

WATER PERMIT NO. 2814-2

Name of Applicant: **Big Mountain Cabins**

Address: **13310 Silver Mountain Rd, Rapid City SD 57702**

Phone: **605 209-8526**

Amount of Water Claimed: **0.067 cfs**

Total Acres: **NA**

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

Water to be used for: **commercial**

County: **Pennington**

Type of Waste Disposal System:

Location: **approximately 3 miles southwest of Rockerville**

PRIORITY

Date Received: **11-16-20**

Application/License Fee: **\$ 300**

Corrected Application Received:

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

Remarks:

Diversion Point: **SW 1/4 SW 1/4 Sec 22-T1S-R6E**

Land to be Irrigated: **NA**

Depth of Well: **160 feet deep**

Well Driller: **Alexander Drilling**

Remarks:

Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **11-23-20**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

			22		
	⊗				

**SOUTH DAKOTA
WATER PERMIT NO. 2814-2**

Date of first receipt of application November 16, 2020.

The Water Management Board approved Water Permit No. 2814-2 on May 5, 2021 for Jude Wildeman, 13310 Silver Mountain Rd, Rapid City SD 57702 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. 2814-2 appropriates less than two acre-feet of water annually at a maximum pump rate of 0.067 cubic feet of water per second from one well completed into the Crystalline Rock Aquifer (160 feet deep) located in the SW 1/4 SW 1/4 Section 22-T1S-R6E for commercial use. This site is located approximately 2 miles southwest of 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: January 1 – December 31.
4. The date from which applicant may claim right is November 16, 2020.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

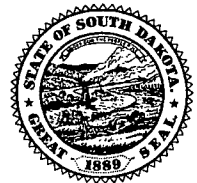
1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

WATER MANAGEMENT BOARD

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

SEP 08 2021

date



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

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2814-2</u>	(office use only) Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Rapid City Journal</u>	

PAID
NOV 16 2020
Ck# _____
RECEIVED
NOV 16 2020
PETROLEUM RELEASE FUND

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

Check use(s) of water:

☐ Municipal	☐ Water Distribution System	☐ Recreational	☐ Institutional
☐ Rural Water System	☒ Commercial	☐ Fish & Wildlife	☐ Geothermal
☐ Domestic (over 18 gpm)	☐ Industrial	☒ Other <u>Commercial & Residential</u>	

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 Big Mountain Cabins Jude Wildeman
Mailing Address 13310 Silver Mountain RD Rapid City SD 57702
(Address) (City) (State) (Zip Code)
Phone 605-209-8520 Mobile 605-209-8520 Email JudeWildeman@yahoo.com
- Amount of water claimed 0.067 *CFS or 30 **GPM and 600,000 ***AF or 600,000 Annual 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 Well private Section 22 - T15 - R6E
- Location of point of diversion That Pt off SW 1/4 SW 1/4 Sec 22 T15 N and W of Lef's H and H 3rd Hwy Low County Pennington
(example - 3 wells in SW 1/4 NE 1/4 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 - NW 1/4 section 12-T104N-R53W)
- County or counties where water will be used Pennington
- Annual period during which water is to be used May-Oct = Commercial / all year = Single Family Residential
- 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)

Seasonal Vacation Rental Cabins & 1 Single Family Home, Sea Cabins w/future cabins planned
*186 gpm for 6 mo per year for Commercial Cabins, 10 Gpm for 6 mo per year for
* Current pump installed is 10 Gpm pump.

I, Jude Wildeman, 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 1 Have test holes been drilled ☐ Yes ☒ No Drilled by Alexander drilling 05/22/14
 (if yes, please provide copies of logs)

b) If existing wells, how many 1 Provide copy of log(s), if available. Drilled by Alexander drilling 05/22/14
 For either Existing or Proposed Wells:

c) Well Depth (required) 160' Depth to Top of Water Bearing Material _____ Depth to Water from Surface 50'

d) Distance to nearest domestic well on applicant's property NA Property owned by others _____

2. Wastewater Disposal System Information

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

b) System Capacity (gallons) 2050 Year Constructed 2014

c) Connected to the City of NA Sanitary System

3. Dugout Information

a) Surface Dimensions NA Depth NA

b) Depth to water (ground surface to water level) NA

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 NA

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)

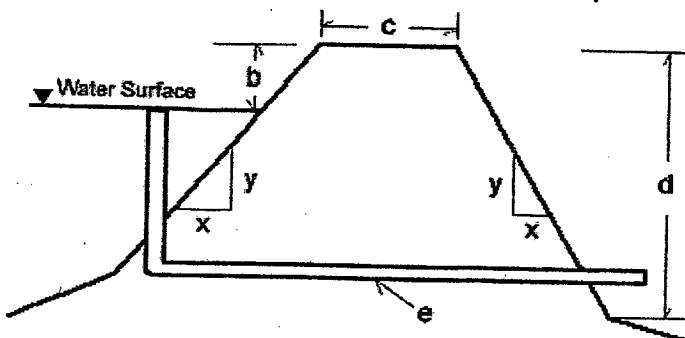
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres



SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location SW 1/4 SW 1/4 Sec 22 Twp 15 Rg 6E

County Pennington

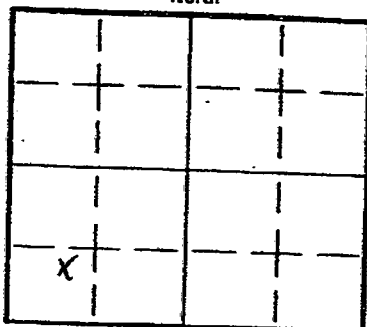
Please mark well location with an "X"

W

E

Well-Completion Date

5/22/14



LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 160 ft. from Septic (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Rotary Downhole Hammer

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other, describe 25' of 6" 160 PVC

WEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	IN	FT	FT	IN
		0	23	8 3/4
		23	160	6

GROUTING DATA

Grout Type Portland No. of Sacks 3 Grout Weight lb./gal From 22 ft. To 0 ft.

Describe grouting procedure Thru trim pipe

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter IN Length FEET

Material

Slot Size Set From Feet to Feet

Other information

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material?

Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?

X YES, How: Wichlorine 50

NO, Why Not?

laboratory sent to for water quality analysis

Well Owner: Jude Wildeman

Business Name:

Address: 2580 Shad Street,
Rapid City, SD 57103

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Drift	0	6
Ha Gray Schist	6	72
Gray Schist fract 1 gpm	72	73
Hard gray schist	73	105
Poroken Brown/gray schist	105	115
fracture 40+ gpm		
Hard gray schist	115	160

STATIC WATER LEVEL 50

Feet

If flowing: closed in pressure PSI

GPM flow 40+ through inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced Flowrate GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe:

☐ Bailed

☐ Other

Pumping Level Below Land Surface

ft. After Hrs. pumped GPM

ft. After Hrs. pumped GPM

If pump installed, pump rate GPM

REMARKS

This well was drilled under license # 324

And this report is true and accurate.

Drilling firm Alfander Drilling Inc.

Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

Date:

