

WATER PERMIT NO. 386A-2

Name of Applicant: **John Tepaske**

Address: **PO Box 95, Orange City IA 51041**

Phone: **712 330-3606**

Amount of Water Claimed: **no add'l**

Total Acres: **no add'l**

Source of Water Supply: **Cheyenne River**

Water to be used for: **irrigation**

County: **Fall River**

Type of Waste Disposal System:

Location: **5 miles southeast of Hot Springs**

PRIORITY

Date Received: **7-12-07**

Application/License Fee: **\$100**

Corrected Application Received:

Period of Annual Use: **April 1 – November 1**

Remarks: **Use 0.9 cfs of the 2.39 cfs authorized by Water Right No. 368-2 for commercial use and an add'l diversion point.**

Diversion Point: **NW ¼ SW ¼ Section 2-T8S-R6E**

Land to be Irrigated: **NA**

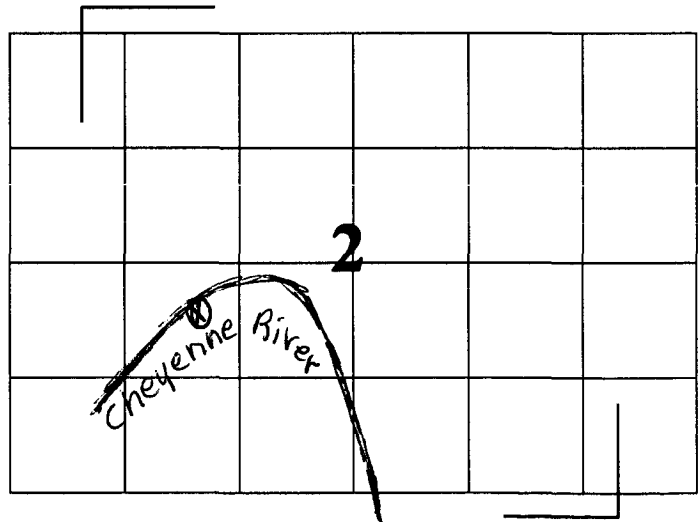
Depth of Well: **NA**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by: **Kory Bount, Fall River NRCS**



Reviewed and the Number Assigned on: **7-12-07**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

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

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>386A-2</u> (office use only)	Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Hot Springs Star PO Box 1000</u>	
	<u>605-745-4170</u>	<u>57747</u>

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

Check use(s) of water:

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

Type of Application:
(check one)

- ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 386-2

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

Additional use for livestock watering in the amount of .9 cfs of the 2.39 cfs authorized by permit No. 386-2 and an additional diversion point.

- Name of Applicant John Tepaske Phone (712) 330-3606
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address PO Box 95 Orange City State IA 51041
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed No additional *CFS or **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Cheyenne River
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Fall River
Additional diversion point north 340 ft. East 2450 ft. from sw corner, S2 T8S, R6E, existing diversion point for permit No. 386-2 will stay in place. (NW1/4 SW1/4)
- County or counties where water will be used Fall River
- Annual period during which water is to be used April 1st to November 1st.
- 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)

Supply water to a commercial feedyard for livestock use.

Iowa
STATE OF ~~SOUTH DAKOTA~~ SS

County of Sioux

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

I, John D. Tepaske, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature John D. Tepaske

Subscribed and sworn to before me this 2nd day of July 2007



Carol J. Oolman
Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 386A-2**

Date of first receipt of application July 12, 2007.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 386A-2 to John Tepaske, PO Box 95, Orange City IA 51041 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. 386A-2 amends Water Right No. 386-2 for an additional use to include commercial use and an additional diversion point. Water Right No. 386-2 authorizes 2.39 cubic feet of water per second (cfs) from the Cheyenne River located in the SE 1/4 NE 1/4 Section 9-T7S-R8E to irrigate 167.40 acres located in the SE 1/4 SW 1/4, S 1/2 SE 1/4 Section 3 and the N 1/2 NW 1/4, SW 1/4 NW 1/4, N 1/2 NE 1/4 Section 10; all in T7S-R8E. This permit authorizes a Cheyenne River diversion point to be located in the NW 1/4 SW 1/4 Section 2-T8S-R6E. The permit holder will utilize up to 0.9 cfs of the 2.39 cfs authorized by Water Right No. 386-2 for commercial use to water livestock for Fall River Feedlot. This additional use will only occur when shut off orders have been issued for the feedlot's existing water right from the Cheyenne River.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: April 1 – November 1.
4. The date of approval of Permit No. 386A-2 is August 24, 2007.
5. The date from which applicant may claim right is July 12, 2007 
6. One-fifth of the construction is to be completed on or before February 24, 2010.
7. All construction is to be completed on or before August 24, 2012.
8. Water is to be put to beneficial use on or before August 12, 2016 
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

