

WATER PERMIT NO. 2805-2

Name of Applicant: R & J LLC

Address: PO Box 245, Wall SD 57790 Phone: 605 391-6967

Amount of Water Claimed: 0.044 cfs (4 AF) Total Acres: NA

Source of Water Supply: groundwater (2 wells)

Water to be used for: commercial County: Pennington

Type of Waste Disposal System:

Location: north side of Hwy 16 by Rockerville

PRIORITY Date Received: 9-25-19

Application/License Fee: \$ 300

Corrected Application Received: 10-1-19

Period of Annual Use: May 1 – October 31

Remarks: RV park, cabins a pool

Diversion Point: NW 1/4 SW 1/4 Sec 13-T1S-R6E

Land to be Irrigated: NA

Depth of Well: 150 – 600 feet deep

Well Driller:

Remarks:

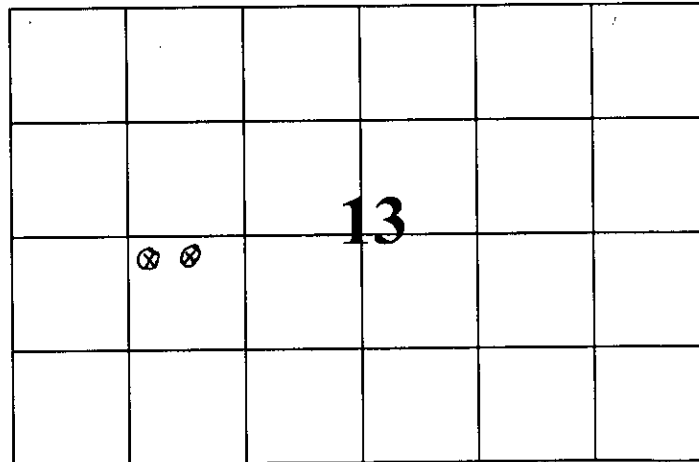
Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 10-1-19

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



**SOUTH DAKOTA
WATER PERMIT NO. 2805-2**

Date of first receipt of application September 25, 2019.

The Water Management Board approved Water Permit No. 2805-2 on October 7, 2020 for R & J, LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790 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. 2805-2 appropriates 4 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from two wells to be completed into the Crystalline Rock Aquifer (150 - 600 feet deep) located in the NW 1/4 SW 1/4 (Lot A, Borglum Subdivision) Section 13-T1S-R6E for commercial use. This site is located on the north side of Hwy 16 near Rockerville SD.
2. The water appropriated shall be used for the purpose of commercial use 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: May 1 – October 30.
4. The date from which applicant may claim right is September 25, 2019.
5. One-fifth of the construction is to be completed on or before April 7, 2023.
6. All construction is to be completed on or before October 7, 2025.
7. Water is to be put to beneficial use on or before October 7, 2029.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

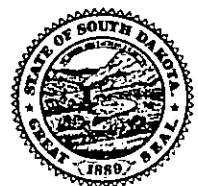
QUALIFICATIONS

1. 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.
2. The wells authorized by Permit No. 2805-2 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.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.
4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

WATER MANAGEMENT BOARD

By: *Eric Gronlund*
Eric Gronlund, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 24 2020
date



Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	(office use only)	
	No. <u>2805-2</u>	Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Rapid city journal</u>	

PAID

SEP 25 2019

Ck# 6720

RECEIVED

SEP 25 2019

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

WATER RIGHTS PROGRAM

Check use(s) of water:

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

Type of Application:
(check one)

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

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

- Name to Appear on Water Permit R+J LLC
 Mailing Address PO Box 245 Wahl SD 57790
 (Address) (City) (State) (Zip Code)
 Phone 605-391-6967 Mobile _____ Email juston.eisenbraun@icloud.com
- Amount of water claimed 0.044 *CFS or 20 **GPM and 4 ***AF or 1,296,000 Gallons
 Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use)
- Source of water supply Sheets & Quartz (NW 1/4 SW 1/4)
- Location of point of diversion 2 wells in lot 1 Banglum Sub Division Sec 13, 136E County Pennington
 (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No

If "Yes," where will water be used? _____
 (example - NW1/4 section 12-T104N-R53W)
- County or counties where water will be used Pennington
- Annual period during which water is to be used May 1st to Oct 30
- 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)

86 RV Hookups, 15 cabins, and a 20x40 pool, we have Taylor Drilling lined up to drill the two wells.

I, Juston Eisenbraun juston, member of R+J LLC, the applicant, certify under
 Name of Person Title (if applicable)
 penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

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 _____ Have test holes been drilled ☐ Yes ☒ No Drilled by _____
(if yes, please provide copies of logs)

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

For either Existing or Proposed Wells:

c) Well Depth (required) 150-600 feet Depth to Top of Water Bearing Material _____ Depth to Water from Surface _____

d) Distance to nearest domestic well on applicant's property 600 feet Property owned by others yes

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) Next Gen septic

b) System Capacity (gallons) 10,000 gallons Year Constructed 2020

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)

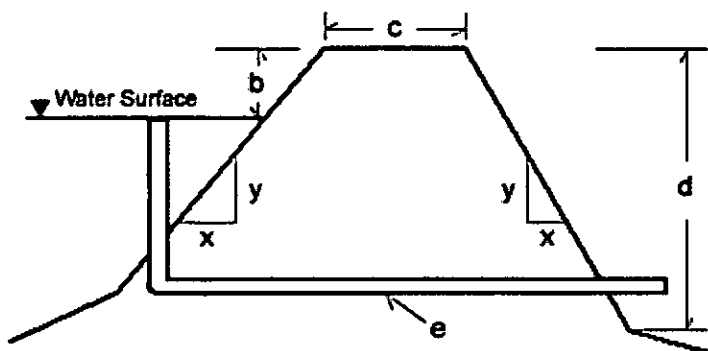
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres





Legend

Roads

- Interstate
- US highway
- SD highway
- County highway
- Main road
- Minor arterial
- Collector
- Ramp
- Paved road
- Unpaved road
- Trail
- Driveway
- Alley
- Unimproved road
- Airport Runway
- Not yet coded

- ▲ Address Points
- Section Lines 0-25k
- Tax Parcels
- Lot Lines
 - <Null>
 - Lot Line
 - Parcel Line

Map Notes:

504.1 0 252.07 504.1 Feet

NAD_1983_StatePlane_South_Dakota_South_FIPS_4002_Feet
© City of Rapid City GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

1S 6E
Section: 11

1S 6E
Section: 12

1S 7E
Section: 10

1S 6E
Section: 14

1S 6E
Section: 13

1S 7E
Section: 18

1S 6E
Section: 23

1S 6E
Section: 24

1S 7E
Section: 19





DL158512

ARTICLES OF ORGANIZATION

DOMESTIC LIMITED LIABILITY COMPANY
SDCL 47-34A-203, 212

Secretary of State
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

Filing Fee: \$150

Total Fee: \$150

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Article I

The name of the Company: **R&J, LLC**

Article II

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business:

Actual Street Address
**38 KREBS STREET
QUINN, SD 57775**

Mailing Address
**PO BOX 245
WALL, SD 57790**

Article III

SDCL 59-11-6

The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent or (b) a commercial registered agent.

(a) The South Dakota Noncommercial Registered Agent's name

Name **Juston Eisenbraun**

Actual Street Address in this State
**38 KREBS STREET
QUINN, SD 57775**

Mailing Address in this State
**PO BOX 245
WALL, SD 57790**

Article IV

The name and address of each organizer

Name	Address
Juston Eisenbraun	PO Box 245, Wall, SD 57790

Article V

The duration of the company if other than perpetual is: **Perpetual**

If the document is not to be effective upon filing by the Secretary of State, the delayed effective date is: _____

B0086-7167 01/07/2019 10:39AM Rec'd by SD SOS



B0086-7168 01/07/2019 10:39AM Rec'd by SD SOS

Article VI

☒ Member-Managed ☐ Manager-Managed

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303(c).

☐ Yes ☒ No

Article VIII

Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

Signature/Authorization

The Articles of Organization must be executed by the organizers.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a criminal penalty (SDCL 22-39-36).

Juston Eisenbraun

Juston Eisenbraun

01/07/2019

PRINTED NAME

SIGNATURE

TITLE

DATED

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date September 25, 20 19

RECEIVED OF nEisenbraun Grain Cleaning PO Box 245 Wall SD 57790

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

Fee for Application for Permit No. <u>2805-2</u> to Appropriate Water, to construct and to put water to beneficial use	100	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2805-2</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	300 00

No. **09213**

By Jeanne Goodman
Chief Engineer JM

Schlaak, Karen

From: Juston Eisenbraun <juston.eisenbraun@icloud.com>
Sent: Wednesday, October 2, 2019 12:06 PM
To: Schlaak, Karen
Subject: Re: [EXT] Water Permit Application for commercial use

I think that would be fine , do you see any problem with using that amount of water ? *called him back 10/2/19*

Sent from my iPhone

On Oct 1, 2019, at 11:54 AM, Schlaak, Karen <Karen.Schlaak@state.sd.us> wrote:

Thanks for your quick reply. Based on the 1,296,000 gallons per year my figuring is 3.977 acre feet also. Are you okay with rounding to 4 acre-feet annually?

From: Juston Eisenbraun <juston.eisenbraun@icloud.com>
Sent: Tuesday, October 1, 2019 12:41 PM
To: Schlaak, Karen <Karen.Schlaak@state.sd.us>
Subject: Re: [EXT] Water Permit Application for commercial use

Hi Karen , by my estimates we should use approximately 1,296,000 gallons per year . How I figured it was 9000 gallons per day our max rate for 90 days = 810,000 gallons then 90 days at 60% max usage or 486,000 for a total use of 1,296,000 . We will only be open from May 1 to October 30 . Thanks

Sent from my iPhone

On Oct 1, 2019, at 8:40 AM, Schlaak, Karen <Karen.Schlaak@state.sd.us> wrote:

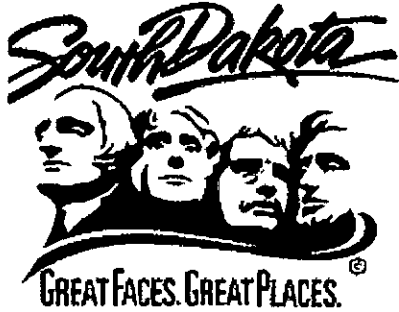
Mr. Eisenbraun,

We received your water permit application for commercial use. This application requests 20 gallons per minute (gpm). In addition to the pump rate, the application needs to include the annual volume in either gallons/year or acre feet/year. In calculating the annual volume, be reasonable but also plan for the maximum annual volume of use from the wells at full development.

A general practice is to convert the diversion rate to a volume in acre feet of water based on 60% pumping. Applying this 60% rate to 20 gpm over the course of a year equates to 32 acre feet of water annually. You may also want to take into consideration the possible decrease of water usage during the winter months.

What annual volume amount do you feel will serve your needs?

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352
<image001.gif>



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2805-2, R & J LLC**

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. 2805-2, R & J LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790.

The Chief Engineer is recommending APPROVAL of Application No. 2805-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. 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.
2. The wells authorized by Permit No. 2805-2 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.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
November 20, 2019

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2805-2
R & J, LLC
C/O JUSTON EISENBRAUN
NOVEMBER 20, 2019

Water Permit Application No. 2805-2 proposes to appropriate 4 acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 0.044 cubic feet of water per second (cfs) (20 gallons per minute) from two proposed wells (150 to 600 feet deep) to be completed into the Crystalline Rock aquifer for commercial use. The wells are to be in the NW ¼ SW ¼ (Lot A, Borglum Subdivision) Sec. 13-T1S-R6E in Pennington County. This site is located on the north side of Highway 16 near Rockerville, SD.

AQUIFER: Crystalline Rock (CRSL)

The crystalline rock in the area of this application consists of Metagraywacke (Lester and Rahn, 2001; Redden et al, 2016), which is a siliceous mica schist with impure quartzite (Martin et al, 2004). The crystalline rock is generally exposed at land surface except where covered by localized gravel deposits and alluvium along stream beds (Lester and Rahn, 2001; Redden et al, 2016). The Crystalline Rock aquifer consists of numerous, localized aquifers in the Precambrian aged core of the Black Hills where extensive fractures and weathering zones allow for the transmission of water (Driscoll and Carter, 2001). The crystalline rocks that comprise the aquifer have very low primary porosity so water movement in the aquifer is along fractures, joints, and faults, which are called secondary porosity (Rahn, 1979). The distribution of secondary porosity features is uneven and unpredictable. Therefore, local aquifer characteristics are site specific and highly variable. Based on an estimated exposed area of 574,000 acres, water bearing material to a depth of 500 feet, and an effective porosity of one percent, Rahn (1979) estimated the amount of recoverable water in storage in the Crystalline Rock aquifer in western South Dakota to be 2,900,000 acre-feet.

Due to the unpredictable nature of secondary porosity and the very low primary porosity of crystalline rock, it is very difficult to determine if the aquifer is under confined or unconfined conditions. Depending on exactly what depth the secondary porosity was encountered in the well bore and the water level in the well compared to the secondary porosity features, the well may change from acting as a confined well to an unconfined well at various water levels that are not comparable to adjacent wells completed into the same aquifer.

Well completion reports on file with the DENR-Water Rights Program for wells completed into the Crystalline Rock aquifer within approximately ½ mile of the well locations proposed by this application have depths ranging from 24 to 525 feet with almost all greater than 100 feet deep (Water Rights, 2019c and 2019d). The reported static water levels ranged from 13 to 85 feet below land surface with most of the wells in the 40 to 70 feet below ground surface range (Water Rights, 2019c and 2019d). The closest wells on file with the Water Rights Program range from 100 to 200 feet deep with static water levels ranging from 30 to 80 feet below ground surface at the time of completion (Water Rights, 2019d).

Figure 1 is a map of the area near the well locations proposed by this application including Crystalline Rock aquifer Water Rights and a pending application (Water Rights, 2019c), and fault locations (Redden and DeWitt, 2008). There are several faults (see Figure 1) and other significant geological structures (e.g. synclines and overturned syncline) in the area of this application (Redden and DeWitt, 2008). It is likely the localized portion of the Crystalline Rock aquifer this application proposes to use is limited by these mapped faults, and the actual areal extent of the aquifer may be even smaller. However, there is not sufficient data available to attempt a full delineation of the localized Crystalline Rock aquifer with any level of certainty.

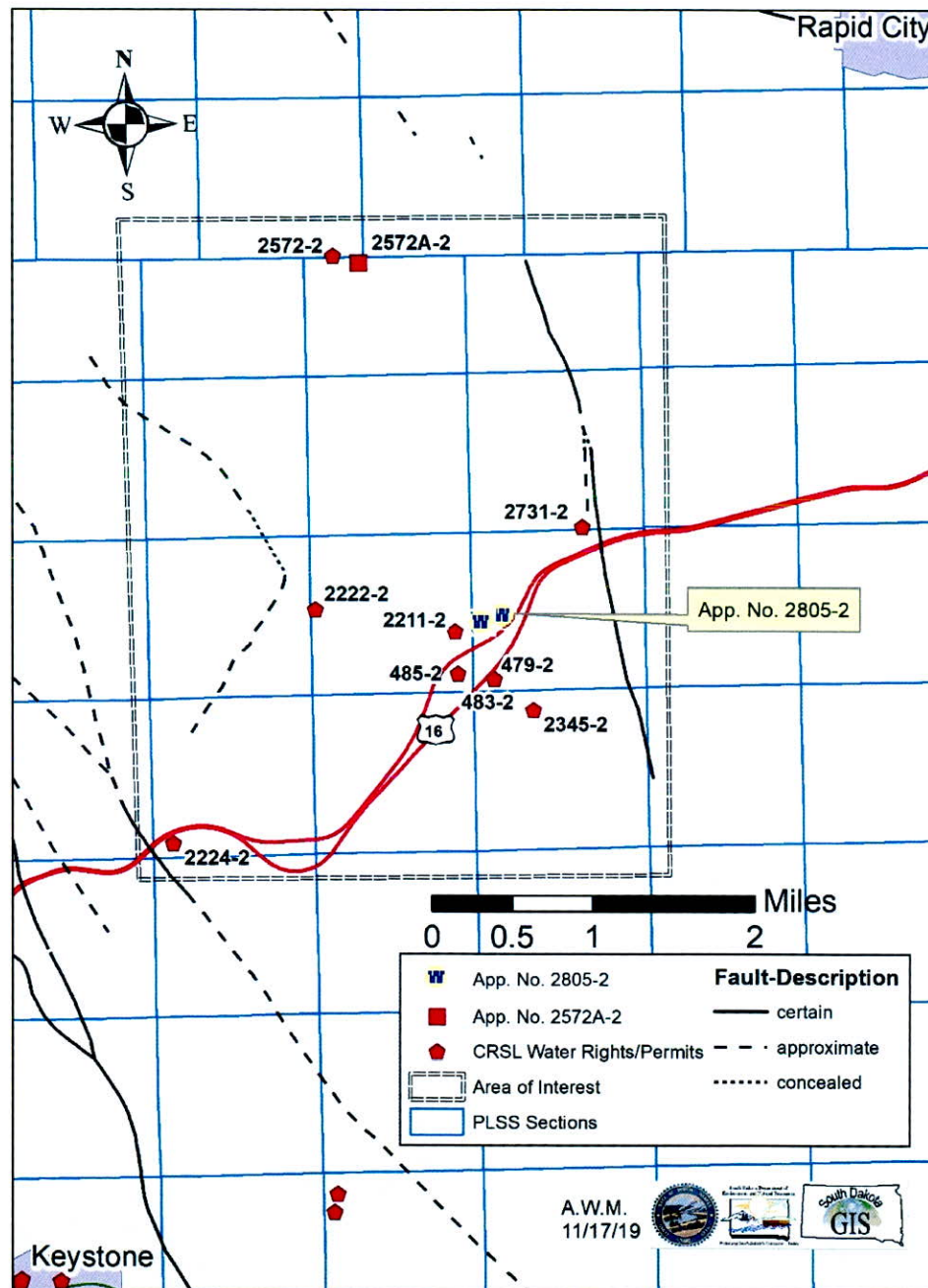


Figure 1-Map of area near Application No. 2805-2 with Crystalline Rock (CRSL) aquifer water rights (Water Rights, 2019c) and fault locations (Redden and DeWitt, 2008)

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for this 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. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

WATER AVAILABILITY

This application proposes to appropriate water from the Crystalline Rock aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

“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. 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 Crystalline Rock aquifer is stratigraphically lower/older than the Greenhorn Formation. However, the applicant is not a water distribution system as defined in SDCL 46-1-6(17). Therefore, it is necessary to determine the relationship between estimated average annual recharge and average annual withdrawals for the Crystalline Rock aquifer.

Hydrologic Budget

Recharge

The Crystalline Rock aquifers are recharged through the infiltration of precipitation and streamflow losses (Driscoll and Carter, 2001). Driscoll and Carter (2001) estimated the recharge to the entirety of the Crystalline Rock aquifers within the core of the Black Hills to be equal to average withdrawals, 3,600 acre-feet per year (ac-ft/yr), during their period of study, 1950-1998. Driscoll and Carter (2001) noted the actual recharge to the Crystalline Rock aquifers must be much larger than estimated to account for discharge to streams. Additionally, Driscoll and Carter (2001) stated, in regard to the Crystalline Rock aquifers, “Recharge conditions are highly transient and have large spatial variability; thus, quantification is not attempted.”. While looking at faults and other significant geological features may allow for some limiting of areal extent, there is not sufficient data available to attempt a delineation of the localized Crystalline Rock aquifer with any level of certainty. Therefore, there is no average annual recharge estimate available for the localized Crystalline Rock aquifer the applicant proposes to use.

Discharge

Discharge from the Crystalline Rock aquifer is through pumping of wells (Water Rights, 2019c and 2019d), seepage to streams (Driscoll and Carter, 2001), and evapotranspiration where the static water level of the aquifer is near ground surface. The water rights and water permit application

shown in the “Area of Interest” in Figure 1 are listed below in Table 1. The estimated average annual use was determined using the following assumptions: (1) Water Right No. 2572-2 is required to report their pumping annually to the Chief Engineer so their average annual pumpage over the reported history, 2007-2018, was used (Water Rights, 2019a), and (2) the rest of the permits are only limited by diversion rate so it was assumed they would pump at their respective permitted diversion rates for 60 percent of the time. This application, if approved, would authorize the appropriation of 4 ac-ft/yr.

Table 1- Water rights and application shown in “Area of Interest” in Figure 1 (Water Rights, 2019a and 2019c)

Permit No.	Name	Priority Date	Status	Use	CFS	Estimated Use (ac-ft/yr)
479-2	ROCKERVILLE GOLD TOWN INC	06/06/1953	LC	COM	0.09	39.1
483-2	ROCKERVILLE TRADING POST	05/01/1954	LC	COM	0.13	56.5
485-2	ROCKERVILLE PARK	05/01/1958	LC	COM	0.07	30.4
2211-2	PINE HAVEN HERITAGE HOME	12/20/1991	LC	COM	0.03	13.0
2222-2	STORM MOUNTAIN CENTER	02/24/1992	LC	REC/INS	0.04	17.4
2224-2	HILLSIDE COUNTRY COTTAGES	01/01/1898	LC	COM	0.004	1.7
2345-2	ROCKERVILLE ACRES SUB-DIV	08/28/1995	LC	COM	0.024	10.4
2572-2	SHERIDAN LAKE HIGHLANDS HOA	11/23/2005	LC	SHD	0.08	6*
2731-2	JEFFREY A OR KRISTI HOFFMAN	10/27/2014	LC	DOM	0.1	43.4
2572A-2	SHERIDAN LAKE HIGHLANDS HOA	n/a	APP	SHD	0	0
Total						217.9
LC=Water Right, APP= Application, COM= Commercial, REC= Recreational, INS= Institutional, SHD= Suburban Housing Development, DOM= Domestic, *= Average use based on reported use 2007-2018						

There are a number of well completion reports on file with the DENR-Water Rights Program for domestic wells that appear to be completed into the Crystalline Rock aquifer within the “Area of Interest” shown in Figure 1 (Water Rights, 2019d). It is likely there are other domestic wells completed into the Crystalline Rock aquifer within that area that are not on file with the Water Rights Program. In general, the volume of water pumped by domestic users is not significant when compared to the appropriative use from an aquifer due to the limited diversion rate and needs of domestic users.

Observation Well Data

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to

determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program maintains two observation wells that have historically been considered completed into the Crystalline Rock aquifer in western South Dakota (Water Rights, 2019b). Observation well CU-86A is located approximately 17.5 miles southwest, and observation well PE-95D is located approximately 3.1 miles north of the proposed well sites. While observation well PE-95D is relatively close to this application, review of the construction of PE-95D determined the observation well is open to both the Deadwood Formation and the crystalline rock (Kilts, 2018). Both the Deadwood Formation and the crystalline rock can be aquifers at that location (Water Rights, 2019b and 2019d; Williamson et al, 2000). An examination of the water level data over the entire period of record of PE-95D determined the water levels appear to be more similar to the Deadwood aquifer than to the Crystalline Rock aquifer (Kilts, 2018; Strobel et al, 2000; Water Rights, 2019b and 2019d). Furthermore, the drilling records for PE-95D do not note encountering any large secondary porosity features (fractures, significant changes in water inflow or loss of water during drilling, etc.) in the crystalline rock portion of the borehole during drilling. Therefore, it is uncertain how representative observation well PE-95D is of either the Deadwood or Crystalline Rock aquifers. Therefore, only observation well CU-86A will be considered in this report. Figure 2 shows the hydrograph for observation well CU-86A.

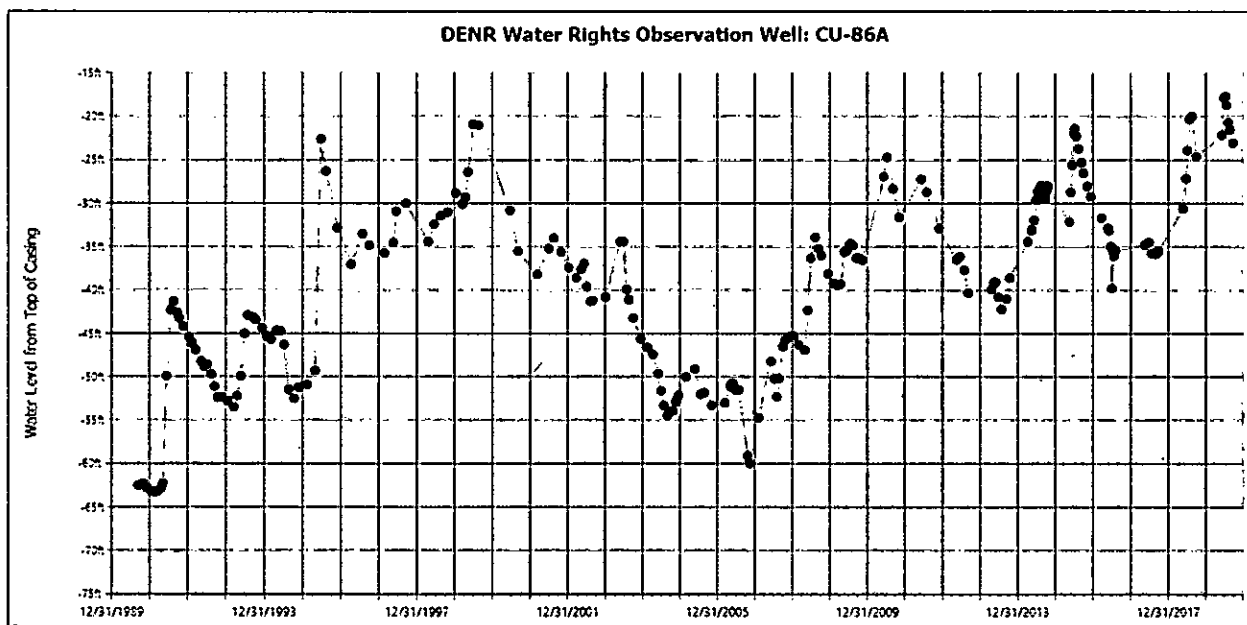


Figure 2- Hydrograph of Crystalline Rock aquifer observation well CU-86A (Water Rights, 2019b)

The hydrograph for CU-86A shows the water levels respond well to climatic conditions. Rising during wetter periods and declining during drier periods. The water levels have fluctuated 45 feet over the period of record in response to climatic conditions. An examination of the hydrograph shows that any effects caused by pumping on the water levels of CU-86A are masked by the climatic conditions indicating the changes in water levels are dominated by natural conditions, recharge to and natural discharge from the aquifer. Natural discharge from an aquifer can be captured for pumping. While CU-86A is not that close to the area of the Crystalline Rock aquifer

the applicant proposes to use, water level data does show the Crystalline Rock aquifer receives recharge.

