

WATER PERMIT NO. 2951A-3

Name of Applicant: Aman Brothers

Address: 33788 121st St, Hosmer SD 57448

Phone:

Amount of Water Claimed: no add'l

Total Acres: no add'l

Source of Water Supply: groundwater (1 well)

Water to be used for: irrigation

County: McPherson

Type of Waste Disposal System: NA

Location: 12 miles southeast of Eureka

PRIORITY

Date Received: 3-20-08

Application/License Fee: \$100

Corrected Application Received:

Period of Annual Use: Mar 1 – Nov 30

Remarks: Change the location of the well

Diversion Point: NE ¼ SE ¼ Sec 33-T126N-R71W

Land to be Irrigated: SE ¼ Sec 33-T126N-R71W

Depth of Well: 81 feet deep

Well Driller: Manikowski Well Drilling

Remarks:

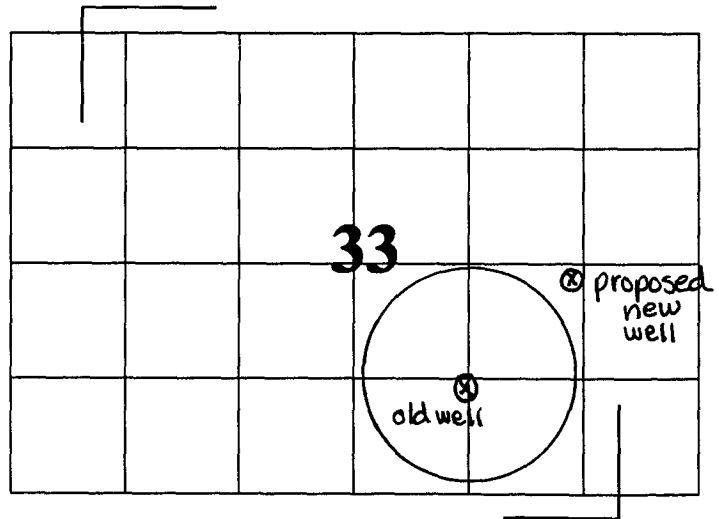
Type of Map: aerial

Prepared by: Ron Duvall

Reviewed and the Number Assigned on: 3-24-08

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2951A-3</u> (office use only) Hydrologic Unit <u>10160007</u>
	Basin <u>James River</u>
	Newspaper <u>Northwest Blade PO Box 797</u>
	<u>605-284-2631</u> <u>Eureka 57437</u>

RECEIVED
MAR 20 2009
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: ☐ New ☐ Vested Right ☒ Amendment/Correction to Permit No. 2951-3
(Use predates Mar 2, 1955)

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

Relocate the existing diversion point from near the center of the SE1/4 section 33-T126N-R71W to NE1/4SE1/4 section 33 (near NE corner of the 40 acre area)

1. Name of Applicant Harlan Aman Brothers Phone _____
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 33788 121st Street Hosmer State SD 57448
(Street, RR, or Box and City) (Zip Code)

2. Amount of water claimed no add *CFS or no add **GPM no add ***AF Total Acreage no add
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply ground water - 1 replacement well

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County McPherson
1 replacement well in NE1/4SE1/4 sec 33-T126N-R71W.
Current permitted pump rate is 1.78 cfs (800 gpm)

5. County or counties where water will be used McPherson

6. Annual period during which water is to be used Mar 1 - Nov 30

7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
Existing acres in SE1/4 section 33-T126N-R71W	138		

8. Give a description of the project. (Attach sheet if more space is needed)

This application is to change the location of the existing diversion point for irrigation of acreage covered by Water Right No. 2951-3. The new well site is to be located near the NE corner of the NE1/4SE1/4 section 33-T126N-R71W.

STATE OF SOUTH DAKOTA) SS
County of MCPHERSON

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, HARLAN AMAN, 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 Harlan Aman
Subscribed and sworn to before me this 19th day of March 2009

Donall H. Hallenberger
Notary Public signature

SOUTH DAKOTA
WATER PERMIT NO. 2951A-3 FOR IRRIGATION

Date of first receipt of application March 20, 2009.

The Water Management Board approved Water Permit No. 2951A-3 on October 7, 2009 for Aman Brothers, 33788 121st St, Hosmer SD 57448 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. 2951A-3 amends Water Right No. 2951-3 to change the location of the authorized well. Water Right No. 2951-3 appropriates 1.78 cubic feet of water per second from one well to be completed into the Hillsvie Aquifer (approximately 119 feet deep) located 60 feet south of the center of the SE 1/4 Section 33 to irrigate 138 acres located in the SE 1/4 Section 33; all in T126N-R71W. This permit authorizes moving the location of the well to the NE 1/4 SE 1/4 Section 33-T126N-R71W. The water source for this well will be the Hillsvie Aquifer and no increase in the diversion rate or number of acres irrigated is authorized by this permit.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: March 1 – November 30.
3. The date from which applicant may claim right is August 20, 1976.
4. One-fifth of the construction is to be completed on or before April 7, 2012.
5. All construction is to be completed on or before October 7, 2014.
6. Water is to be put to beneficial use on or before October 7, 2018.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The wells approved under Permit Nos. 2951A-3 and 6908A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit Nos. 2951A-3 and 6908A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Prior to use of water from either production well authorized by Permit Nos. 2951A-3 and 6908A-3, the Permit Holder shall employ the services of a South Dakota licensed well driller to install monitoring or observation wells near the location of production wells authorized by these permits. The location of the observation wells shall be submitted to the Chief Engineer for approval prior to issuance of Water Permit No. 2951A-3 and 6908A-3. The Chief Engineer, or his representative, shall be granted access for the purpose of monitoring water levels in these wells.

(continued)

Water Permit No. 2951A-3

Aman Brothers

Page 2

4. Under Permit No. 6908A-3, the permit holder shall maintain a distance of at least 1,320 feet between the well intended under this permit, existing production wells, and the well authorized under Permit No. 2951A-3.
5. These Permits are approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

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

APR 23 2010

date



(type or print in ink)

1. Well Information - Proposed Construction *see test hole report on file*

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____

- g) Distance to nearest existing domestic well: *35-126-71* *3/4 North Raymond Graff*
☒ On applicants property *W 1/2 of NE 1 mile* ☒ On property owned by others *27-126-71 South 1/2 of SW*

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) _____ Year Constructed _____
- c) Connected to the City of _____ Sanitary System _____

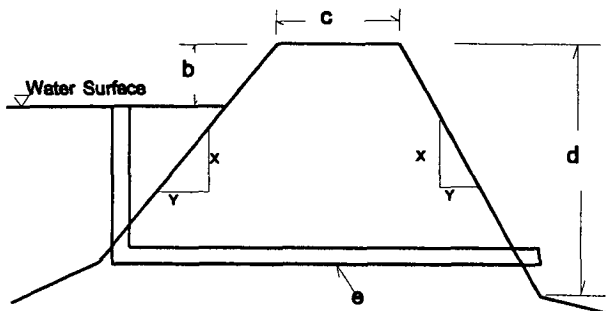
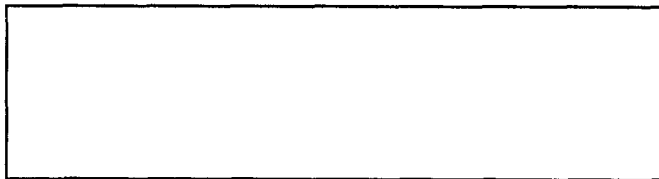
3. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

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

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



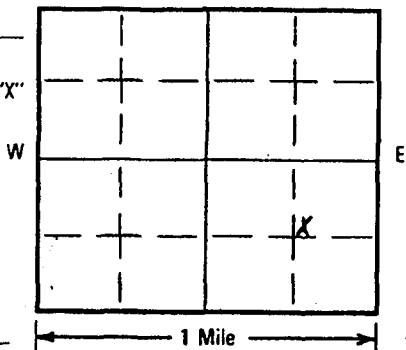
- b) Freeboard _____
- c) Crest Width _____
Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope _____
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NE 1/4 SE 1/4 Sec 33 Twp 126N Rg 41WCounty McPherson North

Please mark well location with an "X"



Well Completion Date

3-18-09

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.) 2500 ft. from septic tank (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward RotaryCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>200 lb</u> LB/FT	<u>1"</u> IN	<u>11</u> FT	<u>110</u> FT	<u>4 3/4</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Antoni's</u>	<u>3</u>	<u>9.8</u> lb./gal	<u>0</u> ft	<u>60</u> ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure _____

SCREEN: ☒ Perforated pipe ☐ ManufacturedDiameter 1" IN Length 40 FEETMaterial PVCSlot Size 1/8" Set From 70 Feet to 110 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

☒ YES, How:chlorine

_____ NO, Why Not? _____

Laboratory sent to for water quality analysis _____

Well Owner: Aman Brothers Farm

Business Name: _____

Address: Hesmer, SD 57448

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Top Soil</u>	<u>0</u>	<u>1</u>
<u>yellow clay</u>	<u>1</u>	<u>8</u>
<u>oxidized sand & gravel</u>	<u>8</u>	<u>55</u>
<u>Blue clay Till</u>	<u>55</u>	<u>70</u>
<u>Coarse Gravel</u>	<u>70</u>	<u>77</u>
<u>Blue clay Till</u>		
<u>with narrow Gravel strips</u>	<u>77</u>	<u>110</u>
<u>Rock</u>	<u>110</u>	<u>111</u>

STATIC WATER LEVEL 44' 2" Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☐ Pumped Describe: _____☐ Bailed _____☐ Other _____

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

ob well

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MAR 23 2009

WATER RIGHTS PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.

Signature of License Representative:

Bryan Manikowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

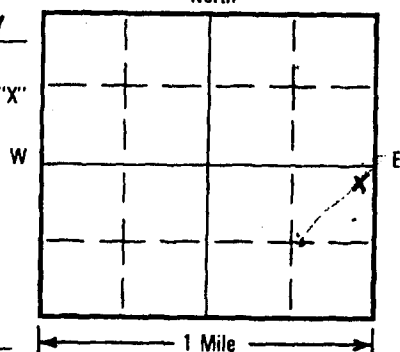
Date: _____

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NE 1/4 SE 1/4 Sec 33 Twp 126N Rg 71W
County McPherson

Please mark well location with an "X"



Well Completion Date

3-19-09

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 5000 ft. from stock yard (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward RotaryCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>16.85</u> LB/FT	<u>5</u> IN	<u>11</u> FT	<u>55</u> FT	<u>8 3/4</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Portland Cement</u>	<u>3</u>	<u>9.7</u> lb./gal	<u>0</u> ft	<u>40</u> ft
<u>Grout</u>		_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure Truemi line from top of Sandpack to top of holeSCREEN: ☐ Perforated pipe ☒ ManufacturedDiameter 5 IN Length 15 FEETMaterial PVCSlot Size 1050 Set From 55 Feet to 70 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

YES, How: chlorine

Laboratory sent to for water quality analysis _____

NO, Why Not? _____

Well Owner: Aman Brothers Farm

Business Name: _____

Address: Hosmer, SD 57448

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top Soil	0	1
Oxidized sand & Gravel	1	21
Fine, Medium to Coarse	21	40
Fine to medium sand	40	50
Medium to Coarse clean	50	70
Blue clay	70	81

STATIC WATER LEVEL 14 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:

☒ PumpedDescribe: Submersible Pump☐ Bailed☐ Other _____

Pumping Level Below Land Surface

16 ft. After 1 Hrs. pumped 60 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

Test well

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MAR 23 2009

WATER RIGHTS PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.Signature of License Representative: Lyron ManikowskiSignature of Well Owner or Equitable Property Holder: Harlan Aman

Date: _____

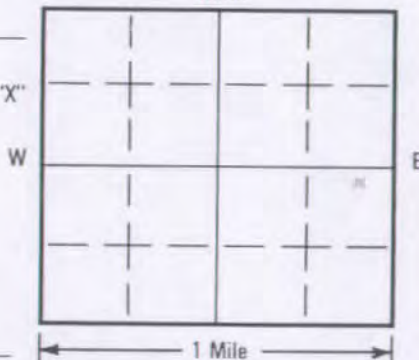
2951A-3

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NE 1/4 SE 1/4 Sec 33 Twp 26N Rg 71WCounty McPherson North

Please mark well location with an "X"



Well Completion Date

11-6-09

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 3000 ft. from Feed lot (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward RotaryCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>Class 20</u> LB/FT	<u>12</u> IN	<u>12</u> FT	<u>17 1/2</u> FT	<u>17 1/2</u> IN
<u>SPA 21</u> LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Portland Cement</u>	<u>8</u>	<u>9.4</u> lb./gal	<u>0</u> ft	<u>35</u> ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure Grout Pumped with tremie 1.4 ft from 35' to Top of HoleSCREEN: ☐ Perforated pipe ☒ ManufacturedDiameter 12 IN Length 15 FEETMaterial stainless steelSlot Size 10/50 Set From 62 Feet to 77 FeetOther information Gravel Pack #50 Slot Red-FlintWAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

x YES, How: Chlorine

____ NO, Why Not? _____

Laboratory sent to for water quality analysis _____

Well Owner: _____

Business Name: Aman Bros FarmsAddress: Hasmen, SD

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Top Soil</u>	<u>0</u>	<u>1</u>
<u>oxidized sand & gravel</u>	<u>1</u>	<u>21</u>
<u>fine to medium sand</u>	<u>21</u>	<u>40</u>
<u>medium to fine sand</u>	<u>40</u>	<u>57</u>
<u>medium to coarse sand</u>	<u>57</u>	<u>77</u>
<u>medium to coarse sand & gravel</u>	<u>77</u>	<u>97</u>
<u>fine silty sand</u>	<u>97</u>	<u>99</u>
<u>blue clay</u>	<u>99</u>	

STATIC WATER LEVEL 17' 1" Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped Describe: Submersible Pump
☐ Bailed _____
☐ Other _____

Pumping Level Below Land Surface

56' 9" ft. After 3 Hrs. pumped 820 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

Production wellThis well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling Inc.Signature of License Representative: Byron ManikowskiSignature of Well Owner or Equitable Property Holder: Harlan AmanDate: 12-11-09

RECEIVED
 DEC 17 2009
 WATER RIGHTS
 PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 3/23, 20 09

RECEIVED OF Aman Bros Harlan Aman 33778 121st St Hosmer SD 57448

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

Fee for Application for Permit No. <u>2951A-3</u> 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. <u>2951A-3</u>	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)	TOTAL	100 00

No.

04087

By

Laurel Erbe
Chief Engineer

Approval of a Change of Diversion Point

NAME: Aman Brothers

ADDRESS: 33778 121st Street, Hosmer SD 57448

DATE: May 15, 2008 **COUNTY:** McPherson **TELEPHONE:**

BACKGROUND:

Water Right No. 2951-3 appropriates 1.78 cfs from one well completed into the Hillview Aquifer located 60 feet south of the center of the SE ¼ Section 33 to irrigate 138 acres in the SE ¼ Section 33; all in T126N, R71W. The water right has a priority date of August 20, 1976.

The water right was transferred from Merle Hieb to Aman Brothers on December 27, 2007.

Mr. Aman has filed a request for a replacement well due to the failure of the existing well. This well has not been used for approximately 15 years since the land has been in the Conservation Reserve Program. SDCL 46-5-37.2 provides an exception to forfeiture for nonuse for water rights whose acreage is enrolled in a acreage reserve program. Based on the irrigation questionnaires, this acreage has been in CRP through 2006.

A well driller that assessed the well concluded the screen was in poor condition and that the well is capable of pumping only 1.07 cfs. Further rehabilitation of the well was not advised. Therefore, the driller advised construction of a new well

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- **Developed water source same as permitted source and no additional water appropriated**

The water source authorized by Water Right No. 2951-3 is the Hillview Aquifer at a depth of approximately 112 feet. The request indicates the source will continue to be the Hillview Aquifer.

No additional appropriation of water is requested. The water right appropriates 1.78 cfs. No additional water will be appropriated by the change in the well location.

- **Review of Existing Diversions**

A review of domestic wells found a total of seven domestic well in the sections immediately surround Section 33. Two of these wells are actually located in Section 33. One of these was drilled for Aman's and the other well was drilled for Ken Thorstenson in 1976. He is the individual who originally filed Application No. 2951-3. At a recent hearing before the Board a number of domestic well owners filed petitions opposing a new application for irrigation on adjacent property claiming impairment to their domestic well. The petitioners had wells 1 ½ miles or greater to the north of the application. The change in the location of the well for Right No. 2951-3 will move the well farther from these domestic wells. The recent permit application was approved. The Board's decision concluded that interference is not expected to be a concern and drawdown is not expected to be significant.

There is an existing water right for irrigation of the N ½ of Section 33 held by Kirchenmann's. The well for this water right is in the NE ¼ NE ¼ Section 33. The change in the well location will move the production well approximately 1,250 feet farther away from this production well. In addition, Aman Brothers hold Water Right No. 2893-3 to irrigate the SE ¼ and E ½ SW ¼ of Section 34 from one well located in the NW ¼ SE ¼ of Section 34. They also have Application No. 6908-3 to irrigate the W ½ SW ¼ and S ½ NW ¼ of Section 34 from a well to be located in the approximate center of the SW ¼ Section 34. This application was contested by neighboring domestic well owners claiming impairment to their domestic wells located 1 ½ to 2 miles to the north. Findings of fact, conclusions of law and a final decision have been adopted with the time period for appeal currently running. The authorization of this change will not move the well closer to either of these wells.

The issue is that Water Right No. 2951-3 has been dormant for approximately 15 years but is not subject to cancellation due to forfeiture for nonuse since the land has been in a reserve program. The land was purchased by the Aman Brothers who have not re-enrolled the land in CRP and intend to re-establish the irrigation system. Due to the age and condition of the well, it needs to be replaced. Instead of drilling a well at the same location, Aman Brothers have requested to drill the well near the SE corner of the section. This is farther away from the domestic wells of the petitioners to the recent application but still will be a diversion that has not been in place for a considerable amount of time.

CONCLUSION

- The change in the well location does not appropriate additional water.
- The well will still be completed into the Hillsview Aquifer.
- Interference is not expected to be a concern.
- Existing domestic wells should not be adversely impacted by authorizing this change in well location.

RECOMMENDED ACTION

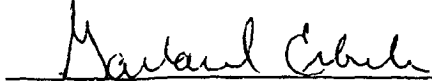
Based on the above criteria, it is recommended that the change of diversion point be authorized under Water Permit No. 2951-3.



Eric Gronlund
Water Rights Program

The Chief Engineer makes a finding pursuant SDCL 46-5-13.1 and ARSD 74:02:01:14.01 that:

This change of diversion point does not increase the potential for adverse effects to existing diversions.



Garland Erbele, Chief Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 23, 2008

Harlan Aman
Aman Brothers
33778 121st Street
Hosmer SD 57448

Dear Mr. Aman:

I am writing in regard to the request filed to authorize changing the location of the well authorized by Water Right No. 2951-3. This water right appropriates 1.78 cfs from one well completed into the Hillsview Aquifer located 60 feet south of the center of Section 33 T126N, R71W to irrigate 138 acres in the SE 1/4 Section 33, all in T126N, R71W. The water right has a priority date of August 20, 1976.

The replacement well is to be located in the SE 1/4 SE 1/4 of this section and is to be approximately 1,400 feet southeast of the present well site. Upon review of the request and pursuant to SDCL 46-5-13.1, the change in the well location is authorized without application or publication of a notice of hearing pursuant to SDCL 46-2A-4. The existing well that has failed shall be plugged in accordance with the Well Construction Standards.

If you have any questions, please contact Eric Gronlund at (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program



MAR - 9 2009

WATER RIGHTS
PROGRAM

Ron Dukkall

I am Writting in regards
about the goof trip on Water
permit 29513. I had a request
to dig new replacement well
on 33- trip/26-71 relocation
SE $\frac{1}{4}$ SE $\frac{1}{2}$ which should of
been NE $\frac{1}{4}$ SE $\frac{1}{4}$. I Faxed the
sheet my well digger fill
out on the test hole well
which he just dug, that is
what our plans last summer

Harlan Amar

605-283-2323



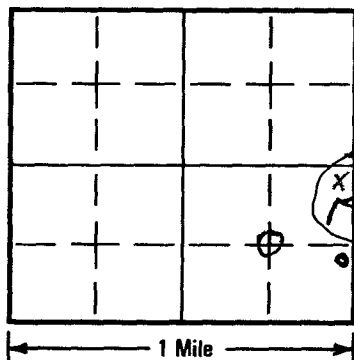
SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NE 1/4 SE 1/4 Sec 33 Twp 126N Rg 71WCounty McPherson

Please mark well location with an "X"

W



Well Completion Date _____

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 5000 ft. from stock yard (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward RotaryCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>4.55</u> LB/FT	<u>5</u> IN	<u>1</u> FT	<u>55</u> FT	<u>8 3/4</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Bentonite</u>	<u>3</u>	<u>9.7</u> lb./gal	<u>0</u> ft.	<u>40</u> ft.
<u>Grout</u>		_____ lb./gal	_____ ft.	_____ ft.

Describe grouting procedure Tremi line from top of sandpack to top of holeSCREEN: ☐ Perforated pipe ☒ ManufacturedDiameter 5 IN Length 15 FEETMaterial PVCSlot Size .050 Set From 55 Feet to 70 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

YES, How: Chlorine

Laboratory sent to for water quality analysis _____

NO, Why Not? _____Well Owner: Aman Brothers Farm

Business Name: _____

Address: Hosmer, SD 57448

WELL LOG:

TEST HoleFORMATION

DEPTH

FROM TO

Top Soil	0	1
Cyclized sand + Gravel	1	21
Fine medium to Coarse	21	40
Fine to medium sand	40	50
Medium to Coarse clay	50	70
Blue clay	70	81

STATIC WATER LEVEL 14 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:

☒ PumpedDescribe: Submersible Pump☐ Bailed☐ Other

Pumping Level Below Land Surface

16 ft. After 1 Hrs. pumped 60 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

Test well

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MAR - 9 2009
WATER RIGHTS
PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

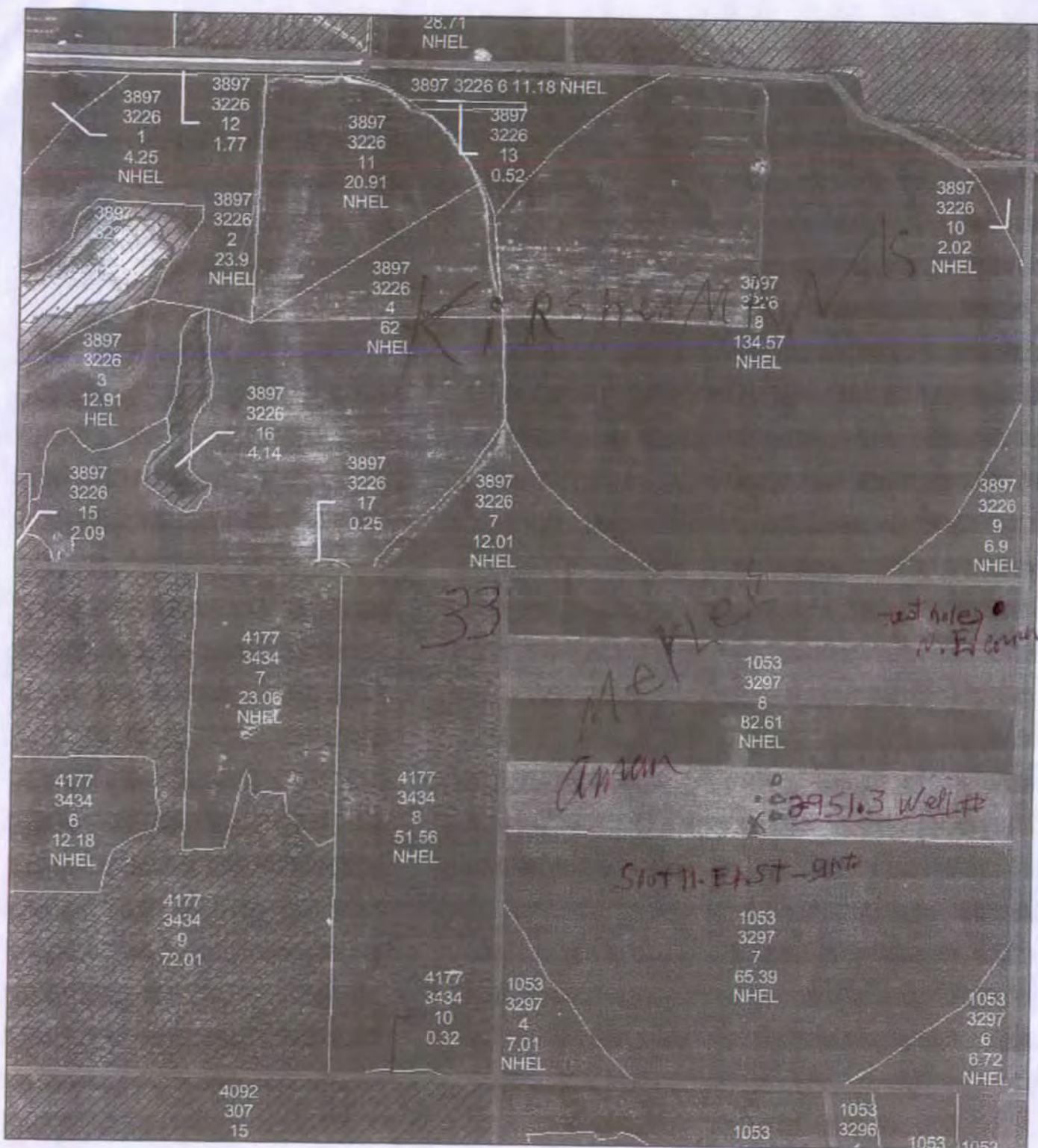
Drilling firm Marikowski Well Drilling, Inc.

Signature of License Representative:

Byron Mammelle

Signature of Well Owner or Equitable Property Holder:

Harlan Aman



United States Department of Agriculture
Farm Service Agency

33-126N-71W

McPherson County, SD

1 inch equals 704 feet

January 25 2007

Don Jurell
Nat. Res. Engineer
3/17/09

N
RECEIVED
MAR - 9 2009
WATER RIGHTS
PROGRAM



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 18, 2009

Harlan Aman
33778 121st Street
Hosmer SD 57448

Dear Mr. Aman:

I am writing in response to the information you sent to the Water Rights Program on March 9, 2009 concerning relocation of the well covered by Water Right No. 2951-3. On May 23, 2008, permission was granted to locate a replacement well to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ section 33-T126N-R71W. The location for the well site in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ placed the well further away from an irrigation well in the NE $\frac{1}{4}$ section 33 and also from domestic wells owned by petitioners opposing your application No. 6908-3.

During a phone conversation with Ron Duvall you indicated that the driller had found a more suitable site for a replacement well in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ section 33 and that you would like to have the replacement well located at this site. This location will move the replacement well closer to the Kirschenmann well in the NE $\frac{1}{4}$ section 33 and to the domestic wells of the petitioners who opposed approval of No. 6908-3. Given the recent history of this area and that the proposed well relocation moves closer to the area of controversy rather than further away, I believe the best course of action is to require approval of an application to change the location of the permitted well. This will afford anyone concerned with the proposed relocation the ability to participate in a hearing on the matter.

I am enclosing a partially-completed permit application that will need to be signed and notarized. After completing the application, please return it with the \$50.00 application fee plus the \$50.00 licensing fee. A report, recommendation, and a notice of hearing to be published in the local paper will then be prepared and provided to you.

If you have any questions, please contact Ron Duvall or Eric Gronlund at 605 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

enclosure

Manikowski Well Drilling Inc. Lisc. #285
316 Main Street
Geneseo, ND 58053
Phone: 701-538-4356
Cell: 701-680-0524

RECEIVED
MAR 23 2009
WATER RIGHTS
PROGRAM

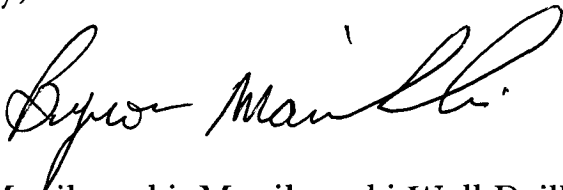
To Ken Buhler, SDWR,

We would like to request permission to drill a 12" test well for Aman Farms, in Hosmer, SD.

The well is to be drilled in the NE 1/4 of the SE 1/4 of SEC 33
Township 126 N. Range 71 in McPerson County in SD.

This well is for the purpose of test pumping drawdown and interference between the well in
SEC. 33 and the well in the west half of SEC. 34.

Sincerely,

A handwritten signature in cursive script, appearing to read "Byron Manikowski".

Byron Manikowski, Manikowski Well Drilling Inc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 26, 2009

Byron Manikowski
Manikowski Well Drilling, Inc
316 Main Street
Geneseo, ND 58053

Dear Mr. Manikowski:

As requested, pursuant to South Dakota Well Construction Standard 74:02:04:21, you are authorized to construct a test well for Aman Farms in the NE¼ of the SE¼ of Section 33, T126N-R71W prior to approval of a water permit. The well will be completed into the Hillsview aquifer. The test well must be constructed in accordance with the SD Well Construction Standards. Any test holes that are abandoned must be plugged pursuant to the SD Well Construction Standards.

Authorization must be obtained before water from the well can be used. Approval of this test well does not assure issuance of a water permit. Following review of a Water Permit Application; and assessing the availability of water, the potential impacts to existing users, the beneficial use, and the public interest of a permit, the Chief Engineer will make a recommendation to the Water Management Board regarding the application. The recommendation to approve, deny, or defer the application will be publicly noticed and an opportunity afforded for the public to intervene. A public hearing may be required to consider the water permit.

Very truly yours,

JAMES A. GOODMAN, P.E.
Natural Resources Engineer
for GARLAND ERBELE, Chief Engineer
Water Rights Program
(605) 773-3352



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2951A-3, Aman Brothers**

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. 2951A-3, Aman Brothers, c/o Harlan Aman, 33788 121st Street, Hosmer SD 57448.

The Chief Engineer is recommending APPROVAL of Application No. 2951A-3 because 1) the proposed diversion 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. The well approved under Permit Nos. 2951-3 and 2951A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit Nos. 2951-3 and 2951A-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Prior to use of water from either production well authorized by Permit No. 2951A-3 and 6908A-3, the Permit Holder shall employ the services of a South Dakota licensed well driller to install a observation well(s) near the location of production wells authorized by these permits. The location of the observation well shall be submitted to the Chief Engineer for approval prior to issuance of Water Permit No. 2951A-3. The Chief Engineer, or his representative, shall be granted access for the purpose of monitoring water levels in the well.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
May 29, 2009

NOTE: Please contact Jim Goodman, Natural Resource Engineering Director at (605) 773-3352 to coordinate the location of the observation well.

REPORT ON WATER PERMIT APPLICATION NO. 2951A-3

For Aman Brothers

April 22, 2009

Application No. 2951A-3 proposes to change the location of the authorized well. Water Right No. 2951-3 appropriates 1.78 cfs (800 gpm) from one well approximately 112 feet deep located about 60 feet south of the center of the SE $\frac{1}{4}$ of section 33 to irrigate 138 acres located in the SE $\frac{1}{4}$ of section 33; all in T126N R71W. This application proposes to move the location of the well about 1,860 feet to the northeast (NE $\frac{1}{4}$ SE $\frac{1}{4}$ of section 33) from the present location. The water source remains the Hillsvie aquifer and no increase in the diversion rate is authorized by this application.

