

Water Right Number 4300-3

1. Considered JULY 26, 19 78
2. Name of Applicant SOUTH LINCOLN CO. RURAL WATER SYSTEM
3. Post Office Address CANTON, S.D.
4. Amount of water claimed 2.0
5. Source of water supply 3 WELLS - 650' DEEP
6. Water to be used for RURAL WATER SYSTEM

Acres to be irrigated -

7. Water to be diverted and used in LINCOLN County
about 3-5 Miles S of WORTHING

8. Proof of Publication

Received

EF

7-24-78

Not received

9. Application

Approved

12-12-78

Subject to

Not approved

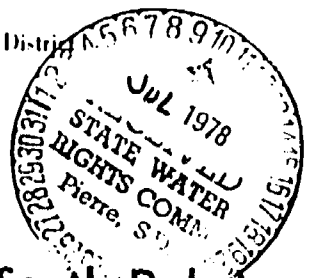
Action deferred

July 22, 1978

10. Remarks:

No. 4300-3Map No. 3511-3 Water Division No. 3 VERMILLION RIVER District 5

(Blanks to be Filled by the Engineer for the W. R. C.)



APPLICATION FOR PERMIT

(Amended 7-7-78)

To Appropriate Water within the State of South Dakota

(NOTE--Draw a line through items not applicable)

1. Name of Applicant South Lincoln and Vermillion County Rural Water Systems
Postoffice address Canton, State South Dakota
If a corporation show date and place of incorporation SLRWS-12/21/76, VCRWS-9/13/70
2. Method of accomplishing work (contract, employment of others, or by direct labor) employment of others
3. Name of diversion work South Vermillion Lincoln RWS Well Field No. 1
4. Amount of water claimed (cubic feet per second) 2.0 cfs (a maximum of 3 wells at a maximum of 0.80 cfs each)
5. Source of water supply Dakota Sandstone
6. Location of point of diversion Sections 20 and 32 of T98N, R50W; and Sections 36 and 38 of T97N, R50W
County Lincoln
7. Annual period or periods during which water is to be used 12 months/yr.
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) Domestic - Rural Water Sys.
9. For irrigation use, _____ Total number of acres to be irrigated N/A

List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.

Attach sheet if more space is needed

10. Time required to complete construction of water supply system 4 years. Additional time required to complete application of water to the proposed beneficial use 1 years.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication Sioux Valley News, Canton, So. Dak.
12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.

Gravel pack wells

B. Works proposed to transport water to place of use.

Rural Water System pipeline network

C. Works proposed to apply water to beneficial use.

Individual Farm Distribution SystemsEstimated Total Cost \$ 4,500,000Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map.
(See instructions concerning preparation.)

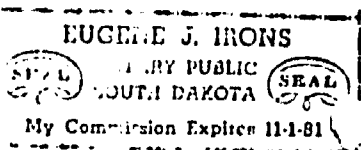
STATE OF SOUTH DAKOTA

County of Lincoln)
Larry Tideman and Joe Huffman) Richard Leornen

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

Signed Larry J. TidemanSubscribed and sworn to before me this 7th day of July, 19 78

Notary Public (or other qualified officer)



SOUTH LINCOLN RURAL WATER SYSTEM

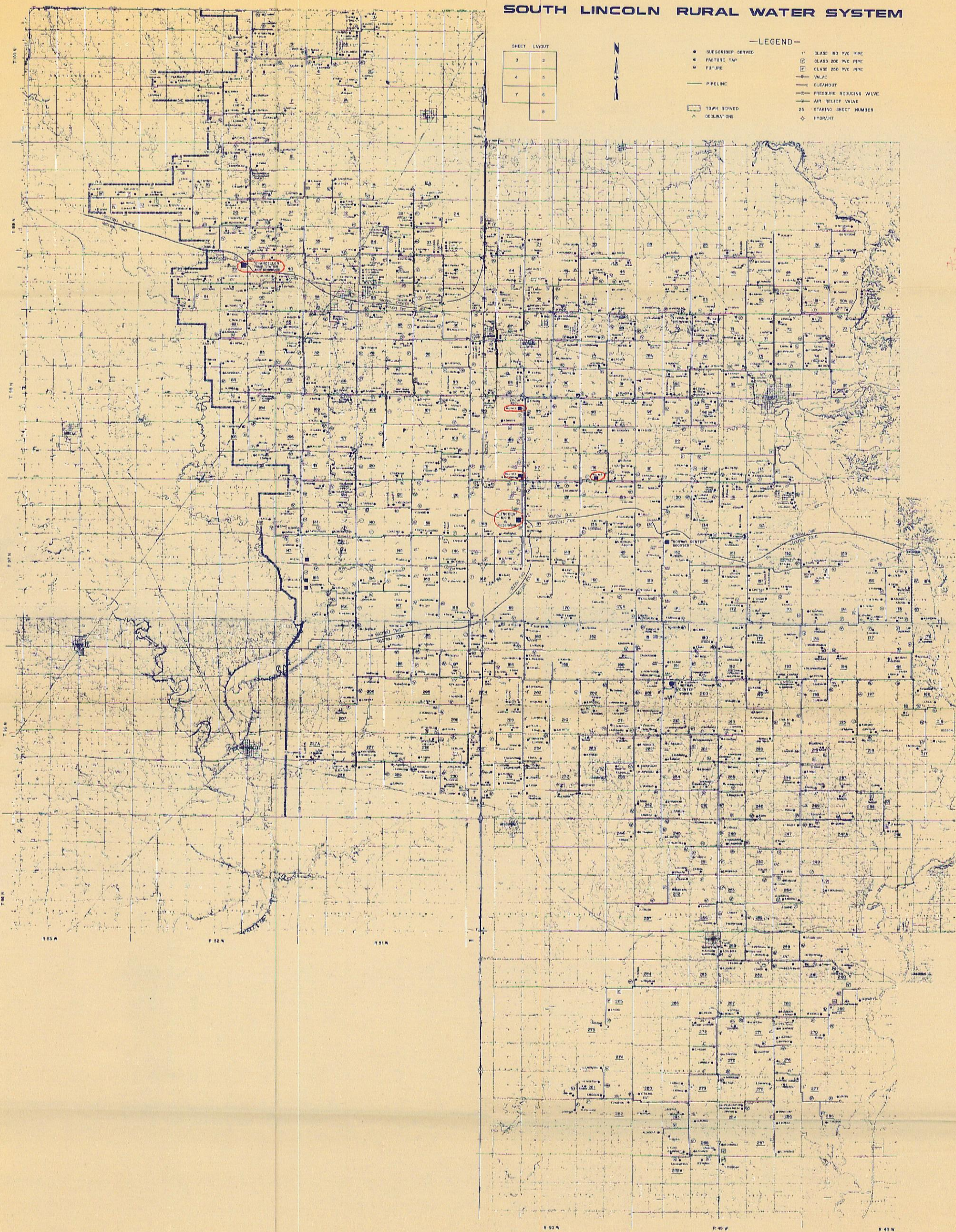
SHEET LAYOUT

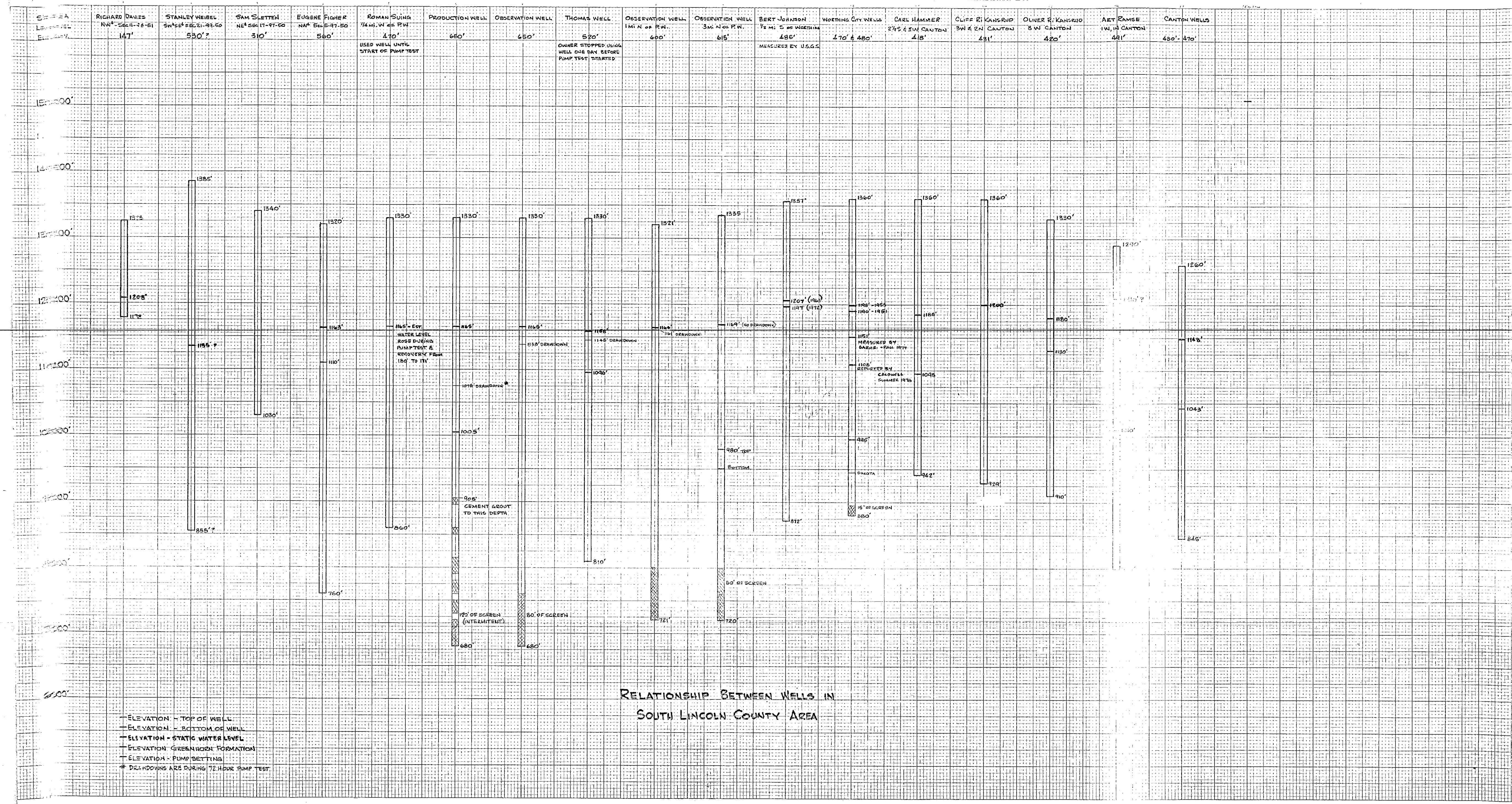
3	2
4	5
7	6
	8



—LEGEND—

- SUBSCRIBER SERVED
- PASTURE TAP
- FUTURE
- PIPELINE
- TOWN SERVED
- △ DECLINATIONS
- 1" CLASS 160 PVC PIPE
- 2" CLASS 200 PVC PIPE
- 3" CLASS 250 PVC PIPE
- VALVE
- CLEANOUT
- PRESSURE REDUCING VALVE
- AIR RELIEF VALVE
- 25 STAKING SHEET NUMBER
- ◇ HYDRANT





WATER RIGHT APPLICATION APPROVAL

The Water Resources Commission hereby approves Water Right Application No. 4300-3
SOUTH LINCOLN COUNTY RURAL WATER SYSTEM CANTON
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57013 With the following modifications:
 (State)

PRIORITY FOR THIS PERMIT N°4300-3 WAS ESTABLISHED UNDER APPLICATION N°4135-3. THIS PERMIT N°4300-3 WAS SUBMITTED AS AN AMENDED APPLICATION, SUPERCEDING AND REPLACING APPLICATION N°4135-3, AND APPLICATION N°4135-3 IS HEREBY CANCELLED.

SUBMISSION OF THE AMENDED APPLICATION WAS APPROVED BY THE WATER RIGHTS COMMISSION UNDER SDCL 46-5-24

SEE ATTACHMENT #2

Date of first receipt of application AUGUST 30, 19 77

Date of return to applicant for correction, amendments or changes required _____, 19 _____

Date of receipt of corrected application AMENDED APPLICATION RECEIVED JULY 10, 19 78

* Approved OCTOBER 17, 19 79, Recorded in Book 21 Page 77

WATER RIGHT PERMIT NO. 4300-3

The Water Resources Commission hereby grants and issues this Water Right Permit No. 4300-3 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is AUGUST 30, 19 77
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before OCTOBER 17, 19 81
3. The whole of said work is to be completed on or before OCTOBER 17, 19 83
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is OCTOBER 17, 19 84
5. The water appropriated shall be used for the purpose of RURAL WATER SYSTEM USE

6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

7. The amount of the appropriation herein granted shall not exceed 2.0 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed 458 ACRES FEET ANNUALLY of water, ~~needed for beneficial use~~ needed for beneficial use, and if for the irrigation purposes said appropriation must be limited to not more than 3 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is USED FOR RURAL WATER SYSTEM USE

actually and beneficially applied for irrigation on or before OCTOBER 17, 19 84; said water to be used during the following described annual period: CONTINUOUSLY

* DATE OF NOTICE OF ENTRY OF JUDGEMENT

Witness my hand this 18TH day of OCTOBER, 19 79

WATER RESOURCES COMMISSION

By:

John Hatch
 Chief Engineer, Executive Officer

Certificate of Construction Issued _____, 19 _____

Water License Issued _____, 19 _____

12. Principal Features of the Proposed Water Supply System (continued.)

D. Well Information or Estimates

- (1) Drill Hole, Diameter 10 inches, Depth 650 ft.
- (2) Casing, Type steel (wood, concrete, steel, etc) Diameter 5 inch Thickness 0.25 inch
- (3) Perforated Screen.
Type stainless steel, Diameter 5 inch, Length 120 ft.
- (4) Gravel Pack. Thickness 2 1/2 inches, Length of gravel pack 225 ft.

E. Dugout Information or Estimates.

- (1) Surface dimensions _____, Depth _____

F. Fill out for Either a Well or a Dugout.

- (1) Water Bearing Materials. (Please attach a copy to test well log if available.)

Character of Water bearing materials Dakota Sandstone formation consisting of loosley cemented medium sand with included layers of clay and shale.

Depth to top of water bearing material 425 ft.

Depth to bottom of water bearing material 650 ft.

Thickness of water bearing material 225 ft.

Depth to water (ground surface to water level) 165 ft.

- (2) Distance to nearest existing household or livestock watering wells.

On same owner's property none rds. On property owned by others 12 rds.

G. Water Storage Dams.

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, maximum water depth, surface area and storage capacity of each storage dam. The location of each water storage dam should be shown on the water right map.

Note: Well number 1 ~~was~~ constructed as described above and located 230 feet west and 130 feet north of the SE Corner of Sec. 32, T98N, R50W.

Barry J. Tolman Signature of Applicant Richard J. Tolman Signature of Applicant

Secretary-Treasurer
South Lincoln Rural Water
System, Inc.

~~Vice~~-Chairman
~~Lincoln County Rural Water~~
System, Inc.

This Permit is approved with the following qualifications: ATTACHMENT 27/

1. That the System be limited to an annual withdrawal of 455 acre-feet and that the total withdrawal be subject to review by the Commission;
2. That before any water is used, all proposed wells must be installed at least 2½ miles apart, with all three wells ready for pumping prior to any use of water;
3. ~~That the system install one observation well into the upper layer of the Dakota Formation about 200 feet from each production well to be used for monitoring drawdown near the production well;~~
CHIEF Approved JAN. 25, 1981 GMB
4. That the rural water system wells approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights.
Withdrawals will be restricted, if the aquifer head pressure declines 20 feet at designated measuring points during a four year period, beginning with the date the first water is pumped into distribution system. The head pressure decline to be determined by using an average of three of the seven proposed observation wells located at least 2 miles from one or more production wells. The lowest measurements, to be based upon an average of each observation well measurements taken over a three month period, will be used in determining head pressure decline;
5. If the aquifer head pressure does decline more than 20 feet in the four year period, or if observation well measurement data indicates the 20 foot head pressure decline level would be reached in the four year period, the rural water system upon order of the Commission will have to change to a new source of water;
6. That no wells be located within 1,300 feet of existing Dakota Formation wells unless waived by the well owner;
7. That the Davis area well field be developed and ~~Therein be fully based on line~~ ~~prior to any pumping from the Dakota wells.~~
OPERATIONAL BY NOVEMBER 1, 1981. approved by WMB 11/20/80 BW

ATTACHMENT #2

ATTACHMENT ON WATER PERMIT NO. 4300-3
SOUTH LINCOLN RURAL WATER SYSTEM

The following supercedes the previous qualifications:

1. That the System be limited to an annual withdrawal of 455 acre-feet and that the total withdrawal be subject to review by the Board;
 2. The System can be pumped with the two wells already completed, if annual withdrawal restrictions are limited to 304 acre feet until the 3rd well is developed and put on line (approved September 25, 1980 - Findings of Fact, Conclusions of Law approved November 20, 1980); spacing between wells must be at least 2½ miles;
 3. That the rural water system wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this Permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights;
- Withdrawals will be restricted, if the aquifer head pressure declines 20 feet at designated measuring points during a four year period, beginning with the date the first water is pumped into distribution system. The head pressure decline to be determined by using an average of three of the seven proposed observation wells located at least two miles from one or more production wells. The lowest measurements, to be based upon an average of each observation well measurements taken over a three month period, will be used in determining head pressure decline;
4. If the aquifer head pressure does decline more than 20 feet in the four year period, or if observation well measurement data indicates the 20 foot head pressure decline level would be reached in the four year period, the rural water system upon order of the Board will have to change to a new source of water;
 5. That no wells be located within 1,300 feet of existing Dakota Formation wells unless waived by the well owner;
 6. That the Davis area well field be developed and therein be fully operational by November 1, 1981.

Canton, SD
WELL REPORT
Lincoln County

HURON
DRILLING CO.
Huron, S. D.

5171
So. Lincoln Rural Water
OWNER

SW-36-98-51
DESCRIPTION

February 8, 1979
DATE

CASING LOG

Depth 530 ft.
Flows gpm 530 ft. 2" Plastic pipe to 530 ft.
Pumps 15 gpm ft. pipe to ft.
Head 125 ft. ft. pipe to ft.
80 ft. Slotted @bottom
Perforations ft. pipe to ft.

Pressure 450 ft. - 530 ft. REMARKS

7 days
Drilling Time 1 - 6 1/2" Gear bit, new

Rig No. 12 1 - 4 1/2" V3S Rock bit, used

Karl Osberg
& Foreman 1 - 4 1/2" V3S rock bit, new
Jack Kuehl

DRILLING INC. DRILLERS LOG

PAGE NO.

South Lincoln Rural Water Assoc. R. Hammer, Sheet #126
JOB NAME LOCATION February 8, 79 12
DATE RIG NO. K. Osberg
Jack Kuehl
FOREMAN

Jt No.	DEPTH	TIME	REMARKS
1	20	8:35	AM 2-8-79 0-5 Top soil
2	40	8:45	5-20 Yellow clay
3	60	9:00	20-60 Blue clay
4	80	9:45	60-70 Gravel 1-sack Revert
5	100	10:05	70-80 Blue clay & gravel
6	120	10:25	80-110 Blue clay
7	140	11:15	110 1/2" Top Pierre Shale
8	160	11:55	110-150 Shale
9	180	12:20	150-160 Chalk
10	200	1:10	160-260 Shale 1-Sack Bran @200 ft.
11	220	2:00	260-330 Shale with hardshells Green Horn @ 300 ft.
12	240	2:35	330-340 Sandy shale
13	260	3:25	340-360 Shale
14	280	4:45	360-380 Sandy shale
15	300	5:50	380-390 Fair sand
16	320	6:20	390-445 Shale
17	340	9:30	445-460 Fair to good sand
18	360	10:00	460-465 Good sand
19	380	10:45	465-475 Hard sand
20	400	11:20	475-500 Good sand
21	420	12:05	500-515 Fair to good sand (9 minutes)
22	440	1:55	515-530 Rock
23	460	2:15	
24	480	2:40	
25	500	2:51	
25	520	3:30	
26	530	TD	

5174
South Lincoln Rural Water
OWNER
WELL REPORT
Lincoln County
SE# of NE#-20-98-50
DESCRIPTION

Huron
DRILLING CO.
Huron, E. D.

March 1, 1979
DATE

Depth 640 ft.
Flows 640 gpm ft. 2" Sch. 80 Plastic pipe to 640 ft.
Pumps 15 gpm ft. pipe to ft.
Head 167 ft. pipe to ft.
210 Ft. Slotted 6 bottom ft. pipe to ft.
Perforations ft. pipe to ft.

REMARKS

Pressure
6 days
Drilling Time
Rig No. 12
Raymond Kuehl
DM Foreman

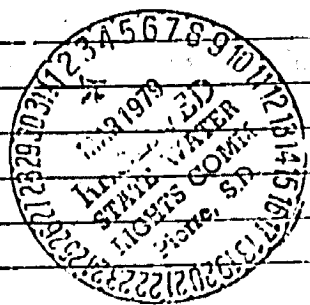
430-640 Slotted
1 - 64" Gear Bit
1 - 4 1/2" V3S Rock Bit

HURON DRILLING INC. DRILLERS LOG

PAGE NO.

South Lincoln Rural Water	SE# of NE#-20-48-50 Lincoln County LOCATION	2/20/79 DATE	12 RIG NO.	Raymond Kuehl FOREMAN
---------------------------	---	-----------------	---------------	--------------------------

Jt No.	DEPTH	TIME	REMARKS
1	20		0-3 Top soil
2	40		3-24 Yellow clay
3	60		24-100 Blue clay
4	80		
5	100		100-140 Sand and Gravel
6	120	11:30	140-144 Sand
7	140	11:50	144-160 Shale
8	160	2:35	160-239 Shale
9	180	2:50	
10	200	3:10	
11	220	3:25	239 Hard S.
12	240	5:00	4 1/2" V-3S Gear Bit : 240 Ft.
13	260	5:25	Shale
14	280	9:00 AM	Shale
15	300	9:40	Shale
16	320	10:25	Shale
17	340	11:00	Shale
18	360	11:40	Shale
19	380	1:05	372-380 Sand
20	400	1:50	382 Greenhorn H.S.
21	420	2:55	380-387 Sandy
22	440	3:30	387-400 Shale
23	460	4:15	402 H.S.
24	480	5:00	402-416 Fair sand
25	500	10:00 AM	416-420 Shale
26	520	10:15	420-434 Shale, sand streaks
27	540	10:45	434-440 Sand, good
28	560	12:15	440-452 Fair sand
29	580	12:45	452 H.S.
30	600	1:15	452-460 Tuff
31	620		460-480 Tuff
32	640	TD	480-500 Streaked sand
			514 Rock- 6 Ft. thick
			520-540 Sand, good
			540-552 Sand, good
			552-560 Shale
			560-580 Shale small sand streaks



Publish first publication, on or before July 14, 1978

NOTICE OF HEARING ON
APPLICATION TO APPROPRIATE WATER

Pierre, South Dakota 57501

July 10, 1978

Notice is hereby given that South Lincoln Co. Rural Water System whose post office address is Canton, South Dakota, has made an application in accordance with the provisions of SDCL 46-1-1 thru 46-1-8; 46-2-9 thru 46-2-11, 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-41, 46-6-3, 46-6-5, 46-6-6.1, 46-6-10, 46-6-14 and Commission Rules ARSD 52:01:01:01 thru 52:01:01:13, for a permit to change points of diversion, and a reduction in the request to appropriate for beneficial use to 2.0 cubic feet of water per second of time from artesian ground water through the Lincoln Co. RWS Well Field #1, the point^s of diversion of which ~~are~~^{are} to be located in the NE $\frac{1}{4}$, Section 20; SE $\frac{1}{4}$, Section 32, T98N, R50W, and in the SW $\frac{1}{4}$

of Section 36, Twp. 98N Range 51W. Said water to be used for the purpose of providing ~~xxxxxx~~ domestic supplies for the rural water system use

This Application No. 4300-3 will be considered by the Water Rights Commission at the Ramada Inn, Sioux Falls, SD upon the 27th day of July, 1978 at 9:00 A.M. The Commission is authorized to make a determination on this application at the hearing. All interested persons may appear and be heard. Any person who may be affected by a Commission decision who desires to present evidence or cross-examine witnesses according to SDCL 1-26 may notify the Commission in writing prior to the hearing or orally at the hearing.

NOTE: The final proof of publication must be received before the hearing date for the Commission to take action.

WATER RIGHTS COMMISSION

BETTY WESTLUND
Water Rights Specialist

cc: South Lincoln Co. Rural Water System
Canton, SD 57013

Form 8 - Proof of Publication - Notice of
Intent to Appropriate Water

No. 4300-1

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Lincoln) ss.

I, Marie Beitzel hereby
certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the _____

A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the _____

City of Canton

County of _____ and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

July 13, 1978

July 20, 1978

Marie Beitzel
(Signature)

Bookkeeper
(Title)

July 20, 1978
(Date Signed)

NOTICE OF HEARING
ON APPLICATION TO
APPROPRIATE WATER

Notice is hereby given that
South Lincoln Co. Rural Water
System whose post office address
is Canton, South Dakota, has made
an application in accordance with
the provisions of SDCL 46-1-1
thru 46-1-8; 46-2-9 thru 46-2-11,
46-2-13; 46-5-1 thru 46-5-8, 46-
5-12, 46-5-41, 46-6-3, 46-6-5,
46-6-6.1, 46-6-10, 46-6-14 and
Commission "Rules" ARSD
52 01:01:01 thru 52:01:01:13, for
a permit to change points of
diversion, and a reduction in the
request to appropriate for
beneficial use to 2.0 cubic feet of
water per second of time from
artesian groundwater through the
Lincoln Co. RWS Well Field #1,
the points of diversion of which
are to be located in the NE1/4
Section 20; SE1/4, Section 32,
T98N, R50W, and in the SW1/4 of
Section 36, Twp. 98N, Range 51W.
Said water to be used for the
purpose of domestic supplies for
the rural water system use.

This Application No. 4300-3
will be considered by the Water
Rights Commission at the
Ramada Inn, Sioux Falls, SD, upon
the 27th day of July 1978 at 9
a.m. The Commission is
authorized to make a
determination on this application
at the hearing. All interested
persons may appear and be heard.
Any person who may be affected
by a Commission decision who
desires to present evidence or
cross-examine witnesses
according to SDCL 1-26 may
notify the Commission in writing
prior to the hearing or orally at
the hearing.

WATER RIGHTS COMMISSION
Betty Westlund
Water Rights Specialist
(7-13; 20)



No. 4300-3

July 28, 1978

South Lincoln Co. Rural Water System
Canton, SD 57013

Dear Sir:

The Water Rights Commission deferred action on your Application No. 4300-3 at the July 27, 1978 Commission meeting, pending investigation by the Commission Staff.

If you have any questions, feel free to contact this office.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH:bt

Report On
South Lincoln County Rural Water
System Applications

July 19, 1978

An application for 4.0 cubic feet per second (cfs) (1796 gpm) from 5 Dakota formation wells to be located south of Worthing, South Dakota was received from the South Lincoln and Lincoln County Rural Water Systems from Canton, S.D., August 30, 1977. The application was advertised for hearing before the Water Rights Commission October 6, 1977 at Spearfish, S.D. Due to petitions and protests from several existing Dakota domestic well owners in the area and the town of Worthing, the Commission deferred action pending further investigation by the Commission Staff. An amended application was received July 10, 1978 from the South Lincoln County Rural Water System for 2.0 cfs (898 gpm) of water from 3 wells into the Dakota Formation. Spacing between the proposed wells in the amended application will be at least two and one-half miles. Application 4301-3 was also submitted by the South Lincoln Rural Water System for 2.0 cfs from 3 wells 70' deep in the Vermillion aquifer SE of Davis, SD.

One production well, 650 feet deep, was drilled by the Rural Water System into the Dakota Formation South of Worthing. This production well is about 200 feet from a Dakota formation well 520 feet deep owned by Orville Thomas, who uses this well for commercial purposes to haul water to customers. Mr. Thomas has a water right application No. 4118-3 with a priority date of August 10, 1977 on file which requests .10 cfs.

The original application proposed to serve not only South Lincoln County, but the existing Lincoln County Rural Water System which presently has water rights and receives its water supply from the City of Sioux Falls well field.

Originally, additional testing of the Dakota Formation in the area was to be completed prior to further consideration of the application by the Commission. For proper testing to be conducted, it would be necessary to construct a production well into each layer of the Dakota Sandstone Formation with observation wells into all layers, with pump tests then conducted in each layer of sandstone to determine if there are connections between the sandstone layers and for proper aquifer testing.

The Staff believes that the amount of testing required for a complete study is unreasonable and is more than should be required by the Rural Water System. The staff believes that any extensive testing of the Dakota formation should be part of the Lincoln County ground water study which is not scheduled for several years.

Without extensive testing, the water right can be approved with enough restrictions including the domestic well clause, which is placed on all water rights approved by the Water Rights Commission to protect domestic water supplies and prior water rights. Such restrictions would increase the risk taken by the Rural Water System.

Not requiring complete testing by the Rural Water System is supported by the fact that the City of Canton, located 8 miles east of the proposed rural water system well field, has been obtaining its water supply from the Dakota Formation for at least 40 years. The city of Canton presently has 7 wells into the Dakota formation which pump a total of 710 gpm (1.58 cfs). The wells are located within approximately a one square mile area. The city has future use rights for an additional 2.22 cfs. The city of Canton is not opposing this application. The city of Canton has reported

that they have not received domestic well complaints from individual domestic well neighbors, nor has the Water Rights Commission received complaints from domestic well owners.

The South Lincoln County Rural Water System is proposing to serve 891 customers (about 350 presently must haul water) plus the system may serve the Town of Chancellor on a wholesale basis.

People and Livestock Served

People (Retail Customers)	3,037
People (Wholesale Customers)	220
Dairy Cows	5,483
Feeder Cattle	74,173
Hogs and Sheep	142,041
Poultry	132,191

Water use design based upon total delivery in 12 hours is 740,237 gallons per day in a 12 hour period or 1,028 gpm or 2.29 cfs. Initial water use for income calculations, based upon the South Lincoln County Rural Water System Final Engineering Feasibility Study and Report, dated February, 1978, is 370,118 gallons per day or 257 gpm or 1.14 acre feet per day or in 365 days, 415 acre feet per year.

The Staff is recommending that application 4300-3 for 3-650 foot deep Dakota formation wells be approved for 2 cfs (898 gpm) as requested, however, that the Commission limit the yearly withdrawal to 415 acre feet per year plus 10% for line losses for a total of 455 acre feet per year, with the total amount withdrawn each year subject to review and adjustment, upward or downward, by the Commission, and the domestic well clause which is as follows:

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

The approval and the above qualifications would be with the understanding that the domestic well clause applies to any interference due to Rural Water System pumping, but not to already declining head pressure of the Dakota Formation which is occurring without any withdrawal by the Rural Water System. That domestic wells which pump sand, cloudy water, or any change in water quality will not be the responsibility of the Rural Water System. If a pump cannot be lowered in a well constructed with the same size casing to the bottom of the well due to blockage of the casing, encrustation of the casing, bent casing or broken or offset casing, such conditions will not be the responsibility of the Rural Water System. Dakota wells with reduced production or no water due to a plugged well, plugged screen, or bottom of the well filled in, would not be the responsibility of the Rural Water System.

The Rural Water System would be responsible if the water levels of the Dakota head pressure dropped due to rural water system pumping. The Water Rights Commission in the past has not told high capacity well owners that they must replace domestic wells, nor in the case of a municipality or rural water system that they must connect the domestic well owner to a rural water system or municipal system or that they

must lower pumps. The Commission has said through the domestic well clause that the high capacity well owner under his permit shall control withdrawals so there is not a reduction of needed water supplies in domestic wells or in other high capacity wells having prior water rights. In the past, there have generally been 3 options which have been followed by the high capacity well owner in agreement with the affected domestic well owner.

- (1) lower the pump
- (2) if the domestic well pump cannot be lowered, connect the domestic well owner to municipal or rural water system, or
- (3) drill the domestic owner a new well

The Water Rights Commission and/or staff have become involved only if the high capacity owner and the domestic well owner could not reach an agreement. The Water Rights Commission and staff have then made a determination as to what was a reasonable offer. If the domestic well owner did not accept the offer, protection of the domestic well was withdrawn and the domestic well owner made his own arrangements for water.

The staff is suggesting that if the rural water system pumping causes adverse domestic well interference and the domestic well pump cannot be lowered, and the owner does not want to be connected to the rural water system, that the rural water system would pay the amount of the price of the connection to the system towards the construction of a new well by the domestic well owner. In those cases where such arrangements are not satisfactory to either the rural water system or the domestic well owner, such disagreements should be brought back to the Water Rights Commission for special consideration.

The commercial use well owned by Mr. Thomas is located about 200 feet from the existing rural water system production well. The Thomas well produces softer water than the rural water system well. The Thomas well is 520 feet deep with three inch casing in the upper part of the well and then two inch casing. The pump setting is 234 feet with the static water level measured at 172 feet three inches prior to the pump test in August 1977, with 12 feet, 11 inches of drawdown during the 72 hour pump test. Duane Thomas has reported that the well is pumping about 3½ loads of water per day. If the Thomas well is interfered with adversely by the rural water system pumping, then the Thomas well would have to be protected.

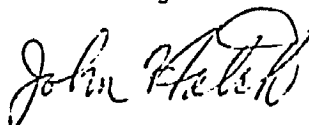
The Water Rights Commission Staff plan to install 4 or 5 additional observation wells in the area, one in the middle layers of the Dakota Formation and 3 or 4 in the upper layers.

Following the above approval recommendations would place additional risk on the rural water system than if the rural water system was required to do more extensive testing. If pumping by the rural water system were to demonstrate serious adverse affects on domestic wells in the area, then the rural water system could be required to reduce or even stop pumping and switch to an alternate source of supply, which they are also requesting under application No. 4301-3 for wells in the Vermillion aquifer southwest of Davis.

If the South Lincoln County Rural Water System were to be denied, it would be difficult to justify approval of any additional applications with junior priorities in the area from the Dakota Formation and possibly in other parts of South Dakota.

The town of Worthing has water rights for two wells and .10 cfs of water with no water reserved for future use. Denial of the rural water system application would mean no additional permits for Dakota wells could be granted to Worthing or to Canton beyond their present future use. Any commercial use of Dakota Formation water in the area without a permit would be terminated. This would include any water hauler that did not have a permit, or other commercial operations.

The 1978 Legislature, through passage of Senate Bill 306 has indicated that the Dakota Formation should continue to be used for municipal and rural water system use even though the head pressure is continuing to decline.

A handwritten signature in cursive script, reading "John Hatch".

JOHN HATCH
Chief Engineer

July 28, 1978

Eugene J. Irons, Attorney
MYRAB AND IRONS
108 S. Broadway
Canton, SD 57013

Dear Mr. Irons:

When I met with you and representatives of the South Lincoln County Rural Water System in Canton July 13, 1978, you indicated that Assad Barari with the State Geological Survey had testified at the trial in Sioux Falls concerning the environmental Impact Statement for the South Lincoln County Rural Water System that adequate water was available in the Dakota Formation for wells to supply the Rural Water System. Could you please provide excerpts from the transcript of the trial and other documentation as to what Mr. Barari testified too.

If I understood Mr. Barari's testimony at the Water Rights Commission meeting in Sioux Falls, July 27, 1978, he did not testify that water was available from the Dakota Formation. I would appreciate your assistance in this matter.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH/gy

7-31-78
Mr. Irons called and advised that Assad's testimony at the trial was about the same as the testimony at the commission meeting.

JH

August 1, 1978

Wanda Sletten, Secretary
Friends of Dakota Sandstone
Rt #2, Box 82
Beresford, SD 57004

Dear Mrs. Sletten:

We have the following complaints on file concerning Dakota Formation wells that were reported to have been affected by the 72 hour test pumping conducted by the South Lincoln County Rural Water System during August, 1977.

1. Sam Sletten domestic well located 2 1/2 S, 1/2 W of the production well. A broken pump rod was reported and the well man (Mr. Verley, of Centerville) indicated the well may have pumped air. This well supplies a cistern and there is no way of telling when the well is pumping air.
2. Dick Davis domestic well located 3 3/4 W of Worthing. This well was reported to have been partially filled with sand after the pump test.
3. City of Worthing, reported their water levels in their wells were affected by the pump test.
4. Stanley Wevel, Worthing, reported his well pumped sand.
5. Duane Thomas reported that his well, used for hauling water, located 200' from the production well riled during the pump test.
6. Eugene Fischer reported that his well did not pump water after the pump test. The well was 560' deep with pump set at 210'.

If you have additional information on these wells or if there are other wells which have not been reported, would you please provide this information.

Very truly yours,

JOHN HATCH, Chief Engineer
WATER RIGHTS COMMISSION

JH/gy

FRIENDS OF DAKOTA SANDSTONE AQUIFER

August 10, 1978



Mr. John Hatch, Chief Engineer
Water Rights Commission
Department of Natural Resource Development
Joe Foss Building
Pierre, So. Dak. 57501

Dear Mr. Hatch:

Your letter of August 1 was brought to the attention of our Board of Directors. The information you list with regard to specific complaints concerning Dakota Formation wells was not completely accurate.

It would appear a study of the Aquifer is being considered, possibly with several factions being involved. The Board of Directors feel our organization is deserving and worthy of being included in the plans for the study, as well as having our professional representative observe and monitor the study. We would appreciate being kept advised of any preliminary plans now being discussed as well as decisions made regarding the future plans on a study.

The fact that the South Lincoln County Rural Water System conducted a pump test was not generally known at the time. Therefore, residents who have had well problems may not have made a complaint, since there has not previously been a high capacity well operating in the area in the past. Since we have not completed collecting the full data on possible adverse affects, the Board of Directors feels we are not in a position to put this information in a report form at this time.

We will endeavor to obtain full and complete information which will be provided to those who will be involved in the actual study. The Board of Directors indicated we are ready and willing to give whatever assistance we can to further a valid Aquifer study, whether by information or advice.

Sincerely,

FRIENDS OF DAKOTA SANDSTONE AQUIFER

Mrs. Wanda Sletten, Secretary
Rt. 2 Box 82
Beresford, So. Dak. 57004

cc: Dennis McFarland

300 National Bldg., 1st South Dakota Bldg.
Sioux Falls, South Dakota 57102
Telephone: 605-339-4157

Similar comparisons are made with the base assumption being that both well fields are developed but that sufficient water is available from the Dakota sandstone. On this basis, the consumers would be paying the added debt service and general maintenance costs for a well field in the Vermillion aquifer that would not be needed. This would cost them an annual expense of about \$23,000. I would like to make a strong case for not adding treatment measures to the Vermillion source at this time. As you can see, it would significantly increase the cost to the user. These measures could be added later without impairing the sanitary quality of the water.

Mr. Hatch

-2-

1 September 1978

The assumed construction schedule is prepared in support of the idea of further evaluating the strengths of the Dakota source before its use is eliminated. The schedule assumes that in September the Commission will allow the System to proceed either with a severely restricted permit or on an experimental basis. Please note by the schedule that it would take in excess of two years for the system to reach the 415 acre-feet per year limitation suggested in a July 19, 1978 report on the South Lincoln System application prepared by your office.

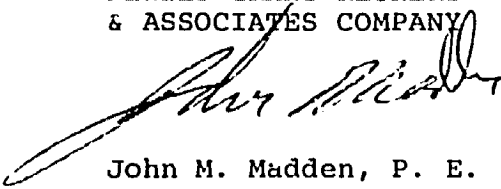
Eventual water use per our design projection would be 960,000 gallons per day or an annual rate of about 1,000 acre-feet per year.

You will note by the schedule that at the time that we have only the Worthing water source available to us, we would have no users being served and could terminate its use if problems resulting from it arose. As soon as we started serving users, we would have both the Vermillion and Dakota sources available and could make an immediate transfer if required to prevent interference from existing wells.

I request that you review the enclosed material and if appropriate forward to the Water Rights Commission for their consideration and examination. Please feel free to contact me on any questions you might have regarding the enclosures.

Sincerely,

DEWILD GRANT RECKERT
& ASSOCIATES COMPANY



John M. Madden, P. E.

JMM:mrw
Enclosure

cc: Curtis Gubbrud
: Larry Tidemann
: Gene Irons

SOUTH LINCOLN RURAL WATER SYSTEM

SUMMARY OF CAPITAL INVESTMENTS AND OPERATION AND MAINTENANCE COSTS FOR VARIOUS WATER SUPPLY ALTERNATIVES

September 1, 1978

Alternate	1	2	3	4
Description	Wells in Dakota Sandstone & Vermillion Aquifer - No Treatment	Wells in Dakota Sandstone Only - No Treatment	Wells in Dakota Sandstone & Vermillion Aquifer With Iron & Manganese Removal	Wells in Dakota Sandstone & Vermillion Aquifer With Iron & Manganese Removal and Softening
<u>FIXED COSTS</u>				
Basic system cost of construction for distribution piping, storage, booster stations, wells and main control center	\$4,306,525	\$3,928,298	\$4,306,525	\$4,306,525
Cost of treatment facilities	0	0	715,000	990,000
Total Construction Costs	\$4,306,525	\$3,928,298	\$5,021,525	\$5,296,525
Other costs including engineering, legal, land, easements, groundwater exploration, inspection, interest and contingencies	504,475	460,202	495,975	509,675
Total Project Costs	\$4,811,000	\$4,388,500	\$5,517,500	\$5,806,200

<u>Alternate</u>	1	2	3	4
<u>Description</u>	Wells in Dakota Sandstone & Ver-million Aquifer - No Treatment	Wells in Dakota Sandstone Only - No Treatment	Wells in Dakota Sandstone & Ver-million Aquifer With Iron & Man-ganese Removal	Wells in Dakota Sandstone & Ver-million Aquifer With Iron & Man-ganese Removal and Softening
Number of Users	891	891	891	891
Cost./User	\$5,400.00	\$4,925.00	\$6,192.00	\$6,516.00
Loan/User assuming 30% Grant Funds	\$3,780.00	\$3,448.00	\$4,335.00	\$4,562.00
Debt Service cost per month per user	<u>\$18.67</u>	<u>\$17.03</u>	<u>\$21.41</u>	<u>\$22.53</u>
Fixed operating costs to include office operation, consumer relations, director expense, insurance, etc.	<u>6.20</u>	<u>6.20</u>	<u>6.20</u>	<u>6.20</u>
Total Fixed Costs Per User Per Month	<u>\$24.87</u>	<u>\$23.23</u>	<u>\$27.61</u>	<u>\$28.73</u>
<u>VARIABLE COSTS</u>				
Basic cost of production to include general maintenance, electric energy, pump repair, chlorination & fluoridation	\$0.55/1,000 gal.	\$0.50/1,000 gal.	\$0.55/1,000 gal.	\$0.55/1,000 gal.
O & M Cost of Treatment	<u>-0-</u>	<u>-0-</u>	<u>\$0.14/1,000 gal.</u>	<u>\$0.58/1,000 gal.</u>
Variable Cost/1,000 Gal.	\$0.55	\$0.50	\$0.69	\$1.13

<u>Alternate</u>				
	1	2	3	4
<u>Description</u>	Wells in Dakota Sandstone & Vermillion Aquifer - No Treatment	Wells in Dakota Sandstone Only - No Treatment	Wells in Dakota Sandstone & Vermillion Aquifer with Iron & Manganese Removal	Wells in Dakota Sandstone & Vermillion Aquifer with Iron & Manganese Removal and Softening
Total Variable Cost/User/Month based on 10,000 Gal./User/Month	<u>\$5.50</u>	<u>\$5.00</u>	<u>\$6.90</u>	<u>\$11.30</u>
Average Monthly Bill Required to Repay Debt and O & M Expense	<u>\$30.37</u>	<u>\$28.23</u>	<u>\$34.51</u>	<u>\$40.03</u>
% Change from Alternate 1	-0-	(-) 7%	(+) 14%	(+) 32%
Annual Change in Cost Per User from Alternate 1	-0-	(-) \$25.68	(+) \$49.68	(+) \$115.92
Annual System Change in Revenue Requirement from Alternate 1	-0-	(-) \$22,800	(+) \$44,265	(+) \$103,285

Notes:

1. Basic system costs based on February, 1978, Final Engineering Feasibility Study and Report for the South Lincoln System.
2. Cost of treatment facilities based on June 14, 1978 cost analysis of treatment alternatives for the Lincoln County Rural Water System.
3. O & M costs based on the March 15, 1978 water rate study for the Big Sioux Community water system and the August 10, 1978 Summary of Rates and Projected Income for the Sioux Rural Water System.

SOUTH LINCOLN RURAL WATER SYSTEM

ASSUMED CONSTRUCTION SCHEDULE AND WATER USE PROJECTION

Date: September 1, 1978

<u>Date</u>	<u>Item Description</u>
Sept. 1978	Receive authority to proceed.
Nov. 1978	Complete construction of Worthing Well No. 1. (Equip present well with pump power supply, etc.)
Dec. 1978	Take bids on distribution system, reservoirs, tower, Worthing Wells #2 and #3 and Vermillion Wells #1, #2 and #3.
May 1979	Start pipeline construction and use of Worthing Well #1 at the rate of approximately 12,000 gallons per day (based on the use of 6,000 gallons per mile for filling, flushing and testing). This use would be an annual rate of 13 acre-feet per year. The system would also start construction of the Vermillion wells and Worthing Wells #2 and #3.
Oct. 1979	Water use increased to the rate of 25,000 gallons per day for construction purposes plus allowance for leaks, etc. Complete all well construction and construction of supply lines to main reservoir. Main reservoir complete to the point of automatic operation.
Nov. 1979 to May 1980	Serve approximately 200 connections during first winter of operation at average rate of 5,000 gallons per month per connection or 34,000 gallons per day (37 acre-feet per year).
May 1980 to Nov. 1980	Complete construction of the distribution system and hookup of the proposed 891 users. Water use increases from 34,000 GPD to 270,000 GPD (891 users at 8,000 gallons per connection per month plus 30,000 GPD wholesale). Therefore, water use rate increases from 37 acre-feet per year to 300 acre-feet per year.
Nov. 1980 to approx. Nov. 1981	Water use increases from 270,000 GPD to 370,000 GPD as users gradually convert to water system use. (From a rate of 300 acre-feet per year to 415 acre- feet per year).
<u>Nov. 1980 to ?</u>	Water use increases from 370,000 GPD to design projected system rate of 960,000 GPD. (Annual use rate of approx. 1,000 acre-feet per year)



Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501
Phone 605/773-3151

September 6, 1978

TO: Persons Concerned with South Lincoln County Rural Water System
Application No. 4300-3 and Orville Thomas Application No. 4118-3

FROM: John Hatch, Chief Engineer, Water Rights Commission

SUBJECT: Reconsideration of Application No. 4300-3 and No. 4118-3

The Water Rights Commission will reconsider Water Right Applications No. 4300-3 and 4118-3 at 2:45 p.m., September 13, 1978 at the 4-H Fairground Meeting Hall, about one mile west of Mitchell, on Highway 16.

This reconsideration hearing will be conducted in accordance with the provisions of SDCL 46-1-1 thru 46-1-8; 46-2-9 thru 46-2-11; 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-41; 46-6-3; 46-6-5, 46-6-6.1, 46-6-10, 46-6-14 and Commission Rules ARSD 52:01:01:01 thru 52:01:01:13.

Applications No. 4300-3 and 4118-3 were deferred by the Water Rights Commission on July 27, 1978 for further investigation.

After reconsideration of Applications No. 4300-3 and 4118-3 the Commission can approve, defer or deny all or part of the Applications or authorize experimental pumping.

This hearing is an adversary proceeding and any person 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 at the hearing. Decisions based upon the hearing may be appealed to the Courts as provided by law.

Very truly yours,

A handwritten signature in cursive script that reads "John Hatch".

JOHN HATCH, Chief Engineer
Water Rights Commission

JH/gy

I hereby certify that the attached notice for reconsideration of Applications No. 4300-3 and 4118-3 was mailed to the persons listed on the attached list September 6, 1978.

Karen Wernsmann
Karen Wernsmann, Staff Assistant IV

STATE OF SOUTH DAKOTA } ss
COUNTY OF HUGHES

Swore to, before me, this 6th day of September, 1978.