Furthermore, there are no indications there are portions of the Crystalline Rock aquifer where average annual withdrawals are exceeding average annual discharge despite increased development of the aquifer (Water Rights, 2019b; 2019d; 2019e). The commentary from Driscoll and Carter (2001) regarding how the recharge to the Crystalline Rock aquifer must be much greater than the estimated 5 cfs (3,600 ac-ft/yr) to account for the groundwater discharge that contributes base flow to many streams is well supported by the hydrograph for observation well CU-86A, which shows the water level generally rising over its period of record. Figure 2 is the hydrograph for observation well CU-86A.

When considering the commentary from Driscoll and Carter (2001) regarding recharge to the Crystalline Rock aquifers, the hydrograph for CU-86A, the continued development of the Crystalline Rock aquifer, and the relatively small annual appropriation requested by this application, there is a reasonable probability unappropriated water is available for this proposed appropriation.

EFFECTS ON EXISTING WATER RIGHTS

Figure 3 is a view of the Crystalline Rock aquifer water rights within approximately 1 mile of the proposed wells sites. The nearest well authorized by a water right to either of the well sites proposed by this application is for Water Right No. 2211-2 approximately 0.17 miles (920 feet) west-southwest of the proposed well sites (Water Rights, 2019c). All the other wells authorized by water rights are approximately 0.35 miles or further away from the well sites proposed by this application (Water Rights, 2019c). Considering the proximity of the other water rights in the area to each other without any reports of well interference issues between these water rights and nearby domestic users (Water Rights, 2019e) and the limited diversion rate requested by this application, there is a reasonable probability this application can be developed without unlawful impairments to existing appropriative users of the Crystalline Rock aquifer.

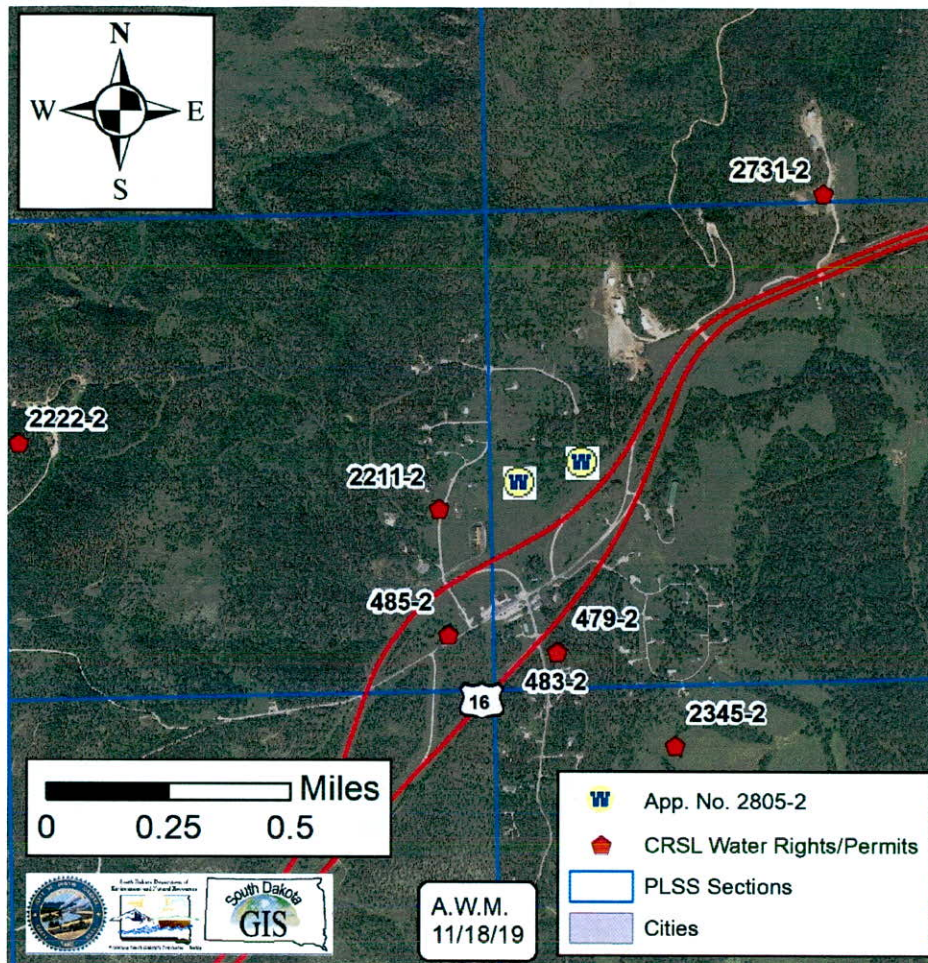


Figure 3- Map of area near Application No. 2805-2 with Crystalline Rock aquifer water rights (Water Rights, 2019c) and fault locations (Redden and DeWitt, 2008)

There are well completion reports on file with the DENR-Water Rights for domestic wells that are mapped within 500 feet of the well sites proposed by this application (Water Rights, 2019d). Unless more accurate information is provided, well completion reports submitted to the DENR-Water Rights Program are mapped at the approximate center of the legal location provided on the well completion report, and multiple wells are mapped at the same location if they share the same legal location description (e.g. NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 2-T3S-R6E). Therefore, there is not a better estimate of the exact distance to the nearest domestic wells on file with the Water Rights Program. It is also likely there are other wells completed into the Crystalline Rock aquifer within approximately 1 mile of the well sites proposed by this application that are not on file with the DENR-Water Rights Program.

The Water Management Board has defined an adequate well in Administrative Rule of South Dakota (ARSD) 74:02:4:20(6) as:

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to

be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet”.

In the past the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. To protect domestic users, the Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

“a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs”.

For most aquifers, the placement of the pump intake 20 feet below the top of the aquifer is sufficient for domestic wells. However, for wells completed into the Crystalline Rock aquifer, 20 feet of saturated aquifer thickness may not be sufficient for a dependable water supply. This is due to the low porosity of the crystalline rock and the unpredictable occurrence of secondary porosity. Thus, wells that meet the definition of an adequate well and therefore should be easily protected by the definition of an adversely impacted domestic well may not yield sufficient water for a well owner’s needs while still being adequate under the rule.

The precise drawdown effects caused by pumping a well cannot be determined without conducting an aquifer pumping test. Water levels in the Crystalline Rock aquifer are known to vary greater than 40 feet as a result of climatic conditions as shown in Figure 2. There has only been one reported instance of well interference in Pennington County for wells completed into the Crystalline Rock aquifer. This involved Water Right No. 2572-2 during the permit’s initial development. The water right was limited to a maximum diversion rate of 18 gallons per minute, the limit for reasonable domestic use, by the Chief Engineer in October 2006. The permit holder reported to the Water Rights Program that the issue was resolved sometime before January 2009, and there have not been any other reports of well interference issues since then (Water Rights, 2019e).

The local development of both domestic and appropriative wells completed into the Crystalline Rock aquifer without a significant history of well interference issues, the limited diversion rate and appropriation volume proposed by this application, the large natural fluctuation of water levels in the aquifer, and the protection afforded to adequate domestic wells by South Dakota Water Law means there is a reasonable probability this proposed diversion can be developed without unlawfully impairing existing users with adequate wells. If this application is approved, a qualification requiring the applicant to control their withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells that have prior water rights should be included.

CONCLUSIONS:

1. Water Permit Application No. 2805-2 proposes to appropriate 4 ac-ft/yr at a maximum instantaneous diversion rate of 0.044 cfs (20 gpm) from 2 wells to be completed into the Crystalline Rock aquifer for commercial use in Pennington County near Rockerville, SD.

2. There is a reasonable probability unappropriated water is available for this proposed appropriation.
3. There is a reasonable probability this proposed diversion can be made without unlawfully impairing existing users.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

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Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

Dec. 4 L2278
NOTICE OF APPLICATION NO. 2805-2 to Appropriate Water
Notice is given that R & J, LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790 has filed an application for a water permit to appropriate 4 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from two wells to be completed into the Crystalline Rock Aquifer (150 - 600 feet deep) located in the NW 1/4 SW 1/4 (Lot A, Borglum Subdivision) Section 13-T1S-R6E for commercial use. This site is located on the north side of Hwy 16 near Rockerville SD.

Pursuant to SDCL 48-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2805-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) It is a beneficial use of water, and 4) It is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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, 623 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 16, 2019.

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.

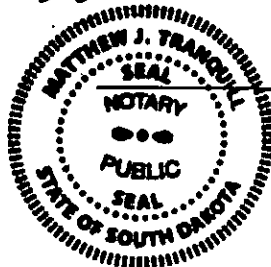
If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application 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.

(Published once at the total approximate cost of \$95.40)

Sheri Sponder 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
4th day of Dec 2019 that the fees charged for
the publication there of are 95 dollars
and 46 cents.

Sheri Sponder

Subscribed and sworn to before me this 16th
day of December, 2019.



Matthew J. Tranquill

Notary public

December 5, 2025

My commission expires

NOTICE OF APPLICATION NO. 2805-2 to Appropriate Water

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2805-2 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

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If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. 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.

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

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

November 21, 2019

R & J LLC
c/o Juston Eisenbraun
PO Box 245
Wall SD 57790

Dear Mr. Eisenbraun:

Water Permit Application No. 2805-2 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Rapid City Journal printed at Rapid City SD (Ph # 605 394-8336). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization 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.

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, November 21, 2019 11:16 AM
To: RCY Legals (legals@rapidcityjournal.com)
Subject: 2805-3, R & J LLC
Attachments: 2805-2public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on December 4, 2019.

R & J LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790 (605 391-6967) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

SD DENR, Water Rights Program
(605) 773-3352



RECEIVED

DEC 11 2019

WATER RIGHTS
PROGRAM

December 7, 2019

Jeanne Goodman

Chief Engineer, Water Rights Program

523 E. Capitol

Pierre, SD 57501

R&J LLC

c/o Justin Eisenbraun

PO Box 255

Wall, SD 57790

RE: Water Permit Application No. 2805-2

The purpose of this letter is to file a written petition opposing the water rights permit applied for by Justin Eisenbraun. I am a home owner receiving water from a domestic well drilled on a lot adjacent to the lot Mr. Eisenbraun plans to develop. I have lived in this area for 16 years and have been actively involved in ensuring our domestic water wells in our area meet our needs. I believe the recommendation will adversely impact the ability of our domestic wells to meet our water needs.

Although there are certain conclusions and statements made in the report to the Chief Engineer that I agree with, there are several areas in the report that I find misleading. There are assumptions made that result in large analytical errors and there are certain conclusions I disagree with. Below I will discuss some specific examples of concerns I have. Please keep in mind I only have had a few days to look into this before needing to file this petition. Also, I have domestic well performance information that DENR does not have and it's likely DENR has information that I do not have.

To identify and analyze an area as large as Figure 1 is not consistent with areas studied in staff reports of several of the water rights applications listed on Table 1. Other staff reports addressed smaller areas of potential influence. By including water rights permit volumes over such a large area, it gives the false impression that the domestic water volumes are likely to be insignificant in the analysis. Also, the staff reports of other applications listed on Table 1 simply state that there are no pertinent observation wells in the area. To use an observation well 17 miles away from this area while also stating local aquifer characteristics are sight specific and highly variable and the actual extent of this aquifer may be small due to localized faulting can also be misleading. Others recognized an observation well that far away did not warrant consideration. I also will point out on page 6 of the report, the average annual withdrawals are always going to be equal to the average annual discharge. I don't think that sentence is what they meant to state but it's what was stated. Also, when you look at the observation well graph, any year in which the water level dropped from the previous year is an indication that the annual withdrawal for that year exceeded the annual recharge.

I have a lot of concerns regarding Table 1. Because of their distance from the proposed application area, I would have excluded the Sheridan Lake Highlands HOA and the Hillside Country Cottages. One could argue the Storm Mountain Center should also have been excluded like I believe it was in the Rockerville Acres Subdivision analysis. I also question why the Rockerville Acres Subdivision water permit application was even filed. As discussed in their application, the water from the well serves the needs of

19 homes in the Golden Hills subdivision. I would have thought that this use would have been domestic versus commercial and no water permit would have been needed. I also would exclude from the analysis the Hoffman water rights permit. The location of that well is extremely close to the geologic unconformity created by the large fault near Stratobowl. I believe we could agree that because of the proximity to this fault, the degree of fracturing in the area is great and is anomalous to the area. Also, this well is in proximity of the Madison formation outcrop. The 100 GPM flow rate of this well is an order of magnitude higher than the average of other wells in the area. Also note that the use listed for that well is domestic versus commercial.

The remaining four water permits on Table 1 (the first four listed) all are close to the applicant's proposal and are relatively close to our domestic wells. A large mistake in the report is the assumption used to determine estimated annual use of these existing water rights permits since annual volumes are not reported. A quick review of each of these permits will explain why.

Permit 479-2: In reviewing the archived permit information, I'm not sure that the approved diversion rate is 0.09 cfs. This permit originally consisted of 2 wells with 0.13 cfs requested for each well. 1958 documentation and the latest water systems examination (1971) both mention an approved diversion rate of 0.26 cfs. The 1971 report states that the well was capable of delivering 0.09 cfs. It may be important to the applicant to know what the correct permitted diversion rate is for this permit. The permit documentation stated the "water is used in commercial purposes in operation of Rockerville Ghost Town". It was to be used in the café, dwelling, toilets, and laundry in 3 buildings.

Permit 483-2: This water right permit was to be used for commercial purposes in Lot A. Documentation shows the use was for the Rockerville Trail Motel and household purposes. This water system was also examined in 1971 and the water was being properly used. In 1990, a claim inspection said the water was used for a motel and restaurant. In 1991 this permit was transferred to the Rockerville Trading Post.

Permit 485-2: This water rights permit was "for commercial purposes in operation of a tourist attraction at Rockerville Park (5 service connections)". Also included in the permit was water for a private fish hatchery. It's interesting to note that the fish hatchery could only receive water when the spring fed stream going through Rockerville was flowing water. That same stream is present today (60 years later) and continues to flow water. The commercial fish pond was abandoned after 3 months of operation and the system examination in 1971 stated the water was being used as indicated in the permit.

Permit 2211-2: This water rights permit was for the Gold Nugget Motel and one home. In 2006, the permit was transferred to Pine Haven Heritage Home. This permit diversion rate equated to 12 GPM.

The first three of the above water rights permits total 210 acre-ft of allowable annual diversion volume. The estimated annual water use in the study for these three is 126 acre-ft. The problem is that all that remains in Rockerville is the Gaslight Restaurant and the Rockerville Main Street portion of the Rockerville Motel and Cabins. Rockerville Park doesn't exist and the Rockerville Ghost Town closed and was sold at a bankruptcy auction decades ago. The Rockerville Trading Post is gone. There is absolutely no way the Gaslight and the Main Street Rockerville Motel can be using anything near that volume.

The Pine Haven Heritage Home doesn't exist anymore. It closed for several years, was remodeled and reopened as the Pine Haven portion of Rockerville Motel and Cabins (same owner as the Rockerville

Main Street portion). When you add the permitted annual diversion rate of the old Pine Haven Heritage Home to the other three permitted volumes you get a maximum allowable diversion rate of 231.7 ac-ft per year. The report estimates the total annual use of these permits (Gaslight and the two portions of Rockerville Motel and Cabins) to be 139 ac-ft per year. THE ESTIMATED USE VOLUME STATED IN THE REPORT FOR THE 3 ROCKERVILLE AND PINE HAVEN HERITAGE HOME WATER RIGHTS PERMITS IS OVER 16 TIMES THE DENR APPROVED SEPTIC VOLUMES FOR THESE FACILITIES!

What also concerns me is what's NOT listed on Table 1. You do not see the Gaslight Restaurant. Attached is a letter from DENR pursuing what's going on with Gaslight water use and the possible need for a water permit back in 2000. There's nothing in the file after that date. You do not see the Main Street portion of the Rockerville Motel and Cabins on Table 1. You do not see the Pine Haven portion of the Rockerville Motel and Cabins (formerly the Pine Haven Heritage Home) on Table 1. The motel has had two different owners. Apparently, none of the current or immediately prior owners have or had a water rights permit.

So what is the likely annual water use of the Gaslight Restaurant and Rockerville Motel and Cabins? If I assume the Gaslight is at maximum capacity and the Rockerville Motel and Cabins is at 100% capacity for the 6 months of the year it is open. I calculate the annual usage (based on required septic design volumes per state law) to be approximately 12 ac-ft. That's less than 10% of the estimated use in the report. The 12 ac-ft usage is even too high because not every seat at the Gaslight is going to be occupied all of the time. Also, it's not realistic to assume during a time of no vacancy at the motel every room is occupied by the maximum number that room can hold.

Why is the above important? I think it's important for the applicant and DENR to understand the magnitude of the permitted but unused existing water permit volumes. These currently unused volumes will have a much higher water priority use than his permit. It's extremely important that everyone understand that our domestic well performance is being influenced by minimal water permit volumes compared to their maximum allowable diversion rates. Even with the relatively small offsetting water permit usage, our community over 15 years ago had homeowners install cisterns with 1 GPM flow restrictors. The domestic wells on lots offsetting the applicant (including the well I obtain water from) have not always met our needs requiring water to be hauled in. I will furnish more information regarding this at the hearing. It's important for everyone to understand that the "limited diversion rate requested by this application" looks limited when you estimate the nearby water rights permit holders to be using 139 ac-ft but doesn't look very limited if they are using less than 12 ac-ft. Keep in mind, if there's 50% occupancy at the restaurant and motels, then the 4 ac-ft "limited diversion rate requested by the applicant" is equivalent to 2/3 of the use from the water rights permit holders.

Another important factor, and an area of the report I strongly disagree with, is the statement that the volume of water pumped by domestic users is not significant and can essentially be brushed away and ignored in the report. In reviewing the historical water rights permit application information, it appears as though people would drill a well and if it made X GPD they would apply for a water rights permit for X GPD. When you look at the water rights permits in close proximity of the subject application, the last time a permit was granted was mid 1990's. I took the 4-section area surrounding the subject application area and went into the state database to see how many domestic water wells have been drilled in the area since 1995. Over two dozen domestic wells have been drilled during that timeframe. I then added what the reported flow rates were of those wells as reported on the completion reports. Those wells

had an aggregate flow rate total of approximately 250 GPM. That flow rate equates a little over 400 ac-ft of water per year. Unfortunately for us domestic water well users, the well production rates listed on a completion report are not necessarily indicative of long-term rates. However, what that figure clearly shows me is that in our potentially localized aquifer area, when you try to understand aquifer withdrawal rates, etc., you cannot ignore the domestic well impact. That potential impact is not insignificant when you're looking at allocating additional water rights volumes.

When you 1) look at the efforts I and other people in our community have taken to meet our water needs, 2) see the magnitude of unused approved water rights volumes in the area 3) understand our domestic well performance and 4) see a lot offsetting developed lots that are limiting their water use to 1 GPM requesting a water rights permit volume of 20 GPM perhaps you can understand why I file this petition in opposition of the subject application.

Sincerely,

A handwritten signature in cursive script that reads "Lon Buehner". The signature is written in black ink and is positioned above the typed name.

Lon Buehner

23734 Pine Haven Dr

Rapid City, SD 57702

(605) 343-0869



GREAT FACES. GREAT PLACES.
Westley Parker
13490 Main Street
Rockerville SD 57702

February 9, 2000

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

Dear Mr. Parker:

I am writing as a follow-up to our telephone conversation regarding the well used for the water supply at the Gas Light. Currently, Water Right No. 479-2 in the name of Rockerville Gold Town authorizes a appropriation of 0.09 cfs (40 gallons per minute) from two wells. It was your belief that one of these two wells is the well used to supply the Gas Light.

Water Right No. 479-2 appropriates water from two wells dating back to 1953 and 1948. Both wells are located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T1S, R6E. The actual water right (copy enclosed) more specifically defines the distance and direction of each well from the SW corner of Section 13. I have also enclosed a map that shows the approximate location of each of the wells. This map is not precise but should show the well locations in relation to each other. I know you said the other well was on the other side of the road.

You indicated a desire to transfer the portion of Water Right No. 479-2 for the well on your property to your corporate name. I am enclosing notice of a transfer of ownership form for you to complete. Issues that need to also be addressed prior to completing the notice of transfer of ownership are:

1. Is one of the wells listed on the water right a well used at the Gas Light Restaurant? If not, a new water right permit will need to be obtained for the commercial use of water.
2. What proportionate share of Water Right No. 479-2 is to be transferred to you? The current water right is for 40 gpm. The diversion rate from each well is information that will be helpful in determining how the water right is split between the two separate owners.
3. Who is the owner of the other well? This information will be necessary to issue the other portion of the water right (well owned by other party) into their name.

Please look over the enclosed information and feel free to contact me if you have any question on how to complete the transfer of ownership form.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352
www.eric.gronlund@state.sd.us

enclosures

RECEIVED

DEC 16 2019

WATER RIGHTS
PROGRAM

William C. Hearne

23762 Pine Haven Dr.

Rapid City, SD 57702

Home: (605) 787-4156

Cell: (605) 645-1756

Fax: (605) 342-8215

E mail: wchearne@gmail.com

Thursday, December 12, 2019

Opposition to Water Permit Application No. 2805-2

I believe our home domestic well will be the closest to the well proposed by the applicant. I do not believe there is sufficient water to grant this application, and approval will have a detrimental effect on neighboring domestic wells.

When we purchased our home eight years ago, we got 5-6 gallons per minute from our well. Production has consistently dropped each year. A recent test produced the lowest amount ever at 3 gallons per minute. This is particularly concerning since we had the highest rainfall ever recorded for 2019.

Our home is a 4 bedroom, 3.5 bath home, with just my wife and I living in it. If we draw the maximum flow rate for more than about 10 minutes, the well will run out of water and we must wait for it to recharge to again get water.

In anticipation of declining water volumes, this month we installed a 2500 gallon cistern at a cost of \$19,479.

Drilling deeper wells does not seem to be a solution. There have been several wells nearby dug many hundreds of feet deeper than my well, but water production did not increase in a significant manner.

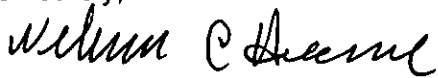
The applicant is requesting more water than all of the domestic production wells in the immediate area produce in total. I believe this amount of draw, in such close proximity, will reduce our well flows to untenable levels.

The geology of our neighborhood is very unfavorable to both water production and septic processing. The underlying rock is generally 1-5 feet below the surface and is

schist. There are no voids, caves or holes in schist to hold water. Basically, we get our water from very fine cracks in the rock as it flows by. This is in marked contrast to wells that are nearby, but on the other side of the geological non-conformity, and are in sandstone and/or limestone. Well production from wells in non-schist formations should not be used as comparisons as the results produce dramatic differences.

Several neighbors have had to haul water in recent years when wells went temporarily dry. The increased water withdrawal the applicant is requesting will cause permanent harm to our ability to enjoy our home. There is not sufficient water for his use and the application should be denied.

Sincerely,



William C Hearne

January 28, 2020

RECEIVED

JAN 31 2020

WATER RIGHTS
PROGRAM

Jeanne Goodman

Chief Engineer, Water Rights Program

523 E. Capitol

Pierre, SD 57501

RE: Water Permit Application No. 2805-2

In my water rights petition dated December 7, 2019 I stated I have domestic well performance information that SD DENR does not have. I am furnishing this information at this time because I believe it is pertinent information applicable to the evaluation of the subject application. My petition highlighted considerable issues regarding the existing water rights and report assumptions of water use. With the domestic well information and public use concerns I am including in this transmittal, I request that consideration be given to redo or modify the report prepared by DENR to incorporate this information that was not previously available to DENR. I also request that the Chief Engineer's recommendation to approve the application be reconsidered given this new information. It is likely an extension will be requested due to a scheduling conflict. The extension should allow sufficient time for this additional analysis.