1S 6E
Section: 16

1S 6E
Section: 15

1S 6E
Section: 14

1S 6E
Section: 21

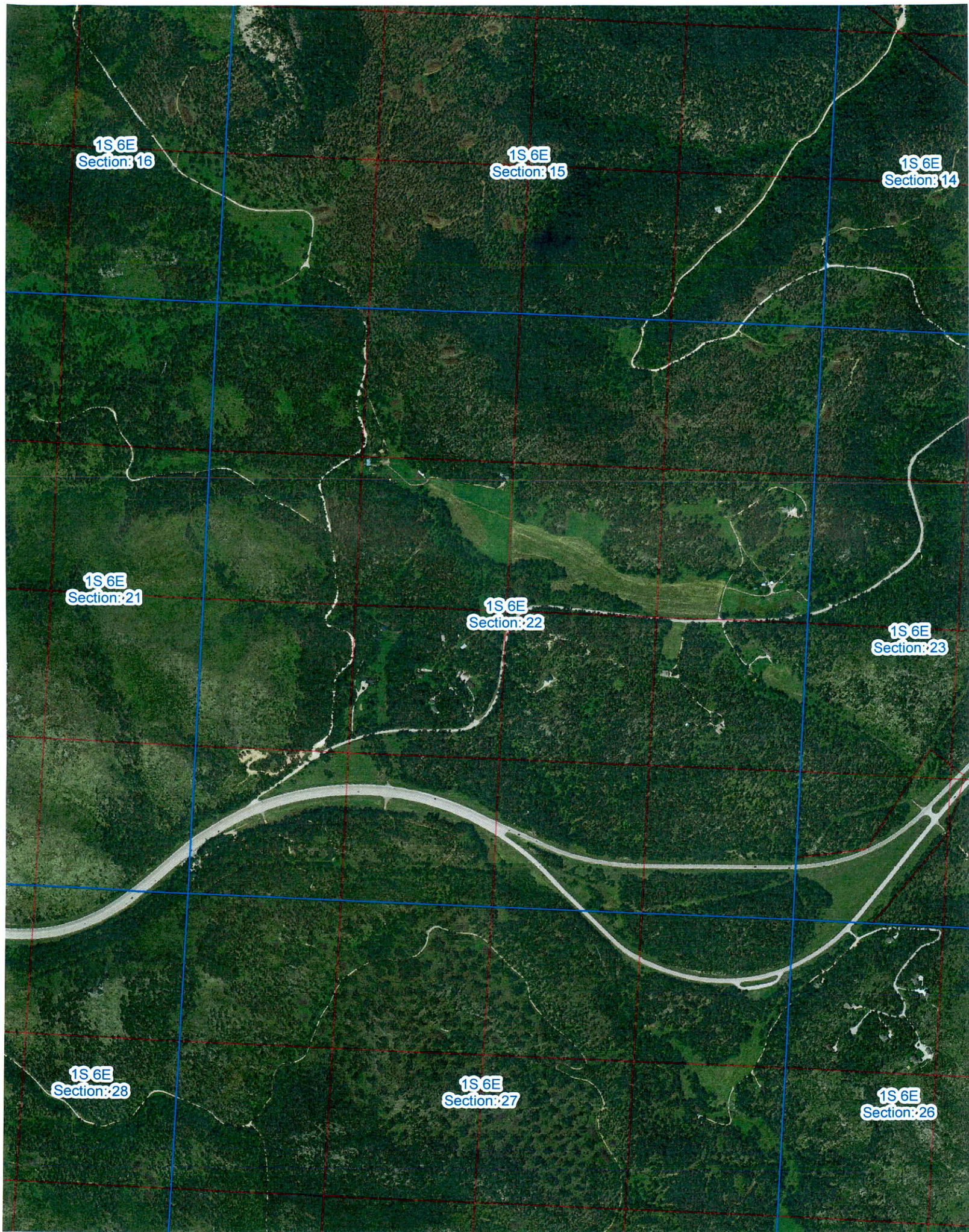
1S 6E
Section: 22

1S 6E
Section: 23

1S 6E
Section: 28

1S 6E
Section: 27

1S 6E
Section: 26





530923079

B0123-9208 01/03/2020 2:25PM Rec'd by SD SOS

ANNUAL REPORT

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

Domestic Limited Liability Company
SDCL 47-34A-211; 59-11-24, 24.1

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

Filing Fee: \$50

Total Fee: \$50

2020
FILING YEAR

1. Business ID and Name:

DL143011
BUSINESS ID

Big Mountain Cabins LLC.
BUSINESS NAME

2. The jurisdiction under whose law it is formed South Dakota

3. The address of the principal executive office (business address):

Actual Street Address

**13310 SILVER MOUNTAIN ROAD
RAPID CITY, SD 57702**

Mailing Address

**13310 SILVER MOUNTAIN ROAD
RAPID CITY, SD 57702**

4. 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 **Jude Thomas Wildeman**

Actual Street Address in this State

**13310 SILVER MOUNTAIN ROAD
RAPID CITY, SD 57702**

Mailing Address in this State

**13310 SILVER MOUNTAIN ROAD
RAPID CITY, SD 57702**

5. If the LLC is manager-managed, list the names and addresses of its Managers. SDCL 59-11-24. If the LLC is member-managed, this section may be left blank.

Name	Address
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Big Mountain Cabins	13310 Silver Mountain Rd
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6. 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.

Name	Address
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Big Mountain Cabins	13310 Silver Mountain Rd
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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).

01/03/2020

Dated

Email (Optional)

Jennifer Wildeman

Signature of an Authorized Person

Jennifer Wildeman

Printed Name

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date November 16, 2020

RECEIVED OF Jude Wildeman/Jennifer M Wildeman 13310 Silver Mountain Rd Rapid City SD 57702

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

Fee for Application for Permit No. <u>2814-2</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>2814-2</u>	\$200.00
Fee for Filing Transfer Form _____	\$
Fee for _____	\$
Fee for Issuing New Well Driller's License No. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law)	
TOTAL	\$300.00

By Eric Gronlund
Chief Engineer me

Water Rights Program - File Documentation

NAME: Jude Wildeman – Big Mountain Cabins

ADDRESS: Rapid City SD

DATE: 11-23-20

RE: Pending application

COMMENTS:

I called Jude Wildeman to clarify the amount of water requested on the application.

He said his driller told him the current pump installed is 10 gallons per minute which currently supplies water to four cabins during the season and his home year round. He is planning a few additional cabins in the future and didn't want to underestimate the size pump he might need so he is requesting 30 gpm. Mr. Wildeman stated the 600,000 gallons per year is probably way more than they would need even with the proposed additional use in the future.

Karen Schlaak

Karen Schlaak
Water Rights Program



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 4, 2020

Jude Thomas Wildeman
Big Mountain Cabins
13310 Silver Mountain Rd
Rockerville SD 57702

Dear Mr. Wildeman:

The South Dakota Water Management Board recently conducted a hearing on a new water permit application to appropriate water from new wells to be completed for a proposed development in the Rockerville area. During that hearing, the issue arose whether a number of existing business' in the area hold water rights for well(s) used to supply water at their business. This letter is intended to make you aware of water right permitting requirements in South Dakota and inquire whether you are aware of any existing water right held for the well(s) supplying Big Mountain Cabins .

The Water Rights Program is unable to find a water right for Big Mountain Cabins. If you are aware of a water right for the well(s) used by Big Mountain Cabins, please let us know by providing the water right number.

If a water right is not in place the for well(s) used by Big Mountain Cabins, a water right permit will need to be obtained. Under South Dakota law, any commercial use of water from a private well requires a water right permit.

Enclosed is an application form and instruction sheet to apply for a Permit to Appropriate Water within the State of South Dakota. For your use, enclosed is an aerial map. Please mark the location of the well with an "X" on the aerial map enclosed.

If you have any questions, please contact Ron Duvall or me. We want to work with you to get the necessary permitting in place.

You can find more information about using water in South Dakota and the permitting process by visiting our website at <https://denr.sd.gov/des/wr/wr.aspx>.

Sincerely,

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

enclosures



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2814-2, Big Mountain Cabins**

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. 2814-2, Big Mountain Cabins, 13310 Silver Mountain Rd, Rapid City SD 57702.

The Chief Engineer is recommending APPROVAL of Application No. 2814-2 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 well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer

January 19, 2021

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2814-2
BIG MOUNTAIN CABINS
C/O JUDE WILDEMAN
JANUARY 19, 2021

Water Permit Application No. 2814-2 proposes to appropriate less than two acre-feet of water annually (ac-ft/yr) at a maximum instantaneous diversion rate of 0.067 cubic feet of water per second (cfs) (30 gallons per minute) from one existing well (160 feet deep) completed into the Crystalline Rock aquifer for commercial use. The well is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22-T1S-R6E in Pennington County. This site is located approximately two miles southwest of Rockerville, SD.

AQUIFER: Crystalline Rock (CRSL)

HYDROGEOLOGY

The crystalline rock at the well site for this application consists of metaconglomerate, quartzite, and metapelite that is gray, dark-gray, and tan in color (Redden et al, 2016). Metagraywacke and metagabbro are also common within two miles of the well site (Redden et al., 2016). 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 one mile of the well for this application have depths ranging from 75 to 520 feet with almost all greater than 100 feet deep (Water Rights, 2021d). The well the applicant intends to use is 160 feet deep completed through drift from land surface to 6 feet deep, and then 5 different layers of schist as noted on the well completion report (Water Rights, 2021d). The static water level at time of completion was 50 feet below land surface (Water Rights, 2021d).

Figure 1 is a map of the area near the applicant's well including Crystalline Rock aquifer Water Rights (Water Rights, 2021c), and fault locations (Redden et al, 2016; Lester and Rahn, 2001). There are many faults (see Figure 1) and other significant geological structures (e.g. synclines, anticlines, domes, etc.) in the area of this application (Redden et al, 2016; Lester and Rahn, 2001; Redden and DeWitt, 2008; Lester and Rahn, 2001). 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 is likely even smaller being further limited by localized secondary porosity. However, there is not sufficient data available to attempt a full delineation of the localized Crystalline Rock aquifer with any level of certainty.

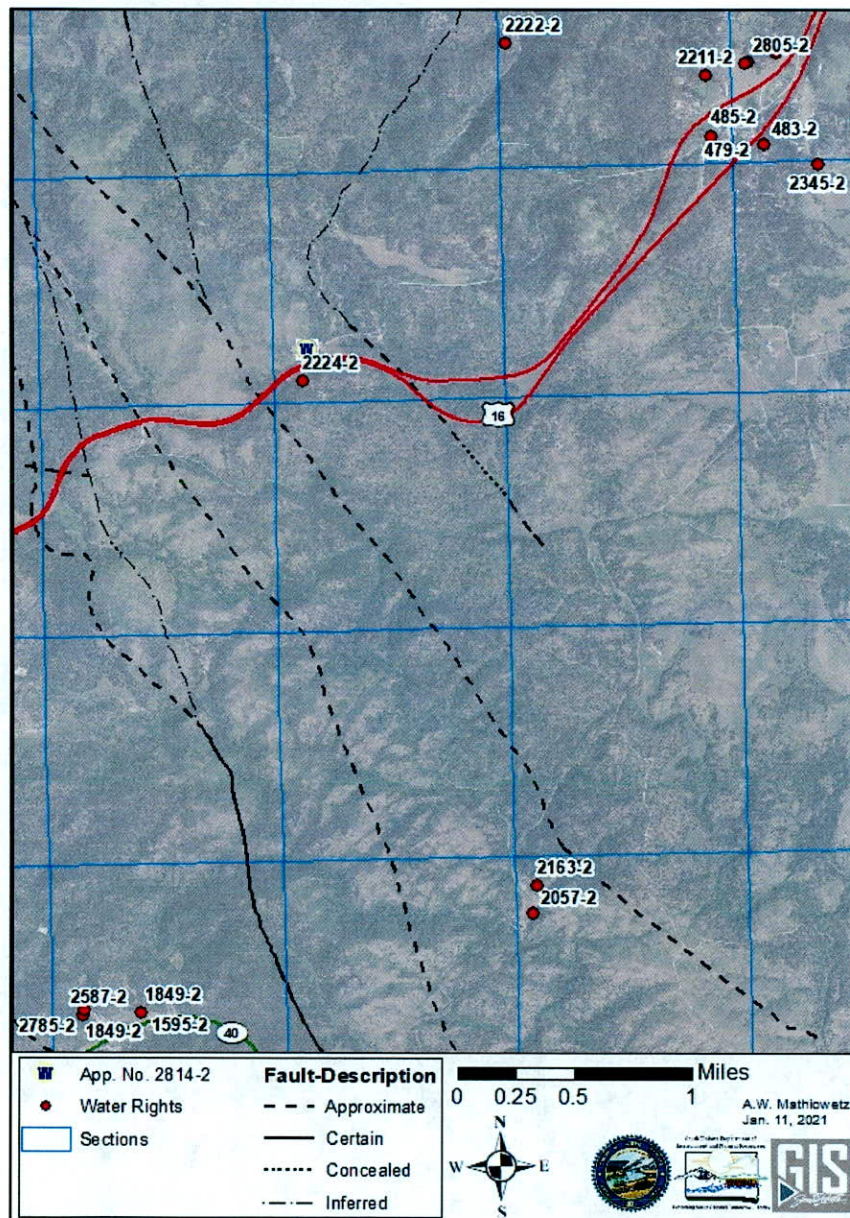


Figure 1-Map of area near Application No. 2814-2 with Crystalline Rock (CRSL) aquifer water rights (Water Rights, 2021c) and fault locations (modified from: Redden et al, 2016; Lester and Rahn, 2001)

