

WATER PERMIT NO. 2850-2

Name of Applicant: Elk Mountain Water Users Association Inc.

Address: 25612 Dewey Rd, Custer SD 57735 Phone: 605 201-1087

Amount of Water Claimed: 0.33 cfs Total Acres: NA

Source of Water Supply: groundwater (one well)

Water to be used for: water distribution system and commercial use County: Custer

Type of Waste Disposal System:

Location: approximately 21 miles west of Custer

PRIORITY Date Received: 7-7-22 Application/License Fee: \$950

Corrected Application Received: 7-19-22 Period of Annual Use: January 1 – December 31

Remarks: Will also provide water to Highlands Volunteer Fire Dept. and serve as a single bulk dispensing station

Diversion Point: NW 1/4 NW 1/4 Sec 21-T4S-R1E

Land to be Irrigated: NA

Depth of Well: 1570 feet deep

Well Driller:

Remarks:

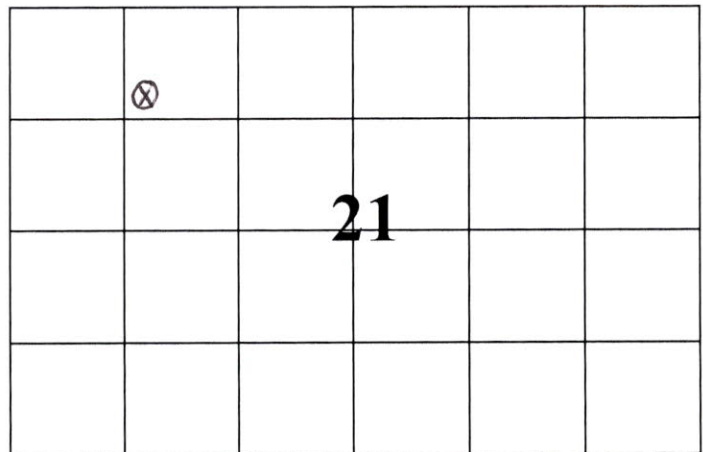
Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 7-19-22

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



**SOUTH DAKOTA
WATER PERMIT NO. 2850-2**

Date of first receipt of application July 7, 2022.

Date of return to applicant for corrections, amendments or changes July 7, 2022.

Date of receipt of corrected application July 19, 2022.

The Water Management Board approved Water Permit No. 2850-2 on July 12, 2023 for Elk Mountain Water Users Association, Inc., 25612 Dewey Road, Custer SD 57735 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. 2850-2 appropriates up to 145 acre-feet of water annually at a maximum pump rate of 0.333 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,570 feet deep) located in the NW 1/4 NW 1/4 Section 21-T4S-R1E to supply a water distribution system as well as commercial use and fire protection. The system will serve users within an approximate ten-mile radius of the well which includes portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County SD) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station. This site is located approximately 21 miles west of Custer SD.
2. The water appropriated shall be used for the purpose of water distribution, commercial, and fire protection 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 July 7, 2022.
5. One-fifth of the construction is to be completed on or before January 12, 2026.
6. All construction is to be completed on or before July 12, 2028.
7. Water is to be put to beneficial use on or before July 12, 2032.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2850-2 is issued for a twenty-year term. Pursuant to SDCL 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2850-2 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The well will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

(continued)

3. The well authorized by Permit No. 2850-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.
5. Water Permit No. 2850-2 appropriates up to 145 acre-feet of water annually.

WATER MANAGEMENT BOARD

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

SEP 21 2023
date



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

PAID

JUL 7 2022

Ck# 1002

Rec't#

RECEIVED

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2850-2</u> (office use only) Hydrologic Unit <u>10120107</u> Basin <u>Upper Cheyenne</u> Newspaper <u>Custer Co Chronicle</u> <u>Rapid City Journal</u>
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Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

OFFICE OF
WATER

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

Create a new diversion point (Madison Formation Deep Well) to supply a newly created water users association.1. Name to Appear on Water Permit Elk Mountain Water Users Association, Inc.

Mailing Address 25612 Dewey Road Custer SD 57735
 (Address) (City) (State) (Zip Code)

Phone 605-201-1087 Mobile 605-749-2223 Email sanderson@custercountysd.com

2. Amount of water claimed 0.333 *CFS or 150 **GPM and 240 ***AF or _____ 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)

3. Source of water supply Madison Aquifer Formation (groundwater)

4. Location of point of diversion 1 well - NW1/4 NW1/4 Section 21-T4S-R1E County Custer
 (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

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

If "Yes," where will water be used? _____

(example - NW1/4 section 12-T104N-R53W)

5. County or counties where water will be used Custer County6. Annual period during which water is to be used January 1 - December 31

7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Elk Mountain Water Users Association, Inc. is a newly-formed, non-profit entity created to manage, distribute, and conserve water from a source used jointly by its members. Entity Articles of Incorporation are attached. The Association proposes to construct a single deep well accessing the Madison Formation aquifer, from which the Association will provide water to the *Highlands Volunteer Fire Department*. Water will also be available for purchase by retail customers via a single bulk dispensing station.

I, Susan Anderson, 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 _____
(if yes, please provide copies of logs)

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

For either Existing or Proposed Wells:

c) Well Depth (**required**) 1570' +/- Depth to Top of Water Bearing Material 1170' +/- Depth to Water from Surface 875' +/-

d) Distance to nearest domestic well on applicant's property N/A Property owned by others 3300'

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) POWTS: Septic tank and leachfield

b) System Capacity (gallons) 1,500 Year Constructed 2003

c) Connected to the City of N/A Sanitary System

3. Dugout Information

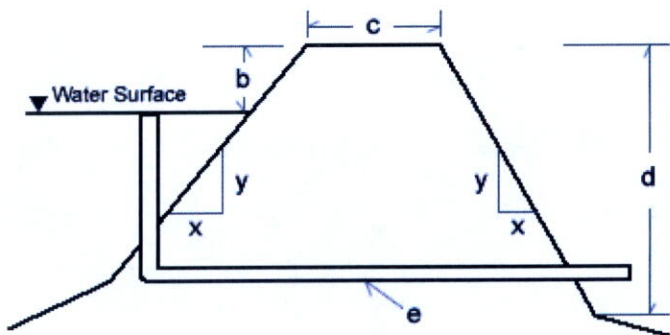
a) Surface Dimensions _____ Depth _____

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

4. Water Storage Dams

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

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



b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

g) X & Y Slope (e.g. 3 to 1 is a typical slope)

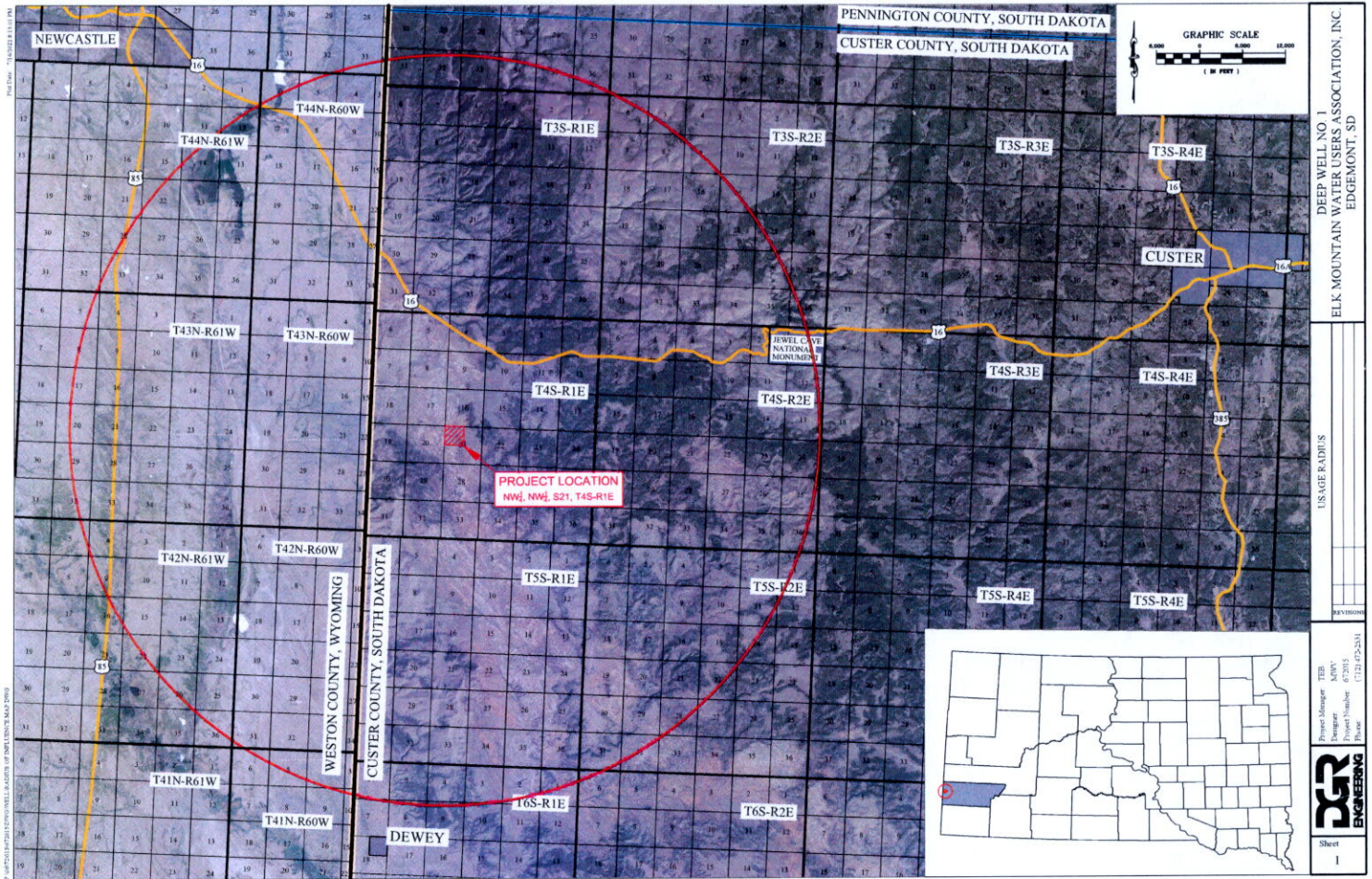
Upstream _____

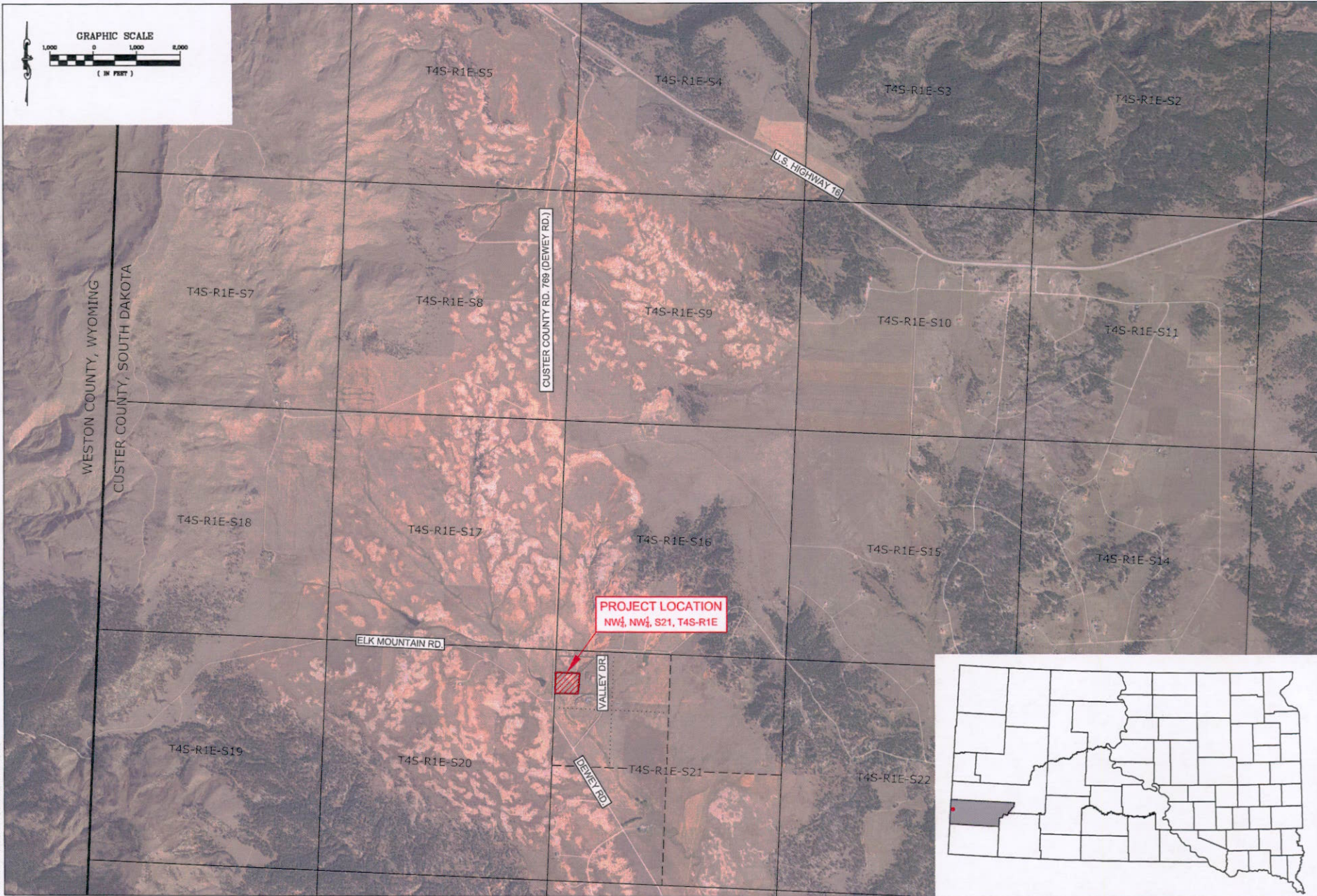
Downstream _____

h) Surface Area of Impoundment _____

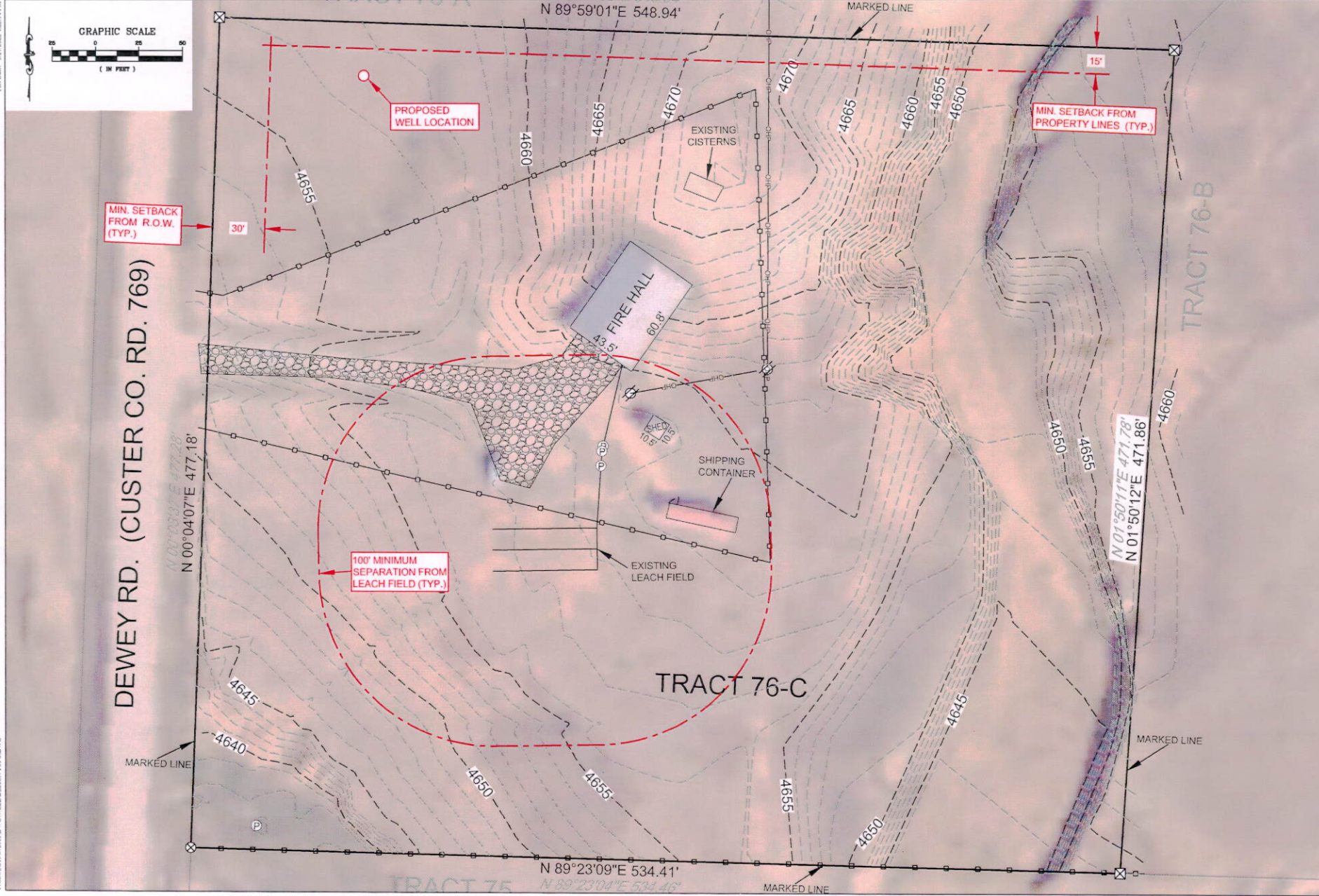
i) Storage _____ Acre Feet

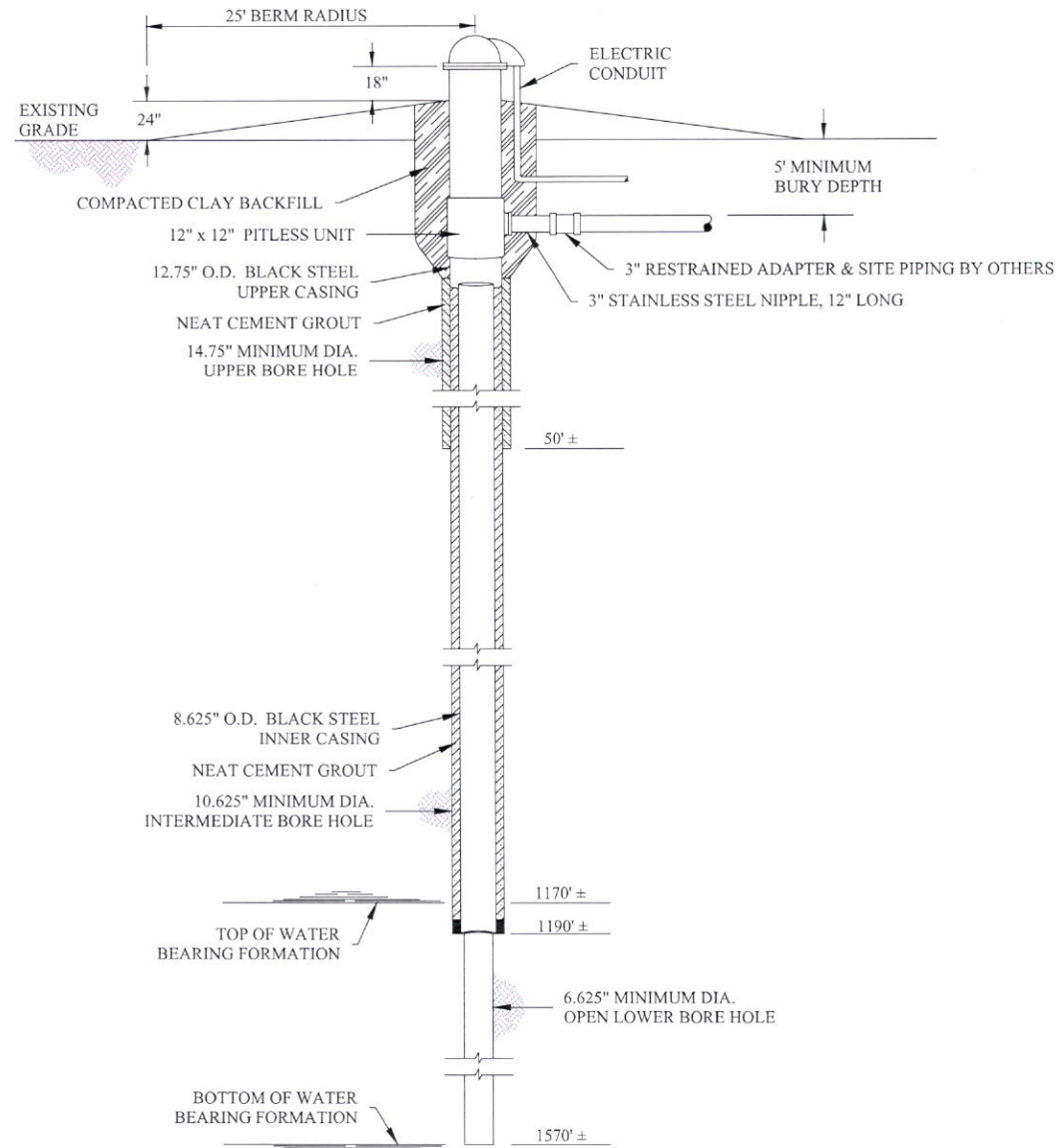
j) Drainage Area Above Dam _____ Acres





Project Manager: TEB Designer: MWV Project Number: 672015 Phone: (713) 472-2531		DGR ENGINEERING
Sheet 1		
LOCATION PLAN		DEEP WELL NO. 1 ELK MOUNTAIN WATER USERS ASSOCIATION, INC. EDMONT, SD

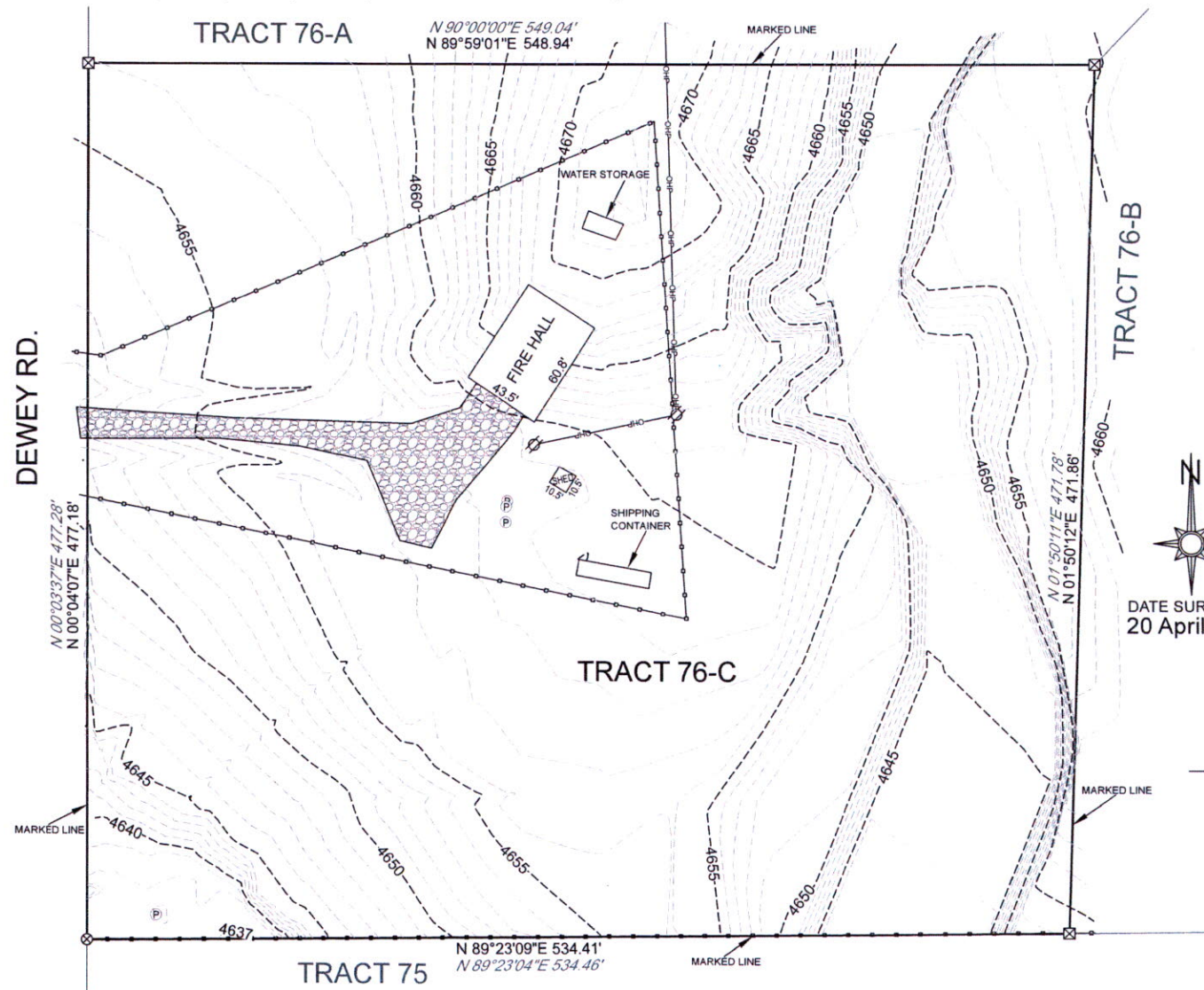




PROPOSED WELL SECTION
NOT TO SCALE

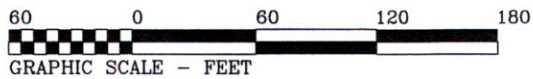
TOPOGRAPHIC SURVEY

TRACT 76-C OF ELK MOUNTAIN RANCHES SUBDIVISION, LOCATED IN THE NW 1/4 OF SECTION 21, T4S, R1E, BHM, CUSTER COUNTY, SOUTH DAKOTA



LEGEND

- Found rebar w/aluminum cap marked "ANDERSEN PLS 2842"
- Found rebar
- 522.06' Slant lettering denotes record calls
- PVC standpipe
- Power pole
- ELEVATIONS ARE BASED ON NAVD88(GEOID18)
- Intermediate contours 3436
- Main contours 3435
- Overhead power line
- Fence line
- Gravel/Rock

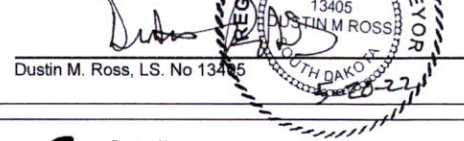


BASIS OF BEARING - GPS OBSERVATION
taken S 22°23'39"E 1342.81' from the SW corner of Lot 76-C.
OPUS STATIC SOLUTION NAD83(2011)
LAT: 43°41'19.44715"
LONG: -104°00'46.85288"

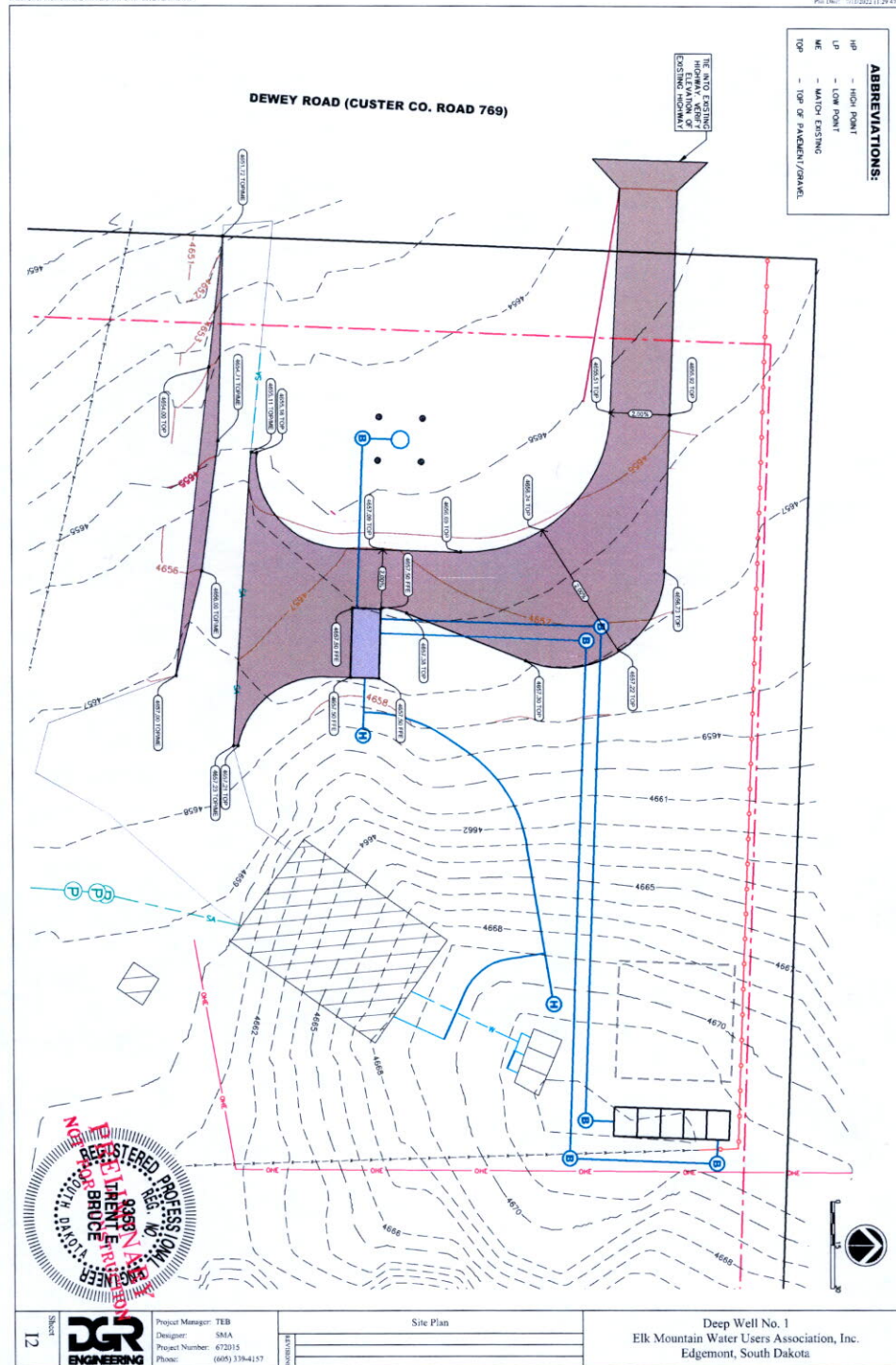


DATE SURVEYED
20 April 2022

CERTIFICATION OF SURVEYOR
I, Dustin M. Ross, LS. No 13405 do hereby certify that this drawing represents a survey made by me or under my direct personal supervision in accordance with the laws of the State of South Dakota and accepted surveying practice, and that the same is to the best of my knowledge and belief, true and correct.



Prepared by ANDERSEN ENGINEERS <i>Land Surveyors</i>		
Drawn by DR	Date 5/18/2022	P.O. Box 446 Edgemont, SD 57735 (605)-662-5500 andersenengineers@gwtc.net
Approved by McB	Date 5/20/2022	
Scale 1"=60'	Sheet 1 of 1	File Name: TR_76C_EMRS_TOPO



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Agriculture and Natural Resources

Date July 7, 2022

RECEIVED OF Elk Mountain Water Users Association 25612 Dewey Road Custer SD 57735

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

Fee for Application for Permit No. <u>2850-2</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>750.00</u>
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>2850-2</u>	\$ <u>200.00</u>
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	\$ <u>950.00</u>

By Eric Gronlund
Chief Engineer

me

State of South Dakota

Office of the Secretary of State

Certificate of Incorporation

Domestic Nonprofit Corporation

I, **Steve Barnett**, Secretary of State of the State of South Dakota, hereby certify that the ARTICLES OF INCORPORATION for

Elk Mountain Water Users Association, Inc.

BUSINESS ID# NS222141

with an effective date of: March 7, 2022, duly signed and verified, SDCL 47-22-6 has been received in this office and is found to conform to law.

ACCORDINGLY, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation and attach hereto a duplicate of the ARTICLES OF INCORPORATION.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this day, March 7, 2022.

Steve Barnett

Steve Barnett
Secretary of State

03/07/2022 11:52 AM



NS222141

B0213-1187 03/07/2022 11:52AM Rec'd by SD SOS

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

ARTICLES OF INCORPORATION

DOMESTIC NONPROFIT CORPORATION
SDCL 47-22-6

Filing Fee: \$30

Total Fee: \$30

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

Article I

The name of the Company: **Elk Mountain Water Users Association, Inc.**

Article IA

The purpose(s) for which the corporation is organized:

The purpose of this non-profit corporation is to acquire and maintain a water well, water storage, and water distribution in Custer County, South Dakota, as well as to engage in any and all other business which may be lawfully conducted by a corporation in the State of South Dakota and elsewhere.

