick Fox
Michael M. Hickey, Bangs McCullen Butler Foye & Simmons LLP
David Albrecht
Toni Martin
Rodney Freeman, Water Management Board
Matthew E. Naasz, Attorney General's Office
Ann F. Mines-Bailey, Attorney General's Office
Doug Lesher
Karl & Suzanne Von Rump
Seth Jeffs

939129 / 12414.0002

RECEIVED
JUL 06 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**United Order of South Dakota's Motion in Limine**

Applicant respectfully moves for an order excluding other parties from offering or soliciting any evidence, including testimony by witnesses, regarding

- The religion of the Applicant and its individual members;
- Details of the organization of the Trust;
- Allegations that the Applicant is a "secretive organization" or is engaged in "abnormal activity"; and
- Personal information and details regarding individual members of the United Order of South Dakota.

This issue was previously discussed in the Applicant's Reply to Petitions of Albrecht and Van Dyke Kilcoin dated March 15, 2015 (received March 19, 2015) and incorporated by this reference.

The Board must consider the application in light of SDCL §46-2A-9. But the evidence Applicant seeks to prohibit is not relevant to the availability of water, the impairment of existing water rights or the beneficial use of water.[1] As Applicant stated in its prior submission, "The assertions of the Albrechts and Ms. Kilcoin are an attempt to use this forum for other purposes." The evidence Applicant seeks to prohibit is "irrelevant" and otherwise excluded under the Rules of Evidence and SDCL § 1-26-19. Specifically, Applicant argues that municipalities and rural water organizations would not

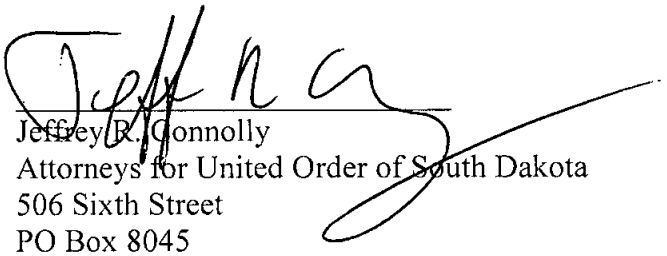
[1] "Beneficial use" is defined as "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3).

need to disclose personal information or even exact numbers of individuals potentially using water subject to their applications. It would be irrelevant, as it is here.

This motion in limine is based upon SDCL §§1-26-19, 1-26-36, 19-19-402, and 19-19-403.

Dated this 1st day of July, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP



Jeffrey R. Connolly
Attorneys for United Order of South Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of July, 2015, I mailed by first-class U.S. mail, a true and correct copy of a United Order of South Dakota's Motion in Limine to the following:

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

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Toni Martin
4141 Villa Ridge Ct. #122
Rapid City, SD 57701

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Eric Gronlund
Water Rights Program
Foss Building
523 East Capitol
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Michael Hickey
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Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Matt Naasz
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501

Chad Comes, PE
Hearing Chair/Water Mgmt Bd.
c/o The City of Madison
Madison, SD 57042

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly

938477 / 12414.0002

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JUL 06 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	)))	**United Order of South Dakota's Witness List**

Pursuant to the Court's May 18, 2015 Scheduling Order, United Order of South Dakota hereby discloses the name of any witnesses it expects to call at the hearing:

1. Seth Jeffs, P.O. Box 5050, Custer, South Dakota 57730. Mr. Jeffs is expected to testify regarding the application generally.

Dated this 1st day of July, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly
Attorneys for United Order of South Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

938175 / 12414.0002

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of July, 2015, I mailed by first-class U.S. mail, a true and correct copy of a United Order of South Dakota's Designation of Expert Witness to the following:

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

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Douglas Lesher
Stone Meadow Ranch
26699 Remington Road
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Rodney Freeman, Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Chad Comes, PE
Hearing Chair/Water Mgmt Bd.
c/o The City of Madison
Madison, SD 57042

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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July 2, 2015

Eric Gronlund
Department of Environment and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501

Re: *In the Matter of Water Application No. 2730-2, United Order*

Dear Eric:

Enclosed for filing please find a copy of DENR's Exhibit 11 - the administrative file.

Respectfully,

Ann Mines Bailey signing on behalf of Ann Mines-Bailey
Ann F. Mines Bailey
Assistant Attorney General

AFMB/jmm

Enclosure

cc: Parties Listed on Certificate of Service

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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	DENR'S DISCLOSURE OF WITNESSES AND EXHIBITS

Pursuant to the Procedural and Scheduling Order dated May 18, 2015, DENR hereby provides the names of the witnesses it intends to call:

1. Ken Buhler, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. Mr. Buhler will testify as to his review of the application for a water permit and subsequent reports which serve as the basis of the Chief Engineer's recommendation of approval, including the nature and hydrologic characteristics of the aquifer, the availability of unappropriated water, and the potential impairment of existing rights.

2. Jeanne Goodman, Chief Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. The Chief Engineer will testify regarding her recommendation of approval of this application.

Furthermore, DENR hereby provides a list of the exhibits it intends to offer during the contested hearing:

1. DENR Exhibit 11: the administrative file.

2. DENR Exhibit 12: Curriculum Vitae of Ken Buhler.

3. DENR Exhibit 13: Curriculum Vitae of Jeanne Goodman.

DENR also intends to utilize Figure 2 in the Supplemental Report to the Chief Engineer on Water Permit Application No. 2730-2 for demonstrative purposes.

Dated this 18th day of July, 2015

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

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PENGAD 800-631-6989
EXHIBIT
DENR
12

KEN BUHLER

EDUCATION

B.S. Geological Engineering, South Dakota School of Mines and Technology, 1981

CAREER EXPERIENCE

Engineer III - SD Dept of Environment and Natural Resources, Water Rights Program: Responsibilities: Conducting ground water investigations and investigating complaints, managing the Observation Well Network, compiling water well data, preparing and reviewing reports for new ground water permit applications, providing technical assistance to the Chief Engineer and providing expert testimony to the Water Management Board on contested water permit applications. Responsible for the management of the state's water well construction program, including licensure and regulation of well drillers operating in South Dakota and administration of the SD Well Construction Standards. Monitor water use, investigate violation complaints and conduct water permit reviews for licensing. Provide technical assistance to the Water Management Board through evaluating ground water permit applications and through interpretation of data from the statewide observation well network.

District Field Engineer – Western Company of North America: Designed oil well stimulation and cementing programs and ensured QA/QC for the District's services.

SPECIAL PROJECTS

Provided technical assistance to the Steering committees for the Black Hills Hydrology Study and the Black Hills Water Management Study.

Provided technical assistance and expert testimony before the South Dakota Water Management Board for Well Construction Rules promulgation, well construction enforcement and well driller licensing issues since 1985.

TESTIMONY

Testified as an expert witness before the South Dakota Water Management Board since 1985. Cases since March 7, 1990 include:

- Water Permit Applications form the Tulare: Western Spink Hitchcock Aquifer: Nos. 7858-3 and 7859-3-Brad Peterson; No. 7860-3-Oscar Inc; No. 7894-3-Van Buskirk Farms
- Water Permit Applications from the Tulare: East James Aquifer: Nos. 7875-3, 7876-3 and 7877-3- Lenny Peterson; Nos. 7878-3, 78779-3, 7880-3, 7881-3, 7882-3 and 7884-3- Oscar Inc.
- Water Permit Application No. 8032-3, Arthur Olsen
- Water Permit Application No. 2078A-3, Riverside Hutterian Brethren
- Water Permit Application Nos. 7369A-3, 7369B-3 and 7369C-3, Huron Hutterian Brethren
- Water Permit Application No. 8068-3, Thunder Ridge RE LLC
- Consideration of Water Permit Application No. 8013-3, Riverside Hutterian Brethren
- Consideration of Water Permit Application No. 4134-3, Bixler Farms
- Consideration of Deferred Applications from Upper Vermillion: Missouri aquifer Application

- No. 7725-3, Lenny Peterson; Nos. 7752-3, 7755-3, 7756-3, 7757-3, Lenny Peterson; Nos. 7726-3, 7727-3, 7753-3, 7754-3, 7759-3, Oscar Inc.; Nos. 7733-3, 7734-3, 7735-3, 7736-3, Van Buskirk Farms LLP
- Renewal of South Dakota Well Driller License No. 740, Brechtel & Sons Drilling
- South Dakota Well Driller License Application for RCS Construction
- South Dakota Well Pump Installer License Application for Babby Solar Pump Co.
- Well Driller License No. 473, Babby Well Drilling
- Application No. 7685-3, Michael Watson; No. 7716-3 Denis and Craig Slepikas; Nos. 7717-3, 7718-3, 7720-3, 7721-3, Terry Wieting; No. 7719-3, Marshall Brothers; Nos. 7722-3, 7723-3, 7724-3, Bren/Leland Kleinssaser; Nos. 7725-3, 7752-3, 7755-3, 7756-3, 7757-3, Lenny Peterson; Nos. 7726-3, 7727-3, 7753-3, 7754-3, 7759-3, Oscar Inc.; Nos. 7733-3, 7734-3, 7735-3, 7736-3, Van Buskirk Farms LLP
- Application No. 7747-3 Gordie Hofer
- Application No. 7551-3, Wayne Binger, Nos. 7570-3, 7571-3, 7572-3, 7574-3,7575-3, 7637-3, 7638-3, 7639-3, 7640-3, Gary Marshall; No. 7620-3, Oscar, Inc.
- Application No. 7441-3, Gary or Julie Peterson; No. 7442-3, Gary or Julie Peterson; No. 7452-3, Jerome Hult; No. 7466-3, Bethel Hagen Trust; No. 7535-3, Donald D Benson; No. 7467-3, Cleland Hagen Trust; No. 7468-3, Cleland Hagen Trust; No. 7558-3, Cleland Hagen Trust; No. 7587-3, Paul Petersen; No. 7588-3, Paul Petersen; No. 7600-3, Michael D Stevens; No. 7601-3, Michael D Stevens; No. 7602-3, Michael D Stevens; No. 7603-3, Michael D Stevens; No. 7623-3, Darrell Osborn; No. 7633-3, Brad Farrar; No. 7653-3, Jeremiah Welsh
- Application No. 7386-3, Brian Gatzke; No. 7537-3, Bret Fliehs; No. 7541-3 Roger Schuelke; No. 7555-3 Craig Bass
- Application No. 7373-3, Terry Wieting; No. 7620-3, Oscar, Inc
- Application No. 7649-3, POET
- Application No. 7295-3, William St. Clair; No. 7348-3, Wipf Acres LP; No. 7365-3, Huron Colony; No. 7366-3, Huron Colony; No. 7367-3, Huron Colony; No. 7368-3, Huron Colony; No. 7369-3, Huron Colony; No. 7370-3, Huron Colony
- Application No. 7345-3, Jack Schmidt
- Application No.7289-3, Bixler Farms; Nos. 7290-3 and 7291-3, Lee Gatzke; No. 7293-3, Jefferey Gatzke and No. 7292-3, Allen Gatzke
- Well Driller License No. 722, Stretch's Well Service
- Consider Application to renew SD Well Driller's License No. 672, Millbrook Industries
- Consider Application for a SD Well Driller's License, Ekern HomeEquipment Co. Inc
- Application No. 7165-3, Paul Buckneberg
- Appeal of Chief Engineer's Decision in the matter of a pond along Spring Creek
- Consider Application for a SD Well Driller's License, Aaron Marshall
- Application No. 2629-2, Fall River Water User District
- Application No. 2633-2, Southern Black Hills Water System
- Application No. 5156-3, Lincoln County Rural Water System, Inc.
- Application No. 2623-2, Colonial Pine Hills Sanitary District
- Application No. 6823-3, TM Rural Water District
- Application No. 1883-1, Pro Eco Energy
- Application No. 2610-2, United Land Management
- Application Nos. 2560A-2 & 2615-2, Fall River Water User District
- Application No. 6846-3, Otter Tail Corporation
- Application No. 1872-1, City of Spearfish
- Application No. 1864-1, Hay Creek Ranch
- Application No. 1858-1, Glencoe Camp Resort
- Application No. 1865-1, Jay Allen

- Application Nos. 2580-2 & 2585-2, Southern Black Hills Water System
- Application No. 2591-2, Larry and Geri Gustafson
- Application No. 1707E-1, Frawley Ranches
- Application No. 2560-2, Fall River Water Users District
- Application No. 2559-2, John Markus
- Application No. 2549-2, City of Custer
- Application No. 2544-2, Timmerman Brothers Ranch Co.
- Application No. 1707D-1, City of Spearfish
- Application No. 1803-1, Albert & Ryett Harty
- Application No. 1789-1, Sturgis Water Department
- Application No. 1779-1, City of Spearfish
- Application No. 1775-1, Alben, Inc
- Application No. 1769-1, DuWayne Mahlen
- Application No. 1772-1, Fisher Sand and Gravel Company
- Application No. 1758-1, No Name City RV & Cabins
- Application No. 2475-2, City of Rapid City
- Application No. 1756-1, Frawley Ranches, Inc
- Application No. 2466-2, Black Hills Generation
- Application No. 2461-2, Colonial Pine Hills Sanitary District
- Application No. 2459-2, Anita Cregut
- Application No. 2458-2, Red Rock Development
- Application No. 6245-2, Shamrock Colony
- Application No. 1707-1, Frawley Ranches
- Application No. 1733-1, Frawley Ranches
- Application No. 6070-3, Spencer Quarries
- Application No. 2427-2, Daniel and Gary Velder
- Application No. 6166-3, Oscar Inc.
- Application No. 1689-1, Jack Marler
- Application No. 6121-3, John Swanson
- Application No. 2418-2, Fall River RWS
- Application No. 1676-1, Stagebarn Subdivision
- Application No. 1674-1, Black Hawk Water User District
- Application No. 6094-3, Dan Christensen
- Application No. 6007-3, Bob's Resort, Inc.
- Application No. 6091-3, Brentwood Colony
- Application No. 2396-2, Flintstone Bedrock City
- Application No. 1670-1, Lyndon & Jane Kok
- Application No. 1666-1, Golden Reward
- Application No. 2400-2, Karlen Family Partnership
- Application No. 2395-2, Roy Alexander
- Application No. 6027-3, City of Brandon
- Application No. 2386-2, Town of Keystone
- Application No. 5996-3, Myrl & Roy's Paving
- Application No. 1650-1, Melvin Delzer
- Application No. 2385-2, Roger Robbins
- Application Nos. 5966-3 & 5967-3, Michael Williams
- Application No. 5965-3, Rodney Hofer
- Application No. 2313-2, Coca Cola bottling of the Black Hills
- Application No. 5797-3, Heartland Pork
- Application No. 2299-2, Custer School District 16-1

- Application No. 2235-2, The Fort
- Application No. 2204-2, Flintstone Bedrock City
- Application No. 5521-3, City of Sioux Falls
- Application No. 5522-3, City of Sioux Falls
- Application No. 5533-3, City of Sioux Falls
- Application No. 5556-3, City of Sioux Falls
- Application No. 2137-2, Frank Simpson
- Application Nos. 2155-2 & 2156-2, City of Rapid City
- Application No. 1478-1 Pete Lien & Sons, Inc
- Consideration of Alleged Seepage Problems with Hawthorne Ditch

Testified as an expert witness before the Sixth Circuit Court in the matter of Stretch's Well Service, Inc./Chuck Ross (Scattergun Lodge) well.

Testified as an expert witness before the Pierre City Council in the matter of flooding related groundwater issues

JEANNE GOODMAN, P.E.
CHIEF ENGINEER

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13

EDUCATION

Bachelor of Science Degree in Geological Engineering, South Dakota School of Mines and Technology 1979

REGISTRATIONS, PROFESSIONAL SOCIETIES, AND AWARDS

1. South Dakota Registered Professional Engineer
2. South Dakota Engineering Society
3. Central Chapter SD Engineering Society Outstanding Engineer of 1995
4. Central Chapter SD Engineering Society Young Engineer of the Year 1986

CAREER EXPERIENCE

April 2013 – present – Chief Engineer, Water Rights Program, DENR. Administer the Program, which coordinates the appropriation of water resources in South Dakota to protect the public welfare and interest in the development of the water resources and determine in what way the water of the state should be developed for the greatest public benefit.

2000 – 2013 - Natural Resources Administrator, Surface Water Quality Program, DENR. Administer the Surface Water Quality program, which coordinates the prevention, reduction, measurement, and control of water pollutants to maintain water quality that is protective of the public's health and safety and the beneficial uses of the state's lakes and streams.

1997 – 2000 - Natural Resources Administrator, Air Quality Program, DENR. Administer the Air Quality program, which coordinates the prevention, reduction, measurement, and control of air pollutants to maintain air quality that is protective of the public's health and safety.

1987 – 1997 – Natural Resources Engineer IV, Ground Water Quality Program, DENR. Team Leader for ground-water discharge plans and enforcement of ground-water quality standards, Underground Injection Control, pesticides in Ground Water, and Wellhead Protection staff. Review storage tank plans and specifications. Supervise special water quality studies and the review of numerous regulated substance release assessments and remediations.

1981 – 1987 – Natural Resources Engineer/Hydrologist, Ground Water Quality Program, DWNR. Participated in writing Rural Clean Water Program/Comprehensive Monitoring and Evaluation proposal and workplan; reviewed mineral exploration permits for impacts to ground water; identified aquifers and compiled well data for Corps studies. Supervised staff and participated in ground water studies and investigations by installing and sampling monitoring wells; contributed sections to the Big Sioux Aquifer Water Quality study; prepared all contracts for Comprehensive Monitoring and Evaluation project, and assisted in installation of monitoring systems.

1979 – 1980 – Natural Resources Engineer I, Water Rights Program, DWNR. Investigated water rights complaints; reviewed water right applications; supervised installation of observation wells; prepared a report on flowing artesian wells.

TESTIMONY

Board of Water Management – In various capacities and responsibilities with DENR, provided testimony regarding permit application review and water use, water quality, and water monitoring relative to water right permit applications, General Water Pollution Control Permits for Concentrated Animal Feeding Operations, and ground water discharge plan applications, and proposed and modifications to Administrative Rules of South Dakota for ground water and surface water quality standards, beneficial use classifications for water bodies in South Dakota, and ground water and surface water discharge permits.

Board of Minerals and Environment – In various capacities and responsibilities with DENR, provided testimony regarding water use, water quality, and water monitoring relative to mineral and oil and gas exploration and development permits.

Court matters since 2008 - In re: *Veblen West Dairy, LLP, Chapter 11, Debtor. Bankr. No. 10-10071.* United States Bankruptcy Court, D. South Dakota (court testimony).
Storbeck, et. al. v. State of South Dakota, Third Judicial Circuit, Kingsbury County Civ. No. 07-69 (deposition).

MAJOR PUBLICATIONS

1. "South Dakota Ground-Water Quality" w/ Koch and Lawrence -USGS USGS Open-file Report 87-0752, Goodman and Pirner - SDDWNR
2. "Agricultural Sources of Nitrate Contamination in a Shallow Sand and Gravel Aquifer in Eastern South Dakota", in Perspectives on Nonpoint Source Pollution, EPA 440/5-85-001.
3. "Non-Point Source Pesticide Contamination of Shallow Ground Water', ASTM Paper No. 892529, St. Joseph, Missouri, Kimball and Goodman.
4. "Nitrate and Pesticide Occurrence in Shallow Groundwater During the Oakwood Lakes-Poinsett RCWP Project", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006.
5. "Coordination is the Project Cornerstone", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006, Kuck and Goodman.
6. "Ground Water Monitoring – A Guide to Monitoring for Agricultural Nonpoint Source Pollution Projects", USDA-FSA, Huron, SD. Goodman, German, and Bischoff, January 1996.

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the DENR's Disclosure of Witnesses and Exhibits and copies of DENR's Exhibits 12 and 13 in the above-entitled matter were served upon each of the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota on this 1st day of July 2015:

Jeff Connolly
Gunderson, Palmer, Nelson & Ashmore
P.O. Box 8045
Rapid City, SD 57709

William R Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive Ste 250
Ft. Collins, CO 80525

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer, SD 57730

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Mr & Mrs David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Rd
Custer, SD 57730-9109

Michael M Hickey
Bangs McCullen Law Firm
P.O. Box 2670
Rapid City, SD 57709-2670

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer, SD 57730

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 N 5th Street
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

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Office of the General Counsel
Mountain Region
740 Simms St, Room 309
Golden, CO 80401-4720

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Assistant Attorney General
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Fairburn, SD 57738

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Assistant U.S. Attorney
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National Park Service
12795 W Alameda Parkway, Ste 198
Lakewood, CO 80228

Chad Comes – Chairman
Water Management Board
116 West Center
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Assistant Attorney General
1302 East Highway 14, Suite 1
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Michael M. Hickey
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Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri

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BANGS McCULLEN
LAW FIRM

Reply to Rapid City Office

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

July 2, 2015

Via E-Mail and U.S. Mail
Eric Gronlund
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: ***In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2***

Dear Eric:

For the above-referenced matter, please find enclosed the following original documents:

1. Linda Van Dyke Kilcoin's Motion to Dismiss; and
2. Linda Van Dyke Kilcoin's Brief in Support of Motion to Dismiss.

By copy of this letter, all interested parties have been served. If you have any questions or comments, please advise. Thank you.

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

Michael M. Hickey

MMH:ke
Enclosure
Cc: Jeanne Goodman; Matt Naasz; Ann F. Mines Bailey
Rodney Freeman; Chad Comes, P.E.; William R. Hansen
Cheryl Schrempp Dupris; Peter A. Fahmy; Jeff Connolly;
Lois Witte; Craig Bobzien; Mr. and Mrs. David Albrecht;
Toni Martin; Doug Lesher; Rick Fox; Dean and Delia Johnson;
Karl & Suzanne Von Rump; and Client

RAPID CITY
First Interstate Gateway
333 West Boulevard
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P.O. Box 2670
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57709-2670
P. (605) 343-1040
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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA.

Linda Van Dyke Kilcoin's Motion to Dismiss

Linda Van Dyke Kilcoin, through counsel and pursuant to SDCL § 15-6-12(b)(2), respectfully moves the Board for dismissal of Applicant United Order of South Dakota's Application. As set forth in the *Brief in Support of Motion to Dismiss* filed herewith, dismissal is warranted because:

- A Common Law Trust is not a legal entity that can maintain a legal action; and
- Seth Jeffs does not have legal authorization to maintain this action on behalf of the Common Law Trust.

Dated this 2nd day of July, 2015.

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

BY _____

MICHAEL M. HICKEY
333 West Blvd., Suite 400
P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040
mhickey@bangsmccullen.com
Attorneys for Linda Van Dyke Kilcoin

CERTIFICATE OF SERVICE

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

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Eric Gronlund
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501
Via e-mail: Eric.Gronlund@state.sd.us

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Chad Comes, PE
Hearing Chair
Water Management Bd.
% The City of Madison
116 West Center Street
Madison, SD 57042

Jeffrey R. Connolly
Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709

William R. Hansen
Jeff Hughes
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Cheryl Schrempp DuPris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Peter A. Fahmy
National Park Service
12795 W. Alameda Parkway, Ste. 198
Lakewood, CO 80228

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St., Room 309
Golden, CO 80401-4720

Craig Bobzien
Forest Supervisor
Black Hills National Forest
1019 North 5th Street
Custer, SD 57730

Mr. & Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 2nd day of July, 2015.

MICHAEL M. HICKEY

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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA.

Linda Van Dyke Kilcoin's Brief in Support of Motion to Dismiss

---

This brief is offered in support of *Linda Van Dyke Kilcoin's Motion to Dismiss*. Throughout the brief, the parties will be referred to name.

The facts in this case are very straight forward. The applicant in this proceeding is an entity which calls itself The United Order of South Dakota[1]. Its organic document is a DECLARATION OF TRUST OF THE UNITED ORDER OF SOUTH DAKOTA. The Declaration of Trust states that the "subscribers and Trustee hereto, have . . . entered into an agreement and contract to create a Trust under which the appointed and constituted Trustees hereunder shall be empowered to operate. . . ." The subscribers describe themselves as a religious Trust which is "a religious society worshiping the Lord and living the Holy United Order.[2]" It is not

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[1] See Declaration of Trust of the United Order of South Dakota attached hereto as Hearing Exhibit 21.

[2] Id.

a business trust organized pursuant to the laws of the State of South Dakota[3] but instead asserts that it is a Common Law Trust.

South Dakota courts[4] have not had occasion to decide whether a common law trust is a legal entity that is capable of commencing a legal proceeding in its own name. The courts of other jurisdictions have held that a common law trust is not a legal entity that can bring or defend a legal action. For example, in *SCG Capital Corporation Profit Sharing Trust v. Green,* 2010 WL 1665268, 49 Conn. L. Rep 555, the Court held that a common law trust that commenced a lawsuit possessed no capacity to sue because it was not a legal entity and therefore the lawsuit was a nullity. In so holding, the Court stated;

> [Our decision is] in accord with the law for common-law trust in other jurisdictions. "A trust is . . . not capable of legal action on its own behalf . . ." 76 Am Jur. 2d 33, Trusts § 3 (2005). "[A]t common law a trust could not ordinarily sue in its own name but only by its trustees . . ." 88 A.L.R. 3d 775 (1978).

The Court went on to hold that only the trustees of the trust could bring an action but declined to allow a substitution of the trustees as the named plaintiff never enjoyed legal existence and therefore there could not be a substitution. *Id. See also Booker v.*

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[3] SDCL Chapter 47-14A.

[4] Our Court in *Schallenkamp v Stevens*, 81 S.D. 573, 138 N.W.2d 657, held that a voluntary, unincorporated, benevolent, and fraternal association could take real property by devise.

Cappozziello, 2006 WL 2194653, 41 Conn. L. 693 (common law business trust was not a legal entity that could be sued under state's Unfair Trade Practices Act.); *Guthmann v. Adco Dry Storage Battery Co.,* 232 Ill.App. 327 (1924) (common law trust which operated as a Massachusetts trust not a legal entity*); State v. Paine,* 137 Wash. 566, 243 P.2d 46, aff'd 137 Wash. 572, 247 P. 476 (1926)*; State v. Gubjkem,* 126 Wash. 581, 219 P.41 (1923).

Secondly, under the terms of Article I of the Trust, it is administered by a Board of Trustees consisting of not less than three (3) nor more than seven (7) Trustees. The Board of Trustees may only act by majority vote. In the present case, based upon the information suppled by the Trust to the State, it appears that in his affidavit dated March 6, 2015, Stephen P. Harker, one of the original trustees, was succeeded by Isaac S. Jeffs, who is a current trustee. No date is given when Isaac Jeffs became a trustee. See Hearing Exhibit 22.

In turn, Isaac Jeffs has submitted a Letter of Authority dated February 18, 2015, authorizing Seth Jeffs to represent the trust on all matters relating to water and water rights. Again, there is no date as to when this authorization was given. See Hearing Exhibit 23.

In the present case, the original application was submitted by Seth Jeffs on October 14, 2014, four months prior to the time that Issac Jeffs appointed him as representative. Additionally, and more significantly, nowhere in the record is there any evidence to establish that a majority of the Board of Trustees appointed Stephen Harker, Issac Jeffs, or Seth Jeffs to act on behalf of the Trust. Given this lack of proper authorization, it is submitted that the present application must be denied and this proceeding dismissed.

Dated this 2nd day of July, 2015.

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

BY: _____

MICHAEL M. HICKEY
333 West Blvd., Suite 400
P.O. Box 2670
Rapid City, SD 57709
Phone: (605) 343-1040
mhickey@bangsmccullen.com
Attorneys for Linda Van Dyke Kilcoin

CERTIFICATE OF SERVICE

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

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Eric Gronlund
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501
Via e-mail: Eric.Gronlund@state.sd.us

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Chad Comes, PE
Hearing Chair
Water Management Bd.
% The City of Madison
116 West Center Street
Madison, SD 57042

Jeffrey R. Connolly
Gunderson Palmer Law Firm
P.O. Box 8045
Rapid City, SD 57709

William R. Hansen
Jeff Hughes
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525-5596

Cheryl Schrempp DuPris
Assistant U.S. Attorney
US Department of Justice
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Pierre, SD 57501

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National Park Service
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Lakewood, CO 80228

Lois Witte
Office of the General Counsel
Mountain Region
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Golden, CO 80401-4720

Craig Bobzien
Forest Supervisor
Black Hills National Forest
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Mr. & Mrs. David Albrecht
High Lonesome Ranch
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Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

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

Dated this 2nd day of July, 2015.

MICHAEL M. HICKEY

EXHIBIT
21

STATE OF SOUTH DAKOTA,
COUNTY OF CUSTER-SS 51278
Filed this 24 Day of Dec 2009 at 10:15 o'clock AM
BOOK 43 OF MISC PAGE 400
/S/ Pamela J. Johnson
REGISTER OF DEEDS FEE $ 44.00 PD DEPUTY
N/S

RECEIVED
JUL 06 2015
WATER RIGHTS PROGRAM

DECLARATION OF TRUST OF THE UNITED ORDER OF SOUTH DAKOTA

KNOW ALL MEN BY THESE PRESENTS: That we, the subscribers and Trustees hereto, have this 23rd day of December, 2009, entered into an agreement and contract to create a Trust under which the appointed and constituted Trustees hereunder shall be empowered to operate as hereinafter set forth.

To this end the subscribers associate themselves together in the formation of a religious Trust for the purposes hereinafter stated, and without personal liability to the Members hereof or to the public. It is intended and proposed that all others than the subscribers hereto who may become Members in this association ipso facto agree to accept the terms of this instrument and Declaration of Trust to all intents and purposes as if they were the original subscribers hereto. Further, it is understood and agreed that we and such other Members as may hereafter come into said association are associated together merely and solely for the purpose of being cesti que trustents of the Trust hereby created.

The association shall be known as the United Order of South Dakota.

The United Order of South Dakota (hereinafter referred to as "The Order") is a religious society worshiping the Lord and living the Holy United Order. It exists to preserve and advance the religious doctrines and goals of The Fundamentalist Church of Jesus Christ of Latter-Day Saints, a religious society (hereinafter referred to as the "FLDS Church"). The doctrines and laws of the Holy United Order are found in the Book of Mormon, the Doctrine and Covenants, the Pearl of Great Price, and the Holy Bible; and are the guiding tenets by which the Trustees of the United Order of South Dakota shall act.

(Doctrine and Covenants 59:5-6)

5. "Wherefore, I give unto them a commandment, saying thus: Thou shalt love the Lord thy God with all thy heart, with all thy might, mind, and strength; and in the name of Jesus Christ thou shalt serve him.

6. "Thou shalt love thy neighbor as thyself."

(Doctrine and Covenants 29:34)

34. "Wherefore, verily I say unto you that all things unto me are spiritual, and not at any time have I given unto you a law which was temporal; neither any man, nor the children of men; neither Adam, your father, whom I created."

(Doctrine and Covenants 42:29-42, 53, 55)

29. "If thou lovest me thou shalt serve me and keep all my commandments.

30. "And behold, thou wilt remember the poor, and consecrate of thy properties for their support that which thou hast to impart unto them, with a covenant and a deed which cannot be broken.

31. "And inasmuch as ye impart of your substance unto the poor, ye will do it unto me; and they shall be laid before the bishop of my church and his counselors, two of the elders, or high priests, such as he shall appoint or has appointed and set apart for that purpose.

32. "And it shall come to pass, that after they are laid before the bishop of my church, and after that he has received these testimonies concerning the consecration of the properties of my church, that they cannot be taken from the church, agreeable to my commandments, every man shall be made accountable unto me, a steward over his own property, or that which he has received by consecration, as much as is sufficient for himself and family.

33. "And again, if there shall be properties in the hands of the church, or any individuals of it, more than is necessary for their support after this first consecration, which is a residue to be consecrated unto the bishop, it shall be kept to administer to those who have not, from time to time, that every man who has need may be amply supplied and receive according to his wants.

34. "Therefore, the residue shall be kept in my storehouse, to administer to the poor and the needy, as shall be appointed by the high council of the church, and the bishop and his council;

35. "And for the purpose of purchasing lands for the public benefit of the church, and building houses of worship, and building up of the New Jerusalem which is hereafter to be revealed—

36. "That my covenant people may be gathered in one in that day when I shall come to my temple. And this I do for the salvation of my people.

37. "And it shall come to pass, that he that sinneth and repenteth not shall be cast out of the church, and shall not receive again that which he has consecrated unto the poor and the needy of my church, or in other words, unto me—

38. "For inasmuch as ye do it unto the least of these, ye do it unto me.

39. "For it shall come to pass, that which I spake by the mouths of my prophets shall be fulfilled; for I will consecrate of the riches of those who embrace my gospel among the Gentiles unto the poor of my people who are of the house of Israel.

40. "And again, thou shalt not be proud in thy heart; let all thy garments be plain, and their beauty the beauty of the work of thine own hands;

41. "And let all things be done in cleanliness before me.

42. "Thou shalt not be idle; for he that is idle shall not eat the bread nor wear the garments of the laborer.***

53. "Thou shalt stand in the place of thy stewardship.***

55. "And if thou obtainest more than that which would be for thy support, thou shalt give it into my storehouse, that all things may be done according to that which I have said."

(Doctrine and Covenants 51:9, 19)

9. "And let every man deal honestly, and be alike among this people, and receive alike, that ye may be one, even as I have commanded you.***

19. "And whoso is found a faithful, a just, and a wise steward shall enter into the joy of his Lord, and shall inherit eternal life."

(Doctrine and Covenants 70:7-10, 14)

7. "Nevertheless, inasmuch as they receive more than is needful for their necessities and their wants, it shall be given into my storehouse;

8. "And the benefits shall be consecrated unto the inhabitants of Zion, and unto their generations, inasmuch as they become heirs according to the laws of the kingdom.

9. "Behold, this is what the Lord requires of every man in his stewardship, even as I, the Lord, have appointed or shall hereafter appoint unto any man.

10. "And behold, none are exempt from this law who belong to the church of the living God;***

14. "Nevertheless, in your temporal things you shall be equal, and this not grudgingly, otherwise the abundance of the manifestations of the Spirit shall be withheld."

(Doctrine and Covenants 78:1-8, 11)

1. "The Lord spake unto Joseph Smith, Jun., saying: Hearken unto me, saith the Lord your God, who are ordained unto the high priesthood of my church, who have assembled yourselves together;

2. "And listen to the counsel of him who has ordained you from on high, who shall speak in your ears the words of wisdom, that salvation may be unto you in that thing which you have presented before me, saith the Lord God.

3. "For verily I say unto you, the time has come, and is now at hand; and behold, and lo, it must needs be that there be an organization of my people, in regulating and establishing the affairs of the storehouse for the poor of my people, both in this place and in the land of Zion—

4. "For a permanent and everlasting establishment and order unto my church, to advance the cause, which ye have espoused, to the salvation of man, and to the glory of your Father who is in heaven;

5. "That you may be equal in the bonds of heavenly things, yea, and earthly things also, for the obtaining of heavenly things.

6. "For if ye are not equal in earthly things ye cannot be equal in obtaining heavenly things;

7. "For if you will that I give unto you a place in the celestial world, you must prepare yourselves by doing the things which I have commanded you and required of you.

8. "And now, verily thus saith the Lord, it is expedient that all things be done unto my glory, by you who are joined together in this order;***

11. "Wherefore, a commandment I give unto you, to prepare and organize yourselves by a bond or everlasting covenant that cannot be broken."

(Doctrine and Covenants 82:11-21)

11. "Therefore, verily I say unto you, that it is expedient for my servants*** to be bound together by a bond and covenant that cannot be broken by transgression, except judgment shall immediately follow, in your several stewardships—

12. "To manage the affairs of the poor, and all things pertaining to the bishopric both in the land of Zion and in the land of Kirtland;

13. "For I have consecrated the land of Kirtland in mine own due time for the benefit of the saints of the Most High, and for a stake to Zion.