Some residences in our relatively small subdivision, located on the north side of Highway 16 adjacent to the subject application, have individual water wells and others are connected to small water systems. The shared wells are owned by the homes connected to that particular well. Because of the small number of connections and people served by the shared well water systems, these systems are unregulated and there are no reporting requirements to the state. The only information available to the state on the domestic water wells in our subdivision is contained in the initial well completion reports. Initial wells in our subdivision were drilled over 20 years ago.

The initial well completion reports for the two shared wells drilled on lots adjacent to the application acreage are attached. Upon initial completion, one well tested 15 GPM and the other 10-15 GPM. Within a few years, the flow rates from the two wells dropped to the point where not all homes would receive water. In 2003, each home in our subdivision tied into a shared well system installed an individual cistern with a 1 GPM flow restrictor in an attempt for all homes to receive adequate water. As shown on the attached invoice descriptions, in the 2003-2008 timeframe and later there continued to be insufficient water flow from the shared wells. Thousands of dollars were spent repeatedly pulling and testing the pump and checking for wellbore fill in an attempt to determine the cause of limited water flow. We repeatedly found no fill or scale and the bench tests run on the pump and motor were fine. With time, it was apparent that there were no mechanical issues associated with the well. The wells were simply producing lesser amounts of water.

Pump savers were installed in the wells to keep the pump motors from burning up due to the lack of water. These pump savers enabled us to read a code to determine the cause of minimal water flow. As shown on several of the attached descriptions, the pump saver code showed "dry well" nearly every time. Once the pump saver senses there is insufficient water being pumped, it shuts the motor off for a set period of time. The motor will then run again until it shuts off again due to lack of water. This is how our systems have functioned for about the last 11 years. Due to the lack of water, the pump will generally run for less than a minute to a few minutes before shutting off. Because of this intermittent water flow and how the homes are tied into the water system, the homes at the highest elevation will not receive water until one or more of the cisterns lower in elevation are full.

There have been several times, especially during periods of low precipitation, when the higher elevation homeowners of our shared well systems have had to haul water themselves or have water commercially hauled in to meet their water needs. At least 3 homes on each system have hauled water at some point in time. With full compliance to the use of the 1 GPM flow restrictors, broad water saving efforts, and recent above average annual precipitation, no one has needed to haul water for several years. However, our wells continued to produce at very low rates barely meeting our needs. A review of the South Dakota well completion report database will show the large number of drilled wells in this area that have been necessary to meet the domestic water needs. The notes on the completion reports identify several wells in the area that were initially completed with substantial rates (similar to the initial reported rates of our shared wells) which a few years later were producing little to no water displaying well performance similar to the wells in our community.

Another concern of our community related to water usage is the impact the water use has on septic volumes which ultimately impacts our water quality. It is important to remember that our septic effluent is disposed of into the same fractured formation that we produce our water from. Attached is a table analyzing the historical nitrate levels of the shared wells discussed above. The "Offsetting Shared Well" is the closest well to the applicant's acreage located less than 100 feet from the property line. Both of these shared wells tested their highest nitrate levels ever in 2019 even though the area has experienced substantially higher than normal precipitation.

A commercial property exists adjacent to the applicant's acreage and near the offsetting shared well. Although our nearly fully developed neighborhood experienced no growth in the last couple of years, the nitrate levels in our shared wells have continued to increase to historic highs measuring up to 8.94 ppm in June 2019. The EPA safe drinking water nitrate limit is 10 ppm. Our water is now approaching the EPA limit. During the last 2 years, the commercial business has expanded their operation requiring more water use and higher septic volumes. The added water use and increased septic volumes have impacted our observed nitrate levels. Substantial information on this matter, including septic noncompliance concerns were furnished to Kent Woodmansey of SD DENR in early 2019. I encourage you to contact Mr. Woodmansey for additional information.

The attached nitrate level table shows a strong correlation between the tested nitrate levels and the commercial business activity. The highest nitrate levels for the last 2 years have been during the summer tourist season when commercial business occupancies are at their highest. The data now shows that during the last 2 years of commercial business operation, the high nitrate levels seen during the summer tourist season are approximately 40% higher than the nitrate levels prior to and after the summer tourist season. The nitrate analysis also shows there is communication in this area within this

fractured formation between septic disposal and nearby water producing wells. Again, the septic effluent is being disposed into the same formation we produce our water from.

The information I have provided in this transmittal highlights the water quantity issues our community and other domestic water users in the area face. A large number of wells have been necessary to meet domestic water needs and the domestic water needs have not always been met by the existing wells. The data also shows the initial water rates reported on well completion reports do not necessarily represent long term water production capability. The information also explains the detrimental impact an added commercial property requiring significant water volumes will likely have on our ability to maintain acceptable water quality in our area because of the nitrate impact of the associated increased septic volumes.

Again, given this added information that previously was not available to SD DENR and the existing allocated water permit volumes versus water being used addressed in my petition letter, I encourage DENR to redo or modify their report incorporating this information. The revised or new report could then be the basis for a reevaluation of the existing approval recommendation.

Sincerely,

A handwritten signature in cursive script that reads "Lon Buehner". The signature is written in black ink and is positioned below the "Sincerely," text.

Lon Buehner

23734 Pine Haven Dr.

Rapid City, SD 57702

(605) 343-0869

07-92

Abstract

4/3/96

Howie Construction
15280 Lower Spring Creek Road
Hermosa, SD 57744
(605) 341-4988

Pine Haven Water Assoc.
23734 Pine Haven Dr.
Rapid City, SD 57702

**Pump Sales and Service
Excavation and Well Drilling**

INVOICE # 620

Billing Date 8/7/2003

Due Date 8/21/2003

Earl Court well

DESCRIPTION	QUANTITY	RATE	AMOUNT
Test pump in test bench, run open discharge and test pressure at spin out and at varying pressures in between, shut off and started pump numerous times. Monitered pump for over one hour and couldn't find anything other than perfect performance of pump. Travel and reinstall pump, pumped well dry after pumping for several minutes. Water would flow at full stream and then drop to about 20% of initial steam. Pulled one joint and installed 10 gpm flow control, still pumped well dry. Travel for smaller flow control. Pulled one joint and installed 5 gpm flow control, set pump and monitored system for 20 minutes. 5:00 AM - 12:45 PM 8/1/03	7.25	0.00	0.00
Excise Tax		2.041%	40.54

Total If Paid By "Due Date" (Cash Price) \$2,026.83

Total Due If Paid After "Due Date" 2229.51

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not recieved by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

Howie Construction
 15280 Lower Spring Creek Road
 Hermosa, SD 57744
 (605) 341-4988

Pump Sales and Service
Excavation and Well Drilling

Pine Haven Water Assoc.
 23734 Pine Haven Dr.
 Rapid City, SD 57702

Invoice# 707
 Billing Date 2/23/2004
 Due Date 3/5/2004
 Job: 1st well

DESCRIPTION	QUANTITY	RATE	AMOUNT
Complaint, pump doesn't kick off. Travel and check system. Found 20 psi on pressure gauge and pump running constantly. We shut off the pump and the outlet valve and waited 10 minutes and started the pump. Pressure built in the pressure tank to 45 psi when the pump cavitated. We pulled the pump loose from the pitless adaptor and checked spin out on pump, maximum psi was 70. We then pumped the well open discharge and pumped the well dry in 3 minutes. Discussed problem with Dan McGuire and he authorized us to blow the well out and set the pump as deep as possible. 8:45 - 10:30 AM 2-20-04 2 men, service truck and derrick	1.75	97.50	170.63
Picked up compressor, traveled to job and pulled the pump, set pipe and blew the well. There was virtually no sentiment in the well and we only able to increase the depth by one foot until we hit hard bottom. Pulled pipe, chlorinated the well and set the pump. The shroud on the pump is 6' from the bottom of the well. 2 men, service truck and derrick 2-21-04 quoted \$700		700.00	700.00
Discount		-100.00	-100.00
Note: With the pump cavatating it isn't going to take long to burn up the pump. We left the outlet valves cracked open slightly to help minimize the production. I could install devices that wouldn't allow the pump to run when there isn't water but they would cost \$450 and would have no use to you unless when the new well is drilled it requires a 3 hp motor or smaller. I would recommend all the lines to the cisterns be shut off and haul water until a new well is drilled and that would allow some recovery time for the well to service those who don't have cisterns and possibly stretch out the life of the pump. While we done everything that we could to help the production of the well I feel bad the outcome wasn't what was needed. Because of that I will deduct \$350 off our bill on the pump installation on the proposed new well.			
Excise Tax		2.041%	15.73

Total If Paid By "Due Date" (Cash Price)

\$786.36

Total Due If Paid After "Due Date"

861.70

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not recieved by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

Howie Construction
 15280 Lower Spring Creek Road
 Hermosa, SD 57744
 (605) 341-4988

Pump Sales and Service
Excavation and Well Drilling

Stratmeyer Subdivision Homeowners
 23734 Pine Haven Dr.
 Rapid City, SD 57702

Invoice# 855
 Billing Date 3/7/2005
 Due Date 3/21/2005

Job: Earl Court well

DESCRIPTION	Qty	RATE	AMOUNT
233 Symcon Motor Saver	1	324.00	324.00
flex conduit	6	0.81	4.86
1/2" PVC flex male adaptor	2	4.73	9.46
1/2" Romex clamps	2	0.34	0.68
10-2 w/g UF	6	0.648	3.89
red wire nut	1	0.16	0.16
concrete screws	4	0.40	1.60
8" x 8" plastic junction box	1	32.85	32.85
Complaint, pump running and no water. Travel and check system, no grounding is present, amperage is 9.2 amps. Pulled pump loose from pitless and tested spin out pressure. The spin out pressure should be 170 PSI, it was 120 PSI. The pump end has probably seen damage from pumping the well dry. We pumped open discharge and the well pumped dry in about 5 minutes. 2 men, service truck & derrick	1.5	97.50	146.25
3:00-4:30 PM 2-23-05			
Travel, pickup materials and install motor saver and above listed materials 2-24-04	2	97.50	195.00
3:30 - 5:30			
Excise Tax		2.041%	14.67

*Paid 3/8/05
 Chk 1067*

Total If Paid By "Due Date" (Cash Price)

\$733.42

Total Due If Paid After "Due Date"

806.76

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not recieved by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

Howie Construction LLC
15280 Lower Spring Creek Road
Hermosa, SD 57744
(605) 341-4988

Pump Sales and Service
Excavation, Well Drilling
Well Video Camera, Well Restoration
Well Cleaning & Disinfection

Stratmeyer Subdivision Homeowners
23734 Pine Haven Dr.
Rapid City, SD 57702

Invoice# 1337
Billing Date 8/25/2008
Due Date 9/8/2008

Job: Earl Court well

DESCRIPTION	Qty	RATE	AMOUNT
Complaint, no water. Travel and check system. I ohmed the pump wires and found no short or grounding down hole, checked incoming voltage and line resistance and everything was in the normal range. The motor saver light was blinking indicating it had reset and was in the timer count down mode (waiting to restart). I used the Motor Saver Informer to read the last fault and it showed "dry well". I manually restarted the pump and it ran for about 10 seconds before the Motor Saver kicked out. The "Informer" showed another "dry well" fault. I discussed the findings with Lon and he wanted to try reprogram the Motor Saver. I reprogrammed the Motor Saver and the pump wouldn't kick out even though it wasn't pumping water. We had just programmed it to run on a dry well. I left the programming instructions with Lon and he said he would program the Motor Saver in about two hours. He called me and told me everything went well and the pump ran for about 15 minutes before kicking the Motor Saver off. 1 man, service truck & derrick 8-23-08 Saturday 10:00AM - 12:00 PM	2	75.00	150.00
Excise Tax		2.041%	3.06

PD 8-28-08 CK No. 1127

Total If Paid By "Due Date" (Cash Price)

\$153.06

Total Due If Paid After "Due Date"

168.37

In an attempt to keep costs down we pass on the cash discount given to us by our suppliers, therefore payment is due upon receipt. If payment is not received by "Due Date" 10% will be added to the balance due. Payments received after the 1st of the month will be charged 2% per month from the date of service or \$35.00 which ever is greater.

If you have any questions or problems please call us!

Howie Construction LLC

15280 Lower Spring Creek Road
Hermosa, SD 57744
(605) 341-4988

Pump Sales and Service
Well Cleaning & Disinfection
Well Restoration, Well Video Camera
Excavation

Stratmeyer Subdivision Homeowners
23734 Pine Haven Dr.
Rapid City, SD 57702

Invoice# 1547
Billing Date 7/2/12
Due Date 7/20/12

Job: Earl Court well

DESCRIPTION	Qty	RATE	AMOUNT
Complaint no water. Travel and check system. The Informer for the Motor Saver showed only 1 fault and that was an over current. The motor would run for a few seconds before it would shut the pump down. We decided to let the well set a couple of hours and see if that increases the run time. 2 men, service truck & derrick 6-16-12	1	97.50	97.50
Travel and pull pump, took pump back to shop and put in test bench. The pump (10GS10) tested great, spin out was 160. Travel to job and set pump and programmed motor saver and all appears well. 2 men, service truck & derrick 8:30-1:00	4.5	97.50	438.75
Heat shrink kit	1	5.75	5.75
4" Stainless steel hose clamp	1	3.75	3.75
2" pipe wrap tape	0.5	11.52	5.76
3/4" 3-M electrical tape	0.1	7.424	0.74
Red wire nut	1	0.16	0.16
Chlorinate well	0.25	4.896	1.22
Excise Tax		2.041%	11.30

If you have any questions or problems
please call

Total If Paid By "Due Date" (Cash Price)

\$564.93

Total Due If Paid After "Due Date"

621.41

In order to keep the amount given to us by our suppliers, therefore payment is due upon receipt. If payment is not received by the 1st of the month will be charged 2% per month. Payments received after the 1st of the date of service or \$35.00 which ever is greater.

Email rchowie@wildblue.net

Website www.howieconstruction.com

Pine Haven Subdivision Water Analyses

Nitrate Levels (ppm)

Date	Offsetting Shared Well	Other Shared Well
Aug 2012-2017	6.29	5.35
8/30/2018	7.83	5.98
3/20/2019	6.41	6.73*
6/27/2019	8.94*	6.37
10/24/2019	6.74	--

Note: In the last 2 years the nitrate level in the offsetting shared well is approximately 40% higher during the peak tourist season.

* Denotes highest nitrate level ever tested in the well.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 31, 2019

denr.sd.gov

NOTICE OF HEARING

TO: Juston Eisenbraun
R & J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 2805-2, R & J LLC

Two petitions were filed in the matter of Water Permit Application No. 2805-2 in response to the Notice of Application published in the Rapid City Journal. This notice schedules a hearing on Application No. 2805-2 before the South Dakota Water Management Board.

Water Permit Application No. 2805-2 proposes to appropriate 4 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from two wells to be completed into the Crystalline Rock Aquifer (150 - 600 feet deep) located in the NW 1/4 SW 1/4 (Lot A, Borglum Subdivision) Section 13-T1S-R6E for commercial use. This site is located on the north side of Hwy 16 near Rockerville SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2805-2 with qualifications 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. 2805-2 at 2:00 PM on Wednesday, February 26, 2020, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items on the agenda. The hearing may continue on the morning of Thursday, February 27, 2020, if needed to complete testimony. Parties should plan accordingly. Notice will be provided to parties if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The February 26, 2020, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer 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 14, 2020. 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 is required to be represented by a lawyer. As a limited liability corporation, the application is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. 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 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 a copy of the report, recommendation, affidavit of publication and the petitions filed in the matter of Water Permit Application No. 2805-2. 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 January 10, 2020. 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

CERTIFICATION

I hereby certify that on December 31, 2019, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated December 31, 2019, regarding notice of hearing for Water Right Permit Application No. 8409-3, as addressed below:

Juston Eisenbraun
R & J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

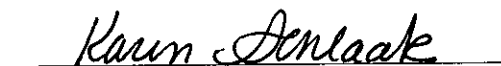
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



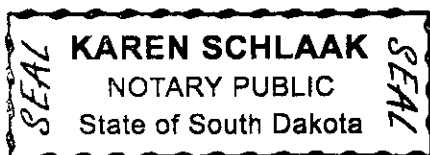
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of December, 2019.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2805-2, R & J LLC**

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. 2805-2, R & J LLC, c/o Juston Eisenbraun, PO Box 245, Wall SD 57790.

The Chief Engineer is recommending APPROVAL of Application No. 2805-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. 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.
2. The wells authorized by Permit No. 2805-2 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.
3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

See report on application for additional information.

A handwritten signature in black ink, appearing to read 'Jeanne Goodman', written over a horizontal line.

Jeanne Goodman, Chief Engineer
November 20, 2019

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2805-2
R & J, LLC
C/O JUSTON EISENBRAUN
NOVEMBER 20, 2019

Water Permit Application No. 2805-2 proposes to appropriate 4 acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 0.044 cubic feet of water per second (cfs) (20 gallons per minute) from two proposed wells (150 to 600 feet deep) to be completed into the Crystalline Rock aquifer for commercial use. The wells are to be in the NW ¼ SW ¼ (Lot A, Borglum Subdivision) Sec. 13-T1S-R6E in Pennington County. This site is located on the north side of Highway 16 near Rockerville, SD.

AQUIFER: Crystalline Rock (CRSL)

The crystalline rock in the area of this application consists of Metagraywacke (Lester and Rahn, 2001; Redden et al, 2016), which is a siliceous mica schist with impure quartzite (Martin et al, 2004). The crystalline rock is generally exposed at land surface except where covered by localized gravel deposits and alluvium along stream beds (Lester and Rahn, 2001; Redden et al, 2016). The Crystalline Rock aquifer consists of numerous, localized aquifers in the Precambrian aged core of the Black Hills where extensive fractures and weathering zones allow for the transmission of water (Driscoll and Carter, 2001). The crystalline rocks that comprise the aquifer have very low primary porosity so water movement in the aquifer is along fractures, joints, and faults, which are called secondary porosity (Rahn, 1979). The distribution of secondary porosity features is uneven and unpredictable. Therefore, local aquifer characteristics are site specific and highly variable. Based on an estimated exposed area of 574,000 acres, water bearing material to a depth of 500 feet, and an effective porosity of one percent, Rahn (1979) estimated the amount of recoverable water in storage in the Crystalline Rock aquifer in western South Dakota to be 2,900,000 acre-feet.

Due to the unpredictable nature of secondary porosity and the very low primary porosity of crystalline rock, it is very difficult to determine if the aquifer is under confined or unconfined conditions. Depending on exactly what depth the secondary porosity was encountered in the well bore and the water level in the well compared to the secondary porosity features, the well may change from acting as a confined well to an unconfined well at various water levels that are not comparable to adjacent wells completed into the same aquifer.

Well completion reports on file with the DENR-Water Rights Program for wells completed into the Crystalline Rock aquifer within approximately ½ mile of the well locations proposed by this application have depths ranging from 24 to 525 feet with almost all greater than 100 feet deep (Water Rights, 2019c and 2019d). The reported static water levels ranged from 13 to 85 feet below land surface with most of the wells in the 40 to 70 feet below ground surface range (Water Rights, 2019c and 2019d). The closest wells on file with the Water Rights Program range from 100 to 200 feet deep with static water levels ranging from 30 to 80 feet below ground surface at the time of completion (Water Rights, 2019d).

Figure 1 is a map of the area near the well locations proposed by this application including Crystalline Rock aquifer Water Rights and a pending application (Water Rights, 2019c), and fault locations (Redden and DeWitt, 2008). There are several faults (see Figure 1) and other significant geological structures (e.g. synclines and overturned syncline) in the area of this application (Redden and DeWitt, 2008). It is likely the localized portion of the Crystalline Rock aquifer this application proposes to use is limited by these mapped faults, and the actual areal extent of the aquifer may be even smaller. However, there is not sufficient data available to attempt a full delineation of the localized Crystalline Rock aquifer with any level of certainty.

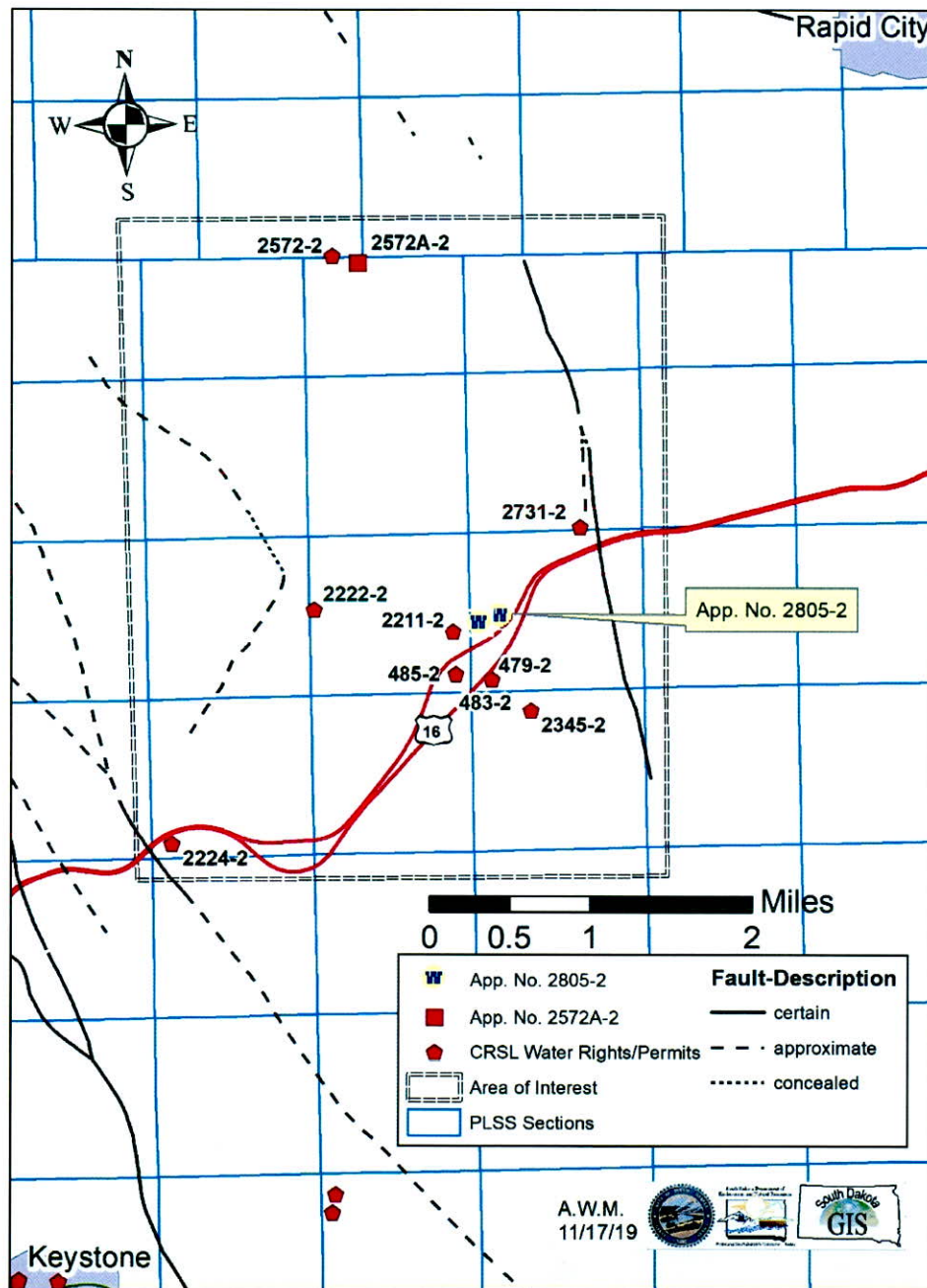


Figure 1-Map of area near Application No. 2805-2 with Crystalline Rock (CRSL) aquifer water rights (Water Rights, 2019c) and fault locations (Redden and DeWitt, 2008)

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for this 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. This report will address the availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

WATER AVAILABILITY

This application proposes to appropriate water from the Crystalline Rock aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

“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. 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 Crystalline Rock aquifer is stratigraphically lower/older than the Greenhorn Formation. However, the applicant is not a water distribution system as defined in SDCL 46-1-6(17). Therefore, it is necessary to determine the relationship between estimated average annual recharge and average annual withdrawals for the Crystalline Rock aquifer.

Hydrologic Budget

Recharge

The Crystalline Rock aquifers are recharged through the infiltration of precipitation and streamflow losses (Driscoll and Carter, 2001). Driscoll and Carter (2001) estimated the recharge to the entirety of the Crystalline Rock aquifers within the core of the Black Hills to be equal to average withdrawals, 3,600 acre-feet per year (ac-ft/yr), during their period of study, 1950-1998. Driscoll and Carter (2001) noted the actual recharge to the Crystalline Rock aquifers must be much larger than estimated to account for discharge to streams. Additionally, Driscoll and Carter (2001) stated, in regard to the Crystalline Rock aquifers, “Recharge conditions are highly transient and have large spatial variability; thus, quantification is not attempted.” While looking at faults and other significant geological features may allow for some limiting of areal extent, there is not sufficient data available to attempt a delineation of the localized Crystalline Rock aquifer with any level of certainty. Therefore, there is no average annual recharge estimate available for the localized Crystalline Rock aquifer the applicant proposes to use.