Article II

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

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

Article III

Will this corporation have members?: **YES**

Article IV

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

Actual Street Address

**25612 DEWEY ROAD
EDGEMONT, SD 57735**

Mailing Address

**25612 DEWEY ROAD
EDGEMONT, SD 57735**

Article V

SDCL 59-11-6

The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, (b) a commercial registered agent, or (c) an office holder.

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

Name Susan Marie Anderson

Actual Street Address in this State

**10092 US HIGHWAY 16
CUSTER, SD 57730**

Mailing Address in this State

**PO BOX 6062
CUSTER, SD 57730**



B0213-1188 03/07/2022 11:52AM Rec'd by SD SOS

Article VI

The name and address of each incorporator (one or more persons - person includes an individual or entity)

Name	Address
Susan Marie Anderson	10092 US Hwy 16, PO Box 6062, Custer SD 57730

Article VII

The name and address of each director (three or more persons - person includes an individual or entity)

Name	Address
Luke Caster	10234 Valley Road, Edgemont, SD 57735
Anine Rosse	10326 Turkey Trail, Edgemont, SD 57735
Jon Morgan	10169 Elk Mountain Road, Edgemont, SD 57735

Article VIII

Signature/Authorization

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

Susan Anderson	<i>Susan Anderson</i>	Organizer	03/07/2022
PRINTED NAME	SIGNATURE	TITLE	DATED



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

October 14, 2022

Daniel Nebelsick
DGR Engineering
1302 South Union St.
Rock Rapids, IA 51246

Dear Mr. Nebelsick:

As requested by email submitted on October 12, 2022, pursuant to South Dakota Well Construction Standard 74:02:04:21, your clients Elk Mountain Water Users Association, Inc are authorized to have a South Dakota licensed well driller construct a test well to an approximate maximum depth of 1,570 feet prior to approval of a water permit. The test well is to be located in NW ¼ NW ¼ Section 21-T4S-R1E in Custer County. All test wells must be constructed in accordance with the SD Well Construction Standards particularly using the methods described in Administrative Rule of South Dakota (ARSD) 74:02:04:28. Any test holes or test wells that are abandoned must be plugged pursuant to the SD Well Construction Standards.

Following completion of the well, the water distribution system may supply water to users at a rate not exceeding 18 gallons per minute (gpm) based on SDCL 46-5-8.2 which amounts to a daily volume up to 25,920 gallons (gpd). Compliance with Drinking Water Standards will also be necessary. For more information regarding Drinking Water requirements, please contact Mark McIntire with the Drinking Water Program at (605) 773-3754. Any diversion of water in excess of either 18 gpm or 25,920 gpd requires approval and issuance of Application No. 2850-2 prior to the use occurring.

Approval of this test well does **NOT** assure issuance of a water permit for Application No. 2850-2. Following review of Water Permit Application No. 2850-2, the Chief Engineer made a recommendation to the Water Management Board that Application No. 2850-2 be approved. The recommendation to approve has been contested. A contested case hearing will be conducted by the Water Management Board to consider the water permit application. Notice of the time and place of hearing will be provided later.

If you have questions regarding permitting or hearing procedures, please call Ron Duvall at (605) 773-3352.

Sincerely,

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

CC: Ann Mines Bailey, Assistant Attorney General
Susan Anderson, Elk Mountain Water Users Assoc. Inc.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2850-2, Elk Mountain Water Users Association Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc., 25612 Dewey Road, Custer SD 57735.

The Chief Engineer is recommending APPROVAL of Application No. 2850-2 with a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2850-2 is issued for a twenty-year term. Pursuant to SDCL 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2850-2 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.
2. The well will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
3. The well authorized by Permit No. 2850-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.
5. Water Permit No. 2850-2 appropriates up to 145 acre-feet of water annually.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
September 19, 2022

**Report to the Chief Engineer
on Water Permit Application No. 2850-2**

Elk Mountain Water Users Association, Inc
14 September 2022

Water Permit Application No. 2850-2 seeks to appropriate up to 145 acre-feet of water annually (ac-ft/yr) at a maximum pump rate of 0.333 cubic feet of water per second (cfs) from one well to be completed into the Madison aquifer (approximately 1,570 feet deep) located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21-T4S-R1E for a water distribution system, commercial use, and fire protection. The proposed system will serve users within an approximate ten-mile radius of the well, including portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E, and T6S-R1E Black Hills Meridian in Custer County and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W 6th Principal Meridian in Weston County, Wyoming. Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station. This site is located approximately 21 miles west of Custer, South Dakota.

Aquifer: Madison Limestone (MDSN)

Hydrogeologic Characteristics

The Madison Group in South Dakota is a Lower Mississippian and Upper Devonian group of formations that in the Black Hills consists of the Englewood and Pahasapa Limestone formations [1]. The Pahasapa Limestone is a “white, light-gray to tan, fine- to medium-grained limestone and dolomite containing brown to gray chert [2].” The Englewood Limestone is a “pink to lavender to light-gray, thin- to medium-bedded, fine- to medium-grained, argillaceous, dolomitic limestone [2].” The Madison aquifer consists of the permeable and porous portions of the Madison Group that are sufficiently saturated to deliver useful quantities of water. The Madison aquifer extends over more than 210,000 square miles in Montana, Wyoming, North Dakota, South Dakota, and Nebraska [3], although it may not be suitable as a source of water in all of those areas due to extreme depth to the aquifer and low water quality far from the outcrops [4]. It crops out in the Black Hills and is buried elsewhere in South Dakota [3]. The Madison aquifer may be hydrologically connected to the Deadwood aquifer underlying it in some locations [5]. It is also connected to the Minnelusa aquifer above it in some areas of the aquifer [5]. There are other bedrock aquifers that receive natural discharge from the Madison aquifer further away from the Black Hills where confining layers between the Madison aquifer and those aquifers are absent. The hydraulic head of the Madison aquifer is higher than land surface in many places around the Black Hills, causing some wells completed into the aquifer to flow without a pump [6]. Numerous springs and seeps in the Black Hills flow with water that has been determined to come from the Madison aquifer [7].

The applicant did not submit a well completion report with the application, but sufficient information is available to determine the availability of water and possibility of unlawful impairment of existing water rights/permits. A well completion report located approximately 0.7 miles south of this application in the SW $\frac{1}{4}$ Section 21 T4S-R1E on April 5, 2001, indicates the driller encountered fractured Madison Formation from 1,020 to the total depth of 1,140 feet below grade [6]. The static water level at the time the well was completed was 890 feet below

grade. Structure contours available in the area of this application indicate that there is 400 feet of thickness between the top of the Madison Group and the top of the Deadwood Formation [8] [9], which is the next lowest formation [1], so it is likely that well did not penetrate the full thickness of the Madison aquifer at this location.

Applicable South Dakota Codified Law (SDCL)

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued 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 domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, 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 the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The Madison aquifer is older and stratigraphically lower than the Greenhorn Formation and the applicant is a water distribution system as defined in SDCL 46-1-6(17). Therefore, the Water Management Board's authority to approve this application is not restricted by whether or not recharge exceeds withdrawals. However, a statewide and local hydrologic budget is included in this report for the information of the Chief Engineer and the Water Management Board.

Pursuant to SDCL 46-2A-20:

Notwithstanding §§ 46-1-14 and 46-2A-7, no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the Water Management Board determines, based upon the evidence presented at a hearing that:

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

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

This application proposes to withdraw water from the Madison aquifer in one of the counties listed above. Therefore, in addition to the other requirements, the Water Management Board must consider the effect this application may have on nearby Madison aquifer wells and springs and this application is subject to a 20-year term limit.

Availability of Water

Statewide Hydrologic Budget

Statewide Recharge

The Madison aquifer receives recharge from infiltration of precipitation and streamflow on the outcrop area and may also receive inflow from the underlying Deadwood aquifer [10]. There are several reports available estimating recharge to the Madison aquifer.

Woodward-Clyde Consultants [11] estimated recharge to the outcrop of the Madison aquifer in the Black Hills as part of an environmental impact statement for the ETSI Coal Slurry Pipeline Project. The upper-bound estimate of recharge in the Woodward-Clyde Consultants report is approximately 400,000 ac-ft/yr, assuming almost all of the precipitation that falls on the outcrop infiltrates into the aquifer [11]. Woodward-Clyde Consultants produced a lower-bound recharge estimate of 140,000 ac-ft/yr based on the Rahn and Gries [7] report [11]. However, the Rahn and Gries report estimated recharge for all Paleozoic limestone in the Black Hills, which includes the Madison Group, the Minnelusa Formation, and the Minnekahta Formation [7]. Rahn and Gries [7, p. 15] reported that 146.14 cfs was their minimum estimated recharge rate for the Paleozoic limestone from infiltration of precipitation, which converts to approximately 106,000 ac-ft/yr for all Paleozoic formations. The Woodward-Clyde Consultants report did not acknowledge the fact that the Rahn and Gries [7] report estimated minimum recharge for a larger group of formations than the Woodward-Clyde Consultants report covers, and therefore is likely to overestimate recharge to the Madison aquifer [11].

Carter, Driscoll, and Hamade [10] analyzed streamflow and precipitation data from water years 1931 to 1998 in the Black Hills area in South Dakota and Wyoming to determine the average annual recharge to the Madison and Minnelusa aquifers. They estimated a combined average annual recharge to both aquifers to be 344 cfs, or approximately 249,000 ac-ft/yr, not including possible flow from the Deadwood aquifer [10]. Carter, Driscoll, and Hamade [10] estimated that approximately 55% of the recharge goes to the Madison aquifer, so the total estimated average recharge to the Madison aquifer from the outcrop in the Black Hills is 137,000 ac-ft/yr, not including possible inflow from adjacent aquifers. The Carter, Driscoll, and Hamade [10] report uses more years of data, more recent data, and better assumptions than the Woodward-Clyde Consultants [11] and Rahn and Gries [7] reports. Therefore, the best estimate of recharge to the Madison aquifer is based on the Carter, Driscoll, and Hamade [10] report.

Statewide Discharge

Discharge from the Madison aquifer in South Dakota is mainly by outflow to other aquifers when the hydraulic head in the Madison aquifer is higher than those aquifers, outflow to springs and seeps, and withdrawals by domestic and appropriative wells [12]. Due to the presence of overlying aquifers and water distribution systems in many areas of the aquifer, domestic well withdrawals are a negligible portion of the hydrologic budget of the Madison aquifer. There are 161 water rights/permits currently authorized to withdraw from the Madison aquifer and 10 future use water rights/permits reserving water from the Madison aquifer. Table 1 shows the future use permits reserving water from the Madison aquifer [13].

Of the 161 active water rights/permits, 97 are primarily for some type of water distribution system (rural water system, municipal, etc), 30 primarily for irrigation, 14 for commercial use,

11 for industrial use, 4 for domestic use, 2 for geothermal use, 2 for institutional use, and one for recreation [13]. Estimated withdrawals for irrigation use are shown in Table 2. When there were more than 10 years of irrigation reports available, the average reported irrigation was used to estimate irrigation withdrawals. When there were less than 10 years of irrigation reports available, withdrawals are assumed to equal 2 acre-feet per acre although actual usage is likely less for non-turf irrigation. Non-irrigation withdrawals from permit holders with irrigation as a permitted use are assumed to withdraw at their maximum instantaneous diversion rate 60% of the time. In the case of Water Right No. 1885-1, that would have caused the total estimated withdrawal to exceed the rate they were physically capable of withdrawing, so their total estimated withdrawal is 100% of their maximum instantaneous diversion rate.

Table 1: Future Use Permits from the Madison aquifer [13]

Permit No.	Name/Business	County	Use	Priority Date	Amount Reserved (ac-ft/yr)
369-1	City of Belle Fourche	LA	MUN	12/10/1958	620
2086-2	City of Rapid City	PE	MUN	05/18/1989	4,075
439-2	City of Rapid City	PE	MUN	09/22/1956	3,367
1872-1	City of Spearfish	LA	MUN	11/13/2006	2,704
2560-2	Fall River Water Users District	FR	RWS	05/16/2005	358
2560A-2	Fall River Water Users District	FR	RWS	05/16/2005	0
2560B-2	Fall River Water Users District	FR	RWS	05/16/2005	0
2580-2	Southern Black Hills Water System	FR	RWS	03/02/2006	1,474
1833-2	Weston Heights Home Owners	MD	RWS	02/18/1983	211
1995-1	Black Hawk Water User District	MD	RWS	04/15/2020	1,300
Total					14,109
FR – Fall River, LA – Lawrence, MD – Meade, PE – Pennington					
MUN – Municipal, RWS – Rural Water System					

Water Right/Permit Nos. 1096-1, 1096A-1, 1496-1, and 1670-1 are all authorized to withdraw from the same well and one dam. Water Right Nos. 1096-1, 1096A-1, 1670-1 authorize diversion of water for irrigation use and Water Right No. 1096A-1 and Water Permit No. 1496-1 authorize diversion of water for rural water system use. Documentation in the administrative file for Water Right No. 1670-1 indicates that the well is not valved such that it can be shut off when not in use for the beneficial uses listed on the permits. A letter dated September 9, 1998 indicates that when the water for that well is not being used for the beneficial uses described in the permits, it is used for fish and wildlife propagation. The person writing the letter indicated they would prefer the Water Management Board not order the well to be shut off when not used for irrigation or rural water system withdrawals. It is likely the well continues to flow uncontrolled; thus, at the flow rate listed in Water Right No. 1096A-1 of 1.33 cfs, that well withdraws approximately 964 ac-ft/yr from the Madison aquifer.

Water Right No. 1650-1 does not require the water right holder to report annual withdrawals and allocates no acreage. It provides supplemental water supply from a flowing well for Water Right No. 1231-1. Water Right No. 1231-1 permits a 110 acre-ft dam to provide water for a commercial livestock operation and irrigation of 134 acres. Water Right No. 1650-1 allows for direct irrigation from a Madison aquifer well of up to 2 acre-ft per acre for the land permitted by Water Right No. 1231-1. Kilts estimated that Water Right No. 1650-1 withdraws 55.9 ac-ft/yr [14].

Report on Water Permit App. No. 2850-2

There are 37 water rights/permits that have a volume limit listed in their permit or have had their total withdrawal limited by a subsequent water right/permit held by the same person/entity. While many of those water rights/permits are required to report their withdrawals, they may develop their permits further to withdraw up to the limit on their permit, so the volume limit listed on their permits is assumed to be their total appropriation. The total volume limit listed by such permits is 21,011 ac-ft/yr.

Table 2: Permits with irrigation listed as one beneficial use, or are connected to an irrigation permit [13] [15]

Permit No.	Name/Business	Diversion rate (cfs)	Acres Licensed/ Permitted	Average Report (ac-ft/yr)	Years of Irrigation Reports	Estimated average irrigation (ac-ft/yr)	Est. Non-irr. Use (ac-ft/yr)	Total Est. Withdrawal (ac-ft/yr)
2773-2	Arrowhead Country Club	1.110	100.00	0	4	200.0	0.0	200.0
1635-1	Black Hills National Cemetery	0.820	54.50	94.8	26	94.8	356.4	451.2
1452-1	Black Hills State College	3.330	25.44	20.3	33	20.3	1,447.5	1,467.8
1670-1	Buddy L, Peggy A, Kami S Ireland	3.610	253.00	47.5	24	*	*	*963.5
1096A-1	Butte Meade Sanitary Dist	1.330	0.00	N/A	0	*	*	*
2458-2	City of Rapid City	0.800	107.00	104.4	21	104.4	0.0	104.4
2002-1	City of Spearfish	1.330	40.00	0.0	1	80.0	0.0	80.0
2313-2	Coca-Cola Bottling	0.330	3.00	7.3	27	7.3	143.4	150.7
1899-1	Davis Ranches Inc	1.430	100.00	0.0	13	0.0	0.0	0.0
2673-2	Diocese of Rapid City	0.120	7.00	8.0	9	14.0	0.0	14.0
1009-1	Donald F/Ann J Brady	0.780	53.73	30.4	40	30.4	0.0	30.4
1185-1		0.380	22.52	110.3	40	110.3	***	110.3
2286-2	Donald Konechne	0.100	38.50	10.2	28	10.2	0.0	10.2
1707A-1	Elkhorn Ridge @ Frawley Ranches LLC	3.705	100.00	0.0	4	0.0	1,610.5	1,610.5
1707E-1		0.000	0.00	9.1	15	9.1	**	9.1
1931-1		0.170	3.30	3.2	9	6.6	73.9	80.5
1650-1	Foothill Land & Cattle LLC	0.890	0.00	N/A	0	*	*	*55.9
1945-1	Frawley Ranches LLC	1.110	265.00	50.7	8	530.0	0.0	530.0
1858-1	Glencoe Camp Resort II LLC	0.860	34.00	0.0	16	0.0	373.8	373.8
2593-2	Hart Ranch Development	0.490	72.50	19.9	15	19.9	213.0	232.9
1911-2	Hart Ranch Development Co	0.880	124.00	120.1	28	120.1	382.5	502.6
1725-2	Janice R Crowser	1.070	75.10	1.0	23	1.0	0.0	1.0
2012-1	Jesse Horstmann	0.500	43.50	N/A	0	87.0	0.0	87.0
1923-1	Jim Montieth	0.110	3.00	1.0	10	6.0	47.8	53.8
858-2	John & Heidi McBride	9.360	655.75	6.7	38	6.7	0.0	6.7
1885-1	John T & Veronica Widdoss	0.110	22.00	16.8	5	44.0	35.7	79.7
1223-1	Montana Dakota Land LLC	0.670	263.00	195.4	40	195.4	0.0	195.4
1960-1	One Diamond Inc	1.280	150.00	148.9	6	300.0	556.4	856.4
1363-1	Spearfish Canyon Cntry Cl	0.900	80.10	63.3	35	63.3	0.0	63.3
2106-2	Stuart Rice	0.080	2.80	0.8	30	0.8	34.8	35.6
1842-1	Tom C Davis	0.440	330.00	0.0	17	0.0	0.0	0.0
2741-2	Tubbs Land & Cattle LLC	3.340	567.00	149.5	3	1,134.0	0.0	1,134.0
419-2	Wind Cave National Park	0.150	6.00	N/A	0	12.0	65.2	77.2
Total		41.585	3,601.74	1,219.8		3,207.8	5,340.9	9,568.1

* Discussed in text. **gives additional time to develop 1707A-1. *** Reports all use types in irrigation report

There are 89 non-irrigation water rights/permits that do not have a volume limit listed in their permit and are not discussed above. They are estimated to withdraw up to their maximum instantaneous diversion rate 60% of the time, for a total estimated withdrawal of 16,897 ac-ft/yr. Based on Water Rights Staff experience, this estimate is likely to be higher than the actual withdrawals by those water rights/permits.

In addition to the potential withdrawals by future use permits described above, four other applications are deferred, held in abeyance, or pending review. Water Permit Application No. 2585-2 for Southern Black Hills Water System seeks to appropriate 1,600 ac-ft/yr but is deferred

for further study. Water Permit Application No. 2685-2 for Powertech, Inc is held in abeyance pending federal permitting and seeks to appropriate 889 ac-ft/yr. Pending Water Permit Application No. 2013-1 seeks to appropriate 2.22 cfs to irrigate 460 acres, for a maximum possible withdrawal of 920 ac-ft/yr. Water Permit Application No. 2016-1 seeks to appropriate up to 1,600 ac-ft/yr.

Summary of Statewide Hydrologic Budget

The best available estimate of recharge to the Madison aquifer in South Dakota is approximately 137,000 ac-ft/yr. The estimated withdrawals as described in the Statewide Discharge section are summarized in Table 3. The total estimated withdrawal, including withdrawals reserved for future use and held, or deferred applications is approximately 67,554 ac-ft/yr. This application may withdraw up to 145 ac-ft/yr, if approved. Therefore, based on the statewide hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 3: Summary of withdrawals from Madison aquifer rounded to the nearest 1 acre-foot.

Type	Count	Est. Rate (ac-ft/yr)
Irrigation (Table 2)	33	9,568
Volume limit	39	21,971
Diversion Rate limit	89	16,897
<i>Subtotal (authorized to withdraw)</i>	161	48,436
Future use (Table 1)	10	14,109
Deferred/held/pending	4	5,009
Grand total	175	67,554

Local Hydrologic Budget

Carter, et al used streamflow, precipitation, spring flow, estimated ground water flow, and well withdrawal data from 1987 to 1996 for the hydrologic budgets. This application is in Subarea 9 of their report. The boundaries of the Carter et al. [12] subareas were designed to minimize flow across subarea boundaries. Carter et al. [12] estimated the total recharge to the Madison and Minnelusa aquifers in Subarea 9 was 60.4 cfs. Assuming 55% of the recharge goes to the Madison aquifer, the estimated recharge in Subarea 9 is 33.2 cfs, or approximately 24,100 ac-ft/yr [10] [12]. Carter, et al. [12] do not provide values for the recharge area of the Madison and Minnelusa formations for each subarea in their report, so it is possible the proportion of recharge area to those two aquifers is different within each subarea. There are no water rights/permits authorized to withdraw, nor future use permits reserving water, from the Madison aquifer in Subarea 9. Domestic well withdrawals are negligible on the scale of this hydrologic budget. This application may withdraw up to 145 ac-ft/yr, if approved. Therefore, based on the local hydrologic budget in combination with other information available, there is reasonable probability unappropriated water is available for this application.

Observation Wells

Administrative Rule of South Dakota 74:02:05:07 requires that the Water Management Board rely upon the record of observation wells, in addition to other information, to determine that recharge exceeds withdrawals to approve an application. The Water Rights Program maintains 25 observation wells completed into the Madison aquifer [16]. The nearest observation well to

this application is CU-93C, located approximately 6 miles north of this application and the next-nearest observation well is CU-95A, located approximately 10 miles southeast of this application [16]. Figure 1 shows water level elevations in CU-93C and CU-95A [16]. Water level data in both observation wells shows a rising trend, on average. In general, water levels rise during periods of higher-than-average rainfall and decline during periods of lower-than-average rainfall. This means that recharge and natural discharge are the dominant effects in the aquifer and natural discharge is available for capture. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available for this application.

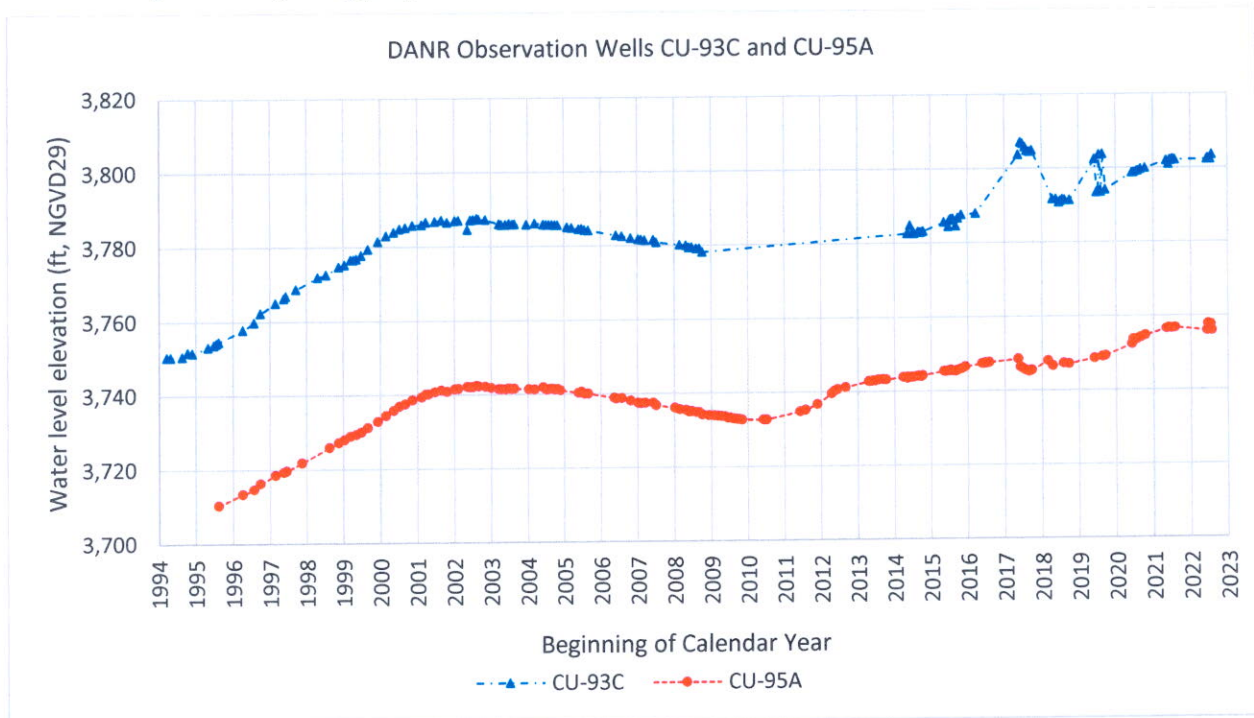


Figure 1: Water level elevations in Observation Wells CU-93C and CU-95A [16]

Possibility of Unlawful Impairment of Existing Water Rights/Permits

The nearest water rights/permits to this application that are completed into the Madison aquifer are Water Permit Nos. 2610-2 and 2730-2, located approximately 17 miles southeast of the proposed well for this application. Water Permit Application No. 2685-2 proposes to place two wells approximately 13 miles south of this application. If approved, Application No. 2685-2 would have a senior priority date to this application. The nearest domestic well completed into the Madison aquifer on file with the Water Rights Program is the well described in the Hydrogeologic Characteristics section of the report, located approximately 0.7 miles south of this application. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if a domestic well is impacted, a water right/permit causes an adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water. Administrative Rule of South Dakota 74:02:04:20(6) defines an adequate well 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 hearing for Water Permit Application No. 2313-2 for Coca-Cola Bottling Company, the Water Management Board determined that to put the waters of the state to maximum beneficial use, hydraulic head would not be protected as a means of water delivery [17]. Some drawdown from this application is likely to occur and nearby well owners may need to lower their pumps or install pumps to access the water in the aquifer. Exact aquifer behavior cannot be known without an aquifer performance test. The applicant must control their withdrawals so that nearby water rights/permits and adequate domestic wells are able to withdraw necessary water. There is no record of well interference complaints from the Madison aquifer in Custer County [18]. Observation wells completed into this aquifer near larger appropriative wells show limited drawdown when the large appropriative wells are in use [16]. Given the lack of well interference complaints in this aquifer in Custer County and limited drawdown shown in observation wells completed near larger appropriations, there is reasonable probability this application can be developed without unlawful impairment of existing water rights.

Springs

There are multiple major springs located approximately 30 miles southeast of the proposed well for this application [19]. Upon considering the deferral of Water Permit Application No. 2585-2 for Southern Black Hills Water System, the Water Management Board adopted a conclusion of law stating in part, "... The only protection South Dakota law provides when considering an application for an underground water permit for flow from an artesian spring is under the public interest criteria" [20]. Given the distance between the proposed well site and the nearest springs, there is reasonable probability this application can be developed without noticeably impacting flow from the springs.

Conclusions

1. Water Permit Application No. 2850-2 seeks to appropriate up to 145 ac-ft/yr at a maximum pump rate of 0.333 cfs from one well to be completed into the Madison aquifer located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21-T4S-R1E for a water distribution system, commercial use, and fire protection.
2. Based on the hydrologic budgets and observation well analysis, there is reasonable probability unappropriated water is available for this application.
3. There is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits and domestic uses.
4. There is reasonable probability this application can be developed without noticeably impacting flow from springs in the Black Hills.
5. This application is subject to a 20-year term limit.



Kimberly. C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

September 22, 2022

Elk Mountain Water Users Association, Inc
c/o Susan Anderson
25612 Dewey Rd
Custer SD 57735

Dear Ms. Anderson:

Water Permit Application No. 2850-2 for water distribution system, commercial and fire protection use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Custer County Chronicle (Ph # 605 673-2217) and the Rapid City Journal (Ph # 605 394-8336). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notice. The newspapers have 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.

NOTICE OF APPLICATION NO. 2850-2 to Appropriate Water

Notice is given that Elk Mountain Water Users Association, Inc., c/o Susan Anderson, 25612 Dewey Rd, Custer SD 57735 has filed an application for a water permit to appropriate up to 145 acre-feet of water annually at a maximum pump rate of 0.333 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,570 feet deep) located in the NW 1/4 NW 1/4 Section 21-T4S-R1E to supply a water distribution system as well as commercial use and fire protection. The proposed system will serve users within an approximate ten-mile radius of the well which includes portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County SD) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station. This site is located approximately 21 miles west of Custer SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2850-2 with qualifications and a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.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 this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by October 11, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by October 11, 2022.

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 _

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, September 22, 2022 11:11 AM
To: 'custernews@gwtc.net'
Subject: 2850-2, Elk Mt Water Users Association Inc
Attachments: 2850-2public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 28, 2022.

Elk Mt. Water Users Association Inc., c/o Susan Anderson, 25612 Dewey Rd, Custer SD 57735 (605 201-1087) 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

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, September 22, 2022 11:12 AM
To: RCY Legals (legals@rapidcityjournal.com)
Subject: 2850-2, Elk Mt Water Users Association Inc
Attachments: 2850-2public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 28, 2022.

Elk Mt. Water Users Association Inc., c/o Susan Anderson, 25612 Dewey Rd, Custer SD 57735 (605 201-1087) 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

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



Affidavit of Publication

State of South Dakota)

)ss.

County of Custer)

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

Elk Mountain Water Users Assn
Notice of Application
No. 2850-2 to Appropriate Water

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

Sept 28, 2023: _____;

_____;

_____;

_____;

the full amount of the fees for the publication of the annexed notice is \$ 50.07

Subscribed and sworn to me before this 28th

of September, 20 23;

Jeanne Fuerstenberg
NOTARY PUBLIC

MY COMMISSION EXPIRES: 11-30-27



NOTICE OF APPLICATION

NO. 2850-2 TO APPROPRIATE WATER

Notice is given that Elk Mountain Water Users Association, Inc., c/o Susan Anderson, 25612 Dewey Rd, Custer SD 57735 has filed an application for a water permit to appropriate up to 145 acre-feet of water annually at a maximum pump rate of 0.333 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,570 feet deep) located in the NW 1/4 NW 1/4 Section 21-T4S-R1E to supply a water distribution system as well as commercial use and fire protection. The proposed system will serve users within an approximate ten-mile radius of the well which includes portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County SD) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station. This site is located approximately 21 miles west of Custer SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2850-2 with qualifications and a

twenty-year term pursuant to SDCL 46-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.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 this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a

party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by October 11, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by October 11, 2022.

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 an approximate cost of \$50.07 and may be viewed free of charge at www.sdpublicnotices.com.

9/28

RECEIVED

OCT 26 2022

OFFICE OF WATER

*** Proof of Publication ***

STATE OF SOUTH DAKOTA)

County of Pennington)

SS:

S.D. DANR - GROUND WATER

523 E CAPITOL AVE

PIERRE SD 57501

ORDER NUMBER 50886

RECEIVED

SEP 30 2022

OFFICE OF
WATER

The undersigned, being duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, 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 for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared

in said newspaper once each day for 1
successive day, the first publication there of being on the
28 day of September, 20 22

Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 09/28/2022

TOTAL AD COST: 84.54

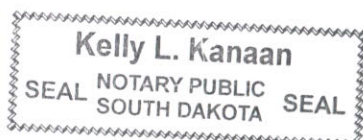
FILED ON: 9/28/2022

Subscribed and sworn to before me this

28th day of September, 20 22
Kelly L. Kanaan Notary Public

My commission expires

Jan 17, 20 25



NOTICE OF APPLICATION NO.
2850-2 to Appropriate Water

Notice is given that Elk Mountain Water Users Association, Inc., c/o Susan Anderson, 25612 Dewey Rd, Custer SD 57735 has filed an application for a water permit to appropriate up to 145 acre-feet of water annually at a maximum pump rate of 0.333 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,570 feet deep) located in the NW 1/4 NW 1/4 Section 21-T4S-R1E to supply a water distribution system as well as commercial use and fire protection. The proposed system will serve users within an approximate ten-mile radius of the well which includes portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County SD) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station. This site is located approximately 21 miles west of Custer SD. Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2850-2 with qualifications and a twenty-year term pursuant to SDCL 46-1-14 and 46-2A-20 because 1) although evidence is not available to justify issuing this permit without a 20 year term limitation, there is 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to

matters of public interest within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.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 this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by October 11, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by October 11, 2022.

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 September 28, 2022 for a total approximate cost of \$86.82 and may be viewed for free at www.sdpublicnotices.com)
Legal No: 50886

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, September 23, 2022 11:14 AM
To: sanderson@custercountysd.com
Cc: Mitchell Vogt
Subject: Water Permit Application No. 2850-2, Elk Mt Water Users
Attachments: 2850-2.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 papers to authorize publication and arrange for payment.