14. "For Zion must increase in beauty, and in holiness; her borders must be enlarged; her stakes must be strengthened; yea, verily I say unto you, Zion must arise and put on her beautiful garments.

15. "Therefore, I give unto you this commandment, that ye bind yourselves by this covenant, and it shall be done according to the laws of the Lord.

16. "Behold, here is wisdom also in me for your good.

17. "And you are to be equal, or in other words, you are to have equal claims on the properties, for the benefit of managing the concerns of your stewardships, every man according to his wants and his needs, inasmuch as his wants are just—

18. "And all this for the benefit of the church of the living God, that every man may improve upon his talent, that every man may gain other talents, yea, even an hundred fold, to be cast into the Lord's storehouse, to become the common property of the whole church—

19. "Every man seeking the interest of his neighbor, and doing all things with an eye single to the glory of God.

20. "This order I have appointed to be an everlasting order unto you, and unto your successors, inasmuch as you sin not.

21. "And the soul that sins against this covenant, and hardeneth his heart against it, shall be dealt with according to the laws of my church, and shall be delivered over to the buffetings of Satan until the day of redemption."

(Doctrine and Covenants 85:3-5)

3. "It is contrary to the will and commandment of God that those who receive not their inheritance by consecration, agreeable to his law, which he has given, that he may tithe his people, to prepare them against the day of vengeance and burning, should have their names enrolled with the people of God.

4. "Neither is their genealogy to be kept, or to be had where it may be found on any of the records or history of the church.

5. "Their names shall not be found, neither the names of the fathers, nor the names of the children written in the book of the law of God, saith the Lord of Hosts."

(Doctrine and Covenants 104:1-2, 11-16, 54-57)

1. "Verily I say unto you, my friends, I give unto you counsel, and a commandment, concerning all the properties which belong to the order which I commanded to be organized and established, to be a united order, and an everlasting order for the benefit of my church, and for the salvation of men until I come—

2. "With promise immutable and unchangeable, that inasmuch as those whom I commanded were faithful they should be blessed with a multiplicity of blessings;***

11. "It is wisdom in me; therefore, a commandment I give unto you, that ye shall organize yourselves and appoint every man his stewardship;

12. "That every man may give an account unto me of the stewardship which is appointed unto him.

13. "For it is expedient that I, the Lord, should make every man accountable, as a steward over earthly blessings, which I have made and prepared for my creatures.

14. "I, the Lord, stretched out the heavens, and built the earth, my very handiwork; and all things therein are mine.

15. "And it is my purpose to provide for my saints, for all things are mine.

16. "But it must needs be done in mine own way; and behold this is the way that I, the Lord, have decreed to provide for my saints, that the poor shall be exalted, in that the rich are made low.***

54. "And again, a commandment I give unto you concerning your stewardship which I have appointed unto you.

55. "Behold, all these properties are mine, or else your faith is vain, and ye are found hypocrites, and the covenants which ye have made unto me are broken;

56. "And if the properties are mine, then ye are stewards; otherwise ye are no stewards.

57. "But, verily I say unto you, I have appointed unto you to be stewards over mine house, even stewards indeed."

(Acts 4:32)

32. "...the multitude of them that believed were of one heart and of one soul; neither said any of them that ought of the things which he possessed was his own; but they had all things common."

(4 Nephi 2-3)

2. "...there were no contentions and disputations among them, and every man did deal justly one with another.

3. "And they had all things common among them; therefore there were not rich and poor, bond and free, but they were all made free, and partakers of the heavenly gift."

We do now covenant and declare that the following are and shall be the fundamental articles of said Trust by which we and all persons who at any time hereafter may transact any business with said Trustees pertaining to the Trust shall be bound and concluded. The contracting parties and Trustees herein signify and confirm by their signatures to this instrument their acceptance of all its terms and their obligation to perform and discharge the duties imposed by this instrument.

ARTICLE I

To carry out its religious mission, the Trust shall be administered by a Board of Trustees consisting of not less than three nor more than seven Trustees.

Stephen P. Harker Vaughan E. Taylor Boyd W. Roundy

are hereby designated Trustees of said Trust, with powers and duties as hereinafter set forth. The Board of Trustees shall act by majority vote, except where herein otherwise provided, of the number of Trustees in office and shall have all rights, powers, and privileges of an absolute owner in carrying out the purposes of the Trust, including without limitation all powers of trustees under South Dakota law. The Board of Trustees may designate representatives to perform one or more of these functions on its behalf.

ARTICLE II

The Trust is designated a non-profit association. The purpose and object of the United Order of South Dakota is primarily for religious worship which includes an actual living of the Holy United Order by Members accepted into The Order. The central principle of The Order requires the gathering together of faithful religious Members on consecrated and sacred lands to establish as one pure people the Kingdom of God on earth under the guidance of the FLDS Church leadership. The Order shall have a common treasury and may appoint stewardships including stewardships to engage in any and all kinds of legitimate business ventures including but not limited to agriculture and manufacturing; provided however, that such endeavors or adventures of whatsoever name or nature shall in no wise conflict with the Constitution of the United States, or the constitutional laws of the land where such operations may be carried on. The proceeds arising from the operations of the trust estate shall be used by the Trustees for the performance of this Trust as herein provided, and any increase arising from the conduct of the business shall become part of the corpus of the trust fund so that there shall be no distributable profits. The Board of Trustees, in their sole discretion, shall administer the Trust consistent with its religious purpose to provide for FLDS Church members who are accepted as Members of The Order, according to their wants and their needs, insofar as their wants are just (Doctrine and Covenants, Section 82:17-21); and provided, that the Trustees may render needed assistance to the FLDS Church or to non-members of the Trust when deemed wise by them.

A consecration is an unconditional dedication to a sacred purpose. Consecration of real estate to the United Order of South Dakota is accomplished by a deed of conveyance. All properties now included or hereafter added to the trust estate are

consecrated and sacred lands, dedicated to the Trust's religious purpose. Accepted Members also consecrate their time, talents, money, and materials to the Lord's storehouse, to become the property of The Order. All consecrations made to or for the benefit of the United Order of South Dakota are dedicated to the sacred purpose of The Order and without any reservation or claim of right and/or ownership. Improvements made by persons living on Trust property become the property of the Trust and are consecrations to the Trust. Members may own, in their own names, any real or personal property not consecrated to The Order.

The privilege to be a Member of the United Order of South Dakota and/or live upon the lands and in the buildings of The Order is by appointment to that mission by the FLDS Church from among its members and is granted, and may be revoked at any time, by the Board of Trustees. Those who seek that privilege commit themselves and their families to live their lives according to the principles of The Order and the FLDS Church, and they and their families consent to be governed by the FLDS Church leadership and the Board of Trustees. They must consecrate their lives, times, talents and resources to the building and establishment of the Kingdom of God on earth under the direction of the FLDS Church leadership and its appointed officers. They must act in the spirit of charity.

(Moroni 7:6-10, 45-48)

6. "For behold, God hath said a man being evil cannot do that which is good; for if he offereth a gift, or prayeth unto God, except he shall do it with real intent it profiteth him nothing.

7. "For behold, it is not counted unto him for righteousness.

8. "For behold, if a man being evil giveth a gift, he doeth it grudgingly; wherefore it is counted unto him the same as if he had retained the gift; wherefore he is counted evil before God.

9. "And likewise also is it counted evil unto a man, if he shall pray and not with real intent of heart; yea, and it profiteth him nothing, for God receiveth none such.

10. "Wherefore, a man being evil cannot do that which is good; neither will he give a good gift.***

45. "And charity suffereth long, and is kind, and envieth not, and is not puffed up, seeketh not her own, is not easily provoked, thinketh no evil, and rejoiceth not in iniquity but rejoiceth in the truth, beareth all things, believeth all things, hopeth all things, endureth all things.

46. "Wherefore, my beloved brethren, if ye have not charity, ye are nothing, for charity never faileth. Wherefore, cleave unto charity, which is the greatest of all, for all things must fail—

47. "But charity is the pure love of Christ, and it endureth forever; and whoso is found possessed of it at the last day, it shall be well with him.

48. "Wherefore, my beloved brethren, pray unto the Father with all the energy of heart, that ye may be filled with this love, which he hath bestowed upon all who are true followers of his Son, Jesus Christ; that ye may become the sons of God; that when he shall appear we shall be like him, for we shall see him as he is; that we may have this hope; that we may be purified even as he is pure. Amen."

They must live in the true spirit of brotherhood.

(Mathew 22:36-40)

36. "Master, which is the great commandment in the law?

37. "Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.

38. "This is the first and great commandment.

39. "And the second is like unto it, Thou shalt love thy neighbour as thyself.

40. "On these two commandments hang all the law and the prophets."

There shall be no disputations among them.

(3 Nephi 18:34)

34. "And I give you these commandments because of the disputations which have been among you. And blessed are ye if ye have no disputations among you."

The Trust is most firmly committed to these goals. People who are granted the privilege to be a Member of the United Order of South Dakota and/or the privilege to live on Trust property acknowledge by their presence upon the land their acceptance of the terms of this Trust. Parents may consent to membership on behalf of their minor children to the extent allowed under applicable state law.

Membership in the United Order of South Dakota and/or use of property owned by The Order is not and does not become a right or claim of anyone who may benefit in any way from the Trust. The Order shall not be liable for liabilities of or claims against the FLDS Church or any Trustee or Member of The Order. Use of Trust property must be within rules and standards set by the Board of Trustees. The Board of Trustees may require individuals and their families to relocate to different locations on Trust property or to share a location with others. Participants who, in the opinion of the Board of Trustees, do not honor their commitments to live their lives according to the principles of The Order and the FLDS Church shall remove themselves from the Trust property and, if they do not, the Board of Trustees may, in its discretion, cause their removal. Any Member thus expelled or excluded from the association shall have no claim upon the trust estate. At such time as they reform their lives and the lives of their family members and are again approved by the FLDS Church and the Board of Trustees they may again be permitted to participate in The Order. The Board of Trustees shall have no obligation whatsoever to return all or any part of consecrated property back to a consecrator or to his or her descendants.

ARTICLE III

Stephen P. Harker, Trustee, shall be President of the Board of Trustees until incapacitated by removal, resignation or death, with powers, duties, authority, and rights to do all things necessary in assisting to carry out the purposes of said Trust as herein set out, or as in the future amended; and said Trustee, as President, is hereby empowered to execute any necessary documents on behalf of the Trust, including contracts, deeds, transfers, assignments, and other instruments to pass title to property and otherwise bind the trust estate; provided, however, that in the absence of the President, or in the event of his inability to act through sickness or otherwise, the Vice-President may act in such capacity, unless the Board of Trustees designates one or more Trustees to execute such documents.

ARTICLE IV

Vaughan E. Taylor, Trustee, shall act as Vice-President of the Board of Trustees.

ARTICLE V

Boyd W. Roundy, Trustee, is to fill the office of Secretary of the Board of Trustees and shall perform such other duties as are necessary and usually performed by such officer in a similar association.

ARTICLE VI

The Trustees aforesaid and their successors in trust shall hold the legal title to all property that may be acquired by or for the benefit of the trust estate, and shall have and exercise exclusive management, disposition and control of the same via the appointed officers of The Order, subject to the terms and provisions of this Declaration of Trust.

ARTICLE VII

The sole Manager and Treasurer of The Order is an appointed Bishop and/or Counselor(s) to the Bishop. The Bishop and Bishop's Counselors are appointed or dismissed by the FLDS Church and are upheld by a unanimous vote of the Board of Trustees.

ARTICLE VIII

The Trustees shall not be liable to the Members of the trust estate for error in judgment in prosecuting and managing the Trust property, interest or business, nor for any act done by them, or either of them in the course of such management, nor for omission to act in the execution of this Trust, except such acts as involve bad faith on their part; nor shall they be liable for the acts or omissions of each other, nor for the acts or omissions of any officer, agent, or servant appointed or acting for them; and should they or either of them be held personally liable on any tort or breach of contract in the prosecution of the trust estate, they or either of them will be entitled to indemnity out of the trust estate to the extent of such liability.

ARTICLE IX

A Trustee or other officer may be removed at any time without cause or for cause, misconduct, or breach of trust, by a majority vote of said Trustees at a special meeting called for the purpose; and upon the death, removal, or resignation of any Trustee or other officer, such vacancy or vacancies may be filled by the remaining members of the Board of Trustees. Dismissal of a Trustee shall be by a written notice, effective on the date the notice is executed. A Trustee may resign by written notice to the Board of Trustees. Each successor Trustee shall have the same powers and authority, and shall be subject to the same duties and restrictions, as predecessor Trustees.

ARTICLE X

Membership in the trust estate is established for the signers of this instrument, and who form the first Board of Trustees, by the conveyance to the trust estate of the following described property, situated in Custer County, State of South Dakota, to-wit:

Parcel # 6359: The South Half of the North Half of the Southwest Quarter of the Northeast Quarter (S½ N½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6360: The South Half of the Southwest Quarter of the Northeast Quarter (S½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6361: The South Half of the North Half of the Southeast Quarter of the Northeast Quarter (S½ N½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6362: The South Half of the Southeast Quarter of the Northeast Quarter (S½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6364: The West Half of the East Half of the Northwest Quarter of the Southeast Quarter (W½ E½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6365: The West Half of the Northwest Quarter of the Southeast Quarter (W½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6366: The East Half of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ NE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6367: The West Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (W½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6368: The East Half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (E½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Southeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ SE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. This parcel contains 40 acres, more or less.

TOGETHER WITH all improvements, easements, and appurtenances thereunto belonging.

SUBJECT TO all easements, restrictions, reservations, rights of way, and items currently appearing of record, if any.

Evidence of membership shall be shown in the books of the association. A membership certificate may, in the discretion of the Trustees, be issued to each Member; but such certificate shall not be transferable, nor carry title to any of the property or assets of the Trust.

ARTICLE XI

Membership in said association shall not entitle the Member to any part of the Trust property, either personal, real or mixed; nor to the right to call for a partition or division of the same, or for an accounting; nor shall any Member have any right to amend, alter, or terminate this Trust.

Further, it is declared that any person who shall accept a membership in said Trust ipso facto becomes a party to this Declaration of Trust and shall be bound and concluded by all the terms and conditions thereof.

The Trustees shall have no power to bind the Members personally, and the Members and all parties whosoever extending credit to, contracting with, or having any claim against the Trust, shall look only and solely to the funds and property of the Trust for payment under such contract or claim, or for any debt, damage, judgments or decrees, or for any money or property that may otherwise be due or become due or payable to them from the Trustees, so that neither the Trustees or Members at any time shall be personally liable by themselves, or by any contract which any officer or agent of the Trust shall give or enter into.

ARTICLE XII

The United Order of South Dakota is intended to meet the requirements of Internal Revenue Code Section 501(d) as a religious or apostolic association; accordingly, the Members hereof must include (each year at the time of filing their returns) in their gross income their entire pro rata shares of the taxable income of this association; additionally, contributions to The Order are not deductible as charitable contributions.

ARTICLE XIII

This Declaration of Trust may be amended at any time and from time to time by unanimous vote of the Trustees.

ARTICLE XIV

This Trust is intended to be of perpetual duration, but may be terminated sooner by the Trustees, if they deem it advisable so to do, in the best interest of the trust estate and the Members thereof.

ARTICLE XV

The death of a Member or Trustee during the continuance of this Trust shall in no wise operate to terminate the Trust, nor shall it entitle the legal representative of the deceased Member or Trustee to an accounting or to take any action in court or elsewhere against the Trustees.

ARTICLE XVI

The original of this Declaration of Trust shall remain a part of the files of the Board of Trustees. It may, however, be recorded in the offices of the county recorders in the states wherein the property of the Trust may be located. The general office of the Trust shall be at Pringle, South Dakota, unless and until it is moved elsewhere by act of the Board of Trustees. The Trust may also establish branch offices by action of the Trustees.

ARTICLE XVII

In the event of discontinuance of this Trust by dissolution or otherwise, whether by the Board of Trustees or by reason of law, the assets of the Trust Estate at that time shall become the property of the South Dakota Stake of Zion, a religious society, organized by Declaration of Trust dated of even date hereof, a church qualified for exemption under Section 501(c)(3) of the Internal Revenue Code, as amended.

IN WITNESS WHEREOF, we, constituting all of the Trustees and original contracting parties under the Declaration of Trust, have executed this Declaration of Trust on the 23rd day of December, 2009.

Stephen P. Harker

Vaughan E. Taylor

Boyd W. Roundy

STATE OF Utah)
: ss.
COUNTY OF Washington)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Stephen P. Harker, Vaughan E. Taylor, and Boyd W. Roundy, personally known to me to be the persons whose names are subscribed to the foregoing Declaration of Trust, appeared before me in person and acknowledged that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official seal this 23rd day of December, 2009.

NOTARY PUBLIC
BOYD KNUDSON
1030 West Utah Avenue
Hildale, UT 84784
My Commission Expires
January 24th, 2011
STATE OF UTAH

Notary Public

Commission Expires: 1/24/11

EXHIBIT
22

AFFIDAVIT
OF FORMER TRUSTEE OF THE
UNITED ORDER OF SOUTH DAKOTA

I, the undersigned Stephen P. Harker, constituting a former Trustee of the United Order of South Dakota, hereby certify, confirm, affirm and reaffirm the following information:

1. I was an original Trustee of the United Order of South Dakota, a common law trust, organized by Declaration of Trust executed on December 23, 2009.
2. Article I of the Declaration of Trust provides that "The Board of Trustees may designate representatives to perform one or more of these functions on its behalf."
3. I have resigned as Trustee of the United Order of South Dakota.
4. Isaac S. Jeffs is a current Trustee of the United Order of South Dakota and, as a successor in trust, holds the same rights, powers, privileges and authority in relationship to the Trust that I previously held.

IN WITNESS WHEREOF, I have executed this Affidavit of Former Trustee of the United Order of South Dakota on the 6th day of March, 2015.

Stephen P. Harker, Former Trustee

STATE OF UTAH)
: ss.
COUNTY OF IRON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Stephen P. Harker, personally known to me, or proved upon satisfactory evidence, to be the person whose name is subscribed to the foregoing Affidavit of Former Trustee of the United Order of South Dakota, appeared before me in person and, being by me first duly sworn, acknowledged the statements therein contained and that he executed the same in the capacity therein stated.

WITNESS my hand and official seal this 6th day of March, 2015.

BOYD KNUDSON
NOTARY PUBLIC, STATE OF UTAH
COMMISSION #680940
MY COMMISSION EXPIRES
JANUARY 24, 2019

Notary Public
Commission Expires: 1/24/19

EXHIBIT
23

LETTER OF AUTHORITY
TO SETH S. JEFFS
FROM THE BOARD OF TRUSTEES OF THE
UNITED ORDER OF SOUTH DAKOTA

As a current Trustee of the United Order of South Dakota, a South Dakota common law trust organized by Declaration of Trust dated December 23, 2009 ("Trust"), I, the undersigned, acting on behalf of the Board of Trustees, hereby authorize you, Seth S. Jeffs, to represent the Trust on all matters relating to water and water rights. Please sign any and all documents relating to Trust water in your capacity as "authorized representative" of the Trust.

IN WITNESS WHEREOF, I have executed this Letter of Authority to Seth S. Jeffs from the Board of Trustees of the United Order of South Dakota on the 18th day of February, 2015.

Isaac S. Jeffs, Trustee
United Order of South Dakota

STATE OF UTAH)
: ss.
COUNTY OF WASHINGTON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that Isaac S. Jeffs, personally known to me to be the person whose name is subscribed to the foregoing Letter of Authority to Seth S. Jeffs from the Board of Trustees of the United Order of South Dakota, appeared before me in person and acknowledged that he executed the same in the capacity therein stated.

WITNESS my hand and official seal this 18th day of February, 2015.

BOYD KNUDSON
NOTARY PUBLIC, STATE OF UTAH
COMMISSION #580940
MY COMMISSION EXPIRES
JANUARY 24, 2019

Notary Public
Commission Expires: 1/24/19

RECEIVED
JUL 0 7 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	DENR'S RESPONSE TO PETITIONER VAN DYKE KILCOIN'S MOTION TO DISMISS

Comes now counsel on behalf of the Chief Engineer and the Water Rights Program of the South Dakota Department of Environment and Natural Resources (hereinafter collectively referred to as DENR) in opposition to Petitioner Van Dyke Kilcoin's Motion to Dismiss. DENR received this application which requests a permit in the name of "United Order of South Dakota" and which was signed by Seth Jeffs. The application sought to add a third well and increase the already authorized diversion under Water Permit No. 2610-2 which, at the time, was in the name of the United Order of South Dakota, Stephen P. Harker, Trustee.[1] DENR subsequently reviewed the application for the determination of the availability of unappropriated water and potential impairment to existing rights. When the application was presented to counsel for review, questions arose regarding Mr. Seth Jeffs' authority to make such an application on behalf of the United Order of South Dakota given that the United Order of South Dakota is a common law trust which is not a juridical entity capable of possessing property. Rather, the assets of the trust are held in the name of the trustee for the benefit of the trust. To that end,

[1] Water Permit No. 2610-2 has subsequently been transferred from Stephen P. Harker, trustee, to Isaac S. Jeffs, trustee of the United Order of South Dakota. *See* Attached Notice of Transfer.

DENR requested further information from Mr. Seth Jeffs regarding his authority to act on behalf of the United Order of South Dakota. In response, Mr. Seth Jeffs provided DENR with an affidavit from Mr. Stephen P. Harker setting forth that he was previously a trustee of the United Order of South Dakota and has since been replaced by Mr. Isaac S. Jeffs. DENR was also provided with a statement of authority from Mr. Isaac S. Jeffs that he is a current trustee of the United Order of South Dakota and that Mr. Seth Jeffs has the authority to act on behalf of the United Order of South Dakota with regard to "all matters relating to water and water rights[.]" Nothing suggests that Mr. Seth Jeffs did not have the authority to act when he submitted the water permit application and the subsequent written statement of authority ratifies Mr. Seth Jeffs' actions. Accordingly, it is DENR's position that the application is ripe for a determination and should proceed to hearing before the Water Management Board..

Dated this 7th day of July, 2015

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

RECEIVED
JUL 06 2015
WATER RIGHTS PROGRAM

SD EForm - 0495LD V2

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

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

Water Right/Permit No. 2610-2

Date: July 2, 2015

I/We request that Water Right/Permit No. 2610-2 formerly owned by:
United Order of South Dakota, Stephen P. Harker, Trustee be transferred to:

New Owner Name: United Order of South Dakota, Isaac S. Jeffs, Trustee

Address: P.O. Box 5050

City, State, Zip Custer SD 57730 Telephone No. 325-650-8444

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

Notice is not given because property has been transferred. Notice is given because Stephen P. Harker is no longer a Trustee of the Untied Order of South Dakota. Isaac S. Jeffs is a Trustee of the Untied Order of South Dakota. Ownership of permit No. 2610-2 has thus been transferred from Stephen P. Harker, as Trustee to Isaac S. Jeffs, as Trustee.

★ I understand that the validity of Water Right/Permit No. 2610-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

A fee of Fifty Dollars ($50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Isaac S. Jeffs, the new owner, certify that the above information is true and correct.

(signed by new owner)

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

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

2009-07

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 7/6, 20 15

RECEIVED OF Gunderson, Palmer, Nelson & Ashmore LLP PO Box 8045 Rapid City SD 58709

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use		
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form 2610-2	50	00
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	50	00

No. 07441

By Jeanne Goodmann
Chief Engineer

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

July 6, 2015

2610-2

Isaac S Jeffs, Trustee
United Order of South Dakota
PO Box 5050
Custer SD 57730

Dear Mr. Jeffs:

I am writing to acknowledge receipt of the transfer form and filing fee submitted for filing an ownership change on Water Permit No. 2610-2.

The ownership change has been completed. Water Permit No. 2610-2 has been transferred as follows:

- **From:** United Order of South Dakota, Stephen P Harker, Trustee
- **To:** United Order of South Dakota, Isaac S Jeffs, Trustee

The receipt for the filing fee is being forwarded by copy of this letter to Gunderson, Palmer, Nelson & Ashmore LLP. If you have any questions, please contact me.

Sincerely,

Genny McMath

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

c: Gunderson, Palmer, Nelson & Ashmore LLP w/Receipt No. 07441

RECEIVED
JUL 0 7 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	DENR'S RESPONSE TO APPLICANT'S MOTION IN LIMINE

Comes now counsel on behalf of the Chief Engineer and the Water Rights Program of the South Dakota Department of Environment and Natural Resources (hereinafter collectively referred to as DENR) in response to Applicant's Motion in Limine. While recognizing the need for some limitation as to the evidence admitted for consideration under the public interest factor set forth in SDCL § 46-2A-9, DENR does not believe a blanket motion in limine is appropriate. Rather, DENR would propose that objections be made at the time the evidence is offered.

Dated this 7th day of July, 2015

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

RECEIVED
JUL 07 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION No. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of July 2015, she mailed by first-class U.S. mail, and e-mailed to those parties with e-mails listed below, true and correct copies of the DENR's Response to Petitioner Van Dyke Kilcoin's Motion to Dismiss and Response to Applicant's Motion in Limine to the following:

Jeffrey R. Connolly
Gunderson, Palmer, Nelson & Ashmore
P.O. Box 8045
Rapid City, SD 57709
jconnolly@gpnalaw.com

William R Hansen, Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive Ste 250
Ft. Collins, CO 80525

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer, SD 57730

Toni Martin
4141 Villa Ridge Ct #122
Rapid City, SD 57701

Mr & Mrs David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Rd
Custer, SD 57730-9109

Michael M Hickey
Bangs McCullen Law Firm
P.O. Box 2670
Rapid City, SD 57709-2670
mhickey@bangsmccullen.com

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer, SD 57730

Craig Bobzien, Forest Supervisor
Black Hills National Forest
1019 N 5th Street
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

Dean and Delia Johnson
14585 E French Creek Road
Fairburn, SD 57738

Rodney Freeman
Prehearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350
rfreeman.huronlaw@midconetwork.com

Cheryl Schrempp Dupris
Assistant U.S. Attorney
P.O. Box 7240
Pierre, SD 57501

Lois Witte
Office of the General Counsel
Mountain Region
740 Simms St, Room 309
Golden, CO 80401-4720

Peter Fahmy
National Park Service
12795 W Alameda Parkway, Ste 198
Lakewood, CO 80228

Matt Naasz
Assistant Attorney General
1302 East Hwy 14, Suite 1
Pierre, SD 57501
Matthew.Naasz@state.sd.us

Chad Comes – Chairman
Water Management Board
116 West Center
Madison, SD 57042
Chad.Comes@cityofmadisonsd.com

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

Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

RECEIVED
JUL 0 9 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**United Order of South Dakota's Response to Kilcoin's Motion to Dismiss**

Intervener, Linda Van Dyke Kilcoin, filed a motion to dismiss. She asserts that dismissal is warranted for two reasons. First, she asserts that a common law trust can not maintain a legal action. Second, she asserts that the Applicant's representative is not authorized to seek approval of the application. Kilcoin's assertions do not hold water.

A. KILCOIN'S MOTION TO DISMISS IS IMPROPER

Kilcoin offers no authority as to why a motion to dismiss is proper. Kilcoin misconstrues the nature of this proceeding; it is not a lawsuit subject to dismissal pursuant to the rules of civil procedure. Rather, it is an application to appropriate water.

Pursuant to law, the Chief Engineer issued a Report recommending approval of the permit. Public notice was then given pursuant to SDCL 46-2A-4, which indicated that "Any person interested in opposing or supporting [the] application or recommendation must file a written petition with BOTH the applicant and Chief Engineer." Kilcoin did file a hand-written petition indicating that she opposed "tripling" the water use of the Applicant, apparently in opposition to the Recommendation of the Chief Engineer.

Certainly, SDCL 46-2A *et seq.* permits Kilcoin the right to *oppose* the Recommendation or the application. Nothing in South Dakota law, though, permits her to deny an applicant the right to have their application heard. The Board should not even consider "dismissing" the application based on the assertions of a petitioner. Rather, if Kilcoin wishes to *oppose* the Recommendation of the Chief Engineer, she may do so at the scheduled hearing.

B. THE TRUST IS AN ENTITY THAT CAN APPLY FOR A WATER PERMIT

Even if the Board entertains Kilcoin's motion, her first argument should be denied. First, there is no basis in South Dakota law for the proposition that the Trust can not apply for a permit. Kilcoin admits that South Dakota courts have not "had occasion to decide whether a common law trust is a legal entity that is capable of commencing a legal proceeding in its own name." This Board should not make law.

Second, the Trust is not *commencing a legal proceeding* in the first place. If anything, it is applying for a water permit. And Kilcon also admits that the South Dakota Supreme Court, in Schallenkamp v. Stevens, held that common law trusts can own land. Plainly, the United Order of South Dakota owns the land in question as evidenced by Exhibit 21. It makes sense that an application can be made for a water permit related to the land that the Trust owns.

Third, the cases cited by Kilcoin are not controlling as to the Board. None of the cases are from the South Dakota Supreme Court or the United States Supreme Court. SCG Capital Corp. Profit Sharing Trust v. Green and Booker v

Cappozziello are both *unreported* cases from Connecticut trial courts. The other three cases are from Illinois and Washington and are all at least 89 years old. Most importantly, all the cases discuss whether a trust can sue or be sued. Here, that is not the issue. There is not a pending complaint subject to dismissal; the Applicant is only seeking a water permit.

Fourth, Kilcoin ignores that the DENR has already acknowledged the Trust's ownership of another water permit. Permit 2610-2 was approved on July 11, 2007 for United Land Management, LLC. See Applicant 207. On December 23, 2009, United Land Management, LLC transferred the land at issue in both permits to United Order of South Dakota. See Applicant 214-215. On December 29, 2009, United Order of South Dakota noticed the transfer of ownership through a notice signed by United Order of South Dakota by Stephen P. Harker, Trustee. See Applicant 213. On January 5, 2010, the Chief Engineer wrote the United Order of South Daktoa c/o Stephen P. Harker, Trustee, indicating that Permit 2610-2 is "now listed in the name of United Order of South Dakota." See Applicant 130. It is difficult to comprehend how Applicant's application should be *dismissed* on the basis that the Trust can not *apply* for a permit, when the DENR acknowledges that the Trust already *holds* a permit.

Fifth, even the cases cited by Kilcoin indicate that a common law trust can act through its trustees. So even if United Order of South Dakota improperly *applied* for the permit, the Board can resolve the issue by simply *approving* the application in the name of Isaac Jeffs as a Trustee. And as

discussed below, Seth Jeffs was acting under authority of the Trustees at the time he completed the application on behalf of the United Order of South Dakota anyway.

C. Seth Jeffs has the Authority to represent the Trust in the application process

Kilcon also argues that the application must be dismissed because Seth Jeffs does not have the authority to act on behalf of the Trust. He plainly does.

Stephen P. Harker was a Trustee of the Untied Order of South Dakota. See Exhibit 21. Isaac S. Jeffs is currently a Trustee of the United Order of South Dakota. See Exhibit 22. The Board of Trustees "may designate representatives to perform one or more" of its functions on its behalf. Exhibit 21, Article I. There is no requirement that this *designation* be in writing or dated. See id. On February 18, 2015, Isaac S. Jeffs "acting on behalf of the Board of Trustees" issued a letter authority to Seth S. Jeffs, confirming his authority to represent the Trust on all matters related to water rights. See Exhibit 23.

Kilcoin's arguments about dates and majority votes are irrelevant. First, Kilcoin is not a beneficiary of the Trust, she has no standing to challenge the Board of Trustee's actions. Second, Seth Jeffs was plainly designated to represent the Board of Trustees prior to the Letter of Authority being issued. The fact that he signed the application attests to that. But also, attachment D to Seth Jeff's February 18, 2015 letter to the Chief Engineer contains a list of meter readings for the United Order of South Dakota with Seth Jeffs's initials on all of the entries, dating back to June of 2014. See Exhibit 11. So plainly,

Seth Jeffs was acting as water manager under the authority or the Board of Trustees well before he signed the application. Also, DENR records will show that Seth Jeffs has been a certified Class I Water Distribution Operations Specialists likely longer than the application has been pending.

Kilcoin's arguments about majority votes and lack of dates are exactly the type of testimony Applicant is seeking to prohibit through its motion in limine. Isaac Jeffs is a Trustee and he has confirmed that the Board of Trustees' has delegated its powers in matters related to water rights to its water operator, Seth Jeffs. The date that the Board of Trustees delegated such authority to Seth Jeffs is irrelevant to Kilcoin's opposition to the Recommendation of the Chief Engineer, as are the mechanics of how the Board of Trustees decided to extend authority to Seth Jeffs.

Dated this 7th day of July, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly
Attorneys for United Order of South Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

I hereby certify on this 7th day of July, 2015, I mailed by first-class U.S. mail, and emailed to those parties with emails listed below, a true and correct copy of a United Order of South Dakota's Response to Kilcoin's Motion to Dismiss to the following:

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

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Toni Martin
4141 Villa Ridge Ct. #122
Rapid City, SD 57701

Karl R. and Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

Rick Fox
P.O. Box 35
Hermosa, SD 57744

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

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Water Management Board
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Matthew.naasz@state.sd.us

Chad Comes, PE
Hearing Chair/Water Mgmt Bd.
c/o The City of Madison
Madison, SD 57042
Chad.comes@cityofmadisonsd.com

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly

SOUTH DAKOTA
WATER PERMIT NO. 2610-2

Date of first receipt of application February 9, 2007.
Date of return to applicant for corrections, amendments or changes February 9, 2007.
Date of receipt of corrected application February 20, 2007.

The Water Management Board approved Water Permit No. 2610-2 on July 11, 2007 for United Land Management, c/o Richard Allred, Box 54, Rapid City SD 57709 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. 2610-2 appropriates 0.21 cubic feet of water per second from two wells to be completed into the Madison Aquifer (approximately 1000 feet deep) located in the NW ¼ SE ¼ Section 10-T6S-R3E.

2. The water appropriated shall be used for the purpose of suburban housing development and may not exceed the amount of water needed for beneficial use.

3. The water is to be used during the following described annual period: January 1 – December 31.

4. The date from which applicant may claim right is February 9, 2007.

5. The time of the construction is to be completed on or before January 11, 2010.

6. All construction is to be completed on or before July 11, 2012.

7. Water is to be put to beneficial use on or before July 11, 2016.

8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2610-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20–year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2610-2 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The wells authorized by Permit No. 2610-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. United Land Management shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

WATER MANAGEMENT BOARD

By: Garland Erbele

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

AUG 0 1 2007
date

Attachment A

APPLICANT 207

STATE OF SOUTH DAKOTA,
COUNTY OF CUSTER-SS 51279
Filed this 24 Day of Dec 2009 at 10:16 O'clock AM
BOOK 49 OF DEED PAGE 330
/S/ Pamela J Johnson
REGISTER OF DEEDS FEE $ 22.00 PD DEPUTY
N/S

After Recording Return To:
Stephen P. Harker, Trustee
11571 Farmer Road
Pringle, SD 57773

[Space Above This Line For Recording Data]

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT: FOR VALUABLE CONSIDERATION OF TEN DOLLARS ($10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged and confessed, and for which no lien, express or implied, does or shall exist United Land Management, LLC, a Limited Liability Company organized and existing under the laws of the State of South Dakota, Grantor, has GRANTED, SOLD, CONVEYED AND WARRANTED, and by these presents does hereby GRANT, SELL, CONVEY AND WARRANT unto Stephen P. Harker, Trustee of the United Order of South Dakota, a Common Law Trust dated of even date hereof, Grantee, all that certain tract of land lying and being situated in the County of Custer, State of South Dakota, and more particularly described as follows, to-wit:

See the Attached Exhibit "A" for Complete Legal Description.