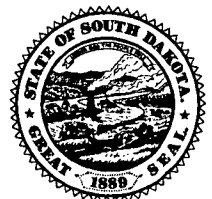
QUALIFICATIONS

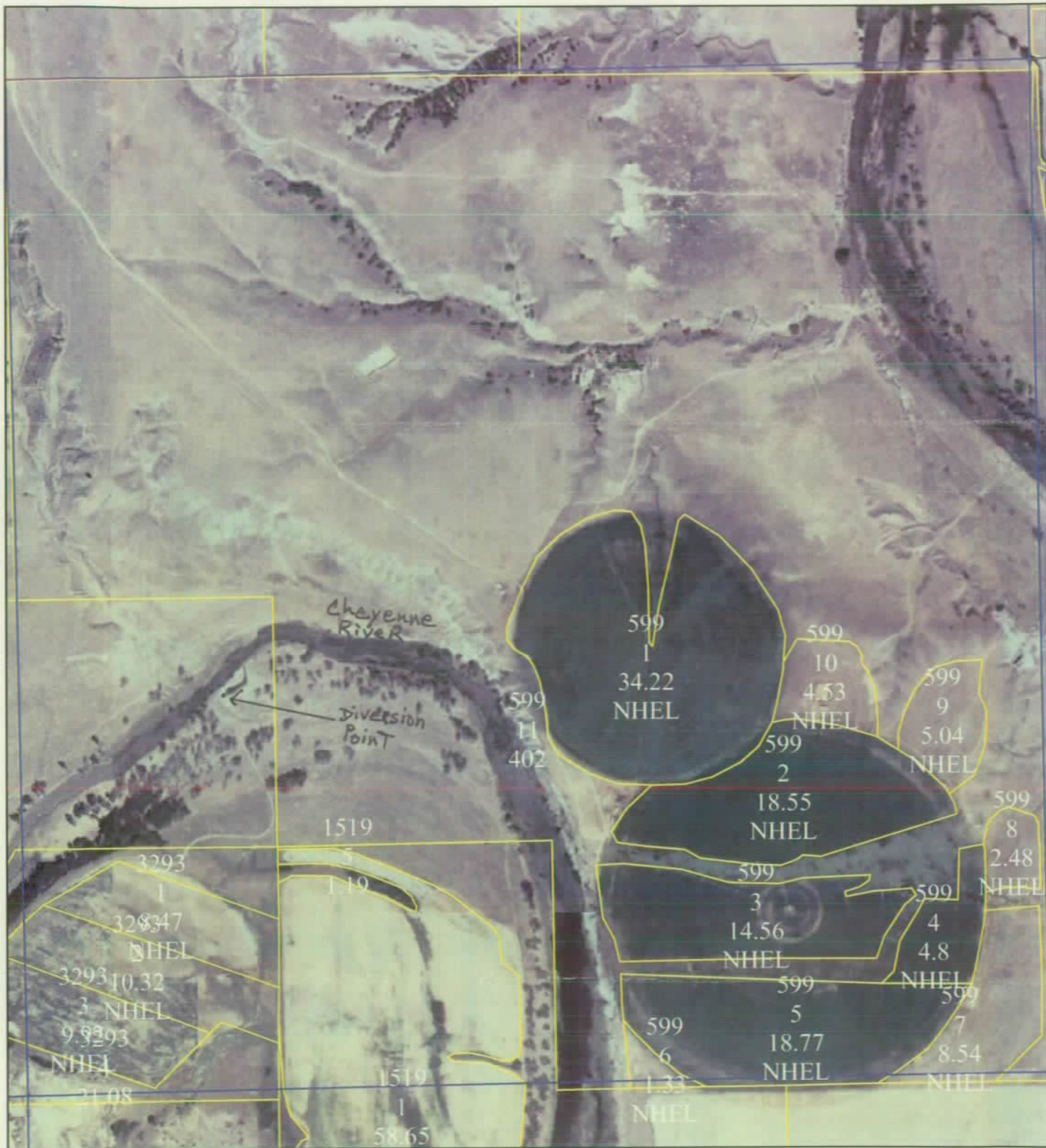
1. Prior to exercising the commercial use, the permit holder shall contact the Chief Engineer to determine the appropriate reduction in the irrigation use.
2. This Permit is approved subject to the permit holder reporting the amount of water diverted for irrigation and the amount used for commercial use on the irrigation water use questionnaire submitted each year.
3. The Water Management Board retains jurisdiction of Permit No. 386A-2. Due to the limitation set forth in SDCL 46-5-34 and 46-5-34.1, if the irrigation authorized by Water Right No. 386-2 becomes subject to abandonment or forfeiture for nonuse, Water Permit No. 386A-2 shall be brought back before the Water Management Board regarding the commercial use component.