Justin A. Zickrick
Justin Zickrick, Notary Public
My Commission expires 3/27/83

James MacInnes
619 N. Summit
Sioux Falls, SD 57101

Clayton Reddickson
RFD 2
Beresford, SD 57004

~~James MacInnes~~
RR #2
Centerville, SD 57014

F.C. Nelson
3004 S. Lincoln
Sioux Falls, SD 57101

Donald Forendery
Beresford, SD 57004

Mr. & Mrs. R.E. & Richard
Mehlaff
RR
Worthing, SD 57077

Mr & Mrs. Donald Sandness
RFD 3
Canton, SD 57013

Loren D. Meyers
RR
Parker, SD 57053

Helmer M. Skie
RR
Lennox, SD 57039

Stanley L. Wiebel
Worthing, SD 57077

Martin Anderson
Parker, SD 57053

Clarence Tronson
RR
Lennox, SD 57039

Merle L. Hanson
RFD 3
Beresford, SD 57004

Mrs. Ulick H. Reiners
Worthing, SD 57077

Neil Jacobson
RR #2
Hudson, SD 57034

Robert Bonine
RFD 3
Beresford, SD 57004

Mr. & Mrs. Bert Baker
Canton, SD 57013

Mrs. Curtis Gubrud
RR #2
Hudson, SD 57034

Elmer Lippert
Worthing, SD 57077

Mr. & Mrs. Allen Brandsma
RR #3
Canton, SD 57013

Roma Jacobson
Hudson, SD 57034

Richard Mehlauff
RR
Worthing, SD 57077

Orville Thomas
Box 365
Park Rapids, MN 56470

Terry Borg
RR
Canton, SD 57013

Dick Reiners
RR
Worthing, SD 57077

Duane Thomas
Worthing, SD 57077

Priscilla Borg
RR #1 Box 133
Canton, SD 57013

Mr. & Mrs. Carl Hammer
RR #1
Canton, SD 57013

Bob Anderson
Centerville, SD 57014

Martin Symens
RR Box 19
Lennox, SD 57039

Mr & Mrs. Dean Albertson
RR #1
Canton, SD 57013

Lowell C. Voog
RR #2
Centerville, SD 57014

Mr. & Mrs. Charles Kuehl
RFD 3
Canton, SD 57013

Nate Enloe
RR #3, Box 140
Beresford, SD 57004

Robert H. Boomer
RR
Lennox, 57039

Clarence Sullestad
RR #3
Canton, SD 57013

Wanda Sletten
Beresford, SD 57004

Wm. R. Lennon
RR #3, Box 167
Canton, SD 57013

Sam Sletten
RR #2
Beresford, SD 57004

Mr. & Mrs. Harold Fischer
RR
Worthing, SD 57077

Arthur J. Henke
RR
Worthing, SD 57077

Mrs. & Mrs. John Wiebers
Centerville, SD 57014

Robert Johnson
Worthing, SD 57077

Harlan L. Fischer
Worthing, SD 57077

Raymond G. Kuhl
5009 W. 12th Street
Sioux Falls, SD 57106

Tom Clark
Box 202
Worthing, SD 57077

Floyd Schemelfing
Lennox, SD 57039

Hilly Skovly
Worthing, SD 57077

Clair Caldwell
Worthing, SD 57077

Dave Nelson
101 South Main, Suite 512
Sioux Falls, SD 57101

Dennis McFarland, Att.
511 Security Building
Sioux Falls, SD 57101

Roman Suing
Worthing, SD 57077

Roman Suing
Worthing, SD 57077

Paul H. Rock

Lennox, SD 57039

Raymond Schmidt
RR
Lennox, SD 57039

Mr. & Mrs. Roy Hammer
RR
Lennox, SD 57039

Mrs. Marvin Skie
RR
Lennox, SD 57039

John Kuhns
RR
Worthing, SD 57077

John Wildeboer
RR #1
Lennox, SD 57039

Henry Wildeboer
RR
Worthing, SD 57077

Alvin Kidel
Worthing, SD 57077

Dale Kennedy
RR #3
Beresford, SD 57004

Barbara Kennedy
RR #3 Box 62
Beresford, SD 57004

Don Pottratz
Box 291
Canton, SD 57013

Chuck Mangrum

Canton, SD 57013

Larry Tidemann
727 E. 5
Canton, SD 57013

Harold Sweeter
Worthing, SD 57077

Ken Sweeter
Worthing, SD 57077

Gene Irons, Attorney
108 S. Broadway
Canton, SD 57013

Curtis Wilson
206 S. Main
Lennox, SD 57039

Katherine Kuhns
Worthing, SD 57077

John A. Paulson
RFD 2
Beresford, SD 57004

Freeman Swanstrom
RFD 2
Beresford, SD 57004

Mr. & Mrs. Harm Bunger
RR #3, Box 44
Beresford, SD 57004

L. E. Verley
221 S. Lincoln
Centerville, SD 57014

Arthur Hansen

Canton, SD 57013

Clare Birgen
RFD Box 40
Worthing, SD 57077

Mrs. Grace Fischer
Worthing, SD 57077

Mr. & Mrs. Jim Sorenson
Rt. 2
Beresford, SD 57004

Mr. & Mrs. Eugene W. Fischer
RR #2
Beresford, SD 57004

David Holman
DEWILD, GRANT, RECKERT & ASSOC.
315 First Avenue
Rock Rapids, IA 51246

John Madden
DEWILD, GRANT, RECKERT & ASSOC.
315 First Avenue
Rock Rapids, IA 51246

Arlyn Fodness
RR
Lennox, SD 57039

Mr. & Mrs. Paul Sletten
RR
Beresford, SD 57004

Lillian Sletten
Worthing, SD 57077

Les Ramstad
Worthing, SD 57077

Lennox, S.D. 57039

Elvern Varilek
Canton, S.D. 57013

Roger B. Liles
Beresford, S.D. 57004

Roman Swing

Worthing, S.D. 57077

Cecil Clay

Beresford, S.D. 57004

Philip Tooley
R.R. 2
Beresford, S.D. 57004

Hazella Clay

Beresford, S.D. 57004

Harold W. Fischer
Worthing, S.D. 57077

Mrs. David Lichtsins
Beresford, S.D. 57004

Joe W. Huffman
S. Lincoln & Lincoln Co.
Rural Water Systems
Canton, SD. 57013

Merlin Tipton
State Geological Survey
USD - Science Center
Vermillion, S.D. 57069

Curtis Gubbrud
S. Lincoln & Lincoln Co.
Rural Water Systems
Canton, S.D. 57013

Milton E. Fischer
Box 307
Milbank, S.D. 57252

Glen Garrett
Part A.
Pierre, S.D. 57501

Stanley Jensen
R.R. #2, Box 107
Beresford, S.D. 57004

John Mickelson
133 E. St. Charles
Rapid City, S.D. 57701

William Richey
R.R.
Gregory, S.D. 57533

Donald Wagner
Ralph, S.D. 57650

Merwyn Walter
R.R. #1
Roswell, S.D. 57372

Elvern Varilek
Geddes, S.D. 57342

Diane Thomas
Worthing, SD 57077

Theresa Green
R.R. 3, Box 46
Beresford, S.D. 57004

Jim Sorenson
R. 2
Beresford, S.D. 57004

Ambrose Hurley
Canton, S.D. 57013

John Maiden
315 1st Ave.
Rock Rapids, Iowa 54246

Samuel E. & Lillian Sletten
Rt. 2, Box 82
Beresford, S.D. 57004

Larry Tideman
Lincoln & S. Lincoln Rural
Water System
Canton, S.D. 57013

Harry M. Yarborough
417 West 4th St.
Sioux Falls, S.D. 57104

Pat Kukroli *mailed*
Rt. 3, Box 94 *returned*
Worthing, S.D. 57077

Grace Sherman
Lennox, S.D. 57039

Katherine Kulins
Worthing, S.D. 57077

Harold Clay
Beresford, SD 57004

Darrel Clay
Beresford, S.D. 57004

Eugene W. Fischer
Worthing, S.D. 57077

Joe Huffman
S. Lincoln & Lincoln Co, Rural
Water System
Canton, S.D. 57013

Neil Stengel
Beresford, S.D. 57004

Raymond G. Kuhl
S.D. Assn. of Rural Water System
2116 S. Minnesota Ave.
Sioux Falls, S.D. 57105

Paul R. Sletten
Rt. 2
Beresford, S.D. 57004

Paul Fossum
Worthing, S.D. 57077

Hazel Bradshaw
Lennox, S.D. 57039

Stanley Anderson
Rt. 3
Lennox, S.D. 57039

Arnold Beck
Worthing, S.D. 57077

Ardis B. Clay
Beresford, S.D. 57004

Charles Groen
R.R. 3
Beresford, S.D. 57004

Bernard Zahn, Sr., Mayor
Town of Worthing
Box 148
Worthing, S.D. 57077

Evert Edblom
Beresford, S.D. 57004

John E. Juel
Lincoln Co. Rural Water System
Harrisburg, S.D. 57032

Arlyn Fodness
Lennox, S.D. 57039

Richard Lommen
Lincoln Co. Rural Water
System
Harrisburg, S.D. 57032

Steve Akkerman
Beresford, S.D. 57004

Richard Gettman
Rt. 3
Worthing, S.D. 57077

Elmer Lippert
Worthing, S.D. 57077

Joy Devitt
Worthing, S.D. 57077

Supplemental Report On
South Lincoln County Rural Water System
Application No. 4300-3
September 10, 1978

The Water Rights Commission deferred South Lincoln County Rural Water System Application No. 4300-3 at the July, 1978 meeting until better testing is done on the Dakota Formation and adequate aquifer information is obtained. The staff has compiled and evaluated data presently available - the pump test data; chemical analyses of the Production well, Thomas well, Worthing wells, Canton wells, and several domestic wells in the area; compared elevations of water levels in the area; looked at any costs to domestic users; reviewed known complaints; and reviewed existing Dakota Formation data. From the existing data, predictions on the effects of the proposed pumping have been developed.

Two methods have been used in the past for developing predictions to determine what the effects of proposed high capacity well pumping would be: (1) Most of the time we review and use available data to make predictions and (2) in a few cases aquifer tests have been conducted with predictions then made based upon analyses and calculations of the pump test data.

There is enough data available at this time to make the determination that unappropriated water is available in the Dakota Formation south of Worthing for the South Lincoln Application for three wells spaced at least $2\frac{1}{2}$ miles apart for up to a total of 900 gpm subject to the 455 acre foot annual withdrawal limitation proposed at the July, 1978 meeting.

Although complete information on the Dakota Formation is not available, we do know that even though the head pressure is declining, the formation head pressure decline remains constant, there is not widespread interference between flowing or pumped wells. As a source of water, the formation is dependable and there is a large amount of water in the Dakota Formation. It has been recognized since the Dakota Formation was discovered that the water is not of uniform quality between different regions of the state. The Dakota is responsible for recharge to large buried glacial aquifers in the southeastern part of the State and large amounts of water are fed into the Missouri River between Vermillion and Sioux City, Iowa. Southeast of Vermillion, the lower Vermillion - Missouri aquifer is in contact with, receives water from, and dissipates the pressure in the Dakota. The Dakota may receive some water from overlying, unconsolidated aquifers in Union County, but the pressure differential in that area is probably from, rather than into, the Dakota. The Dakota Formation in the eastern half of South Dakota transmits water readily in all directions. The Dakota Formation in Worthing, Canton and proposed Rural Water System well area is the same aquifer system; a review of chemical analyses and pressure head elevations shows this relationship. That the Dakota in the Worthing-Canton area is also connected to the Dakota Formation in other parts of South Dakota is demonstrated by a review of pressure head elevations.

The pump test did not provide enough data to allow predictions based upon calculations; however, the pump test did provide considerable data. The test pumping did show that the radius of the cone of depression was small, and that we have no valid complaints as the result of the test pumping. The town of Worthing apparently has well problems as is demonstrated by the Bert Johnson domestic well located 1

mile south of Worthing, a well which the US Geological Survey has been measuring for several years. There is no evidence to show that anyone has been adversely affected by the cone of depression caused by pumping of the Worthing wells.

Under the proposed on and off pumping with the annual withdrawal limitation, we would not expect widespread affects from Rural Water System pumping. Although there is the possibility that the Thomas pump may have to be lowered, we would not expect the Thomas well to be seriously affected. During the 72 hour test pumping at 400 gpm, 5.3 acre feet of water was pumped. At the limited withdrawal authorization of 455 AF/year divided between the three proposed wells spaced at least 2½ miles apart, it would take almost 13 days (12.76 days) of "on and off" pumping on an average to produce the same amount of water from the existing production well. It would probably be necessary to clean the Thomas well to reduce any rust, turbidity, or sand problems. Mr. Thomas already experiences sand problems if he pumps the well to fast.

Concerning chemical quality, neither the Town of Worthing nor the City of Canton have experienced chemical quality changes since their wells were constructed.

Even though the City of Canton has been pumping from the Dakota since 1937 from wells located within an area of less than 1 square mile, there does not seem to be widespread affects (see elevation chart) nor have there been complaints from nearby domestic users.

There is no valid technical reason not to approve the application as proposed with the proposed restrictions. The proposed schedule of operation (see Madden's letter) provides further assurances against any unforeseen circumstances. The phased in operation accompanied by frequent measurements of existing and proposed observation wells in the area would provide good control and monitoring of any cone of influence which may develop.

The Dakota Formation is not going to suddenly go dry in the area from pumping up to a total of 900 gpm from 3 wells spaced at least 2½ miles apart on an "on and off" basis. The proposed 455 acre feet annual withdrawal limitation would not be reached until almost two years after the initial pumping starts, if it is reached then.

Experimental pumping could also be authorized, but the proposed restrictions and the possibility of reducing the annual withdrawal should serve the same purpose.

Regarding costs to domestic well owners, we believe that adverse affects on domestic users will be minimal if they occur. The Rural Water System would be faced with the cost of lowering domestic well pumps at a cost of about \$200 per well, if System pumping is at fault. Declining head would be the individual owners responsibility.

New wells cost about \$10,000 with pumps and appurtances. If a pump can not be lowered, then we believe it would be more than reasonable for the system to pay up to the average cost per user (construction cost or cost of connection to the System which ever is greater) if the domestic owner does not want to connect to System.

The proposed comprehensive study of the Dakota Formation in the area should be conducted; however, this application should not be held up until the study is completed. To do so, we believe would be unreasonable and arbitrary action by the Commission. If this is the case, this type of action could place the Commission in the position of requiring similar prediction information on future and pending applications.

Administration of the waters of the state must be considered. First there is the matter of expediting the permit application. There must be time to gather, assimilate, and assess the necessary information on efficiency and equity. However, as information can never be total and complete, a compromise must be drawn between assessing the application and rendering a decision to the applicant.

JOHN HATCH, Chief Engineer
Water Rights Commission

Domestic well clause

455 at flag.

*all 31 wells 2 1/2 mi spacing - prior to use of any water etc
2 years to determine difference between old and new
production well against domestic well.*

*Domestic well - problem of RAS - lower pumps - ledge to old
system
Spends down to limit to then stop water used. Diff doesn't solve
problems - actual use of water would determine if problems
likely to exist.*

*Charles Hubbard - Dr. SIC RAS (150 users)
Dr. ones - Alty LCRH S - 1. Strike*

app 12-12-78

IN THE MATTER OF THE APPLICATION OF)
SOUTH LINCOLN RURAL WATER SYSTEM, INC.,)
FOR A PERMIT TO APPROPRIATE WATER FOR)
BENEFICIAL USE FOR THE PURPOSE OF)
DOMESTIC SUPPLIES FOR RURAL WATER SYSTEM))
USE (APPLICATION NO. 4300-3))

STATE OF SOUTH DAKOTA.
DEPARTMENT OF NATURAL
RESOURCE DEVELOPMENT.
WATER RIGHTS COMMISSION.

MOTION TO STRIKE EVIDENCE FROM THE RECORD

Comes now the above named applicant, South Lincoln Rural System, Inc., by and through its undersigned attorney, and hereby moves the above named Water Rights Commission of the South Dakota Department of Natural Resource Development for a ruling to strike from the record as evidence herein, all statements made by Mr. Dennis McFarland, Attorney at Law, subsequent to the time he was sworn as a witness in this matter.

This Motion is made for the following reasons and is based upon the legal authority hereinafter set forth:

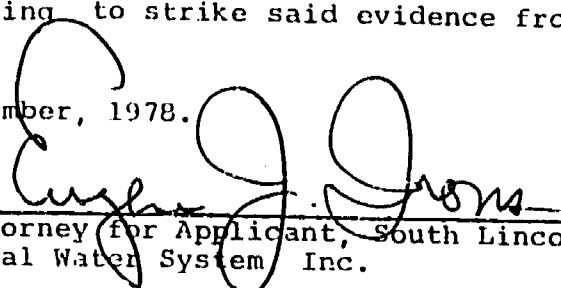
1. Prior to testifying in this matter, Mr. McFarland indicated that he and Mr. Dave Nelson were the attorneys for Friends of Dakota Sandstone, which group opposes said application, and that he preferred to be sworn in, even though he would be calling witnesses to testify in support of his clients position. Assistant Attorney General Janet Pearson, who was present throughout the hearing on July 27, 1978, indicated prior to Mr. McFarland's testimony that a person could not appear in the proceedings both as a witness and as an attorney. Mr. McFarland then proceeded to testify, but did not call any witnesses or introduce any other evidence, and he did continue to represent his clients after he had testified.
2. In contested cases such as this one, the rules of evidence as applied in nonjury civil cases of the Circuit Courts of this State shall be followed. SDCL 1-26-19 (1).
3. When an attorney is a witness for his client upon any trial except as to merely formal matters such as the attestation or custody of an instrument or the like, he shall not further participate in such trial. SDCL 19-1-3.
4. The leading South Dakota case on this question is Jones v. South Dakota Children's Home Society, 238 NW 2d 677 (1976), in which the South Dakota Supreme Court firmly stated the following rule:

"Regardless of its origin, SDCL 19-1-3 makes this problem a matter of evidence, not simply a matter of ethics. Therefore, we are hereby making it incumbent upon the Judges of the Circuit Court of this State to enforce this provision. Henceforth, if an Attorney testifies for his client as to contested matters, neither he nor any member of his firm will be allowed to represent that client at any further proceedings directly relating to that case.

If for some reason the attorney does continue to represent the client after becoming a witness, his testimony will be considered incompetent and stricken from the record."

THEREFORE, said applicant respectfully moves the above named Water Rights Commission for a ruling to strike said evidence from the record herein.

Dated this 13th day of September, 1978.



Attorney for Applicant, South Lincoln
Rural Water System Inc.

-oOo-

4300-3

SOUTH DAKOTA
DEPARTMENT OF NATURAL RESOURCES

Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501
Phone 605/224-3151

September 12, 1977

Robert C. Swartout
Chief Community Programs
Farmers Home Administration
P. O. Box 821
Huron, South Dakota 57350

Dear Mr. Swartout:

This will acknowledge your letter concerning the suit brought by the Sierra Club against Farmers Home Administration personnel, the South Lincoln County Rural Water System and the Minnehaha Community Water Corporation. There seem to be three main issues involved in this matter - land use and zoning, individual wastewater disposal and control of water. All three raise the question of State's rights.

The State of South Dakota, through the Water Rights Commission in accordance with Title 46 of the South Dakota Compiled Laws, is the only agency which has authority to determine what waters of the State can be converted for public use or controlled for public protection. State Statutes also provide that protection of the public interest and the development of water resources of the State is of vital concern to the people of the State and the State shall determine in what way the waters of the State should be developed for the greatest public benefit. The State has further declared that it is in the best public interest that the quantity of water withdrawn annually from a groundwater source shall not exceed the quantity of the average estimated annual recharge of water to such groundwater. Further, the State has also declared that all water within the State is property of the people of the State. The Federal Government has no say as to how State waters are to be appropriated. Specifically, it is up to the State, through the Water Rights Commission, to determine if groundwater use by the Minnehaha Community Water System or the South Lincoln County Rural Water System will deplete available groundwater supplies.

Robert C. Sweetout
September 12, 1977
Page - 2 -

The South Lincoln County Rural Water System has only recently made an application for a water right; this application has not been acted upon by the Commission to date. The Minnehaha Community Water Corporation Water Right Application Number 2311-3 was advertised for a public hearing at a regular Water Rights Commission meeting at Rapid City. Following the public hearing on July 24, 1975, the Commission approved the application. The Commission received no protests to the application before or at the hearing. As required by Statute, before the Commission approves an application the Commission must determine that unappropriated water is available, that the project is feasible and that the application is in the public interest.

Application No. 2311-3 was approved for 4.0 cubic feet per second (cfs) or 1796 gallons per minute which is about 2.5 million gallons per day (mgd) with the water to be obtained from five 50 foot wells. The 4.0 cfs when used on a continuous basis is equivalent to the amount of water which could be authorized to irrigate up to 1120 acres during an irrigation season. A copy of the water right is attached for your information.

The Summons points out that the maximum average yield which could be obtained during a two year period from the Big Sioux Aquifer to the north of Sioux Falls is 24 mgd. This information is contained in United States Geological Survey Paper Number 2024, "Water Resources of the Big Sioux River Valley near Sioux Falls, South Dakota". The 24 mgd is based upon an analog model of the aquifer with the well field simulated as encompassing the entire aquifer. The analog was completed for drought conditions, that is without recharge from precipitation and with a flow equivalent to the two year period of lowest recorded stream flow in the Big Sioux River. Using these conditions, the maximum sustained average daily yield of groundwater is less than 24 million gallons per day. This value is primarily dependent upon aquifer transmissibility and storage; however, under normal conditions the sustained yield is primarily dependent upon the availability of water in the river and hydraulic conductivity of the stream bed.

The Sioux Falls existing water rights and future rights do not include the entire aquifer. The Sioux Falls future use rights area ends about 1½ miles south of Baltic while the Minnehaha system wells are located north of Baltic, about 3½ miles from the Sioux Falls future use area.

Robert C. Swaintout
September 12, 1977
Page - 3 -

Most of the water pumped from the existing Sioux Falls city well field is water which is originally derived from the Big Sioux River. Less than one million gallons per day is transmitted into the well field by under flow through the aquifer. This fact was supported during the past two years when water levels within the Sioux Falls existing well field were low, but to the north outside of the well field water levels were representative of levels expected during dry weather. Although the City of Sioux Falls may need 24 mgd in the future on an average basis, they may not be able to obtain the water from their well field during extremely dry periods, even though to the north of the well field and outside of their future use area the Minnehaha Community System wells and nearby irrigation wells may experience no trouble.

Development of groundwater in the Sioux Aquifer depends on the amount of surface water in the Big Sioux River. During dry periods, the base flow in the Big Sioux River is primarily water released from groundwater storage upstream. During periods of high stream flow, water from the river recharges the aquifer through the stream banks; during floods, large amounts of water on the flood plain percolate through the overlying top soil and alluvium and recharge the aquifer.

Construction of a rural water system would seem to be no different than construction of electric service lines, or telephone service lines or good roads. Regulation of subdivision housing and other development in Minnehaha County and Lincoln County is a function of County Government as specified by Chapter 11-2 of the South Dakota Compiled Laws. Zoning statutes provide that zoning ordinances, subdivision ordinances, official zoning maps or other official controls as deemed necessary by the county shall be included as adjuncts to and in accordance with a comprehensive county law. The zoning statutes provide for land use control through adoption by vote of the people of a comprehensive plan. Whether a county has local zoning controls or not is a local county option as authorized by the State of South Dakota. Any Board of County Commissioners may adopt zoning ordinances, resolutions or regulations to control development within their respective county.

The Plaintiff, the Sierra Club, should take their concerns to the local county commissions since the counties have control of zoning and land use. The Minnehaha County and Lincoln County officials could be called to testify at any court proceedings to explain their existing zoning ordinances and laws.

Robert C. Swickout
September 12, 1977
Page - 4 -

We are certain that the Farmers Home Administration is aware of the situation which occurred outside the city limits of Sioux Falls during the 1960's when the city through annexation and provision of water and sewer services "bailed out" surrounding residents who had built homes without effective zoning or individual wastewater disposal controls and who were, in most cases, not connected to any type of community water system. The situation demonstrated the lack of control exercised by the county at the time with respect to housing developments. It is our understanding that Minnehaha County now is seeking to control subdivision development and individual wastewater disposal. The State Department of Environmental Protection (DEP) has adopted wastewater disposal rules which also provide requirements for construction of individual wastewater disposal systems.

The primary reasons for establishing and constructing rural water systems, as you are aware, are that private well water supplies do not exist and water is hauled, the water supply is bacteriologically unsafe, or the water contains unsatisfactory chemicals, or the supply is insufficient or unreliable. Rural water is expensive; therefore, people normally do not sign up and connect to it unless it is the best water available.

Attached is information we have obtained from the Department of Environmental Protection regarding the bacteriological safety of private water supplies in South Dakota. The Sioux Falls Health Department Laboratory also does water analyses for private water supply owners in Lincoln and Minnehaha Counties which are not included in the attached tabulations. We have included a summary of a report on a detailed private water supply study in Aurora and Brule Counties. The county study indicates that voluntary sampling does not present the true picture, which is more serious than the state-wide figures seem to show.

It is doubtful that the purpose of the National Environmental Protection Act is intended to deprive rural people of a safe, sufficient and dependable source of water which is most likely to be available from a rural water system. Water from a rural water system must meet the requirements of the Federal Safe Drinking Water Act. Water delivered from many private supplies does not meet safe drinking water standards as a review of available bacteriological records and chemical analyses of rural water supplies would indicate.

Apparently the Plaintiff's members obtain their water supplies from city or community type water systems or they are fortunate in having private supplies which are sufficient in quantity, safe to

Robert C. Swartout
September 12, 1977
Page - 5 -

drink, and dependable and they have not experienced the water supply problems encountered by rural residents to be served by the two rural water systems.

We suggest that you obtain what information you can from both rural water systems as to the status of present domestic supplies - quantity, quality and dependability. In Lincoln County, a county-wide groundwater study has not been completed by the State Geological Survey. It is scheduled, but has not been started to date. In Minnehaha County, a county groundwater study has not been scheduled. Only the Sioux Falls well field aquifer and the Skunk Creek Aquifer have received much attention and study.

We would also like to point out that the State, in accordance with SDCL 46-17A-22.1, provides for grants to rural water supply systems, which indicates Legislative support of rural water system development in the State.

The State also has an Environmental Impact Statement Statute, SDCL 11-1A, and a Remedies for Protection of Environment Statute, SDCL 21-10A.

SDCL 21-10A-8 specifies that in any such administrative, licensing or other proceedings as performed by an agency such as the Water Rights Commission, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

The Water Rights Commission has recognized the benefits of rural water systems and that the primary purpose of a rural water system is to deliver a sufficient, dependable and safe supply of drinking water for which there does not appear to be a feasible or prudent alternative. Zoning and land use and individual wastewater disposal control are functions of County Government, although wastewater disposal is also a responsibility of DEP. We believe the requirements of SDCL 21-10A have been met by the Water Rights Commission or through provisions of State Statutes.

Since Water Rights Commission actions are of an environmentally protective regulatory nature, its actions are exempt from the requirements of SDCL 11-1A. However, a review of the requirements

of 11-1A does indicate that the intent of this statute has been met either through actions of the Commission, other agencies or as provided through statute. The Environmental Impact Statement requires answers to the following:

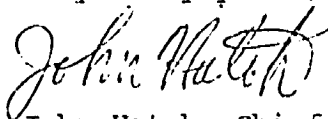
1. A description of the proposed action and its environmental setting - is included in a preliminary feasibility report and plans and specifications for the project and as part of the water right application.
2. The environmental impact of the proposed action including short-term and long-term effects - would be provision of a safe, dependable and sufficient supply of water which will contribute to an improvement in the general health and well-being of the persons served by the rural water system.
3. Any adverse environmental effects which cannot be avoided should the proposal be implemented - would no doubt include land use and zoning, individual wastewater disposal and water supply availability concerns. These concerns are provided for by statutes - county zoning option, DEP rules and State Water Statutes.
4. Alternatives to the proposed action - would be for people to continue to haul water or use unsafe, insufficient or undependable supplies.
5. Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented - would include construction of the rural water system, most of which could not be salvaged; however, since the record of success and acceptance of such systems has been exceptional, anyone with reasonable knowledge of rural water systems would not question the commitment of resources. The Water Rights Commission itself considered the Minnehaha system feasible and in the public interest when considering the water right application. The same consideration will be given to the Lincoln County Application.
6. Mitigation measures proposed to minimize the environmental impact - are provided for in County Zoning, DEP Wastewater Disposal Rules and State Water Statutes.

Robert C. Swartout
September 12, 1977
Page - 7 -

7. The growth-inducing aspects of the proposed action - will be dependent upon local zoning requirements.

Although the above review is rather brief, we believe that the State, through its different agencies and statutes, does satisfy and even exceed, the requirements of the Federal Environmental Impact Statement (EIS) Law. Requiring that a Federal EIS be prepared would be a duplication of effort and could even be an infringement upon State's rights.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Hatch", written in dark ink.

John Hatch, Chief Engineer
WATER RIGHTS COMMISSION

JH:nrf

Enclosure:

~~SECRET~~
4300-3

Department of Natural Resource Development

OFFICE OF THE SECRETARY

Joe Foss Building, Pierre, South Dakota 57501

Phone 605/773-3151

January 4, 1979

Mr. Dennis McFarland
517 N. W. Bank Building
Sioux Falls, South Dakota 57102

Dear Mr. McFarland:

Pursuant to our telephone conversation of yesterday of January 3, 1979, I reviewed the staff recommendations on the rural water system application and also discussed the matter with personnel in the Geological Survey. Although Mr. Barari was on vacation, I was able to have a discussion with Merlin Tipton.

As you know, the Legislature has set the policy of this State to allow withdrawals from the Dakota Formation to exceed the average annual recharge of the aquifer. Although I had no part in presenting this policy proposal to the Legislature or in convincing them to adopt it, it is a policy with which I agree. It is an accepted fact that the Dakota Formation would be declining regardless of the amount of withdrawals that have been made from it in the past or will be made in the future. If we were to restrict loss to the annual recharge limitation, the State could not allow any more withdrawals from the Dakota Formation be they municipal, rural water system or domestic. We would be ignoring a large supply of water which, even though it may be exhaustable, may be capable of supplying our needs for hundreds of years in the future.

In the absence of the average annual recharge limitation, which applies to shallow aquifers in the State, I feel the staff is correct in recommending and the Commission was correct in adopting a limitation based upon the maximum annual decrease that should be allowed in the piezometric head of the Dakota Formation. In fact, if I were to make any changes in the staff position, I would eliminate the requirement that the rural water system also develop its Davis Well Field. I believe the Commission's only function is to determine the amount of water that may be withdrawn, the well location, and the maximum allowable decline in the water level. The risk of exceeding these limitations, I believe, is only the business of the rural water system and should be guarded against as the applicant sees fit. It is not the business of the Commission to protect applicants who violate the conditions of their permits.

Mr. Dennis McFarland

Page 2

January 4, 1979

As I understand it, this matter has been deferred a number of times, but I also understand that the September deferral was granted in order to allow you and your clients to present testimony and evidence since your testimony as a lawyer on behalf of your clients was properly struck from the record. While I am in general agreement with the decision of the Water Rights Commission on the merits, I recognize that a citizen's Board may not have its procedures perfected. For that reason, I would think that you would be eager to submit Findings and Conclusions and have a final decision made under the Administrative Procedures Act so that you can pursue your remedy in Circuit Court and have the matter reversed, if indeed there is an error in the decision. It is my decision that at this late time I will not attempt to interfere with a staff position or Commission decision which appears to be substantially correct. I will not seek to delay the adoption of Findings and Conclusions or a final decision in this matter.

Sincerely,

Warren R. Neufeld, Secretary
Natural Resource Development

WRN/bal

CC: Jeff Masten
✓ John Hatch, Chief Engineer, Water Rights Division



Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501
Phone 605/224-3151

February 9, 1979

Harold W. Fischer, President
Friends of the Dakota Sandstone Aquifer
RR
Worthing SD 57077

Dear Mr. Fischer:

The Water Rights Commission at its meeting December 12, 1978 approved application No. 4300-3 for 2.0 cfs from three 650 foot deep wells in Lincoln County for a rural water system. Attached are the Findings of Fact and Conclusions of Law in final draft as adopted by the Water Rights Commission January 31, 1979 and their final decision.

South Dakota Statutes provide that this decision by the Commission may be appealed to the courts.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH:kjw

cc: Dennis McFarland

Department of Natural Resource Development

WATER RIGHTS COMMISSION
Joe Foss Building, Pierre, South Dakota 57501
Phone 605/224-3151

February 9, 1979

Curtis Gubrud, President
South Lincoln County Rural Water System
Canton SD 57013

Dear Mr. Gubrud:

The Water Rights Commission at its meeting December 12, 1978 approved Application No. 4300-3 for 2.0 cfs from three 650 foot deep wells in Lincoln County for a rural water system. Attached are the Findings of Fact and Conclusions of Law in final draft as adopted by the Water Rights Commission January 31, 1979 and their final decision.

South Dakota Statutes provide that this decision by the Commission may be appealed to the courts.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH:kjw

cc: Gene Irons

Department of Natural Resource Development

WATER RIGHTS COMMISSION
Joe Foss Building, Pierre, South Dakota 57501
Phone 605/224-3151

February 9, 1979

Orville Thomas
Box 365
Park Rapids MN 56470

Dear Mr. Thomas:

The Water Rights Commission at its meeting December 12, 1978 approved Application No. 4300-3 for 2.0 cfs from three 650 foot deep wells in Lincoln County for a rural water system. Attached are the Findings of Fact and Conclusions of Law in final draft as adopted by the Water Rights Commission January 31, 1979 and their final decision.

South Dakota Statutes provide that this decision by the Commission may be appealed to the courts.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Commission

JH:kjw

cc: Robert Timm

February 28, 1979

Mr. John J. Smith
Attorney at Law
South Dakota Department of Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Re: The Matter of South Lincoln Rural
Water System Application for Permit No. 4300-3.

Dear Mr. Smith:

Enclosed please find a true and correct copy of the Notice of Appeal on behalf of the Friends of Dakota Sandstone Aquifer in the above matter. Service is intended by mail.

SDCL 1-26-33 requires that the Agency shall submit to the reviewing Court the entire record of the proceedings. I am assuming that includes the record of all the hearings, including hearings continued on the Application for Permit No. 4300-3; and including the July meeting in Sioux Falls, the September meeting in Mitchell, the December meeting in Sioux Falls and the January meeting in Pierre. I am also assuming that transcripts of the various meetings will be included in the record. The only foreseeable problem you may have is paying for the cost of the December meeting in Sioux Falls. As you recall, Jeff Masten requested that the transcript be made. It would appear under 1-26 that either you or the applicant should provide that transcript. We would be willing to consider stipulating to a transcript made of the tape recording as was done at meetings prior to September. Please advise.

Yours very truly,

Dennis C. McFarland

DCM/ndv

Enc.

DAVID R. NELSON
ATTORNEY AT LAW
SUITE 512 SECURITY BUILDING
101 S. MAIN
SIOUX FALLS, SOUTH DAKOTA 57102
TELEPHONE 339-3501

48133
ATTORNEY
GENERAL
MAR 30 1979

March 29, 1979

Mr. Robert Timm ✓
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

Mr. John J. Smith
Joe Foss Building
Pierre, South Dakota 57501

Mr. Mark Meierhenry, Attorney General
State Capitol Building
Pierre, South Dakota 57501

Mr. Eugene Irons
108 South Broadway
Canton, South Dakota 57013

Mr. Jeff Masten
110 South Broadway
Canton, South Dakota 57013

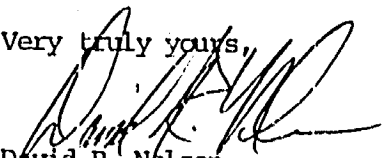
Re: In the Matter of South Lincoln Fural Water
System Application for Permit No. 4300-3

Gentlemen:

I enclose Appellant's MOTION TO COMPEL PRODUCTION OF A TRANSCRIPT,
AFFIDAVIT and NOTICE OF MOTION in the above referenced matter.
Service by mail is hereby intended.

Thank you very much.

Very truly yours,


David R. Nelson

DRN/lrt

Enclosures

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) :SS

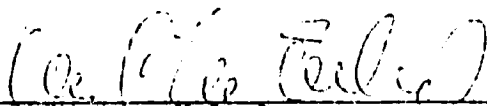
IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3

MOTION TO COMPEL
PRODUCTION OF TRANSCRIPT

COMES NOW the Appellant in the above captioned matter and respectfully moves the Court for an Order compelling the Water Rights Commission of the South Dakota Department of Natural Resources to produce a written verbatim transcript of all proceedings relative to the Application of the South Lincoln Rural Water System for Water Rights, Permit No. 4300-3. In support of this Motion, Movant respectfully shows the Court that S.D.C.L. 1-26-33, a copy of which is annexed hereto and by this reference made a part hereof, requires the agency against whom an appeal is taken to transmit to the reviewing Court the original or a certified copy of the entire record of the proceedings within thirty days after the service of the Notice of Appeal. Movant further shows that according to the South Dakota Supreme Court S.D.C.L. 1-26-33 has been construed to require the agency to furnish a transcript of the proceedings to the reviewing Court. See Clarke vs. South Dakota Real Estate Commission (1977 -S.D.-) 255 N.W.2nd 67.

Dated at Sioux Falls, South Dakota, this 23rd day of March, 1979.


Dennis C. McFarland
Attorney for Appellant
The Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

STATE OF SOUTH DAKOTA)

COUNTY OF HUGHES)

:SS

IN CIRCUIT COURT

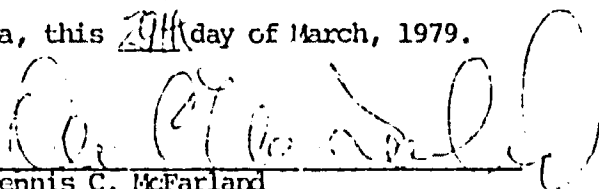
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3

AFFIDAVIT

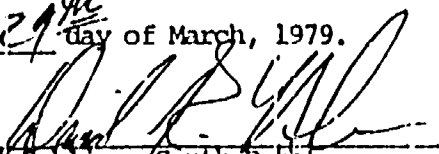
Dennis C. McFarland, being first duly sworn on oath, deposes and states that he is one of the attorneys for the Appellant Friends of Dakota Sandstone Aquifer and that he makes this Affidavit in support of Appellant's Motion to Compel Production of Transcript of the proceedings herein. That the Notice of Appeal in this matter was served by mail on February 28, 1979, and that as of the date herein, no transcript has to the knowledge of your Affiant been ordered or provided by the agency. Your Affiant further shows that a verbatim record of the proceedings herein was made by the agency by tape recording every meeting at which the application hearing was discussed. Your Affiant further represents that the proceedings herein heard on December 12, 1978, were recorded verbatim by the May & Kolb Reporting Services, Inc., of Sioux Falls, South Dakota. Your Affiant further represents that his letter to Mr. John J. Smith, Attorney at Law for the South Dakota Department of Natural Resources, asked that a transcript be provided pursuant to S.D.C.L. 1-26-33. Your Affiant further represents that it would be premature to assign error to the actions of the South Dakota Water Rights Commission in the absence of a verbatim transcript.

Dated at Sioux Falls, South Dakota, this 29th day of March, 1979.


Dennis C. McFarland
Attorney for Appellant
The Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

Subscribed and sworn to before me

this 29th day of March, 1979.


Notary Public - South Dakota

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3

NOTICE OF MOTION

TO THE SOUTH DAKOTA WATER RIGHTS COMMISSION and IT'S ATTORNEY, ASSISTANT
ATTORNEY GENERAL ROBERT TIMM and THE SOUTH DAKOTA DEPARTMENT OF NATURAL RESOURCE
DEVELOPMENT and IT'S ATTORNEYS, ASSISTANT ATTORNEY GENERAL JOHN SMITH and ATTORNEY
GENERAL MARK MEIERHENRY; and EUGENE J. IRONS and JEFF MASTEN, THE ATTORNEYS FOR
THE SOUTH LINCOLN COUNTY RURAL WATER SYSTEM:

You and each of you will hereby take notice that the above Motion to
Compel Production of Transcript of the above entitled matter will be brought on
for hearing before the Honorable Robert Miller in the courtroom of the Hughes
County Courthouse, Pierre, South Dakota, on the 24th day of April, 1979, at the
hour of 10:00 A.M. or as soon thereafter as counsel may be heard.

Dated at Sioux Falls, South Dakota, this 24th day of March, 1979.


Dennis C. McFarland
Attorney for Appellant
The Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) :SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN *
RURAL WATER SYSTEM APPLICATION *
FOR PERMIT NO. 4300-3 *

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 29th, 1979, he sent a true and correct copy of the Motion to Compel Production of Transcript, Affidavit and Notice of Motion to:

Robert Timm
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

John J. Smith
Joe Foss Building
Pierre, South Dakota 57501

Mark Meierhenry, Attorney General
State Capitol Building
Pierre, South Dakota 57501

Eugene J. Irons
108 South Broadway
Canton, South Dakota 57013

Jeff Masten
110 South Broadway
Canton, South Dakota 57013

by first class United States Mail, on this the 29th day of March, 1979.


Dennis C. McFarland
Attorney for Appellant
The Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

DAVID R. NELSON
ATTORNEY AT LAW
SUITE 512 SECURITY BUILDING
101 S MAIN
SIOUX FALLS, SOUTH DAKOTA 57102
TELEPHONE 339-3501

April 16, 1979

Mr. Robert Timm
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

Mr. John J. Smith
Joe Foss Building
Pierre, South Dakota 57501

Mr. Mark Meierhenry, Attorney General
State Capitol Building
Pierre, South Dakota 57501

Mr. Eugene J. Irons
108 South Broadway
Canton, South Dakota 57013

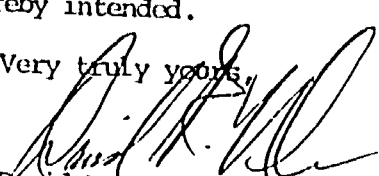
Mr. Jeff Masten
110 South Broadway
Canton, South Dakota 57013

Re: In the Matter of South Lincoln Rural Water System
Application for Permit No. 4300-3

Gentlemen:

Enclosed please find a copy of an Affidavit in the above referenced matter. Service by mail is hereby intended.

Very truly yours,


David R. Nelson

DRN/lm

Enclosure

STATE OF SOUTH DAKOTA
WATER RIGHTS COMMISSION

APPLICATION OF SOUTH LINCOLN
RURAL WATER SYSTEM FOR
PERMIT NO. 4300-3

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Having heard and considered all the evidence presented before the commission on October 6, 1977, at the Holiday Inn, Spearfish, S.D., on July 27, 1978, at the Ramada Inn, Sioux Falls, S.D., on September 13, 1978, at the 4-H Meeting Hall, Mitchell, S.D., and on December 12, 1978, at the Ramada Inn, Sioux Falls, S.D., the commission hereby makes the following:

FINDINGS OF FACT

I Specific Findings

A. The South Lincoln Rural Water System

1. The South Lincoln Rural Water System (the "System") is a non-profit water company organized to supply rural persons in the southern Lincoln County area with high quality water. Approximately 900 users have signed up, of which 50-60% are farm connections. Additionally, the town of Chancellor has signed up.
2. Of 918 proposed members who submitted data sheets to the System:
 - (A) 87% have wells 10 years old or older;
 - (B) 41% presently haul water to meet their needs;
 - (C) 48.4% had access to only a limited or very limited quantity of water for household purposes;
 - (D) 44% had access to only a limited or very limited quantity of water for livestock;
 - (E) 24.2% had hard water for household purposes;
 - (F) 16.8% had water for household purposes that was high in iron.

A number of farmers in the area must limit their operations because of water quality problems; for example, a high nitrate content presents many farmers from raising baby pigs. Approximately 50% of the persons located in the

area to be served have signed up to receive water,

3. The System's application proposes a diversion of up to 2.0 c.f.s. from three 650 foot deep Dakota formation wells to be located in the Northeast Quarter (NE $\frac{1}{4}$) of Section 20 and the Southeast Quarter (SE $\frac{1}{4}$) of Section 32, both in Township 98 North, Range 50 West and in the Southwest Quarter (SW $\frac{1}{4}$) of Section 36, Township 98 North, Range 51 West, all in Lincoln County, South Dakota, approximately 5 miles south of the town of Worthing.
4. To satisfy the demands of presently enrolled customers, the System will require 415 acre-feet of water annually. This quantity plus an additional 10% for line losses, a total of 455 acre-feet per year, will be sufficient to enable the System to bring all presently enrolled customers on line.
5. The System presently holds permit No. 4301-3 to appropriate water from the Vermillion aquifer near Davis, South Dakota. The System acquired this permit as an alternative or supplemental source for the proposed Dakota diversion. The quality of the Vermillion water is much poorer than that of the Dakota formation in the Systems's production well area; however, and the System would have to treat the water to remove iron and manganese.
6. The System will be able to simultaneously bear the capital costs of alternative Vermillion aquifer wells, including a main line hookup into the distribution system, and those of its primary Dakota formation supply system.
7. On or about July 10, 1978, the Application herein was filed in proper form with the South Dakota Water Rights Commission. All notices required by law were duly given prior to the hearing held on the application.

B. The Dakota Formation in the Systems's Production Well Area

1. The Dakota formation in the area of the System's proposed well field is an artesian aquifer consisting of three layers of fine-grained sandstone separated by layers of shale. The top layer of the formation begins at 380 feet and extends down to around 550 feet. The middle layer begins at around 560 feet and extends down to around 610-615 feet.

The lowest level begins at around 630 feet and extends down to around 650-655 feet. The total thickness of the water bearing sandstone is 220-230 feet.

2. The artesian head pressure in the Dakota formation has been declining for many years. The decline in the System's production well area has been less than the decline in other areas of the state. At present, the static water level in the System's production well area is around 170 feet, indicating the existence of around 210 feet of artesian head pressure. Existing data indicates that the present annual average decline of the head pressure in the area is some one-half ($\frac{1}{2}$) to three-fourths ($\frac{3}{4}$) feet per year. Under present conditions, it will therefore take from 300 to 400 years for the static water level to drop to the top of the Dakota formation itself.
3. Applying a conservative estimate of 10% porosity (versus the 15% used in the Dakota Formation Report) to a conservative estimate of 150 feet of average aquifer thickness (versus the 220 feet actually found in the production well log (see "1." above)) would indicate that the aquifer underlying a 36 square mile area should contain at least 350,000 acre feet of water in storage.
4. The Dakota formation is an extensive formation that underlies most of South Dakota; however, the quality of the water in the formation in the System's production well area is significantly better than that existing in the formation generally.
5. Sources of recharge, rate of recharge, and any boundaries to the Dakota Formation in the System's production well area can not be determined from existing data.
6. The Dakota formation in the System's production well area is stratigraphically lower than the greenhorn formation.

C. The System's Pump Test and Drawdown Projections

1. The System constructed one 650 foot deep production test well in its proposed well field and conducted a 72 hour

aquifer test using that well. Aquifer response was monitored by five observation wells situated at distances ranging from 65 feet to three miles from the production well. The method employed and its execution were adequate.

2. The drawdown results from test well No. 3 are inconclusive because static water level had not been established in that well prior to the commencement of the test.
3. The aquifer test indicates that a reasonable coefficient of transmissibility (T) for the Dakota formation in the System's production well area is 20,000 gpd/ft. Based upon this T value, a reasonable coefficient of storage (S) for the formation in that area would be in the range of 10^{-5} to 10^{-3} . Using values of $T = 20,000$ gpd/ft. and $S = 10^{-3}$ and assuming no recharge, the predicted drawdown at 5,000 feet from the production well after one year of pumping at a rate of 270 g.p.m. would be approximately 6.9 feet. The actual aquifer test results indicate that this is a reasonable projection. Because drawdown approximates logarithmic function of time, the rate of drawdown at that point or any other point would decrease dramatically with the passage of time.
4. Although the System's aquifer test produced results from which reasonable predictions of drawdown as a function of distance and time can be made, the test results are not absolutely conclusive because from the indiscriminate pumping from all layers of the formation simultaneously, the possible effects from the layering of the formation in that area could not be determined.
5. Tests to precisely analyse the separate characteristics and interaction of the three layers of the Dakota formation in the production well area would be prohibitively expensive for either the System or the commission staff at this time.

D. Existing Uses of the Dakota Formation in the System's Production Well Area.

1. In an 80 square mile area surrounding the proposed well field, there are 57 wells tapping the Dakota formations.

The owners of 20 of these have signed up to receive water from the System.

2. The depth to which the pumps could be lowered and the lift capacity of the pumps in the wells surrounding the System's proposed well field can not be determined in most cases from the evidence.
3. A reasonable estimate of present annual withdrawals from the Dakota formation in a three township area surrounding the System's proposed well field is as follows:

<u>User</u>	<u>Annual Amount in Acre-Feet</u>
City of Canton	365
Town of Worthing	65
Stan Wievel (water hauler)	20
Other water haulers (estimate)	20
Assume 2 domestic wells/mi. ²	
10,000 gal./mo. average use	
(System uses 8,000 gal./mo.)	80
Any other water use	<u>80</u>
	630

E. Effect of the System's Pumping on Existing Wells

1. The System's pumping can not reasonably be expected to interfere with reasonably constructed existing wells situated farther than 1,300 feet from any of the three proposed production wells.
2. It has been estimated that 10,000 wells have been drilled into the Dakota formation in South Dakota. In 1965, pumpage in 21 counties in southeastern South Dakota probably amounted to nearly 100 c.f.s. 630 acre-feet are withdrawn annually from the three township area surrounding the System's proposed well field. The System's proposed diversion of 455 acre-feet annually should not be a significant addition to the total withdrawals presently made from the formation and will not appreciably increase the present overall rate of decline of the formation in the area of the System's proposed well field.

II Findings of Ultimate Fact

A. The System is a non-profit rural water system as defined in SDCL 1-36A-1.

B. The Dakota formation in the System's production well area is stratigraphically lower than the greenhorn formation.

C. There is sufficient unappropriated water available in the Dakota formation in the area of the System's proposed well field to supply 455 acre-feet annually.

D. A diversion rate of 2 c.f.s. should not interfere with reasonable existing uses.

E. The System is in the public interest.

F. The System, including the Davis alternative supply, is a feasible project.

Wherefore the commission makes the following:

CONCLUSIONS OF LAW

1. SDCL 46-1-4 requires the commission to maximize the beneficial use of the state's water, and where there is a reasonable probability based upon the evidence to believe that unappropriated water is available, the commission should issue a permit.

2. A diversion method must be reasonable to be protectable. A reasonable method of diversion is one which will deliver water to a user as development of the source proceeds reasonably toward maximum beneficial use.

3. Since the Dakota formation is stratigraphically lower than the greenhorn formation and the static water level is presently in a state of continuing decline, availability of unappropriated water must be defined in terms of a reasonable rate of decline.

4. Where the effects of a proposed diversion on existing uses can not be determined with certainty, the commission may issue a permit subject to reasonable conditions to protect both existing uses and the applicant's investment.

5. There is unappropriated water available for diversion by the System in the quantity and at the rate as found by the commission.

6. The System's diversion is in the public interest.

7. The System is feasible.

8. The following are reasonable conditions to be attached to the permit under the facts as found by the commission:

- 1) that the System be limited to an annual withdrawal of 455 acre-feet and that the total withdrawal be subject to review by the commission;
- 2) that before any water is used, all proposed wells must be installed at least 2½ miles apart, with all three wells ready for pumping prior to any use of water;
- 3) that the system install one observation well into the upper layer of the Dakota Formation about 200 feet from each production well to be used for monitoring draw-down near the production well;
- 4) that the rural water system wells approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer.

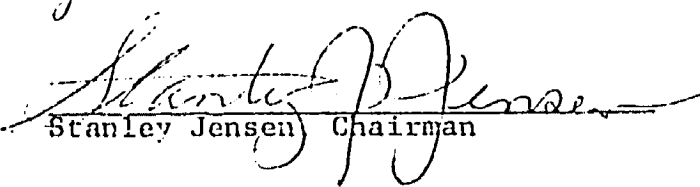
The rural water system under this permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights.

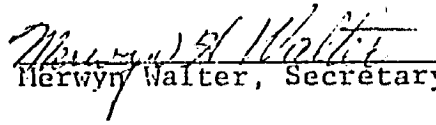
Withdrawals will be restricted, if the aquifer head pressure declines 20 feet at designated measuring points during a four year period, beginning with the date the first water is pumped into distribution system. The head pressure decline to be determined by using an average of three of the seven proposed observation wells located at least 2 miles from one or more production wells. The lowest measurements, to be based upon an average of each observation well measurements taken over a three month period, will be used in determining head pressure decline;

- 5) if the aquifer head pressure does decline more than 20 feet in the four year period, or if observation well measurement data indicates the 20 foot head pressure decline level would be reached in the four year period, the rural water system upon order of the Commission will have to change to a new source of water;

- 6) that no wells be located within 1,000 feet of existing Dakota Formation wells unless authorized by the well owner;
 - 7) that the Davis area well field be developed and placed on line prior to any pumping from the Dakota wells.
9. The Systems application for permit No. 4300-3 for 2 c.f.s. from 3-650 foot deep Dakota Formation wells should be approved subject to the aforementioned conditions.

Signed this 1st day of February, 1979.


Stanley Jensen, Chairman


Merwyn Walter, Secretary

STATE OF SOUTH DAKOTA
Water Rights Commission

In the Matter of South Lincoln
Rural Water System Application
for Permit No. 4300-3

FINAL DECISION

Whereas hearings on the above application were held by the Commission on October 6, 1977 at the Holiday Inn, Spearfish, South Dakota, on July 27, 1978 at the Ramada Inn, Sioux Falls, South Dakota, on September 13, 1978 at the 4-H Meeting Hall, Mitchell, South Dakota, and on December 12, 1978 at the Ramada Inn, Sioux Falls, South Dakota, and the Commission having considered the evidence presented, and at the Commission meeting held at the South Dakota Education Association Auditorium, Pierre, South Dakota on January 31, 1979, the Commission having adopted the staff's Proposed Findings of Fact and Conclusions of Law as amended and having rejected the Proposed Findings of Facts and Conclusions of Law of the Lincoln Rural Water System and the Friends of the Dakota Sandstone Formation in so far as they are not in accord with or are in addition to those adopted by the Commission, it is the final decision of the Commission that:

I

The South Lincoln County Rural Water System, Application No. 4300-3, is approved for 2.0 cfs (898 gpm) from 3 - 650 foot deep Dakota Formation wells, with the annual withdrawal limited to 455 acre feet and that the total withdrawal is subject to review and adjustment by the Water Rights Commission.

II

Before any water is used, all proposed wells must be installed at least 2½ miles apart, with all three wells ready for pumping prior to any use of water.

III

The system install one observation well into the upper layer of the Dakota Formation about 200 feet from each production well to be used for monitoring drawdown near the production well.

IV

The rural water system wells approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights.

Withdrawals will be restricted, if the aquifer head pressure declines 20 feet at designated measuring points during a four year period, beginning with the date the first water is pumped into distribution system. The head pressure decline to be determined by using an average of three of the seven proposed observation wells located at least 2 miles from one or more production wells. The lowest measurements, to be based upon an average of each observation well measurements taken over a three month period, will be used in determining head pressure decline.

V

If the aquifer head pressure does decline more than 20 feet in the four year period, or if observation well measurement data indicates the 20 foot head pressure decline level would be reached in the four year period, the rural water system upon order of the Commission will have to change to a new source of water.