I am waiting for verification from the Rapid City Journal. The verification lists who you need to contact and the payment information. I have not received that email yet. I will forward it to you when it is received. It makes contacting the paper much easier. You can go ahead and contact the Custer County Chronicle.

This information is was mailed to you yesterday.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>





RECEIVED

OCT 28 2022

OFFICE OF
WATER

Petition

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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

Opposing Application for a Water Right Permit

Application No. 28502 Name of Applicant Tomas + Eracio Martinez

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

Our main concern is our water wells are the nearest to this proposed well and we have a livestock pond directly west that can possibly be affect from this well because it is spring fed.

List the reasons for your opposition to this application.

- loss of our water for our livestock
- unneccary costs that may incur if our static water levels decrease.

Late
Filed

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: Eracio Last Name: Martinez

Mailing Address: 25663 Dewey Rd

City: Edgemont State: SD Zip: 57735

Optional contact information. Phone: 307-746-5770 Email: mstymartinez2@yahoo.com

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. _____

Petitioner's Name _____

Any additional description of the unique injury or reasons for opposing this application:



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

October 27, 2022

NOTICE OF HEARING

TO: Susan Anderson Petitioners
Elk Mountain Water Users Assn. Inc. (see attached list dated October 27, 2022)
PO Box 6062
Custer SD 57730

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

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

SUBJECT: Notice of Hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

Petitions in opposition have been filed in the matter of Water Permit Application No. 2850-2 in response to the Notice of Application published in the Rapid City Journal and Custer County Chronicle on September 28, 2022. This notice schedules a hearing on Application No. 2850-2 before the South Dakota Water Management Board.

Water Permit Application No. 2850-2 proposes to appropriate up to 145 acre-feet of water annually at a maximum pump rate of 0.333 cubic feet of water per second from one well to be completed into the Madison Aquifer (approximately 1,570 feet deep) located in the NW 1/4 NW 1/4 Section 21-T4S-R1E to supply a water distribution system as well as commercial use and fire protection. The proposed system will serve users within an approximate ten-mile radius of the well which includes portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County SD) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Water will also be provided to the Highlands Volunteer Fire Department and available for purchase by retail customers via a single bulk dispensing station.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 2850-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board.

The Water Management Board will conduct a hearing to consider Application No. 2850-2 at 10:45 AM **(Central Time)**, on Wednesday, December 7, 2022, 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 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 December 7, 2022 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 opposing the application. A request for an automatic delay must be filed by **November 7, 2022**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided 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 may be represented by legal counsel. As a legal entity (Elk Mountain Water Users Association Inc.), 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.

Enclosed is a copy of the report, recommendation, affidavits of publication, and the petitions filed in the matter of Water Permit Application No. 2850-2. 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, other pleadings, and comments filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.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." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

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 the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Pontious, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Pontious@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

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 November 7, 2022. 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.

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
October 27, 2022

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated October 27, 2022, with attachments regarding Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc., was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on October 27, 2022.

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

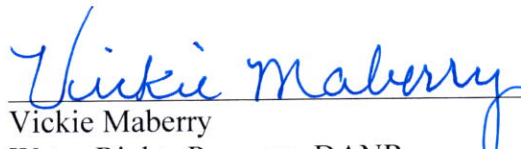
Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Above also Sent Inter-office to:

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



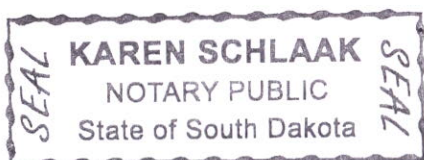
Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of October, 2022.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025



Duvall, Ron

From: Dan Nebelsick <dan.nebelsick@dgr.com>
Sent: Monday, October 24, 2022 11:35 AM
To: Duvall, Ron
Cc: Susan Anderson
Subject: RE: [EXT] Test Well for Elk Mountain Water Users Assn.

Ron,

Please use the following for US Mail:

Elk Mountain Water Users Association
C/O Susan Anderson
PO Box 6062
Custer SD 57730

Susan is the registered agent for the entity.

Please let me know if you have any questions.

Thanks,

Dan

Daniel D. Nebelsick, P.E.



1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-348-4847

www.dgr.com

Trusted. Professional. Solutions.

From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Monday, October 24, 2022 10:38 AM
To: Dan Nebelsick <dan.nebelsick@dgr.com>
Subject: RE: Test Well for Elk Mountain Water Users Assn.

Dan,

We had the US mail copy of the test well approval sent to Susan returned to us. Is there a better address than:

Susan Anderson
25612 Dewey Rd
Edgemont SD 57735

Thank you,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA

From: Duvall, Ron
Sent: Friday, October 14, 2022 2:47 PM
To: Dan Nebelsick <dan.nebelsick@dgr.com>
Cc: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Subject: Test Well for Elk Mountain Water Users Assn.

Dan,

Attached is the letter that is going out in today's mail. The copy to Susan Anderson is getting sent to the address on the water permit application but to Edgemont, rather than Custer, since the zip code is for Edgemont and Edgemont is the city identified on Association's filing with the Secretary of State.

Thank you and have a nice weekend,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA



RECEIVED

OCT 11 2022

OFFICE OF
WATER

Petition

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES

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

Opposing Application for a Water Right Permit

Application No. 2850-2 Name of Applicant ELK MT. Water Users Assoc INC.

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

The 145 acre feet of water annually could pull down the static level of 5 Natural springs and Number of shallow wells used for domestic and livestock uses that have provided water for the Stearns Ranch for as long ago as the year 1900 and probably before. The best Coon Creek water amount are here within 1 mile and used for both human & livestock uses. Losses will hurt!

List the reasons for your opposition to this application.

Ower water Rights must be protected. They are the oldest ones in this area. Some of these springs flow all winter and do not freeze. They come from below formations and possibly the same as this permit uses. A well that pumps to 4 pastures 90' deep provides water to 100 hd or 2 pairs of Bulls all winter and Household use to. Another well serves corralls. The lower dam along Elk Mt Ranch has been used to dip 75 buckets with 3 helicopters and fill semi trucks for fires & road work by Co worker for nearly 40 years. This pond refills by its self. It is the only one within the east side of ELK MT deep enough to do this. This was done on the ELK MT Fire in 5 days with 200 hd of Cattle or more.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: Daniel Norman Last Name: Stearns
Mailing Address: 25499 Dewey Rd Edgemont S. Dak. 57735
City: Edgemont S. Dak State: S. Dak Zip: 57735

Optional contact information. Phone: 605-749-2202 Email: Id Stearns@yahoo.com

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 2850-2

Petitioner's Name Daniel N. Stearns

Any additional description of the unique injury or reasons for opposing this application:

Legal description for private land

R1E sec 18 45 N2 NE4 80 Acres

HES #347 sec 18 T4 120 Acres (BIDGS)

SE4SE4 sec 18 T4 R1 40 Acres Corral well + Home place so well

S2SW4 sec 17 T4 R1 80 Acres West Fork Coon Creek Dam (Best)

N2S2 sec 17 T4 R1 160 Acres Frag Dam + spring North

N2 sec 17 T4 R1 320 Acres

SW4 sec 9 T4 R1 160 Acres

SE4 sec 8 T4 R1 160 Acres

SW4SW4 sec 8 T4 R1 40 Acres

SE4SW4 sec 8 T4 R1 40 Acres

SE4 SE4 sec 7 T4 R1 40 Acres Old Elk Mt school well unused (Home)

SW4SE4 sec 7 T4 R1 40 Acres Best Well 90' deep serve (6 Tanks)

N24N2S2 16 T4 R1 480 Acres (School Land Lease)

Government Lease permit water spring 45 1E sec 19
upper Dugout fill 5 tanks

Wyo part to permit lot 38 Mix Spring Best on the mt.

SD spring sec 7 45 1E. Guernsey spring serve app 8 tank

Iraq - Right (1950) 47-017 1-112 ACR 19.2 ACRE Fee

SE corner 0 sec 17 T4 R1

All land bought by Granddad William Stearns + Norman E Stearns with all water rights prior to 1952 back to early 1900s.

Should have report back from Weston Engineering by hearing Date.

US mail is very slow here mail 3 day a week
Stearns Family wants our water Rights protected
We have picture of all springs + dams and
close to 100 yrs of record or more. Granddad drove
horses here from White Clay Nebr. in 1900
No fences between here + Buffalo gap

Dan N. Stearns

667

RAPID CITY, 037383

THE UNITED STATES OF AMERICA

To all to Whom these Presents shall Come, Greeting:

WHEREAS, A Certificate of the Register of the Land Office at Rapid City, South Dakota, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 29, 1862, "To secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of.....

William E. Bailey

has been established and duly consummated, in conformity to law, for the *south half of the south*

east quarter and the south half of the southwest quarter of Section seventeen, the northeast quarter and the north half of the northwest quarter of Section twenty and the northwest quarter and the north half of the southwest quarter of Section twenty-one in Township four south of Range one east of the Black Hills Meridian, South Dakota, containing six hundred forty acres.

according to the Official Plat of the survey of ^{the} said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General.

NOW KNOW YE, That there is, therefore, granted by the United States unto the said claimant the tract of land above described; To have and to hold the said tract of land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for mine and remove the same pursuant to the provisions and limitations of the Act of September 29, 1916 (39 Stat., 862)

IN TESTIMONY WHEREOF, I, *Calvin Coolidge*, President of the United

States of America, have caused these letters to be made Patent and the seal of the General Land office to be hereunto affixed.

GIVEN under my hand *at the City of Washington* in the District of Columbia, the *Third*

day of *January* in the year of our Lord one thousand nine hundred and *Twenty-five* and of the independence of the United States the one hundred and *Twenty-ninth*.

By the President *Calvin Coolidge*
By *Viola B. Pugh* Secretary.
M. P. Le Roy
Recorder of the General Land Office.



RECORDED: Patent Number. 950 901

Filed for record this *7th* day of *January*, 192*9*, at *10* o'clock and *50* minutes *A.M.*

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OCT 11 2022
OFFICE OF
WATER

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OCT 11 2022

OFFICE OF
WATER

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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



Petition

Opposing Application for a Water Right Permit

Application No. 2850-2 Name of Applicant Elk Mountain Water Users Association Inc.

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

The impact of drawing 145-acre ft of water, lowering the water table, effecting my ability to continue raising livestock and support my family. As well as the increase in vehicles traveling the local gravel roads hauling water from this well, endangering people and livestock.

List the reasons for your opposition to this application.

The negative impact of drawing 145 acer ft of water from this proposed well, will have on pre-existing wells, springs and dugouts all used by my family.

The increased traffic it will bring to the Dewey Rd. and Valley Dr. which travel though our pastures and a country school, putting people and livestock at risk.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: Dalton Last Name: Stearns

Mailing Address: 10321 Two Track Trl

City: Edgemont State: South Dakota Zip: 57735

Optional contact information. Phone: (605) 440-0478 Email: bardoubled@gmail.com

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 2850-2

Petitioner's Name Dalton Stearns

Any additional description of the unique injury or reasons for opposing this application:

The Stearns Family has been ranching in this area since the 1920's overcoming challenges made by the environment and man. We have seen more drought years then wet, imbedding the importance of all our water resources. If we lose the ability to water our livestock with natural springs, dugouts and wells, it could mean the end of four going on five generations of hard work and history that made this area. As the Fourth generation I have seen so many changes to this area, in developing of the subdivisions, fewer families raising livestock and the increase in interest of locals and tourist. With the possibility of this well, it will make big and faster changes, both good and bad for everyone.

My grandpa Norman Stearns helped start the Elk Mountain Fire Dept. and I can remember the building of the fire hall. So, I have an appreciation and understanding for them wanting a well to offer better services to the community, but when it could affect many different families negative and their way of life, I will not stand for that.

With 145-acre ft of water being pulled from a well in this area there will be changes, it may or may not affect our water sources, but it will increase the traffic on the Dewey Rd. and Valley Dr with people accessing the well. Stearns Family has been grazing livestock along these roads for a hundred years and every year we seem to have a few cattle hit be vehicles passing through our pastures. My oldest boy is enrolled at Elk Mountain School on Valley Dr. along with 9 other students. I have seen people fly by the school not paying attention many times and with a well bring other vehicles that don't normally drive by the school, it will only increase and further endanger the people at the school. I feel the increase in traffic on the local roads has been overlooked by many people in favor of the well and understand this aspect needs to be brought up to different people than just the Department of Agriculture and Natural Resources.

Listed below are the water sources and location that I currently use for my ranch:

Main Well: Used for house and livestock
Drilled 10/4/2005
Depth: 1160 ft
Location: Section 27 Township 4 South Range 1 East

Older Well: Used for livestock
Drilled prior to main well
Depth: 90 ft
Location: Section 27 Township 4 South Range 1 East

Water Resources on leased land: James & Sharon Fridley

Main Spring:
Used since early 1900's for house & corrals with overflow filling two dams to the north
Depth: Hand Dug
Location: Section 8 Township 4 South Range 1 East

Second Spring
Seasonal usage for livestock
Depth: Naturally comes to the surface
Location: Section 9 Township 4 South Range 1 East

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OFFICE OF
WATER

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

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



Petition

Opposing Application for a Water Right Permit

Application No. 2850-2 Name of Applicant Elk Mountain Water Users Assoc Inc.

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

There hasn't been a demand for 145 acre feet of water from the Madison in this local area and the affects on existing local wells is concerning.

I support the Highlands Fire Department use of water from this well project, however 145 acre feet of water seems excessive.

List the reasons for your opposition to this application.

I am concerned that 145 acre feet of water will affect the recovery of our local wells. My family depends on an existing madison well which waters cattle year around. Cattle ranching is our lively hood and water is essential for our ranching operation.

This area has several madison wells that were drilled for primarily livestock water. The existing local madison wells were payed for by ranching families so they would have a dependable water source. These wells were drilled at a tremendous cost to rancher to ensure the feasibility of the ranch for the next generations.

145 acre feet of water is a tremendous amount of water this new well is asking for compared to all other local wells current and past demands.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: Travis Paulton Last Name: _____

Mailing Address: 10693 Pass Creek Rd

City: Edgemont State: SD Zip: 57735

Optional contact information. Phone: 605-673-4641 Email: tpaulton1983@gmail.com

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



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and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
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Petition

Opposing Application for a Water Right Permit

Application No. 2850-2 Name of Applicant Elk Mountain Water Users Assoc Inc.

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

- 1 We are not against a well to serve the Highlands Fire Department,
- 2 but we are alarmed by the amount of water to be extracted and the 10 mile radius.
- 3 We ranch for a living and are concerned that this proposed well
- 4 will adversely affect our Madison well along with the Madison well on our lease land, which is even closer to the Highlands Fire Department.

List the reasons for your opposition to this application.

- 1 The overwhelming volume of water allotted for commercial sale is of great concern to us and may adversely affect our livelihood in that our Madison well may be affected.
- 2 Our Madison well supplies water for our domestic use.
- 3 It is also piped to serve 20 cattle water tanks for our cattle and for 3 neighbors' cattle as well.
- 4 The proposed well may adversely affect the Madison well on our leased land.
- 5 We have 3 families (3 generations) who make a living off this ranch and we do not want to see our water supply adversely affected.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: William and Susan Last Name: Paulton
Mailing Address: 10666 Pass Creek Rd.
City: Edgemont State: SD Zip: 57735

Optional contact information. Phone: 307-629-0580 Email: paultonenterprises@gmail.com

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 2850-2

Petitioner's Name Bill Paulton/Susan Paulton

Any additional description of the unique injury or reasons for opposing this application:

We have ranched in this area for 48 years. Water is life-blood to any ranching operation.

We depend upon our Madison well and the one on our leased land.

We do not want to have our livelihood adversely affected nor threatened.



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OFFICE OF
WATER

Petition

DEPARTMENT of AGRICULTURE and NATURAL RESOURCES

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

Opposing Application for a Water Right Permit

Application No. 2850-2 Name of Applicant Elk Mountain Water Users Association Inc.

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>. Susan Anderson, Custer, SD.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

Pitts Ranch property begins roughly a mile and one half to two miles north (upstream) from the proposed well. We are not opposed to the fire hall drilling a well on county funds (property taxes). We see the need. A well pumping 150 gallons a minute (9,000 gal/hr - 216,000 gal/day) will effect flow rate, farming, contamination, and depletion of surface and shallow wells upstream affecting our cattle and farming business.

List the reasons for your opposition to this application.

-Pitts Ranch is a cow/calf and farming operation. Pitts Ranch (along with 3 others) lease ~ 35,000 acres from the USDA for cattle grazing. Pitts ranch's closest well (150' drilled in the 50's) ~ 2 miles upstream. the ranch relies on 2 springs to service 2 houses and barns. The lease has 5 wells. Some shallow, some madison, one in the deadwood; and 14 springs, ranging from 3 miles to 10 miles, all upstream from the proposed. At a potential flow rate of 77,760,000 gallon per year; We feel this well will dramatically affect the shallow wells & springs, even the madison since they are upstream a study by Penn State concurred. We have been in drought conditions for several years and have already seen a dramatic effect.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: Jim & Charel Last Name: Pitts (Pitts Ranch)

Mailing Address: 25385 Gillette Canyon Road

City: Newcastle State: WY Zip: 82701

Optional contact information. Phone: 605-749-2222 Email: _____

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 2850-2

Petitioner's Name Elk Mountain Water Users Association, Inc.

Any additional description of the unique injury or reasons for opposing this application:

Further depletion of ground and surface water effects our ability to effectively graze our livestock and service homes/building. Depletion of the upstream water leads to potential well and spring contamination due to reduced water flow. Pertaining to farming; decrease surface water increases soil compaction and potentiates nitrate issues, burning of the crops with fertilizers and high concentration of weed control chemicals.

Since the well is being set up as non-potable we can't use it for our homes if that water source dries up, thus it does not benefit the community, only the fire hall.

This MUFD is a brush truck unit with no structural certification. Insurance does not recognize the ISO number. Thus no benefit. They currently have full access to John Button's Madison well and roughly 30,000 gallons of storage. As well as water next door from Thomas Martinez, Water Users Inc. have stated to members in the community that they would restrict certain community members and businesses from purchasing water based on who they are. This well is funded by local and federal money and is a public work. Purchaser selection is not an option.

I, Jim am a 3 generation on this ranch of 75 years. I have seen as the area has developed and wells drilled the depletion, dry up, and contamination of upstream ground, surface, shallow and deep wells. Thank you for your consideration.

**Water Rights Program
File Documentation**

NAME OF PERSON OR FILE: Mitch Vogt, DGR Engineering

DATE: Aug. 4, 2022 TELEPHONE: (712) 472-2531

RE: Confirming water source for Application No. 2850-2

COMMENTS:

I called Mitch to confirm the listed desired water source, the Madison aquifer, was accurate. The listed total well depth on Form 2A likely extends below the bottom of the Madison aquifer in the area of the application. Mitch confirmed they are seeking water from the Madison aquifer.



Adam Mathiowetz

Natural Resources Engineer

DANR-Water Rights Program

Looking East - below the West Fork Coon Creek Dam - 10/09/2022





Water below the West Fork Coon Creek Dam - 10/09/2022

Dan Stearns standing near the spillway - West Fork Coon Creek Dam - 10/09/2022





**Dipping from the
West Fork Coon Creek
Dam for fire control
2011**



Fire Fighting helicopter dropping water taken from the
West Fork Coon Creek Dam during the 2011 Elk Mt Fire



Fire Fighting helicopter dipping from the West Fork Coon Creek Dam during the 2011 Elk Mt Fire



Shoreline of West Fork Coon Creek Dam looking toward Elk Mountain - 10/09/2022



**West Fork Coon Creek Dam
Spring Fed - 10/09/2022**



West Fork Coon Creek Dam
Spring Fed - 10/09/2022



West Fork Coon Creek Dam
Spring Fed - 10/09/2022



West Fork Coon Creek Dam
Spring Fed - 10/09/2022



West Fork Coon Creek Dam
Spring Fed - 10/09/2022



West Fork Coon Creek Dam - Spring Fed
Dam was built in the 1920's by William Allen Stearns
photos taken 10/09/2022



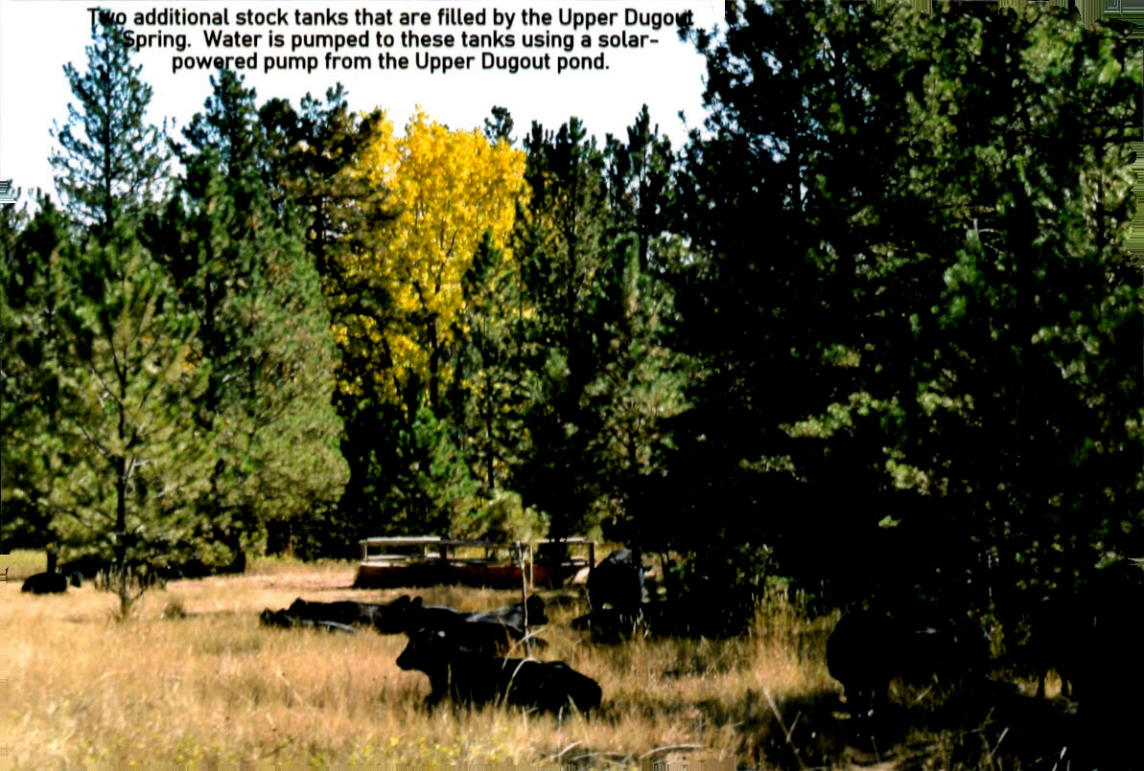


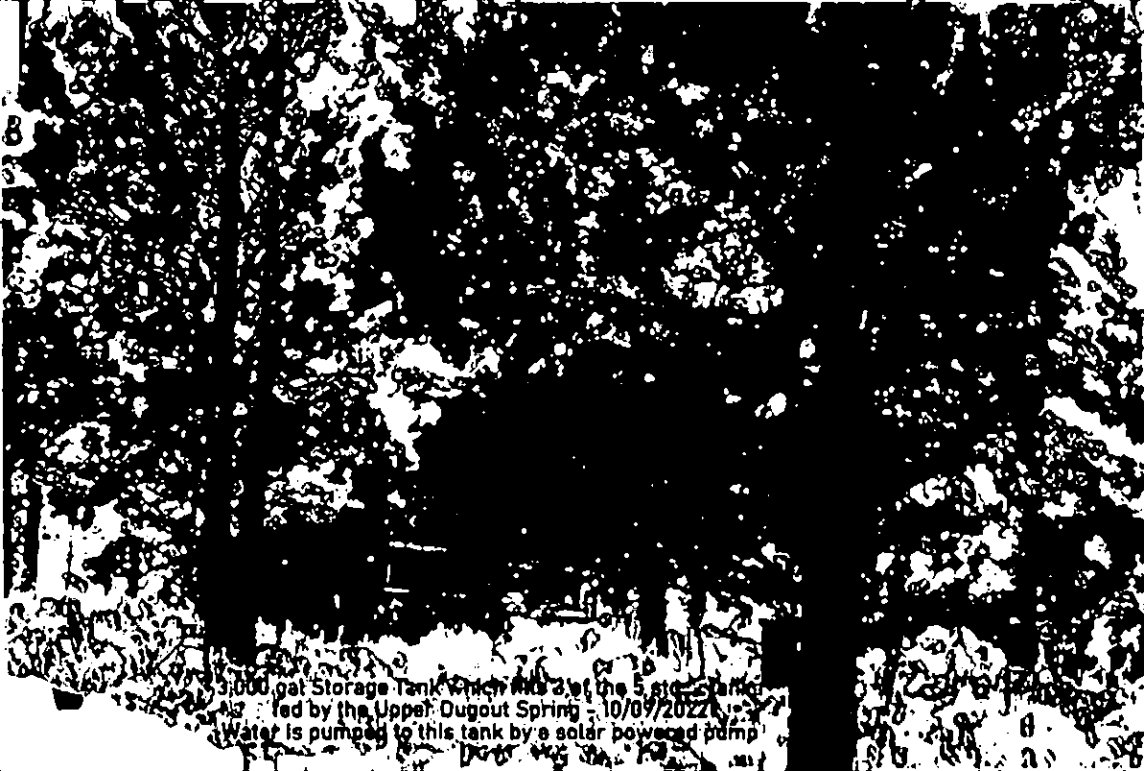
2 of the 5 stock tanks at the farm, showing the water level.



Water flow from the solar pump is sufficient to keep these 2 tanks plus the additional 3,000 gal storage tank and 3 more stock tanks filled all summer.

Two additional stock tanks that are filled by the Upper Dugout Spring. Water is pumped to these tanks using a solar-powered pump from the Upper Dugout pond.

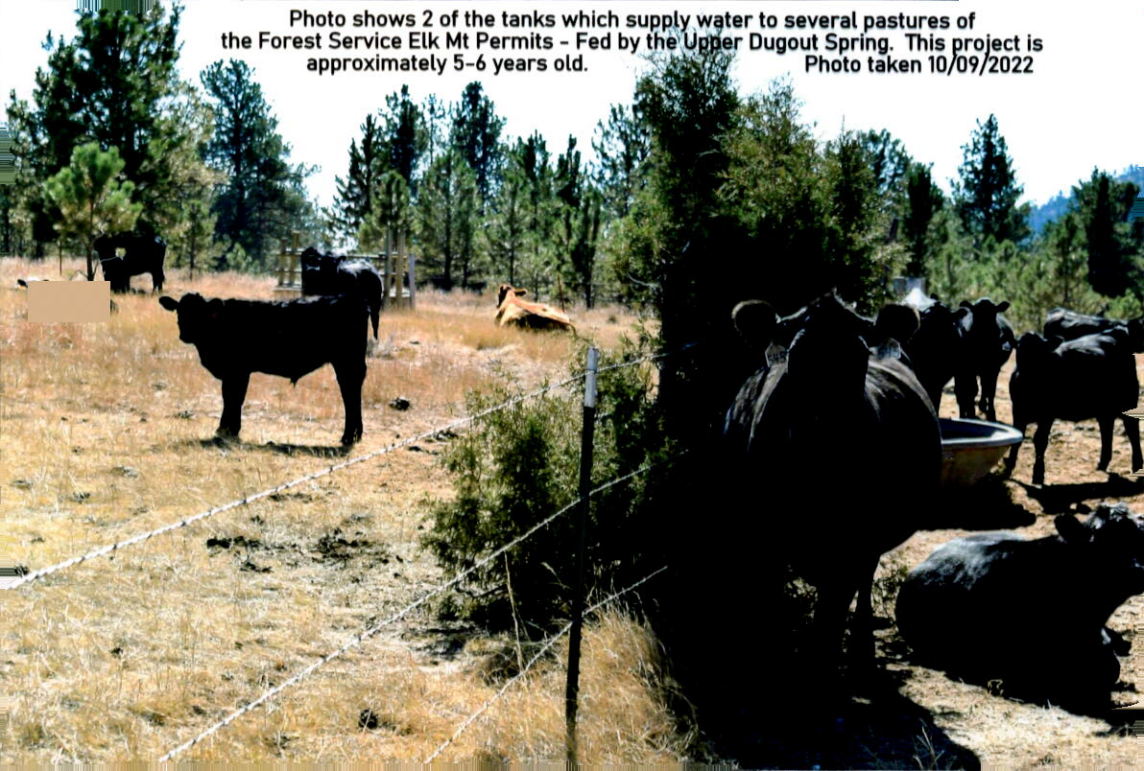




3,000 gal Storage Tank which is 2 of the 5 storage tanks
fed by the Upper Dugout Spring - 10/09/2022
Water is pumped to this tank by a solar powered pump

Photo shows 2 of the tanks which supply water to several pastures of the Forest Service Elk Mt Permits - Fed by the Upper Dugout Spring. This project is approximately 5-6 years old.

Photo taken 10/09/2022



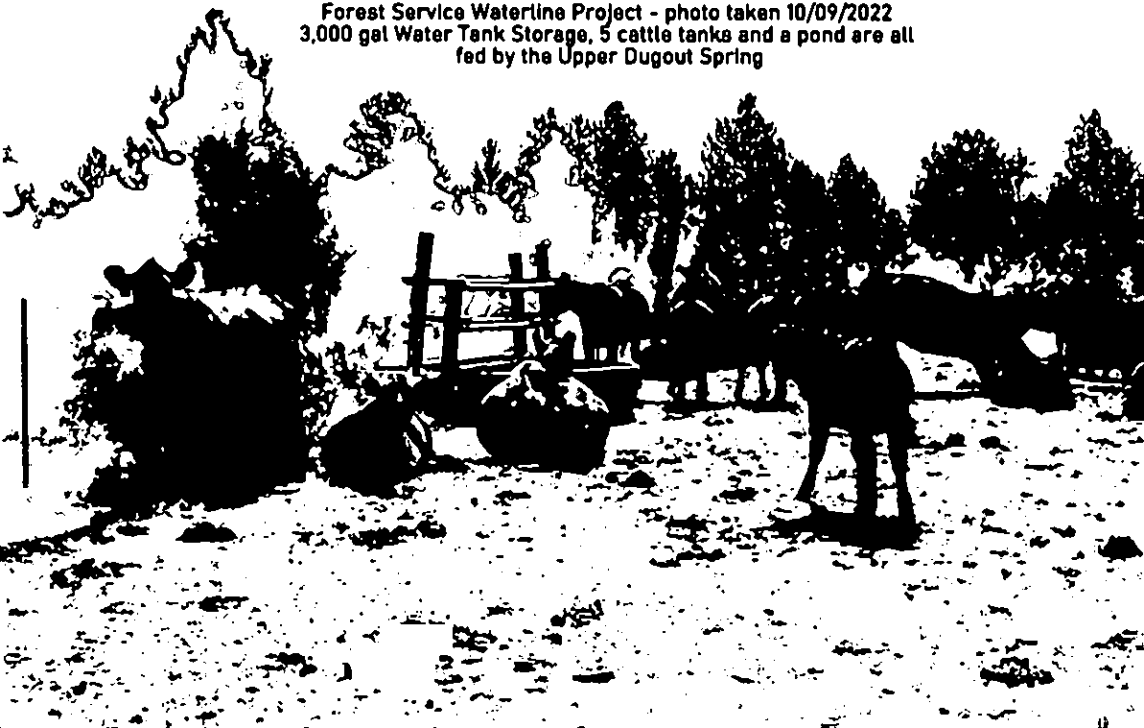
Forest Service Project fed by Upper Dugout Spring
10/09/2022



Forest Service Project fed by Upper Dugout Spring
10/09/2022



Forest Service Waterline Project - photo taken 10/09/2022
3,000 gal Water Tank Storage, 5 cattle tanks and a pond are all
fed by the Upper Dugout Spring







This dam was built by Norman 'Bud'
Stearns during the 1970's.