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 consider 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 must be at least equal to average withdrawals, 3,600 acre-feet per year (ac-ft/yr), during their period of study, 1950-1998. Driscoll and Carter (2001) also 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 the areal extent, there is not sufficient data available to attempt a delineation of the localized Crystalline Rock aquifer with any level of certainty. Furthermore, the spatial variability and transient nature of the recharge means that even if there was a delineation of this portion of the Crystalline Rock aquifer, simply applying the 3,600 ac-ft/yr equally over the entirety of the aquifer is inappropriate. 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, 2021c and 2021d), seepage to streams (Driscoll and Carter, 2001), and evapotranspiration where the static water level of the aquifer is near ground surface. The water rights shown in Figure 1 are listed below in Table 1. The estimated average annual use for each permit was determined by assuming pumping at the permitted diversion rate 60 percent of the time. Water Right Nos. 2785-2 and 2814-2 and Water Permit No. 2805-2 are limited by an annual maximum permitted volume (Water Rights, 2021c). Water Right Nos. 2587-2 and 2785-2 are required to report their annual pumpage to the Water Rights Program (Water Rights, 2021c). As clearly shown by Water Right Nos. 2587-2 and 2785-2, the reported water use is often much less than the estimated use using the 60 percent rule and can also frequently be less than the permitted volume. Due to the extensive faults in the area of this application and the distance between the well for this application and most of the water rights/permits shown in Figure 1, the only water right that is likely in the same localized portion of the Crystalline Rock aquifer is Water Right No. 2224-2.

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 shown in Figure 1 and within one mile of the well the applicant intends to use (Water Rights, 2021d). 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 a significant component of a hydrologic budget when compared to the appropriative use from an aquifer due to the limited diversion rate and needs of domestic users. However, due to what is likely a relatively small and fault limited areal extent of the localized portion of the Crystalline Rock aquifer, it is probable that domestic use is a significant portion of the local hydrologic budget. There is no way to accurately estimate local domestic use since it is not practical to delineate the localized portion of the Crystalline Rock aquifer and it is very difficult to locate potential well users from satellite imagery due to tree cover. In the past, the Water Rights Program has used, and the Water Management Board has accepted, a domestic water use estimation using the following assumptions: 1) 2.5 residents per rural dwelling, and 2) either the average per capita use by self-serve well users for the county in question or an average use from across the state if county specific data is not available in Carter and Neitzert's (2008) report on estimated water use in South Dakota. In this case, Pennington County self-supplied domestic users withdrew approximately 70 gallons per day per capita. That is equal to 0.20 ac-ft/yr for each rural dwelling with a well using the previously discussed assumptions.

The estimated appropriative use from the localized portion of the Crystalline Rock aquifer the applicant intends to use is assumed to be the proposed annual volume by this application, 2 ac-ft/yr, and the estimated average annual use by Water Right No. 2224-2, 1.7 ac-ft/yr. There is no reasonably accurate way to estimate domestic use. However, it would take more than 18 rural dwellings using the above assumptions to equal the estimated average annual appropriative use.

Table 1- Water rights and application shown in Figure 1 (Water Rights, 2021a and 2021c)

Permit No.	Name	Priority Date	Status	Use	Diversion Rate (cfs)	Estimated Use (ac-ft/yr)	Permitted Vol. (ac-ft/yr)	Reported Avg. Use (ac-ft/yr)
2814-2	BIG MOUNTAIN CABINS	11/16/2020	APP	COM	0.067	n/a	2	n/a
2057-2	BLACK HILLS	06/07/1988	LC	INS	0.019	8.3	n/a	n/a
2163-2	CHILDREN'S HOME	02/14/1991	LC	INS	0.04	17.4	n/a	n/a
2224-2	HILLSIDE COUNTRY COTTAGES	01/01/1898	LC	COM	0.004	1.7	n/a	n/a
2731-2	JEFFREY A OR KRISTI HOFFMAN	10/27/2014	LC	DOM	0.1	43.4	n/a	n/a
1774-2	MINERAL TECHNOLOGY CORP	05/08/1981	LC	COM	0.09	39.1	n/a	n/a
2211-2	PINE HAVEN HERITAGE HOME	12/20/1991	LC	COM	0.03	13.0	n/a	n/a
2805-2	R & J LLC	09/25/2019	PE	COM	0.044	n/a	4	n/a
2345-2	ROCKERVILLE ACRES SUB-DIV	08/28/1995	LC	COM	0.024	10.4	n/a	n/a
479-2	ROCKERVILLE GOLD TOWN INC	06/06/1953	LC	COM	0.09	39.1	n/a	n/a
485-2	ROCKERVILLE PARK	05/01/1958	LC	COM	0.07	30.4	n/a	n/a
483-2	ROCKERVILLE TRADING POST	05/01/1954	LC	COM	0.13	56.5	n/a	n/a
1595-2	ROCKY GULCH LLC	06/20/1977	LC	COM	0.07	30.4	n/a	n/a
2222-2	STORM MOUNTAIN CENTER	02/24/1992	LC	REC/INS	0.04	17.4	n/a	n/a
1849-2	TOWN OF KEYSTONE	08/09/1983	LC	MUN	0.56	243.3	n/a	n/a
2587-2		04/20/2006	LC	MUN	0.133	57.8	n/a	30.1*
2785-2		08/11/2014	LC	MUN	0.167	n/a	24.6	3.1**
LC= Water Right, PE= Water Permit, APP= Application, COM= Commercial, INS= Institutional, REC= Recreational, n/a= Not Applicable *= 2006-2019 average, **= 2014-2019 average								

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, 2021b). Observation well CU-86A is located approximately 15.2 miles southwest, and observation well PE-95D is located approximately 4.8 miles north of the well the applicant intends to use (Water Rights, 2021b). 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, 2021b and 2021d; 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, 2021b and 2021d). 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.

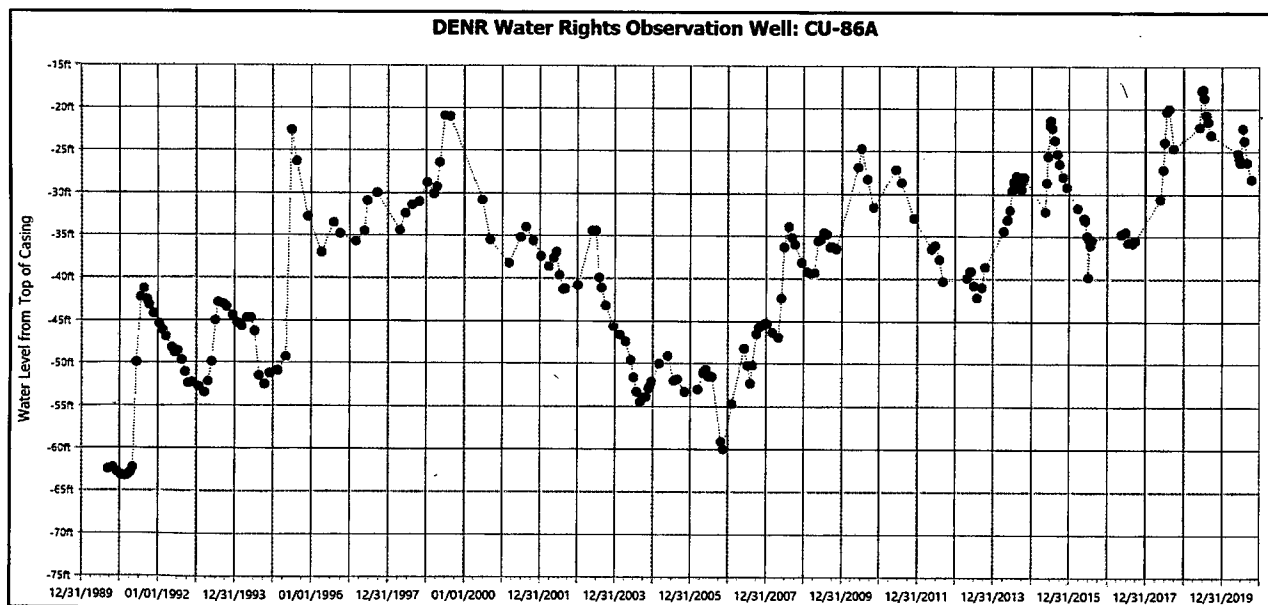


Figure 2- Hydrograph of Crystalline Rock aquifer observation well CU-86A (Water Rights, 2021b)

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, 2021b; 2021d; 2021e). 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 applicant's well. The well authorized by Water Right No. 2224-2 is approximately 750 feet south of the applicant's well (Water Rights, 2021c). Considering the distance between the applicant's well and the well authorized by Water Right No. 2224-2, the minimal number of complaints regarding well interference in Pennington County (Water Rights, 2021e), 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.

There are well completion reports on file with the DENR-Water Rights for domestic wells that are mapped within 0.25 miles of the well for this application (Water Rights, 2021d). 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. SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 22-T1S-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 0.25 miles of the applicant's well that are not on file with the DENR-Water Rights Program.