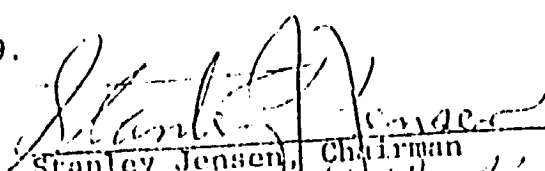
VI

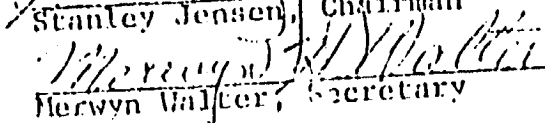
No wells shall be located within 1,300 feet of existing Dakota Formation wells unless waived by the well owner.

VII

The Davis area well field shall be developed and placed on line prior to pumping from any Dakota Formation wells.

Dated this 2 day of February, 1979.


Stanley Jensen, Chairman


Herwyn Walter, Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) :SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3.

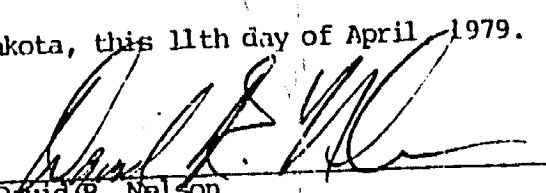
CIV. 79-60

AFFIDAVIT

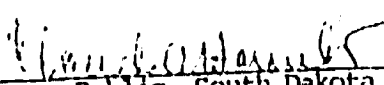
David R. Nelson, being first duly sworn on oath, deposes and states that he is one of the attorneys for the Opponent in the above captioned matter and that he makes this Affidavit in support of Opponent's Motion for the production of a transcript relative to the Application of the South Lincoln Rural Water System for Permit No. 4300-3. That your Affiant has personal knowledge of the fact that tape recordings were made of all Water Rights Commission hearings relative to the South Lincoln Rural Water System application by virtue of the fact that at each meeting he has attended tapes were being made. Your Affiant also believes said tapes exist because the CERTIFICATION AND TRANSMITTAL OF RECORD prepared by John Hatch on March 27, 1979, certifies that tapes were made of said hearings and that the tape cassettes were included with the record being transmitted to the Circuit Court.

That your Affiant is of the belief that transcriptions of all those tapes are necessary in order to assign error to the action of the Commission in that several assignments of error will have a great deal to do with what occurred at the Commission meetings prior to December 12, 1978, and January 31 and February 1, 1979.

Dated at Sioux Falls, South Dakota, this 11th day of April 1979.


David R. Nelson
One of the Attorneys for Opponent
Suite 512, Security Building
101 South Main
Sioux Falls, South Dakota 57102

Subscribed and sworn to before me
this 11th day of April, 1979.


Notary Public - South Dakota

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) :SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3.

CIV. 79-60

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 16, 1979, he sent a true and correct copy of the AFFIDAVIT of David R. Nelson, Dated April 11, 1979, to the following:

Robert Timm
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

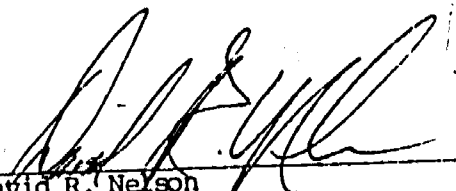
John J. Smith
Joe Foss Building
Pierre, South Dakota 57501

Mark Meierhenry, Attorney General
State Capitol Building
Pierre, South Dakota 57501

Eugene J. Irons
108 South Broadway
Canton, South Dakota 57013

Jeff Masten
110 South Broadway
Canton, South Dakota 57013

by first class United States mail.



David R. Nelson
One of the Attorneys for Appellant
Suite 512, Security Building
101 South Main
Sioux Falls, South Dakota 57102

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3.

CIV. 79-60

AFFIDAVIT

David R. Nelson, being first duly sworn on oath, deposes and states that he is one of the attorneys for the Opponent in the above captioned matter and that he makes this Affidavit in support of Opponent's Motion for the production of a transcript relative to the Application of the South Lincoln Rural Water System for Permit No. 4300-3. That your Affiant has personal knowledge of the fact that tape recordings were made of all Water Rights Commission hearings relative to the South Lincoln Rural Water System application by virtue of the fact that at each meeting he has attended tapes were being made. Your Affiant also believes said tapes exist because the CERTIFICATION AND TRANSMITTAL OF RECORD prepared by John Hatch on March 27, 1979, certifies that tapes were made of said hearings and that the tape cassettes were included with the record being transmitted to the Circuit Court.

That your Affiant is of the belief that transcriptions of all those tapes are necessary in order to assign error to the action of the Commission in that several assignments of error will have a great deal to do with what occurred at the Commission meetings prior to December 12, 1978, and January 31 and February 1, 1979.

Dated at Sioux Falls, South Dakota, this 11th day of April, 1979.

DAVID R. NELSON
David R. Nelson
One of the Attorneys for Opponent
Suite 512, Security Building
101 South Main
Sioux Falls, South Dakota 57102

Subscribed and sworn to before me
this 11th day of April, 1979.

CLAUDE A. HAMILTON
Notary Public - South Dakota

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3.

CIV. 79-60
CERTIFICATE OF SERVICE

Robert Timm
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

John J. Smith
Joe Foss Building
Pierre, South Dakota 57501

Mark Meierhenry, Attorney General
State Capitol Building
Pierre, South Dakota 57501

Eugene J. Irons
108 South Broadway
Canton, South Dakota 57013

Jeff Masten
110 South Braodway
Canton, South Dakota 57013


David R. Nelson
One of the Attorneys for Appellant
Suite 512, Security Building
101 South Main
Sioux Falls, South Dakota 57102

STATE OF SOUTH DAKOTA

COUNTY OF HUGHES

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
APPLICATION FOR A PERMIT
NO. 4300-3

*
*
*
*
*
*
*

BRIEF OF RESPONDENT
SOUTH LINCOLN RURAL
WATER SYSTEM, INC.

STATEMENT OF FACTS

The South Lincoln Rural Water System is a rural water system designed to serve the rural residents of Lincoln County and extends, at points, into Union, Clay and Turner County. It should be distinguished, as such, from the North Lincoln Rural Water System which is a separate system with separate wells serving rural residents along the southern rim of Sioux Falls and approximately the northern third of Lincoln County. Approximately 940 individual rural users have subscribed to the system which would serve approximately 3,290 rural residents in the service area. In addition, six municipalities, located in the proposed service area, with a combined population of 5,587 persons, have expressed an interest in purchasing bulk water from the system. Funding has been requested from the Farmers Home Administration.

The appeal presently before this Court is the latest in a long and frustrating series of attacks on the system. In July of 1977, the Sierra Club brought an action pursuant to the National Environmental Policy Act, 42 U.S.C. sec. 4321 et seq. (NEPA), to enjoin funding, planning or construction of the South Lincoln System until an environmental impact statement was prepared. The suit named various federal agencies, their administrators, real estate developers and two water systems, Minnehaha Community Water Corp., and

the South Lincoln Rural Water System as defendants. After a ten day trial in U.S. District Court in Sioux Falls in December, 1977, the complaint was dismissed. Sierra Club v. Cavanaugh, et al., ___ F.S. ___ (Civ. 77-4070).

The South Lincoln System then proceeded to apply for its water permits. An application was originally submitted to the Water Rights Commission which envisioned the withdrawal of 4.0 cubic feet per second (cfs) from five wells in the Dakota Formation for the North and South systems both. This application was submitted in August, 1977.

On July 10, 1978, an application was submitted on behalf of only the South Lincoln System for the withdrawal of 2.0 cfs from three wells in the Dakota Formation (Application 4300-3), and another application was submitted for the withdrawal of 2.0 cfs from 3 wells in the Vermillion Aquifer (Application 4301-3). The net effect was that the requested withdrawal in the Dakota Aquifer was reduced 50%, and the North Lincoln system was dropped entirely. This appeal involves Application 4300-3, the request for withdrawal in the Dakota Formation. (#4301-3 was approved and not appealed by any party).

Appellant mistakenly suggests that the Water Rights Commission was asked to make a final decision at its meeting on July 27, 1978 on #4300-3 after hearings across the state and spending "several" months. As the Court can plainly see, the application had been before the Commission for slightly more than two weeks. The comments of the Commissioners which Appellant cites in its Brief, p. 3, indicate that the Commission was unclear whether it was considering the joint application rather than #4300-3. Action was deferred at the July meeting.

The next consideration given by the Commission was at its meeting in Mitchell on September 13, 1978. Appellant suggests on page 4 of its Brief that the matter was not taken up again until December, 1978, which is clearly in

error. At this hearing, the South Lincoln system moved that the testimony of one of Appellant's attorneys be stricken from the record of the hearing held on July 27, 1978. Appellant had been granted a certain amount of time in which to present testimony and witnesses, and the time was taken up entirely by opening remarks of counsel.

The motion to strike was granted at the September meeting. The minutes of that meeting indicate that approximately six pages of the minutes of the July meeting involved Appellant's evidence, and the motion resulted in approximately five and one-half pages being stricken.

The Appellant was given the opportunity to prepare a real case and present it, along with further testimony from the applicant, at a special meeting called for December 12, 1978. At the December meeting, the Water Rights Commission Staff presented a new proposal which contained a considerably more restrictive set of conditions on water withdrawals than had previously been requested. These conditions were designed to serve three useful purposes: (1) protect the wells of surrounding appropriators with an ascertainable and measurable standard; (2) provide useful research data on the extent and characteristics of the Dakota Formation; and (3) allow the applicant to withdraw significantly better quality water than that available from #4301-3 with a backup system available in case conditions (1) were approached.

At the December meeting, Appellants introduced no direct (or indirect, for that matter) testimony from any competent witness that unappropriated water did not exist in the Dakota Formation. Appellant's only expert was Mr. Assad Barari from the South Dakota Geological Survey who testified that even if there were some deficiencies in the testing previously done by the Rural Water System, there was still useful experimental information in the

data upon which one may draw tentative conclusions. Further the staff recommendation with its restrictions was a useful and significant step in developing information needed for decision-making by the Geological Survey and the Water Rights Commission. (Minutes of 12/12/78, pp. 103-108).

Mr. Barari's testimony was entirely consistent with that of the other expert witnesses present: Mr. John Hatch for the Commission staff, Mr. John Madden from the system's engineering firm, and an independent consultant, Mr. Richard Aten of Harza Engineering, who was asked by South Lincoln to review all the work done to date and also the criticisms of Appellant.

Aten is presently the head of the Hydrology Division of Harza Engineering Company, an international engineering company with headquarters in Chicago. He has been project director or manager for water development projects in Guyana, Jamaica, Ghana, Venezuela, Pakistan, Kuwait, Trucial States, New York, Illinois, Ohio, California, to name a few. Appellant makes the outlandishly chauvinistic suggestion that since he had no extensive prior familiarity with the Dakota Formation his testimony should be disregarded--in other words the principles of the science of hydrology and groundwater development practices which are true in the rest of the world don't apply in the particular township in the County of Lincoln, State of South Dakota where the proposed wells would be located.

Mr. Aten stated his findings rather succinctly in the summary of his report, "Review of Findings on Dakota Aquifer Development" which was made a part of the record of the December 12 meeting:

Although one can now recognize improvements in the test installations and procedures, the aquifer test is unprecedented in scope and detail, and it has produced results that are considered usable.

Based on test results and other data, it is concluded that development of the Dakota aquifer

by the South Lincoln Rural Water District and pumpage of 455 acre feet annually (afa) from that aquifer will not have a significant effect on the water levels or available supply for the aquifer.

Further refinement at present of aquifer properties at this site is not considered justifiable because future drawdown effects will be greatly influenced by other considerations such as the location and distance to the recharge source, physical properties of the aquifer in areas beyond the test site, and unknown present and future withdrawals by other users. The trial operation and monitoring approach proposed by the State Water Rights Commission should resolve two of these unknowns and therefore has great potential benefit to both this Project and other Dakota aquifer users in the entire Sioux Falls to Vermillion region.

Based on the testimony of Messrs. Hatch, Madden, Aten and Barari, all of which was consistent with the above-cited summary from Aten's review, the Commission could lawfully and reasonably conclude that unappropriated water was available, that the project was feasible, and that the project was in the public interest.

ARGUMENT

I.

DE NOVO REVIEW ON APPEAL FROM AN ADMINISTRATIVE DECISION PERMITS AN INDEPENDENT INQUIRY INTO THE FACTS, BUT ONLY FOR THE PURPOSE OF PASSING ON THE LEGALITY OF THE BOARD'S DECISION.

The Supreme Court has held that de novo trial or the review of an administrative board's determination permits an independent inquiry into the facts, but only for the purpose of passing on the legality of the Board's decision. Mortweet v. Ethan Board of Education, Davison County, __S.D.__, 241 N.W.2d 580 (1976). In a subsequent decision, the Supreme Court stated that

The issue before the circuit court, on the trial de novo, is not whether the board's decision was the wisest course, nor whether the evidence preponderates in favor of the board decision. Instead, the circuit court takes evidence so that it may determine... (2) whether that discretion was exercised unreasonably or arbitrarily, or was manifestly abused. Without weighing the evidence the circuit court determines whether there is substantial evidence to support the Board decision.

Collins v. Wakonda Ind. School Dist. No. 1, __S.D.__, 252 N.W.2d 646 (1977).

"Substantial evidence" has been held to mean such relevant and competent evidence as a reasonable mind might accept as adequate to support a conclusion. Application of Ed Phillips & Sons Co., 86 S.D. 326, 195 N.W.2d 400, 405 (1972); Valley State Bank of Canton v. Farmers State Bank, 87 S.D. 614, 213 N.W.2d 459 (1973); Piper v. Neighborhood Youth Center, __S.D.__, 241 N.W.2d 868 (1976); State Dept. of Soc. Services v. Rodvik, __S.D.__, 264 N.W.2d 898 (1978); State Division of Human Rights, ex rel. Ewing v. Prudential Insurance Co. of America, __S.D.__, 273 N.W.2d 111 (1978); State Dept. of Public Safety v. Eastmen, __S.D.__, 273 N.W.2d 159 (1973); City of Brookings v. Dept. of Environmental Protection, __S.D.__, 274 N.W.2d 887 (1979);

Application of Montana Dakota Utilities, __S.D.__, 278 N.W. 2d 189 (1979); and Vetter v. Town of Bisc., __S.D.__, 278 N.W.2d 202 (1979).

It is against the above-cited background of decisions that the Court should consider the Appellant's construction of Dail v. South Dakota Real Estate Commission, __S.D.__, 257 N.W.2d (1977) and the 1978 legislative amendments to S.D.C.L. 1-26-36. Appellant, at p. 7 of its Brief, states that "(W)here the reviewing court was previously barred from substituting 'its judgment for that of the agency as to the weight of the evidence on questions of fact', the new rule only requires that 'the court shall give great weight to the findings made and inferences drawn by an agency on questions of fact.' " The conclusion which Appellant apparently desires the Court to draw is that it should feel no hesitation, on Constitutional or other grounds, in substituting its judgment for that of an agency.

At this point we might pause for a brief observation on Appellant's construction of the amendments before demolishing it. As the Court is well aware, the delegation of legislative authority to administrative bodies is a very recent phenomena measured against the history of law. The Constitutional battle was drawn out and a hard fought one throughout the first forty years of this century. Equally contested was whether the courts had any power to review the decision of an agency. Now the Appellant offers this Court the opportunity to be the first Court to declare that the Legislature of this State saw fit in 1978 to surrender its delegated power to the unfettered discretion of the judiciary. We submit that there is nothing in the history of administrative case law in this State, or any other jurisdiction, that would suggest that the courts should immerse themselves as deeply in the details of administrative decision-making as Appellant desires. The Court must examine

the record to see that the decision was not characterized by one or more of the errors in law enumerated in S.D.C.L. 1-26-36. The theory is thus that a generalist Court reviews the record made before an agency possessing a particular expertise to see that the statutory rules of fair play and sound decision-making were observed and applied.

The principal reason for which Appellant's argument on p. 7 fails, however, is that Appellant seems to have neglected S.D.C.L. 1-26-36(5). The evidentiary standard by which the findings and conclusions of an agency are measured now is the "clearly erroneous" standard, rather than "substantial evidence". This is precisely the same standard which the Supreme Court applies to the decisions of this Court, so that we deem it unnecessary to say anything further about the standard of review.

I.A

APPELLANT WAS ALLOWED MORE THAN ADEQUATE OPPORTUNITY
TO PRESENT ITS CASE TO THE COMMISSION

The Appellant complains at several points in its Brief that it was denied an opportunity to present its case and that the Commission had already made up its mind prior to the introduction of Appellant's case in chief. Further, Appellant was put out by certain statements of Commission members to the effect of "Are you done yet?"

At the beginning of the hearing certain guidelines were announced with respect to time by the Commission. In essence, the Staff and Applicant would put their evidence on in the morning, there would be a noon break, the Appellant would take part of the afternoon, the vote would be taken and all parties on their way back home by 3:00 P.M. or so. Morning, noon and afternoon passed, and Appellant was still cross-examining Respondent's witnesses. Respondent was deprived of the opportunity for re-direct when the electricity in the Ramada Inn failed and Mr. Aten had to run for his 4:00 flight. His report had to be introduced by way of offer of proof at the end of the hearing.

Reviewing the minutes of the December 12, 1978 hearing it is difficult to find any participation by Respondent or the Commission Staff in the bulk of lengthy and repetitious examination by Appellant. If any party was prejudiced by the comments of certain commissioners and the time constraints it was the Respondent SLRWS, and not the Appellant.

With respect to the Affidavit of Harold Fischer attached to the Brief of Appellant, we have two principal arguments. First, affiant was an interested party and had absolutely no business discussing the case with any commissioner. Second, Appellant knew about this alleged bias and failed to make any record before the Commission. As an additional observation,

we might note that it is typical for a jury, at the close of the plaintiff's evidence, to think that the plaintiff should prevail not having heard the defendant's evidence. The only thing that the affidavit of Fischer actually demonstrates is that five or so hours of nearly continuous cross-examination failed to persuade the Commission that the experts had made incorrect conclusions or that the data was insufficient to support the staff recommendation.

II.

UNAPPROPRIATED WATER IS AVAILABLE FOR SLRWS

The Appellant's principal attack is directed at the uncertainty in the exact amount of water contained in the Dakota aquifer. The origin of the argument can be briefly summarized.

The Appellants consist of a few of the owners of wells in the Dakota aquifer. The water which was tested for quality from the experimental well in the Dakota aquifer turned out to be nearly an order of magnitude (factor of ten) better than the water available from the Vermillion aquifer from which withdrawals were approved in Application #4301-3. The test results are included with this Brief as Appendix I, and are part of the record before the Water Rights Commission.

The Dakota Sandstone aquifer is part of a rather extensive formation which covers most of South Dakota and flows into the western part of Iowa. As Mr. Barari testified, Geological Survey and other field data indicate that the level is gradually declining which is the cause of some concern. Against the background of the dry years in the middle 70's, the desperate need in areas such as Lincoln County for a dependable source, the experimental data and due consideration of the arguments pro and con on the subject of the anti-mining provision in the Code (i.e., prohibition of withdrawals of water in a declining formation), the Legislature passed S.B. 306, S.L. 1978, ch.323 "Utilization of Deep Ground Water by Common Distribution Systems Provided For" amending S.D.C.L. 46-6. The amendment stated that:

The commission may, however, approve applications for withdrawals of ground water from any ground water formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by municipal systems non-profit water supply companies...

The Appellants therefore lost that much of their argument in the Legislature before they ever got to court, since the Dakota Sandstone aquifer is one of the formations specifically addressed by the amendment.

The Appellants next attack the aquifer pump test which was conducted. Only one well was pumped, and Appellants suggest on the strength of some of Assad Barari's comments that two or three should have been pumped. The testimony of Barari, Madden, Hatch and Aten was unanimous, however, that relevant and useful information was obtained from the one well test upon which one can draw conclusions. The conclusion which was drawn, however, wasn't the conclusion which Appellants desired. Based upon what is presently known about the formation, the pump test, and generally applicable principles of groundwater hydrology and geology, all the witnesses said that unappropriated water was available for use by SLRWS subject to the restrictions and conditions stated in the Staff recommendation. The only contrary "evidence" contained in the record are statements of counsel, not direct evidence.

The real issue here is who has the burden of uncertainty? In any situation of imperfect knowledge, when the consequences of a contemplated action can only be surmised and when its costs and benefits cannot confidently be reduced to a net quantity, it becomes critical to decide where the burden of such uncertainties should fall. Historically, that burden has tended to fall on those who challenge the wisdom of an on-going technological trend. The working presumption has been that such a trend ought to be continued so long as it can be expected to yield a profit for those who have chosen to exploit it, and that any deleterious consequences that might ensue will either be manageable or will in any event not be serious enough to warrant a deliberate decision to

interfere with the project momentum. So it was, for example, that drilling rights were leased to oil companies operating in the Santa Barbara channel without sufficient consideration of the possible effects of massive oil leakage near the coast and with inadequate preventive measures to minimize such dangers; that vast quantities of chemicals have routinely been released into the biosphere with little or no timely attention to their potential hazards; and so forth.

Writ large, the result is something of a dilemma: To prohibit each proposed development until its benefits are demonstrated to outweigh its suspected dangers would prove extremely costly even if it were politically possible; but to permit continued and proliferating uses until their dangers are convincingly shown to outweigh their benefits is to take some rather frightening chances with man's future. The Water Rights staff and Commission suggested and approved a simple and effective solution to this dilemma.

As we have noted, Appellants argue their wells will be affected and that the head pressure will drop precipitously. The staff recommendation was that the permit be approved for a three well field and that an experimental 4-year program be initiated for pumping. If the artesian head pressure drops more than 20 feet during or over the four years, the SLRWS pumping must stop and the system switch over entirely to the Vermillion aquifer. In addition, monitoring wells will be constructed throughout the area to police the 20 foot limitation.

The 20 foot parameter was decided on after a survey of the deep wells in the area which revealed that almost all wells would be more than adequately protected. No single entity involved in this proceeding could possibly afford the testing proposed by Appellant--not the State, the U.S. Geological Survey or Respondent SLRWS. The net result then, is that the well owners are protected, the State and Federal agencies receive

invaluable research data, and particularly an indication of how much water and recharge is available in the formation to guide future water rights decision-making, and SLRWS receives excellent quality water at low cost from a dependable source for its farmers. Appellants suggest that the decision to adopt the staff recommendation with slight modification was arbitrary and capricious, an abuse of discretion and clearly erroneous (or occasionally unsupported by substantial evidence).

As Mr. Hatch of the Water Rights Staff pointed out in his Review of Lincoln County County, Recommendations, Study Methods and a Suggested Dakota Formation Management Proposal (December 8, 1978), the Appellant's hedgehog approach would not only inexcusably waste large amounts of water, the Commission still would be faced with the question of how much head pressure decline would be allowed in South Lincoln County. Respondent SLRWS respectfully suggests that the staff recommendations adopted by the Commission are the only reasonable, safe and suitable manner in which the estimates and calculations of the amount of unappropriated water can be verified.

A last matter on the subject of unappropriated water should be dealt with briefly. On the basis of an analysis of the anti-mining statute, a particular construction of water law decisional history, and the most wrong-headed misinterpretation of hydrological dynamics of the Dakota aquifer ever printed, the Appellant concludes in its Brief, pp.19-20, that the Commission erred in finding that unappropriated water exists with such audacity that it literally takes one's breath away. First, Appellant's argument disregards entirely the 1978 amendment, S.D.C.L. 46-6-3.1 and the second sentence therein. Next, Appellant assumes a hypothetical case, viz., that there is no recharge, and deduces that there is a fixed amount of water in the aquifer. Next, Appellant assumes that if there will ever come a time when that water will run dry due to the absence of recharge

or even the inadequacy of recharge, then there is no unappropriated water available. Fait accompli, the Commission was clearly in error.

The only problem with Appellant's reasoning is that it is circular, and viciously so. If one assumes that his assumptions are true, any deduction based on the "true" assumptions should also be true. In this case, Aten, Barari and Hatch all indicated that the good water quality in the formation was one of the indicia of recent recharge. For that reason, and all others previously stated, Appellant's argument should be disregarded.

III.

THE SLRWS IS A FEASIBLE PROJECT WITH #4300-3 AND #4301-3

The Commission found as fact that the system, including the Davis alternative supply, is a feasible project. (Findings of Ultimate Fact F.). Mr. Madden testified extensively on the facts and figures involved in the project design, including the modifications and restrictions proposed by the Water Rights Staff, and that testimony, particularly with respect to feasibility was unrebutted by any testimony elicited by Appellant. Appellant did not present any argument on the subject in its Brief, and it should therefore be deemed waived and unnecessary to discuss further.

IV.

THE SLRWS APPLICATION IS IN THE PUBLIC INTEREST.

Pervading any argument on the administration of underground waters are terms like "the general welfare" or the "public interest" or "net benefit to society as a whole." One hears it said, for example, that a certain project is contrary to "the public interest," or that technological change should be made more responsive to criteria reflecting "the general welfare," or that alternative technologies should be selected according to which will maximize the "net benefit to society." Such phrases, of course, have the merit of brevity and the appearance of objectivity, but it is far from clear that they convey any operationally useful meaning. Almost without exception, certain projects will affect some people or interests adversely and others beneficially, and there simply is

no agreed-upon algebra by which one can neatly subtract the pains from the pleasures in order to arrive at a net index of social desirability.

The major features of the public benefit to be derived from this project were discussed at length in the argument on whether or not unappropriated water was available. Here we will simply summarize the main points. Appellants argue that the project is not in the public interest because their wells will be affected, the withdrawals are from a declining formation about which little is known and they will be at the mercy of the system once it is built.

In point of fact, under the permit which was granted, several hundred points of diversion will be consolidated into two well fields over which the Water Rights Commission has control. At the present time there are over 300 individual wells withdrawing water including Appellants. Once the system is in place, most of the wells will be unnecessary, so that the Commission will have made a significant step forward in achieving management of the groundwater basin. Secondly, the production wells and monitoring wells will provide the first continuous and hard data on the characteristics of the Dakota formation. With reliable experimental information, the Commission or staff's decision making will be that much better and scientific knowledge will be increased. Over 1000 households will finally have a dependable source of running water, which many lack at the present time. (See Appendix II to this Brief).

The permit affords protection to the present well owners and Appellants that is given to no one else in this State, and the risk is assumed by SLRWS.

In reply, Appellants argue that because we do not possess perfect knowledge at the present time, a handful of persons should be permitted to withdraw the water as

they please, with the balance flowing through the formation and out of the State. Mr. Barari and Aten estimated that there was on the order of 300,000 acre feet of water under the particular township using conservative figures. The application requests 455 acre feet per year. Respondent SLRWS respectfully suggests that the Commission correctly perceived this project as being in the public interest, and that the Appellant's position would result in the squandering on a massive scale of a valuable natural resource and a violation of the public trust therein.

On the basis of this, and all other arguments, we pray that this Court affirm the decision of the Water Rights Commission.

DATED at Canton, this 14th day of June, 1979.

RESPECTFULLY SUBMITTED,

MYRABO & IRONS

By: _____

Eugene J. Irons
108 S. Broadway
Canton, South Dakota 57013

SAM W. MASTEN, P.C.

By: _____

Jeff Masten
110 S. Broadway
Canton, South Dakota 57013

Attorneys for Respondent
South Lincoln Rural
Water System

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) : SS

IN CIRCUIT COURT MAR 22 1979
SIXTH JUDICIAL CIRCUIT 37851

*
IN THE MATTER OF SOUTH LINCOLN *
*
RURAL WATER SYSTEM APPLICATION * MOTION TO
*
FOR PERMIT NO. 4300-3 * DISMISS APPEAL
*

Comes now the Respondent, South Lincoln Rural Water System, Inc., by and through its undersigned attorneys of record, and moves the Court for its Order dismissing the purported Appeal of the Appellant, Friends of the Dakota Sandstone Aquifer, for the following reasons:

I.

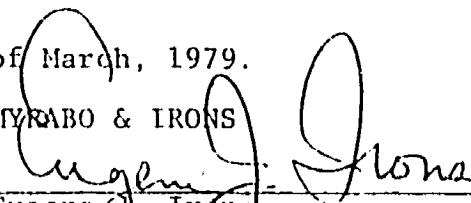
Failure to make, file or serve an undertaking for costs and damages required by Law.

II.

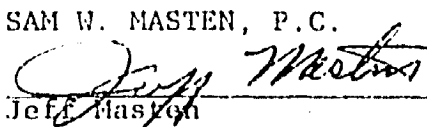
Failure to serve Assignments of Error upon Respondents as required by law, thus rendering said purported Appeal a nullity and ineffectual for any purpose. This motion is based upon the files and records herein, and upon the statutes of the State of South Dakota relating to the taking of administrative appeals.

Dated this 21st day of March, 1979.

MYRABO & IRONS


Eugene J. Irons
108 South Broadway
Canton, South Dakota 57013

SAM W. MASTEN, P.C.


Jeff Masten
110 South Broadway
Canton, South Dakota

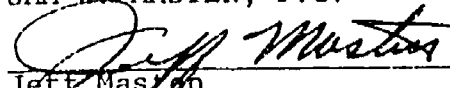
Attorneys for Respondent, South Lincoln Rural Water System, Inc.

NOTICE OF MOT. N

To: APPELLANT, FRIENDS OF DAKOTA SANDSTONE AQUIFER
and ITS ATTORNEYS, DENNIS C. MCFARLAND and DAVID NELSON;
THE SOUTH DAKOTA WATER RIGHTS COMMISSION and ITS ATTORNEY,
ASSISTANT ATTORNEY GENERAL ROBERT TIMM and THE SOUTH DAKOTA
DEPARTMENT OF NATURAL RESOURCE DEVELOPMENT and ITS ATTORNEYS,
ASSISTANT ATTORNEY GENERAL JOHN SMITH and ATTORNEY GENERAL
MARK MEIERHENRY.

You and each of you will hereby take notice that
the above Motion to dismiss appeal of the above entitled
matter will be brought on for hearing before the Honorable
Robert Miller in the courtroom of the Hughes County Court-
house, Pierre, South Dakota on the 24th day of April, 1979,
at the hour of 10:00 a.m. or as soon thereafter as counsel
may be heard.

SAM W. MASTEN, P.C.


Jeff Masten

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 21,
1979, he sent a true copy of the foregoing Motion to Dis-
miss Appeal to

Dennis C. McFarland
Law Center
Suite 101 - 505 West 9th Street
Sioux Falls, South Dakota 57104

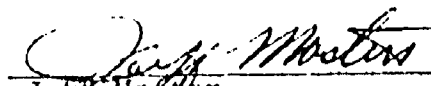
Robert Timm
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

John J. Smith
Joe Foss Building
Pierre, South Dakota 57501

Mark Meierhenry, Attorney General
Capitol Building - Pierre, SD 57501

by first class United States mail.

Dated this 21st day of March, 1979.


Jeff Masten

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3.

)
)
)
) CIV. 79-60
CERTIFICATION AND
TRANSMITTAL OF RECORD

I, John Hatch, am employed by the State of South Dakota as Chief Engineer of the Water Rights Commission. I hereby certify that to the best of my knowledge and belief, the materials enclosed in the box bearing the title of this action are a complete and accurate copy of the entire record of the Water Rights Commission and the Department of Natural Resource Development in the matter of the application of the South Lincoln Rural Water System for Permit No. 4300-3. Included are the following:

1. Nine tape cassettes containing copies of all portions of Water Rights Commission hearings pertaining to South Lincoln Rural Water System's Application No. 4300-3:

- #1. October 6 and 7, 1977 hearing
- #2. July 26 and 27, 1978 hearing
- #3. " "
- #4. September 13 and 14, 1978 hearing
- #5. December 12, 1978 hearing
- #6. " "
- #7. " "
- #8. " "
- #9. January 31 and February 1, 1979 hearing

2. All correspondence by Department of Natural Resource personnel concerning Application No. 4300-3.

3. Minutes of the five Water Rights Commission meetings at which public hearings or other proceedings on South Lincoln Rural Water Systems Application No. 4300-3 were held -- October 6 and 7, 1977; July 26 and 27, 1978; September 13 and 14, 1978; December 12, 1978; and January 31 and February 1, 1979.

4. Copies of exhibits 1 through 12 received by the Commission at its special meetings of December 12, 1978 on South Lincoln Rural Water System's Application No. 4300-3:

- #1. September 1, 1978 - Letter to John Hatch from John Madden;
- #2. The results of the South Lincoln Rural Water System's survey of potential customers;
- #3. Water quality comparison of the Worthing well field and the Davis well field;
- #4. Ground Water and Wells by the Johnson Division, UOP, Inc.;
- #5. Compilation of data obtained from well samples;
- #6. "Water Supply Study for Canton, South Dakota, July, 1957" by the Omaha Drilling Company;
- #7. "Problems of the Soft Water Supply of the Dakota Sandstone, with Special Reference to the Conditions at Canton, South Dakota" by Oscar E. Minzer;
- #8. "Artesian-Water Supply of the Dakota Formation, Southeastern South Dakota" by C.F. Dyer and A.J. Goerhing;
- #9. July 10, 1978 - Letter to Mrs. Wanda Sletton from the Iowa Natural Resources Council;
- #10. July 7, 1978 - Letter to Mrs. Wanda Sletton from the Institute of Agriculture and Natural Resources, the University of Nebraska - Lincoln;
- #11. Calculations of water velocity;
- #12. "Review of DGR Findings on the Dakota Aquifer Development - South Lincoln County Rural Water Supply".

5. Application of South Lincoln and Lincoln County Rural Water Systems for Permit No. 4135-3, including a project map, aquifer pump test results, well log, and the following engineering reports: "South Lincoln Rural Water System - Preliminary Engineering Feasibility Study and Report"; "South Lincoln Rural Water System - Final Engineering Feasibility Study and Report"; and "Lincoln and South Lincoln County Rural Water Systems - Report of Ground-water Investigations"; by John Madden, P.E.

6. Fee receipt for Application 4135-3.

7. Notice of the October 6, 1977, hearing on Application 4135-3.

8. Notice to South Lincoln and Lincoln County Rural Water Systems of the publication of notice of the October 6, 1977 public hearing.

9. Transmittal to publisher of notice of hearing on Application 4135-3.
10. Proof of publication of notice of October 6, 1977 hearing on Application 4135-3.
11. Petition in opposition to proposed well sires.
12. Explanation of Friends of Dakota Sandstone Aquifer.
13. Memo summarizing events through October 6, 1977 public hearing.
14. Notice of deferral sent to South Lincoln and Lincoln County Rural Water Systems.
15. Notice of reconsideration hearing on Application 4135-3 scheduled for October 31, 1977.
16. October 31, 1977 letter to John Hatch from Duane Thomas listing those opponents of Application 4135-3 who desired to receive notice of future hearings.
17. March 10, 1978 report on South Lincoln and Lincoln County Rural Water Systems.
18. Transmittal to publisher of notice of the July 26 and 27, 1978 hearing on Application 4300-3.
19. Notice of hearing on Application 4300-3, July 27, 1978.
20. Proof of first publication for July 27, 1978 hearing on Application 4300-3.
21. Notice of South Lincoln Rural Water System of publication of notice for July 27, 1978 hearing on Application 4300-3.
22. Amended Application 4300-3 of South Lincoln Rural Water System, including map.

23. July 19, 1978 staff report on South Lincoln Rural Water System application.
24. Notice to interested persons of July 27, 1978 hearing on Application 4135-3 and 4118-3.
25. Proof of second publication of notice for July 27, 1978 hearing on Application 4300-3.
26. Certificate of mailing of September 6, 1978 notice of September 13, 1978 hearing on Applications 4300-3 and 4118-3.
27. Supplemental report on South Lincoln Rural Water System Application 4300-3, September 10, 1978.
28. Motion to strike evidence from the record.
29. "Review of Lincoln County Recommendations, Study Methods, and Suggested Dakota Formation Management Proposal," December 8, 1978.
30. Applicants Proposed Decision, Findings of Fact and Conclusions of Law, December 12, 1978.
31. Contestants Proposed Findings of Fact and Conclusions of Law.
32. Applicants Proposed Decision, Findings of Fact and Conclusions of Law, January 16, 1979.
33. Staff's Proposed Findings of Fact and Conclusions of Law.
34. Return receipts - Final Decision and Findings of Fact and Conclusions of Law.
35. Findings of Fact and Conclusions of Law.
36. Final Decision; and
37. "Geology and Hydrology of the Dakota Formation in South

Dakota" by Robert A. Shoon, South Dakota Geological Survey.

I hereby transmit this certified record to the Sixth Judicial
Circuit Court in and for the County of Hughes, South Dakota.

Dated this 27th day of March, 1979.

John Hatch
John Hatch
Chief Engineer
Water Rights Commission

Subscribed and sworn to before me this 27th day of March, 1979.

Justin A. Zickrick
Notary Public

My Commission Expires 3/27/83.

(seal)

SAM W. MASTEN, P. C.
A PROFESSIONAL CORPORATION
LAWYERS
110 SOUTH BROADWAY
CANTON, SOUTH DAKOTA 57013
PHONE (605) 987-2821

SAM W. MASTEN
JEFF MASTEN

ATTORNEY
GENERAL
JUN 18 1979

OF COUNSEL
MARY E. MASTEN
2021 SECOND AVENUE
RAPID CITY, SOUTH DAKOTA 57701
PHONE (605) 348-7933

June 14, 1979

Mr. Dennis C. McFarland
Attorney at Law
Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

Mr. David R. Nelson
Attorney at Law
Suite 210
226 North Phillips Avenue
Sioux Falls, South Dakota 57102

Mr. Mark V. Meierhenry
Attorney General
State Capitol Building
Pierre, South Dakota 57501

Mr. Robert Timm
Office of the Attorney General
State Capitol Building
Pierre, South Dakota 57501

Mr. John Smith
Assistant Attorney General
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

re: In the Matter of the SLRWS, Permit No. 4300-3

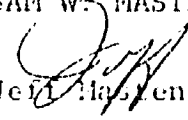
Gentlemen:

Enclosed to each of you is a true and correct copy of the Brief of Respondent South Lincoln Rural Water System. This is deemed service by mail upon you.

With best personal regards,

Very truly yours,

SAM W. MASTEN, P.C.


Jeff Masten

JPM:jm

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS



IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
APPLICATION FOR PERMIT
#4300-3.

)
)
)
)

CIV. 79-60
NOTICE OF ENTRY
OF JUDGMENT

TO: FRIENDS OF THE DAKOTA SANDSTONE AQUIFER

PLEASE TAKE NOTICE that the Final Judgment served herewith
in the above captioned action was entered by the Clerk of the
Hughes County Circuit Court on the 1st day of October, 1979.

Dated this 1st day of October, 1979.

MARK V. MEIERHENRY
ATTORNEY GENERAL

John J. Smith
Assistant Attorney General
Earth Resources Unit
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-3805

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
APPLICATION FOR PERMIT
#4300-3

CIV. 79-60
JUDGMENT

This matter was brought on for hearing before the Circuit Court, Sixth Judicial Circuit, the Honorable Robert A. Miller presiding, at 3:00 p.m. on June 28, 1979, in the courtroom of the Hughes County Courthouse, upon the Notice of Appeal of February 28, 1979, of the Friends of the Dakota Sandstone Aquifer from the Final Decision of the Water Rights Commission of February 3, 1979, granting Permit to appropriate #4300-3 to the South Lincoln Rural Water System and upon the Assignments of Error served May 16, 1979. Appellant Friends of the Dakota Sandstone Aquifer appeared through its counsel, Dennis C. McFarland; respondent South Lincoln Rural Water System appeared through its counsel, Eugene Irons and Jeff Hasten; and respondent Water Rights Commission and Department of Natural Resource Development appeared through its counsel, John J. Smith, Assistant Attorney General. The parties submitted briefs pursuant to this Court's order of April 26, 1979. Having heard and considered the arguments and briefs of counsel and the whole record herein, and having entered its Memorandum Decision herein on October 9, 1979, the Court hereby

ORDERS that the Final Decision of the Water Rights Commission of February 3, 1979, granting Permit to appropriate #4300-3 to the South Lincoln Rural Water System is affirmed in all particulars.

Dated this 17th day of October, 1979.

BY THE COURT:

Robert A. Miller
The Honorable Robert A. Miller
Circuit Court Judge

ATTEST: E. L. Luce
Clerk of Courts

(Seal)

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

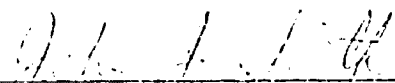
IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH)
LINCOLN RURAL WATER SYSTEM)
APPLICATION FOR PERMIT)
#4300-3.)

CIV. 79-60
CERTIFICATE
OF SERVICE

The Undersigned hereby certifies that he served a copy of the Notice of Entry of Judgment and the Judgment of October 17, 1979, in the above captioned action, on the date below, by depositing a copy in the U.S. Mail, First Class, postage prepaid, at Pierre in an envelope addressed to Dennis C. McFarland, Law Center, Suite 101, 505 W. 9th Street, Sioux Falls, South Dakota 57104, attorney for Appellant Friends of the Dakota Sandstone Aquifer, which is said person's last known address to the subscriber.

Dated this 17th day of October, 1979.



John J. Smith
Assistant Attorney General
Earth Resources Unit
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-3805

Information pertaining to W.R. Application No. 4135-3

Application for South Lincoln County Rural Water System
Petition in opposition to proposed well sites
July 19, 1978 notice of reconsideration
October 25, 1977 notice of reconsideration
Jan. 13 letter to Duane Thomas from Hatch
Oct. 31 letter & petition from Friends of Dakota Sandstone Aquifer
May 26 letter to Hatch from Jerry Seigel, East Dakota Con. Sub-District
March 10, 1978 Report on South Lincoln County RWS
Explanation of Friends of Dakota Sandstone Aquifer organization
March 27 letter to Sletten from Hatch
March 17 letter to Hatch from Sletten
Summary of events from October 6, 1977 WRC meeting
Transmittal letter to Sletten for copies
Request of minutes from Sletten
March 7 letter to Sletten from Gov. Kneip
Proof of publication
Map
Deferred action letter of October 1977
Sept 27 protest letter from Town of Worthing
Field pumping tests
Well drillers logs
August 1977 application letter from John Madden
Letter to publisher
Notice of Intent to Appropriate Water
Receipt
Publication Notice

W. R. Application No. 4300-3

Application for Permit
Well logs
Dec 12, 1977 letter to Swartout from Hatch
Jan 4, 1979 letter to McFarland from Neufelt
Dec 7, 1978 letter to Irons from Hatch
Cover letter for Commission's Findings of Fact & Conclusions sent to
Gubrud, Irons, Thomas, Timm, Fischer, McFarland - copy of return receipts
Supplemental Report - Sept 10, 1978
Proof of Publication
List of people notified for reconsideration hearing of Sept 13, 1978
Motion to strike evidence from the record
Nov 28 letter to Hatch from Irons
Aug 1 letter to Sletten from Hatch
Sept 1 transmittal letter to Irons from Hatch
Aug 5 letter to Hatch from Irons
May 3 letter to Hatch from Sletten
July 28 letter to Irons from Hatch
July 28 letter to McFarland from Hatch
Report on South Lincoln County RWS application July 19, 1978
Deferral letter of July 28
Notice of Publication
Publication of Notice letter
Letter to Publisher
Notice of Intent to Appropriate water
Map

Minutes - October 6 & 7, 1977
pages 14 thru 23

Minutes - July 26 & 26, 1978
pages 32 thru 49

Minutes - September 13 & 14, 1978
pages 20 thru 25

Minutes - December 12, 1978

Review of Lincoln County Recommendation Study Methods & a Suggested
Dakota Formation Management Proposal - December 8, 1978 by Hatch

- Exhibit #1 Sept 1, 1978 letter to Hatch from Madden
#2 South Lincoln Rural Water
#3 Water Quality Comparison
#4 Groundwater & Wells published by Johnson Division (book)
- "The Study & Interpretation of Chemical Characteristics
of Natural Water by John G. Hem 1975"
- Report on Investigation No 71, "Artesian Conditions in
Southeastern SD" by Raymond C. Barkley
#5 Results of the samples tested
#6 The Water Supplies Study for Canton SD dated July 1957
#7 "Water Supply Paper # 597" - "Problems of the Soft-Water Supply
of the Dakota Sandstone, with special Reference to the
Conditions at Canton SD" Pages 147 thru 170
#8 "Open File Report" dated July 1965 - "The Artesian Water Supply
of Dakota Formation, Southeastern SD."
#9 Letter to Sletten from Iowa Natural Resource Council dated
July 10, 1978
#10 Letter to Sletten from University of Nebraska - Lincoln at
Lincoln, Nebraska
#11 Calculations of water velocity
#12 Review of DGR Findings on Dakota Aquifer Development -
South Lincoln Co. RW Supply

Minutes - January 31 & February 1, 1979
page 29

Proposed Findings of Facts and Conclusions of Law submitted by David
Nelson for the Friends of the Dakota Sandstone Aquifer
Proposed Findings of Facts and Conclusion of Law, Applicants Proposed
Decision, Proposed: Decision Findings of Fact and Conclusion sub-
mitted by Eugene Irons representing the South Lincoln Co. RWS
Findings of Fact and Conclusions of Law as accepted by the Commission and
prepared by the Commission staff
Final Decision

Booklets

Report of Groundwater Investigations prepared by Madden

Report of Investigations # 104, Geology & Hydrology of Dakota Formation
in SD by Robert Schoon, SDGS

Preliminary Engineering Feasibility Study & Report by DGR

Final Engineering Feasibility Study & Report by DGR

Cassette Recordings

Portions of Water Rights Commission meetings pertaining to South Lincoln
County RWS

Cassette #1	October 6 -7, 1977 meeting
#2	July 26 - 27, 1978 meeting
#3	" "
#4	September 13 -14, 1978 meeting
#5	December 12, 1978 meeting
#6	" "
#7	" "
#8	" "
#9	January 31 & Feb 1, 1979 meeting

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:SS

COUNTY OF HUGHES)

SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH LINCOLN

RURAL WATER SYSTEM APPLICATION

FOR PERMIT NO. 4300-3

CERTIFICATE OF SERVICE

I, David R. Nelson, hereby certify that a true and correct copy of the Assignments of Error in the above captioned matter was mailed to the following:

Mr. Robert Timm
Earth Resources Unit
Joe Foss Building
Pierre, South Dakota 57501

Mr. John Smith
Joe Foss Building
Pierre, South Dakota 57501

Mr. Mark V. Meierhenry
Attorney General
State Capitol Building
Pierre, South Dakota 57501

Mr. Jeff Masten
Attorney at Law
110 South Broadway
Canton, South Dakota 57013

Mr. Eugene J. Irons
Attorney at Law
108 South Broadway
Canton, South Dakota 57013

with postage thereon on this the 16th day of May, 1979.

DAVID R. NELSON

David R. Nelson

One of the attorneys for

Appellant

Suite 210

226 North Phillips Avenue

Sioux Falls, South Dakota 57102

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION ASSIGNMENTS OF ERROR
FOR PERMIT NO. 4300-3

The Friends of the Dakota Sandstone Aquifer, the opponent and the appellant in the above entitled matter, hereby states and alleges that the South Dakota Water Rights Commission erred in the following particulars, the same being the Assignments of Error upon which the opponent and appellant will rely upon in its appeal to the Circuit Court in and for the Sixth Judicial Circuit of the State of South Dakota in the above entitled matter.

I.

The Commission erred in adopting Finding of Fact I.A.5. in that there is no evidence in the record to support the finding that the original permit no. 4301-3 was an alternate or a supplemental source.

II.

The Commission erred in finding that treatment of water taken from the site of the original permit (Davis) would be necessary for the reason that the record supports the finding that treatment would not be necessary.

III.

The Commission erred in failing to find that water taken from the site of the original permit (Davis) meets standards established by the Safe Drinking Water Act.

IV.

The Commission erred in failing to find that the applicant proposed to treat the original permit as the primary water source for the South Lincoln County Rural Water System.

V.

The Commission erred in adopting Finding I.A.6. in that there is no evidence in the record as to the capital costs of

developing the original site (Davis) including the wells and the accompanying distribution system.

VI.

The Commission erred in adopting Finding of Fact I.A.6. for the reason that there is no evidence in the record that funds are available from the Farmer's Home Administration to develop the original site (Davis) in addition to those in the Worthing area.

VII.

The Commission erred in adopting Finding I.B.1. for the reason that the record clearly reflects that the Sandstone bearing bands are narrower than those described in Finding I.B.1.

VIII.

The Commission erred in adopting Finding I.B.1. for the reason that there is no evidence that the water bearing sandstone in Lincoln County or in the immediate area of the production well is comprised of fine grain sand.

IX.

The Commission erred in adopting Finding I.B.2. that the static water level in the systems production well area is 170 feet because the evidence in the record indicates that the static water level in that area is in fact 165 feet.

X.

The Commission erred in adopting Finding I.B.2. for the reason that the head pressure is less than 210 feet in several areas surrounding the production well.

XI.

The Commission erred in adopting Finding I.B.2. in that there is no evidence in the record to establish that the decline in the particular area of the production well is 1/2 foot to 3/4 foot per year, but that rather the evidence shows more head pressure decline in the area of the production well.

XII.

The Commission erred in adopting Finding I.B.2. in that the hydrology of the aquifer is considerably varied in the area of the proposed production well.

XIII.

The Commission erred in adopting Finding I.B.3. in that there is no evidence in the record, nor does any pump data exist, to show that the porosity of the aquifer in the area of the production well is in fact 10 percent.

XIV.

The Commission erred in adopting Finding I.B.4. in that the fact of significantly better water quality in the area of the proposed production wells indicates a different hydrology of this area compared to the rest of the Dakota Sandstone Aquifer.

XV.

The Commission erred in finding that the observation wells were located at positions commencing at 65 feet from the production well because the evidence reflects that the closest observation well was located 40 feet from the production well.

XVI.

The Commission erred in Finding I.C.1. in that the evidence shows that the tests furnished data inadequate to support conclusions made by the Rural Water System and the Water Rights Commission staff.

XVII.

The Commission erred in finding as a matter of fact I.C.3. in that both the transmissibility and storage coefficients are predicated on accurate pump test data, which pump test data the record reflects is a result ^{of} inaccurate and inadequate testing and the hydrology of a different area.

XVIII.

The Commission erred in finding as a matter of fact I.C.3. for the reason that the Commission did not find that the production well was drilled in the place where it had previously been shown

that there was more water present than in other areas near the test well.

XIX.

The Commission erred in failing to find as a matter of fact that while drawdown does approximate a logarithmic function of time, recharge function and/or the presence or absence of barriers to flow would tend to have an impact on the amount of drawdown.

XX.

The Commission erred in failing to find as a matter of fact that reasonable predictions and conclusions as to drawdown are impossible due to the lack of knowledge of the hydrology of the area adjacent to the production well and the scientific and technical inadequacies of the pump test data.

XXI.

The Commission erred in failing to find that in the event knowledge of the hydrology and geology of the area were available reasonable predictions and conclusions as to drawdown would be possible.

XXII.

The Commission erred in failing to find as a matter of fact that the United States Geological Survey is planning a study of the Dakota Sandstone Aquifer in the area of the production well, and that the United States Geological Survey is another source of funding for tests to precisely analyze the separate characteristics and interaction of the three layers of the Dakota formation in the area of the production well.

XXIII.

The Commission erred in finding that the costs of the tests referred to in the preceding Assignment of Error are prohibitive for the reason that there is no evidence in the record to prove what the cost of such test would be.

XXIV.

The Commission erred in finding I.B.1. as a matter of fact in that there is no evidence in the record to show that the data contained in said finding came from questionnaires all of which may not have been returned.

XXV.

The Commission erred in finding I.E.1. as a matter of fact in that there is no evidence in the record to support said finding.

XXVI.

The Commission erred in failing to find as a matter of fact that the pump test conducted by the Rural Water System and the staff of the Water Rights Commission in August of 1977 did in fact have a negative impact on a number of area wells.

XXVII.

The Commission erred in failing to find as a matter of fact that an approximate 2/3 or 66 percent increase in the amount of water withdrawn from the three township area surrounding the system's proposed well field is in fact a significant increase in the amount of water taken from the area.

XXVIII.

The Commission erred as a matter of law in finding that unappropriated water is available to the Rural Water System.

XXIX.

The Commission erred in failing to find that there was no evidence in the record to support the fact of recharge in the area surrounding the production well.