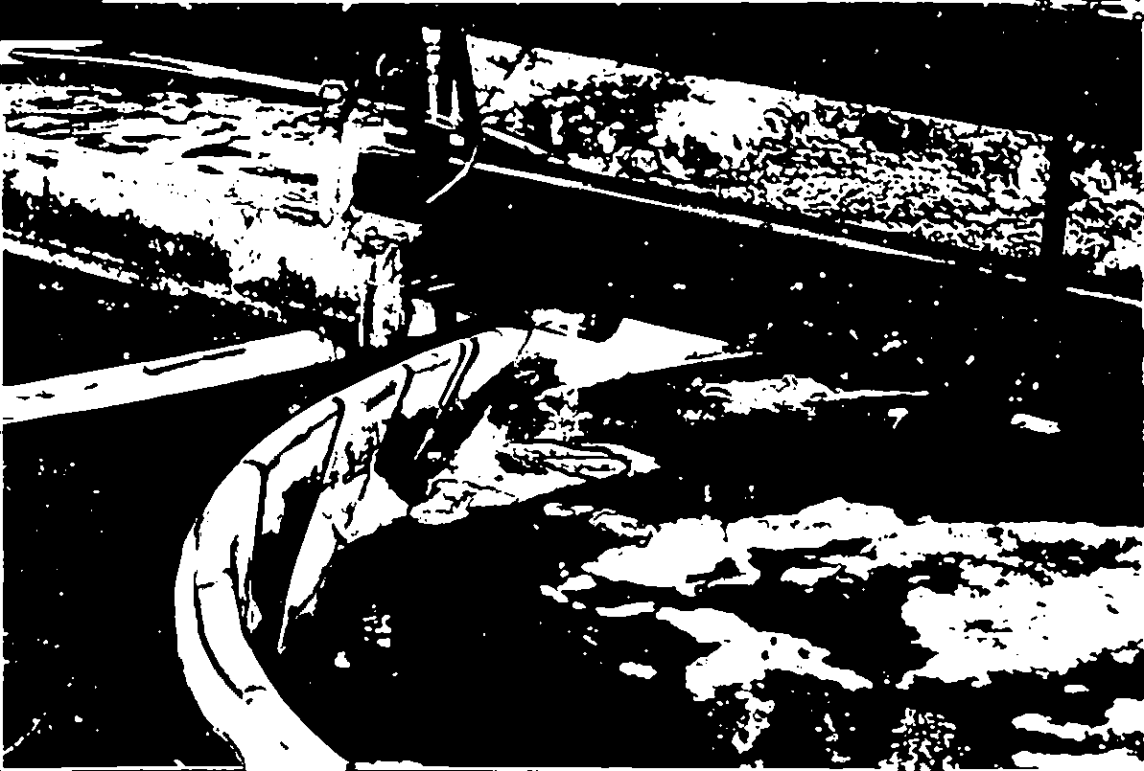
Mix Spring - near the top of Elk Mountain.
Photos taken 10/09/2022



Mix Spring Pond and 2 stock tanks
10/09/2022

A photograph of a forest stream. The water is shallow and reflects the surrounding trees. A person is visible in the background on the left side, standing near a small structure or fence. The forest is dense with tall trees, and the ground is covered in fallen leaves and branches. The lighting is bright, suggesting a sunny day.

Mix Spring Pond and
Stock Tanks
10/7/01 10:29







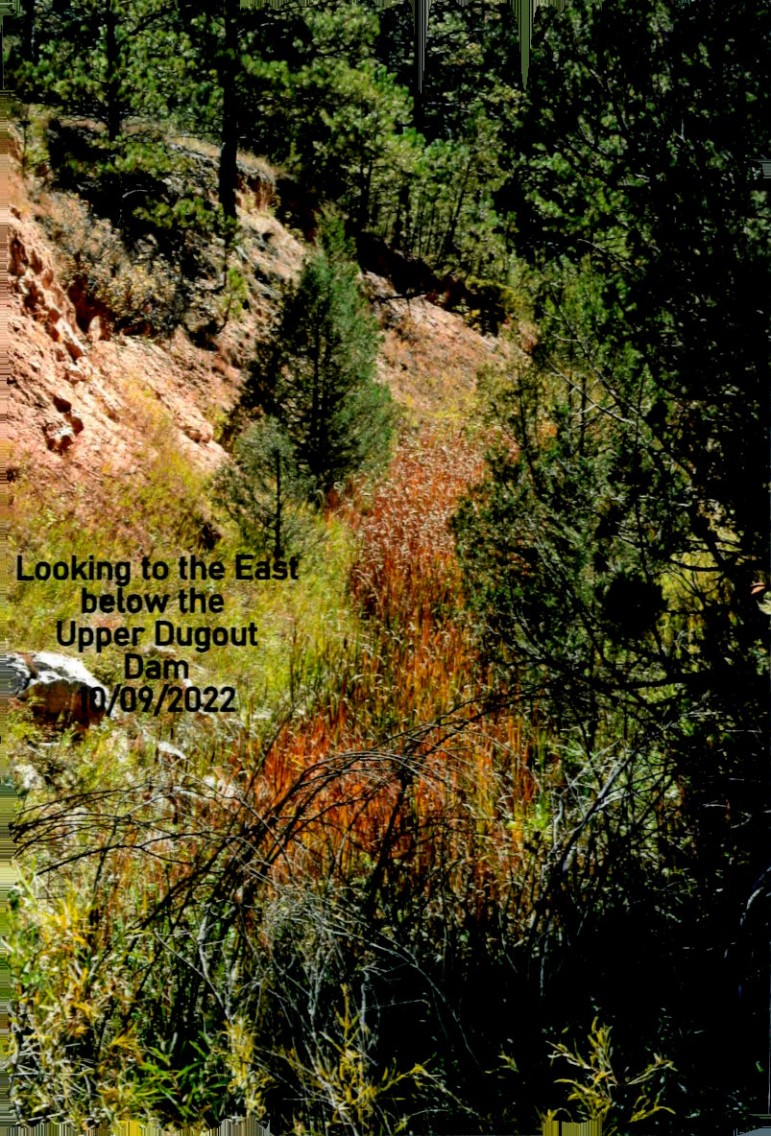
Mix Spring Pond and Stock Tanks
Forest Service Project on top
of Elk Mountain
photos taken 10/09/2022



Upper Dugout Spring Pond - 10/09/2022

A person wearing a cowboy hat, a plaid shirt, and dark pants with a red strap is standing in a field of tall, dry grass. They are working on a solar panel that is mounted on a wooden post. The background shows a dense forest of evergreen trees under a clear blue sky. The text is overlaid in the bottom left corner.

Upper Dugout Dam
Solar Panels
Forest Service Project
Now maintained by
FS Permit holders
10/09/2022



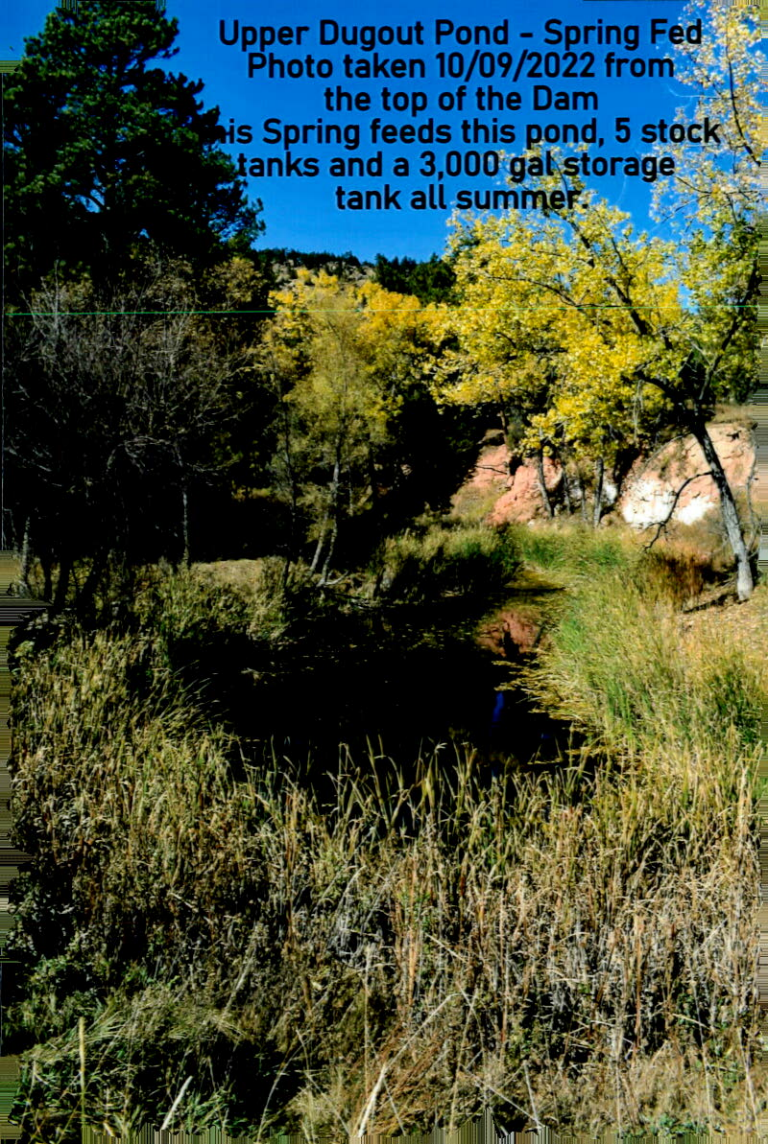
Looking to the East
below the
Upper Dugout
Dam
10/09/2022

Upper Dugout Spring
Dam and Pond
10/09/2022

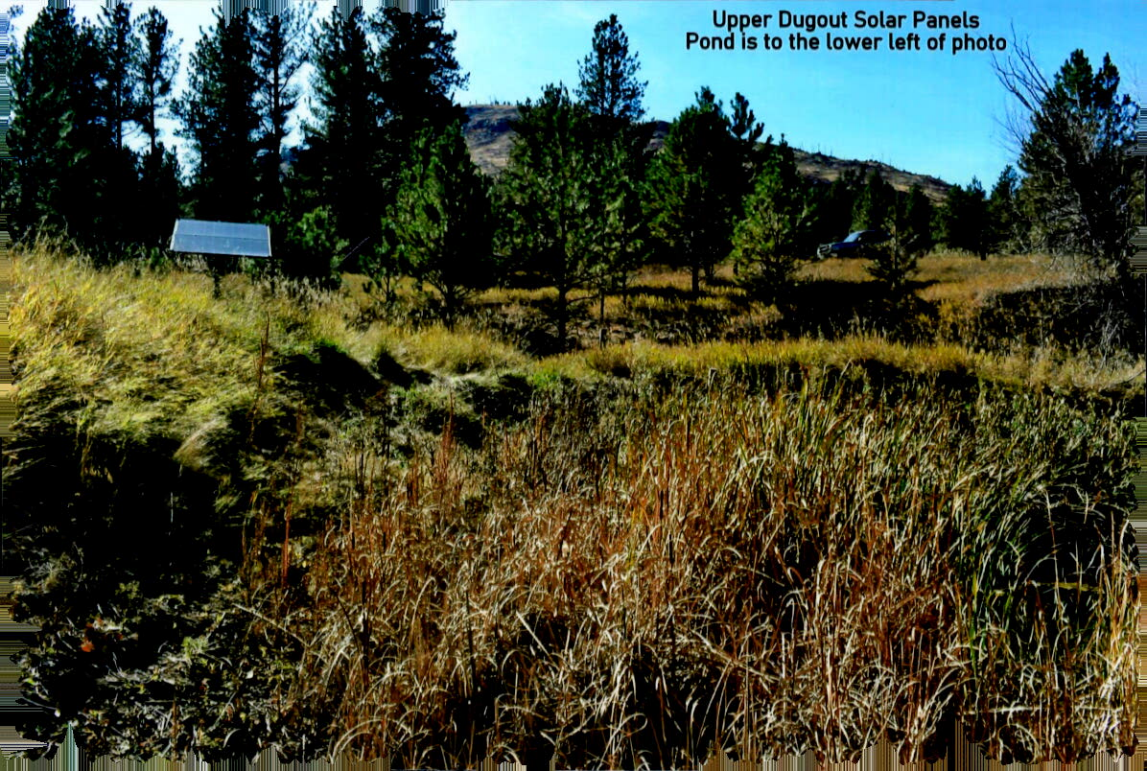


Upper Dugout Pond - Spring Fed
Photo taken 10/09/2022 from
the top of the Dam

This Spring feeds this pond, 5 stock
tanks and a 3,000 gal storage
tank all summer.



Upper Dugout Solar Panels
Pond is to the lower left of photo



**Upper Dugout Dam
and Pond**

10/09/2022



**Looking to the South from the top
of the Big Dam - East Fork Coon Creek Dam
10/09/2022**



Big Dam - East Fork Coon Creek Dam - Spring Fed - 10/09/2022
South Face and Spillway



North face of the Big Dam - East Fork Coon Creek Dam - 10/09/2022
This dam has overflowed multiple times in the past with water running over the spillway (left edge of photo). Water continues down to Dalton & Dani Stearns' property.



**The face of the Big Dam - East Fork Coon Creek Dam was re-rocked in the 1960's
by Norman 'Bud' Stearns & his father-in-law Raymond Gorsuch**



Big Dam - East Fork Coon Creek - Spring Fed - 10/09/2022
Built by Norman 'Bud' Stearns after the Water Rights paperwork was approved in 1950



Big Dam - East Fork Coon Creek Dam - Spring Fed - 10/09/2022
Looking North



Big Dam - East Fork Coon Creek - Spring Fed - 10/09/2022
The Dam was built in the early 1950's by Norman 'Bud' Stearns
Dam is shown in upper left half of photo



Big Dam - East Fork Coon Creek - Spring fed - 10/09/2022
This whole area will be full of water during a wet year







Thomas Martinez Dam - 10/09/2022
Not Spring Fed



Dirt Work started at the Elk Mt Volunteer Fire Station - 10/09/2022



School Section Spring
10/09/2022



School Section Spring - 10/09/2022
Looking down into the draw
from the west side



School Section Spring

10/09/2022

Water flow is higher in
the spring and lower

at present

School Section Spring - 10/09/2022
Looking South from the tanks
Hillsides are covered with chokecherries and
other wild shrubs which bloom every spring





Dan Stearns adjusting the pipe at
the School Section Spring
10/09/2022

School Section Spring • 10/09/2022
Where the spring flows out of the
hillside



School Section Spring - 10/09/2022



School Section Spring
10/09/2022



Duvall, Ron

From: Duvall, Ron
Sent: Monday, July 25, 2022 9:34 AM
To: 'Mitchell Vogt'
Cc: Schlaak, Karen; Dan Nebelsick; Trent Bruce; sanderson@custercountysd.com; Tyson Mitzel
Subject: RE: [EXT] Elk Mt Water Users Assoc Inc.

Mitch,

We will add the uses to the application and this email communication to the file to document the additions.

Thank you,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA

From: Mitchell Vogt <mitchell.vogt@dgr.com>
Sent: Thursday, July 21, 2022 9:54 AM
To: Duvall, Ron <Ron.Duvall@state.sd.us>
Cc: Schlaak, Karen <Karen.Schlaak@state.sd.us>; Dan Nebelsick <dan.nebelsick@dgr.com>; Trent Bruce <trent.bruce@dgr.com>; sanderson@custercountysd.com; Tyson Mitzel <tyson.mitzel@dgr.com>
Subject: RE: [EXT] Elk Mt Water Users Assoc Inc.

Hi Ron,

Thanks for reaching out. Yes, if you think it makes sense to list multiple water use types then I think we should as well. The current plan is to incorporate a bulk water sale/fill station at the well site. The fire department will have a dedicated service connection for potable water, and they will also have the ability to fill existing cisterns for fire-fighting storage.

Let me know if you need anything else from me, or if you can just add a note to your file.

Thanks,

Mitch Vogt – EI, MBA, CPCU®



1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-541-5399

www.dgr.com

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From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Wednesday, July 20, 2022 9:35 AM

To: Mitchell Vogt <mitchell.vogt@dgr.com>

Cc: Schlaak, Karen <Karen.Schlaak@state.sd.us>; Dan Nebelsick <dan.nebelsick@dgr.com>; Trent Bruce <trent.bruce@dgr.com>; sanderson@custercountysd.com; Tyson Mitzel <tyson.mitzel@dgr.com>

Subject: RE: Elk Mt Water Users Assoc Inc.

Mitchell,

I am looking over the application as well and, based on the project description in item No. 7, would you like "commercial" use added to the types of water use since you may be providing service to bulk water users? Also, I see the volunteer fire department is being provided water but I don't know if they are just a service connection or if the water is for use in fire-fighting. If fire-fighting, you may also want to add "fire protection" as another type of use. Please let me know.

Thank you,

Ron Duvall

**Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program**

605.773.3352

danr.sd.gov



DANR
SOUTH DAKOTA

From: Mitchell Vogt <mitchell.vogt@dgr.com>

Sent: Monday, July 18, 2022 5:27 PM

To: Schlaak, Karen <Karen.Schlaak@state.sd.us>

Cc: Dan Nebelsick <dan.nebelsick@dgr.com>; Trent Bruce <trent.bruce@dgr.com>; Susan Anderson <sanderson@custercountysd.com>; Tyson Mitzel <tyson.mitzel@dgr.com>

Subject: RE: [EXT] Elk Mt Water Users Assoc Inc.

Karen,

Yes, that is correct. We anticipate this well serving users within a 10-mile radius, as indicated by the red circle.

Thanks for the quick turnaround. Let me know if you need anything else.

Thanks!

Mitch Vogt – EI, MBA, CPCU®



1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-541-5399

www.dgr.com

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From: Schlaak, Karen <Karen.Schlaak@state.sd.us>

Sent: Monday, July 18, 2022 8:41 AM

To: Mitchell Vogt <mitchell.vogt@dgr.com>

Subject: RE: Elk Mt Water Users Assoc Inc.

Mitch,

Schlaak, Karen

From: Mitchell Vogt <mitchell.vogt@dgr.com>
Sent: Monday, July 18, 2022 5:27 PM
To: Schlaak, Karen
Cc: Dan Nebelsick; Trent Bruce; Susan Anderson; Tyson Mitzel
Subject: RE: [EXT] Elk Mt Water Users Assoc Inc.
Attachments: Usage Radius Map-1.pdf

Karen,

Yes, that is correct. We anticipate this well serving users within a 10-mile radius, as indicated by the red circle.

Thanks for the quick turnaround. Let me know if you need anything else.

Thanks!

Mitch Vogt – EI, MBA, CPCU®

 1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-541-5399
www.dgr.com

Trusted. Professional. Solutions.

From: Schlaak, Karen <Karen.Schlaak@state.sd.us>
Sent: Monday, July 18, 2022 8:41 AM
To: Mitchell Vogt <mitchell.vogt@dgr.com>
Subject: RE: Elk Mt Water Users Assoc Inc.

Mitch,
Received the revised application.

I have a question regarding the map with the red circle. Does the red circle indicate the proposed area the water association may serve? For purposes of the public notice we would state the well is located in the NW ¼ NW ¼ Section 21-T4S-R1E serving users in portions of T3S-R1E, T3S-R2E, T4S-R1E, T4S-R2E, T5S-R1E, T5S-R2E and T6S-R1E (Custer County) and T44N-R61W, T44N-R60W, T43N-R61W, T43N-R60W, T42N-R61W, T42N-R60W, T41N-R60W (Weston County, WY). Do you agree?

Karen

From: Mitchell Vogt <mitchell.vogt@dgr.com>
Sent: Saturday, July 16, 2022 9:13 PM
To: Schlaak, Karen <Karen.Schlaak@state.sd.us>
Cc: Susan Anderson <sanderson@custercountysd.com>; Trent Bruce <trent.bruce@dgr.com>; Dan Nebelsick <dan.nebelsick@dgr.com>; Tyson Mitzel <tyson.mitzel@dgr.com>
Subject: FW: [EXT] Elk Mt Water Users Assoc Inc.

Hi Karen,

I've attached a revised water rights application on behalf of Elk Mountain Water Users Association, Inc. We've reduced the annual volume from 240 acre-ft to 145 acre-ft. The revised application also includes a map showing the extent of the service area. Please let us know if you need anything else.

Regards,

Mitch Vogt – EI, MBA, CPCU®



1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-541-5399

www.dgr.com

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From: Trent Bruce <trent.bruce@dgr.com>

Sent: Friday, July 8, 2022 9:36 AM

To: Mitchell Vogt <mitchell.vogt@dgr.com>

Cc: Tyson Mitzel <tyson.mitzel@dgr.com>; Dan Nebelsick <dan.nebelsick@dgr.com>

Subject: FW: Elk Mt Water Users Assoc Inc.

FYI

Trent Bruce, PE



2909 East 57th Street
Sioux Falls, SD 57108
phone: 605-339-4157
cell: 605-789-0625

www.dgr.com

Trusted. Professional. Solutions.

From: Susan Anderson <sanderson@custercountysd.com>

Sent: Friday, July 8, 2022 9:34 AM

To: Schlaak, Karen <Karen.Schlaak@state.sd.us>

Cc: Trent Bruce <trent.bruce@dgr.com>; Dan Nebelsick <dan.nebelsick@dgr.com>

Subject: RE: Elk Mt Water Users Assoc Inc.

Hello, Karen –

Thank you for letting me know that you received the Elk Mountain Water Users Association's application for water appropriation.

I will forward your questions/concerns to Trent Bruce and Dan Nebelsick from DGR Engineering. It is my understanding that they have been working with DANR with regard to this project.

If you have any further technical questions, please contact Trent and Dan. They have been retained as our engineering firm for this water project.

Thank you.

Best regards,

Susan Anderson

Susan M. Anderson, J.D.
Custer County Commission Legal Counsel
420 Mount Rushmore Road
Custer, SD 57730
Cell: 605.201.1087

From: Schlaak, Karen <Karen.Schlaak@state.sd.us>
Sent: Thursday, July 7, 2022 1:48 PM
To: Susan Anderson <sanderson@custercountysd.com>
Subject: Elk Mt Water Users Assoc Inc.

Ms. Anderson,

Thank you for submitting the *Application for a Permit to Appropriate Water* for Elk Mt. Water Users Association Inc. In order to complete the application, the following is required.

- Please submit a map that outlines the entire area that will be served by the water association.
- The application requests 150 gallons per minute and 240 acre-feet of water annually. The volume listed on the application appears to have been calculated based on continuous pumping at the rate of 150 gallons per minute. It is unrealistic that 150 gallons per minute will be pumped continuously during the entire year. In calculating the annual volume, be reasonable but also plan for the maximum annual volume of use from the well at full development.

If you have questions, please let me know.

Karen Schlaak
DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



Schlaak, Karen

From: Dan Nebelsick <dan.nebelsick@dgr.com>
Sent: Thursday, June 2, 2022 5:08 PM
To: Gronlund, Eric
Cc: Mitchell Vogt; Trent Bruce; Schlaak, Karen
Subject: RE: [EXT] WellPermitApplicationCOMBINED_05.27.22.pdf

Eric,

Thanks for the clarification. We will confirm what the system wants to apply for and submit the application / fee accordingly.

Dan

Daniel D. Nebelsick, P.E.

 1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-348-4847
www.dgr.com

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From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Thursday, June 2, 2022 3:31 PM
To: Dan Nebelsick <dan.nebelsick@dgr.com>
Cc: Mitchell Vogt <mitchell.vogt@dgr.com>; Trent Bruce <trent.bruce@dgr.com>; Schlaak, Karen <Karen.Schlaak@state.sd.us>
Subject: RE: WellPermitApplicationCOMBINED_05.27.22.pdf

No – the total fee is \$700 (\$500 application and \$200 inspection feet).

You appear to be attempting to interpret the \$100 fee is for a diversion of 45 gpm or less and therefore since 45 gpm pumped 24/7 365 day equates to 72.5 ac-ft the application fee should only be \$100. However, the application indicates the pump rate is 75 gpm (not < 45gpm) so the \$500 application fee applies.

Eric

From: Dan Nebelsick <dan.nebelsick@dgr.com>
Sent: Thursday, June 2, 2022 3:03 PM
To: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Cc: Mitchell Vogt <mitchell.vogt@dgr.com>; Trent Bruce <trent.bruce@dgr.com>
Subject: FW: [EXT] WellPermitApplicationCOMBINED_05.27.22.pdf

Eric,

We are working on another new well out in the southern black hills. Can you confirm the fee for the attached permit application in \$300? (\$100 for 72 acre-ft and \$200 for the inspection fee)?

Thanks,

Dan

Daniel D. Nebelsick, P.E.



1302 South Union Street
Rock Rapids, IA 51246
phone: 712-472-2531
cell: 712-348-4847

www.dgr.com

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From: Mitchell Vogt <mitchell.vogt@dgr.com>
Sent: Thursday, June 2, 2022 1:41 PM
To: Dan Nebelsick <dan.nebelsick@dgr.com>
Subject: RE: WellPermitApplicationCOMBINED_05.27.22.pdf

Dan,

Disregard the previous attachment. This one should be current.

Thanks,

Mitch Vogt

From: Mitchell Vogt
Sent: Thursday, June 2, 2022 1:38 PM
To: Dan Nebelsick <dan.nebelsick@dgr.com>
Subject: RE: WellPermitApplicationCOMBINED_05.27.22.pdf

Dan,

Application is attached. Revised to show 75 gpm instantaneous flow and 72 acre-feet annual volume, as discussed.

Thanks,

Mitch Vogt

From: Mitchell Vogt
Sent: Wednesday, June 1, 2022 1:37 PM
To: Dan Nebelsick <dan.nebelsick@dgr.com>
Subject: RE: WellPermitApplicationCOMBINED_05.27.22.pdf

Dan,

Revised application is attached. Should be ready to send to Trent and/or submit to DENR with the \$300 fee.

Thanks,

Mitch Vogt

From: Dan Nebelsick <dan.nebelsick@dgr.com>
Sent: Friday, May 27, 2022 2:20 PM

To: Mitchell Vogt <mitchell.vogt@dgr.com>

Subject: WellPermitApplicationCOMBINED_05.27.22.pdf

Mitch,

See attached comments. Let me know if you want to discuss.

Dan



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 4, 2023

NOTICE

TO: J. Scott James, Attorney
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Petitioners
(see attached list dated March 7, 2023)

Matthew E. Naasz, Attorney
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

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

FROM: Eric Gronlund, Chief Engineer
SD DANR, 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. 2850-2, Elk Mountain Water Users Association Inc.

Notice is hereby given that on the 12th day of July 2023, 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.

Enclosures

c: David McVey, Water Management Board Counsel

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
March 7, 2023

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

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

IN THE MATTER OF WATER
APPLICATION NO. 2850-2, Elk
Mountain Water Users Association,
Inc.

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FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on May 3, 2023. Board members James Hutmacher, Peggy Dixon, Rodney Freeman, Tim Bjork, Chad Comes, and Bill Larson were present at the hearing and heard the evidence presented. Applicant Elk Mountain Water Users Association, Inc. (Elk Mountain) was represented by J. Scott James. Petitioners Daniel Stearns and Dalton Stearns were represented by Robert J. Galbraith. Petitioners Tomas and Eraclio Martinez were represented by Matthew E. Naasz. Petitioner Travis Paulton appeared pro se. Ann F. Mines Bailey represented the Department of Agriculture and Natural Resources, 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 July 7, 2022, Water Rights received Water Permit Application No. 2850-2 on behalf of Elk Mountain seeking an appropriation of 145 acre-

feet of water per year at a maximum diversion rate of 0.333 cubic feet of water per second (cfs) from one well to be completed into the Madison aquifer for use in a water distribution system, for commercial use, and for fire protection in Custer County. The well is to be located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 21 T4S-R1E.

2. The Chief Engineer, Eric Gronlund, recommended approval of the application subject to qualifications.

3. Notice of Water Permit Application No. 2850-2 was timely advertised on September 28, 2022, in the Rapid City Journal and the Custer County Chronicle (Custer County) and posted on the DANR website.

4. Water Rights received timely petitions in opposition to Water Permit Application No. 2850-2 from Dalton Stearns, Daniel Stearns, William and Susan Paulton, Travis Paulton, and Jim and Charol Pitts on October 11, 2022.

5. Water Rights also received a petition in opposition from Tomas and Eraclio Martinez on October 28, 2022, after the deadline. A motion to dismiss the Martinezes was made by Water Rights. Initially, the prehearing chair granted the motion to dismiss; however, upon appeal, the Board determined that the Martinezes should be allowed to participate.

6. The matter was scheduled to be heard by the Water Management Board during its December 7, 2022 meeting. A request for an automatic delay was made and the hearing was rescheduled for the next Board meeting

to be held on March 8, 2023. Due to weather concerns, the hearing was then continued from the Board's March meeting to the May meeting.

7. Water Permit Application No. 2850-2 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 whether there is a reasonable probability that unappropriated water is available for the proposed use, whether the proposed use would impair domestic water uses and water rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest pertaining to matters of public interest within the regulatory authority of the Water Management Board.

8. Kim Drennon, a natural resources engineer with Water Rights, reviewed the permit application and performed a technical review of the application. Ms. Drennon provided expert testimony regarding the technical review of the application to the Board.

9. The Madison aquifer is composed of the permeable and saturated portions of the Madison Group which is comprised of limestone and dolomite. It is older and stratigraphically lower than the Greenhorn Formation. The Madison aquifer underlies approximately 210,000 square miles in Montana, Wyoming, North Dakota, and South Dakota. In South Dakota, it underlies approximately 30,000 square miles. Aquifer material in the area of the proposed point of diversion averages a thickness of approximately 400 feet and occurs approximately 1,020 feet below surface. The aquifer is under

confined conditions in the area of the point of diversion with well logs in the area demonstrating an artesian head pressure of approximately 130 feet.

10. The Madison aquifer receives recharge through infiltration of precipitation along the outcrop and from streamflow losses. The best information available calculates that recharge to the Madison aquifer equals 137,000 acre-feet of water per year in South Dakota.

11. Ms. Drennon calculated withdrawals from the Madison aquifer in South Dakota to be approximately 67,554 acre-feet per year, including water reserved by future use permits.

12. Ms. Drennon further testified that there are 25 observation wells completed into the Madison aquifer. A review of the data from those observation wells indicates that the aquifer is responding to climatic conditions and that natural discharge is available for capture.

13. Ms. Drennon testified it is her conclusion that, based upon her review of the best information available regarding recharge to the aquifer, existing water rights, and the observation well data, there is sufficient unappropriated water available to satisfy this application.

14. There are 161 existing water rights/permits currently authorized to withdraw water from the Madison aquifer in South Dakota.

15. Ms. Drennon testified that the nearest existing domestic well on record is located approximately 0.7 miles to the south of the proposed point of diversion and owned by the Martinezes. Based upon the statements and maps presented, it is believed that that domestic well completion report, as

submitted by the well driller, is inaccurate and the well is actually 900 feet from the proposed point of diversion.

16. The nearest existing water right to the proposed point of diversion is approximately 17 miles to the southeast.

17. The closest observation well is approximately 6 miles north of the proposed point of diversion.

18. Ms. Drennon testified that the Madison aquifer is highly transmissive in the area of this application. She furthered her explanation by stating that an aquifer that has high transmissivity will have lower drawdown in nearby wells because the aquifer can recharge the area more quickly.

19. Ms. Drennon concluded that, based upon the relatively low rate of diversion, the high transmissivity of the aquifer, the presence of approximately 130 feet of head pressure in the area, and no previous complaints of interference in the aquifer, there is a reasonable probability that the application could be developed without unlawful impairment to existing rights.

20. Ms. Drennon also testified that the closest springs stemming from the Madison aquifer are located approximately 30 miles southeast of the proposed point of diversion and that it would be highly unlikely that the springs would be affected by this proposed diversion. She further testified that the springs in the vicinity of the proposed point of diversion are not from the Madison aquifer and most likely come from the Minnekahta Formation or other alluvial formations in the area.

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

22. The Board also received the testimony of applicant's expert witness, Dan Nebelsick, a civil engineer with DGR Engineering. Mr. Nebelsick assisted Elk Mountain with the design for the project and with submitting the application for a water right. In doing so, Mr. Nebelsick worked with Elk Mountain to estimate the volume of water necessary to meet the proposed uses. Mr. Nebelsick testified that he also performed a technical review.

23. Mr. Nebelsick testified that the Madison aquifer is fully saturated at this location. He further testified that there was unappropriated water available.

24. Mr. Nebelsick additionally testified that the springs in this area do not likely originate from the Madison aquifer given the confining layer and the lack of head pressure in the Madison aquifer even if it could penetrate the confining layer.

25. Mr. Nebelsick also calculated the potential drawdown should the proposed diversion be granted. His calculations demonstrated that if the proposed diversion pumped at its maximum permitted rate of 150 gallons per minute continuously for 24 hours, the drawdown at the Martinez well would range between 3 to 70 feet based upon the range of potential transmissivity rates.

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

27. Both Ms. Drennon and Mr. Nebelsick testified that the best information regarding the characteristics of the aquifer in this location and the potential effects of the proposed diversion on nearby wells would be obtained through an aquifer performance test, also referred to at times as an aquifer pump test. Both, however, testified that the best information available are the studies that comprise the Black Hills Hydrology Report and upon which they each relied.

28. John Morgan, president of the Elk Mountain Water Users Association, also offered testimony to the Board. Additionally, Mr. Morgan is a member of the volunteer fire department. Mr. Morgan testified how the Highlands Fire Department currently obtains water from Newcastle, approximately 18 miles away, to fight fire. Mr. Morgan testified about the water needs and anticipated use of the water by the residents in the area.