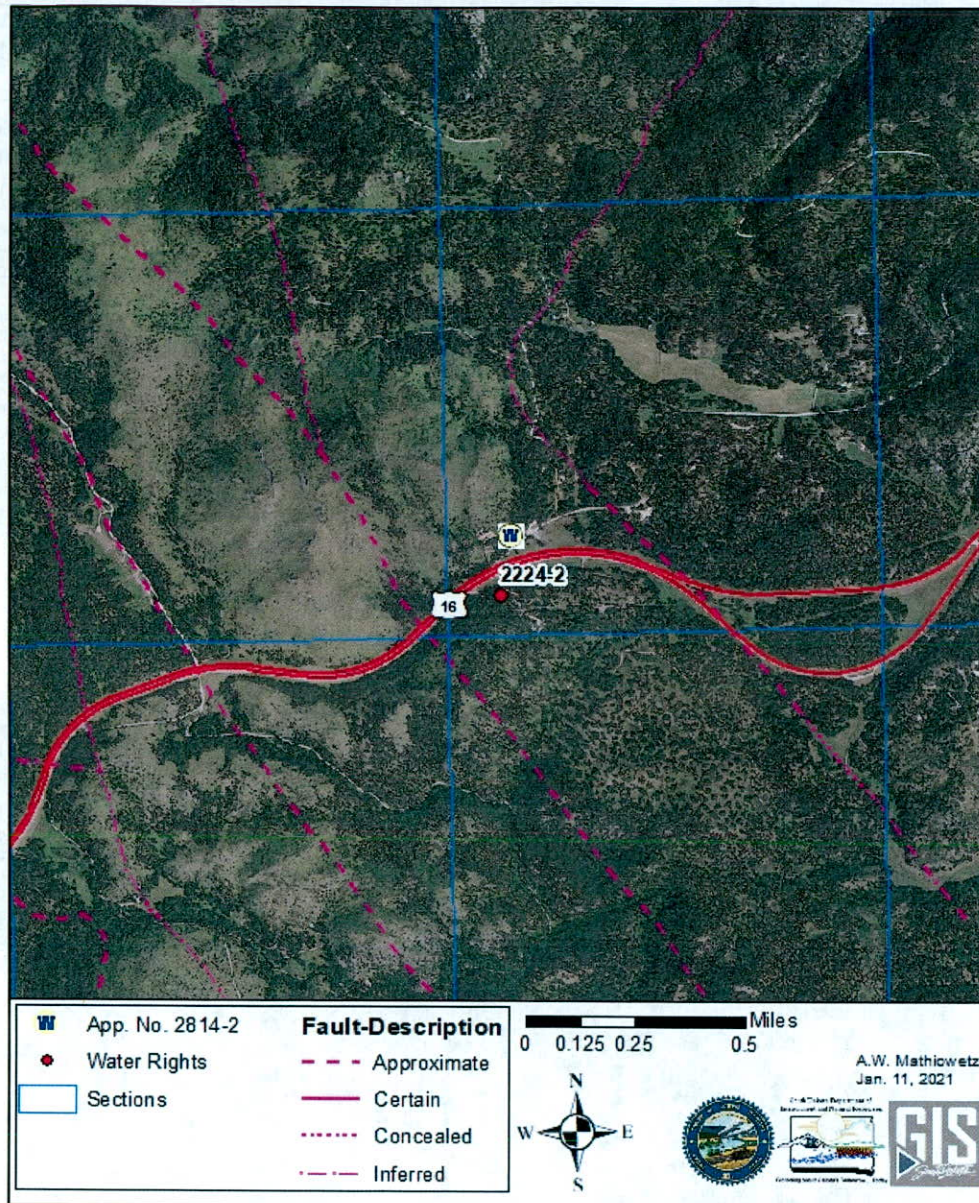


Figure 3- Map of area near Application No. 2805-2 with Crystalline Rock aquifer water rights (Water Rights, 2021c) and fault locations (Redden et al, 2016)

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, 2021e). During the Water Management Board hearing regarding Water Permit No. 2572-2A, a witness for a petitioner against approval of the permit stated the issue was not resolved (Water Rights, 2021b). During the Water Management Board hearing on Water Permit 2805-2, petitioners against the approval of the permit stated that the further development of local wells, all domestic use wells based on Water Rights Program well completion reports (Water Rights, 2021d), had created issues and interference with existing wells (Water Rights, 2021b). Water Permit Nos. 2572A-2 and 2805-2 are located approximately 3.6 miles north-northeast and 2.4 miles northeast, respectively, from the applicant’s well and are likely completed into different portions of the Crystalline Rock aquifer. Neither of these claims have been investigated or substantiated by the Water Rights Program.

There has been local development of both domestic and appropriative wells completed into the Crystalline Rock aquifer without a significant history of well interference issues and this application is proposing a relatively limited diversion rate and appropriation volume. Furthermore, the aquifer has large natural fluctuation of water levels that often mask or exceed drawdown caused by well pumping. South Dakota Water Law affords protection to adequate domestic wells, and this water use has been occurring for a number of years with no reported well interference issues. The above factors mean there is a reasonable probability this 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. 2814-2 proposes to appropriate up to 2 ac-ft/yr at a maximum instantaneous diversion rate of 0.067 cfs (30 gpm) from an existing well completed into the Crystalline Rock aquifer for commercial use in Pennington County approximately 2 miles southwest of 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

REFERENCES:

- Carter, J.M. and Neitzert, K.M. 2008. Estimated Use of Water in South Dakota, 2005. Scientific Investigations Report 2008-5216. U.S. Geological Survey. Rapid City, South Dakota.
- Driscoll, D.G. and Carter, J.M. 2001. Hydrologic Conditions and Budgets for the Black Hills of South Dakota, Through Water Year 1998. Water-Resources Investigations Report 01-4226. U.S. Geological Survey. Rapid City, South Dakota.
- Kilts, W.K. 2018. Report to the Chief Engineer Water Permit No. 2789-2 Rushmore Cave. May 20, 2018. SD DENR-Water Rights Program Permit Files. Pierre, South Dakota.
- Lester, J.L. and Rahn, P.H. 2001. Geologic Map of the Rockerville Quadrangle, South Dakota. 7.5 Minute Series Geologic Quadrangle Map 3. 1:24,000 scale. SD DENR-Geological Survey. Vermillion, South Dakota.
- Rahn, P.H. 1979. Ground Water Resources of Western South Dakota. SDSM&T Project Well No. 2533. Sponsored by Omaha District of the U.S. Army Corp of Engineers. SD School of Mines and Technology. Rapid City, South Dakota.
- Redden, J.A., Saxton, S.L., Terry, M.P., and Fahrenbach, M.D. 2016. Geologic Map of the Mount Rushmore Quadrangle, South Dakota. 7.5 Minute Series Geologic Quadrangle Map 26. 1:24,000 scale. SD DENR-Geological Survey. Vermillion, South Dakota.
- Water Rights. 2021a. Non-Irrigation Questionnaire Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2021b. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2021c. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2021d. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Water Rights. 2021e. Pennington County Complaint/Investigation File. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Williamson, J.E., Jarrell, G.J., Clawges, R.M., Galloway, J.M., and Carter, J.M. 2000. Digital data sets for map products produced as part of the Black Hills Hydrology Study, western South Dakota. Open-File Report 2000-471. <<https://pubs.er.usgs.gov/publication/ofr00471>>. Accessed: October 28, 2019. U.S. Geological Survey. Rapid City, SD.

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, January 19, 2021 1:01 PM
To: judewildeman@yahoo.com
Subject: Water Permit Application No. 2814-2
Attachments: 0392.pdf

Attached is a copy of the report, chief engineer recommendation and information regarding the public notice for your water permit application. As stated in the letter, please contact the paper as soon as possible to authorize publication and arrange for payment. This information is being mailed to you today.

Karen Schlaak

Water Rights Program
(605) 773-3352





DENR
SOUTH DAKOTA

**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.**

January 19, 2021

Big Mountain Cabins
c/o Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Dear Mr. Wildeman:

Water Permit Application No. 2814-2 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 newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Karen Schlaak

Karen Schlaak
Water Rights Program
(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: Tuesday, January 19, 2021 12:54 PM
To: Rapid City Journal (legals@rapidcityjournal.com)
Subject: 2814-2, Big Mountain Cabins
Attachments: 2814-2public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on January 29, 2021.

Big Mountain Cabins, c/o Jude Wildeman, 13310 Silver Mountain Rd, Rapid City SD 57702 (605 209-8526) has been notified to contact you to authorize publication and arrange for payment.

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

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

Karen Schlaak
Water Rights Program
(605) 773-3352



NOTICE OF APPLICATION NO. 2814-2 to Appropriate Water

Notice is given that Big Mountain Cabins, c/o Jude Wildeman, 13310 Silver Mountain Rd, Rapid City SD 57702 has filed an application for a water permit to appropriate less than two acre-feet of water annually at a maximum pump rate of 0.067 cubic feet of water per second from one well completed into the Crystalline Rock Aquifer (160 feet deep) located in the SW 1/4 SW 1/4 Section 22-T1S-R6E for commercial use. This site is located approximately 2 miles southwest of Rockerville SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2814-2 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 Ron Duvall 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, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 8, 2021.

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 _

Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA

FEB 05 2021

County of Pennington

SS:

WATER RIGHTS
PROGRAM

January 29 L24410
NOTICE OF APPLICATION NO.
2814-2 to Appropriate Water

Notice is given that Big Mountain Cabins, c/o Jude Wildeman, 13310 Silver Mountain Rd, Rapid City SD 57702 has filed an application for a water permit to appropriate less than two acre-feet of water annually at a maximum pump rate of 0.067 cubic feet of water per second from one well completed into the Crystal-line Rock Aquifer (160 feet deep) located in the SW 1/4 SW 1/4 Section 22-T1S-R6E for commercial use. This site is located approximately 2 miles southwest of Rockerville SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2814-2 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 Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

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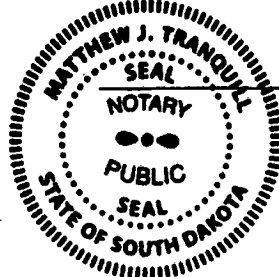
(Published once at the approximate cost of \$47.41)

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
29th day of Jan 2021 that the fees charged for
the publication there of are 47 dollars
and 41 cents.