WATER MANAGEMENT BOARD

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

OCT 09 2007
date





United States Department of Agriculture
Farm Service Agency

2-8S-6E

Fall River County, SD

1:8,557



Kay Bunt
NRCS Dist. Cons.
6/27/07

April 09, 2007

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 7/12, 20 07

RECEIVED OF FALL RIVER FERRYLAND LLC PO BOX 892 HOLT SPRINGS SD 57747

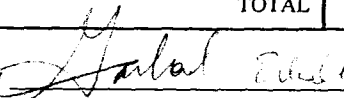
The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	50	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	100	
TOTAL	100	00

No.

03 92

By


Chief Engineer





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 386A-2, John Tepaske**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 386A-2, John Tepaske, PO Box 95, Orange City IA 51041.

The Chief Engineer is recommending APPROVAL of Application No. 386A-2 because 1) the proposed additional use can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Prior to exercising the commercial use, the permit holder shall contact the Chief Engineer to determine the appropriate reduction in the irrigation use.
2. This Permit is approved subject to the permit holder reporting the amount of water diverted for irrigation and the amount use for commercial use on the irrigation water use questionnaire submitted each year.
3. The Water Management Board retains jurisdiction of Permit No. 386A-2. Due to the limitation set forth in SDCL 46-5-34 and 46-5-34.1, if the irrigation authorized by Water Right No. 386-2 becomes subject to abandonment or forfeiture for nonuse, Water Permit No. 386A-2 shall be brought back before the Water Management Board regarding the commercial use component.

See report on application for additional information.

Garland Erbele, Chief Engineer
July 25, 2007

REPORT ON WATER PERMIT APPLICATION NO. 386A-2

John Tepaske

July, 17, 2007

Application No. 386A-2, John Tepaske proposes to amend Water Right No. 386-2 for an additional use to include commercial use and to add an additional diversion point. Water Right No. 386-2 authorizes 2.39 cubic feet of water per second (cfs) from the Cheyenne River located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9-T7S-R8E to irrigate 167.40 acres located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 3 and the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 10; all in T7S-R8E. This application proposes to add a Cheyenne River diversion point to be located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2-T8S-R6E. The applicant proposes to utilize up to 0.9 cfs of the 2.39 cfs authorized by Water Right No. 386-2 for commercial use to water livestock for Fall River Feedlot. This additional use will only occur when shut off orders have been issued for the feedlot's existing water right from the Cheyenne River. The proposed project is located approximately 11.5 miles SE of the town of Hot Springs in Fall River County South Dakota.

Review of the Water Source

The Cheyenne River headwaters in the high plains of Wyoming in the Thunder Basin National Grasslands and meanders around the southern extent of the Black Hills entering South Dakota about 14 miles northwest of the town of Edgemont, SD. The river then passes through narrows and enters Angostura Reservoir located approximately 6 miles south of Hot Springs, SD. Construction of Angostura Reservoir was completed in 1949 as part of the Angostura Unit irrigation system. The Bureau of Reclamation (BOR) holds South Dakota Water Right No. US579-2 for an annual one-time fill of 138,761 acre-feet of water stored in Angostura Reservoir for irrigation and other purposes. Since October 1949 the flow in the Cheyenne River downstream of Angostura has been regulated primarily to serve the irrigation needs of the Angostura Irrigation District. Water is diverted directly from Angostura Reservoir and delivered through a main canal to the Irrigation District. Average precipitation in the area is approximately 16-inches per year, most of which occurs from the months of April through September. In addition there are numerous tributaries located along the southern and eastern flanks of the Black

Hills that contribute flow to the Cheyenne River. The major source of flow coming from upstream of this project is from the Fall River and return flow from the Angostura Irrigation District.

Since 1998, the United States Geological Survey (USGS) has maintained a stream flow gaging station at Red Shirt, SD located approximately 60 miles downstream of this project and 14 river miles downstream of the last Angostura Irrigation District wasteway at the mouth of Cottonwood Creek. Table 1 shows the probability table for this gage from flow data collected over the period 1998 through 2005. For the May through September interval, when Cheyenne River flows are mainly regulated by output to the Irrigation District from Angostura Dam, indicate there is a 90-percent probability the median flow rate will range from 63 to 120 cfs or greater downstream of the proposed project during this interval of any given year. There is a 75-percent probability the median flow rate will range from 69 to 190-cfs or greater for the same interval at this location. (Table 3)

Table 1. Monthly Flow(cfs) probability for USGS Gaging Station at Red Shirt

Probability	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
90%	67	61	112	112	120	87	63	64	81	98	86	66
75%	70	65	141	123	190	91	69	72	85	104	98	80
50%	71	72	198	151	309	97	78	87	89	115	113	104
25%	99	98	214	466	363	441	139	114	113	150	506	99
10%	111	113	233	670	390	627	165	129	123	171	736	140

USGS Wasta, SD stream flow gaging station data collected from 1950 through 2005 indicate there is a 90-percent probability the median flow rate in the Cheyenne River at this location will range from 47 to 60 cfs or greater during the May through September interval of any given year. There is a 75-percent probability the median flow rate will range from 66 to 95 cfs or greater for the same interval at this location. (Table 2)

Table 2. Monthly Flow(cfs) probability for USGS Gaging Station near Wasta

Probability	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
90%	30	50	102	78	60	53	47	47	51	62	70	45
75%	48	78	146	117	95	93	72	66	73	84	93	73
50%	80	110	240	214	237	272	142	104	100	112	119	100
25%	135	179	471	383	623	925	353	176	152	168	160	130
10%	220	349	867	839	1560	2130	725	425	282	279	292	230

The presumption can be made that the stream flow rates recorded at the cited gaging stations are post withdrawal of the majority of water right allocations located upstream of the cited gages during the normal irrigation season.