29. The Board also received testimony from Luke Caster. Mr. Caster testified that he lives in the area and is the chief of the Highlands Fire Department. Mr. Caster testified that while there is water storage around the area, having this water permit would reduce the travel time. Mr. Caster also testified regarding the history of fires in the area and opined that the fires in recent times have been larger than those in the past.

30. Kent Keidel also provided testimony to the Board. Mr. Keidel lives in the area of the proposed diversion. He testified that the water is needed and that the sources currently available are not reliable.

31. Eraclio Martinez testified before the Board. His family owns and operates the Martinez Ranch located adjacent to the proposed point of diversion. Mr. Martinez testified that their well is located approximately 900 feet from the proposed point of diversion. Mr. Martinez testified that the well is the main water supply for his family and his father's family as well as the cattle and horses which they manage on the ranch. He expressed concerns that his well would be impacted by the proposed diversion.

32. Travis Paulton, a cattle rancher, local landowner and professional wildland firefighter, also provided testimony to the Board. Mr. Paulton testified that his ranch relies on their well which is completed into the Madison aquifer and located 4.7 miles south of the proposed point of diversion. Mr. Paulton expressed his concerns regarding the amount of water requested by this proposed diversion and his belief that the amount of water requested is greater than what is needed.

33. Shaun Pitts additionally provided testimony to the Board regarding his involvement with the Highlands Fire Department, including his family's provision of equipment and water for the fighting of fires in the area. Mr. Pitts further testified regarding the presence of a commercial well in the area that is available to the public for the purchase of water.

34. The Board also received testimony from Dalton Stearns.

Mr. Stearns testified regarding the locations of a number of different homes, wells, and water sources. Mr. Stearns also testified that his ranching operation and family rely on the Madison aquifer well on his land.

Mr. Stearns described the reliance of his family and others upon the springs and surface waters located on his land and his leased land and the effects that would be felt should those sources go dry. He further expressed his concerns about this project and its use of public funds and the amount of water requested.

35. Mr. Daniel Sterns also testified before the Board. Mr. Stearns testified that he owns land in the area of the proposed diversion. Mr. Stearns testified about the springs on his land and in the vicinity and the testing of the water which he had performed.

36. Petitioners did not submit sufficient evidence through expert opinions, testimony, or other evidence that would support a determination that there is not a reasonable probability that there is unappropriated water available, that there would be an unlawful impairment should the application be granted, that this appropriation is not a beneficial use of water, or that it is not in the public interest.

37. The springs mentioned by petitioners are not sourced from the Madison aquifer and most likely sourced from the Minnekahta Formation.

38. The best information reasonably available regarding the Madison aquifer is the Black Hills Hydrology Report.

39. The Board finds that based upon the best information reasonably available, the factors of SDCL § 46-2A-9 are satisfied.

40. The evidence establishes that there is unappropriated water available in the Madison aquifer to satisfy this application.

41. The evidence establishes the proposed diversion would not unlawfully impair existing water rights or domestic water uses.

42. The Board further finds that the proposed uses of the water for a water distribution system, commercial use, and fire suppression constitute beneficial uses.

43. The Board further finds that placing the water to these beneficial uses is in the public interest.

44. 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 application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting the application. The recommendation, however, is not 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 as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by §§ 46-2-9 and 46-2-11.” 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. South Dakota Codified Law, section 46-6-3.1 provides an exception to the recharge/withdrawal limitation. It states in pertinent part, “[a]n 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 estimated average annual recharge for use by water distribution systems.” The Madison aquifer is older and stratigraphically lower than the Greenhorn Formation. Additionally, the permit is for use in a water distribution system. Thus, the appropriation may be granted even if the withdrawal would exceed the estimated annual recharge.

9. Nonetheless, the Board concludes it is not probable withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if the application is granted.

10. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

11. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing domestic uses and water rights. The proposed diversion can be developed without unlawful impairment of existing water rights or domestic water uses.

12. The Board concludes that artesian head pressure is not a protected means of delivery.

13. The third element set forth 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

uses (water distribution system, commercial use, and fire suppression) are beneficial uses.

14. 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 use in a water distribution system, commercial use, and fire suppression is in the public interest.

15. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Water Rights filed Proposed Findings of Fact and Conclusions of Law and Decision and Intervenor Tomas and Eraclio Martinez (Intervenor) filed limited objections. In compliance with SDCL § 1-26-25, the Proposed Findings of Fact and Conclusions of Law are accepted, modified, or rejected as follows:

Proposed Findings of Fact

The facts set forth in Water Rights proposed Findings of Fact are accepted as proposed.

Intervenor objected to Findings Paragraph 19 as incomplete. Intervenor stated: “Ms. Drennon agreed that an aquifer performance test would provide the best information with which to determine whether the application could be developed without unlawful impairment of the Martinez

Well.” No alternative finding of fact was proposed and this statement does not affect the fact set forth in Paragraph 19.

Intervenors objected to Findings Paragraph 27 as incomplete. Intervenors stated: “The undisputed testimony from both expert witnesses was that an aquifer performance test would be the best information upon which to base an opinion as to whether the proposed diversion would impair nearby existing diversions from the Madison aquifer.” No alternative finding of fact was proposed and this statement does not affect the fact set forth in Paragraph 27.

Intervenors objected to Findings Paragraph 31 as incomplete. Intervenors stated: “Mr. Martinez also testified that the Martinez well, which is located approximately 900 feet from the proposed point of diversion, is a Madison aquifer well. This testimony was not disputed by either the Water Rights Program or the applicant.” No alternative finding of fact was proposed and this statement does not affect the fact set forth in Paragraph 31.

Intervenors objected to Findings Paragraph 41 as incomplete. Intervenors stated: “The evidence elicited at the hearing on this matter establishes that an aquifer performance test would be the best information available to determine whether the proposed diversion would unlawfully impair domestic water uses.” No alternative finding of fact was proposed and this statement does not affect the fact set forth in Paragraph 41.

Proposed Conclusions of Law

Intervenors objected to Conclusions Paragraph 11. Intervenors stated: “Without an aquifer performance test, given the proximity of the proposed

diversion to the Martinez well, the evidence does not establish that the proposed diversion can be developed without impairment of the Martinez well. For that reason, this application should be denied until such time as an aquifer performance test is completed and evaluated by the water rights program.” This is an opinion stated by the Intervenors that is not supported by the evidence presented or the policies and procedures of the Water Rights Program which focuses on the best evidence *available* when reviewing an application

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2850-2 is granted with a priority date of July 7, 2022, and the following qualifications:

1. In accordance with SDCL §§ 46-1-14 and 46-2A-20, Permit No. 2850-2 is issued for a twenty-year term. Pursuant to SDCL § 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2850-2 may also be cancelled for non-construction, forfeiture, abandonment or three permit violations pursuant to SDCL §§ 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

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

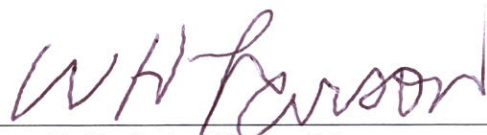
3. The well authorized by Permit No. 2850-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.

5. Water Permit No. 2850-2 appropriates up to 145 acre-feet of water annually.

Dated this 17th day of July, 2023.

BY THE BOARD:



South Dakota Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated August 4, 2023, and a signed copy of the Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and a list of petitioners dated March 7, 2023, was served upon the following by enclosing the same in envelopes with first class postage prepaid, and depositing said envelopes in the United States mail on August 4, 2023.

J. Scott James, Attorney
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Matthew E. Naasz, Attorney
Gunderson, Palmer, Nelson &
Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also 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, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4 day of August, 2023.



Rachel Rodriguez
Notary Public
My Commission expires May 16, 2029



JUN 27 2023

OFFICE OF
WATER

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

IN THE MATTER OF WATER	)	TOMAS AND ERACLIO
APPLICATION NO. 2850-2, Elk	)	MARTINEZ'S OBJECTIONS TO
Mountain Water Users Association,	)	THE WATER RIGHTS PROGRAM'S
Inc.	)	PROPOSED FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW

COMES NOW Tomas and Eraclio Martinez, the Intervenor, by and through their attorney, Matthew E. Naasz of Gunderson, Palmer, Nelson & Ashmore, LLP, and submits its Objections to the Water Rights Program's proposed Findings of Fact and Conclusions of Law submitted on June 16, 2023. Tomas and Eraclio Martinez specifically object as follows:

Objections to Water Rights Program's Proposed Findings of Fact

1. On July 7, 2022, Water Rights received Water Permit Application No. 2850-2 on behalf of Elk Mountain seeking an appropriation of 145 acre-feet of water per year at a maximum diversion rate of 0.333 cubic feet of water per second (cfs) from one well to be completed into the Madison aquifer for use in a water distribution system, for commercial use, and for fire protection in Custer County. The well is located in the NW ¼ NW ¼ Sec. 21 T4S-R1E.
2. The Chief Engineer, Eric Gronlund, recommended approval of the application subject to qualifications.
3. Notice of Water Permit Application No. 2850-2 was timely advertised on September 28, 2022, in the Rapid City Journal and the Custer County Chronicle (Custer County) and posted on the DANR website.
4. Water Rights received timely petitions in opposition to Water Permit Application No. 2850-2 from Dalton Stearns, Daniel Stearns, William and Susan Paulton, Travis Paulton, and Jim and Charol Pitts on October 11, 2022.
5. Water Rights also received a petition in opposition from Tomas and Eraclio Martinez on October 28, 2022, after the deadline. A motion to dismiss the Martinezes was made by Water Rights. Initially, the prehearing chair granted the motion to dismiss; however, upon appeal, the Board determined that the Martinezes should be allowed to participate.
6. The matter was scheduled to be heard by the Water Management Board during its December 7, 2022 meeting. A request for an automatic delay was made and the hearing was rescheduled for the next Board meeting to be held on March 8, 2023. Due to weather concerns, the hearing was then continued from the Board's March meeting to the May meeting.

7. Water Permit Application No. 2850-2 is a new water permit application which requires a determination pursuant to SDCL S 46-2A-9 whether there is a reasonable probability that unappropriated water is available for the proposed use, whether the proposed use would impair domestic water uses and water rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest pertaining to matters of public interest within the regulatory authority of the Water Management Board.
8. Kim Drennon, a natural resources engineer with Water Rights, reviewed the permit application and performed a technical review of the application. Ms. Drennon provided expert testimony regarding the technical review of the application to the Board.
9. The Madison aquifer is composed of the permeable and saturated portions of the Madison Group which is comprised of limestone and dolomite. It is older and stratigraphically lower than the Greenhorn Formation. The Madison aquifer underlies approximately 210,000 square miles in Montana, Wyoming, North Dakota, and South Dakota. In South Dakota, it underlies approximately 30,000 square miles. Aquifer material in the area of the proposed point of diversion averages a thickness of approximately 400 feet and occurs approximately 1,020 feet below surface. The aquifer is under confined conditions in the area of the point of diversion with well logs in the area demonstrating an artesian head pressure of approximately 130 feet.
10. The Madison aquifer receives recharge through infiltration of precipitation along the outcrop and from streamflow losses. The best information available calculates that recharge to the Madison aquifer equals 137,000 acre-feet of water per year in South Dakota.
11. Ms. Drennon calculated withdrawals from the Madison aquifer in South Dakota to be approximately 67, 554 acre-feet per year, including water reserved by future use permits.
12. Ms. Drennon further testified that there are 25 observation wells completed into the Madison aquifer. A review of the data from those observation wells indicates that the aquifer is responding to climatic conditions and that natural discharge is available for capture.
13. Ms. Drennon testified it is her conclusion that, based upon her review of the best information available regarding recharge to the aquifer, existing water rights, and the observation well data, there is sufficient unappropriated water available to satisfy this application.
14. There are 161 existing water rights/permits currently authorized to withdraw water from the Madison aquifer in South Dakota.
15. Ms. Drennon testified that the nearest existing domestic well on record is located approximately 0.7 miles to the south of the proposed point of diversion and owned by the Martinezes. Based upon the statements and maps presented, it is believed that that domestic well completion report, as submitted by the well driller, is inaccurate and the well is actually 900 feet from the proposed point of diversion.
16. The nearest existing water right to the proposed point of diversion is approximately 17 miles to the southeast.
17. The closest observation well is approximately 6 miles north of the proposed point of diversion.

18. Ms. Drennon testified that the Madison aquifer is highly transmissive in the area of this application. She furthered her explanation by stating that an aquifer that has high transmissivity will have lower drawdown in nearby wells because the aquifer can recharge the area more quickly.
19. Ms. Drennon concluded that, based upon the relatively low rate of diversion, the high transmissivity of the aquifer, the presence of approximately 130 feet of head pressure in the area, and no previous complaints of interference in the aquifer, there is a reasonable probability that the application could be developed without unlawful impairment to existing rights.

Objection: This finding of fact is incomplete. Ms. Drennon agreed that an aquifer performance test would provide the best information with which to determine whether the application could be developed without unlawful impairment of the Martinez Well.

20. Ms. Drennon also testified that the closest springs stemming from the Madison aquifer are located approximately 30 miles southeast of the proposed point of diversion and that it would be highly unlikely that the springs would be affected by this proposed diversion. She further testified that the springs in the vicinity of the proposed point of diversion are not from the Madison aquifer and most likely come from the Minnekahta Formation or other alluvial formations in the area.
21. The Board finds Ms. Drennon to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Ms. Drennon's testimony and the reports and exhibits which she prepared and/or upon which she relied.
22. The Board also received the testimony of applicant's expert witness, Dan Nebelsick, a civil engineer with DGR Engineering. Mr. Nebelsick assisted Elk Mountain with the design for the project and with submitting the application for a water right. In doing so, Mr. Nebelsick worked with Elk Mountain to estimate the volume of water necessary to meet the proposed uses. Mr. Nebelsick testified that he also performed a technical review.
23. Mr. Nebelsick testified that the Madison aquifer is fully saturated at this location. He further testified that there was unappropriated water available.
24. Mr. Nebelsick additionally testified that the springs in this area do not likely originate from the Madison aquifer given the confining layer and the lack of head pressure in the Madison aquifer even if it could penetrate the confining layer.
25. Mr. Nebelsick also calculated the potential drawdown should the proposed diversion be granted. His calculations demonstrated that if the proposed diversion pumped at its maximum permitted rate of 150 gallons per minute continuously for 24 hours, the drawdown at the Martinez well would range between 3 to 70 feet based upon the range of potential transmissivity rates.
26. The Board finds Mr. Nebelsick to be a credible expert witness and these Findings of Fact are supported by the evidence presented including Mr. Nebelsick's testimony and the exhibits which he prepared and/or upon which he relied.
27. Both Ms. Drennon and Mr. Nebelsick testified that the best information regarding the characteristics of the aquifer in this location and the potential effects of the proposed diversion on nearby wells would be obtained through an aquifer performance test, also referred to at times as an

aquifer pump test. Both, however, testified that the best information available are the studies that comprise the Black Hills Hydr010U Report and upon which they each relied.

OBJECTION: This finding of fact is incomplete. The undisputed testimony from both expert witnesses was that an aquifer performance test would be the best information upon which to base an opinion as to whether the proposed diversion would impair nearby existing diversions from the Madison aquifer.

28. John Morgan, president of the Elk Mountain Water Users Association, also offered testimony to the Board. Additionally, Mr. Morgan is a member of the volunteer fire department. Mr. Morgan testified how the Highlands Fire Department currently obtains water from Newcastle, approximately 18 miles away, to fight fire. Mr. Morgan testified about the water needs and anticipated use of the water by the residents in the area.
29. The Board also received testimony from Luke Caster. Mr. Caster testified that he lives in the area and is the chief of the Highlands Fire Department. Mr. Caster testified that while there is water storage around the area, having this water permit would reduce the travel time. Mr. Caster also testified regarding the history of fires in the area and opined that the fires in recent times have been larger than those in the past.
30. Kent Keidel also provided testimony to the Board. Mr. Keidel lives in the area of the proposed diversion. He testified that the water is needed and that the sources currently available are not reliable.
31. Eraclio Martinez testified before the Board. His family owns and operates the Martinez Ranch located adjacent to the proposed point of diversion. Mr. Martinez testified that their well is located approximately 900 feet from the proposed point of diversion. Mr. Martinez testified that the well is the main water supply for his family and his father's family as well as the cattle and horses which they manage on the ranch. He expressed concerns that his well would be impacted by the proposed diversion.

OBJECTION: This finding of fact is incomplete. Mr. Martinez also testified that the Martinez well, which is located approximately 900 feet from the proposed point of diversion, is a Madison aquifer well. This testimony was not disputed by either the Water Rights Program or the applicant.

32. Travis Paulton, a cattle rancher, local landowner and professional wildland firefighter, also provided testimony to the Board. Mr. Paulton testified that his ranch relies on their well which is completed into the Madison aquifer and located 4.7 miles south of the proposed point of diversion. Mr. Paulton expressed his concerns regarding the amount of water requested by this proposed diversion and his belief that the amount of water requested is greater than what is needed.
33. Shaun Pitts additionally provided testimony to the Board regarding his involvement with the Highlands Fire Department, including his family's provision of equipment and water for the fighting of fires in the area. Mr. Pitts further testified regarding the presence of a commercial well in the area that is available to the public for the purchase of water.
34. The Board also received testimony from Dalton Stearns. Mr. Stearns testified regarding the locations of a number of different homes, wells, and water sources. Mr. Stearns also testified that

his ranching operation and family rely on the Madison aquifer well on his land. Mr. Stearns described the reliance of his family and others upon the springs and surface waters located on his land and his leased land and the effects that would be felt should those sources go dry. He further expressed his concerns about this project and its use of public funds and the amount of water requested.

35. Mr. Daniel Sterns also testified before the Board. Mr. Stearns testified that he owns land in the area of the proposed diversion. Mr. Stearns testified about the springs on his land and in the vicinity and the testing of the water which he had performed.
36. Petitioners did not submit sufficient evidence through expert opinions, testimony, or other evidence that would support a determination that there is not a reasonable probability that there is unappropriated water available, that there would be an unlawful impairment should the application be granted, that this appropriation is not a beneficial use of water, or that it is not in the public interest.
37. The springs mentioned by petitioners are not sourced from the Madison aquifer and most likely sourced from the Minnekahta Formation.
38. The best information reasonably available regarding the Madison aquifer is the Black Hills Hydrology Report.
39. The Board finds that based upon the best information reasonably available, the factors of SDCL S 46-2A-9 are satisfied.
40. The evidence establishes that there is unappropriated water available in the Madison aquifer to this application.
41. The evidence establishes the proposed diversion would not unlawfully impair existing water rights or domestic water uses.

OBJECTION: The evidence elicited at the hearing on this matter establishes that an aquifer performance test would be the best information available to determine whether the proposed diversion would unlawfully impair domestic water uses.

42. The Board further finds that the proposed uses of the water for a water distribution system, commercial use, and fire suppression constitute beneficial uses.
43. The Board further finds that placing the water to these beneficial uses is in the public interest.
44. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Objections to the Water Rights Program's Proposed Conclusions of Law

1. The Board has jurisdiction over this matter. The application falls within the Board's responsibility over water appropriation and regulation in Title 46.
2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL S 46-2A-4.
3. The Chief Engineer recommended granting the application. The recommendation, however, is not binding on the Board. SDCL S 46-2A-4(8).
4. The applicant is required to satisfy each of the factors set forth in SDCL S 46-2A-9.
5. The Board concludes that the applicant has satisfied each of the factors set forth in SDCL S 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 as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SS 46-2-9 and 46-2-11." 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 S 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL S 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. South Dakota Codified Law, section 46-6-3.1 provides an exception to the recharge/ withdrawal limitation. It states in pertinent part, "[a]n 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 estimated average annual recharge for use by water distribution systems." The Madison aquifer is older and stratigraphically lower than the Greenhorn Formation. Additionally, the permit is for use in a water distribution system. Thus, the appropriation may be granted even if the withdrawal would exceed the estimated annual recharge.
9. Nonetheless, the Board concludes it is not probable withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL S 46-6-3.1 if the application is granted.

10. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.
11. The second requirement of SDCL S 46-2A-9 is that the proposed water use may not unlawfully impair existing domestic uses and water rights. The proposed diversion can be developed without unlawful impairment of existing water rights or domestic water uses.

OBJECTION: Without an aquifer performance test, given the proximity of the proposed diversion to the Martinez well, the evidence does not establish that the proposed diversion can be developed without impairment of the Martinez well. For that reason, this application should be denied until such time as an aquifer performance test is completed and evaluated by the water rights program.

12. The Board concludes that artesian head pressure is not a protected means of delivery.
13. The third element set forth in SDCL S 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 S 46-1-6(3). The proposed uses (water distribution system, commercial use, and fire suppression) are beneficial uses.
14. The fourth requirement of SDCL S 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 S 6-1-6(3). The Board concludes that appropriating water for use in a water distribution system, commercial use, and fire suppression is in the public interest.
15. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

Respectfully submitted this 22nd day of June, 2023.

By: /s/ Matthew E. Naasz

Matthew E. Naasz
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709
Telephone: (605) 342-1078
Telefax: (605) 342-9503
E-mail: mnaasz@gpna.com

CERTIFICATE OF SERVICE

I hereby certify on June 22, 2023, a true and correct copy of **TOMAS AND ERACLIO MARTINEZ'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served by U.S. mail, first class, postage prepaid and via email upon the following individuals set forth below:

Rodney Freeman, Prehearing Chairman Water Management Board
Joe Foss Building
523 East Capitol Avenue Pierre, SD 57501

Ann F. Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Susan Anderson
Elk Mountain Water Users Association, Inc.
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Custer, SD 57730

Robert J. Galbraith
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Rapid City, SD 57709-8030

William and Susan Paulton
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Edgemont, SD 57735

Travis Paulton
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Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

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

By: /s/ Matthew E. Naasz
Matthew E. Naasz



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RECEIVED

JUN 20 2023

OFFICE OF
WATER

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ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY

June 16, 2023

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Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users
Association, Inc.*

In the Matter of Water Application No. 2850-2

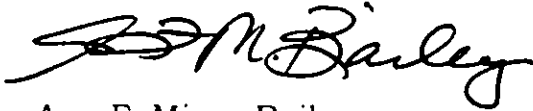
Page 2

June 16, 2023

To Whom It May Concern:

Enclosed please find a true and correct copy of the Water Rights Program's Proposed Findings of Fact, Conclusions of Law, and Final Decision and the Certificate of Service in the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

Enclosures

cc w/encs: ✓ Ron Duvall, DANR Water Rights Program (by interoffice mail)

WATER MANAGEMENT BOARD

WATER RIGHTS PROGRAM'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on May 3, 2023. Board members James Hutmacher, Peggy Dixon, Rodney Freeman, Tim Bjork, Chad Comes, and Bill Larson were present at the hearing and heard the evidence presented. Applicant Elk Mountain Water Users Association, Inc. (Elk Mountain) was represented by J. Scott James. Petitioners Daniel Stearns and Dalton Stearns were represented by Robert J. Galbraith. Petitioners Tomas and Eraclio Martinez were represented by Matthew E. Naasz. Petitioner Travis Paulton appeared pro se. Ann F. Mines Bailey represented the Department of Agriculture and Natural Resources, 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 July 7, 2022, Water Rights received Water Permit Application No. 2850-2 on behalf of Elk Mountain seeking an appropriation of 145 acre-

feet of water per year at a maximum diversion rate of 0.333 cubic feet of water per second (cfs) from one well to be completed into the Madison aquifer for use in a water distribution system, for commercial use, and for fire protection in Custer County. The well is to be located in the NW¼ NW¼ Sec. 21 T4S-R1E.

2. The Chief Engineer, Eric Gronlund, recommended approval of the application subject to qualifications.

3. Notice of Water Permit Application No. 2850-2 was timely advertised on September 28, 2022, in the Rapid City Journal and the Custer County Chronicle (Custer County) and posted on the DANR website.

4. Water Rights received timely petitions in opposition to Water Permit Application No. 2850-2 from Dalton Stearns, Daniel Stearns, William and Susan Paulton, Travis Paulton, and Jim and Charol Pitts on October 11, 2022.

5. Water Rights also received a petition in opposition from Tomas and Eraclio Martinez on October 28, 2022, after the deadline. A motion to dismiss the Martinezes was made by Water Rights. Initially, the prehearing chair granted the motion to dismiss; however, upon appeal, the Board determined that the Martinezes should be allowed to participate.

6. The matter was scheduled to be heard by the Water Management Board during its December 7, 2022 meeting. A request for an automatic delay was made and the hearing was rescheduled for the next Board meeting

to be held on March 8, 2023. Due to weather concerns, the hearing was then continued from the Board's March meeting to the May meeting.

7. Water Permit Application No. 2850-2 is a new water permit application which requires a determination pursuant to SDCL § 46-2A-9 whether there is a reasonable probability that unappropriated water is available for the proposed use, whether the proposed use would impair domestic water uses and water rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest pertaining to matters of public interest within the regulatory authority of the Water Management Board.

8. Kim Drennon, a natural resources engineer with Water Rights, reviewed the permit application and performed a technical review of the application. Ms. Drennon provided expert testimony regarding the technical review of the application to the Board.

9. The Madison aquifer is composed of the permeable and saturated portions of the Madison Group which is comprised of limestone and dolomite. It is older and stratigraphically lower than the Greenhorn Formation. The Madison aquifer underlies approximately 210,000 square miles in Montana, Wyoming, North Dakota, and South Dakota. In South Dakota, it underlies approximately 30,000 square miles. Aquifer material in the area of the proposed point of diversion averages a thickness of approximately 400 feet and occurs approximately 1,020 feet below surface. The aquifer is under

confined conditions in the area of the point of diversion with well logs in the area demonstrating an artesian head pressure of approximately 130 feet.

10. The Madison aquifer receives recharge through infiltration of precipitation along the outcrop and from streamflow losses. The best information available calculates that recharge to the Madison aquifer equals 137,000 acre-feet of water per year in South Dakota.

11. Ms. Drennon calculated withdrawals from the Madison aquifer in South Dakota to be approximately 67,554 acre-feet per year, including water reserved by future use permits.

12. Ms. Drennon further testified that there are 25 observation wells completed into the Madison aquifer. A review of the data from those observation wells indicates that the aquifer is responding to climatic conditions and that natural discharge is available for capture.

13. Ms. Drennon testified it is her conclusion that, based upon her review of the best information available regarding recharge to the aquifer, existing water rights, and the observation well data, there is sufficient unappropriated water available to satisfy this application.

14. There are 161 existing water rights/permits currently authorized to withdraw water from the Madison aquifer in South Dakota.

15. Ms. Drennon testified that the nearest existing domestic well on record is located approximately 0.7 miles to the south of the proposed point of diversion and owned by the Martinezes. Based upon the statements and maps presented, it is believed that that domestic well completion report, as

submitted by the well driller, is inaccurate and the well is actually 900 feet from the proposed point of diversion.

16. The nearest existing water right to the proposed point of diversion is approximately 17 miles to the southeast.

17. The closest observation well is approximately 6 miles north of the proposed point of diversion.

18. Ms. Drennon testified that the Madison aquifer is highly transmissive in the area of this application. She furthered her explanation by stating that an aquifer that has high transmissivity will have lower drawdown in nearby wells because the aquifer can recharge the area more quickly.

19. Ms. Drennon concluded that, based upon the relatively low rate of diversion, the high transmissivity of the aquifer, the presence of approximately 130 feet of head pressure in the area, and no previous complaints of interference in the aquifer, there is a reasonable probability that the application could be developed without unlawful impairment to existing rights.

20. Ms. Drennon also testified that the closest springs stemming from the Madison aquifer are located approximately 30 miles southeast of the proposed point of diversion and that it would be highly unlikely that the springs would be affected by this proposed diversion. She further testified that the springs in the vicinity of the proposed point of diversion are not from the Madison aquifer and most likely come from the Minnekahta Formation or other alluvial formations in the area.

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

22. The Board also received the testimony of applicant's expert witness, Dan Nebelsick, a civil engineer with DGR Engineering. Mr. Nebelsick assisted Elk Mountain with the design for the project and with submitting the application for a water right. In doing so, Mr. Nebelsick worked with Elk Mountain to estimate the volume of water necessary to meet the proposed uses. Mr. Nebelsick testified that he also performed a technical review.

23. Mr. Nebelsick testified that the Madison aquifer is fully saturated at this location. He further testified that there was unappropriated water available.

24. Mr. Nebelsick additionally testified that the springs in this area do not likely originate from the Madison aquifer given the confining layer and the lack of head pressure in the Madison aquifer even if it could penetrate the confining layer.

25. Mr. Nebelsick also calculated the potential drawdown should the proposed diversion be granted. His calculations demonstrated that if the proposed diversion pumped at its maximum permitted rate of 150 gallons per minute continuously for 24 hours, the drawdown at the Martinez well would range between 3 to 70 feet based upon the range of potential transmissivity rates.

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

27. Both Ms. Drennon and Mr. Nebelsick testified that the best information regarding the characteristics of the aquifer in this location and the potential effects of the proposed diversion on nearby wells would be obtained through an aquifer performance test, also referred to at times as an aquifer pump test. Both, however, testified that the best information available are the studies that comprise the Black Hills Hydrology Report and upon which they each relied.

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34. The Board also received testimony from Dalton Stearns.

Mr. Stearns testified regarding the locations of a number of different homes, wells, and water sources. Mr. Stearns also testified that his ranching operation and family rely on the Madison aquifer well on his land.

Mr. Stearns described the reliance of his family and others upon the springs and surface waters located on his land and his leased land and the effects that would be felt should those sources go dry. He further expressed his concerns about this project and its use of public funds and the amount of water requested.

35. Mr. Daniel Stearns also testified before the Board. Mr. Stearns testified that he owns land in the area of the proposed diversion. Mr. Stearns testified about the springs on his land and in the vicinity and the testing of the water which he had performed.

36. Petitioners did not submit sufficient evidence through expert opinions, testimony, or other evidence that would support a determination that there is not a reasonable probability that there is unappropriated water available, that there would be an unlawful impairment should the application be granted, that this appropriation is not a beneficial use of water, or that it is not in the public interest.

37. The springs mentioned by petitioners are not sourced from the Madison aquifer and most likely sourced from the Minnekahta Formation.

38. The best information reasonably available regarding the Madison aquifer is the Black Hills Hydrology Report.

39. The Board finds that based upon the best information reasonably available, the factors of SDCL § 46-2A-9 are satisfied.

40. The evidence establishes that there is unappropriated water available in the Madison aquifer to satisfy this application.

41. The evidence establishes the proposed diversion would not unlawfully impair existing water rights or domestic water uses.

42. The Board further finds that the proposed uses of the water for a water distribution system, commercial use, and fire suppression constitute beneficial uses.

43. The Board further finds that placing the water to these beneficial uses is in the public interest.

44. 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 application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting the application. The recommendation, however, is not 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 as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by §§ 46-2-9 and 46-2-11.” 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. South Dakota Codified Law, section 46-6-3.1 provides an exception to the recharge/withdrawal limitation. It states in pertinent part, “[a]n 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 estimated average annual recharge for use by water distribution systems.” The Madison aquifer is older and stratigraphically lower than the Greenhorn Formation. Additionally, the permit is for use in a water distribution system. Thus, the appropriation may be granted even if the withdrawal would exceed the estimated annual recharge.

9. Nonetheless, the Board concludes it is not probable withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if the application is granted.

10. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

11. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing domestic uses and water rights. The proposed diversion can be developed without unlawful impairment of existing water rights or domestic water uses.

12. The Board concludes that artesian head pressure is not a protected means of delivery.

13. The third element set forth 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

uses (water distribution system, commercial use, and fire suppression) are beneficial uses.

14. 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 use in a water distribution system, commercial use, and fire suppression is in the public interest.

15. 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. 2850-2 is granted with a priority date of July 7, 2022, and the following qualifications:

1. In accordance with SDCL §§ 46-1-14 and 46-2A-20, Permit No. 2850-2 is issued for a twenty-year term. Pursuant to SDCL § 46-2A-21, the twenty-year term may be deleted at any time during the twenty-year period or following its expiration. If the twenty-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2850-2 may also be cancelled for nonconstruction, forfeiture, abandonment or three permit violations pursuant to SDCL §§ 46-1-12, 46-5-37.1 and ARSD 74:02:01:37.

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

3. The well authorized by Permit No. 2850-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

4. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison aquifer.

5. Water Permit No. 2850-2 appropriates up to 145 acre-feet of water annually.

Dated this ____ day of July, 2023.