Sheri Sponder

Subscribed and sworn to before me this 3rd
day of February, 2021.



Matthew J. Tranquill

Notary public

December 5, 2025

My commission expires

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

PAID

FEB 18 2021

Ck# 4332

Mail to: PMB 2020

DENR - Water Rights Program

523 E Capitol Ave

Pierre, SD 57501-3182

FEB 18 2021

Water Right/Permit No. 2814-2

WATER RIGHTS
PROGRAM

Date: 16 Feb 2021

I/We request that Water Right/Permit No. 2814-2 formerly owned by:

Big Mountain Cabins

be transferred to:

New Owner Name: Jude Wildeman

Address: 13310 Silver Mountain Rd

City, State, Zip

Rapid City



SD



57702

Telephone No. 605-209-8526

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

- ☒ I understand that the validity of Water Right/Permit No. 2814-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

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

I, Jude Wildeman, the new owner, certify that the above information is true and correct.



(signed by new owner)

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

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

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Environment and Natural Resources

Date February 18, 2021

RECEIVED OF Jude Wildeman/Jennifer Wildeman 13310 Silver Mountain Rd. Rapid City SD 57702

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$
Fee to retain Future Use Permit No. _____ after period of seven years.	\$
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	\$
Fee for Filing Transfer Form <u>2814-2</u>	\$50.00
Fee for _____	\$
Fee for Issuing New Well Driller's License No. _____	\$
Fee for Renewal of Well Driller's License No. _____	\$
Fee for Issuing Well Pump Installer's License No. _____	\$
Fee for Renewal of Well Pump Installer's License No. _____	\$
(Any Other Work Provided by Law) TOTAL	\$50.00

By Eric Gronlund
Chief Engineer
vm

RECEIVED

FEB 03 2021

WATER RIGHTS
PROGRAM

February 1, 2021

Eric Gronlund, Chief Engineer

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

Big Mountain Cabins

c/o Jude Wildeman

13310 Silver Mountain Rd

Rapid City, SD 57702

RE: Water Permit Allocation No. 2814-2, Big Mountain Cabins Recommendation

I write this letter in opposition to the subject Big Mountain Cabins water permit application. I am a domestic water user located approximately 2 miles from the subject application and within the area outlined in Figure 1 of the Report to the Chief Engineer.

I oppose this application for several reasons. I do not believe the Report to the Chief Engineer properly describes and assesses the potential impact to the large number of domestic wells in the area. In addition, Table 1 of the Report to the Chief Engineer names water rights entities that apparently are no longer in existence and appears to potentially exclude other existing commercial entities in the area. Also, the application seems to show that the applicant's commercial entity has been operating without the water permit required by state law. If true, I do not believe the qualifications currently recommended by the Chief Engineer are sufficient to ensure future compliance.

Sincerely,



Lon Buehner

23734 Pine Haven Dr.

Rapid City, SD 57702

RECEIVED

FEB 18 2021

WATER RIGHTS
PROGRAM

February 16, 2021

Eric Gronlund, Chief Engineer

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

RE: Request for Hearing Delay, Water Permit Application No. 2814-2, Big Mountain Cabins

This letter is to request a delay for the hearing of Water Permit Application No. 2814-2, Big Mountain Cabins. I have a prior commitment on March 4, 2021. Also, my wife and I are in the 1D high risk Covid category but are not yet eligible for vaccination. A delay may give me the opportunity to be vaccinated prior to the hearing.

Sincerely,



Lon Buehner

23734 Pine Haven Dr.

Rapic City, SD 57702



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 10, 2021

NOTICE OF HEARING

TO: Big Mountain Cabins
c/o Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

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

SUBJECT: Notice of Hearing on Water Permit Application No. 2814-2, Big Mountain Cabins

A petition was filed in the matter of Water Permit Application No. 2814-2 in response to the Notice of Application published in the Rapid City Journal on January 29, 2021. This notice schedules a hearing on Application No. 2814-2 before the South Dakota Water Management Board.

Water Permit Application No. 2814-2 proposes to appropriate less than two acre-feet of water annually at a maximum pump rate of 0.067 cubic feet of water per second from one well completed into the Crystalline Rock Aquifer (160 feet deep) located in the SW ¼ SW ¼ Section 22-T1S-R6E for commercial use. This site is located approximately 2 miles southwest of Rockerville, SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2814-2 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 conduct a hearing to consider Application No. 2814-2 at 8:30 AM (Central Time), on Thursday, March 4, 2021, 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. 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 March 4, 2021 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 22, 2021. 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 legal entity (Big Mountain Cabins), the applicant 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 Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application or other information related to the application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendation, affidavit of publication, and the petition filed in the matter of Water Permit Application No. 2814-2. 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. Notices, orders and other pleadings filed in this matter are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is February 23, 2021. 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 Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

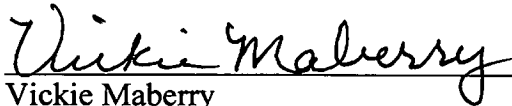
I hereby certify that on February 10, 2021, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated February 10, 2021, regarding the scheduling of a hearing in the matter of Water Permit Application No. 2814-2, as addressed below:

Big Mountain Cabins
c/o Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

Sent Inter-office to:

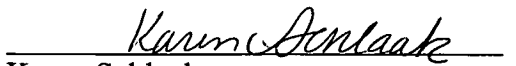
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

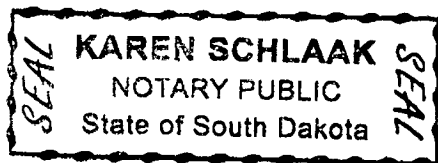


Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of February, 2021.


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

February 22, 2021

NOTICE

TO: Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

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

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2814-2, Jude Wildeman

A petition was filed in the matter of Water Permit Application No. 2814-2 in response to the Notice of Application published in the Rapid City Journal on January 29, 2021. A notice of hearing dated February 10, 2021, was sent to parties scheduling a March 4, 2021 hearing before the Water Management Board on Application No. 2814-2. In response to this notice, on February 18, 2021, Lon Buehner filed a request for a delay (copy enclosed) of the March 4, 2021 hearing date. Pursuant to SDCL 46-2A-5 and the Notice of Hearing dated February 10, 2021, this request for a delay is construed as written notice to the chief engineer requesting an automatic delay of the March 4, 2021 hearing date. Therefore, the hearing on Application No. 2814-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will NOT be held on March 4, 2021.

The hearing to consider Application No. 2814-2 is now tentatively scheduled for the May 5 - 6, 2021 Water Management Board meeting. The Board will formalize the May 2021 meeting dates at the March 3 - 4 meeting. Future notice of the time and place of the hearing for Application No. 2814-2 will be provided to all parties of record.

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 2814-2 are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>.

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

enclosure

c: Ann Mines Bailey, Assistant Attorney General

February 16, 2021

RECEIVED

FEB 18 2021

WATER RIGHTS
PROGRAM

Eric Gronlund, Chief Engineer

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

RE: Request for Hearing Delay, Water Permit Application No. 2814-2, Big Mountain Cabins

This letter is to request a delay for the hearing of Water Permit Application No. 2814-2, Big Mountain Cabins. I have a prior commitment on March 4, 2021. Also, my wife and I are in the 1D high risk Covid category but are not yet eligible for vaccination. A delay may give me the opportunity to be vaccinated prior to the hearing.

Sincerely,



Lon Buehner

23734 Pine Haven Dr.

Rapid City, SD 57702

CERTIFICATION

I hereby certify that on February 22, 2021, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 22, 2021, regarding an automatic delay of the hearing in the matter of Water Permit Application No. 2814-2, as addressed below:

Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 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

Vickie Maberry

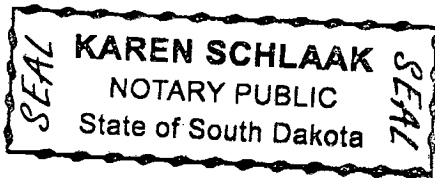
Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of February, 2021.

Karen Schlaak

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

March 22, 2021

NOTICE OF HEARING

TO: Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer
SD DENR, Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2814-2, Jude Wildeman

The Water Management Board will conduct a hearing to consider Application No. 2814-2 at 10:00 AM (Central Time), on Wednesday, May 5, 2021, 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 public notice published in the Rapid City Journal on January 29, 2021, and the Notice of Hearing dated February 10, 2021, still apply.

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 2814-2 are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>.

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 22, 2021, 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 22, 2021, in the matter of Water Permit Application No. 2814-2, as addressed below:

Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 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

Vickie Maberry

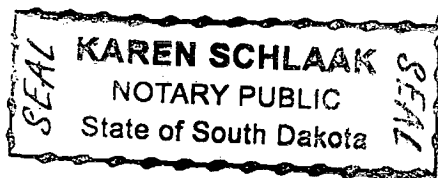
Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of March, 2021.

Karen Schlaak

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

RECEIVED

APR 15 2021

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 14, 2021

Jude Wildeman
13310 Silver Mountain Road
Rapid City, SD 57702

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Rights Program

Re: *In the Matter of Water Permit Application No. 2814-2, Big Mountain
Cabins/Jude Wildeman*

To Whom it May Concern:

Enclosed please find a copy of the Water Rights' Motion for Procedural Order and proposed Procedural Order along with the Certificate of Service in the above-entitled matter.