TOGETHER WITH all improvements, easements, and appurtenances thereunto belonging. SUBJECT TO all easements, restrictions, reservations, rights of way, and items currently appearing of record, if any.

~~TRANSFER FEE PAID $~~
EXEMPT FROM TRANSFER FEE

EXEMPT from Transfer Fee 43-4-22(18)

WITNESS the hand of said grantor, this 23rd day of December, 2009.

Witnesses:

United Land Management, LLC

Jerold Williams (Seal)
Jerold Williams, Manager and Member

STATE OF Utah
COUNTY OF Washington

This instrument was acknowledged before me on December 23rd, 2009 by Jerold Williams, Manager and Member of United Land Management, LLC, a South Dakota Limited Liability Company on behalf of said Limited Liability Company.

NOTARY PUBLIC
BOYD KNUDSON
1020 West Utah Avenue
Hildale, UT 84784
My Commission Expires
January 24th, 2011
STATE OF UTAH

Boyd Knudson
Notary Public
Commission Expires: 1/24/11

EXHIBIT "A"

Parcel # 6359: The South Half of the North Half of the Southwest Quarter of the Northeast Quarter (S½ N½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6360: The South Half of the Southwest Quarter of the Northeast Quarter (S½ SW¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6361: The South Half of the North Half of the Southeast Quarter of the Northeast Quarter (S½ N½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6362: The South Half of the Southeast Quarter of the Northeast Quarter (S½ SE¼ NE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6364: The West Half of the East Half of the Northwest Quarter of the Southeast Quarter (W½ E½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 10 acres, more or less.

Parcel # 6365: The West Half of the Northwest Quarter of the Southeast Quarter (W½ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 20 acres, more or less.

Parcel # 6366: The East Half of the Northeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ NE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6367: The West Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (W½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian, containing 5 acres, more or less.

Parcel # 6368: The East Half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (E½ NW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW¼ NE¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. The East Half of the Southeast Quarter of the Northwest Quarter of the Southeast Quarter (E½ SE¼ NW¼ SE¼) of Section 10, Township 6 South, Range 3 East, Black Hills Meridian. This parcel contains 40 acres, more or less.

RECEIVED
DEC 3 1 2009
WATER RIGHTS PROGRAM

SD EForm - 0495 V2

NOTICE OF TRANSFER OF OWNERSHIP

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

Water Right/Permit No. 2610-2

Date: 12/29/09

I/We request that Water Right/Permit No. 2610-2 formerly owned by:
United Land Management be transferred to:

New Owner Name: United Order of South Dakota
Address: 11576 Former road PO Box 5050
City, State, Zip Custer SD 57730 Telephone No. 605-673-5274

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

Water Permit No. 2610-2

☑ I understand that the validity of Water Right/Permit No. 2610-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

A fee of Fifty Dollars ($50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, United Order of South Dakota, the new owner, certify that the above information is true and correct. By Stephen P. Harbec Trustee

United Order of South Dakota
by Stephen P. Harbec Trustee
(Signed by new owner)

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

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

2009/07

(Copy of land deed transfer enclosed also)

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

January 5, 2010

2610-2

United Order of South Dakota
c/o Stephen P Harker, Trustee
PO Box 5050
Custer SD 57730

Dear Mr. Harker:

Thank you for following up on the ownership change for Water Permit No. 2610-2. The transfer has been completed. The water permit formerly listed in the name of United Land Management is now listed in the name of United Order of South Dakota. For you records, enclosed is a copy of the permit and the receipt for payment of the transfer fee.

Pursuant to a qualification (No. 4) on Water Permit No. 2610-2, I am requesting that you report the amount of water diverted from the Madison Aquifer during 2009. Please respond by January 31, 2010. If you do not have this information, please forward this request to the person who would.

If you have any questions concerning this or other water rights questions, please contact Karen Schlaak at (605) 773-3352. Water use data and/or questions may also be forwarded to Karen via email at **karen.schlaak@state.sd.us**.

Sincerely,

Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

enclosures

Seth S. Jeffs

United Order of South Dakota
PO Box 5050
Custer, SD 57730

February 18, 2015

RECEIVED
FEB 2 3 2015
WATER RIGHTS
PROGRAM

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

National Park Service Water Resources Division
William R. Hansen
and Jeff C. Hughes
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

Black Hills National Forest
Craig Bobzien
1019 North 5th Street
Custer, SD 57730

RE: NPS and National Forest Petition to Intervene in South Dakota Water Permit Application No. 2730-2

Dear Ms. Goodman, Mr. Hansen and Mr. Bobzien,

I am the water operator for the water system owned and operated by the United Order of South Dakota. I was grateful for the opportunity to talk to the representatives of the National Park Service on February 13, which included William Hansen, Jeff Hughes, and Peter Fahmy. I was also grateful to talk to Craig Bobzien on February 17th. In both of the phone conversations I described what is contained in this letter.

I take this opportunity to describe the reason why we are asking for more water rights. I have included the well log data that we agreed to give to the NPS. During the years 2008-2010 the records were much more detailed. The yearly reporting to the State of South Dakota Water Rights is the only record we have for the years 2011-2014. I have recently reported to the Water Rights Division that we used 8,323,600 gallons of water in the year 2014, which is 25.5 acre feet of water.

There are currently two permitted wells, one of which is operative, pumping at less than 94 GPM when the water is needed. I will call this well #1. This well will only pump at 94 GPM when there is no head pressure, when the storage tank is empty. When the tank has water in it, and is being filled, the rate goes down to around 50-70 GPM. Most of the time this is the average rate at which the well is pumping.

The second well is inoperative at this time. When installed, it did not produce the water flow that was desired. It runs dry in a few minutes of pumping at less than 90 GPM. This well was installed as a backup to the only operating well. We anticipate that this well is only capable of producing from 10-20 GPM. We will be installing a smaller pump and use it as a supplement to the larger well. I will call this well #2.

At this time the community has a 30,000 gallon water storage tank to compliment the water distribution system. The water distribution comes through 4" water mains. This system was installed as a temporary system to fill the need until we are able to install a more adequate water distribution system.

During the summer months the 30,000 gallon water tank runs dry and the buildings are often left without water. Well #1 is not able to keep up with the additional demand of watering gardens, orchards, landscape, and feeding animals during the spring and summer months. **We are asking for the privilege to drill another well (well #3) and also to have the privilege to pump at a higher rate because of the higher demand for water during the spring and summer months.**

The three wells will operate on a staged demand basis. When the demand for water is low, well #1 will be able to take care of the need. If the demand for water is high all three wells will be used. This is the only time that we would be pumping at a peak demand rate of around 200 GPM. The only other events that would require the peak rate would be the event of a fire or troubles with the water distribution system like a break in any of the water lines.

As you can see by the attachments, the greatest demands are during the months from the end of May to the beginning of September. The rest of the year the demand is only a fraction of what is used in those five months. Well #1 will easily be able to keep up with the need and will only be pumping for a short time each day for about seven months out of the year.

The United Order of South Dakota is currently permitted to use up to 153 acre feet of water per year if the wells run at 95 GPM for the entire year. Cumulatively, we do not expect to use more than what we are currently allowed to use under permit # 2610-2.

The number of gardens and orchards will increase as the community is able to bring more of the land into cultivation; also the needs for animals in the future will increase the demand for water. We request that we at least be allowed to displace up to the currently allowed 153 acre feet of water per year, that there be no cumulative limitation placed on what is already allowed under permit # 2610-2.

The need for fire protection is also a great concern. Currently there is no dependable fire protection. Engineers recommend at least 6"+ water mains with a minimum of at least 20 psi, with fire hydrants spread through the community. There is a demand of thousands of gallons per minute during that critical time when the water is needed most. The likelihood of a fire is much greater in the summer months when most water is being used and the reserves would be at the lowest levels.

Adequate fire protection requires water in storage, ready for the event of a fire. We will be installing a larger water tank and distribution system to meet this need. Part of this need is to have adequate wells feeding the water distribution system at an adequate rate to not only keep up with the demand, but also make sure that there is always water in storage. With hydrants in place there will be a need to flush the lines at regular intervals during the year to keep the system clean and free of bacteria and other normally harmful elements that collect in a water distribution system. This will also increase the cumulative amount of water that will be needed, but not significantly.

We need to be able to perform maintenance work on well #1 but are unable to because we do not have another adequate backup well.

There is no way to know how much water future well #3 will be able to produce. To be safe we asked for an additional 205 GPM, so that we can run all three wells at the same time without exceeding the peak rate limit of the United Order of South Dakota's water rights.

This is my formal request to the Water Rights Program of South Dakota to alter the permit application number 2730-2 to reflect a total peak rate of 200 GPM instead of 300 GPM, which is an addition of 105 GPM, instead of 205 GPM to the permit number 2610-2 which allows the United Order of South Dakota to use 95 GPM.

In summary, the Chief Engineer has recommended that the United Order of South Dakota be permitted to displace more water based on the fact that there is unused water available. It has been shown that it will not have an impact on any of the needs of those around us. The NPS and the Forest Service suggest that we will be using 300 GPM all the time for the entire year, which would be impractical and impossible for this community to do. There will only be a need to pump at a peak rate of 200 GPM at short times usually during the spring and summer months.

Though we do not anticipate the need to displace much more water cumulatively, we need to be able to displace water at a higher rate at certain times of the year when the need exists. We humbly and respectfully ask for the privilege to drill another well and also to be able to pump water at a higher rate when it is needed. We also request that we be allowed to use no less than the cumulative total amount of water that we are currently allowed to use under permit #2610-2.

We hope this relieves your fears and concerns.

Sincerely

Seth S. Jeffs
Water Operator
United Order of South Dakota

Attachments: Attachment A – SD Water Well Completion Report 10/15/07 (Well #1)
Attachment B – Monthly Well Log Data for 2008-2010
Attachment C – SD Water Well Completion Report 10/20/10 (Well #2)
Attachment D – Monthly Well Log Data from June, 2014

Attachment #4

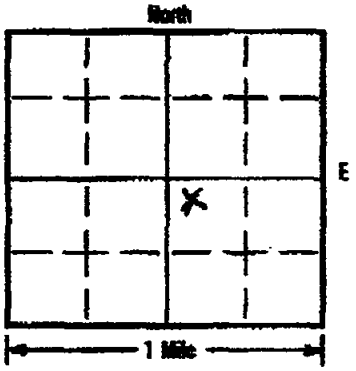
SOUTH DAKOTA WATER WELL COMPLETION REPORT

UI-32

Location NW ¼ SE ¼ Sec 10 Twp 6S Rg 3E

County Custer

Please mark well location with an "X"



Well Completion Date

10-15-07

LOCATION:
Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? >100 ft. from Septic System (Identify source).

PROPOSED USE:
☒ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:
Air rotary + DHH

CASING DATA: ☒ Steel ☐ Plastic ☐ Other
If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
28 LB/FT	8 5/8 IN	0 FT	930 FT	11 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	270	15 lb./gal	0 ft.	930 ft.
		lb./gal	ft.	ft.

Describe grouting procedure pressure grouted through casing

SCREEN: ☐ Perforated pipe ☐ Manufactured
Diameter IN Length FEET
Material
Slot Size Set From Feet to Feet
Other information

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO
If so, what material?
Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?
☒ YES, How: Chlorine solution
Laboratory sent to for water quality analysis ___ NO, Why Not?
Did not set pump

Well Owner:
Business Name: United Land Management
Address:

WELL LOG:

FORMATION	DEPTH FROM	DEPTH TO
mostly SS yel. some shale	0	115
LS, SS + shale red to pink	115	248
LS shaley red to gray	248	307
SS yellow	307	344
LS gray, pink + white	344	597
LS white w/ purple shale	597	701
shale red	701	719
LS light gray to buff	719	1085

STATIC WATER LEVEL ≈ 800 Feet
If flowing: closed in pressure PSI
GPM flow through inch pipe
Controlled by ☐ Valve ☐ Reducers ☐ Other
Reduced Flowrate GPM
Can well be completely shut in?

WELL TEST DATA:
☐ Pumped Describe:
☐ Bailed air developed
☐ Other
Pumping Level Below Land Surface
1085 ft. After 2 Hrs. pumped 50 GPM
ft. After Hrs. pumped GPM
If pump installed, pump rate GPM

REMARKS

This well was drilled under license # 331
And this report is true and accurate.
Drilling firm Taylor Drilling Co.
Signature of License Representative:
Signature of Well Owner or Equitable Property Holder:
Date:

Attachment B · Page 1

United Order of South Dakota (formerly United Land Management)

2008

MONTH	Water Usage(gallons)	Meter Reading
January	79,000	
February	79,000	
March	79,000	new meter -0-
April	65,600	64,000
May	271,200	129,600
June	532,200	400,800
July	717,300	933,000
August	918,500	1,650,300
September	406,700	2,568,800
October	249,100	2,975,500
November	152,300	3,224,600
December	140,000	3,376,900
		3,516,900
Total Water Used in 2008	2,813,520	

Attachment D Page 2

United Order of South Dakota			
2009			
	MONTH	Water Usage (gallons)	Meter Reading (end of month)
			3,516,900
	January	126,100	3,643,000
	February	147,000	3,790,000
	March	110,000	3,900,000
	April	145,600	4,045,600
	May	630,700	4,676,300
	June	1,407,200	6,083,500
	July	1,048,400	7,131,900
	August	1,134,200	8,266,100
	September	814,600	9,080,700
	October	205,900	9,286,600
	November	203,600	9,490,200
	December	234,200	9,724,400
	Total Water Used in 2009	6,207,500	

water rights from state = .21 cfs = 1.57 gps = 94.25gpm = 5,655 gal/hr

135,720 gallons per day = 49,537,800 gallons per year

(1,136 acre feet per year)

we used 142.5

Attachment D Page 3

United Order of South Dakota			
2010			
	MONTH	Water Usage (gallons)	Meter Reading (end of month)
			9,724,400
	January	223,300	9,947,700
	February	105,100	10,052,800
	March	97,200	10,150,000
	April	150,200	10,300,200
	May	458,700	10,758,900
	June	530,100	11,289,000
	July	1,946,000	13,235,000
	August	2,040,500	15,275,500
	September	1,371,300	16,646,800
	October	603,200	17,250,000
	November	200,000	17,450,000
	December	281,300	17,731,300
	Total Water Used in 2010	8,006,900	

water rights from state = .21 cfs = 1.57 gps = 94.25gpm = 5,655 gal/hr

135,720 gallons per day = 49,537,800 gallons per year

(1,136 acre feet per year)

Attachment C Page 1

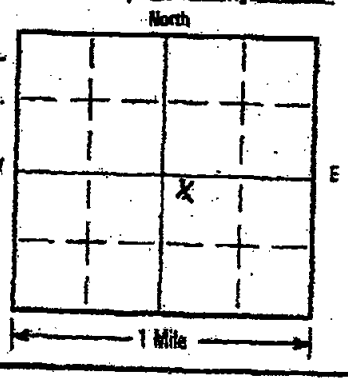
SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NW ¼ SE ¼ Sec 10 Twp 65 Rg 3E

County Custer

Please mark well location with an "X"



Well-Completion Date

10-20-10

Well Owner: United Land Mgmt

Business Name:

Address:

WELL LOG:

FORMATION	DEPTH FROM	DEPTH TO
see attachment		

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? > 100 ft. from Septic System (identify source).

PROPOSED USE:

☒ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:

Air Rotary + DHH

CASING DATA: ☒ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
40.50 LB/FT	10 3/4 IN	0 FT	933 FT	14 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	700	15 lb./gal	0 ft.	933 ft.
		lb./gal	ft.	ft.

Describe grouting procedure: cement pressure grouted through casing

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter IN Length FEET

Material

Slot Size Set From Feet to Feet

Other information

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material?

Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?

X YES, How: chlorine solution

NO, Why Not?

Laboratory sent to for water quality analysis

pump not installed

STATIC WATER LEVEL 2 800 Feet

If flowing: closed in pressure PSI

GPM flow through inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced Flowrate GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe:
☐ Bailed air developed
☐ Other

Pumping Level Below Land Surface

1080 ft. After 2 Hrs. pumped 25 GPM

ft. After Hrs. pumped GPM

If pump installed, pump rate GPM

REMARKS

RECEIVED
FEB 11 2011
WATER RIGHTS PROGRAM

This well was drilled under license # 331

And this report is true and accurate.

Drilling firm Taylor Drilling Co.

Signature of Licensee Representative:

Ralph Taylor

Signature of Well Owner or Equitable Property Holder:

Date:

Attachment C Page 2

Lithology for United Land Management water well completed October 20, 2010

0	to	92	SS, yellow, orange & tan
92	to	205	mostly LS, some SS & Shale, red, pink, lavender & white
205	to	220	Shale, red
220	to	300	LS, Shaley, red to gray
300	to	332	SS, yellow
332	to	602	LS, gray, pink & white
602	to	620	Shale, red to purple
620	to	695	LS, white
695	to	715	Shale, red
715	to	1078	LS, light gray to buff (Madison)
1078	to	1081	Siltstone, lavender (Englewood)

Attachment D

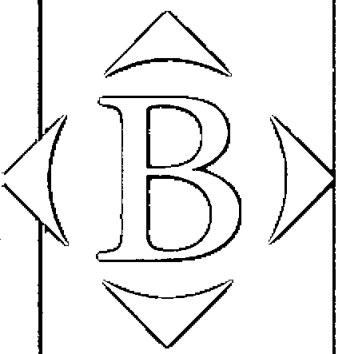
Well Water Meter Log Well # 1 *United Order of South Dakota*

Date	Time	Meter Reading	Taken By
6/30/14	1:00 PM	47403000	
7/18/14	9:27 PM	482477 - -	
7/26/14	1:43 PM	483679	
7/28/14	6:05 AM	483928 - -	
8/4/14	10:38 AM	489898 - -	
8/22/14	7:58 AM	505429 - -	
8/27/14	1:20 PM	509660 - -	
9/17/14	10:19 AM	518310 - -	
9/26/14	3:18 PM	523438 - -	
10/10/14	7:20 AM	525215 - -	
10/13/14	2:24 PM	525584 - -	
10/17/14	2:53 PM	525843 - -	
10/22/14	6:07 PM	526644 - -	
10/28/14	5:46 PM	527201 - -	
10/31/14	1:00 PM	527361 - -	
11/4/14	3:06 PM	527996 - -	
11/24/14	8:00 AM	528935 - -	
11/27/14	6:10 PM	529020 - -	
12/2/14	12:46 PM	529242 - -	
12/11/14	6:10 PM	529634 - -	
1/3/15	5:19 AM	530610 - -	
1/24/15	7:02 AM	532421 - -	
1/26/15	1:10 PM	532628 - -	
2/7/15	11:36 AM	533296 - -	
2/16/15	6:06 PM	533692 - -	

RAPID CITY
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Eric J. Pickar
Sarah E. Baron Houy
Jacob M. Quasney
Kara L. Frankman
Benjamin D. Tronnes
Mark F. Marshall
Of Counsel

SIOUX FALLS
Victoria M. Duehr
Kathryn H. Morrison

Attorneys also admitted in Nebraska, North Dakota, Minnesota and Missouri



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

SIOUX FALLS
5919 S. Remington Place
Suite 100
P.O. Box 88208
Sioux Falls, South Dakota
57109-8208
P. (605) 339-6800
F. (605) 339-6801

BANGS McCULLEN
LAW FIRM

RECEIVED
JUL 0 9 2015
WATER RIGHTS PROGRAM

Reply to Rapid City Office

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

July 7, 2015

Via E-Mail and U.S. Mail
Eric Gronlund
DENR Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: ***In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2***

Dear Eric:

For the above-referenced matter, please find enclosed an original document entitled *Linda Van Dyke Kilcoin's Response to Applicant's Motion in Limine.*

By copy of this letter, all interested parties have been served by e-mail or U.S. mail. If you have any questions or comments, please advise. Thank you.

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

Michael M. Hickey

MMH:ke
Enclosure
Cc: **E-mail:** Jeanne Goodman; Matt Naasz; Ann F. Mines Bailey Rodney Freeman; Chad Comes, P.E.; Cheryl Schrempp Dupris; Peter A. Fahmy; Jeff Connolly; Lois Witte; Craig Bobzien

U.S. Mail: William R. Hansen; Mr. and Mrs. David Albrecht; Toni Martin; Doug Lesher; Rick Fox; Dean and Delia Johnson; Karl & Suzanne Von Rump; and Client

RECEIVED
JUL 0 9 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA.

Linda Van Dyke Kilcoin's Response to Applicant's Motion in Limine

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Linda Van Dyke Kilcoin, through counsel, hereby responds to Plaintiff's Motion in Limine. Through this response, the parties will be referred to by name.

The United Order seeks to prohibit the introduction of evidence concerning the religion of the Applicant and its individual members, and the details of the organization of the Trust. For the reasons set forth below, Kilcoin resists this motion.

According to the documents produced in this proceeding, the United Order calls itself a common law trust. As set forth in Kilcoin's Motion to Dismiss, a common law trust is not an entity recognized under South Dakota law[1]. Under South Dakota law, a trust can only act through its trustees.

SDCL § 55-1A-32 sets forth the powers of a trustee which are applicable to a trust estate whether established by the terms of a will or other written instrument. SDCL § 55-1A-1. Those specific powers

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[1]. Moreover a trust, whether common law or otherwise, is not considered a person under the definitions found in Title 46. See SDCl § 46-1-6 (15).

include the power to prosecute or defend actions, claims, or proceedings for the protection of trust assets. SDCL § 55-1A-32. Certainly, the present action constitutes a proceeding.

Clearly a common law trust does not have a religion. The trustees and the members of the trust may, however, be members of a particular religion. The past practices of those individuals, including their religion to the extent that it impacts their dealings with civil and legal authorities, is clearly relevant as to whether it is in the public interest to issue a permit.

The details of the common law trust are clearly relevant to the issues in the present case. The initial application submitted by the United Order on October 14, 2014, was signed by Mr. Seth Jeffs. That application sought water for the purpose of "suburban housing development." Whether or not he was properly authorized by a majority of the trustees to act on behalf of the trust, as required by the trust document, is a question which must be resolved.

Mr. Jeffs has been convicted by the federal government of harboring a fugitive felon, Warren Jeffs. Mr. Jeff's credibility can be impeached by his prior conviction, and Kilcoin should be entitled to inquire about that conviction and the circumstances surrounding the same.

On May 12, 2015, Kilcoin served Interrogatories and Requests for the Production of Documents on the Applicant. Interrogatories 4, 5 and 20 requested the Applicant to supply information about the number of persons being served by the Applicant as of October 14, 2014, the date of the application, and the date of May 12, 2015 (the date the interrogatories were served). The Applicant objected to these interrogatories and now seeks to prevent Kilcoin from even asking about the number of individuals using water.

In an effort to resolve this discovery dispute, Kilcoin offered to stipulate to a protective order. That offer was refused. The refusal to share this very basic and limited information is very disturbing and only heightens the anxiety within the surrounding community. Clearly, the number of individuals being served or potentially going to be served is relevant to an application to use water for a suburban housing development.

I could not find any definition of what constitutes a suburban housing development under our law. The term suburban housing would seem to suggest that people are going to live there and use the water being appropriated. Common sense would seem to suggest that the number of persons being served is relevant to such an application.

Additionally, according to Supplemental Report prepared by Ken Buhler, the current capacity of the onsite wastewater system is 126

individuals. If that is the capacity of the wastewater system, certainly the parties are entitled to know what is the number of people that system is now serving, or going to serve in the foreseeable future.

Lastly, one of the elements which the Board must determine is whether the proposed use is in the public interest. SDCL § 46-2A-9. It is submitted that the nature and character of the community intending to use the waters of the state falls within the purview of the public interest. Previously this Board has used this element to protect springs and prevent flooding of adjoining property. It is submitted that it should also apply this standard to review and determine the nature and character of the applicant.

WHEREFORE, Linda Van Dyke Kilcoin respectfully requests the Board to deny this Motion in Limine.

Dated this 7th day of July, 2015.

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

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CERTIFICATE OF SERVICE

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

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Dated this 7th day of July, 2015.

MICHAEL M. HICKEY

Rapid City Journal

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Next door to a secret society

JANUARY 26, 2015 6:30 AM • SETH TUPPER JOURNAL STAFF

Editor's note: Today's stories are the second installment of the Rapid City Journal's look at what is happening in and around the FLDS compound near Pringle. The first installment ran in the Sunday, Jan. 25, edition.

Odd things happen to the closest neighbors to a religious sect in Custer County.

For instance, one time the sect's leaders offered Karl and Suzanne Von Rump $1,000 to go on vacation.

The Von Rumps, a retired couple from Minnesota, have the kind of sense of humor that helps them live next door to the 140-acre, secretive compound watched over by a scary-looking guard tower and inhabited by an unknown number of seldom-seen sect members.

A noose hangs from the stairs that lead to the second story of the Von Rumps' cabin. But there's also a sign that turns ominous into funny: "Come hang with us."

Their home, in a remote pocket of the southern Black Hills, is off a gravel road that dead-ends a mile beyond their driveway. The first floor is a garage and workshop; above is a small, rustic living area.

The compound is 300 yards away, so the Von Rumps need all the laughs they can get. And they seem to get plenty.

Still, they're concerned about what might be going on inside the compound — it's run by the Fundamentalist Church of Jesus Christ of Latter Day Saints, or FLDS, whose members have practiced plural marriage elsewhere, at times with underage brides — and the Von Rumps stubbornly wish the compound would disappear.

"I don't think we can get a penny for this place, so, yeah, we'll outlast them," Suzanne predicted, "unless we both die."

Karl is a retired machinist and Navy veteran, and Suzanne worked as a financial secretary. They were living in Faribault, Minn., in 1999 when they bought their 40 acres about 15 miles southwest of Pringle.

"I love it," the buzz-cut, white-bearded Karl said of the rugged surroundings. "And the climate is wonderful," he added, pointing outside to last Wednesday's sunny and mild weather.

The Von Rumps started building their cabin in 2000 and split their time between Minnesota and South Dakota for a while before settling permanently in what they thought would be a pristine, peaceful place to retire. They loved the sweeping view of the Black Hills from their property, including the peak of Pilger Mountain in the distance. Red Canyon is also nearby.

When they heard that a mysterious, cult-like group was trying to buy land immediately to their south, the Von Rumps quickly made a competing offer.

They were a week late.

The sale to an FLDS-affiliated corporation closed in 2003.

Since then, a friend has purchased land around the Von Rumps, protecting them against any northward expansion by the compound.

Living next to such a place is, at times, very noisy.

The Von Rumps said when compound dwellers were tackling construction projects in the early years, they worked all hours. Karl and Suzanne and other neighbors complained to local government officials about the noise. Fed up, one pair of neighbors moved away.

As time has worn on, the compound's leaders have grown more responsive to complaints, and they and the Von Rumps have forged an uneasy coexistence.

There's still noise, as when compound workers are unearthing and busting up rocks. There are also weekly semitractor-trailer arrivals and departures.

When Karl wants to talk to somebody inside the compound, he goes down to the guard tower and makes an inquiry. A leader is summoned by radio and sometimes emerges from what looks like a space under the tower. The Von Rumps think there might be a system of tunnels beneath the compound; if true, that would help explain why so few people are ever seen moving around.

Another reason the compound's inhabitants remain out of sight is the network of fences, fitted with tightly spaced, 8-foot-long vertical wood planks, and the berms. Most views of inside of the compound are obstructed.

The compound's leaders sometimes try to be good neighbors but seem to lack a full understanding of the concept. They'll incite neighborly anger by working noisily through the night on a construction project, then come plow the Von Rumps' driveway after a snowfall.

Then there was the unexpected largess.

Once, when the compound was launching a particularly noisy project, the leaders approached the Von Rumps with an odd offer: Here's $1,000. Go away for a while.

Grudgingly, the Von Rumps took the money and a vacation.

The Von Rumps are among nine couples, individuals or organizations to petition against the compound's pending application to the state for a third water well. They worry about too much use of the Madison aquifer in the typically dry area, and they wonder why a compound they believe to have only about 100 people and no animals needs access to 300 gallons of water per minute.

That's enough to meet the needs of more than 4,000 people, according to the National Park Service, one of the organizations petitioning against the well permit.

Hope for the Von Rumps comes in the form of history. A similar, larger FLDS compound in Texas was raided and seized by the state in recent years.

Whatever happens, the Von Rumps say they're staying put.

"Our view was absolutely gorgeous," Suzanne said, "until they moved in."

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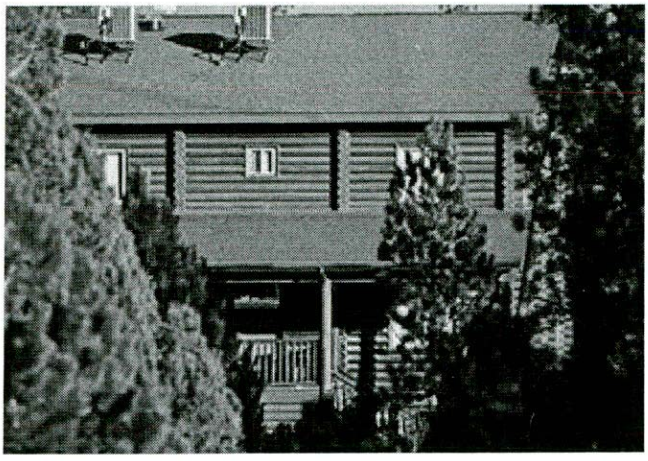
Miles from nowhere: A trip to a compound that keeps secrets



JANUARY 26, 2015 6:00 AM • SETH TUPPER JOURNAL STAFF

Last Wednesday, Journal photographer Sean Ryan and I took Highway 16 south through Hill City to Custer and continued on Highway 385 to tiny Pringle, where we veered onto Highway 89 for about five miles before turning west onto 18 Mile Road.

There our tires hit gravel for the first time. We had left the familiar behind.

As journalists, Sean and I have frequent, welcome opportunities to venture to out-of-the-way places, the kind most people never see. Our Wednesday trip to the compound of the Fundamentalist Church of Jesus Christ of Latter Day Saints was precisely such an opportunity.

From that turn to the west, we traveled on 10 miles of gravel roads with low speed limits — 45 mph in straight stretches, 25 around some tight curves — and with patches of ice where hills and pine trees shadow the road. We didn't want to miss a turn or go sliding into the ditch, so I took it slow and got passed by a big pickup.

We turned onto Pleasant Valley Road, 20 Mile Road and Farmer Road before we finally crested a rise and saw, spread before us to the south, the 140-acre compound.

The first surprise: A dirt road runs right through it. The road separates the west and east parts of the compound. The view into both sides is blocked by earthen mounds and by fences consisting of tightly spaced, 8-foot-long vertical wood planks.

Before leaving Rapid City, we had reviewed aerial photos of the

compound and knew there are a dozen or more structures, including group homes, sheds and barns, but beyond the obstructions, we could catch only fleeting glimpses of buildings.

The other initially strong impression is that the compound appears to be in a perpetual state of construction. Everywhere along the road, there is equipment. An oil truck here. A backhoe there. A flatbed trailer. An unoccupied pickup sitting by the road, surrounded by fence-building materials. A stack of giant, cylindrical concrete structures, perhaps meant for use in some type of drainage system.

For several minutes I had been gawking and Sean had been shooting photos. Then our eyes were drawn to the most imposing thing on the site, the guard tower. It's much like the guard towers at prisons — three stories high, with windows at the top providing a 360-degree view of the grounds.

Many in Custer County are wary of the compound, but I've interviewed some who seem protective of it and say the people inside just want to be left alone to practice their religion. Seeing the guard tower and all the opaque fencing and berms gives a different impression. Hutterites and Amish people want to be left alone to practice their religion, but they don't wall themselves in and build guard towers. That goes beyond privacy and looks more like hiding.

What might the compound's leaders be hiding? At other FLDS strongholds, including a Texas compound that was raided and seized in recent years, the religion's leaders were hiding polygamy and child brides who were bearing children for much-older husbands. The big, unanswered question about the compound near Pringle is whether the same thing is happening there.

As we drove south on the road that bisects the compound, we saw an especially large, mounded row of earth to the east. Behind that, we knew from aerial photos, is a massive, rectangular area scraped clean of vegetation with a square depression in the middle. Many outsiders speculate it's the site of a future temple, but nobody seems to know for sure, and we couldn't see anything but the mounded-up dirt.

At the south edge of the compound, the road continues but disappears into a forested area. Other roads with "No Trespassing" signs split off into

the compound's east and west sides.

There was a pickup on the road to the east. It slowed and we slowed, obviously eyeing each other. I stopped, hoping somebody might come talk to us, but the pickup eventually disappeared deeper into the compound. The only other sign of life we saw was a beat-up white minivan quickly driving from the east side to the west side.

Other than that, we neither heard nor saw any human activity. It was eerily quiet considering estimates of the compound's population range from 75 to 300, but I've read that people at FLDS compounds scatter and hide when outsiders approach.

We didn't brave the road that continues south of the compound, at least at first. We'd seen on aerial images that the road dead-ends at a structure just south of the compound, and we didn't know if that was part of the compound or somebody's else property.

Instead, we drove just north of the compound and turned into the first driveway, where we met the guy who'd passed us earlier in a big pickup: Karl Von Rump.

When we got out of the Jeep, he was standing in his driveway and eyeing us with suspicion. He had a buzz-cut head and a full, scraggly white beard.

"Hi," I said. "I'm from the Rapid City Journal ..."

Before I could continue, Von Rump's scowl turned to a smile and he broke out laughing. There aren't many reporters who come to his neck of the woods, but they show up every so often, and he surely knows what they want. He apologized for passing us on the gravel road and invited us inside, where he offered us an Old Milwaukee beer (we declined).

Karl and his wife, Suzanne, who are both retired, live in a cabin that faces the compound at a distance of only 300 yards. They explained why there's a road through the compound. "It's a public road on private property," Karl said. The cabin to the south is owned by a man not affiliated with the compound. There's no other way to the cabin, and the compound cannot legally cut off the man's access, so the road will apparently be there as long as the owner of the cabin holds out.

Karl encouraged us to drive through the compound to the cabin and

assured us it was safe and permissible, so after the interview, we did. The road dead-ends at the cabin's driveway, and the cabin is perched right on the edge of the breathtakingly beautiful Red Canyon. I wondered how many in the compound have never seen the natural beauty just a few hundred yards from their walled-up world.

Having seen all we could and needing to return to Rapid City, we hit the road, enjoying the sense of freedom and adventure that must be so foreign to so many inside the compound.

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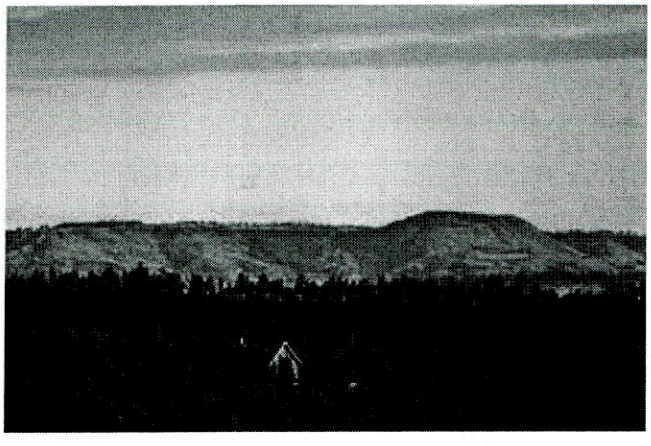
Religious compound's water could serve thousands, Park Service says



JANUARY 25, 2015 6:30 AM • SETH TUPPER JOURNAL STAFF

A rural Custer County compound inhabited by members of a reportedly polygamous sect would have enough water to become the county's most populous community if an additional well permit is approved by the state, a staunch opponent of the application asserts.