Discharge

Discharge from the Crystalline Rock aquifer is through pumping of wells (Water Rights, 2019c and 2019d), seepage to streams (Driscoll and Carter, 2001), and evapotranspiration where the static water level of the aquifer is near ground surface. The water rights and water permit application

shown in the “Area of Interest” in Figure 1 are listed below in Table 1. The estimated average annual use was determined using the following assumptions: (1) Water Right No. 2572-2 is required to report their pumping annually to the Chief Engineer so their average annual pumpage over the reported history, 2007-2018, was used (Water Rights, 2019a), and (2) the rest of the permits are only limited by diversion rate so it was assumed they would pump at their respective permitted diversion rates for 60 percent of the time. This application, if approved, would authorize the appropriation of 4 ac-ft/yr.

Table 1- Water rights and application shown in “Area of Interest” in Figure 1 (Water Rights, 2019a and 2019c)

Permit No.	Name	Priority Date	Status	Use	CFS	Estimated Use (ac-ft/yr)
479-2	ROCKERVILLE GOLD TOWN INC	06/06/1953	LC	COM	0.09	39.1
483-2	ROCKERVILLE TRADING POST	05/01/1954	LC	COM	0.13	56.5
485-2	ROCKERVILLE PARK	05/01/1958	LC	COM	0.07	30.4
2211-2	PINE HAVEN HERITAGE HOME	12/20/1991	LC	COM	0.03	13.0
2222-2	STORM MOUNTAIN CENTER	02/24/1992	LC	REC/INS	0.04	17.4
2224-2	HILLSIDE COUNTRY COTTAGES	01/01/1898	LC	COM	0.004	1.7
2345-2	ROCKERVILLE ACRES SUB-DIV	08/28/1995	LC	COM	0.024	10.4
2572-2	SHERIDAN LAKE HIGHLANDS HOA	11/23/2005	LC	SHD	0.08	6*
2731-2	JEFFREY A OR KRISTI HOFFMAN	10/27/2014	LC	DOM	0.1	43.4
2572A-2	SHERIDAN LAKE HIGHLANDS HOA	n/a	APP	SHD	0	0
Total						217.9
LC=Water Right, APP= Application, COM= Commercial, REC= Recreational, INS= Institutional, SHD= Suburban Housing Development, DOM= Domestic, *= Average use based on reported use 2007-2018						

There are a number of well completion reports on file with the DENR-Water Rights Program for domestic wells that appear to be completed into the Crystalline Rock aquifer within the “Area of Interest” shown in Figure 1 (Water Rights, 2019d). It is likely there are other domestic wells completed into the Crystalline Rock aquifer within that area that are not on file with the Water Rights Program. In general, the volume of water pumped by domestic users is not significant when compared to the appropriative use from an aquifer due to the limited diversion rate and needs of domestic users.

Observation Well Data

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to

determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program maintains two observation wells that have historically been considered completed into the Crystalline Rock aquifer in western South Dakota (Water Rights, 2019b). Observation well CU-86A is located approximately 17.5 miles southwest, and observation well PE-95D is located approximately 3.1 miles north of the proposed well sites. While observation well PE-95D is relatively close to this application, review of the construction of PE-95D determined the observation well is open to both the Deadwood Formation and the crystalline rock (Kilts, 2018). Both the Deadwood Formation and the crystalline rock can be aquifers at that location (Water Rights, 2019b and 2019d; Williamson et al, 2000). An examination of the water level data over the entire period of record of PE-95D determined the water levels appear to be more similar to the Deadwood aquifer than to the Crystalline Rock aquifer (Kilts, 2018; Strobel et al, 2000; Water Rights, 2019b and 2019d). Furthermore, the drilling records for PE-95D do not note encountering any large secondary porosity features (fractures, significant changes in water inflow or loss of water during drilling, etc.) in the crystalline rock portion of the borehole during drilling. Therefore, it is uncertain how representative observation well PE-95D is of either the Deadwood or Crystalline Rock aquifers. Therefore, only observation well CU-86A will be considered in this report. Figure 2 shows the hydrograph for observation well CU-86A.

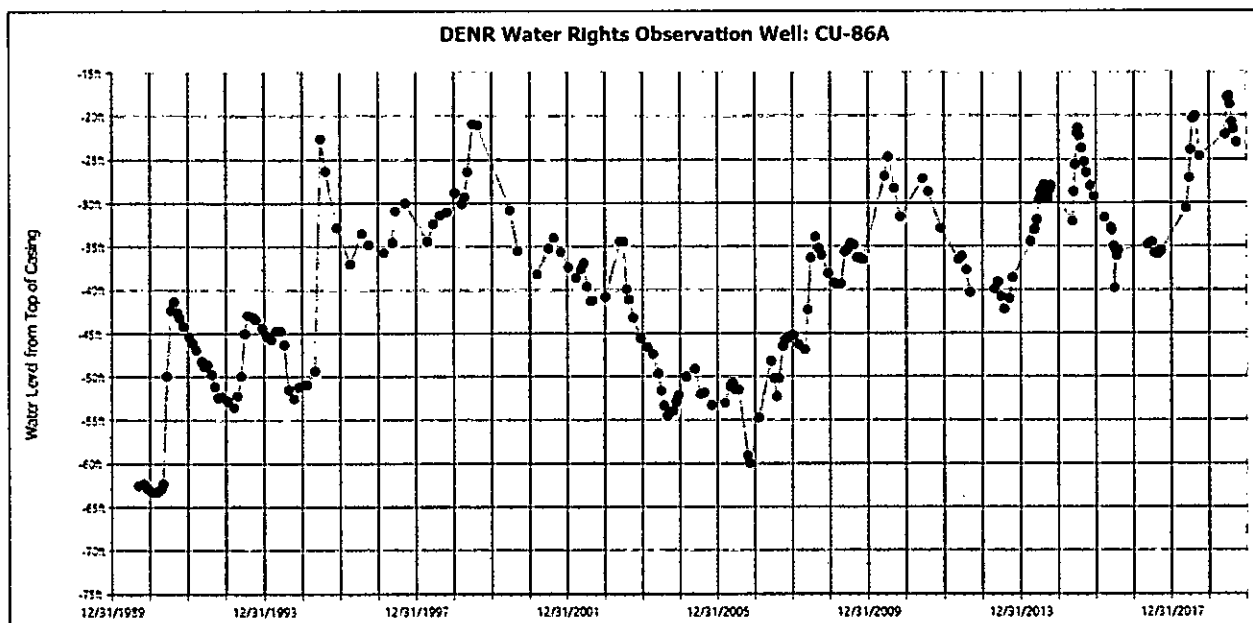


Figure 2- Hydrograph of Crystalline Rock aquifer observation well CU-86A (Water Rights, 2019b)

The hydrograph for CU-86A shows the water levels respond well to climatic conditions. Rising during wetter periods and declining during drier periods. The water levels have fluctuated 45 feet over the period of record in response to climatic conditions. An examination of the hydrograph shows that any effects caused by pumping on the water levels of CU-86A are masked by the climatic conditions indicating the changes in water levels are dominated by natural conditions, recharge to and natural discharge from the aquifer. Natural discharge from an aquifer can be captured for pumping. While CU-86A is not that close to the area of the Crystalline Rock aquifer

the applicant proposes to use, water level data does show the Crystalline Rock aquifer receives recharge.

Furthermore, there are no indications there are portions of the Crystalline Rock aquifer where average annual withdrawals are exceeding average annual discharge despite increased development of the aquifer (Water Rights, 2019b; 2019d; 2019e). The commentary from Driscoll and Carter (2001) regarding how the recharge to the Crystalline Rock aquifer must be much greater than the estimated 5 cfs (3,600 ac-ft/yr) to account for the groundwater discharge that contributes base flow to many streams is well supported by the hydrograph for observation well CU-86A, which shows the water level generally rising over its period of record. Figure 2 is the hydrograph for observation well CU-86A.

When considering the commentary from Driscoll and Carter (2001) regarding recharge to the Crystalline Rock aquifers, the hydrograph for CU-86A, the continued development of the Crystalline Rock aquifer, and the relatively small annual appropriation requested by this application, there is a reasonable probability unappropriated water is available for this proposed appropriation.

EFFECTS ON EXISTING WATER RIGHTS

Figure 3 is a view of the Crystalline Rock aquifer water rights within approximately 1 mile of the proposed wells sites. The nearest well authorized by a water right to either of the well sites proposed by this application is for Water Right No. 2211-2 approximately 0.17 miles (920 feet) west-southwest of the proposed well sites (Water Rights, 2019c). All the other wells authorized by water rights are approximately 0.35 miles or further away from the well sites proposed by this application (Water Rights, 2019c). Considering the proximity of the other water rights in the area to each other without any reports of well interference issues between these water rights and nearby domestic users (Water Rights, 2019e) and the limited diversion rate requested by this application, there is a reasonable probability this application can be developed without unlawful impairments to existing appropriative users of the Crystalline Rock aquifer.

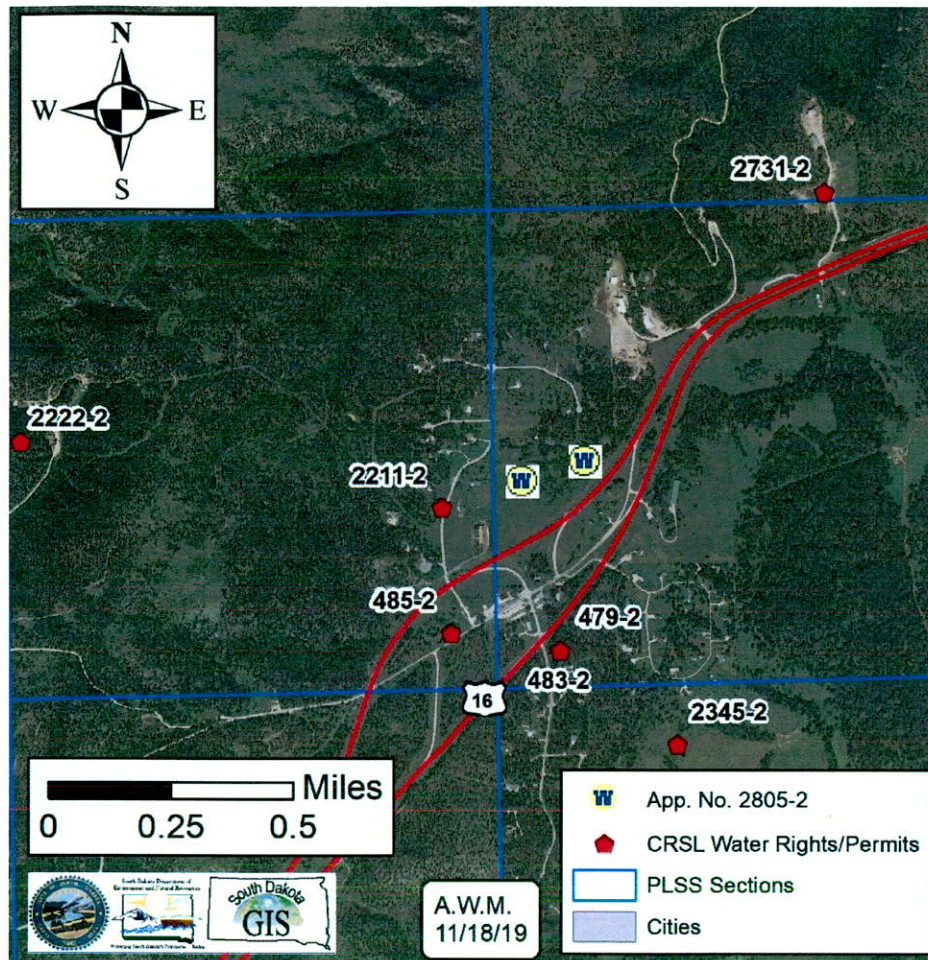


Figure 3- Map of area near Application No. 2805-2 with Crystalline Rock aquifer water rights (Water Rights, 2019c) and fault locations (Redden and DeWitt, 2008)

There are well completion reports on file with the DENR-Water Rights for domestic wells that are mapped within 500 feet of the well sites proposed by this application (Water Rights, 2019d). Unless more accurate information is provided, well completion reports submitted to the DENR-Water Rights Program are mapped at the approximate center of the legal location provided on the well completion report, and multiple wells are mapped at the same location if they share the same legal location description (e.g. NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 2-T3S-R6E). Therefore, there is not a better estimate of the exact distance to the nearest domestic wells on file with the Water Rights Program. It is also likely there are other wells completed into the Crystalline Rock aquifer within approximately 1 mile of the well sites proposed by this application that are not on file with the DENR-Water Rights Program.

The Water Management Board has defined an adequate well in Administrative Rule of South Dakota (ARSD) 74:02:4:20(6) as:

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to

be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet”.

In the past the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. To protect domestic users, the Water Management Board defined an “adversely impacted domestic well” in ARSD 74:02:04:20(7) as:

“a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner’s needs”.

For most aquifers, the placement of the pump intake 20 feet below the top of the aquifer is sufficient for domestic wells. However, for wells completed into the Crystalline Rock aquifer, 20 feet of saturated aquifer thickness may not be sufficient for a dependable water supply. This is due to the low porosity of the crystalline rock and the unpredictable occurrence of secondary porosity. Thus, wells that meet the definition of an adequate well and therefore should be easily protected by the definition of an adversely impacted domestic well may not yield sufficient water for a well owner’s needs while still being adequate under the rule.

The precise drawdown effects caused by pumping a well cannot be determined without conducting an aquifer pumping test. Water levels in the Crystalline Rock aquifer are known to vary greater than 40 feet as a result of climatic conditions as shown in Figure 2. There has only been one reported instance of well interference in Pennington County for wells completed into the Crystalline Rock aquifer. This involved Water Right No. 2572-2 during the permit’s initial development. The water right was limited to a maximum diversion rate of 18 gallons per minute, the limit for reasonable domestic use, by the Chief Engineer in October 2006. The permit holder reported to the Water Rights Program that the issue was resolved sometime before January 2009, and there have not been any other reports of well interference issues since then (Water Rights, 2019e).

The local development of both domestic and appropriative wells completed into the Crystalline Rock aquifer without a significant history of well interference issues, the limited diversion rate and appropriation volume proposed by this application, the large natural fluctuation of water levels in the aquifer, and the protection afforded to adequate domestic wells by South Dakota Water Law means there is a reasonable probability this proposed diversion can be developed without unlawfully impairing existing users with adequate wells. If this application is approved, a qualification requiring the applicant to control their withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells that have prior water rights should be included.

CONCLUSIONS:

1. Water Permit Application No. 2805-2 proposes to appropriate 4 ac-ft/yr at a maximum instantaneous diversion rate of 0.044 cfs (20 gpm) from 2 wells to be completed into the Crystalline Rock aquifer for commercial use in Pennington County near Rockerville, SD.

2. There is a reasonable probability unappropriated water is available for this proposed appropriation.
3. There is a reasonable probability this proposed diversion can be made without unlawfully impairing existing users.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

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WATER RIGHTS
PROGRAM

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Thursday, December 12, 2019

Opposition to Water Permit Application No. 2805-2

I believe our home domestic well will be the closest to the well proposed by the applicant. I do not believe there is sufficient water to grant this application, and approval will have a detrimental effect on neighboring domestic wells.

When we purchased our home eight years ago, we got 5-6 gallons per minute from our well. Production has consistently dropped each year. A recent test produced the lowest amount ever at 3 gallons per minute. This is particularly concerning since we had the highest rainfall ever recorded for 2019.

Our home is a 4 bedroom, 3.5 bath home, with just my wife and I living in it. If we draw the maximum flow rate for more than about 10 minutes, the well will run out of water and we must wait for it to recharge to again get water.

In anticipation of declining water volumes, this month we installed a 2500 gallon cistern at a cost of \$19,479.

Drilling deeper wells does not seem to be a solution. There have been several wells nearby dug many hundreds of feet deeper than my well, but water production did not increase in a significant manner.

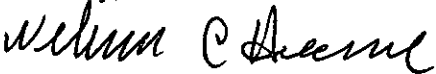
The applicant is requesting more water than all of the domestic production wells in the immediate area produce in total. I believe this amount of draw, in such close proximity, will reduce our well flows to untenable levels.

The geology of our neighborhood is very unfavorable to both water production and septic processing. The underlying rock is generally 1-5 feet below the surface and is

schist. There are no voids, caves or holes in schist to hold water. Basically, we get our water from very fine cracks in the rock as it flows by. This is in marked contrast to wells that are nearby, but on the other side of the geological non-conformity, and are in sandstone and/or limestone. Well production from wells in non-schist formations should not be used as comparisons as the results produce dramatic differences.

Several neighbors have had to haul water in recent years when wells went temporarily dry. The increased water withdrawal the applicant is requesting will cause permanent harm to our ability to enjoy our home. There is not sufficient water for his use and the application should be denied.

Sincerely,


William C Hearne

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DEC 11 2019

WATER RIGHTS
PROGRAM

December 7, 2019

Jeanne Goodman

R&J LLC

Chief Engineer, Water Rights Program

c/o Justin Eisenbraun

523 E. Capitol

PO Box 255

Pierre, SD 57501

Wall, SD 57790

RE: Water Permit Application No. 2805-2

The purpose of this letter is to file a written petition opposing the water rights permit applied for by Justin Eisenbraun. I am a home owner receiving water from a domestic well drilled on a lot adjacent to the lot Mr. Eisenbraun plans to develop. I have lived in this area for 16 years and have been actively involved in ensuring our domestic water wells in our area meet our needs. I believe the recommendation will adversely impact the ability of our domestic wells to meet our water needs.

Although there are certain conclusions and statements made in the report to the Chief Engineer that I agree with, there are several areas in the report that I find misleading. There are assumptions made that result in large analytical errors and there are certain conclusions I disagree with. Below I will discuss some specific examples of concerns I have. Please keep in mind I only have had a few days to look into this before needing to file this petition. Also, I have domestic well performance information that DENR does not have and it's likely DENR has information that I do not have.

To identify and analyze an area as large as Figure 1 is not consistent with areas studied in staff reports of several of the water rights applications listed on Table 1. Other staff reports addressed smaller areas of potential influence. By including water rights permit volumes over such a large area, it gives the false impression that the domestic water volumes are likely to be insignificant in the analysis. Also, the staff reports of other applications listed on Table 1 simply state that there are no pertinent observation wells in the area. To use an observation well 17 miles away from this area while also stating local aquifer characteristics are sight specific and highly variable and the actual extent of this aquifer may be small due to localized faulting can also be misleading. Others recognized an observation well that far away did not warrant consideration. I also will point out on page 6 of the report, the average annual withdrawals are always going to be equal to the average annual discharge. I don't think that sentence is what they meant to state but it's what was stated. Also, when you look at the observation well graph, any year in which the water level dropped from the previous year is an indication that the annual withdrawal for that year exceeded the annual recharge.

I have a lot of concerns regarding Table 1. Because of their distance from the proposed application area, I would have excluded the Sheridan Lake Highlands HOA and the Hillside Country Cottages. One could argue the Storm Mountain Center should also have been excluded like I believe it was in the Rockerville Acres Subdivision analysis. I also question why the Rockerville Acres Subdivision water permit application was even filed. As discussed in their application, the water from the well serves the needs of

19 homes in the Golden Hills subdivision. I would have thought that this use would have been domestic versus commercial and no water permit would have been needed. I also would exclude from the analysis the Hoffman water rights permit. The location of that well is extremely close to the geologic unconformity created by the large fault near Stratobowl. I believe we could agree that because of the proximity to this fault, the degree of fracturing in the area is great and is anomalous to the area. Also, this well is in proximity of the Madison formation outcrop. The 100 GPM flow rate of this well is an order of magnitude higher than the average of other wells in the area. Also note that the use listed for that well is domestic versus commercial.

The remaining four water permits on Table 1 (the first four listed) all are close to the applicant's proposal and are relatively close to our domestic wells. A large mistake in the report is the assumption used to determine estimated annual use of these existing water rights permits since annual volumes are not reported. A quick review of each of these permits will explain why.

Permit 479-2: In reviewing the archived permit information, I'm not sure that the approved diversion rate is 0.09 cfs. This permit originally consisted of 2 wells with 0.13 cfs requested for each well. 1958 documentation and the latest water systems examination (1971) both mention an approved diversion rate of 0.26 cfs. The 1971 report states that the well was capable of delivering 0.09 cfs. It may be important to the applicant to know what the correct permitted diversion rate is for this permit. The permit documentation stated the "water is used in commercial purposes in operation of Rockerville Ghost Town". It was to be used in the café, dwelling, toilets, and laundry in 3 buildings.

Permit 483-2: This water right permit was to be used for commercial purposes in Lot A. Documentation shows the use was for the Rockerville Trail Motel and household purposes. This water system was also examined in 1971 and the water was being properly used. In 1990, a claim inspection said the water was used for a motel and restaurant. In 1991 this permit was transferred to the Rockerville Trading Post.

Permit 485-2: This water rights permit was "for commercial purposes in operation of a tourist attraction at Rockerville Park (5 service connections)". Also included in the permit was water for a private fish hatchery. It's interesting to note that the fish hatchery could only receive water when the spring fed stream going through Rockerville was flowing water. That same stream is present today (60 years later) and continues to flow water. The commercial fish pond was abandoned after 3 months of operation and the system examination in 1971 stated the water was being used as indicated in the permit.

Permit 2211-2: This water rights permit was for the Gold Nugget Motel and one home. In 2006, the permit was transferred to Pine Haven Heritage Home. This permit diversion rate equated to 12 GPM.

The first three of the above water rights permits total 210 acre-ft of allowable annual diversion volume. The estimated annual water use in the study for these three is 126 acre-ft. The problem is that all that remains in Rockerville is the Gaslight Restaurant and the Rockerville Main Street portion of the Rockerville Motel and Cabins. Rockerville Park doesn't exist and the Rockerville Ghost Town closed and was sold at a bankruptcy auction decades ago. The Rockerville Trading Post is gone. There is absolutely no way the Gaslight and the Main Street Rockerville Motel can be using anything near that volume.

The Pine Haven Heritage Home doesn't exist anymore. It closed for several years, was remodeled and reopened as the Pine Haven portion of Rockerville Motel and Cabins (same owner as the Rockerville

Main Street portion). When you add the permitted annual diversion rate of the old Pine Haven Heritage Home to the other three permitted volumes you get a maximum allowable diversion rate of 231.7 ac-ft per year. The report estimates the total annual use of these permits (Gaslight and the two portions of Rockerville Motel and Cabins) to be 139 ac-ft per year. THE ESTIMATED USE VOLUME STATED IN THE REPORT FOR THE 3 ROCKERVILLE AND PINE HAVEN HERITAGE HOME WATER RIGHTS PERMITS IS OVER 16 TIMES THE DENR APPROVED SEPTIC VOLUMES FOR THESE FACILITIES!

What also concerns me is what's NOT listed on Table 1. You do not see the Gaslight Restaurant. Attached is a letter from DENR pursuing what's going on with Gaslight water use and the possible need for a water permit back in 2000. There's nothing in the file after that date. You do not see the Main Street portion of the Rockerville Motel and Cabins on Table 1. You do not see the Pine Haven portion of the Rockerville Motel and Cabins (formerly the Pine Haven Heritage Home) on Table 1. The motel has had two different owners. Apparently, none of the current or immediately prior owners have or had a water rights permit.

So what is the likely annual water use of the Gaslight Restaurant and Rockerville Motel and Cabins? If I assume the Gaslight is at maximum capacity and the Rockerville Motel and Cabins is at 100% capacity for the 6 months of the year it is open. I calculate the annual usage (based on required septic design volumes per state law) to be approximately 12 ac-ft. That's less than 10% of the estimated use in the report. The 12 ac-ft usage is even too high because not every seat at the Gaslight is going to be occupied all of the time. Also, it's not realistic to assume during a time of no vacancy at the motel every room is occupied by the maximum number that room can hold.

Why is the above important? I think it's important for the applicant and DENR to understand the magnitude of the permitted but unused existing water permit volumes. These currently unused volumes will have a much higher water priority use than his permit. It's extremely important that everyone understand that our domestic well performance is being influenced by minimal water permit volumes compared to their maximum allowable diversion rates. Even with the relatively small offsetting water permit usage, our community over 15 years ago had homeowners install cisterns with 1 GPM flow restrictors. The domestic wells on lots offsetting the applicant (including the well I obtain water from) have not always met our needs requiring water to be hauled in. I will furnish more information regarding this at the hearing. It's important for everyone to understand that the "limited diversion rate requested by this application" looks limited when you estimate the nearby water rights permit holders to be using 139 ac-ft but doesn't look very limited if they are using less than 12 ac-ft. Keep in mind, if there's 50% occupancy at the restaurant and motels, then the 4 ac-ft "limited diversion rate requested by the applicant" is equivalent to 2/3 of the use from the water rights permit holders.