Review of Existing Water Rights

There are 58 existing water rights/permits appropriating 163.27 cfs from Cheyenne River in the reach from Angostura Reservoir to the confluence with the Belle Fourche River. Water Right No. 386-2 is authorized to divert 2.39 cubic feet of water per second (cfs) to irrigate 167.40 acres. This water right is required to submit an annual irrigation questionnaire as a means to report water use to the Water Rights program. Upon review of the submitted irrigation questionnaires for this water right, over the period 1983 to 2006, it was found that irrigation was reported for nine of the years, the land was enrolled in the USDA 0-92 farm program for six of the years and from 1999 through 2001 there was no irrigation due to it being too wet to irrigate. Two of the years, 1998 and 2003, no irrigation was reported due to other circumstances. Table 3. lists the reported use.

Table 3. Reported Irrigation on the Annual Irrigation Questionnaire for No 386-2.

Year	Acres Reported Irrigated	Reason Not Irrigated	Year	Acres Reported Irrigated	Reason Not Irrigated
1983	NA	Not Reported	1995	0	Farm Program
1984	160		1996	140	
1985	130		1997	167	
1986	65		1998	0	Did not irrigate
1987	0	Farm Program	1999	0	Too wet
1988	0	Farm Program	2000	0	Too wet
1989	0	Farm Program	2001	0	Too wet

1990	0	Farm Program		2002	110	
1991	0	Farm Program		2003	0	Did not irrigate
1992	0	Farm Program		2004	167	
1993	0	Farm Program		2005	167	
1994	0	Farm Program		2006	150	

Review of the Proposed Project

The applicant proposes to add commercial use to the existing irrigation use and to add an additional diversion point to allow water to be diverted for the Fall River Feedyard. Fall River Feedyards, LLC. currently holds Water Right No. 1636-2 with a priority date of May 3, 1978, authorizing the diversion of 1.17 cfs from the Cheyenne River for commercial use at the feedlot.

On June 30, 2006, the Chief Engineer issued shutoff orders on this river reach for water rights having priority dates junior to December 31, 1969, which included the Water Right No.1636-2 held by Fall River Feedyard. Upon receiving the shutoff order, the manager of Fall River Feedyard contacted the Chief Engineer to explain that the Cheyenne River was the only water supply the feedlot had available for watering several thousand head of cattle held at the feedlot. The Chief Engineer granted a conditional reprieve from the shutoff order due to the severe consequences of not providing water for livestock. One of the conditions for the temporary reprieve outlined by the Chief Engineer was the requirement the Feedyard obtain a backup water supply. The Feedyard previously entered in to an agreement with Steve Simunek to amend his Water Right No.399A-2, priority of February 15, 1954, which also added commercial use to an existing irrigation right. This application is the Fall River Feedyards attempt to obtain this backup supply with one of the oldest priority dates for this reach. This would be accomplished by the applicant, Mr. Tepaske, amending his current irrigation right to add commercial use and an additional diversion point. This would then allow Mr. Tepaske through a lease agreement to provide the delivery of water to the Fall River Feedyard in the event the Feedyard's Water Right No. 1636-2 and Mr. Simunek's Water Right No. 399A-2 are shutoff.

Since the construction of Angostura Reservoir in the late 1940's, the Chief Engineer of the Water Rights Program has issued shutoff orders four different years for the river reach downstream of

the reservoir due to lack of water in the river. In 1989 and 1990 shutoff orders were issued to junior water right holders for the river reach Angostura Dam to the town of Wasta, SD. In 2006 and 2007 shutoff orders were issued for the river reach from Angostura Reservoir to the Belle Fourche River confluence. In the three separate occasions shutoff orders were issued, the holder of Water Right No. 386-2 was not issued an order due to the senior priority date of this water right.

South Dakota Codified Law, SDCL, 46-2A-12 allows an existing water right to be amended to add an additional use and an additional diversion point, only if the changes do not unlawfully impair existing rights, represent a beneficial use and is in the public interest. SDCL 46-5-30.4 states if an existing water right is amended, the original priority date shall be retained. In addition, an amendment of a water right may not increase the rate of diversion or the volume of water to be appropriated under the original water right.