AQUIFER – HILLSVIEW AQUIFER (HV)

The Hillsvie aquifer is a predominantly buried outwash (sand and gravel) in McPherson County but appears to be a surficial aquifer under water table conditions in the area of this application. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage in McPherson County (Hedges, 1982). The county study report (Hamilton, 1982) does not specifically name the Hillsvie aquifer but simply groups this aquifer under “other aquifer” and estimates potential well yields of 500 gpm could be possible.

Test drilling by the applicant indicates a favorable test at this site. A log provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to a depth of 70 feet. This test well completion report indicates a static water level of about 14 feet below land surface. Also a test well drilled beside the existing production well (these two logs are a lot alike) indicates the original well was probably screened at too deep an interval and probably never was a good production well.

The Water Rights Program monitors two observation wells in this area and located within a one and one-half mile radius of this proposed well site. Water levels for these observation wells show good response to climatic conditions. Water levels gradually decline during dry years and rise during wet years (recharge). The water level record indicates that the aquifer is capable of sustaining additional withdrawals (Water Rights, 2009). The effects of pumping are not obvious from an examination of the hydrographs. Hydrographs for MP-80H and MP-80G are included with this report.

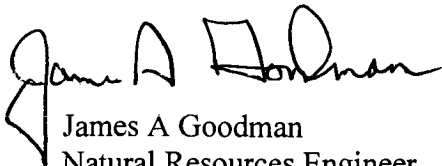
REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are two existing Water Right Nos. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres) and 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) located within one mile of this proposed diversion point. The well for No. 4129-3 is approximately 2,850 feet northwest and the well for No. 2893-3 is approximately 2,700 east both from this proposed well site. Also there is an existing Water Permit No. 6908-3 (one well, 110 feet deep, 2.0 cfs, irrigation of 160 acres) with a proposed well located approximately 1,870 feet southeast of this application site. It must be noted that there is

be noted that there is an application (No. 6908A-3) to move this proposed well to another site. At this distance between wells drawdown should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

CONCLUSIONS

1. Water is available from the Hillsview aquifer.
2. The aquifer is under water table conditions at this site. Drawdown created by pumping is not expected to be significant at the distance between wells. Interference is not expected to be a problem.
3. The well authorized by this application must be constructed in accordance with SD Well Construction Standards.
4. This area has been controversial in the past. The last permit issued in this area resulted in litigation which resulted in an affirmation of the Water Management Board's decision to issue the permit. It is expected this application may result in additional controversy.
5. The applicant has finally drilled test holes in this area to determine the best potential site for a production well. Even so the applicant will still need to construct and test a production well to determine the viability of this proposed site.



James A Goodman
Natural Resources Engineer

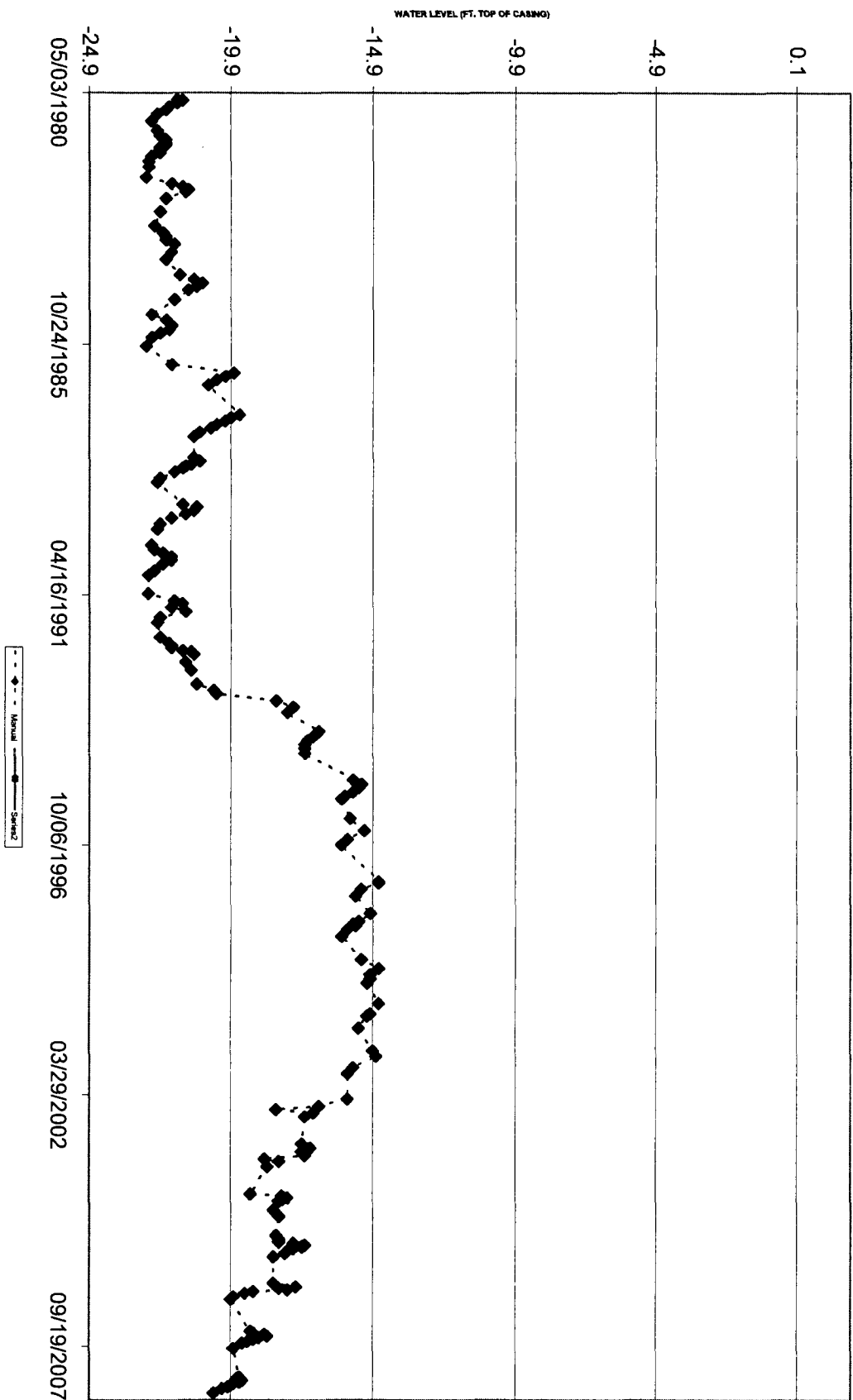
BIBLIOGRAPHY

Hamilton, L.J., 1982, Geology and Water Resources of McPherson, Edmunds, and Faulk Counties, South Dakota, Part II Water Resources, Bulletin 26, SD DENR, SDGS, Vermillion, SD, 57069.

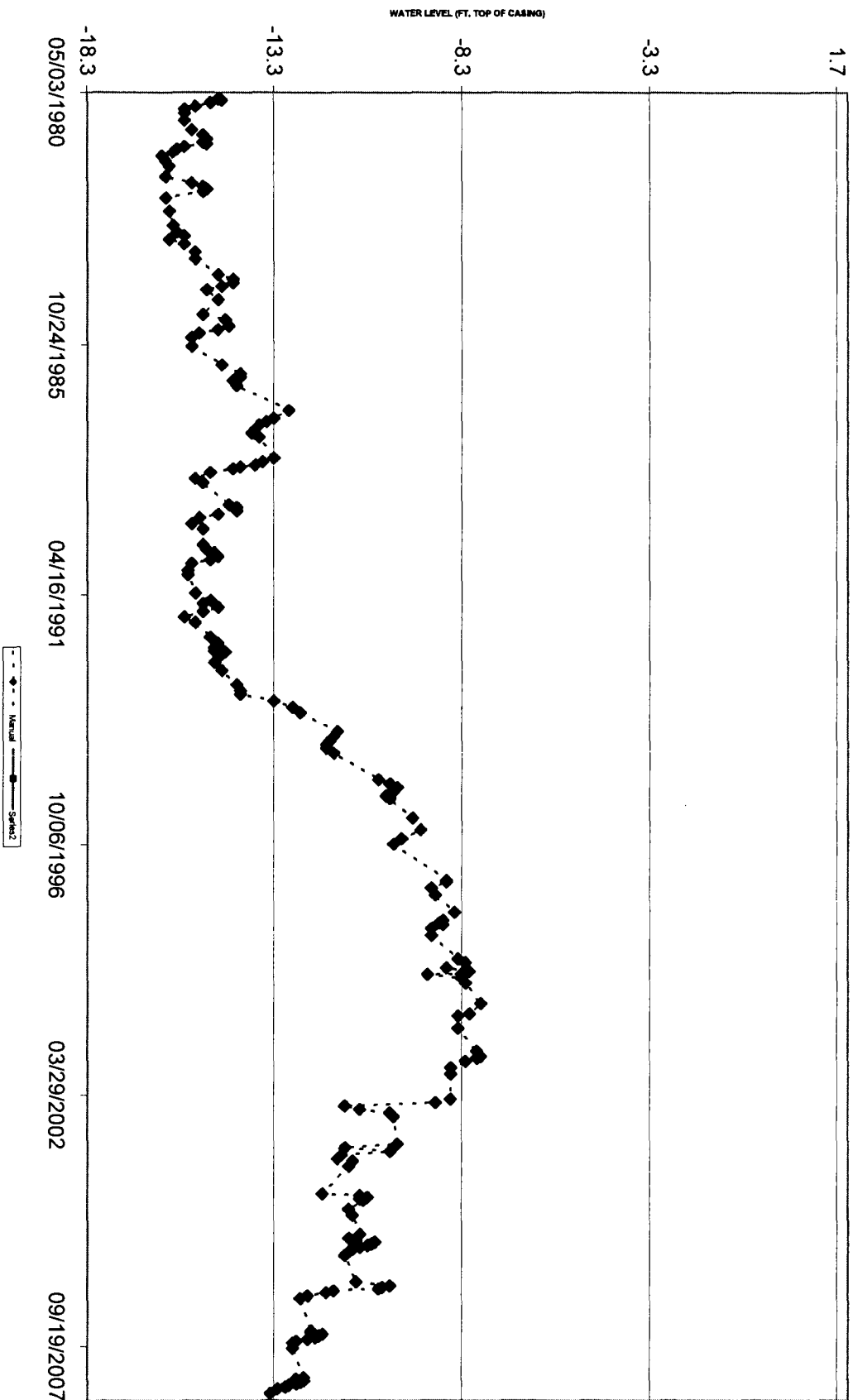
Hedges, L.S., and others, 1982, Evaluation of Ground Water Resources Eastern South Dakota and Upper Big Sioux River South Dakota and Iowa, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 57069.

Water Rights, 2009, Unpublished Observation Well Data for McPherson County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

**WATER RIGHTS' OBSERVATION WELL
MP-80G**



**WATER RIGHTS' OBSERVATION WELL
MP-80H**



AFFIDAVIT OF PUBLICATION

RECEIVED

JUN 15 2009

**WATER RIGHTS
PROGRAM**

The NW Blade
PO Box 797; Eureka, SD 57437
605-284-2631

STATE OF South Dakota; COUNTY OF Mc Pherson

I, Heidi Morlock, am authorized by the publisher as agent to make this affidavit of publication.
Under oath, I state that the following is true and correct.

The NW Blade, is a newspaper which is published weekly and is of general circulation and is in compliance with South Dakota Newspaper Association legalized Statutes.

The notice has been published in the newspaper listed above.

DATE(S) OF PUBLICATION:

- 1) 6-4-09 Water Rights
- 2) 6-11-09 Water Rights
- 3) J

THE NAME OF THE CORPORATION / GOVERNMENT OFFICE: Dept. of Environment & Nat. Resources

TYPE OF DOCUMENT: _____

AUTHORIZED SIGNATURE:

Heidi Morlock, Editor
Heidi Morlock, Editor

SUBSCRIBED AND SWORN TO BEFORE ME ON THE

12th DAY OF June, 20 09.

NOTARY SIGNATURE: Bobby Lapp

My commission expires June 5, 2010

Public Notices

NOTICE OF HEARING

on Application Nos. 2951A-3 & 6908A-3 to Appropriate Water

Notice is given that Aman Brothers, c/o Harlan Aman, 33788 121st St, Hosmer SD 57448 have filed the following applications for a water permit.

Application No. 2951A-3 proposes to amend Water Right No. 2951-3 to change the location of the authorized well. Water Right No. 2951-3 appropriates 1.78 cubic feet of water per second from one well to be completed into the Hillsview Aquifer (approximately 119 feet deep) located in 60 feet south of the center of the SE 1/4 Section 33 to irrigate 138 acres located in the SE 1/4 Section 33; all in T126N-R71W. This application proposes to move the location of the well to the NE 1/4 SE 1/4 Section 33-T126N-R71W. The water source for this well will be the Hillsview Aquifer and no increase in the diversion rate or number of acres irrigated is authorized by this application.

Application No. 6908A-3 proposes to amend Water Permit No. 6809-3 to change the location of the well and include irrigation of acreage authorized by Water Right No. 2893-3. Water Permit No. 6908-3 appropriates 2.0 cubic feet of water per second (cfs) from one well to be completed into the Hillsview Aquifer (approximately 110 feet deep) located in NE 1/4 SW 1/4 Section 34 to irrigate 160 acres located in the W 1/2 SW 1/4, S 1/2 NW 1/4 Section 34; all in T126N-R71W. This application proposes to expand the area in which the diversion point authorized by No. 6908-3 may be located to include the NW 1/4 SW 1/4, S 1/2 NW 1/4 Section 34-T126N-R71W. Water Right No. 2893-3 appropriates 2.0 cfs from one well completed into the Hillsview Aquifer located in the NW 1/4 SE 1/4 Section 34 to irrigate 202 acres located in the E 1/2 SW 1/4, SE 1/4 Section 34-T126N-R71W. The applicant is requesting that irrigation of the entire acreage covered by Nos. 6908-3 and 2893-3 be allowed from either of the two authorized diversion points. No increase in the diversion rate or number of acres irrigated is authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2951A-3 & 6908A-3 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.

Any person interested in opposing or supporting this application must file a written petition with **BOTH the applicant and Chief Engineer**. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3332)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2009. 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.

The Water Management Board will consider this application at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD on July 8, 2009 at 1:00 p.m. CDT. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The July 8, 2009 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by July 29, 2009.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May
June 29, 2009

Northwest Blade
PO Box 797
Eureka SD 57437

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application Nos. 2951A-3 & 6908A-3 to Appropriate Water to be published twice. Please publish the first notice on June 4, 2009 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 Aman Brothers, c/o Harlan Aman, 3788 121st St., Hosmer SD 57448 (Ph # 605-283-2323).

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-----

Nos. 2951A-3 & 6908A-3

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

Date _____

We are in receipt of your letter of May 29, 2009 enclosing Notice to Appropriate Water by Application Nos. 2951A-3 & 6908A-3 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.

May 29, 2009

Aman Brothers
c/o Harlan Aman
33788 121st St
Hosmer SD 57448

Dear Mr. Aman:

Water Permit Application Nos. 2951A-3 & 6908A-3 for irrigation use have 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 Northwest Blade printed at Eureka SD (Ph #605-284-2631). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and reports on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendations, 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 June 4, 2009 with the second publication 7 days later. The applicant is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF HEARING on Application Nos. 2951A-3 & 6908A-3 to Appropriate Water

Notice is given that Aman Brothers, c/o Harlan Aman, 33788 121st St, Hosmer SD 57448 have filed the following applications for a water permit.

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Application No. 6908A-3 proposes to amend Water Permit No. 6809-3 to change the location of the well and include irrigation of acreage authorized by Water Right No. 2893-3. Water Permit No. 6908-3 appropriates 2.0 cubic feet of water per second (cfs) from one well to be completed into the Hillsvie Aquifer (approximately 110 feet deep) located in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34 to irrigate 160 acres located in the W $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 34; all in T126N-R71W. This application proposes to expand the area in which the diversion point authorized by No. 6908-3 may be located to include the NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 34-T126N-R71W. Water Right No. 2893-3 appropriates 2.0 cfs from one well completed into the Hillsvie Aquifer located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34 to irrigate 202 acres located in the E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Section 34-T126N-R71W. The applicant is requesting that irrigation of the entire acreage covered by Nos. 6908-3 and 2893-3 be allowed from either of the two authorized diversion points. No increase in the diversion rate or number of acres irrigated is authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2951A-3 & 6908A-3 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.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to 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 June 29, 2009. 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.

The Water Management Board will consider this application at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD on July 8, 2009 at 1:00 p.m. CDT. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The July 8, 2009 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by July 29, 2009.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to

the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by July 29, 2009, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since this application does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by July 29, 2009.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. 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

May 29, 2009

TO: Thomas Tobin, Tonner, Tobin & King, PO Box 1456, Aberdeen SD 57402-1456
Allen Hieb and Delores Hieb, 11585 340th Avenue, Hosmer SD 57448
Dale Mohr, 11505 341st Avenue, Hosmer SD 57448
Raymond Groft, 1701 3rd Avenue SE, Apt. 103, Aberdeen SD 57401

SUBJECT: Water Permit Applications filed by Aman Brothers

Aman Brothers submitted water permit applications to change the location of the two diversion points authorized by Water Right No. 2951-3 and Water Permit No. 6908-3. Enclosed are the staff reports, recommendations and public notice for these applications. It is anticipated that the notice will be published in the Northwest Blade printed in Eureka on June 4 and 11, 2009. The notice schedules a July 8, 2009 hearing before the Water Management Board.

Please note that the Chief Engineer's recommendation includes a condition for permit holder to install an observation well, if the applications are approved, to monitor water levels in the aquifer.

This information is being sent to those who petitioned in opposition to Water Permit No. 6908-3. I was unable to find an address for petitioner Herbert Groft. Please feel free to contact me if you have any questions about the permitting process.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

Enclosures

TONNER, TOBIN & KING, LLP

ATTORNEYS AT LAW
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

RECEIVED

JUN 26 2009

**WATER RIGHTS
PROGRAM**

ATTORNEYS:
THOMAS P. TONNER
THOMAS M. TOBIN
HIRAM I. KING

TELEPHONE: (605) 225-1000
FAX: (605) 225-0625
E-Mail: ttobin@nvc.net

RESEARCH & INVESTIGATION:
CHARLES A. BENSEN

June 25, 2009

Garland Erble
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: Application Numbers 2951-A-3 and 6908A-3

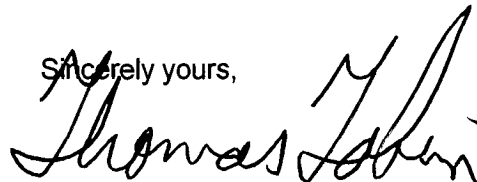
Dear Garland

This letter is being sent to you on behalf of the interested persons, Allen Hieb, Dale Graff, Raymond Graff, Herbert Graff, Dale Mohr and Rudy Aman. Each of the above-interested parties are opposing the application and are opposing the Chief Engineer's recommendations. Each interested party mentioned above opposes the application. They believe that the location of the wells and the increased irrigation will endanger existing wells which the interested parties have an interest. There is a problem with the availability of water in this area. The use of irrigation pumps in this area adversely affects the usefulness of the wells of the interested parties for domestic purposes and livestock purposes. The interested parties believe this is not in the public's best interests and that the applications can be granted without adversely affecting their availability water on the property.

If you should have any questions, please do not hesitate to contact me.

Thanking you, I remain,

Sincerely yours,



Thomas M. Tobin

TMT:tj

Cc: Allen Hieb
Rudy Aman
Dale Graff
Raymond Graff
Herbert Graff

TONNER, TOBIN & KING, LLP

ATTORNEYS AT LAW
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

RECEIVED

JUL - 1 2009

**WATER RIGHTS
PROGRAM**

ATTORNEYS:
THOMAS P. TONNER
THOMAS M. TOBIN
HIRAM I. KING

TELEPHONE: (605) 225-1000
FAX: (605) 225-0625
E-Mail: ttobin@nvc.net

RESEARCH & INVESTIGATION:
CHARLES A. BENSEN

June 29, 2009

Garland Erble
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: Application Numbers 2951-A-3 and 6908A-3

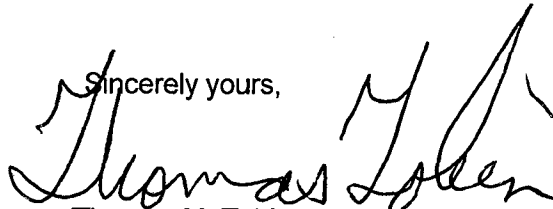
Dear Garland

In reference to the letter that was sent to you on June 25, 2009, please add the following interested parties in regards to the above-entitled matter: Lorraine Mohr; Delores Hieb.

If you should have any questions, please do not hesitate to contact me.

Thanking you, I remain,

Sincerely yours,



Thomas M. Tobin

TMT:jmj

Cc: Lorraine Mohr
Delores Hieb



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 30, 2009

NOTICE

TO: Harlan Aman
33788 121st Street
Hosmer SD 57448

Thomas Tobin
Tonner, Tobin & King, LLP
PO Box 1456
Aberdeen SD 57402-1456

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Hearing on Water Permit Application Nos. 2951A-3 and 6908A-3, Aman Brothers

A petition was submitted by Thomas Tobin, attorney at law, in opposition to Water Permit Application Nos. 2951A-3 and 6908A-3 filed by Aman Brothers. The petition was filed in response to the Notice of Application published June 4 and 11, 2009 in the NW Blade.

Application No. 2951A-3 proposes to amend Water Right No. 2951-3 to change the location of the authorized well. Water Right No. 2951-3 appropriates 1.78 cubic feet of water per second from one well to be completed into the Hillsvie Aquifer (approximately 119 feet deep) located in 60 feet south of the center of the SE 1/4 Section 33 to irrigate 138 acres located in the SE 1/4 Section 33; all in T126N-R71W. This application proposes to move the location of the well to the NE 1/4 SE 1/4 Section 33-T126N-R71W. The water source for this well will be the Hillsvie Aquifer and no increase in the diversion rate or number of acres irrigated is authorized by this application.

Application No. 6908A-3 proposes to amend Water Permit No. 6809-3 to change the location of the well and include irrigation of acreage authorized by Water Right No. 2893-3. Water Permit No. 6908-3 appropriates 2.0 cubic feet of water per second (cfs) from one well to be completed into the Hillsvie Aquifer (approximately 110 feet deep) located in NE 1/4 SW 1/4 Section 34 to irrigate 160 acres located in the W 1/2 SW 1/4, S 1/2 NW 1/4 Section 34; all in T126N-R71W. This application proposes to expand the area in which the diversion point authorized by No. 6908-3 may be located to include the NW 1/4 SW 1/4, S 1/2 NW 1/4 Section 34-T126N-R71W. Water Right No. 2893-3 appropriates 2.0 cfs from one well completed into the Hillsvie Aquifer located in the NW 1/4 SE 1/4 Section 34 to irrigate 202 acres located in the E 1/2 SW 1/4, SE 1/4 Section 34-T126N-R71W. The applicant is requesting that irrigation of the entire acreage covered by Nos. 6908-3 and 2893-3 be allowed from either of the two authorized diversion points. No increase in the diversion rate or number of acres irrigated is authorized by this application.

The Water Management Board will conduct a hearing to consider Application Nos. 2951A-3 and 6908A-3 at 1:00 PM (Central Time) on Wednesday July 8, 2009 at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2951A-3 and 6908A-3 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. 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 based on the evidence presented at the public hearing.

This hearing may be an adversarial proceeding. Any party of record and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. 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 and petition in the matter of Water Permit Application Nos. 2951A-3 and 6908A-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

The legal authority and jurisdiction under which the hearing is held is SDCL 46-1-14, 46-1-15, 46-1-16, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, and SDCL 46-2A-1 thru 46-2A-9.

The particular sections of the statutes and rules involved are SDCL 46-1-1 thru 46-1-9, 46-1-14 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-9, 46-2A-12, 46-2A-14, 46-2A-15, 46-5-1 thru 46-5-2, 46-5-5, 46-5-6.11, 46-5-8, 46-5-10, 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352. In addition, please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing.

c: Diane Best, Assistant Attorney General
Margo D. Northrup, PO Box 280, Pierre SD 57501

CERTIFICATION

I hereby certify that on June 30, 2009, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 30, 2009, regarding the scheduling a hearing on Water Right Permit Application Nos. 2951-3 and 6908A-3, as addressed below:

Harlan Aman
33788 121st Street
Hosmer SD 57448

Thomas Tobin
Tonner, Tobin & King, LLP
PO Box 1456
Aberdeen SD 57402-1456

Margo D. Northrup
PO Box 280
Pierre SD 57501

Diane Best, Assistant Attorney General
300 N. Dakota Ave., Suite 403
Sioux Falls SD 57104



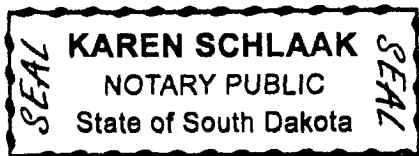
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of June 2009.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



Phone: (605) 773-3352
Fax: (605) 773-4068

SD DENR-Water Rights

Fax

To: Lester Aman

From: Ken Buhler

Fax: (605) 283-5305

Date: July 2, 2009

Phone:

Pages: 2

Re: Heib Well Log

CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments: Here is the report for the well in the NW¼ NE¼ Sec. 23, T126N-R71W. I will leave the hard copy with Eric Gronlund.

Let me know if you need anything else

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

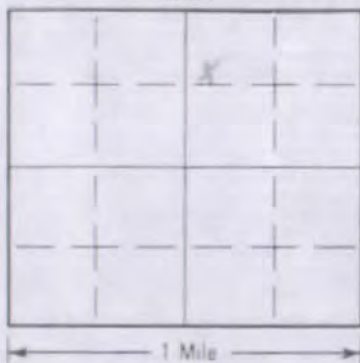
Location 1/4 Sec 23 Twp 126 Rg 71County McPherson North

Please mark well location with an 'X'

W

E

Well Completion Date

9-7-06

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 3000 ft. from Farm yard (identify source)

PROPOSED USE

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

METHOD OF DRILLING:

RotaryCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>200</u> LB/FT	<u>4</u> IN	<u>12</u> FT	<u>140</u> FT	<u>7</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Cement</u>	<u>7</u>	<u>15</u> lb./gal	<u>10</u> ft	<u>90</u> ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure Pumped down 14" pipeSCREEN: ☒ Perforated pipe ☐ ManufacturedDiameter 4 IN Length 200 FEETMaterial PVCSlot Size 025 Set From 115 Feet to 135 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

YES How: _____NO Why Not? _____

Laboratory sent to for water quality analysis _____

Well Owner Deloris Hink

Business Name _____

Address Sumner, S. Dak.

WELL LOG:

DEPTH

FORMATION	FROM	TO
<u>Soil</u>	<u>0</u>	<u>1</u>
<u>Gravel</u>	<u>1</u>	<u>1.8</u>
<u>Blue Clay</u>	<u>1.8</u>	<u>45</u>
<u>Gravel</u>	<u>45</u>	<u>50</u>
<u>Blue Clay</u>	<u>50</u>	<u>110</u>
<u>Gravel</u>	<u>110</u>	<u>135</u>
<u>Clay</u>	<u>135</u>	<u>140</u>

STATIC WATER LEVEL 39 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 air Describe _____☐ Bailed _____☐ Other _____

Pumping Level Below Land Surface

90 ft. After 2 Hrs. pumped 45 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

RECEIVED
SEP 15 2006This well was drilled under license # 465

And this report is true and accurate.

Drilling firm Bob's Drilling & EquipmentSignature of License Representative Robert SchumacherSignature of Well Owner or Equitable Property Holder Deloris HinkDate 9-10-06

SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER MANAGEMENT BOARD

= = = = =

WATER PERMIT APPLICATION
NOS. 2951-A-3 AND 6908A-3,
AMAN BROTHERS

ORIGINAL

= = = = =

Partial Transcript of Proceedings
Testimony of Jim Goodman and Board Comments
July 8, 2009

= = = = =

A P P E A R A N C E S

DIANE BEST,
SOUTH DAKOTA ATTORNEY GENERAL'S OFFICE,
Deputy Attorney General, 300 North Dakota
Avenue, Suite 403,
Sioux Falls, South Dakota 57104,
appearing on behalf of the Department;

LINDSEY RITER-RAPP,
RITER, ROGERS, WATTIER & NORTHRUP,
Attorneys at Law, P.O. Box 280,
Pierre, South Dakota 57501,
appearing on behalf of the Applicant;

THOMAS M. TOBIN,
TONNER, TOBIN & KING,
Attorneys at Law, P.O. Box 1456,
Aberdeen, South Dakota 57402,
appearing on behalf of the Interveners.

Reported by Cheri McComsey Wittler, RPR, CRR

1 THE WITNESS: Thank you. My name is Jim
2 Goodman. I'm an engineer with the Water Rights Program,
3 and I'm here to present testimony on Application Nos.
4 2951A-3 and 6908A-3 for Aman Brothers.

5 If you take a little time and pull out this map
6 and set it out there so it's handy for you to see, I'm
7 going to spend some time referring to this. It's a
8 little messy, it's a little cluttered, but this is all
9 very close together.

10 This is the irrigation application and the
11 moving of the wells, and the existing applications -- or
12 permits that are in this area.

13 It's just two sections and parts of others but
14 Section 33 is in the -- is on the left side, and Section
15 34 is the right side. The yellow lines mark the section
16 lines. And the pivot -- a standard sized pivot there is
17 about a quarter section of land there to give you a
18 little bit of reference on what that looks like. We'll
19 be referring to that quite a bit, that sketch.

20 That -- I believe that was Exhibit G.

21 MS. BEST: Yes.

22 CHAIRMAN BJORK: Correct.

23 THE WITNESS: Application 2951A-3, and if you'll
24 look at the map, in the southeast quarter of Section 33,
25 that's permit 2951-3, 2951A-3 proposes to move the well

1 location, which the well location where it exists now is
2 the red X. Where it's moved to is the blue X with the
3 circle around it. It's approximately in that area. Is
4 that pretty clear to everybody on how that sits?

5 Basically this application is simply for the
6 moving of that well that distance. Now the aquifer here
7 in question is the Hills View, what we call the Hills
8 View Aquifer. In this area it's predominantly a varied
9 outwash. However -- by "this area," I mean this county.
10 However, right in this area it's under water table
11 conditions when you look at all the well logs and things
12 around there. So basically it's a surficial aquifer.
13 It's been mapped to underlie about 51,200 acres in
14 McPherson County and contains an estimated 230,000 acre
15 feet.

16 Test drilling has been completed at this site by
17 Manikowski well drilling. The test hole logs indicate
18 that they had sand and gravel down to about a depth of 70
19 feet and a static water level of about 14 feet below land
20 surface. This particular site does look favorable for
21 development. And the test holes would show that.

22 The Water Rights Program, we do monitor a couple
23 observation wells in this area. They are also shown on
24 this map. MP 80 G is located in the very northwest
25 corner of Section 33, and MP 80 H is located over in the

1 northeast quarter of Section 34, right on the section
2 lines.

3 I have included hydrographs of those two
4 observation wells for your review. Basically these two
5 hydrographs indicate the wet and dry years and a total
6 fluctuation of about 10 feet of magnitude between the
7 absolute highest and the absolute lowest water level. If
8 anything, looking at the period of record now, you know,
9 we're probably somewhere maybe a little higher than
10 "normal" if you want to use words like that. I don't
11 like to do that. Because what these observation wells
12 show is basically the general flux of climate over time
13 and I do not like to apply terms like average or anything
14 like that to a record that's this short.