Sincerely,


Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall, DENR Water Rights Program (*Interoffice mail*)

RECEIVED

APR 15 2021

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

WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER	)	MOTION FOR
APPLICATION NO. 2814-2, BIG	)	PROCEDURAL ORDER
MOUNTAIN CABINS/JUDE	)	
WILDEMAN	)	

COME NOW the Chief Engineer and the Water Rights Program and request the Prehearing Chair enter a Procedural Order regarding the conduct of the hearing to be held on May 5, 2021. The COVID-19 pandemic is ongoing. In an effort to comply with the guidelines set forth by the Centers for Disease Control, such as social distancing, the Chief Engineer and Water Rights Program request that the Prehearing Chairman order that the parties submit their exhibits, properly numbered, in order to effectuate the provision of those exhibits to Board members who may be attending the meeting remotely. It is also requested that the Prehearing Chairman order the parties to provide the administrator responsible for the physical arrangements of the hearing room with the number of people that will be in attendance so that the room could be set up in a manner which would allow for social distancing. A proposed order is submitted with this motion for the Prehearing Chairman's consideration.

Dated this 14th day of April 2021.


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

Counsel for Water Rights Program, DENR

**WATER RIGHTS
PROGRAM**

PROCEDURAL ORDER

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 eight (8) copies for the Board, its

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

The number of participants to be present and the exhibits as outlined above must be provided on or before 5p.m. on April 26, 2021, to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this _____ day of April 2021.

BY THE BOARD:

RODNEY FREEMAN
PREHEARING CHAIRMAN

RECEIVED

APR 15 2021

WATER RIGHTS
PROGRAM

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

IN THE MATTER OF WATER	)	
APPLICATION NO. 2814-2, BIG	)	CERTIFICATE OF SERVICE
MOUNTAIN CABINS/JUDE	)	
WILDEMAN	)	

The undersigned hereby certifies that true and correct copies of the Water Rights' Motion for Procedural Order and proposed Procedural Order, in the above matter, were served by U.S. mail, first class, postage prepaid, upon the following, on this 14th day of April 2021:

Jude Wildeman
13310 Silver Mountain Road
Rapid City, SD 57702

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

And true and correct copies were served by email and hand-delivery upon the following:

David M. McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Rights Program

And the original was sent for filing by interoffice mail to the following:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 E. Capitol Ave.
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

*Counsel for Chief Engineer and
Water Rights Program*



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 15, 2021

NOTICE

TO: Big Mountain Cabins/Jude Wildeman Lon Buehner
13310 Silver Mountain Rd 23734 Pine Haven Dr.
Rapid City SD 57702 Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer
SD DENR, Water Rights Program

SUBJECT: Pre-hearing Officer's Procedural Order in the matter of Water Permit Application No. 2814-2, Big Mountain Cabins/Jude Wildeman

Enclosed is pre-hearing officer Freeman's Procedural Order in the matter of Water Permit Application No. 2814-2, Big Mountain Cabins/Jude Wildeman.

Notices, orders and other pleadings filed in the matter of Water Permit Application No. 2814-2 are posted on DENR's contested case page at <https://denr.sd.gov/contested.aspx>.

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
David McVey, Assistant Attorney General

CERTIFICATION

I hereby certify that on April 15, 2021, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 15, 2021, concerning issuance of a procedural order and the procedural order also dated April 15, 2021, regarding Water Permit Application No. 2814-2, as addressed below:

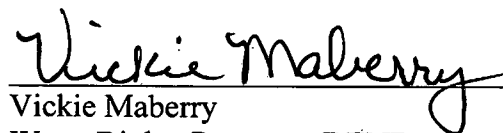
Big Mountain Cabins/Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 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



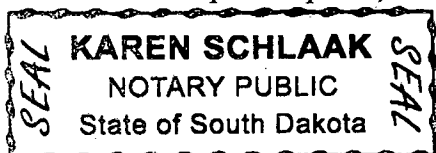
Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of April, 2021.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

APR 15 2021

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

WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER	)	PROCEDURAL
APPLICATION NO. 2814-2, BIG	)	ORDER
MOUNTAIN CABINS/JUDE	)	
WILDEMAN	)	

This matter is scheduled to be heard by the Water Management Board on May 5, 2021. In preparation for that hearing, the parties shall comply with the following:

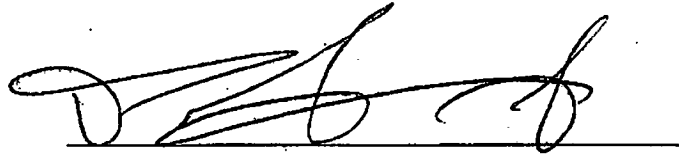
1. To facilitate distribution to those Board members who will be appearing remotely during the May 5 hearing, the parties shall provide a hardcopy of each exhibit which may be used during the course of the hearing. Each exhibit is to be numbered prior to submission. DENR will use numbers 1-99; Applicant will use numbers 100-199; and Intervenor Lon Buehner will use numbers 200-299.
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 eight (8) copies for the Board, its

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

The number of participants to be present and the exhibits as outlined above must be provided on or before 5p.m. on April 26, 2021, to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 15 day of April 2021.

SO ORDERED:

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

RODNEY FREEMAN
PREHEARING CHAIRMAN

RECEIVED

APR 19 2021

WATER RIGHTS
PROGRAM

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

IN THE MATTER OF WATER	)	PROCEDURAL
APPLICATION NO. 2814-2, BIG	)	ORDER
MOUNTAIN CABINS/JUDE	)	
WILDEMAN	)	

This matter is scheduled to be heard by the Water Management Board on May 5, 2021. In preparation for that hearing, the parties shall comply with the following:

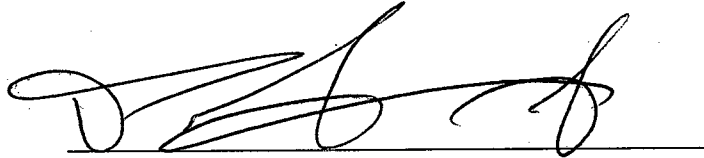
1. To facilitate distribution to those Board members who will be appearing remotely during the May 5 hearing, the parties shall provide a hardcopy of each exhibit which may be used during the course of the hearing. Each exhibit is to be numbered prior to submission. DENR will use numbers 1-99; Applicant will use numbers 100-199; and Intervenor Lon Buehner will use numbers 200-299.
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 eight (8) copies for the Board, its

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

The number of participants to be present and the exhibits as outlined above must be provided on or before 5p.m. on April 26, 2021, to Ron Duvall, Water Rights, Department of Environment of Natural Resources, 523 East Capitol, Pierre, SD 57501.

Dated this 15 day of April 2021.

SO ORDERED:

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

RODNEY FREEMAN
PREHEARING CHAIRMAN

April 19, 2021

RECEIVED

APR 21 2021

WATER RIGHTS
PROGRAM

Ron Duvall

Water Rights

Department of Environment of Natural Resources

523 East Capitol

Pierre, SD 57501

RE: Water Permit Application No. 2814-2, Big Mountain Cabins

Attached per the pre-hearing officer's Procedural Order are hard copies of each exhibit which may be used during the course of the hearing. I anticipate having two participants.

A handwritten signature in cursive script that reads "Lon Buehner".

Lon Buehner

23734 Pine Haven Dr

Rapid City, SD 57702

 **Department of
Water & Natural Resources**

Joa Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

September 21, 1988

NOTICE

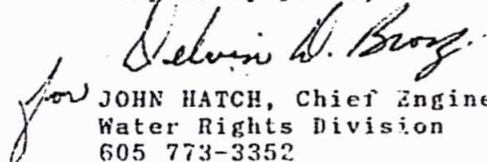
Rockerville Trail Motel
Rockerville SD 57701

Dear Sir:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 483-2 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

A staff member from the Division of Water Rights will be contacting you and scheduling an inspection of your water project. If we can answer any questions, please contact us.

Very truly yours,


for JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352





Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

December 1, 1988

Vested Water Right
Claim No. 483-2

Rockerville Trail Motel
Rockerville SD 57701

Dear Sir:

Enclosed is a copy of a letter received from the U.S. Department of Interior, Bureau of Reclamation. The Bureau of Reclamation is opposing those vested water right claims in Pennington, Perkins, Butte and Fall River counties which have never been investigated by the Division of Water Rights. Earlier, you received a letter stating that I was opposing your claim until an investigation can be completed.

After the investigation has been completed, you and the Bureau of Reclamation will be notified as to the date, place and time of the hearing on your vested water right claim. At that time all parties of record will have an opportunity to testify on the validation.

If we can answer any questions, please contact us.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352

cc: Bruce Laymon, Bureau of Reclamation





United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
Belle Fourche Projects Office
P.O. Box 226

Newell, South Dakota 57760-0226

WTR 4.10
BF-430

AUG 18 1993



Mr. John Hatch, Chief Engineer
Water Rights Division
South Dakota Department of Water and Natural Resources
523 E. Capitol
Pierre SD 57501-3181

Subject: Vested Water Right Claims in Western South Dakota (Your Letter
Dated April 26, 1993) (Water Rights)

Dear Mr. Hatch,

We have reviewed the vested water right claims located in Perkins, Pennington, Fall River, and Butte Counties as listed in your letter dated April 20, 1993. We have also discussed these rights with contract water users. We appreciate the assistance of your staff in providing documentation of inspections and validation proceedings for specific claims as we requested.

We are satisfied with all of the actions taken by the board. Our intent in opposing validation of the water rights was to assure that all of the rights were reviewed prior to validation. That review has been completed by your staff. Thank you for notifying us of the board's actions and extending the opportunity to reconsider the actions if it would have been deemed necessary. We understand that future notification will be made in advance of board actions.

If we can be of further assistance, please contact Craig Kjar or me at (605) 456-2695.

Sincerely,

B. M. Laymon
Bruce M. Laymon
Project Manager

cc: Mr. Joe Kramer, Manager
Angostura Irrigation District
PO Box 346
Oral SD 57766

Mr. James E. Winterton, Project Manager
Belle Fourche Irrigation District
PO Box 225
Newell SD 57760

Exhibit No. 203



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

Item #4 (Continued)**d. Drainage pattern and drainage plan.**

We will follow all requirements as outlined in South Dakota State Law 46-10A-20 and Pennington County PUD Zoning Requirements. We will provide a pre-development drainage and post-development drainage plan, beginning this plan when the PUD is approved by the County Commissioners.