BY THE BOARD:

South Dakota Water Management Board

JUN 20 2023

OFFICE OF
WATERSTATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CERTIFICATE OF SERVICE
Mountain Water Users Association,	)	
Inc.	)	

The undersigned hereby certifies that true and correct copies of the Water Rights Program's 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 16th day of June 2023:

J. Scott James
Southern Hills Law PLLC
429 1/2 Mount Rushmore Road #2
Custer, SD 57730

*Counsel for Elk Mountain Water Users
Association, Inc.*

Robert J. Galbraith
Nooney & Solay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

*Counsel for Daniel Stearns and Dalton
Stearns*

Matthew E. Naasz
Gunderson, Palmer, Nelson
& Ashmore, LLP
P.O. Box 8045
Rapid City, SD 57709-8045

Counsel for Tomas and Eraclio Martinez

Daniel Norman Stearns
25499 Dewey Road
Edgemont, SD 57735

Dalton Stearns
10321 Two Track Trail
Edgemont, SD 57735

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

And on the same date, a copy was hand-delivered and emailed to:

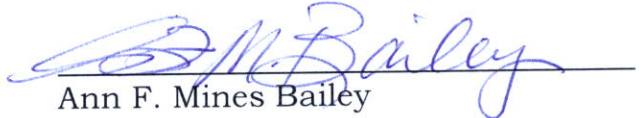
David M. McVey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
David.McVey@state.sd.us

Counsel for Water Management Board

And on the same date, the originals were filed by interoffice mail with:

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

MARTY J. JACKLEY
ATTORNEY GENERAL


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

*Counsel for Chief Engineer and
Water Rights Program, DANR*

Dan & JoAnn Stearns
25499 Dewey Road
Edgemont, SD 57735
May 30, 2023

RECEIVED

JUN 02 2023

OFFICE OF
WATER

Department of Agriculture and Natural Resources
C/O Ron Duvall
523 E. Capitol Ave
Pierre, SD 57501

Mr. Duvall,

Enclosed you will find a video containing information and showing current conditions of the springs on and around our ranch that are near to the proposed well site. After the hearing, we began documenting water levels on 5 springs which we feel could be at risk with the drilling and pumping of the deep well approved for the Elk Mountain Water Users Association, Volunteer Fire Department and the Custer Highlands subdivision.

The DVD contains photos and videos that creates a reference for the normal levels of these natural springs which support ponds, marshes, stock tanks, and pipelines which are used in our ranching operation. We feel it is important to record this information and file it with your office before the drilling begins on May 31, 2023 to create a baseline or proof of what we have before this project gets started – just in case there are any issues encountered along the way that affect our existing water rights.

It also contains information on these springs such location, history, and includes one spring-fed stock dam (owned by Dan and myself) that was not noted on the engineer's map presented as evidence at the hearing and may not have been taken into consideration at the time.

You may view this video and the transcript if you wish, but please add it to any records or files there might be dealing with this matter so there is a record in place if anything happens.

Thank you for your help through this process.

Dan & JoAnn Stearns

Dan & JoAnn Stearns
JoAnn Stearns



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

File No. 2850-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Daniel and JoAnn Stearns

ADDRESS: 25499 Dewey Road, Edgemont SD 57735

RE: Video of area water supplies in general vicinity of proposed well for No. 2850-2

COMMENTS:

Daniel Stearns was a party to the contested case proceeding for Water Permit Application No. 2850-2. In response to the application, a video was prepared to provide information on area springs and dams of concern to petitioners. The video is being stored at R:\Work\WR\Imaging\wrinfo\wr_div2 and the file is named 2850-2_video.mp4. The date is May 28, 2023 on the video title page.

Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

My name is JoAnn Stearns. My husband Dan and I live and ranch on the east side of Elk Mountain near the proposed drilling site of the new, deep well for the Elk Mountain Water Users Association, Elk Mountain Volunteer Fire Department, and the Custer Highlands subdivision. Drilling of this well into the Madison formation is scheduled to begin on Tuesday, May 31, 2023.

Dan & I submitted a petition against this proposed well, as did our son, Dalton and his wife Dani along with other local ranchers who are concerned about possible issues that may be caused by the drilling of this well and the annual water draw of 145 acre-feet that was requested and approved.

We are submitting this video and information that has been compiled before the drilling begins, as a way to document the normal water levels of the natural springs in the immediate area. We will continue to monitor these springs throughout the drilling of the new well and the eventual pumping of the water from it, watching for any problems, damages, or water losses which may be caused by this project.

Our ranch sits ½ mile to the north and west of the drilling site. We have 2 shallow wells and 2 springs on our privately owned property and we maintain an additional natural spring on the School Section which we have leased for over 25 years.

Our son Dalton, and his wife Dani own and ranch on the original homestead that was settled by Dalton's great-grandfather. They have a deep well into the Madison formation which is the only reliable water source for their farming and ranching operation.

At the South Dakota Water Board hearing on May 3rd, 2023 in Pierre, SD, the engineers for the DANR and the Elk Mt Water Users Association stated that **there will be drawdown** to Dalton & Dani's well which may or may not affect their water access. They also stated, multiple times that there will be **no damage to the springs because they are not fed by the Madison Formation**. I hope that is true, but we all know springs have their own set of rules and it is a delicate balance of water and pressure that keeps them flowing. There are a lot of unknowns when it comes to drilling wells and things occasionally happen that upsets that balance so if this project affects our springs we will have this video as proof of what we had before drilling began.

On May 4th – the day after the hearing, I began taking photos to document the water level of the one of the spring-fed stock dams which Dan & I own known as Coon Creek Spring. This spring is located in Sec 17, Township 4, Range 1 – 3,378 feet from the proposed well site.

This spring was not listed on the map which was presented at the hearing as evidence by the Water Users Association. We are not sure why this particular spring was left off the map but it is the closest one to the drilling site and one of the best producing springs in the area. Both of the engineers who testified, did state they had not visited or 'set foot' in the area before making their recommendations but had instead only relied on historic records and studies to reach their conclusions. So, even though the dam is easy to see on satellite images, it is possible they would not be aware that it is actually fed by a spring.

The dam was constructed in 1921 by Dan's grandfather, William Allen Stearns and since then, the water has never stopped flowing and the dam has never dried up in the 100+ years

that our family has owned it. It is used year-round by our livestock and the local wildlife including elk, deer and Bighorn sheep. Since it is spring fed, the water flows over the spillway sustaining a marshy area then continues down the Coon Creek drainage to a 2nd stock dam which is owned by the Martinez family who also raise livestock. While other stock dams in the area almost always dry up by the end of summer, the water in our dam maintains a consistent level year-round.

In July of 2011 the WhoopUp Fire burned over Elk Mountain. Shifting winds drove the flames toward our ranch from the south, west and finally the north before it was contained. These photos were taken during that fire and show the 2 helicopters that flew non-stop between the dam and the fire lines for 5 consecutive days – pulling approximately 75 loads each day. The bucket under the smaller helicopter hauls approximately 500 gals per load and the Sikorski Air Crane draws 2500 gals per load. If you figure that each helicopter took half of the loads each day, it adds up to 562,500 gals of water.

During that same time, more than 200 head of cattle belonging to ourselves and our neighbors were forced off the mountain by the fire. They were gathered into the pasture and would drink between helicopter visits and at night when things settled down. A mature cow will drink between 8 – 10 gals of water/per day – so 200 head of cattle X 9 gals for 5 days = an additional 9,000 gals used.

One of the attending fire departments also placed a pump at the dam to fill trucks. We have no idea how many gals of water they pumped, but even if you just figure what the helicopters and cattle were using, approximately 571,500 gals of water were pulled from this single spring-fed dam over 5 consecutive days and **the water level never dropped.**

Divided by days, hours, and minutes we can document that spring produced over 80 gals/minute to maintain that level.

I have also included photos & videos for other springs we will be monitoring.

The Upper Dugout Spring is located 1 ½ miles SW of the firehall on the east side of Elk Mountain. With the use of a solar powered pump, this spring-fed dam supplies water to a pond and 2 large stock tanks. And since the recent addition of a pipeline project which was built in cooperation with the US Forest Service and local ranchers it has expanded the water accessibility to several previously dry pastures. This pipeline fills multiple stock tanks at a slightly higher elevation and roughly ½ mile east of the Upper Dugout spring. This project uses a large, above ground water storage tank that makes water available even when the sun isn't shining.

Improvements to Mix Spring consists of 2 large stock tanks and a pond which is located near the top of Elk Mountain – 2.7 miles from the proposed well site. This was another cooperative project between the US Forest Service and the local ranchers to utilize the naturally occurring spring to supply water year-round to wildlife and the livestock that graze on the permits every summer. This grazing by local livestock also helps lower the fuel load on the forest which, in turn, aids in wildland fire control.

North of the firehall – 3,128 feet, is a spring known as the School Section Spring. It was listed as "Unnamed" on the submitted map of springs. Dan & I have leased the school section and maintained this spring for many years. This is a low-flow spring but it runs consistently.

Occasionally we do haul additional water to these tanks during the summer months when the cattle are in this pasture and we need additional water.

We also own another spring which was also marked as 'Unnamed' on the map but is known to us as the Big Dam Spring. This spring has slowed or stopped flowing some years but does normally maintain a small pond. The dam was built by Dan's grandfather as well and in wet years it holds a substantial amount of water.

This is dry country, so even with these water sources, we occasionally still need to haul water for the cistern at the old house Dan's parents lived in, for livestock and our personal fire units as well. We purchase this water from the large community well at Newcastle, WY where we pay an annual fee.

The geology of this area is fascinating with many sink holes and caverns but these same features make it impossible to predict what will happen when you drill here. In the past 7 months we have talked to several well drillers, water hydrologists and experts in the field. None of them believe there will be any issues with our shallow well but every one of them has shown genuine concern for the natural springs in the area.

This is why we filed our petitions and why we will carefully monitor the springs as the new well is drilled and the water pumped from it.

Please retain this video and information in your records as a base line to compare any future information against and we will keep you informed of any changes that arise.

Thank you.

John W Stearns
5/30/2023



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

May 8, 2023

NOTICE

TO: J. Scott James, Attorney
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Petitioners
(see attached list dated March 7, 2023)

Matthew E. Naasz, Attorney
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

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

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

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

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. 2850-2, Elk Mountain Water Users Association Inc.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to Board Counsel David McVey and all other parties by June 16, 2023. 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 Board and Water Rights Program counsel and other parties by June 27, 2023. Board counsel requests that the draft findings or alternative findings be provided in both a PDF format and a WORD format file via email to David.McVey@state.sd.us.

The Board will consider adoption of Findings of Fact, Conclusions of Law, and Final Decision at 9:30 AM (Central Time), on Wednesday, July 12, 2023, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior issues on the agenda. Notice will be provided if there is a change in the hearing time.

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 12, 2023 meeting. The evidentiary hearing was completed May 3, 2023. No additional testimony will be received at the meeting on July 12, 2023.

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

c: David McVey, Water Management Board Counsel

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

March 7, 2023

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated May 8, 2023, regarding preparation of findings of fact, conclusions of law and a final decision in the matter of Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and a list of petitioners dated March 7, 2023, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on May 8, 2023.

J. Scott James, Attorney
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Matthew E. Naasz, Attorney
Gunderson, Palmer, Nelson &
Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
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Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also 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

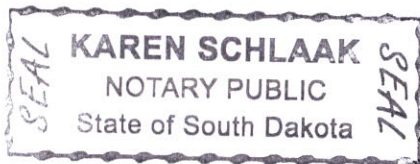
Vickie Maberry
Vickie Maberry

Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of May, 2023.

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

April 5, 2023

NOTICE OF HEARING

TO: J. Scott James, Attorney
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Petitioners
(see attached list dated March 7, 2023)

Matthew E. Naasz, Attorney
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Ann Mines Bailey, Assistant Attorney General
1320 East Highway 14, Suite 1
Pierre SD 57501-8501

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

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

The Water Management Board will conduct a hearing to consider Application No. 2850-2 at 10:00 AM **(Central Time)**, on Wednesday, May 3, 2023, 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 Custer County Chronicle on September 28, 2022, Rapid City Journal on September 28, 2022, and the Notice of Hearing dated October 27, 2022, still apply.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2850-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.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: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

March 7, 2023

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated April 5, 2023, regarding Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and a list of petitioners dated March 7, 2023, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on April 5, 2023.

J. Scott James, Attorney
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Matthew E. Naasz, Attorney
Gunderson, Palmer, Nelson &
Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Petitioners as follows:

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25663 Dewey Rd
Edgemont SD 57735

Above also Sent Inter-office to:

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

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

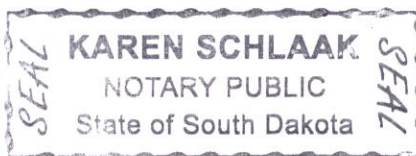


Ron Duvall
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of April, 2023.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

MAR 29 2023

OFFICE OF
WATER

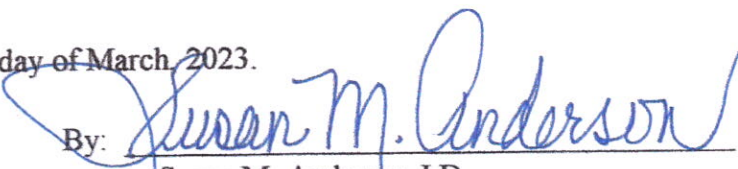
STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2,	)	NOTICE OF TERMINATION OF
Elk Mountain Water Users Association, Inc.)		LIMITED APPEARANCE

PLEASE TAKE NOTICE that Susan M. Anderson, hereby makes a notice of her termination of limited appearance as attorney for the Elk Mountain Users Association, Inc., a South Dakota Nonprofit Corporation, in the above-entitled action, for the purpose of filing the Elk Mountain Water Users Association, Inc. Disclosure of Expert Witness. The Disclosure of Expert Witness has been timely filed and her responsibility of limited appearance has been completed.

Respectfully submitted this 27th day of March, 2023.

By:


Susan M. Anderson J.D.

P.O. Box 6062

Custer SD 57730

Telephone: 605-201-1087

Wolfandersoncapital@gmail.com

RECEIVED

MAR 29 2023

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

OFFICE OF
WATER

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2,	)	CERTIFICATE OF SERVICE
Elk Mountain Water Users Association, Inc.)		

The undersigned hereby certifies that true and correct copies of the Notice of Termination of Limited Appearance, in the above matter, were served by U.S. mail, first-class, postage prepaid, upon the following on this 27th day of March 2023:

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

Robert J. Galbraith
Nooney & Salay, LLP
PO Box 8030
Rapid City, SD 57709-8030
Counsel for Daniel Stearns & Dalton Stearns

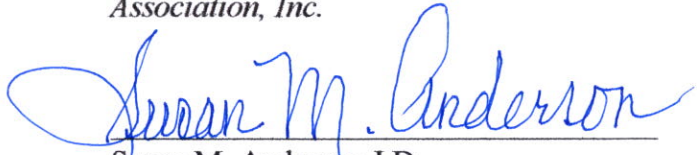
Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Matthew E. Naasz
P.O. Box 8045
Rapid City, SD 57709
Counsel for Tomas & Eraclio Martinez

Ron Duvall
SD DANR Water Rights Program
Joe Foss Building
523 E Capitol Ave
Pierre, SD 57501-3182

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

J. Scott James
Southern Hills Law PLLC
429 ½ Mt. Rushmore Road
Custer, SD 57730
Counsel for Elk Mountain Water Users Association, Inc.


Susan M. Anderson J.D.
P.O. Box 6062
Custer SD 57730
Telephone: 605-201-1087
Wolfandersoncapital@gmail.com



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 15, 2023

NOTICE OF ENTRY OF ORDER

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)
1320 East Highway 14, Suite 1
Pierre SD 57501-8501
ann.minesbailey@state.sd.us

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez
P.O. Box 8045
Rapid City SD 57709
mnaasz@gpna.com

J. Scott James, Legal Counsel for Applicant South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730
southernhillslaw@gmail.com

Susan Anderson (Limited Appearance)
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730
sanderson@custercountysd.com

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030
robert@nooneysolay.com

Petitioners
(see attached list dated March 7, 2023)

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Order Setting aside Pre-hearing Chair Order to Dismiss Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc. and requiring compliance with Procedural Order and Disclosure deadlines

Enclosed is an Order by the Water Management Board setting aside the Pre-hearing Chair Order dismissing a late-filed petition by Tomas and Eraclio Martinez regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc. The Order also requires compliance with the previously issued procedural order and sets disclosure deadlines for Tomas and Eraclio Martinez.

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

Enclosure

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)
david.mcvey@state.sd.us

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

March 7, 2023

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735
jdstearns@yahoo.com

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735
bardoubled@gmail.com

Travis Paulton
10693 Pass Creek Rd
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25385 Gillette Canyon Rd
Newcastle WY 82701
limestoneservicesllc@outlook.com

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735
mistymartinez2@yahoo.com

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

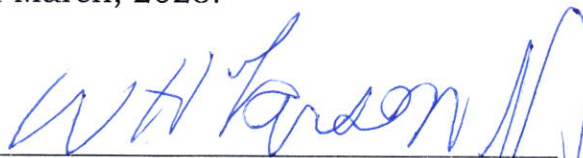
IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	ORDER
Mountain Water Users Association,	)	
Inc.	)	

The Water Management Board met on Wednesday, March 8, 2023, and heard the appeal in the above-entitled matter from petitioners Tomas and Eraclio Martinez regarding the Prehearing Chair's Order dismissing them from the matter due to the untimeliness of their petition to intervene. Upon hearing arguments from the parties, it is hereby

ORDERED that the order of the Prehearing Chair is set aside. Petitioners Tomas and Eraclio Martinez will be allowed to participate in the above-entitled contested case proceedings.

IT IS FURTHER ORDERED that Petitioners Tomas and Eraclio Martinez shall comply with the provisions of the Procedural Order. Additionally, Petitioners Tomas and Eraclio Martinez shall disclose any expert witness no later than April 10, 2023, and shall disclose their witness list and exhibits no later than April 21, 2023, in accordance with the Procedural Order.

Dated this 8th day of March, 2023.



William Larson, Chair
Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated March 15, 2023, regarding an Order by the Water Management Board setting aside an Order by the Pre-hearing Chair dismissing a late-filed petition concerning Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc., requiring compliance the procedural order, and setting disclosure deadlines and a copy of the issued Order signed March 8, 2023, were served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on March 15, 2023.

Matthew E. Naasz
P.O. Box 8045
Rapid City SD 57709
mnaasz@gpna.com

J. Scott James
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730
southernhillslaw@gmail.com

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730
sanderson@custercountysd.com

Robert J. Galbraith
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030
robert@nooneysolay.com

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735
jdstearns@yahoo.com

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Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735
mistymartinez2@yahoo.com

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
ann.minesbailey@state.sd.us

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
david.mcvey@state.sd.us

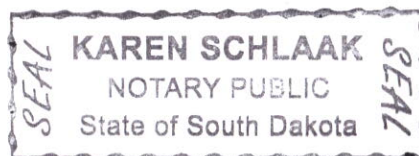

Vickie Maberry

Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of March, 2023.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

IN THE MATTER OF WATER
APPLICATION NO. 2850-2, Elk
Mountain Water Users Association,
Inc.

) **TOMAS AND ERACLIO MARTINEZ'S**
) **NOTICE OF APPEAL**
)

RECEIVED

MAR 08 2023

**OFFICE OF
WATER**

PLEASE TAKE NOTICE THAT Tomas and Eraclio Martinez hereby appeal the Order Granting Motion to Dismiss entered by the Prehearing Chair on February 13, 2023. Tomas and Eraclio respectfully request this Board consider this appeal sufficiently in advance of the hearing on the merits of this application to allow Tomas and Eraclio Martinez to fully participate in the contested case hearing, should the Order Granting Motion to Dismiss be reversed.

Respectfully submitted this 6th day of March, 2023.

ATTORNEYS FOR TOMAS AND ERACLIO
MARTINEZ

By: /s/ Matthew E. Naasz

Matthew E. Naasz
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709
Telephone: (605) 342-1078
Telefax: (605) 342-9503
E-mail: mnaasz@gpna.com

CERTIFICATE OF SERVICE

I hereby certify on March 3, 2023, a true and correct copy of a **TOMAS AND ERACLIO MARTINEZ'S NOTICE OF APPEAL** was served upon the following individuals by U.S. Mail, postage prepaid:

Atten: Ron Duvall
SD DANR, Water Rights Program
523 E Capitol Ave
Pierre, SD 57501

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

Susan Anderson
Elk Mountain Water Users Association, Inc.
P.O. Box 6062
Custer, SD 57730

J. Scott James
South Hills Law PLLC
429 ½ Mt. Rushmore Rd.
Custer, SD 57730

Robert J. Galbraith
Nooney & Solay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

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Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

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

By: /s/ Matthew E. Naasz
Matthew E. Naasz

RECEIVED

via
email

MAR 06 2023

OFFICE OF
WATER

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

IN THE MATTER OF WATER) **TOMAS AND ERACLIO MARTINEZ'S**
APPLICATION NO. 2850-2, Elk) **NOTICE OF APPEAL**
Mountain Water Users Association,)
Inc.

PLEASE TAKE NOTICE THAT Tomas and Eraclio Martinez hereby appeal the Order Granting Motion to Dismiss entered by the Prehearing Chair on February 13, 2023. Tomas and Eraclio respectfully request this Board consider this appeal sufficiently in advance of the hearing on the merits of this application to allow Tomas and Eraclio Martinez to fully participate in the contested case hearing, should the Order Granting Motion to Dismiss be reversed.

Respectfully submitted this 6th day of March, 2023.

ATTORNEYS FOR TOMAS AND ERACLIO
MARTINEZ

By: /s/ Matthew E. Naasz

Matthew E. Naasz
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709
Telephone: (605) 342-1078
Telefax: (605) 342-9503
E-mail: mnaasz@gpna.com

CERTIFICATE OF SERVICE

I hereby certify on March 3, 2023, a true and correct copy of a **TOMAS AND ERACLIO MARTINEZ'S NOTICE OF APPEAL** was served upon the following individuals by U.S. Mail, postage prepaid:

Ron Duvall
SD DANR, Water Rights Program
523 E Capitol Ave
Pierre, SD 57501

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

Susan Anderson
Elk Mountain Water Users Association, Inc.
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Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

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

By: /s/ Matthew E. Naasz
Matthew E. Naasz



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 7, 2023

NOTICE OF ENTRY OF ORDER

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)
1320 East Highway 14, Suite 1
Pierre SD 57501-8501
ann.minesbailey@state.sd.us

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez
P.O. Box 8045
Rapid City SD 57709
mnaasz@gpna.com

J. Scott James, Legal Counsel for Applicant South Hills Law PLLC
429 ½ Mt. Rushmore Rd
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southernhillslaw@gmail.com

Susan Anderson (Limited Appearance)
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730
sanderson@custercountysd.com

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030
robert@nooneysolay.com

Petitioners
(see attached list dated March 7, 2023)

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Order Granting Motion to Continue Hearing regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

Enclosed is an Order granting the Motion to Continue the contested case hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc. until the May 2023 Water Management Board meeting. Tentatively, the May meeting is scheduled for May 3 and 4, 2023 (subject to change). The exact date and time will be provided in a future Notice. **NOTE**, even though the contested case hearing will NOT be held on March 8, an appeal of an Order granting a Motion to Dismiss a petition late-filed by Tomas and Eraclio Martinez WILL be heard as scheduled on the Board's agenda at 10:00 am (**Central Time**) on March 8, 2023.

To connect remotely to the board meeting concerning the Appeal of the Order granting the Motion to Dismiss, you have one of the two following options. **Please note, if you intend to speak, the court reporter prefers that you participate using Option 1 so she can see you as you speak. This helps with the court reporter's ability to record the conversation.**

Option 1. Audio/visual via Microsoft Teams. To be seen and heard requires a device equipped with a camera and microphone and an internet connection. No software install is necessary, the recommended web browser is Google Chrome or Microsoft Edge. To participate, start the browser and navigate to **<https://www.microsoft.com/microsoft-teams/join-a-meeting>**. When prompted, enter the following to join the meeting:

Meeting ID: 269 938 382 58

Passcode: YHaAwE

Option 2. Connect via audio only. Call 605-679-7263 and enter 970 611 510#

If you are interested in just listening to the board meeting, a livestream of the meeting is available at <https://www.sd.net/>.

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

Enclosure

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)
david.mcvey@state.sd.us

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, ELK	)	ORDER
MOUNTAIN WATER USERS	)	
ASSOCIATION, INC.	)	
	)	

The above-entitled matter is scheduled to be heard by the Water Management Board on Wednesday, March 8, 2023. It is expected that a significant winter weather events will be moving across the state beginning Tuesday. This winter weather event may impede Board members, counsel for the parties, petitioners, and other witnesses from physically attending the meeting in Pierre which could result in issues in presenting evidence to the Board.

On March 6, 2023, the Chief Engineer moved to continue the contested case portion of the above-entitled matter until the next regularly scheduled meeting in May.

On March 6, 2023 Tomas and Eraclio Martinez filed a Notice of Appeal, appealing the Order Granting Motion to Dismiss entered by the Prehearing Chair on February 13, 2023.

Accordingly, it is hereby

ORDERED that the Chief Engineer's Motion to continue the contested case portion of the above-entitled matter until the next regularly scheduled meeting in May is GRANTED. The appeal regarding the Order Granting Motion

to Dismiss by the Pre-Hearing Chair will remain on the agenda for March 8, 2023 and will be heard by the Board at that time.

Dated this 7th day of March, 2023.

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

Rodney Freeman, Pre-Hearing Chair
South Dakota Water Management Board

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
March 7, 2023

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735
jdstearns@yahoo.com

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735
bardoubled@gmail.com

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735
tpaulton1983@gmail.com

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735
paultonenterprises@gmail.com

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701
limestoneservicesllc@outlook.com

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735
mistymartinez2@yahoo.com

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated March 7, 2023, regarding the granting of a motion to continue the hearing on Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and the Order Granting Motion to Continue signed March 7, 2023, was served upon the following by email and by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on March 7, 2023.

Matthew E. Naasz
P.O. Box 8045
Rapid City SD 57709
mnaasz@gpna.com

J. Scott James
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730
southernhillslaw@gmail.com

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730
sanderson@custercountysd.com

Robert J. Galbraith
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030
robert@nooneysolay.com

Petitioners as follows:

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Late-Filed Petitioner
Tomas & Eraclio Martinez
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mistymartinez2@yahoo.com

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
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David McVey, Assistant Attorney General
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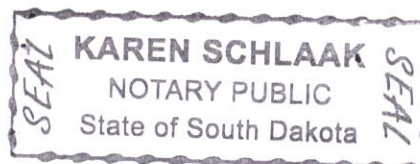
Ron Duvall
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of March, 2023.



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

<http://atg.sd.gov>

RECEIVED

via
email

MAR 06 2023

OFFICE OF
WATER

MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

March 6, 2023

Susan Anderson
Attorney at Law
P.O. Box 6062
Custer, SD 57730
sanderson@custercountysd.com
*Counsel for Elk Mountain Water Users
Association, Inc.*

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*Counsel for Elk Mountain Water Users
Association, Inc.*

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jdstearns@yahoo.com
bardoubled@gmail.com
*Counsel for Daniel Stearns and Dalton
Stearns*

Matthew E. Naasz
Gunderson, Palmer, Nelson
& Ashmore, LLP
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mistymartinez2@yahoo.com
Counsel for Tomas and Eraclio Martinez

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Newcastle, WY 82701
limestoneservicesllc@outlook.com

David M. McVey
Assistant Attorney General
David.McVey@state.sd.us
Counsel for Water Management Board

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users
Association, Inc.*

Elk Mountain Water Users Association, Inc.

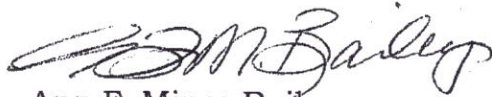
Page 2

March 6, 2023

To Whom It May Concern:

Enclosed please find a true and correct copy of the Chief Engineer's Motion for Continuance and the Certificate of Service in the above-referenced matter.

Sincerely,

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

Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

Enclosures

cc w/encs: Ron Duvall, DANR Water Rights Program (by interoffice mail and email)

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

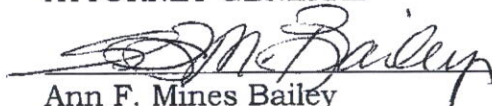
IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CHIEF ENGINEER'S MOTION
Mountain Water Users Association,	)	FOR CONTINUANCE
Inc.	)	

The above-entitled matter is scheduled to be heard by the Water Management Board on Wednesday, March 8, 2023. It is the understanding of the undersigned counsel that significant winter weather events will be moving across the state beginning Tuesday. It is also my understanding that this winter weather event may impede Board members, counsel for the parties, petitioners, and other witnesses from physically attending the meeting in Pierre which could result in issues in presenting evidence to the Board. Accordingly, the Chief Engineer hereby moves to continue the above-entitled matter until the next regularly scheduled meeting in May.

Given the timing of matters, this motion will be mailed in compliance with SDCL § 46-2A-6 and emailed to the parties where possible.

Dated this 6th day of March 2023.

MARTY J. JACKLEY
ATTORNEY GENERAL



Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: Ann.MinesBailey@state.sd.us
Counsel for Chief Engineer and
Water Rights Program, DANR

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CERTIFICATE OF SERVICE
Mountain Water Users Association,	)	
Inc.	)	

The undersigned hereby certifies that true and correct copies of the Chief Engineer's Motion for Continuance in the above matter were served by U.S. mail, first-class postage prepaid, and by email upon the following on this 6th day of March 2023:

Susan Anderson
Attorney at Law
P.O. Box 6062
Custer, SD 57730
sanderson@custercountysd.com
Counsel for Elk Mountain Water Users Association, Inc.

J. Scott James
Southern Hills Law PLLC
429 1/2 Mount Rushmore Road #2
Custer, SD 57730
southernhillslaw@gmail.com
Counsel for Elk Mountain Water Users Association, Inc.

Robert J. Galbraith
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Rapid City, SD 57709-8030
robert@nooneysolay.com
jdstearns@yahoo.com
bardoubled@gmail.com
Counsel for Daniel Stearns and Dalton Stearns

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& Ashmore, LLP
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Edgemont, SD 57735
paultonenterprises@gmail.com

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701
limestoneservicesllc@outlook.com

And on the same date, a copy was emailed to:

David M. McVey
Assistant Attorney General
David.McVey@state.sd.us
Counsel for Water Management Board

And on the same date, the originals were filed by interoffice mail with, and copies were emailed, to:

Ron Duvall
DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501
Ron.Duvall@state.sd.us

MARTY J. JACKLEY
ATTORNEY GENERAL



Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
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Email: Ann.MinesBailey@state.sd.us
*Counsel for Chief Engineer and
Water Rights Program, DANR*



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1302 East Highway 14, Suite 1
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<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED

MAR 08 2023

OFFICE OF
WATER

March 6, 2023

Susan Anderson
Attorney at Law
P.O. Box 6062
Custer, SD 57730
sanderson@custercountysd.com
*Counsel for Elk Mountain Water Users
Association, Inc.*

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Southern Hills Law PLLC
429 1/2 Mount Rushmore Road #2
Custer, SD 57730
southernhillslaw@gmail.com
*Counsel for Elk Mountain Water Users
Association, Inc.*

Robert J. Galbraith
Nooney & Solay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030
robert@nooneysolay.com
jdstearns@yahoo.com
bardoubled@gmail.com
*Counsel for Daniel Stearns and Dalton
Stearns*

Matthew E. Naasz
Gunderson, Palmer, Nelson
& Ashmore, LLP
P.O. Box 8045
Rapid City, SD 57709
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Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735
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William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735
paultonenterprises@gmail.com

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701
limestoneservicesllc@outlook.com

David M. McVey
Assistant Attorney General
David.McVey@state.sd.us
Counsel for Water Management Board

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users
Association, Inc.*

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

RECEIVED

MAR 08 2023

OFFICE OF
WATER

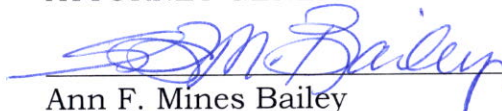
IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CHIEF ENGINEER'S MOTION
Mountain Water Users Association,	)	FOR CONTINUANCE
Inc.	)	

The above-entitled matter is scheduled to be heard by the Water Management Board on Wednesday, March 8, 2023. It is the understanding of the undersigned counsel that significant winter weather events will be moving across the state beginning Tuesday. It is also my understanding that this winter weather event may impede Board members, counsel for the parties, petitioners, and other witnesses from physically attending the meeting in Pierre which could result in issues in presenting evidence to the Board. Accordingly, the Chief Engineer hereby moves to continue the above-entitled matter until the next regularly scheduled meeting in May.

Given the timing of matters, this motion will be mailed in compliance with SDCL § 46-2A-6 and emailed to the parties where possible.

Dated this 6th day of March 2023.

MARTY J. JACKLEY
ATTORNEY GENERAL



Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: Ann.MinesBailey@state.sd.us
*Counsel for Chief Engineer and
Water Rights Program, DANR*

Elk Mountain Water Users Association, Inc.

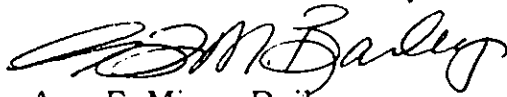
Page 2

March 6, 2023

To Whom It May Concern:

Enclosed please find a true and correct copy of the Chief Engineer's Motion for Continuance and the Certificate of Service in the above-referenced matter.