William Hansen, chief of the Water Rights Branch of the National Park Service, wrote that another well would mean the compound 15 miles southwest of Pringle would have enough water to serve 4,372 residents. At present, estimates of the population of the compound peak at about 300.

"For the sake of comparison," Hansen wrote in a petition protesting the additional well, "according to the 2010 census the population of Custer, which is the largest town in Custer County, was 2,067 residents."

Circumstances surrounding the sect — the Fundamentalist Church of Jesus Christ of Latter Day Saints, often referred to as the FLDS — suggest that there may be plans for a sizable increase in the population at the Pringle compound.

The group's 1,700-acre Texas compound, where as many as 700 people once lived, was seized by state authorities in April following years of documented cases of underage brides bearing children fathered by older men. There's also an ongoing legal fight over FLDS trust-owned homes in a Utah-Arizona border town that has resulted in some evictions.

Sam Brower, an author and well-known investigator of FLDS activities, surmises that "a couple thousand" people eventually will live on the

compound.

The Park Service, which operates Wind Cave National Park about 13 miles east of the proposed well site, is one of nine organizations or people that beat the deadline for filing petitions opposing the permit for the additional well. The petitions will force the state Department of Environment and Natural Resources to schedule a hearing of the Water Management Board.

DENR analysts have recommended approving the application.

The United Order of South Dakota, a trust that owns the 140-acre compound, wants to drill a third well. The trust is affiliated with the FLDS, which has continued the practice of plural marriage since its long ago split from the mainstream Mormon church. FLDS members live in several enclaves in the western United States, including the remote Black Hills compound, and in Canada.

Some neighbors of the South Dakota compound filed petitions against the well permit. *(See "Compound's neighbors fear Waco-like situation," Page A5)*

In the National Park Service's lengthy petition filing, Hansen used an estimate of per capita domestic water use in South Dakota to calculate that 4,372 people could be served by the compound's requested water usage. Seemingly nobody outside the compound knows exactly how many people live there. A 2013 state drinking-water report says the compound's current water system serves 75 people.

Nearby residents and Custer County officials have estimated there could be between 100 to 300 people there.

The well permit would more than triple the compound's total allowable use of the Madison aquifer, from 94 gallons per minute to 300. Additionally, the compound's 30,000-gallon underground water tank would be replaced with a 250,000-gallon above-ground tank, and 4-inch water mains would be replaced with 6- and 8-inch mains.

The man who submitted the application for the compound is Seth Jeffs, brother of Warren Jeffs, the former head of the FLDS. Warren Jeffs, who married multiple underage brides as young as 12, is serving a life sentence for sexual assault and aggravated sexual assault of children.

Seth Jeffs was convicted in 2006 of helping to hide Warren Jeffs from authorities.

Seth Jeffs is listed as the certified operator of the South Dakota FLDS compound's water system.

The National Park Service, in its petition letter, relied on usage reports filed with state regulators to calculate the compound's average annual water usage, which is 25.9 acre-feet. The petition says that amount "is sufficient to meet the customary domestic needs of 234 persons."

Complicating the estimates are the extensive gardens, visible in aerial photos of the compound, which presumably require a significant amount of water.

Seth Jeffs, when contacted weeks ago by the Rapid City Journal and asked how many people live in the compound, said "I don't have that information." During a more recent follow-up call, he declined to answer any questions.

Brower, the Utah-based private investigator whose book about the FLDS, "Prophet's Prey," has been adapted for a documentary premiering this month at the Sundance Film Festival, speculates the South Dakota compound will grow. He said estimates of the population of the Texas compound before it was raided in 2008 were as low as 100 to 200, but that number was far surpassed by just the number of children who were found there.

"They may not get 4,000 there," Brower said of the Pringle-area site, "but they're probably counting on a couple thousand. Their thinking is that the end of the world is coming, too, and they're going to have to make their way, so they need as much water as they can get."

Two-day series on FLDS compound

Today

- Well application would provide enough water for thousands at religious compound near Pringle. Critics weigh in.

Monday

- What is it like to live 300 yards from a secretive religious compound? What is the scene at the compound site?

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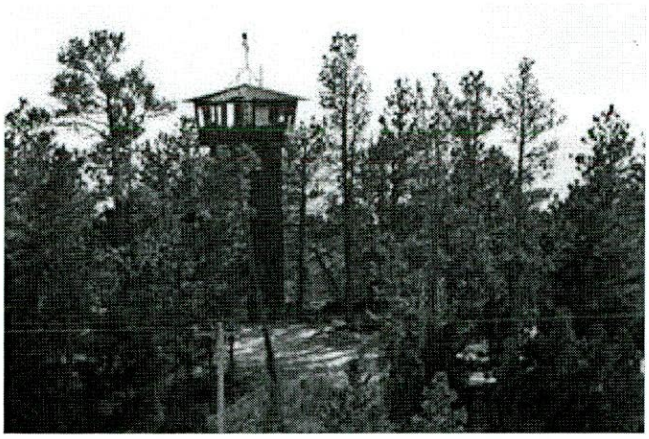
Compound's neighbors fears Waco-like scenario



JANUARY 25, 2015 6:30 AM • SETH TUPPER JOURNAL STAFF

PRINGLE | The FLDS religious sect's compound in South Dakota's southern Black Hills was remarkably noncontroversial the past few years.

After the initial land purchase in 2003 and the hubbub around the early development, the place faded into the rugged and remote landscape of rural Custer County. Outsider gossip and curiosity continued, but attention from the media dwindled, boiling tensions with neighbors settled to a simmer, and compound leaders seemed to ingratiate themselves with some local officials.

So when the compound requested permission from state government to drill a third water well, its leaders might have expected a quick and quiet process. Things almost went that way when state analysts recommended approval of the permit.

Then the letters started showing up at a state office in Pierre.

"If Custer County P and Z is going to put its head in the sand," said one of the letters, referring to the county's planning and zoning office, "I guess it will take Pierre to do something before this turns into Waco, Texas."

Waco was the site of a 1993 federal siege at a Branch Davidian compound that ended in the fiery deaths of 76 members of the religious sect.

The comparison was drawn by Linda Van Dyke Kilcoin, who identified herself as an owner of land adjacent to the South Dakota compound. Her letter is representative of the once-dormant feelings stirred back to life by the well application.

A legal notice of the application was required, including publication in this newspaper and in the Custer County Chronicle. A total of nine people or organizations responded to the notice with letters opposing the well. Those letters forced a future public hearing.

The letters run the gamut, from handwritten condemnations of the compound dwellers' religious practices to multi-page treatises by federal bureaucrats concerned about an underground aquifer and about the possible damage the well could do to caves and rare plant species.

Permit would triple water capacity

Though the 140-acre enclave 15 miles southwest of Pringle may be reminiscent of the Branch Davidian compound, there is no formal link. The Branch Davidians were the result of a long-ago splinter in the Seventh-Day Adventist Church. The compound near Pringle is associated with the Fundamentalist Church of Jesus Christ of Latter-Day Saints, known as the FLDS, which split decades ago from the mainstream Mormon church.

FLDS members reportedly continue to practice plural marriage, and their former leader, Warren Jeffs, who is said to have married multiple underage brides as young as 12 years old and dozens of adult ones, is serving life in prison for sexual assault and aggravated sexual assault of children.

Warren Jeffs' brother, Seth Jeffs, submitted the well application and is listed as the certified operator of the water system. In 2006, Seth Jeffs was convicted of harboring Warren Jeffs, who was then on the run from law enforcement.

The well permit would more than triple the compound's total allowable use of the Madison aquifer from 94 gallons per minute to 300.

Seth Jeffs, when contacted by the Journal, has refused to say why the extra water is needed or how it will be used.

Neighbors critical of application

Among the nine letters sent to Jeanne Goodman, chief engineer of the state's Water Rights Program, seven are from private residents and two are from federal government agencies.

Questions, accusations and anger about the compound's secrecy typify the letters from private citizens.

Toni Martin, of Rapid City, called the FLDS a "devious group" and said allowing the compound to get a well permit "with no substantial reason" would be "insane."

"Why do they have locks on gates, a watch tower at the entrance, etc.?" Martin wrote. "Do the research on our aquifers; don't be stupid and duped."

Doug Lesher, acting manager of the Stone Meadow Ranch, said he runs an elk operation consisting of 29 animals and sometimes has bison.

"I am concerned that they will run the aquifer dry and I won't have any water for my elk and buffalo," Lesher wrote. (An analysis by the state Department of Environment and Natural Resources has found the additional well "will not likely have a noticeable effect to the Madison aquifer.")

Dean and Delia Johnson, of Fairburn, wrote that they belong to a 96-square-mile, 60-member rural water association with 200 miles of pipe. Their association, the petition said, is permitted to draw 250 gallons per minute from the Madison aquifer, 50 gallons per minute less than what the compound is requesting.

"Water in western South Dakota is a very valuable, tenuous element," the Johnsons wrote. "We are very concerned about overuse, misuse and abuse of this resource."

Threats to rare plants, Wind Cave

In contrast to the broader criticisms leveled by private citizens, two federal agencies took direct aim at the four criteria the South Dakota Water Management Board will ultimately use to consider the application: whether unappropriated water is available from the aquifer, whether existing water rights would be unlawfully impaired, whether the proposed use is beneficial, and whether the proposed use is in the public interest.

Letters from the National Park Service and U.S. Forest Service cited ways in which their analysts say the proposed well would violate the four criteria.

Craig Bobzien, supervisor of the Black Hills National Forest, wrote that the proposed well, in combination with other existing and future uses of the aquifer, could harm a "rare warm water spring ecosystem" in the area.

"There are four rare plant species documented to occur at Cascade Springs and along Cascade Creek that do not occur anywhere else in South Dakota," Bobzien wrote, adding that the Forest Service "is concerned that reduced water flows at Cascade Springs could adversely affect the survival and viability of these rare plant species."

The most thorough attack on the application came from the National Park Service, which operates Wind Cave National Park about 13 miles east of the proposed well site. The chief of the Park Service's Water Rights Branch, William Hansen, wrote a four-page letter Dec. 19 and followed it with a four-page amendment and 11 pages of attachments Jan. 15.

Hansen used per capita domestic water usage in South Dakota to estimate that the water rights sought by the compound would be enough to serve 4,372 people, 58 times more than the 75 people the compound lists as inhabitants on state drinking water reports.

In a point-by-point dressing down of the compound's application, Hansen goes on to assert that:

- Pumping from the proposed well could increase the frequency and duration of dry periods in parts of Wind Cave, and "these impacts could significantly affect the cave forming processes";
- The compound has never supplied copies of well logs, pump-test data and water usage that it promised to give the Park Service when the compound received permission to drill its initial wells;
- And, the 2009 transfer of compound ownership from the South Dakota-registered corporation known as United Land Management to the trust known as United Order of South Dakota, for which the Park Service found no legal registration in South Dakota, means "it is unclear what the legal status of the United Order of South Dakota is under South Dakota law."

Hansen called the application "wholly speculative" and wrote that the compound "may be seeking to appropriate groundwater for other than traditional domestic uses."

Kilcoin, the neighboring landowner, offered the bluntest criticism of all.

"As locals, we know what is going on in there and we don't want to see it expand," she wrote. "We value our 12 year old girls in South Dakota. Help us!"

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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denr.sd.gov

September 10, 2015

NOTICE OF HEARING

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing and Revised Recommendation in the matter of Water Permit Application No. 2730-2, United Order of South Dakota

The Water Management Board conducted the evidentiary hearing in the matter of Water Permit Application No. 2730-2 on July 9, 2015. At the conclusion of the testimony, the Board passed a motion to reopen the evidentiary portion of the proceeding and to continue the proceeding until the next regularly scheduled meeting of the Board to be October 14th in order to permit applicant to provide additional evidence concerning the need for the water requested from the well, Application No. 2730-2.

The Water Management Board will reconvene the hearing on Application No. 2730-2 at 9:30 AM (Central Time) on Wednesday, October 14, 2015, Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. This hearing is for the narrow scope of United Order of South Dakota providing additional evidence regarding their need for the water requested. The agenda time is an estimate. Future notice will be provided to all parties if there is a change to the hearing time or date.

The Chief Engineer has revised the recommendation for Application No. 2730-2 to reflect amendments adopted by the Board at the July 9, 2015 meeting. Enclosed is the revised recommendation dated August 25, 2015.

Questions regarding the hearing process may be directed to Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215.

Enclosure

c: Ann Mines-Bailey, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:

Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525

Lois Witte, Counsel for United States Forest Service
740 Simms Street, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
225 South Pierre Street, Suite 337
Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending APPROVAL of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) evidence is not available to justify issuing this permit without a 20 year term limitation, 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. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

(continued)

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
August 25, 2015

NOTE: This revised recommendation reflects the amendments adopted by the Water Management Board on July 9, 2015 to the recommendation dated June 1, 2015.

CERTIFICATION

I hereby certify that on September 10, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated September 10, 2015, regarding scheduling the hearing for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Jeffrey R Connolly, Counsel for United
Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Sent Inter-office to:

Ann Mines- Bailey, Assistant Attorney
General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of September, 2015

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

October 2, 2015

NOTICE OF HEARING

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Changing Hearing Time for Water Permit Application No. 2730-2, United Order of South Dakota

Due to an agenda change, the hearing on Water Permit Application No. 2730-2 is being rescheduled from 9:30 AM to 1:00 PM on Wednesday, October 14, 2015.

The Water Management Board will reconvene the hearing on Application No. 2730-2 at 1:00 PM (Central Time) on Wednesday, October 14, 2015, Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. This hearing is for the narrow scope of United Order of South Dakota providing additional evidence regarding their need for the water requested. The agenda time is an estimate.

DENR has received correspondence via email from citizens asking that their comments be forwarded to the Water Management Board. The packet sent to the Board prior to the hearing will include this correspondence. Enclosed are those emails and attachments received on or before October 2, 2015. If more emails are submitted they will be provided to the board and parties at the October 14th meeting.

Questions regarding the hearing process may be directed to Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215.

Enclosure

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 2, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated October 2, 2015, regarding change of the hearing time for Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Sent Inter-office to:

Ann Mines- Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of October, 2015

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:

Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525

Lois Witte, Counsel for United States Forest Service
740 Simms Street, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
225 South Pierre Street, Suite 337
Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

Gronlund, Eric

From: Linda Rae Barker <lindarae08@gmail.com>
Sent: Thursday, September 10, 2015 9:25 AM
To: Gronlund, Eric
Subject: Re: FDLS Water Permit, Pringle SD, 2730-2

Subj: Water permit 2730-02 FDLS - Pringle, SD

Dear Mr. Gronlund,

I own property in Canyon Rim Ranch, Pringle South Dakota. You, most likely, have heard from other property owners in this beautiful area of the Southern Black Hills.

The polygamist organization, FDLS, has applied for an increase in their water rights on the property which they purchased and developed on the North side of Red Canyon. Not only has it been frustrating to have this sect near out property, now they are apparently planning to increase the population at the compound.

I am sure that you are aware of the practices of the FDLS...Warren Jeffs is their founder and Seth Jeffs, his brother, is directly involved in the operations of the South Dakota site.

My husband and I purchased this property with a dream to build a home for retirement and family get togethers. My family has deep roots in South Dakota. My paternal grandfather settled near Dupree/Isabel and was a well respected rancher with a sizable spread. My maternal grandfather, Wesley Clark from Redfield, was the Attorney General of the State of South Dakota. My uncle Sterling Clark from Belle Fourche served also as Attorney General for the State. My father and mother were both graduates of Yankton College. My father is now 97 years old and very active in Rapid City.

In 2013 my husband passed away. At the time I was living in Rapid City. My daughter and her husband moved to the Denver area, and I elected to relocate to be close to family. It is no longer practical to maintain the property in Canyon Rim. I attend the Homeowners meetings every year, taxes and dues are paid current, however, I am making an effort, regretfully, to sell my land.

We have an interested party at this time, however, their main concern is the presence of the FDLS community and the disturbance their sect has created in this area. The practices of this group and the subsequent publicity surrounding same are making it very difficult to sell a property in Canyon Rim.

I am requesting that you take whatever measures you need to stop the approval of the Water Permit request submitted by the FDLS - United Order of South Dakota. Please help us maintain integrity in this beautiful region. The homeowners who are already there are good, responsible people who love the peace and quiet of Red Canyon.

All efforts will be appreciated.

Respectfully,

Linda Rae Barker
Lakota I - Canyon Rim Ranch, Pringle South Dakota
605.390.6783
lindarae08@gmail.com

Gronlund, Eric

From: Julie Turner <giddieup@hotmail.com>
Sent: Thursday, September 10, 2015 12:55 PM
To: Gronlund, Eric
Subject: SD water permit application number 2730-2 9-10-15

Dear Mr. Gronlund, Water Rights Program:

I'd like to voice my deep concern about the FDLS compound's request for increased water usage in Custer County. To grant them this request would be an overwhelmingly bad decision for the public interest.

My husband and I are long-time visitors to the Black Hills. Since childhood I have dreamed of living there. We have been seriously pursuing a land purchase in Custer County. One of our prime choices had us driving directly by the FDLS compound. It is unsightly and noisy. We immediately erased that property from consideration. There is no way we wanted to drive by that eyesore daily, nor listen to construction at all hours of the day and night. They have ruined the beautiful Black Hills forest scenery and continue to build unsightly structures.

No one selling land was very forthcoming about what the FDLS was, so looked up information about this organization at our local library and read many news articles. In particular, I read "Prophets Prey" by Sam Brower, the man responsible for gathering much of the information that resulted in placing Warren Jeffs in prison. If you have not, I would strongly encourage you to read this book. I was shocked and saddened at what I learned and even more dismayed that we as a country, are allowing this organization to continue on it's destructive path.

What is going on behind those walls has been proven by the State of Texas. To merely allow them to move their group from state to state and expect protection is insane. This is not a question about religious rights but instead rape, incest and pedophilia. They also do not pay their taxes. They hide money and force underage labor. They refuse to tell us how many people they have living there. What more do we need to have to deny them a permit for more water? Any other organization would be denied.

Custer County, the State of South Dakota and it's citizens need to sum up the courage to take a firm stand. If this place remains in operation, it will ultimately result in many negative affects,

including tourism. South Dakota has already lost one potential constituent, as we have sadly decided that until this compound is closed, we are not considering living there. We can not live in a county/state that refuses to acknowledge and do something about the wrong doing going on in their own backyards.

Please forward this letter to the Water Management Board. Thank you for your time and consideration.

Jim & Julie Turner

Adel, Iowa

Gronlund, Eric

From: John Buchanan <jbjohnnyb2@mac.com>
Sent: Thursday, September 10, 2015 1:09 PM
To: Gronlund, Eric
Subject: Water permit application 2730-2

Mr Gronlund,

I am writing to you about the upcoming hearing on the water permit application referenced above, #2730-2, and to ask you to please do whatever you can to deny this application. My wife and I own two parcels of land in Custer county and plan to build our retirement home on five acres not too far from the FLDS compound that is asking for this large increase in water use. We are customers and users of the Southern Black Hills Water System (SBHWS) and strongly believe that the increase in water use and storage capacity by this group is definitely NOT in the public interest.

There are concerns about the real need for this large increase in water use and nobody can tell us how many people this group plans to serve with all this water. I pay my taxes on the our land on time every year as well as maintain two water accounts with SBHWS in good standing, and just want to have our voices and serious concerns heard by those in a position to make this decision.

We are members in good standing of the public and believe that allowing this permit is not in the public interest.

Thank you for your time and consideration,

John A. Buchanan and Mary Helen Dirkes
503-332-3598
jbjohnnyb2@mac.com

Gronlund, Eric

From: Nancy Nuttbrock <nancynuttbrock@gmail.com>
Sent: Thursday, September 10, 2015 8:58 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Dear Mr. Gronlund,

{Please forward this email to the Water Management Board.}

I am certain that you are all aware of the problem we have in Custer County. The Fundamentalist Church of Jesus Christ of Latter Day Saints, or FLDS, has a compound near Pringle, and it appears that they are planning to increase their population.

The cult members are not nice people, upstanding citizens, or good neighbors. As an organization, the FLDS is well known for polygamy, arranged marriages between underage girls and old men, child rape, and the expulsion of young men. Those who think that the Pringle FLDS community is different, and consists of only benevolent members, are kidding themselves.

The people who live in the compound are not model citizens. They choose to delay paying property taxes for as long as possible, up to 3 years. Consequently they are in arrears by hundreds of thousands of dollars. The county does not have enough money for education and roads. Imagine how a few hundred thousand dollars would help if the FLDS members paid their property taxes on time, like the vast majority of county citizens do.

The compound members are not good neighbors. When they are in construction mode, they operate day and night, running heavy equipment that is very noisy, and illuminating the area with bright lights after dark.

The South Dakota Water Management Board is currently considering a permit application from the FLDS to drill a new well, which would increase its capability to pump water from 100 gallons per minute to 200 gpm, to replace a 30,000 gallon underground water tank with an above ground tank of at least 250,000 gallons, and to replace existing main lines with 6" and 8" lines. By contrast, the Southern Black Hills Water System, which services 350 customers, has a 100 gpm well, a 125,000 gallon storage tank, and its largest main lines are 6". The FLDS compound is 140 acres. The SBHWS territory covers many square miles.

The FLDS compound near Pringle appears to be preparing for more members. Many of these could be coming from the Yearning for Zion FLDS temple in El Dorado, which was closed by the state of Texas.

Denial of the latest FLDS well permit application by the Water Management Board could prevent a significant increase in population in the Pringle compound.

The Water Management Board held a hearing in Pierre in July to consider the application. I was present, and testified in opposition to the permit approval, on the grounds that granting increased use of state water by the FLDS would not be in the public interest. Other people spoke out against the approval of the permit as well, on the same grounds.

Seth Jeffs testified on behalf on the permit approval. Seth is the brother of Warren Jeffs, the FLDS leader who is in prison. Seth is the water operator for the Pringle FLDS, and filed the permit application. In spite of many questions from lawyers and board members, Seth would not provide any information about how many people live in the compound, about what goes on in the compound, or about the United Order of South Dakota, the name of the trust for the FLDS in our state.

Eventually the frustrated board members voted to delay their decision until the next board meeting on October 14.

For the good of Custer County, its tax-paying citizens, ***this application must be denied***.

Nancy Nuttbrock
Custer County Property Owner
Cell: 307-421-7100

Gronlund, Eric

From: Steve Buttress <sbuttress@gmail.com>
Sent: Sunday, September 13, 2015 8:32 AM
To: Gronlund, Eric
Subject: Water permit application 2730-2

Eric

Would you please forward this message to the members of the water board. Thank you.

Dear Water Board Members

As I understand it, the standard for issuing the permit is, Is it in the public interest?

It's hard for me to see how enabling the FLDS to continue their industrial-scale expansion in the otherwise remote, peaceful and quiet canyon country is in the public interest.

The FLDS holds what they describe as 'religious beliefs'. Unfortunately those 'beliefs,' as described in the books "Escape" and "The Prophets Prey" are the excuses they use to violate the laws of our country. Those violations include polygamy, child sexual abuse and violations of child labor laws. This link describes the US Department of Labor's actions against the FLDS for such actions.

http://www.dol.gov/opa/media/press/whd/WHD20151660.htm#.VfDNk3rQqsU.mailto

The FLDS has not changed their 'beliefs." The only thing they have changed is their address, from Utah and Colorado and Texas to South Dakota. We will be dealing with the same criminal violations at the point when investigations develop the evidence to prosecute.

The Water Board can play an important role in limiting the damage the FLDS can do to its victims in the meantime. Vote "NO" on the permit application. You have ample evidence that it is not in the public interest. I'm certain that the input you are getting from the public is overwhelmingly opposed to the permit. You will be strongly supported in your refusal to grant the permit.

Thank you Steve Buttress

--
Steve Buttress
26835 Elk Run Rd.
Hot Springs, SD 57730

605 745-4691
308 236-9967
308 708-0113 cell

Gronlund, Eric

From: Keith and Kathy Rabuse <krabuse@earthlink.net>
Sent: Sunday, September 13, 2015 6:17 PM
To: Gronlund, Eric
Subject: Water Permit Application 2730-2
Attachments: E.Gronlund_Objection Letter SD Water Mgt Bd_09.13.15.pdf

Mr. Gronlund:

Please find attached a letter of objection to the Water Permit Application 2730-2.

We will greatly appreciate your forwarding a copy of the letter to the members of the Water Management Board prior to the hearing scheduled in October.

Regards,

Keith and Kathy Rabuse
Big Sky 7, Canyon Rim Ranch, Custer County, SD

September 13, 2015

Eric Gronlund
Water Rights Program
State of South Dakota
eric.gronlund@state.sd.us

Re: Water Permit Application 2730-2

Dear Mr. Gronlund:

We are owners of property at Canyon Rim Ranch in Custer County, SD. Please forward this message to the members of the Water Management Board.

We are writing to object to the application by the United Order of South Dakota (FLDS), Seth Jeffs, water operator, to increase their capacity to pump water from 100 gallons per minute to 200 gpm, and to replace their underground 30,000 gallon water tank with an above ground tank of at least 250,000 gallons, and to increase their main water lines from 6" to 8".

This application is not in the public interest.

The size of the FLDS property in the application is 140 acres. They have not identified how many people are currently served by their water system, and how many additional are planned to be served by this increased water, nor for what purpose the water is intended. In contrast, the Southern Black Hills Water System services 350 customers over many square miles, has a 100 gpm well, and a 125,000 gallon storage tank, and it's largest main lines are 6".

With an increase in water usage of the magnitude requested in the FLDS application, there is no documentation provided by them that shows that they have the capacity within their 140 acres to handle the additional septic/waste needs.

Their application intends for the FLDS to be self-monitoring and self-reporting. With their secretive nature and complete lack of transparency in this application alone, there should be no trust allotted to them in this regard. As an example of their disregard for local laws and regulations, they have established the habit of delaying payment on their county taxes for up to 3 years, continually maintaining a balance of hundreds of thousands of dollars. These people do not behave as good citizens and good stewards, and should not be afforded the benefit of trust.

No one knows how many people are living at the FLDS compound at this time, and whether their population exceeds that allowed by Custer County ordinances. It is suspected that their request for this very large increase in water service is intended for the purpose of further increasing the number of people living there.

The Custer County Construction Permit Requirements state:

> *"No more than two (2) dwelling units are allowed on any lot, tract or parcel of land. Each dwelling unit is required to have a separate wastewater disposal system."*

Further, the Custer County Individual On-Site Wastewater Systems Permit Requirements state:

> *"A site evaluation by a representative of the Custer County Planning Department will generally be required prior to the installation of any small on-site wastewater disposal system. ....*
> *An Individual Wastewater Disposal Permit will not be issued until the percolation test results and general layout of the proposed system have been approved by the Planning Director or his representative."*

Without confirmation by Custer County that the intended use on the 140 acre tract by the FLDS meets the regulations of the County for density and has been approved by the Planning Director for the necessary waste water disposal that will be generated by the greatly increased draw and use of water, the state Water Management Board should not approve an application for increased water draw, storage, and distribution on the property.

This application is not in the public interest.

Our water resources are precious. We strongly encourage the Water Management Board to reject Water Permit Application 2730-2. The applicant has not shown how they plan to use and manage the water, nor proven that they have a need for such a significant draw from our aquifers. There are deep ramifications to such a concentrated draw, and subsequent output, of water in a very small footprint.

Thank you for your kind consideration to our objection.

Regards,

Keith and Kathy Rabuse
Big Sky 7, Canyon Rim Ranch, Custer County, SD
krabuse@earthlink.net
214-289-4567

Jacobson, Gail

From: Nielsen <wnconnected@gwtc.net>
Sent: Wednesday, September 16, 2015 5:18 PM
To: Gronlund, Eric
Subject: FLDS Water

Please forward this message to the Water management board

I strongly object for the FLDS to drilling a new well. I very concerned as water is not a renewable resource and to limit this well to any group is not ok with me. Please pass this along.
Thank you
Nina Nielsen

Jacobson, Gail

From: Nielsen <wnconnected@gwtc.net>
Sent: Friday, September 18, 2015 11:09 AM
To: Gronlund, Eric
Subject: application number 2730-2

Please forward this message to the Water management board

I strongly object for the FLDS to drilling a new well. I very concerned as water is not a renewable resource and to limit this well to any group is not ok with me. Please pass this along.
Thank you
Nina Nielsen

Jacobson, Gail

From: Marc & Jeana Shaw <shawseano@goldenwest.net>
Sent: Friday, September 18, 2015 11:08 AM
To: Gronlund, Eric
Subject: water permit application 2730-2

Mr. Gronlund:

I am writing to ask you to forward a message to the Water Management Board to deny the water permit application for the FLDS compound located in Pringle (application #2730-2). Granting this organization additional water from the state is NOT in the public's best interest and will adversely affect property values in the area. Please do not allow this application to go through.
Thank you.

Respectfully,
Jeana and Marc Shaw

Jacobson, Gail

From: SDSooze <sue_stimson@hotmail.com>
Sent: Friday, September 18, 2015 11:45 AM
To: Gronlund, Eric
Subject: Water Management Board: Permit Application 2730-2

Importance: High

Please do not permit additional water to the FLDS near Pringle. If they don't know, or won't report, the number of residents, how can they justify the need for additional water? Water is a very scarce resource here in western South Dakota and not to be squandered mysteriously.

Sincerely, Susan Stimson-Sugzda

Jacobson, Gail

From: Leon Handrick <leonhandrick@yahoo.com>
Sent: Friday, September 18, 2015 3:23 PM
To: Gronlund, Eric
Subject: FLDS in Pringle SD

I live in Custer and spend the winters in Austin, TX. Several years ago while in Texas I read with a great deal of interest the State's closing of the FLDS compound and incarceration of Warren Jeffs for reasons everyone is aware of to include child molestation disguised as spiritual marriages. The FLDS in Texas is the same as the FLDS in South Dakota. Their request for more water is to accommodate an influx of members from Texas, Utah and Arizona. Their request should be denied as a pursuit to further their illegal activities; aka crimes of polygamy and statutory rape.. As an observation, shouldn't So. Dakota pursue the legal steps that Texas did?

Please forward this message to the Water Management Board.

Thank you;

Leon Handrick
PO Box 180
Custer, SD 57730

Jacobson, Gail

From: Linda M. Hasselstrom <lindamichele777@gmail.com>
Sent: Sunday, September 20, 2015 12:00 PM
To: Gronlund, Eric
Subject: Water permit for FLDS

Dear Mr. Gronlund and the Water Management Board,

Thanks to the intelligent editorial written by Custer resident Mike Fleming and published by the Custer County Chronicle, I am asking you to include my name among those protesting the granting of any water permits to the FLDS group in Custer County.

As the board surely knows, and as I have probably written in every single of my 15 published books, water supplies have always been precarious in western South Dakota. They are particularly precarious in the southwestern part of my county, and already strained by the demands of developments like the Tatanka complex, and the proposed mining of uranium by the Chinese-owned company Azarga.

Custer County has always been agriculture-based. Tourism businesses, while providing income, have also strained our resources, both in water, and in other ways.

Meanwhile, Custer County authorities say they have no legal basis upon which to provide control of the FLDS organization. Providing a permit for even more water will encourage the FLDS to continue their practices of raping little girls under the guise of religious freedom. Please help stop their influence by not allowing them to expand further in our county.

Thank you for passing my comments on to The Water Management Board.

Linda M. Hasselstrom
info@windbreakhouse.com

Author of:
JUST RELEASED: *The Wheel of the Year: A Writer's Workbook*
Dirt Songs: A Plains Duet, with Twyla M. Hansen; *No Place Like Home: Notes from a Western Life, Between Grass and Sky, Feels Like Far, Bitter Creek Junction, Land Circle, Dakota Bones, Going Over East, Windbreak, Bison: Monarch of the Plains, When a Poet Dies, The Roadside History of South Dakota, Roadkill, Caught By One Wing.*

Editor of Leaning into the Wind, Woven on the Wind, Crazy Woman Creek with Gaydell Collier and Nancy Curtis; also editor of Journal of a Mountain Man, by James Clyman.

Website: www.WindbreakHouse.com
Facebook: www.Facebook.com/WindbreakHouse
Blog: WindbreakHouse.WordPress.com

Windbreak House Writing Retreats
PO Box 169, Hermosa, SD 57744
voicemail (605) 255-4064

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 10:48 AM
To: Jacobson, Gail
Subject: FW: Application #2730-2

From: Chic Keeley [mailto:cmkeeley55@gmail.com]
Sent: Monday, September 21, 2015 10:43 AM
To: Gronlund, Eric
Subject: Application #2730-2

Allowing the FLDS to acquire more water from the state is not in the public interest.

Please forward this message to the Water Management Board.

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 11:03 AM
To: Jacobson, Gail
Subject: FW: application number 2730-2

From: Pete&Edie [mailto:petedie@goldenwest.net]
Sent: Thursday, September 17, 2015 8:13 PM
To: Gronlund, Eric
Subject: application number 2730-2

To whom it may concern at the South Dakota Water Management Board.
In reference to water permit application number 2730-2. As a resident of Custer County, I request you reject this application as allowing the FLDS compound to acquire more water from the state is not, in my opinion, in the best interests of the residents of Custer County.
Thank you,
Peter Burkett, Custer, SD

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 12:47 PM
To: Jacobson, Gail
Subject: FW: FLDS
Attachments: FLDS.doc

From: Paul VanBockern [mailto:pvb@wrrestaurants.com]
Sent: Monday, September 21, 2015 12:15 PM
To: Gronlund, Eric
Subject: FLDS

Mr. Gronlund
Please share my thoughts with the water board. I also sent a similar message to the Governor

Thank you

Paul Van Bockern
CEO
WR Hospitality LLC
3211 W. Sencore Drive
Sioux Falls, SD 57107
605/965-1470

Paul Van Bockern
3209 Rivers Edge Way
Sioux Falls, SD 57105
Cell 605-351-6559
E-mail: pvb@sio.midco.net

Mr. Eric Gronlund

My wife Karen and I own property in southern Custer County. Canyon Rim Ranch, is a wilderness preservation development where 29 property owners have either built their cabin and living the dream or continue to dream of building a cabin in the Black Hills.

We and many of our neighbors have a problem and are asking for your help. On the surface if appears to be about water but the results much deeper with the potential of affecting all of South Dakota. The South Dakota DENR Water Management Board is currently considering an application from the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS). In addition to their current well or wells they now are asking permission to drill another 200 gpm well, which if approved would lead to an uncontrolled expansion of this polygamist compound.

We are opposed to the expansion and their application for this additional well. It is interesting to read the testimony Seth Jeffs, the compounds water manager and brother to the famed Warren Jeffs, offered to the Board in July. He offered no reasons for the water expansion or did he answer many of the questions posed to him by the Board. At the hearing on July 10 everyone from the public who was able to give comment was opposed to this new application.

No one really knows what goes on in the guarded compound but all speculate the same as happened in Texas. This South Dakota problem will only grow along with the numbers of members in the community if additional water permits are granted to the FLDS without valid reasons and without regular inspections to verify water consumption. Just not an annual report left to the compound leadership.