Dated at Sioux Falls, South Dakota, this ____ day of May, 1979.

DENNIS C. MCFARLAND
Dennis C. McFarland
Attorney for Appellant
The Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

MAY 21 1979

69301

CK

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE APPLICATION *
OF THE SOUTH LINCOLN COUNTY RURAL * ASSIGNMENT OF ERROR
WATER SYSTEM APPLICATION 4300-3 *

The Friends of the Dakota Sandstone Aquifer, Opponents and Appellants herein, state that the South Dakota Water Rights Commission erred in the following particular, the same being one of the Assignments of Error upon which the Appellant will rely upon in its appeal to the Circuit Court of Hughes County in the above entitled matter:

I.

The Commission erred in that it abused its discretion by making its decision to issue Permit 4300-3 prior to hearing all of the evidence at the December 12, 1978 hearing.

DATED at Sioux Falls, South Dakota, this 18th day of May, 1979.

David R. Nelson
226 North Phillips Avenue
Sioux Falls, South Dakota
57102

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

* * * * *

IN THE MATTER OF THE APPLICATION *

OF THE SOUTH LINCOLN COUNTY RURAL*

CERTIFICATE OF SERVICE

WATER SYSTEM APPLICATION 4300-3 *

* * * * *

David R. Nelson, one of the attorneys for the Friends of the
Dakota Sandstone Aquifer, hereby certifies that he served a true
and correct copy of the Assignment of Error dated May 18, 1979,
by mailing first class, postage prepaid, copies thereof to the
following attorneys at their respective addresses:

Jeff Masten, Esquire
110 South Broadway
Canton, South Dakota 57103

Eugene Irons, Esquire
108 South Broadway
Canton, South Dakota 57103

John Smith, Esquire
Joe Foss Building
Pierre, South Dakota 57501

Robert Timm, Esquire
Joe Foss Building
Pierre, South Dakota 57501

Mark V. Meierhenry, Esquire
Office of the Attorney General
State Capitol
Pierre, South Dakota 57501

on the 18th day of May, 1979.

David R. Nelson
226 North Phillips Avenue
Sioux Falls, South Dakota
57102

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH LINCOLN
RURAL WATER SYSTEM WATER SYSTEM
WATER RIGHT APPLICATION

CERTIFICATE OF SERVICE

NO. 4300-3

David R. Nelson, hereby certifies that he served a true
and correct copy of the Appellant's Brief dated May 31, 1979, by
mailing first class, postage prepaid, copies thereof to the following
attorneys at their respective addresses:

Jeff Masten, Esquire
110 South Broadway
Canton, South Dakota 57013

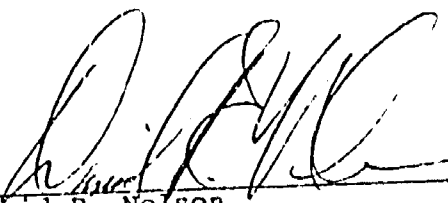
John Smith, Esquire
Joe Foss Building
Pierre, South Dakota 57501

Mark V. Meierhenry, Esquire
Office of the Attorney General
State Capitol Building
Pierre, South Dakota 57501

Eugene Irons, Esquire
108 South Broadway
Canton, South Dakota 57013

Robert Timm, Esquire
Joe Foss Building
Pierre, South Dakota 57501

on the 31st day of May, 1979.



David R. Nelson
One of the Attorneys for Appellant
Suite 210
226 North Phillips Avenue
Sioux Falls, South Dakota 57102

SIXTH JUDICIAL CIRCUIT

STATEMENT OF FACTS

At each of the hearings preceding December 12, 1978, the Commission deferred action on the application, the Commission being of the belief that inadequate data existed for them to make a determination as to whether unappropriated water was present. At the December 12, 1978, meeting the permit was granted with those restrictions which are attached to the final decision of the South Dakota Water Rights Commission, which decision is dated February 3, 1979.

The granting of the permit has been resisted by a group of South Lincoln County deep-well owners, the Friends of the Dakota Sandstone Aquifer, hereinafter referred to as the appellants or opponents. The proponent of the project is the South Lincoln Rural Water System, hereinafter referred to as the proponent or respondent.

Appellants served and filed their Notice of Appeal on February 28, 1979. The matter came on for hearing respondent's

Motion to Dismiss and appellant's Motion to Compel the Production of Transcripts on April 24, 1979, at 10:00 o'clock A.M. before the Honorable Robert Miller in the Courtroom of the Hughes County Courthouse. Judge Miller's Order of April _____, 1979, denied the Motion to Dismiss the appeal and also denied appellant's Motion to Compel the Production of a Transcript, established a briefing schedule, and set a date for oral argument.

ARGUMENT

W.R.C. did not make a proper finding of fact. It is not a fact-finding body. It is a regulatory body. It is not a court. It is not a fact-finding body. It is a regulatory body. It is not a court. It is not a fact-finding body. It is a regulatory body.

THE WATER RIGHTS COMMISSION ABUSED IT'S DISCRETION
BY DECIDING TO ISSUE THE PERMIT
PRIOR TO HEARING ALL THE EVIDENCE

II.

Unappropriated water is not available for the project. The water rights commission abused its discretion by issuing the permit prior to hearing all the evidence.

UNAPPROPRIATED WATER IS NOT AVAILABLE
FOR THE PROJECT

III.

THE CONCLUSION THAT UNAPPROPRIATED WATER IS
AVAILABLE IS BASED UPON UNRELIABLE DATA

IV.

THE PROJECT WILL INTERFERE WITH EXISTING WELLS AND
THEREBY BE CONTRARY TO THE PUBLIC INTEREST

V.

THE GROUND WATER IN THE DAKOTA SANDSTONE AQUIFER
IN THE AREA OF THE PROPOSED SYSTEM IS NOT SUBJECT
TO APPROPRIATION

I.
THE WATER RIGHTS COMMISSION ABUSED IT'S DISCRETION
BY DECIDING TO ISSUE THE PERMIT
PRIOR TO HEARING ALL THE EVIDENCE

It is the obligation of the South Dakota Water Rights Commission to take the testimony and evidence of all interested parties relative to applications for Water Rights Permits. S.D.C.L. 1-26-16, 1-26-18, 46-5-20. It is upon the evidence presented at that hearing that the Water Rights Commission or any administrative agency is to make its decision.

In this particular case, Water Rights Permit Application No. 4300-3, the Commission had numerous hearings and opportunities to review evidence and observe the witnesses testifying both for the proponents of the project, the opponents, and the Water Rights Commission staff. After hearings across the State and spanning several months, the Water Rights Commission was asked to make a final decision in July of 1978. At that time, it was the opinion of the Water Rights Commission that insufficient evidence had been received and that the Commission was unwilling to decide on the evidence which they had before them. July 25, 1978 minutes. As a result, the proponents and the staff were directed to gather additional evidence and prepare additional studies which would demonstrate whether or not there was unappropriated water available in the area surrounding the production well. There was a conclusion made, on the record, that the evidence was not sufficient in July to substantiate a decision one way or the other. In fact, at the July meeting Commissioner Varilek said, "The Geological Survey people may have some more information down the road, and we're talking about building two systems to one water supply; we're not sure that that system is going to be adequate and I just can't feel that I can make a decision when they are not really sure what they're going to do." Commissioner Wagner added at the same meeting, "I believe that we should have a better test well run on the Dakota formation before I can make a firm commitment, myself." July 25, 1978, Water Rights Commission meeting minutes.

Consequently, the meeting was adjourned until some future date. On December 12, 1978, the Commission reconvened at which time the permit was granted. However, it is important to note that absolutely no new evidence was presented at the December 12, 1978, meeting and no new studies were made. See page 37 of the Water Rights Commission Staff December 12, 1978, minutes. Only different individuals reviewing the same evidence was offered, and that came only from Richard Aten, a Chicago based consultant.

Mr. Aten reviewed the same information reviewed by the South Dakota Geological Survey. Assad Barrari of the Survey was only able to say, based upon that data, that more testing was required before it could be determined that there was unappropriated water available and whether any recharge occurs in the area. Page 101 of the December 12, 1978, Water Rights Commission minutes.

Mr. Aten admitted no experience with ground water in South Dakota or any portion of the Dakota Sandstone Aquifer, which formation amounts to a great deal of Mr. Barrari's expertise.

And most important, at no time was Mr. Aten willing to say that unappropriated water was either present in the area or available to the system.

At the December 12, 1978, meeting, the Commission decided to grant the permit on the basis of evidence that was deemed insufficient in July to conclude that unappropriated water was available. Such an about-face amounts to an abuse of discretion on the part of the Water Rights Commission and indicates their failure to balance the evidence carefully in order to ascertain whether there was in fact substantial evidence to support the conclusion that the permit ought to issue. Even Commissioner Varilek said at the December 12, 1978, meeting that, "I am probably in no better position to make a judgment than I was two years ago when I heard it for the first time." Page 59 of the minutes of the December 12, 1978, Water Rights Commission hearing.

This has undoubtedly been one of the most difficult applications for the Water Rights Commission to deal with, and it has

consumed a great deal of the Commission's time. That is probably why Commissioner Varilek indicated at the December 12, 1978, meeting that the Commission had voted against the project so many times and it has nonetheless failed to go away, that this time perhaps they would try to vote for the permit and perhaps that would make the problem go away. See the December 12, 1978, minutes. Again, Mr. Varilek's comment was made prior to the opponents in this case presenting any evidence against the project at all.

A cursory review of the December 12, 1978, minutes will reveal that the Commissioners were prepared to vote and wanted to vote at the close of the presentation made by the proponents of the project and the Water Rights Commission staff. The Commissioners were in fact anxious to leave prior to hearing any opposition evidence. It was only after the staff attorney advised the Commissioners that they had an absolute obligation to hear the testimony and evidence of the opponents that they agreed to stay and do so. The conclusion that the Commissioners paid something less than astute attention to the evidence and testimony presented by the opponents is an inviting one to make.

There are a number of examples in the December 12, 1978, minutes compiled by the staff which indicate the attitude of the Commissioners in terms of their willingness to consider all of the evidence presented. For example, on page 20 of the staff's minutes for that date Commissioner Varilek indicated that, "It appears to me that if you want me here at this meeting, you better hurry up and get it said, because at about 3:00 this jet is going to be leaving." On page 57 of the same minutes when the opponents were beginning their presentation, Commissioner Jensen asked opponents counsel, "Are you about done Mr. McFarland?" On the next page, page 58, Commissioner Varilek said, "This is no court case today and I refuse to accept it as a court case. When I was called here today for a special meeting for the Water Rights Commission to give these people opposed an opportunity to be heard. We have heard from lawyers all afternoon and all morning. I think we have some interested people outside that would like to say something. If

they want to say something, fine. If not, I am ready to make a motion and go home." Again on page 59, Commissioner Varilek states, "I make this as a motion" prior to the opponents opportunity to complete their presentation.

Comments such as these indicate that the Commissioners were obviously very put out by the fact that they had been required to listen to this testimony regarding this application for several meetings covering a span of several hours each time. While they cannot be blamed for their impatience, it is nonetheless their statutory duty to hear all of the evidence prior to making a decision; and it is obvious that the Commissioners made their decision prior to hearing the opening statement and the argument of opponents.

This fact is born out by the annexed Affidavit of Harold Fischer, marked Exhibit A, which indicates that the Commissioners had in fact made a decision during or prior to the lights failing at the December 12, 1978, hearing, which was prior to the opponents presenting their views, or even making an opening statement.

There is no question but that judicial review is appropriate in circumstances such as these. The appellants in this case are not asking the Court to supercede the discretionary authority of an administrative agency, but there is no question but that the Court has a responsibility to ascertain whether decisions made by administrative agencies are made as a result of Commissioners having abused their discretion.

"The review by the Court exercising judicial functions only cannot extend beyond the questions whether the Commission has acted within its constitutional or statutory powers and whether its order or determination is supported by substantial evidence and is reasonable and not arbitrary." Application of Dakota Transportation, 291, N.W. 589, 594 (1940).

The South Dakota Supreme Court has also had an opportunity to assess the role of the reviewing court in Dail v. South Dakota Real Estate Commission, ___ S.D. ___, 257 N.W.2d 709 (1977).

In Dail, the Court held that,

"The standard for review of an administrative decision is established by S.D.C.L. 1-26-36, which

states that the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact; provided, however, that the court may reverse or modify the agency's decision if it, inter alia, is affected by error of law, or is unsupported by substantial evidence on the whole record." Citations omitted.

It is important to note that the statute construed in Dail, S.D.C.L. 1-26-36, has subsequently been amended to modify the Court's scope of review. Where the reviewing court was previously barred from substituting "its judgment for that of the agency as to the weight of the evidence on questions of fact", the new rule only requires that "The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact."

The conclusion is inescapable that there must be some judgment exercised by the Court on review of a decision made by an administrative agency. The following language from 2 Am.Jur. 2d "Administrative Law", Section 260, Page 467, is instructive:

"However, the 'arbitrary or capricious' test also, and chiefly, relates to whether a particular action should have been taken or as justified, such as the reasonableness of the exercise of discretion in reaching a determination, and whether the agency action is without foundation in fact, especially where there is no question of jurisdiction or authority of the agency."

The first question is then whether the agency has exercised its discretion reasonably, and that certainly reflects on the Commissioners willingness to withhold making a decision prior to hearing all of the evidence and viewing all of the witnesses. In addition, the Court should be allowed to review whether a decision is reasonable in light of all of the evidence.

The following language from 2 Am.Jur. 2d "Administrative Law", Section 621, Page 469, is appropriate:

"The 'substantial evidence' rule provides for a review of rationality of a determination and is a test of reasonableness and not of rightness of agency findings of fact. It does not mean that the reviewing Court will weigh the evidence or substitute its judgment for the considered judgment of the administrative tribunal. It does mean, however, that the Court will apply the only available objective test to determine whether the administrative tribunal did in truth exercise such considered judgment and that it will insist upon such relevant

evidence as a reasonable mind might accept as adequate to support a conclusion.

The 'substantial evidence' rule does not provide a formula of precise content and does not avoid the process of judgment in its application." Emphasis supplied.

The appellants in this case are asking the Court to review the evidence offered in this case and make a determination as to whether the evidence is sufficient to support the decision; or whether the Commission's determination that unappropriated water is available to the proponent and that granting the permit is in the public interest is clearly erroneous in light of all the evidence.

Certainly, making a decision based upon evidence which six months earlier was insufficient and announcing that decision to individuals at the December 12, 1978, hearing prior to the hearing of all the evidence and hearing all the witnesses fails to satisfy the reasonable exercise of discretion standard, and does not amount to a decision supported by substantial evidence.

II.
UNAPPROPRIATED WATER IS NOT AVAILABLE
FOR THE PROJECT

The Commission's decision that unappropriated water is available is clearly erroneous in light of the evidence in the record. While the proponents of the project went into great detail to establish that there were approximately 350,000 acre feet of water below the area of the proposed well field, that does not necessarily mean that that amount of water is available and unappropriated. On page 108 of the Water Rights Commission December 12, 1978, minutes, the following exchange occurred between Attorney Nelson and Assad Barrari of the South Dakota Geological Survey, which reveals the difference between the presence of water and its availability for withdrawal:

Nelson Q: "Is there a difference between estimating the amount of water in an aquifer and in estimating what percentage of that water is extractable?"

Barrari A: "That is correct."

Nelson Q: "Does that vary with the geology of that particular aquifer?"

Barrari A: "That is correct."

Nelson Q: "And do we know enough about the geology at the Dakota Sandstone Aquifer to decide how much of that 350,000 acre feet can be extracted?"

Barrari A: "Not very reliable."

Nelson Q: "If, because of the geology of the formation, the 435 acre feet is all that you can take out of that formation, then it would be a lot more significant a number wouldn't it?"

Barrari A: "That is correct."

There is no question but that the aquifer in the area of the proposed well field is declining. Schoon, in his report marked as Exhibit 37, reports on page 29,

"Although local variations do occur, the preponderance of data indicate the pressures in the Dakota Artesian System are declining and perhaps within a few tens of years there will be few flowing wells in the James River lowlands. In view of this, it appears that it would be wise to regulate the number of wells in any given area. Before a new well can be drilled in an area where an old one exists, the old well should be plugged with cement. In view of our past blatant disregard of conservation principles, we are fortunate that the artesian system has not already been depleted."

Water is being taken out of the Dakota formation now at a rate of 630 acre feet per year. The following is contained in Exhibit 4-4, page 117, ". . . unless some recharge takes place while the pump is stopped, the water level will not fully recover to the original static level. Each time pumping is resumed the drawdown starts from a new level slightly lower than that which prevailed at the start of the previous pumping period." It is important to note from the pump test data and pages 6, 12, 17 and 21 of Appendix 2 thereof that the wells had not totally recovered after 30 hours of the August 1977 pump test. This has the effect of decreasing the static water level. Each time the pumps are turned on, if each well is not allowed to recover for a period in excess of 30 hours, then the cumulative effect will be to decrease the static level in the well every time the pump is operated.

Even the proponents of the system admit that it is impossible to ascertain whether the water below the area of the proposed production well field is available for withdrawal. Mr. Curtis Gubbrud stated on page 2 of the Water Rights Commission July minutes that, "The Rural Water System is also asking for a second permit in another well field, so if problems occur in the Dakota Aquifer, an alternate source of water would be available." Mr. Madden stated on page 3 of the same minutes that, "In the event that they do have problems in operating the Dakota Wells, the Rural Water System could without delay, use the alternate source of the same distribution source without putting the system out of water." On page 13 of the same minutes, Mr. Madden continued by stating that since the Dakota formation is a complex geologic area, he felt that it was a good move on the part of the system to have an alternate source, even though it is not as desirable as they may like.

There is no question but that the record reflects that there is a great deal of concern as to whether unappropriated water is available that will not have a negative impact on surrounding wells.

Even Mr. Madden says on page 41 of the December 12, 1978, minutes of

There is no question but that the record reflects that there is a great deal of concern as to whether unappropriated water is available that will not have a negative impact on surrounding wells. Even Mr. Madden says on page 41 of the December 12, 1978, minutes of

There is not available. Unappropriated water is not available when existing rights could not be satisfied in the immediate future. RWS would be domestic use for the next part.

the Water Rights Commission hearing, that the system should plan to have an alternate source that they would be able to use. Commissioner Varilek said at the same meeting, on page 59 of the minutes, that "I am not sure from the testimony presented to me at the several meetings that water is available or if it isn't available. We've been through the pump test, and sometimes it doesn't turn out too favorable." Commissioner Walter added at the same meeting where the permit was granted that, "Well, in the first place we are not sure that they have enough water available, and in the second place if there is that much water available, we have already approved that amount from another source which was included in the motion. I would just feel more comfortable if they cut down to one cubic foot per second on this permit."

III.
THE CONCLUSION THAT UNAPPROPRIATED WATER IS AVAILABLE
IS BASED UPON UNRELIABLE DATA

The Commission's conclusion that unappropriated water was present was predicated mainly on testimony received from Richard Aten and John Madden, both of whom made their conclusions based almost exclusively on the pump test data gathered as a result of the test conducted in August of 1977. Mr. Aten said on page 44 of the December 12, 1978, Water Rights Commission minutes that, "It was my understanding that I was going to make an independent objective review of the work that they had done, particularly directing the questions of the impacts on the proposed development on the water resources in general terms as a ground water resource; and to look at the supporting material, particularly the pumping tests on which those projections were based." It is interesting to note from Mr. Aten's response that he was not asked by either the proponents of the project or the Water Rights Commission staff about the availability of unappropriated water. Mr. Aten concluded on page 48 of the December 12, 1978, Water Rights Commission minutes that, "Any knowledge on the Dakota was recently acquired."

Likewise, John Madden's testimony was predicated almost exclusively on the results of the ground water investigations that were conducted by his firm on the basis of testing performed in the area of the proposed well field in August of 1977. See page 30 of the December 12, 1978, Water Rights Commission minutes.

All the conclusions reached by the Water Rights Commission regarding the availability of water to supply this system and the existing uses and the impact of the project on those existing uses are predicated on the pump test data assembled as a result of the August 1977 testing. That testing was performed in an inadequate and inaccurate fashion and it cannot support the conclusions reached by the proponents from that data assembled. The Commission's conclusion that unappropriated water is available and that its granting of the permit is in the public interest are not supported by valid

scientific data.

rate of pumping was controlled

The pump test conducted in August of 1977 was inadequate in a number of respects. Therefore, the conclusions made therefrom are inaccurate. In order for the pump test to give accurate results, the rate of pumping must be maintained constantly. Page 83 of Exhibit 4-4 indicates that the best way to do that is to use a valve on the discharge line of the pump, "Unnoticed changes in speed that result from varying line voltage on electric motors or from variations in air temperature, common humidity, or gasoline mixture on gasoline engines cause less fluctuation of the discharge when the pump is working against the back pressure or head developed in the partially closed valve. Trying to control the pumping rate by changing the pump speed is not always satisfactory." However, Mr. Madden testified at the December 12, 1978, meeting on page 42 of the minutes that, "The method of pumping, you use an orifice plate at the end of the discharge pipe through the pump. The operator in charge of running the pump would then regulate the speed of the motor running the pump or the control valve on the discharge of the pump to maintain the flow." On page 47 of the December 12, 1978, minutes to the Water Rights Commission hearing, Mr. Aten indicated that if the pump test data were not based on a continuous rate of pumping at 400 gallons per minute, that would affect the calculations which he made after reviewing the data.

It is also true that head pressure decline readings made during the pump test make it difficult to conclude the impact the proposed development would have on the head pressure in the area. According to Assad Barrari on page 104 of the Water Rights Commission December 12, 1978, meeting, "Even the data shows that you can't make a conclusion."

The length of time the pumping actually occurred in August of 1977 also reflects on the validity of the data. Mr. Hatch says in his December 6 report, which is included in Exhibit 2, that, "Pumping for each of the three aquifer tests should exceed 72 hours and possibly extend for several days to obtain the amount of

information which is believed necessary, although the 72-hour pump test would permit certain aquifer prediction calculations to be made . . . the staff has also considered pumping the existing well for a 30-day period." In fact Assad Barrari said on page 10 of the July minutes of the Water Rights Commission meeting, "One of the problems was distance and the other was time" referring to the problems of the pump test data. On page 51 of the Water Rights Commission December 12, 1978, minutes, Mr. Aten indicated that a 72-hour pump test is insufficient to tell what the total cone of depression will be. Also, on December 12, 1978, Mr. Barrari testified on page 102 of the minutes of the Water Rights Commission meeting that in Bedrock Aquifer the longer you pump the better data you get, and that 72 hours in the shallow aquifer is sufficient, but that this is not a shallow well test.

An additional problem with the validity of the test hinges on the location of the observation well as well as their characteristics. Mr. Hatch says in his December 6 report, in explaining why the staff considered pumping for 30 days but did not do that, said "We did not do this because we did not have satisfactory observation wells to monitor all of the effects at the time and because of the waste of water." On page 5 of Exhibit 12 it is concluded, "With present knowledge of the possible zone nature of the Dakota, one would want observation wells completed in all zones or, for a research-type test, measure pumped well flow from each zone or to isolate flow from one zone at a time" That was not the case here, where there was a total of only three wells located within the appropriate area, none of which were capable of closing off any of the three water bearing veins. Mr. Barrari indicated at the December 12, 1978, Water Rights Commission hearing on page 102 of the minutes that observation wells should be placed from 150 feet to one mile, and also indicated that they should be placed in different directions. In this case, there were only three wells located in the recommended area. See the pump test data.

Mr. Barrari indicated at the July meeting on page 10 of the Water Rights Commission minutes, "Based on the data that was furnished to the survey, they could not make any scientific conclusion. An aquifer pump test is conducted to determine aquifer characteristics. Those characteristics are used to determine what is going to happen after pumping for 30 days, 90 days, or other pumping periods. But with the information available, the long term effects could not be determined." He also indicated at the same meeting that the pump test as operated was inaccurate in terms of the way it was recorded and in the way the conclusions were made.

IV.
THE PROJECT WILL INTERFERE WITH EXISTING WELLS AND
THEREBY BE CONTRARY TO THE PUBLIC INTEREST

The Water Rights Commission found as a matter of fact that a diversion made of 2.0 cubic feet per second should not interfere with reasonable existing uses. See Finding II,D. The appellants contend that it was clearly erroneous for the Commissioners to adopt that Finding and fail to adopt a Finding to the effect that the pump test conducted by the Rural Water System and the staff of the Water Rights Commission in August of 1977 did, in fact, have a negative impact on a number of area wells. If, in fact, there was a significant negative impact on area wells, then the Commission would have had to address the question posed by S.D.C.L. 46-5-18 as to whether the approval of the application would be "contrary to the public interest". Presumably the Commissioners would have viewed the public interest differently had they made a Finding that area wells would be damaged by the withdrawal of water by the Rural Water System.

In failing to find that area wells were interfered with by the July pump test, the Commission made a clearly erroneous decision. The minutes of the October 1977 Water Rights Commission, on page 4, indicate that Mr. Madden "noted that with this type of formation, with the low transmissivity and a low storage coefficient, pumping these wells will have some effect considerable distance from the pump wells. After one year of pumping at 150 gallons per minute, there would start to be an effect 100,000 feet (almost 20 miles) from the pumped wells." Mr. Madden added at the same meeting, on page 7 of the minutes, that "The complications of the Dakota Aquifer with sand and shale layers, raises the question of what happens with a production well if there is somebody finished in one of these thin sand stringers some distance from the Rural Water System wells. If the system happens to screen it and get an unusually large withdrawal, there should be much more drawdown than was predicted from that one stringer and the individual well could be dried up. The system might exceed the recharge rate from that one stringer if it happens to be continuous and isolated in that area." When Attorney

McFarland asked Mr. Aten at the December 12, 1978, minutes on page 56 whether a drawdown of 2.0 cubic feet per second could draw the water in the production well to a point where it would render other wells in the area unusable, assuming first that the Dakota is a declining formation and second that there is an inadequate recharge, Mr. Aten responded that that was possibly correct.

At the December 1w, 1978, Water Rights Commission meeting, the minutes reflect that Stanley Wievel owns a 530 foot deep well located approximately 5 miles north of the production well which was used during the pump test. Mr. Wievel reported that during the pump test, his well pumped cloudy and pumped visible sand suspended in the water. See page 80 of the December 12, 1978, Water Rights Commission minutes. Mr. Wievel also indicated that that problem did not occur prior to the pump test nor at any time after the pump test.

Eugene Fisher has a well located about one mile west of the production well that is approximately 532 feet deep. He noticed after the production well was turned off that the pressure being supplied by his well was significantly diminished. See page 85 of the December 12, 1978, Water Rights Commission meeting minutes.

Likewise, Tim Griffin testified at the same hearing that he has a well approximately 3 1/4 to 3 1/2 miles north and west of the production well. During the time of the pump test, he took some water that his well pumped, put it in a pop bottle, and after the sand had settled out there was about 2 inches of sand in the bottom of the pop bottle. See page 90 of the December 12, 1978, Water Rights Commission meeting minutes. Mr. Griffin also said that the amount of water that came out of the pump was also significantly diminished. These and other examples of well problems were not dealt with by the Commissioners and were in fact dismissed without comment.

In each case where well problems were present during the August 1977 pump test, the problems were not noticed prior to the test and were never noticed again subsequent to the test. The

conclusion that the problems are associated at least in some way with the pump test conducted in August of 1977 is inescapable. It is important to note that at the time of the August 1977 pump test, the amount of water being withdrawn was only 400 gallons per minute while the permit would seek to take 2.0 cubic feet of water per second.

*if conditions
of permit
are affected*
This second permit was granted only on the condition that in the event area wells are adversely affected and the Rural Water System acknowledges that they are responsible for the negative effect, then the system would close down the Worthing area well field and convert to the alternate source. It is illogical that they would take funding from Farmer's Home to develop the "alternate" source at Davis and take on that additional financial obligation if they themselves were not relatively convinced that water would have to be used from the Davis area. Thus, both the proponents of the system and the Commissioners express a great deal of hesitance, on the record, that there is water available. And even if the water is available from the Worthing area, there is a great deal of hesitancy that it can be withdrawn without having a serious negative impact on area wells. But the Findings do not reflect these concerns and only conclude that area wells will not be interfered with. Consequently, the Commissioners never get to the question of whether this negative impact on area wells is in the public interest.

The Commission concluded that approximately 630 acre feet of water are withdrawn annually from the three township area surrounding the system's proposed well field. See Finding I, E, 2. And then the Commission concludes in the same Finding that an additional 455 acre feet annually should not be a significant addition to the total withdrawals presently made, when in fact the increase approximates 66 percent.

In light of all of the evidence in the record, the Finding of the Commission that the significant increase of withdrawal from the area of the proposed well field would not have a significant negative impact on area wells is clearly erroneous in light of the evidence found in the record.

THE GROUNDWATER IN THE DAKOTA SANDSTONE AQUIFER
IN THE AREA OF THE PROPOSED SYSTEM IS NOT SUBJECT
TO APPROPRIATION

It is the appellant's contention in this case that there is no unappropriated water present in the area surrounding the proposed production well and located in the Dakota Sandstone Aquifer. Generally, when the term appropriation is used in water law, it refers to either surface water or flowing underground water. See for example the following language from 78 Am.Jur. 2nd, "Waters" Section 163, Page 613:

"It may be stated as a general proposition that the rules of law applying to the appropriation of surface waters do not apply to waters percolating through the earth without a defined and known channel, and that such waters are not ordinarily subject to appropriation. It has been held in this respect that underground waters which are not tributary to any natural stream are not subject to the doctrine of appropriation."

A review of the South Dakota Compiled Laws indicates that the legislature intended to allow appropriation of ground water only where there was a definite stream or a fixed amount and rate of recharge. It was for that reason that the legislature included a prohibition on the mining of water in 46-6-3.1. In other words, the legislature intended to allow for the appropriation of ground water by the specific language of 46-6-3 which requires any person who desires to "appropriate any ground water" to give the Commission notice of their intent to do so as well as fulfilling certain other requirements.

The evidence is not contradicted in this case that the source and rate of recharge to the Dakota Sandstone Aquifer and the area surrounding the production well in South Lincoln County is not known and is incapable of being known in the absence of further study. Beyond that, the very fact of recharge has not been established and in the event that there is no recharge, which cannot be denied by the proponents or the Water Rights Commission staff, then what the staff would do would appropriate water from a finite source.

Credence to the conclusion that any recharge to the aquifer is questionable is lent by the fact that the head pressure in the area of the proposed project is declining. See Finding of Fact I.B.2.

conditions of permit coverable long w/ law change

The doctrine of appropriation has to do with taking water from a moving stream. If water continues to flow after the amount of water granted in the appropriative permit is withdrawn, then there is unappropriated water. If not all the water is taken, then that water which is left is unappropriated water. Here we are dealing with something completely different. Here we have a finite supply which is being appropriated by a means which measures the rate of withdrawal. For example, two cubic feet per second is sought by Permit 4300-3. It is impossible to know whether, in the absence of any recharge data, when that water is taken at two cubic feet per second for X number of days or months whether water will remain to supply the other demands of the area. If, in fact, there will ever come a time when that water will run dry due to the absence of recharge or even the inadequacy of recharge, then there is no unappropriated water available. There is only appropriated and unused water available.

now can't

The Commission therefore erred in finding that unappropriated water exists.

Dated at Sioux Falls, South Dakota, this 31st day of May, 1979.

Dennis C. McFarland
Attorney for Appellant
The Law Center
505 West Ninth Street
Sioux Falls, South Dakota 57104

David R. Nelson
Attorney for Appellant
Suite 210
226 North Phillips Avenue
Sioux Falls, South Dakota 57102

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
WATER RIGHT APPLICATION

AFFIDAVIT

NO. 4300-3

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

Harold E. Fischer, being first duly sworn on oath, deposes and states that he is the Chairman of the Friends of the Dakota Sandstone Aquifer and that he is a deep well owner in South Lincoln County. That in his capacity as Chairman of the Friends of the Dakota Sandstone Aquifer and a well owner in Lincoln County, South Dakota, he was present at the December 12, 1978, meeting of the South Dakota Water Rights Commission held in Sioux Falls, South Dakota. That he was present for the entire hearing, including all recesses. That he is personally acquainted with Stanley Jensen and Mervyn Walter and that he knows them to be members of the South Dakota Water Rights Commission. That during an afternoon recess prior to the opponents and appellants presenting their evidence and testimony relative to Water Right Application 4300-3, that he was personally told by the within named Merwyn Walter and Stanley Jensen that the Water Rights Commission intended to grant and issue a "experimental" to the South Lincoln County Rural Water System. That your Affiant was so informed prior to the opponents presenting any evidence or any testimony.

dated at Sioux Falls, South Dakota, this 31st day of May, 1979.

Harold E. Fischer
Harold E. Fischer

Subscribed and sworn to before me
this 31st day of May, 1979.

David R. Nelson
David R. Nelson
Notary Public - South Dakota

EXHIBIT A

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
APPLICATION FOR PERMIT NO.
4300-3.

CIV. 79-60

BRIEF OF RESPONDENTS DNRD
AND WATER RIGHTS COMMISSION

STATEMENT OF FACTS

On August 30, 1977, the Water Rights Commission received the original application in this matter. That Application No. 4135-3 for 4 c.f.s. from five 650 foot deep Dakota formation wells was submitted by the South Lincoln Rural Water System (System), Respondenc herein, jointly with the existing Lincoln County Rural Water System for a common water supply. A hearing was held on that application on October 6, 1977, at the Holiday Inn in Spearfish. Because it had received protests from several existing Dakota formation domestic well owners in the area and from the Town of Worthing, the commission deferred action pending an investigation by the commission staff. An amended Application No. 4300-3, the application at issue presently in this case, was received July 10, 1978, from the System for 2 c.f.s. (898 g.p.m.) of water from three 650 foot deep Dakota formation wells to be spaced at least 2½ miles apart and to be located in Lincoln County, South Dakota, approximately 5 miles south of the Town of Worthing. At that time Application No. 4301-3 was also submitted by the System for 2 c.f.s. from three 70 foot deep wells in the Vermillion aquifer southeast of Davis, South Dakota.

A hearing was held on Applications 4300-3 and 4301-3 on July 27, 1978, at the Ramada Inn in Sioux Falls. At that hearing the commission approved Application No. 4301-3. The commission voted to defer action on Application No. 4300-3 until better testing could be done on the Dakota formation in the area and adequate aquifer information obtained. Application No. 4300-3 was brought on again for hearing before the commission on September 13, 1978 December 13, 1978 Mitchell, South Dakota. At that meeting, the commission granted

a motion by the System to strike the testimony of counsel for the Friends of the Dakota Sandstone Aquifer, the Appellant herein, from the record. In response to a request by counsel for the Appellant, the commission voted to continue the hearing to a special hearing to be held on December 12, 1978, in Sioux Falls to enable the Appellant to prepare its witnesses and present its case. That special hearing on Application No. 4300-3 was held as scheduled on December 12, 1978, at the Ramada Inn in Sioux Falls.

On January 31, 1979, the commission made its Final Decision including Findings of Fact and Conclusions of Law, a copy of which is attached hereto. The commission generally found that the System is needed and is in the public interest, that the system including the Davis alternative supply is a feasible project, that there is sufficient unappropriated water available in the Dakota formation in the area of the System's proposed well field to supply 455 acre-feet annually, and that a maximum diversion rate of 2 c.f.s. should not interfere with reasonable existing uses. The permit as issued in the Final Decision is strictly conditioned to provide protection to existing domestic uses.

OUTLINE OF ARGUMENT

INTRODUCTION: SCOPE OF REVIEW

I.

THE WATER RIGHTS COMMISSION PROPERLY EXERCISED ITS DISCRETION IN REACHING A DECISION DESIGNED TO PROTECT AND ACCOMODATE COMPETING INTERESTS, AND THE PROCEDURE IT EMPLOYED WAS FAIR TO ALL PARTIES.

A. The proceedings of the commission and the Final Decision itself clearly manifest a reasoned consideration of conflicting and often complex technical evidence and an attempt at accomodating adverse interests.

B. The record of an administrative hearing may not be supplemented by a later affidavit, and appellant's proffered

affidavit is inadmissible as evidence in this case.

C. A substantial showing of prejudgment is required to nullify the decision of an administrative agency on the grounds that the hearing was unfair.

II.

THE COMMISSION'S FINDING THAT UNAPPROPRIATED WATER IS AVAILABLE IS NOT CLEARLY ERRONEOUS.

III.

THE COMMISSION'S FINDING, THAT THE DATA ON WHICH IT BASED ITS FINDING THAT UNAPPROPRIATED WATER IS AVAILABLE WAS SUFFICIENTLY RELIABLE, IS NOT CLEARLY ERRONEOUS.

IV.

THE COMMISSION'S FINDING THAT THE SYSTEM'S WELLS WILL NOT UNREASONABLY INTERFERE WITH EXISTING WELLS IS NOT CLEARLY ERRONEOUS.

V.

PERCOLATING GROUND WATER IN THE STATE OF SOUTH DAKOTA IS SUBJECT TO APPROPRIATION.

INTRODUCTION: SCOPE OF REVIEW

The only legal issue explicitly raised by Appellant's Brief is its apparent contention in I. that the Water Rights Commission's alleged prejudgment of the facts constitutes an abuse of discretion. The remainder of Appellant's Brief is devoted to attacking the commission's findings of fact. For this reason, Respondents DNRD and the Water Rights Commission will at the outset set forth the principles which are to guide the court's review of the evidence and the commission's exercise of discretion.

The applicable standards of review are set forth in SDCL 1-26-36 which provides:

The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The

court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

* * *

- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The intent of the statute seems to be that the findings of the commission are to be judged against the evidence using the clearly erroneous standard, and that the actions and decisions of the agency are to be reviewed by the arbitrary, capricious, or abuse of discretion standard.

The clearly erroneous standard has been employed for many years as the standard of review in appeals to the Supreme Court from cases tried to the court. In Schutterle v. Schutterle, 260 N.W.2d. 341 (1977) at 347, the court defined the clearly erroneous standard as follows:

The credibility of the witnesses and weight to be accorded their testimony is for the trial court, and we accept that version of the evidence including any reasonable inferences therefrom which are favorable to the trial court's determination...The question for us on appeal is not whether we would have made the same findings as the trial court did, but whether after reviewing the entire evidence we are left with a definite and firm conviction that the trial court was mistaken in making the challenged findings.

This accords with the mandate of SDCL 1-26-36 that the court give great weight to the findings made and the inferences drawn by the agency on questions of fact.

Abuse of discretion will be treated below in I.

I.

THE WATER RIGHTS COMMISSION PROPERLY EXERCISED ITS DISCRETION IN REACHING A DECISION DESIGNED TO PROTECT AND ACCOMMODATE COMPETING INTERESTS, AND THE PROCEDURE IT EMPLOYED WAS FAIR TO ALL PARTIES.

- A. The proceedings of the commission and the final decision itself clearly manifest a reasoned consideration of conflicting and often complex evidence and an attempt at accommodating adverse interests.

Respondents DNRD and the Water Rights Commission agree with the Appellant's assertion that the commission must take the testimony and evidence of all interested parties relative to applications for water rights permits and must base its decisions upon the evidence presented at such hearings. The Water Rights Commission heard evidence and argument relevant to the System's application for Permit No. 4300-3 on four separate occasions, consuming some nineteen hours in all. At each of these four hearings the commission permitted opponents of Application No. 4300-3 and the earlier Application No. 4135-3 the opportunity to present evidence and to argue against the granting of such permits. The commission provided opponents of the System's application ample opportunity to be heard.

As the Appellant points out on page 3 of its Brief, the commission was unwilling at the close of the July 27, 1978 hearing, on the evidence before it to decide the merits of the application. On page 4 of its Brief, the Appellant states that the hearing was reconvened on December 12, 1978, that no new evidence was presented at the December 12, 1978 hearing, and that the commission decided to grant the permit on the basis of evidence that it deemed insufficient in July. The Appellant argues that the commission's alleged change of heart is tantamount to an abuse of discretion on its part.

Appellant's contention is faulty for two reasons. First, assuming without admitting that Appellant's assertion that no new evidence was received is true, its contention that a quasi-judicial body after rehearing the same evidence on two subsequent occasions and hearing argument relative to that evidence on the same two subsequent occasions, may not then decide to make a final decision based on the totality of the evidence is perposterous.

Secondly, Appellant's assertion that the commission heard no new evidence is untrue. Interestingly, Appellant omits any mention of the commission's hearing on Application No. 4300-3 held on September 13, 1978. At that hearing new evidence was presented

concerning the average pumping time allowable under the staff recommended limitation of 455 acre-feet per year. Mr. Hatch presented evidence on water levels in wells near the City of Worthing, City of Canton, and the System's production well. Mr. Hatch presented evidence on the phase-in schedule of the system's pumping, he presented evidence on his opinion of what effect the System's pumping would have on existing wells in the area, and he presented a set of qualifications that he felt would adequately protect existing uses. At the December 12, 1978 hearing, additional evidence was presented by John Hatch concerning measurements that the commission staff had taken on three new observation wells near the production well and information compiled from measurements on other wells in the area. Additionally, Mr. Hatch submitted an even more involved staff proposal than the one submitted at the September 13, 1978 hearing. The System presented the expert testimony of Richard Aten, a Chicago based consulting engineer. Although Mr. Aten's conclusions were based primarily upon the same data relied upon by Mr. Madden and Mr. Barari, his opinion constituted new evidence in the case. The Appellant's contention that the opinion of a qualified expert on aquifer test data, the interpretation of which is a complex and highly technical endeavor, does not constitute new evidence is simply untenable. In a case such as this involving the interpretation of complex data, the commission must rely upon expert opinion, and to accept Appellant's contention is to hold that there is only one possible interpretation of any given set of technical data. This cannot be law.

The significance that the Appellant attaches to the failure of Assad Barari of the South Dakota Geological Survey and Richard Aten, the System's consultant, to reach a conclusion that unappropriated water is available in the Dakota formation in the proposed well field area is unjustified. Both men did in fact testify that water was available. Neither man could testify as to whether unappropriated water was available because such a decision is a legal conclusion committed to the sound discretion of the Water Rights Commission by SDCI 46-6-3.1 when an application

involves a municipality, a non-profit rural water system, or another common distribution system and the formation sought to be taped is lower than the Greenhorn formation as is the case here. In such a case, unlike the usual case facing the commission, average annual recharge is not necessarily the limiting factor in the commission's determination of the availability of unappropriated water. This point will be discussed further in II. below. X

By far the most convincing evidence of the commission's proper exercise of discretion in this case is the Final Decision itself, including the very strict conditions attached to it. Contrary to the impression conveyed in Appellant's Brief, the commission did not simply throw up its hands in irritation and frustration at the December 12, 1978 hearing and approve the System's application outright. Rather, the record amply illustrates that throughout the proceedings held on Application No. 4300-3, the commission exhibited sincere concern for the rights of existing domestic well owners in the area and its commitment to protect those interests. The commission's decision does not give the System carte blanche to rape one of the precious natural resources of this state. To the contrary, the decision manifests a difficult accommodation of competing interests arrived at only after a prolonged and searching scrutiny of conflicting and often complex evidence. In addition to limiting this System to an annual withdrawal of 455 acre-feet, the commission's decision fixes an acceptable decline in aquifer pressure in the System's well area to protect existing domestic well owners and sets forth a system of staff monitoring to assure compliance with those conditions. Rather than arbitrary and capricious action, the initial indecision of the commission and the ultimate decision fashioned to assuage its doubts represents the exercise of administrative discretion at its best. X

There is no doubt that Appellant's assertion that the commission found Application No. 4300-3 to be a vexing and sometimes irritating case is true. The December 12, 1978 meeting was attended by several hundred persons all of whom held strong opinions on the

merits of the case. The atmosphere of the meeting was tense and contentious. These factors no doubt affected the commissioners' attitudes and prompted some of the expressions of impatience with the progress of the hearing. The fact of the matter, however, is that the commission sat through nine hours of testimony and argument both for and against the application and rendered a proposed decision only after hearing all of the testimony and argument presented. The commission rendered its final decision on January 31, 1979, some six weeks following the December 12 hearing. The record as a whole simply does not support Appellant's contention that the Water Rights Commission abused its discretion by deciding the case prior to hearing all of the evidence.

B. The record of an administrative hearing may not be supplemented by a later affidavit, and Appellant's proffered affidavit is inadmissible as evidence in this case.

The Appellant contends that the Water Rights Commission made its decision prior to hearing the Appellant's evidence at the December 12, 1978 hearing. To support this contention the Appellant has attached an affidavit of Harold Fischer as Exhibit A to its Brief. In State ex rel. Iowa Employment Sec. Commission v. Iowa Merit Employment Commission, 231 N.W.2d 854 (1975), the Iowa Supreme Court entertained a similar contention that off-the-record statements made by one of the commissioners indicated a prejudgment of the case. The Appellant supported its contention by an affidavit similar to Mr. Fischer's. The court held in that case that the record made before the administrative tribunal could not be supplemented by later affidavits. We would urge the court to adopt that holding of the Iowa court.

The South Dakota Administrative Procedures Act in SDCL 1-26-35 sets forth the procedure to be followed in cases of alleged irregularity in procedure before the agency. That section provides:

...In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

SDCL 19-4-2 sets forth the uses to which affidavits may be put in actions and proceedings:

An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law.

It does not authorize the use of an affidavit to prove irregularities in administrative procedure. Mr. Fischer's affidavit is not evidence in this case and ought not be considered by the court.

C. A substantial showing of prejudgment is required to nullify the decision of an administrative agency on the grounds that the hearing was unfair.

Prior to the conclusion of the System's case at the December 12, 1978 hearing, and before the Appellant had introduced any evidence in opposition to the application, Commissioner Varilek moved to grant the System an experimental permit. In the colloquy that followed, Commissioner Varilek's motion was withdrawn, and Commissioner Decker moved to approve the application subject to stringent conditions. (December 12, 1978 Minutes, pp. 59-73.) This motion was eventually passed at the conclusion of all the evidence and ultimately was approved by the commission at its January 21, 1979 meeting as the Final Decision of the commission. During the commission's discussion on the framing of the motion, the following exchange occurred between counsel for the Appellant and the chair (December 12, 1978 Minutes, p. 67):

Mr. McFarland: ...I have a record to protect. Is the chair going to take any more testimony?

Chairman Jensen: We are going to take it during the discussion.

Mr. McFarland: Is that coming up?

Chairman Jensen: It will be after this.

Mr. McFarland: Does the commission intend to make a decision prior to the time of discussion?

Mr. Richie: We are going to make a motion and a second and then discuss it. That is the intent.

Mr. McFarland: Will opponents of the application be allowed the opportunity to testify? I guess it would be, depending on the motion, in opposition to the motion?

Chairman Jensen: Yes.

This was followed by further discussion by the commissioners and those in attendance concerning the precise wording of Mr. Decker's motion, and then:

Chairman Jensen: We now open it up for discussion and objections.

The Appellants then put on their case.

The Appellants contend that this procedure together with some statements of Commissioner Varilek indicating impatience with the progress of the hearing and the alleged statements made by Commissioners Jensen and Walter show that the commission had made its decision prior to hearing the evidence of Appellant, and that Appellant was thereby denied a fair hearing. In Belsinger v. District of Columbia, 295 F. Supp. 159, rev. on other grounds, 436 F.2d 214 (1969), the court enunciated what seems to be the prevailing judicial attitude on agency preconception of a case:

There must be an impartial tribunal. But to assume that any tribunal approaches a cause completely devoid of predilections or initial reactions is unrealistic. To nullify a ruling of a quasi-adjudicatory body on the basis of bias or pre-judgment requires a substantial showing of a "predetermined purpose to reach a predetermined end." See also State ex rel. Iowa Employment Sec. Commission v. Iowa Merit Employment Commission, supra.; Converse v. Udall, 262 F.Supp. 583 (1966), affirmed 399 F.2d 616, Cert. den. 89 S.Ct. 635, 393 U.S. 1025, 21 L.Ed. 569.

The Appellant's showing in this case does not rise to the level required by these cases to nullify a decision. While it is true that the commission was not sufficiently persuaded by Appellant's evidence to either amend or deny Commissioner Decker's motion at the close of Appellant's case, it does not necessarily follow that the commission did not consider it. It must also be borne in mind that the commission had heard the substance of Appellant's objections previously at its July 27, 1978 hearing (July 26 and 27, 1978 Minutes, pg. 36), although much of the evidence adduced at that hearing was formally stricken from the record as the testimony of Appellant's attorney. As noted above, however, the commissioners' comments relative to the various motions and the evidence, throughout the course of this case, have indicated a deeply felt concern with Appellant's rights, and its decision clearly demonstrates the commission's commitment to protect Appellant's rights.

In view of the commission's clear concern for the Appellant's rights, Appellant's showing of prejudgment is certainly not so substantial as to justify a nullification of the commission's decision. However, should the court be of the opinion that the commission's conduct of the hearing to some extent prejudiced the Appellant's rights, it can adequately protect those rights on appeal through its review of the evidence by adjusting the deference it accords to the commission's findings and decision in proportion to the shortcomings it perceives in the commission's procedure. That this is a commonly employed tool of judges is recognized by Davis, Administrative Law of the Seventies, §29.00, pp. 653-654:

What matters is that federal judges generally understand that they may not properly substitute their judgment for administrative judgment except on questions of law on which they are the experts, that something like reasonableness, rational basis, substantial evidence or clearly erroneous guides what they do on other questions, and that in most cases other factors have a much stronger influence than the words of the formula that is supposed to apply. Whatever the formulas, good judges generally tread lightly when they are impressed with the care, conscientiousness, and balance of the administrators, but they penetrate more deeply, sometimes even substituting judgment, when the administrative performance seems to them to have been slovenly.

Respondents DNRD and the Water Rights Commission are confident that the court will conclude that under any standard of review, the evidence in this case clearly supports the commission's Findings and Conclusions and that the commission reached a decision that is substantively fair and is the product of reasoned deliberation and just exercise of discretion.

II.

THE COMMISSION'S FINDING AND CONCLUSION THAT UNAPPROPRIATED WATER IS AVAILABLE IS NOT CLEARLY ERRONEOUS.

The commission's decision that unappropriated water is available is supported by the evidence, and its decision to permit the System to develop up to 455 acre-feet per year with strict conditions limiting pressure decline manifests a sound exercise of the discretion vested in the commission by SDCL 46-6-3.1.

Appellant's argument to the contrary both fails to consider the effect of SDCL 46-6-3.1 on the nature of the factual determination

that the commission is called upon to make in a case such as this and misinterprets the facts upon which the commission did in fact base its decision. Although its contention raises both a legal issue and a factual issue, the Appellant fails completely to recognize the legal significance hidden beneath its wooden use of the term "unappropriated". Thus its critique of the commission's weighing of the evidence is devoid of any legal standard against which the sufficiency of the evidence can be measured. Furthermore, the Appellant misinterprets the evidence that it claims shows the decision of the commission to be clearly erroneous.

Respondents DNRD and the Water Rights Commission will first address the legal issue of what is meant by the term "unappropriated water" in a case where the exceptions stated in SDCL 46-6-3.1 are applicable. This is necessary to determine the legal standard against which the evidence adduced before the commission must be measured.

Before the commission may issue a permit to an applicant for either ground water or surface water, the commission must find that unappropriated water is available for use by the applicant. SDCL 46-5-20 and 46-6-3. In considering the vast majority of applications to appropriate ground water, the commission must measure the intended appropriation against two standards - the one absolute, the other depending on the factual circumstances of the particular case. The commission is absolutely precluded by SDCL 46-6-3.1 from permitting water to be withdrawn annually from a ground water source in excess of the "average estimated annual recharge of water" to the source. Additionally, the commission must determine in all cases whether or not the particular diversion contemplated will interfere in the legal sense with other wells using the same source. The questions involved in the determination of potential well interference concern the effect that the anticipated cone of depression of the proposed well will have on existing adequate wells in the vicinity of the proposed well. The problem is principally one of spacing wells to insure that the water supply from adequate wells as defined by SDCL 46-6-6.1 and ARSD Chapter 52:01:04 is protected from interference by any proposed well.