15 Now this is a very long period of record for
16 observation wells for us, but still in the overall sense
17 of things it's a relatively short record in terms of
18 time.

19 The other application, and I'll digress here a
20 little bit. I'll go into the other application. It's
21 also -- this is 6908A-3. This is the application that
22 was approved in I believe it was last March, and Diane
23 went through what happened with that application.

24 What the applicant is proposing to do now is if
25 you look at the southwest quarter of Section 34, there is

1 an X with a red circle around it. That was the
2 approximate location of the well for that 6908-3. He's
3 proposing to move that. Where the blue X -- the 6908A-3
4 where the blue X with the circle around it is located is
5 not necessarily where that's proposed. I put that on
6 there just for a reference point.

7 The application is advertised, it says the south
8 half of the northwest quarter, which would be basically
9 that 80 acres, or the northwest quarter of the southwest
10 quarter of section 34. So that would basically be
11 anywhere located within that area would be where the well
12 is advertised.

13 Now this is also the Hills View Aquifer. The
14 same set of information and stuff that I presented on the
15 other application would apply. And also the two monitor
16 wells are both in the Hills View Aquifer and would apply
17 to this application too.

18 Now where we're going to digress here a little
19 bit is I think you've got a pretty good idea of the
20 locations of the wells, and right now I'm going to go
21 over the existing irrigation that has gone on there for
22 quite a few years and the location of those wells.

23 Now in the north half of Section 33 there's an
24 existing irrigation right, 4129-3. The irrigation well
25 for that permit is located in the northwest quarter, and

1 it is represented by that red X in the northeast of the
2 northeast I guess it would be of Section 33.

3 That well supplies water for the whole north
4 half of that section.

5 Now in the very -- near the very center of
6 Section 34 is another irrigation well, and that's permit
7 2893-3. And there is a red X located just south and east
8 of the center of section 34. And I believe that -- now
9 is there anybody in the room that thinks that I've got
10 something wrong here with these? Because I'd like to
11 clear it up before we get too far down the road. I think
12 this is what our paper rights would show. This is where
13 we think everything is at. Is there anybody that's going
14 to -- wants to dispute any of this before we get too far
15 down the road?

16 CHAIRMAN BJORK: Mr. Goodman, I don't think we
17 can just ask the group here if they think anything is
18 wrong with this. Unfortunately, that just doesn't fit
19 into the scheme of things.

20 THE WITNESS: All right. I'm sorry. Anyway,
21 that's where we sit with the map. Sorry I did that.

22 CHAIRMAN BJORK: Okay.

23 THE WITNESS: Now the chief engineer -- or I
24 concluded that water's available from the aquifer. The
25 aquifer's under water table conditions at this site. I

1 do not expect drawdown created by pumping to be very
2 significant. And potential distance between wells here,
3 I do not think drawdown would be significant and I don't
4 believe interference would be a problem.

5 Also they have now drilled some test holes and
6 because they went in and drilled the test holes is what
7 resulted in the application to move some of these wells.
8 I think they discovered that maybe some of the original
9 sites probably weren't as good as the newer sites. Could
10 have maybe avoided this whole hearing if they would have
11 done that a year and a half ago.

12 Anyway, now are there any questions over that
13 map or the locations or how things are sitting from the
14 board?

15 CHAIRMAN BJORK: Questions?

16 Tell me again in the southeast of 33, the X in
17 the center of that quarter, is that the well for 2951-3?

18 THE WITNESS: That's correct.

19 CHAIRMAN BJORK: Okay.

20 THE WITNESS: And this application, the
21 amendment is 2951A-3 is to move the well to the northeast
22 of to where that blue X.

23 CHAIRMAN BJORK: Okay. But that well does exist
24 now? It's been drilled?

25 THE WITNESS: No. He drilled a test hole.

1 CHAIRMAN BJORK: He drilled a test hole.

2 THE WITNESS: At least I don't think it exists
3 yet. I've got a test hole.

4 Okay. Now the recommendation of the chief
5 engineer for 2951A-3, because this is an existing water
6 right and is a relatively old water right, it's the one
7 we're handling first because it's going to obviously have
8 priority over the new one.

9 We're recommending -- or the chief engineer is
10 recommending approval of that application with some
11 standard language that we put on a lot of them. Follow
12 well construction standards, and also there's an item,
13 no. 3, that I need to talk over a little bit here with
14 the board.

15 What that says is pretty open-ended. What it
16 means is that we're recommending approval of this
17 application following these hearings but we're also
18 requiring the applicant -- or requesting the board to
19 require the applicant, I should say, to drill a
20 monitoring or observation well in the immediate area of
21 where most of the complaints and protests were coming
22 from in order that we would have something to monitor
23 water levels in their area.

24 I felt that that was possibly a way to head off
25 some things that might come up at this hearing.

1 Questions, and I guess we would like the board to adopt
2 that standard and require then the applicant to do that
3 and thought that that would be fairly fair and
4 straightforward.

5 Now the problem there is and the reason it is so
6 open-ended is we don't have a site. It really doesn't
7 matter to me in that area -- it could be a mile or 2
8 north of here or 3 miles north, but what it does or what
9 I think is important is that both the applicant and the
10 folks that are contesting it would agree to that site or
11 that general area and then we'd bring a driller in and
12 put a monitor well in into that aquifer assuming that we
13 hit it at that site. If we don't, we move and try
14 another spot. But that's the way -- that's the reason
15 that item 3 is written the way it is.

16 Our intent here is that before he would produce
17 water from his production well, that he would do this and
18 give us a site that we could measure water levels that
19 these guys are using from the aquifer that they're
20 pumping from on the north side of this lake. That's our
21 intent and I think that's clear now to everybody that's
22 here. It probably wasn't clear when they read that,
23 however, because when I read it again it didn't make a
24 lot of sense to me either.

25 Now the only other -- the conditions are exactly

1 the same on 6908-3 except we added one additional
2 condition. And that is condition no. 3 on the second
3 one, is the requirement that we would like to see that
4 applicant when he drills his production well, and in
5 particular I'm referring to 6908A-3, that he would
6 attempt to get that about 1,320 feet away from existing
7 permitted rights.

8 Since 2951A-3 and 2893 are both his, the
9 applicant, it's really not my job to protect him from
10 himself, I don't think. It's a situation where it has to
11 make economic sense to him. There are a lot of other
12 considerations than me just standing up here saying it
13 should be 1,320 feet away. Honestly, that's probably
14 more his call than mine. However, there is another water
15 right in the area that does not belong to him and he
16 could actually get within 1,300 feet of that and be
17 within that advertised area that we've advertised the
18 location for.

19 So the point being here is I would like to see a
20 1,320-foot spacing if possible. The rationale behind
21 that is -- 1,320 feet is a quarter mile. The rationale
22 behind that is in shallow glacial water table aquifers
23 like this that a pumping rate of around 700, 750 gallons
24 a minute, which is a relatively typical thing, that if
25 you look at the drawdown created by a pumping well under

1 those conditions, if you pump that well at that rate for
2 30 consecutive days, the 0 drawdown line is about a
3 quarter mile. In other words, you don't measure anything
4 at 1,320 feet away. That's the rationale behind it. It
5 works. It's just the way it works. And it works that
6 way just about everywhere in the state.

7 Now, like I said, it's probably not my position
8 or anybody else's position to say if the individual wants
9 to drill irrigation wells side by side and pipe the
10 water, I guess that's up to him. Maybe that was
11 absolutely the best site he could. However, I would
12 prefer that that spacing be at least held to the existing
13 right that does not belong to the applicant.

14 Anyway, that -- are there any questions on that?

15 MR. HUTMACHER: Mr. Chairman?

16 CHAIRMAN BJORK: Mr. Hutmacher.

17 MR. HUTMACHER: If I could ask a couple of
18 questions. On 2951A-3, are we abandoning the well in the
19 center of the section there?

20 THE WITNESS: Yes, we are and moving it.

21 MR. HUTMACHER: And the same thing over across,
22 we're going to -- the proposed site is going to be
23 abandoned and moved to one of the new blue Xs.

24 THE WITNESS: And be moved to the new site.
25 Yeah. It is a proposed site. It has not been built.

1 MR. HUTMACHER: Would it be possible to use that
2 existing well in the center of that section to, whatever,
3 put a smaller casing and recase that well and use that
4 for a monitor well? It's going to be fairly hard to get
5 to when you need to get to it.

6 THE WITNESS: Oh, I'm sure you could. My whole
7 point of requiring a monitoring well is to -- for the
8 assurance of the people that are protesting it.

9 MR. HUTMACHER: Right.

10 THE WITNESS: It's not for the benefit of the
11 applicant.

12 MR. HUTMACHER: I understand that.

13 THE WITNESS: And besides that, the area we're
14 talking about putting this in, if you'll notice the small
15 lake here to the north half, we're talking a mile or 2 to
16 the north of there. It's not even on this map would be
17 the location of the monitor well. I feel that the two
18 monitor wells we have here are representative of what's
19 going on.

20 MR. HUTMACHER: Okay. All right. Thanks.

21 MR. HOYT: Mr. Chairman? Mr. Goodman, as it
22 relates to the qualification no. 3 or the proposed
23 qualification, I think in your testimony you had said
24 you'd like to see this done and this distance maintained,
25 if possible. But qualification 3 does not have an if

1 possible in it.

2 THE WITNESS: Right. Right. I understand that.
3 And I think he has to maintain that distance from the --
4 ones that aren't his, the one that isn't his, the
5 distance. You see what I mean?

6 MR. HOYT: I do. I just didn't know whether you
7 meant this to be a finite requirement in no. 3 or a best
8 efforts.

9 THE WITNESS: Well, it's a best effort, but I
10 hate to draw the line that fine because if it ends up
11 1,319, I mean, he's met the intent as far as I'm
12 concerned and it's not 1,320, and I think that's
13 ridiculous. But there are a lot of issues where that
14 could come up to be that way.

15 But to me it's a recommendation. It makes sense
16 from a hydrologic point of view. However, there are
17 other factors other than hydrology. Economic ones, your
18 cost. Does he really -- I mean, he is -- he is asked
19 with these applications if he can use that existing well
20 and 30 foot of water all this area. It might be a few
21 years before he even puts this well in, and he would
22 still be watering out of the existing one.

23 These are business decisions that he would make
24 and I don't want to tie up the business of making those
25 decisions but on the other hand --

1 MR. HOYT: I understand your point and your
2 reasoning and I would concur. My question simply being
3 is should the at least be approximately then?

4 THE WITNESS: Well, I liked at least because got
5 them thinking. Got them headed that direction, sir.

6 CHAIRMAN BJORK: Mr. Goodman, do we have the
7 authority to --

8 THE WITNESS: I think the board has the
9 authority to set spacing on wells and the board has.

10 CHAIRMAN BJORK: We do have that authority as a
11 board?

12 THE WITNESS: Yeah, I think you do. And
13 commonly any diversion for irrigation in the Big Sioux
14 Aquifer, you set a standard of about 1,320 feet away from
15 the Big Sioux River itself. The intent of that is to
16 minimize impacts on flow of the river. So, yes, I think
17 you do. There have been, however, permits approved
18 within that area for municipalities and rural water
19 systems.

20 CHAIRMAN BJORK: Any other questions from the
21 board?

22 MR. BRINK: That language has no effect on the
23 future application as far as you're concerned? In other
24 words, let's say we got another guy over here in --
25 approaching the east quarter corner of 33. Everybody

1 snuggles up over there because it's a good spot.

2 THE WITNESS: Yeah.

3 MR. BRINK: Are we going to say, oh, boy, you
4 know, you're closer than 1,320 feet from these other guys
5 and we really wanted you to maintain that? Is that going
6 to be a --

7 THE WITNESS: Here's the way I would see it
8 happening: If someone else came in there and -- first of
9 all, you'd have to get permission from the landowner if
10 somebody else is going to pipe the water out there. But
11 say he owned a quarter of land further south and wanted
12 to pipe water a mile out of there, I think it would be
13 perfectly reasonable for this board to say, okay, let's
14 put the well in. Let's run an aquifer test. Let's show
15 exactly what's going to happen and as soon as you present
16 that information, we'll make a decision on that. That
17 would require him to drill a well, test pump it, show the
18 effects of what's going on, and then he could move the
19 water out if he showed no adverse effects.

20 So I think it's a step-by-step process. We
21 haven't even started this. I mean, there's really very
22 little going on here right now. There's nothing else
23 within miles of this area that's being irrigated. We
24 just have a little development right here in this area.
25 And honestly, there's really only two irrigation wells

1 there that have been used any length of time at all.

2 MR. BRINK: Is there something unique about the
3 formation at that location? Is it deeper?

4 THE WITNESS: Well, it seems to start very near
5 the surface and goes down to about 70 feet. If you look
6 at all the test wells in the area both north of the lake,
7 east of the lake, south, there appears to be an area
8 south of the lake where you go into the sand and gravel
9 relatively close to the land surface and then you're out
10 of it somewhere around 70 feet in depth.

11 The original well for 2951A-3 indicated it went
12 down about 120 feet. There was a little clay and then
13 reportedly a little more sand and gravel below that.
14 They screened that deeper sand and gravel and that well
15 never did produce very good. I think they probably got
16 some clay sand below the actual aquifer and actually
17 didn't complete that into the -- if they had completed it
18 higher they may have gotten a better well. But I think
19 they screened it too deep.

20 And the reason I can say that with some
21 reasonable assurance is because the new driller that came
22 in drilled a test hole right beside that and basically
23 recommended that they not try to replace that well and
24 moved them to the north.

25 CHAIRMAN BJORK: If I can stop you right here, I

1 want to get us a little bit back in order here.
2 Mr. Goodman, is that the extent of your presentation for
3 us then?

4 THE WITNESS: Is what, sir?

5 CHAIRMAN BJORK: Is that the extent of your
6 presentation in terms of this?

7 THE WITNESS: Yes.

8 CHAIRMAN BJORK: Then I would ask, Ms. Best, if
9 you would proceed with questions, if you have comments --
10 questions for the witness.

11 DIRECT EXAMINATION

12 BY MS. BEST:

13 Q. The only question I have, Jim, is can you -- do you
14 have any knowledge with respect to this 2951A-3, whether
15 that's been cropped in recent years?

16 A. Whether it's what?

17 Q. Whether that's been cropped in recent years?

18 A. No, I don't.

19 Q. Okay.

20 A. I know it was in CRP for many years, but I don't
21 know what it is right now.

22 Q. Okay.

23 CHAIRMAN BJORK: Further questions?

24 MS. BEST: Nothing.

25 CHAIRMAN BJORK: Ms. Riter-Rapp.

1 MR. BRINK: Mr. Chairman, could I have one more?

2 CHAIRMAN BJORK: I'd like to wait until we get
3 through with counsel first and then we'll go with our
4 questions.

5 MR. BRINK: Okay.

6 CHAIRMAN BJORK: Our further questions.
7 Ms. Riter-Rapp.

8 MS. RITER-RAPP: Thank you.

9 CROSS-EXAMINATION

10 BY MS. RITER-RAPP:

11 Q. You indicated there were two observation wells, the
12 MP 80 G and MP 80 H. Do you know what the distance is
13 between the observation well and the proposed sites?

14 A. Well, just a little over a mile.

15 Q. What is the distance between the proposed sites and
16 the Interveners' property in this case?

17 A. Oh, probably the -- I can't say for certain because
18 I don't know what they own, but I know they're just on
19 the other side of the lake. I would guess probably a
20 mile. Somewhere in that range. A mile or two.

21 Q. Okay. But you indicated in the observation wells or
22 the logs that we have that the logs show that in wet
23 years there's more water and in dry years there's less
24 water so it's climatic conditions that affect the levels?

25 A. That's true.

1 Q. Did you have the opportunity to review any well logs
2 of any other wells in the area?

3 A. I've looked at well logs in the area, yes.

4 Q. And what was your -- I guess, what did you learn
5 from reviewing the well logs in the area of these
6 proposed wells?

7 A. Well, you mean for the irrigation wells?

8 Q. Right. I guess my question is what other wells are
9 in the area?

10 A. Oh, okay. There are domestic wells. And basically
11 for household and then also livestock watering wells.

12 Q. And have you reviewed the logs for those wells then
13 that are in the area?

14 A. I've looked at everything that we have on file
15 that's located within a couple-mile radius of this area,
16 yes.

17 Q. Okay. And in your review of those well logs is
18 there, you know, does it show that there's adequate water
19 to supply those wells?

20 A. Well -- well, that's why they put them in.
21 Generally they don't finish them if they didn't find
22 adequate water. Although they may get a relatively low
23 yield on them. A domestic well doesn't require a lot of
24 water. We're talking 5 to 10 gallons a minute, usually
25 the size of the pump that's put in them. They may go as

1 high as 15 but that's not a big deal usually.

2 Q. And maybe what I was trying to ask is to your
3 knowledge are there any wells in the area that have gone
4 dry?

5 A. Just from the last hearing that we had, some of the
6 folks said that their wells went dry but I've never
7 looked at any, no.

8 Q. So you don't have any specific data regarding that?

9 A. No, I don't.

10 Q. Okay.

11 MS. RITER-RAPP: I don't believe I have any
12 other questions for the witness.

13 CHAIRMAN BJORK: Thank you. Mr. Tobin.

14 MR. TOBIN: Thank you.

15 CROSS-EXAMINATION

16 BY MR. TOBIN:

17 Q. Mr. Goodman, just to go back on something that was
18 asked of you, the domestic wells in this area, they don't
19 report to you? They don't provide you any reports, do
20 they?

21 A. The well drillers when they drill a new well are
22 required to submit what's called a completion report.
23 What that is is the formations they went through, the
24 size of the casing they put in, and then a lot of times
25 there will be some information in there on a test maybe

1 that they did when they -- typically they'll blow the
2 well with air or something and they may give you those
3 kind of numbers. They'll give you a static water level,
4 the size of casing, and basically the geologic
5 information, that's what I think is most important, and
6 they'll give you a legal location which may or may not be
7 right.

8 Q. But that's a once-in-point time --

9 A. Yes.

10 Q. -- of information; correct?

11 A. Yeah. They're required to file that.

12 Q. Right. And then as time goes on, the people that
13 have these wells, they aren't required to file any
14 additional reports to your department?

15 A. No, sir. No, sir.

16 Q. People that have protected water rights, they are
17 required to provide information on an annual basis?

18 A. Irrigators do.

19 Q. Right.

20 A. Not everyone, but irrigators are required to.

21 Q. The existing well at 2951-3 that's right in the
22 middle of the quarter, didn't that well go dry?

23 A. I don't know about dry. I assume it's got water in
24 it. But it would be my impression that it was probably
25 difficult -- probably didn't pump what they needed. I

1 wouldn't call that dry but --

2 Q. Well, presumably at the time that they drilled it,
3 it would have been -- they wouldn't have completed the
4 well if it wouldn't have been an adequate source for
5 irrigation?

6 A. Well, I think they were hoping it would be an
7 adequate source. And I can't go back to 1981 or '77 or
8 whenever that was put in. But, you know, the record
9 indicates that they at least put up a system, put a pump
10 in it and developed it at that time. So they thought at
11 least that it was. Otherwise, they wouldn't have done
12 it, I'm assuming.

13 Q. And now the reason for the request to move the well
14 is because they don't think this well that exists would
15 provide the irrigation necessary for the land.

16 A. I think that's right. It's obvious, yeah.

17 Q. If they were to drill the well just a little bit
18 away from where they -- drill a new well. Like evidently
19 there's a test well or some test well?

20 A. They did drill a test well right beside it.

21 Q. And it would indicate that was -- at least the
22 person that drilled the test well thought that wasn't an
23 adequate source of water for irrigation?

24 A. They would have then probably constructed the well
25 right there then.

1 Q. I thought you testified that --

2 A. They drilled a test hole there and they obviously
3 made some determinations that maybe that other well
4 was -- had been screened too deep or whatever. And they
5 found a better spot, whatever it is, 1,800 feet away or
6 so and recommended -- the driller apparently recommended
7 that spot. You've got to realize this is what they've
8 applied to me. I was not privy to any of their
9 conversations. I'm just --

10 Q. Okay. And the other spot that they have drilled a
11 test well would be up in the northeast portion of that
12 quarter where you've got the blue circle with the --

13 A. Right. That's what the application is for, yes,
14 sir.

15 Q. Now regardless of where the well is located, the
16 pivot system would still operate in a location from the
17 well in order for it to irrigate the land that it's
18 supposed to cover?

19 A. Would be the same area, yes, sir.

20 Q. Yeah.

21 A. They'd have to pipe back obviously from the well
22 back to the pivot.

23 Q. However, if we go across the quarter line and go to
24 the 6908-3 or 6908A-3 permits, if they relocate the well
25 that they proposed to drill on the last application, that

1 would allow them to irrigate actually more land than what
2 they had -- were allowed to irrigate before; is that
3 correct?

4 A. Well, it depends a little bit on your perspective
5 here. They have the permit. The 6908 authorizes
6 irrigation of those lands right now. What they're
7 requesting to do is they're not requesting to change any
8 of that irrigation that's approved. What they're
9 requesting to do is move the well location from the red
10 circle to somewhere else. And since it's the same
11 aquifer, there's really no changes except the location of
12 that well. That is the change. It's already been
13 approved. The 6908, they're approved. They could
14 actually go out there today and drill a well where the
15 red X is and irrigate those lands.

16 Q. And the existing well on Section 24 would still be
17 used as an irrigation well also?

18 A. 34 you mean?

19 Q. Yeah. Section 34.

20 A. Yes, sir. The existing one is very near the center
21 of the section.

22 Q. Correct. But it -- but the proposed site would
23 actually move up closer to the Interveners' property?

24 A. It depends on where the Intervener -- if the
25 Interveners were south, they would be moving further

1 away. If the Interveners were north, it would be moving
2 closer, yes.

3 Q. The observation wells that you have that you have on
4 your picture here, MP 80 H and MP 80 G, is it true that
5 those were only cased down to about 45 feet?

6 A. They're shallow wells, yes. They're cased in to
7 that sand and gravel, yes.

8 Q. Okay. And then they would be deeper than the casing
9 then; is that correct? The well itself?

10 A. No. No. There would be a casing and a screen and
11 that's the -- they may have drilled deeper.

12 Q. Okay.

13 A. From the drill hole data but the well itself is only
14 as deep as the casing and the screen.

15 Q. But you believe that the cased area actually
16 penetrates the aquifer?

17 A. Yes, sir.

18 Q. Okay. As to both of them?

19 A. Yes, sir.

20 Q. Okay. And you believe that the water that you are
21 observing in those monitoring wells actually is aquifer
22 water?

23 A. Yes, sir.

24 Q. Was it your understanding that they did drill test
25 wells in the area on Section 34 in the general vicinity

1 where you have your red X with spokes -- red circle with
2 spokes, I mean, that they drilled test wells and they
3 didn't find adequate water there?

4 A. I've looked at those -- I honestly can't -- I'm not
5 sure I can -- I don't know. I know that they submitted
6 some test hole logs, and I can't remember if they drilled
7 in that -- in the center there or not. I know they
8 drilled further north and hit things that were very
9 similar to what they show from the existing well and the
10 proposed other site for 2951, but I don't -- I can't
11 answer that question without actually looking back at
12 that. Or to even see if we did get a log on that. We
13 did get a small group of -- they would be in the
14 application, I believe in our file here. They would be
15 in there but --

16 Q. The rate of drawdown or the amount that's being
17 pumped on any given time period, that was regulated in
18 the prior applications?

19 A. It would be limited to what the prior application
20 was, yes, sir.

21 Q. But there is no limitation on the number of days
22 that can be pumped in a season or the number of days in a
23 row that it can be pumped; is that right?

24 A. Not specifically but indirectly, yes. There is.
25 It's limited to a volume based on the acreage. You're

1 allowed 2 acre foot per acre, which, you know, 24 inches
2 per acre. That's -- probably doesn't mean a lot to you
3 sitting here. But historically looking back at the
4 irrigation questionnaires from all over the state, in a
5 dry year an irrigator might use 12 to 15 inches a year.
6 And in a wet year he might be down around 6 to 10 inches
7 per year.

8 Even though -- to give you a little bit of an idea
9 of what that means, like your 750 gallon a minute rate,
10 if you pump 7 days in a row, you might get somewhere
11 between an inch and 2 inches on those 130-some acres. An
12 irrigator will tell you he has a hell of a time catching
13 up. If he gets behind he has to have rain.

14 You'd have to pump -- I believe to get the 2 acre
15 feet you'd have to pump something like 60-some
16 consecutive days at that maximum rate to get to that.
17 And it's very rare. It almost never happens anywhere
18 except golf courses. I mean, you simply can't do it.
19 And realistically it's a tough thing to make something
20 operate that long. I mean, there are so many variables
21 there that -- everything from lightening to shut the
22 power off -- I mean, there's so many things. It just
23 really rarely happens.

24 Q. Does anyone ever inspect the withdrawal rates to see
25 if the withdrawal rates are what's pursuant to the

1 permit?

2 A. We inspect the permit but, no, we don't measure the
3 withdrawal rate. We will basically take -- you'll look
4 at the pump. You'll look at the system, the way it's set
5 up. There may be a set of rain curves or something
6 develop like that for the system and then you know what
7 the system is running at, what pressure. You can
8 calculate the volume we think reasonably accurately what
9 the system's putting out. That's what we go by. We
10 don't actually put a flow meter on it and measure it, no,
11 sir.

12 Q. Well, but you don't go back and actually check to
13 see if they leave the same size pump on there, do you?

14 A. It's only inspected that once. You're right.

15 Q. Right. So then from that point on you rely upon the
16 operator to furnish you well reports or some type of
17 annual report that would indicate the number of days that
18 he pumped and the number of hours per day, I presume,
19 that he pumped?

20 A. That's correct.

21 Q. And then because you assume that his equipment
22 hasn't changed from the first inspection, then you can go
23 ahead and calculate the amount of water that was actually
24 put on the ground?

25 A. We can do that, or many of them report the amount of

1 gallons or the amount of inches that they've calculated
2 they've used, yes, sir.

3 Q. Is there any standardization in the industry that
4 when they do the test wells that they actually are also
5 monitoring the observation wells at the same time to see
6 if there's any differences?

7 A. No. I'm trying to think of what you really meant
8 there.

9 Q. Well, I'm just saying that if you're going to drill
10 a test well and you're going to pump it --

11 A. Oh, yeah.

12 Q. If you're going to pump it --

13 A. They can measure -- like our monitor wells, yes, you
14 can measure them any time you want. We don't have any --
15 generally they will have a padlock on them but I give
16 people keys to get in those padlocks. If there came an
17 opportunity where it was close enough and you thought you
18 could measure some drawdown, I would encourage that to
19 happen. And it has happened before.

20 Q. There was a study of this Hills View Aquifer in
21 1982, I think. That's about the most recent information
22 that we have about it, isn't it?

23 A. That's the study that named it, yes, sir.

24 Q. Did that also identify the size and the extent of it
25 and --

1 A. Yeah. As best they could at that time, yes.

2 Q. And I think in that document they said something
3 about a 500-gallon-per-minute drawdown was going to be
4 possible.

5 A. Yeah. I cited that in my report to -- the geologist
6 estimate was 500 gallons a minute. It's a bit of a --
7 it's a bit of a guess. Even when you bring that man out
8 to drill you a test well, you know, you want a high water
9 level and you want thicker sand and gravel. The thicker
10 the better. It's kind of like peanut butter or
11 something. That's the kind of thing you're really
12 looking for.

13 Once you identify that best potential site, you
14 really need to look around the area a little bit. In
15 other words, get away. Because not only thicker, but the
16 more extensive the better off you are. In fact, if
17 everybody here is in the same thing, that's better yet.
18 If everybody here has a well in that same aquifer, then
19 we're really dealing with something. This is a big thing
20 here.

21 Otherwise, if there's only two or three irrigation
22 wells down there, it may not be such a big deal. I mean,
23 that's kind of the way I look at it.

24 Q. But at least these wells that are being proposed,
25 they're actually drawing down 8 to 900 gallons a minute,

1 aren't they?

2 A. That's the -- the application requests numbers in
3 that range, yes, sir. That's based on the acreage
4 usually. What happens is you're allowed 1 cubic foot per
5 second. That's about 450 gallons a minute for every 70
6 acres. So that would be roughly 900 gallons a minute for
7 140 acres.

8 Q. The irrigation questionnaires that the irrigators
9 file, are they public information?

10 A. Yes, sir.

11 Q. Okay. As far as calculating recharge rates, have
12 you ever had a reason to calculate recharge rates in this
13 aquifer?

14 A. Have I had a reason to? No, sir. The -- a recharge
15 rate is a little bit -- there's a lot of judgment
16 involved there. However, you can measure the water
17 levels in these monitor wells, observation wells. And
18 you can get a feeling for what the recharge rate is based
19 on those changes in those water levels as they rise.

20 If you get a 2- or 3-foot rise in the spring and
21 during a wet year, you can make a pretty reasonable
22 estimate of how much water precipitation or leakage into
23 the ground, if you will, it took to raise that water
24 level by a foot.

25 You know, it's not all water. What you're measuring

1 in the ground is not -- you may measure a water level
2 that comes up a foot, but it's not actually 12 inches of
3 water that made that rise 1 foot. It's actually less
4 than that because about 30-some percent of that is sand.
5 So there's that much less water that would require --
6 that would actually raise it a foot so. That's one way
7 to kind of get it recharged is to look at those water
8 level changes in the monitor wells.

9 Q. In looking at the available water in an aquifer --
10 like we had this testimony there was -- I forget. I
11 wrote it down here. There was lots of water, of acre
12 feet in this -- in this particular aquifer. Like 230,000
13 acre feet of water in there. And you're talking about
14 each irrigation well only being able to pump out 2 acre
15 feet per -- I mean, per year?

16 A. Uh-huh.

17 Q. It would seem like there's an inexhaustible source
18 but not all the water's recoverable, is it?

19 A. No, not all the water. This particular estimate is
20 recoverable. If you were going to say -- if you're going
21 to -- you'd probably double this or pretty close to
22 triple if you were going to say all the water. What we
23 tried to do -- depends on which set of reports you're
24 looking at. What we tried to do is estimate recoverable
25 in those reports. If it's a USGS report, they estimate

1 total water. If it's a SDGS report, it's recoverable.
2 Slight difference but you're right, it's not all
3 available at that spot anyway because the aquifer
4 underlies a relatively large area and obviously at one
5 end of that aquifer you're not going to be able to get
6 what you can get at another end. But you'd never take it
7 all out of one spot anyway. It's generally spread
8 around. So it kind of equals out.

9 Q. As far as the irrigation out of this aquifer, are
10 these the -- what you have here, are these the only ones
11 that have been permitted so far?

12 A. This is it.

13 Q. Okay. And they just all happened to be in a small
14 area.

15 A. That's correct, sir.

16 Q. If the Interveners lived north of the lake, would
17 their land also be on top of the same aquifer as what the
18 irrigation wells south of the lake are on?

19 A. Well, it's mapped that way. And so for the purposes
20 of this, I'm going to say yes because that's the best
21 information I have until somebody shows me different.

22 Q. You indicated that the existing well in the Section
23 33 could be used as a monitoring well if they wanted to
24 leave it as such, they could actually use that as a
25 monitoring well.