It's amazing to stand at the rim of Red Canyon looking across to the Compound to see the expansion taking place and the environmental damage created in just a few years. The concerns are real and at some point as neighbors we hope the FBI, County and State law enforcement officials will develop the evidence needed to close the operation and seize the property. In my opinion it is not a matter of if only a matter of when.

As you know the The Water Board meets again mid-October. My hope is Seth Jeffs once again offers no reasons for expansion of wells in the compound making denial much simpler for the Board.

I know you are already aware of this ever increasing problem in Custer County and ask that you share my views with the water management board. Perhaps the many voices who wish to stop the drilling of an additional well by the FLDS will be heard. The leaders of this cult are not good neighbors or for that matter good citizens of Custer County and the State of South Dakota.

Regards,

Paul Van Bockern

Paul Van Bockern

Jacobson, Gail

From: Gronlund, Eric
Sent: Monday, September 21, 2015 4:21 PM
To: Jacobson, Gail
Subject: FW: Application # 2730-2 water permit for FLDS

From: Oestmann, Shelia
Sent: Monday, September 21, 2015 3:52 PM
To: Gronlund, Eric
Subject: Application # 2730-2 water permit for FLDS

Dear Eric,

I'm am writing in regards to the FLDS Compound water permit request. I am very much against this request. I'm a Pringle resident and water is a precious commodity. Please seriously consider denying this permit.

Thank you for your time and consideration.

Shelia Oestmann
26161 Bowman Ridge Rd
Po Box 138
Pringle, SD 57773
605-673-5792

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Jacobson, Gail

From: Gronlund, Eric
Sent: Wednesday, September 23, 2015 7:52 AM
To: Jacobson, Gail
Subject: FW: Letter to the Water Management Board
Attachments: Eric Gronlund of the Water Rights Program.docx

-----Original Message-----
From: Terry Johnson [mailto:terryjohnson@goldenwest.net]
Sent: Tuesday, September 22, 2015 5:48 PM
To: Gronlund, Eric
Subject: Letter to the Water Management Board

Mr. Gronlund,

Please forward our letter to the Members of the Water Management Board.

Thank you.

Scott and Terry Johnson

26680 Buffalo Butte DR
Hot Springs, SD 57747
September 18, 2015

Dear Members of the Water Management Board:

We live approximately 4 miles from the Fundamentalist Latter Day Saints (FLDS) Compound near Pringle, SD. FLDS members rented a home in our subdivision for two years. We have been vocal about our concerns about the abuse of children and spoken to the following people:

- Spring 2013, editor of the Custer County Chronicle, from whom we ask for anonymity at that time,
- Summer of 2014, Congresswoman Kristi Noem's aide in the Rapid City office,
- April 2014, agents from the Division of Criminal Investigation and U. S. Homeland Security came to our home regarding the FLDS activity in our subdivision.
- April 2015, Senator John Thune's aide in the Sioux Falls office.
- June 2015, Seth Tupper, investigative reporter of the Rapid City Journal,

In addition, in May 2014 we and the other two officers of the Pine Butte Subdivision Homeowners' Association met with the Custer County Sheriff and deputies, and two special agents from the SD Division of Criminal Investigation. All were interested in what we learned living near members of the FLDS who were living outside the compound.

We were told by the Custer County Sheriff that the home rented by the FLDS was used as a "house of proving." It doesn't take much imagination to figure what a House of Proving means when older men and very young women and children are involved. We are concerned about the obvious future expansion of the FLDS Compound near Pringle, SD particularly in light of their application to drill a new well increasing their water capacity from 30,000 gallons to 250,000 gallons, which doubles the size of the existing Southern Black Hills Water System tank serving approximately 350 homes.

Attached is a letter we sent in January 2015 to U. S. Senator John Thune, U. S. Senator Mike Rounds, U. S. Representative Kristi Noem, S. D. Governor Dennis Daugaard, S. D. Attorney General Marty Jackley, S. D. State Representative Mike Verchio, S. D. State Representative Bruce Rampelberg, S. D. State Representative Lance Russell, Custer County Commissioner Chairman Phil Lampert, Custer County Commissioner Mark Hartman, Custer County Commissioner Travis Bies, Custer County Commissioner David Haseltine, Custer County Commissioner Jim Lintz about the underage children suspected of being involved in sexual activity with and sexually abused by older men at the FLDS compound in Pringle. Only two of the 12 responded to our letter—Senator Rounds and Senator Thune. In addition to the abuse of its children, the FLDS creates local problems, for example, by taking over local political offices as witnessed in AZ and CO cities, water usage, houses in hiding and/or houses of proving. Because only one wife is recognized by the government, the other four, five, six or more may choose to receive government financial assistance, referred to by the FLDS as "Bleeding the Beast." There are multiple problems for local and state governments associated with the FLDS, but the most alarming and destructive is sexual abuse of children.

The residents you are currently hearing from have chosen to live here full time or part time. They bring expertise, experience and a willingness to help. Some volunteer their time in various capacities and some continue to work. Most contribute their time and their money to SD. Please listen to what they are saying before it is too late to stop a major migration of the FLDS.

The approval of the water permit will seal the deal for the FLDS in Pringle. The group can expand, and hundreds will move here. Sadly, children will continue to be abused. Pringle, SD can add to its legend as Elk Capitol of SD, Pedophile Capitol of SD joining the communities of Eldorado, TX, Hillsdale, UT and Colorado City, AZ. We ask you to take a stand against their absurd request, deny the water permit and therefore the expansion of the FLDS. Protect and save children.

Sincerely,

Scott Johnson, Terry Johnson
605-745-3826

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 7:45 AM
To: Jacobson, Gail
Subject: FW: water permit application 2730-2

From: Nancy Glassgow [mailto:nancygrn@gwtc.net]
Sent: Wednesday, September 23, 2015 6:15 PM
To: Gronlund, Eric
Subject: water permit application 2730-2

Mr. Gronlund, I would like for you to forward this on to the members of the Board who will be meeting in mid-October to consider the application of the FLDS compound near Pringle, South Dakota. I would very much like for the members of the Board to check out a book called, "Prophet's Prey" by Sam Brower who is himself a Mormon (not to be confused with the followers of Warren Jeffs who are NOT Mormons). I researched Mr. Brower before reading the book to be sure of his reputation and authority on the subject. Mr. Seth Jeffs who has been the one to come to Pierre and meet with the Board is a convicted felon who has molested young men but with the help of good lawyers got off with probation! This is not a group of people who go "quietly about their business" without hurting anyone. They are people who molest and abuse women and children; the fact that a large number of them are settled here in the Black Hills and are essentially doing whatever they please with no interest shown by law enforcement is very sad.I would be very happy to send my copy of this book to you if the Board would at least be willing to review it and consider what is written by this man. He has made it his job to try to help women and young men who break away from the group and try to live a normal life away from the sexual, physical, and emotional abuse.

Trust me, this issue is about much more than water; I realize that members of the Board may not want to get involved, but if they won't at least be willing to look into the history and abuse of this group, then perhaps we have a bigger problem to deal with. Apathy and just "sending the application on" will essentially give these people the blessing of the people of South Dakota to continue the abuse. It is about more than polygamy and to believe that they have the "right" to live their lives as they choose is to close our eyes to the fact that children and women are suffering every day in the middle of our beautiful Black Hills.

I am a nurse, a mother and a grandmother and I would do anything to expose the truth of what is happening there. Please, ask the Board who is considering this permit to do the same.

Thank you very much.

Nancy Glassgow
16455 Hwy. 1416
New Underwood, SD 57761

nancygrn@gwtc.net

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 9:37 AM
To: Jacobson, Gail
Subject: FW: Water Permit Application Number 2730-2
Attachments: Water Management Board.docx

-----Original Message-----
From: dhorner4@cox.net [mailto:dhorner4@cox.net]
Sent: Thursday, September 24, 2015 9:32 AM
To: Gronlund, Eric
Subject: Water Permit Application Number 2730-2

Mr. Gronlund,

Attached to this e-mail is a letter to the Water Management Board concerning the above referenced Water Permit Application. Please forward this letter to the Members of the Board.

Thank You,

David Horner

David Horner
14118 Ames Ave
Omaha, NE 68164

September 24, 2015

Water Management Board
South Dakota Department of Environment & Natural Resources
Joe Foss Building
523 E Capitol
Pierre, SD 57501

Re : Water Permit Application Number 2730-2

Dear Board Members,

As you are undoubtedly aware, there is increasing concern in Custer County and the State of South Dakota over the presence of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) in the southern Black Hills, near Pringle. This is the same organization whose principals of faith include multiple wives and the forced marriage of underage girls to men who are sometimes decades older. The leader of this organization, Warren Jeffs, was sentenced to life in prison in Texas for sexual abuse of a child. Many believe Warren Jeffs continues to direct the FLDS from prison. There are other FLDS communities in Utah, Arizona, Colorado and elsewhere.

The State of Texas has confiscated FLDS property, and the Federal Government is prosecuting the FLDS for discrimination against non-FLDS members in the Utah and Arizona communities. In addition, the Department of Labor has issued a $2,000,000 fine against the FLDS and its leadership, including Lyle Jeffs, one of Warren Jeffs brothers, for forcing underage children and others in the community to harvest pecans without pay. Forcing their underage children (some as young as 8 years old) to work is a very common behavior in all the FLDS holdings.

This sect, through a common law trust known as the United Order of South Dakota, owns a 140 acre compound outside Pringle. The trust, through its representative Seth Jeffs, has applied with the DENR to drill an additional well on the property that would double its current water withdrawal capacity of 100 gallons per minute, and to build a 250,000 gallon water tower. Seth Jeffs is the "water manager" for the compound and is another brother of Warren Jeffs. Seth was convicted of a felony for aiding Warren's flight from justice, prior to his arrest.

At the Water Management Board meeting in July, after intense questioning by opposition counsel, as well as members of the Board, Mr. Jeffs refused to answer any questions concerning the number of inhabitants of the FLDS compound or its need for the additional water. The Board, in frustration at Mr. Jeffs lack of candor, deferred a decision on the application until the next Board meeting in October, in order to obtain additional details in support of the FLDS application.

While Mr. Jeffs refused to answer any questions regarding the number of people residing at the compound, the maximum occupancy supported by its current wastewater permits is 126. Mr. Jeffs is seeking to withdraw 200 gallons per minute, and fill a 250,000 gallon water tower, for a maximum of 126 people. By contrast, the Southern Black Hills Water System, also located near Pringle, serves 350 customers over several square miles, with a 100 gallon per minute well and a 125,000 gallon water tower. The incongruity of Mr. Jeffs request is staggering. Without an established need, the FLDS application cannot possibly be in the best interest of the people of Custer County and South Dakota. In addition, there is concern whether Mr. Jeffs is even properly authorized to conduct such business on behalf of the United Order of South Dakota.

As a taxpayer in Custer County, I own a home one mile from the FLDS compound. I am writing to request that you examine the details of this application and require the FLDS to establish a compelling need for this additional water that is in the best interests of the people of South Dakota. Absent that need, your duty requires you to deny this application. Please bring the weight of your Board to bear to prevent the unnecessary and wasteful allocation of the natural resources of South Dakota.

"The Salvation of the State is Watchfulness in the Citizen" – H. B. Alexander

Thank you for your time.

Respectfully,

David Horner

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 11:19 AM
To: Jacobson, Gail
Subject: FW: #2730-2

-----Original Message-----
From: Lori [mailto:lanniegj@yahoo.com]
Sent: Thursday, September 24, 2015 11:16 AM
To: Gronlund, Eric
Subject: #2730-2

Dear Eric,
Please don't approve the new well for the FLDS group.
They are a cult that we don't want to encourage.
They have done nothing to reach out to the rest of the community, hiding their activities.
Thanks,
Jon and Lori Gjording
Custer, SD

God Bless America

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, September 24, 2015 2:27 PM
To: Jacobson, Gail
Subject: FW: Water permit application 2730-2

From: Kyran Mittelstadt [mailto:knmittels@gmail.com]
Sent: Thursday, September 24, 2015 2:23 PM
To: Gronlund, Eric
Subject: Water permit application 2730-2

Eric, please forward this message to the Water Management Board.

We as land and property owners near the Pringle, SD area do not feel that it is in our interest, nor the rest of the public, to allow the FLDS to acquire more water from the state.

Kyran and Nancy Mittelstadt
12007 Kimberly Dr.
Custer, SD

Jacobson, Gail

From: Dave <dwr84@live.co.uk>
Sent: Friday, September 25, 2015 5:02 AM
To: Gronlund, Eric; Dave
Subject: Water Permit Application-2730-2

Dear Sir,

I would be grateful if you would forward this e-mail to the Water Management Board of S.Dakota in connection with water application request No. 2730-2..

I have been notified of an application by the FLDS compund at Pringle to hugely increase their water extraction and storage. I wish to object strongly to this for the following reasons:

A. We are living in a fragile environment of water scarcity and extracting large disproportionate water volumes is not in the interests of Custer County.

B. Granting such a request is the same as the County and State implicitly supporting the growth of a community who are persistently delinquent on taxes, who have destroyed the environment they occupy, who infringe child and female human rights ,who have no regard for their neighbours as evidenced by their past 24hour construction habits and who refuse to state how many people live in their compound now or how many they plan to import in the future.

C. There are no grounds to treat anybody advantageously relative to the other inhabitants of Custer County.
The water supply and infrastructure provided recently by SBHWS is adequate for its other users and to allow one group of people to extract water at such a huge rate and volume bears no resemblance to the average use by other law and tax abiding members of Custer County.

Yours sincerely
David Rogers
Pringle ,South Dakota.
Sent from my BlackBerry® wireless device

Jacobson, Gail

From: L & C Van Zetten <leccvz@gmail.com>
Sent: Friday, September 25, 2015 1:25 PM
To: Gronlund, Eric
Subject: Water Permit application No. 2730-2
Attachments: FLDS water permit.docx

Mr. Gronlund - please forward the attached e-mail regarding the subject application to the Water Management Board on our behalf.

Claudia, Larry Van Zetten, Custer County residents

E Email Eric Gronlund

Water Rights Program eric.gronlund@state.sd.us

Forward msg to Water Mgmt Bd

Water Permit application No. 2730-2

The State Water Withdrawal Regulations state that when considering whether to grant a water use permit, two of the considerations are: the proposed use is beneficial and the use is in the public's interest.

It has been reported in the *Custer County Chronicle* that at a recent hearing in Pierre requesting a new well for the compound – permit application number shown above, Seth Jeffs did not answer the Board's question as to how many people live in the compound. If the FLDS representative is NOT answering the Board's questions, how can the Board legitimately grant the permit? The phrase...if you have nothing to hide, you have nothing to hide applies in this issue.

To provide additional information about this property...in March 2004 Custer County Planning issued a building permit for the subject property near Pringle. The stated reason for the permit was for a lodge to be used as a corporate retreat – 7 rooms to house 14 people. A play with words without the truth provided.

Even if Seth Jeffs did answer the Board's pointed question about the number of people living in the compound, along with other very relevant questions, their previous record with Custer County does not indicate truthfulness when specifics are requested.

Further, we see no means for this additional permit to be in the public's interest. Detrimental is more likely the case to the property owners surrounding the compound. Initially, the compound was issued a building permit for a retreat for 14 people. Now the number is undisclosed. No one knows how many people are located at this property and the amount of water needed in the future, and therein is one of the problems surrounding this sect.

Deny this permit request for increasing the pumping capability of the compound on the grounds that answers were not provided to meet the Board's criteria for approving same.

Claudia and Larry Van Zetten – Custer County Residents

Gronlund, Eric

From: Bart Ender <bartender0530@gmail.com>
Sent: Saturday, September 26, 2015 8:11 AM
To: Gronlund, Eric
Subject: permit application #2730-2

Mr. Gronlund-
I will be the first to admit I do not live in the area around the FLDS compound at Pringle. I do know, however, that the effects of their lifestyle
are not limited to just inside their fences. Allowing a group that maintains unlawful practices to expand into the area is tacit approval-
something I feel would be a bad idea unless we want to open up the area to more who share that philosophy.

For that reason, I would urge the resource board to deny the water permit for the FLDS compound.

Thank you,

Cabot Irvine
Rapid City SD
605-786-7247

Gronlund, Eric

From: David Frankel <davidcoryfrankel@gmail.com>
Sent: Saturday, September 26, 2015 11:05 AM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Hello,

Please forward this message to the Water Management Board concerning water permit application number 2730-2.

I am resident in Custer County.

I object to the increase in water requested by the FLDS in Pringle because (1) the FLDS and its representative Seth Jeffs has not been forthcoming about their plans or activities at their compound and secretiveness about such details should be grounds for denying the permit application; (2) water is precious and should not be allocated to a property, project or group without full disclosure of all material facts; (3) the FLDS at Pringle have not been good neighbors - they have over-utilized public resources such as the roads in the area to the detriment of other local residents; and (4) there is no reason why the FLDS at Pringle should have more access to water than any other property of similar size in terms of acres and they already have more access to water than properties of equal size.

Sincerely,

David Frankel
POB 143
Buffalo Gap, SD 57722

Gronlund, Eric

From: MAP Ranch <mapranch@gwtc.net>
Sent: Saturday, September 26, 2015 2:30 PM
To: Gronlund, Eric
Subject: Permit app #2730-2

Please forward to WATER MANAGEMENT BOARD

Dear Mr. Gronlund,

I am against allowing the FLDS (aka United Order of South Dakota) to acquire any additional water rights for their compound down by Pringle – period. Their current system should be enough for the size of their land. If they need additional water let them haul it like many many other land owning residents must do. Water is scarce enough in the Black Hills with the amount they are asking for - it's a huge opportunity to waste it among other things – what about the next drought?

VOTE NO and Against any approval – it is not in our public interest.

Sincerely,

Anita R. Pease
P.O. Box 807
Custer, SD

Gronlund, Eric

From: Karen Parry <karendparry@gmail.com>
Sent: Saturday, September 26, 2015 3:53 PM
To: Gronlund, Eric
Subject: Water Permit Application 2730-2

Eric, would you please forward this message to the SD Water Management Board? Thanks, Karen Parry

Dear Members of the SD Water Management Board,

In reference to water permit application number 2730-2 submitted by the United Order of SD & FLDS, I strongly encourage you to deny the request to drill a new well and increase the capacity of the water system for what appears to be a very high-density population for the FLDS land size.

Compared to the water capacity of Southern Black Hills Water System for number of customers and land acreage, the FLDS request is not a reasonable request for the type of land use appropriate for this area and in respect to the surrounding pre-existing landowners. Further, the refusal of the applicant to disclose the number of people at the FLDS site and its projected population, activities, and purposes as requested by your Board is not consistent with our SD values of honesty and transparency. The illegal practices of the FLDS is other states and their lack of consideration for their current neighbors in our southern Black Hills are additional indicators this it would be unwise to facilitate the FLDS expansion at this site by approving this permit.

In the best interest of SD's limited water resources, the surrounding landowners, and preventing future problems created by this high-density settlement, I trust you will deny application 2730-2.

Sincerely,
Karen Parry
6617 Carnoustie Ct
Rapid City SD

Gronlund, Eric

From: Carole Qualm <cqualm@gmail.com>
Sent: Saturday, September 26, 2015 5:36 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

please Do not allow the FLDS to acquire more water from the state. This is not in the best interest of the residents of South Dakota.

Sincerely,
Carole Qualm

Jacobson, Gail

From: elkayes@midco.net
Sent: Saturday, September 26, 2015 9:40 PM
To: Gronlund, Eric
Subject: FLDS water application

Mr. Gronlund,

Please add my name to the list of taxpayers in South Dakota requesting that the water application by the FLDS be denied. I believe this request is to go to the Water Management Board and the water permit application number is 2730-2. I personally believe we do not know all that is happening in this community and I would hate to see more taxpayer money being spent on things that may promote illegal activity.

Thank you for listening to my request.

Sincerely,

Linda Schilling
1711 Morningside Drive
Rapid City, SD 57701
elkayes@midco.net

Jacobson, Gail

From: Carol Jorgensen <jorgensen@gwtc.net>
Sent: Saturday, September 26, 2015 10:37 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Please forward this message to the Water Rights Program:
PLEASE DENY THIS PERMIT – IT IS NOT IN THE PUBLIC INTEREST.

I am a resident of Custer, SD.
There has been no way to validate the number of people who live on this property.
I do not understand why they need more water for the size of the property.
Water is a precious commodity.

The secretiveness of the FLDS compound south of Custer is very concerning to all of us.
I am concerned for the welfare and safety of some of the residents there.

The very idea of a "compound" has very negative connotations.
A **compound** is a type of fortification made up of walls or fences surrounding several buildings in the center of a large piece of land. Compounds can be designed to double as living spaces and military structures in the middle of hostile territory or as a military area within a country's territory; they are also used by the extremely wealthy, powerful, paranoid or criminal to protect against threats to themselves or their property.

By the definition above, the FLDS site seems, indeed, to be a compound. Third parties are not allowed into the site without an escort and it does not appear that all people inside the compound are free to come and go. Bringing more people into the "compound" would seem to me **NOT TO BE IN THE PUBLIC INTEREST.**

Jacobson, Gail

From: Robert Phares <rphares@gwtc.net>
Sent: Saturday, September 26, 2015 10:44 PM
To: Gronlund, Eric
Subject: Water Permit 2730-2

I am opposed to granting this application. FLDS should not be supported because of its treatment of underage girls. Please forward my position to the Water management Board.

Thanks,
Robert Phares
Hot Springs

Jacobson, Gail

From: Nathan Schwandt <njwschwan@gmail.com>
Sent: Sunday, September 27, 2015 11:46 AM
To: Gronlund, Eric
Subject: Water permit application #2730-2

Mr Gronlund: Please forward this message to the Water Management Board.

Dear water Management Board:

Please reject the Water permit application #2730-2. It is not in the best interest of the state and our community to allow the FLDS to acquire more water for their cult.

Nathan W Schwandt

Jacobson, Gail

From: Carolyn Terrill <roca@gwtc.net>
Sent: Sunday, September 27, 2015 3:41 PM
To: Gronlund, Eric
Subject: Water Permit application number 2730-2

Please forward to Water Management Board.

I do not believe that letting the FLDS acquire more water rights is in the public interest because of their secrecy about the number of people living there and secrecy about future plans needing more water. From the reports that I have read, they are not good neighbors--even the presence of a guard house raises uncertainty--and then there are the legal problems and convictions from other compounds.

Please vote against granting the application.

Sincerely,

Carolyn Terrill
27274 Wind Cave Road
Hot Springs, SD 57747

Jacobson, Gail

From: Velda Bishop <vibishop@aol.com>
Sent: Sunday, September 27, 2015 7:22 PM
To: Gronlund, Eric
Subject: FLDS AT Pringle,S.d..

In regard to the cult at Pringle, I can not believe the State ever allowed them in. What are you people thinking??? Theyshould be counted, this idea of no one knowing how many are there, come on. The Brother of a criminal in charge, gee sounds like what we need. There should not be a water permit issued to them and there would be a total investigation by the FBI as to their activity, lets put a little grip in this, I can't believe the wishy wash about it. Do you know a camp closed in Ciolo. and one in Texas there are about 4,000 that need a place----well do we need that??
The idea they can have armed gaurds at the gate in a tower, well that ought to tell the authorities some thing. And all the heavy equipement at the gates---what are they doing? of course no one knows. Waster permit app.no.2730-2denied. I am 87 yrs. old and this one stumps me.

Velda Bishop 605 343 6843
!643 Rushmore St.
Rapid City, S.D. 57702

Jacobson, Gail

From: Gronlund, Eric
Sent: Tuesday, September 29, 2015 8:49 AM
To: Jacobson, Gail
Subject: United Order

-----Original Message-----
From: Duvall, Ron
Sent: Monday, September 28, 2015 8:45 AM
To: James Kienitz
Subject: RE: Atten: Ken Buhler

Mr. Kienitz:

Just letting you know your message has been received and I am passing it on to the appropriate person.

Thank you,

Ron Duvall
SD DENR, Water Rights Program
(605) 773-3352
denr.sd.gov

-----Original Message-----
From: James Kienitz [mailto:jameskienitz@icloud.com]
Sent: Saturday, September 26, 2015 4:00 PM
To: DENR INTERNET INFORMATION
Subject: Atten: Ken Buhler

Dear sir
Hopefully this is being sent to the right source....if not, I apologize and ask if this could please be forwarded to the proper person/committee. Thank you.
This is in re to water permit application # 2730-2. FLDS compound no. of Custer, SD. The application for another well is deeply alarming to me because:
Obviously , is an incredibly important finite resource necessary for sustainable life. I realize all too well that this is "preaching to the choir". We are very grateful for everything you do to protect this.
We live in Woodland Hills in Black Hawk so you are familiar with our acreage and population. With careful attention to our systems/dispersal etc., we manage quite "well" with our one well, storage tanks etc. This includes not only water for drinking/cooking, but also lawn maintenance and several of the lots have rather substantial vegetable/flower gardens.
This FLDS compound has two wells if my information is correct. One of which simply needs repair. They also have storage capacity. .
I am NOT approaching this from my religious beliefs, but it is my understanding that the LDS belief encourages storing /providing necessities for future use. If our one well ran dry (which I note IS happening in one area of the U?S!), we are "dry". Why should this group of people have the right to deplete our aquifers?

In light of the above, I would like to go on the record as being firmly opposed, with reason, to this compound receiving a permit for another well..

Thank you for your consideration ,

Robin Kienitz
8804 Woodland Drive.
Black Hawk, SD
605-787-6562. john316jr@rap.midco.net

Sent from my iPad

Jacobson, Gail

From: Jeanann Goss <jeananngoss@gmail.com>
Sent: Monday, September 28, 2015 9:34 AM
To: Gronlund, Eric
Subject: FLDS

There is going to be a large influx of FLDS heading your way if you grant them additional water. The faithful in the UO have been told to be prepared to move. In the UO group are numerous children who have been taken from their parents.

They have been extinguished parents and having those parents sign their minor children over to a "worthy" family.

Jeanann Goss

Sent from my iPhone

Jacobson, Gail

From: Don and Cindy Walker <caw427don@rap.midco.net>
Sent: Monday, September 28, 2015 11:19 AM
To: Gronlund, Eric
Subject: FDLS application #2730-2.

Dear Sir;

Please forward to Water Management Board:
I am writing concerning the application by FDLS seeking more water rights. application number 2730-2. I don't believe this is in the best interest for South Dakota. Water is a precious resource to S. D. FDLS will not disclose their popluation, practices, or access to the compound. This is a cult. Why should South Dakota give them any water rights?

Concerned.
Don and Cynthia Walker

Jacobson, Gail

From: Gronlund, Eric
Sent: Tuesday, September 29, 2015 8:50 AM
To: Jacobson, Gail
Subject: FW: Water Permit Application 2730-2
Attachments: CRR Water issue.pdf

From: thomas carbone [mailto:tcdtd1@gmail.com]
Sent: Tuesday, September 29, 2015 8:49 AM
To: Gronlund, Eric
Subject: Water Permit Application 2730-2

Eric, I'm a landowner in Canyon Rim Ranch. Please forward my opposition to permit request 2730-2 to the Water Management Board. I have included the text below in the attached pdf. Please let me know if you need anything else/more for this to be effective.

To: South Dakota Water Management
Board 9/28/1
5

Re: Water Permit Application 2730-2

The water permit application 2730-2 to be considered by the Water Management Board on October 14, 2015 concerns me greatly. I do not believe it would be in the best interest of good standing South Dakota tax payers. It seems to me that until you can ascertain the need for the water it should be denied. When requesting access and use of public domain (in this case water) it is the public's right to know why and for what use. There should be no secrets. It is incomprehensible to me how the Water Management Board can even consider approval without even the basic questions being answered. If there are shenanigans in play here and the Water Management Board approves the permit then they are part and parcel to those maleficence's.

The simple comparison between this permits request and the current capacity of the entire Southern Black Hills Water System should ring alarm bells. I would expect the Board to do its due diligence and determine to what extent the need exists and the purpose for this public domain resource - anything less would be aiding and abetting the requester.

Thomas Carbone

Landowner/Taxpayer

Custer County SD

Jacobson, Gail

From: Gronlund, Eric
Sent: Tuesday, September 29, 2015 2:42 PM
To: Jacobson, Gail
Subject: FW: Compound water permit

From: Paul Meier [mailto:altitudist@yahoo.com]
Sent: Tuesday, September 29, 2015 2:41 PM
To: Gronlund, Eric
Subject: Compound water permit

This is to express my concerns regarding permit application #2730-2. Could you please forward this to the water management board prior to their October meeting.
I am a homeowner in the Pringle area and would encourage you to NOT grant any further water rights to any group that is not forthcoming with answers as to the reason for the increase and the number of people currently in residence or projected to be in residence on any property.
Thank you for your service and consideration of my concerns.
Paul Meier

Sent from Yahoo Mail on Android

Jacobson, Gail

From: LaRee Mayes <lmayes@rap.midco.net>
Sent: Tuesday, September 29, 2015 4:26 PM
To: Gronlund, Eric
Subject: water permit application 2730-2

Please forward this letter to the Water Management Board. Re: Permit App. # 2730-2

The FDLS compound near Pringle, SD, has been shrouded in secrecy since it opened. The FDLS was found to abuse youthful member in Texas. The leadership of the compound in Custer County is the same group of men. This compound cannot stand close scrutiny, and to allow it to grow in secrecy will only allow future bad acts to continue. The board manages life when it manages water.
Terry and LaRee Mayes
Rapid City, SD

Jacobson, Gail

From: Dawn Marso <dawnmarso@dakotaradiogroup.com>
Sent: Tuesday, September 29, 2015 4:28 PM
To: Gronlund, Eric
Subject: water permit application number 2730-2

Eric, I have read the editorial in the Rapid City Journal written by Mike Fleming . I would like you to please share my email with the Water Management Board. I am totally against the permit from the FLDS to drill a new well. As I understand it, Seth Jeffs has testified on behalf of the permit approval and in spite of many questions , Seth would not provide any information about how many people live in the compound or about what goes on in the compound. Of course he would not provide any of this information as what is happening in this and the other compounds is absolutely sick!! It is unbelievable that this type of behavior is allowed to happen in the United States and in South Dakota! I challenge each member of the Water Management Board to read the book written by Rebecca Musser.. "The Witness Wore Red: The 19th Wife who brought Polygamous Cult Leaders to Justice". Musser wrote the memoir in 2013 along with author Bridget Cook. After years of sexual abuse by Jeffs, she finally escaped the compound, testified against FLDS prophet Warren Jeffs a total of 20 times. Musser is the widow of deceased prophet Rulon Jeffs, making over 63 other women her "sister-wives, a designation given to the polygamous wives of one man in the FLDS. Musser's sister , Elissa Wall has also written a memoir "Stolen Innocence". Wall had to marry her own cousin at the age of 14. I believe that reading "The Witness Wore Red" is essential to help the Board with their decision. South Dakota does not want or need any more people arriving in this Compound. Thank you .

--

Dawn Marso
Dakota Radio Group
605-224-8686
Fax 605-224-8984
dawnmarso@dakotaradiogroup.com

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Jacobson, Gail

From: Gronlund, Eric
Sent: Wednesday, September 30, 2015 8:00 AM
To: Jacobson, Gail
Subject: FW: Letter Concerning Water Permit Application Number 2730-2
Attachments: 20150930 Letter to Water Management Board.docx

-----Original Message-----
From: Mike Fleming [mailto:mike.fleming@goldenwest.net]
Sent: Tuesday, September 29, 2015 8:52 PM
To: Gronlund, Eric
Subject: Letter Concerning Water Permit Application Number 2730-2

Eric,

Please forward the attached letter to the members of the Water Management Board. It concerns water permit application number 2730-2 from the United Order of South Dakota.

Thank you,

Mike Fleming

September 30, 2015

South Dakota Water Management Board

Dear Water Management Board Members,

I am writing in response to Water Permit Application number 2730-2 from the United Order of South Dakota. I was present at the Water Management Board hearing in July when the permit application was discussed. I testified against approval of the permit, and presented petitions from area residents expressing similar opinions. The petitions were not accepted.

I still believe that the permit should be denied because it is not in the public interest. However, I contend that the public interest argument extends far beyond a possible diminishment in water levels for springs and wells in the vicinity. It is not in the public interest for the state of South Dakota to provide additional water to a sect of polygamist pedophiles.

The United Order of South Dakota is not as innocuous as its name implies. It represents the South Dakota contingent of the Fundamentalist Church of Jesus Christ of Latter Day Saints. The FLDS is not a group of would be saints. As an organization, the FLDS is well known for polygamy, arranged marriages between underage girls and old men, child rape, and the expulsion of young men who may prove attractive to young women. People who think that the Custer County FLDS community is different, and consists of only benevolent members, are either kidding themselves, or are choosing to be ignorant.

A truck driver from Hot Springs was making deliveries of gravel to the compound a few years ago. Normally he was paid by a person, or by $100 bills left in an envelope for him near the front gate. One time he was not paid in person or by envelope, and went looking for someone who could pay him. He unexpectedly stumbled upon a room full of pregnant girls, before being intercepted, paid, and escorted from the compound.

Someone who owns a cabin very close to the compound was surprised one day by two young men who had just been expelled from the compound. He helped them contact friends in North Dakota who came to pick up the ex-cult members.

The people who live in the compound are not good neighbors. When they are in construction mode, they operate day and night, running heavy equipment that is very noisy, and illuminating the area with bright lights after dark.

The FLDS has applied for a permit to drill a new well, which would increase its capability to pump water from 100 gallons per minute to 200 gpm, to replace a 30,000 gallon underground water tank with an above ground tank of at least 250,000 gallons, and to replace existing main lines with 6" and 8" lines. By contrast, the Southern Black Hills Water System, which services 350 customers, has a 100 gpm well, a 125,000 gallon storage tank, and its largest main lines are 6". The FLDS compound is 140 acres. The SBHWS territory covers many square miles.

The FLDS compound near Pringle appears to be preparing for more members. Many of these could be coming from the Yearning for Zion FLDS temple in El Dorado Texas, which was closed by the state of Texas. Denial of the latest FLDS well permit application by the Water Management Board could prevent a significant increase in population in the Pringle compound.

Assuming that the FLDS is just another religious group, such as Hutterites, Mennonites, or even Mormons, is not reasonable. Predicting future water usage in the FLDS compound by extrapolating numbers of inhabitants from sewage permits, and by estimating acres of land that could be cultivated by looking at Google Earth maps, is not acceptable. The FLDS situation in Pringle is unique, and this permit application warrants more scrutiny than other applications.

The Water Management Board has a choice. You can decide that the FLDS permit application is just a normal application from another religious group, or you can recognize this permit application for what it really is – a means to increase the population of a compound of pedophiles. I urge you to deny this permit application on the grounds that approving it is clearly not in the public interest.

Sincerely,

Mike Fleming

PO Box 65

Pringle, South Dakota 57773

mike.fleming@goldenwest.net

Jacobson, Gail

From: Gronlund, Eric
Sent: Wednesday, September 30, 2015 12:46 PM
To: Jacobson, Gail
Subject: FW: Water Rights Program; Water permit application number 2730-2

From: Lana VunCannon [mailto:mlvuncannon@yahoo.com]
Sent: Wednesday, September 30, 2015 11:33 AM
To: Gronlund, Eric
Subject: Water Rights Program; Water permit application number 2730-2

Please forward this message to the Water Management Board. We, Michael, Sr. and Lana VunCannon, land owners in Custer County, are **NOT** in favor of approving the above mentioned water permit application.

We have been Custer County land owners since October, 2002. We have lived through one summer packed and ready to evacuate due to drought and high fire dangers. Water is precious here. We understand that very well. Additionally, we do not approve of the cult activities engaged in by the FLDS group because our county continues to be negatively impacted by their actions. We do not want to create opportunities for them to grow any larger.