It is undisputed that the Dakota formation in the System's production well area is stratigraphically lower than the Greenhorn formation. It is also undisputed that the System is a nonprofit water supply company as defined in SDCL 10-36A-1. Consequently, the general rule that the availability of unappropriated water is limited by the average estimated annual recharge to the source is inapplicable to this case under the exception found in SDCL 46-6-3.1. That section vests the commission with the discretion to permit certain uses to appropriate water even though such use will result in an actual reduction in the quantity of the water present in the source. The exception basically allows the commission to treat an aquifer under certain circumstances as a non-rechargeable basin. The difficult question thus posed is: What does the term "available unappropriated water" mean when recharge to the aquifer is not determinative? In this particular case, the question is complicated by the fact that the head pressure in the Dakota formation has been declining for many years.

The record in this case, and particularly the commission's Conclusions of Law reveal the solution that the commission adopted to solve this difficult problem. The commission considered its duty to maximize the beneficial use of the state's water, SDCL 46-1-4; it considered the fact that the Dakota formation in the System's proposed well field is presently in a state of continuing decline; and as shown by conclusions of law 2. and 4., it considered the effects that the System's proposed diversion might have on the existing uses in the area of the proposed wells. In short, the commission balanced what the evidence showed to be the benefits to be realized by the System's development and use of the water against the risk of harm to existing uses.

Beyond the problem of protecting existing domestic uses in the area from the anticipated cone of depression of the System's proposed wells, the commission adopted the position that the availability of unappropriated water must be perceived in terms of an acceptable rate of decline over the next few years. For a discussion of a similar approach in the case of a non-rechargeable

basin, see: Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966). Again the reasonableness of any increase in the rate of decline to be caused by the System's proposed use was measured by balancing the potential benefit against the harm that such increase might cause to persons presently using the source. The commission was deeply concerned with the security of existing wells in the area, and its decision reflects these concerns through the imposition of very strict conditions on the permit: it limited the System's annual diversion to 455 acre-feet (this translates into an average pumping rate of some 270 g.p.m., roughly 1/3 the rate the System had requested); it set a limit on pressure decline of 20 feet over four years; it required that the System develop and have on line an alternative source of water, namely the System's Vermillion aquifer supply in the Davis area; it prohibited interference with adequate existing wells; and it directed the staff to carry out a monitoring program to assure that these conditions were complied with.

The evidence supports the commission's decision. The aquifer test conducted by the System, though perhaps not perfect, was felt to be adequate for making general predictions by all of the experts that testified before the commission. The aquifer test indicated that at roughly one mile from the production well after one year of pumping at a rate of 270 g.p.m. the drawdown would be about 7 feet. Because most of the drawdown in the vicinity of a well occurs during the initial phase of pumping, the rate of drawdown at that point or any other point from the well would decrease dramatically with each successive increment of time. See Exhibit 4, Ground Water and Wells, p. 113 et seq. The commission reasonably concluded that such a drawdown would probably not interfere with existing uses in the area. The evidence further indicates that the Dakota formation in the production well area is presently declining at a rate of 1/2 to 3/4 feet per year, (See "Review of Lincoln County Recommendations, Study Methods and a Suggested Dakota Formation Management Proposal" and supporting data, p.4). Assuming without admitting that Appellant is correct in its assertion on page 18 of its Brief that the System's

withdrawals would increase total withdrawals in the area by 66%, this would still result in an overall increase in the rate of decline of only 1/4 feet per year at most. Since there was testimony that there is underflow through the area and possible discharge from the formation in excess of the System's allowable 455 acre-feet per year, the commission could justifiably conclude that the System's withdrawals would not result in measureable increase in the rate of decline at all.

On page 10 of its Brief, Appellant exhibits a fundamental misunderstanding of well recovery data. It confuses the concept of cone of depression with overall rate of aquifer pressure decline. The drawdown and recovery figures for a pumped well indicate the well yield, that is, the amount of water which can be withdrawn from a well per foot of drawdown in that well per day. It is simply not possible to determine what effect any amount of pumping will have on static water level, that is, the level in the well after full recovery, through the measurement of the pumping well alone. The System's aquifer test in fact indicated that although the proposed wells could have a noticeable effect at some distance, the impact would not be substantial. Nevertheless, the commission included in its decision strict conditions to insure that existing uses were protected. The commission soundly exercised its discretion in resolving difficult issues involving the availability of unappropriated water and its decision ought to stand.

III.

THE COMMISSION'S FINDING THAT THE DATA ON WHICH IT BASED ITS FINDING THAT UNAPPROPRIATED WATER IS AVAILABLE WAS SUFFICIENTLY RELIABLE IS NOT CLEARLY ERRONEOUS.

Appellant's contention that the aquifer test conducted by the System is valueless is without merit. Without doubt the test could have been conducted for a longer period of time, and more conclusive results might have been obtained. The System might have used six, seven, ten, or one hundred observation wells rather than the five that were used. The commission did not base

its finding that the pump test provided adequate data on the fact that it was a perfect pump test. The commission did find that the pump test provided data that was sufficiently reliable to support a decision with the strict drawdown, pressure decline, monitoring, and alternative source conditions that it did in fact impose.

Mr. Richard Aten testified at page 45 of the December 12, 1978 minutes as follows:

Mr. Aten: ...The test procedure was more comprehensive than I have run into in most other locations where sandstone, midwest sandstone aquifers are concerned. There are areas where it could have been improved. From hindsight there are several things now that it would be nice to get the data to look through. But in substance, I would say, the test is adequate for the purpose at hand. There are errors, minor errors in the analysis. It seems that in my opinion that off set each other, so I feel that they ended up with a transmissivity value that is about right. Working with groundwater work under the most controlled conditions is a very inexact science.

In the same vain the substance of what Appellant's counsel was able to elicit from Assad Barari at the December 12 hearing was simply that the aquifer tests conducted by the system could have produced more reliable data had more money and time been consumed. He did not state that the data derived from the test was invalid (December 12, 1978 Minutes, pages 101-103). Mr. Barari's statement, "Even the data shows that you can't make a conclusion," (December 12, 1978 Minutes, page 104) is quoted completely out of context by the Appellant. Counsel for Appellant had referred Mr. Barari to the results of geological survey observation wells contained on page 4 of the "Review of Lincoln County Recommendations, etc." These figures refer to overall head pressure decline in the aquifer and do not relate to the pump test data at all.

In summary, the commission's decision to accord the pump test sufficient weight to allow the system to proceed with development while recognizing its inherent limitations and thus providing the safeguards of the attached conditions is indicative of a sound exercise of discretion on the part of the commission.

IV.

THE COMMISSION'S FINDING THAT THE SYSTEM'S WELLS WILL NOT UNREASONABLY INTERFERE WITH EXISTING WELLS IS NOT CLEARLY ERRONEOUS.

The Appellant contends that the commission clearly erred in finding that the System's proposed diversion of 455 acre-feet per year with a maximum diversion rate of 2 c.f.s. should not interfere with reasonable existing uses. In support of this contention Appellant points to the testimony of several individuals to the effect that during the course of the System's aquifer test, their wells experienced turbidity problems and in one case a pressure reduction. Additionally, he points to testimony by John Madden, engineer for the System, and Richard Aten, the System's witness, to the effect that the System's pumping could adversely affect wells in the area.

There is evidence to support the commission's finding, and the evidence to the contrary does not so clearly preponderate as to invalidate that finding. It is true that Mr. Madden testified that there would be an effect at almost 20 miles from a well pumped at 150 gallons per minute. However, he did not state how substantial that effect would be. The aquifer test indicates that the effect would be negligible. (See South Lincoln Rural Water System Feasibility Study.) Mr. Madden gave more precise drawdown figures at the December 12, 1978 hearing on page 30.

With the exception of Eugene Fischer none of the witnesses who testified that the pump test had affected their wells could correlate the time when the turbidity problems occurred with the time of the pump test.

At least two witnesses testified that it would be highly improbable that the turbidity problems complained of by Appellant's witnesses could have been caused by the System's aquifer test. The following exchange occurred between counsel for the Appellant and Mr. Aten (December 12, 1978 Minutes, pp. 56-57):

Mr. McFarland: If a well four miles away from the production well pumped sand for the third time a day after the pump test was completed, is it probable, one more additional fact, and it has not pumped sand since that time, would you say that it is probable that the pump test was a factor in the causation of the sand being pumped in that well?

Mr. Aten: I would say that it is highly improbable.

Mr. McFarland: Is that because it would normally show up sooner than that?

Mr. Aten: It is because there is so little effect at four miles that I don't think it could cause anything to happen.

Mr. McFarland: So little effect, do you mean there is no cone of depression out that far?

Mr. Aten: There would be very, very little drawdown.

The following exchange occurred between counsel for the System and Mr. Barari at page 110 of the December 12, 1978 minutes:

Mr. Masten: Going back to our simple little model there, that Mr. Nelson doesn't think too much of, if you calculate the velocity of an ideal fluid because it is an ideal fluid and you compare the velocity in permeable medium, will the total velocity go up or down?

Mr. Barari: Your velocity I think, I would like to think about that for a little bit.

Mr. Masten: Can the proposed project generate sufficient velocity over an area like the Dakota Sandstone Aquifer?

Mr. Barari: More particularly?

Mr. Masten: Yes, four miles away?

Mr. Barari: That aquifer characteristic and the pump test that you are talking, I don't think that is very possible.

There is a distinction between influence on the aquifer in the area of an existing well and interference with that well in the legal sense. The Appellant fails to address this legal issue at all.

For an existing method of diversion to be legally protectable, that method of diversion must be reasonable in the sense that it must be sufficiently suited to the characteristics of the source to enable the user to obtain water at the same time that other reasonable users are diverting water. City of Colorado Springs v. Bender, 366 P.2d 522 (1961). The commission attached

the following condition to the permit under IV. of the Final Decision:

The rural water system wells approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights.

Additionally, the decision provides that if observation well measurement data indicates that a 20 foot head pressure decline will be reached within a four year period, the System must change to a new source of water. The decision of the commission on this point is supported by the evidence and represents a sound exercise of administrative discretion.

V.

GROUND WATER IN THE STATE OF SOUTH DAKOTA IS SUBJECT TO APPROPRIATION.

Appellant's contention that water in the Dakota formation in the System's proposed production well area is not subject to appropriation is totally without merit. SDCL 46-6-3 specifically provides that "Any person desiring to appropriate any ground water as defined in Section 46-1-6 shall give notice to the commission..." SDCL 46-1-6(7) defines "ground water":

"Ground water", under the surface, whatever may be the geologic reservoir in which it is standing or moving;...

The statutory scheme for appropriation of ground water was enacted by the Session Laws of 1955, Ch. 431, §1, and was specifically upheld in a case involving percolating waters in Knight v. Grimes, 80 S.D. 517, 127 N.W.2d 708 (1964).

Appellant also seems to be reasserting its contention that the commission's finding that unappropriated water is available was erroneous. The legal issue raised by this contention and the effects of SDCL 46-6-3.1 have been dealt with in II. above.

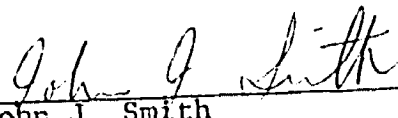
CONCLUSION

Throughout the course of the proceedings before the commission on Application No. 4300-3, the commission has exhibited its concern

for all parties concerned and its sincere commitment to protect existing uses while attempting to gain the maximum benefit of the state's waters for the people of this state. The mere fact that during various hearings, one or more commissioners expressed doubts about the advisability of granting a permit does not indicate an abuse of discretion. The meetings of the Water Rights Commission are required to be public. SDCL 1-25-1. Unlike the court, the Water Rights Commission does not have the luxury of being able to deliberate privately. Its reasoning process must be laid out for all the world to see, and it is the very existence of reasoned deliberation that the courts usually look to in determining whether an administrative agency has acted arbitrarily or capriciously in rendering a decision. The decision of the Water Rights Commission should not fail merely because the commissioners entertained doubts in the process of fashioning a decision designed to protect against the source of those doubts. The decision of the commission represents the sound exercise of administrative discretion and is supported by the evidence, and Respondents DNRD and the Water Rights Commission pray that the court affirm its decision in all particulars.

Dated this 15 day of June, 1979.

MARK V. MEIERHENRY
ATTORNEY GENERAL



John J. Smith
Assistant Attorney General
Earth Resources Unit
Room B-100, Anderson Building
Pierre, South Dakota 57501
Telephone: 773-3805

CERTIFICATE OF SERVICE

The Undersigned hereby certifies that he served a copy of the foregoing upon the persons herein designated, all on the date below, by depositing a copy in the U.S. Mail, First Class, postage prepaid, at Pierre in envelopes address to:

Dennis C. McFarland
Attorney at Law
505 W. 9th St., Suite 101
Sioux Falls, SD 57104

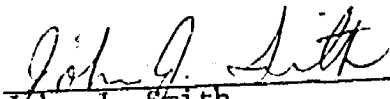
Jeff P. Masten
Attorney at Law
110 S. Broadway
Canton, SD 57013

David R. Nelson
Attorney at Law
226 N. Phillips Ave.
Sioux Falls, SD 57102

Eugene Irons
Attorney at Law
108 S. Broadway
Canton, SD 57013

which are said person's last known addresses to the subscriber.

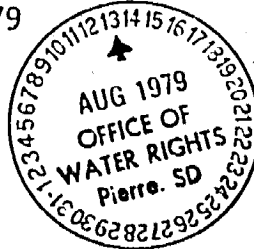
Dated this 15 day of June, 1979.



John J. Smith
Assistant Attorney General
Earth Resources Unit
Room B-100, Anderson Building
Pierre, South Dakota 57501
Telephone: 773-3805

FRIENDS OF DAKOTA SANDSTONE AQUIFER

August 2, 1979



Watch for my signature Bob
RECEIVED

AUG 6 1979

DEPT. OF WATER &
NATURAL RESOURCES

Department of Natural Resource Development
Joe Foss Building
Pierre, So. Dak. 57501

Dear Sirs:

Since your Department has recently been reorganized, we would appreciate it if you would outline the present policy with regard to applications submitted to you for water rights, if in fact it differs from past policy.

only if absolutely necessary. WJ
Specifically, we are interested in whether the Water Rights Commission will continue to have regularly scheduled meetings throughout the State and if applications for permits will require advertisement for same as has been done in the past. We would also be interested in your present policy regarding changing diversion points on an existing permit.

Finally, we would like to have the names of those who are or will be serving this Department, particularly those appointed on the Water Rights Commission.

Thank you for your assistance.

Sincerely,

Mrs. Wanda Sletten
Secretary-Treasurer

cc: Dennis McFarland

**SOUTH Dakota Department of
Water & Natural Resources**
Joe Foss Building Water Rights, Water Management Division
Pierre, South Dakota 57501 (605) 733-3352

August 17, 1979

Mrs. Wanda Sletten, Secretary
Friends of Dakota Sandstone Aquifer
Route 2, Box 82
Bereford, SD 57004

Dear Mrs. Sletten:

Reference is made to your letter regarding procedures for water right application. There is basically no change in the procedure, IE: submission of the application, advertising requirements and hearing before the Board of Water Management.

Board meetings will be held in Pierre unless it is deemed necessary to hold the hearings elsewhere.

The policy for changing diversion points has not changed.

Attached is a list of the Board members that have been appointed.

Should you have further questions, feel free to contact this office.

Sincerely,

WARREN R. NEUFELD
Secretary

WRN/bt
Enc.

Equal Opportunity Employer

2/1/80

September 5, 1979

Mrs. Wanda Sletten, Secretary
Friends of Dakota Sandstone Aquifer
Route 2, Box 82
Beresford, South Dakota 57004

Dear Mrs. Sletten:

Thank you for your letter of August 2, 1979, concerning the procedure for application of a water right. At the present time there have been no basic changes in the procedure for application of a water right. The procedure still requires application, published legal notice and a hearing before the Board of Water Management, formerly the Water Rights Commission. All hearings will be held in Pierre unless deemed absolutely necessary to hold them elsewhere. Also, there has been no change in the policy for altering diversion points on an existing permit.

Attached you will find a list of the Board members you requested. Please feel free to contact this office if you have any more questions.

Sincerely,

Warren R. Neufeld, Secretary
Department of Water & Natural Resources

WRN:vk:ms
Enc.

South Lincoln ~~8/10/79~~ 8/12

Phone (605)-773-3151

September 26, 1979

Mr. Eugene Irons, Esquire
108 South Broadway
Canton, South Dakota 57013

RE: South Lincoln Rural Water System, Incorporated

Dear Gene,

This letter is to confirm our telephone conversation of August 22, 1979. I must apologize for not sending this written confirmation earlier. I recognize the importance both financial and otherwise to the rural water system and the Friends of Dakota Sandstone of settling this matter as soon as possible. If I have any excuses at all it is simply that since our conversation on August 22, I have been unable to spend more than three or four days in my office. I would ordinarily ask one of my staff members to draft a letter such as this, but since I was the only one that actually participated in the telephone conversation, I felt that I should draft this letter myself to ensure its accuracy.

The following is a list of points we discussed regarding the South Dakota Geological Survey's participation in a settlement of this lawsuit.

1. Under SDCL 45-2-1 the South Dakota Geological Survey has the power to contract with non-profit rural water supply companies or corporations organized and taxed under the provisions of SDCL Chapter 10-36A. I am satisfied that there is sufficient statutory authority for the Geological Survey to provide some service in this matter so long as the contractual obligation is solely with the South Lincoln Rural Water System.
2. The Geological Survey is willing to provide hydrological opinions on whether a drawdown of the potentiometric head in any particular well is caused in whole or in part by South Lincoln Rural Water System.
3. This determination of the cause of a drawdown in a particular well, however, must be distinguished from any secondary effects such as turbidity which may or may not be caused by that drawdown. I must insist that the Geological Survey reserve the right to refuse its opinion on whether any specific drop in water level in any particular well is causing these secondary impacts. In fact, in almost all situations the Geological

s

Survey will be unable to determine the cause or causes of these secondary impacts. This is because observed phenomena such as turbidity are related not only to the water level in a well, but also to other factors such as the fluctuation in that water level, the construction of the well and its maintenance history. Any determination concerning the cause or relationship between the decline in water level in any well and observed secondary effects will have to be made by another mediator of the parties' choosing. The adverse effects possibly caused by a drop in the water level of a well are subject to too many other factors that are not within the Geological Survey's expertise or control.

4. Before any work by Geological Survey is to be done, all wells must be surveyed to establish a definite baseline history. The following tasks should be performed with regards to each well:
 - a. The pump setting should be measured,
 - b. The pump capacity should be measured,
 - c. The static and pumping water levels should be measured,
 - d. Samples should be taken for analyses of water quality.
5. I request that all Geological Survey expenses incurred in performing this service for the two parties be reimbursed by the rural water system. It is acceptable for the rural water system to be reimbursed in turn by the Friends of the Dakota Sandstone, but because of the statute cited above, Geological Survey can contract only with the rural water system.
6. Because of personnel and budgeting restrictions within this department all water level monitoring must be done by Division of Water Rights Staff. The Geological Survey is capable of interpreting this data as outlined above, but it does not have the time or personnel to maintain an observation well data program. This is a function that has historically been performed by the Division of Water Rights Staff and will continue to be so in the future.
7. I assumed that all parties will be entering into this arrangement in good faith and that efforts will be made by both sides to reasonably and peacefully settle any differences that may arise. If, however, any disputes would degenerate into a shouting match or anything else of such unseemly nature, I would prefer to have the matter settled in court rather than be drawn into the middle of an irreconcilable situation. For this reason the Geological Survey must reserve the right to withdraw from this arrangement any time it determines a dispute has gone beyond any point of reasonable reconciliation.

Eugene Irons

Page - 3 -

September 26, 1979

3. Because the use of water is an ongoing activity and the Board of Water Management may be asked to exercise its jurisdiction over future disputes, I fear that information and data or opinions offered in good faith in order to accommodate the parties at this time may possibly be used in the future in an attempt to discredit or impeach expert testimony from employees of this department. For this reason I request that data, information and opinions generated as a result of this arrangement not be used as evidence in any future proceeding unless permission is given in writing.

I have discussed all of these matters with the Geological Survey, and I am supported by the survey with regard to all of these provisions. The survey is understandably reluctant to step into the middle of this controversy, and I can sympathize with that reluctance. All of us in the department, however, feel that no progress will be made in this situation unless risks are taken. Recognizing that the South Lincoln Rural Water System and the Friends of the Dakota Sandstone are both accepting some risk to their respective positions by proposing this arrangement, I feel the Department of Water and Natural Resources as a regulatory and investigatory agency should be willing to travel at least an equal distance. I believe we have done this in our position outline above, and will appreciate receiving any comments or alternative suggestions you may have. Hoping to hear from you soon.

Sincerely,

S/

Warren R. Neufeld
Secretary

WRN:crb

cc: Dennis McFarland
John Hatch ✓
Duncan McGregor
Bob Swartout

File
S. Line.

RETURNED
GENERAL

66962

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

110

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF SOUTH LINCOLN
RURAL WATER SYSTEM APPLICATION
FOR PERMIT NO. 4300-3

MEMORANDUM DECISION

ACTION

This is an appeal from the decision of the South Dakota Water Rights Commission (presently known as the South Dakota Water Management Board) which granted water permit #4300-3 to South Lincoln Rural Water System. This Court affirms the Commission's decision.

PARTIES

The parties to this action consist of appellants who are known as "Friends of the Dakota Sandstone Aquifer" and respondents which consist of the Water Rights Commission (Commission) and applicant, South Lincoln Rural Water System. Appellants are residents of the city of Worthing and surrounding ranch and farm residents with existing domestic wells. For purposes of clarity, Friends of the Dakota Sandstone Aquifer will be referred to as Appellants. Respondents, South Lincoln Rural Water System, will be referred to as SLRWS.

FACTS

On August 30, 1977, SLRWS submitted application #4135-3 for 4 c.f.s. (cubic feet per second) of water to be withdrawn from the Dakota Sandstone Formation. Hearing on that application was held in Spearfish, South Dakota on August 6, 1977, at which time, in response to protests from existing well owners from the Worthing area, the Commission deferred action pending further investigation by the staff.

On July 10, 1978, the Commission received an amended application #4300-3 (presently at issue) seeking the appropriation of 2 c.f.s. of water to be withdrawn through three wells in the Dakota Formation approximately five miles south of Worthing. In addition to SLRWS's amended application #4300-3, the Commission received application #4301-3 for the appropriation of 2 c.f.s. to be drawn from the Vermillion Aquifer as an alternate source.

On July 27, 1978, the Commission held hearings on both SLRWS's applications. At this hearing, the Commission approved application #4301-3 but deferred action on the amended application #4300-3 until "better testing is done on the Dakota Formation and adequate aquifer information is obtained."

Application #4300-3 was again before the Commission on September 13 and 14, 1978 but hearing thereon was continued until December to allow appellants an opportunity to offer sworn testimony from witnesses in opposition to the granting of the permit. The record reflects that appellants obtained this continuance after the Commission granted SLRWS's motion to strike appellants' counsel's testimony at the July meeting on grounds that he was not a sworn witness, but rather was acting counsel for appellants.

On December 12, 1978, the Commission held a special hearing on the application in Sioux Falls which ultimately resulted in the final decision now on appeal. The Commission, at that time granted permit #4300-3 and attached certain conditions thereto.

These conditions require that:

- (1) SLRWS's annual withdrawal is "limited to 455 acre feet and that the total withdrawal is subject to review and adjustment by the Water Rights Commission", and
- (2) Proposed wells must be at least two and one-half miles apart prior to any use of water, and
- (3) SLRWS must drill an observation well into the upper layer of the Dakota Formation about 200 feet away from each of the three wells for monitoring purposes, and
- (4) "Withdrawals will be restricted if the aquifer head pressure declines 20 feet at designated measuring points during a four year period . . .", and
- (5) If the aquifer head pressure declines or if it appears that it will decline more than 20 feet in four years time, SLRWS would, upon order of the Commission, be required to change to a new source of water, and
- (6) No wells shall be located within 1300 feet of existing Dakota Formation wells without waiver by the owner, and
- (7) SLRWS shall develop and place a line on its alternate source of water from the Davis field in the Vermillion aquifer so that if pumping were stopped from the Dakota Formation near Worthing, members of the system would immediately have water available.

Appellants filed their Notice of Appeal with this Court on March 1, 1979 and hearing thereon was held on June 28, 1979.

ISSUES PRESENTED

The Appellant filed 29 Assignments of Error which are here condensed to the following five issues.

- (1) Whether the Commission approved permit #4300-3 prior to hearing all the evidence and thereby abused its discretion? This Court finds that the Commission did not.
- (2) Whether the Commission's decision is clearly erroneous in light of the entire evidence in the record by concluding that unappropriated water is available for diversion from the Dakota Aquifer? This Court finds that the Commission's decision is not clearly erroneous.
- (3) Whether the Commission's conclusion that unappropriated water is available is clearly erroneous in light of the entire evidence in the record as being based on unreliable data? This Court finds that it is not.
- (4) Whether the Commission's decision is clearly erroneous in light of the entire evidence in the record as being contrary to public interest? This Court finds that it is not.
- (5) Whether the Commission's decision is clearly erroneous in light of the entire evidence in the record for granting appropriation of ground water from the Dakota Sandstone Aquifer? This Court finds that it is not.

SCOPE OF REVIEW

SDCL 1-26-36 provides the governing scope of review for appeals from administrative agency decisions. That section mandates that this Court give great weight to the agency's findings of fact and inferences therefrom. The Court, in reviewing the decision may not reverse or modify the agency ruling unless substantial rights have been prejudiced by any agency decision which is:

(1) in violation of the constitution or statute; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) effected by other error of law; (5) clearly erroneous in light of the entire evidence in the record; or (6) arbitrary and capricious, abuse of discretion or clearly unwarranted exercise of discretion.

The clearly erroneous test of reviewing an agency's fact determination requires that before this Court may reverse or modify, it must determine "whether on the entire evidence it is left with a definite and firm conviction that a mistake has been committed". In re Estate of Hobelsberger, (S.D. 1970) 181 NW2d 455.

DECISION

ABUSE OF DISCRETION

The first issue to be resolved is whether the Commission members had decided to issue the permit prior to hearing all the evidence thereby abusing their discretion and rendering an arbitrary and capricious decision.

The record reflects that at the July hearing, the Commission felt that the August, 1977 testing of the Dakota Aquifer was inadequate and that further tests and information were necessary before they could render a decision. Based on that determination, the Commission deferred action on the application. The record further reflects that no new major testing was completed prior to their ruling on the application at the December meeting.

Appellant contends that since there was no new testing prior to the December ruling on the application, the Commission's decision is an abuse of discretion. Appellant further points to

the expert testimony of Assad Barrari, which supports that the August, 1977 test data may not be adequate to draw conclusions that unappropriated water is available for withdrawal.

Commission contends that it did not abuse its discretion. In support thereof, the Commission points to the nineteen hours of hearings and argues that new evidence was submitted for the Commission's consideration at the December meeting. The Commission claims that the new evidence consisted of testimony by John Hatch (Water Rights staff engineer) as to the water levels of wells in the Worthing and Canton areas; a proposal of qualifications which the staff felt would allow the Commission to grant the permit and yet protect existing well owners, and finally, expert testimony by Richard Aten, a ground water specialist, who testified that the data from the August, 1977 pump test was sufficient to draw conclusions as to the availability of water for this permit.

This Court does not find the Commission's decision to be an abuse of discretion merely because they changed their minds about the adequacy of the August, 1977 pump test data. For this Court to hold that the evidence at the December hearing could not have reasonably influenced the Commission to reconsider the pump test data, would certainly be a substitution of this Court's judgment for that of the Commission. Schutterle v. Schutterle, 260 NW2d 341 (1977). Testimony by Aten that the test was "comprehensive" and the data was sufficient to draw conclusions, could certainly warrant the Commission's reconsideration of the data and its determination as to the adequacy of that data.

Next, Appellant points to comments made by Commissioner

Varilek which suggest he was not interested in hearing opponent's testimony and would rather vote and go home.¹ Appellants argue that these comments by Varilek, and others, support their contention that the Commission had made its decision prior to hearing Appellants' evidence. Additionally, Appellants offered at the hearing before this Court, an affidavit by Harold E. Fischer, Chairman of the Friends of the Dakota Sandstone Aquifer, which states that he was told by Commissioners Jensen and Walter, prior to Appellants putting on their evidence, that the Commission intended to grant an "experimental" permit to SLRWS.

After having reviewed the minutes of the hearings and tape recordings thereof, this Court is of the opinion that the Appellants were not denied their opportunity to be heard and the Commission did not make its decision prior to hearing all of the evidence.

The record reflects that Appellants' counsel's testimony at the July meeting was stricken by the Commission upon motion by SLRWS as being improper testimony by an attorney representing the opponents. See SDCL 1-26-19. However, the hearing was continued until December so that Appellants would have their opportunity to produce sworn testimony by witnesses other than

¹Varilek comments: "We have heard from lawyers all afternoon and all morning. I think we have some interested people outside that would like to say something. If they want to say something, fine. If not I'm ready to make a motion and go home." December 12, 1978 Water Rights Commission meeting, pg. 58, Varilek; "Could I ask a question while these legal minds decide what they are going to do . . . ?" Varilek at pg. 32; "It appears to me that if you want me here at this meeting, you better hurry up and get it said, because at about 3:00 this jet is going to be leaving." Varilek at pg. 57.

their counsel. See Commission's minutes, September 13, 1978, pg. 25. The December minutes reflect that Appellants were given that opportunity. Prior to the Commission's vote on the motion to grant the permit with conditions, Appellants' counsel stated "we rest". See December meeting minutes, pg. 112, McFarland.

The record of the December meeting further reflects that Appellants called witnesses, cross-examined witnesses produced by SLRWS and had an opportunity to argue against the granting of the permit. This Court is therefore of the opinion that Appellants were properly afforded an opportunity to be heard.

In regard to Appellants' offered affidavit by Harold Fischer, this Court does not consider the same as admissible evidence. Although SDCL 1-26-35 provides "proof . . . may be taken in the court" where there is alleged irregularity before the Commission, this Court is not of the opinion that Appellants' affidavit was the appropriate form of proof. See SDCL 19-4-2. Even were this Court to have considered Appellant's affidavit, the statement by the Commissioners that they intended to grant an "experimental" permit does not alone meet Appellants' substantial burden of proving the Commission had a "predetermined purpose to reach a predetermined end". Belsinger v. District of Columbia, 295 F.Supp. 159, 436 F2d 214 (1969); State ex rel. Iowa Employment Sec. Commission v. Iowa Merit Employment Commission, 231 NW2d 854 (Ia. 1975); Converse v. Udall, 262 F.Supp. 583 (1969). The record reflects that even though Commissioner Varilek made a motion to grant an "experimental" permit, that avenue of action was rejected by the Commission and they proceeded to hear Appellants' evidence before ultimately voting to grant the permit.

with conditions. There was considerable discussion on the record by the Commissioners which confirms that they were struggling to find an appropriate decision based on the facts before them. This Court is therefore of the opinion that the entire evidence in the record does not show that the Commission had already decided the issue before Appellants presented their evidence.

This Court must pause to note that although review has revealed no irregularity by the Commission which would amount to an abuse of discretion and ultimate reversal of its decision, the actions of the Commission members and in particular, Mr. Varilek, are below the dignity of an administrative body of the Commission's character. The comments by Varilek and on one occasion, Decker, were certainly unnecessary irrespective of how tense the hearings may have been. It is this type of conduct on the part of the Commission members that invites the criticism they are so quick to condemn. Certainly any administrative agency, just like any court, commands that degree of respect which they offer to those before them.

AVAILABILITY OF UNAPPROPRIATED WATER

The key issue in this appeal is whether the Commission's conclusion that unappropriated water is available is clearly erroneous in light of the entire evidence in the record. Since Appellant's argument #3, as briefed, deals with the same issue by alleging that the conclusion is based on unreliable data, this Court will deal with both issues #1 and #3 together.

Appellants' major contention is that the record does not support that there are 2 c.f.s. of water available for appropriation from the Dakota Sandstone Aquifer. In support of this contention, Appellants point to the expert testimony of Assad Barrari which stated that, based on the data from the 1977 pump test, the U.S. Geological Survey could not make a scientific conclusion. Appellants reason that even SLRWS does not know whether unappropriated water is available because they sought an alternative source of water, namely the 2 c.f.s. from the Vermillion Aquifer. Appellants also contend that the Commission could not properly have determined unappropriated water was available where recharge of the Dakota Sandstone Aquifer is unknown. This Court does not find the Commission's conclusions to be clearly erroneous and is not left with a definite and firm conviction that a mistake has been committed.

There is no question but that the Commission must find that unappropriated water is available before they grant a water permit. SDCL 46-5-20. The findings of fact and conclusions of law reflect that the Commission did so find. The general rule is that the Commission is precluded from granting a permit under which water withdrawal exceeds the "average estimated annual recharge . . .". See SDCL 46-6-3.1. Additionally, the Commission must also determine whether the appropriation and diversion would interfere with existing wells. However, an exception to the general rule of recharge may be found in SDCL 46-6-3.1. That statute provides that the Commission "may" approve applications for withdrawal of ground water from any ground water formation "older than or stratigraphically lower than the Greenhorn formation" even though

that withdrawal exceeds the annual rate of recharge, provided that, the applicant is a municipal system, a non-profit water supply company, water user district, sanitary district or other common distribution system.

There is no question that the Dakota Sandstone Aquifer is lower than the Greenhorn. Neither is there any dispute that SLRWS is a non-profit water supply company under the provisions of SDCL 10-36A-1. This Court is therefore of the opinion that the Commission need not have made a requisite determination regarding the rate of annual recharge in this case. SDCL 46-6-3.1 vests the Commission with the authority to grant the permit in spite of actual reduction of water quantity. It would therefore seem evident to this Court that the Commission need not concern itself with the recharge factor.

Historically, the approach to defining unappropriated water was through the concept of annual rate of recharge. Since the Legislature has mandated that recharge is no longer a factor in granting permits for appropriation of water from formations lower than the Greenhorn, the statute would only appear to require that the Commission determine that water is available for appropriation.

Both expert witnesses agree there is sufficient water in the aquifer. Barrari's main concern is that he does not know how much the withdrawal would lower the pressure in the aquifer. Aten testified that he felt there was surplus water in the aquifer and that it was flowing out of the county. Since both experts agree that the water is there, this Court finds the record sufficient to support the Commission's conclusion that water was available for appropriation.

The absence of a recharge factor does not, of course, mean the Commission has carte blanche authority or discretion to grant applications that would draw down the aquifer. They must still consider the "public interest" in doing so and balance that factor with the duty to protect against possible interference with existing wells. See SDCL 46-1-2, 46-1-4.

The record shows that the Commission was very concerned with both the possible interference to existing wells and the rate of decline in the aquifer. Certainly the provisions of SDCL 46-6-3.1 and the facts of this case presented the Commission with a difficult problem in granting a permit without their having to be an annual recharge. The record reflects that they attempted to resolve the problem by placing conditions on the permit which would assure the safety of existing well owners by requiring that SLRWS not pump more than 455 acre feet annually (which is substantially less than they requested); that the pumping is to be monitored by the staff so that if it draws down the aquifer pressure or appears that it will draw down the pressure by twenty feet within four years, the Commission will immediately revoke the permit and that SLRWS must develop their alternate source of water under permit #4301-3 (Vermillion Aquifer), on line, so that the system's customers would immediately have water in the event this permit would later be revoked.

It is this Court's opinion that these conditions and the record of the hearings are illustrative of the fact that the Commission did not abuse its discretion in balancing all factors concerned in granting the permit under SDCL 46-6-3.1.

In regard to Appellants' contention that the Commission's decision is based on unreliable data, this Court notes that the testimony is conflicting in regard to the sufficiency of the 1977 pump test data.

Expert testimony by Mr. Aten indicated that, in his opinion, the test was more "comprehensive" than those he had run on Sandstone aquifers in the midwest. Mr. Barrari, on the other hand, stated that more testing would be helpful in determining whether unappropriated water was within the aquifer. Since there appears to be credible testimony on both sides, this Court will not substitute its judgment for that of the Commission's. The record certainly reflects that the Commission could have reasonably found that the data was sufficient enough to support that there was water available for appropriation.

PUBLIC INTEREST

Appellants contend that the Commission's decision is contrary to public interest and therefore clearly erroneous. In support of this contention Appellant points to the testimony of several Worthing residents which indicated that during the pump test, their wells either pumped sand or their water flow was reduced. Appellants reason that the Commission's ruling is contrary to public interest where the existing wells are injured.

As discussed supra, the Commission must indeed consider the interference with existing wells. However, the record also reflects that the experts testified that it was unlikely that the test pumping would have affected wells as far away as those complained of by Appellants. Certainly this raises a question of credibility of testimony on both sides. Again, even though this Court may not

agree, it may not substitute its judgment for that of the Commission.

It is evident that the Commission chose to believe the testimony of the experts and in light of the conflicting testimony, placed the conditions on the permit to assure that existing wells would not be injured. Certainly this type of approach is not an abuse of discretion.

This Court therefore finds that the Commission's decision is not contrary to public interest. The avenue they chose in granting the permit allowed the use of water to those in need thereof and yet attempts to protect those existing well owners by adding protective conditions.

DAKOTA SANDSTONE ACQUIFER WATER SUBJECT TO APPROPRIATION

Finally, Appellants contend that the Dakota Sandstone Aquifer is not the type of ground water subject to appropriation. In support of that contention, Appellant cites general authority that waters perculating through the earth "are not ordinarily subject to appropriation".

This Court is little influenced by Appellants' last contention. SDCL 46-6-3 quite clearly provides for the appropriation of " any ground water" as defined by SDCL 46-1-6. The definition of ground water provides that it is water "under the surface, whatever may be the geologic reservoir in which it is standing or moving; . . .". [emphasis added]

In light of these statutes and the well known judicial approval of ground water appropriation in Knight v. Grimes, 80 S.D. 517, 127 NW2d 708 (1964), this Court finds that the Dakota Sandstone Aquifer is subject to appropriation.

Accordingly, the Commission's decision is affirmed.
Counsel for the Commission is directed to prepare and submit
an order in accordance with this memorandum decision.

Dated this 9th day of October, 1979.

BY THE COURT:


Robert A. Miller
Presiding Circuit Judge

ATTEST:

Clerk of Courts

(SEAL)

February 2, 1969

Mr. Lynn Hedges
Geological Survey
University of So. Dak.
Vermillion, So. Dak. 57069

Dear Lynn:

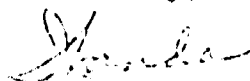
Although it may be a while before you or a representative of SDGS is called into the negotiation sessions between the SRRS and FORSA, I thought you might be interested in what has been accomplished thus far.

From the front sheet, you can see where and why there is disagreement remaining.

I would be interested in any comments you may have if you would care to present them at this time. Please keep in mind that 1. the approval of anything thus far is not final and is contingent upon the approval of our total membership and that of the SRRS, and 2. there may be areas of further detail to be included in the final draft.

We are hoping to schedule the next meeting as soon as possible so that both sides will benefit from an agreement coming about.

Sincerely,



Mrs. Wanda Stetten

Rt. 2 Box 82
Percutord, S.D. 57004

AGREEMENT

This Agreement, entered into by and between the South Lincoln Rural Water System, Inc. (hereinafter referred to as SLRWS) and by the Friends of Dakota Sandstone Aquifer (hereinafter referred to as FODSA), WITNESSETH:

WHEREAS, the parties hereto acknowledge irreconcilable differences regarding the potential effect of wells to be constructed by SLRWS under terms of its Application #4300-3 issued by the Water Rights Commission of the South Dakota Department of Natural Resource Development on existing private wells of the FODSA membership; and

WHEREAS, the members of FODSA hereby assert that neither FODSA nor any of its individual members, oppose construction of a proposed rural water system by SLRWS; and

WHEREAS, SLRWS hereby indicates its willingness to compensate members of FODSA as required by South Dakota Law and as required by this agreement;

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, it is agreed as follows:

1. PURPOSE

The purposes of this Agreement are as follows:

- 1.1 To mutually acknowledge the rights of both parties to use of waters of the State of South Dakota for domestic purposes, acknowledging that individual FODSA members have a prior domestic right to the use of water from the Dakota Sandstone and that the prior right of the town of Worthing, South Dakota to use of water from the Dakota Sandstone is recognized.

from existing wells.

1.2 To establish procedures whereby the FOBSA membership will be assured of its full protection under the laws and by this agreement with SIRWS.

1.2A To eliminate any potential irreversible damage to the quantity and quality of the wells of the FOBSA membership.

(SIRWS VERSION)

1.3 To terminate any current litigation, administrative proceedings or appeals from either, and to preclude any future litigation, administrative proceedings or appeals from either, any of which could adversely affect the ability of SIRWS to obtain financing of the construction of its proposed rural water system.

(FOBSA VERSION)

1.3 To terminate any current litigation.

1.4 To establish a regular communication channel between the parties to this agreement.

2. JOINT AGREEMENT:

The SIRWS and FOBSA jointly agree as follows:

2.1 SIRWS and FOBSA agree to each designate two representatives to meet not less than monthly, unless waived by both parties, for the period of time needed by the SIRWS to complete construction and of being in full production for the period of two years and following that period, to meet every four months for a period of eight years. The exact time, place and regularity of such meetings to be as mutually determined.

2.2 SERWS and FODSA shall retain the Santa Fe Geological Survey (SDGS) to obtain the following baseline information, as SDGS deems appropriate, regarding the FODSA wells (described on Exhibit "A" attached hereto and incorporated herein by reference), which wells shall be the only ones afforded any protection by this agreement:

- a. Static and pumping water levels.
- b. Well yield and specific capacity.
- c. Water samples collection and mineral analysis, with collection and analysis of the following chemical data being done on a regular basis:

- (1) Calcium (Ca)
- (2) Magnesium (Mg)
- (3) Iron (Fe)
- (4) Manganese (Mn)
- (5) Total solids.

Analysis of total conductivity may be done on a less frequent basis.

- d. Measurement of pump setting.
- e. Storage facility description.
- f. Sea level elevation.

2.3 SERWS and FODSA may each have a representative present, as observers only, when the above information is collected and that no less than 24 hours notice to FODSA members will be given prior to collection of base line data.

(SERWS VERSION)

2.4 SERWS shall pay the initial \$2,000.00 of cost incurred

in connection with the collection of the above information, and any expense in excess of that sum shall be paid equally by SLRWS and FODSA.

(FODSA VERSION)

2.4 SLRWS shall pay all costs incurred in connection with the collection of the above information.

2.5 SLRWS and FODSA agree that, upon review and acceptance by SDGS, the following data from all observation wells in the area will be made a part of the records to be maintained under this agreement:

- a. Location of wells.
- b. Sea level elevation.
- c. Logs of the wells.
- d. Static water levels.
- e. Water sample analyses.
- f. Materials of construction.

2.6 SLRWS and FODSA agree that any existing data, including that referred to in paragraph 2.2 above, that is applicable to FODSA wells to be monitored as a part of this agreement, and which, if in the opinion of the SDGS, is deemed to be accurate and representative, will be accepted as data for consideration under this agreement and only for the purposes of this agreement.

2.7 It is agreed that water quality data shall be collected as a part of the efforts of this agreement. At the time each pump test is conducted on Dakota Sandstone wells, a water sample shall be taken at the start of

each pump test and at 24 hour intervals during the pump test. Water samples will also be taken from observation wells as long as sampling procedure does not interfere with the accuracy of the water level measurements. Samples will be taken by SDGS and they will also perform the analysis of same. If there is production use of the Dakota Sandstone by SERS, samples will be taken at a frequency of not less than 6 months during the time of construction and as SDGS deems necessary for the purpose of this agreement after full production has commenced. Frequency of future sampling will be no less than annually. Water samples will be taken from all wells incorporated by reference in this agreement. In the event any water samples analysed by the SDGS under this agreement show that total solids have increased double the normal variance on an individual well basis, using all water quality data records previously incorporated into this agreement, this variance shall be considered abnormal and shall initiate the following procedure:

If the quality of water of a FODSA member's well becomes abnormal, the system shall have an amount of time, in steps 1, 2 and 3, equal to the period of time from the first day of operation of the system until the date the abnormality is determined, to bring the quality back to the normal variance.

(1) Re-test the water.

(2) Seek assistance of SDGS and abide by their

recommendation.

- (3) SLRWS will modify use by various means to rectify the problem.
- (4) SLRWS will, within 24 hours, temporarily provide storage where necessary and free water from an approved public water supply to the FODSA member(s). Water shall be provided in a quantity sufficient to meet the reasonable needs of the FODSA member(s) but limited to the yield and specific capacity of the individual well as outlined in paragraph 2.2.
- (5) SLRWS shall provide to the FODSA member(s), free water from their system, in a quantity equal to the yield and specific capacity of the well of the individual FODSA member as established in paragraph 2.2, by means of a hook-up for the time remaining on the life of the individual well. When this point has been reached, the FODSA member will pay to SLRWS the cost of a hook-up, as determined by the cost of a hook-up at the time this measure was implemented, and shall pay the normal cost of the water on a monthly basis, thereby becoming a regular member of SLRWS.
- (6) SLRWS will provide the FODSA member(s) with a new source of water by means of a new well as outlined in paragraph 3.6.
- (7) SLRWS will abandon the Dakota Sandstone as their source of water for their system.

(8) SRRWS will collect their share of production wells.

SRRWS will pay all costs of collection and analysis of water samples referred to in this paragraph.

2.8 SRRWS and FODSA agree that protection of the usable quantity and quality of FODSA membership wells shall be given high priority. It is agreed that if, at any time during a SRRWS pump test and/or during production use of the wells by SRRWS, any FODSA well is rendered incapable of producing a sufficient previously established quantity and quality of water to meet the needs of the owner of such well, as outlined in paragraph 2.2, an emergency condition shall be agreed to exist. Such FODSA member may use whatever private or commercial facilities are available to provide water for the first 24 hours of the emergency, at his own expense. After 24 hours, SRRWS shall provide water from an approved public water supply to meet such needs, as outlined in paragraph 2.2, until such time as the problem has been resolved; provided, however, that in the case of FODSA member, the town of Worthing, the SRRWS shall, within 6 hours, provide water from an approved public water supply to meet the needs of the citizens of Worthing, as outlined in paragraph 2.2, and shall provide water until such time as the problem has been resolved. SRRWS further agree to provide temporary storage facilities to any FODSA member not

having a permanent reservoir. Actual costs incurred by either party during the emergency period shall be paid by SLRWS. If it is determined that the emergency was not attributed to effects caused by the operation of the SLRWS wells, the costs incurred by the FODSA member during the emergency period shall be reimbursed by the individual FODSA member to SLRWS. It is agreed that during initial pump tests, water shall be provided by SLRWS by means of a commercial facility from an approved public water supply.

2.9 If either SLRWS or FODSA questions the operational condition of any observation well, they may request the SDGS to conduct a performance test on that observation well. SLRWS herein agrees to allow a performance test on any of their observation wells so questioned. SLRWS and FODSA agree to request cooperation from owners of other observation wells so questioned. If SLRWS questions an observation well performance, they agree to pay the cost of a performance test. If FODSA questions an observation well performance, they agree to pay the cost of a performance test.

2.10 Monitoring of all wells incorporated by reference in this agreement for water levels is to be done by the SDGS. These water levels will be checked at the same time and frequency as the water samples are taken by the SDGS as outlined in paragraph 2.7. It is agreed that representatives of SLRWS and FODSA may be present, as observers

[The page contains several paragraphs of extremely faint, illegible handwritten text. The text is oriented horizontally but is heavily obscured by noise and artifacts from the scanning process. A vertical line, possibly a page fold or a margin line, is visible on the right side of the page. The overall quality is poor, with significant background noise and a high level of contrast.]

only, at the time these readings are taken, with prior notice of same being given by the SDGS. Costs of monitoring are to be paid as outlined in paragraph 2.7.

3. SLRWS AGREEMENT:

SLRWS agrees as follows:

3.1 To provide FODSA will all pertinent information on logs and location of observation wells, and production wells drilled by SLRWS, and performance data of same. SLRWS also agrees that representatives of FODSA may be present, as observers only, at the time and location of wells being drilled by SLRWS with 24 hours prior notice of the commencement of drilling being given to FODSA.

(SLRWS VERSION)

3.2 To perform pump tests on all Dakota Formation wells constructed by SLRWS, such tests to be in accordance with the pump test guidelines provided by the SDGS (attached hereto as Exhibit "B" and incorporated herein by reference). It is generally agreed that each pump test will be of 72 hours duration with a capacity to be between 100 and 150 percent of design pumping capacity.

(FODSA VERSION)

3.2 Prior to commencing line construction, pump tests will be performed on all production wells under Application #4300-3 as well as Application #4301-3. Pump tests will be conducted in accordance with the written guidelines provided by the SDGS (attached hereto as Exhibit "B" and incorporated herein by reference); provided,

however, that in addition to the above described guidelines, pump tests on production wells under Application #4300-3 will be of no less than 72 hours duration on each production well separately at maximum capacity of each; then a pump test of no less than 72 hours duration will be run on all three production wells simultaneously at maximum capacity of each well. SDRWS agrees that in the event the pump tests are not conducted in accordance with the written guidelines of the SDGS as well as the above criteria, that the pump tests will be null and void and will be done over again.

3.3 To provide FODSA with 48 hours advance notice of any and all pump tests on Dakota Sandstone wells. Members of FODSA may be present, as observers only, at any and all well sites during any pump testing.

(SRRWS VERSION)

3.4 To voluntarily comply with the Water Rights permit issued by the State of South Dakota.

(FODSA VERSION)

3.4 To voluntarily comply with the Water Rights application #4300-3 issued by the State of South Dakota. In the event the SDRWS determines a decline in the static water level of the wells covered by this agreement or the observation wells, to such a degree that continued pumping could be detrimental, SDRWS would agree to voluntarily withdraw from the Dakota Sandstone immediately and revert to the source under Application #4301-3 for their total

supply and would cement their Dakota Sandstone production wells. SIRWS also agrees that if, during the period of ten years from and after the execution date of this agreement, there is spent the combined sum of \$25,000.00 or more, to repair and replace FODSA wells, SIRWS would voluntarily immediately withdraw from the Dakota Sandstone and revert to the source under Application #4301-3 for their total supply and would cement their Dakota Sandstone production wells.

3.5 That, in the event the water level of a FODSA well goes below the pump setting and the pipe or pump can be lowered enabling the well to provide water of previously established quantity and quality, as outlined in paragraph 2.2, the SIRWS agree to pay all costs in connection with the lowering of the pump or pipe (including a pump or motor, if necessary). The work shall be performed by a contractor mutually agreeable to SIRWS and the FODSA member at current rates. The owner shall use the most readily available agreed upon contractor. During the period in which the well is not producing, it is mutually agreed that an emergency shall be declared, and provisions for temporary water, storage facilities and costs providing water shall be as previously agreed in paragraph 2.2 above. To implement this section, designated representatives of SIRWS and FODSA shall prepare an approved list of well maintenance contractors, to the extent available.

(A) (SIRWS VERSION)

3.6 The replacement of any well for FODSA member(s) shall be done free of charge to the member(s) and shall provide a specific yield equal to or greater than that established in the baseline data.

(B) (FODSA VERSION)

3.6 The replacement of any well for FODSA member(s) shall be done free of charge to the member(s) with all costs involved to be borne by SIRWS. The well shall be drilled by a well driller mutually agreeable to SIRWS and the FODSA member(s). The well shall provide water of substantially the same quantity and quality as the well that is being replaced, as outlined in paragraph 2.2, and shall be placed in a location convenient to the member(s). The replaced well shall have the same status of protection under this agreement and for the same length of time as the original well. In the event the well cannot be replaced according to the above criteria, SIRWS will supply the member(s) with previously established quality and quantity water necessary to meet all needs of the member(s), as outlined in paragraph 2.2, forever, free of charge to that member(s) and not by means of a hook-up to SIRWS.

4. FODSA AGREEMENT:

FODSA agrees as follows:

4.1 That, for purposes of this agreement, FODSA Membership shall be as shown on the list of members (Exhibit "C")

attached hereto and incorporated herein by reference), and the wells of said members which shall be provided rights and subjected to obligations pursuant to this agreement shall be strictly limited to those depicted on the attached map (Exhibit "A") showing the location of PODSA members and identifying such wells.