Sincerely,



Ann F. Mines Bailey
Assistant Attorney General

AFM/mn

Enclosures

cc w/encs: ✓ Ron Duvall, DANR Water Rights Program (by interoffice mail and email)

RECEIVED

MAR 08 2023

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CERTIFICATE OF SERVICE
Mountain Water Users Association,	)	
Inc.	)	

The undersigned hereby certifies that true and correct copies of the Chief Engineer's Motion for Continuance in the above matter were served by U.S. mail, first-class postage prepaid, and by email upon the following on this 6th day of March 2023:

Susan Anderson
Attorney at Law
P.O. Box 6062
Custer, SD 57730
sanderson@custercountysd.com
Counsel for Elk Mountain Water Users Association, Inc.

J. Scott James
Southern Hills Law PLLC
429 1/2 Mount Rushmore Road #2
Custer, SD 57730
southernhillslaw@gmail.com
Counsel for Elk Mountain Water Users Association, Inc.

Robert J. Galbraith
Nooney & Solay, LLP
P.O. Box 8030
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robert@nooneysolay.com
jdstearns@yahoo.com
bardoubled@gmail.com
Counsel for Daniel Stearns and Dalton Stearns

Matthew E. Naasz
Gunderson, Palmer, Nelson
& Ashmore, LLP
P.O. Box 8045
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mnaasz@gpna.com
mistymartinez2@yahoo.com
Counsel for Tomas and Eraclio Martinez

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735
tpaulton1983@gmail.com

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735
paultonenterprises@gmail.com

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701
limestoneservicesllc@outlook.com

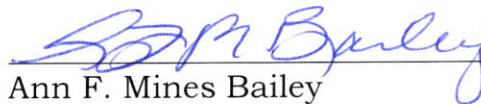
And on the same date, a copy was emailed to:

David M. McVey
Assistant Attorney General
David.McVey@state.sd.us
Counsel for Water Management Board

And on the same date, the originals were filed by interoffice mail with, and copies were emailed, to:

Ron Duvall
DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501
Ron.Duvall@state.sd.us

MARTY J. JACKLEY
ATTORNEY GENERAL



Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: Ann.MinesBailey@state.sd.us
*Counsel for Chief Engineer and
Water Rights Program, DANR*



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 14, 2023

NOTICE OF ENTRY OF ORDER

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)
1320 East Highway 14, Suite 1
Pierre SD 57501-8501

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez
P.O. Box 8045
Rapid City SD 57709

J. Scott James, Legal Counsel for Applicant
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Susan Anderson (Limited Appearance)
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Petitioners
(see attached list dated November 9, 2022)

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Order Granting the Motion to Dismiss Martinez Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

Enclosed is an Order granting the Motion to Dismiss the Martinez Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

As stated in the enclosed order, the petitioner may appeal the order by filing an appeal with DANR by March 6, 2023, before 5:00 pm Central time. Such appeal must be in writing and sent via U.S. Mail.

Mail appeal to:

Atten: Ron Duvall
SD DANR, Water Rights Program
523 E Capitol Ave
Pierre SD 57501

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

Enclosure

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
November 9, 2022

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

RECEIVED

FEB 14 2023

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	ORDER GRANTING MOTION
APPLICATION NO. 2850-2, Elk	)	TO DISMISS
Mountain Water Users Association,	)	
Inc.	)	

On July 7, 2022, the applicant filed an application requesting an appropriation of 145 acre-feet of water per year at a maximum diversion rate of 0.333 cubic feet per second. The application was reviewed, and the Chief Engineer issued a recommendation of approval in this matter with qualifications. Notice of the Chief Engineer's recommendation was appropriately noticed in the legal newspaper and on DANR's website as required. The notice set forth that petitions by interested persons must be filed on or before October 11, 2022. On October 28, 2022, Water Rights received the petition in opposition of Tomas and Eraclio Martinez (Martinez Petition) which was postmarked October 25, 2022.

Notice was published in the Rapid City Journal and the Custer County Chronicle on September 28, 2022. The notice specifically set forth the deadline of October 11, 2022, for the filing of petitions. The Martinez petition, however, was received more than two weeks after that deadline.

On the on January 24, 2023, the Water Rights Program filed a motion to dismiss on the basis that the petition filed by Tomas and Eraclio Martinez was not timely in that it was not filed within 10 days of the published notice as

required by both statute and rule. On February 3, 2023 a response to the motion to dismiss was filed by Tomas and Eraclio Martinez. On February 13, 2023, a hearing was held by the Pre-Hearing Chair for the Water Management Board.

SDCL §46-2A-4(c) states in relevant part:

...The notice, which shall be provided by the chief engineer to the applicable newspapers, shall include the following, as applicable:...

4. A statement that a person may only participate in the hearing if:...

(c) The person files a petition to oppose the application with the chief engineer and applicant within ten days of the published notice;

ARSD §74-02-01-12.04 states:

Petitions filed pursuant to SDCL 46-2A-4(4) or 46-2A-23 to oppose or support an application must be served by first class mail or personally delivered to the chief engineer's office and the applicant. Mail must be postmarked or personal delivery must occur at least 10 days before the published date of hearing pursuant to SDCL 46-2A-4 or within 10 days after the published notice pursuant to SDCL 46-2A-23. If the tenth day is a Saturday, Sunday, or legal holiday, petitions must be postmarked or personally delivered to the chief engineer's office and the applicant by the next working day.

Both the statute and the administrative rule use mandatory language for the requirement that any petitions in opposition be filed withing ten days of the published notice. Neither the statute nor the rule contains a "good cause" exception to the ten-day requirement. Both the statute and the rule are mandatory and in the case the Board, by and through the pre-hearing chair, is bound to grant the motion to dismiss.

FOR THE REASONS SET FORTH HEREIN, Water Right's Motion to Dismiss the Petition in Opposition filed by Tomas and Eraclio Martinez is **GRANTED**. Tomas and Eraclio Martinez may appeal this Order by filing with

the DANR by March 6, 2023 before 5:00 P.M. Central Time. Such appeal must be in writing and sent via U.S. Mail.

So Ordered this 13th day of February, 2023.

A handwritten signature in purple ink, consisting of several loops and a final flourish, positioned above the printed name.

Rodney Freeman
Pre-Hearing Chairman
Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated February 14, 2023, regarding the granting of a motion to dismiss a late-filed petition for Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. and the Order Granting Motion to Dismiss signed February 13, 2023, was served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on February 14, 2023.

Matthew E. Naasz
P.O. Box 8045
Rapid City SD 57709

J. Scott James
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
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Edgemont SD 57735

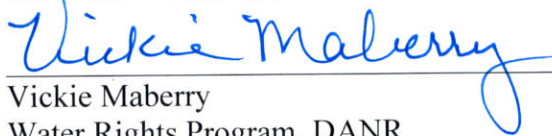
Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also Sent Inter-office to:

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

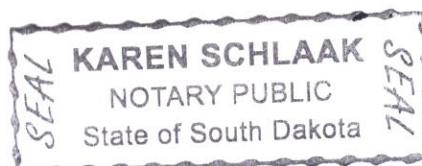
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of February, 2023.


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

February 9, 2023

NOTICE

TO: Ann Mines Bailey, Assistant Attorney General (Counsel for Chief Engineer)
1320 East Highway 14, Suite 1
Pierre SD 57501-8501

Matthew E. Naasz, Legal Counsel for Tomas and Eraclio Martinez
P.O. Box 8045
Rapid City SD 57709

J. Scott James, Legal Counsel for Applicant
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Susan Anderson (Limited Appearance)
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith, Legal Counsel for Daniel and Dalton Stearns
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Petitioners
(see attached list dated November 9, 2022)

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Prehearing Remote Conference concerning Motion to Dismiss Martinez Late-Filed Petition regarding Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

On January 24, 2023, a motion was filed by Ann Mines Bailey, Assistant Attorney General, to dismiss a petition late-filed by Tomas and Eraclio Martinez. On February 6, 2023, a response to the motion to dismiss was filed by Matthew E. Naasz, legal counsel for Tomas and Eraclio Martinez. The response requested the motion be denied and scheduling of a prehearing telephonic call to consider the matter. Prehearing Chair Rodney Freeman will hear arguments by Ann Mines Baily and Matthew Naasz during a prehearing conference via remote connection. All legal counsels and petitioners are receiving notification of this prehearing conference.

However, please note, this prehearing conference is NOT to argue the merits of the application filed by Elk Mountain Water Users Association Inc. The only matter that will be discussed is the motion to dismiss. The contested case hearing to consider Application No. 2850-2 is set to be heard by the Water Management Board on March 8, 2023, as previously noticed.

The prehearing conference will be conducted on Monday, February 13, 2023, at 10:00 AM **Central Time**. To connect to the remote conference, you have one of the two following options. **Please note, if you intend to speak, the court reporter prefers that you participate using Option 1 so she can see you as you speak. This helps with the court reporter's ability to record the conversation.**

Option 1. Audio/visual via Microsoft Teams. To be seen and heard requires a device equipped with a camera and microphone and an internet connection. No software install is necessary, the recommended web browser is Google Chrome or Microsoft Edge. To participate, start the browser and navigate to <https://www.microsoft.com/microsoft-teams/join-a-meeting>. When prompted, enter the following to join the meeting:

Meeting ID: 248 757 523 60

Passcode: MViiEG

Option 2. Connect via audio only. Call 605-679-7263 and enter 906 220 361#

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

c: David McVey, Assistant Attorney General (Legal Counsel for Water Management Board)

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
November 9, 2022

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated February 9, 2023, regarding a prehearing conference concerning a motion to dismiss a late-filed petition for Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. was served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on February 9, 2023.

Matthew E. Naasz
P.O. Box 8045
Rapid City SD 57709

J. Scott James
South Hills Law PLLC
429 ½ Mt. Rushmore Rd
Custer SD 57730

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
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Dalton Stearns
10321 Two Track Trl
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Travis Paulton
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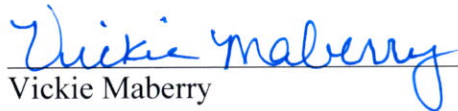
Late-Filed Petitioner

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also 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, DANR

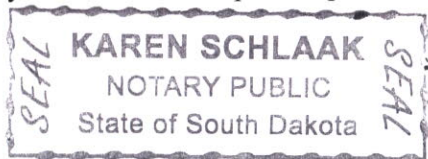
STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of February, 2023.


Karen Schlaak

Notary Public

My Commission expires April 1, 2025



**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

IN THE MATTER OF WATER) **TOMAS AND ERACLIO MARTINEZ’S**
APPLICATION NO. 2850-2, Elk) **RESPONSE TO MOTION TO DISMISS**
Mountain Water Users Association,)
Inc.)

COMES NOW Tomas and Eraclio Martinez, by and through its undersigned counsel,
hereby respectfully submits their Response to Motion to Dismiss.

FACTUAL AND PROCEDURAL HISTORY

This application seeks to divert 150 gpm (.333 cfs) from the Madison aquifer from a well to be constructed for a water distribution system, commercial use, and fire protection. The well will be located in the NW1/4, NW1/4 Section 21-T4S-R1E, Custer County South Dakota. The Chief Engineer has recommended approval of the application. Notice of the Chief Engineer's application indicated that any person contesting the application shall file a petition by October 11, 2022. The Water Rights Program received the petition of Tomas and Eraclio on October 28, 2022.

Tomas and Eraclio Martinez own property located at 10216 Valley Rd., Edgmont South Dakota. *See*, Affidavit of Eraclio Martinez. This property makes part of their family cattle ranch. This property is adjacent to the property upon which the applicant seeks to drill the well associated with this application. The Martinez family has a Madison aquifer domestic well, which is located on their 10216 Valley Rd property. The well completion report for this well was received by the Water Rights Program on February 4, 2002. *See*, Exhibit A. This well completion report indicates that the well-driller encountered the Madison formation at 1020 feet deep, and the static water level was 890 feet below grade. The SD DANR well completion report data base places this well over one half-mile to the south of the proposed well site associated

with this application. *See*, Exhibit B (an excerpt from the South Dakota Water Rights Well Completion Report database including an estimate of the distance between the proposed point of diversion in this matter and the database's location of the Martinez well).

In recommending approval of this application, the Water Rights Engineer identified the "nearest domestic well completed into the Madison aquifer on file with the Water Rights Program" as a well "located approximately 0.7 miles south of this application in the SW1/4 Section 21 T4S-R1E" with depths to the Madison formation and a static water level matching that of the Martinez well. Presumably, this is the well discussed in the Report to the Chief Engineer.

But the Martinez well is not 0.7 miles away from the proposed well-site associated with this application. The Martinez well is located just to the southeast of the building site on 10216 Valley Rd. *See*, Exhibit A to Affidavit of Eraclio Martinez. An approximate measurement done on the Custer County GIS website shows the Martinez well and the proposed well site to be approximately less than 900 feet apart. *See*, Exhibit C (Exhibit C to the Response to Motion to Dismiss is the same as Exhibit A to the Affidavit of Eraclio Martinez). This is consistent with measurements taken on the ground by Eraclio Martinez. The proposed diversion from the Madison aquifer is not approximately 3,700 feet from the Martinez' domestic well, but less than a quarter of that distance away.

The Martinez family did not timely file a Petition in Intervention in this matter because they were on a family vacation at the time the Notice was published. *See*, Affidavit of Eraclio Martinez. By the time the Martinez family returned home, the time for submitting petitions had passed. *Id.*

ARGUMENT

The Water Rights' Program's Motion to Dismiss relies on SDCL 46-2A-4 as the legal authority for the proposition that the Martinez' petition should be dismissed. That section requires the public notice which must be published to include: "A statement that a person may only participate in the hearing if: . . . (c) The person files a petition to oppose the application with the chief engineer and applicant within ten days of the published notice[.]" SDCL 46-2A-4(4). While this statute requires timely submission of petitions, it does not prevent this Board from allowing late-filed petitions to be granted party status.

This Board has discretion to control its docket. The language of SDCL 46-2A-4 does not mandate this Board dismiss an untimely filed petition. Had the Legislature intended untimely submission of a petition to be a jurisdictional bar to a petitioner's participation, it could have specifically stated that. This Board has allowed participation by intervenors who have submitted untimely petitions in other matters. For example, in the Powertech proceedings, the Oglala Sioux Tribe Moved for admission as a party after untimely filing its petition to intervene. *See, Exhibit D.* The Oglala Sioux Tribe is currently a party to that proceeding.

Importantly, no party would suffer prejudice by allowing the Martinez family to participate. Petitioners in opposition filed a motion for auto-delay approximately 10 days after the Martinez family filed their petition. The hearing was then delayed from December to March. During that time, the Martinez family has been served with all pleadings and filings. It is also important to recognize that a timely petition in opposition was filed in this matter. So this is not a situation in which there will be no contested-case hearing without the Martinez family.

Here, the interests of fairness require that the Martinez family be allowed to fully participate in this hearing process. They own and utilize the closest well to the proposed

diversion point, and the location of that well to the proposed diversion point has not been considered by the Water Rights program. The report to the Chief Engineer states: "Some drawdown from this application is likely to occur and nearby well owners may need to lower their pumps or install pumps to access the water in the aquifer. Exact aquifer behavior cannot be known without an aquifer performance test." Report to the Chief Engineer at 8. The Martinez family wishes to express to the Water Management their concerns with the location of the well, and that the drawdown anticipated by the Report to the Chief Engineer has not been fully considered, given the actual locations of the well. Principles of fundamental fairness dictate that the Martinez family be allowed to fully participate as parties in this application process.

CONCLUSION

For the reasons states above, Tomas and Eraclio Martinez respectfully request this Board deny the Motion to Dismiss filed by the Water Rights Program. Tomas and Eraclio Martinez request a telephonic hearing be scheduled on the Water Rights' Motion to Dismiss. Given the deadlines currently in place, this hearing should be conducted as soon as possible.

Respectfully submitted this 3rd day of February, 2023.

ATTORNEYS FOR TOMAS AND ERACLIO
MARTINEZ

By: /s/ Matthew E. Naasz

Matthew E. Naasz
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709
Telephone: (605) 342-1078
Telefax: (605) 342-9503
E-mail: mnaasz@gpna.com

CERTIFICATE OF SERVICE

I hereby certify on February 3, 2023, a true and correct copy of a **TOMAS AND ERACLIO MARTINEZ'S RESPONSE TO MOTION TO DISMISS** was served upon the following individuals by Email and U.S. Mail, postage prepaid:

Rodney Freeman, Prehearing Chairman Water Management Board
Joe Foss Building
523 East Capitol Avenue Pierre, SD 57501

Ann F. Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

Susan Anderson
Elk Mountain Water Users Association, Inc.
P.O. Box 6062
Custer, SD 57730

Robert J. Galbraith
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Rapid City, SD 57709-8030

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Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

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

By: /s/ Matthew E. Naasz
Matthew E. Naasz

EXHIBIT

A

SOUTH DAKOTA WATER WELL COMPLETION REPORT

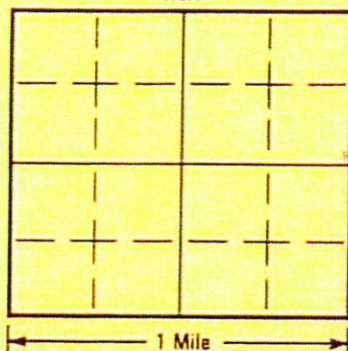
07-92

Location 1/4 SW 1/4 Sec 21 Twp 45 Rg 7E
County CUSTER

Please mark well location with an "X"

By Elk Mt School

Well Completion Date

11-5-01

LOCATION:

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

PROPOSED USE:

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

METHOD OF DRILLING:

Rotary Down hole Hammer

CASING DATA:

☒ Steel ☐ Plastic ☐ OtherIf other describe 1025' - 5" steel

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	IN	FT	FT	IN
	5	0	1025	6 3/4
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
Port Ht	50	11-15 lb./gal	0	1025
at 8% Bat		lb./gal	ft	ft

Describe grouting procedure

SCREEN: ☐ Perforated pipe ☐ Manufactured None

Diameter _____ IN Length open Hole FEET

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NOIf so, what material? Case set Madison

Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?

YES, How:

Chlorine Solution

NO, Why Not?

Laboratory sent to for water quality analysis

Well Owner: Tom MartinezBusiness Name: HC 2650 Dewey RdAddress: Edgemont S.D.

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Spearsfish	0	65
minnesota L.S.	65	100
Gooche	100	190
Minnesota S.S.	190	580
Minnesota M. & M. M. M.	580	590
Minnesota S.S.	590	1020
Madison Fractured L.S.	1020	1140
H2O - 30 ² gpm		
3214		

STATIC WATER LEVEL 890 Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped 4/AIR Describe: 30² gpm☐ Bailed☐ Other

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

RECEIVED

FEB - 4 2002

This well was drilled under license # 324 WATER RIGHTS PROGRAM

And this report is true and accurate.

Drilling firm Alexander Drilling Inc.

Signature of License Representative:

By Alexander

Signature of Well Owner or Equitable Property Holder:

Tom MartinezDate: 5-13-2001

B



Water Well Completion Reports

Go Back

Go Forward

SEARCH WELLS
Help Tools

DRILLERS

PUMP IN

Miles

Measurement Result

0.63 Miles

TRS labels ☒ label darkness ☐

Search

T004S R001E S20

27666

Compl Rpt: 00055229.

Last Name: MARTINEZ

First Name: TOM

Business:

County: Custer

Well Type: DOM

Township:

Range:

Section:

QQ: SW

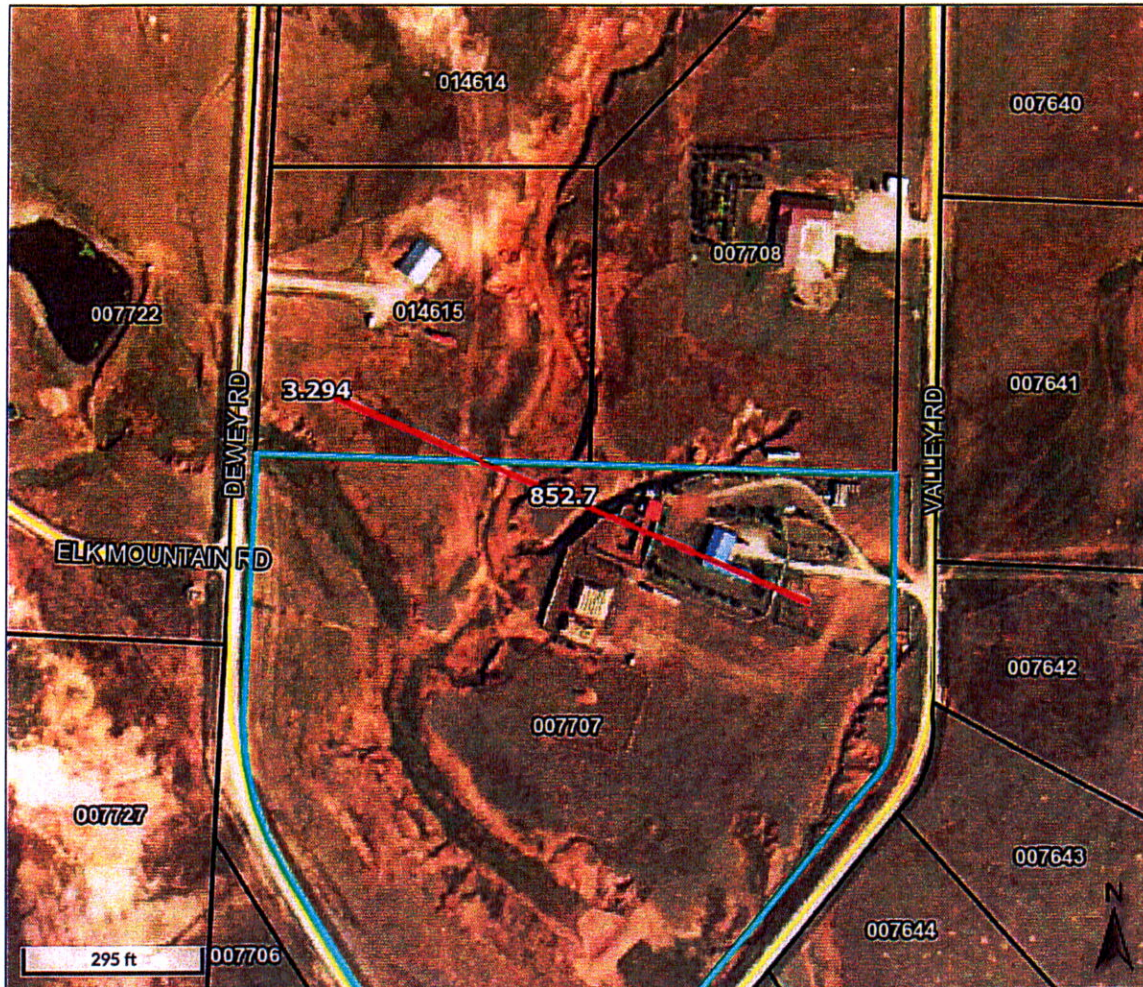
Latitude: 43.004170

Longitude: -104.00956

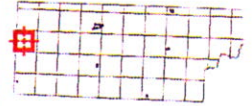
Driller No.: 324

Compl Date: "Mon 05

Streets



Overview



Legend

-  Corporate Limits
- Highways
 -  SD Hwy
 -  US Hwy
 -  Roads
-  Parcels

Parcel ID	007707	Alternate ID	n/a	Owner Address	MARTINEZ TOMAS L & IRMA M
Sec/Twp/Rng	021/0004/001	Class	Agricultural		10216 VALLEY RD
Property Address	10216 VALLEY RD	Acreage	20		EDGEMONT, SD 57735-5010
	EDGEMONT				

District 16.2-1-1-0-0

Brief Tax Description ELK MT RANCHES SUBD TR 75 SEC 21 T4 R1 20 AC
MH AS RE-1996 LIBERTY HERITAGE HOMES 16X80
SERIAL # 06L27155
TITLE # 153361390
1040102100000700

(Note: Not to be used on legal documents)

Parcels are not adjusted to match aerial background. GIS information is for reference purposes only and is not a legal document. Data may contain errors.

Date created: 1/30/2023

Last Data Uploaded: 1/30/2023 7:41:43 AM

Developed by  **Schneider**
GEOSPATIAL

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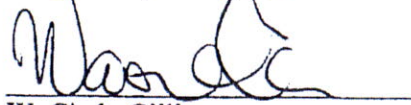
WATER RIGHTS
PROGRAM

- 1) That the granting of such permits will adversely affect the future surface and subsurface water rights of Oglala Sioux Tribe and its members in their ability to use our water resources for domestic, commercial, and other uses.
- 2) The proposal for a uranium mine northwest of Edgemont would use large amounts of water. Powertech Uranium has asked the state for a permit to extract 551 gallons per minute from the Madison aquifer. They have also applied for a permit to extract 8,500 gallons per minute from the Inyan Kara formation. 9,000 gallons per minute equals 12,960,000 gallons per day.
- 3) According to the company, the project may last as long as 20 years. The company plans to drill two or more wells into the Madison aquifer and a total of 1500 wells into the Inyan Kara.
- 4) Approximately 1000 wells would operate at any one time. According to the company, the project would consume (use up) 2.76 billion gallons of the water which would no longer be available to communities, ranches, and members of the Oglala Sioux Tribe.
- 5) After it is used for mining, the water that is not consumed or left in the aquifer would be treated in one of two ways: The company prefers to pump it underground -- below drinking water sources - where it would no longer be available to communities, ranches, and families. It could be sprayed on the ground, which has created a build-up of toxic materials, including selenium, at other sites.
- 6) The permit area is in a semi-arid area, and droughts are a regular occurrence. If this project goes through, we will lose access to critical groundwater resources.

- 7) The Oglala Sioux Tribe further objects to these applications for our water rights as they will interfere with and adversely affect existing water rights which is not in the best interests of the tribe and its members.

Dated this 28th day of November, 2012.

Respectfully submitted,



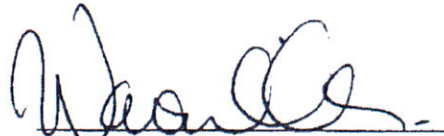
W. Cindy Gillis
Attorney for the Oglala Sioux Tribe
522 Seventh Street, Suite 202
Rapid City, South Dakota 57701
Tel: (605) 716-6355
Fax: (605) 716-6357

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the foregoing **PETITION TO INTERVENE AND OPPOSITION TO APPLICATION** on the 28th day of November, 2012, by email, fax and/or mailing a copy by First Class Mail, postage fully prepaid, from the United States Post Office at Rapid City, South Dakota to the following persons:

CHIEF ENGINEER
Water Rights Program
523 E. Capitol
Pierre, S.D. 57501

POWERTECH
c/o Richard Blubaugh
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111



W. Cindy Gillis
Attorney for the Oglala Sioux Tribe

**BEFORE THE WATER MANAGEMENT BOARD
OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

IN THE MATTER OF WATER)
APPLICATION NO. 2850-2, Elk)
Mountain Water Users Association,)
Inc.)

**AFFIDAVIT OF
ERACLIO MARTINEZ**

I, Eraclio Martinez, one of the Petitioners in the above captioned matter, being first duly sworn upon my oath, state and declare as follows:

1. I assist my parents and my wife with our family ranching operation, which is located at 10216 Valley Road, Edgemont, SD 57735.

2. Attached hereto as Exhibit A is map printed from the Custer County GIS system. This map accurately reflects the location of the domestic well referred to as the “Martinez Well” in our Response to the Motion to Dismiss our Petition filed by the Water Rights Program.

3. My entire family and I went on a summer vacation during the time that the Notice of Application was published in the local newspaper.

4. By the time we returned from vacation, the petition date had passed.

5. We do not subscribe to any printed newspaper. Our neighbor provided the Notice of Recommendation to us after we returned from vacation.

6. When we discovered that the Application included utilization of the well for commercial purposes, we were surprised. Prior to this, we had been told that a future well was being contemplated, but that the well would be used for fire protection purposes and for the Elk Mountain School.

7. Even though we live, and our well is located next door to the fire hall where the well will be located, we were not made aware of this Application other than by our neighbors who provided a copy of the petition to us.

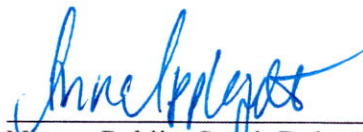
8. Upon reviewing the Notice of Recommendation, we filed our petition as quickly as possible.

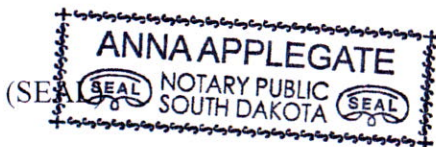
FURTHER AFFIANT SAYETH NOT.

Dated: February 3, 2023.


Eraclio Martinez

Subscribed and sworn to before me by Eraclio Martinez this 3rd day of February, 2023.


Notary Public, South Dakota
My commission expires: 9/11/2023



ATTORNEYS FOR TOMAS AND ERACLIO
MARTINEZ

By: /s/ Matthew E. Naasz

Matthew E. Naasz
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709
Telephone: (605) 342-1078
Telefax: (605) 342-9503
E-mail: mnaasz@gpna.com

CERTIFICATE OF SERVICE

I hereby certify on February 3, 2023, a true and correct copy of a
AFFIDAVIT OF ERACLIO MARTINEZ was served upon the following individuals by Email
and U.S. Mail, postage prepaid:

Rodney Freeman, Prehearing Chairman Water Management Board
Joe Foss Building
523 East Capitol Avenue Pierre, SD 57501

Susan Anderson
Elk Mountain Water Users Association, Inc.
P.O. Box 6062
Custer, SD 57730

Robert J. Galbraith
Nooney & Solay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us

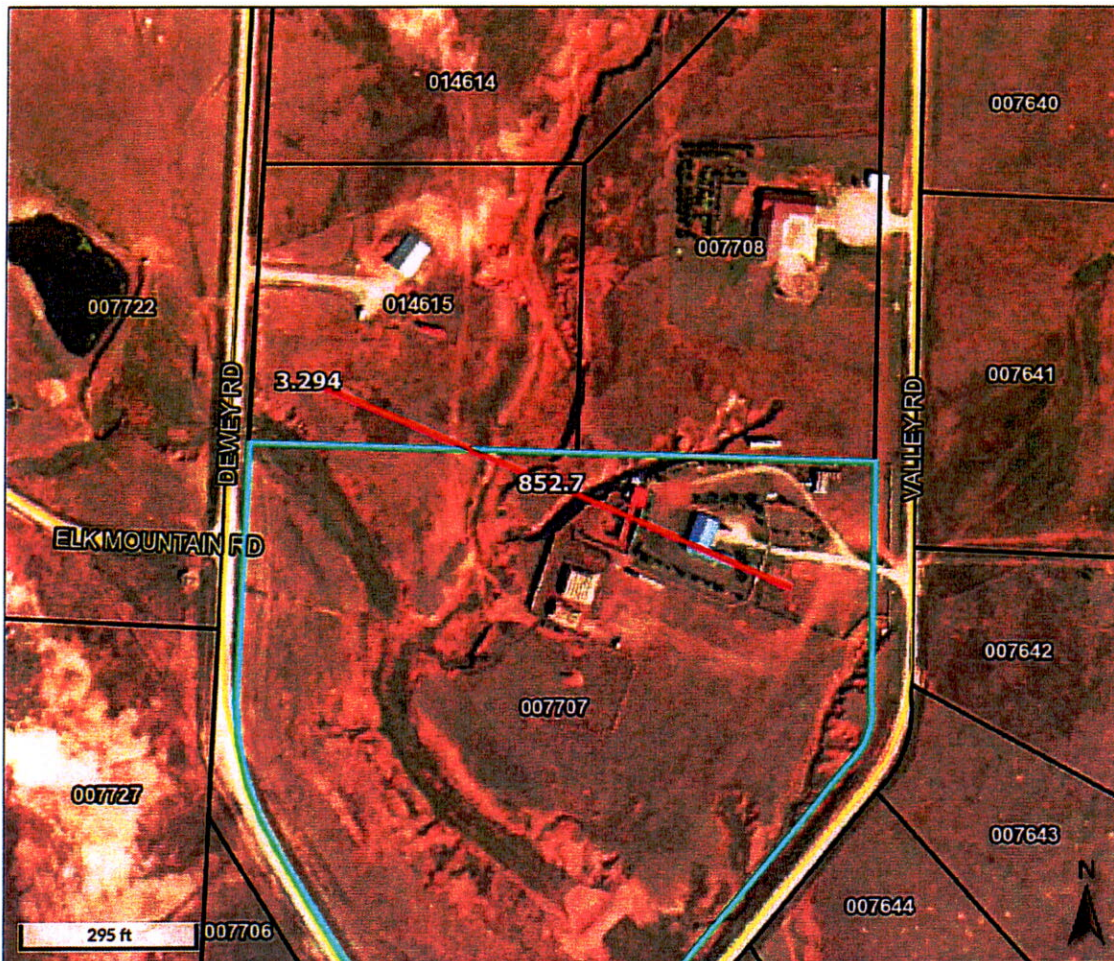
David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
david.mcvey@state.sd.us

By: /s/ Matthew E. Naasz
Matthew E. Naasz

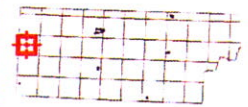
EXHIBIT

A

BeaconTM Custer County, SD



Overview



Legend

- Corporate Limits
- Highways
 - SD Hwy
 - US Hwy
 - Roads
- Parcels

Parcel ID	007707	Alternate ID	n/a	Owner Address	MARTINEZ TOMAS L & IRMA M
Sec/Twp/Rng	021/0004/001	Class	Agricultural		10216 VALLEY RD
Property Address	10216 VALLEY RD	Acreage	20		EDGEMONT, SD 57735-5010
	EDGEMONT				

District 16.2-1-1-1-0-0
 Brief Tax Description ELK MT RANCHES SUBD TR 75 SEC 21 T4 R1 20 AC
 MH AS RE-1996 LIBERTY HERITAGE HOMES 16X80
 SERIAL # 06L27155
 TITLE # 153361390
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OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
<http://atg.sd.gov>

RECEIVED

JAN 26 2023

OFFICE OF
WATER

MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

January 24, 2023

Rodney Freeman, Prehearing Chairman
Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Susan Anderson
Elk Mountain Water Users
Association, Inc.
P.O. Box 6062
Custer, SD 57730

Robert J. Galbraith
Nooney & Salay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
(Hand-delivered)

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users Association, Inc.*

Dear Mr. Freeman:

Enclosed please find a true and correct copy of Motion to Dismiss and Certificate of Service in the above-referenced matter.