Another important factor, and an area of the report I strongly disagree with, is the statement that the volume of water pumped by domestic users is not significant and can essentially be brushed away and ignored in the report. In reviewing the historical water rights permit application information, it appears as though people would drill a well and if it made X GPD they would apply for a water rights permit for X GPD. When you look at the water rights permits in close proximity of the subject application, the last time a permit was granted was mid 1990's. I took the 4-section area surrounding the subject application area and went into the state database to see how many domestic water wells have been drilled in the area since 1995. Over two dozen domestic wells have been drilled during that timeframe. I then added what the reported flow rates were of those wells as reported on the completion reports. Those wells

had an aggregate flow rate total of approximately 250 GPM. That flow rate equates a little over 400 ac-ft of water per year. Unfortunately for us domestic water well users, the well production rates listed on a completion report are not necessarily indicative of long-term rates. However, what that figure clearly shows me is that in our potentially localized aquifer area, when you try to understand aquifer withdrawal rates, etc., you cannot ignore the domestic well impact. That potential impact is not insignificant when you're looking at allocating additional water rights volumes.

When you 1) look at the efforts I and other people in our community have taken to meet our water needs, 2) see the magnitude of unused approved water rights volumes in the area 3) understand our domestic well performance and 4) see a lot offsetting developed lots that are limiting their water use to 1 GPM requesting a water rights permit volume of 20 GPM perhaps you can understand why I file this petition in opposition of the subject application.

Sincerely,

A handwritten signature in cursive script that reads "Lon Buehner". The signature is written in black ink and is positioned above the printed name.

Lon Buehner

23734 Pine Haven Dr

Rapid City, SD 57702

(605) 343-0869



Westley Parker
13490 Main Street
Rockerville SD 57702

February 9, 2000

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Dear Mr. Parker:

I am writing as a follow-up to our telephone conversation regarding the well used for the water supply at the Gas Light. Currently, Water Right No. 479-2 in the name of Rockerville Gold Town authorizes a appropriation of 0.09 cfs (40 gallons per minute) from two wells. It was your belief that one of these two wells is the well used to supply the Gas Light.

Water Right No. 479-2 appropriates water from two wells dating back to 1953 and 1948. Both wells are located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T1S, R6E. The actual water right (copy enclosed) more specifically defines the distance and direction of each well from the SW corner of Section 13. I have also enclosed a map that shows the approximate location of each of the wells. This map is not precise but should show the well locations in relation to each other. I know you said the other well was on the other side of the road.

You indicated a desire to transfer the portion of Water Right No. 479-2 for the well on your property to your corporate name. I am enclosing notice of a transfer of ownership form for you to complete. Issues that need to also be addressed prior to completing the notice of transfer of ownership are:

1. Is one of the wells listed on the water right a well used at the Gas Light Restaurant? If not, a new water right permit will need to be obtained for the commercial use of water.
2. What proportionate share of Water Right No. 479-2 is to be transferred to you? The current water right is for 40 gpm. The diversion rate from each well is information that will be helpful in determining how the water right is split between the two separate owners.
3. Who is the owner of the other well? This information will be necessary to issue the other portion of the water right (well owned by other party) into their name.

Please look over the enclosed information and feel free to contact me if you have any question on how to complete the transfer of ownership form.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352
www.eric.gronlund@state.sd.us

enclosures

Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

Dec. 4 L2279
NOTICE OF APPLICATION NO.
2805-2 to Appropriate Water
Notice is given that R & J, LLC, c/o
Justin Eisenbraun, PO Box 245,
Wall SD 57790 has filed an
application for a water permit to
appropriate 4 acre-feet of water
annually at a maximum pump rate
of 0.044 cubic feet of water per
second from two wells to be
completed into the Crystalline Rock
Aquifer (150 - 600 feet deep)
located in the NW 1/4 SW 1/4 (Lot
A, Borglum Subdivision) Section
13-T1S-R6E for commercial use.
This site is located on the north
side of Hwy 16 near Rockerville
SD.

Pursuant to SDCL 46-2A-2, the
Chief Engineer recommends AP-
PROVAL of Application No. 2805-2
with qualifications because 1) un-
appropriated water is available, 2)
existing rights will not be unlawfully
impaired, 3) It is a beneficial use of
water, and 4) It is in the public
interest. The Chief Engineer's
recommendation with qualifications,
the application, and staff report are
available at <http://denr.sd.gov/public>
or contact Eric Gronlund for this
information, or other information, at
the Water Rights Program address
provided below.

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 Build-
ing, 623 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 16, 2019.

The petition may be informal, but
must include a statement describ-
ing 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.

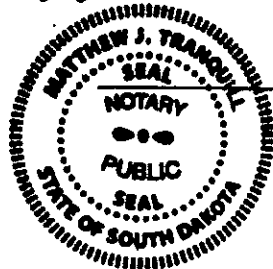
If the applicant does not contest the
recommendation of the Chief Engi-
neer and no petition to oppose the
application is received, the Chief
Engineer shall act on the applica-
tion pursuant to the recommenda-
tion with no hearing held before the
Water Management Board. If a
petition opposing the application or
contesting the recommendation is
filed, then a hearing will be
scheduled and the Water Manage-
ment Board will consider this
application. Notice of the hearing
will be given to the applicant and
any person filing a petition.

(Published once at the total approximate cost of
\$95.46)

Sheri Sponder 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
4th day of Dec 2019 that the fees charged for
the publication there of are 95 dollars
and 46 cents.

Sheri Sponder

Subscribed and sworn to before me this 16th
day of December, 2019.



Matthew J. Tranquill

Notary public

December 5, 2025

My commission expires



Summary of South Dakota Water Laws and Rules

Prepared by Water Rights Program

May 2013

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING

PMB 2020

523 EAST CAPITOL

PIERRE SOUTH DAKOTA 57501-3182

<http://denr.sd.gov/wr>

The following is a summary of South Dakota water laws and rules. This summary is provided as a service of the Water Rights Program, Department of Environment and Natural Resources for the purpose of introducing the public to the water rights laws of South Dakota. The actual text of the laws and rules may be viewed at <http://denr.sd.gov/des/wr/laws.aspx>.

PLEASE NOTE: This summary is not a substitute for the South Dakota Codified Laws or Administrative Rules of South Dakota and is not intended to serve as legal advice. In the event there is a difference in interpretation between this document and South Dakota Codified Law and/or Administrative Rule, the law and/or rule controls.

ADMINISTRATIVE OVERVIEW

- 1) Water in South Dakota is owned by the people of the state and not by private individuals. The right to use water may be obtained under State Law.

Reference: SDCL 46-1-1, 46-1-3, and 46-5-5.

- 2) South Dakota water rights are administered by a system commonly called the "Doctrine of Prior Appropriation." This means the first in time (senior priority) is the first in right, except for individual domestic use. Priority is established based on the date of filing the application. Uses of water developed prior to or under development as of March 2, 1955 (surface water) or February 28, 1955 (ground water) may qualify for a vested water right depending on the type of use involved.

Reference: SDCL 46-1-9, 46-2A-9, 46-2A-12, 46-4-1, 46-4-2, 46-5-4, 46-5-7, 46-5-8, 46-5-34, 46-5-34.1, and 46-6-3.

- 3) Domestic use of water takes precedence over appropriative rights.

Reference: SDCL 46-1-5, 46-1-6(7), and 46-1-6(14).

- 4) The seven member Water Management Board regulates water use, approves and denies permits, validates vested rights, cancels water right permits or rights, establishes ordinary high and low water marks for lakes as well as setting lake outlet elevations.

Reference: SDCL 1-40-15, 43-17-21, 43-17-23 thru 43-17-25, 43-17-28, 46-2-9, 46-2-11, 46-2A-7, 46-2A-8, 46-2A-16, 46-4-2, and 46-5-8.1.

DOMESTIC WATER USE – no permit needed

- 1) The following domestic uses do not require a water right permit:
 - a. Domestic use of water from other than a common water distribution system that does not exceed 25,920 gallons per day (which is 18 gpm pumped 24 hours per day) or a peak diversion rate of 25 gallons per minute (gpm) for:

1. Individual farm or ranch use including livestock water;
2. Individual household use for drinking, washing, sanitary, culinary, and other ordinary household purposes; and
3. Irrigation of a noncommercial family garden, trees, lawn, shrubbery, or orchard that is no larger in area than one acre. Lawn, tree, and garden watering within a city, town, or from other common water distribution systems is covered by the system water right.

Note: Drip irrigation systems for noncommercial purposes and not exceeding 18 gpm do not need to be permitted even if the irrigated area exceeds one acre.

- b. Water use from other than a common water distribution system that does not exceed 18 gallons per minute (gpm) for:
 1. Schools, parks and other public recreation areas;
 2. Geothermal heating or cooling of a single household. Most heat pump installations for household heating and cooling should not require more than 5 to 10 gpm; and
 3. Noncommercial on-farm alcohol production.

Reference: SDCL 46-1-6(7), 46-5-50 thru 46-5-52. Water Management Board Rules 74:02:01:01 and 74:02:01:03.

WATER RIGHT PERMITTING

- 1) Except for the previously described domestic water uses and water distribution systems (e.g. towns, rural water systems, subdivisions, and mobile home parks) that do not pump more than 18 gpm, all uses of water require a water right permit pursuant to procedures in SDCL Chapter 46-2A. Water uses supplied from a water distribution system do not need a separate permit. Examples of uses which require a permit are:
 - a. Cities, towns, rural water systems, mobile home parks, subdivisions, and other common water distribution systems that pump more than 18 gpm. Those systems not pumping more than 18 gpm that may expand and increase pumping above 18 gpm, should obtain a water right permit to establish a priority date.

Note: Certain water distribution systems that do not pump more than 18 gpm may still be subject to compliance with Safe Drinking Water Standards. SDCL Chapter 34A-3A. Water Management Board Rules Chapter 74:04:05.
 - b. Domestic use for farm, ranch, household, and livestock use from other than a common water distribution system in excess of either 25,920 gallons per day (18 gpm continuously for a day) or 25 gpm (peak rate).
 - c. Any well that is allowed to flow more than 18 gpm.
 - d. Any dam or dugout on a dry draw or nonnavigable watercourse impounding more than 25 acre feet.
 - e. Any dam constructed for any purpose on a stream considered navigable.
 - f. Irrigation of more than one acre.
 - g. Commercial use, even less than 18 gpm, when supplied from other than a common water distribution system to a truckstop, tourist attraction, eating, drinking, or lodging establishment, commercial campground and any other business. An existing business without a water right has no right to the use of water. The commercial user without a water right is not entitled to receive protection in the event of well

interference by a new or future user who has a water right. The new user with a water right will have the senior priority over an existing user without a water right.

- h. Industrial, manufacturing, gravel washing and mining uses when supplied by other than a common water distribution system. Temporary water permits may be issued for temporary, short term projects. See Temporary Water Permitting.
- i. Geothermal use of any amount of water from other than a common water distribution system, for businesses, churches, schools, or any other building, except for individual homes using 18 gpm or less.
- j. Any use by a school, park, rest area or other public recreation area in excess of 18 gpm when supplied by other than a common water distribution system.
- k. Any use by a hospital, nursing home or church when supplied by other than a common water distribution system.

Fees for permit applications are set by SDCL 46-2-13(2).

Depending on the type of use involved a person who applied water to a beneficial use for works constructed prior to or under construction as of March 2, 1955 (surface water) or February 28, 1955 (ground water), may qualify for a vested right pursuant to SDCL 46-1-9 or 46-6-1, if that vested water right has not been forfeited or abandoned. Vested water right claims may be filed or the chief engineer may require vested water right claims to be filed pursuant to SDCL 46-5-49 or 46-6-2.

Reference: SDCL 46-1-3, 46-1-6(3), 46-1-9, 46-1-15, 46-5-1.1, 46-5-6.2 thru 46-5-6.8, 46-5-8.2, 46-5-9, 46-5-10, 46-5-49 and 46-6-2. Water Management Board Rules ARSD 74:02:01:03.

2) Criteria for granting a water right permit as set forth in SDCL 46-2A-9:

- a. Water must be available for the proposed use.

The water source, whether surface or ground water, needs to be capable of supporting the proposed water use. For ground water, the average annual use from the water source may not exceed the average estimated annual recharge with some limited exceptions – please refer to “WELLS, Ground Water Management” for additional details.

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

Existing rights, including domestic uses of water, may not be unlawfully impaired regardless of whether the proposed source is surface or ground water. In order for a well to be protected it must meet the definition of an “adequate” well – please refer to “WELLS, Well Construction” for additional details.

- c. The use of water must be a beneficial use.

Beneficial use is the use of water that is reasonable and useful and beneficial to the owner and consistent with the best utilization of water supplies. In general, beneficial uses of water include, but are not limited to: 1) domestic, 2) municipal, 3) rural water system, 4) irrigation, 5) suburban housing, 6) commercial, 7) industrial, 8) recreation, 9) fish and wildlife, and 10) institutional.

- d. The use of water must be in the public interest.

Public interest is not specifically defined in water rights law and is a determination made by the Board based on testimony at the time of hearing. In making a public interest determination, the Board may recognize that some issues are within the jurisdiction of local, state and federal entities.

WATER RIGHT PERMIT ADMINISTRATION

- 1) After approval of a water right permit, the permit owner has five years to complete any construction. The owner then has an additional four years to put the water to beneficial use.

A water right permit may be amended to extend the time for completion of construction or the time to put the water to beneficial use. The extension may be granted on account of delays due to physical or engineering difficulties, due to operation of law, or due to exigent circumstances identified by the Water Management Board. An application to amend a permit to extend the time for construction or the time to put the water to use needs to be made prior to expiration of the time period to be extended.

Reference: SDCL 46-2A-1(2), 46-2A-8, and 46-5-26.

- 2) An existing water right permit or right may be amended. Amendment examples are: to change the use of water, to change place of use, to extend time for construction beyond five years, to change diversion points or to add diversion points. An amendment can not be granted to increase the rate of diversion or volume of water appropriated under the original permit or if an existing water right will be impaired. An application to increase the rate of diversion or volume of water will be treated as a new application and will be assigned a new priority date.

The location of an existing diversion point may be moved or additional diversion points may be added without application or publication, if:

- a. The water source remains unchanged;
- b. No additional water is appropriated;
- c. If for irrigation purposes, no new land is irrigated; and
- d. The Chief Engineer makes a finding that the potential for interference with existing diversions is not increased.

Reference: SDCL 46-2A-1(2), 46-2A-12, 46-5-13.1, 46-5-30.4, and 46-5-31.

- 3) Notice of any sale, grant, lease, conveyance or other transfer of an application, permit, or license to appropriate water must be filed with the Chief Engineer of the Water Rights Program within 90 days. No assignment is binding, except upon the parties thereto, unless filed for record in the Water Rights Program.

Reference: SDCL 46-5-30.3 and 46-5-32.

- 4) Water right permits can be cancelled for nonconstruction. However, the Board may reinstate any water right permit with a priority date after March 31, 1977, within three years after expiration of the original construction period if unappropriated water is available. A new priority date is assigned to a reinstated permit. A water right permit or right can be lost for any of the following three reasons:

- a. Abandonment - The water right permit or right owner has no intent to use water and abandons its use. Once a water right permit or right is abandoned, it can not be reclaimed under the original permit or right.

- b. Forfeiture - Occurs by operation of law if water is not used for a three year period without legal excuse. A "legal excuse" would include, generally, the lack of water, but may include other reasons. Once a water right permit or right is forfeited, it can not be reclaimed under the original permit or right.
- c. A third violation of a condition of a water right permit or right.

Reference: SDCL 46-1-12, 46-2A-8.1, 46-5-36, 46-5-37, and 46-5-37.1. Water Management Board rules ARSD 74:02:01:36 thru 74:02:01:41.

FUTURE USE PERMITTING

- 1) The following entities may reserve water for expected future needs pursuant to procedures in SDCL 46-2A:
 - a. State institution;
 - b. Municipality as defined in SDCL 9-1-1;
 - c. The South Dakota conservancy district or water development districts as defined in SDCL 46A-2-4;
 - d. Water user district as defined in SDCL 46A-9-2;
 - e. Nonprofit rural water supply company as defined in SDCL 10-36A-1;
 - f. Sanitary district as defined in SDCL Chapter 34A-5;
 - g. Irrigation district as defined in SDCL 46A-4; or
 - h. Water project district as defined in SDCL Chapter 46A-18.

Approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specific priority date. A future use permit does not grant authority to construct works or put the water to beneficial use. An additional application is required to construct works and put reserved water to beneficial use. The fee for a future use application is 10% of the usual fee for an application to construct works and put water to beneficial use.

Future use permits are subject to review by the Water Management Board every seven years. If the future use permit is allowed to remain in effect after the seven year review, an additional 10% fee is required.

Reference: SDCL 46-2-13(2), 46-5-38, and 46-5-38.1.

FLOOD CONTROL PERMITTING

- 1) Flood control permits are required pursuant to SDCL 46-2A for facilities constructed on a watercourse to control flooding. Emergency facilities may be constructed without a permit. However, the Chief Engineer of the Water Rights Program must be promptly notified. Flood control permits are not required for flood control facilities constructed on dry draws.

Reference: SDCL 46-2A-11, 46-5-47, and 46-5-48.

TEMPORARY WATER PERMITTING

- 1) Temporary water permits may be issued by the Chief Engineer when limited amounts of public water are needed on a temporary basis. For example, permission may be granted to use water for highway and other construction projects and exploration drilling. A temporary permit is not valid after December 31 of the year in which the permit was issued and, under certain circumstances, a temporary permit may be rescinded. In

addition, a temporary permit is temporary permission to use public water and does not grant any right of priority for the temporary use.

Temporary permits may be granted to use water from either public or privately owned sources of water. Approval of a temporary permit does not grant trespass rights to access the water. Water may be obtained from municipalities and other permitted water distribution systems without a temporary permit.

Reference: SDCL 46-5-40.1. Water Management Board Rules ARSD 74:02:01:32 thru 74:02:01:34.02.

WELLS

1) Ground Water Management

- a. An adversely impacted domestic well is a well in which the pump intake is at least 20 feet below the top of the aquifer or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water from the well owner's needs.

Reference: Water Management Board Rules ARSD 74:02:04:20(7)

- b. South Dakota water laws do not allow the "mining" of ground water. "Mining" occurs when the average quantity of water pumped annually from a ground water aquifer exceeds the estimated average annual recharge to the aquifer. There are a few areas in South Dakota where additional water right permits are not being approved for this reason. A limited exception to "no mining" is made by SDCL 46-6-3.1 for water distribution systems. The Water Rights Program maintains more than 1,500 observation wells to monitor ground water levels.

Reference: SDCL 46-2-14 and 46-6-3.1.

- c. South Dakota water law does not protect artesian head pressure as a means of diversion. In other words, a well owner is not necessarily guaranteed that water from a flowing well or from a pump placement that relies on head pressure will always be available. A pump must be capable of being placed 20 feet into the aquifer or set as near to the bottom of the aquifer as practical if the aquifer is less than 20 feet thick.

2) Well Construction

- a. All wells must be completed in accordance with South Dakota Well Construction Standards. A well driller must be licensed to drill water wells in South Dakota. The driller is required by law to file a copy of a well completion report with the Water Rights Program within 30 days of completion of each well.

Reference: 46-2A-13, 46-6-9, and 46-6-11. Water Management Board Rules ARSD Chapter 74:02:04

- b. Any person who performs work for compensation in the repair of wells or as a well pump installer must obtain either a well driller's license or a well pump installer's license.

Reference: 46-2A-13 and 46-6-9.2.

- c. An adequate well is defined as a well constructed to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet.

Reference: Water Management Board Rules ARSD 74:02:04:20(6)

3) Well Owner Responsibilities

- a. The owner or equitable property holder is responsible for the well from the time the licensed well driller successfully completes the well in compliance with the Well Construction Standards ARSD Chapter 74:02:04. The owner shall keep the well capped or covered, in good repair, and in a sanitary condition.

Reference: Water Management Board Rules ARSD 74:02:04:74

- b. All flowing wells must be controlled by the owner to produce only the amount of water needed and to prevent waste of water.

Reference: SDCL 46-2-18, 46-6-10, 46-6-14, 46-6-20, 46-6-21, 46-6-29, and 46-6-30. Water Management Board Rules ARSD 74:02:04:74.

- c. When the owner of an existing well constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Other abandoned wells must also be plugged. If an old well is not to be abandoned or will be used, the well must still be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

Reference: SDCL 46-6-18 and 46-6-27.

DAMS OR DUGOUTS

- 1) Dams or dugouts of any size on a navigable watercourse or storing greater than 25 acre feet of water located on a dry draw or on a nonnavigable watercourse require a water right permit.

Reference: SDCL 46-4-1 and Water Management Board Rules ARSD 74:02:01:03.

- 2) Dams or dugouts storing 25 acre feet or less of water located on a dry draw or on a nonnavigable watercourse can be constructed without a water right permit provided a location notice is filed. However, the dam may not be constructed if it changes the course of the water, interferes with water rights, or wrongfully floods land owned by others.

Reference: SDCL 46-4-1.1, 46-4-3 and 46-5-2.

- 3) The owner of a dam or dugout storing 25 acre feet or less on a dry draw must file a location notice with the county Register of Deeds and the Water Management Board to avail the owner of the rights provided in SDCL Chapter 46-4 including establishment of a priority date. The \$50.00 filing fee is set by SDCL 46-2-13(1).

Reference: SDCL 46-4-3 thru 46-4-6.

- 4) The Board may not enforce limitations on domestic use of water from dry draw dams except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse.

Reference: SDCL 46-2-22

- 5) Water Management Board Safety of Dams Rules Chapter 74:02:08 apply to dams that are 25 feet or more in height (top of dam) or that store 50 acre-feet or more of water (maximum storage to top of dam.)

Reference: Water Management Board Safety of Dams Rule ARSD 74:02:08:01(7).

- 6) Beaver dams - No person owning land through which a watercourse passes may prohibit the removal of obstructions built by beavers in a watercourse, if the beavers have obstructed or interfered with the flow of water through the watercourse in a manner that floods land belonging to others or impairs existing water rights.

Reference: SDCL 46-5-1.2.

ORDINARY HIGH/LOW WATER MARKS AND LAKE OUTLET ELEVATIONS

- 1) The Water Management Board establishes ordinary high water marks (OHWM), ordinary low water marks (OLWM) and lake outlet elevations for public lakes.

State law provides that all navigable rivers and lakes are public highways within 50 feet landward from the water's nearest edge, provided that the outer boundary of such public highway may not expand beyond the OHWM and may not contract within the OLWM. Thus, the public has the right to use a strip of land up to 50 feet wide below the OHWM beginning at the water's edge or the OLWM. Further, while the public may use the 50 foot strip of land for only "public" purposes, the private adjoining landowner may use the land for any purpose not inconsistent with the rights of the public.

The meander line is a survey line and is usually not a property line nor is the title of an adjacent landowner limited to the meander line, except when the land title conveyance clearly states that the meander line is the property line. Subject to the preceding exception, the meander line defines neither the boundary of a lake or stream nor the extent of land area owned by the adjacent landowner. The meander line was established during early government surveys and used to determine the acres of land subject to sale.

Reference: SDCL 43-17-1 thru 43-17-4, and 43-17-20 thru 43-17-30.

Procedure for Hearings before the Water Management Board

The Water Management Board's function is to regulate and control the development, conservation, and allocation of the use of water according to the principles of beneficial use and priority of appropriation. In this role, the Water Management Board conducts contested case hearings on water right permit applications. This document is intended to acquaint participants in hearings of general procedures before the Board.

The Board is a citizen board consisting of seven members appointed by the Governor. They are from varying backgrounds and locations around the state. The Board has meetings approximately every two months.

South Dakota codified laws (SDCL) and administrative rules (ARSD) govern water rights. The laws and rules may be downloaded at DENR's website at <http://www.state.sd.us/denr/denr.html>. Laws of interest include SDCL Chapters 1-26, 46-1, 46-2, 46-2A, 46-4, 46-5 and 46-6. Administrative rules to review are ARSD 74:02:01.

An individual may represent himself in a contested case before the Board or may be represented by legal counsel. However, an organization, association, partnership, corporation, etc., must be represented by an attorney. Attorneys that intend to participate in the hearing must mail a Notice of Appearance to all other parties. Non-resident attorneys must be able to demonstrate compliance with the requirements set forth SDCL 16-18-2 to practice in South Dakota.

Burden of Proof

The applicant for an permit issued by the Water Management Board has the burden of proving that he is entitled to the permit. The applicant must therefore be prepared to present the permit application and the proposed operation to the Board at a contested case hearing. This burden then switches to the petitioning parties to prove their case. Do not rely on the Department of Environment and Natural Resources (DENR) to carry the burden of proof. Although DENR makes a recommendation to the Board, this recommendation is in no way binding upon the Board. While a DENR expert will present their report and be subject to questioning by the Board and parties on the application, DENR is not an advocate for your position.

SDCL 46-2A-9 sets forth the four criteria that must be present in order to approve an application. They are:

- 1) A reasonable probability that unappropriated water is available for the proposed use;
- 2) The proposed diversion will not unlawfully impair existing rights;
- 3) The use is a beneficial use; and
- 4) The use is in the public interest.

Procedure

You or your legal counsel need to be at the hearing to present your position in a contested case hearing.

The Board Chairman runs the hearing. Address all questions and objections to the Chairman for a ruling. In some instances the Board will appoint a hearing chairman for preside over prehearing conferences and prehearing motions. An attorney from the Attorney General's office is seated with the Board to provide

them legal advice. In addition, the Water Rights Program is represented by legal counsel. This is a legal proceeding so expect to swear an oath to tell the truth when you approach the podium.