4.2 To cause written notice of any transfer of ownership of the wells referred to in paragraph 4.1 above to be given to SLRWS within thirty (30) days of any such transfer, together with the written agreement of such transferee to be bound by this agreement, the failure to give such notice and to provide such an agreement to result in a forfeiture of the rights of the owner of such well otherwise provided by this agreement.

4.3 To provide SDGS access to their members' wells for the purpose of obtaining data collected by SDGS under this agreement and to hold SLRWS harmless from any claims, demands, causes of action or any other well damage related liability that may arise from or be connected with the collection by SDGS of data as outlined in this agreement.

(SLRWS Version)

4.4 To abide by the instructions of the SDGS with respect to use of their individual wells during any period of pump test.

(PODSA Version)

4.4 To abide by the instructions of the SDGS with respect to use of their individual wells during any period of pump

lent; provided, however, that no FARM member shall be required to abstain from using their individual wells.

(SIRWS VERSION)

4.5 To abstain from appealing to the South Dakota Supreme Court the Judgment rendered by the Honorable Robert A. Miller, Sixth Judicial Circuit Court Judge, which Judgment is dated October 17, 1979, to refrain from commencing any other lawsuits or administrative proceedings or hearings of any nature which might have the effect of delaying the development of the rural water system to be constructed by SIRWS, or the financing thereof, whether by the Farmers Home Administration of the U.S. Department of Agriculture, or otherwise, and to request that the Farmers Home Administration give early consideration to the approval of the financing of said rural water system, subject to the provisions of this Agreement.

(FODSA VERSION)

4.5 To abstain from continuing the appeal to the South Dakota Supreme Court the Judgment rendered by the Honorable Robert A. Miller, Sixth Judicial Circuit Court Judge, which Judgment is dated October 17, 1979.

5. AMENDMENT OF AGREEMENT:

This agreement can be amended or otherwise modified only by a written instrument duly executed by the parties hereto.

(FODSA VERSION)

6. VIOLATION OF AGREEMENT: ()

If either party to this agreement, or any person at the present time or in the future belonging to the membership of either party shall violate any provision of this agreement, the other party shall have the option of rescinding this agreement by sending a notice of rescission to the other party, the legal addresses of the parties for the purposes of this provision being as follows:

Friends of Dakota Sandstone Aquifer
RR 2 Box 62
Bertsmo, South Dakota 57004

South Lincoln Rural Water System, Inc.
Gordon, South Dakota 57013

Such rescission shall result in the termination of this Agreement, which shall, thereafter, be of no further force or effect.

(FODSA VERSION)

6. VIOLATION OF AGREEMENT:

If FODSA shall violate the provisions of this agreement as it relates to FODSA members, the violation shall be discussed, negotiated and resolved by and between the representatives of SLRWS, FODSA and representatives of FADA. If there is a violation by SLRWS of any provision contained in this agreement as it relates to SLRWS, SLRWS agrees to voluntarily immediately withdraw from the Dakota Sandstone and revert to the source under Application #4301-3 for their total supply and would cement their Dakota Sandstone production wells.

7. EXECUTION OF AGREEMENT:

This agreement was entered into this ____ day of _____,

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

19____, by the duly authorized representatives of the parties hereto, it being specifically understood and agreed that each party relied upon the authority of such representatives to legally bind and obligate all persons purported to be brought within the provisions of this agreement.

FARMERS HOME ADMINISTRATION ENDORSEMENT:

(SLRWS VERSION)

By the following endorsement of the Farmers Home Administration said agency acknowledges receipt of a copy of this Agreement and further acknowledges that any concessions made or conceived in this Agreement to which SLRWS is bound are not considered to be unduly restrictive with regard to the feasibility of the Rural Water System proposed to be constructed by SLRWS and that any concessions made or conceived by FODSA are understood to remove any pending litigation, possible appeals, or administrative proceedings that might affect the development or feasibility of said project or impair any collateral or other security which might be tendered to the Farmers Home Administration in connection with its proposed financing of said project.

(FODSA VERSION)

By the following endorsement of the Farmers Home Administration said agency acknowledges receipt of a copy of this agreement and further acknowledges that any concessions made or conceived in this agreement to which FODSA is bound are not considered to be unduly restrictive with regard to the feasibility of the Rural Water System proposed to be constructed by FODSA and that any

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

concessions made or conceived by FODSA are understood to remove any pending litigation that might affect the development or feasibility of said project or impair any collateral or other security which might be tendered to the Farmers Home Administration in connection with its proposed financing of said project, and also acknowledges that any concessions made or conceived in this agreement constitutes duly reasonable protection of the prior domestic rights of FODSA members; and further acknowledges that a copy of this agreement shall become attached to and be made a part of the funding package in connection with the proposed financing of said project; and further acknowledges that the proposed financing of said project will include funds which will enable SRRWS to abide by the concessions to which they have agreed in this agreement; and further acknowledges that in the event it is necessary to implement the withdrawal provisions of paragraphs 2.7, 3.4 and 6 of this agreement, Farmers Home Administration agrees to extend the funding to SRRWS to enable the SRRWS to construct any treatment plant which may be necessary in connection with the source of water available under application #4301-3.

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

PLEASE NOTE:

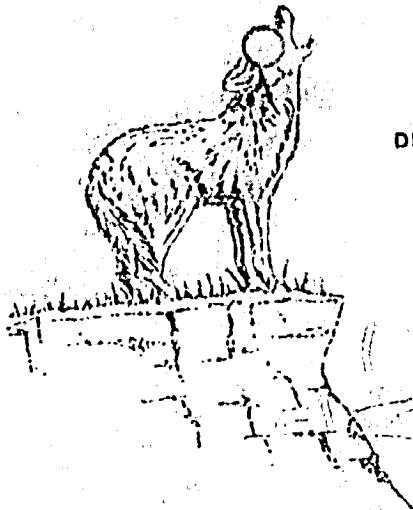
Any starred (*) paragraphs have not been agreed to.

- 2.4 SLRWS has proposed paying an amount up to the cost of the SDGS estimate, with any excess of the estimate to be paid equally by SLRWS and FODSA. This has not been agreed upon, pending additional information being obtained from SDGS.
- 3.2 There is disagreement over the wording of this paragraph, pending further information being obtained from SDGS.
- 3.6 This has not been agreed to and is subject to the approval of paragraph 2.7.
- 4.4 Agreement to SLRWS version is contingent upon discussion with SDGS.
- 4.5 Agreement is contingent upon final version of paragraph 1.3.
- 6 SLRWS wants their version, with some possible rewording. There is mutual agreement that the addresses of both parties should be made a part of this agreement.

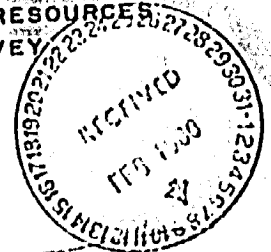
The endorsement by FmHA is to be discussed by SLRWS and FODSA with FmHA officials. SLRWS and FODSA are agreed on the following:

1. A copy of this agreement should be a part of and be attached to the funding package FmHA prepares.
2. FmHA should consider the provisions of this agreement in determining the feasibility of this project.

BEST IMAGE POSSIBLE FROM POOR ORIGINAL



DEPARTMENT OF WATER AND NATURAL RESOURCES
SOUTH DAKOTA GEOLOGICAL SURVEY
SCIENCE CENTER, UNIVERSITY
VERMILLION, SOUTH DAKOTA-57069
(605) 624-4471



February 6, 1980

Mr. Warren R. Neufeld, Secretary
Department of Water and Natural
Resources
Foss Building
Pierre, SD 57501

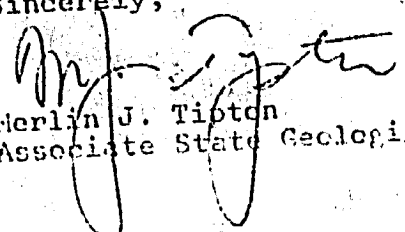
Dear Mr. Neufeld:

Last Monday John Madden called to say that the South Lincoln Rural Water System and the Friends of Dakota Sandstone were getting close to an agreement. Some questions concerning the Geological Survey's participation could not be answered unless we were involved in the negotiations. A joint meeting between SLRWS and FODSA will be held on February 15, 1980 and they would like the Geological Survey to be present.

Yesterday Wanda Sletten sent Lynn a copy of the agreement that is being negotiated. A copy of the agreement is enclosed for your perusal. This morning Duncan, Lynn, Cleo, Assad, and I had a meeting and have serious misgivings about this agreement. We feel the Water Management Board should do all the monitoring and our involvement should only be from a technical study viewpoint--if we should be involved at all.

We would like to talk over this matter with you at your convenience. If this cannot be done before February 15, 1980, we do not feel we should meet with them unless you direct otherwise. Please advise.

Sincerely,


Merlin J. Tipton
Associate State Geologist

LF:ec
Enclosure

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

M E M O

March 12, 1980

TO: Warren R Neufeld, Secretary, DWR
FROM: John Hatch, Chief Engineer, Division of Water Rights *J. Hatch*
SUBJECT: Water Rights Comments on Letter from Gene Irons Concerning SLRWS

It is our understanding that SLRWS & FODSA have reached an agreement.

We should stay with our original position concerning the Geological Survey participation.

Even though another party (not Geological Survey), yet to be agreed upon by SLRWS & FODSA may be employed to measure area observation wells & FODSA member domestic wells in the area, Water Rights would still expect to monitor observation wells in the area on a regular basis. Such monitoring would be a part of our observation well monitoring activities with more frequent monitoring if necessary.

We have installed an observation well equipped with a continuous recorder which the US Geological Survey is responsible for. Since the USGS has not been involved in this dispute other than to provide information, they are a neutral, but knowledgeable party. The continuous recorder well will be used as a check to assure accuracy of the other observation well measurements in the area.

We have made arrangements with the Geological Survey to provide casing for installation in selected test holes in the SLRWS well field area during 1980 as part of their work in Lincoln County for Sioux Falls.

Any agreement between SLRWS & FODSA can not be contrary to State Water Laws and Rules.

If SLRWS Dakota formation wells are shut off, we would be in a position of restricting or shutting off pumping under area Water Permits junior to the SLRWS Water Permit. At this point such measures would include the town of Worthing's deferred application (if approved) and the Water hauler (Wiebel) located on edge of Worthing (unless a vested right can be established). The water hauler well is illegal at this time. We have delayed enforcement pending the outcome of the SLRWS dispute. Any other unauthorized wells in the area would also be shut off.



8. As consideration for execution by first parties of the above described waiver and release of all claims, second party shall pay first parties the sum of \$15,000.00 to be paid as follows:

(a) The sum of \$5,000.00 to be paid at such time as this agreement has been executed by both of the First Parties.

(b) The sum of \$10,000.00 to be paid when a contract for the construction of the South Lincoln Rural Water System has been awarded and funds for the construction of said project have been received from the Farmers Home Administration.

9. In addition to the foregoing payments and subject to the provisions set forth below, Second Party agrees to provide First Parties with water from the said production well of Second Party when requested to do so by First Parties and subject to the following:

(a) The connection between Second Party's system and First Parties' storage facility shall be made at no cost to First Parties, including the installation of Second Party's meter, except that First Party shall hold Second Party harmless from any claims arising from the making of such connection, and the entire installation shall be made and used in accordance with the standards and rules then in effect for Second Party's rural water system, it being further understood that the meter and shut off valve of Second Party will be installed on the property of First Parties and that Second Party shall have perpetual access and an easement to said meter and shut off valve over and across the property of First Parties.

(b) The quantity of water to be so delivered to First Parties shall not exceed 20,000 gallons in any one calendar day of 24 hours at a maximum delivery rate of 25 gallons per minute.

(c) Such water so furnished to First Parties shall only be supplied when and if all necessary permits have been received by Second Party so as to allow the operation of said production well, and then only if said well is in production, even though it may be only one of the wells producing water for the Rural Water System; Second Party shall not be obligated to provide First Parties with water if said production well is no longer being used by Second Party.

(d) For the first five years after it becomes possible for Second Party to provide water to First Parties pursuant to this Agreement, whether or not any water has been so provided, First Parties shall pay Second Party for any water which is provided at the rate of 75¢ per 1,000 gallons, and, after expiration of such 5 year period, First Parties shall pay Second Party for any water so provided at the wholesale rate then being charged by Second Party. First Parties will not be subject to any minimum monthly charge, but will only be charged for water actually provided to them. All such charges shall be due upon the mailing of a monthly statement therefor by Second Party, and, if such charges have not been paid in full within sixty (60) days after the mailing of such statement, Second Party shall be authorized to terminate this Agreement by mailing a Notice of Termination to either of First Parties, although such termination shall not affect the Release of all Claims or the Waiver executed by First Parties pursuant to this Agreement, which Release and Waiver shall remain in full force and effect.

10. That First Parties shall pay Second Party the sum of \$60.00 which represents 1/2 of the legal fees incurred by Second Party in connection with the preparation of this agreement.

11. That this Agreement and the rights and obligations of First Party pursuant to this Agreement shall run with and be appurtenant to the real property described in paragraph one above, it being further understood and agreed that First Parties shall give Second Party written notice of any conveyance or other alienation of said property.

12. That this Agreement, together with the rights and obligations of Second Party thereunder may be assigned by Second

party, it being further understood and agreed that second party shall give either of first parties notice of any such assignment.

13. That this Agreement constitutes the entire understanding of the parties hereto and may not be amended or otherwise modified except by a written document executed by the parties to this agreement.

IN WITNESS WHEREOF, the parties hereto have, for themselves, their heirs, personal representatives, successors and assigns, affixed their signatures to this Agreement the day and year first written above.

FIRST PARTIES:

Orville D. Thomas
Orville D. Thomas

Duane Thomas
Duane Thomas.

SECOND PARTY:
SOUTH LINCOLN RURAL WATER SYSTEM,
INC.

BY: Curtis E. Schubert
President

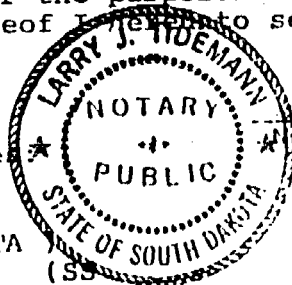
South Dakota
STATE OF ~~MINNESOTA~~)
(SS
COUNTY OF Lincoln)

On this the 3 day of July, 1979, before me Larry J. Tidemann the undersigned officer, personally appeared Orville D. Thomas, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

My Commission Expires: 9/22/1985

STATE OF SOUTH DAKOTA)
(SS
COUNTY OF LINCOLN)

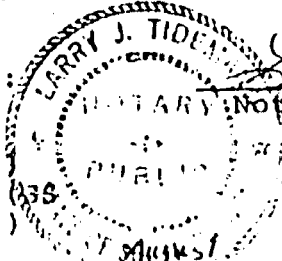


On this the 3 day of July, 1979, before me Larry J. Tidemann the undersigned officer, personally appeared Duane Thomas, known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

My Commission Expires: 9/22/1985

STATE OF SOUTH DAKOTA)
(SS
COUNTY OF LINCOLN)

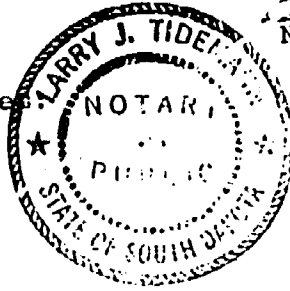


On this the 3 day of July, 1979, before me Larry J. Tidemann the undersigned officer, personally appeared Curtis E. Schubert, who acknowledged himself to be the President of South Lincoln Rural Water System, Inc. a corporation, and that he, as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation

by himself as President.
In Witness Whereof I hereunto set my hand and official seal.

My Commission Expires

9 MAR 1985



Larry J. Tideman
Notary Public

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

WALVER



Pursuant to the Agreement of even date herewith entered into by and between ORVILLE D. THOMAS and DUANE THOMAS, hereinafter referred to as First Parties, and SOUTH LINCOLN RURAL WATER SYSTEM, INC. A South Dakota non-profit Corporation, hereinafter referred to as Second Party, first parties agree as follows:

1. That on February 3, 1979, the Water Rights Commission of the State of South Dakota issued a final decision in the matter of South Lincoln Rural Water System application for permit No. 4300-3 which, in part, provided as follows:

- (a) "The rural water system wells approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights."
- (b) "No wells shall be located within 1,500 feet of existing Dakota Formation wells unless waived by the well owner."

2. That First Party, ORVILLE D. THOMAS is the owner of the property described as follows:

TRACTS TWO (2) AND THREE (3) AND THE SOUTH 208 FEET 8 1/2 INCHES, OF THE EAST 208 FEET 8 1/2 INCHES (EXCEPT LOTS H-2 AND H-3 THEREOF), OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION THIRTY TWO (32), TOWNSHIP NINETY EIGHT (98), RANGE FIFTY (50), LINCOLN COUNTY, SOUTH DAKOTA.

3. That First Parties have been operating and intend to continue operating a commercial water hauling service head-quartered on said property which also contains an existing well from which First Parties obtain the water necessary to the operation of their business.

4. That the permit issued to Second Party pursuant to South Lincoln County Rural Water System Application No. 4300-3 includes the right to establish a production well located on the following described real property: TRACT ONE (1) IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION THIRTY TWO (32), TOWNSHIP NINETY EIGHT (98), RANGE FIFTY (50), LINCOLN COUNTY, SOUTH DAKOTA.

5. That said production well is within 1500 feet of the existing Dakota Formation Well from which First Parties obtain the water necessary to the operation of their business, all as more fully described above.

6. That, pursuant to said agreement of the parties hereto, which also provides for compensation for this waiver, the First Parties hereby waive any and all rights they would otherwise have pursuant to any final decision of the Water Rights Commission of the State of South Dakota, dated February 3, 1979 and all rights or remedies at law or equity or through administrative proceedings,

which they might otherwise have against Second Party its successors or assigns, or against the Water Rights Commission of the State of South Dakota or against any agency succeeding thereto.

7. That it is expressly agreed that the Waiver herein provided shall constitute a Waiver as to any past, present or future acts or omissions of Second Party, its successors or assigns in connection with its construction, operation, maintenance or replacement of said production well. It is not the intention of this Waiver to release Second party, its successors or assigns from any future negligent acts or omissions, except as the same might pertain to the matters set forth in paragraph one above, it being further understood that this Waiver does apply to the existing production well, as well as to any well which may be constructed in the future as a replacement of the existing well of Second Party.

8. That this Waiver and the obligations of First Parties pursuant hereto shall run with and be appurtenant to said real property of First Part, ORVILLE D. THOMAS, as more particularly described in paragraph two above.

9. That first parties shall execute any additional waivers or other documents which may be requested by the Water Rights Commission of the State of South Dakota, or any successor agency, so as to effectuate the intent of this Waiver.

10. That the rights and obligations of second party hereunder may be assigned by second party, it being further understood and agreed that second party shall give either of the first parties written notice of any such assignment.

IN WITNESS WHEREOF, the First Parties have, for themselves, their heirs, personal representatives, successors and assigns, affixed their signatures to this Waiver on this 6th day of July, 1979.

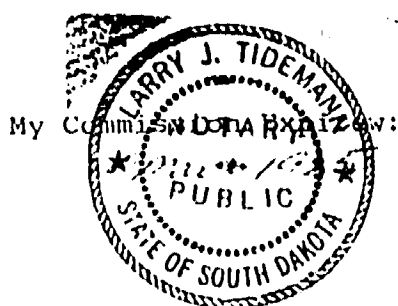
Orville D. Thomas
Orville D. Thomas

Duane Thomas
Duane Thomas

STATE OF South Dakota)
MINNESOTA)
COUNTY OF Lincoln) (SS

On this the 3 day of August, 1979, before me Larry J. Tidemann the undersigned officer, personally appeared Orville D. Thomas, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof I herunto set my hand and official seal.

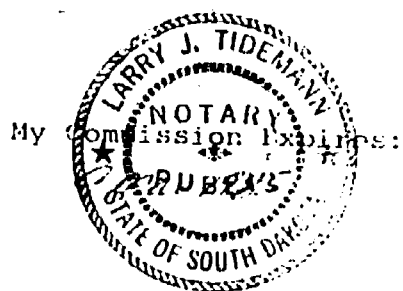


Larry J. Tidemann
Notary Public

STATE OF SOUTH DAKOTA)
(SS
COUNTY OF LINCOLN)

On this the 3 day of ^{August}~~July~~, 1979, before me Larry J. Tidemann
the undersigned officer, personally appeared Duane Thomas, known
to me or satisfactorily proven to be the person whose name is
subscribed to the within instrument and acknowledged that he
executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.



Larry J. Tidemann
Notary Public

In the Supreme Court, State of South Dakota

AUG 20 1980

IN THE MATTER OF THE SOUTH LINCOLN RURAL
WATER SYSTEM APPLICATION FOR PERMIT NO.

4300-3

XXXXXXXXXX
XXXX

#12997

Statement
of Costs and Disbursements
and Notice of Taxation

Before argument	10.00
For argument	30.00
Clerk's fees to perfect appeal record	132.00
Printing brief	
Fees Clerk Supreme Court	
Costs on rehearing	172.00

Total

Costs and disbursements in above cause taxed and allowed this twentieth day of
August, 19 80, at One Hundred Seventy-two & No/100 DOLLARS

Costs on rehearing

In favor of Appellees

Against Appellants

(Payable as follows: \$152 to Appellee South Lincoln Rural Water System
and \$20 to Pierre, South Dakota)

Appellee Water Management Board.)

By

Deputy

Alvin J. Engel
Clerk of the Supreme Court

4300-3

RECEIPT
WATER RIGHTS COMMISSION
State of South Dakota

No 4 7677

September 4, 1980

PIERRE,

RECEIVED OF Wanda Sletten, Sec-Treas, FRIENDS OF DAKOTA SANDSTONE AQUIFER, Rt. 2, Box 82
the following amount in fees for services rendered as provided for by law: Beresford, SD 57004

Fee for Application for Permit to Appropriate Water No. (examination, processing, recording and filing)		
Fee for inspecting Construction, and issuing Cert. of Construction No.....		
Fee for inspecting Beneficial Use, and issuing Water License No.....		
Fee for issuing Location Certificate-Dry Draw, No.....		
Fee for filing		
Fee for certified copy of		
Fee for Print copy of map		
Fee for Certifying		
Fee for in the matter of the South Lincoln Rural Water System application for Permit No. 4300-3 for costs payable to (any other work as provided by law) Appellee Water Management Board.		
TOTAL	20.00	20.00

WATER RIGHTS COMMISSION

By *(Signature)*
Chief Engineer, Executive Officer
JOHN HATCH /KE

South Lincoln file

MEMO TO: South Lincoln, File 26102.6
FROM: John Madden
DATE: 6 August 1980
RE: Worthing Well NO. 1



Will Greeley, Thein Drilling Company called this AM to advise that they have dispatched a crew to work on the Worthing well. Anticipate starting drilling the upper hole later today. The will probably not finish the upper hole this week. Anticipate placing the casing, grout and finishing the upper hole next week.

On that basis, I would anticipate that they would start the lower hole the week of August 18th.

DEWILD GRANT RECKERT
& ASSOCIATES COMPANY

BY John M. Madden, P.E.

JMM:mvb
cc: Cliff Morren
Charles Kuehl
Merlin Tipton
John Hatch

Rt. 2 Box 32
Beresford, S.D. 57004

FRIENDS OF DAKOTA SANDSTONE AQUIFER

September 3, 1980



Department of Water and Natural Resources
Water Rights Division
Joe Foss Building
Pierre, South Dakota 57501

Attention: Mr. John Smith

Dear Sir:

In accordance with the statement received from the Clerk
of the South Dakota Supreme Court, enclosed herewith is
our check #85 in the amount of \$20.00 payable to the
Water Management Board.

Sincerely,

FRIENDS OF DAKOTA SANDSTONE AQUIFER

A handwritten signature in cursive script that reads "Wanda Sletten".

Wanda Sletten
Secretary-Treasurer

Enc.
cc: Dennis McFarland

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
APPLICATION FOR PERMIT NO.
4300-3

* * * *

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

* * * *

HONORABLE ROBERT A. MILLER
Judge

* * * *

DENNIS C. McFARLAND
Sioux Falls, South Dakota

Attorney for Appellants
Friends of Sandstone Aquifer.

JEFF P. MASTEN of
SAM W. MASTEN, P.C.
Canton, South Dakota

On the brief:
EUGENE J. IRONS of
MYRABO AND IRONS
Canton, South Dakota

Attorneys for Appellee
South Lincoln Rural Water
System.

JOHN S. SMITH
Assistant Attorney General
Pierre, South Dakota

On the brief:
MARK V. MEIERHENRY
Attorney General
Pierre, South Dakota

Attorneys for Appellee
Water Management Board.

* * * *

ARGUED, May 21, 1980

OPINION FILED AUG 20 1980

#12997

continued until December to allow appellants an opportunity to offer opposing testimony.

On December 12, 1978, the Board held a special hearing on application No. 4300-3 in Sioux Falls, which resulted in the final decision to grant the permit subject to certain conditions.¹

The scope of review on an appeal from an administrative agency is set forth in SDCL 1-26-36:

-
1. (1) South Lincoln Rural Water System's annual withdrawal is "limited to 455 acre feet and the total withdrawal is subject to review and adjustment by the Water Rights Commission", and
 - (2) Proposed wells must be at least two and one-half miles apart prior to any use of water, and
 - (3) South Lincoln Rural Water System must drill an observation well into the upper layer of the Dakota Formation about 200 feet away from each of the three wells for monitoring purposes, and
 - (4) "Withdrawals will be restricted if the aquifer head pressure declines 20 feet at designated measuring points during a four year period. . . .", and
 - (5) If the aquifer head pressure declines or if it appears that it will decline more than 20 feet in four years time, South Lincoln Rural Water System would, upon order of the Commission, be required to change to a new source of water, and
 - (6) No wells shall be located within 1300 feet of existing Dakota Formation wells without waiver by the owner, and
 - (7) South Lincoln Rural Water System shall develop and place a line on its alternate source of water from the Davis field in the Vermillion aquifer so that if pumping were stopped from the Dakota Formation near Worthing, members of the system would immediately have water available.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE SOUTH
LINCOLN RURAL WATER SYSTEM
APPLICATION FOR PERMIT NO.
4300-3

* * * *

APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

* * * *

HONORABLE ROBERT A. MILLER
Judge

* * * *

DENNIS C. McFARLAND
Sioux Falls, South Dakota

Attorney for Appellants
Friends of Sandstone Aquifer.

JEFF P. MASTEN of
SAM W. MASTEN, P.C.
Canton, South Dakota

On the brief:
EUGENE J. IRONS of
MYRABO AND IRONS
Canton, South Dakota

Attorneys for Appellee
South Lincoln Rural Water
System.

JOHN S. SMITH
Assistant Attorney General
Pierre, South Dakota

On the brief:
MARK V. MEIERHENRY
Attorney General
Pierre, South Dakota

Attorneys for Appellee
Water Management Board.

* * * *

ARGUED, May 21, 1980

OPINION FILED AUG 20 1980

#12997

FOSHEIM, Justice.

The circuit court upheld the decision of the South Dakota Water Rights Commission which granted water permit No. 4300-3 to South Lincoln Rural Water System. We affirm on appeal.

The Friends of Dakota Sandstone Aquifer will hereinafter be referred to as (appellants); the South Dakota Rural Water System as (appellees); and the South Dakota Water Rights Commission, presently known as the South Dakota Water Management Board, as the (Board).

On August 30, 1977, appellees submitted application No. 4135-3 for four cubic feet per second (cfs) of water to be withdrawn from the Dakota Sandstone formation. Hearing on that application was held at Spearfish, South Dakota, on August 6, 1977. In response to protests from existing well owners in the Worthing area, the Board deferred action on the application pending further investigation by its staff. On July 10, 1978, the Board received an amended application No. 4300-3 (presently at issue) seeking the appropriation of two cfs of water to be withdrawn from three wells in the Dakota formation approximately five miles south of Worthing. In addition to amended application No. 4300-3, appellees also submitted application No. 4301-3 for the appropriation of two cfs to be drawn from the Vermillion Aquifer as an alternate source. On July 27, 1978, the Board held hearings on both applications, following which application No. 4301-3 was approved but action on amended application No. 4300-3 was deferred until "better testing is done on the Dakota formation and adequate Aquifer information is obtained." Application No. 4300-3 again came before the Board on September 13 and 14, 1978; however, further hearing thereon was

#12997

continued until December to allow appellants an opportunity to offer opposing testimony.

On December 12, 1978, the Board held a special hearing on application No. 4300-3 in Sioux Falls, which resulted in the final decision to grant the permit subject to certain conditions.¹

The scope of review on an appeal from an administrative agency is set forth in SDCL 1-26-36:

-
1. (1) South Lincoln Rural Water System's annual withdrawal is "limited to 455 acre feet and the total withdrawal is subject to review and adjustment by the Water Rights Commission", and
 - (2) Proposed wells must be at least two and one-half miles apart prior to any use of water, and
 - (3) South Lincoln Rural Water System must drill an observation well into the upper layer of the Dakota Formation about 200 feet away from each of the three wells for monitoring purposes, and
 - (4) "Withdrawals will be restricted if the aquifer head pressure declines 20 feet at designated measuring points during a four year period. . . .", and
 - (5) If the aquifer head pressure declines or if it appears that it will decline more than 20 feet in four years time, South Lincoln Rural Water System would, upon order of the Commission, be required to change to a new source of water, and
 - (6) No wells shall be located within 1300 feet of existing Dakota Formation wells without waiver by the owner, and
 - (7) South Lincoln Rural Water System shall develop and place a line on its alternate source of water from the Davis field in the Vermillion aquifer so that if pumping were stopped from the Dakota Formation near Worthing, members of the system would immediately have water available.

The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

A court need not enter its own findings of fact and conclusions of law but may affirm, modify or reverse the findings and conclusions entered by the agency as part of its judgment. The circuit court may award costs in the amount and manner specified in chapter 15-17.

We review the record of the administrative agency in the same manner as the circuit court, unaided by any presumption that the lower court's decision is correct. South Dakota Public Utilities Commission v. Otter Tail Power Co., 291 N.W.2d 291 (S.D. 1980). Piper v. Neighborhood Youth Corps, 90 S.D. 443, 241 N.W.2d 868 (S.D. 1976).

The issues presented relate primarily to subsections (5) and (6) of SDCL 1-26-36. We first consider appellants' contention that the Board's findings and conclusions are clearly erroneous. The question for us on appeal under the "clearly erroneous" standard is not whether we would have made the same decision as did the administrative agency, but whether, after reviewing the entire evidence, we are "'left with a definite and firm conviction that a mistake has been committed.'" Fraser v. Water Rights Commission __ N.W.2d __, __ (S.D. 1980), opinion filed July 9, 1980, quoting In Re Estate of Hobelsberger, 85 S.D. 282, 289, 181 N.W.2d 455, 459 (1970).

Pursuant to SDCL 46-5-20² and before granting the permit, the Commission (now Board) determined that there was unappropriated water available for the benefit of this applicant. Appellants dispute the basis of the Board's finding because they contend that the aquifer in the area of the proposed well field is declining and that no re-charge of the aquifer takes place. It appears from the evidence that re-charge of this aquifer, while probable, is unknown. SDCL 46-6-3.1 precludes the Board from allowing the quantity of water withdrawn annually from a ground water source to exceed the quantity of the "average estimated annual recharge of water to the ground water." However, the statute continues with this exception:

The board may, however, approve applications for withdrawals of ground water from any ground water formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by municipal systems, nonprofit water supply companies as defined in §10-36A-1, water user districts as defined in chapter 46-16, sanitary districts as defined in chapter 34A-5 and other common distribution systems.

As the trial court noted, there does not seem to be any dispute that the Dakota Sandstone Aquifer is lower than the greenhorn formation or that the South Lincoln Rural Water System is a nonprofit water supply

2. SDCL 46-5-20 provides:

Upon the receipt of the proof of first publication, accompanied by the proper fees, the commission shall hold a hearing at the time and place specified in §46-5-17, at which all interested parties may appear and be heard. The commission shall determine from the evidence presented at the hearing, from such surveys of the water supply as may be available and from the records, whether there is unappropriated water available for the benefit of the applicant. If the proof of second notice of publication has not been received at the time of the hearing, the commission may grant the permit conditioned upon receipt of proof of the second notice. When the proof of second notice is received, the chief engineer may issue the permit on behalf of the commission.

#12997

company organized pursuant to SDCL 10-36A-1. We therefore concur with the trial court's conclusion that the Board need not have made a determination regarding the rate of annual recharge because SDCL 46-6-3.1 vests the Commission with authority to grant the permit notwithstanding that withdrawal may exceed the average estimated annual recharge.

Appellants also challenge the showing of the proponents of the project that there are approximately 350,000 acre feet of water below the area of the proposed well field on the ground that this does not necessarily mean that such amount of water is available and unappropriated. They note the testimony of witness Assad Barrari of the South Dakota Geological Survey given on December 12, 1978, to the effect that there wasn't enough reliable data about the geology of the Dakota Sandstone aquifer to determine how much of this 350,000 acre feet is extractable. The message which emerges from the testimony of the experts is that the aquifer tests conducted could have produced more reliable data had more money and time been expended. There seems to be a consensus, however, that the aquifer contains sufficient water. The uncertainty seems to center on how much the proposed withdrawal would lower the pressure in the aquifer.

Considering all of the factors before the Board, we agree with the trial court that the record was sufficient to support the Board's conclusion that water was available for appropriation. Consequently, we cannot conclude that substantial rights of the appellants have been prejudiced because the Board's findings and conclusions are clearly erroneous in light of the entire evidence in the record. SDCL 1-26-36(5).

#12597

The next issue is whether the Board abused its discretion and rendered an arbitrary decision. The record of the July hearing indicates the Board felt the August 1977 testing of the Dakota Aquifer was inadequate and that further tests and information were necessary before they could render a decision. Based on that determination, the Board deferred action on the application. The record further reflects that no new major testing was completed prior to their ruling on the application at the December meeting. Appellants rationalize that since there was no new testing prior to the December ruling on the application, the Board's decision demonstrates an abuse of discretion. They point to the expert testimony of Assad Barrari, which indicates the August 1977 test data was not adequate to draw conclusions that unappropriated water is available for withdrawal. The Board counters that new evidence was submitted for their consideration at the December meeting, which consisted of testimony by John Hatch (Water Rights staff engineer) as to the water levels of wells in the Worthing and Canton areas; a proposal of qualifications which the staff felt would allow the Board to grant the permit and yet protect existing well owners; and finally, expert testimony by Richard Aten, a ground water specialist, who testified that the data from the August 1977 pump test was sufficient to draw conclusions with respect to the availability of water for this permit.

We agree with the trial court that the Board's change of position concerning the adequacy of the August 1977 pump test data does

#12997

not necessarily indicate an abuse of discretion. As the circuit court noted, to hold on appeal that the evidence presented at the December hearing could not have reasonably influenced the Board to reconsider the pump test data would amount to a substitution of our judgment for that of the Board contrary to *In Re Estate of Hobelsberger*, supra. The testimony of Aten that the test was "comprehensive" and that the data was sufficient to draw conclusions warranted the Board's reconsideration and its determination as to the adequacy of that data.

The Board heard evidence and argument relative to the application for permit No. 4300-3 on four separate occasions, consuming some nineteen hours in all. At each of these four hearings, the Board granted opponents of the application an opportunity to present evidence and arguments. Counsel for appellants conceded in argument that his clients were fully heard.

It does appear from the transcript that, at times, some Board members expressed impatience at the hearing. However, a full reading of the record does not support appellants' claim that the Board in effect threw up its hands in irritation and frustration and approved the application outright. Rather, it appears that throughout the hearing the members of the Board exhibited sincere concern for the rights of existing well owners in the affected area and its commitment to protect those interests. This concern is further evidenced by the strict conditions attached to the decision to grant the application.

We conclude, therefore, that the administrative findings of the Board were not characterized by an abuse, or unwarranted exercise, of discretion.

#12997

Appellants also question the constitutionality of SDCL 46-6-3.1 as applied to the facts in this case. It appears to be their position that if in pumping water under permit No. 4300-3 the system interferes with the rights of existing users, then SDCL 46-6-3.1 and the action taken by the Board, pursuant to that statute, are unconstitutional. That issue was not litigated either at the administrative level or on appeal to the circuit court.

In Application of American State Bank, Pierre, 254 N.W.2d 151 (S.D. 1977), the appellants urged for the first time on appeal a violation of due process. Their only claim to making a timely objection consisted of a proposed finding of fact which was submitted to the State Banking Commission after the hearing and was rejected by the Commission. We held that did not preserve a basis in the record before the administrative agency to raise the issue for the first time before this court. We have consistently held that the constitutionality of a statute will be considered only when it has been properly presented in the lower court. *Rice v. Hofer*, 73 S.D. 75, 39 N.W.2d 481 (1949); *Midland Nat. Life Ins. Co. v. Johnson*, 69 S.D. 150, 7 N.W.2d 620 (1943); *Lyon v. Bertolero*, 23 S.D. 82, 120 N.W. 766 (1909). See also: *Empey v. Rapid City*, 73 S.D. 462, 103 N.W.2d 861 (1960). We accordingly do not consider this to be an issue before us on appeal.

The judgment of the trial court is affirmed.

All the Justices concur.

3 September 1980



Water Rights Commission
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Attention: John Hatch, Water Rights Engineer

Re: South Lincoln Rural Water Permit #4300-3

Dear Commission Members:

With reference to the above permit and the test drilling conducted by the South Dakota Geological Survey, we respectfully request your review and reconsideration of the conditions placed on the permit. The major areas of concern at this time are the following:

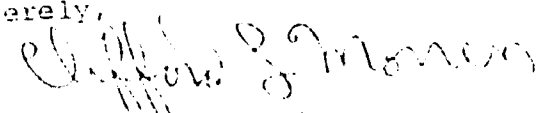
Condition 2 - That all three wells are ready for pumping prior to any use of water.

Condition 7 - That the Davis area well field be placed on line prior to pumping from any Dakota formation wells.

Also as part of your review, we request consideration regarding modification of the location of the point of diversion. It is our desire to construct a total of three wells with Well No. 3 at one of the sites indicated in red permitting greater flexibility concerning siting, etc. At present, Well No. 1 (Section 20, T98N, R50W) and No. 2 (Section 32, T98N, R50W) are built or are under construction as previously approved.

Should you have questions, please contact either John Madden or David Holman with DeWild Grant Reckert & Associates in Rock Rapids, Iowa.

Sincerely,


Cliff Morren, Manager
South Lincoln Rural Water System

CM:kld

cc: Curtis Gubrud
Gene Irons
John Madden

October 6, 1980

LuVerne Jurgens
Parker,
South Dakota 57053

Dear Mr. Jurgens:

I checked with the engineering firm which is designing the South Lincoln rural water system. They indicated that the Chancellor portion of the system has been deleted until funding is available. If you have further questions about this matter, contact the South Lincoln Rural Water office in Canton. The office is located across the street east of the Court House in the basement of the old bank building.

Sincerely,

JAMES A. GOODMAN
Hydrologist

JAG:kw



**Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
655 773-3352

4300-3A

October 6, 1980

Jeff Masten
Masten, Myrabo & Irens P.C.
108 S Broadway
Canton SD 57013

Dear Mr. Masten:

The Water Management Board requested that proposed Findings of Fact, Conclusions of Law and a proposed Decision regarding Water Rights Application No. 4300-3A approval be prepared. The Water Management Board will meet in the Karl Mundt Library Meeting Room, Madison SD, on November 19 & 20, 1980. We have tentatively placed consideration of the proposed Findings of Fact, Conclusions of Law and Decision on the agenda for 1:00 p.m., November 19, 1980.

The Attorney General's Office will prepare proposed Findings, Conclusions and Decision for consideration by the Board. This notice is provided to you in the event you wish to prepare or have prepared your own proposed Findings, Conclusions and Decision for consideration by the Board. We are enclosing a list of the Board and their addresses in the event you wish to mail the proposed Findings and Conclusions directly to the Board.

If you would rather that we print and include the Findings, Conclusions and Decision with the information that we mail to each Board member, please have the information in this office by November 10, 1980. We will be mailing information concerning the Board meeting to the Board members November 12, 1980. If the proposed Findings and Conclusions are mailed to the Board, please submit one copy to this office to become a part of the permanent file.

Your truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

enclosure

cc: Dennis McFarland, Attorney

Equal Opportunity Employer

BEST IMAGE POSSIBLE
FROM POOR ORIGINAL

October 30, 1980

Mr. Jeffrey P. Masten
110 South Broadway
Canton, South Dakota 57013

RE: IN THE MATTER OF SOUTH LINCOLN RURAL WATER
SYSTEM AMENDMENTS TO PERMIT NO. 4300-3

Dear Mr. Masten:

I am enclosing the staff's proposed Findings, Conclusions and Final Decision for the South Lincoln Rural Water System matter. If you do not find them to be to your liking, let me know and perhaps we can work out any minor alterations. If you have any major objections, perhaps it would be best if you submit your own Findings, Conclusions and Decision to the Board.

I will be available if you have any questions or comments.

Best wishes,

Daniel M. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

DJD:ln

Enclosure

**BEST IMAGE POSSIBLE
FROM POOR ORIGINAL**

October 30, 1980

Mr. Dennis C. McFarland
505 West 9th Street - Suite 101
Sioux Falls, South Dakota 57104

RE: IN THE MATTER OF SOUTH LINCOLN RURAL WATER
SYSTEM AMENDMENTS TO PERMIT NO. 4300-3

Dear Mr. McFarland:

I am enclosing the staff's proposed Findings, Conclusions and Final Decision for the South Lincoln Rural Water System matter. If you do not find them to be to your liking, let me know and perhaps we can work out any minor alterations. If you have any major objections, perhaps it would be best if you submit your own Findings, Conclusions and Decision to the Board.

I will be available if you have any questions or comments.

Best wishes,

Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room P-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

DJD:ln

Enclosure

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF SOUTH LINCOLN	)	FINDINGS OF FACT
RURAL WATER SYSTEM AMENDMENTS	)	CONCLUSIONS OF LAW
TO PERMIT NO. 4300-3	)	FINAL DECISION

Having heard and considered all the evidence presented before the Board in the above-entitled matter on September 25, 1980 at the Richard B. Kneip Building, Pierre, South Dakota, the Board hereby makes the following:

FINDINGS OF FACT

1. That on December 12, 1978 the South Lincoln Rural Water System (hereafter SLRWS) obtained Water Permit No. 4300-3 from the Water Rights Commission (now Water Management Board) for three wells which will withdraw water from the Dakota Formation in Lincoln County for use by a rural water system.

2. That Permit No. 4300-3 had several conditions attached to it, including:

II. Before any water is used, all proposed wells must be installed at least 2 1/2 miles apart, with all three wells ready for pumping prior to any use of water, and

VII. The Davis area well field shall be developed and placed on line prior to pumping from any Dakota Formation wells.

3. That SLRWS has petitioned the Board for relief from these conditions and, in addition, for a change in the diversion point for Well #3 of Permit No. 4300-3.

4. That the purpose of condition II was to provide for an equal withdrawal rate of water from the three wells requested so as to have minimal drawdown effects on existing domestic wells.

5. That the reason behind the request for relief from condition II by SLRWS is to permit the system to begin serving users at an earlier time since it is uncertain that the third well will be completed before winter.

6. That to adequately serve the customers already on line, SLRWS need not pump at a rate which would exceed 2/3 amount of water allowed per year by Permit 4300-3.

7. That condition VII was placed on Permit 4300-3 to insure an immediate alternate source of water to the users of SLRWS if within a four year period from the date water is first distributed through the system the head pressure in the Dakota Formation declines twenty feet.

8. That funding for completion of the Davis field system is not guaranteed in the future if funds presently available to the SLRWS are not used for that purpose.

9. That if the Dakota Sandstone head pressure declines twenty feet within four years and if the Davis field system is not yet developed, water users within the SLRWS will be forced to find alternate sources of water.

10. That the data concerning the decline or stability of the Dakota Sandstone aquifer head pressure is inconclusive.

11. That the language of condition VII is somewhat vague.

12. That the geologic log for site #3 indicates water can be withdrawn from the Dakota Formation at site #3 but the aquifer thickness is only seventy feet.

13. That alternate sites for Well #3 have been tentatively located, but test drilling is necessary before an assessment of the water producing capabilities of the alternate sites can be made.

14. That the purpose for requesting a change in the diversion point for Well #3 is that it is believed the alternate sites will have a greater aquifer thickness, hence a lesser impact on other wells.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to consider amendments to a water permit.

2. That the Board has the right and the obligation to protect the interests of the citizens of South Dakota in matters relating to water use.

3. That there will be no adverse effect on local well owners if condition II of Permit No. 4300-3 is amended to allow the SLRWS relief from the three well requirement so long as the annual withdrawal is no greater than 2/3 of that allowed in the permit.

4. That when a condition has been placed on a water permit and an insufficient amount of new evidence is available to justify altering that condition, the Board need not amend the original permit.

5. That it is in the best interests of present and future subscribers to SLRWS water, for the Davis field water to be developed and ready for use in a reasonable and certain time.

6. That an applicant need not obtain a water permit to drill a test hole.

7. That the Board may defer a request for a change in diversion points.

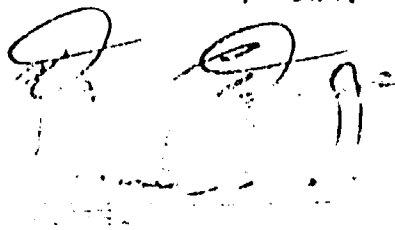
FINAL DECISION

The request by SLRWS to be relieved from condition II of Water Permit 4300-3 is hereby granted subject to the limitation that there be an annual withdrawal restriction of 304 acre feet until the third well is developed and put on line.

Permit No. 4300-3, condition VII, is hereby amended by deleting the words "placed on line prior to any pumping from the Dakota wells," and substituting the words "therein be fully operational by November 1, 1981."

The request for a change in diversion point of Well #3 of Permit No. 4300-3 is hereby deferred.

Dated this 20th day of November, 1980.



Richard J. Harwood
SECRETARY



**Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

4300-3

December 2, 1980

Jeff Masten
Masten, Myrabo & Irons P.C.
108 S Broadway
Canton SD 57013

Dear Mr. Masten:

This is to notify you that final Decisions including Findings of Fact and Conclusions of Law were adopted by the Water Management Board for Application No. 4300-3 which was considered at the September 25, 1980 meeting.

The Final Decision, Findings and Conclusions are on file in this office and signed copies will be furnished upon request. South Dakota Statutes provide that the decisions of the Board may be appealed to the Courts.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

cc: Dennis McFarland, Attorney

Equal Opportunity Employer

IR-101-9/79

No. 4300-3

December 18, 1900

John Madden
DeWild, Grant, Reckert & Asso.
315 First Ave
Rock Rapids, Iowa 51246

Dear Mr. Madden:

This letter is in reference to qualification No. 3 to the South Lincoln County Rural Water System Permit No. 4300-3. The qualification which states:

"that the system install one observation well into the upper layer of the Dakota Formation about 200 feet from each production well to be used for monitoring drawdown near the production well."
will have to be complied with prior to pumping any water from the production wells into the system's distribution system.

Please advise if there are any questions.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

 **Department of
Water & Natural Resources**
Joe Foss Building
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
605 773 1112

January 9, 1981

TO: Persons Interested In South Lincoln Rural Water System Permits No. 4300-3 & No. 4300-3A, and Town of Worthing Application No. 4401-3

FROM: John Hatch, Chief Engineer, Water Rights Division *John Hatch*

SUBJECT: Reconsideration of Deferred Application of the Town of Worthing and request for relief from certain conditions in South Lincoln Permits

The Water Management Board will reconsider deferred Water Permit Application No. 4301-3 of the Town of Worthing, and will consider the South Lincoln Rural Water System request for relief from certain qualifications on Permits No. 4300-3 and 4300-3A at 10:00 am on January 29, 1981 at Meeting Room #1, Kneip Building, Church & Illinois, Pierre SD.

This reconsideration hearing will be conducted in accordance with the provisions of SDCL 46-1-1 thru 46-1-9; 46-1-14; 46-2-9 thru 46-2-11; 46-2-13; 46-5-1 thru 46-5-8; 46-5-10 thru 46-5-22; 46-5-41; 46-6-3; 46-6-5; 46-6-6.1; 46-6-10; 46-6-3.1; 46-6-14 and Board Rules ARSD 52:01:01:01 thru 52:01:01:13.

The Town of Worthing application was previously deferred by the Board pending staff investigation. New data has been made available on the request of the South Lincoln permits, and based on this, the request for relief has been scheduled.

After reconsideration of the deferred application the Board can approve, conditionally approve, defer, or deny all or part of the Application, or action on the request.

This hearing is an adversary proceeding. Any person 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 at the hearing. Decisions of the Board may be appealed to the Courts as provided by law.

You are also notified that SDCL 1-26 provides any interested party the opportunity to meet informally with the Water Rights Division Staff to discuss proposed recommendations by the staff to the Board prior to the scheduled hearing. If we do not hear from you, we will assume that the opportunity for an informal meeting is being waived and you wish to proceed directly to the hearing on the application before the Board.

Any handicapped person wishing to attend this hearing can contact the Water Rights Division, DWNR, Joe Foss Building, Pierre SD, prior to the hearing date for assistance to assure access to the hearing.

JH:kw

Equal Opportunity Employer

WNR-101-9/79

A circular ink stamp from the Division of Water Rights in Pierre, South Dakota. The stamp features a central date "JAN 11 1981" and the text "DIVISION OF WATER RIGHTS" and "Pierre, SD" arranged in a circular pattern around it. The stamp is slightly tilted and shows some wear.

January 23, 1981

Dear John:

"Two hundred sixty thousand dollars of FmHA grant funds is reserved to construct the transmission line to the Davis Well Field in order that you can comply with the provisions of the Water Right that was issued by the Water Resource Commission. These funds will be used for that express purpose until such time as the Water Right is amended by the Commission deleting the requirement to construct such transmission line. Diversion of these funds for other purposes will be at the sole discretion of the Farmers Home Administration."

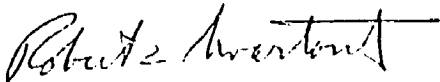
*Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination based on race, sex, religion,
national origin or marital status should be sent to:
Secretary of Agriculture, Washington, D. C. 20250*

2 - John Hatch - Water Rights Permit, South Lincoln RWS 1/23/81

If this requirement is deleted now and at a later date the need for a second water supply is demonstrated, FmHA would provide the necessary priority to fund construction of the transmission main, pumps and controls subject to the availability of funds.

In summary, unless the technical data available to date dictates such construction, the expense appears to be unwarranted and will limit our ability to fund this or other needed projects reducing the number of persons benefitted. It is our position that the public interest will be best served by expending available funds to serve people having a demonstrated need for an adequate supply of good quality water.

Sincerely,



ROBERT C. SWARTOUT
Chief, Community Programs

FRIENDS OF DAKOTA SANDSTONE AQUIFER

February 9, 1981

South Lincoln #116
DB
Curtis Gubbrud #245
Pet

RECEIVED

FEB 10 1981

DEPT. OF WATER &
NATURAL RESOURCES

Mr. Jeff Masten
Masten, Myrabo & Irons, P.C.
110 South Broadway
Canton, SD 57013

Dear Jeff:

This is to confirm our telephone conversation of February 3, 1981 which you initiated on behalf of the South Lincoln Rural Water System.

We understand the proposal dealt with the possibility of negotiations between Friends of Dakota Sandstone Aquifer and the South Lincoln Rural Water System. These negotiations would include, but not be limited to, the possibility of the funds necessary to have the alternate source fully operational to be placed in escrow.

Since our telephone conversation, I have obtained authorization to represent Friends of Dakota Sandstone Aquifer during any negotiation discussions. I trust you have forwarded our request that John Madden represent the South Lincoln Rural Water System.

I understand you will notify me when and if negotiations are to commence.