Under normal operations Fall River Feedyard would utilize Water Right No. 1636-2 as the primary water supply for livestock held in the feedlot. This proposed amendment would allow, under an emergency situation when shutoff orders have been issued for Fall River Feedyards' primary water supply, the Fall River Feedyard to be able to continue to divert Cheyenne River utilizing diversion authority from another water right. Mr. Tepaske, upon amendment approval, would be able to deliver commercial livestock water that had previously been used that season for irrigation. To ensure this emergency use does not violate the intent of SDCL 46-2A-12 and 46-5-30.4, the portion of active irrigation needs to be reduced proportionally to the amount delivered for the feedlot. It is envisioned that due to the likely infrequent yet urgent nature of exercising the amended commercial use for the feedlot, staff from the Water Right Program will need to be actively involved to quantify the irrigation reduction.

Granting of this amendment does not guarantee that in the future, extremely dry conditions may occur requiring additional shutoff orders to be issued which may include this water permit.

Because this proposed amendment is to add a diversion point and an additional use to an existing irrigation water right and not to eliminate the irrigation entirely, the limitations set forth in SDCL 46-5-34.1 for transferring irrigation rights apart from land do not apply. However if in the future the irrigation use is abandoned, this water right would need to be re-opened by the Water Management Board since it is not the intent of this amendment to bypass the restrictions of SDCL 46-5-34.1.

Conclusions

1. This application proposes to amend Water Right No. 386-2 to include commercial use and to add an additional diversion point.
2. South Dakota Codified Laws, 46-2A-12 and 46-5-30.4 allow an existing water right to be amended to add an additional use and an additional diversion point, only if the changes do not unlawfully impair existing rights, represent a beneficial use and is in the public interest. The original priority date shall be retained. Also, an amendment of a water right may not increase the rate of diversion or the volume of water to be appropriated under the original water right.
3. If this application is approved, the applicant, through a lease agreement would provide the delivery of water to the Fall River Feedyard in the event the Feedyard's Water Right No. 1636-2 is shutoff.
4. Approving this amendment does not guarantee that in the future, extremely dry conditions may occur requiring additional shutoff orders to be issued which may include this water permit.
5. If this application is approved, it should contain the following qualification:

Prior to exercising the commercial use, contact shall be made with the Chief Engineer to determine the appropriate reduction in the irrigation use.



Mark D. Rath
Natural Resources Engineering Specialist

AFFIDAVIT OF PUBLICATION

State of South Dakota)
) ss.
 County of Fall River)

Brett Nachtigall of Hot Springs, Fall River County, South Dakota, being duly sworn, upon oath says that he is the publisher of the Hot Springs Star, as a legal newspaper, as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, and is published at Hot Springs, county and state aforesaid; that the advertisement headed -

329 - Notice of
Application No. 386A-2

a true printed copy thereof is hereunto annexed, was published in the said Hot Springs Star, in the regular and entire issue of said paper,

for two

successive issues, beginning with the issue dated _____

Aug. 7, 20 07

and ending with the issue dated _____

Aug. 14, 20 07

That the full amount of the fee charged for the publication of said notice is

\$ 54.28, and that no agreement or understanding, for the division thereof, has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the whole amount insures to the benefit of the publishers of said newspaper.

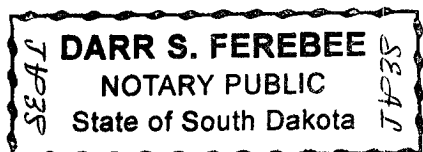
Brett Nachtigall
 Subscribed and sworn to before me

this 11 day of Sept

20 07

D. S. Ferebee

My Commission Expires Notary Public
 November 24, 2010



NOTICE OF APPLICATION NO. 386A-2 to Amend Water Right No. 386-2

Notice is given that John Tepaske, PO Box 95, Orange City IA 51041 has filed an application for a water permit to amend Water Right No. 386-2 for an additional use to include commercial use and to add an additional diversion point. Water Right No. 386-2 authorizes 2.39 cubic feet of water per second (cfs) from the Cheyenne River located in the SE1/4 NE1/4 Section 9-T7S-R8E to irrigate 167.40 acres located in the SE1/4 SW1/4, S1/2 SE1/4 Section 3 and the N1/2 NW1/4, SW1/4 NW1/4, N1/2 NE1/4 Section 10; all in T7S-R8E. This application proposes to add a Cheyenne River diversion point to be located in the NW1/4 SW1/4 Section 2-T8S-R6E. The applicant proposes to utilize up to 0.9 cfs of the 2.39 cfs authorized by Water Right No. 386-2 for commercial use to water livestock for Fall River Feedlot. This additional use will only occur when shut off orders have been issued for the feedlot's existing water right from the Cheyenne River.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 386A-2 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on these applications, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by August 24, 2007.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application.