1 A. Yes. See, to me the criteria to be a good
2 monitoring well is, for my people, it has to be
3 accessible. It has to be in the same aquifer, and it has
4 to be something that I can pump and develop to make sure
5 it's going. I do not want to be in a situation where I
6 go onto a guy's farm place and have to shut the cylinder
7 off for his cylinder pump well or move or try to get into
8 his well with a pitless unit on it that has a submersible
9 and measure that water level. I don't want to be in that
10 position because I don't want the responsibility for
11 doing something to somebody's well.

12 Q. Right.

13 A. Or even having them allege that. So that's why we
14 put in our own. And basically for access. You may have
15 different people going out there. It's very difficult to
16 get somebody out in the middle.

17 Q. One well doesn't mean one irrigation system, does
18 it?

19 A. Not necessarily. You could have two wells from one
20 system, yes, sir. Or three. There's some areas up in
21 this country where there may be four or five needing one
22 system.

23 Q. So the number of acres that could be irrigated,
24 sometimes when people look at center pivots they see the
25 circle and they see a well and they think well, it's a

1 well and irrigation system, that's the unit. But in
2 reality, all the land that the Amans have here could be
3 irrigated out of these wells if they wanted to pipe the
4 water?

5 A. Well, the license permit's specified, but the other
6 permit does specify just an area and they could irrigate
7 anywhere in that area, yes, sir.

8 Q. Right. Okay. My clients do appreciate your
9 recommendation on the test well or the monitoring well
10 north of the lake.

11 A. Okay.

12 Q. When you testified that the -- when you have a well
13 that draws down, you indicated that it would draw maybe
14 as far as a quarter of a mile away. Did I misunderstand
15 you, or is that kind of what I was getting was you said
16 something about you pump here and it might affect the
17 drawdown as much as a quarter of a mile away?

18 A. That's about right.

19 Q. Okay.

20 A. But you have to have ideal scenarios here. It would
21 be that 750 gallons a minute, shallow water table,
22 prolific sand and gravel. And some of the aquifer tests
23 and things we've run in places where we've run them 3 or
24 5 or 7 days and you're able then to project out, the zero
25 drawdown line is that point where we can actually measure

1 some effect. And at that distance after 30 days pumping
2 at that rate, you would begin to see that. The cone
3 would actually start at the well because you're actually
4 dewatering right around the well. And it would gradually
5 expand and it would take that long before you could
6 measure at that distance.

7 Now the reason that's important or it could be
8 construed as important is then if you put another well
9 in, irrigation well, 1,320 feet away, well, when you
10 begin to pump both of them, those cones hit one another.
11 And they would hit one another, then it automatically
12 causes -- in order for the system to go to equilibrium,
13 you have to draw the pumping level down in the well just
14 a little bit further. Now what that is can't be
15 determined until you actually do it, but you know that it
16 will.

17 What makes it critical on your high production well
18 is that you've only got so many feet of water in that
19 production well and you want to try to maintain that
20 pumping level above your well stream. So generally when
21 folks are talking about affecting their domestic well,
22 these high-capacity wells are not going to affect your
23 domestic well because they can't possibly. I mean, it
24 just isn't going to work that way. They have to maintain
25 a water level in those production wells high enough so

1 they can still maintain their diversion rate. If you're
2 going to get drawdown that's going to extend all over the
3 place in tremendous amount, they're going to be the first
4 ones that know. They're done.

5 Q. The cone of depression, is that the same thing we're
6 talking about on the effect of the drawdown rate?

7 A. That's basically -- if you pick up a textbook or
8 Google cone of depression, you'll get a picture of a cone
9 like that.

10 MR. TOBIN: That's all the questions I have.
11 Thank you.

12 THE WITNESS: You're welcome.

13 CHAIRMAN BJORK: Questions from the board.

14 Mr. Brink, you had a question?

15 MR. BRINK: I'll go back to my other question.
16 What happens to these wells that are abandoned? Does
17 your qualifications require them to be --

18 THE WITNESS: They're supposed to be plugged.

19 MR. BRINK: Okay.

20 THE WITNESS: And we have standards on how to
21 plug them. Many cases, however, these irrigation wells,
22 what we do is when we approach the owner -- and not to
23 give these guys any ideas, but when we approach the owner
24 telling that well should be plugged, generally they'll
25 tell us I want to use that well as a domestic well now.

1 And especially in a situation where they have
2 corn out there and they're irrigating it and they run
3 cows in it, it's nice to have a stock well. So they put
4 a smaller pump in it and use it for a stock well. That's
5 one of the things that we get hit with a lot. But
6 technically you're supposed to plug it, take care of it
7 and seal it so it's not a conduit for contamination.

8 MR. BRINK: Okay. Thank you.

9 CHAIRMAN BJORK: Any other questions of the
10 board? Ms. Best, redirect?

11 MS. BEST: Yes, I do. Thank you.

12 REDIRECT EXAMINATION

13 BY MS. BEST:

14 Q. Jim, is it unusual for irrigators to amend permits
15 to move diversion points?

16 A. No, ma'am.

17 Q. You were asked a question about limitations on the
18 permit and you talked about these permits currently or as
19 amended would have volume limitations; right?

20 A. Excuse me. Volume in terms of acre feet, yes.

21 Q. And what is the acre feet again?

22 A. On the new one it would be 2 acre feet per acre.
23 And on the old one I'm sure that's old enough to be 3
24 acre feet per acre because that's what the statute was at
25 the time it was approved.

1 Q. On 2951; correct?

2 A. I don't remember what that changeover number is, but
3 I believe that would still be 3 acre feet. I didn't
4 anticipate that coming up.

5 Q. And there's also a diversion rate limitation;
6 correct?

7 A. Diversion rate is generally 1 CFS per 70 acres.
8 However, when we inspect it, if it's developed, whatever
9 it's developed for, that's what we license it for. In
10 many cases that's less than the maximum that would be
11 allowed.

12 Q. And you're not -- you're not recommending that the
13 board approve anything here that would exceed the -- the
14 standard diversion rate and volume limitations, are you?

15 A. No.

16 Q. Now in addition as to these irrigation permits, is
17 there also a seasonal limitation? Have they applied for
18 year around or just growing season?

19 A. Well, this is irrigation. Generally it's April
20 through September. I don't know exactly what they said
21 on there, but usually it's April through September.

22 Q. There was some testimony regarding test pumping. I
23 just want to clear up the dialogue that you had with Mr.
24 Tobin.

25 And I believe that there was an inquiry about using

1 state observation wells to assist in measuring water
2 during test pumping. Do you recall that dialogue?

3 A. Yes.

4 Q. And you indicated that it has happened before. Are
5 you speaking of other aquifers?

6 A. Oh, yes. Not at this site. A lot of times our
7 monitor wells are used by well drillers. If there
8 happens to be one close by and they're running some kind
9 of test, they ask if they can measure them. That happens
10 a lot.

11 Q. Is test pumping necessary before these particular
12 amendments are approved?

13 A. Well, we didn't -- we didn't recommend that.
14 However, the applicant, when he gets out there, in order
15 to size his system and that sort of thing -- he's got a
16 long way to go. Simply sitting in here doesn't develop
17 anything. He has to -- still has to drill that
18 production well, put a pump in it, test it to make sure
19 it's going to provide the amount of water he needs. He
20 would be silly to buy a system that covered 138 acres, he
21 gets out there and finds out he's only got 500 gallons a
22 minute water, he'd be better off irrigating 110 or
23 something. I mean, really, the first thing you do is
24 develop the water source and then design your system. At
25 least that's what you should do.

1 Q. There was also a dialogue about scientists who had
2 earlier estimated the aquifer capable of having wells
3 with a 500-gallon-per-minute capacity. Is this aquifer
4 capable of having wells that would produce the 900
5 gallons per minute that is permitted for these wells?

6 A. Well, we've got a couple of -- we licensed a couple
7 permits. 1.78 is not quite 900 but what is that, about
8 800? So I would say, you know, it looks like it could
9 be, yes.

10 Q. Do you have a reservation about asking the board to
11 amend permits that provide for that 900 gallons a minute?

12 A. No. Because I know full well that when he gets out
13 there he'll get what he gets.

14 Q. But it will not be able to exceed 900.

15 A. Right.

16 Q. There was a dialogue regarding the estimate of
17 recoverable water. And you relied on -- in part at least
18 on reports of others; is that correct?

19 A. Yes. From either the county study or the state
20 geological survey studies.

21 Q. And you're familiar with the process used to
22 estimate recoverable water in an aquifer?

23 A. Yes.

24 Q. And have you been involved in that process yourself
25 in the past?

1 A. Yes.

2 Q. And, in fact, you've actually worked on these sorts
3 of studies; is that right?

4 A. Some of them.

5 Q. Do you find that the estimates of recoverable water
6 that you used are reliable reports?

7 A. Well, we hope so.

8 Q. Are these standard references used --

9 A. I'm not being funny. The reason I'm saying that is
10 this: It's because those numbers are large, quite large.
11 In almost every respect those numbers are large. And the
12 development, water development from an aquifer, all
13 aquifers, is relatively small. And that the
14 difference -- we're talking about an order of magnitude
15 of we may be using 1,000 acre feet out of an aquifer
16 that's got 100,000 acre feet in storage. It's just to --
17 it's to the point of it's not absurd but you cannot
18 compare it. It just doesn't fit.

19 And the -- and the most important part of that
20 argument is it doesn't matter what's in storage. It
21 matters what the recharge rates are. And that recharge
22 rate is so much smaller than what's in storage that
23 you're going to hit those recharge rates long before we
24 ever hit the storage. Storage is not the limiting
25 factor. The amount of storage in the aquifer is not a

1 limiting factor unless there isn't much. Period.

2 Q. Okay. Are you saying that the estimate of
3 recoverable water is so large that the permits here are
4 not --

5 A. It's just not significant.

6 Q. Insignificant. Consequently, if there was a
7 recoverable water estimate that was more conservative,
8 you're still not concerned that it would approach any
9 recoverable water issue in this proceeding?

10 A. Yes.

11 Q. You relied on the reports of -- your reports of
12 others in looking at recharge rates as well; correct?

13 A. I didn't use a recharge rate with this aquifer.

14 Q. Okay. Are you concerned that the recharge of this
15 water is insufficient to support -- or the recharge of
16 this aquifer is insufficient to report -- to support the
17 permits at issue here?

18 A. I'm not sure I followed your question. Am I
19 concerned that it's insufficient or --

20 Q. Insufficient.

21 A. Insufficient.

22 Q. My throat's getting dry. Are you concerned about
23 whether the recharge to this aquifer is sufficient to
24 support the permits that have already been granted?

25 A. No, I'm not concerned about that. I think the

1 recharge is sufficient for the ones that are there and
2 the proposed ones.

3 MS. BEST: I have nothing further. Thank you.

4 CHAIRMAN BJORK: Ms. Riter-Rapp, do you have any
5 recross?

6 RECROSS-EXAMINATION

7 BY MS. RITER-RAPP:

8 Q. The only question that I had, and maybe you
9 testified to this already, but with either of the
10 proposed applications or requests to change the location
11 is there any request to increase the diversion rate?

12 A. I don't think so, no.

13 MS. RITER-RAPP: Okay. I have no other
14 questions.

15 CHAIRMAN BJORK: Mr. Tobin?

16 MR. TOBIN: Thank you.

17 RECROSS-EXAMINATION

18 BY MR. TOBIN:

19 Q. Mr. Goodman, in the proposal of 6908-3 it was
20 actually proposed that that was going to be able to
21 irrigate perhaps more than the quarter? I mean, it was
22 going to be the east 80 acres plus an additional 160
23 acres in the original application; is that right?

24 A. It proposed -- it proposed to -- the way it made
25 practical sense to me would be that there would be a

1 pivot in the southeast quarter and a pivot in the
2 southwest quarter and it would overlap some of those
3 existing acres with that new diversion point.

4 Q. So how many acres total are permitted to be
5 irrigated then out of these two permits?

6 A. Which two, 2951 or 6908 or 2893?

7 Q. Let's talk about 2951 and 6908 first.

8 A. Okay. 2951 is 138 acres.

9 Q. Okay.

10 A. 2893 is 202 acres.

11 Q. Okay.

12 A. 6908 was 160. And from that you can discern that it
13 hasn't been developed yet and he applied for two
14 different 80-acre pieces. The west half, the 80 acres in
15 the west half of the southwest of 34 and the south half
16 of the northwest quarter in Section 34. Okay.

17 Q. My concern is is whether or not a person could use
18 two different permits to irrigate the same ground with
19 and, therefore, exceed the 2 acre foot per acre per year.

20 A. No. We would condition that. No. He's still only
21 allowed the 2 acre foot. We would still hold him to
22 that.

23 Q. Okay. It's that, regardless of where the water
24 comes from, it's that per acre.

25 A. Yes.

1 Q. Regardless what well he uses to irrigate it with,
2 it's still 2 acre foot per acre?

3 A. This is an interesting one, though, because I know
4 the new one would be 2 acre foot and the old one is 3.

5 Q. I understood that. That's why I limited myself just
6 to the one on Section 34 because I understand that 33 is
7 3 acres.

8 So if he -- well, are you telling me that if he uses
9 the well on permit 2951 on Section 33 but he actually
10 runs the pivot over here on the other one that he could
11 use 3 acre feet?

12 A. If under the transfer the board approved it and
13 retained the priority date, that's a possibility. But
14 the statute now says 2. So anything that goes through
15 here is 2 acre feet right now.

16 Q. Okay.

17 A. Is that okay with my bookkeepers? Okay.

18 Q. What you're saying is that the acres that were
19 covered under the old permit for 3 acre foot per acre,
20 they can stay the same?

21 A. Yes.

22 Q. But anything in excess, that would have to be 2 acre
23 foot?

24 A. Yes. But it's limited. It's limited.

25 Q. Okay. But I can't use two different wells and pump

1 4 acre foot per acre?

2 A. No. That wouldn't be the intent of that at all.

3 We're not going to grow rice I hope.

4 Q. When we were here before on some of these same
5 issues one of the Findings of Fact was stated that
6 Harlan Aman never experienced problems with the existing
7 irrigation wells located on his property. Do you know
8 when he had problems with 2951? Do you know when they
9 started?

10 A. No.

11 Q. Okay.

12 A. Where did you read that out of?

13 Q. That was the Findings of Fact.

14 A. Oh.

15 Q. Okay.

16 MR. TOBIN: That's all the questions I have.

17 CHAIRMAN BJORK: Further questions from the
18 board?

19 MR. HOYT: Mr. Chairman?

20 CHAIRMAN BJORK: Mr. Hoyt.

21 MR. HOYT: Mr. Goodman, your reports on both of
22 these applications indicate in your conclusion 1 that --
23 or, excuse me, conclusion 2, that drawdown is not
24 expected to be significant at the distances between wells
25 and that interference is not expected to be a problem.

1 In his letter of intervention Mr. Tobin
2 indicates that his clients believe that the -- and I'm
3 quoting from his letter, "His clients believe that the
4 location of the wells and the increased irrigation will
5 endanger existing wells which the interest" -- I guess
6 it's "in which the interested parties have an interest."
7 And he goes on further, "The use of irrigation pumps in
8 this area adversely affects the usefulness of the wells
9 of the interested parties for domestic purposes and
10 livestock purposes."

11 Do you concur with those statements in Mr.
12 Tobin's letter to Intervener?

13 THE WITNESS: Personally, I don't concur. I do
14 concur with their statements, however, because I know
15 they believe that. If that's what you mean. I know they
16 believe that; they wouldn't have said it. However, I
17 don't believe that that is what is going to happen.

18 MR. HOYT: And that is what you have formally
19 stated in your conclusion too.

20 THE WITNESS: That's correct. Now if I may, the
21 proposal that we're throwing out there is if we go up
22 there, the applicant goes up and drills a monitor well,
23 measure that and to show it, that way we don't have to
24 argue about it anymore.

25 MR. HOYT: Are you familiar with the

1 qualifications which have been recommended by the chief
2 engineer?

3 THE WITNESS: Yes.

4 MR. HOYT: And if, in fact, the concerns which
5 Mr. Tobin has stated were, in fact, to materialize, has
6 the chief engineer incorporated any protections for
7 domestic wells, animal watering, and prior -- wells with
8 prior rights?

9 THE WITNESS: Yes. There's an automatic
10 protection, if you will, granted to everybody in that
11 type of situation. If they're affected, adversely
12 affected, and we can show that, they would be protected.
13 However, I've been here 34 years, and I tell you what, it
14 don't happen.

15 MR. HOYT: Very well. Can I summarize your
16 position then that you don't expect interference and
17 drawdown to be a problem but if it does happen, those
18 that are concerned with prior rights have protections?

19 THE WITNESS: Yes, sir. And we would
20 investigate it.

21 MR. HOYT: Thank you.

22 MS. BEST: If I may follow up with that a little
23 bit.

24 CHAIRMAN BJORK: One second.

25 MR. HOYT: Adequate wells.

1 CHAIRMAN BJORK: Mr. Brink.

2 MR. BRINK: I'm down to the last line of Mr.
3 Tobin's letter. I think maybe he's either misstated it
4 or I have misinterpreted it. He says, "The interested
5 parties believe this is not in the public interest and
6 that the applications can't be granted without adverse
7 effects." Is that what you mean to say?

8 MR. TOBIN: What's that say?

9 MR. HALLEM: Mr. Brink, that's a question for
10 Mr. Tobin on it. Right now, it's the witness.

11 MR. BRINK: I'm sorry. I will do that at a
12 later time.

13 MR. HALLEM: Thank you.

14 CHAIRMAN BJORK: Any other questions from the
15 board? Ms. Best, do you have any follow-up?

16 MS. BEST: Yes. Thank you.

17 REDIRECT EXAMINATION

18 BY MS. BEST:

19 Q. Jim, I have one follow-up in response to board
20 questioning. And I think that we ought to make sure that
21 we have it on the record here for this proceeding that as
22 to this condition on the outside chance that there are
23 concerns about well interference, can you explain to the
24 board and the parties here exactly what happens? You
25 said that you would investigate. Can you go into that in

1 more detail and explain that to the board?

2 A. Well, if we received a complaint, we would send
3 someone out to interview the folks that are -- that had
4 filed the complaint. And we would attempt to get all the
5 information we could and try to get some measurements and
6 do some things like that on whatever facts we could put
7 together. And then we would give them a decision as soon
8 as we could, you know, get to one. I think they would
9 deserve either a yes or a no or something to that effect.

10 I've been out on hundreds of these and generally it
11 comes to a situation where it's the 28th of August, it's
12 106 degrees and they've been out of water for five days
13 and they've got cows running around wanting to know
14 what's going on. So you need to know.

15 Q. And is the DENR responsive to getting those answers
16 out quickly?

17 A. Yeah. We try to, yes.

18 Q. And what if there is interference? Then what?

19 A. Well, if there were interference or an adverse
20 effect caused by -- and it doesn't have to be an
21 irrigator. It could be a municipality. Any permitted
22 user. There's some options. The permitted user, he
23 could either supply water to the person that's out of
24 water, cut some sort of a deal somehow. Pipe water over
25 there, hook them up to rural water. Anything that you

1 could possibly come up with could be considered at that
2 time.

3 Q. And is that mitigation, a decision on what avenues
4 to mitigate, is that something that's determined at the
5 time by the DENR or the water user or how does that work?

6 A. I'm not going to say it's easy. You kind of have to
7 get both of them in the same room and you have to sit
8 down there and explain the World According to Garp the
9 best you know it and hopefully you've got reasonable
10 people to work things out reasonably.

11 If it comes to a point where we have to issue orders
12 and stuff, you know what goes on there. That could take
13 months. Two people sitting in a room can make a decision
14 and something could happen in two hours, but if it comes
15 here it could take six months to a year before you get a
16 decision. And it might be the same decision.

17 MS. BEST: I don't have anything further, but if
18 that prompts additional questioning on that process.

19 Others may.

20 CHAIRMAN BJORK: Ms. Riter-Rapp?

21 MS. RITER-RAPP: No.

22 CHAIRMAN BJORK: Mr. Tobin?

23 MR. TOBIN: No.

24 CHAIRMAN BJORK: Mr. Goodman, you're excused.

25 Any other witnesses, Ms. Best?

1 CHAIRMAN BJORK: Thank you, Mr. Tobin.

2 Discussion by the board?

3 MR. FREEMAN: Well, Mr. Chairman, I don't
4 think -- I mean, we've already approved the water. The
5 only thing we're being asked to do is to change the
6 location. Based upon the evidence and testimony I've
7 heard, I don't believe changing the location is going to
8 make any difference.

9 That being said, however, changing the location
10 by granting these permits, I think there are more
11 safeguards in effect for the Interveners than they had
12 under the old permits. If we left the location where it
13 was and didn't add these new safeguards such as the
14 monitoring well and the 1,320 feet, thereabouts, I think
15 they're worse off. Personally, I think granting the
16 location change puts the Interveners in a better position
17 than they were before. And that's why I'm -- intend to
18 vote for the recommendation on both of them.

19 CHAIRMAN BJORK: Further comments?

20 MR. FREEMAN: And I would make that a motion
21 that we approve the recommendation of the chief engineer
22 on water permit 2951A-3 and 6908A-3, subject to the
23 qualifications set forth by the chief engineer.

24 CHAIRMAN BJORK: Motion has been made.

25 MS. LOUCKS: Second.

1 CHAIRMAN BJORK: And seconded. Discussion from
2 the board?

3 MR. HUTMACHER: Mr. Chairman, if I can just
4 briefly make a couple comments.

5 CHAIRMAN BJORK: Mr. Hutmacher.

6 MR. HUTMACHER: I believe that Mr. Freeman is
7 right. I think there's more protection for the
8 Interveners here. And I don't want to argue with counsel
9 for the Interveners but I think staff does an excellent
10 job of trying to get to the bottom of those problems when
11 they show up. And I think that Mr. Goodman's statements,
12 the 6- to 12-month thing happens when those decisions
13 have to come to the board. When staff deals with those
14 problems they get those resolved usually pretty fast and
15 I think they do an excellent job. And I'm sure if
16 there's trouble there, they'll be up there and try to
17 resolve the problem as soon as they can.

18 CHAIRMAN BJORK: Thank you. Further discussion.
19 Mr. Brink.

20 MR. BRINK: As much as I admire Mr. Goodman's
21 testimony in so many of these records, I also find so
22 many times when things just went upside down after the
23 permits were granted and we started pumping water. All
24 of the things that we talked about and said were going to
25 happen didn't happen and went the other way.

1 I think perhaps if there was a mistake made it
2 was made on the last issue. In other words, we're
3 hanging all our hats on and carrying all our stuff in one
4 basket and that's what we did the last time. For me, the
5 last time could have been an error. And for that reason
6 I think I'm going to vote no on this motion.

7 MR. HOLZBAUER: Mr. Chairman, we talk about
8 irrigating. We talk about the cone of depression. And I
9 can sit here and verify the fact that that irrigation
10 well is the one that's going to draw air first. It's not
11 going to be the outsider. It's going to be that
12 irrigation well. That's the point of diversion right
13 there. That's the deepest point of that cone.

14 MR. BRINK: Good point.

15 MR. HOLZBAUER: And with practical experience I
16 can talk this. So with that, I feel that there's
17 enough -- enough regulations that all it takes is one
18 trip down -- and I've seen it happen. One trip down and
19 that well shuts off. That irrigation well shuts off
20 right now. So it don't take no six months, you know, I
21 mean, I know that. I mean, so I'm going to be in favor
22 of voting for the motion.

23 CHAIRMAN BJORK: Anyone else?

24 MR. HOYT: Mr. Chairman?

25 CHAIRMAN BJORK: Mr. Hoyt.

1 MR. HOYT: Well, as we all know and I'm sure
2 most people in this room know, water's a precious
3 resource in South Dakota. But the charge of this board
4 is to implement the public policy of this state, which is
5 to put available water to beneficial use, giving respect
6 to prior rights to use that water. And to domestic
7 wells, which are also used for animal watering purposes.
8 That being the case, I'm going to vote in favor of the
9 applications to put that water to beneficial use.
10 Subject to the protections in the qualifications by the
11 chief engineer.

12 I think in this case the monitoring wells, as
13 has already been said, provide additional protection to
14 the Interveners in this case and will provide accurate
15 information on which I think speedy action can be taken
16 in the event that there is a problem.

17 So I think that we need to put the water to use.
18 We need to respect prior rights. And I think we put in
19 place in the chief engineer's recommendations and
20 qualifications a means to do that. I can appreciate the
21 Interveners' concerns. I know they're legitimate. It
22 sounds like you've been on that land a long time and you
23 love it. And you've got animal operations and apparently
24 cropland, as do the Amans. So both of you depend on
25 these farms and this water for your livelihoods. So I'm

1 confident that we have put in place, or the chief
2 engineer has recommended that we put in place adequate
3 protections for all of the parties.

4 MR. BRINK: Mr. Chairman, I'd like to ask one
5 question. It doesn't matter the outcome on this vote is
6 that there is a permit in place; is that correct?

7 CHAIRMAN BJORK: That's correct.

8 MR. BRINK: And that permit isn't going to go
9 away whether we vote aye or nay.

10 CHAIRMAN BJORK: That's correct. Further
11 discussion from the board?

12 MS. LOUCKS: I will just agree with what efforts
13 Everett said. I think there's sufficient protection
14 until proved otherwise and we won't know unless we try.
15 But I depend a lot on the engineers to research the
16 project and I'm going to vote for it.

17 CHAIRMAN BJORK: Okay. We have a motion on the
18 table. And a second. I'm going to ask for all those in
19 favor to say aye.

20 (All but Mr. Brink indicate aye)

21 CHAIRMAN BJORK: Opposed, same sign.

22 MR. BRINK: Aye.

23 CHAIRMAN BJORK: Motion carried.

24 MR. TOBIN: Thank you for your time.

25 CHAIRMAN BJORK: Excuse me just a second,

1 please.

2 MR. HALLEM: What we're going to need to have is
3 post -- Findings of Fact and Conclusions of Law. Since
4 Applicant was the successful party on it, they'll need
5 to submit those in accordance and consistent with the
6 rules. And I think that's -- I always forget. 20 days
7 before --

8 MR. GRONLUND: 20 days, response is 10 days.

9 MR. HALLEM: 20 days before the next hearing.
10 If you get them done sooner, that's wonderful. And then
11 10 days after submissions, objections and any other
12 proposed findings by the parties.

13 I will then prepare rulings, give them out to
14 the board and counsel, and it will be finalized the next
15 board meeting, which will be -- is it the 7th or the
16 8th?

17 MS. BEST: October 7. And I would note too that
18 Eric sent out a notice regarding the findings that
19 reiterates those dates.

20 MR. FREEMAN: One other matter.

21 MR. TOBIN: It's on the record. My friend
22 brought up the issue regarding my letter. I did forget
23 an apostrophe T on there. I didn't mean that you should
24 approve it, that you should not approve it. So just for
25 the record. You caught it.

1

MR. BRINK: Thanks, Tom.

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(A short recess is taken)

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1 STATE OF SOUTH DAKOTA)

2 :SS

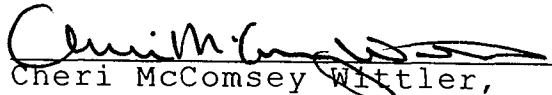
CERTIFICATE

3 COUNTY OF SULLY)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 8th day of July,
11 2009, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 5th day of
14 August, 2009.

15
16
17
18 
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter
23
24
25

SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER MANAGEMENT BOARD

=====

WATER PERMIT APPLICATION
NOS. 2951-A-3 AND 6908A-3,
AMAN BROTHERS

=====

Partial Transcript of Proceedings
Testimony of Allen Hieb
July 8, 2009

=====

ORIGINAL

A P P E A R A N C E S

DIANE BEST,
SOUTH DAKOTA ATTORNEY GENERAL'S OFFICE,
Deputy Attorney General, 300 North Dakota
Avenue, Suite 403,
Sioux Falls, South Dakota 57104,
appearing on behalf of the Department;

LINDSEY RITER-RAPP,
RITER, ROGERS, WATTIER & NORTHRUP,
Attorneys at Law, P.O. Box 280,
Pierre, South Dakota 57501,
appearing on behalf of the Applicant;

THOMAS M. TOBIN,
TONNER, TOBIN & KING,
Attorneys at Law, P.O. Box 1456,
Aberdeen, South Dakota 57402,
appearing on behalf of the Interveners.

Reported by Cheri McComsey Wittler, RPR, CRR

1 MR. TOBIN: I would be calling Allen Hieb to
2 testify, please.

3 CHAIRMAN BJORK: Mr. Hieb.

4 MR. TOBIN: And I would also be offering
5 Interveners Exhibit No. 1. Copies have been supplied to
6 the other counsel.

7 CHAIRMAN BJORK: And that is?

8 MR. TOBIN: It's a -- the front page, I think
9 it's -- I numbered the pages. I forget whether it's 7 or
10 8 pages. The front page is actually a rainfall and snow
11 calculation over several years, and the back pages are
12 well checks made by Allen Hieb indicating the levels of
13 water of certain wells in the area.

14 CHAIRMAN BJORK: Ms. Best, do you have any
15 objections?

16 MS. BEST: I do not. I trust that the
17 foundation will be laid on it later.

18 CHAIRMAN BJORK: Ms. Riter-Rapp.

19 MS. RITER-RAPP: I don't have any objection
20 either with the same I guess reservation that as long as
21 the foundation is established for them.

22 CHAIRMAN BJORK: All right. Would the court
23 reporter please swear -- excuse me. Then we will accept
24 Intervener Exhibit 1 for the record.

25 (The witness is sworn by the court reporter)

DIRECT EXAMINATION

BY MR. TOBIN:

Q. Would you state your name and spell it, please.

A. A-L-L-E-N H-I-E-B.

Q. And where do you live, Allen.

A. 11585 348th Avenue, Hosmer, South Dakota.

Q. Geographically where do you live in relationship to Section 33 and 34 that we've been talking to that are operated by the Aman Brothers?

A. Approximately a mile, mile and a half to the north.

Q. And on Exhibit G there's actually -- it shows a lake at the top of Exhibit G. Do you live on the south side of the lake, or do you live on the north side of the lake?

A. North.

Q. And you live immediately north of the lake?

A. No.

Q. And how far north of the lake would you live?

A. Approximately a mile.

Q. And how long have you lived there?

A. My whole life.

Q. And how old are you?

A. 41.

Q. And what is your occupation?

A. Farm/ranch.

1 Q. Do you have livestock there?

2 A. Yes.

3 Q. And the water source that you use on your property
4 for water is what?

5 A. Wells, pasture wells.

6 Q. And do you sit on the aquifer that we're referring
7 to?

8 A. Yes, I do.

9 Q. On Exhibit 1 there are several pages, but can you
10 explain the front page of Exhibit 1?

11 A. On the precip one?

12 Q. Yes.

13 A. Well, that basically shows the rain and snowfall and
14 the annual precipitation that's been received from 2004
15 to so far 2009.

16 Q. It's actually signed by a weather watcher up there.
17 Do you know him?

18 A. Yes, I do.

19 Q. What's his name?

20 A. Arnold Wiederich (phonetic).

21 Q. So he actually supplied the information on
22 Exhibit 1?

23 A. Yes.

24 Q. If you turn the page to page 2, can you then explain
25 the remaining pages in Exhibit 1, Interveners Exhibit 1?

1 A. These are well logs from our wells and from the
2 Graff wells that show basically the drop that we've been
3 experiencing, and these date back for a number of
4 years.