Sincerely,

Wanda Sletten, Secretary

cc: Dennis McFarland
Jack Weiland
South Dakota Geological Survey
Bob Neufeld ✓
Bob Kennedy
John Madden
Curtis Gubbrud
Dennis Decker
East Dakota Conservancy Sub-District

South Lincoln Rural Water
System
File

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

February 24, 1981

RECEIVED
FEB 25 1981
DEPT. OF WATER &
NATURAL RESOURCES

Mr. John Madden
DeWild Grant Reckert & Associates Co.
315 First Avenue
Rock Rapids, Iowa 51246

Dear John:

It was unfortunate for all concerned that you and I were unable to promote an Agreement between the South Lincoln Rural Water System and Friends of Dakota Sandstone Aquifer recently. I feel confident that the best interests of both parties would have been served by the proposal we discussed.

Since the South Lincoln System was not receptive to our proposal and chose rather to continue with their previous hasty decision to appeal the ruling of the Water Management Board, further discussions would appear to be a waste of time, such as what occurred a year ago. I fail to see, however, how an appeal would be beneficial to the System. The contractor will have to be notified by March 1 to install the 8" supply line to the alternate source because the FmHA had those funds ear-marked for that purpose unless released by the Water Management Board. Their case was based upon their desire to use those funds elsewhere. Even if they win an appeal, the major cost of the alternate source will already have been spent.

Even though you are no longer authorized to represent the South Lincoln System involving negotiations, I trust this will not interfere with the oral agreement we made in November, 1980. That provided, you will recall, that FODSA would be given sufficient notice of a pump test at the third well site which would enable our group the opportunity to participate in the test by monitoring domestic wells and exchanging data. I would appreciate a written confirmation from you on this.

Please advise.

Sincerely,

Wanda Sletten, Secretary

cc: Dennis McFarland
Jack Welland
South Dakota Geological Survey
Bob Neufeld ✓
Bob Kennedy
Jeff Masten
Curtis Gubbrud
Dennis Decker
East Dakota Conservancy Sub-District
FODSA Board of Directors
Roger McKellips
Marvin Skie
Howard Kennedy

**SOUTH DAKOTA Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
605 773-3352

January 9, 1981

TO: Persons Interested In South Lincoln Rural Water System Permits No. 4300-3
& No. 4300-3A, and Town of Worthing Application No. 4401-3

FROM: John Hatch, Chief Engineer, Water Rights Division *John Hatch*

SUBJECT: Reconsideration of Deferred Application of the Town of Worthing and
request for relief from certain conditions in South Lincoln Permits

The Water Management Board will reconsider deferred Water Permit Application No. 4301-3 of the Town of Worthing, and will consider the South Lincoln Rural Water System request for relief from certain qualifications on Permits No. 4300-3 and 4300-3A at 10:00 am on January 29, 1981 at Meeting Room #1, Kneip Building, Church & Illinois, Pierre SD.

This reconsideration hearing will be conducted in accordance with the provisions of SDCL 46-1-1 thru 46-1-9; 46-1-14; 46-2-9 thru 46-2-11; 46-2-13; 46-5-1 thru 46-5-8; 46-5-10 thru 46-5-22; 46-5-41; 46-6-3; 46-6-5; 46-6-6.1; 46-6-10; 46-6-3.1; 46-6-14 and Board Rules ARSD 52:01:01:01 thru 52:01:01:13.

The Town of Worthing application was previously deferred by the Board pending staff investigation. New data has been made available on the request of the South Lincoln permits, and based on this, the request for relief has been scheduled.

After reconsideration of the deferred application the Board can approve, conditionally approve, defer, or deny all or part of the Application, or action on the request.

This hearing is an adversary proceeding. Any person 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 at the hearing. Decisions of the Board may be appealed to the Courts as provided by law.

You are also notified that SDCL 1-26 provides any interested party the opportunity to meet informally with the Water Rights Division Staff to discuss proposed recommendations by the staff to the Board prior to the scheduled hearing. If we do not hear from you, we will assume that the opportunity for an informal meeting is being waived and you wish to proceed directly to the hearing on the application before the Board.

Any handicapped person wishing to attend this hearing can contact the Water Rights Division, DWNR, Joe Foss Building, Pierre SD, prior to the hearing date for assistance to assure access to the hearing.

JH:kw

Equal Opportunity Employer

WNR-101-9/79

SOUTH DAKOTA
Department of
Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

February 4, 1981

Jeff P Masten
110 S Broadway
Canton SD 57013

Dennis McFarland
505 W 9th St - Suite 101
Sioux Falls SD

Gentleman:

You are aware that the Water Management Board requested that proposed Findings of Fact, Conclusions of Law and a proposed Decision regarding Water Right Permit Nos. 4300-3 & 4300-3A be prepared. The Water Management Board will meet at the Holiday Inn, Sandy Shore Room, Watertown SD on March 25 & 26, 1981. We have tentatively placed consideration of the proposed Findings of Fact, Conclusions of Law and Decision on the agenda for 4:00 pm, March 25, 1981.

The Attorney General's Office will prepare proposed Findings, Conclusions and Decision for consideration by the Board. This notice is provided to you in the event you wish to prepare or have prepared your own proposed Findings, Conclusions and Decision for consideration by the Board.

Please have any proposed Findings, Conclusions and Decision in this office by March 16, 1981. We will be mailing information concerning the Board meeting to the Board members March 18, 1981.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

Equal Opportunity Employer

**SOUTH Dakota Department of
Water & Natural Resources**
Joe Foss Building
Pierre, South Dakota 57501
Water Rights Division
605 773-3352

March 17, 1981

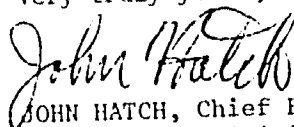
Jeff P Masten
110 S Broadway
Canton SD 57013

Dennis McFarland
505 W 9th St - Suite 101
Sioux Falls SD 57101

Gentleman:

Enclosed please find a copy of the proposed Findings of Fact, Conclusions of Law and Final Decision on Application No. 4300-3, South Lincoln Rural Water System as prepared by the Attorney General's Office.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

enclosure

Equal Opportunity Employer

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

IN RE APPLICATION FOR PERMIT)
NO. 4401-3 BY THE CITY OF)
WORTHING AND SOUTH LINCOLN)
RURAL WATER SYSTEM PERMIT)
NO. 4300-3.)

CIV. FILE 81-103
BRIEF OF APPELLEE
WATER MANAGEMENT BOARD

PRELIMINARY STATEMENT

The above-entitled case is an appeal pursuant to SDCL 1-26-30 of two administrative decisions made by the Water Management Board (Board) on January 29, 1981 at the Richard B. Kneip Building, Pierre, South Dakota. After a full hearing was accorded to all parties, the Board granted Water Permit No. 4401-3 to the Town of Worthing (Worthing) and denied South Lincoln Rural Water System's (SLRWS) request for relief from Condition No. 7 of Water Permit No. 4300-3.

ISSUES

I.

THE BOARD, BY APPROVING WORTHING'S APPLICATION, BUT DENYING SLRWS'S REQUEST FOR RELIEF FROM QUALIFICATION NO. 7, DID NOT ACT IN AN ARBITRARY AND CAPRICIOUS MANNER.

II.

THE BOARD WAS NOT CLEARLY ERRONEOUS AND DID NOT ABUSE ITS DISCRETION BY APPROVING WORTHING'S APPLICATION, BUT DENYING SLRWS'S REQUEST FOR RELIEF FROM QUALIFICATION NO. 7.

PROCEDURAL HISTORY

With the following modifications, the Board agrees with the procedural history as reported in the SLRWS's brief, and therefore will not duplicate the procedural history here.

Modifications:

1. The initial hearing on Application No. 4135-3 was held on October 6, 1977 rather than August 6, 1977.
2. Application No. 4300-3 included proposed points of diversion from two and one half (2 1/2) to five (5) miles from the Town of Worthing rather than all being approximately

five (5) miles distance as stated by
SLRWS.

3. The application filed by SLRWS on
September 3, 1980 asking for modification of Permit No. 4300-3 should
be denominated Permit No. 4300-3A.

SCOPE OF REVIEW

The Board is an administrative body of the State of South Dakota. One of its functions is to grant or deny water permit applications submitted by those who wish to obtain water rights. SDCL 46-5-20 requires the Board to hold hearings on water applications thereby bringing Board decisions under the contested case definition of 1-26-1(2). All contested case decisions of the Board are subject to appeal by agrieved parties. SDCL 1-26-30.

The scope of review of an administrative decision is strictly limited by SDCL 1-26-35 and 1-26-36. Absent a special showing, the reviewing court is restricted to reviewing the record that was before the administrative body at the time of the hearing. SDCL 1-26-34 and 1-26-35.

SDCL 1-26-36 requires, in part, that the reviewing court give great weight to the agency's findings made and inferences drawn on questions of fact. This statute further states:

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) ***
- (2) ***
- (3) ***
- (4) ***
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The South Dakota Supreme Court has had the opportunity to interpret these standards of review on a number of occasions recently. Repeatedly cited is the Courts' 1970 decision of In Re Estate of Hobelsberger, 85 S.D. 282, 181 N.W.2d 455 (1970) wherein the Court held that an agency's decision should be affirmed unless the reviewing court is "left with a definite

and firm conviction that a mistake has been committed." 181 N.W.2d at 459. See In Re South Lincoln Rural Water System Application for Permit #4300-3, 295 N.W.2d 743 (S.D. 1980); Fraser v. Water Rights Commission, 294 N.W.2d 784 (S.D. 1980). The Court also discussed judicial review of agency decisions in Basin Electric Power Cooperative v. Payne, 298 N.W.2d 385 (S.D. 1980) and found that an abuse of discretion was a determination whose

" . . . result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." 298 N.W.2d at 388.

Since there are no questions of law presented here, the entire case is governed by the above standard.

ARGUMENT

I.

The Board, by approving Worthing's application, but denying SLRWS's request for relief from Qualification No. 7, did not act in an arbitrary and capricious manner.

A. Worthing

It is apparent that the true thrust of the testimony and argument presented by SLRWS to the Board at its January, 1981 meeting and in the SLRWS's trial brief is that Qualification No. 7 be removed from Permit No. 4300-1, not that Worthing's permit be denied or that an alternate source condition be placed on Worthing's permit. Since SLRWS argues that water is available and an additional source qualification is unreasonable on its own permit, it serves no purpose other than harassment for its appeal of the Board's decision granting Worthing's permit.

Worthing's permit must be considered separately from that of all other permits, including that of SLRWS. Considered alone, no party can object that any party was or will be harmed by the granting of Worthing's permit. The Board found that unappropriated water appears to be available (Finding of Fact No. 12), that the town could not afford to develop a second source of water (Finding of Fact No. 10), that the town already has one source of water

(Finding of Fact No. 6), albeit not enough for present and projected uses, and that sixty-five acre feet per year is a reasonable maximum withdrawal needed by Worthing (Finding of Fact No. 9). With these findings, it would have been contrary to the public interest for the Board to have denied the permit or conditioned it in such a way as to effectively deny it. Clearly, the decision was not arbitrary and capricious.

The Board took the action most rational under the circumstances and granted Worthing's permit subject to the acre-feet limitation. Worthing remains junior in priority to the permit of SLRWS and, if necessary, can be shut off to protect SLRWS and other senior water right holders. Since there is no potential harm of a pecuniary or any other nature alleged by SLRWS, and no other party protested Worthing's permit, the decision of the Board granting Water Application No. 4401-3 should be affirmed.

B. SLRWS

SDCL 46-1-14 gives the Board the authority to subject any water permit to such terms, conditions, qualifications, restrictions, or limitations necessary to protect the public interest. SLRWS argues that to treat two applicants to the same source of water in a different manner is arbitrary and capricious and an abuse of discretion. It contends that upon granting Worthing's permit without an alternate source qualification the Board was required to remove Qualification No. 7 on Permit No. 4300-1. This argument ignores the fact that applications are different, applicants are different, and the public interest is likely to be different in each case considered by the Board even when dealing with a single source of water.

A look at the two applicants involved here reveals the differences between them that lends support to the decision that an alternate source was necessary in one case but not the other. SLRWS has under contract, eight hundred sixty five (865) water users (p. 92, Transcript) and sufficient water appropriated to serve more users. The population of Worthing according to

the 1970 census was two hundred ninety four (294) people, approximately one third (1/3) the number to be served by the SLRWS. *Worthing*

SLRWS's permit allows a total withdrawal of 455 acre feet/yr. of water from the Dakota whereas Worthing is limited to 65 acre feet/yr. Thus, SLRWS is entitled to seven times the total amount of water than Worthing. The rate of withdrawal is also significantly different. SLRWS is entitled to two c.f.s., Worthing is permitted only .23 c.f.s. under Water Permit No. 4401-3.

Finally, if aquifer conditions require that Worthing be shut off from Dakota withdrawals, the town does have one tenth (.1) c.f.s. of water on an early priority water right to fall back on. SLRWS would have no immediate alternate source of water if the Davis field qualification is not required. While true that SLRWS will have a significant amount of time between a determination that a shut-off would be required and the date of the ultimate shut-off, no one was able to guarantee to the Board that funding to develop the Davis source would be available in the future.

The significance of the differences between Worthing and SLRWS was manifest to the Board. First, Worthing was too small to develop an alternate source of water whereas the greater size of SLRWS made development of the Davis source a relatively inexpensive safeguard to the system itself and to others fearful that the Board would be reluctant to order a shut-off of SLRWS even after a significant drop in the head pressure.

Second, the lesser amount of water to be withdrawn by Worthing would have a small amount of aquifer impact as compared to the withdrawal by SLRWS. Third, the immediate emergency source available to Worthing, but not to SLRWS gave the Board ample reason to treat Worthing differently than SLRWS.

Taken to extremes, the argument of SLRWS that all applicants from the same source of water be treated in an identical fashion would mean that an applicant for a two family water supply system from the Dakota could expect to be required to develop an alternate source of water as a condi-

tion of its permit. Surely the Board has the flexibility to subject each application to careful scrutiny and impose conditions or not subject to the needs of the applicants consistent with the best uses of the water resources of the state. The Board followed this policy with Worthing and SLRWS and made two carefully considered and reasoned decisions. It is clear that there was nothing arbitrary or capricious about those decisions.

II.

THE BOARD WAS NOT CLEARLY ERRONEOUS AND
DID NOT ABUSE ITS DISCRETION BY APPROVING
WORTHING'S APPLICATION, BUT DENYING SLRWS'S
REQUEST FOR RELIEF FROM QUALIFICATION NO.
7.

SLRWS urges the court to overturn the Board's decision and substitute its own judgment based upon the testimony given at the January 29, 1981 Board meeting. This position is based upon the claim by SLRWS that the Board was clearly erroneous and abused its discretion by approving Worthing's application without removing Qualification No. 7 from Water Permit No. 4300-3. This claim is unmerited.

Permit No. 4300-3 was granted on December 12, 1973 after several hearings and many hours were spent listening to arguments for and against the granting of the permit. Due to lack of information with regard to the aquifer, the Board moved and voted to grant the permit subject to seven conditions. The first six conditions were placed on the permit to protect other Dakota well owners from significant aquifer head pressure declines. The seventh condition, requiring development of the Davis well field was appended to the permit to protect water users in SLRWS from hardship in case the system was required to shut-off from the Dakota.

That decision was acceptable to SLRWS and was thought to be a good compromise. In fact, when the Friends of the Dakota Sandstone (FSDA) appealed the Board's decision, SLRWS pointed to the seven conditions in the permit as evidence of the rationality of the Board. The Court in In Re Matter of South Lincoln Rural Water System Application for Permit No. 4300-3, 295 N.W.2d 743 (S.D. 1980) also indicated that the conditions imposed in the permit demonstrated the Board's careful con-

sideration of the application.

Now, however, SLRWS contends that perhaps the decision that was so reasonable back in December of 1978 is not so reasonable today. To support this argument counsel for SLRWS claims that the new evidence presented before the Board in January, 1981 conclusively demonstrates that there is a lot of water in the aquifer and that the amount of high quality water is better than previously known. While these contentions may be true, they still do not alleviate the concerns of the Board at the time Condition No. 7 was originally imposed.

What concerned the Board in December, 1978 was not so much the amount of water in the aquifer as the effect of high capacity pumping on the head pressure of the Dakota (see Conditions 4 and 5 of Water Permit #4300-3). The Board wanted to protect domestic well owners in the area from the financial burden of lowering pumps or drilling new wells to compensate for a serious head pressure decline. At the same time, Condition No. 7 was imposed on the permit to protect the system from an excess of optimism about the aquifer.

The expert testimony on January 29, 1981, did not relieve the Board's doubts about the head pressure decline. On page 53 of the transcript, the following exchange occurs between Board Chairman Decker and Assad Barrari of the South Dakota Geological Survey:

Decker: Okay. Do you feel then as of today, this date, that you have more data available to you, or sufficient data that you can in fact validate some of those things or tell us what the drawdown is going to be based on what has been done?

Barrari: We have found out the aquifer covers a larger area. We have also determined more good water that is present in the aquifer. But we cannot determine what is the effect of the drawdown. We cannot predict the drawdown.

Derrick Iles, also of the South Dakota Geological Survey, who performed the data gathering relied upon by SLRWS also would not commit himself to any conclusions about the Dakota. On page 59 of the transcript in response to a question by Board member Ray Rylance about relieving the concerns of the Board, Iles responded:

"It's a judgment. There is nothing conclusive. I cannot point to a specific fact and say this is the all-important fact and it's going to solve all the problems."

On questioning from counsel for FOSDA, Iles admitted that he did not know the source of recharge, rate of recharge, or quality of recharge water. (Transcript, p. 75 and 76). He also admitted that he did not know if inferior quality water would move into the area due to increased pumping (Transcript, p. 76). Dennis Beisell, a hydrologist who testified for FOSDA stated that there was inadequate information to make a reliable drawdown prediction (Transcript, p. 117). At no time did Richard Aten, the hydrologist hired by SLRWS, venture to make a drawdown prediction. At no time during the testimony were the Board's legitimate questions about the drawdown answered by any of the experts.

SLRWS argues that it is unreasonable in 1981 to impose the Davis well field condition because of the high cost imposed upon the customers within the system. In December of 1978 it was not unreasonable, but somehow the high cost is unreasonable in 1981. Given the high social cost of eight hundred sixty five (865) water users being shut-off if the Davis line is not built and the aquifer head pressure drops, the costs of building the line are cheap. Counsel for SLRWS uses the figure of seven hundred seventy two thousand nine hundred eighty five dollars (\$772,985) as the total cost of this Board imposed insurance policy. This figure is deceptive because it is the total cost over forty years to SLRWS. Present value of that total, however, using a conservative five percent (5%) rate of inflation is approximately one hundred nine thousand dollars (\$109,000). That is not very much money when considering the alternative of no water at all.

During the January 29, 1981 Board meeting there was a long discussion about future funding if the Davis line was not required to be constructed until actually needed (Transcript pp. 81-102). The Board wished to determine whether funding would be available in the future should the Davis line need to be constructed. At no time was there any guarantee by SLRWS that funding would be available either in part or in total. Therefore,

it was reasonable that the Board required the Davis line to be constructed when it knew funds were presently available rather than hope that money could be found in the future when construction costs would undoubtedly be higher.

Regarding the forty seven (47) users in the Alcester area that SLRWS contends will be deleted from the system by the Davis line requirement, it was in the Board's sound judgment and discretion for it to have determined that the potential harm to eight hundred sixty five (865) users clearly outweighed the immediate harm to those forty seven (47) users. Further, there was no testimony from SLRWS saying that alternate funding to add those Alcester users was unavailable.

In its brief, SLRWS attempts to demonstrate that the Board made a political decision rather than a decision based upon the hydrological and geological facts before it by citing comments made by two board members. This argument fails for a number of reasons. First, there were five members who voted unanimously not to modify the permit at the January 29, 1981 hearing. The entire Board decision is not necessarily indicated by the comments made by one or two individual Board members. It cannot be said that board members Walters, Arend, and Rylance agreed with the rationale alleged by SLRWS as the reason behind the decision by Harms and Decker.

Second, Chairman Decker's supposed comment was taken out of context. On page 133 of the transcript, Decker indicates that he is unconvinced by the new evidence presented. Therefore, since there has been no significant change in information since the original decision was made in 1978, there would be no reason to remove the qualification. If it was reasonable in 1978, it is still reasonable in 1981 without conclusive new data.

Third, the reasons for the decision are set out in the findings of fact and conclusions of law. It is improper for a reviewing court to look into the thought processes of an administrative body to determine whether there was a legitimate basis for a decision. In United States v. Morgan, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941) the Court said, "Just as a judge cannot be subjected to such a scrutiny . . . so the

integrity of the administrative process must be equally respected." 61 S.Ct. at 1004. A California Court of Appeals discussed this doctrine succinctly in Board of Administration, Public Employees' Retirement System v. Superior Court, 123 Cal. Rptr. 530 (1975) when it said, "The law is firmly established that if the decision is right, the judgment or order will be affirmed regardless of the correctness of the grounds upon which the decision was reached." 123 Cal. Rptr. at 533.

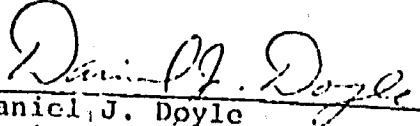
The decision of the Board was within the law, was reasonable under the facts and circumstances and the statement of reasons for making the decision by one or more board members cannot be inquired into or used to invalidate the Board's decision. To reverse the decision of the Board would amount to a substitution of the Court's judgment for that of the Board contrary to South Dakota law and policy.

With regard to Worthing, there were more than sufficient grounds for the Board to have approved its application subject to the acre feet limitation. The Dakota formation has been discussed extensively before the Board on numerous occasions. As counsel for SLRWS points out in the trial brief, there was no question that there is a substantial amount of water in the aquifer. The staff has testified that it feels unappropriated water was unavailable in the Dakota. There was no reason not to grant Worthing's water right based on the evidence before the Board and therefore the Board acted properly in approving Application No. 4401-3.

For these reasons, the Water Management Board respectfully prays that the decision of the Board granting Application No. 4401-3 to the Town of Worthing and the decision denying relief from Qualification No. 7 in Water Permit No. 4300-31 to SLRWS be sustained.

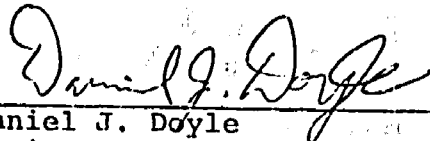
Dated this 27th day of April, 1981.

Respectfully submitted,


Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Brief of Appellee Water Management Board IN THE MATTER OF SOUTH LINCOLN AND CITY OF WORTHING, CIV. FILE NO. 81-103 was served by United States mail, first class, postage prepaid, upon Mr. Jeffrey P. Masten, Attorney at Law, 110 South Broadway, Canton, South Dakota 57013 and Mr. Dennis C. McFarland, Attorney at Law, 505 West 9th Street, Suite 101, Sioux Falls, South Dakota 57104 on this 27th day of April, 1981.



Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF SOUTH LINCOLN	)	FINDINGS OF FACT
RURAL WATER SYSTEM'S REQUEST FOR	)	CONCLUSIONS OF LAW
RELIEF FROM CERTAIN CONDITIONS TO	)	FINAL DECISION
PERMIT NO. 4300-3	)	

Having heard and considered all the evidence presented before the Board in the above-entitled matter on January 29, 1981 at the Richard B. Kneip Building, Pierre, South Dakota, the Board hereby makes the following:

FINDINGS OF FACT

1. That South Lincoln Rural Water System possesses Water Permit No. 4300-3 which was granted on December 12, 1978 by the Water Rights Commission (now Water Management Board).
2. That this permit had several qualifications attached to it, including the requirements that:
 - 3) The system shall install one observation well into the upper layer of the Dakota Formation about two hundred feet from each production well to be used for monitoring draw down near the production well.
 - 7) The Davis area well field shall be developed and placed on line prior to pumping from any Dakota Formation wells.
3. That at the meeting of the Water Management Board on September 25, 1980 the rural water system asked to be relieved of the Davis well field condition on the grounds that the condition was unnecessary and that if required to comply with that condition, numerous households would not be able to be served by the system.
4. That the Board determined at that meeting that the purpose of the Davis well field qualification was to protect the system in the event the Dakota Formation head pressure was found to be declining more than anticipated, requiring the rural water system to find another source of water. The Davis field was to be the other source and was initially required by the Board to be available at the time the system was operational.

5. That funding for the Davis well field was available September, 1980, but that there was no guarantee that the funding would continue to be available to the same extent or at all in the future should the need for it be determined due to Dakota Formation head pressure conditions.

6. That there was insufficient evidence to conclusively determine the effects of pumping by the rural water system on the Dakota Formation head pressure.

7. That the Board at the September 25, 1980 meeting determined that the Davis well field qualification was a reasonable and necessary precaution based upon the funding uncertainty and lack of information regarding the recharge and movement of water in the Dakota Formation.

8. That the Board at that meeting declined to remove the Davis field qualification, but modified it to require that the well field be fully operational by November 1, 1981.

9. That the Board further modified the permit at the request of the rural water system by allowing a change in diversion point and by relieving the rural water system from the requirement that three wells be operational prior to the use of the water by the system.

10. That the rural water system in January 26, 1981 again asked for relief from the Davis well field condition and also asked for relief from the observation well requirement.

11. That the observation wells in the area presently serve the purpose of Condition No. 3 in monitoring any draw down caused by the rural water system wells.

12. That there is no absolute guarantee that funding will be available in the future to construct the Davis line should the Board determine that such construction is necessary due to declines in the Dakota Formation head pressure.

13. That there is still insufficient information, despite the information prepared by the South Dakota Geological Survey, to be certain that the Dakota Formation head pressure will not decline to a sufficient degree to cause the rural water system to cease pumping from the Dakota Formation.

14. That only continued pumping will conclusively determine the impacts of large-scale withdrawals from the

Dakota Formation.

15. That, in the event the decline of the Dakota Formation head pressure is greater than anticipated by the rural water system, the Davis field availability is necessary so that the users of this system will have a guaranteed alternate source of water.

16. That if the Dakota Formation head pressure declines to the extent the rural water system must cut off from that source, and if the Davis well field has not been constructed, and if there is no funding or inadequate funding to provide an alternate source of water, the harm to the users of the rural water system will be severe.

17. That this potential harm is avoidable.

18. That the Davis well field qualification is the most reasonable and equitable means of avoiding the potential loss of water to the users of the rural water system.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to consider amendments to a water permit.

2. That the Board has the authority and is obligated to place whatever conditions on a water permit it feels are necessary to protect the interest of both the applicant and others who may be affected by the granting of the permit.

3. That it is in the public interest to relieve the rural water system from Condition No. 3 of the permit since observation wells are present to adequately monitor any head pressure decline.

4. That the Board may refuse to amend a permit if it feels the amendment is not in the interest of the applicant or other potentially affected parties.

5. That when a qualification has been placed on a water permit and no conclusive and irrefutable evidence has been presented to change the necessity for that qualification, the Board need not amend or remove that qualification.

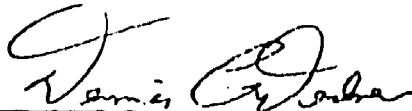
6. That it is not in the rural water system's interest nor in the interest of others potentially effected

by the rural water system's pumping from the Dakota Formation to relieve the rural water system from the Davis well field qualification.

FINAL DECISION

The request by the South Lincoln Rural Water System to be relieved from Condition No. 3 of Water Permit No. 4300-3 is hereby granted. The request by South Lincoln Rural Water System to be relieved from Condition No. 7 of Water Permit No. 4300-3 is hereby denied.

Dated this 25th day of March, 1981.


CHAIRMAN


SECRETARY

**SOUTH Dakota Department of
Water & Natural Resources**

Joe Foss Building
Pierie, South Dakota 57501

Water Rights Division
605 773-3352

March 27, 1981

Jeff P Masten
110 S Broadway
Canton SD 57013

Dennis McFarland
505 W 9th St - Suite 101
Sioux Falls SD 57101

Gentlemen:

This is to notify you that final Decisions including Findings of Fact and Conclusions of Law were adopted by the Water Management Board for Application No. 4300-3 which was considered at the March meeting as prepared by staff.

The Final Decision, Findings and Conclusions are on file in this office and signed copies will be furnished upon request. South Dakota Statutes provide that the decision of the Board may be appealed to the Courts.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

kw

Equal Opportunity Employer

FRIENDS OF DAKOTA SANDSTONE AQUIFER

March 30, 1981



Mr. John Hatch
Department of Water and Natural Resources
Water Rights Division
Joe Foss Building
Pierre, SD 57501

Dear John:

We are requesting a statement from your office with regard to concerns we have based upon events which have occurred in the past as it will affect events that may occur in the near future.

The South Lincoln Rural Water System was granted their request that they be allowed to pump from two wells with a reduction to 304 acre feet annually until their third well was constructed. The original intent, we believe, was that the original 455 acre feet was to have been more or less equally divided between the three wells to spread out the influence. It is our understanding that the main control building and reservoir of the Rural Water System will be completed April 1, so it would appear the System could commence pumping shortly after that date. In observing the progress made by the System, the only well in a position to be pumped at this time is Well #2.

Testimony was presented at the January 29, 1981 hearing to the effect that 455 acre feet is less than 300 gpm. Therefore, the 304 acre feet previously referred to would be even further less than 300 gpm.

We would like a confirmation as to the pumping rate the Rural System is allowed at this time, from how many wells, as well as information as to how the staff of the Water Management Board intends to monitor the pumping rate the System is using. We would also like to know if the staff has, or will be personally inspecting the wells to be pumped by the Rural Water System as to whether the air line has been properly installed in each of them. Considering the reluctance in the past on the part of the Rural Water System to comply with regulations imposed upon them, it would appear to us that some check over and above their written or oral assurance be made on these matters.

At the November, 1980 hearing, you stated the observation wells, which are to be used to monitor the drawdown, would be determined after the third well was finally located and after some pumping by the System. If the System has indeed located their third well site but has no way of transporting the water from that well to their distribution point, we would also be interested in what monitoring will be done until the water from the existing third site is utilized, and considering the potential output of that well, or if that site is abandoned, the monitoring to be done until the third site is definitely located and actually put into production use at a pumping rate equal to that of the other two wells.

Your prompt reply would be appreciated.

Sincerely,

Wanda J. Sletten, Secretary

cc: Dennis McFarland
Dennis Decker

South Lincoln file

MASTEN, MYRABO & IRONS, P.C.

A PROFESSIONAL CORPORATION

LAWYERS

108 SOUTH BROADWAY

CANTON, SOUTH DAKOTA 57013

SAM W. MASTEN (1915 - 1980)

JEFF MASTEN

LLOYD K. MYRABO

EUGENE J. IRONS

WILLIAM D. KUNSTLE

AREA CODE 605
9.1-4351

March 30, 1981

Hon. Robert A. Miller
Presiding Judge of Circuit Court
Hughes County Courthouse
Pierre, South Dakota 57501

In Re: Appeal by South Lincoln Rural Water System from decision
of South Dakota Water Management Board.

Dear Judge Miller:

It is my understanding that a hearing to extend the stay in the
above matter has been rescheduled for April 29, 1981, rather than April
1, 1981 as had been originally scheduled.

Because of the extreme time constraints faced by our client, the
rural water system, I would greatly appreciate it if you could
give consideration to establishing a briefing and argument schedule
for this matter so that we would not have to wait until the hearing
which has been set for April 29 to do so.

Inasmuch as we represent the moving party, I would think that any
time problems would then be ours, rather than the appellees, since
we would be writing the first brief.

This project is in the middle of construction, and for that reason,
we are rather pressed for time.

Any consideration of this request you can give us will be much
appreciated, and I will look forward to hearing from you at your
convenience.

Thank you in advance for your cooperation.

Very truly yours,

EUGENE J. IRONS,
For the firm.

EJI:ds





CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT

Hughes County Courthouse
P.O. Box 1112
Pierre, South Dakota 57501
(605) 773-3711

Chambers of
Robert A. Miller
Presiding Circuit Judge

April 1, 1981

Sally Hanson
Administrative Secretary

Eugene J. Irons, Esq
108 South Broadway
Canton, S.D. 57013

Robert L. Timm, Esq
Deputy Attorney General
State Capitol Building
Pierre, S.D. 57501

Daniel Doyle, Esq
Assistant Attorney General
Department of Water and Natural Resources
Pierre, S.D. 57501

Dennis C. McFarland, Esq
505 W. 9th Street, Suite 101
Sioux Falls, S.D. 57104

Graig Sewell, Esq
131 N. Main Avenue
Sioux Falls, S.D. 57102

IN THE MATTER OF SOUTH LINCOLN
(City of Worthing and)

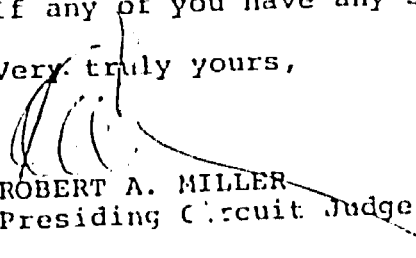
Hughes County File 81-103

Gentlemen:

Pursuant to Mr. Irons' letter of March 30, 1981 I feel that appellant's brief should be submitted to me by April 14; then appellees should have until April 24 to submit their briefs; lastly, appellant could then serve their reply brief at the time of the hearing.

If any of you have any serious objection to this please advise.

Very truly yours,


ROBERT A. MILLER
Presiding Circuit Judge

Original filed with Clerk of Courts



Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

(605) 773-3352
Water Rights Division

April 7, 1981

Wanda J. Sletten, Secretary
Friends of Dakota Sandstone Aquifer
Rt. 2, Box 82
Beresford, SD 57004

RE: 4300-3 ✓

Mrs. Sletten:

This will acknowledge your request for clarification of the South Lincoln Rural Water System Water Permits, proposed inspection and monitoring of area head pressure levels. The Rural Water System was issued Permit No. 4300-3 which authorizes:

1. Withdrawal rates up to 2.0 cubic feet per second (cfs)
2. From 3 Dakota Formation Wells
3. Maximum withdrawal from each well not to exceed .8 cfs (359 gpm)
4. The annual withdrawal (January 1 thru December 31) will not exceed 455 acre feet with all three wells ready for pumping prior to any use of water.

Permit No. 4300-3A was approved to authorize a change in one diversion point.

The Rural Water System's request for relief from condition 2 of Permit No. 4300-3 (required all 3 wells to be ready for pumping prior to any use of water) was granted subject to the limitation that there be an annual withdrawal restriction of 304 acre feet until the third well is developed and put on line. Although relief from condition 2 was granted, two wells must be ready for pumping (on line) before any use of water.

The 455 acre feet annual withdrawal (need three wells) is an average withdrawal of 282 gpm and 304 acre feet annual withdrawal (need two wells) is an average withdrawal of 188.5 gpm. The average gpm has nothing to do with the actual pump capacity. The maximum pump capacity per well can be no more than 0.8 cfs of 359 gpm. The capacity of the pumps actually installed will be based upon safe well yield subject to the maximum 0.8 cfs limitation. It is to the Rural Water System's advantage to rotate pumping to spread out effects to the head pressure because of the qualifications placed upon the System's Permit.

We expect to do the monitoring necessary to determine any effects of Dakota Formation pumping in the Lincoln County Area and to determine if the System is in compliance with its permit. The continuous recorder observation well will provide hourly information. Other observation wells will be monitored every 2 to 3 weeks during regular well measurement trips. During the winter months, we expect to maintain a similar schedule unless experience shows a 2 to 3 week schedule is not necessary. If more frequent measurements are necessary we would expect to make such measurements. Whether 2 or 3 wells are pumped, permit qualifications must be followed.

Equal Opportunity Employer

Wanda J. Sletten, Secretary
Friends of Dakota Sandstone Quifer
Page 2
April 7, 1981

Although a final inspection of the Rural Water System will not be made until after the project is completed, we expect to make inspection visits to the production well sites to determine that flow meters have been installed, are in operation and that gpm and total withdrawals can be determined.

Production well drawdown measurements in wells more than 300 feet deep do not have to be determined using an air line. An electric probe is usually a more reliable method of measuring drawdown in any well. The air lines can become plugged or otherwise inoperable.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH/bt

cc: Dennis Decker
Dennis McFarland, Attorney
Jeff Masten, Attorney
John Madden

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

Affidavit

John Hatch, Chief Engineer of the Division of Water Rights, South Dakota Department of Water and Natural Resources, being duly sworn on his oath, deposes and says:

That the following documents are true and accurate photocopies of original documents on file in the offices of the Division of Water Rights and that these documents constitute the Administrative Record for the appeal of In Re Application for Permit No. 4401-3 by the City of Worthing and South Lincoln Rural Water System Permit No. 4300-3.

Application No. 4401-3 file, Town of Worthing & Minutes-May 24 & 25, 1981
Letter dated September 3, 1980 from Cliff Morron
Minutes-Water Management Board- September 25 & 26, 1980
Letter dated October 6, 1980 from John Hatch
Reconsideration Notice dated November 5, 1980
Two letters dated October 30, 1980 from Daniel J Doyle
Findings of Fact, Conclusions of Law & Final Decision on Permit No. 4300-3 prepared by the Friends of the Dakota Sandstone Aquifer
Findings of Fact, Conclusions of Law & Final Decision on Permit No. 4300-3 prepared by Attorney Generals Office and adopted by the Board
Minutes-Water Management Board-November 19 & 20, 1980
Supplemental Materials in Reconsideration of Water Rights Permit No. 4300-3A dated November 20, 1980 prepared by Devilb Grant Beckert & Asso.
Letter dated December 2, 1980 from John Hatch
Letter dated December 18, 1980 from Curtis Gubrud
Letter dated December 19, 1980 from John M Madden
Letter dated January 8, 1981 from Curtis Gubrud
Reconsideration Notice dated January 9, 1981
Letter dated January 23, 1981 from Robert C Swartout
Report dated January 26, 1981 "Town of Worthing Application No. 4401-3 and the Request for Relief From Certain Conditions on South Lincoln Rural Water System Permits 4300-3 and 4300-3A" prepared by James Goodman
Minutes-Water Management Board-January 23 & 29, 1981
Transcript of Hearing held January 29th, 1981
Maps dated January 29, 1981 presented to Water Management Board by Derric Hiles
Letter dated February 4, 1981 from John Hatch
Letter dated February 9, 1981 from Wanda Stetten
Letter dated March 17, 1981 from John Hatch
Letter dated March 27, 1981 from John Hatch
Findings of Fact, Conclusions of Law & Final Decision on Permit No. 4300-3 prepared by the Attorney General Office and adopted by the Board
Letter dated March 30, 1981 from Eugene Irons
Letter dated April 7, 1981 from John Hatch

JOHN HATCH

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public for the State of
South Dakota

STATE OF SOUTH DAKOTA)
) : SS
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

In Re: Application for
Permit 4401-3 by the City
Of Worthing and South
Lincoln Rural Water System
Permit No. 4300-3A.

BRIEF
OF
APPELLANT
SOUTH LINCOLN RURAL WATER
SYSTEM (SLRWS)

AFR 1 : 1981

I. PROCEDURAL HISTORY

The South Lincoln Rural Water System will be referred to as (SLRWS), the South Dakota Water Management Board, as the (Board), the Friends of Dakota Sandstone Aquifer as (FODSA), and the City of Worthing, as (Worthing).

On August 30, 1977, SLRWS submitted an Application Number 4135-3 for four (4) cubic feet per second, (cfs) of water to be withdrawn from the Dakota Sandstone formation. Hearing on that Application was held at Spearfish, South Dakota, on ^{October} ~~August~~ 6, 1977. In response to objections from existing well owners in the Worthing area (FODSA), the Board deferred action on the Application pending further investigation by its staff. On July 10, 1978, the Board received an amended Application Number 4300-3 (the predecessor at issue herein) seeking the appropriation of two (2) CFS from water to be withdrawn from three (3) wells in the Dakota formation approximately five (5) miles south of Worthing. In addition to the amended Application Number 4300-3, SLRWS also submitted Application Number 4301-3 for the appropriation of two (2) CFS to be drawn from the Vermillion aquifer as an alternate source. On July 27, 1978, the Board held hearings on both Applications, following which Application Number 4301-3 was approved but action on amended Application Number 4300-3 was deferred until "better testing is done on the Dakota formation and adequate aquifer information is obtained." Application Number 4300-3 again came before the Board on September 13th and 14th.

1978; however, further hearing thereon was continued until December to allow FODSA an opportunity to offer opposing testimony.

On December 12, 1978, the Board held a special hearing on Application Number 4300-3 in Sioux Falls, which resulted in the final decision to grant the permit subject to certain conditions, one of which is that issue in this appeal.

FODSA thereafter appealed the granting of the permit to this Court. This Court upheld the decision of the Board granting permit number 4300-3. On subsequent appeal to the Supreme Court, the judgment of this Court and of the Board granting the permit was affirmed. In the matter of the South Lincoln Rural Water System Application for Permit Number 4300-3 NW 2d (#12297, filed August 20, 1980).

On September 3, 1980 SLRWS ^{filed} followed an Application ^{N₂(4300-3A)} for a modification of Permit Number 4300-3. The amended permit related to the SLRWS request to modify restriction No. 2 to restrict withdrawals to three hundred four (304) acre feet per year until a third well was developed and fully operational, requested the deletion of restriction No. 7 which would require the Davis well line to be placed on line prior to any pumping from the Dakota well and requested a change in diversion point of Well Number 3 of Permit Number 4300-3. Hearing was held on September 25, 1980 at the Kneip Building, Pierre, South Dakota. The request by SLRWS to be relieved from Condition No. 2 of Water Permit Number 4300-3 was granted subject to the limitation that there be an annual withdrawal restriction of three hundred four (304) acre feet until the third well was developed and put on line. Condition No. 7 of said Permit was amended by deleting the words "placed on line prior to any pumping from the Dakota wells" and substituting the words "therein be fully operational by November 1, 1981." And, the request for a change in diversion point of Well Number 3 of Permit 4300-3 was deferred.

A hearing was again held on November 20, 1980 in Madison, South Dakota at which time a new diversion point was approved and findings of fact and conclusions of law were waived by all parties.

The requirement of the Davis well line was again raised at the Knisp Building in Pierre, South Dakota on January 29, 1981. After extensive testimony the Board denied relief from the Condition No. 7 requested by SLRWS and granted Permit Number 4401-3 to Worthing. Findings of fact and conclusions of law were adopted on March 25, 1981 at which time all parties were served with a Notice of Appeal. The Notice of Appeal was further filed with this Court on the following day.

SCOPE OF REVIEW

The issues presented in this appeal, as is characteristic of administrative appeals, relate primarily to Subsection (5) and (6) of SDCL 1-26-36. With respect to review of the Board's Findings and Conclusions, the question for the Court on appeal under the "clearly erroneous" standard is not whether the Court would have made the same decision as did the administrative agency, but whether, after reviewing the entire evidence, the Court is "left with a definite and firm conviction that a mistake has been committed." Frazier vs. Water Rights Commission NW 2d, (SD 1980) (SD 7980), In the Matter of the South Lincoln Rural Water System Water Application for Permit Number 4300-3, (SD 82080), both quoting In Re Estate of Hobelsberger, 85 SD 282, 289, 181 NW 2d 455, 459 (1970).

STATEMENT OF FACTS

The Dakota formation underlies nearly three-quarters of the State of South Dakota and substantial areas in adjoining States. In Lincoln County, it comprises a series of semi-consolidated sandstones and intervening shaly or silty sands that extend southward from a sub-crop line extending from Harrisburg to Lennox and beyond in to Turner County and into Iowa as well. Development to the present time has been limited to individual

household, farm, and small-community supplies. At the time of the initial application for a permit to appropriate in August, 1977, little was known of the potential yield or development limitations.

At the January 29, 1981, hearing all experts for all parties testified that the development proposed by the South Lincoln Rural Water System was considered well below the likely yield potential, even for the Lincoln County portion of the aquifer, and consequently unlikely to cause significant adverse affects on present users. The only dissent from this opinion was by an expert testifying for FODSA who agreed that the water was available, but was concerned that the precise draw-down could not be predicted with the present data. These conclusions, particularly those of the Water Management Board's staff and experts for SLRWS were based on the absence of significant impacts or complaints during some forty (40) years of use by the city of Canton, 370 acre feet per year compared to SLRWS present limitation of 304 acre feet per year, and by the obvious existence of surplus overflow out of Lincoln County.

The aquifer has been developed in Lincoln County for municipal supply at Canton, Worthing, Lennox, Harrisburg and Beresford, and for farm or household supply at something in the order of one hundred (100) rural locations.

At Canton, municipal needs of some 370 acre feet annually (af/yr) are met from seven (7) wells located in a three-quarter mile long strip south of Highway 18. The wells range from 400 to 480 feet deep, partially penetrating the Dakota aquifer. Well production ranges from 120 to 150 gallons per minute (gpm), and the reported specific capacities range from 1.1 to 1.9 gallons per minute per foot of draw-down (gpm/ft). The records available from the staff and from the city of Canton indicate the water level reading by DPK on January 26, 1981 in the Canton City Well #2, which was idle at the time, with a static water level of 137.55 feet below an approximate ground elevation of 1247 feet, compared

to 1937 when the well was constructed, the static water level reported was 100 feet. From monitoring wells constructed by the South Dakota Water Management Board and other observation wells, the water level impacts have been previously testified to not extend more than five miles from the City well field.

Copies of the data summaries by SDGS are attached to this Brief and by reference made a part hereof, taken from the presentation of Terric Iles at the January 29th hearing. In addition a copy of the cost summary of construction alternatives which was referred to at the hearing is also attached as part of this Brief.

ARGUMENT

This appeal centers on the Board's requirement that SLRWS construct a water line from its main storage area to the Davis well field as an alternative source to the Worthing well field, and that this alternative be operational on November 1, 1981. The economic impact of the Davis well line expenditure will be substantial. It will cost Three Hundred Eighty Four Thousand Dollars (\$384,000.00) initially to place this alternate source on line. The well field has already been developed and capped, and SLRWS has proved the capacity of that formation to produce. The reason for not simply going to the Davis well field and abandoning the Worthing well field is that Davis water requires treatment as it is of substantially poorer quality than the Worthing water from the Dakota formation which need not be treated for consumption. In addition to the Three Hundred Eighty Four Thousand Dollars (\$384,000.00) up front to place the alternative on line, SLRWS will be required to terminate all late sign-ups and delete an additional forty seven (47) users in the Alcester area unless additional funding can be obtained. The Farmers Home Administration by a letter of January 23, 1981, indicated to the Board that it would provide the necessary priority to secure future funding of the Davis source if actual need was demonstrated. The engineers testified that it would take at the

outside fifteen (15) weeks to lay the pipes and install the pumps and bring the source operational if it were required because of a twenty foot (20') head pressure decline in a period of four (4) years. Recall, that the testimony was, that any change in water quality would occur over a period of decades, compared to fifteen (15) weeks for construction, and that any decline in head pressure approaching the twenty foot (20') limitation would be observable well in advance of any adverse impact. The engineers further testified that the average total cost per user, as currently funded, would be Five Hundred Thirty Eight Dollars and Eighty Five Cents (\$538.85) without the Davis line (865 users) or Five Hundred Sixty One Dollars and Nineteen Cents (\$561.19) with the Davis line (818 users). Each user would therefore be required to pay an additional Twenty Two Dollars and Thirty Four Cents (\$22.34) per year to pay for the Davis source or the sum of Seven Hundred Seventy Two Thousand Nine Hundred Eighty Five Dollars (\$772,985.00) over the forty (40) year repayment period. SLRWS respectfully submits that the Board's requirement that the system users pay three-quarters of a million dollars to install an alternate line to protect fewer than a dozen wells or existing well owners from a hypothetical decline in aquifer head pressure, particularly in view of the unanimous testimony on the substantial extent of the water in storage, water flowing, and water quality is prima facie unreasonable, and that the Board's finding to the effect that it is "in the public interest" to require such an expenditure meets the Supreme Court's standard that one is left with a definite and firm conviction that a mistake has been committed.

The Board was advised by the staff and by SLRWS, that the Farmers Home Administration by letter of January 23, 1981 would provide the necessary priority to secure future funding of the Davis source if actual need is demonstrated, i.e., if the twenty foot (20') head pressure decline restriction appeared to be approaching. In addition Robert Swarthout of the Farmers Home

Administration personally appeared at the March 1981 meeting to answer any questions that the Board might have.

FODSA appeared at all hearings related to the amendment of Condition No. 7. On January 29, 1981 the only point they made was the continual assertion of their claim that "a deal is a deal," i.e., that SLRWS agreed to the restriction and that it, its users, and the rest of the citizens from three (3) counties together with the tax payers nationwide should suffer for it.

FODSA's claim is morally bankrupt. The Court will recall that in the last appeal, FODSA argued that the decision to grant the permit was arbitrary and capricious because the Board deferred the permit on July 27, 1978 until "better testing is done on the Dakota formation and adequate aquifer information is obtained." According to FODSA it was unjustified and arbitrary for the Board to award the permit on December 12, 1978 when no new testing had been done. FODSA lost that argument. The Court will also recall that the justification by the Board for placing Condition No. 7 on the permit was in order to start construction of the system and operate it until further knowledge of the aquifer characteristics was gained.

To make a long story short, the further tests, drilling and analysis that FODSA claimed was so necessary before a decision could be made has been done. Unfortunately for FODSA, the data and conclusions reached all support the staff and SLRWS. The delicate "sweet pocket" of water covers five (5) townships, at least one thousand (1000) ac. ft. move through the formation annually with another 1,000,000 ac. ft in storage under conservative estimates.

Now that the evidence is in, the best FODSA can muster for argument is that "a deal is a deal."

What of the Board? Even though the presently existing Board is composed of new members, except two (2) from the original Water Rights Commission, the Board refused to reconsider the requirement. As far as the Board was concerned, this was a

"political deal." Witness the statement of Mr. Harms (TR. 1/29/81 p. 145):

I guess, just for consideration of the people that are here, this is a really tough issue for me because it is against my better judgment to require that line there based on the technical facts that I have. I just -- I just don't think it's necessary, you know. I agree with the testimony that has been presented. I just agree with the fact that it's probably not ever going to be used to protect your wells. It may be used for something else.

On the other hand I am going to vote for that motion because the history of this Commission has been to require that restriction, and I think we have really wrestled with some tough issues. But when we get this complex, I think we have to look at the history of the situation and why the restrictions were placed. So it's more a political alternative to me than it is a technical alternative, but that's the way life is, too. (emphasis added).

It was the further position of Chairman Decker that he would not vote to modify the permit, even in the face of facts, unless FODSA agreed with modification. (Tr. 1/29/81, p. 133, l. 24, 25). We respectfully submit that there is nothing in Title 46 which vests the Board with the authority to make political deals between private parties at taxpayer expense. Hatch testified in the original permit proceedings that Condition No. 7 was unnecessary and the staff did not recommend it. Neither did SLRWS, but with lack of data it was felt to be in the public interest to consent to the condition pending results of the drilling program.

Now the Board says that even though FODSA's own expert admits the water is available (Tr. 1/29/81, p. 121, 122), it will ignore the staff recommendation (delete the requirement) and the testimony of Goodman, Iles, Adten, Barari and Madden. It was the Board's position that even though the line "probably will not be used, it is in the best interests of SLRWS users, and in the public interest, to require the expenditure of Seven Hundred Seventy Two Thousand Nine Hundred Eighty Five Dollars (\$772,985.00) to construct this white elephant for the protection of an unidentifiable and amorphous class of well owners, probably numbering fewer than a dozen.

The outrageous nature of the Board's decision is underscored by the fact that only one (1) well owner, Wanda Sletten, has appeared at the latest round of hearings, and only three (3) or so testified in the original proceeding - - most of whom were from Worthing.

Turning to the subject of Worthing, there is a rather stark contrast between the Findings of Fact, Conclusions of Law and Final Decision adopted in the matter of the Worthing Permit as opposed to the South Lincoln Permit. Ostensibly these two permits were considered based upon the same evidence since the respective wells are located approximately two miles apart and are obviously in the same aquifer. At the hearing on January 29, 1981 this writer was accused of holding Worthing hostage to the South Lincoln request for modification. Given this writer's Greek ancestry it may indeed be true that on occasion he does look like an Iranian, particularly the morning after. Nevertheless the Findings of Fact in the Worthing Permit matter form a sufficient basis for an appeal both of the SLRWS Permit and of Worthing's Permit. Worthing requested a permit to appropriate approximately 65 ac.ft. or roughly 1/6th of the South Lincoln withdrawal. For purposes of argument let us assume that the populations are proportionate. This would translate into approximately 120 users. The Court's attention is then drawn to Finding of Fact No. 10 on the Worthing Permit to the effect

That to condition this permit by requiring the town of Worthing to have alternate source of water in readiness in case of an aquifer decline would cause the town to be unable to develop the water under this permit.