Very sincerely,

Michael, Sr. and Lana VunCannon
12158 Buckhorn Estates Dr.
Custer, SD 57730
605.673.2596

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, October 01, 2015 7:46 AM
To: Jacobson, Gail
Subject: FW: Water Permit Application # 2730-2

-----Original Message-----
From: oonagh wood [mailto:oonagh@gwtc.net]
Sent: Wednesday, September 30, 2015 9:19 PM
To: Gronlund, Eric
Subject: Water Permit Application # 2730-2

Eric
Can you please forward this comment to the Water Management Board? Thank you

I am a resident of Custer County and own property in the Southern Black Hills.
I am concerned about the request from the FLDS to double their water supply without any information provided to justify their need for this increase.
If the FLDS is reluctant to explain the basis for their request, the WMB should be equally reluctant to approve it.
I would ask that you reject the application until they provide an explanation as to why, and if, it is necessary. Water is a precious commodity in this area of the Black Hills and all applications should be thoroughly investigated before being approved.

Respectfully submitted,
Oonagh Wood
Wood Ranch
Argyle, SD

Jacobson, Gail

From: Gronlund, Eric
Sent: Thursday, October 01, 2015 1:42 PM
To: Jacobson, Gail
Subject: FW: Water Permit Application #2730-2

From: Baers [mailto:baerb@goldenwest.net]
Sent: Thursday, October 01, 2015 1:37 PM
To: Gronlund, Eric
Subject: Water Permit Application #2730-2

Dear Mr. Gronlund,

Please forward this email to all members of the South Dakota Water Management Board. Thank you.

Robert J. Baer

October 1, 2015

South Dakota Water Management Board

Dear Water Management Board Members,

This letter is in opposition of Water Permit Application #2730-2 from the United Order of South Dakota. I am sure the Water Management Board has received many excellent letters stating various views why Water Permit Application #2730-2 should be denied. I would like to make three points that you may not have not heard. Unfortunately the FLDS compound is right across the canyon from where I reside.

First, Seth Jeffs admitted to the Water Board hearing in July 2015 that he is not a resident of the state of South Dakota. Thus, he is an "out-of stater" trying to get our water.

Second, when we built our house in the Black Hills about 9 years ago, for the first year I heard a constant grinding of rocks. I could not figure out what was going on. Then I finally figured it out. The FLDS was building tunnels. Yes, I am sure they have tunnels at the compound.

Third, I found it odd that Peggy Dixon the only female member of the Water Management Board would not be allowed to vote at the October Water Board Meeting concerning the United Order of South Dakota permit application. I realize that she was not at the July hearing. Surely she is capable of reading the minutes from the July hearing and is able to make an informed decision. Also, with the FLDS treatment of women, she should be able to voice her opinion and get the chance to vote.

Please deny Water Permit Application #2730-2 from the United Order of South Dakota, as it is not in the public interest.

Thank you for your time and consideration.

Sincerely,

Robert J. Baer
26866 Elk Run Road
Hot Springs, SD 57747
605-745-7662

Gronlund, Eric

From: Darlene Wulf <darlenewulf@hotmail.com>
Sent: Tuesday, October 06, 2015 6:20 AM
To: Gronlund, Eric
Subject: 2730-2 water permit

Please forward to the proper agency ,water management board,permit 2730-2 my concern, and to deny this permit. I know of a case where a man filled his stock dam with a hose hooked to a hydrant,wasted terrible amount of water. We do not realize what we have until others waste it, then gone for all of us.

Gronlund, Eric

From: Jo Bass <jobass2277@msn.com>
Sent: Tuesday, October 06, 2015 1:36 PM
To: Gronlund, Eric
Subject: Water Permit Application No. 2730-2
Attachments: Water Board Letter October 6.pdf

Dear Mr. Gronlund-

Please distribute the attached letter to the members of the Water Management Board.

Thank you.

Jo Bass
jobass2277@msn.com

October 6, 2015

South Dakota Water Management Board
c/o Mr. Eric Gronlund
DENR—Water Rights Program
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182

SENT VIA EMAIL DIRECTED TO eric.gronlund@state.sd.us

Re: Application # 2730-2

To the Members of the South Dakota Water Management Board:

I am writing about Water Permit Application # 2730-2 submitted by the United Order of South Dakota. I am a resident of Custer County.

I have reviewed many of the statutes, regulations and filed documents posted online on the Department of Environment and Natural Resources website in connection with the application, as well as related media reports.

My understanding is that the current status of the proceedings is that the board will reopen its evidentiary hearing on October 14, for the limited purpose of giving the applicant a further opportunity to present evidence to establish the need for the water they have applied for.

I respectfully request that you consider the following in the course

of your further deliberations on the application:

1) Is it possible to conclude that the statutory standards set forth in Section 46-1-4 have been met when the "manager" of the water system has reportedly indicated that he does not know how many people are being served? Which means he has been "managing" it without knowing how many water users there are (and, presumably, his predecessor managers have done the same)? That statutory provision reads as follows:

"46-1-4. Beneficial use of water resources - Prevention of waste - Right to water from natural stream or watercourse. It is hereby declared that because of conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that **the waste or unreasonable method of use of water be prevented**, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people **and for the public welfare**. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of diversion of water." (emphasis added).

I think a water manager who does not know how many water users there are cannot be using water in a manner to prevent waste or in the interest of the people and for the public welfare.

2) Is it appropriate to permit farming of pecans, a crop requiring vast amounts of water, in Western South Dakota? Does the applicant raise pecans or have future plans to do so? Does the applicant intend to raise crops grown for sale? A September 9 press release from the US Department of Labor (Release No. 15-

1660-DEN) reported that its Wage and Hour Division found that the Fundamentalist Church of Jesus Christ of Latter-Day Saints and certain of its leaders violated various labor laws in connection with their 2012-2013 pecan harvest. The DOL took multiple enforcement actions, including seeking $1.9 million in civil money penalties. The applicant for this water permit is a common law trust that, pursuant to its written Declaration of Trust, is established as a religious order to "preserve and advance the religious doctrines and goals of The Fundamentalist Church of Jesus Christ of Latter-Day Saints." In light of that fact, it is particularly appropriate to determine what crops the applicant intends to water—and perhaps also wise to consider prohibiting irrigation of pecans altogether.

3) At a minimum, I think the application should be supported by sworn testimony and/or a written affidavit **provided by the applicant** confirming (a) the number of inhabitants using the water for residential uses now and projected to be using it in the future, (b) the number and type of livestock whose needs are met using the water now and projected to be met using it in the future, and (c) the types of crops and number of acres being irrigated using the water now and projected to be irrigated using it in the future.

4) In the absence of that factual supporting information, I think the application should be denied and the board should then begin proceedings to cancel the applicant's existing permits.

5) The application should not be approved on the basis of DENR usage estimates based on unsupported assumptions about the actual number of residents and the acres under irrigation and/or unsupported projections of future needs. It is not DENR's responsibility to build a case for the applicant. So far, the applicant has simply said we need more water. That should not be enough.

I am certain the board has heard from many South Dakotans about their concerns about the growing presence of the FLDS in Custer County. I share their concerns but I think the water application process can be concluded on the basis of the evidence submitted—and, more importantly, not submitted—by the applicant.

Thank you for your service on the Water Management Board.

Jo Bass
jobass2277@msn.com

Gronlund, Eric

From: Alan Kegel <alank@isodisc.com>
Sent: Wednesday, October 07, 2015 3:17 PM
To: Gronlund, Eric
Subject: Water Management Board - re Permit Hearing: Application #2730-2
Attachments: WMB re Application 2730-2.pdf

Dear Mr. Gronlund;

Please, forward this letter, expressing my grave concern, to the South Dakota Water Management Board regarding the aforementioned application, #2730-2, at once, so they'll have it in their possession for circumspect contemplation in advance of the October 14, 2015 board meeting regarding deliberation of same. Thanking you, in advance.

Regards,

Alan Kegel

Dear South Dakota Water Board Members:

As a concerned citizen and property owner of Custer County, SD I am writing to demand that you DENY and REJECT the aforementioned well permit Application #2730-2 brought before the WMB by the FLDS cult, otherwise identified by pretense as the United Order of South Dakota and represented by various persons including Seth Jeffs, brother of pedophile and convicted child rapist Warren Jeffs, and others who may be involved.

The FLDS polygamist cult of Custer County, led jointly by Seth Jeffs and Warren Jeffs from his Texas prison cell, has been characterized by the FBI as an organized crime operation that engages in wholesale pedophilia, preying on children, raping and impregnating pubescent girls, along with a host of other criminal activities that essentially constitute sexual slavery and perhaps sexual tourism for church elders visiting various of the cult's compounds.

I passionately believe that by awarding the sought after well permit you will not only validate the offensive and deviant sexual practices of this criminally reprehensible enterprise but will, in effect, come to be in league with their perverse abuse of women and children, thereby supporting and perpetuating the cancer that covertly crept into South Dakota by omission and misrepresentation of their true identity and now cloaked in the thin facade of religion.

I find it startling that the South Dakota Water Management Board, or any other governing entity, would knowingly entertain any such request, given the fact that this group practices any number of activities that are either illegal or criminal under codified law and offend the moral sensibilities of most of the citizens of the state and is being investigated and prosecuted by the FBI and Justice Departments of several states as a criminal enterprise!

You have an obligation to help protect, or at least shield the citizens of South Dakota from anyone or organization that engages in: polygamist marriage, pedophilia, organized exploitation of underage girls, sexual enslavement of minors, sexual victimization, ritualistic rape of helpless victims, grooming of children for sexual

predation, sexual tourism, etc. What makes this even more repugnant is their entrenched perversity is done in the name of God!

You cannot allow this malignancy to fester in Custer County: you must reject application 2730-2 so they cannot they expand their activities and transport more reprobates into the Black Hills. They don't respect rule of law, they don't pay taxes until threatened by legal action, they live clandestinely, operate under the cover of darkness, they are not good citizens and they do not represent the social and moral good we all expect in our neighbors.

There was a time I didn't feel so strongly about this group, basically "live and let live" but that all began to change when the criminal activities of Warren Jeffs were eventually exposed, more so when he became a fugitive from justice and was finally apprehended (reportedly after being secretly hidden by permit applicant Seth Jeffs in the Custer County FLDS compound) and convicted of crimes against children. I cannot abide the FLDS: neither can you.

CNN has recently published a number of stories that further expose both Jeffs and the FLDS cult he controls; they're sobering, please, explore them.

http://www.cnn.com/2015/09/30/us/polygamist-flds-warren-jeffs-update/index.html

http://www.cnn.com/2015/09/30/us/warren-jeffs-son-speaks-out/index.html

http://www.cnn.com/2015/09/29/us/warren-jeffs-children-allegations/index.html

http://www.cnn.com/videos/tv/2015/09/28/this-is-life-lisa-ling-season-2-warren-jeffs-clip-1.cnn

http://www.cnn.com/videos/tv/2015/09/28/this-is-life-lisa-ling-season-2-warren-jeffs-clip-2.cnn

http://www.cnn.com/videos/tv/2015/09/28/this-is-life-lisa-ling-season-2-warren-jeffs-clip-3.cnn

http://www.cnn.com/videos/us/2015/09/24/warren-jeffs-children-flds-lisa-ling-orig.cnn

We are all counting on you to make sure the Black Hills is protected from an expansion of the deviant activity at the Custer County FLDS Compound.

Sincerely,

Alan Kegel

Gronlund, Eric

From: Brenda Nicholson <1vanillabean@gmail.com>
Sent: Wednesday, October 07, 2015 9:26 PM
To: Gronlund, Eric
Subject: Pringle FLDS Compound: Water Vote

Hello,

My name is Brenda Nicholson, and I left the FLDS about 3 1/2 years ago. I saw the article concerning this request and have been trying to figure out how I can add my voice to the issue. So here I am.

I went to school with Seth Jeffs, and his second wife is my sister-in-law. Having come from inside this group I can assure you that they absolutely are not just innocent people trying to live their religion. They have been removing children from their biological parents for years now - in fact, at the time of the raid on the Texas YFZ Ranch in 2008, there were many children there who had been taken from both of their biological parents. At that point in time this wasn't as widely practiced as it has been over the last few years. Now there are hundreds of children who have been taken from their parents. My concern is that they are going to be brought to this compound in Pringle.

The things that are being done to families in that group will have long-lasting and serious implications. Unfortunately, the states of Utah and Arizona continue to turn a blind eye to the crimes of this cult. According to what I understand this is greatly due to the fact that those states have high populations of Mormons. (Members of the Church of Jesus Christ of Latter-day Saints, or LDS.) The mainstream LDS, or Mormons, follow the same teachings, scriptures and ideas, except for the fact that the FLDS (Fundamentalist Church of Jesus Christ of Latter-day Saints) continue to follow all of the fundamentals that Joseph Smith, Jr., Brigham Young, and other early day leaders taught - including polygamy. Anything that is done to stop the FLDS will set a precedent that could negatively effect the LDS. This is, as I said, my opinion. But since I can't think of any other reason for them to turn a blind eye and a deaf ear to the abuses that are being done, it seems reasonable that this could be a factor.

This is very disturbing to me. Religious freedom was never intended to be an umbrella of protection that organizations can hide under and do anything they want in the name of God. I assure you, people are being hurt inside this cult. If not physically (but I think that is happening also) for sure emotionally and psychologically. Because of the abuse and harm I witnessed when I was a part of that cult, I have a different perspective than many people. I am doing all that I can to be an advocate and a voice for those who have no voice. Those trapped by a belief in a cruel and manipulative god. Among those are many members of my family.

I urge you to consider my plea to not give them another place to hide away and commit crimes against the most innocent - the children. You might be well served to go back into the archives of April 2008 and watch what results when you allow a cult to build a compound inside your borders. The people you see will just be strangers to you, but to me they are family. They were being hurt by their leaders, and ended up being returned to their abusers. Please do whatever you can to help stop them. Keep the pressures up so they can't settle in, build, strengthen and regroup. Anything that you can do will be a power in protecting innocence. If enough of us put an effort into it, we can make a difference.

Thank you for your time and consideration,
Brenda Nicholson

Gronlund, Eric

From: Jeanann Goss <jeananngoss@gmail.com>
Sent: Wednesday, October 07, 2015 7:00 PM
To: Gronlund, Eric
Subject: FLDS

I would hate for Custer County to end up like Texas and be over run with FLDS. At the time the children were removed the majority were living in the ranch with neither of their biological parents. The parents had been deemed unworthy and the kids were being cared for by a "more worthy" person.

Jeanann Goss

Sent from my iPhone

Gronlund, Eric

From: Dawn <madsen5@madmountain.net>
Sent: Saturday, October 10, 2015 1:19 PM
To: Gronlund, Eric
Subject: Water Permit 2730-2 Input

I am concerned with the water and septic use of such a large compound as is being developed near Pringle.

Our water resources need to be protected for all who live here in the Black Hills area. Other "systems" where water is used and later treated in a septic/sanitation process is carefully monitored for public and wildlife safety. It is my understanding, oversight is required to monitor the proper installation, treatment, and maintenance of such systems for such a number of persons as this. As far as I am able to determine, any verification of stated volumes, condition, maintenance, or other "self-reported" information has not be verified and published as verified by our regulating departments.

If our State resources are not yet able to properly oversee such a large "development" either in manpower or current regulations, please delay any approvals until sufficient groundwork is in place within our State departments. It would seem prudent to proceed at a slower pace than overwhelm our staff and allow an overuse of our resources.

Thank you for your time regarding this matter.

Sincerely,
Pam Frink
23045 Mystic Rd, Hill City
605-574-4268

Gronlund, Eric

From: Barton and Lois Adriaan <paradoxadrian@gmail.com>
Sent: Monday, October 12, 2015 3:05 PM
To: Gronlund, Eric
Subject: water permit application # 2730-2

To Members of SD Water Management Board,

I have concerns about the above water permit in Custer county. My family owns the Spring on the Hill Ranch about 2 miles south east of the site of the above proposed well. We have a well for the cattle run on the ranch and am concerned with the amount of water that is proposed to be pumped. That amount of water is either for a moderate sized city or an extensive irrigation project but would be upstream from our well and while not professional hydrologists, we are concerned about our water supply being diminished.

If the water will be used for household use, we also have concerns about a moderate sized city being on septic tanks and ground water contamination, although I realize that is not your board's focus.

Thank you for your consideration of this issue.

Sincerely,

Barton Adrian
paradoxadrian@gmail.com
208-421-2406

Gronlund, Eric

From: Duvall, Ron
Sent: Tuesday, October 13, 2015 8:19 AM
To: Gronlund, Eric; Goodman, Jeanne
Cc: Smith, Kim (DENR)
Subject: FW: FLDS well

FYI

NOTE: When replying to this email do NOT click the person's [mailto:myname@email.com] address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

-----Original Message-----
From: James Kienitz [mailto:jameskienitz@icloud.com]
Sent: Monday, October 12, 2015 11:47 AM
To: DENR INTERNET INFORMATION
Subject: FLDS well

Ladies and gentlemen,
In reviewing today's article in the Rapid City Journal, it is noted that at least some of the letters are addressing the beliefs practiced by this "compound ". Of course it's abominable, but the point is missed in asking you to curtail their practices with the denial of a well permit.
I still stand firmly by my original letter. It is my opinion they don't NEED a third well. They are seriously misusing this valuable resource or have plans to store vast amounts for future use. I speak from the startling parallel to our development (and I'm quite certain we are certainly not unique). We have adequate water and pressure for all residents with judicial management and invaluable assistance from the State to maximize our output from ONE well.
Again, I beg you to consider ALL the populace and our future requirements for this life sustaining resource.
Thank you, Robin Kienitz, 8804 Woodland Dr., Black Hawk. (Woodland Hills) 605-787-6562 . John316jr@rap.midco.net

Sent from my iPad

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 2730-2, United Order of South Dakota

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2730-2, United Order of South Dakota, c/o Seth Jeffs, 11571 Farmer Rd, Pringle SD 57773.

The Chief Engineer is recommending APPROVAL of Application No. 2730-2 with a 20 year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

(continued)

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
October 13, 2015

NOTE: This revised recommendation reflects the amendments adopted by the Water Management Board on July 9, 2015 to the recommendation dated June 1, 2015.

Gronlund, Eric

Subject: FW: web published Ltr to editor
Attachments: TNR 2015 LTR to Eric Gronlund FDLS Water Permit.doc

From: J T [mailto:giddieup@hotmail.com]
Sent: Monday, October 12, 2015 10:35 AM
To: Smith, Kim (DENR)
Subject: web published Ltr to editor

Hello Kim,

I received your name from Seth Tupper, Rapid City Journal. He forwarded your name and email/phone to me.

As I expressed to him, while I was so glad to see that the public was going to be able to read all the letters sent, hopefully encouraging others to send in more, I hadn't anticipated all letters would be published on-line, including emails/personal information.

Would you be so kind, to remove my email address and city state from my letter? Or replace it with the one attached/printed below? We have experienced a case of identity theft since this was written and have been strongly advised not to divulge any personal information on-line.

Thank you so very kindly.

Julie

From: Julie Turner
To: eric.gronlund@state.sd.us
Subject: SD water permit application number 2730-2 9-10-15
Date: Thu, 10 Sep 2015 12:54:40 -0500

Dear Mr. Gronlund, Water Rights Program:

I'd like to voice my deep concern about the FDLS compound's request for increased water usage in Custer County. To grant them this request would be an overwhelmingly bad decision for the public interest.

My husband and I are long-time visitors to the Black Hills. Since childhood I have dreamed of living there. We have been seriously pursuing a land purchase in Custer County. One of our prime choices had us driving directly by the FDLS compound. It is unsightly and noisy. We immediately erased that property from consideration. There is no way we wanted to drive by

that eyesore daily, nor listen to construction at all hours of the day and night. They have ruined the beautiful Black Hills forest scenery and continue to build unsightly structures.

No one selling land was very forthcoming about what the FDLS was, so I looked up information about this organization at our local library and read many news articles. In particular, I read "Prophets Prey" by Sam Brower, the man responsible for gathering much of the information that resulted in placing Warren Jeffs in prison. If you have not, I would strongly encourage you to read this book. I was shocked and saddened at what I learned and even more dismayed that we as a country, are allowing this organization to continue on it's destructive path.

What is going on behind those walls has been proven by the State of Texas. To merely allow them to move their group from state to state and expect protection is insane. This is not a question about religious rights but instead rape, incest and pedophilia. They also do not pay their taxes. They hide money and force underage labor. They refuse to tell us how many people they have living there. What more do we need to have to deny them a permit for more water? Any other organization would be denied.

Custer County, the State of South Dakota and it's citizens need to sum up the courage to take a firm stand. If this place remains in operation, it will ultimately result in many negative affects, including tourism. South Dakota has already lost one potential constituent, as we have sadly decided that until this compound is closed, we are not considering living there. We can not live in a county/state that refuses to acknowledge and do something about the wrong doing going on in their own backyards.

Please forward this letter to the Water Management Board. Thank you for your time and consideration.

Jim & Julie Turner

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

October 19, 2015

NOTICE

TO: Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709
Parties of Record (see attached list)

FROM: for Jeanne Goodman, Chief Engineer
Water Rights Program

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

The Water Management Board directed Jeffrey Connolly, counsel for United Order of South Dakota, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 2730-2.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 11:30 AM, on Wednesday, December 9, 2015, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior issues on the agenda. Notice will be provided if there is a change in the hearing date or time.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to each Board member and parties of record by November 12, 2015. Written objections or comments in support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed), Water Rights Program counsel and other parties of record by November 23, 2015. Board counsel requests that the draft findings or alternative findings be provided in a WORD format file via email to *matthew.naasz@state.sd.us*.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision may be made on December 9, 2015. The evidentiary hearing was completed July 9, 2015, with further legal argument made on October 14, 2015. No additional testimony will be received on December 9, 2015.

If you have questions about the findings process, please contact Ann Mines-Bailey at (605) 773-3215.

enclosure

c: Ann Mines-Bailey, Assistant Attorney General
Matthew Naasz, Assistant Attorney General

PARTIES OF RECORD LIST FOR WATER PERMIT 2730-2, United Order of South Dakota

APPLICANT:

Jeffrey R. Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

PETITIONERS:

Peter A Fahmy, Counsel for National Park Service
National Park Service, Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins CO 80525

Lois Witte, Counsel for United States Forest Service
740 Simms Street, Suite 309
Golden CO 80401

Cheryl Schrempp DuPris, Assistant US Attorney
225 South Pierre Street, Suite 337
Pierre SD 57501

Michael M Hickey, Counsel for Linda Van Dyke Kilcoin
Bangs McCullen Law Firm
PO Box 2670
Rapid City SD 57709-2670

Karl R and Suzanne K Von Rump
11560 Farmer Road
Custer SD 57730

Mr and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Spgs Rd
Custer SD 57730-9109

Toni Martin
4141 Villa Ridge Ct #122
Rapid City SD 57701

Douglas L Lesher, Acting Manager
Stone Meadow Ranch
26699 Remington Rd
Custer SD 57730

Rick Fox
PO Box 35
Hermosa SD 57744

Dean and Delia Johnson
14585 East French Creek Road
Fairburn SD 57738

WATER MANAGEMENT BOARD MEMBERS

Chad Comes
116 W Center
Madison SD 57042

Leo Holzbauer - **Secretary**
PO Box 877
Wagner SD 57380

Rodney Freeman Jr - Pre **Hearing Officer**
PO Box 176
Huron SD 57350

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Tim Bjork - **Vice Chairman**
112 W Oak St
Pierre SD 57501

Jim Hutmacher - **Chairman**
802 E 7th Street
Oacoma SD 57365

BOARD ATTORNEY

Matt Naasz, Assistant Attorney General
Natural Resources Section
Office of Attorney General
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Jeanne Goodman, Chief Engineer
Water Rights Program
523 East Capitol Ave
Pierre, SD 57501

STAFF ATTORNEY

Ann Mines-Bailey
Office of Attorney General
Natural Resources Section
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre SD 57501

October 19, 2015

CERTIFICATION

I hereby certify that on October 19, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated October 19, 2015, regarding preparation of findings of fact, conclusions of law and final decision in the matter of Water Right Permit Application No. 2730-2, as addressed below and on the attached parties of record list:

Jeffrey R Connolly, Counsel for United Order of South Dakota
Gunderson, Palmer, Nelson & Ashmore
PO Box 8045
Rapid City SD 57709

Sent Inter-office to:

Ann Mines- Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Gail Jacobson

Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of October, 2015

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

RECEIVED
NOV 16 2015
WATER RIGHTS PROGRAM

RECEIVED
NOV 16 20
WATER RIGHTS PROGRAM

November 10, 2015

DENR -WATER RIGHTS PROGRAM
Joe Foss Building
523 East Capitol Ave
Pierre, South Dakota 57501

RE: Application No. 2730-2, United Order of South Dakota

To Whom It May Concern:

It was my understanding that the use of the water was to be for domestic use, gardens, orchards, people, animals. Giving them the benefit of the doubt, they dug a hole that measures 30'x40'x15' deep that was said to be used for water. If so, they have water storage that equals 79,500 gallons of liquid. Seth Jeffs said they have only 30,000 gallons of storage. The cistern was constructed by the Fundamentalists out of concrete made at their Concrete Plant right there on their property. That uses a lot of water. They also built a milking parlor that is 2 stories high that is all concrete. According to them they have a well that produces 94 gallons per minute already, which is large enough to supply a small city of about 4,000. Why do they need more water? They do not have any animals. They have gardens that they water using a sprinkler system, however, wouldn't it be better to use a drip system that would use less water?

Thank you for listening to my concerns.

Sincerely,

Karl R Von Rump

Karl R Von Rump
11560 Farmer Rd
Custer, SD 57730

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

ATTORNEYS AT LAW
506 SIXTH STREET
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078
www.gundersonpalmer.com
ATTORNEYS LICENSED TO PRACTICE IN SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA, WYOMING, MONTANA, MINNESOTA, KENTUCKY, AND PENNSYLVANIA

J. CRISMAN PALMER
JAMES S. NELSON
DANIEL E. ASHMORE
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
DAVID E. LUST
TERRI LEE WILLIAMS
SARA FRANKENSTEIN
JASON M. SMILEY
QUENTIN L. RIGGINS

RONALD G. SCHMIDT
JEFFREY R. CONNOLLY
REBECCA L. MANN
ANDREW J. KNUTSON
KYLE L. WIESE
JANA SMOOT WHITE
TYLER C. WETERING
NATHAN R. CHICOINE
MATTHEW C. HASVOLD
KATELYN A. COOK

WYNN A. GUNDERSON
Of Counsel

RECEIVED
NOV 16 2015
WATER RIGHTS PROGRAM

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

November 12, 2015

VIA EMAIL: Matthew.naasz@state.sd.us
Matthew Naasz
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501

Re: United Order of South Dakota Re: Water Rights
GPNA File No. 12414.0002

Dear Mr. Naasz:

Enclosed is United Order of South Dakota's Proposed Findings of fact, Conclusions of Law and Final Decision.

Sincerely yours,

Jeff

Jeffrey R. Connolly

JRC:bmp
cc: Dean Johnson
Delia Johnson
Jeanne Goodman
Craig Bobzien
Rick Fox
William Hansen
Eric Gronlund
Michael M. Hickey
David Albrecht
Suzanne Von Rump
Toni Martin

1005032 / 12414.0002

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

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	**Proposed Findings of Fact and and Conclusions of Law**

FINDINGS OF FACT

1. This permit application was filed by the United Order of South Dakota. It seeks to appropriate 0.46 cubic-feet per second of water from the Madison aquifer. The water will be used by the applicant for domestic needs in Custer County, South Dakota.
2. Two hearings were held in this matter, the first on July 9, 2015 and the second on October 14, 2015. The Board has considered evidence presented and arguments made by the parties at both hearings.
3. The Board members present at the October 14 meeting also reviewed the transcript of the July 9 hearing, prior to the October 14 hearing.
4. The Applicant appeared at the July 9 hearing through water operator Seth Jeffs and attorney Jeffrey R. Connolly of Rapid City. Jeffs testified at the July 9 hearing. Applicant appeared at the October 14 hearing through attorney Jeffrey R. Connolly. The Applicant did not personally appear at the October 14 hearing.
5. Intervenor, Linda Kilcoin, appeared at the July 9 hearing and the October 14 hearing through counsel, Michael Hickey of Rapid City. Kilcoin did not appear at either hearing.
6. Intervenor Karl Von Rump appeared *pro se* at the July 9 hearing and *pro se* at the October 14 hearing.

7. Intervenors National Park Service and National Forest Service stipulated to withdraw their petitions to intervene through a written agreement and did not attend either hearing as reflected by the transcript and exhibits.
8. The Department of Environment and Natural Resources (DENR) was represented at both hearings by counsel, Ann Mines-Bailey.
9. The remaining intervenors did not participate in either hearing.
10. The parties stipulated to admission of the complete administrative file as to Water Permit Application Nos. 2730-2 (Exhibit 11).
11. A previous water permit, 2610-2, issued on or about July 11, 2007 to United Land Management, LLC was properly transferred to the United Order of South Dakota as of January 5, 2010.
12. Permit 2610-2 was previously held for the benefit of the United Order of South Dakota by one of its trustees, Stephen P. Harker.
13. Ownership of permit 2610-2 was transferred from Trustee Stephen P. Harker, of the benefit of United Order of South Dakota to Trustee Isaac S. Jeffs for the benefit of the United Order of South Dakota on July 2, 2015.
14. Isaac S. Jeffs is a Trustee of the United Order of South Dakota.
15. The Trustees of the United Order of South Dakota have authorized Seth S. Jeffs to represent the United Order of South Dakota on all matters related to their water interests and water rights and to represent the United Order of South Dakota in the application process of permit 2730-2.
16. Seth Jeffs testified and agreed to limit the annual volume of appropriation to 60 acre-feet. Jeffs also agreed to unannounced site visits by DENR staff to verify the well conditions.

17. The applicant and its predecessors have previosuly used water pursuant to permit 2610-2 without significant impact to the Madison aquifer.
18. The Madison aquifer is stratigraphically lower and older than the Greenhorn formation.
19. The application seeks water for a water distribution system.
20. The Madison aquifer receives recharge through infiltration of precipitation and stream flow losses in the outcrop area. Natural discharge from the Madison aquifer occurs at artesian springs that originate from the Madison aquifer and to ground water outflow.
21. It is reliably estimated that the Madison aquifer contains 640 million acre-feet of recoverable water in western South Dakota. It constitutes a tremendous water resource for the State of South Dakota. In the area of the proposed well, the Madison is somewhere between 250 and 300 feet thick. The Madison aquifer contains approximately 9.8 million acre-feet of recoverable water and storage in Fall River County and approximately 9.2 million acre-feet of recoverable water and storage in Custer County.
22. There is available water in the Madison aquifer to supply this requested appropriated amount. There are currently a total of 15 appropriations from the Madison Aquifer in the vicinity of the diversion points referenced in application 2730-2. Additionally, there are seven future use permits that reserve 2,224 acre feet of water per year;
23. The worse case scenario for usage in the Madison aquifer, based on current permits is less that 50,000 acre feet per year. Meanwhile, recharge in the Madison is taking place at 140,000 to 400,000 acre-feet per year.
24. A permit granted to appropriate 0.46 c.f.s. equates to the right to appropriate 333.04 acre-feet of water annual if constantly diverted at the 0.46 rate. However, the applicant has agreed to a yearly cap of 60 acre-feet of water annually. Actual withdrawals of permits already in

the Madison Aquifer have been estimated to average only 12,309 acre-feet annually from 1987 to 1996.

25. The DENR has concluded that it is not probable that any ground water rights would be adversely impacted by the permit.
26. The Chief Engineer has concluded that there is unappropriated water available at the proposed well site from the Madison aquifer. The Chief Engineer's report states that the proposed appropriation should not adversely affect existing water rights including domestic wells and the appropriation should not affect the discharge of the nearest spring, Evans Plunge.
27. The proposed diversion would not unlawfully impair the rights of Wind Cave National Park or the Black Hills National Forest.
28. At least 75-100 individuals live at the applicant site and can utilize water for domestic use.
29. The applicant currently has on-site wastewater permits to allow for up to 126 people.
30. The applicant can beneficially use up to 18 acre-feet per year of water for culinary, drinking, and sanitation needs.
31. The applicant can beneficially use up to 42 acre-feet per year of water for watering of landscaping, orchards, and gardens.
32. At this time, applicant can irrigate up to 21 acres of land for landscaping, gardens or orchards.
33. There exists reasonable probability that there is unappropriated water available for the Applicant's proposed use under this permit.
34. The proposed diversion can be developed without unlawful impairment of existing rights.
35. The proposed use in the permit is beneficial use to the appropriator.
36. The proposed use is in the public interest .

37. To the extent that any of these Findings of Fact are determined to be Conclusions of Law, they should be deemed Conclusions of Law.

CONCLUSIONS OF LAW

1. The South Dakota Water Management Board conducted a hearing on this application for appropriation of water under the authority of SDCL Ch. 46-2 and Ch. 46-2A.
2. Board member, Dixon, who was absent during the July 9 hearing, reviewed the transcript of the July 9 hearing and the complete file. She is able to participate in the Board's consideration of the Application.
3. Unappropriated water is available for the proposed appropriation. There currently exists a need for quality water for rural water system that this Application would help satisfy.
4. The proposed diversion can be developed without unlawful impairment of existing rights to other permit holders. SDCL 46-2A-9.
5. The domestic use of water is the highest use of water and takes precedence over all other appropriative rights.
6. The proposed use by the applicant is a beneficial use and a public benefit.
7. The proposed use would be an efficient use of the water resources in the state.
8. The proposed use is in the public interest.
9. Intervenor Kilcoin's Motion to Dismiss is denied for the reasons stated in the record.
10. The United Order of South Dakota is an entity, which can maintain an application and can be awarded a water permit under the authority of this Board.
11. Seth S. Jeffs has been given legal authorization by the Trustees of the United Order of South Dakota to maintain this action and application for water permit on behalf of the United Order of South Dakota.

12. The United Order of South Dakota, through its Trustee, Issac S. Jeffs, is the owner of permit 2601-2.

13. The United Order of South Dakota, through its Trustees, is an entity which may be granted a water permit by this Board.

14. To the extent that any of these Conclusions of Law are determined to be Findings of Fact, they should be deemed Findings of Fact.