In our first phase, consisting of approximately 5 acres, we anticipate approximately five 4-plex units. These five units will have roof surfaces of 6,200 square feet each or approximately 31,000 total square feet of roof. We are planning to use natural landscaping around the structures. The 31,000 square feet of roof surface represents 14% of the total land area in the anticipated first phase (31,000 sf / 217,800sf). We will work with Pennington County Planning and the State of SD regarding required drainage, retention areas, etc.

We feel a benefit of this PUD area that we have naturally sloping areas that have moved water to well-established drainage areas.

We have also identified in our site plan our designated general storm water collection areas, as shown on Exhibit 5A in blue. Their placement, size and design will be determined by the storm water engineer.

e. Parking.

The proposed residential parking for each unit will be provided through garages, driveways and carports. Any commercial area parking will be in designated parking lots.

f. Utility services.

Water - Per Eric Gronlund, Engineer III with SDDENR via email on 12/4/19, informed us that our proposed Rockerville Property PUD is vested with two water rights allowing 70 gallons per minute listed as follows:

Water Right 479-2:

This water right is from 1953 and carries a 40 gpm allocation from one well.

Item #4 (Continued)

Water Right 485-2:

This water right is from 1958 and carries at 30 gpm allocation from two wells.

These two water rights allocate us 100,800 gallons of water per day at full gpm water right usage (70 gpm x 60 minutes per hour x 24 hours), but our projected usage is significantly less at 26,250 (see below).

For design purposes, Brittney Molitor of the Pennington County Planning Department, suggested that a baseline for water usage per day would be 75 gallons per day per person and assuming 2 people per bedroom. This equates to 22,500 gallons of daily water usage (assuming 50 one-bedroom units and 50 two-bedroom units). The 22,500 gallons per day usage represents only 22% of our vested water rights (22,500 / 100,800).

We are also currently working on the preliminary water distribution system design. Upon approval of our PUD request, we will provide design and documentation to meet the requirements of water quality, water distribution, water testing and licensing as required by Pennington County and SDDENR. This includes South Dakota Administrative Rule 74:04:09:06. We are currently working with Mark MacIntire P.E. from SD DENR in Pierre and Erin Fagnan with SD DENR in Rapid City on the SD DENR requirements.

Sewer/Onsite Wastewater System - South Dakota Administrative Rule 74:53:01:37 allows a landowner to install a mound or evapotranspiration system. Our plan is to install multiple combination mound and evapotranspiration systems.

We estimate once the proposed Rockerville Property PUD is fully built and at full occupancy (100 units), the maximum daily on-site wastewater will be 26,250 gallons. The 26,250 gallons per day is based on maximum waste-water flow capacity requirements as outlined in South Dakota Administrative Rule 74:53:01:20 Table 2, calculated as follows (3.5 persons x 75 gallons per person x 100 units).

Our proposed PUD also includes options for commercial, apartment and other uses. Our primary plan is for fourplex, triplex and duplex type residential housing and our wastewater treatment is based on the fourplex, triplex and duplex type design. However, if the market dictates that commercial and apartment uses be utilized, we will use the same type mound system and applicable wastewater gallonage per day as allowed under the SD Administrative Rule identified above to comply with the wastewater requirements for each type of use.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 10, 2021

NOTICE

TO: Big Mountain Cabins/Jude Wildeman Lon Buehner
13310 Silver Mountain Rd 23734 Pine Haven Dr.
Rapid City SD 57702 Rapid City SD 57702

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
SD DANR, 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. 2814-2, Big Mountain Cabins/Jude Wildeman.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 9:30 AM Central Time, on Wednesday, July 7, 2021, 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 the parties of record by June 17, 2021. 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 the Board attorney, and other parties of record by June 25, 2021. A mailing list is enclosed. Board counsel requests that the draft findings or alternative findings also 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 July 7, 2021 meeting. The evidentiary hearing was completed May 5, 2021. No additional testimony will be received on July 7, 2021.

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

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

Findings of Fact Mailing List
Water Permit Application No. 2814-2,
Big Mountain Cabins/Jude Wildeman

APPLICANT

Big Mountain Cabins/Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

PARTIES OF RECORD

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

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

BOARD LEGAL COUNSEL

David McVey, Assistant Attorney General
Counsel for Water Management Board
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

Also submit via email to: David.McVey@state.sd.us

CERTIFICATION

I hereby certify that on May 10, 2021, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 10, 2021, regarding preparation of findings of fact, conclusion of law, and final decision for Water Permit Application No. 2814-2, as addressed below:

Big Mountain Cabins/Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 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

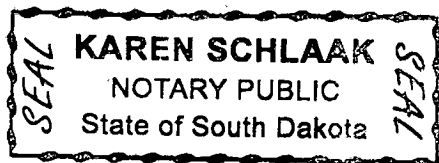
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Vickie Maberry
Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of May, 2021.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2025



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/>

JASON R. RAVNSBORG

ATTORNEY GENERAL

RECEIVED

JUN 14 2021

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN

CHIEF DEPUTY ATTORNEY GENERAL

June 10, 2021

Jude Wildeman/Big Mountain Cabins
13310 Silver Mountain Road
Rapid City, SD 57702

Long Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

David M. McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Rights Program

Re: *In the Matter of Water Permit Application No. 2814-2, Big Mountain Cabins/Jude Wildeman*

To Whom it May Concern:

Enclosed please find a copy of the Water Rights' Proposed Findings of Fact, Conclusions of Law and Final Decision along with the Certificate of Service in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall, DENR Water Rights Program (*Interoffice mail*)

RECEIVED

JUN 14 2021

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	WATER RIGHTS' PROPOSED
APPLICATION NO. 2814-2, BIG	)	FINDINGS OF FACT,
MOUNTAIN CABINS/JUDE	)	CONCLUSIONS OF LAW, AND
WILDEMAN	)	FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on May 5, 2021. 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. Applicant Jude Wildeman and Intervenor Lon Buehner appeared *pro se*. Ann F. Mines Bailey represented the DANR 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 November 16, 2020, Water Rights received Water Permit Application No. 2814-2 on behalf of Big Mountain Cabins seeking an appropriation of water for commercial use for cabin rentals near Rockerville, SD. The application proposes the diversion of less than 2 acre-feet of water annually with an instantaneous diversion rate of 0.067 cubic feet of water per second (cfs) from an existing well completed into the Crystalline Rock aquifer in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22-T1S-R6E in Pennington County.

2. The Chief Engineer, Eric Gronlund, recommended approval of the application subject to the permit including three qualifications. Those qualifications are as follows:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

3. Notice of the application was timely advertised on January 29, 2021, in the Rapid City Journal (Pennington County).

4. DENR received a timely petition to intervene from Lon Buehner.

5. On February 18, 2021, the application was transferred from Big Mountain Cabins to Jude Wildeman.

6. The matter was initially scheduled to be heard by the Water Management Board during its March 4, 2021 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May.

7. Water Permit Application No. 2814-2 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.

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

9. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from an observation well completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

10. In this area, the Crystalline Rock aquifer consists of metaconglomerate, quartzite, metapelite, and metagraywacke. The aquifer has very low primary porosity. Water movement in the aquifer occurs through its secondary porosity which consists of 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.

11. When determining the availability of unappropriated water and the potential for unlawful impairment, the Crystalline Rock aquifer must be examined within a more localized area rather than as a whole due to these aquifer characteristics.

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

13. There are no average annual recharge estimates available for the localized portion of the Crystalline Rock aquifer in which the proposed diversion is sought. However, the best information available is a report analyzing the different water sources within the Black Hills. The authors of that study concluded that recharge to the Crystalline Rock aquifer must be *much greater* than 3600 acre-feet.

14. There are two observation wells completed into the Crystalline Rock aquifer. One of the wells is believed to be open to both the Deadwood Formation and the Crystalline Rock aquifer and, therefore, was not relied upon when reviewing this application. The other observation well, CU-86A, is located approximately 15.2 miles southwest of the proposed diversion point. 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 aquifer can receive recharge and that the effects from pumping are temporal and are masked by climatic conditions.

15. Mr. Mathiowetz 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.

16. Within this localized area, there is one existing water right in the Crystalline Rock aquifer located approximately 750 feet to the south of the proposed diversion point. Additionally, there are up to 8 domestic wells within the vicinity.

17. Mr. Mathiowetz concluded that based upon the observation well data that demonstrates the aquifer receives recharge, the relatively limited use in the localized area, and that the proposed diversion point has been in use for some time without issue, there is a reasonable probability that unappropriated water is available.

18. Mr. Mathiowetz further concluded that based upon the limited diversion rate and volume requested and minimal 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.

15. 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.

16. The Board also received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified that he had contacted Big Mountain Cabins, owned and operated by Mr. Wildeman, upon direction of the Board after Mr. Buehner had suggested in a prior proceeding that Big Mountain Cabins did not have a permit. Based upon that contact, Big Mountain Cabins submitted this application. Mr. Gronlund testified that based upon his review of the report

and the best information available, he recommended approval of the application. 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.

17. Mr. Gronlund further testified that the Water Rights Program is aware that there are entities operating without a permit and that the goal is to bring them into compliance. To that end, contact is being made with those entities believed to be operating without a permit.

18. 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.

19. Lon Buehner also testified before the Board. Mr. Buehner testified that he lives in the Rockerville area. Mr. Buehner expressed concerns regarding a number of issues regarding water rights in that area. Mr. Buehner further expressed concerns that the report by Water Rights is incomplete because it does not account for those entities which are operating without a permit. In particular, Mr. Buehner expressed concerns regarding inspections and urged that periodic inspections be required. Additionally, Mr. Buehner urged the theory that the septic volumes that are permitted should act as a limitation for the water volumes permitted and suggested that a qualification should be added to that effect. Mr. Buehner additionally expressed concerns that the approval of this application would be a detriment to those commercial entities currently operating without a permit.