5 Q. And as far as the measurements that were taken, who
6 did the measuring?

7 A. I did it myself.

8 Q. And who constructed the documents that comprise
9 pages 2 through the end of Exhibit Interveners 1?

10 A. I constructed the documents, and mom pretty much hit
11 print, some of this stuff up from prior years, a separate
12 journal.

13 Q. So but the measurements themselves were taken by
14 you?

15 A. Yes.

16 Q. And if you go through the exhibit, if you refer to
17 exhibit -- or page 2 on Interveners 1, where is that well
18 located in relationship to Sections 33 and 34?

19 A. That would be located to the northeast approximately
20 a mile and a half.

21 Q. Okay. And what did you find regarding that well?

22 A. Well, there had been very little drop in wells until
23 last year when the Amans started the irrigation pump that
24 had been sitting idle for a number of years, and then we
25 started experiencing dramatic drops.

1 Q. And if you go to page 3, where is that well located?

2 A. That well would be a mile and a half west of our
3 farm. Wait. That would be a half a mile west of the
4 farm.

5 Q. When you say "the farm" you're meaning your farm?

6 A. Yes.

7 Q. Now in distance from Section 33 and 34 how far is
8 it?

9 A. That's also approximately a mile and a half.

10 Q. Okay. And what do your well logs show there?

11 A. There they basically show as soon as the
12 irrigation's kicked on the water levels drop.

13 Q. On page 4 what does it show?

14 A. Basically the same scenario.

15 Q. And the well on page 4, where is that well located?

16 A. That well is located right also a mile -- about a
17 mile and a half north of the irrigation site, and that's
18 the well that supplies my mom's house and main yard.

19 Q. Now Mr. Aman made a couple marks on the map, and we
20 couldn't really tell what -- where he was marking. But
21 he indicated to us in testimony that he was marking your
22 mom's well or the well on your home place there.

23 How recent is the well that your mom actually uses
24 or you use on your home place?

25 A. Well, that well in Section 23 was drilled in 2006.

1 Q. Okay. And why was it drilled in 2006?

2 A. It was drilled as a supplement well to the yard just
3 in case something goes wrong with that well.

4 Q. And as far as the existing well, what -- is that on
5 section -- did you say 26?

6 A. No. 23.

7 Q. 23. Is that on 23, or is it on the other one?

8 A. The well in Section 22 is the well that had gone dry
9 in 2006.

10 Q. Okay. Okay. So you had a well that went dry in
11 2006, and that was located near your home place?

12 A. It's approximately a half, three-quarters miles to
13 the west of the home.

14 Q. And then you drilled the well in 2006?

15 A. Yes.

16 Q. Now did the well you drilled replace the one that
17 went dry?

18 A. No.

19 Q. Okay. They're two different locations?

20 A. They're two different locations.

21 Q. The well that went dry in 2006, how long had it been
22 there?

23 A. That had been there since 2002.

24 Q. I think we're at the -- how many -- on page 4 again
25 that's the well that you operate or the well that you

1 were checking?

2 A. Yes.

3 Q. And how far is that from Sections 33 and 34?

4 A. Are you referring to that 100-foot deep well?

5 Q. Do the page numbers. I'm referring to page number
6 4.

7 A. That's the well for my mother's house.

8 Q. Okay. If you go to page 5, where is that well?

9 A. That well is in Section 21.

10 Q. So it's a little west of the Section 33? Excuse me.
11 It's just north of 33?

12 A. It would be just north of 33.

13 Q. And then on page 6, where is that well located?

14 A. That well is located in section -- that would be in
15 Section 27. Northeast corner of Section 27.

16 Q. Again, that's just directly north of Section 34?

17 A. Yes.

18 Q. Okay. On -- on page 7 where is that well located?

19 A. That would be just directly north of Amans'
20 irrigation.

21 Q. Is there another page?

22 A. Yes.

23 Q. Okay. Is that a well?

24 A. Yes.

25 Q. Okay. Where is that located?

1 A. That's also located in Section 23. It's kind of in
2 the northern part of Section 23.

3 Q. So that would be a little east and north of
4 Section 34?

5 A. Yes.

6 Q. Now when you did these recordings what was your
7 conclusion that you drew from taking these measurements
8 in the well?

9 A. Well, as soon as the irrigation gets turned on
10 within a couple of weeks basically our water levels start
11 dropping. After irrigations are turned off our water
12 levels will start rising back up again.

13 Q. Are you concerned about adding -- adding a well?

14 A. It really doesn't pay as long as the -- as long as
15 these irrigations keep going on --

16 Q. But are you concerned about the Amans adding a well?

17 A. Yes, I am.

18 Q. Now the well on Section 33 evidently had not been
19 used for years?

20 A. True.

21 Q. So in reality what we're going to be doing here is
22 if they start actively pumping on Section 33 and adding a
23 well on 34, you're actually going to be adding two
24 irrigation wells at the same time?

25 A. Yes.

1 Q. And about the same vicinity and the same aquifer?

2 A. Correct.

3 Q. The well that they started pumping that you
4 indicated last year, what section was that located on?

5 A. That was the one in Section 33.

6 Q. Okay. And that's the one that just -- that the well
7 driller indicated could only draw 380 gallons a minute?

8 A. Correct.

9 Q. Now had the Amans operated the irrigation well on
10 34?

11 A. Yes.

12 Q. So basically if you go to 7 to 800 gallons a minute,
13 you're basically going to double the draw on the well on
14 33, and you're going to add that much, 8 to 900 gallons a
15 minute, on 34?

16 A. True.

17 Q. So the net gain is going to be approximately 1,300
18 some gallons per minute?

19 A. Correct.

20 Q. If they install everything?

21 A. If they install the wells and get them all up and
22 going.

23 Q. Now you support the chief engineer's recommendation
24 that they install a monitoring well north close to your
25 property or to the Graff property?

1 A. Yes, I do.

2 Q. And you think that's a good idea?

3 A. Yes, I do.

4 Q. Okay. And as far as you are concerned, do you
5 believe that you're going to suffer negative consequences
6 on your domestic and livestock water sources if these
7 wells are actually pumped by the Amans?

8 A. Yes, I do.

9 Q. And according to your records that's what you think
10 they show?

11 A. Correct.

12 Q. In the application process did you believe that
13 there were actually acres being added to be irrigated?

14 A. I wasn't sure.

15 Q. What do you think now?

16 A. According to their testimony, that there shouldn't
17 be any acres added.

18 Q. You also used dugouts to water your livestock?

19 A. Correct.

20 Q. Did you have any indication that the water table in
21 the dugouts was being affected by the water?

22 A. Yes, I did.

23 Q. And explain that.

24 A. Usually after irrigation starts the water levels in
25 our dugouts start dropping.

1 Q. And that's in your dugouts?

2 A. Yes. In our dugouts.

3 Q. Is there anything else you want to tell the board
4 regarding your concerns on this application?

5 A. I'm just mainly concerned that if some more
6 irrigations keep getting added, we're going to basically
7 get run out of water. Because our well logs start
8 dictating that there's major fluctuations in these water
9 tables when the irrigation is in process. And it has
10 basically multiplied because the third irrigation already
11 has been activated. And if another one keeps getting
12 added on to this, where is it going to end? That's my
13 main concern.

14 MR. TOBIN: That's all the questions I have.
15 Thank you.

16 CHAIRMAN BJORK: Ms. Best.

17 MS. BEST: Thank you.

18 CROSS-EXAMINATION

19 BY MS. BEST:

20 Q. You've got a number of well measurements in this
21 exhibit. Are you the one that measured all the wells for
22 all of your properties as well as that for --

23 A. The Graff property, yes.

24 Q. Okay. And then did you have a standard amount of
25 time that you made sure that these wells were not

1 producing water for your purposes before you went ahead
2 and measured?

3 A. It really didn't matter as far as being pumped or
4 not because in the wintertime the water levels rise and
5 then pumping them and checking them also in the fall --
6 it really doesn't really matter too much. Because these
7 wells were all good enough producing wells that it had no
8 influence.

9 Q. So your own pumping from the same well doesn't
10 influence --

11 A. Well, in the wintertime we're pumping our wells just
12 like we do in the summertime. In the wintertime the
13 water levels are actually rising. That would not be the
14 case if our pumping would be affecting our wells.

15 Q. Well, all these wells that you're talking about are
16 used for agriculture production; is that correct? Or --

17 A. For livestock or domestic purposes, yes.

18 Q. Sure. And so let's take -- on page 2 the well for
19 the south lot.

20 A. Yes.

21 Q. Okay. Now by south lot you mean your feedlot;
22 correct?

23 A. Correct.

24 Q. And you run how many head in that feedlot?

25 A. It varies.

1 Q. Up to 1,000; right?

2 A. We have had. But lately we've had fewer.

3 Q. Now were you pumping water for cattle to drink from
4 at the same time you were making these depth
5 measurements?

6 A. No.

7 Q. Or had you pumped the water for the cattle and -- I
8 mean, how much pumping pressure had you placed on the
9 well before you took these depth measurements?

10 A. Usually I check these well measurements before I
11 turn on the pump.

12 Q. Before you turned on the pump?

13 A. Before I turned on the pump.

14 Q. So then how long would the -- how long would your
15 pump not be used before you would check the depth
16 measurements?

17 A. Overnight.

18 Q. Overnight. And is that true for each one of the
19 wells involved here?

20 A. Yes, it is.

21 Q. Now I think you testified to this, but I want to
22 clarify. You understand that as to Section 33 that the
23 proposal here is they've already got -- that there's
24 already a permit for irrigation of the quarter in
25 Section 33, and the proposal here would change the place

1 of the well but there would be no ability to add acreage
2 or a diversion rate. You understand that?

3 A. Yes, I do.

4 Q. And will moving the place of the well affect any of
5 your wells?

6 A. Possibly. It's hard to tell unless a person
7 knows -- or has it done. But since it's closer to our
8 wells, chances are the cone of depression could easily
9 affect that more greatly than it is now.

10 Q. And your closest well to this site is between a mile
11 and a half and 2 miles, isn't it?

12 A. The closest well would be Graff's well, and that
13 approximately would be between a half and three-quarters
14 of a mile.

15 Q. Your closest well would be a mile and a half to
16 2 miles?

17 A. Approximately a mile and a half.

18 Q. And you were present, weren't you, for the testimony
19 of Ray Graff as to the water levels at his ground in --
20 or from his well in the southwest of 27?

21 A. Yes.

22 Q. The testimony a year or so ago?

23 A. Yes.

24 Q. He testified that those wells were still -- were
25 good producing wells?

1 A. They were still good producing wells. But we never
2 had a reason to check them either.

3 Q. And he's got two wells in that -- in that --

4 A. He's got one, and Herbert's got one.

5 Q. Raymond's got two on his quarter too, doesn't he?

6 A. No.

7 Q. Okay. And then you understand that the changes that
8 are proposed with respect to the water rights over on
9 Section 34 would change the place of the well and deal
10 with the acres being irrigated but there would not be
11 anymore total acres irrigated and there would not be an
12 increase in the diversion rate.

13 You understand that?

14 A. Yes. I understand that.

15 Q. And is it your testimony then that those changes
16 alone by moving the well or changing where the acres --
17 management of those irrigated acres, that that would
18 affect your -- the depth of your wells?

19 A. In part. But also the addition of these wells will
20 also more greatly affect our water supplies. The last
21 proposed well, if that gets activated also, because just
22 the changes that occurred from when the prior well in
23 Section 33 was activated dropped our water levels even
24 more greatly than they had prior.

25 So if they add this other one that had been proposed

1 which that's not yet been drilled, you'll basically be
2 adding two more wells.

3 Q. If I understand you correctly, and you'll correct me
4 if I'm wrong, the objection is that -- is not -- goes to
5 this underlying issue of whether that well that was
6 permitted last year, whether that should have been
7 granted to start with; is that correct?

8 A. That is partially correct, yes.

9 Q. And that's -- well, that's your biggest objection
10 really, isn't it?

11 A. That is partially the objection, but moving them
12 closer to us yet also moves everything closer up there so
13 possibly the cone of depression can affect our wells more
14 greatly than prior cases.

15 Q. Now as to page 3, this well log for the well that
16 you had drilled on Section 22 in 2002?

17 A. Yes.

18 Q. I want to make sure I'm real clear on this. It
19 indicates it's a 100-foot well but it was backed up to
20 30 feet?

21 A. Right.

22 Q. And you testified a year ago, didn't you, that --
23 you used the word "backfill," that it was 100 feet but
24 then it was backfilled up to 30 feet?

25 A. That is correct. That's what the well driller did.

1 Q. And so --

2 A. And this well is in the exact same location where my
3 great-great-grandfather's well was that survived the
4 drought of the Dirty '30s without ever going dry.

5 Q. So you're not saying that -- I mean, you're not
6 saying that that well is 100 feet deep today, are you?

7 A. No, I'm not. I'm saying it's 30 feet deep.

8 Q. It's gravel packed?

9 A. Yes.

10 Q. And it's a 30-foot well; correct?

11 A. Correct.

12 Q. And for the fourth one, that's at the main farm and
13 at Deloris's house?

14 A. Yes.

15 Q. Over on Section 23 as well, you list the well depth
16 there as 83 feet. And is that 83 feet for the producing
17 well, or are you including also some gravel pack on the
18 bottom?

19 A. There is no gravel pack on the bottom. That's the
20 full depth of the well.

21 Q. And on number 5, the well at what's referred to on
22 your chart Section 21, the Fouth (phonetic) pasture?

23 A. Correct.

24 Q. And there again, well depth 100 feet, that's the
25 full production, 100 feet?

1 A. All our wells are the full depth measured except the
2 one that was backed up, which was just stated.

3 MS. BEST: Okay. I have no further questions.
4 Thank you.

5 CHAIRMAN BJORK: Ms. Riter-Rapp.

6 MS. RITER-RAPP: I have no questions for the
7 witness.

8 CHAIRMAN BJORK: Mr. Tobin. Redirect?

9 MR. TOBIN: Just one question.

10 REDIRECT EXAMINATION

11 BY MR. TOBIN:

12 Q. Where is the south edge of the aquifer?

13 A. We believe it's not much further south than the
14 south side of Section 34.

15 MR. TOBIN: Okay. That's all the questions I
16 have. Thank you.

17 CHAIRMAN BJORK: Anymore questions? From the
18 Board?

19 MR. HUTMACHER: Mr. Chairman.

20 CHAIRMAN BJORK: Mr. Hutmacher.

21 MR. HUTMACHER: I would have just a couple.
22 Mr. Hieb, your wells, primarily what is their
23 construction? PVC casing? 5 inch?

24 THE WITNESS: A lot of them are 4 and 5 inch PVC
25 casing.

1 MR. HUTMACHER: PVC screen in them?

2 THE WITNESS: Yes.

3 MR. HUTMACHER: Most gravel packed?

4 THE WITNESS: Around the side. Whatever the
5 common way a well driller does a well.

6 MR. HUTMACHER: Do you have any idea what the
7 screen slot opening is?

8 THE WITNESS: I'm sure it's on our well logs.

9 MR. HUTMACHER: Okay. The other question I
10 have, the well -- the irrigation system that's in 33, the
11 Cirschenmann or Kirschenmann or whatever.

12 THE WITNESS: Yes.

13 MR. HUTMACHER: Was that put in before the one
14 that was in the southwest of 33, or is that --

15 THE WITNESS: Well, the Kirschenmann one was the
16 first one put in. And then the one in Section 34, which
17 the Amans have, was the second one put in.

18 MR. HUTMACHER: Okay.

19 THE WITNESS: And then this one here, 33 here,
20 that was the last one put in.

21 MR. HUTMACHER: So when the Kirschenmann one
22 went in did you notice an effect on your wells right away
23 then?

24 THE WITNESS: No, we didn't.

25 MR. HUTMACHER: You didn't notice until the one

1 went in in 34?

2 THE WITNESS: Well, then we started getting to
3 the wetter years. And at that time I was also fairly
4 young so I never really paid much attention.

5 MR. HUTMACHER: Okay.

6 THE WITNESS: Because a lot of these went in in
7 '76, and I was born in '68 so.

8 MR. HUTMACHER: My last question is the -- your
9 pump system that you have, you said you turned it on, you
10 were taking your measurements.

11 Do you run manual pump systems or --

12 THE WITNESS: They're submersible pumps, and on
13 some of my pastures there are solar pumping switches.

14 MR. HUTMACHER: But do they have a pressure
15 switch and pressure tank on them?

16 THE WITNESS: Some of them do. The ones on the
17 solar system do not. They're just operated with a pump
18 slowed down to about 10 gallons a minute.

19 MR. HUTMACHER: If you were taking measurements
20 on a pump that has a tank and pressure system on, you
21 don't know for sure if that pump has run half the night
22 the night before.

23 THE WITNESS: Oh, overnight? A lot of times our
24 cattle are not in our pastures. Because they move to a
25 different pasture overnight. During the day we turn them

1 on, and the tanks are all full in the morning. So we
2 know it hadn't been going very much. And there's a lot
3 of times too if I questioned it, I'd go back and
4 remeasure it, and then I'd get the same measurements.

5 MR. HUTMACHER: But without a manual switch on
6 it, you actually turn it on, you don't know if the pump
7 run half the night or 10 minutes.

8 THE WITNESS: Well, we can always flip the
9 switch off at the pole, which we have done also, to make
10 certain that the power's off.

11 MR. HUTMACHER: Okay. I'm done.

12 CHAIRMAN BJORK: Any other questions?
13 Follow up, Mr. Tobin?

14 MR. TOBIN: I have no other questions.

15 MS. BEST: Nothing.

16 MS. RITER-RAPP: No.

17 CHAIRMAN BJORK: Okay. You are dismissed.
18
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25

1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 8th day of July,
11 2009, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 10th day of
14 September, 2009.

15
16
17 

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter
22
23
24
25

CERTIFICATION

I hereby certify that on July 13, 2009, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 13, 2009, regarding preparation of Findings of Fact, Conclusions of Law and Final Decision in the matter of Application Nos. 2951A-3 and 6908A-3 addressed as stated below:

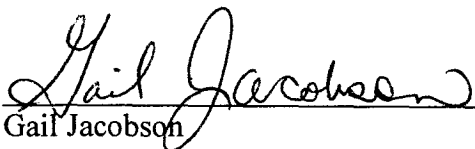
Lindsey Riter-Rapp
PO Box 280
Pierre SD 57501

Thomas Tobin
PO Box 1456
Aberdeen SD 57402-1456

Diane Best
Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104

A copy of the above described Notice was sent Inter-office to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



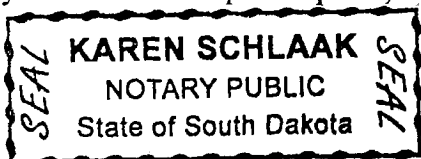
Gail Jacobson
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of July, 2009.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED
SEP 17 2009
WATER RIGHTS
PROGRAM

IN THE MATTER OF	)	
WATER PERMIT	)	Findings of Fact,
APPLICATION NO.'s	)	Conclusion of Law,
2951A-3 and 6908A-3,	)	Final Decision and Order
Aman Brothers	)	

This matter having come on for hearing before the South Dakota Water Management Board on the 8th day of July, 2009 and the applicant appearing personally and by and through attorneys Riter, Rogers, Wattier and Northrup, LLP of Pierre, South Dakota and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program and Tom Tobin of Aberdeen, South Dakota appearing on behalf of Interveners, Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman, and the Board having considered the evidence presented, all records and documents on file herein and good cause appearing therefore, now enters the following Findings of Facts and Conclusion of Law:

FINDINGS OF FACT

Application No. 2951A-3

1. Application No. 2951A-3 (hereinafter the "Application") proposes to change the location of the authorized well under Water Right No. 2951-3.
2. Water Right No. 2951-3 appropriates 1.78 cubic feet of water per second ("CFS") or approximately 800 gallons per minute from one well approximately 112 feet deep located about 60 feet south of the center of the southeast quarter of Section 33 to irrigate 138 acres located in the southeast quarter of Section 33; all in Township 126 North, Range 71 West, McPherson County. This application proposes to move the location of

the well about 1,860 feet to the northeast (northeast quarter of the southeast quarter of Section 33) from the present location. The water source remains the Hillsview Aquifer and no increase in the diversion rate is authorized by this application.

3. The Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. Test drilling by the applicant indicates favorable tests in the area. Logs provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to a depth of 70 feet. This test well completion report indicates a static water level of about 14 feet below land surface. Also, a test well drilled beside the existing production well indicates the original well was screened at too deep an interval and was never a good production well.
5. In addition to the test wells, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are located within one and one-half mile of this proposed well site. Water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. The effects of pumping are also not obvious from an examination of the hydrographs M-80G and MP-80H.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvew Aquifer, reviewed information obtained from the two state observation wells (MP-80G MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.
7. Witness Goodman testified that the Hillsvew Aquifer is capable of sustaining additional withdrawals and, further that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained with the Goodman report and the testimony of all the parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.
8. There are two existing Water Right No.'s 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres) and 2893-3 (one well, 76 feet deep, of 2.0 cfs, irrigation of 202 acres) located within one mile of this proposed diversion point. The well for No. 4129-3 is approximately 2,850 feet northwest and the well for No. 2893-3 is approximately 2,700 feet east both from this proposed well site. Also, there is an existing Water Permit

No. 6908-3 (one well, 110 feet deep, 2.0 cfs, irrigation of 160 acres) with a proposed well located approximately 1,870 feet southeast of this application site. There is an application (No. 6908A-3) to move this proposed well to another site. At this distance between wells draw down should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

9. The Aman Brothers have never experienced any problems with the existing irrigation wells located on their property.
10. Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman intervened in this matter and are opposed to the granting of the application as proposed.
11. Allen Heib was the only intervener to testify in these proceedings. He lives a mile and a half (1 ½) north of sections 33 and 34. He has wells on his property for domestic and livestock use. His closest well to the proposed site is a mile and a half (1 ½).
12. The Findings of Fact, Conclusions of Law, Final Decision and Order dated May 7, 2008 are adopted herein and incorporated by this reference as Exhibit 1.

Application No. 6908A-3

13. Aman Brothers filed Application No. 6908A-3 (hereinafter the "Application") to amend water permit 6908-3 to change the location of the well and include irrigation of acreage authorized by Water Right No. 2893-3.
14. Water Permit No. 6908-3 appropriates 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well approximately 110 feet deep located in the northeast quarter of the southwest quarter of section 34 to irrigate 160 acres located in the west half of the southwest quarter of the south half of the northwest

quarter; all in Township 126 North, Range 71 West. The application proposes to expand the area in which the diversion point authorized by Water Permit No. 6908-3 may be located to include the NW1/4 SW1/4 S1/2 NW1/4 of Section 34, Township 126 North, Range 71 West, McPherson County. The applicant is requesting that irrigation of the entire acreage covered by Permit No's 6908-3 and 2893-3 be allowed from either of the two authorized diversion points. No increase in the diversion rate or number of acres irrigated is authorized by this application.

15. The Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this application, the aquifer is under water table conditions and appears to be a surficial aquifer.
16. Test drilling by the applicant indicates favorable tests in the area. Logs provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to depths of 70 and 74 feet. A third test also has the surface sand and gravel to 70 feet but also indicates sand and coarse gravel from 97 to 120 feet all below land surface. One of the test wells indicates a static water level of about 28.5 feet below land surface.
17. In addition to the test wells, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within one and one-half mile of this proposed well site. Water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is

capable of sustaining additional withdrawals. The effects of pumping are also not obvious from an examination of the hydrographs, MP-80H and MP-80G.

18. DENR witness, James Goodman, a natural resources engineer, reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillview Aquifer, reviewed information obtained from the two state observation wells (MP-80G MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.
19. Witness Goodman testified that the Hillview Aquifer is capable of sustaining additional withdrawals and, further that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained with the Goodman report and the testimony of all the parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.
20. There are two existing irrigation wells within one-half mile of this proposed well. These are Water Rights No. 4129-3 (one well, 70 feet deep, 188 cfs, irrigation of 272 acres) and Water Right No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres).

Also, there is an existing Water Permit Application No. 2951A-3 (one well, 70 feet deep, 1.78 cfs, irrigation of 138 acres) with a proposed well located potentially near the proposed site. The distance between the wells is unknown. The advertised locations could allow a spacing of 1,320 feet between wells under this permit, permit No. 2951A-3 and Water Right No. 4129-3. The well authorized by Water Right No. 4129-3 would be about 3,200 feet northwest of this application if this well is drilled on a line between Permit No. 2951A-3 and Water Right No. 2893-7. At this distance between wells down drawn should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

21. The Aman Brothers have never experienced any problems with the existing irrigation wells located on their property.
22. Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman intervened in this matter and are opposed to the granting of the application as proposed.
23. Allen Heib was the only intervener to testify in these proceedings. He lives a mile and a half (1 ½) north of sections 33 and 34. He has wells on his property for domestic and livestock use. His closest well to the proposed site is a mile and a half (1 ½).
24. The Findings of Fact, Conclusions of Law, Final Decision and Order of May 7, 2008 are adopted herein and incorporated by this reference as Exhibit 1.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.

2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the forgoing Findings of Facts and Conclusion of Law, the Board now enters the following:

FINAL DECISION AND ORDER

1. The application for Water Permit No's 2951A-3 and 6908A-3 and are hereby granted with the following qualifications:

A. The wells approved under Permit No's 2951A-3 and 6908A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate wells or in inadequate wells having prior water rights.

B. The wells authorized by Permit No's 2951A-3 and 6908A-3 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.

C. Prior to the use of water from either production well authorized by Permit No's 2951A-3 and 6908A-3, the Permit Holder shall employ the services of a South

Dakota licensed well driller to install monitoring or observation wells near the location of the production wells authorized by these permits. The location of the observation wells shall be submitted to the Chief Engineer for approval prior to issuance of Water Permit No's 2951A-3 and 6908A-3. The Chief Engineer, or his representative, shall be granted access for the purpose of monitoring water levels in these wells.

D. Under Permit No. 6908A-3, the permit holder shall use best efforts to maintain a distance of at least 1,320 feet between the well intended under this permit and existing production wells.

E. These permits are approved subject to the irrigation water use questionnaire being submitted each year.

DATED this ____ day of September, 2009.

By the Board:

Chairman

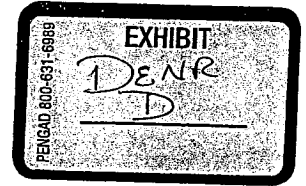
EXHIBIT 1

RECEIVED

SEP 17 2009

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD



IN THE MATTER OF
WATER PERMIT
APPLICATION NO. 6908-3,
Harlan Aman

)
)
)
)
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
FINAL DECISION AND ORDER

This matter having come on for hearing before the South Dakota Water Management Board on the 11th day of March, 2008, and the Applicant appearing personally and by and through attorneys Riter, Rogers, Wattier, and Northrup, LLP, of Pierre, South Dakota, and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program, and Thomas Tobin of Aberdeen, South Dakota, appearing on behalf of Intervenor, Allen Heib, Deloris Heib, Dale Mohr, and Raymond Groft, and the Board having considered the evidence presented, all records and documents on file herein, having entered its oral decision and rulings on the parties' submissions and good cause appearing therefore, now enters the following Findings and Fact and Conclusions of Law:

FINDINGS OF FACT

1. Harlan Aman filed Application No. 6908-3 (hereinafter "Application") for a water permit for irrigation purposes.
2. The Application proposes to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well is to be completed into the

Hillsvieview Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. The well may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right No. 2893-3.

3. The Hillsvieview Aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. The proposed depth of 110 feet should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.
5. Although no test well was drilled for this Application, there is sufficient information from a County Study conducted in 1982 by the South Dakota Geological Survey (the most recent water study conducted for this aquifer), other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within two miles of this proposed well site. Water levels for these wells show good response to climatic

conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well support that the aquifer is capable of sustaining additional withdrawals. The hydrograph for observation well MP-80G (located about 1 ½ miles northwest of proposed well) also supports the conclusion that the aquifer is capable of sustaining additional withdrawals.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie Aquifer, reviewed information obtained from the two state observation wells (MP-80G and MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.
7. Witness Goodman testified that the Hillsvie Aquifer is capable of sustaining additional withdrawals and, further, that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the

information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of this testimony as well as the observation well hydrographs contained with the Goodman report and the testimony of all parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.

8. There are three existing irrigation wells within one mile of this proposed well. These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-9 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 feet northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No. 4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells, drawdown is not expected to be significant. The observation well record reinforces this conclusion.
9. Harlan Aman has never experienced problems with the existing irrigation wells located on his property.

10. Allen Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Allen Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site.
11. Allen Hieb has wells on his property for domestic use and livestock use. Some of the wells are drilled at the depth of 140 feet. The wells at a depth of 140 feet are good, high producing wells. One of the wells was drilled at a depth of thirty feet. This well went dry in 2006. The year 2006 was a drought year. The 30 foot well at this location is responsive to fluctuations in the aquifer due to drought. Moreover, the Board recognizes that the DENR monitoring wells, which are close to the proposed well site and to Aman's existing wells show that fluctuation is much more attributable to climatic conditions than it is to irrigation. In fact, the DENR expert testified that fluctuation in water levels would be attributable to climatic conditions rather than irrigation.
12. Delores Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Delores Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. Delores Hieb is the mother of Allen Hieb and also uses wells for domestic use and livestock use.
13. Dale Mohr intervened in this matter and is opposed to the granting of the Application as proposed. Dale Mohr lives on a ranch one mile east Allen Hieb.

14. Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a dept of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.
15. Raymond Groft intervened in this matter and is opposed to the granting of the Application as proposed. Raymond Groft currently lives in Aberdeen, South Dakota but owns land within approximately one (1) mile to one mile and one quarter of a mile (1 ¼) from the proposed well site.
16. Raymond Groft currently has two wells on the property for domestic us and they are working properly.
17. The wells that have been replaced by Allen Hieb and Dale Mohr were 25 to 45 feet deep. They were replaced during dry years or drought years. The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells.

18. All Intervenors have as their only water source wells that have been drilled in the area of Applicant's proposed well site.
19. This Board's conclusion that the proposed diversion can be developed without unlawful impairment of existing rights relies on both the Goodman expert testimony as well as the chief engineer's proposed qualifications for the proposed permit. The permit would be qualified so as to protect nearby domestic wells and other wells which may obtain water from the same aquifer and which hold priority rights. The proposed qualification provides that the well owner must control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights. This includes both existing irrigation rights as well as domestic wells which are not required to be permitted.
20. The Board finds that the testimony presented by the applicant and intervenors in this matter, when fully considered in light of all the evidence in the record, weighs in favor of determining that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, and also weighs in favor of finding that the proposed diversion can be developed without unlawful impairment of existing rights.
21. The Intervenors assert that the Application at issue will result in a situation where 240 acres will be irrigated from the proposed well. The

actual new acreage that would be irrigated under this permit would be up to 160 acres. In addition, part of the Application is to allow irrigation of an additional 64 acres that is already irrigated under another water right. The additional 64 acres are located in the east half of the southwest quarter of Section 34, which is authorized by Water Right No. 2893-3. Granting this permit allows use of water from the new well authorized under this permit as an alternative to the well now used under Water Right No. 2893-3 for the 64 acres. This does not allow the Applicant to "double up" and apply more total water per acre than that authorized under SDCL 46-5-6. Further, allowing irrigation of this 80 acres from the presently pending permit does not authorize the transfer or change in acreage of any rights granted under Water Right No. 2893-3.