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

Aug 7, 14



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 27, 2007

Hot Springs Star
PO Box 1000
Hot Springs SD 57747

ATTENTION: Legal Public Notice

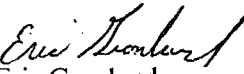
Enclosed is a Notice on Application No. 386A-2 to Appropriate Water to be published twice. Please publish the first notice on August 7, 2007 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is John Tepaske, PO Box 95, Orange City IA 51041 (Ph # 712-330-3606).

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

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

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 386A-2

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

Date _____

We are in receipt of your letter of July 27, 2007 enclosing Notice to Appropriate Water by Application No. 386A-2 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

July 27, 2007

John Tepaske
PO Box 95
Orange City IA 51041

Dear Mr. Tepaske:

Water Permit Application No. 386A-2 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Hot Springs Star printed at Hot Springs SD (Ph # 605-745-4170). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application is enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

cc: Haven Stuck, Attorney, PO Box 8250, Rapid City SD 57709
Lonnie Dunn, PO Box 892, Hot Springs SD 57747

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

Instruction to Newspaper - Publish first Notice on August 7, 2007 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 386A-2 to Amend Water Right No. 386-2

Notice is given that John Tepaske, PO Box 95, Orange City IA 51041 has filed an application for a water permit to amend Water Right No. 386-2 for an additional use to include commercial use and to add an additional diversion point. Water Right No. 386-2 authorizes 2.39 cubic feet of water per second (cfs) from the Cheyenne River located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9-T7S-R8E to irrigate 167.40 acres located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 3 and the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 10; all in T7S-R8E. This application proposes to add a Cheyenne River diversion point to be located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2-T8S-R6E. The applicant proposes to utilize up to 0.9 cfs of the 2.39 cfs authorized by Water Right No. 386-2 for commercial use to water livestock for Fall River Feedlot. This additional use will only occur when shut off orders have been issued for the feedlot's existing water right from the Cheyenne River.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 386A-2 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on these applications, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by August 24, 2007.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

OCT 09 2007

John Tepaske
PO Box 95
Orange City IA 51041

Dear Mr. Tepaske:

Enclosed is Water Permit No. 386A-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Please note that Qualification No. 1 states that prior to exercising the commercial use, the permit holder shall contact the Chief Engineer to determine the appropriate reduction in irrigation use.

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,

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

c: Lonnie Dunn, Fall River Feedlot

enclosures

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 386A-2

I have this day, May3, 2016 made a thorough examination of the water use system constructed by John Tepaske, PO Box 95, Orange City, IA 51041 of Permit No. 386A-2, bearing the priority of 5/6/1903 authorizing the diversion of 0.9 cu. ft. per second of the waters of the Cheyenne River for commercial purposes, in Fall River County.

Inspection contact & relationship to permit holder, if applicable: **Mike Homelvig, Feed Yard Manager**
P.O. Box 892, Hot Springs, SD 57747
605-745-4109

A. Works used to divert the water:

Pump 1:

- 1) Make Sta Rite
- 2) Model *L6TS230
- 3) Size 6" submersible
- 4) Capacity 175 GPM @ 240' TDH

Pump 2:

- Make Sta Rite
 Model *L6TS300
 Size 6" submersible
 Capacity 350 GPM @ 240' TDH

*Pump models not known. Pump model nos. correspond to make and capacity shown on permit application. Operating head fits pump curves for these models.

Power:

- 1) Source electric
- 2) Horsepower rating 15 hp

Power:

- Source electric
 Horsepower rating 30 hp

B. Works used to transport water to place of use:

- 1) Type PVC pipe
- 2) Size 10 inches
- 3) Length 9,450 feet

C. Works used to apply water to beneficial use:

Water is pumped to a "clean water storage pond" and then boosted to the feedlot distribution system serving 18,000 – 24,000 head of cattle.

D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes

list any extended period of nonuse: **This permit authorizing up to 0.9 cfs of the 2.39 cfs authorized by Water Right 386-2 for commercial use at Fall River Feedlot will only be used when shut off orders have been issued for the existing feedlots existing Water Right 1636-2 from the Cheyenne River. To date the last shut of order issued to Fall River Feedlot for 1636-2 was issued June 27, 2007. Therefor the commercial use of 386-2 has not been used.**

- 2) Exceptions to compliance are: **none - There has been no commercial use requiring reporting.**

E. Condition and Location:

1. The system is in good condition with the point of diversion located as follows:
2,127' N and 1,022' E of the SW corner Section 2 T8S R6E (43.381883, -103.378177).
2. The works are capable of diverting and conveying to the place of use 1.17 cu. ft. per second of water which is to be used for commercial use. Water has been put to beneficial use to the maximum extent as follows:
commercial livestock feeding operation

The license should be issued for 0.9 cfs .