Contested case hearing are conducted pursuant to procedures outlined in SDCL ch. 1-26. Only parties of record can participate in the hearing by presenting testimony, calling witnesses or cross examining witnesses. Parties include the applicant and those individuals that have filed a petition as set forth in the public notice. The following procedure is followed:

1. Opening statements (parties may waive their opening statement)
 - a. Applicant
 - b. DENR – DENR will present a brief description of the application
 - c. Petitioners and Intervenors
2. Evidentiary hearing
 - a. Applicant (applicant's opportunity to present testimony and call witnesses)
 - b. DENR – staff present their report and the Chief Engineer's recommendation
 - c. Petitioners and Intervenors (opportunity to present testimony and call witnesses)

Be prepared to explain your position on the application. Although the Board members have a great deal of expertise, don't presume they know anything about your issue before them. If you're the applicant, state what the proposed project is, the location of the project, timelines for completed the project and its benefits. If you are an opponent to the application, explain where you live in proximity to the proposed project and the adverse impact of the proposed project.

Parties may call witnesses on their behalf. The Board oftentimes hears testimony from technical experts, neighbors or other witnesses regarding the proposal. Written endorsements are subject to the hearsay rule at the time of the hearing since the person can not be cross examined. Written comments will usually be allowed only if there is no objection from any other party.

Upon the conclusion of any witness's testimony, Board members may ask questions of the witness and all parties will be afforded an opportunity in an orderly manner to cross examine the witness regarding their testimony. Cross examination is your opportunity to ask questions of the witness related to their direct testimony. It is not the appropriate time for you to provide your testimony.

3. Rebuttal – parties are afforded an opportunity to present testimony rebutting a prior witnesses testimony. Witnesses are again subject to cross examination but only related to their rebuttal testimony.
4. Closing arguments (summation of your position)
 - a. Applicant
 - b. DENR
 - c. Petitioners and Intervenors
5. Board decision. The decision making process occurs in public in front of all concerned and on the record. Normally, the Board limits discussion to its members but may call on witnesses, lawyers or parties to clarify a point. Upon making a verbal decision, the Board will direct

either the prevailing party or Water Rights Program's staff attorney to prepare findings of fact, conclusions of laws and Final Decision that will be considered at the Board's next meeting. The findings are a record of the facts considered by the Board. In the event the Board's decision is appealed to court, the findings reflect the facts considered by the Board to arrive at a decision. The non-prevailing party may waive their rights to findings if they are satisfied the Board addressed their concerns or have no intention of appealing the decision.

Although hearings may sometimes be considered informal, it is evidentiary hearing. Lawyers cannot testify or answer factual questions, cross examination is allowed, copies of exhibits must be available for opposing counsel or parties.

Ex-parte Communication

It is improper for any party to a pending application or contested case proceeding to contact Board members prior to the hearing. To do so is ex-parte communication with the likely result being the Board member excusing himself from the proceeding. The Board is very careful to avoid even the appearance of discussing a contested case hearing that will come before it. Situations do arise where a party requests to have a Board ruling on a motion prior to the evidentiary hearing. If an applicant or party has an issue he wishes to raise prior to the hearing, please contact the Water Rights Program and they will put you in contact with either the Board's attorney or the Water Rights Program attorney.

Exhibits

Exhibits are pictures, maps or documents you wish the Board to consider in conjunction with your testimony. Used effectively, exhibits greatly increase the interest and knowledge of the Board. Please have all exhibits you intend to present marked in advance of the hearing (example – Applicant Exhibit 1, 2 and 3 or Petitioner Exhibit 1, 2 and 3). Provide enough copies of each exhibit for the Board, Water Rights Program, opposing counsel and other parties. The exchange of exhibits by parties prior to the hearing is encouraged. Be aware that someone may object to admission of an exhibit. The Board Chairman will rule whether the exhibit is admissible. All exhibits become part of the record and will not be returned.

Transcript

A court reporter is present at all contested case hearings. A party wishing to have a transcript of the hearing should make their own arrangement with the court reporter. DENR will tape the proceeding and will prepare minutes of the hearing.

Appeal of Board's Decision

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days from when the signed findings of fact, conclusions of law and final decision is mailed to parties. The notice of appeal must be in accordance with procedures established in SDCL 1-26-31.

The best advice is to come to the hearing prepared! If you have question regarding the hearing process, please contact Eric Gronlund, Water Rights Program at (605) 773-3352.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 28, 2020

NOTICE

TO: Juston Eisenbraun
R & J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2805-2, R & J LLC

Petitions of opposition were filed in response to the public notice for Water Permit Application No. 2805-2 filed by R & J LLC. Notice of hearing dated December 31, 2019, was sent to parties scheduling a February 26, 2020, hearing before the Water Management Board on Application No. 2805-2. In response to the notice, Petitioner William Hearne filed a formal request (copy enclosed) for delay of the February 26, 2020, hearing date on the application. Therefore, the hearing on Application No. 2805-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on February 26, 2020.

The hearing to consider Application No. 2805-2 is tentatively scheduled for the May 6 - 7, 2020, Water Management Board meeting. The Board will formalize their next meeting date at the February 26th meeting. Future notice of the time and place of the hearing for Application No. 2805-2 will be provided to all parties of record.

Questions regarding the hearing process may be directed to Eric Gronlund at (605) 773-3352.

enclosure

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on January 28, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated January 28, 2020, regarding automatic delay for Water Right Permit Application No. 2805-2, as addressed below:

Juston Eisenbraun
R & J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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



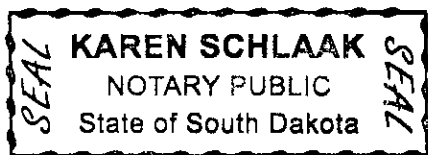
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of January, 2020



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

JAN 27 2020

WATER RIGHTS
PROGRAM

BILL HEARNE

23762 Pine Haven Dr
Rapid City, SD 57702

Office: 605-787-4156

Cell: 605-645-1756

Fax: 605-342-8215

wchearne@gmail.com

1/22/2020

Jeanne Goodman,

I wish to request a delay of the hearing for water permit Application #2805-2, R&J LLC. I have previously submitted information concerning this issue.

I will be out-of-state on the scheduled hearing date and ask that it be rescheduled to another time.

Thank you for your consideration.

Sincerely,





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/>

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APR 06 2020

**WATER RIGHTS
PROGRAM**

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 2, 2020

Juston Eienbraun
P.O. Box 245
Wall, SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

Michael M. Hickey
Counsel for R&J, LLC
Bangs, McCullen, Butler, Foy & Simmons
P.O. Box 2670
333 West Blvd., Suite 400
Rapid City, SD 57709

William C. Hearne
23762 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

Re: *In the Matter Water Application No. 2805-2, R&J, LLC*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Motion for Continuance in the above-referenced file.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".
Ann F. Mines Bailey
Assistant Attorney General

AFM/mb
Enclosures
cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

APR 06 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S
APPLICATION NO. 2805-2, R&J, LLC	)	MOTION FOR
	)	CONTINUANCE
	)	

The above-entitled matter is currently scheduled to be heard before the Water Management Board at its regularly scheduled meeting May 6-7, 2020. Currently, the Governor has issued an executive order declaring a state of emergency due to the COVID-19 pandemic. See Executive Order 2020-04. As part of that Executive Order, the Governor requests that all South Dakotans practice social distancing and avoid gatherings of ten or more individuals. The Executive Order is set to expire May 2, 2020. Nonetheless, in light of the current public health situation, the Chief Engineer requests a continuance of the evidentiary hearing in this matter. The Chief Engineer requests that a new date be set for hearing in June of 2020.

Dated this 2nd day of April 2020.


Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

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APR 06 2020

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 2805-2, R&J, LLC	)	CERTIFICATE OF SERVICE
	)	

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Motion for Continuance in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 2nd day of April 2020:

Juston Eienbraun
P.O. Box 245
Wall, SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

Michael M. Hickey
Counsel for R&J, LLC
Bangs, McCullen, Butler, Foy & Simmons
P.O. Box 2670
333 West Blvd., Suite 400
Rapid City, SD 57709

William C. Hearne
23762 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

March 16, 2020

NOTICE

TO: Juston Eienbraun Lon Buchner William C Hearne
 R & J LLC 23734 Pine Haven Dr 23762 Pine Haven Dr
 PO Box 245 Rapid City SD 57702 Rapid City SD 57702
 Wall SD 57790

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
 Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2805-2, R & J LLC

The Water Management Board will conduct a hearing to consider Application No. 2805-2 at 8:45 AM (Central Time), on Wednesday, May 6, 2020, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notices dated December 31, 2019, and the public notice in the Rapid City Journal published December 4, 2019, still apply.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 16, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated March 16, 2020, regarding Water Right Permit Application No. 2805-2, as addressed below:

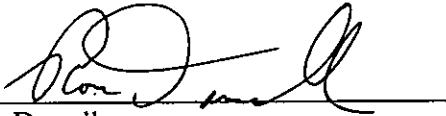
Juston Eienbraun
R & J LLC
PO Box 245
Wall D 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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



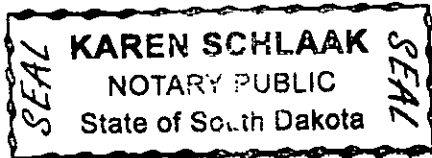
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of ~~March~~ April, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	ORDER ON CHIEF ENGINEER'S
APPLICATION NO. 2805-2, R&J, LLC.	)	MOTION FOR A CONTINUANCE
	)	
	)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

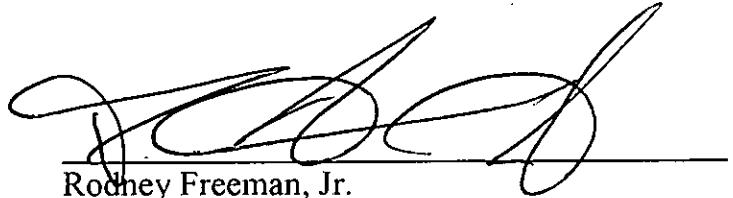
WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Wednesday June 10, 2020 through Thursday June 11, 2020.

3. The DENR Water Rights Program will provide notice of the time and place of the hearing in compliance with the Open Meetings Law.

Dated this 6th day of April, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

CERTIFICATION

I hereby certify that on April 9, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order and Scheduling for Hearing dated April 9, 2020,, regarding Water Right Permit Application No. 2805-2, as addressed below:

Juston Eienbraun
R & J LLC
PO Box 245
Wall D 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



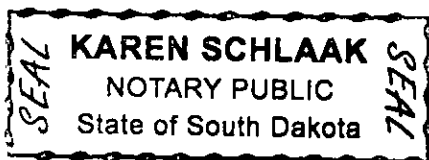
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of April, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





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/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

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APR 24 2020

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 23, 2020

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

RE: In the Matter of Water Application No. 2805-2, R&J, LLC

Dear Mr. Buehner,

On April 2, 2020, I filed a Motion for Continuance and Certificate of Service in the above-entitled matter. In the Motion and Certificate of Service your address was set forth as above. However, in the creation of the mailing label, your address was mistaken. I am now sending you the copy of the Motion and Certificate of Service as originally sent along with an Amended Certificate of Service. I apologize for the mistake. Please contact me if you have any questions or concerns.

Thank you,


Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc: Ron Duvall, DENR Water Rights Program

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

RECEIVED

APR 24 2020

WATER RIGHTS
PROGRAM

IN THE MATTER WATER)
APPLICATION NO. 2805-2, R&J, LLC)
)

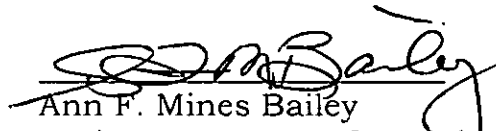
AMENDED
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the April 2, 2020 letter, Chief Engineer's Motion for Continuance, April 2, 2020 Certificate of Service, and returned envelope in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 23rd day of April 2020:

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General



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/>

RECEIVED

APR 24 2020

WATER RIGHTS
PROGRAM

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 2, 2020

Juston Eienbraun
P.O. Box 245
Wall, SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

Michael M. Hickey
Counsel for R&J, LLC
Bangs, McCullen, Butler, Foy & Simmons
P.O. Box 2670
333 West Blvd., Suite 400
Rapid City, SD 57709

William C. Hearne
23762 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

Re: *In the Matter Water Application No. 2805-2, R&J, LLC*

To Whom it May Concern:

Enclosed please find a copy of Chief Engineer's Motion for Continuance in the above-referenced file.

Sincerely,


Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program

RECEIVED

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

APR 24 2020

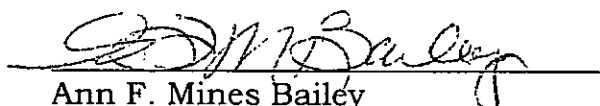
WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	CHIEF ENGINEER'S
APPLICATION NO. 2805-2, R&J, LLC	)	MOTION FOR
	)	CONTINUANCE
	)	

The above-entitled matter is currently scheduled to be heard before the Water Management Board at its regularly scheduled meeting May 6-7, 2020. Currently, the Governor has issued an executive order declaring a state of emergency due to the COVID-19 pandemic. See Executive Order 2020-04. As part of that Executive Order, the Governor requests that all South Dakotans practice social distancing and avoid gatherings of ten or more individuals. The Executive Order is set to expire May 2, 2020. Nonetheless, in light of the current public health situation, the Chief Engineer requests a continuance of the evidentiary hearing in this matter. The Chief Engineer requests that a new date be set for hearing in June of 2020.

Dated this 2nd day of April 2020.



Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: atgservice@state.sd.us

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER)
APPLICATION NO. 2805-2, R&J, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Chief Engineer's Motion for Continuance in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 2nd day of April 2020:

Juston Eienbraun
P.O. Box 245
Wall, SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

Michael M. Hickey
Counsel for R&J, LLC
Bangs, McCullen, Butler, Foy & Simmons
P.O. Box 2670
333 West Blvd., Suite 400
Rapid City, SD 57709

William C. Hearne
23762 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General

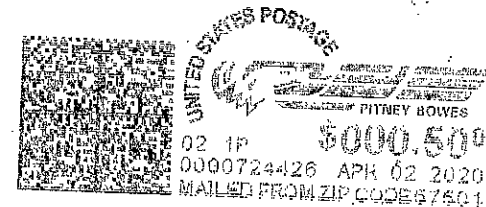
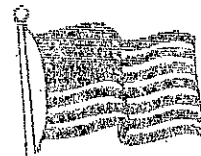
JASON R. RAVNSBORG
ATTORNEY GENERAL
1302 EAST HIGHWAY 14, SUITE 1
PIERRE, SOUTH DAKOTA 57501-8501

ADDRESS SERVICE REQUESTED

males

Attorney General

APR 14 2020



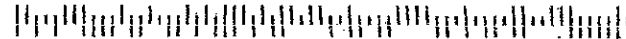
Lon Buehner
23734 Pine Haven Drive
Wall, SD 57790

NIXIE 553 DE 1 0004/08/20

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

NSN
577901850101 > 8501

BC: 57501850101 *0935-09527-02-44



RECEIVED

MAY 08 2020

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	AMENDED ORDER ON CHIEF
APPLICATION NO. 2805-2, R&J, LLC.	)	ENGINEER'S MOTION FOR A
	)	CONTINUANCE
	)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

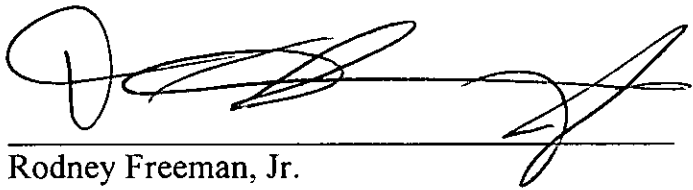
WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Wednesday July 8, 2020 beginning at 1:00 P.M.

3. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 8, 2020 hearing can be held.
4. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

A handwritten signature in black ink, consisting of a large initial 'R' followed by a series of loops and a long horizontal stroke.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

May 11, 2020

NOTICE OF ENTRY OF ORDER AND SCHEDULING FOR HEARING

TO: Juston Eienbraun Lon Buehner William C Hearne
 R & J LLC 23734 Pine Haven Dr 23762 Pine Haven Dr
 PO Box 245 Rapid City SD 57702 Rapid City SD 57702
 Wall SD 57790

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
 Water Rights Program

SUBJECT: Hearing Officer's Order on Motion for Continuance Regarding Water Permit
 Application No. 2805-2, R & J LLC and Scheduling for Hearing

Enclosed is Hearing Officer Freeman's order concerning the Chief Engineer's motion for a continuance in the matter of Water Permit Application No. 2805-2 and scheduling for hearing.

Based on the order, the Chief Engineer's motion for continuance is granted and the contested case for Application No. 2805-2 will NOT be heard on June 10 or 11, 2020. The evidentiary hearing is rescheduled for hearing at 1:00 PM central time on Wednesday, July 8, 2020.

On Thursday, June 11, 2020, a remote conference call will be held at 9:00 AM central time to discuss the status of the COVID-19 pandemic and to determine whether the July 8, 2020, hearing can be held. In preparation for this conference call, please be prepared to provide an approximate head count for your group to help with planning what size of room is needed to accommodate everyone with appropriate social distancing. To participate in the conference call, dial 605-679-7263 and enter the Conference ID 460 008 44# when prompted. You may also contact us for a link if you wish to participate by video. To participate by video, you will need a device with a webcam and microphone as well as a mobile wireless or internet connection.

Questions regarding this matter may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Enclosure

c: Ann Mines Bailey, Assistant Attorney General
David McVey, Assistant Attorney General

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	AMENDED ORDER ON CHIEF
APPLICATION NO. 2805-2, R&J, LLC.	)	ENGINEER'S MOTION FOR A
	)	CONTINUANCE
	)	

WHEREAS, the instant matter is scheduled to be heard during the Water Management Board's ("Board" hereinafter) regularly scheduled meeting on May 6-7, 2020; and

WHEREEAS, the Governor has declared a state of emergency in South Dakota due to the COVID-19 pandemic; and

WHEREAS, as part of Executive Order 2020-08, the Governor requests that people implement social distancing measures and further that they "suspend or modify business practices as recommended by CDC guidance that involve 10 or more people to be in an enclosed space where physical separation of at least 6 feet is not possible"; and

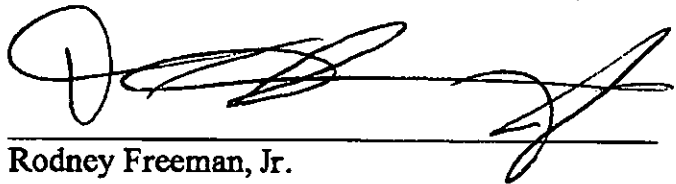
WHEREAS, in light of the current public health situation, the Chief Engineer has requested a continuance of the evidentiary hearing in this matter.

NOW THEREFORE, it is ORDERED:

1. The Chief Engineer's Motion for a Continuance is GRANTED.
2. The evidentiary hearings is re-scheduled and will take place on Wednesday July 8, 2020 beginning at 1:00 P.M.

3. A conference call will be held at 9:00 A.M. on June 11, 2020 to discuss the status of the COVID-19 pandemic and to determine whether the July 8, 2020 hearing can be held.
4. The DENR Water Rights Program will provide notice of the time and place of the well hearing in compliance with the Open Meetings Law, as well as notice and call-in information for the conference call.

Dated this 7th day of May, 2020.

A handwritten signature in black ink, appearing to read 'Rodney Freeman, Jr.', written over a horizontal line.

Rodney Freeman, Jr.
Hearing Officer
South Dakota Water Management Board

CERTIFICATION

I hereby certify that on May 11, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order and Scheduling for Hearing dated May 11, 2020, regarding Water Right Permit Application No. 2805-2, as addressed below:

Juston Eienbraun
R & J LLC
PO Box 245
Wall D 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



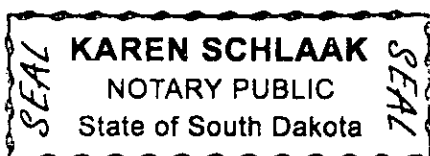
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of May 11, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 18, 2020

NOTICE OF ENTRY OF ORDER

TO: Juston Eienbraun
R & J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer
Water Rights Program



SUBJECT: Hearing Officer's Order on Providing Numbered Exhibits and Number of Individuals attending Hearing on Water Permit Application No. 2805-2, R & J LLC

Enclosed is Hearing Officer Freeman's order in the matter of Water Permit Application No. 2805-2 to submit numbered exhibits and provide the number of individuals attending the hearing to Ron Duvall on or before June 26, 2020. In addition, the order requires having enough copies of numbered exhibits available at the hearing.

Enclosure

c: David McVey, Assistant Attorney General

JUN 18 2020

WATER RIGHTS
PROGRAMSTATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2805-2, R&J LLC.	)	ORDER
	)	
	)	

This matter is scheduled to be heard by the Water Management Board on July 8, 2020. In preparation for that hearing, the parties shall comply with the following:

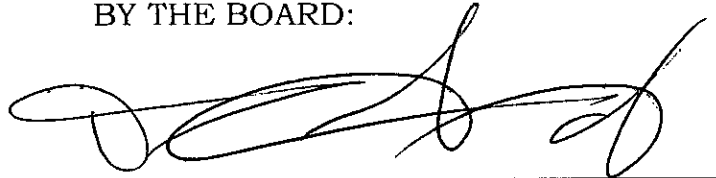
1. To facilitate distribution to those Board members who will be appearing remotely during the July 8 hearing, the parties shall provide a hardcopy of each exhibit which may be used during the course of the hearing. Each exhibit is to be numbered prior to submission. DENR will use numbers 1-99; Applicant will use numbers 100-199; Intervenor Lon Buehner will use numbers 200-299; and Intervenor William C. Hearne will use numbers 300-399.
2. In order to comply with the guidance issued by the Centers for Disease Control and the South Dakota Department of Health, the parties shall also submit the number of individuals who will be present on their behalf during the hearing.
3. The parties must still be prepared to provide a sufficient number of copies of exhibits, with the exception of the administrative file, for use at the contested case hearing, including at least nine (9) copies for the

Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

On or before June 26, 2020, the number of participants to be present and the exhibits as outlined above must be provided to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 17th day of June, 2020.

BY THE BOARD:

A handwritten signature in black ink, appearing to read 'Rodney Freeman', written over a horizontal line.

RODNEY FREEMAN
PREHEARING CHAIRMAN

CERTIFICATION

I hereby certify that on June 18, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Entry of Order dated June 18, 2020, regarding Water Right Permit Application No. 2805-2, as addressed below and on the parties of record list:

Juston Eienbraun
R & J LLC
PO Box 245
Wall D 57790

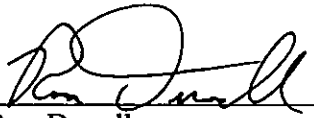
Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



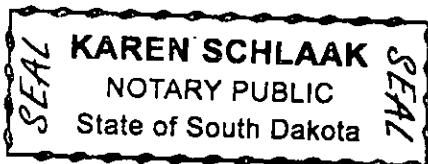
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of June, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RAPID CITY OFFICE
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343.1040
FAX (605) 343.1503

BANGS McCULLEN
— LAW FIRM —

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

Reply to Rapid City Office

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

SIOUX FALLS OFFICE
6340 S. Western Avenue
Suite 160
Sioux Falls, SD 57108
(605) 339.6800
FAX (605) 339.6801

RECEIVED

JUN 29 2020

WATER RIGHTS
PROGRAM

June 26, 2020

Ron Duvall
Water Rights, DENR
523 East Capitol
Pierre, SD 57501

Re: In the Matter of Water Application No. 2805-2, R&J, LLC

Dear Mr. Duvall:

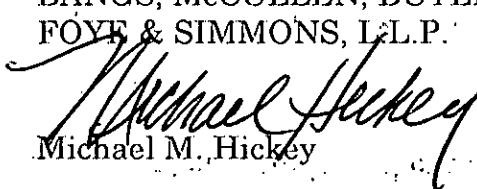
On behalf of applicant R&J, LLC, please find enclosed my *Notice of Appearance*. At the July 8, 2020, hearing, we anticipate that three (3) individuals will be present for the hearing.

Also enclosed is an exhibit, numbered as Exhibit 100. We reserve the right, however, to utilize any and all documents prepared by the Departmental staff regarding this application.