22. The proposed Water Permit is for use for irrigation. This Board has previously found on several occasions that the use of water for irrigation for farm crops is a beneficial use and is in the public interest. This use is beneficial to the appropriator insofar as the appropriator desires to increase its capacity to grow agriculture crops. The use is also consistent with the interest of the public of this state and the best utilization of water supplies in that it provides for use of water to support the State's agricultural economy. Further, it is in the public interest to

promote the maximum beneficial use of water. Accordingly, the proposed use is beneficial within the meaning of SDCL 46-1-6(3).

23. The proposed use is in the public interest insofar as it provides water for irrigation which would, in turn, benefit the general economic development of the area in question.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the foregoing Findings of Fact and Conclusions of Law, the Board now enters the following:

FINAL DECISION AND ORDER

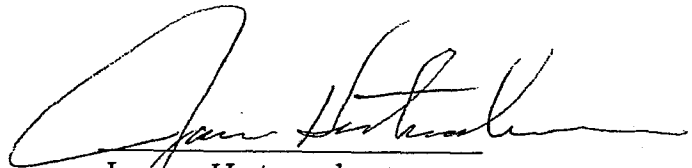
1. The Application for Water Permit No. 6908-3 is hereby granted with the following qualifications:
 - A. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his

withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

- B. The well authorized by Permit No. 6908-3 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 74:02:04:25.
- C. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 7th day of May, 2008.

BY THE BOARD:

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

James Hutmacher
Chairman

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

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SEP 17 2009
WATER RIGHTS
PROGRAM

IN THE MATTER OF WATER PERMIT
APPLICATION NO.'s 2951A-3 and
6908A-3 , Aman Brothers

CERTIFICATE OF SERVICE

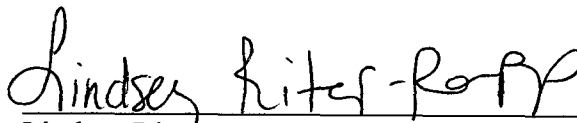
The undersigned hereby certifies that true and correct copies of proposed Findings of Fact, Conclusions of Law and Final Decision were served upon each of the following by first class mail on this 16th day of September, 2009:

Thomas Tobin
Attorney at Law
PO Box 1456
Aberdeen, SD 57402

Diane Best
Assistant Attorney General
300 N. Dakota Ave, Ste 403
Sioux Falls, SD 57105

Jeffrey P. Hallem
Assistant Attorney General
1302 E. Hwy 14, Ste 1
Pierre, SD 57501-8501

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources
Foss Building
523 E. Capitol
Pierre, SD 57501


Lindsey Riter-Rapp

TONNER, TOBIN & KING, LLP

ATTORNEYS AT LAW
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

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SEP 22 2009

WATER RIGHTS
PROGRAM

ATTORNEYS:

THOMAS P. TONNER
THOMAS M. TOBIN
HIRAM I. KING

TELEPHONE: (605) 225-1000
FAX: (605) 225-0625
E-Mail: ttobin@nvc.net

RESEARCH & INVESTIGATION:
CHARLES A. BENSEN

September 21, 2009

Garland Erble
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: Application Numbers 2951-A-3 and 6908A-3

Dear Garland

As you know, I represent the interveners that appeared in the water permit application number 2951-A-3 and 6908A-3. We also appeared earlier in application 6908A-3. Subsequent to both hearings, the one issue that we pointed out is the lack of enforcement if the drawing from the irrigation wells creates a reduction in needed water supplies and inadequate wells having prior water rights. When there is a complaint that the existing water rights are being impaired and the domestic water availability becomes an issue and a complaint is made, the irrigators are not required to quit irrigating until a complete study is done to verify the availability of the water or whether or not the permit is being violated, the irrigators are permitted to continue to irrigate while the domestic users have to make other accommodations for water. We state now as we have before that this is a flaw in system; although it sounds good on paper that the domestic users are taken care of, the reality is that the irrigators are being protected when there is a violation in the permit.

Further, there is no time frame in which the investigation to determine if the complaint is well founded and it appears from the response we have received so far is that the response to the department is measured in months and not days.

At the present time, the well on property owned by Raymond Graff is not useable. I include the well log for Ray Graff's well as part of this letter. I also include a well log for the well on Section 23, Township 126, Range 71.

As you can see, in an attempt to keep the well going on Ray Graff's property, the fuse has burned out five times and they have replaced two pumps in the well.

It is our belief that the pumping of the three irrigation wells and the constant pumping of those wells in 2009 has drastically affected the availability of the water and the domestic wells in the area.

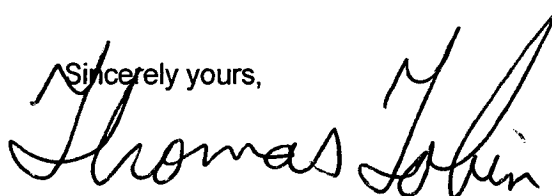
My clients aren't clear on whether or not the existing wells that existed prior to the applications to move the wells to a different spot are going to result in two wells permitted or only one well permitted. We would also like to know if the Aman's have any data from the test well they were going to install. We believe the quick response to the complaints regarding inadequate water supplies should be received so that the water situation can be determined prior to winter.

September 21, 2009

If you should have any questions, please do not hesitate to contact me.

Thanking you, I remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas M. Tobin". The signature is fluid and cursive, with a large, stylized "T" at the beginning and a long, sweeping underline.

Thomas M. Tobin

TMT:jmj

Cc: Allen Hieb
Rudy Aman
Dale Graff
Raymond Graff
Herbert Graff

WELL LOG FOR RAY GRAFF'S WELL

year 2009

SECTION

27-126-71

Well Depth is 39 feet

DATE	start	stop	volume
may 16 2009	17 Foot	18 foot	1 tank
June 17 2009	23 foot	24 foot	1 tank
July 06 2009	18 foot	19 foot	1 tank
July 12 2009	pump burned out well had only 2 feet of water		
july 13 2009	replaced pump start 22 ft. stop 36 foot		
July 14-21 2009	well unuseable can pump 100 gal. water or less at a time		
july 23 2009	22 foot	34 foot	1 tank
July 24 2009	18 foot	33 foot	1 tank
July 27 2009	tank was empty fuse blown pump out of the water		
July 28- 30 2009	1/3 tank on 28 th. pump off on 29 th. 3/4 tank on the 30th.		
July 31 2009	20 foot	30 foot	1 tank
Aug 1-Aug 4 2009	17 foot	30 foot	1 1/4 tank
Aug 6 2009	fuse blown tank empty well unusable water level at 35 ft.		
Aug 7-13 2009	only small amounts of water can be pumped at a time		
Aug 15 2009	30 foot	35 foot	1 tank
Aug 16 - 24 2009	no problems start 18 ft. stop 20 -25 ft.		
Aug 27 2009	blown fuse tank empty pumped a 1 tank		
Sept 5 2009	blown fuse tank empty pumped 3/4 tank		
Sept.6 2009	blown fuse could only pump 100 gal. of water		
Sept.7 - 15 2009	well unuseable can pump 100 gal. water or less at a time		

WELL LOG FOR WELL DRILLED 9/10/06

SEC. 23-126-71 2009 well log

140 FT. DEEP STATIC WATER LEVEL 34FT

5/12/2009 rained .60

5/13/2009 Irrigation was started

30 - 40 MPH. winds

DATE DEPTH TO WATER

3/28/2009	*****	25 feet
4/12/2009	*****	24 feet turned off heater
4/25/2009	*****	24 feet
5/1/2009	*****	24 feet
5/11/2009	*****	24 feet
5/25/2009	*****	28 feet
6/17/2009	*****	30 feet
6/23/2009	*****	30 feet
7/7/2009	*****	30 feet
7/20/2009	*****	40 feet
8/5/2009	*****	48 feet
8/14/2009	*****	59 feet
8/25/2009	*****	65 feet
9/13/2009	*****	70 Feet

july 8 all irr. Were going

july 12 1.25 in rain aman kirshmann irr.

july 18 irrigations were started

july 24 all 3 irr. Were on

aug 2 - aug 4 all 3 irr. ON



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

September 29, 2009

NOTICE

TO: Lindsey Riter-Rapp
PO Box 280
Pierre SD 57501

Thomas Tobin
PO Box 1456
Aberdeen SD 57402-1456

FROM: Garland Erbele, Chief Engineer
Water Rights Program, DENR 

SUBJECT: Change in Hearing Time for Consideration of Findings of Fact, Conclusions of Law
and Final Decision

Due to changes in the agenda, the Water Management Board will now consider adoption of Findings, Conclusions and Final Decision approving Water Permit Nos. 2951A-3 and 6908A-3 at 1:30 PM, on October 7, 2009, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. Future notice will be provided if there is a change in the meeting date or location

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General, 300 N. Dakota Ave., Suite 403, Sioux Falls SD
57104-6032

CERTIFICATION

I hereby certify that on September 29, 2009, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 29, 2009, regarding hearing time for consideration of Findings of Fact, Conclusions of Law and Final Decision in the matter of Application Nos. 2951A-3 and 6908A-3 addressed as stated below:

Lindsey Riter-Rapp
PO Box 280
Pierre SD 57501

Thomas Tobin
PO Box 1456
Aberdeen SD 57402-1456

Diane Best
Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104

A copy of the above described Notice was sent Inter-office to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



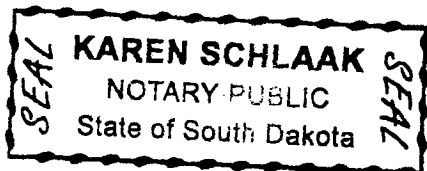
Gail Jacobson
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of September, 2009.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA



RECEIVED

SEP 30 2009

WATER RIGHTS
PROGRAM

OFFICE OF ATTORNEY GENERAL

300 N. Dakota Avenue, Suite 403
Sioux Falls, South Dakota 57104-6032
Phone (605) 367-5880
FAX (605) 367-5886
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY

September 28, 2009

Jeff Hallem
Office of Attorney General
1302 E. Hwy. 14, Ste. 1
Pierre, SD 57501

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350

Tim Bjork
112 W. Oak St.
Pierre, SD 57501

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401

Bernita Loucks
219 42nd St.
Rapid City, SD 57702

Jim Hutmacher
802 East 7th St.
Oacoma, SD 57365

Leo Holzbauer
P.O. Box 877
Wagner, SD 57380

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

Re: *In the Matter of Water Permit Application Nos. 2951A-3 and 69-8A-3,
Aman Brothers*

Dear Board Members and Board Counsel:

Enclosed is a copy of the DENR Response to proposed Findings of Fact, Conclusions of Law and Final Decision in the above referenced matter. I am also enclosing a copy of the Proposed Finding sent out by the Applicants' counsel. It appears from the Certificate of Service that that they may not have been sent to you.

All parties have also been provided with copies of this letter and the DENR Response. The original DENR Response and original Certificate of Service have been filed with Chief Engineer Erbele.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".
Diane Best

Assistant Attorney General

Enclosures

RECEIVED

SEP 30 2009

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR RESPONSE TO
PERMIT APPLICATION	)	PROPOSED FINDINGS OF FACT
No. 2951A-3 and No. 6908-3,	)	AND CONCLUSIONS OF LAW
AMAN BROTHERS	)	AND FINAL DECISION

COMES NOW the Department of Environment and Natural Resources, Water Rights Program (DENR) and makes its Response to the proposed Findings of Fact, Conclusions of Law and Final Decision.

1. Except as set forth below, the DENR agrees with entry of the proposed Findings of Fact, Conclusions of Law, and Final Decision and urges adoption.

Application 2951A-3

2. The DENR asks that Finding 3 be changed by adding the words "in McPherson County" after the words "recoverable water in storage" on the third line. This is consistent with the Report of witness James Goodman, page 1.

3. The DENR asks that Finding 4, first sentence, be changed by deleting the words "in the area" and inserting the words "at this site." This reflects the testimony that the test drilling has been done for the specific site involved.

4. The DENR asks that Finding 5, line 5, be changed by deleting the words "that is" and inserting a comma after "climatic conditions." Also, the DENR suggests inserting the word "for" before the reference to M-80G and MP-80H on the last line. These changes are grammatical suggestions.

5. After Finding 6, additional Findings are warranted:

Witness Goodman relied in part on the County study conducted by the South Dakota Geological Survey in 1982 which includes an analysis of the Hillview aquifer. Goodman testified that the County study reported

the Hillsvview aquifer is capable of supporting wells producing up to 500 gallons per minute. Based on the irrigation wells that have actually been drilled since that time and the irrigation reports received by the DENR, Goodman testified that the Hillsvview Aquifer is actually more productive and actually supports wells of 900 gpm.

Other than the foregoing, Goodman used the County study. He relied on the South Dakota Geological Survey calculation of the recharge rate in the County study. He further testified that the estimated amount of available water addressed in the County study was the total recoverable water in the aquifer.

6. The DENR asks that Finding 7 be changed to address only interference with other appropriative rights. Accordingly, the first sentence would state: "Witness Goodman testified that interference with other appropriative water permits (irrigation use) is not expected to be a concern." There would be no changes on the second and third sentences. The last sentence would also be changed to read: "In light of his testimony as well as the hydrographs contained in the Goodman Report and the testimony of all the parties, this Board finds that Applicant's use and proposed diversion can be developed without unlawful impairment of existing appropriative water rights."

7. Additional underlying Findings regarding domestic well interference would be warranted:

(a) The Intervenor's' domestic wells are in the Hillsvview aquifer. Given the distance between the Intervenor's domestic wells and the proposed location of Applicants' well, witness Goodman testified that there is not likely to be an adverse impairment of existing rights to domestic use of water. The closest well is one and one-half miles from this site and is owned by Dale Heib.

(b) More particularly, Goodman testified that under the "ideal scenario" where water would be pumped at high capacity at 750 gallons per minute, where the water table is shallow, and where there is prolific sand and gravel, the cone of influence would be the largest and the actual

measurable drawdown from wells in this area would be 1,320 feet at most.

(c) Further, the high capacity irrigation wells used by the Applicant would need to maintain water in the aquifer at a high enough level so that they can maintain their diversion rate. If Applicant were to pump water so that it causes a large cone of influence drawing water from a wide area, Applicant would have a lesser diversion rate. Accordingly, irrigators will not, as a management matter, cause draw down that would impair their own operations.

(d) Goodman's conclusions are based on his experience and background, his analysis of the County study, irrigation information filed with the water rights program, and the nearby DENR observation wells.

(e) In addition to the Goodman conclusions concerning the absence of likelihood of interference, the Chief Engineer proposed two qualifications, which this Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in domestic wells that are adequate wells. The other qualification is the installation of a monitoring well.

(f) Under the monitoring well qualification, the Applicant must install a monitoring or observation well in the area between the Intervenor's domestic wells and the irrigation diversions authorized by Permit 2951A-3 and Permit 6809-3. The purpose of locating this monitoring well in this area is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in the nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefore should provide reliable independent data. The precise location of the monitoring well is to be submitted by the Applicant and is subject to approval by the Chief Engineer. The monitoring well is to be completed before the Applicant's irrigation begins under Permit 2951A-3 (and Permit 6809-3). This monitoring well is to be the same monitoring well as that required in Permit 6809-3.

(g) In light of the Goodman testimony that there is unlikely to be adverse impairment of existing rights (as well as the proposed qualifications on the permit), this Board finds that granting the proposed application will not result in an impairment of existing rights to domestic use of water.

8. An ultimate Finding on impairment would be in order:

Granting the proposed application will not result in an impairment of existing rights.

9. After Finding 7, an additional finding would be warranted:

This request proposes to change the place of diversion for existing Permit 2951-3, and therefore no additional water is to be appropriated. The propriety of the issuance of the original Permit 2951-3 will not be revisited in this proceeding. In particular, this Board recognizes that when Permit 2951-3 was issued in 1976, the present water law was in place, which requires a finding of whether there was "a reasonable probability that there is unappropriated water available for the proposed use." At this time, no additional finding is necessary on the availability of water from the Hillsvew aquifer since no additional water is to be appropriated. Moreover, no evidence was presented at hearing that would demonstrate that the aquifer size, recharge rate, or other aquifer characteristics of usage of water from this aquifer warrant a different finding. Finally, witness James Goodman testified that water is available from this aquifer. The Board credits his testimony as to the availability of water from this aquifer.

Application 6908A-3

10. The DENR submits that in Finding 14 the place of the property to be irrigated should be described as "160 acres located in the west half of the southwest quarter and the south half of the northwest quarter, all in Section 34, Township 126 North, Range 71 West."

11. The DENR asks that Finding 15 be changed to add the words "McPherson County" to the third line after the words "recoverable water in storage." This is for the reasons stated above.

12. The DENR asks that Finding 17 be changed by deleting the words "that is" and inserting a comma after the words "climatic conditions." Also, the DENR suggests that the word "for" be inserted before the words "MP-80H and MP-80G." These are grammatical suggestions.

13. The DENR asks that Finding 19 be changed to address only the issue of interference with existing appropriative water rights. The first sentence would state "Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern when conditioned as set forth below." There would be no changes to the second and third sentences. The last sentence would state "In light of his testimony as well as the hydrographs contained with the Goodman report and the testimony of all parties, this Board finds that the proposed diversion and use can be developed without unlawful impairment of existing water rights, particularly when conditioned as required below."

14. After Finding 19, an additional Finding would be in order:

The Chief Engineer has recommended, and this Board adopts, a qualification that requires spacing of 1,320 feet between the well authorized under this permit and another irrigation well belonging to another irrigator (Permit 4129-3). This condition is designed to avoid claims of interference since drawdown could occur up to 1,320 feet from the Applicant's irrigation well. Although witness Goodman testified that it is also advisable for the Applicant to install his well at least 1,320 feet away from his own other nearby irrigation well for Permit 2893-A, the issue of interference between the Applicant's own wells is an internal management issue for the Applicant.

15. The DENR also submits that a set of additional underlying findings regarding domestic well interference would be warranted:

(a) The Intervenor's domestic wells are in the Hillview aquifer. Given the distance between the Intervenor's domestic wells and the proposed location of Applicants' well, witness Goodman testified that there is not likely to be an adverse impairment of existing rights to domestic use of water. The closest well is one and one-half miles from this site and is owned by Dale Heib.

(b) More particularly, Goodman testified that under the "ideal scenario" where water would be pumped at high capacity at 750 gallons per

minute, where the water table is shallow, and where there is prolific sand and gravel, the cone of influence would be the largest and the actual measurable drawdown from wells in this area would be 1,320 feet at most.

(c) Further, the high capacity irrigation wells used by the Applicant will need to maintain water at a high enough level so that they can maintain their diversion rate. If Applicant pumps water so that it causes a large cone of influence drawing water from a wide area, the Applicant will have a lesser diversion rate. Generally, irrigators will not, as a management matter, continue to pump water in such conditions.

(d) Goodman's conclusions are based on his experience and background, his analysis of the County study, irrigation information filed with the water rights program, and the nearby DENR observation wells.

(f) In addition to the Goodman conclusions concerning the absence of likelihood of interference, the Chief Engineer proposed two qualifications, which this Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that the Applicant install a monitoring or observation well in the area between the Intervenor's domestic wells and the irrigation diversions authorized by Permits 2951A-3 and Permit 6809-3. The purpose of locating this monitoring well in this area is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in the nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefore should provide reliable independent data. The precise location of the monitoring well is to be submitted by the Applicant and is subject to approval by the Chief Engineer. The monitoring well is to be completed and the location provided to the Chief Engineer before the Applicant's irrigation begins under Permit 6809-3 (and Permit 2951A-3). This monitoring well is to be the same monitoring well as that required in Permit 2951A-3. The second qualification is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in domestic wells that are adequate wells.

(g) In light of the Goodman testimony that there is unlikely to be adverse impairment of existing rights (as well as the proposed qualifications on the permit) this Board finds that granting the proposed application will not result in an impairment of existing rights to domestic use of water.

16. An ultimate Finding on impairment would be warranted:

Granting the proposed application will not result in an impairment of existing rights.

17. The DENR asks that a new Finding be added:

This request proposes to change the place of diversion and place of use for an existing permit and therefore no additional water is to be appropriated. This Board authorized issuance of the original Permit 6809-3 in 2008 and it was affirmed by the Fifth Circuit Court. This Board will not revisit the propriety of the issuance of Permit 6809-3. In particular, this Board found that there is a "reasonable probability that there is water available for the Applicants proposed use" from the Hillsvie aquifer for this permit." FOF 7. This Finding is final. Because no additional water will be appropriated when the presently pending permit is granted, there is no need to make an additional finding concerning availability of water from the Hillsvie Aquifer. Further, the no evidence was presented that the aquifer size, recharge rate, or any other aquifer characteristic or use has changed since Permit 6809-3 was issued. Finally, the witness James Goodman testified that water is available from this aquifer.

CONCLUSIONS OF LAW

18. The DENR submits that Conclusion of Law 2 should be changed to state as follows:

This matter involves two amendments to water permits and is governed by SDCL 46-5-30.4 and SDCL 46-5-31. Neither of the amendments to permits involved here seeks to increase the rate of diversion or increase the volume of water to be appropriated under the original water permits. SDCL 46-5-30.4 requires a finding that amendments may not impair existing rights, but does not require a finding as to whether water is available from the aquifer. In other words, although consideration of new permits would require a determination as to whether "there is a reasonable probability that there is unappropriated water available" under SDCL 46-2A-9, the present matters involve amendments to permits under SDCL 46-5-30.4. Reference in 46-5-30.4 to the procedural requirements of 46-2A apply to the water permitting procedure, the time for construction and other procedural and regulatory requirements, but not to the standard for approval of permits in SDCL 46-2A-9. Consequently, although evidence was presented demonstrating that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use, and this Board has so found, a determination on that specific issue is not required as a matter of law. Further, the previously issued permits already required such a finding

and are legally in force. Moreover, even if such a Conclusion of Law were required, this Board concludes that this standard has been met.

19. The DENR submits that an additional Conclusion of Law would be warranted, which would state as follows:

SDCL 46-5-30.4 and SDCL 46-5-31 refer to SDCL 46-5-33 and SDCL 46-5-34. SDCL 46-5-33 and SDCL 46-5-34 contain restrictions relating to situations where irrigation permits are amended by abandoning the permitted acreage and using the new water permits at new locations. Those statutes are inapplicable here.

20. In Conclusion 3 "impairment" is misspelled and should be changed.

21. The DENR recommends an additional Conclusion stating as follows:

This Board has repeatedly concluded that using water permits for irrigation is a beneficial use and in the public interest. The use is beneficial within the meaning of SDCL 46-1-6(3) in that it is reasonable and useful and beneficial to the appropriator in terms of enhanced agricultural production and economic benefit and, at the same time, is consistent with the interest of the public of this state in the best utilization of water supplies, particularly when considering the policy set forth in SDCL 46-1-4. The amendment of irrigation permits to conform to the best use for agriculture production is also in the public interest.

FINAL DECISION AND ORDER

22. In the Final Decision and Order, line 1, the word "and" is extraneous and should be deleted.

23. In the Final Decision and Order, Item A, the last sentence should read "The well owner under these permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights."

24. In the Final Decision and Order, Item D (pertaining only to Permit No. 6908A-3) the words "use best efforts to" should be deleted in the first

sentence. There was testimony (including that of James Goodman at pages 12-16) regarding the issue of whether this should be a "best efforts" scenario rather than a mandatory condition insofar as the distance between Aman's own wells was concerned. However, the Chief Engineer's written recommendation was that the 1,320 foot distance would (a) apply as to the distance between any well approved in Permit 6908A-3 and all other irrigation wells, and (b) that it be placed on the permit as an enforceable conditions, not just a guideline. After reflecting on the testimony and the proposed Final Decision of the Applicant, the Chief Engineer's position remains the same. Although no testimony was presented that Aman Brothers intend to transfer water rights or ownership of their property in the near future, operators and owners do change from time to time, and the spacing requirement (even as between the wells for the two Aman permits involved (Permit 6908-3 and Permit 2893-3)) is a prudent course of action. The spacing requirement is appropriate as to all wells and should be enforceable. If the Applicant finds it impossible or impractical to comply with this condition as site work occurs, then the Applicant would need to apply for an amendment to this qualification.

Dated this 28th day of September, 2009.



Diane Best
Assistant Attorney General
300 N. Dakota Ave., Suite 403
Sioux Falls, SD 57104

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION	)	CERTIFICATE OF SERVICE
No. 2951A-3 and No. 6908-3,	)	
AMAN BROTHERS	)	

The undersigned hereby certifies that true and correct copies of DENR Response to Proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Sioux Falls, South Dakota, on this 24th day of September, 2009:

Tom Tobin
P.O. Box 1456
Aberdeen, SD 57402

Francis Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
Attorney at Law
P.O. Box 176
Huron, SD 57350-0176

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

Leo Holzbauer
P.O. Box 877
Wagner, SD 57380

Bernita Loucks
219 42nd St.
Rapid City, SD 57702-2123

Jim Hutmacher
802 E. Seventh St.
Oacoma, SD 57365

Garland Erbele, Chief Engineer
DENR Water Rights Program
Joe Foss Bldg.
523 E. Capitol Ave.
Pierre, SD 57501

Tim Bjork
112 W. Oak St.
Pierre, SD 57501

Jeffrey P. Hallem
Assistant Attorney General
1302 E. Highway 14, Ste. 1
Pierre, SD 57501-8501

Lindsey Riter-Rapp
P.O. Box 280
Pierre, SD 57501

Dated this 27th day of September, 2009.

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
300 N. Dakota Ave., Suite 403
Sioux Falls, SD 57104
Telephone: (605) 367-5880
Counsel for South Dakota DENR
Water Rights Program



OFFICE OF ATTORNEY GENERAL

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

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 1, 2009

Lindsay Riter Rapp
Attorney at Law
P.O. Box 280
Pierre, SD 57501

Diane Best
Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls, SD 57104

✓ Garland Erberle
DENR Water Rights Program
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 5750

Thomas Tobin
P.O. Box 1456
Aberdeen, SD 57402

Re: *In the Matter of Water Permit Application Nos. 2951A-3
and 6908A-3, Aman Brothers*

Dear Counsel and Chief Engineer Erberle:

Enclosed please find a copy of the proposed Water Management Board's Rulings on Applicant's proposed Findings of Fact, Conclusions of Law, Final Decision and Order and DENR Response to Proposed Findings of Fact and Conclusions of Law and Final Decision, the Proposed Findings of Fact, Conclusions of Law, and Final Decision and Order, and Certificate of Service for the above-entitled matter, which I have prepared consistent with directions by the Water Management Board at the July 8, 2009, hearing. That Board's consideration of these proposals is currently scheduled at 1:30 p.m. on October 7, 2009, in the Floyd Matthew Training Center, Pierre. At that time, the Board will proceed to finalize its decision in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey P. Hallem".
Jeffrey P. Hallem
Assistant Attorney General

JPH:jkp

Enclosures
cc w/enc.: Water Management Board Members

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	WATER MANAGEMENT BOARD'S
WATER PERMIT	)	RULINGS ON APPLICANT'S
APPLICATION NOS.	)	PROPOSED
2951A-3 and 6908A-3,	)	FINDINGS OF FACT,
Aman Brothers	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER
	)	AND
	)	DENR RESPONSE TO
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION

Pursuant to the directions of the Water Management Board, counsel for Applicant submitted proposed Findings of Fact, Conclusions of Law, Final Decision and Order. Subsequently, counsel for the Department of Environment and Natural Resources, Water Rights Program, submitted DENR Response to Proposed Findings of Fact and Conclusions of Law and Final Decision; no proposals or responses were received from Intervenors. The Board, upon review of the parties' submissions and the administrative record, and having orally entered its decision, hereby enters the following rulings:

A. Applicant's proposed Introductory Paragraph and Findings of Fact 1, 2, 6, 8, 9, 10, 11, 12, 13, 16, 18, 20, 21, 22, 23 and 24 are adopted by the Board as consistent with the administrative record and the Board's oral decision.

B. Applicant's proposed Finding of Fact No. 3 is adopted by the Board as consistent with the administrative record and the Board's oral decision, as modified to include the modification set forth in DENR Response No. 2.

C. Applicant's proposed Finding of Fact No. 4 is adopted by the Board as consistent with the administrative record and the Board's oral decision, as modified to include the modification set forth in DENR Response No. 3.

D. Applicant's proposed Finding of Fact No. 5 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 4.

E. Applicant's Finding of Fact No. 7 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 6 as further modified by the Board to be more consistent with applicable South Dakota law.

F. Applicant's proposed Finding of Fact No. 14 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 10 together with the additional modification of inserting ", McPherson County" at the end of the first sentence.

G. Applicant's proposed Finding of Fact No. 15 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 11, with

the additional modification of "in" inserted between "storage" and "McPherson County" in the second sentence as modified.

H. Applicant's proposed Finding of Fact No. 17 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 12.

I. Applicant's proposed Finding of Fact No. 19 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 13 as further modified by the Board.

J. Applicant's proposed Conclusion of Law No. 1 is adopted by the Board as consistent with South Dakota Law.

K. Applicant's proposed Conclusion of Law No. 2 is rejected by the Board for the reasons set forth in DENR Response Nos. 9, 17 and 18 as not consistent with applicable South Dakota law regarding amendments to existing water rights and permits.

L. Applicant's proposed Conclusion of Law No. 3 is substantially adopted as consistent with the Board's oral decision, the Board's rulings set forth above and South Dakota law, as modified to include the modification proposed in DENR Response No. 20, and to reflect the multiple applications before the Board and that the rights not being impaired are "water" rights. The revised Conclusion of Law is as follows:

The proposed diversions can be developed without unlawful impairment of existing water rights.

M. Applicant's proposed Conclusion of Law No. 4 is adopted by the Board as consistent with the Board's oral decision, the Board's rulings as set forth above, and South Dakota law, as modified below to reflect the fact that the Conclusions concern multiple applications. The revised Conclusion of Law is as follows:

The proposed uses are beneficial uses.

N. Applicant's proposed Conclusion of Law No. 5 is adopted by the Board as consistent with the Board's oral decision, the Board's rulings as set forth above, and South Dakota law, with the correction of the word "application" to "applications".

O. Applicant's proposed Final Decision and Order is substantially adopted by the Board as consistent with the Board's oral decision, the Board's rulings as set forth above, and South Dakota law, as modified to include the modifications set forth in DENR Response Nos. 22, 23 and 24, and that Item D under the Final Decision and Order be further modified to reflect the multiple applications and to state that the minimum distance requirement under Permit No. 2908A-3 also includes the well authorized under Permit No. 2951A-3. Item D of the Final Decision and Order is modified as follows:

D. Under Permit No. 6908A-3, the permit holder shall maintain a distance of at least 1,320 feet between the well intended under this permit, existing production wells, and the well authorized under Permit No. 2951A-3.

P. DENR Response Nos. 2, 3, 4, 7(a), 7(b), 7(c), 7(d), 7(e), 7(g), 8, 10, 11, 12, 15(a), 15(b), 15(c), 15(d), 15(g), 16, 18, 19, 20, 21, 22, 23, and 24 are

adopted by the Board as being consistent with the administrative record, South Dakota law, the Board's oral decision and the Board's rulings set forth above.

Q. DENR Response No. 5 is adopted as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above with the deletion of the first and second sentences in the second paragraph of the Response. Goodman testified that he did not rely upon the calculation of a recharge rate in the County Study for his opinions. The Board also adopts DENR Response No. 5 as modified to be included as a factual finding for Application No. 6908A-3.

R. DENR Response 6 is adopted by the Board as consistent with the administrative record, South Dakota law, the Board's oral decision, and the Board's rulings set forth above, as modified changing "appropriative water permits" to "appropriative water rights."