Sincerely,

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

AFM/mb
Enclosures

cc w/encs: Ron Duvall, DANR Water Rights Program (U.S. Mail)

RECEIVED

JAN 26 2023

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

OFFICE OF
WATER

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	MOTION
APPLICATION NO. 2850-2, Elk	)	TO DISMISS
Mountain Water Users Association,	)	
Inc.	)	

The Chief Engineer and the South Dakota Department of Agriculture and Natural Resources Water Rights Program (the Program) respectfully move the Board's duly appointed prehearing chairman, Rodney Freeman, for dismissal of the petition of Tomas and Eraclio Martinez in the above-entitled matter as it is untimely.

On July 7, 2022, the applicant filed an application requesting an appropriation of 145 acre-feet of water per year at a maximum diversion rate of 0.333 cubic feet per second. The application was reviewed, and the Chief Engineer issued a recommendation of approval in this matter with qualifications. Notice of the Chief Engineer's recommendation was appropriately noticed in the legal newspaper and on DANR's website as required. The notice set forth that petitions by interested persons must be filed on or before October 11, 2022. On October 28, 2022, Water Rights received the petition of Tomas and Eraclio Martinez which was postmarked October 25, 2022.

South Dakota Codified Law, section 46-2A-4(6) provides that petitions to oppose an application must be filed within ten days of the of the published

notice. In this matter, notice was published in the Rapid City Journal and the Custer County Chronicle on September 28, 2022. By law, the petition should have been received no later than October 11, 2022. See SDCL §§ 46-2A-4 and 2-14-14. The notice specifically set forth the deadline of October 11, 2022, for the filing of petitions. This petition, however, was received more than two weeks after that deadline. Accordingly, this petition is not timely and should be dismissed.

Dated this 24th day of January 2023.



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, DANR

RECEIVED

JAN 26 2023

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

OFFICE OF
WATER

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CERTIFICATE OF SERVICE
Mountain Water Users Association,	)	
Inc.	)	

The undersigned hereby certifies that true and correct copies of the Motion to Dismiss in the above matter, were served by U.S. mail, first-class, postage prepaid, upon the following on this 24th day of January 2023:

Susan Anderson
Elk Mountain Water Users Association, Inc.
P.O. Box 6062
Custer, SD 57730

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Robert J. Galbraith
Counsel for Daniel Stearns and
Dalton Stearns
Nooney & Salay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

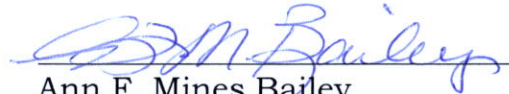
David M. McVey
Counsel for Water Management Board
Assistant Attorney General
DANR Water Rights Program
1302 East Highway 14, Suite 1
Pierre, SD 57501
(Hand-delivered)

Rodney Freeman, Prehearing Chair
Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

And on the same date, the originals were filed by U.S. mail, first-class, postage prepaid with:

Run Duvall, DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

MARTY J. JACKLEY
ATTORNEY GENERAL



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

Counsel for Water Rights Program, DANR



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 26, 2023

NOTICE

TO: Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Regarding Motion to Dismiss concerning Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

On January 24, 2023, a motion was filed by Ann Mines Bailey, Assistant Attorney General, to dismiss your petition on the basis that it was late filed more than two weeks after the filing deadline.

If you plan to oppose dismissal of your petition opposing Application No. 2850-2, Elk Mountain Water Users Association Inc., please provide written notification to me no later than February 6, 2023.

Mail to: Atten. Ron Duvall
SD DANR, Water Rights Program
523 E. Capitol Ave.
Pierre SD 57501

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2850-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

If you have any questions regarding procedural matters, please contact me at (605) 773-3352 or by email at ron.duvall@state.sd.us.

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

CERTIFICATION

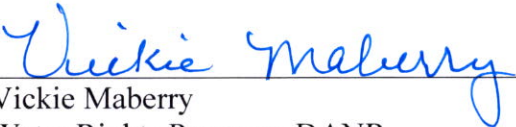
The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated January 26, 2023, regarding a Motion to Dismiss concerning Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. was served upon the following by enclosing the same in an envelope with first class postage prepaid and affixed thereto, and depositing said envelope in the United States mail on January 26, 2023.

Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also 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



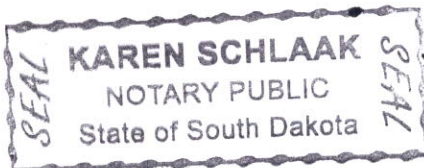
Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of January, 2023.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





RECEIVED

JAN 25 2023

OFFICE OF
WATER

OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

January 24, 2023

Rodney Freeman, Prehearing Chairman
Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Susan Anderson
Elk Mountain Water Users
Association, Inc.
P.O. Box 6062
Custer, SD 57730

Robert J. Galbraith
Nooney & Salay, LLP
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Jim and Charel Pitts
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Newcastle, WY 82701

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
(Hand-delivered)

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users Association, Inc.*

Dear Mr. Freeman:

Enclosed please find a true and correct copy of Motion to Dismiss and Certificate of Service in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, reading "Ann F. Mines Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall, DANR Water Rights Program (U.S. Mail)

RECEIVED

JAN 25 2023

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

OFFICE OF
WATER

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	MOTION
APPLICATION NO. 2850-2, Elk	)	TO DISMISS
Mountain Water Users Association,	)	
Inc.	)	

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notice. In this matter, notice was published in the Rapid City Journal and the Custer County Chronicle on September 28, 2022. By law, the petition should have been received no later than October 11, 2022. See SDCL §§ 46-2A-4 and 2-14-14. The notice specifically set forth the deadline of October 11, 2022, for the filing of petitions. This petition, however, was received more than two weeks after that deadline. Accordingly, this petition is not timely and should be dismissed.

Dated this 24th day of January 2023.


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, DANR

RECEIVED

JAN 25 2023

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CERTIFICATE OF SERVICE
Mountain Water Users Association,	)	
Inc.	)	

The undersigned hereby certifies that true and correct copies of the Motion to Dismiss in the above matter, were served by U.S. mail, first-class, postage prepaid, upon the following on this 24th day of January 2023:

Susan Anderson
Elk Mountain Water Users Association, Inc.
P.O. Box 6062
Custer, SD 57730

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
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Jim and Charel Pitts
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Newcastle, WY 82701

Robert J. Galbraith
Counsel for Daniel Stearns and
Dalton Stearns
Nooney & Salay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

David M. McVey
Counsel for Water Management Board
Assistant Attorney General
DANR Water Rights Program
1302 East Highway 14, Suite 1
Pierre, SD 57501
(Hand-delivered)

Rodney Freeman, Prehearing Chair
Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

And on the same date, the originals were filed by U.S. mail, first-class, postage prepaid with:

Run Duvall, DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

MARTY J. JACKLEY
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Ann F. Mines Bailey", written over a horizontal line.

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

Counsel for Water Rights Program, DANR



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 25, 2023

NOTICE OF HEARING

TO: Susan Anderson Petitioners
Elk Mountain Water Users Assn. Inc. (see attached list dated November 9, 2022)
PO Box 6062
Custer SD 57730

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

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

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

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

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

The Water Management Board will conduct a hearing to consider Application No. 2850-2 at 10:00 AM **(Central Time)**, on Wednesday, March 8, 2023, 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 Custer County Chronicle on September 28, 2022, Rapid City Journal on September 28, 2022, and the Notice of Hearing dated October 27, 2022, still apply.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2850-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.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.

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

November 9, 2022

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated January 25, 2023, regarding Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc. was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on January 25, 2023.

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Petitioners as follows:

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Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
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Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

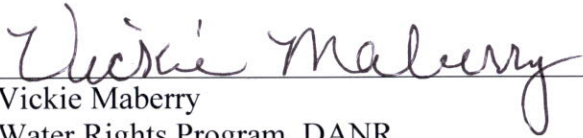
Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also Sent Inter-office to:

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

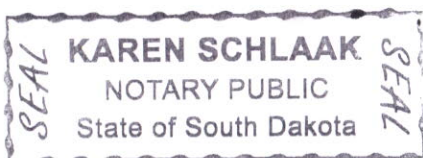
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this _____ day of January 25, 2023.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



Duvall, Ron

From: Duvall, Ron
Sent: Thursday, January 12, 2023 3:13 PM
Subject: Notice of Entry of Order concerning Water Permit Application No. 2850-2, Elk Mountain Water Users Association, Inc.
Attachments: 2850-2_ord.pdf

Attached is a courtesy copy of an Order going out in today's mail. The attachment, as well as other documents related to this case, are also posted online at [DANR Contested Cases \(sd.gov\)](https://danr.sd.gov/contested-cases). Please note in the Order the first deadline date arrives on January 27, 2023, concerning disclosure of expert witnesses. Also, note that any pleadings pursuant to this Order need to be provided to all parties by regular first class mail. The Certification (last page of the attachment) lists everyone receiving this Order. In addition, any pleadings are also to be mailed to the Water Management Board Chair at:

William Larson, WMB Chair
SD DANR, Water Rights Program
523 E. Capitol Ave
Pierre SD 57501

A notice scheduling a hearing before the Water Management Board will be coming in a separate mailing, the date will either be March 7 or 8, 2023, in Pierre.

Thank you,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA

Enclosures

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

November 9, 2022

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Edgemont SD 57735

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Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

RECEIVED

DEC 27 2022

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PROCEDURAL
APPLICATION NO. 2850-2, Elk	)	AND SCHEDULING ORDER
Mountain Water Users Association,	)	
Inc.	)	

Upon consideration of Motion for Procedural and Scheduling Order filed by the Chief Engineer and the South Dakota Department of Agriculture and Natural Resources Water Rights Program, the following deadlines shall be imposed in preparation for the hearing of this matter before the Water Management Board on March 7-8, 2023.

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. While individuals may appear *pro se* at hearings before the Water Management Board, all entities must be represented by counsel. Furthermore, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.
2. Each party must disclose in writing the names of all expert witnesses it intends to call as a witness at the contested case hearing no later than January 27, 2023. Each party must include in this submission copies of any *curricula vitae* as well as copies of any expert report prepared by the expert witness. If the expert has not prepared a

report, the party must disclose a summary of the anticipated testimony the expert will provide and the methodology the expert utilized in coming to those conclusions.

3. On or before February 21, 2023, each party must disclose in writing the names of each witness the party anticipates calling to testify during the hearing.
4. Each party must provide to all other parties a list identifying all exhibits that party intends to offer as evidence in its case in chief at the hearing and copies of said exhibits on or before February 21, 2023. The copies may be provided by electronic means. A copy shall also be provided to Ron Duvall, DANR Water Rights Program, 605-773-3352 or at Ron.Duvall@state.sd.us.
5. Each party must mark in advance of the hearing all exhibits the party intends to introduce at the hearing in its case in chief. The applicant shall mark their exhibits with the designations A through Z. The Program shall use the block of exhibit numbers 1-100. The remaining parties shall be required to contact Ron Duvall, DANR Water Rights Program, 605-773-3352 or at Ron.Duvall@state.sd.us, to obtain a block of exhibit numbers.
6. Each party to the contested case proceedings must prepare and provide a sufficient number of copies of exhibits for use at the hearing for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

7. All original pleadings be sent by regular first-class mail to Ron Duvall, DANR Water Rights Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182. Parties shall also be required to serve copies of all pleadings on all other parties, including the Board Chairman, and upon the Board's Counsel, Assistant Attorney General David McVey.

Dated this 9th day of December 2022.



Rodney Freeman, Prehearing Chair
Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated January 12, 2023; a Procedural and Scheduling Order signed January 9, 2023; both regarding Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc.; and informational document entitled "Procedure for Hearings before the Water Management Board," was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on January 12, 2023.

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

Petitioners as follows:

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25499 Dewey Rd
Edgemont SD 57735

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10666 Pass Creek Rd
Edgemont SD 57735

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Newcastle WY 82701

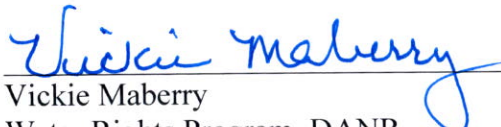
Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also Sent Inter-office to:

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

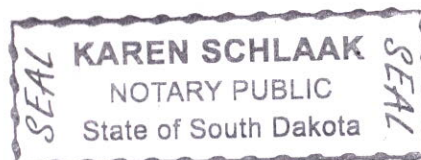
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this _____ day of January 12, 2023.


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
<http://atg.sd.gov>

MARK A. VARGO
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

December 21, 2022

RECEIVED

DEC 27 2022

**OFFICE OF
WATER**

Rodney Freeman
DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

Susan Anderson
Elk Mountain Water Users
Association, Inc.
P.O. Box 6062
Custer, SD 57730

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Robert J. Galbraith
Nooney & Salay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

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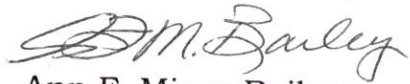
David M. McVey
Assistant Attorney General
Counsel for Water Management Board
1302 East Highway 14, Suite 1
Pierre, SD 57501
(Hand-delivered)

Re: *In the Matter of Water Application No. 2850-2, Elk Mountain Water Users Association, Inc.*

Mr. Freeman:

Enclosed please find a true and correct copy of Motion for Procedural and Scheduling Order, Procedural and Scheduling Order and Certificate of Service in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "A.M. Bailey".

Ann F. Mines Bailey
Assistant Attorney General

AFM/mb

Enclosures

cc w/encs: Ron Duvall, DANR Water Rights Program (*U.S. Mail*)

RECEIVED

DEC 27 2022

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	MOTION
APPLICATION NO. 2850-2, Elk	)	FOR PROCEDURAL
Mountain Water Users Association,	)	AND SCHEDULING ORDER
Inc.	)	

The Chief Engineer and the South Dakota Department of Agriculture and Natural Resources Water Rights Program (the Program) respectfully move the Board's duly appointed prehearing chairman, Rodney Freeman, for entry of a procedural and scheduling order in the above captioned matter consistent with the terms of this motion.

In support of said motion, the Program submits the following:

1. Elk Mountain Water Users Association, Inc. (Elk Mountain) has submitted an application for a water permit (Application No. 2850-2). The applicant requests a permit to appropriate 145 acre-feet of water at a maximum diversion rate of 0.33 cubic feet of water per second from a well to be completed into the Madison aquifer for use in a water distribution system, for commercial use, and for fire protection. The proposed point of diversion is to be completed in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21-T4S-R1E. The Chief Engineer recommends approval of the application.

2. The matter was properly public noticed setting a deadline of October 11, 2022, for the submission of petitions in opposition. Petitions were received from Daniel Stearns, Dalton Stearns, William and Susan Paulton,

Travis Paulton, and Jim and Charol Pitts on or before October 11, 2022. On October 28, 2022, a petition from Tomas and Eraclio Martinez was also received.

3. The matter was initially scheduled to be heard at the December 2022 Water Management Board meeting, but an automatic delay was requested. The hearing is currently scheduled to be held at the Water Management Board's March 7-8, 2023, meeting.

4. There is potential for testimony of multiple experts. Accordingly, the Water Rights Program requests the following prehearing schedule be established and applied to all parties to the formal contested case proceeding:

a. The Program requests that all attorneys representing a party at the hearing be required to file a Notice of Appearance. While individuals may appear *pro se* at hearings before the Water Management Board, all entities must be represented by counsel. Furthermore, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.

b. Each party must disclose in writing the names of all expert witnesses it intends to call as a witness at the contested case hearing no later than January 27, 2023. Each party must include in this submission copies of any *curricula vitae* as well as copies of any expert report prepared by the expert witness. If the expert has not prepared a report, the party must disclose a summary of the anticipated testimony the expert will provide and the methodology the expert utilized in coming to those conclusions.

c. On or before February 21, 2023, each party must disclose in writing the names of each witness the party anticipates calling to testify during the hearing.

d. Each party must provide to all other parties a list identifying all exhibits that party intends to offer as evidence in its case in chief at the hearing and copies of said exhibits on or before February 21, 2023. The copies may be provided by electronic means. A copy shall also be provided to Ron Duvall, DANR Water Rights Program, 605-773-3352 or at Ron.Duvall@state.sd.us

9. The Program requests that the Board include in its order the requirement that each party must mark in advance of the hearing all exhibits the party intends to introduce at the hearing in its case in chief. The applicant shall mark their exhibits with the designations A through Z. The Program shall use the block of exhibit numbers 1-100. The remaining parties shall contact Ron Duvall, DANR Water Rights Program, 605-773-3352 or at Ron.Duvall@state.sd.us, to obtain a block of exhibit numbers.

10. The Program requests that the Board include in its order the requirement that each party to the contested case proceedings must prepare and provide a sufficient number of copies of exhibits for use at the hearing as follows: ten (10) copies for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

11. The Program requests that the Board include in its order the requirement that all original pleadings be sent by regular first-class mail to

Ron Duvall, DANR Water Rights Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182. Parties shall also be required to serve copies of all pleadings on all other parties, including the Board Chairman, and upon the Board's Counsel, Assistant Attorney General David McVey.

12. A draft procedural order is attached hereto for the Prehearing Chairman's consideration.

Dated this 21st day of December, 2022.


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, DANR

RECEIVED

DEC 27 2022

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PROCEDURAL
APPLICATION NO. 2850-2, Elk	)	AND SCHEDULING ORDER
Mountain Water Users Association,	)	
Inc.	)	

Upon consideration of Motion for Procedural and Scheduling Order filed by the Chief Engineer and the South Dakota Department of Agriculture and Natural Resources Water Rights Program, the following deadlines shall be imposed in preparation for the hearing of this matter before the Water Management Board on March 7-8, 2023.

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. While individuals may appear *pro se* at hearings before the Water Management Board, all entities must be represented by counsel. Furthermore, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.
2. Each party must disclose in writing the names of all expert witnesses it intends to call as a witness at the contested case hearing no later than January 27, 2023. Each party must include in this submission copies of any *curricula vitae* as well as copies of any expert report prepared by the expert witness. If the expert has not prepared a

report, the party must disclose a summary of the anticipated testimony the expert will provide and the methodology the expert utilized in coming to those conclusions.

3. On or before February 21, 2023, each party must disclose in writing the names of each witness the party anticipates calling to testify during the hearing.
4. Each party must provide to all other parties a list identifying all exhibits that party intends to offer as evidence in its case in chief at the hearing and copies of said exhibits on or before February 21, 2023. The copies may be provided by electronic means. A copy shall also be provided to Ron Duvall, DANR Water Rights Program, 605-773-3352 or at Ron.Duvall@state.sd.us.
5. Each party must mark in advance of the hearing all exhibits the party intends to introduce at the hearing in its case in chief. The applicant shall mark their exhibits with the designations A through Z. The Program shall use the block of exhibit numbers 1-100. The remaining parties shall be required to contact Ron Duvall, DANR Water Rights Program, 605-773-3352 or at Ron.Duvall@state.sd.us, to obtain a block of exhibit numbers.
6. Each party to the contested case proceedings must prepare and provide a sufficient number of copies of exhibits for use at the hearing for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

7. All original pleadings be sent by regular first-class mail to Ron Duvall, DANR Water Rights Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182. Parties shall also be required to serve copies of all pleadings on all other parties, including the Board Chairman, and upon the Board's Counsel, Assistant Attorney General David McVey.

Dated this _____ day of December 2022.

Rodney Freeman, Prehearing Chair
Water Management Board

RECEIVED

DEC 27 2022

OFFICE OF
WATER

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2850-2, Elk	)	CERTIFICATE OF SERVICE
Mountain Water Users Association,	)	
Inc.	)	

The undersigned hereby certifies that true and correct copies of the Motion for Procedural and Scheduling Order and Proposed Procedural and Scheduling Order, in the above matter, were served by U.S. mail, first-class, postage prepaid, upon the following on this 21st day of December 2022:

Susan Anderson
Elk Mountain Water Users Association, Inc.
P.O. Box 6062
Custer, SD 57730

William and Susan Paulton
10666 Pass Creek Road
Edgemont, SD 57735

Travis Paulton
10693 Pass Creek Road
Edgemont, SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Road
Newcastle, WY 82701

Robert J. Galbraith
Counsel for Daniel Stearns and
Dalton Stearns
Nooney & Salay, LLP
P.O. Box 8030
Rapid City, SD 57709-8030

Tomas and Eraclio Martinez
25663 Dewey Road
Edgemont, SD 57735

And on the same date, the originals were filed with:

Run Duvall, DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

MARK A. VARGO
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "Ann F. Mines Bailey", is written over a horizontal line.

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

Counsel for Water Rights Program, DANR

pld_afm (mb)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

November 9, 2022

NOTICE OF HEARING

TO: Susan Anderson Petitioners
Elk Mountain Water Users Assn. Inc. (see attached list dated November 9, 2022)
PO Box 6062
Custer SD 57730

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

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

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

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

Petitions in opposition have been filed in the matter of Water Permit Application No. 2850-2 in response to the Notice of Application published in the Rapid City Journal and Custer County Chronicle on September 28, 2022. In response, a Notice of Hearing dated October 27, 2022, was sent to the applicant and petitioners. The notice scheduled a hearing before the Water Management Board on December 7, 2022.

In response to the October 27, 2022 notice, legal counsel for petitioners, Daniel and Dalton Stearns, filed a request for an automatic delay of the December 7, 2022 hearing date. The request for a delay was dated November 4, 2022, and meets the November 7, 2022 filing deadline. Pursuant to SDCL 46-2A-5 and the Notice of Hearing dated October 27, 2022, this is written notice to the chief engineer requesting an automatic delay of the December 7, 2022 hearing date. Therefore, the hearing on Application No. 2850-2 is automatically delayed pursuant to SDCL 46-2A-5 and 46-2A-23 and will NOT be held on December 7, 2022.

The hearing to consider Application No. 2850-2 is now tentatively scheduled for the March 7 and 8, 2023 Water Management Board meeting. The Board will formalize the March 2023 meeting dates at the December 7, 2022 meeting. Future notice of the time and place of the hearing for Application No. 2850-2 will be provided.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2850-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.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.

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.

November 9, 2022

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
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Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated November 9, 2022, regarding an automatic delay of the hearing concerning Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc., was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on November 9, 2022.

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Robert J. Galbraith, Attorney
Nooney & Solay, LLP
PO Box 8030
Rapid City SD 57709-8030

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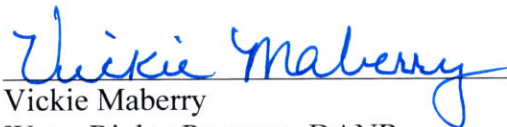
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Newcastle WY 82701

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Late-Filed Petitioner
Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

Above also Sent Inter-office to:

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

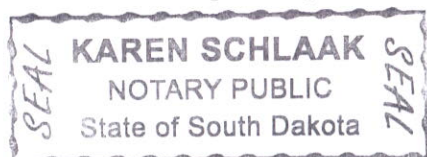

Vickie Maberry

Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of November, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RECEIVED

NOV 07 2022

OFFICE OF
WATER

LAW OFFICES
NOONEY & SOLAY, LLP

326 FOUNDERS PARK DRIVE
P. O. BOX 8030
RAPID CITY, SOUTH DAKOTA 57709-8030

JOHN K. NOONEY
KURT E. SOLAY
ROBERT J. GALBRAITH
MARLI A. SCHIPPERS
JARED D. NOONEY
SARAH L. WEYRICH

TELEPHONE: 605.721.5846
FACSIMILE: 605.721.5867

[Email: robert@nooneysolay.com]

November 4, 2022

VIA U.S. MAIL ONLY

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

Re: Water Permit Application No. 2850-2

To Whom It May Concern:

Please be advised that this Firm represents Daniel Stearns and Dalton Stearns. Please consider this letter a request to delay the hearing currently scheduled for December 7, 2022. This request is both for the automatic delay, upon request of parties having filed a petition opposing the application and because I am not available on the date of the hearing. If you need anything else from me related to this request, please let me know.

Sincerely yours,

/s/ Robert J. Galbraith

Robert J. Galbraith

RJG/al

cc: Client

Ron Duvall (ron.duvall@state.sd.us)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

October 31, 2022

TO: Tomas & Eraclio Martinez
25663 Dewey Rd
Edgemont SD 57735

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Receipt of Petition and Notice of Hearing concerning Water Permit Application
No. 2850-2, Elk Mountain Water Users Assn. Inc.

We received your petition on October 28, 2022 concerning Water Permit Application No. 2850-2, Elk Mountain Water Users Assn. Inc. Even though the petition was late-filed (the deadline was October 11, 2022), I am enclosing a copy of a Notice of Hearing concerning Application No. 2850-2 that was mailed on October 27, 2022.

Please understand that by missing the filing deadline for petitions, an objection may be made that your petition was not timely filed.

Enclosure



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

SEP 21 2023

Elk Mountain Water Users Association, Inc.
c/o J. Scott James
429 1/2 Mt. Rushmore Road
Custer SD 57730

Dear Mr. James:

Enclosed is Water Permit No. 2850-2 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

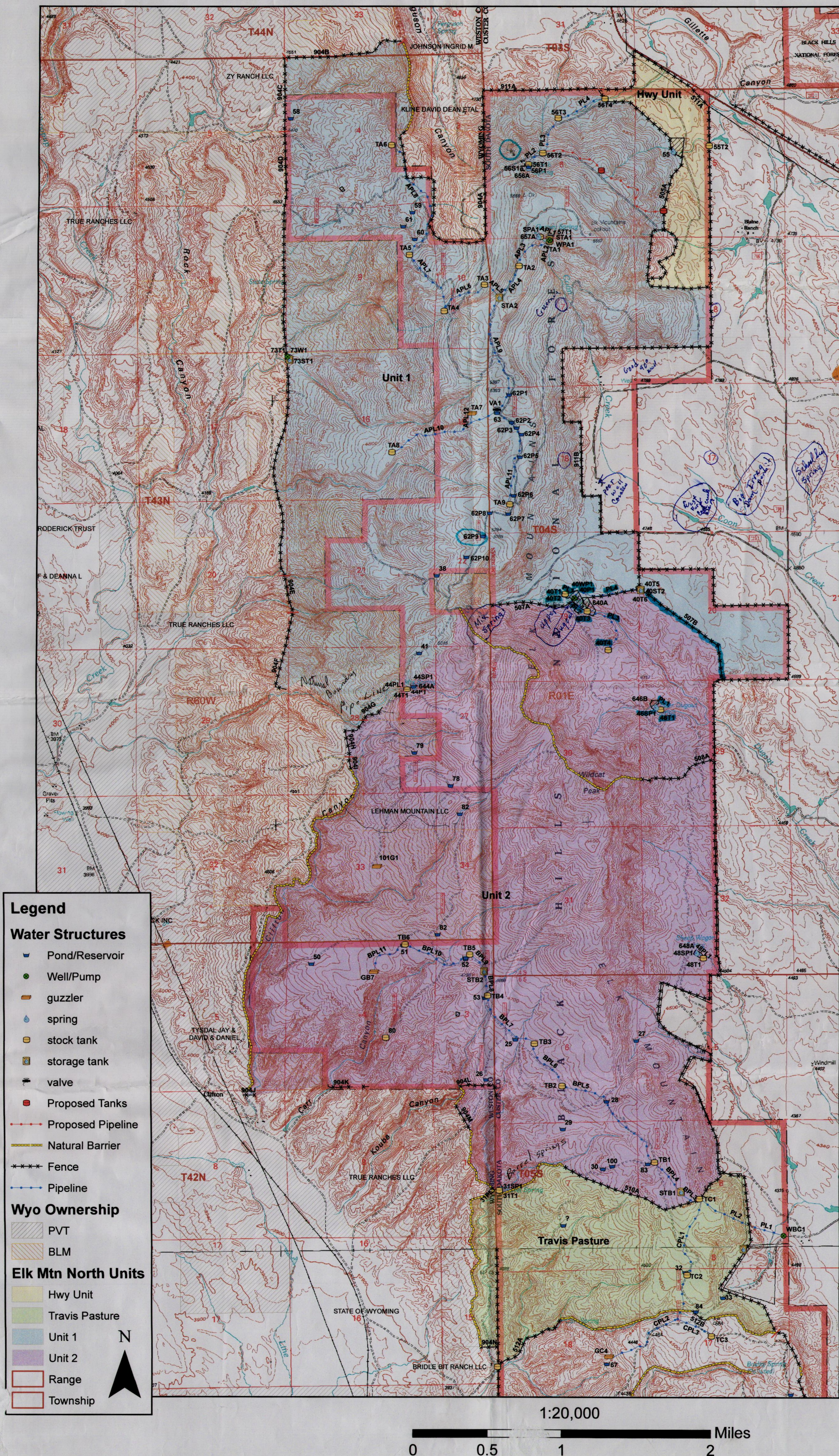
Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

Elk Mountain Allotment

North Grazing Units

RECEIVED
OCT 11 2022
OFFICE OF
WATER





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
Posting on DANR Website**

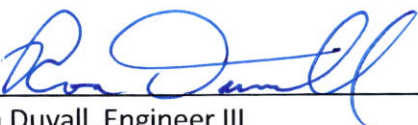
Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the application is contested, the posting is moved to the DANR contested case website at <https://danr.sd.gov/public/ContestedCase.aspx> until final action is taken on the application pursuant to SDCL § 46-2A-4.

Application No.: 2850-2

Name of Applicant: Elk Mountain Water Users Association Inc.

Date of Posting: 9/23/2022

Date of Removal: 9/21/2023



Ron Duvall, Engineer III

9/21/2023

Date

Subscribed and sworn to before me, a notary public, this 21 day of September, 2023.



Notary Public - South Dakota
My commission expires: Rachel Rodriguez
My Commission Expires
May 16, 2029

(SEAL)





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 23, 2025

NOTICE OF HEARING

TO: Elk Mountain Water Users Association, 25612 Dewey Rd., Custer SD 57735

FROM: Ron Duvall, Engineer III
for Mark Mayer, PE
Director of Office of Water

SUBJECT: Violation of Permit Qualification to Report Annual Water Use

Our records indicate your 2024 annual water use has not been submitted for Permit No. 2850-2. The request to report water use for 2024 was dated January 3, 2025. Two follow-up attempts to get the required water use report have gone unanswered. The Water Management Board has directed owners of water permits who have not submitted the 2024 water use reporting be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No. 2850-2 qualification:

"The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer."

The hearing will be held on **Wednesday, July 9, 2025, at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No. 2850-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the water use report(s) is (are) received in this office before the **July 9, 2025**, hearing, you will no longer be in violation of your permit and your name will be removed from the Board agenda. You may submit your water use report by providing the information to Rachel Rodriguez at (605) 773-3352 or via email at rachel.rodriguez@state.sd.us. You may also submit the water use report via mail using the address in the NOTE at the bottom of this Notice.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD 57501 or call (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

Water Rights Program - File Documentation

NAME: Elk Mountain Water Users Association, Inc.

ADDRESS: 25612 Dewey Road, Custer SD 57735

DATE: June 13, 2025

RE: 2024 Annual Water Usage

COMMENTS:

Received a call from John Morgan regarding the Notice of Hearing letter dated May 23, 2025. He stated that they have not yet drilled a well and no has been used. I informed him that he was no longer on the agenda for the July 9th Water Management Board meeting.

Rachel Rodriguez

Rachel Rodriguez

Water Rights Program

605 773-3352

rachel.rodriquez@state.sd.us