3. All structures, wells and lands on map Yes

F. Comments or other permit(s) associated with the project: Water Permit 386A-2 amends Water Right 386-2 for an additional use to include commercial use and an additional diversion point. The permit holder will utilize up to 0.9 cfs of the 2.39 cfs authorized by Water Right 386-2 for commercial use to water livestock for Fall River Feedlot. This additional use will only occur when shut off orders have been issued for the feedlots existing water right from the Cheyenne River. **During the time shut-off orders are in effect, Fall River Feedlot will be allowed to use only the larger of the two submersible pumps. The large pump has a capacity of 0.8 cfs (350 gpm).**



Steven Quissell
Water Rights Inspector
DENR Water Rights Program

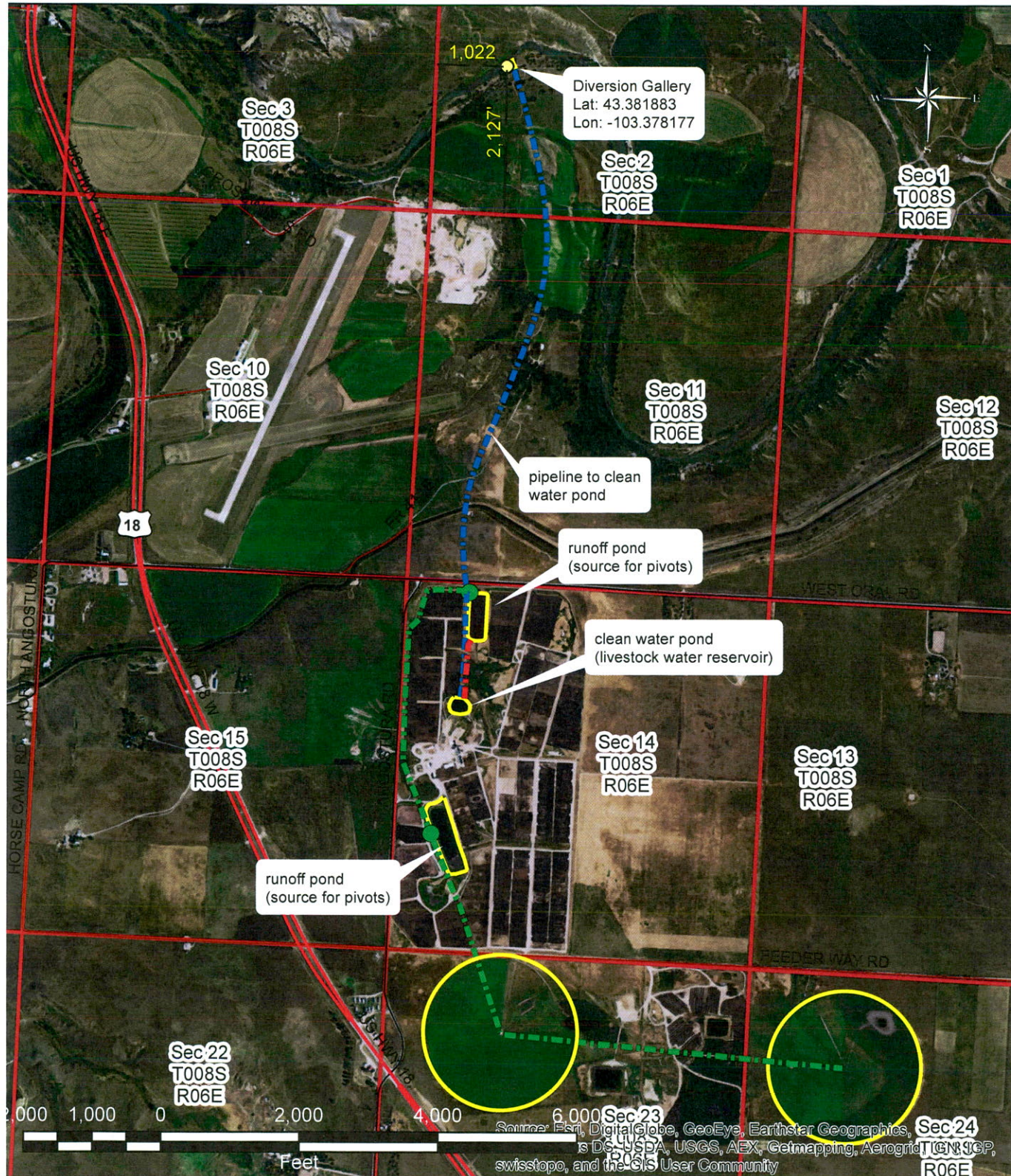
Date Report Completed: 7/6/2016



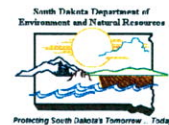
Intake gallery and submersible pumps



Clean water storage reservoir



Steven Quissell
Steven Quissell
Water Rights Inspector
ENR Water Rights Program



McMath, Genny

From: Gronlund, Eric
Sent: Tuesday, July 05, 2016 4:14 PM
To: Beck, Lynn; Quissell, Steve
Cc: McMath, Genny
Subject: RE: 386A-2 John Tepaske

I had a moment and looked at this. Short answer – the issuance of No. 386A-2 was in error regarding the priority date and should have been 5/16/1903.