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

Sincerely,

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


Michael M. Hickey

MMH:bah

Enclosures.

cc:

Client

Lon Buehner

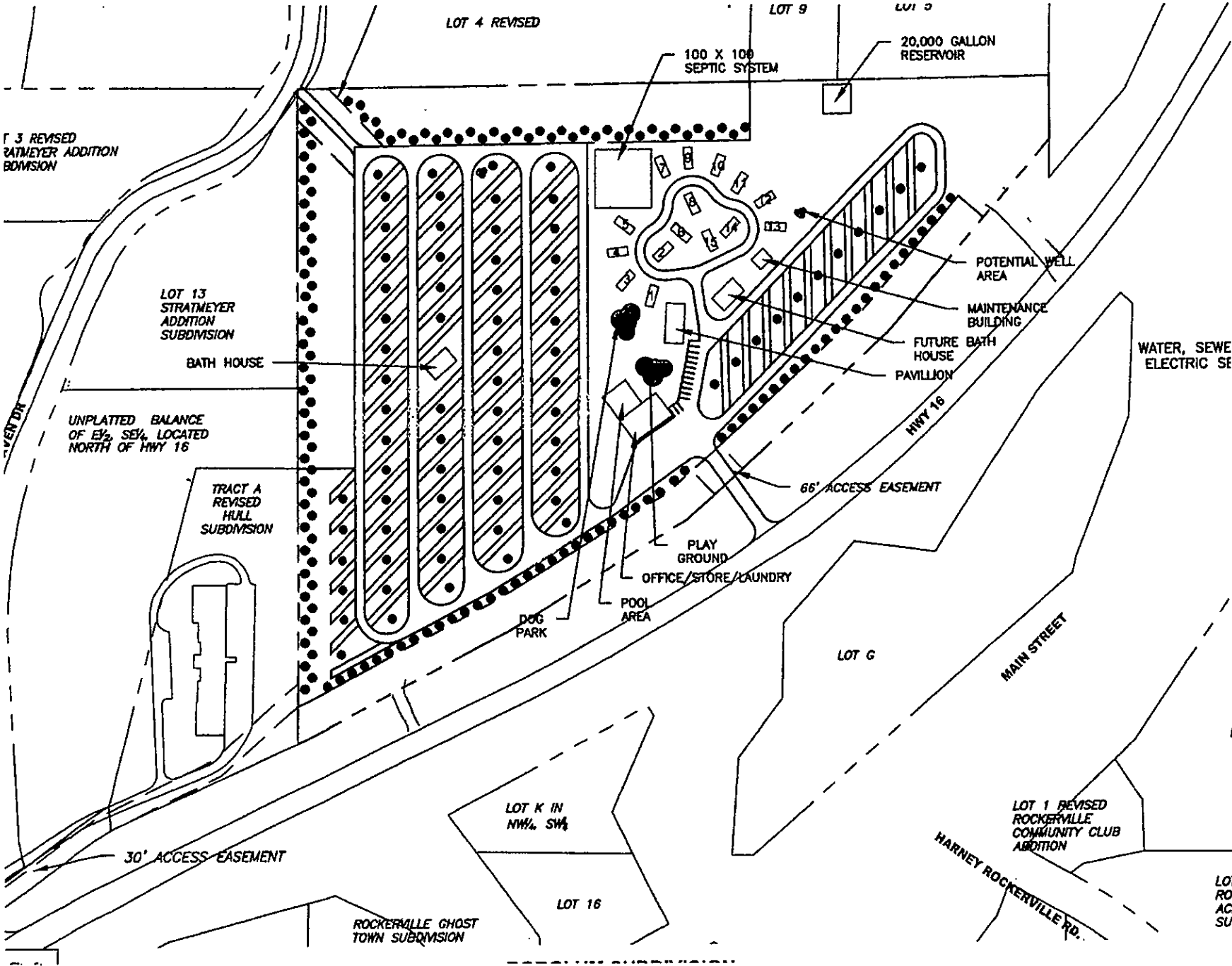
William Hearne

cc:

cc: [illegible]



Applicant's Exhibit 100 - Page 1 of 1



JUN 29 2020

WATER RIGHTS
PROGRAM

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

IN THE MATTER OF WATER
APPLICATION NO. 2805-2, R&J, LLC.

Notice of Appearance

Please take notice that Michael M. Hickey, of Bangs, McCullen, Butler, Foye & Simmons, L.L.P., hereby makes an appearance as an attorney for Applicant, R&J, LLC, in the above-entitled action, and requests that copies of all further pleadings, affidavits or motions in the above-entitled matter also be served upon the undersigned attorney.

Dated this 26th day of June, 2020.

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

Telephone: (605) 343-1040

Facsimile: (605) 343-1503

mhickey@bangsmccullen.com

ATTORNEYS FOR APPLICANT R&J, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on June 26, 2020, he caused true and correct copies of the above to be served upon each of the persons identified below as follows:

☒	First Class Mail	☐	Overnight Mail
☐	Hand Delivery	☐	Facsimile
☐	Electronic Mail	☐	Odyssey / ECF System

Ron Duvall
WATER RIGHTS
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
523 East Capitol
Pierre, SD 57501

Lon Buehner
23734 Pine Haven Dr.
Rapid City, SD 57702

William C. Hearne
23762 Pine Haven Dr.
Rapid City, SD 57702


MICHAEL M. HICKEY

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/>

RECEIVED

AUG 21 2020

WATER RIGHTS
PROGRAM

JASON R. RAVNSBORG

ATTORNEY GENERAL

CHARLES D. McGUIGAN

CHIEF DEPUTY ATTORNEY GENERAL

August 20, 2020

Juston Eienbraun
R & J LLC
P.O. Box 245
Wall, SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

Michael M. Hickey
Counsel for R&J, LLC
Bangs, McCullen, Butler, Foy & Simmons
P.O. Box 2670
Rapid City, SD 57709

William C. Hearne
23762 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered

Re: *In the Matter Water Application No. 2805-2, R&J LLC.*

To Whom it May Concern:

Enclosed please find a copy of Water Rights' Proposed Findings of Fact and Conclusions of Law in the above-referenced file.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/enc: Ron Duvall, DENR Water Rights Program

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	WATER RIGHTS' PROPOSED
APPLICATION NO. 2805-2, R&J LLC	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	

This matter came before the South Dakota Water Management Board for hearing on July 8, 2020. Board members James Hutmacher, Tim Bjork, Rodney Freeman, Peggy Dixon, Leo Holzbauer, and Bill Larson were present at the hearing and heard the evidence presented. R&J, LLC was represented by Michael M. Hickey. Intervenors Lon Buehner and William Hearne appeared *pro se*. Ann F. Mines Bailey represented the DENR Water Rights Program and the Chief Engineer.

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. On September 25, 2019, Water Rights received Water Permit Application No. 2805-2 on behalf of R&J, LLC seeking an appropriation of water for commercial use in an RV park and cabins located near Rockerville, SD. The application proposes the diversion of 4 acre-feet of water annually with an instantaneous diversion rate of 0.044 cubic feet of water per second (cfs) from two wells to be completed into the Crystalline Rock aquifer in the

NW¼SW¼ (Lot A, Borglum Subdivision) Sec. 13-T1S-R6E in Pennington County.

2. At the time the application was reviewed, the Chief Engineer, Jeanne Goodman, recommended approval of the application subject to the permit including four specified qualifications. Those qualifications are as follows:

- 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.
- The wells authorized by Permit No. 2805-2 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.
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.
- Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

4. Sometime after issuing the recommendation, but prior to the hearing in this matter, Chief Engineer Goodman stepped down, accepting a new position with DENR. Eric Gronlund was subsequently named Chief Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and hearing was timely advertised on December 4, 2019, in the Rapid City Journal (Pennington County).

6. DENR received timely petitions to intervene from Lon Buehner and William Hearne.

7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July, 2020 meeting.

8. Water Permit Application No. 2805-2 is 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.

9. In considering water availability, this Board must examine whether the average quantity of 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.

10. Adam Mathiowetz, a natural resources engineer with the Water Rights Program, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from observations wells completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

11. In this area, the Crystalline Rock aquifer consist of numerous localized aquifers in the Precambrian aged core of the Black Hills. It is made up of Metagraywacke, which is siliceous mica schist with impure quartzite. The aquifer has very low primary porosity. Water movement in the aquifer occurs through fractures, joints and faults within the aquifer material. This secondary porosity is very uneven and unpredictable. The aquifer is estimated to contain approximately 2,900,000 acre-feet of recoverable water in storage in western South Dakota. Due to these aquifer characteristics, there are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought.

12. Mr. Mathiowetz testified recharge to the Crystalline Rock aquifer occurs mainly through infiltration of precipitation and streamflow losses.

13. There are two observation wells in the Crystalline Rock aquifer. One of the wells is open to both the Deadwood Formation as well as the Crystalline Rock aquifer and was therefore not relied upon when reviewing this application. The other observation well, CU-86A, is located approximately 17.5

miles from the proposed diversion points. The data from this observation well demonstrates that the aquifer responds to climatic trends, recharging during wet periods and declining during dry periods. The observation well data demonstrates that the effects from pumping are temporal and are masked by climatic conditions. In fact, the data demonstrates an upward trend.

14. Based upon the nature and characteristics of the aquifer and the data available from the observations wells, Mr. Mathiowetz opined that there is unappropriated water available for this application.

15. Mr. Mathiowetz further testified that in reviewing the pertinent information, he concluded that the localized portion of the Crystalline Rock aquifer in which this diversion is sought is limited by larger faults and significant geologic features which have been mapped to some extent. Within this area of interest, there are ten existing water rights in the Crystalline Rock aquifer, with the nearest water right located approximately 0.17 miles from the proposed diversion site. Mr. Mathiowetz opined that even at that distance, given the relatively low diversion rate and volume requested and the lack of a significant history of complaints of well interference, there is a reasonable probability that the proposed amendment would not unlawfully impair existing water rights.

16. Additionally, there are a number of domestic wells within the vicinity of the proposed diversion site. Mr. Mathiowetz concluded that based upon the limited diversion rate and volume requested by this application and that there is little history of well interference in that area, there is a reasonable

probability that the proposed diversion would not result in an unlawful impairment of existing rights.

17. The Board finds Mr. Mathiowetz to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits upon which he prepared and/or relied.

18. The Board also received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified that he reviewed the application, report, and recommendation and that he agreed with the former Chief Engineer's recommendation. He further testified that he believed the proposed diversion to be a beneficial use and in the public interest consistent with the Board's previous decisions.

19. The Board finds Chief Engineer Gronlund to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Gronlund's testimony.

20. The Board also received the testimony of Juston Eisenbraun. Mr. Eisenbraun completed the application on behalf of R&J, LLC. Mr. Eisenbraun testified as to the plans to construct a RV campground with additional cabins, along with a store, laundry facility, and shower house. There are also plans to construct a swimming pool at a later date. The plan is to have the campground open from May until October weather permitting.

21. The Board also received the testimony of William Hearne. Mr. Hearne testified he owns land adjacent to the proposed project. Mr. Hearne

testified that as the use of water in the local area has increased the water his well is able to produce has decreased. Moreover, Mr. Hearne testified that the water quality has decreased as the use in the area has increased. Mr. Hearne testified that he believes that because of the unpredictable nature of the aquifer, one does not know where the effluent from septic systems will go. Mr. Hearne further spoke of his concerns regarding the lack of regulation and/or enforcement regarding water quality standards.

22. Lon Buehner also testified before the Board. Mr. Buehner testified that he believes the amount of water use in the localized area as stated in the Water Rights report cannot be valid because of the lack of development that exists. Mr. Buehner further testified of a great amount of development which has been planned and tentatively approved for the local area. Mr. Buehner additionally testified that there are a number of commercial establishments in the area that do not appear to have a water permit. Mr. Buehner contended that there are a number of domestic wells in the area which have an impact on the water in the area. Mr. Buehner further opined that given the topographical features of the area, the applicable area of the aquifer is quite small and that the recharge available to this area is greatly diminished.

23. The Board finds that there is unappropriated water available to satisfy this application.

24. The Board finds that granting this application would not unlawfully impair existing water rights.

25. The Board further finds that the proposed use of the water for commercial use in an RV campground constitutes a beneficial use.

26. The Board further finds that placing the water to this beneficial use is in the public interest.

27. 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. The Board concludes that R&J, LLC has satisfied each of the factors set forth in SDCL § 46-2A-9.

6. South Dakota Codified Law, section 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.

7. 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.”

8. The Board concludes 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 water 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 (commercial) 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 § 6-1-6(3). The Board finds that appropriating water for commercial use, such as this, 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. 2805-2 is granted with the following qualifications:

1. 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.

2. The wells authorized by Permit No. 2805-2 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.

3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.

4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0-acre foot of water.

Dated this ____ day of October, 2020.

BY THE BOARD:

South Dakota Water Management Board

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

IN THE MATTER WATER) APPLICATION NO. 2805-2, R&J LLC.)	)	CERTIFICATE OF SERVICE
---	---	------------------------

The undersigned hereby certifies that a true and correct copy of the Water Rights' Proposed Findings of Fact and Conclusions of Law in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 20th day of August 2020:

Juston Eienbraun
P.O. Box 245
Wall, SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

Michael M. Hickey
Counsel for R&J, LLC
Bangs, McCullen, Butler, Foy & Simmons
P.O. Box 2670
333 West Blvd., Suite 400
Rapid City, SD 57709

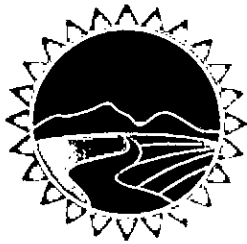
William C. Hearne
23762 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501
Hand-delivered and by-Word Version

And on the same date, the original was filed with:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 15, 2020

NOTICE

TO: Juston Eienbraun Lon Buehner William C Hearne
 R & J LLC 23734 Pine Haven Dr 23762 Pine Haven Dr
 PO Box 245 Rapid City SD 57702 Rapid City SD 57702
 Wall SD 57790

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
 Water Rights Program

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

The Water Management Board directed counsel for the Water Rights Program to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 2805-2, R & J LLC.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 1:00 PM Central Time, on Wednesday, October 7, 2020, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD.

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 September 10, 2020. 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, and other parties of record by September 25, 2020. A mailing list is enclosed. Board counsel requests that the draft findings or alternative findings be provided in both a PDF format and a WORD format file via email to David.McVey@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 at the October 7, 2020, meeting. The evidentiary hearing was completed July 8, 2020. No additional testimony will be received on October 7, 2020.

If you have questions about the findings process, please contact Ann Mines-Bailey at (605) 773-3215.

Enclosure

C: Ann Mines Bailey, Water Rights Program Counsel
David McVey, Water Management Board Counsel

PARTIES OF RECORD MAILING LIST
WATER PERMIT APPLICATION NO. 2805-2
R & J LLC

APPLICANT

Juston Eienbraun
R & J LLC
PO Box 245
Wall SD 57790

Michael M. Hickey
Attorney for R & J LLC
PO Box 2670
Rapid City SD 57709-2670

PETITIONERS

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Ann Mines Bailey, Assistant Attorney General
Counsel for Water Rights Program, DENR
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

CERTIFICATION

I hereby certify that on July 15, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 15, 2020, regarding preparation of findings of fact, conclusion of law and final decision for Water Right Permit Application No. 2805-2, as addressed below:

Juston Eienbraun
R & J LLC
PO Box 245
Wall SD 57790

Michael M. Hickey
PO Box 2670
Rapid City SD
57709-2670

Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



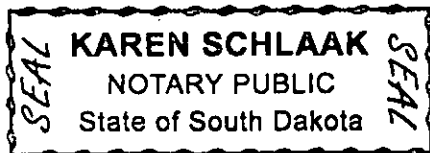
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of July, 2020.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 21, 2020

R&J LLC
c/o Juston Eisenbraun
PO Box 245
Wall, SD 57790

Dear Mr. Eisenbraun:

As requested by email on August 21, 2020, pursuant to South Dakota Well Construction Standard 74:02:04:21, you are authorized to have a South Dakota licensed well driller construct two test wells prior to approval of Water Permit Application No. 2805-2. The test wells will be located in the NW ¼ SW ¼ Section 13-T1S-R6E as requested in the water permit application. All test wells must be constructed in accordance with the SD Well Construction Standards. Any test holes or test wells that are abandoned must be plugged pursuant to the SD Well Construction Standards.

Authorization must be obtained before water from the wells can be used in excess of domestic use as defined by South Dakota Codified Law 46-1-6(7) or for uses other than domestic use. Approval of these test wells does not assure issuance of a water permit. Water Permit Application No. 2805-2 has currently not been approved pending adoption of Findings of Fact, Conclusions of Law and Final Decision by the Water Management Board. If you have questions regarding permitting, please call Ron Duvall at (605) 773-3352.

Sincerely,

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

RECEIVED

SEP 23 2020

WATER RIGHTS
PROGRAM

September 15, 2020

To: David McVey, Juston Eisenbraun, Michael M. Hickey, William C. Hearne

RE: Suggested Revision to Proposed Findings of Fact, Conclusions of Law and Final Decision

Water Permit Application No. 20805-2, R&J LLC

To explain the need for my suggested revision to Final Decision qualification No. 3, I'd like to discuss conclusions resulting from the Report to the Chief Engineer on Water Permit No. 285-2 and discuss the ramifications of those conclusions. I believe those ramifications are likely to impact the final decision made on the subject application. I also believe the conclusions justify my suggested revision should the Water Management Board decide to approve the subject application.

Accessible water permit files confirm some information in the report to the Chief Engineer essentially reflects historical out of date information. The reasons for this are the lack of inspections on many properties for up to 50 years, lack of compliance in transferring rights, etc. Figure 1 and Table 1 of the report listed large estimated water use on properties that have been vacant for decades. It listed estimated water use for properties that had been closed for years and reopened as other businesses. The report failed to list several recently developed business entities that have been in operation for several years. It was because of these errors and omissions that I previously requested to the Chief Engineer (Jeanne Goodman at the time) that the report be redone with current and corrected information. I believed a revised report reflecting current and corrected information was necessary to properly assess the R&J LLC water permit request.

My expectation preparing for the hearing was that the sole focus would be whether or not additional water is available for the R&J LLC property to be developed. As I reviewed water permit files and additional data, I concluded the decision by the Water Management Board regarding the subject application has huge potential ramifications for several existing commercial/business entities within Figure 1 of the report to the Chief Engineer. The report did not show existing water rights for the Gaslight Restaurant, Big Mountain Cabins, or Silver Mountain Resort and Cabins. The Gaslight was recently rebuilt after a fire and the others are recent developments/expansions.

I met with the Pennington County Planning Director on February 3, 2020 to question how recent commercial/business development in the Rockerville area could be built without an existing water right permit and I was informed that Pennington County does not require a water permit for a business entity to obtain a construction or building permit. As a result, you have several business entities operating within the Figure 1 area of the report with no water right permit, as required by state law. Again, these establishments, like others in the Figure 1 area of the report, have not been inspected for water rights purposes.

There are two businesses in the Rockerville area (within the area of interest) that may be operating with water use that exceeds the maximum allowable water use of their water permit. The "Pine Haven Heritage Home" in Table 1 was an assisted living facility that ceased operation about 6 years ago. The property was eventually renovated and is now the Pine Haven portion of Rockerville Lodge and Cabins. During the rezone hearing of the R&J LLC property, the owner of the motel wrote to the Pennington

County Commissioners stating that the well produced 25 GPM (gallons per minute) but the maximum permitted water rate for the assisted living facility was 0.03 cfs which equates to 12 GPM. The other business with an apparent issue is the Hillside Country Cabins (shown on Table 1 as Hillside Country Cottages). The water right for this entity is 0.004 cfs which equals 2 GPM. Their website states they have 18 cabins, log homes and an executive lodge with maximum occupancy of approximately 85 people. I do not believe it is feasible to meet the water needs of such a large entity with the maximum permitted rate of 2 GPM.

The above water rights information is important in understanding the ramifications the R&J LLC water right decision may have on other currently operating business entities in the report's area of interest (Figure 1) that are operating without a water right or may have a water right that is insufficient to meet their water needs. If the Water Management Board denies the R&J LLC water right request because there is no unallocated water available in this localized aquifer or because the localized aquifer withdrawals are exceeding the aquifer recharge, how will the Gaslight Restaurant, and potentially Big Mountain Cabins, and Silver Mountain Resort and Cabins be able to obtain a water right which is required under state law? How will Hillside Cabins or the Pine Haven portion of Rockerville Lodge and Cabins be able to obtain additional water rights if their current use exceeds their lawfully permitted water volumes? The Water Rights Program staff may inspect those properties. Someone may file a complaint regarding those properties unlawfully producing water without a permit. If domestic water users cannot meet their water needs, they may request that all commercial/business entities without a valid water permit quit producing water. Those properties will be unable to obtain a water permit because the localized crystalline aquifer water has been fully allocated. Is the viability of the businesses currently operating without a water right at risk with the R&J LLC decision?

I have explained to the Pennington County Planning and Zoning Commissioners that the water rights issues in the Rockerville area (Figure 1) are complex and sensitive and quite frankly, a mess. The county has helped create this situation by allowing business construction without a water right permit. The state has played a part in creating the situation by failing to inspect existing water rights and allowing lodging and eating establishments to be granted licenses without a water right permit. Business owners also have had a role in creating the situation by failing to understand or follow state laws regarding water rights. Addressing these issues will take a commitment from both the state and the county as well as assistance from existing business owners.

I continue to believe there is no unallocated water available in our localized crystalline rock aquifer. I reviewed with you at the recent hearing that the four offsetting properties in the Rockerville area (Permit Nos. 483-2, 479-2, 585-2 and 2211-2) have a total water rights allocation of 231.7 acre-feet per year. This allocation represents over 7 feet of water per year within those property boundaries. However, I do recognize the potentially devastating impact a determination that there is no unallocated water available would have on the established businesses in Figure 1 that are operating unlawfully without a water right permit and may need to request a permit in the future.

Conclusions of Law No. 7 states one should determine 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 to the groundwater source." This is consistent with Findings of Fact No. 9 which states "In considering water availability, this Board must examine whether 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 is granted." I do not believe with such an examination one can conclude there is water available from the localized aquifer when Finding of Fact No. 11 states, "Due to these aquifer characteristics, there are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought." I remind the Board that I did enter an exhibit from the study referenced in Mr. Mathiowetz's report which did estimate recharge in the crystalline core of the Black Hills.

Based on Findings of Fact Nos. 13 and 14, Mr. Mathiowetz relied on data from an observation well 17.5 miles from the proposed diversion points to opine that there is unappropriated water available for the application. Applying data from an observation well 17.5 miles away, inferring the observation well is in the same aquifer as the proposed application, is inconsistent with Finding of Fact No. 11 which states "In this area, the Crystalline Rock aquifer consists of numerous localized aquifers in the PreCambrian aged core of the Black Hills." At the hearing, I discussed well invoice information which showed during several times of reduced precipitation the shared domestic wells adjacent to the applicant's property essentially were dry requiring homeowners to haul water. Such information directly offsetting the application property is more relevant than fluid levels in a well 17.5 miles away, most likely located in a different localized aquifer than the applicant's property and adjacent domestic wells. The backlog of activity for well drillers in the Black Hills during times of lower precipitation also is indicative of numerous localized aquifers in the crystalline rock where recharge during periods of lower precipitation is insufficient to meet overall water needs.

With Chief Engineer Goodman stepping down shortly before the R&J LLC water permit hearing, I was not able to ask her why she decided not to have the report rewritten to reflect current data or ask her why periodic inspections had not been performed to avoid the situation where several businesses are operating with no water rights permits and others may be taking water volumes exceeding their water allocations. Newly appointed Chief Engineer Gronlund perhaps could have provided insight but I believe he should be given the opportunity to correct the noncompliance issues. Unfortunately, I don't see how the noncompliance issues with existing businesses such as the Gaslight Restaurant, Big Mountain Cabins, Silver Mountain Resort and Cabins, etc. can be addressed without allocating them additional water than what's already been allocated in the area. I don't believe water could be allocated to those business entities if the R&J LLC application is denied due to unallocated water not being available.

I conclude that the water rights issues in the area outlined in Figure 1 of the report are a mess. The county granting construction/building permits without a water right, the state not inspecting these properties and business owners not complying with the law all are likely causes. As I stated earlier, I do not believe there is unallocated water available and I believe the R&J LLC water permit request should be denied. However, when you look at the ramifications of an R&J LLC water permit denial on other existing businesses that do not have but need a water right to be in compliance, I understand if the Board's final decision is to approve the R&J LLC request.

My concern is that increased water allocations in this area are going to negatively impact our community's ability to meet our domestic water needs and maintain acceptable water quality. I understand the Board is not responsible for managing water quality. However, it is important to note that essentially all water use in this area ends up as septic effluent. Higher water use results in higher septic effluent volumes which increases the risk of water contamination in the localized crystalline rock

aquifer. We produce water and dispose the septic effluent into the same formation. Septic systems are designed based on anticipated water use. Anticipated water use is also the basis for an approved water right permit water volume. Any business entity that produces more than their permitted water volume has the potential to not only impact available water quantity for others, but also impact water quality because of the higher associated septic volumes.

The information discussed above shows the challenge the area immediately offsetting the R&J LLC application acreage has had in meeting domestic water needs and maintaining acceptable drinking water quality. Homes adjacent to the R&J LLC acreage have periodically needed to haul water to meet their needs. As Mr. Hearne discussed at the hearing, his domestic well adjacent to the R&J LLC acreage has tested nitrate levels that exceed the EPA drinking water limit. I have recently discovered that in the past the Pine Haven portion of Rockerville Lodge and Cabins, which also is adjacent to the R&J LLC acreage, has also exceeded the EPA nitrate level limit. A third well adjacent to the R&J LLC acreage has tested a nitrate level very close to the EPA limit during the peak tourist season.