DECISION

The Board hereby authorizes the Permit conditioned on the following:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a 20-year term. Pursuant to 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under this Permits Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.
5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The water Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.
6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

Dated this 12th day of November, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeffrey R. Connolly
Attorneys for United Order of South Dakota
506 Sixth Street
PO Box 8045
Rapid City, SD 57709
(605) 342-1078
jconnolly@gpnalaw.com

CERTIFICATE OF SERVICE

I hereby certify on this 12th day of November, 2015, I mailed by first-class U.S. mail, and emailed to those parties with emails listed below, a true and correct copy of a United Order of South Dakota's Proposed Findings of Fact, Conclusions of Law and Final Decision to the following:

Mr. and Mrs. David Albrecht
High Lonesome Ranch
26541 Stagecoach Springs Road
Custer, SD 57730-9109

Toni Martin
4141 Villa Ridge Ct. #122
Rapid City, SD 57701

Rick Fox
PO Box 35
Hermosa, SD 57744

Cheryl Schrempp Dupris
Assistant U.S. Attorney
US Department of Justice
225 South Pierre St., Suite 337
Pierre, SD 57501

Michael Hickey
Bangs McCullen Butler Foye
& Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Ann Mines-Bailey
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 5750

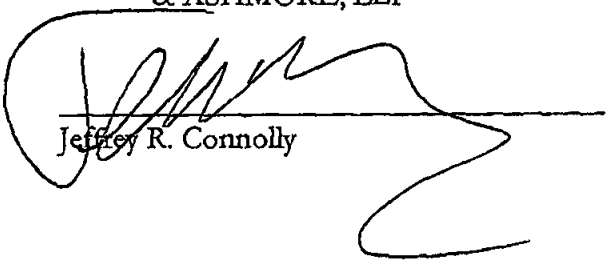
Doug Lesher
Stone Meadow Ranch
26699 Remington Road
Custer, SD 57730

Dean & Delia Johnson
14585 East French Creek Road
Fairburn, SD 57738

Matthew Naasz
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501
Matthew.naasz@state,sd.us

Karl R. Von Rump
Suzanne K. Von Rump
11560 Farmer Road
Custer, SD 57730

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP



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RECEIVED
NOV 20 2015
WATER RIGHTS PROGRAM

November 19, 2015

Re: *In the Matter of Water Application No. 2730-2, United Order*

TO WHOM IT MAY CONCERN:

Enclosed please find DENR's proposed Findings of Fact, Conclusions of Law and Final Decision, DENR's Response to United Order's proposed Findings of Fact and Conclusions of Law and Certificate of Service in the above-referenced matter.

Respectfully,

Ann F. Mines Bailey
Assistant Attorney General

AFMB/jmm

Enclosures

cc: Parties Listed on Certificate of Service

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	)))))))	DENR'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on July 9, 2015, and again on October 14, 2015. Board members Chad Comes, Tim Bjork, Ev Hoyt, Rodney Freeman and Leo Holzbauer were present at both hearings and heard the evidence presented. Board member Peggy Dixon was not present at the July 9, 2015, hearing but was provided with a copy of the transcript of that hearing and was present and participated in the October 14, 2015, hearing. Board member Jim Hutmacher was present at the July 9, 2015, hearing but did not attend, or participate in, the October 14, 2015, hearing. United Order of South Dakota (hereinafter referred to as United Order) were represented by Jeffrey R. Connolly. Intervenor Linda Van Dyke Kilcoin was represented by Michael Hickey. Intervenor Karl Von Rump appeared pro se. The remaining intervenors did not appear at either of the hearings. Ann Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. United Land Management applied for and was granted Water Permit No. 2610-2 which authorized the construction of two wells in the NW¼SE¼ Section 10-T6S-R3E in Custer County. Water Permit No. 2610-2 additionally appropriates 0.21 cfs of water from the Madison Aquifer for use of suburban housing development. There was no annual volume rate limit placed upon Water Permit No. 2610-2 at the time Water Permit Application No. 2730-2 was submitted.

2. United Land Management subsequently transferred the permit to United Order of South Dakota, Stephen P. Harker, trustee. United Order is a common law trust and, as a result, the permit is held in the name of the trustee and not the trust. The Notice of Transfer was filed with DENR on December 31, 2009. Although the permit is often referred to as being held by United Order, it is clear from the Notice of Transfer that it is held by Stephen P. Harker, trustee for United Order.

3. On October 14, 2014, DENR received Water Permit Application No. 2730-2 requesting an additional diversion point (i.e. authority to construct a new well) and an increase in diversion rate (from 0.21 cfs to 0.67 cfs) to Water Permit No. 2610-2. The application requested the permit be held in the name of United Order of South Dakota and was signed by Seth Jeffs.

4. Upon request, Mr. Seth Jeffs presented an affidavit of Mr. Stephen P. Harker declaring that he is no longer a trustee of United Order

and that Isaac S. Jeffs is a current trustee. A statement of authority executed by Mr. Isaac S. Jeffs, trustee of United Order, authorizing Mr. Seth Jeffs to act on behalf of United Order on all matters relating to water and water rights was also provided to DENR. The application, though initiated prior to the execution of the formal statement of authority, is properly before the Board.

5. Water Permit Application No. 2730-2 indicates that the use for the water under the application was domestic use over 18 gpm and/or rural water system. Despite that designation by the applicant, DENR staff understood that the applicant's request did not qualify as a rural water system but that the water was to be used for domestic use by United Order's water system and processed the application on those grounds. July Transcript, p. 49.

6. The Chief Engineer recommended approval of the application subject to the permit including four specified qualifications.

7. Notice of the application and hearing was timely advertised in the Custer County Chronicle on January 7, 2015, and the Rapid City Journal on December 31, 2014.

8. DENR received timely petitions in opposition to the application from the following parties: United States Department of the Interior, National Park Service (hereinafter referred to as National Park Service); Karl and Suzanne Von Rump; Linda Van Dyke Kilcoin; Toni Martin; Mr. and Mrs. David Albrecht; Rick Fox; Dean and Delia Johnson; and United States

Department of Agriculture, Black Hills National Forest (hereinafter referred to as Forest Service).

9. On February 23, 2015, DENR received a written request to modify the application to request a total peak rate of 200 gpm (or 0.446 cfs) as opposed to the original requested rate of 300 gpm (or 0.668 cfs).

10. A Supplemental Report was prepared and the Chief Engineer issued a revised recommendation indicating that the application should be approved at a maximum diversion rate of 0.446 cfs and limited to an annual volume rate of 60 acre-feet per year of water subject to qualifications.

11. Subsequently, United Order entered into a settlement agreement with National Park Service and Forest Service whereby United Order agreed to accept the Chief Engineer's revised recommendation that the application be approved at the maximum diversion rate of 0.446 cfs and limited to 60 acre-feet per year and the additional specified qualifications in exchange for the withdrawal of National Park Service's and Forest Service's petitions in opposition. DENR received formal requests to withdraw the petitions in opposition from National Park Service and Forest Service on June 29, 2015.

12. Water Permit Application No. 2730-2 is considered a new water permit application which requires a determination pursuant to SDCL 43-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

13. In considering water availability this Board must examine whether the quantity of the average water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

14. The Madison Aquifer underlies portions of North Dakota, South Dakota, Montana, Wyoming, Saskatchewan, Manitoba and Alberta. The Madison Aquifer is comprised of limestone dolomite carbonate rock. In the area of the proposed well site, the Madison Aquifer is approximately 300 feet thick. It is a karstic aquifer which contains an estimated 644,827,200 acre-feet of recoverable water in storage in western South Dakota.

15. The Madison Aquifer is older than, and stratigraphically lower than, the Greenhorn Formation.

16. Recharge to the Madison Aquifer occurs from precipitation and stream-flow loss. Several studies have been conducted to estimate the recharge to the Madison Aquifer. One study estimated the Madison Aquifer receives between 140,000 and 400,000 acre-feet of recharge per year. Another study estimated the recharge to be approximately 137,000 acre-feet per year.

17. DENR witness, Ken Buhler, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Madison Aquifer, and reviewed the information obtained from current water right/permit files and well completion reports for the aquifer.

18. Mr. Buhler testified that withdrawals from the Madison Aquifer amount to less than 50,000 acre-feet per year.

19. Mr. Buhler testified as to a supplemental report prepared in an attempt to determine the amount of water United Order could be expected to use. He concluded that the maximum amount of reported water use was 40.53 acre-feet per year. In determining the current and future use of water by United Order, Mr. Buhler relied in part on a report by the Department of Environment and Natural Resources-Drinking Water Program generated after an on-site evaluation on June 11, 2014, in which it was noted that the United Order water system currently serves 75 individuals. Mr. Buhler also relied in part upon wastewater system approvals which indicated that United Order's wastewater system was capable of supporting 126 people. Based upon the wastewater approvals, Mr. Buhler estimated United Order's need for drinking water, washing, sanitary, and culinary uses would total 18 acre-feet per year. Mr. Buhler then examined the area that United Order currently irrigates for gardens, orchards and landscape. He determined that approximately seven acres is currently irrigated. He further concluded that there were approximately 14 more acres that could be irrigated. Thus, Mr. Buhler determined that United Order could irrigate up to 21 acres of gardens, orchards and landscape with such use equaling approximately 42 acre-feet of water per year. Thus, Mr. Buhler determined that based upon the information before the Chief Engineer, United Order could not put to beneficial use more than 60 acre-feet of water per year.

20. Mr. Buhler also examined whether there would be an unlawful impairment to existing water rights in the Madison Aquifer.

21. Using the Theis equation, Mr. Buhler calculated that using 60 acre-feet per year, the draw down 1,000 feet from the proposed well site would be approximately one feet.

22. The nearest existing water right to the proposed well site is Water Right No. 419-2 located approximately five miles away and held by Wind Cave National Park. Mr. Buhler opined that there would not be an unlawful impairment to this existing water right.

23. Additionally there are 64 domestic well completion reports on file with DENR within an approximate five-mile radius of the proposed point of diversion. Of those 64 domestic wells, only three are believed to be completed into the Madison Aquifer. Those three wells are located more than three miles from the proposed well site. Mr. Buhler testified that there is no likelihood that these domestic wells would be adversely impacted.

24. Mr. Seth Jeffs also testified before the Board. Mr. Jeffs is the water operator for United Order and initiated this application for the new point of diversion and increased diversion rate. Mr. Jeffs was authorized by the trustees of the United Order of South Dakota to act on their behalf in the application. This authorization is memorialized by a statement of authority executed by Mr. Isaac Jeffs.

25. Mr. Jeffs testified that one of their two current wells is inoperable due to a broken shaft and that a new well would serve as a backup well.

Mr. Jeffs testified that Mr. Buhler's estimate as to irrigable acreage was accurate. Mr. Jeffs further testified that he did not dispute Mr. Buhler's calculations as to the limitations of the wastewater approvals on the number of residents allowed.

26. The Board also received testimony from Mike Fleming. Mr. Fleming testified that he owns property at Canyon Rim Ranch, a wilderness preservation community located near the United Order compound. Mr. Fleming testified that he, individually and as president of the Canyon Rim Ranch homeowners' association, is concerned that the proposed use of water would impair the wells and springs located within Canyon Rim Ranch. He also testified that there are concerns that the surrounding property values would be adversely impacted. Mr. Fleming testified that he and the homeowners he represents as president do not believe this application is in the public interest.

27. At the July hearing, the Board also received the testimony of Jim Farmer. Mr. Farmer established the Canyon Rim Ranch and owns property bordering the Untied Order compound on the north and on the south. He is in the process of establishing wilderness communities on those properties as well. Mr. Farmer testified that property values have decreased as a result of United Order's presence.

28. Intervenor Karl Von Rump also presented testimony to the Board at the July hearing. Mr. Von Rump testified that he owns property located

near the United Order compound. Mr. Von Rump testified that construction activities occur at all hours of the night and disrupt the peace of the area.

29. At the July hearing, the Board unanimously added to the Chief Engineer's proposed qualifications. Thus, upon action of the Board, Qualification No. 5 now reads, "A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The water permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer. The report shall be a total volume submitted each January and provide a month-by-month breakdown of water withdrawn for the previous calendar year for each well. Site visits by DENR staff will be permitted at any time to verify any of the permit qualifications." The Board further added Qualification No. 6 which provides, "[f]ailure to comply with any of these qualifications may result in cancellation proceedings before this board."

30. Unable to reach a decision as to the disposition of the application, the July hearing was continued and the Board indicated the evidentiary portion of the hearing would be reopened for the sole purpose of receiving further evidence regarding United Order's need for the water.

31. At the October hearing, the applicant informed the Board that no further evidence would be presented as it was believed that there was sufficient evidence in the record for the Board to make a determination as to the factors set forth in SDCL § 46-2A-9.

32. The Board finds Mr. Buhler to be a credible witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Buhler's testimony and the reports and exhibits which he prepared and/or relied upon.

33. Intervenors have not submitted any expert opinions, testimony or evidence that would support a determination that there is a reasonable probability that there is not unappropriated water available in this aquifer.

34. The Board finds that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

35. The Board further finds that granting these applications would not result in withdrawals from the aquifer exceeding recharge to the aquifer.

36. The Board further finds that the proposed use of the water for drinking, sanitation, and culinary use as well as the irrigation of landscape, gardens and orchards is a beneficial use.

37. The Board further finds that placing the water to these beneficial uses is in the public interest.

38. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL 46-2A-4.

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL 46-2A-4(8).

4. The applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9.

5. SDCL 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first factor for consideration under SDCL 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL 46-6-3.1 pertaining to recharge/withdrawal: whether "according to the best information reasonably available, it is probable that the quantity of water withdrawn

annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

7. SDCL 46-6-3.1 provides an exception to the recharge/withdrawal limitation. It states in pertinent part, "An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems." The Madison Aquifer is stratigraphically lower than the Greenhorn Formation and United Order's water system meets the definition of a water distribution system. As a result, the Board concludes that the exception to the recharge/withdrawal limitation could be applied to these circumstances but need not be as there is unappropriated water available to fulfill this application.

8. There is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

9. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL 46-6-3.1 if this application is granted.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing rights.

11. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to

the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (domestic) is a beneficial use.

12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3). The Board finds that appropriating water for domestic use, i.e. drinking, culinary use, sanitation, and the irrigation non-commercial orchards and gardens, is in the public interest.

13. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2730-2 is granted in the name of Isaac S. Jeffs, trustee of the United Order of South Dakota with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall

control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

Dated this _____ day of December, 2015.

BY THE BOARD:

_____

South Dakota Water Management Board

pld_AFMB In the Matter of Water Permit United Order (DENR's Proposed FOF & COL) (jmm)

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WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	)	DENR'S RESPONSE TO UNITED ORDER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW, the Department of Natural and Environment Resources - Water Rights Program (hereinafter DENR) in response to United Order's proposed findings of fact and conclusions of law in this matter.

DENR objects to Proposed Finding 11 in that Water Permit No. 2610-2 was transferred from United Land Management, LLC to United Order of South Dakota, Stephen P. Harker, trustee.

DENR objects to Proposed Finding 17 as improper and not supported by the record per se. DENR does not contend that the use of Water Permit No. 2610-2 resulted in unlawful impairment to existing water rights. Nonetheless, DENR contends that while there is evidence that the water permit was used, there was no evidence regarding whether there was a "significant impact to the Madison aquifer."

DENR objects to the second sentence of Proposed Finding 20 as it is not supported by the record.

DENR objects to Proposed Finding 21. DENR asserts that the actual number in the first sentence is 644,827,200 acre-feet of recoverable water in western South Dakota. Furthermore, the thickness of the Aquifer in this

location is approximately 300 feet thick as opposed to the proposed 250 to 300 feet thick. Furthermore, there is no evidence in the record regarding the recoverable water and storage of the Madison Aquifer in Fall River County or Custer County.

DENR objects to the final sentence of Proposed Finding 22 as it is unsupported by the record.

DENR objects to Proposed Finding 23 as unsupported by the record. The record reflects that a liberal construction of the withdrawals occurring from the Madison Aquifer amounts to less than 50,000 acre-feet per year. Furthermore, recharge of the Madison Aquifer has been the subject of two different studies with one concluding that the recharge rate is between 140,000 and 400,000 acre-feet per year while the other study estimated recharge in the amount of 137,000 acre-feet per year. The Board did not specify upon which recharge rate it relied.

DENR objects to Proposed Finding 24 as unsupported by the record. The rate of diversion supported by the Chief Engineer is 0.446 cfs not 0.46 cfs. Furthermore, the record reflects that the Black Hills Hydrology Study estimated an average annual withdrawal from the Madison Aquifer of 12,163 acre-feet per year for the period of 1987 through 1996. DENR, however, has taken a more conservative approach and estimated that withdrawals from the Madison Aquifer total less than 50,000 acre-feet per year.

DENR objects to Proposed Finding 26 in that it refers to the Chief Engineer's report as opposed to the report authored by DENR Engineer Ken Buhler.

DENR objects to Proposed Finding 28 as unsupported by the record.

DENR objects to Proposed Finding 29 in that it should refer to wastewater approvals not wastewater permits.

DENR objects to Proposed Finding 32 as unsupported by the record. The record reflects that at this time, United Order can irrigate up to seven acres and that there may be an additional 14 acres that could be irrigated in the future.

DENR objects to Proposed Conclusions of Law 10 and 13. United Order of South Dakota is a common law trust which is not a juridical entity and cannot hold title to the water permit. The water permit must be issued to the trustee on behalf of United Order of South Dakota.

DENR asserts that additional findings are necessary and thereby submits its own proposed findings of fact and conclusions of law for the Board's consideration.

Dated this 19th day of November 2015.

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of DENR's proposed Findings of Fact, Conclusions of Law and Final Decision and DENR's Response to United Order's proposed Findings of Fact and Conclusions of Law in the above-entitled matter were served upon each of the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota on this 19th day of November 2015:

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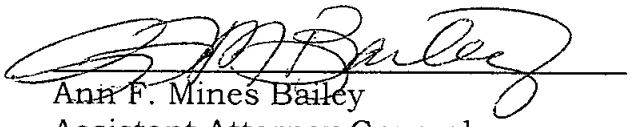

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pld_AFMB COS (United Order) (jmm)

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Reply to Rapid City Office

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

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NOV 25 2015
WATER RIGHTS PROGRAM

November 23, 2015

Via E-Mail and U.S. Mail
Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: ***In the Matter of the Application of the United Order of South Dakota, Application No. 2730-2***

Dear Matt:

For the above-referenced matter, please find enclosed an original document entitled *Linda Van Dyke Kilcoin's Objections to Applicant's Proposed Findings of Fact and Conclusions of Law.*

By copy of this letter, the Water Board and all interested parties have been served by e-mail or U.S. mail. If you have any questions or comments, please advise. Thank you.

Sincerely,

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

Michael M. Hickey

MMH:ke
Enclosure
Cc: Parties Listed on Certificate of Service

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NOV 25 2015
WATER RIGHTS PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA.

Linda Van Dyke Kilcoin's Objections to Applicant's Proposed Findings of Fact and Conclusions of Law

---

COMES NOW, Linda Van Dyke Kilcoin, through counsel, and hereby makes her objections to the Applicant's Proposed Findings of Fact and Conclusions of Law and Final Decision.

FINDINGS OF FACT

1. This permit application was filed by the United Order of South Dakota. It seeks to appropriate 0.46 cubic-feet per second of water from the Madison aquifer. The water will be used by the applicant for domestic needs in Custer County, South Dakota.

OBJECTION: As was demonstrated at the time of the hearing on July 9, 2015, the application was submitted by the United Order of South Dakota which represents itself as being a common law trust, which is not a legal entity recognized under the law and capable of holding a valid water permit or initiating an application to obtain water. The application is signed by Seth Jeffs in his individual capacity and not as an authorized representative of the United Order of South Dakota.

2. Two hearings were held in this matter, the first on July 9, 2015 and the second on October 14, 2015. The Board has considered evidence presented and arguments made by the parties at both hearings.

<u>OBJECTION</u>: No additional evidence was introduced at the hearing held on October 14, 2015, as neither the applicant nor Seth Jeffs appeared at the hearing despite being requested to do so.

3. The Board members present at the October 14 meeting also reviewed the transcript of the July 9 hearing, prior to the October 14 hearing.

<u>OBJECTION</u>: There is no evidence in the record to support this finding other than the statement by Mr. Naasz that Ms. Dixon has "reviewed the transcript that was provided and has familiarized herself with the record in this matter." This statement was not confirmed by Ms. Dixon.

4. The Applicant appeared at the July 9 hearing through water operator Seth Jeffs and attorney Jeffrey R. Connolly of Rapid City. Jeffs testified at the July 9 hearing. Applicant appeared at the October 14 hearing through attorney Jeffrey R. Connolly. The Applicant did not personally appear at the October 14 hearing.

<u>OBJECTION</u>: The Applicant did not appear at the July 9 hearing as Mr. Seth Jeffs is not a trustee of the United Order of South Dakota, which is not a legally recognized entity, and there is no evidence in the record to support a finding that Mr. Jeffs was properly authorized to appear on behalf of the trust.

5. Intervenor, Linda Kilcoin, appeared at the July 9 hearing and the October 14 hearing through counsel, Michael Hickey of Rapid City. Kilcoin did not appear at either hearing.

<u>OBJECTION</u>: No objection.

6. Intervenor Karl Von Rump appeared pro se at the July 9 hearing and pro se at the October 14 hearing.

<u>OBJECTION</u>: No objection.

7. Intervenors National Park Service and National Forest Service stipulated to withdraw their petitions to intervene through a written agreement and did not attend either hearing as reflected by the transcript and exhibits.

<u>OBJECTION</u>: This finding is incomplete and therefore inaccurate concerning the actions of the National Park Service and National Forest Service.

8. The Department of Environment and Natural Resources (DENR) was represented at both hearings by counsel, Ann Mines-Bailey.

<u>OBJECTION</u>: No objection.

9. The remaining intervenors did not participate in either hearing.

<u>OBJECTION</u>: No objection.

10. The parties stipulated to admission of the complete administrative file as to Water Permit Application Nos. 2730-2 (Exhibit 11).

<u>OBJECTION</u>: No objection.

11. A previous water permit, 2610-2, issued on or about July 11, 2007 to United Land Management, LLC was properly transferred to the United Order of South Dakota as of January 5, 2010.

<u>OBJECTION</u>: This statement is not a finding of fact and is not supported by the evidence herein. It states a legal conclusion, which is erroneous, as a common law trust cannot commence legal proceedings or hold a water permit. Additionally, the transfer was not properly done as Mr. Duvall never consulted with anyone familiar with the legal status of a common law trust.

12. Permit 2610-2 was previously held for the benefit of the United Order of South Dakota by one of its trustees, Stephen P. Harker.

<u>OBJECTION</u>: This finding is clearly erroneous and incorrect. The document clearly establishes that the permit was transferred to the United Order of South Dakota, which is not a legal entity and is thus incapable of commencing legal proceedings or otherwise holding a water permit.

13. Ownership of permit 2610-2 was transferred from Trustee Stephen P. Harker, of the benefit of United Order of South Dakota to Trustee Isaac S. Jeffs for the benefit of the United Order of South Dakota on July 2, 2015.

<u>OBJECTION</u>: This finding is clearly erroneous as there is no evidence in the record to support this finding. Additionally, the evidence clearly establishes that the permit was transferred to the United Order of South Dakota, which is not a legal entity and is thus incapable of commencing legal proceedings or otherwise holding a water permit.

14. Isaac S. Jeffs is a Trustee of the United Order of South Dakota.

<u>OBJECTION</u>: This finding is clearly erroneous as it is not supported by the evidence in the record. There is no evidence in the record to establish that Issac S. Jeffs was properly appointed as a trustee at any time relevant to the filing of the application.

15. The Trustees of the United Order of South Dakota have authorized Seth S. Jeffs to represent the United Order of South Dakota on all matters related to their water interests and water rights and to represent the United Order of South Dakota in the application process of permit 2730-2.

<u>OBJECTION</u>: This finding is clearly erroneous as it is not supported by the evidence.

16. Seth Jeffs testified and agreed to limit the annual volume of appropriation to 60 acre-feet. Jeffs also agreed to unannounced site visits by DENR staff to verify the well conditions.

<u>OBJECTION</u>: This finding is clearly erroneous as the testimony of Seth Jeffs should be rejected.

17. The applicant and its predecessors have previosuly (sic) used water pursuant to permit 2610-2 without significant impact to the Madison aquifer.

<u>OBJECTION</u>: This proposed finding is clearly erroneous and is not supported by the evidence herein.

18. The Madison aquifer is stratigraphically lower and older than the Greenhorn formation.

<u>OBJECTION</u>: No objection.

19. The application seeks water for a water distribution system.

<u>OBJECTION</u>: No objection.

20. The Madison aquifer receives recharge through infiltration of precipitation and stream flow losses in the outcrop area. Natural discharge from the Madison aquifer occurs at artesian springs that originate from the Madison aquifer and to ground water outflow.

<u>OBJECTION</u>: This finding is clearly erroneous and is not supported by the evidence herein.

21. It is reliably estimated that the Madison aquifer contains 640 million acre-feet of recoverable water in western South Dakota. It constitutes a tremendous water resource for the State of South Dakota. In the area of the proposed well, the Madison is somewhere between 250 and 300 feet thick. The Madison aquifer contains approximately 9.8 million acre-feet of recoverable water and storage in Fall River County and approximately 9.2 million acre-feet of recoverable water and storage in Custer County.

<u>OBJECTION</u>: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

22. There is available water in the Madison aquifer to supply this requested appropriated amount. There are currently a total of 15 appropriations from the Madison Aquifer in the vicinity of the diversion points referenced in application 2730-2. Additionally, there are seven future use permits that reserve 2,224 acre feet of water per year.

<u>OBJECTION</u>: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

23. The worse case scenario for usage in the Madison aquifer, based on current permits is less than 50,000 acre feet per year. Meanwhile, recharge in the Madison is taking place at 140,000 to 400,000 acre-feet per year.

<u>OBJECTION</u>: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

24. A permit granted to appropriate 0.46 c.f.s. equates to the right to appropriate 333.04 acre-feet of water annual if constantly diverted at the 0.46 rate. However, the applicant has agreed to a yearly cap of 60 acre-feet of water annually. Actual withdrawals of permits already in the Madison Aquifer have been estimated to average only 12,309 acre-feet annually from 1987 to 1996.

<u>OBJECTION</u>: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

25. The DENR has concluded that it is not probable that any ground water rights would be adversely impacted by the permit.

<u>OBJECTION</u>: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

26. The Chief Engineer has concluded that there is unappropriated water available at the proposed well site from the Madison aquifer. The Chief Engineer's report states that the proposed appropriation should not adversely affect existing water rights including domestic wells and the appropriation should not affect the discharge of the nearest spring, Evans Plunge.

<u>OBJECTION</u>: This finding is clearly erroneous and is not supported by the evidence herein.

27. The proposed diversion would not unlawfully impair the rights of Wind Cave National Park or the Black Hills National Forest.

<u>OBJECTION</u>: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

28. At least 75-100 individuals live at the applicant site and can utilize water for domestic use.

<u>OBJECTION</u>: This finding is clearly erroneous and not supported by the evidence in the record. In point of fact, the applicant offered no testimony as to the number of individuals that utilize the water as Mr. Jeffs repeatedly refused to testify concerning the number of people living in the compound. The Board specifically advised the applicant to appear and give testimony concerning the number of individuals living at the compound, but applicant continued to refuse to do so.

29. The applicant currently has on-site wastewater permits to allow for up to 126 people.

<u>OBJECTION</u>: According to the testimony of Mr. Buhler, there are 4 waste water systems on the property which have a capacity of 63 bedrooms or 126 individuals. It appears that 18 additional bedrooms were added in March 2010. There is no evidence in the record to support a finding that applicant is operating within the limitations of those waste water permits or intends to operate within the limitations of that permit in the future as Mr. Jeffs refused on multiple occasions to testify as to the number of individuals that live in the compound or as to the future plans to add additional inhabitants.

30. The applicant can beneficially use up to 18 acre-feet per year of water for culinary, drinking, and sanitation needs.

<u>OBJECTION</u>: This is not a proper finding of fact and is not supported by the evidence herein.

31. The applicant can beneficially use up to 42 acre-feet per year of water for watering of landscaping, orchards, and gardens.

<u>OBJECTION</u>: This is not a proper finding of fact and is not supported by the evidence herein. This finding is based upon an unsupported assumption of Mr. Buhler who never visited the site and never did anything to verify the number of acres involved.

32. At this time, applicant can irrigate up to 21 acres of land for landscaping, gardens or orchards.

<u>OBJECTION</u>: This is not a proper finding of fact and is not supported by the evidence herein. This finding is based upon an

unsupported assumption of Mr. Buhler who never visited the site and never did anything to verify the number of acres involved.

33. There exists reasonable probability that there is unappropriated water available for the Applicant's proposed use under this permit.

OBJECTION: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

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

OBJECTION: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

35. The proposed use in the permit is beneficial use to the appropriator.

OBJECTION: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein.

36. The proposed use is in the public interest.

OBJECTION: This finding is clearly erroneous, based upon speculation and conjecture, and is not supported by the evidence herein. The Department did nothing to determine whether the proposed use was in the public interest, and the Board refused to consider or make inquiry into the interest of the public concerning this application.

37. To the extent that any of these Findings of Fact are determined to be Conclusions of Law, they should be deemed Conclusions of Law.

OBJECTION: No objection.

CONCLUSIONS OF LAW

1. The South Dakota Water Management Board conducted a hearing on this application for appropriation of water under the authority of SDCL Ch. 46-2 and Ch. 46-2A.

OBJECTION: No objection.

2. Board member, Dixon, who was absent during the July 9 hearing, reviewed the transcript of the July 9 hearing and the complete file. She is able to participate in the Board's consideration of the Application.

OBJECTION: There is no evidence in the record to support this conclusion of law. The only "evidence" in the record is the statement by Mr. Naasz that Ms. Dixon has "reviewed the transcript that was provided and has familiarized herself with the record in this matter." This statement was not confirmed by Ms. Dixon.

3. Unappropriated water is available for the proposed appropriation. There currently exists a need for quality water for rural water system that this Application would help satisfy.

OBJECTION: There is no evidence in the record to support this conclusion as the use by the applicant does not qualify as a rural water system.

4. The proposed diversion can be developed without unlawful impairment of existing rights to other permit holders. SDCL 46-2A-9.

OBJECTION: There is no evidence in the record to support this conclusion.

5. The domestic use of water is the highest use of water and takes precedence over all other appropriative rights.

OBJECTION: There is no evidence in the record to support this conclusion.

6. The proposed use by the applicant is a beneficial use and a public benefit.

<u>OBJECTION</u>: There is no evidence in the record to support this conclusion.

7. The proposed use would be an efficient use of the water resources in the state.

<u>OBJECTION</u>: There is no evidence in the record to support this conclusion.

8. The proposed use is in the public interest.

<u>OBJECTION</u>: This conclusion is an error of law and is not supported by the evidence herein. The Department did nothing to determine whether the proposed use was in the public interest, and the Board refused to consider or make inquiry into the interest of the public concerning this application.

9. Intervenor Kilcoin's Motion to Dismiss is denied for the reasons stated in the record.

<u>OBJECTION</u>: The denial of Kilcoin's motion is in violation of statutory provisions and otherwise affected by error of law.

10. The United Order of South Dakota is an entity, which can maintain an application and can be awarded a water permit under the authority of this Board.

<u>OBJECTION</u>: This conclusion violates statutory provisions and is otherwise affected by error of law. A common law trust is not a judicial entity that can commence legal proceedings or hold title to a water permit.

11. Seth S. Jeffs has been given legal authorization by the Trustees of the United Order of South Dakota to maintain this action and application for water permit on behalf of the United Order of South Dakota.

<u>OBJECTION</u>: This conclusion violates statutory provisions, is otherwise affected by error of law, and is not supported by the evidence here.

12. The United Order of South Dakota, through its Trustee, Issac S. Jeffs, is the owner of permit 2601-2.

<u>OBJECTION</u>: This conclusion violates statutory provisions, is otherwise affected by error of law, and is not supported by the record herein. This conclusion was fabricated out of thin air by the Department and Board after it was pointed out that a common law trust is not a judicial entity that can commence legal proceedings or hold title to a water permit.

13. The United Order of South Dakota, through its Trustees, is an entity which may be granted a water permit by this Board.

<u>OBJECTION</u>: This conclusion violates statutory provisions, is otherwise affected by error of law, and is not supported by the record herein. This conclusion was fabricated out of thin air by the Department and Board after it was pointed out that a common law trust is not a judicial entity that can commence legal proceedings or hold title to a water permit.

14. To the extent that any of these Conclusions of Law are determined to be Findings of Fact, they should be deemed Findings of Fact.

<u>OBJECTION</u>: No objection.

<u>DECISION</u>

The Board hereby authorizes the Permit conditioned on the following:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a 20-year term. Pursuant to 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.

<u>OBJECTION</u>: Kilcoin objects to this portion of the decision for all of the reasons stated above.

2. The wells approved under this Permits Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

<u>OBJECTION</u>: Kilcoin objects to this portion of the decision for all of the reasons stated above. Additionally, this statement is not a proper legal conclusion as it presupposes that the applicant will in fact comply with the requirements of the permit or the law when the evidence in the records establishes just the opposite.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

<u>OBJECTION</u>: Kilcoin objects to this portion of the decision for all of the reasons stated above. Additionally, this statement is not a proper legal conclusion as it presupposes that the applicant will in fact comply with the requirements of the permit or the law when the evidence in the records establishes just the opposite.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

<u>OBJECTION</u>: Kilcoin objects to this portion of the decision for all of the reasons stated above. Additionally, this statement is not a proper legal conclusion as it presupposes that the applicant will in fact comply with the requirements of the permit or the law when the evidence in the records establishes just the opposite.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The water Permit holder shall report to the Chief Engineer annually the amount

of water withdrawn from the Madison aquifer. The report shall be a total volume submitted each January and provide a month by month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

OBJECTION: Kilcoin objects to this portion of the decision for all of the reasons stated above. Additionally, this statement is not a proper legal conclusion as it presupposes that the applicant will in fact comply with the requirements of the permit or the law when the evidence in the records establishes just the opposite.

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

OBJECTION: No objection, other than the evidence in the record clearly establishes that the Department has never inspected this location to determine if in fact they are in compliance despite the fact that state law has always given them that option.

Dated this 23rd day of November, 2015.

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

BY: _____

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CERTIFICATE OF SERVICE

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

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which are the last e-mail addresses and addresses of the addressees known to the subscriber.

Dated this 23rd day of November, 2015.

MICHAEL M. HICKEY

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RECEIVED
DEC 11 2015
WATER RIGHTS PROGRAM

Writer's E-mail Address: jconnolly@gpnalaw.com
Writer's Fax No.: (605) 342-0480

December 9, 2015

Eric Gronlund
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: United Order of South Dakota Re: Water Rights – Application #2730-2
GPNA File No. 12414.0002

Dear Eric:

Enclosed please find a Notice of Entry of Findings of Fact and Conclusions of Law and Water Management Board's Rulings on Parties' Submissions.

Sincerely yours,

Jeffrey R. Connolly

JRC:bmp
Enclosure
cc: Mr. and Mrs. Albrecht
Ann Mines-Bailey
Toni Martin
Doug Lesher
Rick Fox
Dean and Delia Johnson
Cheryl Schrempp Dupris
Matthew Naasz
Michael Hickey
Karl and Suzanne Von Rump
Chad Comes
Everett Hoyt
Jeanne Goodman
Craig Bobzien
William Hansen
Jim Hutmacher
Rodney Freeman
Lois Witt
Peter Fahmy
Peggy Dixon
Tim Bjork
Leo Holzbauer
Seth Jeffs

RECEIVED
DEC 11 2015
WATER RIGHTS PROGRAM

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

IN THE MATTER OF WATER PERMIT APPLICATION #2730-2, UNITED ORDER OF SOUTH DAKOTA	))))	NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND WATER MANAGEMENT BOARD'S RULINGS ON PARTIES' SUBMISSIONS

YOU ARE HEREBY NOTIFIED AND INFORMED that Findings of Fact, Conclusions of Law and Final Decision was signed on December 9, 2015 by James Hutmacher, Chairman of South Dakota Water Management Board and the Water Management Board's Ruling on Parties' Submissions was signed on December 9, 2015 by James Hutmacher, Chairman of South Dakota Water Management Board. A copy of the Findings of Fact, Conclusions of Law and Final Decision and the Water Management Board's Rulings on parties' Submissions is attached hereto and served upon you

Dated this 9TH day of December, 2015.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

Jeff R. Connolly

Jeffrey R. Connolly
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CERTIFICATE OF SERVICE

I hereby certify on this 9th day of December, 2015, I mailed by first-class U.S. mail, and emailed to those parties with emails listed below, a true and correct copy of a Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision and Water Management Board's Rulings on Parties' Submissions to the following:

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Jeffrey R. Connolly

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	)))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on July 9, 2015, and again on October 14, 2015. Board members Chad Comes, Tim Bjork, Ev Hoyt, Rodney Freeman and Leo Holzbauer were present at both hearings and heard the evidence presented. Board member Peggy Dixon was not present at the July 9, 2015, hearing but was provided with a copy of the transcript of that hearing and was present and participated in the October 14, 2015, hearing. Board member Jim Hutmacher was present at the July 9, 2015, hearing but did not attend, or participate in, the October 14, 2015, hearing. United Order of South Dakota (hereinafter referred to as United Order) were represented by Jeffrey R. Connolly. Intervenor Linda Van Dyke Kilcoin was represented by Michael Hickey. Intervenor Karl Von Rump appeared pro se. The remaining intervenors did not appear at either of the hearings. Ann Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. United Land Management applied for and was granted Water Permit No. 2610-2 which authorized the construction of two wells in the NW¼SE¼ Section 10-T6S-R3E in Custer County. Water Permit No. 2610-2 additionally appropriates 0.21 cfs of water from the Madison Aquifer for use of suburban housing development. There was no annual volume rate limit placed upon Water Permit No. 2610-2 at the time Water Permit Application No. 2730-2 was submitted.