S. DENR Response 7(f) is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above, as modified below to reflect that the actual location of the monitoring well was not delineated in the Chief Engineer's proposed qualifications, but rather, through the testimony of witness Goodman, that it was contemplated that the observation well will be located in an area between Intervenor's domestic wells and the irrigation diversions authorized by the two permits. Response 7(f), as adopted, reads as follows:

Under the monitoring well qualification, Applicant must install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse

effects on water levels in nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefor should provide reliable independent data. The precise location of the monitoring well is to be submitted by the Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that any approval of a monitoring well will be conditioned on its being located in an area between Intervenor's domestic wells and the irrigation diversions authorized by Permit 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before Applicant's irrigation begins under Permit 2951A-3 (and Permit 6809A-3). This monitoring well is to be the same monitoring well as that required in Permit 6809A-3.

T. DENR Response No. 9 is adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above as corrected, changing "Permit 2951-3" to "Water Right 2951-3" where it occurs in the Response.

U. DENR Response No. 13 is substantially adopted as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above as further modified to be consistent with Board Ruling E. concerning Applicant's proposed Finding of Fact 7 and DENR No. 6. Revised Finding of Fact 19 is as follows:

Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at the distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained in the Goodman report and the testimony of all the parties, this Board finds that the proposed diversion and use can be developed without unlawful impairment of existing appropriative water rights.

V. DENR Response No. 14 is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above, as modified by deleting the last sentence of the Response that is inconsistent with DENR Response No. 24 and the Board's rulings set forth above.

W. DENR Response No. 15(f) is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above, as modified below to be consistent with Board Ruling S above concerning the location of the monitoring well. Response 15(f) as adopted by the Board reads as follows:

In addition to the Goodman conclusions concerning the absence of likelihood of interference, Chief Engineer proposed two qualifications, which the Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that Applicant install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefor should provide reliable independent data. The precise location of the monitoring well is to be submitted by Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that approval of a monitoring well will be conditioned on its being located in an area between the Intervenor's domestic well and the irrigation diversions authorized by Permit No. 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before Applicants' irrigation begins under Permit 6809A-3 (and Permit 2951A-3). The monitoring well is to be the same monitoring well as that required in Permit 2951A-3. The second qualification is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in domestic wells that are adequate wells.

W. DENR Response 17 is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above with correction of the third sentence to accurately state the portion of Board's Finding of Fact No. 7 concerning Permit 6809A-3. The revised third sentence of the Response is as follows:

In particular, this Board found that there is a "reasonable probability that there is unappropriated water available for the Applicant's proposed use" from Hillsvew aquifer for this permit. Finding of Fact No. 7.

The Board attorney is directed to prepare Findings of Fact, Conclusions of Law, and Final Decision and Order consistent with the above rulings to be executed by the Chairman of the Board or Board designee without further motion or hearing.

Dated this ____ day of October, 2009.

BY THE BOARD:

Timothy Bjork, Chairman

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
WATER PERMIT	)	FINDINGS OF FACT,
APPLICATION NOS.	)	CONCLUSIONS OF LAW,
2951A-3 and 6908A-3,	)	FINAL DECISION AND ORDER
Aman Brothers	)	

This matter having come on for hearing before the South Dakota Water Management Board on the 8th day of July, 2009 and the Applicant appearing personally and by and through attorneys Riter, Rogers, Wattier and Northrup, LLP of Pierre, South Dakota and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program and Tom Tobin of Aberdeen, South Dakota appearing on behalf of Intervenors, Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman, and the Board having considered the evidence presented, all records and documents on file herein and good cause appearing therefore, now enters the following Findings of Facts and Conclusion of Law:

FINDINGS OF FACT

Application No. 2951A-3

1. Application No. 2951A-3 (hereinafter the "Application") proposes to change the location of the authorized well under Water Right No. 2951-3.
2. Water Right No. 2951-3 appropriates 1.78 cubic feet of water per second ("CFS") or approximately 800 gallons per minute from one well approximately 112 feet deep located about 60 feet south of the center of the

southeast quarter of Section 33 to irrigate 138 acres located in the southeast quarter of Section 33; all in Township 126 North, Range 71 West, McPherson County. This Application proposes to move the location of the well about 1,860 feet to the northeast (northeast quarter of the southeast quarter of Section 33) from the present location. The water source remains the Hillsvew aquifer and no increase in the diversion rate is authorized by this Application.

3. The Hillsvew aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage in McPherson County. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.

4. Test drilling by the Applicant indicates favorable tests at this site. Logs provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to a depth of 70 feet. This test well completion report indicates a static water level of about 14 feet below land surface. Also, a test well drilled beside the existing production well indicates the original well was screened at too deep an interval and was never a good production well.

5. In addition to the test wells, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are located within one and one-half miles of this proposed well site. Water levels for these wells show good response to climatic conditions, rising during wet periods (recharge) and gradually

declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. The effects of pumping are also not obvious from an examination of the hydrographs for M-80G and MP-80H.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit Application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie aquifer, reviewed information obtained from the two state observation wells (MP-80G MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.

7. Witness Goodman relied in part on the County Study conducted by the South Dakota Geological Survey in 1982 which includes an analysis of the Hillsvie aquifer. Goodman testified that the County Study reported the Hillsvie aquifer is capable of supporting wells producing up to 500 gallons per minute. Based on the irrigation wells that have actually been drilled since that time and the irrigation reports received by the DENR, Goodman testified that the Hillsvie aquifer is actually more productive and actually supports wells of 900 gpm.

He further testified that the estimated amount of available water addressed in the County Study was the total recoverable water in the aquifer.

8. There are two existing Water Right Nos. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres) and 2893-3 (one well, 76 feet deep, of 2.0 cfs, irrigation of 202 acres) located within one mile of this proposed diversion point. The well for No. 4129-3 is approximately 2,850 feet northwest and the well for No. 2893-3 is approximately 2,700 feet east both from this proposed well site. Also, there is an existing Water Permit No. 6908-3 (one well, 110 feet deep, 2.0 cfs, irrigation of 160 acres) with a proposed well located approximately 1,870 feet southeast of this application site. There is an application (No. 6908A-3) to move this proposed well to another site. At this distance between wells draw down should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

9. Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at the distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained in the Goodman report and the testimony of all the parties, this Board finds that Applicant's use and proposed diversion can be developed without unlawful impairment of existing appropriative water rights.

10. The Aman Brothers have never experienced any problems with the existing irrigation wells located on their property.

11. This request proposes to change the place of diversion for existing Water Right 2951-3, and therefore no additional water is to be appropriated. The propriety of the issuance of the original Water Right 2951-3 will not be revisited in this proceeding. In particular, this Board recognizes that when Water Right 2951-3 was issued in 1976, the present water law was in place, which requires a finding of whether there was "a reasonable probability that there is unappropriated water available for the proposed use." At this time, no additional finding is necessary on the availability of water from the Hillsvie aquifer since no additional water is to be appropriated. Moreover, no evidence was presented at hearing that would demonstrate that the aquifer size, recharge rate, or other aquifer characteristics of usage of water from this aquifer warrant a different finding. Finally, witness James Goodman testified that water is available from this aquifer. The Board credits his testimony as to the availability of water from this aquifer.

12. Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman intervened in this matter and are opposed to the granting of the Application as proposed.

13. Allen Heib was the only intervenor to testify in these proceedings. He lives a mile and a half (1 ½) north of sections 33 and 34. He has wells on his property for domestic and livestock use. His closest well to the proposed site is a mile and a half (1 ½).

14. The Intervenor's domestic wells are in the Hillsvie aquifer. Given the distance between the Intervenor's domestic wells and the proposed location

of Applicants' well, witness Goodman testified that there is not likely to be an adverse impairment of existing rights to domestic use of water. The closest well is one and one-half miles from this site and is owned by Dale Heib.

15. More particularly, Goodman testified that under the "ideal scenario" where water would be pumped at high capacity at 750 gallons per minute, where the water table is shallow, and where there is prolific sand and gravel, the cone of influence would be the largest and the actual measurable drawdown from wells in this area would be 1,320 feet at most.

16. Further, the high capacity irrigation wells used by the Applicant would need to maintain water in the aquifer at a high enough level so that they can maintain their diversion rate. If Applicant were to pump water so that it causes a large cone of influence drawing water from a wide area, Applicant would have a lesser diversion rate. Accordingly, irrigators will not, as a management matter, cause draw down that would impair their own operations.

17. Goodman's conclusions are based on his experience and background, his analysis of the County Study, irrigation information filed with the Water Rights Program, and the nearby DENR observation wells.

18. In addition to the Goodman conclusions concerning the absence of likelihood of interference, the Chief Engineer proposed two qualifications, which this Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in

domestic wells that are adequate wells. The other qualification is the installation of a monitoring well.

19. Under the monitoring well qualification, the Applicant must install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in the nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefor should provide reliable independent data. The precise location of the monitoring well is to be submitted by the Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that any approval of a monitoring well will be conditioned on it being located in an area between Intervenor's domestic wells and the irrigation diversions authorized by Permit 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before the Applicant's irrigation begins under Permit 2951A-3 (and Permit 6809A-3). This monitoring well is to be the same monitoring well as that required in Permit 6809A-3.

20. In light of the Goodman testimony that there is unlikely to be adverse impairment of existing rights (as well as the proposed qualifications on the permit), this Board finds that granting the proposed Application will not result in an impairment of existing rights to domestic use of water.

21. Granting the Application will not result in an impairment of existing rights.

22. The Findings of Fact, Conclusions of Law, Final Decision and Order dated May 7, 2008 are adopted herein and incorporated by this reference as Exhibit 1.

Application No. 6908A-3

23. Aman Brothers filed Application No. 6908A-3 (hereinafter the "Application") to amend Water Permit 6908-3 to change the location of the well and include irrigation of acreage authorized by Water Right No. 2893-3.

24. Water Permit No. 6908-3 appropriates 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well approximately 110 feet deep located in the northeast quarter of the southwest quarter of Section 34 to irrigate 160 acres located in the west half of the southwest quarter and the south half of the northwest quarter; all in Section 34, Township 126 North, Range 71 West, McPherson County. The Application proposes to expand the area in which the diversion point authorized by Water Permit No. 6908-3 may be located to include the NW $\frac{1}{4}$ SW $\frac{1}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, Township 126 North, Range 71 West, McPherson County. The Applicant is requesting that irrigation of the entire acreage covered by Permit No. 6908-3 and Water Right No. 2893-3 be allowed from either of the two authorized diversion points. No increase in the diversion rate or number of acres irrigated is authorized by this Application.

25. The Hillview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage in McPherson

County. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.

26. Test drilling by the Applicant indicates favorable tests in the area. Logs provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to depths of 70 and 74 feet. A third test also has the surface sand and gravel to 70 feet but also indicates sand and coarse gravel from 97 to 120 feet all below land surface. One of the test wells indicates a static water level of about 28.5 feet below land surface.

27. In addition to the test wells, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within one and one-half miles of this proposed well site. Water levels for these wells show good response to climatic conditions, rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. The effects of pumping are also not obvious from an examination of the hydrographs, MP-80H and MP-80G.

28. DENR witness, James Goodman, a natural resources engineer, reviewed the permit Application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillview aquifer, reviewed information obtained from the two state observation wells (MP-80G MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology

and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.

29. Witness Goodman relied in part on the County Study conducted by the South Dakota Geological Survey in 1982 which includes an analysis of the Hillsvie aquifer. Goodman testified that the County Study reported the Hillsvie aquifer is capable of supporting wells producing up to 500 gallons per minute. Based on the irrigation wells that have actually been drilled since that time and the irrigation reports received by the DENR, Goodman testified that the Hillsvie aquifer is actually more productive and actually supports wells of 900 gpm.

He further testified that the estimated amount of available water addressed in the County Study was the total recoverable water in the aquifer.

30. There are two existing irrigation wells within one-half mile of this proposed well. These are Water Rights No. 4129-3 (one well, 70 feet deep, 188 cfs, irrigation of 272 acres) and Water Right No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres). Also, there is an existing Water Permit Application No. 2951A-3 (one well, 70 feet deep, 1.78 cfs, irrigation of 138 acres) with a proposed well located potentially near the proposed site. The distance between the wells is unknown. The advertised locations could allow a spacing of 1,320 feet between wells under this permit, Permit No. 2951A-3 and Water Right No. 4129-3. The well authorized by Water Right No. 4129-3 would be about 3,200 feet northwest of this Application if this well is drilled on a line

between Permit No. 2951A-3 and Water Right No. 2893-7. At this distance between wells down drawn should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

31. Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at the distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained in the Goodman report and the testimony of all the parties, this Board finds that the proposed diversion and use can be developed without unlawful impairment of existing appropriative water rights.

32. The Aman Brothers have never experienced any problems with the existing irrigation wells located on their property.

33. This request proposes to change the place of diversion and place of use for an existing permit and therefore no additional water is to be appropriated. This Board authorized issuance of the original Permit 6809-3 in 2008 and it was affirmed by the Fifth Circuit Court. This Board will not revisit the propriety of the issuance of Permit 6809-3. In particular, this Board found that there is a "reasonable probability that there is unappropriated water available for the Applicant's proposed use" from the Hillsvew aquifer for this permit. Finding of Fact 7. This Finding is final. Because no additional water

will be appropriated when the presently pending permit is granted, there is no need to make an additional finding concerning availability of water from the Hillsview Aquifer. Further, no evidence was presented that the aquifer size, recharge rate, or any other aquifer characteristic or use has changed since Permit 6809-3 was issued. Finally, the witness James Goodman testified that water is available from this aquifer.

34. Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman intervened in this matter and are opposed to the granting of the Application as proposed.

35. Allen Heib was the only intervenor to testify in these proceedings. He lives a mile and a half (1 ½) north of sections 33 and 34. He has wells on his property for domestic and livestock use. His closest well to the proposed site is a mile and a half (1 ½).

36. The Intervenor's domestic wells are in the Hillsview aquifer. Given the distance between the Intervenor's domestic wells and the proposed location of Applicants' well, witness Goodman testified that there is not likely to be an adverse impairment of existing rights to domestic use of water. The closest well is one and one-half miles from this site and is owned by Dale Heib.

37. More particularly, Goodman testified that under the "ideal scenario" where water would be pumped at high capacity at 750 gallons per minute, where the water table is shallow, and where there is prolific sand and gravel, the cone of influence would be the largest and the actual measurable drawdown from wells in this area would be 1,320 feet at most.

38. Further, the high capacity irrigation wells used by the Applicant will need to maintain water at a high enough level so that they can maintain their diversion rate. If Applicant pumps water so that it causes a large cone of influence drawing water from a wide area, the Applicant will have a lesser diversion rate. Generally, irrigators will not, as a management matter, continue to pump water in such conditions.

39. Goodman's conclusions are based on his experience and background, his analysis of the County Study, irrigation information filed with the Water Rights Program, and the nearby DENR observation wells.

40. In addition to the Goodman conclusions concerning the absence of likelihood of interference, Chief Engineer proposed two qualifications, which the Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that Applicant install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefore should provide reliable independent data. The precise location of the monitoring well is to be submitted by Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that approval of a monitoring well will be conditioned on its being located in an area between the Intervenor's domestic

well and the irrigation diversions authorized by Permit No. 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before Applicants' irrigation begins under Permit 6809A-3 (and Permit 2951A-3). The monitoring well is to be the same monitoring well as that required in Permit 2951A-3. The second qualification is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in domestic wells that are adequate wells.

41. In light of the Goodman testimony that there is unlikely to be adverse impairment of existing rights (as well as the proposed qualifications on the permit) this Board finds that granting the proposed application will not result in an impairment of existing rights to domestic use of water.

42. Granting the Application will not result in an impairment of existing rights.

43. The Findings of Fact, Conclusions of Law, Final Decision and Order of May 7, 2008 are adopted herein and incorporated by this reference as Exhibit 1.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.

2. This matter involves two amendments to water permits and is governed by SDCL 46-5-30.4 and SDCL 46-5-31. Neither of the amendments to permits involved here seeks to increase the rate of diversion or increase the volume of water to be appropriated under the original water permits. SDCL 46-5-30.4 requires a finding that amendments may not impair existing rights, but does not require a finding as to whether water is available from the aquifer.

In other words, although consideration of new permits would require a determination as to whether “there is a reasonable probability that there is unappropriated water available” under SDCL 46-2A-9, the present matters involve amendments to permits under SDCL 46-5-30.4. Reference in 46-5-30.4 to the procedural requirements of 46-2A apply to the water permitting procedure, the time for construction and other procedural and regulatory requirements, but not to the standard for approval of permits in SDCL 46-2A-9. Consequently, although evidence was presented demonstrating that there is a reasonable probability that there is unappropriated water available for the Applicant’s proposed use, and this Board has so found, a determination on that specific issue is not required as a matter of law. Further, the previously issued permits already required such a finding and are legally in force. Moreover, even if such a Conclusion of Law were required, this Board concludes that this standard has been met.

3. SDCL 46-5-30.4 and SDCL 46-5-31 refer to SDCL 46-5-33 and SDCL 46-5-34. SDCL 46-5-33 and SDCL 46-5-34 contain restrictions relating to situations where irrigation permits are amended by abandoning the permitted acreage and using the new water permits at new locations. Those statutes are inapplicable here.

4. The proposed diversions can be developed without unlawful impairment of existing water rights.

5. This Board has repeatedly concluded that using water permits for irrigation is a beneficial use and in the public interest. The use is beneficial

within the meaning of SDCL 46-1-6(3) in that it is reasonable and useful and beneficial to the appropriator in terms of enhanced agricultural production and economic benefit and, at the same time, is consistent with the interest of the public of this state in the best utilization of water supplies, particularly when considering the policy set forth in SDCL 46-1-4. The amendment of irrigation permits to conform to the best use for agriculture production is also in the public interest.

6. The proposed uses are beneficial uses.

7. It is in the public interest to grant the Applications subject to the qualifications set forth in the Final Decision below.

From the forgoing Findings of Facts and Conclusion of Law, the Board now enters the following:

FINAL DECISION AND ORDER

The applications for Water Permit Nos. 2951A-3 and 6908A-3 are hereby granted with the following qualifications:

A. The wells approved under Permit No's 2951A-3 and 6908A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

B. The wells authorized by Permit No's 2951A-3 and 6908A-3 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.

C. Prior to the use of water from either production well authorized by Permit No's 2951A-3 and 6908A-3, the Permit Holder shall employ the services of a South Dakota licensed well driller to install monitoring or observation wells near the location of the production wells authorized by these permits. The location of the observation wells shall be submitted to the Chief Engineer for approval prior to issuance of Water Permit No's 2951A-3 and 6908A-3. The Chief Engineer, or his representative, shall be granted access for the purpose of monitoring water levels in these wells.

D. Under Permit No. 6908A-3, the permit holder shall maintain a distance of at least 1,320 feet between the well intended under this permit, existing production wells, and the well authorized under Permit No. 2951A-3.

E. These permits are approved subject to the irrigation water use questionnaire being submitted each year.

DATED this ____ day of October, 2009.

BY THE BOARD:

Tim Bjork, Chairman

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OCT - 2 2009

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION) CERTIFICATE OF SERVICE
No. 2951A-3 and No. 6908-3,)
AMAN BROTHERS)

The undersigned hereby certifies that true and correct copies of Water Management Board's Rulings on Applicant's Proposed Findings of Fact, Conclusions of Law, Final Decision and Order and DENR Response to Proposed Findings of Fact and Conclusions of Law, and Final Decision and the proposed Findings of Fact, Conclusions of Law, Final Decision and Order in the above matter were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 1st day of October, 2009:

Tom Tobin
P.O. Box 1456
Aberdeen, SD 57402

Tim Bjork
112 W. Oak St.
Pierre, SD 57501

Rodney Freeman, Jr.
Attorney at Law
P.O. Box 176
Huron, SD 57350-0176

Lindsey Riter-Rapp
P.O. Box 280
Pierre, SD 57501

Leo Holzbauer
P.O. Box 877
Wagner, SD 57380

Francis Brink
1214 S. Wells St.
Aberdeen, SD 57401-7351

Jim Hutmacher
802 E. Seventh St.
Oacoma, SD 57365

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

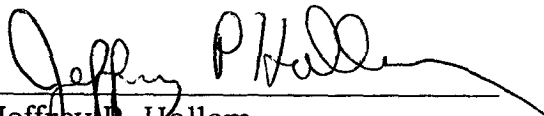
Bernita Loucks
219 42nd St.
Rapid City, SD 57702-2123

Diane Best
Assistant Attorney General
300 N. Dakota Ave., Suite 403
Sioux Falls, SD 57104

and by Interoffice Mail to:

Garland Erbele, Chief Engineer
DENR Water Rights Program
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501

Dated this 1st day of October, 2009.



Jeffrey R. Hallem
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
Counsel for South Dakota DENR
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

October 13, 2009

NOTICE

TO: Lindsey Riter-Rapp
PO Box 280
Pierre SD 57501

Thomas Tobin
PO Box 1456
Aberdeen SD 57402-1456

FROM: Garland Erbele, Chief Engineer
Water Rights Program, DENR *Garland Erbele*

SUBJECT: Adoption of Finding of Fact, Conclusion of Law and Final Decision in the matter
of Water Permit Application Nos. 2951A-3 and 6908A-3

This is to notify you that the Water Management Board rulings and the Final Decision, including Findings of Fact and Conclusions of Law, were adopted October 7, 2009, by the Water Management Board in the matter of Water Permit Nos. 2951A-3 and 6908A-3, Aman Brothers. A copy of the Board rulings and signed Findings of Fact, Conclusions of Law and Final Decision are enclosed.

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: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General, 300 N. Dakota Ave., Suite 403, Sioux Falls SD

CERTIFICATION

I hereby certify that on October 13, 2009, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 13, 2009, regarding preparation of Findings of Fact, Conclusions of Law and Final Decision in the matter of Application Nos. 2951A-3 and 6908A-3 addressed as stated below:

Lindsey Riter-Rapp
PO Box 280
Pierre SD 57501

Thomas Tobin
PO Box 1456
Aberdeen SD 57402-1456

Diane Best
Assistant Attorney General
300 N. Dakota Avenue, Suite 403
Sioux Falls SD 57104

A copy of the above described Notice was sent Inter-office to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



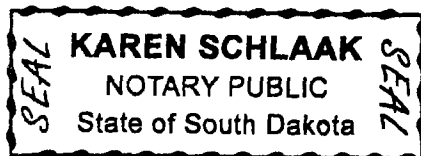
Gail Jacobson
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of October, 2009.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
WATER PERMIT	)	
APPLICATION NOS.	)	FINDINGS OF FACT,
2951A-3 and 6908A-3,	)	CONCLUSIONS OF LAW,
Aman Brothers	)	FINAL DECISION AND ORDER

This matter having come on for hearing before the South Dakota Water Management Board on the 8th day of July, 2009 and the Applicant appearing personally and by and through attorneys Riter, Rogers, Wattier and Northrup, LLP of Pierre, South Dakota and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program and Tom Tobin of Aberdeen, South Dakota appearing on behalf of Intervenor, Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman, and the Board having considered the evidence presented, all records and documents on file herein and good cause appearing therefore, now enters the following Findings of Facts and Conclusion of Law:

FINDINGS OF FACT

Application No. 2951A-3

1. Application No. 2951A-3 (hereinafter the "Application") proposes to change the location of the authorized well under Water Right No. 2951-3.
2. Water Right No. 2951-3 appropriates 1.78 cubic feet of water per second ("CFS") or approximately 800 gallons per minute from one well approximately 112 feet deep located about 60 feet south of the center of the

southeast quarter of Section 33 to irrigate 138 acres located in the southeast quarter of Section 33; all in Township 126 North, Range 71 West, McPherson County. This Application proposes to move the location of the well about 1,860 feet to the northeast (northeast quarter of the southeast quarter of Section 33) from the present location. The water source remains the Hillsview aquifer and no increase in the diversion rate is authorized by this Application.

3. The Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage in McPherson County. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.

4. Test drilling by the Applicant indicates favorable tests at this site. Logs provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to a depth of 70 feet. This test well completion report indicates a static water level of about 14 feet below land surface. Also, a test well drilled beside the existing production well indicates the original well was screened at too deep an interval and was never a good production well.

5. In addition to the test wells, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are located within one and one-half miles of this proposed well site. Water levels for these wells show good response to climatic conditions, rising during wet periods (recharge) and gradually

declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. The effects of pumping are also not obvious from an examination of the hydrographs for M-80G and MP-80H.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit Application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie aquifer, reviewed information obtained from the two state observation wells (MP-80G MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.

7. Witness Goodman relied in part on the County Study conducted by the South Dakota Geological Survey in 1982 which includes an analysis of the Hillsvie aquifer. Goodman testified that the County Study reported the Hillsvie aquifer is capable of supporting wells producing up to 500 gallons per minute. Based on the irrigation wells that have actually been drilled since that time and the irrigation reports received by the DENR, Goodman testified that the Hillsvie aquifer is actually more productive and actually supports wells of 900 gpm.

He further testified that the estimated amount of available water addressed in the County Study was the total recoverable water in the aquifer.

8. There are two existing Water Right Nos. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres) and 2893-3 (one well, 76 feet deep, of 2.0 cfs, irrigation of 202 acres) located within one mile of this proposed diversion point. The well for No. 4129-3 is approximately 2,850 feet northwest and the well for No. 2893-3 is approximately 2,700 feet east both from this proposed well site. Also, there is an existing Water Permit No. 6908-3 (one well, 110 feet deep, 2.0 cfs, irrigation of 160 acres) with a proposed well located approximately 1,870 feet southeast of this application site. There is an application (No. 6908A-3) to move this proposed well to another site. At this distance between wells draw down should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

9. Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at the distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained in the Goodman report and the testimony of all the parties, this Board finds that Applicant's use and proposed diversion can be developed without unlawful impairment of existing appropriative water rights.

10. The Aman Brothers have never experienced any problems with the existing irrigation wells located on their property.

11. This request proposes to change the place of diversion for existing Water Right 2951-3, and therefore no additional water is to be appropriated. The propriety of the issuance of the original Water Right 2951-3 will not be revisited in this proceeding. In particular, this Board recognizes that when Water Right 2951-3 was issued in 1976, the present water law was in place, which requires a finding of whether there was "a reasonable probability that there is unappropriated water available for the proposed use." At this time, no additional finding is necessary on the availability of water from the Hillview aquifer since no additional water is to be appropriated. Moreover, no evidence was presented at hearing that would demonstrate that the aquifer size, recharge rate, or other aquifer characteristics of usage of water from this aquifer warrant a different finding. Finally, witness James Goodman testified that water is available from this aquifer. The Board credits his testimony as to the availability of water from this aquifer.

12. Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman intervened in this matter and are opposed to the granting of the Application as proposed.

13. Allen Heib was the only intervenor to testify in these proceedings. He lives a mile and a half (1 ½) north of sections 33 and 34. He has wells on his property for domestic and livestock use. His closest well to the proposed site is a mile and a half (1 ½).

14. The Intervenor's domestic wells are in the Hillview aquifer. Given the distance between the Intervenor's domestic wells and the proposed location

of Applicants' well, witness Goodman testified that there is not likely to be an adverse impairment of existing rights to domestic use of water. The closest well is one and one-half miles from this site and is owned by Dale Heib.

15. More particularly, Goodman testified that under the "ideal scenario" where water would be pumped at high capacity at 750 gallons per minute, where the water table is shallow, and where there is prolific sand and gravel, the cone of influence would be the largest and the actual measurable drawdown from wells in this area would be 1,320 feet at most.

16. Further, the high capacity irrigation wells used by the Applicant would need to maintain water in the aquifer at a high enough level so that they can maintain their diversion rate. If Applicant were to pump water so that it causes a large cone of influence drawing water from a wide area, Applicant would have a lesser diversion rate. Accordingly, irrigators will not, as a management matter, cause draw down that would impair their own operations.

17. Goodman's conclusions are based on his experience and background, his analysis of the County Study, irrigation information filed with the Water Rights Program, and the nearby DENR observation wells.

18. In addition to the Goodman conclusions concerning the absence of likelihood of interference, the Chief Engineer proposed two qualifications, which this Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in

domestic wells that are adequate wells. The other qualification is the installation of a monitoring well.

19. Under the monitoring well qualification, the Applicant must install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in the nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefor should provide reliable independent data. The precise location of the monitoring well is to be submitted by the Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that any approval of a monitoring well will be conditioned on it being located in an area between Intervenor's domestic wells and the irrigation diversions authorized by Permit 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before the Applicant's irrigation begins under Permit 2951A-3 (and Permit 6809A-3). This monitoring well is to be the same monitoring well as that required in Permit 6809A-3.

20. In light of the Goodman testimony that there is unlikely to be adverse impairment of existing rights (as well as the proposed qualifications on the permit), this Board finds that granting the proposed Application will not result in an impairment of existing rights to domestic use of water.

21. Granting the Application will not result in an impairment of existing rights.

22. The Findings of Fact, Conclusions of Law, Final Decision and Order dated May 7, 2008 are adopted herein and incorporated by this reference as Exhibit 1.

Application No. 6908A-3

23. Aman Brothers filed Application No. 6908A-3 (hereinafter the "Application") to amend Water Permit 6908-3 to change the location of the well and include irrigation of acreage authorized by Water Right No. 2893-3.

24. Water Permit No. 6908-3 appropriates 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well approximately 110 feet deep located in the northeast quarter of the southwest quarter of Section 34 to irrigate 160 acres located in the west half of the southwest quarter and the south half of the northwest quarter; all in Section 34, Township 126 North, Range 71 West, McPherson County. The Application proposes to expand the area in which the diversion point authorized by Water Permit No. 6908-3 may be located to include the NW $\frac{1}{4}$ SW $\frac{1}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, Township 126 North, Range 71 West, McPherson County. The Applicant is requesting that irrigation of the entire acreage covered by Permit No. 6908-3 and Water Right No. 2893-3 be allowed from either of the two authorized diversion points. No increase in the diversion rate or number of acres irrigated is authorized by this Application.

25. The Hillsvie aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage in McPherson

County. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.

26. Test drilling by the Applicant indicates favorable tests in the area. Logs provided by Manikowski Well Drilling indicates sand and gravel from one foot below land surface to depths of 70 and 74 feet. A third test also has the surface sand and gravel to 70 feet but also indicates sand and coarse gravel from 97 to 120 feet all below land surface. One of the test wells indicates a static water level of about 28.5 feet below land surface.

27. In addition to the test wells, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within one and one-half miles of this proposed well site. Water levels for these wells show good response to climatic conditions, rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. The effects of pumping are also not obvious from an examination of the hydrographs, MP-80H and MP-80G.

28. DENR witness, James Goodman, a natural resources engineer, reviewed the permit Application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillview aquifer, reviewed information obtained from the two state observation wells (MP-80G MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology

and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.

29. Witness Goodman relied in part on the County Study conducted by the South Dakota Geological Survey in 1982 which includes an analysis of the Hillsvie aquifer. Goodman testified that the County Study reported the Hillsvie aquifer is capable of supporting wells producing up to 500 gallons per minute. Based on the irrigation wells that have actually been drilled since that time and the irrigation reports received by the DENR, Goodman testified that the Hillsvie aquifer is actually more productive and actually supports wells of 900 gpm.

He further testified that the estimated amount of available water addressed in the County Study was the total recoverable water in the aquifer.