The resulting added water withdrawals and increased septic effluent from an approved R&J LLC water permit will likely make it more difficult for our community to meet our domestic water needs and maintain acceptable drinking water quality. Unlike the past, our community is now aware of the complex water rights issues that exist in the immediate area (Figure 1 of the staff report) and understands the priority of domestic water users. In the future we will likely look to the Chief Engineer and the Water Management Program staff for remedies and assistance should the domestic water needs not be met while nondomestic water users are producing from the same localized crystalline rock aquifer.

Should the Board approve the R&J LLC water permit request, I believe it will be extremely important and necessary to ensure the R&J LLC water withdrawals comply with the qualifications of the permit. To monitor compliance and provide beneficial water production information to the Chief Engineer and Water Management Program staff in identifying remedies and assistance per the above paragraph, I request that No. 3 in the FINAL DECISION qualification be changed to the following:

3. The permit holder shall measure the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer. The amount of water withdrawn shall be reported to the Chief Engineer on June 1, August 1 and the closing date of the RV park season each year.

R&J LLC has indicated they plan on utilizing a holding tank for water storage. Therefore, metering the water volume should be fairly easy and inexpensive. Reporting water withdrawal volumes 3 times versus 1 time per year on the suggested dates will capture data for analysis over the peak tourist (and likely highest water use) months of June and July. Given 1) the historical lack of water permit compliance inspections in the area, 2) the necessity of adjacent homeowners to haul water in the past to meet their domestic water needs, and 3) the adjacent property water quality issues currently being addressed by Pennington County and SD DENR, I believe the metering of the water withdrawals and the reporting of water use 3 times annually by the permit holder is warranted.


Lon Buehner

Petitioner, Water Permit Application No. 285-2, R&J LLC

RAPID CITY OFFICE
333 West Boulevard
Suite 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343.1040
FAX (605) 343.1503

BANGS McCULLEN
— LAW FIRM —

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

Reply to Rapid City Office

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

SIOUX FALLS OFFICE
6340 S. Western Avenue
Suite 160
Sioux Falls, SD 57108
(605) 339.6800
FAX (605) 339.6801

RECEIVED

SEP 28 2020

WATER RIGHTS
PROGRAM

September 25, 2020

Ron Duvall
Water Rights, DENR
523 East Capitol
Pierre, SD 57501

Re: In the Matter of Water Application No. 2805-2, R&J, LLC

Dear Mr. Duvall:

On behalf of applicant R&J, LLC, please be advised that we have no objections to the *Water Rights' Proposed Findings of Fact and Conclusions of Law* filed by Ann Mines Bailey on August 20, 2020.

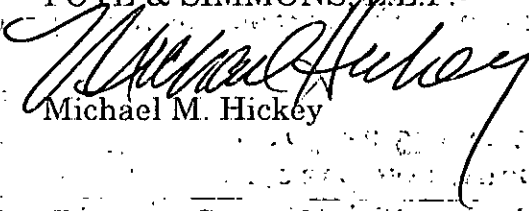
The applicant does, however, have an objection to the submission of Mr. Lon Buehner, as the submission is not supported by the existing law and the evidence presented at the hearing. Moreover, the submission is contrary to and inconsistent with the decision of the Board and the *Findings of Fact and Conclusions of Law* filed by the Department of Environment and Natural Resources.

This letter has been sent to the attorney for the DENR, the attorney for the Water Management Board, and all parties of record pursuant to the DENR's Notice dated July 15, 2020.

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

Sincerely,

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


Michael M. Hickey

MMH:bah

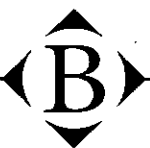
cc: Juston Eisenbraun

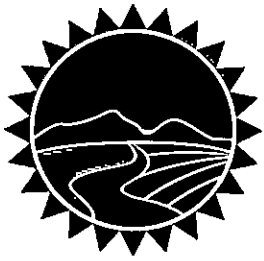
Lon Buehner

William Hearne

Ann Mines Bailey, Water Rights Program Counsel

David McVey, Water Management Board Counsel





DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

September 30, 2020

NOTICE

TO: Michael M. Hickey
Counsel for R&J LLC
Bangs, McCullen, Butler, Foy & Simmons
PO Box 2670
Rapid City SD 57709

Juston Eisenbraun
R&J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City SD 57702

William C Hearne
23762 Pine Haven Drive
Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: In the Matter of Water Permit Application No. 2805-2, R&J LLC

Enclosed is the Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2805-2 as compiled by Board Counsel David McVey. Consideration of findings is scheduled for the October 7, 2020, Water Management Board meeting.

enclosure

c: Ann Mines Bailey, Assistant Attorney General
David McVey, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 30, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 30, 2020, for Water Right Permit Application No. 2805-2, as addressed below:

Michael M. Hickey
Counsel for R&J LLC
Bangs, McCullen, Butler, Foy & Simmons
PO Box 2670
Rapid City SD 57709

Juston Eisenbraun
R&J LLC
PO Box 245
Wall SD 57790

Lon Buehner
23734 Pine Haven Drive
Rapid City SD 57702

William C Hearne
23762 Pine Haven Drive
Rapid City SD 57702

Sent Inter-office to:

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

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

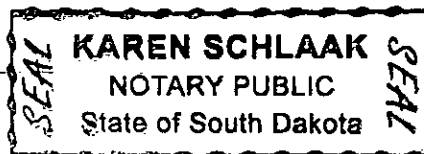


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of September, 2020


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION NO. 2805-2, R&J LLC	)	OF LAW, AND FINAL DECISION
	)	
	)	

This matter came before the South Dakota Water Management Board for hearing on July 8, 2020. Board members James Hutmacher, Tim Bjork, Rodney Freeman, Peggy Dixon, Leo Holzbauer, and Bill Larson were present at the hearing and heard the evidence presented. R&J, LLC was represented by Michael M. Hickey. Intervenors Lon Buehner and William Hearne appeared *pro se*. Ann F. Mines Bailey represented the DENR Water Rights Program and the Chief Engineer.

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. On September 25, 2019, Water Rights received Water Permit Application No. 2805-2 on behalf of R&J, LLC seeking an appropriation of water for commercial use in an RV park and cabins located near Rockerville, SD. The application proposes the diversion of 4 acre-feet of water annually with an instantaneous diversion rate of 0.044 cubic feet of water per second (cfs) from two wells to be completed into the Crystalline Rock aquifer in the

NW¼SW¼ (Lot A, Borglum Subdivision) Sec. 13-T1S-R6E in Pennington County.

2. At the time the application was reviewed, the Chief Engineer, Jeanne Goodman, recommended approval of the application subject to the permit including four specified qualifications. Those qualifications are as follows:

- 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.
- The wells authorized by Permit No. 2805-2 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.
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.
- Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

4. Sometime after issuing the recommendation, but prior to the hearing in this matter, Chief Engineer Goodman stepped down, accepting a new position with DENR. Eric Gronlund was subsequently named Chief Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and hearing was timely advertised on December 4, 2019, in the Rapid City Journal (Pennington County).

6. DENR received timely petitions to intervene from Lon Buehner and William Hearne.

7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July, 2020 meeting.

8. Water Permit Application No. 2805-2 is 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.

9. In considering water availability, this Board must examine whether the average quantity of 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.

10. Adam Mathiowetz, a natural resources engineer with the Water Rights Program, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from observations wells completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

11. In this area, the Crystalline Rock aquifer consist of numerous localized aquifers in the Precambrian aged core of the Black Hills. It is made up of Metagraywacke, which is siliceous mica schist with impure quartzite. The aquifer has very low primary porosity. Water movement in the aquifer occurs through fractures, joints and faults within the aquifer material. This secondary porosity is very uneven and unpredictable. The aquifer is estimated to contain approximately 2,900,000 acre-feet of recoverable water in storage in western South Dakota. Due to these aquifer characteristics, there are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought.

12. Mr. Mathiowetz testified recharge to the Crystalline Rock aquifer occurs mainly through infiltration of precipitation and streamflow losses.

13. There are two observation wells in the Crystalline Rock aquifer. One of the wells is open to both the Deadwood Formation as well as the Crystalline Rock aquifer and was therefore not relied upon when reviewing this application. The other observation well, CU-86A, is located approximately 17.5

miles from the proposed diversion points. The data from this observation well demonstrates that the aquifer responds to climatic trends, recharging during wet periods and declining during dry periods. The observation well data demonstrates that the effects from pumping are temporal and are masked by climatic conditions. In fact, the data demonstrates an upward trend.

14. Based upon the nature and characteristics of the aquifer and the data available from the observations wells, Mr. Mathiowetz opined that there is unappropriated water available for this application.

15. Mr. Mathiowetz further testified that in reviewing the pertinent information, he concluded that the localized portion of the Crystalline Rock aquifer in which this diversion is sought is limited by larger faults and significant geologic features which have been mapped to some extent. Within this area of interest, there are ten existing water rights in the Crystalline Rock aquifer, with the nearest water right located approximately 0.17 miles from the proposed diversion site. Mr. Mathiowetz opined that even at that distance, given the relatively low diversion rate and volume requested and the lack of a significant history of complaints of well interference, there is a reasonable probability that the proposed amendment would not unlawfully impair existing water rights.

16. Additionally, there are a number of domestic wells within the vicinity of the proposed diversion site. Mr. Mathiowetz concluded that based upon the limited diversion rate and volume requested by this application and that there is little history of well interference in that area, there is a reasonable

probability that the proposed diversion would not result in an unlawful impairment of existing rights.

17. The Board finds Mr. Mathiowetz to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits upon which he prepared and/or relied.

18. The Board also received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified that he reviewed the application, report, and recommendation and that he agreed with the former Chief Engineer's recommendation. He further testified that he believed the proposed diversion to be a beneficial use and in the public interest consistent with the Board's previous decisions.

19. The Board finds Chief Engineer Gronlund to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Gronlund's testimony.

20. The Board also received the testimony of Juston Eisenbraun. Mr. Eisenbraun completed the application on behalf of R&J, LLC. Mr. Eisenbraun testified as to the plans to construct a RV campground with additional cabins, along with a store, laundry facility, and shower house. There are also plans to construct a swimming pool at a later date. The plan is to have the campground open from May until October weather permitting.

21. The Board also received the testimony of William Hearne. Mr. Hearne testified he owns land adjacent to the proposed project. Mr. Hearne

testified that as the use of water in the local area has increased the water his well is able to produce has decreased. Moreover, Mr. Hearne testified that the water quality has decreased as the use in the area has increased. Mr. Hearne testified that he believes that because of the unpredictable nature of the aquifer, one does not know where the effluent from septic systems will go. Mr. Hearne further spoke of his concerns regarding the lack of regulation and/or enforcement regarding water quality standards.

22. Lon Buehner also testified before the Board. Mr. Buehner testified that he believes the amount of water use in the localized area as stated in the Water Rights report cannot be valid because of the lack of development that exists. Mr. Buehner further testified of a great amount of development which has been planned and tentatively approved for the local area. Mr. Buehner additionally testified that there are a number of commercial establishments in the area that do not appear to have a water permit. Mr. Buehner contended that there are a number of domestic wells in the area which have an impact on the water in the area. Mr. Buehner further opined that given the topographical features of the area, the applicable area of the aquifer is quite small and that the recharge available to this area is greatly diminished.

23. The Board finds that there is unappropriated water available to satisfy this application.

24. The Board finds that granting this application would not unlawfully impair existing water rights.

25. The Board further finds that the proposed use of the water for commercial use in an RV campground constitutes a beneficial use.

26. The Board further finds that placing the water to this beneficial use is in the public interest.

27. 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. The Board concludes that R&J, LLC has satisfied each of the factors set forth in SDCL § 46-2A-9.

6. South Dakota Codified Law, section 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.

7. 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.”

8. The Board concludes 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 water 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 (commercial) 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 § 6-1-6(3). The Board finds that appropriating water for commercial use, such as this, 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. 2805-2 is granted with the following qualifications:

1. 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.

2. The wells authorized by Permit No. 2805-2 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.

3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.

4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0-acre foot of water.

Dated this 7thday of October, 2020.

BY THE BOARD:

James Hutmacher, Chairman
South Dakota Water Management Board



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 13, 2020

NOTICE OF ENTRY OF ORDER

TO: Michael M. Hickey Lon Buehner William C Hearne
Attorney for R & J LLC 23734 Pine Haven Dr 23762 Pine Haven Dr
PO Box 2670 Rapid City SD 57702 Rapid City SD 57702
Rapid City SD 57709-2670

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision in the
matter of Water Permit No. 2805-2, R & J LLC

Notice is hereby given that on the 7th day of October 2020, the South Dakota Water Management Board entered its Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter. Enclosed is the signed Findings of Fact, Conclusions of Law and Final Decision adopted by the Board.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

c: Juston Eisenbraun, R&J LLC, PO Box 245, Wall SD 57790
Ann Mines Bailey, Water Rights Program Counsel
David McVey, Water Management Board Counsel

CERTIFICATION

I hereby certify that on October 13, 2020, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 13, 2020, regarding adoption of findings of fact, conclusion of law and final decision for Water Right Permit Application No. 2805-2, as addressed below:

Juston Eisenbraun
R & J LLC
PO Box 245
Wall SD 57790

Michael M. Hickey
PO Box 2670
Rapid City SD
57709-2670

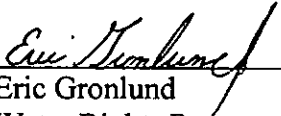
Lon Buehner
23734 Pine Haven Dr
Rapid City SD 57702

William C Hearne
23762 Pine Haven Dr
Rapid City SD 57702

Sent Inter-office to:

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

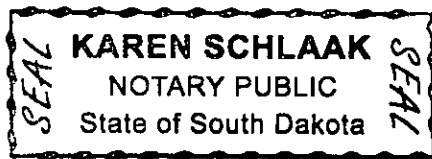
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of October ~~13~~, 2020.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



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

IN THE MATTER OF WATER	)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION NO. 2805-2, R&J LLC	)	OF LAW, AND FINAL DECISION
	)	
	)	

This matter came before the South Dakota Water Management Board for hearing on July 8, 2020. Board members James Hutmacher, Tim Bjork, Rodney Freeman, Peggy Dixon, Leo Holzbauer, and Bill Larson were present at the hearing and heard the evidence presented. R&J, LLC was represented by Michael M. Hickey. Intervenors Lon Buehner and William Hearne appeared *pro se*. Ann F. Mines Bailey represented the DENR Water Rights Program and the Chief Engineer.

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. On September 25, 2019, Water Rights received Water Permit Application No. 2805-2 on behalf of R&J, LLC seeking an appropriation of water for commercial use in an RV park and cabins located near Rockerville, SD. The application proposes the diversion of 4 acre-feet of water annually with an instantaneous diversion rate of 0.044 cubic feet of water per second (cfs) from two wells to be completed into the Crystalline Rock aquifer in the

NW¼SW¼ (Lot A, Borglum Subdivision) Sec. 13-T1S-R6E in Pennington County.

2. At the time the application was reviewed, the Chief Engineer, Jeanne Goodman, recommended approval of the application subject to the permit including four specified qualifications. Those qualifications are as follows:

- 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.
- The wells authorized by Permit No. 2805-2 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.
- The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.
- Water Permit No. 2805-2 authorizes a total annual diversion of 4.0 acre foot of water.

4. Sometime after issuing the recommendation, but prior to the hearing in this matter, Chief Engineer Goodman stepped down, accepting a new position with DENR. Eric Gronlund was subsequently named Chief Engineer. At the hearing, Chief Engineer Gronlund officially adopted Chief Engineer Goodman's earlier recommendation.

5. Notice of the application and hearing was timely advertised on December 4, 2019, in the Rapid City Journal (Pennington County).

6. DENR received timely petitions to intervene from Lon Buehner and William Hearne.

7. The matter was initially scheduled to be heard by the Water Management Board during its February 26, 2020 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May. Due to the COVID-19 pandemic, the hearing was again continued until the July, 2020 meeting.

8. Water Permit Application No. 2805-2 is 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.

9. In considering water availability, this Board must examine whether the average quantity of 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.

10. Adam Mathiowetz, a natural resources engineer with the Water Rights Program, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from observations wells completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

11. In this area, the Crystalline Rock aquifer consist of numerous localized aquifers in the Precambrian aged core of the Black Hills. It is made up of Metagraywacke, which is siliceous mica schist with impure quartzite. The aquifer has very low primary porosity. Water movement in the aquifer occurs through fractures, joints and faults within the aquifer material. This secondary porosity is very uneven and unpredictable. The aquifer is estimated to contain approximately 2,900,000 acre-feet of recoverable water in storage in western South Dakota. Due to these aquifer characteristics, there are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought.

12. Mr. Mathiowetz testified recharge to the Crystalline Rock aquifer occurs mainly through infiltration of precipitation and streamflow losses.

13. There are two observation wells in the Crystalline Rock aquifer. One of the wells is open to both the Deadwood Formation as well as the Crystalline Rock aquifer and was therefore not relied upon when reviewing this application. The other observation well, CU-86A, is located approximately 17.5

miles from the proposed diversion points. The data from this observation well demonstrates that the aquifer responds to climatic trends, recharging during wet periods and declining during dry periods. The observation well data demonstrates that the effects from pumping are temporal and are masked by climatic conditions. In fact, the data demonstrates an upward trend.

14. Based upon the nature and characteristics of the aquifer and the data available from the observations wells, Mr. Mathiowetz opined that there is unappropriated water available for this application.

15. Mr. Mathiowetz further testified that in reviewing the pertinent information, he concluded that the localized portion of the Crystalline Rock aquifer in which this diversion is sought is limited by larger faults and significant geologic features which have been mapped to some extent. Within this area of interest, there are ten existing water rights in the Crystalline Rock aquifer, with the nearest water right located approximately 0.17 miles from the proposed diversion site. Mr. Mathiowetz opined that even at that distance, given the relatively low diversion rate and volume requested and the lack of a significant history of complaints of well interference, there is a reasonable probability that the proposed amendment would not unlawfully impair existing water rights.

16. Additionally, there are a number of domestic wells within the vicinity of the proposed diversion site. Mr. Mathiowetz concluded that based upon the limited diversion rate and volume requested by this application and that there is little history of well interference in that area, there is a reasonable

probability that the proposed diversion would not result in an unlawful impairment of existing rights.

17. The Board finds Mr. Mathiowetz to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits upon which he prepared and/or relied.

18. The Board also received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified that he reviewed the application, report, and recommendation and that he agreed with the former Chief Engineer's recommendation. He further testified that he believed the proposed diversion to be a beneficial use and in the public interest consistent with the Board's previous decisions.

19. The Board finds Chief Engineer Gronlund to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Gronlund's testimony.

20. The Board also received the testimony of Juston Eisenbraun. Mr. Eisenbraun completed the application on behalf of R&J, LLC. Mr. Eisenbraun testified as to the plans to construct a RV campground with additional cabins, along with a store, laundry facility, and shower house. There are also plans to construct a swimming pool at a later date. The plan is to have the campground open from May until October weather permitting.

21. The Board also received the testimony of William Hearne. Mr. Hearne testified he owns land adjacent to the proposed project. Mr. Hearne

testified that as the use of water in the local area has increased the water his well is able to produce has decreased. Moreover, Mr. Hearne testified that the water quality has decreased as the use in the area has increased. Mr. Hearne testified that he believes that because of the unpredictable nature of the aquifer, one does not know where the effluent from septic systems will go. Mr. Hearne further spoke of his concerns regarding the lack of regulation and/or enforcement regarding water quality standards.

22. Lon Buehner also testified before the Board. Mr. Buehner testified that he believes the amount of water use in the localized area as stated in the Water Rights report cannot be valid because of the lack of development that exists. Mr. Buehner further testified of a great amount of development which has been planned and tentatively approved for the local area. Mr. Buehner additionally testified that there are a number of commercial establishments in the area that do not appear to have a water permit. Mr. Buehner contended that there are a number of domestic wells in the area which have an impact on the water in the area. Mr. Buehner further opined that given the topographical features of the area, the applicable area of the aquifer is quite small and that the recharge available to this area is greatly diminished.

23. The Board finds that there is unappropriated water available to satisfy this application.

24. The Board finds that granting this application would not unlawfully impair existing water rights.

25. The Board further finds that the proposed use of the water for commercial use in an RV campground constitutes a beneficial use.

26. The Board further finds that placing the water to this beneficial use is in the public interest.

27. 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. The Board concludes that R&J, LLC has satisfied each of the factors set forth in SDCL § 46-2A-9.

6. South Dakota Codified Law, section 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.

7. 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.”

8. The Board concludes 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 water 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 (commercial) 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 § 6-1-6(3). The Board finds that appropriating water for commercial use, such as this, 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. 2805-2 is granted with the following qualifications:

1. 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.

2. The wells authorized by Permit No. 2805-2 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

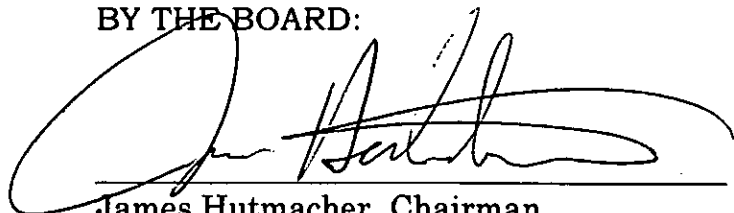
74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

3. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells completed into the Crystalline Rock aquifer.

4. Water Permit No. 2805-2 authorizes a total annual diversion of 4.0-acre foot of water.

Dated this 7th day of October, 2020.

BY THE BOARD:

A handwritten signature in black ink, appearing to read 'James Hutmacher', is written over a horizontal line.

James Hutmacher, Chairman
South Dakota Water Management Board



DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

NOV 24 2020

R & J LLC
c/o Juston Eisenbraun
PO Box 245
Wall SD 57790

Dear Mr. Eisenbraun:

Enclosed is Water Permit No. 2805-2 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

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,

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

enclosures

2805-2

SD EForm - 1621LD V1

SOUTH DAKOTA WATER WELL COMPLETION REPORT

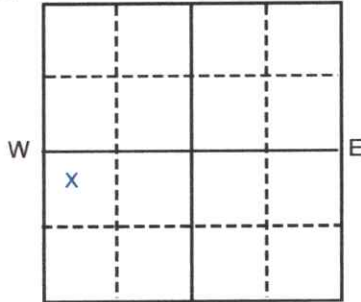
11-02

Location NW ¼ SW ¼ Sec 13 Twp 15 Rg 6E

County Pennington

North

Please mark well location with an "X"



Well Completion Date

1/7/2021

1 Mile

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?
150 + ft. from drain field (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

DHH

CASING DATA:

☒ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
23 LB/FT	7 IN	+2 FT	172 FT	8 3/4 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	45	15 Lb/gal	0 Ft	172 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure

pressure grouted through casing

SCREEN:

☐ Perforated pipe ☐ Manufactured

Diameter _____ Inches 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☐ No, Why Not?

Lab to which water quality sample sent for analysis

Well Owner: Juston Eisenbraun

Business Name:

Address: PO Box 245

City, State, Zip: Wall SD 57790

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
clay, light brown	0	6
schist, heavily weathered	6	38
schist, moderately weathered	38	65
schist, gray, w/moderately weathered	65	170
zones		
schist, w/ occasional weathered zones	170	250
quartzitic schist	250	493
schist, gray	493	613

STATIC WATER LEVEL 70 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe: air developed☐ Bailed☒ Other

Pumping Level Below Land Surface

_____ 600 Ft. After _____ 3 Hrs. pumped _____ 15 GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: _____ GPM

REMARKS

Well #1

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:

RECEIVED

Date: FEB 12 2021

WATER RIGHTS PROGRAM

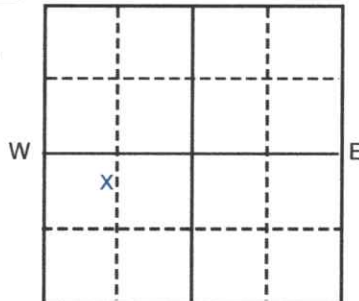
2805-2

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location NW SW 13 Twp 18 Rg 6E
 County Pennington North

Please mark well
location with an "X"



Well Completion Date

1/25/2021

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?
150+ ft. from drain field (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

DHH

CASING DATA:

☒ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>23</u> LB/FT	<u>7</u> IN	<u>+2</u> FT	<u>172</u> FT	<u>8 3/4</u> IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
<u>cement</u>	<u>37</u>	<u>15</u> Lb/gal	<u>0</u> Ft	<u>172</u> Ft
		Lb/gal	Ft	Ft

Describe grouting procedure

pressure grouted through casing

SCREEN:

☐ Perforated pipe ☐ Manufactured
 Diameter _____ Inches 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

☐ No, Why Not?

Lab to which water
quality sample sent for analysis

Well Owner: Juston Eisenbraun

Business Name:

Address: PO Box 245City, State, Zip: Wall SD 57790

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
top soil & sandy clay	0	2
schist, heavily weathered	2	28
schist, gray, occasional zones of moderate to heavy weathering	28	315
schist, heavily oxidized	315	328
schist, gray	328	601

STATIC WATER LEVEL

62 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe: air developed☐ Bailed☒ Other

Pumping Level Below Land Surface

590 Ft. After 1 Hrs. pumped 19 GPM450 Ft. After 1 Hrs. pumped 17 GPM

If pump installed, pump rate: _____ GPM

REMARKS

Well #2

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:

RECEIVED

FEB 12 2021

WATER RIGHTS
PROGRAM