2. United Land Management subsequently transferred the permit to United Order of South Dakota, Stephen P. Harker, trustee. United Order is a common law trust and, as a result, the permit is held in the name of the trustee and not the trust. The Notice of Transfer was filed with DENR on December 31, 2009. Although the permit is often referred to as being held by United Order, it is clear from the Notice of Transfer that it is held by Stephen P. Harker, trustee for United Order.

3. On October 14, 2014, DENR received Water Permit Application No. 2730-2 requesting an additional diversion point (i.e. authority to construct a new well) and an increase in diversion rate (from 0.21 cfs to 0.67 cfs) to Water Permit No. 2610-2. The application requested the permit be held in the name of United Order of South Dakota and was signed by Seth Jeffs.

4. Upon request, Mr. Seth Jeffs presented an affidavit of Mr. Stephen P. Harker declaring that he is no longer a trustee of United Order and that Isaac S. Jeffs is a current trustee. A statement of authority executed by Mr.

13. Two hearings were held in this matter, the first on July 9, 2015, and the second on October 14, 2015. The Board has considered evidence presented and arguments made by the parties at both hearings.

14. The transcript of the July 9 hearing was available for review by the Board members prior to the October 14 meeting.

15. The Applicant appeared at the July 9 hearing through water operator Seth Jeffs and attorney Jeffrey R. Connolly of Rapid City. Jeffs testified at the July 9 hearing. Applicant appeared at the October 14 hearing through attorney Jeffrey R. Connolly. The Applicant did not personally appear at the October 14 hearing.

16. Intervenor, Linda Kilcoin, appeared at the July 9 hearing and the October 14 hearing through counsel, Michael Hickey of Rapid City. Kilcoin did not personally appear at either hearing.

17. Intervenor Karl Von Rump appeared *pro se* at the July 9 hearing and *pro se* at the October 14 hearing.

18. Intervenors National Park Service and National Forest Service stipulated to withdraw their petitions to intervene through a written agreement and did not attend either hearing as reflected by the transcript and exhibits.

19. The Department of Environment and Natural Resources (DENR) was represented at both hearings by counsel, Ann Mines Bailey.

20. The remaining intervenors did not participate in either hearing.

21. The parties stipulated to admission of the complete administrative file as to Water Permit Application No. 2730-2 (Exhibit 11).

22. Ownership of permit 2610-2 was transferred from Trustee Stephen P. Harker, for the benefit of United Order of South Dakota to Trustee Isaac S. Jeffs for the benefit of the United Order of South Dakota on July 2, 2015.

23. Isaac S. Jeffs is a Trustee of the United Order of South Dakota.

24. The Trustees of the United Order of South Dakota have authorized Seth S. Jeffs to represent the United Order of South Dakota on all matters related to their water interests and water rights and to represent the United Order of South Dakota in the application process of permit 2730-2.

25. Seth Jeffs testified and agreed to limit the annual volume of appropriation to 60 acre-feet. Jeffs also agreed to unannounced site visits by DENR staff to verify the well conditions.

26. The application seeks water for a water distribution system.

27. The Madison Aquifer underlies portions of North Dakota, South Dakota, Montana, Wyoming, Saskatchewan, Manitoba and Alberta. The Madison Aquifer is comprised of limestone dolomite carbonate rock. In the area of the proposed well site, the Madison Aquifer is approximately 300 feet thick. It is a karstic aquifer which contains an estimated 644,827,200 acre-feet of recoverable water in storage in western South Dakota.

28. The Madison Aquifer is older than, and stratigraphically lower than, the Greenhorn Formation.

29. Recharge to the Madison Aquifer occurs from precipitation and stream-flow loss. Several studies have been conducted to estimate the

recharge to the Madison Aquifer. One study estimated the Madison Aquifer receives between 140,000 and 400,000 acre-feet of recharge per year. Another study estimated the recharge to be approximately 137,000 acre-feet per year.

30. DENR witness, Ken Buhler, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Madison Aquifer, and reviewed the information obtained from current water right/permit files and well completion reports for the aquifer.

31. Mr. Buhler testified that withdrawals from the Madison Aquifer amount to less than 50,000 acre-feet per year.

32. Mr. Buhler testified as to a supplemental report prepared in an attempt to determine the amount of water United Order could be expected to use. He concluded that the maximum amount of reported water use was 40.53 acre-feet per year. In determining the current and future use of water by United Order, Mr. Buhler relied in part on a report by the Department of Environment and Natural Resources-Drinking Water Program generated after an on-site evaluation on June 11, 2014, in which it was noted that the United Order water system currently serves 75 individuals. Mr. Buhler also relied in part upon wastewater system approvals which indicated that United Order's wastewater system was capable of supporting 126 people. Based upon the wastewater approvals, Mr. Buhler estimated United Order's need for drinking water, washing, sanitary, and culinary uses would total 18 acre-feet per year. Mr. Buhler then examined the area that United Order currently irrigates for gardens, orchards and landscape. He determined that approximately seven

acres is currently irrigated. He further concluded that there were approximately 14 more acres that could be irrigated. Thus, Mr. Buhler determined that United Order could irrigate up to 21 acres of gardens, orchards and landscape with such use equaling approximately 42 acre-feet of water per year. Thus, Mr. Buhler determined that based upon the information before the Chief Engineer, United Order could not put to beneficial use more than 60 acre-feet of water per year.

33. Mr. Buhler also examined whether there would be an unlawful impairment to existing water rights in the Madison Aquifer.

34. Using the Theis equation, Mr. Buhler calculated that using 60 acre-feet per year, the draw down 1,000 feet from the proposed well site would be approximately one foot.

35. The nearest existing water right to the proposed well site is Water Right No. 419-2 located approximately 13 miles away and held by Wind Cave National Park. Mr. Buhler opined that there would not be an unlawful impairment to this existing water right.

36. Additionally there are 64 domestic well completion reports on file with DENR within an approximate five-mile radius of the proposed point of diversion. Of those 64 domestic wells, only three are believed to be completed into the Madison Aquifer. Those three wells are located more than three miles from the proposed well site. Mr. Buhler testified that there is no likelihood that these domestic wells would be adversely impacted.

37. Mr. Seth Jeffs also testified before the Board. Mr. Jeffs is the water operator for United Order and initiated this application for the new point of diversion and increased diversion rate. Mr. Jeffs was authorized by the trustees of the United Order of South Dakota to act on their behalf in the application. This authorization is memorialized by a statement of authority executed by Mr. Isaac Jeffs.

38. Mr. Jeffs testified that one of their two current wells is inoperable due to a broken shaft and that a new well would serve as a backup well. Mr. Jeffs testified that Mr. Buhler's estimate as to irrigable acreage was accurate. Mr. Jeffs further testified that he did not dispute Mr. Buhler's calculations as to the limitations of the wastewater approvals on the number of residents allowed.

39. The Board also received testimony from Mike Fleming. Mr. Fleming testified that he owns property at Canyon Rim Ranch, a wilderness preservation community located near the United Order compound. Mr. Fleming testified that he, individually and as president of the Canyon Rim Ranch homeowners' association, is concerned that the proposed use of water would impair the wells and springs located within Canyon Rim Ranch. He also testified that there are concerns that the surrounding property values would be adversely impacted. Mr. Fleming testified that he and the homeowners he represents as president do not believe this application is in the public interest.

40. At the July hearing, the Board also received the testimony of Jim Farmer. Mr. Farmer established the Canyon Rim Ranch and owns property

bordering the United Order compound on the north and on the south. He is in the process of establishing wilderness communities on those properties as well. Mr. Farmer testified that property values have decreased as a result of United Order's presence.

41. Intervenor Karl Von Rump also presented testimony to the Board at the July hearing. Mr. Von Rump testified that he owns property located near the United Order compound. Mr. Von Rump testified that construction activities occur at all hours of the night and disrupt the peace of the area.

42. At the July hearing, the Board unanimously added to the Chief Engineer's proposed qualifications. Thus, upon action of the Board, Qualification No. 5 now reads, "A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The water permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer. The report shall be a total volume submitted each January and provide a month-by-month breakdown of water withdrawn for the previous calendar year for each well. Site visits by DENR staff will be permitted at any time to verify any of the permit qualifications." The Board further added Qualification No. 6 which provides, "[f]ailure to comply with any of these qualifications may result in cancellation proceedings before this board."

43. Unable to reach a decision as to the disposition of the application, the July hearing was continued and the Board indicated the evidentiary portion

of the hearing would be reopened for the sole purpose of receiving further evidence regarding United Order's need for the water.

44. At the October hearing, the Applicant informed the Board that no further evidence would be presented as it was believed that there was sufficient evidence in the record for the Board to make a determination as to the factors set forth in SDCL § 46-2A-9.

45. The Board finds Mr. Buhler to be a credible witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Buhler's testimony and the reports and exhibits which he prepared and/or relied upon.

46. Intervenors have not submitted any expert opinions, testimony or evidence that would support a determination that there is a reasonable probability that there is not unappropriated water available in this aquifer.

47. The Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use.

48. The Board finds that the proposed diversion can be developed without unlawfully impairing existing water rights.

49. The Applicant currently has on-site wastewater approvals to allow for up to 126 people.

50. The Board further finds that granting this application would not result in withdrawals from the aquifer exceeding recharge to the aquifer.

51. The Board further finds that the proposed use of the water for drinking, sanitation, and culinary use as well as the irrigation of landscape, gardens and orchards is a beneficial use.

52. The Board further finds that placing the water to these beneficial uses is in the public interest.

53. Any Finding of Fact more properly designated as a Conclusion of Law shall be treated as such.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL 46-2A-4.

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL 46-2A-4(8).

4. The Applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9.

5. SDCL 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the Applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these

factors must be met and the permit must be denied if the Applicant does not meet its burden of proof on any one of them.

6. The first factor for consideration under SDCL 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL 46-6-3.1 pertaining to recharge/withdrawal: whether "according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

7. SDCL 46-6-3.1 provides an exception to the recharge/withdrawal limitation. It states in pertinent part, "An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems." The Madison Aquifer is stratigraphically lower than the Greenhorn Formation and United Order's water system meets the definition of a water distribution system. As a result, the Board concludes that the exception to the recharge/withdrawal limitation could be applied to these circumstances.

8. There is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

9. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL 46-6-3.1 if this application is granted.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing rights.

11. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (domestic) is a beneficial use.

12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 46-1-6(3). The Board finds that appropriating water for domestic use, i.e. drinking, culinary use, sanitation, and the irrigation non-commercial orchards and gardens, is in the public interest.

13. Board member, Dixon, who was absent during the July 9 hearing, reviewed the transcript of the July 9 hearing and the complete file. She is able to participate in the Board's consideration of the Application.

14. Intervenor Kilcoin's Motion to Dismiss is denied for the reasons stated in the record.

15. Seth S. Jeffs has been given legal authorization by the Trustees of the United Order of South Dakota to maintain this action and application for water permit on behalf of the United Order of South Dakota.

16. The United Order of South Dakota, through its Trustee, Issac S. Jeffs, is the owner of permit 2610-2.

17. Any Conclusion of Law more properly designated as a Finding of Fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2730-2 is granted in the name of Isaac S. Jeffs, trustee of the United Order of South Dakota with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2730-2 is issued for a twenty year term. Pursuant to SDCL 46-2A-21, the twenty year term may be deleted at any time during the twenty year period or following its expiration. If the twenty year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2730-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

2. The wells approved under Permit Nos. 2610-2 and 2730-2 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these Permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

3. The new well authorized by Permit No. 2730-2 shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. Water Permit Nos. 2610-2 and 2730-2, combined, are limited to an annual volume of 60 acre-feet of water at a maximum diversion rate of 0.446 cubic feet of water per second.

5. A water meter shall be installed and maintained at the well sites authorized by Water Permit Nos. 2610-2 and 2730-2. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer. The report shall be a total volume submitted each January and provide a month-by-month breakdown of water withdrawn for the previous calendar year for each well. Site visits by Department of Environment and Natural Resources staff will be permitted at any time to verify any of the permit qualifications.

6. Failure to comply with any of these qualifications may result in cancellation proceedings before this Board.

Dated this 9 day of December, 2015.

BY THE BOARD:

James Hutmacher, Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA	)))))	WATER MANAGEMENT BOARD'S RULINGS ON PARTIES' SUBMISSIONS

Pursuant to the direction of the Water Management Board, counsel for the Applicant, United Order of South Dakota submitted Proposed Findings of Fact and Conclusions of Law, Final Decision and Order in the above-entitled matter. Subsequently, Ann Mines Baily, counsel for the Department of Environment and Natural Resources, Water Rights Program (DENR) submitted DENR's Response to United Order's Proposed Findings of Fact and Conclusions of Law. Additionally, Michael M. Hickey, counsel for intervenor Linda Van Dyke Kilcoin, submitted Linda Van Dyke Kilcoin's Objections to Applicant's Proposed Findings of Fact and Conclusions of Law. Intervenor Karl Von Rump did not submit objections to the respective proposals, or proposals of his own. The Board, upon review of the submissions received, the administrative record, and having orally entered its decision, enters the following rulings:

A. Applicant's proposed Finding of Fact No. 1 is rejected by the Board as incomplete statement of the procedural posture of this matter. In its place DENR's Proposed Findings of Fact Nos. 1-12 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision.

B. Applicant's Proposed Findings of Fact Nos. 2-10 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision as modified as follows:

a. Applicant's proposed Finding of Fact No. 3 has been modified to read: "The transcript of the July 9 hearing was available for review by the Board members prior to the October 14 hearing."

b. Applicant's proposed Finding of Fact No. 5 has been modified to insert "personally" between "did not" and "appear."

These proposed Findings of Fact are numbers 13-21 in the attached proposed Findings of Fact and Conclusions of Law.

C. Applicant's proposed Findings of Fact Nos. 11-12 are rejected by the Board. DENR's Proposed Findings of Fact Nos. 1-2 more accurately reflect the administrative record and the evidence presented on this issue.

D. Applicant's proposed Findings of Fact Nos. 13-16 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision. These proposed Findings of Fact are numbers 22-25 in the attached proposed Findings of Fact and Conclusions of Law.

E. Applicant's proposed Finding of Fact No. 17 is rejected by the Board as not supported by the administrative record and evidence presented.

F. Applicant's proposed Finding of Fact No. 18 is substantively accepted by the Board as consistent with and supported by the administrative

record and the Board's oral decision, but is replaced by DENR's proposed Finding of Fact No. 15.

G. Applicant's proposed Finding of Fact No. 19 is accepted by the Board as consistent with and supported by the administrative record and the evidence presented. This proposed Finding of Fact is number 26 in the attached proposed Findings of Fact and Conclusions of Law.

H. Applicant's proposed Findings of Fact Nos. 20-24 are rejected by the Board as incomplete and/or inconsistent with the administrative record and the Board's oral decision. DENR's Proposed Findings of Fact Nos. 14, 16-18, and 20-23 more accurately reflect the credible testimony received, the administrative record, and the Board's oral decision on the matters contained in Applicant's proposed Findings of Fact Nos. 20-24.

I. Applicant's proposed Finding of Fact No. 25 is accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision; as modified to read: "The Board finds that the proposed diversion can be developed without unlawfully impairing existing water rights." This proposed Finding of Fact, as modified, is number 48 in the attached proposed Findings of Fact and Conclusions of Law.

J. Applicant's proposed Finding of Fact No. 26 is rejected by the Board as the information contained in this proposed finding is more completely, and more accurately, reflected in Findings of Fact proposed by DENR and adopted by these rulings.

K. Applicant's proposed Findings of Fact Nos. 27-28 are rejected by the Board.

L. Applicant's proposed Finding of Fact No. 29 is accepted by the Board as consistent with the administrative record and the Board's oral decision as modified to read: "The applicant currently has on-site wastewater approvals to allow for up to 126 people." This proposed Finding of Fact, as modified, is number 49 in the attached proposed Findings of Fact and Conclusions of Law.

M. Applicant's proposed Findings of Fact Nos. 30-32 are rejected by the Board as DENR's proposed Finding of Fact No. 19 more accurately and completely reflects the administrative record and the Board's oral decision.

N. Applicant's proposed Findings of Fact Nos. 33-37 are substantively accepted by the Board; however, these proposed Findings of Fact will be replaced by DENR's proposed Findings of Fact Nos. 33-38, and Applicant's proposed Finding of Fact No. 25 (as modified), which more accurately and completely reflect the administrative record and the Board's oral decision.

O. Applicant's proposed Conclusions of Law Nos. 1, 3-4, 6-8 and 14 are rejected as duplicative of DENR's proposed Conclusions of law, which the Board concludes more accurately reflect the administrative record, the Board's oral decision and the Findings of Fact adopted by this Board in these rulings.

P. Applicant's proposed Conclusion of Law No. 5 is rejected by the Board as the present application does not present a need for the Board to compare relative priorities of water rights.

Conclusions of Law are rejected by the Board as contrary to the Board's adopted Findings of Fact, Conclusions of Law and Oral Decision. The Board's Findings of Fact, Conclusions of Law, and Final Decision are consistent with and supported by the administrative record and are a reasonable interpretation and application of the applicable provisions of South Dakota law.

The Board's attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Decision consistent with the above rulings to be executed by the Board's designee without further notice of hearing.

BY THE BOARD:

12/9/2015

James Hutmacher, Chairman
South Dakota Water Management Board

PAID
SEP 20 2021
Ck#_____

NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED
SEP 20 2021
WATER RIGHTS PROGRAM

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

No. **2730-2**

Date: 9-16-2021

I/We request that Water Permit No. **2730-2**

formerly owned by: **United Order of South Dakota**

be transferred to: (name & address) Blue Mountain Ranch LLC
11581 Farmer RD. Custer SD 57730

Telephone No. 435-233-8549

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

1 well – NW 1/4 SE 1/4 Section 10-T6S-R3E

I/We understand that the validity of Water Right/Permit No. **2730-2** has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

A fee of Fifty Dollars ($50.00) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Patric Pugh, the new owner, certify that the above information is true and correct.

Patric Pugh
(Signed by new owner)

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

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

2730-2

RECEIPT

WATER RIGHTS PROGRAM
South Dakota Department of Agriculture and Natural Resources

Date September 20, 2021

RECEIVED OF Blue Mountain Ranch LLC 11581 Farmer Rd. Custer SD 57730

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	$____
Fee for Application for Permit No. _____ to Appropriate Water for Future use	$____
Fee to retain Future Use Permit No. _____ after period of seven years.	$____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	$____
Fee for Filing Transfer Form 2730-2	$50.00
Fee for _____	$
Fee for Issuing New Well Driller's License No. _____	$____
Fee for Renewal of Well Driller's License No. _____	$
Fee for Issuing Well Pump Installer's License No. _____	$
Fee for Renewal of Well Pump Installer's License No. _____	$
(Any Other Work Provided by Law) TOTAL	$50.00

By Eric Gronlund
Chief Engineer
JM

2730-2

Operating Agreement of
BLUE MOUNTAIN RANCH, LLC

This Operating Agreement (this "Agreement") is effective as of the 11 day of September 2019, by and between the undersigned, Prairie Farms, LLC a Utah limited liability company, Claude Seth Cooke, Patrick Pipkin, Andrew Chatwin, the Members (the "Members") of Blue Mountain Ranch, LLC a Colorado limited liability company (the "Company").

Explanatory Statements

A. The Members have obtained that certain default judgment entered April 29, 2019 by the United States District Court for the District of Arizona, Case No. CV-16-08232-PCT-DLR awarding monetary damages to each of the Members (the "Judgement"), as more fully described in Exhibit B, attached hereto and incorporated herein.

B. The Members obtained a Transcript of Judgment in the District Court of Montezuma County, Colorado, Case No. 2019CV030034 for the Judgment which was filed as a foreign judgment with said district court, and the Members have assigned the Transcript of Judgment to the Company for the purpose of allowing the Company to, among other things, foreclose, bid, and acquire real property to which said Transcript of Judgment may attach and/or is recorded against.

C. Any real property obtained by the Company through foreclosure or other means of the Company's exercising the rights and benefits afforded by the Transcript of Judgment shall be held and managed by the Company pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the Members, agree as follows:

Section I
Defined Terms

The following capitalized terms have the meanings specified below, in Section I.

"Act" means the Colorado Limited Liability Act, as amended from time to time.

"Adjusted Capital Account Deficit" means, with respect to any Interest Holder, the deficit balance, if any, in the Interest Holder's Capital Account at the end of the relevant taxable year, once the following adjustments have been made:

(i) any deficit will be decreased by the amounts which the Interest Holder is obligated to restore under Section 4.4.2 of the Agreement or is obligated to restore under Regulation Sections 1.704-2(g)(1) and (i)(5) (i.e., the Interest Holder's share of Minimum Gain and Member Minimum Gain); and

(ii) any deficit will also be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6), if applicable.

"Affiliate" means, with respect to a Member, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Member. The term "control," as used in the immediately preceding sentence, means, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than twenty five percent (25%) of the voting rights attributable to the shares of the controlled corporation, and with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

"Agreed Value" means the dollar amount last agreed upon in writing by the Managers at a duly held annual or special meeting. The Managers will base the Agreed Value upon the reasonable value of the Company's assets less outstanding liabilities and encumbrances. The Agreed Value will be dated and filed in the records of the Company. If the date of the most recent determination of the Agreed Value is more than 13 months before the date of the event giving rise to the purchase and sale of Membership Rights, or an Interest, then the Withdrawal Purchase Price or Transfer Price shall be computed using Appraised Value.

"Agreement" means this Agreement, as amended from time to time.

"Capital Account" means the account maintained by Company for each Interest Holder in accordance with the following provisions:

(i) an Interest Holder's Capital Account shall be credited with the Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's allocable share of Profit and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of Section IV (other than Section 4.3.3.); and

(ii) an Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder, the Interest Holder's allocable share of Loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Section IV (other than Section 4.3.3.).

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. If the book value of Company property is adjusted pursuant to Section 4.3.3., the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

"Cash Flow" means all cash funds derived from operations of Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall be increased by the reduction of any reserve previously established.

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"Company" means the limited liability Company operated in accordance with this Agreement.

"Interest Holder" means any Person who holds a Membership Interest, whether as a Member or as an unadmitted assignee of a Member.

"Involuntary Withdrawal" means, with respect to any Member, the occurrence of any of the following events:

(i) if a Member makes an assignment for the benefit of creditors; files a voluntary petition of bankruptcy; is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding; files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties; files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in this Subsection (i) and; any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(ii) if a Member breaches this Agreement;

(iii) if a Member is an individual, the death of a Member; except that the death of an individual is not an involuntary withdrawal under this agreement so long as the membership interest passes to a Member's Family; or

(iv) if the Member is a Member by virtue of being the trustee of a trust holding the Interest, the termination of the trust; if the Member is a partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company; if the Member is a corporation, the dissolution of the corporation or the revocation of its charter.

"Majority Vote of Members" means a decision made by a majority of the Members who are original signatories to this Agreement and/or who have been subsequently admitted as Members with voting rights. For clarification purposes, if there are four members, a majority vote is a vote by three out of four members. If there are three members, a majority vote is a vote by two out of three members. If there are only two members, a majority vote is a unanimous vote by the two members.

"*Manager*" means the person(s) serving as member(s) of the Management Committee pursuant to Article V.

"Member" means each Person signing this Agreement and any Person who is subsequently admitted as a member of Company.

"*Member's Family*" means, with respect to any individual Member, the spouse, siblings, and lineal descendants by birth or adoption, and trusts for the exclusive benefit of a Member or any of the foregoing individuals.

"Member Minimum Gain" has the meaning set forth in Regulation Section 1.704-2 (i) for "partner nonrecourse debt minimum gain."

"Membership Interest" means a Person's share of the Profits and Losses of Company, and the right to receive distributions from Company.

"Membership Rights" means all of the rights of a Member in Company, including a Member's: (i) Membership Interest, (ii) right to inspect Company's books and records, and (iii) the right to participate in the management of and vote on matters coming before Company, as specified in this Agreement.

"Minimum Gain" has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain will be computed separately for each Interest Holder in a manner consistent with the Regulations under Code Section 704(b).

"Negative Capital Account" means a Capital Account with a balance of less than zero.

"Percentage" means, as to a Member, the percentage set forth after the Member's name on *Exhibit* A, as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member whose Interest has been acquired by such Interest Holder, to the extent the

Interest Holder has succeeded to that Member's Membership Interest.

"Person" means an individual, corporation, partnership, association, limited liability Company, trust, estate, or other entity.

"Positive Capital Account" means a Capital Account with a balance greater than zero.

"Profit" and *"Loss"* means, for each taxable year of Company (or other period for which Profit or Loss must be computed) Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) will be included in computing taxable income or loss;

(ii) any tax-exempt income of Company, not otherwise taken into account in computing Profit or Loss, will be included in computing taxable income or loss;

(iii) any expenditures of Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, will be subtracted from taxable income or loss;

(iv) gain or loss resulting from any taxable disposition of Company property will be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes;

(v) instead of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, depreciation computed based upon the adjusted book value of the asset will be taken into account; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.3 will not be taken into account in computing Profit or Loss.

"Regulation" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

"Resignation" means a Member's dissociation with Company by means other than a Transfer or an Involuntary Withdrawal.

"Transfer" means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means voluntarily to sell, hypothecate, pledge, assign, or otherwise transfer. Transfer shall include an involuntary transfer

which arises by operation of law or otherwise including but not limited to transfers resulting from death, divorce, or as a result of court order.

Section II
Formation and Name; Office; Purpose; Term

2.1. *Organization.* The Company was organized as a limited liability Company under the laws of the State of Colorado upon the filing of Articles of Organization with the Colorado Secretary of State on August 29, 2019. The Managers may authorize the Company to conduct business in any state other than Colorado and may take steps necessary to cause the registration of the Company to conduct business in any such states.

2.2. *Name of Company.* The name of the limited liability Company is **BLUE MOUNTAIN RANCH, LLC** (the "Company"). The Company may do business under that name and under any other name or names upon which the Managers agree. If Company does business under a name other than that set forth in its Articles of Organization, then Company shall file a trade name certificate as required by law.

2.3. *Purpose.* Company is organized to engage in any business permitted under the Act, including (i) bidding and foreclosing upon any real property against which the Transcript of Judgement has been recorded and entering into all agreements and documents in connection with same and (ii) the holding, acquiring, selling, leasing, cattle ranching, farming, and conducting ranch or other business operations in connection with real property and any improvements thereon located that may be acquired by the Company (the "Property").

2.4. *Term.* The term of Company began upon the date of the filing of the Articles of Organization and shall continue in existence in perpetuity, unless its existence is sooner terminated pursuant to Section VII of this Agreement.

2.5. *Principal Office.* The principal office of the Company is initially located at 450 East Utah Avenue, Hildale, Utah 84784, or at any other place upon which the Managers may agree.

2.6. *Resident Agent.* The name and address of the Company's resident agent in the State of Colorado is Gregory Golden & Landeryou, LLC 1199 Main Avenue, Suite 213, Durango, Colorado 81301. The Managers may change the registered agent as necessary.

2.7. *Members.* The name, present mailing address, initial capital contribution, and Percentage of each Member are set forth on Exhibit A, as it may be amended from time to time.

Section III
Members; Capital; Capital Accounts; Personal Guarantees

Signature Page for Operating Agreement of
BLUE MOUNTAIN RANCH, LLC

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

MEMBERS:

Prairie Farms, LLC, A Utah limited liability company

Seth Cooke
By: Seth Cooke, Managing Member

Date: 9-11-, 2019

Seth Cooke
By: Seth Cooke

Date: 9-11-, 2019

Patrick Pipkin
By: Patrick Pipkin

Date: 9-11-, 2019

Andrew Chatwin
By: Andrew Chatwin

Date: 9-11, 2019

2730-2

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 5, 2021

2610-2
2730-2

Patrick Pipken
Blue Mountain Ranch LLC
11581 Farmer Rd
Custer SD 57730

Dear Mr. Pipken:

I am writing to acknowledge the transfer of ownership forms, filing fees and the Operating Agreement for the LLC.

The ownership changes have been completed. Water Permit Nos. 2610-2 and 2730-2 formerly listed under United Order of SD – Isaac Jeffs, Trustee, are now listed under Blue Mountain Ranch LLC.

Enclosed for your records are receipts for the filing fees that were paid. If I can answer any questions, please let me know.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 11, 2024

NOTICE OF HEARING

TO: Blue Mountain Ranch, c/o Patric Pipkin, LLC., 11581 Farmer Rd, Custer SD 57730

FROM: Ron Duvall, Engineer III
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Violation of Permit Qualification to Report Annual Water Use

Our records indicate your 2023 annual water use has not been submitted for Permit Nos. 2610-2 and 2730-2. The request to report water use for 2023 was dated January 5, 2024. Two follow-up attempts to get the required water use report have gone unanswered. The Water Management Board has directed owners of water permits who have not submitted the 2023 water use reporting be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit Nos. 2610-2 and 2730-2 qualification:

> "The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer."

The hearing will be held at **Wednesday, July 10, 2024 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1 Suspend or cancel Permit Nos. 2610-2 and 2730-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the water use report(s) is (are) received in this office before the **July 10, 2024** hearing, you will no longer be in violation of your permit and your name will be removed from the Board agenda. You may submit your water use report by providing the information to Rachel Rodriguez at (605) 773-3352 or via email at rachel.rodriguez@state.sd.us. You may also submit the water use report via mail using the address in the NOTE at the bottom of this Notice.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD 57501 or call (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing, dated June 11, 2024, concerning violation water use reporting qualification in the matter of Water Permit Nos. 2610-2 and 2730-2 was served by U.S. certified mail, postage prepaid, upon the following on June 11, 2024.

Blue Mountain Ranch
c/o Patric Pipkin LLC.
11581 Farmer Rd
Custer SD 57730

Shannon Konst
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this ____ day of ____, 2024.

Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029

RACHEL RODRIGUEZ NOTARY PUBLIC STATE OF SOUTH DAKOTA Seal

June 24, 2024

Hyrum Keddington
11581 Farmer Road
Custer SD 57730

Dear Mr. Keddington:

Thank you for reporting your annual water usage. Your Permit Nos. 2610-2 and 2730-2 have been removed from the July Water Management Board meeting.

The letter for reporting annual water usage is sent every year in January. I have enclosed copies of your permits for your reference. Please look over the qualifications section.

Sincerely,

Ron Duvall, Natural Resources Engineer
for Eric Gronlund, Chief Engineer
Water Rights Program

enclosures

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

July 9, 2024

2610-2
2730-2

SDR Training Center
c/o Hyrum Keddington
11581 Farmer Rd
Custer SD 57730

Dear Mr. Keddington:

The Water Rights Program is in receipt of two "Notice of Transfer of Ownership" forms, requesting that Water Permit Nos. 2610-2 & 2730-2, held by Blue Mountain Ranch LLC, be transferred to SDR Training Center.

While the transfer forms were received on June 24, 2024, to date, no transfer fees have been received. Please mail a check, payable to SD Water Rights Program, in the amount of $100.00 ($50/transfer) to:

SD DANR
Water Rights Program
523 E Capitol Ave
Pierre SD 57501

Payment may also be made over the phone by calling our Fiscal Office at 605-773-5559.

Sincerely,

Amanda Dewell

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

Not Irregation Well

SD EForm - 0495LD V2

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

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

Water Right/Permit No. 2730-2, 2610-2

Date: March 5, 2024

I/We request that Water Right/Permit No. 2730-2 formerly owned by:

Blue Mountain Ranch be transferred to:

New Owner Name: SDR Training Center, Hyrum Keddington

Address: 11581 Farmer Road

City, State, Zip Custer SD 57730 Telephone No. 801-979-5899

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

[x] I understand that the validity of Water Right/Permit No. 2730-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

A fee of Fifty Dollars ($50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Hyrum Keddington, the new owner, certify that the above information is true and correct.

Hyrum Keddington

(signed by new owner)

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

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

2009-07

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

2610-2
2730-2

July 19, 2024

SDR Training Center
c/o Hyrum Keddington
11581 Farmer Rd
Custer SD 57730

Dear Mr. Keddington:

I have received your "Notice of Transfer of Ownership" forms and the required fees. Enclosed are receipts of payment for your records, as well as copies of both Water Permits.

Water Permit Nos. 2610-2 & 2730-2, previously owned by Blue Mountain Ranch LLC, are now listed under SDR Training Center. I have also updated your contact information in our system.

As a reminder, so long as you use the water beneficially, as stated in the Water Permits, State Water Laws provide that you have a continuing right to use the water. Should the water not be put to beneficial use for a period longer than 3 consecutive years, without legal excuse, the permits will be subject to cancellation.

If you have any questions, please contact me.

Sincerely,

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

enclosures

RECEIPT

WATER RIGHTS PROGRAM
South Dakota Department of Agriculture and Natural Resources

Date July 18th, 2024

RECEIVED OF Paid by Makell Evans for Hyrum Keddington 11581 Farmer Rd Custer SD 57730

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	$____
Fee for Application for Permit No. _____ to Appropriate Water for Future use	$____
Fee to retain Future Use Permit No. _____ after period of seven years.	$____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	$____
Fee for Filing Transfer Form Permit # 2730-2	$51.25
Fee for _____	$
Fee for Issuing New Well Driller's License No. _____	$____
Fee for Renewal of Well Driller's License No. _____	$
Fee for Issuing Well Pump Installer's License No. _____	$
Fee for Renewal of Well Pump Installer's License No. _____	$
(Any Other Work Provided by Law) TOTAL	$51.25

By Eric Brodland
Chief Engineer

2730-2

Dewell, Amanda

From: Mathiowetz, Adam (DENR)
Sent: Monday, November 10, 2025 9:21 AM
To: Dewell, Amanda
Subject: Permit Cancellation Call

Kory Weisbeck is the new owner of permit 2370-2. Kory is planning to plug the well and does not use the permit. When I spoke with his well driller, Frank Conway, I told Frank that if Kory is not going to use the well and thus the permit, it should be cancelled. Please call Kory back to get what is needed from him. Thank you.

His number is 605-484-4425

Adam Mathiowetz, PE
Engineer, Water Rights Program
Department of Agriculture and Natural Resources
523 E. Capitol Ave. Pierre SD, 57501
605.773.3352
danr.sd.gov

11/13/25 : totally agreeable to cancellation - not using wells + having plugged in near future.
Planning for March '26 WMB meeting. AD