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

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

22. The Board further finds that the proposed use of the water for commercial use for cabin rentals constitutes a beneficial use.

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

24. 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 the applicant 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 concludes that appropriating water for this commercial use 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. 2814-2 is granted with the following qualifications:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a

reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.

3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

Dated this ____ day of July, 2021.

BY THE BOARD:

South Dakota Water Management Board

RECEIVED

JUN 14 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2814-2, BIG	)	CERTIFICATE OF SERVICE
MOUNTAIN CABINS/JUDE	)	
WILDEMAN	)	

The undersigned hereby certifies that true and correct copies of the Water Rights' Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter were served by U.S. mail, first class, postage prepaid, upon the following, on this 10th day of June 2021:

Jude Wildeman
Big Mountain Cabins
13310 Silver Mountain Road
Rapid City, SD 57702

Lon Buehner
23734 Pine Haven Drive
Rapid City, SD 57702

And true and correct copies were served by e-mail and hand-delivery upon the following:

David M. McVey
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
Counsel for Water Rights Program

And the original was sent for filing by interoffice mail to the following:

Ron Duvall
DENR Water Rights Program
Joe Foss Building
523 E. Capitol Ave.
Pierre, SD 57501


Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

*Counsel for Chief Engineer and
Water Rights Program*

pld_afm (lde)

Attorney General
438203
JUN 25 2021

June 24, 2021

Big Mountain Cabins / Jude Wildeman David McVey, Assistant Attorney General

13310 Silver Mountain RD Attorney General's Office

Rapid City, SD 57702 1302 East Highway 14, Suite 1

Pierre, SD 57501

Ann Miles Bailey X

Attorney General's Office

1302 East Highway 14, Suite 1

Pierre, SD 57501

RE: Water Right Application No. 2814-2, Big Mtn. Cabins / Jude Wildeman

Proposed Findings of Fact, Conclusions of Law, and Final Decision Suggested Revisions

Regarding Item 19 I recommend adding the following:

Mr. Buehner testified that a comparison of the DANR public water system and DANR water rights databases indicates Big Mountain Cabins, Cosmos Mystery Area, Gaslight Restaurant, Rockerville Gold Nugget Lodge, Rockerville Motel and Cabins, and Rustic Ridge Guest Cabins are commercial entities with a public water system but no water right. Rockerville Park, Rockerville Gold Town, Pine Haven Heritage Home, and Rockerville Trading Post are commercial entities that have a water right but have no public water system. Silver Mountain Cabins is a commercial entity with no public water system and no water right. Mr. Buehner also testified Hillside Country Cabins is a commercial entity that is likely to be exceeding their 2 GPM allocated water volume since it is serving 18 cabins and log homes.

I also question the reasoning behind item 5 and recommend it's removal. I do not believe it is appropriate to utilize the water permit transfer form to transfer an application for a water right. In doing so, you essentially transferred a nonexistent water right from one entity to another. Is not the intent of the water permit transfer form to transfer existing water rights due to ownership changes, etc.? I would think if Big Mountain Cabins LLC owns the commercial entity, the water right needs to be assigned to Big Mountain Cabins LLC versus Jude Wildeman. In any case, I believe it is prudent for the SD Water Management Board to reassess if it is appropriate to use the water right transfer form to transfer a nonexistent water right in order to change an application from an LLC to an individual.

Thank you for your consideration regarding the above recommendations.

Sincerely,


Lon Buehner

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
APPLICATION NO. 2814-2, BIG	)	CONCLUSIONS OF LAW, AND
MOUNTAIN CABINS/JUDE	)	FINAL DECISION
WILDEMAN	)	

This matter came before the South Dakota Water Management Board for hearing on May 5, 2021. 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. Applicant Jude Wildeman and Intervenor Lon Buehner appeared *pro se*. Ann F. Mines Bailey represented the DANR 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 November 16, 2020, Water Rights received Water Permit Application No. 2814-2 on behalf of Big Mountain Cabins seeking an appropriation of water for commercial use for cabin rentals near Rockerville, SD. The application proposes the diversion of less than 2 acre-feet of water annually with an instantaneous diversion rate of 0.067 cubic feet of water per second (cfs) from an existing well completed into the Crystalline Rock aquifer in the SW¼SW¼ Sec. 22-T1S-R6E in Pennington County.

2. The Chief Engineer, Eric Gronlund, recommended approval of the application subject to the permit including three qualifications. Those qualifications are as follows:

- A. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- B. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
- C. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

3. Notice of the application was timely advertised on January 29, 2021, in the Rapid City Journal (Pennington County).

4. DENR received a timely petition to intervene from Lon Buehner.

5. On February 18, 2021, the application was transferred from Big Mountain Cabins to Jude Wildeman.

6. The matter was initially scheduled to be heard by the Water Management Board during its March 4, 2021 meeting; however, an automatic delay was requested and the hearing was rescheduled for the next regular Board meeting in May.

7. Water Permit Application No. 2814-2 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.

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

9. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Crystalline Rock aquifer, and reviewed the information obtained from an observation well completed into the Crystalline Rock aquifer, as well as current water right/permit files and well completion reports for the aquifer.

10. In this area, the Crystalline Rock aquifer consists of metaconglomerate, quartzite, metapelite, and metagraywacke. The aquifer has very low primary porosity. Water movement in the aquifer occurs through its secondary porosity which consists of 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.

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16. Within this localized area, there is one existing water right in the Crystalline Rock aquifer located approximately 750 feet to the south of the proposed diversion point. Additionally, there are up to 8 domestic wells within the vicinity.

17. Mr. Mathiowetz concluded that based upon the observation well data that demonstrates the aquifer receives recharge, the relatively limited use in the localized area, and that the proposed diversion point has been in use for some time without issue, there is a reasonable probability that unappropriated water is available.

18. Mr. Mathiowetz further concluded that based upon the limited diversion rate and volume requested and minimal 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.

19. 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.

20. The Board also received the testimony of Chief Engineer Eric Gronlund. Mr. Gronlund testified that he had contacted Big Mountain Cabins, owned and operated by Mr. Wildeman, upon direction of the Board after Mr. Buehner had suggested in a prior proceeding that Big Mountain Cabins did not have a permit. Based upon that contact, Big Mountain Cabins submitted this application. Mr. Gronlund testified that based upon his review of the report

and the best information available, he recommended approval of the application. 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.

21. Mr. Gronlund further testified that the Water Rights Program is aware that there are entities operating without a permit and that the goal is to bring them into compliance. To that end, contact is being made with those entities believed to be operating without a permit.

22. 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.

23. Lon Buehner also testified before the Board. Mr. Buehner testified that he lives in the Rockerville area. Mr. Buehner expressed concerns regarding a number of issues regarding water rights in that area. Mr. Buehner further expressed concerns that the report by Water Rights is incomplete because it does not account for those entities which are operating without a permit. In particular, Mr. Buehner expressed concerns regarding inspections and urged that periodic inspections be required. Additionally, Mr. Buehner urged the theory that the septic volumes that are permitted should act as a limitation for the water volumes permitted and suggested that a qualification should be added to that effect. Mr. Buehner additionally expressed concerns that the approval of this application would be a detriment to those commercial entities currently operating without a permit.

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

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

26. The Board further finds that the proposed use of the water for commercial use for cabin rentals constitutes a beneficial use.

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

28. 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 the applicant 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 concludes that appropriating water for this commercial use 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

Water Rights filed complete Proposed Findings of Fact and Conclusions of Law and Decision and the Intervenor, Lon Buehner, filed an objection and requested an amendment to Findings of Fact Paragraph 19 (now Paragraph 23) and further requested that Findings of Fact Paragraph 5 be deleted in its entirety. In compliance with SDCL § 1-26-25, the Proposed Findings of Fact and Conclusions of Law are accepted, modified, or rejected as follows:

- A. Intervenor's request to amend Findings of Fact Paragraph 19 (now Paragraph 23) is denied.
- B. Intervenor's request to delete Finding of Facts Paragraph 5 in its entirety is denied.

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2814-2 is **GRANTED** with the following qualifications:

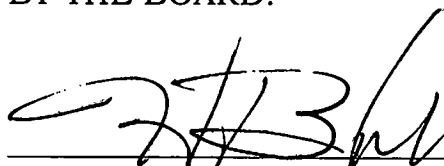
1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells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

2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.

3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

Dated this 7th day of July, 2021.

BY THE BOARD:

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

South Dakota Water Management Board
Tim Bjork, Chairman



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

July 16, 2021

NOTICE OF ENTRY OF ORDER

TO: Big Mountain Cabins
c/o Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 Pine Haven Dr.
Rapid City SD 57702

FROM: *for* Eric Gronlund, Chief Engineer
SD DENR, Water Rights Program

SUBJECT: Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Application No. 2814-2, Big Mountain Cabins

Notice is given that on the 7th day of July 2021, 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: Ann Mines Bailey, Water Rights Program Counsel
David McVey, Water Management Board Counsel

CERTIFICATION

I hereby certify that on July 16, 2021, 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 July 16, 2021, regarding adoption of findings of fact, conclusion of law and final decision for Water Permit Application No. 2814-2, and a signed copy of the findings, conclusions, and final decision dated July 7, 2021, as addressed below:

Big Mountain Cabins
c/o Jude Wildeman
13310 Silver Mountain Rd
Rapid City SD 57702

Lon Buehner
23734 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

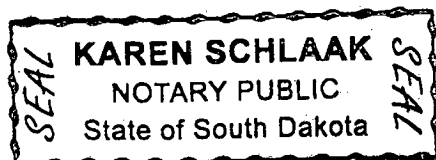
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Vickie Maberry
Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of July, 2021.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

SEP 08 2021

Jude Wildeman
Big Mountain Cabins
13310 Silver Mountain Rd
Rapid City SD 57702

Dear Mr. Wildeman:

Enclosed is Water Permit No. 2814-2 authorizing your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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