Conclusion No. 2 of Mark Rath's report included that priority should be retained. Also SDCL 46-5-30.4 is explicit that "priority shall be retained upon amendment". Steve is absolutely right that 386A-2 would provide no benefit in the event of a shut-off order if it has a 2007 priority date.

The foundation of the Tepaske water right is irrigation. Irrigation rights can not be changed to a commercial use. Therefore, this permit was considered an additional use and qualified that prior to exercising the commercial component that DENR be contacted to the appropriate reduction of irrigation use is implemented to insure there wasn't additional water use under the 1903 priority. Also if the irrigation component is abandoned or forfeited the commercial use component would need to come back before the Board so it did not become a "change to commercial use" that is prohibited for irrigation. That may have caused the confusion at the time of issuance.

Eric

From: Beck, Lynn
Sent: Tuesday, July 05, 2016 12:57 PM
To: Quissell, Steve
Cc: Gronlund, Eric; McMath, Genny
Subject: RE: 386A-2 John Tepaske

My short answer is it does not make sense to me. We have a Board meeting this week so it will have to wait until after for Eric to take a look at the intent of this permit.

Lynn

From: Quissell, Steve
Sent: Tuesday, July 05, 2016 12:43 PM
To: Beck, Lynn
Subject: 386A-2 John Tepaske

Lynn

The priority date for 386A-2 is shown as 7/12/2007. Water Right 386-2 has a priority of **5/6/1903**. If 386A-2 is only used in the case of shut-off orders of the feedlots existing 1978 water right, I don't see that the 386A-2 with a 2007 priority will benefit the feedlot. They would both be shut off. Am I missing something? **Shouldn't the priority for 386A-2 be 5/16/1903?**

Steven Quissell

Water Right Inspector

SD Department of Environment and Natural Resources

Water Rights Program

Phone: (605) 394-6763

Fax: (605) 394-5317



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

OCT 12 2017

386A-2

John Tepaske
PO Box 95
Orange City IA 51041-0095

Dear Mr. Tepaske:

Enclosed is Water License No. 386A-2. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

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

enclosures

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 386A-2**

(1) John Tepaske, PO Box 95, Orange City IA 51041 made Application No. 386A-2, July 12, 2007 for a water permit to amend Water Right No. 386-2 for an additional use to include commercial use and also an additional diversion point. Water Permit No. 386A-2 authorizes up to 0.90 cubic feet of water per second (cfs) of the 2.39 cfs authorized under Water Right No. 386-2 from the Cheyenne River, Fall River County, South Dakota for commercial purposes in watering livestock at the Fall River Feedlot. Permit No. 386A-2, with a priority date of May 16, 1903 was approved August 24, 2007 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before August 24, 2012 and for the application to beneficial use of said water on or before August 24, 2016.

Water Right No. 386-2, with a priority date of May 16, 1903, authorizes diversion of 2.39 cfs from the Cheyenne River for irrigation purposes. Water Permit No. 386A-2, retaining the same priority date, allowed up to 0.90 cfs of the 2.39 cfs to be used for supplying water to the Fall River Feedlot if shutoff orders were issued to the feedlots' existing water right on the Cheyenne River.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the water supply system and application of water to beneficial use and is entitled to divert up to 0.90 cubic feet of water per second of the 2.39 cfs authorized under Water Right No. 386-2 for beneficial use. The location of the diversion point is the NW ¼ SW ¼ approximately 2,127'N and 1,022'E of the SW corner of Section 2, T8S, R6E (43.381883, -103.378177).

The additional use for watering livestock at the Fall River Feedlot can occur only when shut off orders have been issued for the feedlot's existing Water Right No. 1636-2 from the Cheyenne River. The permit holder must contact the Chief Engineer prior to exercising the commercial use so that the proper reduction in irrigation can be determined.

(3) Pursuant to South Dakota Water Law 46-5-30.1 John Tepaske, PO Box 95, Orange City IA 51041 the holder and/or owner of Water Right No. 386A-2 is issued a license to appropriate water, the right to use up to 0.90 cubic feet of water per second from the Cheyenne River with a priority date of May 16, 1903 from the location specified in (2) of this license for commercial purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 386A-2 and subject to the following qualifications:

- Prior to exercising the commercial use, the permit holder shall contact the Chief Engineer to determine the appropriate reduction in the irrigation use.
- This Permit is approved subject to the permit holder reporting the amount of water diverted for irrigation and the amount used for commercial use on the irrigation water use questionnaire submitted each year.
- The Water Management Board retains jurisdiction of Permit No. 386A2. Due to the limitation set forth in SDCL 46-5-34 and 46-5-34.1, if the irrigation authorized by Water Right No. 386-2 becomes subject to abandonment or forfeiture for nonuse, Water Permit No. 386A-2 shall be brought back before the Water Management Board regarding the commercial use component.



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

OCT 12 2017

date