30. There are two existing irrigation wells within one-half mile of this proposed well. These are Water Rights No. 4129-3 (one well, 70 feet deep, 188 cfs, irrigation of 272 acres) and Water Right No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres). Also, there is an existing Water Permit Application No. 2951A-3 (one well, 70 feet deep, 1.78 cfs, irrigation of 138 acres) with a proposed well located potentially near the proposed site. The distance between the wells is unknown. The advertised locations could allow a spacing of 1,320 feet between wells under this permit, Permit No. 2951A-3 and Water Right No. 4129-3. The well authorized by Water Right No. 4129-3 would be about 3,200 feet northwest of this Application if this well is drilled on a line

between Permit No. 2951A-3 and Water Right No. 2893-7. At this distance between wells down drawn should not be significant and it is not expected that interference will be a concern. The observation well record reinforces this conclusion.

31. Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at the distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained in the Goodman report and the testimony of all the parties, this Board finds that the proposed diversion and use can be developed without unlawful impairment of existing appropriative water rights.

32. The Aman Brothers have never experienced any problems with the existing irrigation wells located on their property.

33. This request proposes to change the place of diversion and place of use for an existing permit and therefore no additional water is to be appropriated. This Board authorized issuance of the original Permit 6809-3 in 2008 and it was affirmed by the Fifth Circuit Court. This Board will not revisit the propriety of the issuance of Permit 6809-3. In particular, this Board found that there is a "reasonable probability that there is unappropriated water available for the Applicant's proposed use" from the Hillview aquifer for this permit. Finding of Fact 7. This Finding is final. Because no additional water

will be appropriated when the presently pending permit is granted, there is no need to make an additional finding concerning availability of water from the Hillsvie Aquifer. Further, no evidence was presented that the aquifer size, recharge rate, or any other aquifer characteristic or use has changed since Permit 6809-3 was issued. Finally, the witness James Goodman testified that water is available from this aquifer.

34. Allen Heib, Deloris Heib, Lorraine Mohr, Dale Mohr, Raymond Graff, Herbert Graff, Dale Graff and Rudy Aman intervened in this matter and are opposed to the granting of the Application as proposed.

35. Allen Heib was the only intervenor to testify in these proceedings. He lives a mile and a half (1 ½) north of sections 33 and 34. He has wells on his property for domestic and livestock use. His closest well to the proposed site is a mile and a half (1 ½).

36. The Intervenor's domestic wells are in the Hillsvie aquifer. Given the distance between the Intervenor's domestic wells and the proposed location of Applicant's well, witness Goodman testified that there is not likely to be an adverse impairment of existing rights to domestic use of water. The closest well is one and one-half miles from this site and is owned by Dale Heib.

37. More particularly, Goodman testified that under the "ideal scenario" where water would be pumped at high capacity at 750 gallons per minute, where the water table is shallow, and where there is prolific sand and gravel, the cone of influence would be the largest and the actual measurable drawdown from wells in this area would be 1,320 feet at most.

38. Further, the high capacity irrigation wells used by the Applicant will need to maintain water at a high enough level so that they can maintain their diversion rate. If Applicant pumps water so that it causes a large cone of influence drawing water from a wide area, the Applicant will have a lesser diversion rate. Generally, irrigators will not, as a management matter, continue to pump water in such conditions.

39. Goodman's conclusions are based on his experience and background, his analysis of the County Study, irrigation information filed with the Water Rights Program, and the nearby DENR observation wells.

40. In addition to the Goodman conclusions concerning the absence of likelihood of interference, Chief Engineer proposed two qualifications, which the Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that Applicant install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefore should provide reliable independent data. The precise location of the monitoring well is to be submitted by Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that approval of a monitoring well will be conditioned on its being located in an area between the Intervenor's domestic

well and the irrigation diversions authorized by Permit No. 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before Applicants' irrigation begins under Permit 6809A-3 (and Permit 2951A-3). The monitoring well is to be the same monitoring well as that required in Permit 2951A-3. The second qualification is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in domestic wells that are adequate wells.

41. In light of the Goodman testimony that there is unlikely to be adverse impairment of existing rights (as well as the proposed qualifications on the permit) this Board finds that granting the proposed application will not result in an impairment of existing rights to domestic use of water.

42. Granting the Application will not result in an impairment of existing rights.

43. The Findings of Fact, Conclusions of Law, Final Decision and Order of May 7, 2008 are adopted herein and incorporated by this reference as Exhibit 1.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.

2. This matter involves two amendments to water permits and is governed by SDCL 46-5-30.4 and SDCL 46-5-31. Neither of the amendments to permits involved here seeks to increase the rate of diversion or increase the volume of water to be appropriated under the original water permits. SDCL 46-5-30.4 requires a finding that amendments may not impair existing rights, but does not require a finding as to whether water is available from the aquifer.

In other words, although consideration of new permits would require a determination as to whether “there is a reasonable probability that there is unappropriated water available” under SDCL 46-2A-9, the present matters involve amendments to permits under SDCL 46-5-30.4. Reference in 46-5-30.4 to the procedural requirements of 46-2A apply to the water permitting procedure, the time for construction and other procedural and regulatory requirements, but not to the standard for approval of permits in SDCL 46-2A-9. Consequently, although evidence was presented demonstrating that there is a reasonable probability that there is unappropriated water available for the Applicant’s proposed use, and this Board has so found, a determination on that specific issue is not required as a matter of law. Further, the previously issued permits already required such a finding and are legally in force. Moreover, even if such a Conclusion of Law were required, this Board concludes that this standard has been met.

3. SDCL 46-5-30.4 and SDCL 46-5-31 refer to SDCL 46-5-33 and SDCL 46-5-34. SDCL 46-5-33 and SDCL 46-5-34 contain restrictions relating to situations where irrigation permits are amended by abandoning the permitted acreage and using the new water permits at new locations. Those statutes are inapplicable here.

4. The proposed diversions can be developed without unlawful impairment of existing water rights.

5. This Board has repeatedly concluded that using water permits for irrigation is a beneficial use and in the public interest. The use is beneficial

within the meaning of SDCL 46-1-6(3) in that it is reasonable and useful and beneficial to the appropriator in terms of enhanced agricultural production and economic benefit and, at the same time, is consistent with the interest of the public of this state in the best utilization of water supplies, particularly when considering the policy set forth in SDCL 46-1-4. The amendment of irrigation permits to conform to the best use for agriculture production is also in the public interest.

6. The proposed uses are beneficial uses.

7. It is in the public interest to grant the Applications subject to the qualifications set forth in the Final Decision below.

From the forgoing Findings of Facts and Conclusion of Law, the Board now enters the following:

FINAL DECISION AND ORDER

The applications for Water Permit Nos. 2951A-3 and 6908A-3 are hereby granted with the following qualifications:

A. The wells approved under Permit No's 2951A-3 and 6908A-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under these permits shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

B. The wells authorized by Permit No's 2951A-3 and 6908A-3 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.

C. Prior to the use of water from either production well authorized by Permit No's 2951A-3 and 6908A-3, the Permit Holder shall employ the services of a South Dakota licensed well driller to install monitoring or observation wells near the location of the production wells authorized by these permits. The location of the observation wells shall be submitted to the Chief Engineer for approval prior to issuance of Water Permit No's 2951A-3 and 6908A-3. The Chief Engineer, or his representative, shall be granted access for the purpose of monitoring water levels in these wells.

D. Under Permit No. 6908A-3, the permit holder shall maintain a distance of at least 1,320 feet between the well intended under this permit, existing production wells, and the well authorized under Permit No. 2951A-3.

E. These permits are approved subject to the irrigation water use questionnaire being submitted each year.

DATED this 7th day of October, 2009.

BY THE BOARD:


Tim Bjork, Chairman

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	WATER MANAGEMENT BOARD'S
WATER PERMIT	)	RULINGS ON APPLICANT'S
APPLICATION NOS.	)	PROPOSED
2951A-3 and 6908A-3,	)	FINDINGS OF FACT,
Aman Brothers	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER
	)	AND
	)	DENR RESPONSE TO
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION

Pursuant to the directions of the Water Management Board, counsel for Applicant submitted proposed Findings of Fact, Conclusions of Law, Final Decision and Order. Subsequently, counsel for the Department of Environment and Natural Resources, Water Rights Program, submitted DENR Response to Proposed Findings of Fact and Conclusions of Law and Final Decision; no proposals or responses were received from Intervenors. The Board, upon review of the parties' submissions and the administrative record, and having orally entered its decision, hereby enters the following rulings:

A. Applicant's proposed Introductory Paragraph and Findings of Fact 1, 2, 6, 8, 9, 10, 11, 12, 13, 16, 18, 20, 21, 22, 23 and 24 are adopted by the Board as consistent with the administrative record and the Board's oral decision.

B. Applicant's proposed Finding of Fact No. 3 is adopted by the Board as consistent with the administrative record and the Board's oral decision, as modified to include the modification set forth in DENR Response No. 2.

C. Applicant's proposed Finding of Fact No. 4 is adopted by the Board as consistent with the administrative record and the Board's oral decision, as modified to include the modification set forth in DENR Response No. 3.

D. Applicant's proposed Finding of Fact No. 5 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 4.

E. Applicant's Finding of Fact No. 7 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 6 as further modified by the Board to be more consistent with applicable South Dakota law.

F. Applicant's proposed Finding of Fact No. 14 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 10 together with the additional modification of inserting ", McPherson County" at the end of the first sentence.

G. Applicant's proposed Finding of Fact No. 15 is adopted by the Board as consistent with the administrative record and the Board's oral decision as modified to include the modification set forth in DENR Response No. 11, with

the additional modification of “in” inserted between “storage” and “McPherson County” in the second sentence as modified.

H. Applicant’s proposed Finding of Fact No. 17 is adopted by the Board as consistent with the administrative record and the Board’s oral decision as modified to include the modification set forth in DENR Response No. 12.

I. Applicant’s proposed Finding of Fact No. 19 is adopted by the Board as consistent with the administrative record and the Board’s oral decision as modified to include the modification set forth in DENR Response No. 13 as further modified by the Board.

J. Applicant’s proposed Conclusion of Law No. 1 is adopted by the Board as consistent with South Dakota Law.

K. Applicant’s proposed Conclusion of Law No. 2 is rejected by the Board for the reasons set forth in DENR Response Nos. 9, 17 and 18 as not consistent with applicable South Dakota law regarding amendments to existing water rights and permits.

L. Applicant’s proposed Conclusion of Law No. 3 is substantially adopted as consistent with the Board’s oral decision, the Board’s rulings set forth above and South Dakota law, as modified to include the modification proposed in DENR Response No. 20, and to reflect the multiple applications before the Board and that the rights not being impaired are “water” rights. The revised Conclusion of Law is as follows:

The proposed diversions can be developed without unlawful impairment of existing water rights.

M. Applicant's proposed Conclusion of Law No. 4 is adopted by the Board as consistent with the Board's oral decision, the Board's rulings as set forth above, and South Dakota law, as modified below to reflect the fact that the Conclusions concern multiple applications. The revised Conclusion of Law is as follows:

The proposed uses are beneficial uses.

N. Applicant's proposed Conclusion of Law No. 5 is adopted by the Board as consistent with the Board's oral decision, the Board's rulings as set forth above, and South Dakota law, with the correction of the word "application" to "applications".

O. Applicant's proposed Final Decision and Order is substantially adopted by the Board as consistent with the Board's oral decision, the Board's rulings as set forth above, and South Dakota law, as modified to include the modifications set forth in DENR Response Nos. 22, 23 and 24, and that Item D under the Final Decision and Order be further modified to reflect the multiple applications and to state that the minimum distance requirement under Permit No. 2908A-3 also includes the well authorized under Permit No. 2951A-3. Item D of the Final Decision and Order is modified as follows:

D. Under Permit No. 6908A-3, the permit holder shall maintain a distance of at least 1,320 feet between the well intended under this permit, existing production wells, and the well authorized under Permit No. 2951A-3.

P. DENR Response Nos. 2, 3, 4, 7(a), 7(b), 7(c), 7(d), 7(e), 7(g), 8, 10, 11, 12, 15(a), 15(b), 15(c), 15(d), 15(g), 16, 18, 19, 20, 21, 22, 23, and 24 are

adopted by the Board as being consistent with the administrative record, South Dakota law, the Board's oral decision and the Board's rulings set forth above.

Q. DENR Response No. 5 is adopted as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above with the deletion of the first and second sentences in the second paragraph of the Response. Goodman testified that he did not rely upon the calculation of a recharge rate in the County Study for his opinions. The Board also adopts DENR Response No. 5 as modified to be included as a factual finding for Application No. 6908A-3.

R. DENR Response 6 is adopted by the Board as consistent with the administrative record, South Dakota law, the Board's oral decision, and the Board's rulings set forth above, as modified changing "appropriative water permits" to "appropriative water rights."

S. DENR Response 7(f) is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above, as modified below to reflect that the actual location of the monitoring well was not delineated in the Chief Engineer's proposed qualifications, but rather, through the testimony of witness Goodman, that it was contemplated that the observation well will be located in an area between Intervenor's domestic wells and the irrigation diversions authorized by the two permits. Response 7(f), as adopted, reads as follows:

Under the monitoring well qualification, Applicant must install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse

effects on water levels in nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefor should provide reliable independent data. The precise location of the monitoring well is to be submitted by the Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that any approval of a monitoring well will be conditioned on its being located in an area between Intervenor's domestic wells and the irrigation diversions authorized by Permit 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before Applicant's irrigation begins under Permit 2951A-3 (and Permit 6809A-3). This monitoring well is to be the same monitoring well as that required in Permit 6809A-3.

T. DENR Response No. 9 is adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above as corrected, changing "Permit 2951-3" to "Water Right 2951-3" where it occurs in the Response.

U. DENR Response No. 13 is substantially adopted as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above as further modified to be consistent with Board Ruling E. concerning Applicant's proposed Finding of Fact 7 and DENR No. 6. Revised Finding of Fact 19 is as follows:

Witness Goodman testified that interference with other appropriative water rights (irrigation use) is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at the distance between wells, drawdown is not expected to be significant. In light of his testimony as well as the hydrographs contained in the Goodman report and the testimony of all the parties, this Board finds that the proposed diversion and use can be developed without unlawful impairment of existing appropriative water rights.

V. DENR Response No. 14 is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above, as modified by deleting the last sentence of the Response that is inconsistent with DENR Response No. 24 and the Board's rulings set forth above.

W. DENR Response No. 15(f) is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above, as modified below to be consistent with Board Ruling S above concerning the location of the monitoring well. Response 15(f) as adopted by the Board reads as follows:

In addition to the Goodman conclusions concerning the absence of likelihood of interference, Chief Engineer proposed two qualifications, which the Board adopts, that will negate the likelihood of impairment and provide for specific information to aid in resolving disputes regarding claims of impairment. One of those qualifications is that Applicant install a monitoring or observation well. The purpose of locating this monitoring well is to enable the parties and the DENR to determine whether the irrigation diversions authorized here cause adverse effects on water levels in nearby domestic wells. Monitoring wells are not pumped or used for other purposes and therefor should provide reliable independent data. The precise location of the monitoring well is to be submitted by Applicant and is subject to approval by the Chief Engineer prior to construction. Based upon the testimony of Goodman, it is contemplated that approval of a monitoring well will be conditioned on its being located in an area between the Intervenor's domestic well and the irrigation diversions authorized by Permit No. 2951A-3 and Permit 6809A-3. The monitoring well is to be completed before Applicants' irrigation begins under Permit 6809A-3 (and Permit 2951A-3). The monitoring well is to be the same monitoring well as that required in Permit 2951A-3. The second qualification is that the Applicant must control withdrawals so that there is not a reduction of needed water supplies in domestic wells that are adequate wells.

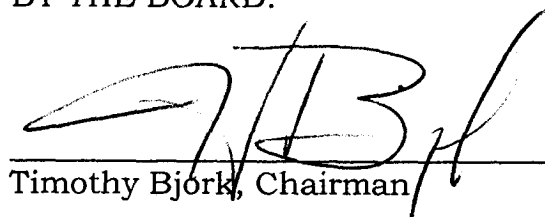
W. DENR Response 17 is substantially adopted by the Board as consistent with the administrative record, the Board's oral decision, and the Board's rulings set forth above with correction of the third sentence to accurately state the portion of Board's Finding of Fact No. 7 concerning Permit 6809A-3. The revised third sentence of the Response is as follows:

In particular, this Board found that there is a "reasonable probability that there is unappropriated water available for the Applicant's proposed use" from Hillsview aquifer for this permit. Finding of Fact No. 7.

The Board attorney is directed to prepare Findings of Fact, Conclusions of Law, and Final Decision and Order consistent with the above rulings to be executed by the Chairman of the Board or Board designee without further motion or hearing.

Dated this 7th day of October, 2009.

BY THE BOARD:



Timothy Bjork, Chairman

TONNER, TOBIN & KING, LLP

ATTORNEYS AT LAW
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

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FEB - 5 2010
WATER RIGHTS
PROGRAM

ATTORNEYS:
THOMAS P. TONNER
THOMAS M. TOBIN
HIRAM I. KING

TELEPHONE: (605) 225-1000
FAX: (605) 225-0625
E-Mail: ttobin@nvc.net

RESEARCH & INVESTIGATION:
CHARLES A. BENSEN

February 3, 2010

Garland Erble
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: Application Numbers 2951-A-3 and 6908A-3

Dear Garland

I am writing this letter on behalf of Allen Hieb and other interveners. Previously we had written and indicated that we were having severe problems with the domestic water supplies, which coincides with the operation of the irrigation systems in the general vicinity of the properties of the interveners. We expected that the department would have issued an immediate cease of the system order to the irrigators once the problems were brought to your attention. It was a condition of the permits that the operation of the irrigation systems not interfere with the domestic water supplies.

At every hearing we had raised the issue that there is no policy or strategy to enforce the conditions granted along with the water permits and the irrigation permits granted on to the Amans. The domestic water users continue to have problems while the irrigators continue to irrigate while the department does nothing but attempt to set up some type of monitoring wells for a long period of time. The inability of the interveners to utilize the previous water systems is an emergency to them. The problems that were documented in previous correspondence to you occurred in a year that most would have been considered a "wet year".

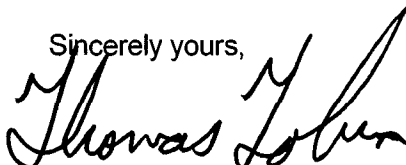
Does the Department have a policy or strategy in place that would be implemented once the domestic water user substantiates their complaint? If not, then the conditions placed with the granting of the water permits are empty promises to the interveners. We know there were numerous problems in trying to drill test wells in the area. The failure of the test well drilling over a large area substantiates our claim that the aquifer present in the region is not a uniformed water pool that we are led to believe exists in that area. We do not now, or have ever agreed, that the draw down of the water from the irrigation pumps is an even draw down on the surface of the aquifer. We believe that the wells are pumping from spring fed areas that can't keep up with the rates of pumping and is affecting the domestic water users. If there is something in your policy that the interveners need to be doing in order to get the department's attention or to activate the strategies or policies to enforce the condition placed on the permits, please let me know and we will comply with the policies. If you feel that you have addressed our prior concerns and notices, please let me know how you addressed those concerns.

February 3, 2010

If you should have any questions, please do not hesitate to contact me.

Thanking you, I remain,

Sincerely yours,



Thomas M. Tobin

TMT:jmj

Cc: Allen Hieb
Rudy Aman
Dale Graff
Raymond Graff
Herbert Graff



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

March 5, 2010

Mr. Thomas M. Tobin
Tonner, Tobin & King, LLP
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

Dear Mr. Tobin

Thank you for your letter on behalf of Allen Hieb and others concerning the water permit issued to Harlan Aman for irrigation. Your letter expresses concern over the protection of domestic water supplies afforded to your clients.

As you know, under state water law the domestic use of water is the highest use of water. The Water Management Board in issuing the permit conditioned the permit to protect domestic use and required Mr. Aman to install a monitoring well. DENR also installed two additional monitoring wells and there are now five monitoring wells in the immediate vicinity that DENR can use to gather data on the effects of pumping the irrigation wells. On two of the wells there is over 30 years of record. DENR has measured water levels in the new wells and starting this spring will measure water levels on roughly a two week schedule until fall in all five of the wells. Water levels gathered from these wells are used to detect any impacts of pumping the irrigation wells. Data gathered to date, does not indicate that the irrigation wells are impacting Mr. Heib's domestic wells.

Your client always has the right to file a complaint with the Water Rights program if he believes that their domestic use is being adversely impacted as a result of the irrigation well. DENR will perform an investigation and make a determination based on the results of the investigation. Either party has the option of appealing the results of the investigation to the WMB or ultimately to circuit court.

Hopefully this helps answer your questions. I know this is an important matter to your clients.

Sincerely,

Garland Erbele, Chief Engineer
DENR



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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March 31, 2010

Harlan Aman
Aman Brothers
33788 121st Street
Hosmer SD 57448

Dear Mr. Aman:

Water Permit Nos. 2951A-3 and 6908A-3 for irrigation were approved by the Water Management Board subject to conditions. A condition required you as the permit holder to install a monitoring well near the location of the production wells. The Board's decision included that the location of the monitoring well shall be submitted to the Chief Engineer for approval prior to issuance of the permits. Since we have not received a submittal from you, the water permits have not been formally issued.

As you know, DENR installed two monitoring wells and we understand that after a number of attempts, Aman Brothers has also a monitoring well in place. I request that you submit a map showing the location of the monitoring well and the well completion report for the monitoring well.

You do not have a legal right to irrigate the lands authorized by Water Permit Nos. 2951A-3 and 6908A-3 until the Chief Engineer issues the permits. The water permits can not be issued until the monitoring well is formally approved by the Chief Engineer.

If you have any questions, please feel free to contact me.

Sincerely,

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



United States Department of Agriculture
Farm Service Agency

PLSS: 26_126N_71W
Farm: 4200

McPherson County
1:8,204



RECEIVED

March 10, 2010

Wetland Determination Identifiers

- Restricted Use
- ▲ Limited Restrictions
- Exempt from Conservation Compliance Provisions

Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

APR - 8 2010

WATER RIGHTS
PROGRAM

Common Land Units

Non Cropland

2008 Ortho-Photography - Not to Scale



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PIERRE, SOUTH DAKOTA 57501-3182
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April 12, 2010

Harlan Aman
33788 121st Street
Hosmer SD 57448

Dear Mr. Aman:

The Water Management Board approval of Water Permit Nos. 2951A-3 and 6908A-3 placed a condition that the permit holder install a monitoring or observation well near the production wells authorized by the permit. The condition further requires the location of the observation wells to be submitted to the Chief Engineer for approval prior to issuance of the water permits.

The Water Rights Program has received a well completion report from Manikowski Well Drilling for this monitoring well and a FSA aerial map showing the location of the monitoring well. These submittals are construed as your request for approval of this monitoring well. As Chief Engineer, the monitoring well location and construction are approved.

The Water Rights Program encourages Aman Brothers to measure and maintain records of the water level in the monitoring well prior to commencing with irrigation each year and take monthly measurements until the conclusion of the irrigation season. Upon request, the Water Rights Program shall be granted access for the purpose of monitoring the water level in the well.

Based on DENR's approval of the monitor well location, the two water permits are to be issued.

If you have any questions, please contact Jim Goodman at 605 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program, DENR

SOUTH DAKOTA WATER WELL COMPLETION REPORT

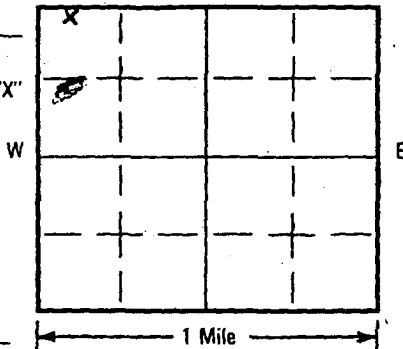
07-92

Location NW 1/4 NW 1/4 Sec 26 Twp 126N Rg 71W
 County McPherson

Please mark well location with an "X"

Well Completion Date

11-20-09



LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 1000 ft. from septic tank (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotary

CASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT class 300 LB/FT 2 IN +2 FT 39 FT 4 3/4 IN
 _____ LB/FT _____ IN _____ FT _____ FT _____ IN
 _____ LB/FT _____ IN _____ FT _____ FT _____ IN

GROUTING DATA

Grout Type Portland Cement No. of Sacks 3 Grout Weight 9.4 lb./gal _____ ft. _____ ft.
 _____ lb./gal _____ ft. _____ ft.

Describe grouting procedure Trémie line

SCREEN: ☐ Perforated pipe ☒ Manufactured

Diameter 2 IN Length 10 FEET

Material PVC

Slot Size 10/10 Set From 39 Feet to 49 Feet

Other information sand packed with Red Flint sand

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

X YES, How: chlorine

X NO, Why Not? _____

well installed for
water-level only

Laboratory sent to for water
 quality analysis

Well Owner: Aman Bros Farms

Business Name: _____

Address: Hosmer, SD

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Top Soil</u>	<u>0</u>	<u>1</u>
<u>oxidized sand</u>	<u>1</u>	<u>20</u>
<u>Blue clay</u>	<u>20</u>	<u>41</u>
<u>Rock</u>	<u>41</u>	<u>42</u>
<u>Coarse Sand & Gravel</u>	<u>42</u>	<u>51</u>
<u>Blue clay</u>	<u>51</u>	<u>60</u>

STATIC WATER LEVEL 23' 4 1/2" Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped

Describe: Air lift

☐ Bailed

☐ Other

Pumping Level Below Land Surface

40 ft. After 3 Hrs. pumped 10 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

observation well
site #4

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 DEC 17 2009
 WATER RIGHTS
 PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.

Signature of License Representative:

Byron Manikowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

Date: 12-11-09

12-17-09

Gronlund, Eric

From: Goodman, Jim
Sent: Tuesday, April 13, 2010 3:49 PM
To: Erbele, Garland
Cc: Gronlund, Eric
Subject: monnitoring well

Harlan Aman called at 3:20 (Tuesday, April 13, 2010) to inform me that it was OK with him and his brother for us to measure and maintain the observation well that Manikowski drilled in his pasture (just inside the fence) and located in the NW 1/4 section 26, T126N R71W in McPherson County. This montoring well was put in to fulfill a permit requirement. I have not seen the well yet but understand that it is located east of our well, MP-2009A, and within one half mile. He was concerned that we would need an official easement. I told him verbal permission was fine with me, it is his well not ours. We just want to measure it for awhile and may need to pump it. That was OK with him. He was going out to do field work.

He did tell me that he would probably not be irrigating until late June or July. Something about transformers. They were not able to replace transformers damaged by the storm and were on back order. He is at the mercy of the electric company. When the new ones are installed he will be able to pump but not until then. This includes the old systems as well.

04/13/2010



DEPARTMENT of ENVIRONMENT
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denr.sd.gov

APR 23 2010

Aman Brothers
33788 121st St
Hosmer SD 57448

Dear Sirs:

Enclosed are Water Permit Nos. 2951A-3 and 6908A-3 authorizing construction of your water diversion systems and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Form 10's, *Notice of Completion of Works and Application of Water to Beneficial Use*, are enclosed. Please return the completed forms after you have finished the systems and have put the water to beneficial use. An investigation can then be scheduled so the water licenses 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

enclosures



2951A-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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www.state.sd.us/denr

January 15, 2016

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448
FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2015 Irrigation Questionnaires

Our records indicate your 2015 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2015. The Water Management Board has directed that owners of water permits who have not submitted the 2015 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Thursday, March 3, 2016 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(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaire(s) is (are) received in this office before the **March 3, 2016** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

February 24, 2016

2951-3
2951A-3
6908-3
6908A-3

Lester & Harlan Aman
33788 121st St
Hosmer SD 57448

Dear Sirs:

I am writing to acknowledge receipt of your 2015 irrigation questionnaires.

You may disregard the January 15, 2016, "Notice" concerning reporting requirements for Water Right No. 2951-3 and Water Permit Nos. 2951A-3, 6908-3 and 6908A-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



2951A-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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PIERRE SOUTH DAKOTA 57501-3182
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January 26, 2018

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2017 Irrigation Questionnaires

Our records indicate your 2017 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 20, 2017. The Water Management Board has directed that owners of water permits who have not submitted the 2017 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 7, 2018 at 10:00 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(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 7, 2018** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of ENVIRONMENT
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PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

February 1, 2018

Harlan or Lester Aman
Aman Brothers
33788 121st St
Hosmer SD 57448

RE: Water Permit/Right Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3

Dear Sirs:

I am writing to acknowledge receipt of your 2017 irrigation questionnaires.

You may disregard the January 26, 2018, "Notice" concerning reporting requirements for Water Permit/Right Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Genny McMath". The signature is written in a cursive, flowing style.

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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January 25, 2019

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2018 Irrigation Questionnaires

Our records indicate your 2018 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 30, 2018. The Water Management Board has directed that owners of water permits who have not submitted the 2018 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 6, 2019 at 10:30 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(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 6, 2019** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 30, 2019

Lester & Harlan Aman
33788 121st St
Hosmer SD 57448

RE: Water Right/Permit Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3

Dear Sirs:

I am writing to acknowledge receipt of your 2018 irrigation questionnaires.

You may disregard the January 25, 2019, "Notice" concerning reporting requirements for Water Right/Permit Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 2021

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2020 Irrigation Questionnaires

Our records indicate your 2020 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2020. The Water Management Board has directed that owners of water permits who have not submitted the 2020 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at **Wednesday, March 3, 2021 at 10:00 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(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 3, 2021** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: QBJDUW**

Note: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

2951A-3



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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 3, 2021

Lester & Harlan Aman
33778 121st St
Hosmer SD 57448

RE: Water Right or Permit Nos. 2951-3, 2951A-3, 2893-3, 6908-3 & 6908A-3

Dear Sirs:

I am writing to acknowledge receipt of your 2020 irrigation questionnaires. Jeff Aman called and completed the forms over the phone with me today.

You may disregard the January 22, 2021, "Notice" concerning reporting requirements for Water Right or Permit Nos. 2951-3, 2951A-3, 2893-3, 6908-3 & 6908A-3. The information was received in our office prior to the Water Management Board meeting and your names were deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Genny McMath". The signature is written in dark ink on a white background.

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 13, 2025

2951A-3

Aman Brothers
c/o Harlan Aman
33778 121st St
Hosmer SD 57448

Dear Mr. Aman:

The Water Rights Program is in receipt of the 2024 Irrigation Questionnaires you submitted for Water Right Nos. 2893-3 & 2951-3 and Permit Nos. 2951A-3, 6908-3, and 6908A-3.

On this year's questionnaire for Water Permit No. 2951A-3 you reported that use of the irrigation system had been abandoned.

Water Permit No. 2951A-3 authorizes the irrigation of 138 acres located in the SE $\frac{1}{4}$ Section 33, at a rate of 1.78 cubic feet of water per second, from a single well (Hillsview Aquifer) located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 33; all in T126N-R71W.

Please contact me via email or by calling my direct line (605) 910-5187 to discuss cancellation of Aman Brothers' Water Permit No. 2951A-3.

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Aman Brothers (Jeff), 33778 121st St, Hosmer SD 57448

DATE: 01/15/2025

TELEPHONE: 605.290.3073

RE: Reported "abandoned" on 2024 IQ

COMMENTS:

Permit holder called after receiving my letter dated January 13, 2025. He said that the site had actually not been abandoned that the new well site authorized by 2951A-3 was being used to irrigate acres authorized by 2951-3. There was just confusion since there were no acres listed on the IQ. I explained that the two would likely be incorporated into one during licensing and that I would make the necessary adjustments to future mailings.



Amanda Dewell
Water Rights Program