In other words, it's okay for the Board to not require any alternate source for Worthing, even though it is a junior appropriator, for 120 people located in the city of Worthing, but South Lincoln has to chop all late users plus 47 additional users in the Alcester area off in order to fund an alternate source.

Consider Condition No. 11:

That the town of Worthing is aware that there are

the construction of that Davis well line. What the Board is in effect doing here is playing fast and loose with taxpayer money which far exceeds the scope of their authority. The Court will note that a substantial part of the argument over the SLRWS Permit consists of inquiries into federal funding decisions, the funds, and whether or not a certain person can commit a federal agency to the expenditure of funds. This is all outside the scope of any authority that this particular Board might possess. Again, a Board acting with quasi-judicial authority should deal with facts, not politics. The facts are that the line is unnecessary and it is not the Board's position or authority to force political deals between FODSA and the Farmers Home Administration.

The killer in the Worthing set of Conclusions of Law is No. 4:

That it is not in the State's interest to grant a water permit subject to such conditions that effectively deny the applicant use of the water applied for when such conditions are not necessary to protect senior water right holders, adequate domestic well owners, or others with a valid interest.

In Conclusion No. 5 the Board found that in the event that senior rights were interfered with, the Worthing wells would have to be shut down. Presumably since this is State law, if SLRWS interfered with senior right consistent with a 20 ft. head pressure decline limitation, it, too, would be shut down. It is therefore unnecessary according to the Board that the Worthing Permit be conditioned similar to the SLRWS Permit. But this isn't good enough in the case of SLRWS. The law as applied to Worthing is different than the law as applied to the system.

If this Board on one day found that the sun rose in the east, and on the following day and on the same evidence, found that the sun rose in the west one might reasonably conclude that that Board was being arbitrary, capricious, or is flat wrong on one out of the two. The Conclusions of Law in the Worthing Permit are plainly and simply nonsensical viewed against the SLRWS Condition No. 7, or vice versa.

Conclusion of Law No. 4 also raises a substantial question that borders on an equal protection issue. It is okay that the City of Worthing pay its dues to FODSA and FODSA supports the city of Worthing's application without restrictions, but when it comes to the evil SLRWS they have to cut people out of the system, not serve others, and waste three-quarters of a million dollars because the Board presumably will not enforce the law in the SLRWS case whereas it would in the Worthing case. The decision, we submit, in the SLRWS case is flatly wrong.

Ultimately the determination on the propriety of Condition No. 7 on the SLRWS Permit turns on a determination of what the public interest is. There is a paucity of case law governing choices relating to the public interest, and certainly no objective standard set out in the Code. Such determinations are, by their very nature, intuitive in some cases, and certainly subject to attack as being arbitrary and capricious. Some guidance may be found in the recently developed instrumental analysis that the U.S. Supreme Court uses to determine the nature of the process due in the Due Process cases. The second prong of the Supreme Court's Due Process analysis involves weighing "the personal interest infringed, discounted by the chance that alternative procedures would be more likely to safeguard it, against the added cost of such alternative procedures." L. Tribe, American Constitutional Law § 10 through 12 at 532 through 540, note 4 (1978). Matthews v. Aldridge, 424 U.S. 319, (1976),; Mashaw, "The Supreme Court's Due Process Calculus For Administrative Adjudication in Matthews v. Aldridge: 3 Factors In Search Of a Theory of Value, 44 U.Chl.L.Rev. 28 (1976). In the present case the personal interest infringed would be the claimed inadequacy of the standard domestic well clause which is inserted and made a part of every water appropriation permit. This was made a part of the SLRWS Permit and the Worthing Permit, only the

SLRWS Permit also carried the additional Condition No. 7. The cost of the Condition No. 7 is easily ascertainable from the evidence: Seven Hundred Seventy Two Thousand Nine Hundred Eighty Five Dollars (\$772,985.00). The question is what facts entitle FODSA, to the extent that FODSA is anything more than Wanda Sletten, to Seven Hundred Seventy Two Thousand Nine Hundred Eighty Five Dollars (\$772,985.00) worth of protection more than she would otherwise be entitled to under the statutes of the State of South Dakota or more protection than any other well owner in this entire State is entitled to. The answer to this question, based upon the record thus far, is none. There are no facts in evidence which would justify such a substantial expenditure of public and private funds for the "protection" of so few from a risk of harm which is so low. The experts describe the amount of drilling, testing and research done on this aquifer in order to put this system in as "uncommon" which is a very conservative way of saying that no other system in this State has received such extensive attention.

For these and all other reasons, SLRWS respectfully prays that this Court either reverse the Board's determination on Condition No. 7 and remand with directions to the Board to enter findings not inconsistent with the Court's opinion, or to reverse the Worthing decision and direct the Board to treat like withdrawals in a like manner, or both.

Dated this 14th day of April, 1981.

Respectfully submitted,

MASTEN, MYRABO & IRONS, P.C.

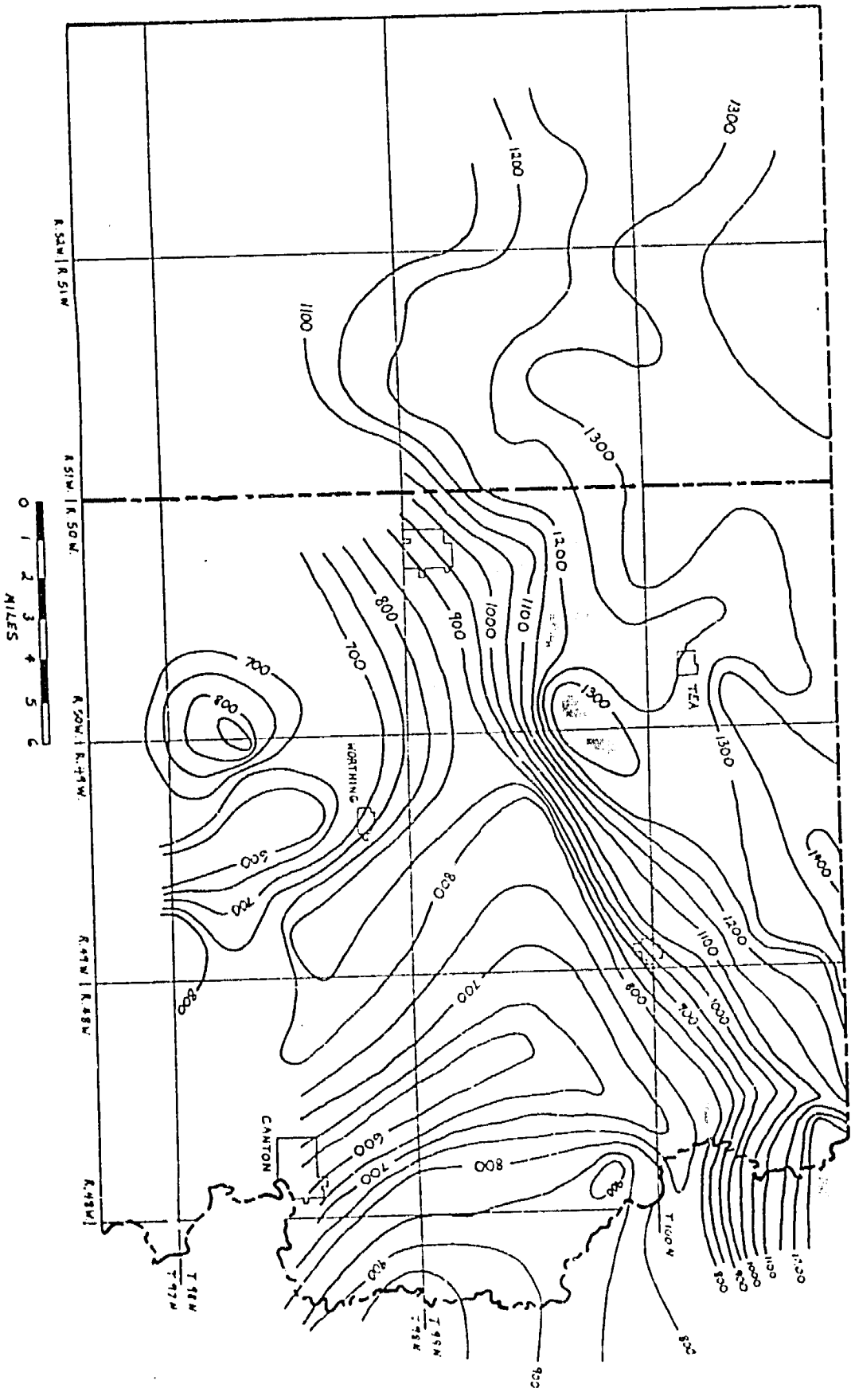
By



Jeff Masten
108 S. Broadway
Canton, SD 57013

CONTOUR MAP of the PRECAMBRIAN (Sioux Quartzite) SURFACE

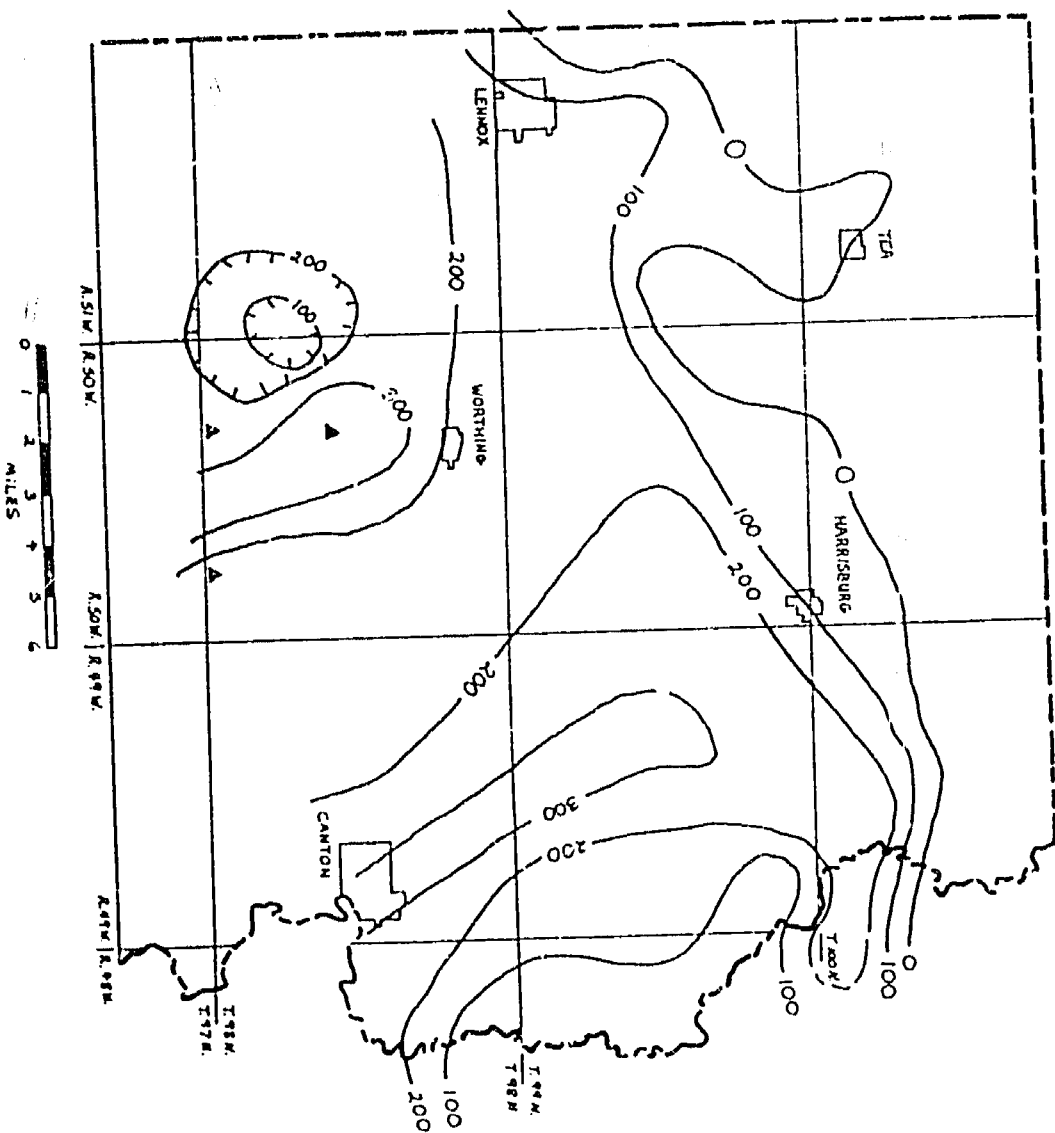
Contour Interval = 50 ft



THICKNESS of the Dakota Formation

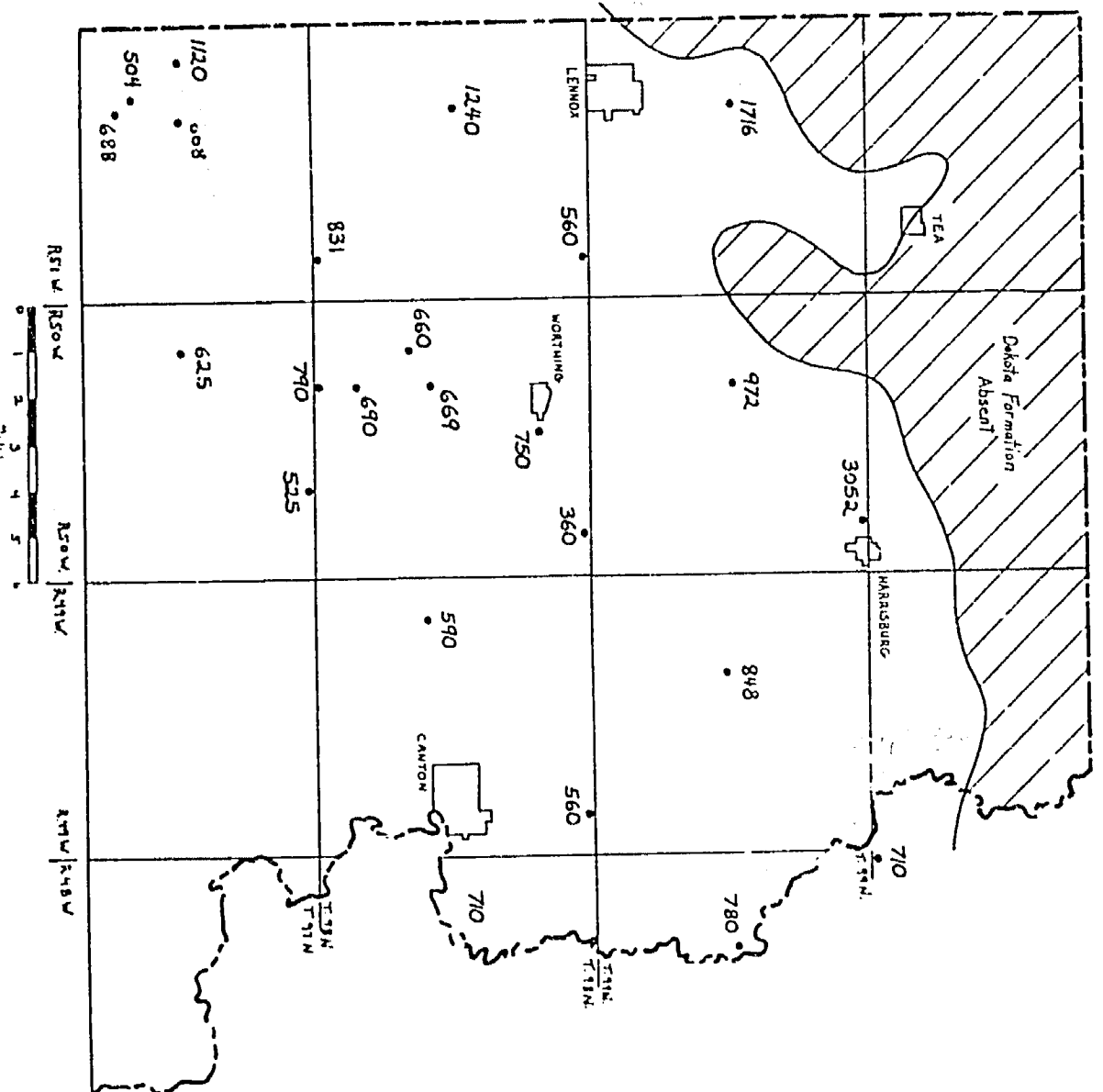
Contour Interval = 100 ft.

▲ South Lincoln Rural
Water System Production
Well.



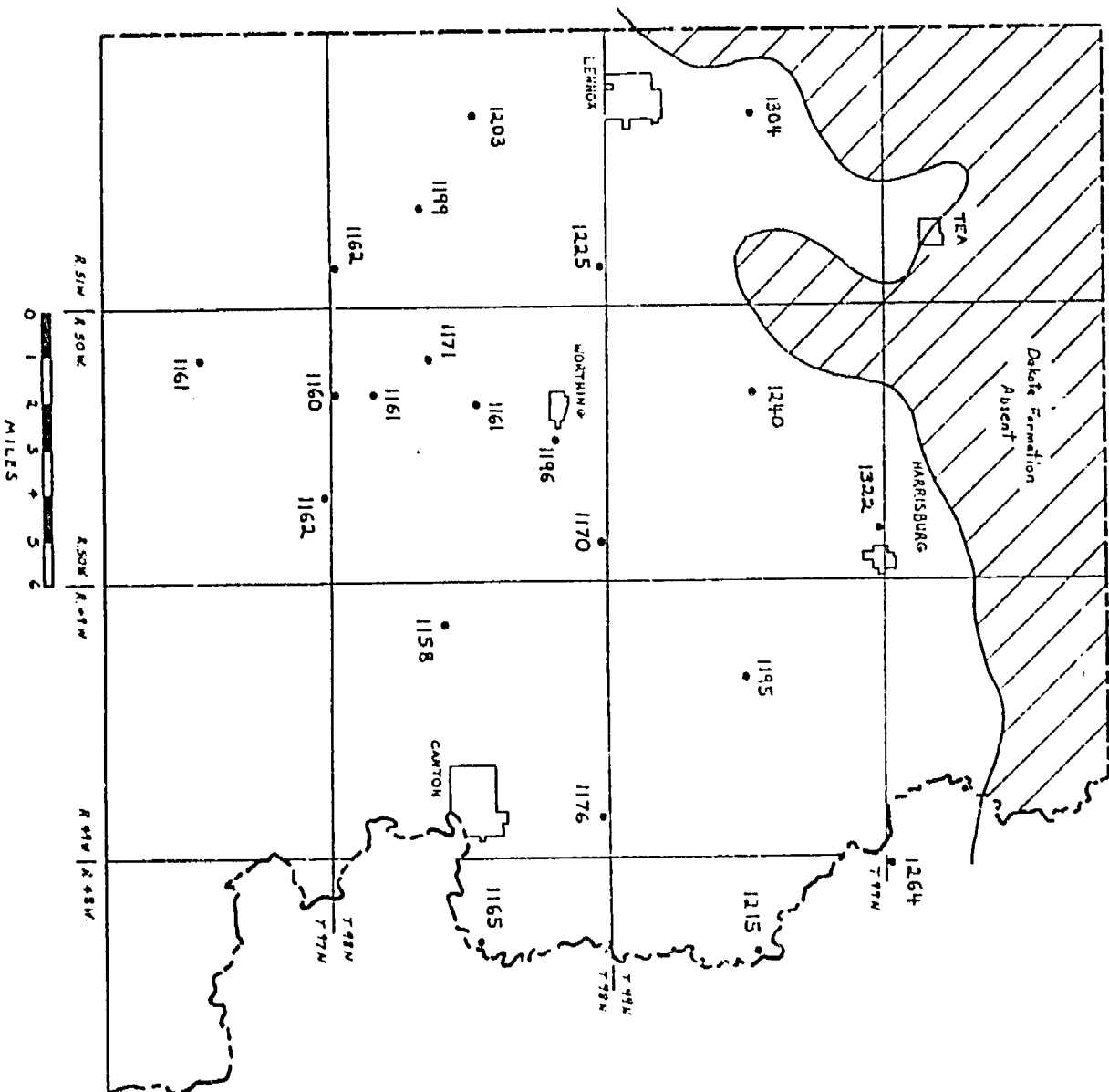
TOTAL DISSOLVED SOLIDS: Dakota Formation

848
 • Number indicates total dissolved solids in parts per million.



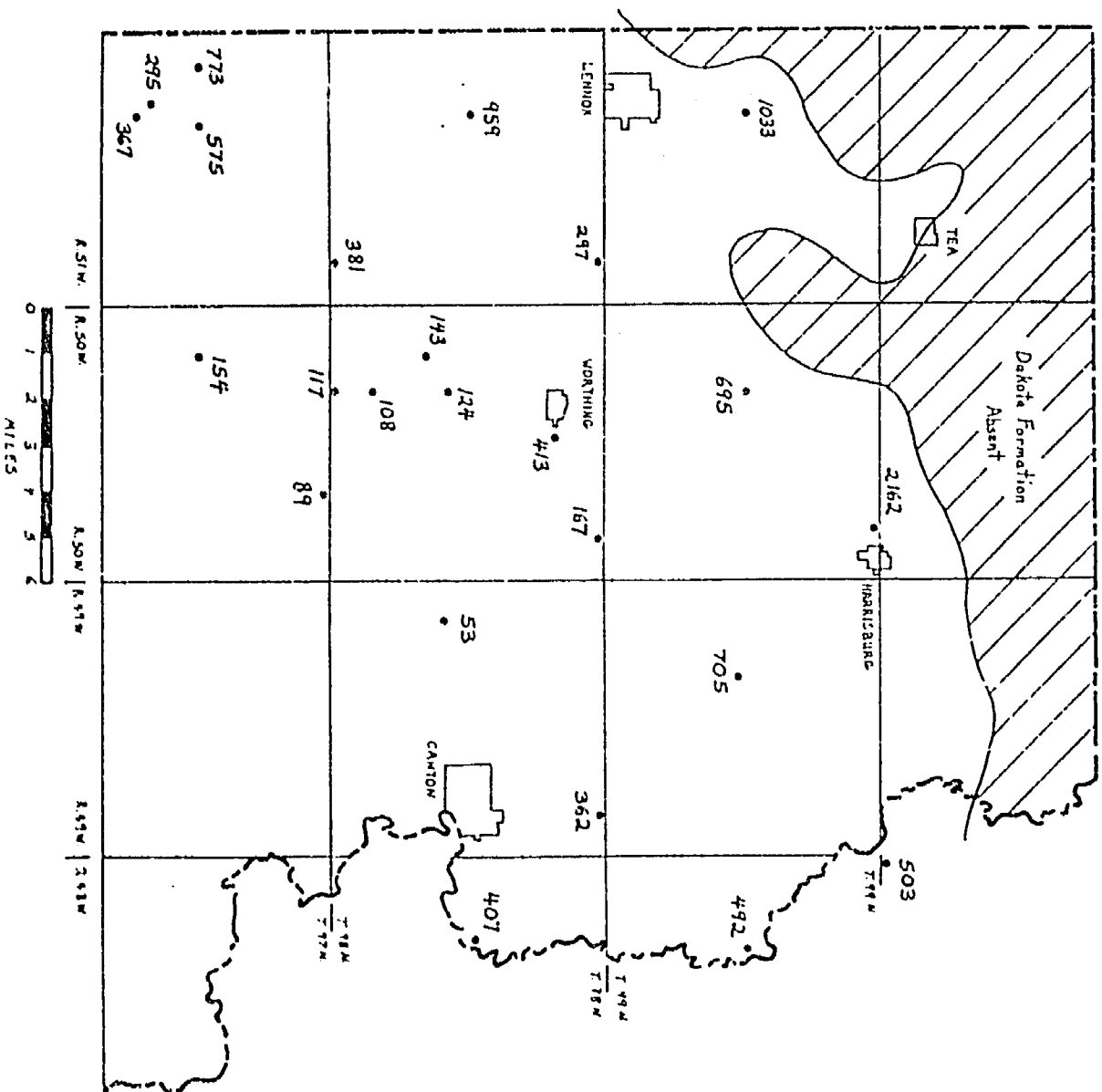
WATER LEVELS : Dakota Formation

1195
 • Number indicates elevation in feet above
 mean sea level.



HARDNESS: Dakota Formation

705
• Number indicates hardness as CaCO₃
in parts per million.



SOUTH LINCOLN RURAL WATER

COST SUMMARY OF CONSTRUCTION ALTERNATIVES

	Present Funds		State Grant		Additional FmHA & State Funds	
	1	2	3	4	5	6
<u>Facilities Provided</u>						
Davis Wells on Line	X					X
Working Wells on Line	X	X	X	X	X	X
Project Section 1	100%	100%	100%	100%	100%	100%
Project Section 2	100%	100%	100%	100%	100%	100%
Project Section 3	0%	0%	50%	100%	100%	100%
Project Section 4	88%	100%	100%	100%	100%	100%
<u>Statistical Summary</u>						
Total Project Cost	\$7,270,000	\$7,270,000	\$7,470,000	\$7,989,000#	\$8,212,000#	\$8,583,000#
Number of Users Served	818	865	922	1,010	1,100	1,100
Loan	\$5,674,000	\$5,674,000	\$5,674,000	\$6,080,000	\$6,250,000	\$6,550,000
Annual Cost Per User*	\$561.19	\$538.85	\$510.90	\$506.85	\$486.82	\$502.99
Users Aided	--	47	67	78	90	--

Assumes loan/grant funds available in the same proportions as current funds.

* Includes \$150.00 per user per year O & M expense.

4300-3

M E M O

May 20, 1981

TO: South Lincoln RWS File

FROM: John Hatch *J. Hatch*

Dave Holman, DG & R advised via telephone April 22, 1981 that the South Lincoln Rural Water System started pumping Wells No. 1 & No. 2, April 21, 1981 for flushing lines and filling ground level reservoirs.

The pump setting is 360 feet below the discharge head (about 5 feet above the ground surface). Pump design is for 300 gpm.

Mr. Holman reported a person complained of cloudy water in domestic well about 10 days before any RWS pumping.

Assad Barari reported that he had investigated a complaint of a domestic well pumping sand. Well was 2 E & 1/2 N of North RWS production well. Assad found sand in the pressure tank. Water direct from the well did not show sand. This indicated the well had been pumping a small amount of sand for some time. Assad advised the well owner that a well pumping sand 2 miles from a production well was not the result of any pumping from the production well.

June 1, 1981

M E H O

TO: South Lincoln Rural Water System File
FROM: John Hatch, Chief Engineer *John Hatch*
SUBJECT: Serving First Users by Rural Water System

John Madden, DG & R advised via telephone that 230 users have been authorized to start using water from the South Lincoln Rural Water System beginning the week of June 1, 1981. An additional 280 users will be authorized to turn on by July 1, 1981. All system pipe is to be in the ground by July 4, 1981. The remaining users will be turned on between now and late fall.

The four year period specified in the RWS Permit officially begins June 1, 1981. The system has been pumping water into reservoirs for main flushing for about one month.

JH/gy

104

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

June 19, 1981

RECEIVED
JUN 21 1981
DEPT. OF WATER & NATURAL RESOURCES

Mr. Bob Neufeld
Department of Water and Natural Resources
Joe Foss Building
Pierre, S. D. 57501

Dear Mr. Neufeld:

On May 27, 1981, at the meeting of the Water Management Board, Mr. Dan Doyle gave the members of the Board an update on the status of the pending litigation. One of the areas involved the South Lincoln Rural Water System in that Judge Miller had denied the request of the Rural Water System for a stay with regard to construction of the alternate source pending a decision on the merits and that if the three parties involved could stipulate to a stay, a bond of \$384,000 would be required. Mr. Doyle also informed the Board that the Rural Water System had made no attempt to obtain a stipulation from either FODSA or the State.

A discussion by the Board with regard to enforcement of the restriction brought forth one statement by Mr. Arend that in addition to the four months construction time, a minimum of 45 days would be required for the bidding process. The consensus of the Board was that the Rural Water System would necessarily have to be under construction of the alternate source by July 1 in order to complete construction by November 1, 1981 and be in compliance with their permit. After several possible routes of action were discussed, Mr. John Hatch suggested to the Board that he would write the Rural Water System for an indication of how much had been done toward the bidding process and ultimately having the alternate source completed by November 1, 1981 and informing the Rural Water System that the Board expected them to be under construction by July 1 or be subject to appear at the July 29-30 Board meeting for an explanation. Mr. Hatch stated the letter would be written right after the Board meeting and this received approval of the Board.

On June 11, 1981, I personally requested a copy of the letter Mr. Hatch was to have written. I was told that he did not write the letter to the Rural Water System as a result of a conversation with you. I was told you told Mr. Hatch not to write the letter until Judge Miller handed down his decision on the merits because the Rural Water System would not actually be in violation of their permit until November 2, 1981 and that the Water Management Board was not the enforcer - the staff was.

Mr. Bob Neufeld
June 19, 1981

-2-

I realize that 46-2-3.1 says the board may delegate enforcement of existing rules and laws to the chief engineer. However, 46-2-3 says the engineer and other personnel are to serve at the pleasure of the commission. This, therefore, indicates that the "staff" is to take direction from the board as well as carry out the wishes of the board. If the "staff" has full rein, there is little reason for the existence of the board. It also is inconceivable to me that the "staff" would voluntarily enforce a requirement on a permit when the requirement did not originate with them.

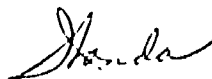
Another matter discussed with Mr. Hatch on June 11 was the fact that the Rural Water System had started serving customers on June 1 and that it appeared the Rural Water System was wasting water and that the "staff" had not made an "on-sight" inspection. When questioned, Mr. Hatch said they did not have a time schedule set up on when they would make the inspection and that the lowering of water levels in monitored observation wells would prompt him to make the inspection. However, in a letter dated April 7, 1981 to me, Mr. Hatch states as follows: "Although a final inspection of the Rural Water System will not be made until after the project is completed, we expect to make inspection visits to the production well sites to determine that flow meters have been installed, are in operation and that gpm and total withdrawals can be determined." On June 11, Mr. Hatch stated he had talked to Mr. John Madden, engineer for the Rural Water System, and that the Rural Water System Board had not authorized advertisement for bids for the alternate source. Mr. Hatch also said that John Madden had assured him that the flow meters and other appurtenances had been installed and were in operation and this, apparently, fulfilled the "inspection"

You are well aware of the fact that the permit for the South Lincoln Rural Water System has been controversial since this was first brought before the Board in October, 1977. During this time, we do not feel the Rural Water System has shown good faith by their actions and that this fact should be a signal for the "staff" to keep close scrutiny on the progress of the System by actual on-sight inspections. If it would serve no other purpose, it would be helpful in settling disputes which may arise in the future.

Also, I see nothing in the statutes that indicates your office supersedes the authority of the Water Management Board which would enable you to override a request the Board understood would be carried out.

An explanation to justify these recent decisions of the "staff" would be appreciated.

Sincerely,



Wanda Sletten, Secretary

cc: Dennis Decker
Marion Gunderson
Leland Harms
Robert Arend
Raymond Rylance
Merwyn Walter

July 9, 1981

Mrs. Wanda Slotton, Secretary
Friends of Dakota Sandstone Aquifer
Route #2, Box 82
Boronford, South Dakota 57004

Dear Mrs. Slotton:

This will acknowledge your letter concerning conversations between myself and Mr. Hatch relating to enforcement of South Lincoln Rural Water System's permit to appropriate water. I apologize for not responding sooner, but for the last few weeks I have been involved with important matters that have occupied all of my time.

You are concerned that the Water Management Board's desire for John Hatch to contact the Rural Water System was not acted upon by Mr. Hatch. As you say, no letter was written to the Rural Water System. The reasons for this would become obvious if you would make a more complete analysis of the statutes, both those you cited and some you failed to cite.

The executive reorganization of 1973 altered the statutory authority of the Water Rights Commission (formerly the Water Resources Commission and since 1979, the Water Management Board). Presently, the Water Management Board exercises the functions of its predecessors with regard to the granting of water rights, regulation of water use, and resolution of conflicts involving water rights or use within its jurisdiction (SDCL 1-40-19, 46-2-9) except that the Department of Water and Natural Resources under the direction of the Secretary now performs the administrative functions of the Board (SDCL 1-40-13). Administrative functions include the hiring and managing of personnel and the implementation of decision of the Water Management Board.

The issuance or denial of water permits constitutes licensing, hence SDCL Chapter 1-26 requires that contested case hearings be held before the Board when it considers water permit applications. Therefore, the Board, among other things, is a quasi-judicial body which can grant, deny, defer, or when a water permit or right is violated, suspend water permits on rights via the hearing process. It must be clear to you that to assure the protection of due process rights of all parties involved in a contested case hearing or potential hearing, the Board

Mrs. Wanda Slotten
Page 2
July 9, 1981

cannot simultaneously be responsible for enforcing orders regarding water permits on rights and also exercise quasi-judicial powers to determine at a formal hearing whether or not a water permit or right has been violated. It cannot sit as both prosecutor and judge. In order to maintain the impartiality of the Board in its quasi-judicial functions, the enforcement authority rests with the Department of Water and Natural Resources.

At the Water Management Board meeting in May, Mr. Doyle, as the Board's attorney in the litigation pending in circuit court, requested an interpretation from the Board of a condition placed by the Board on the Rural Water System's water permit. This was not intended to be an adversary proceeding in which parties of Friends of Dakota Sandstone Aquifer or South Lincoln Rural Water System were to be involved. Nor was any formal action anticipated from the Board and, in fact, the Board took no formal action. The Board was merely acting in an advisory capacity in clarifying its intent regarding recent amendments to Water Permit No. 4500-B. The tone of your letter indicates that you doubt the staff's ability and willingness to undertake its enforcement responsibilities with regard to South Lincoln Rural Water System's permit. If that is your attitude, you are seriously mistaken. The staff has been diligent in monitoring the system's construction situation. Mr. Hatch has been in contact with John Madden and has learned that the contracts have been let for construction of the Davis Line and work is to begin shortly (the week of July 20). Barring unforeseen problems, the line should be operational by November 1, 1981, as required in the permit. Since the necessity of the Davis Line was in question pending the outcome of the circuit court determination, it was not unreasonable for Mr. Hatch not to have any pressure on the System to let the contracts. Nor was it unreasonable for the System itself to await the outcome of the decision.

As for inspections of South Lincoln's system, we have been in contact with Mr. Madden and have been advised that meters have been installed and records are being kept. The system has monitoring capability to record when the pumps are operated, for how long, and the number of gallons pumped. Since part of Mr. Madden's responsibility to his firm's client, the Rural Water System, is to be certain that authorized construction includes those features necessary to meet the conditions of the system's permit, we saw no need to make an immediate inspection. When an inspection is made, if the monitoring capability is not as Mr. Madden has stated, we will consider the Rural Water System to be in violation of its permit and Mr. Madden will obviously be in trouble with his client. In addition to the above described awareness of the situation, we have a regular schedule of monitoring observation water levels as any drawdowns are of immediate interest to us at this time.

I hope this letter will satisfy your concerns with regard to this matter. As is evident, the Department is fully capable of performing its duties with regard to enforcement of water rights in the state.

Mrs. Wanda Sletton
Page 3
July 9, 1981

The real problem is that you apparently believe these duties extend a good deal further than they actually do. We hope in the future you will be more cautious before you jump to conclusions, both legal and otherwise, about the operations of Mr. Hatch and his staff. If you have any further questions or problems, please contact us.

Sincerely,

Warren R. Neufeld, Secretary
Department of Water and Natural Resources
Phone: (605) 7773-5151

cc: Dennis Decker
Marion Gunderson
Leland Harris
Robert Arend
Raymond Rytance
Herwin Walter

1672405JH

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

July 15, 1981

7/21/81 2275
C. W. W.
RECEIVED

JUL 17 1981

**DEPT. OF WATER &
NATURAL RESOURCES**

Mr. Warren R. Neufeld, Secretary
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear Mr. Neufeld:

Re: South Lincoln Rural Water System
Water Permit #4300-3

Thank you for your letter of July 9. It was unnecessary for you to apologize for the delay in your response, as I realize the extent of the difficult matters handled by your office.

My letter was apparently one of those difficult matters. Although your reply was lengthy, it failed to satisfy my concerns nor did it justify the actions taken by your office and the staff regarding the enforcement of one of the restrictions attached to the above permit.

You state in your letter that the Water Management Board has the functions of granting water rights, regulation of water use and resolution of conflicts within its jurisdiction (SDCL 1-40-19, 46-2-9). You also state your office now performs the administrative functions of the Board (SDCL 1-40-13). You also stated the Board "cannot simultaneously be responsible for enforcing orders regarding water permits on rights and also exercise quasi-judicial powers to determine at a formal hearing whether or not a water permit or right has been violated".

I might direct your attention to other sections of the Code. SDCL 1-32-1(10) reads, "'Quasi-judicial function' means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes the functions of interpreting, applying, and enforcing existing rules and laws; ... ordering action or abatement of action; ...". SDCL 1-32-1(12) states, "'Administrative function' means any management function to include planning, developing, and implementing programs; organizing the internal structure of a department or agency; selecting, appointing, promoting, removing, and managing personnel; directing, administering, reviewing, and co-ordinating activities and programs assigned to a department, agency or organizational subunit; reporting; and budgeting and expending funds, including, unless excepted, special budgetary functions". I see the term "enforcing" quite plainly in the description covering the function of the Water Management Board. I fail to see the term "enforcing" anywhere under "Administrative function".

There seems to be a disagreement on the functions of the Water Management Board and perhaps even the Board would be interested in an official opinion from the Attorney General's office.

Mr. Warren R. Neufeld
July 15, 1981

-2-

Although SDCL 1-26 requires that contested case hearings be held before the Board, the matter of the enforcement of the restriction was not a contested matter. The decision had been made (on more than one occasion, I might add) and the Board was asked what their wishes were since a stay had not been granted by Judge Miller. A rather healthy discussion followed to which I was a witness, and I might add, you were not. The minutes of the meeting would reflect this and if they do not, they should and if they do not, I would like to know why. The members of the Board were justifiably concerned that the staff stay on top of matters to make sure construction of the Davis source commenced by July 1 in order to insure completion by November 1, 1981. I am sure the Board did not feel they need make an official motion and have it carried in order to be assured that their wishes would be carried out. They may consider that action necessary in the future.

You also stated you had been in contact with Mr. Madden, engineer for South Lincoln Rural Water System and that he had assured you that the System had met its responsibilities and that construction of the Davis line was to begin on or about July 20. I would like to point out that it isn't the "Davis line" that is to be under construction. It is the "Davis source", fully operational, and this includes pumps, motors, power, connections to the main control building, controls, pipe-line and all other apparatus so that a push of a button on a moment's notice would activate the alternate source - on November 1, 1981 if necessary. Also, at the time I spoke to Mr. Hatch, he did not know that construction was to be started about July 20. At that time, he wasn't sure if it would start at all. Over and above that, it remains to be seen if construction does progress and if all of the above mentioned particulars of that project are complete and on time. It is apparently the intent of the staff, at this point, to do little more than take the word of the Rural Water System and after November 1, make a lengthy investigation if completion was not accomplished.

Sincerely,



Wanda Sletten, Secretary

cc: Dennis Decker
Marion Gunderson
Leland Harms
Robert Arend
Raymond Rylance
Merwin Walter

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

July 31, 1981



Mr. Warren R. Neufeld, Secretary
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear Mr. Neufeld:

I would appreciate a reply to my letter to you of July 15, 1981.

I am also requesting minutes of the Water Management Board meeting on July 29-30, 1981 held in Pierre, including the official action taken by the Board following their executive session as provided under SDCL 1-25-2.

Sincerely,

Wanda Sletten
Secretary

August 3, 1981

Wanda Stetten, Secretary
Friends of Dakota Sandstone Aquifer
Route 2, Box 102
Petersford, South Dakota 57004

Re: South Lincoln Rural Water System Permit No. 4300-3 & 4300-3A

Dear Mrs. Stetten:

Responding to your letter of July 15, 1981, our interpretation of the statutes is based upon several discussions with Assistant Attorneys General and our own experience with the Administrative Procedures Statutes and Water Law Administration. My position on this matter has not changed. I am satisfied that the conditions of Permits No. 4300-3 and 4300-3A are being met at this time. We have been and expect to continue to monitor compliance with the conditions of the South Lincoln Permits.

Until it appears that conditions of the South Lincoln Rural Water System Permits may be violated, I see no need to utilize limited Department personnel resources to do more than has been done nor do I believe additional discussion is necessary. It is the Rural Water System's responsibility to meet Permit conditions. This includes the details of meeting the requirement that the Davis area well field be developed and fully operational by November 1, 1981.

You have done an excellent job of quoting the statutes out of context. My position remains that any attempt by the Board to require a deadline for the initiation of construction amounts to an amendment to the South Lincoln permit. Such an amendment cannot be made *ex parte* and can only be made in the context of a contested case hearing. Until this is done, I will exercise my discretion as best I can in seeking enforcement of the terms of the present permit which, I might add, have been consistently obeyed by the South Lincoln System.

Sincerely,

Herren R. Haufold, Secretary
Department of Water and Natural Resources

cc: Water Management Board

a74501gy

**SOUTH Dakota Department of
Water & Natural Resources**
Joe Foss Building Water Rights Division (605) 773-1152
Pierre, South Dakota 57501

August 7, 1981

Wanda Sletten
KR #2, Box 82
Beresford, SD 57004

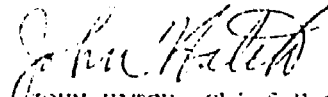
Mrs. Sletten:

This will acknowledge your letter to Mr. Neufeld. By the time you receive this letter, you should have received Mr. Neufeld's response to your letter dated July 15, 1981.

The minutes for the July 29-30, 1981 Water Management Board meeting will not be available until after the Board reviews and approves the minutes at the next meeting, October 7 & 8, 1981. The executive session was conducted to allow the Department and Board to consult with their legal advisors (Assistant Attorney Generals).

We have been advised that the provisions of 1-25-2 were not intended by the Legislature to prohibit executive sessions for legal purposes. By common law practice there has always been an implied attorney-client privilege and executive sessions can be held to exercise the attorney-client privilege. The Board meeting was adjourned prior to the executive session, no formal action was taken following the executive session and what was discussed during the session is not available to the public.

Very truly yours,


JOHN HATCH, Chief Engineer
Water Rights Division

JH/gy

bcc: Water Management Board
Dan Doyle

Equal Opportunity Employer

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

August 19, 1981



Mr. John Hatch
Water Rights Division
Department of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear John:

We understand you recently stopped at Worthing for the purpose of checking to see if Worthing had meters on their pumps. Presumably, your trip to this area also included some inspection of the South Lincoln Rural Water System.

It would be appreciated if you could advise us of how extensive your inspection was, what you found in your inspection, the conclusions you reached and also, if you plan a further inspection at a scheduled time.

We would also request being present at the time future inspections are made.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Wanda Sletten'.

Wanda Sletten, Secretary

Water Rights Division
605 773-3352

August 21, 1981

Wanda Sletten, Secretary
Friends of Dakota Sandstone Aquifer
Rt 2, Box 82
Beresford SD 57004

Mrs. Sletten:

Responding to your letter of August 19, 1981, I was in the Lincoln County area the first week of August. The South Lincoln Rural Water System has water meters installed and records of water pumped are being maintained. The System is in compliance with the conditions of its permit. The Town of Worthing is in the process of purchasing and installing metering equipment. They should then be in compliance with the Town's Permit.

The Davis well field pipeline has been installed, filled with water and pressure tested. The System expects to meet the November 1, 1981 deadline for having the Davis well field fully operational.

Regarding your request to be present at the time of future inspections, you will need to receive permission from the Rural Water System to enter their property.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

CH:kv

FRIENDS OF DAKOTA SANDSTONE AQUIFER
P.O. Box 82
Beresford, South Dakota 57004

September 10, 1981



Mr. John Hatch
Water Rights Division
Department of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear John:

At the meeting of the Water Management Board on November 20, 1980, you stated, and the minutes reflect, that the staff proposed to meet with the South Lincoln Rural Water System and Friends of Dakota Sandstone Aquifer for the purpose of designating observation wells to be used for monitoring the head pressure changes during the four year period; this period to start when the system started delivering water to their first customer. I believe you also stated this meeting was also contingent upon the South System making a final determination on their third well site.

It is our belief that, in discussions by the Water Management Board at the September 25-26, 1980 and November 19-20 hearings, it was the intent of the Board that the third well would be capable of being pumped at a rate comparable to each of the two present production wells. As you know, the third well site, approved by the Board on November 20, 1980, averaged 50 gallons per minute during the 49 hour pump test in March of this year. You are also aware of the fact that the pump test was concluded at that point due to the 104.75' of drawdown in the pumped well. To date, no construction has been commenced by the South Lincoln System to connect this third well to their system and we are not aware of any attempt by the system to seek another site for a third well. We also believe it was recommended that the system have three wells to even out the drawdown affect and, by the system's own testimony on September 25, 1980, to give them a spare well (page 23); to give them more flexibility in the event of adversity (page 24) and to spread out the pumping requirements between three wells instead of two (page 24).

The system is now restricted to 304 acre feet and can only revert to the 455 acre feet originally allowed, when the third well is put into production. At the present time, the system may feel they have no problem living with this restriction due to the number of subscribers they are serving, even though when one well needs repair, as has been the case, they only have one spare well. As soon as present construction is completed and they are serving the number of subscribers the system is designed to serve, they very well may need the additional 151 acre feet to meet their needs. We do not feel it was the intent of the Board that the system could put into production, a well having the

Mr. John Hatch
September 10, 1981

-2-

capability of their present third site, in order to obtain the additional 151 acre feet.

We also feel that the intent of the Board, on September 25, 1980 and reaffirmed on January 29, 1981, was that the Davis or alternate source be such that, if needed, by November 1, 1981, that a flip of a switch would activate the source. According to the FmHA file recently reviewed, this will not be the case.

Due to all of the above circumstances, as well as the trend we see developing in the water levels in the area, we are requesting that you set up the meeting to establish the observation wells to be monitored from existing observation wells and/or additional observation wells. We feel that if the system is required to have the Davis source fully operational by November 1, 1981, that the State also be required to have the monitored observation wells designated by November 1, 1981.

Please advise.

Sincerely,



Wanda Sletten, Secretary

cc: Robert Arend



Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
(605) 773-3352

September 17, 1981

Wanda Sletten, Secretary
Friends of Dakota Sandstone Aquifer
RR #2, Box 82
Beresford, SD 57004

Mrs. Sletten:

RE: 4300-3

This will acknowledge your letter of September 10, 1981. South Lincoln Rural Water System representatives have also asked the same question about designating observation wells to be used for monitoring head pressure changes during the four year period. There is not much value in attempting to designate wells until we see an actual pumping cone of depression develop. This may or may not occur prior to November 1, 1981. At this time, we are monitoring area observation wells to determine effects of pumping. When we have sufficient information to designate the monitoring wells, we then expect to meet with both the System and your group to do so.

Regarding the Rural Water System wells, the original intended plan of the System was to construct three wells of equal capacity. The permit was issued for 2.0 cfs from a maximum of 3 wells and a maximum of 0.8 cfs from each well. The Board never established minimum well capacities. Because of qualification No. 4 (20 foot decline), it is to the Rural Water Systems advantage to regulate their pumping, if necessary, and to use three wells. If only 2 wells are connected with 304 acre feet annual withdrawal or if the third smaller capacity well is connected with a total annual 455 acre feet authorized, this is the System's problem. The 20 foot decline requirement still applies.

Regarding the Davis supply, I do not know what is in the FMHA file. However, if necessary after November 1, the System will be able to pump water from the Davis well field to the main pumphouse reservoir for delivery to the System's distribution system. The mechanics of doing so are again the System's problem and responsibility.

The Water Management Board (former Water Rights Commission) had two primary concerns when considering the South Lincoln applications.

- 1) that reasonable protection of water supply was provided to domestic well owners and prior appropriated rights, and
- 2) that service to the System customers would not be disrupted due to supply problems.

The conditions of the permit are intended to meet the above concerns, the System is in compliance with permit conditions and I am satisfied the November 1, 1981 Davis Supply condition will be met.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH/gy

Equal Opportunity Employer

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

Oct. 16, 1981



Mr. John Hatch
Water Rights Division
Department of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear John:

Re: 4300-3

This acknowledges receipt of your letter of September 17, 1981. There leaves little question that we have a difference of opinion on what the Water Management Board intended regarding certain restrictions placed on the above permit.

Therefore, we are requesting to be placed on the agenda for the December Water Management Board meeting in Sioux Falls for the purpose of asking the Water Management Board for specific clarification on several of the restrictions.

So that no question arises in the future, I am sending a copy of this letter to Mr. Eugene Irons, Attorney for the South Lincoln Rural Water System and I am requesting that you notify them of the time of the hearing as provided by law, at the same time we are notified.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wanda Sletten".

Wanda Sletten, Secretary

cc: Robert Arend
Eugene Irons
Dennis McFarland

**Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 772-3352

October 21, 1981

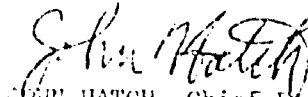
Wanda Sletten, Secretary
Friends of the Dakota Sandstone Aquifer
Rt 2, Box 82
Beresford SD 57004

Dear Mrs. Sletten:

RE: 4300-1

This will acknowledge your request for time at the December Water Management Board Meeting for the purpose of a hearing to request the Board for clarification of the South Lincoln Rural Water System permit qualifications. Prior to placing clarification of the Permit qualifications on the Agenda, a list of specific questions or allegations you want considered must be provided. Your questions or allegations will be included in the notice.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

cc: Eugene From
Dennis McFarland

Equal Opportunity Employer

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

October 26, 1981



Mr. John Hatch
Water Rights Division
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear John:

Receipt of your letter of October 21, 1981 is acknowledged.

My letter to you of October 16 indicated we wished specific clarification on several of the restrictions. Since a discussion on one restriction could ultimately necessitate a discussion of other restrictions, perhaps all of the restrictions will be discussed.

As to a list of specific questions or allegations, as I have already outlined, we want clarification by the members of the Water Management Board on these restrictions since you and I have a difference of opinion on the intent of the Board on some of the restrictions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wanda Sletten".

Wanda Sletten, Secretary

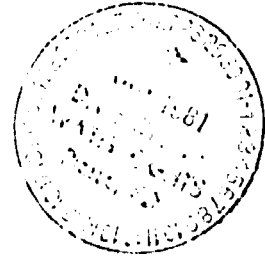
STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
Pierre, South Dakota 57501
Phone (605) 773-3215

MARK V. MEIERHENRY
ATTORNEY GENERAL



October 28, 1981

Ms. Wanda Sletten, Secretary
Friends of Dakota Sandstone Aquifer
Route #2, Box 2
Beresford, South Dakota 57004

Dear Ms. Sletten:

I am writing this letter in response to your correspondence of October 26, 1981 in which you indicate an unwillingness to specify those conditions in Water Permit #4300-3 that, in your opinion, need to be clarified. There are two reasons for John's request in his letter of October 21, 1981 for a more detailed statement of your concerns.

The first reason is so that we may afford adequate notice to all parties interested in your questions. If no further details are forthcoming from you, only you would know what issues would be raised at a hearing scheduled upon your request. The Board, the staff, and South Lincoln Rural Water System would be ill-prepared to participate in the hearing absent a more specific statement from you. This lack of proper notice would be as inappropriate in a Board hearing as it would be within the State's judicial system where due notice must be provided to all parties to a hearing of the substance of that hearing.

The second reason for John's request is to allow proper time budgeting at the hearing. As you must know from your participation in, and observation of Board hearings, it is extremely difficult to prepare an agenda and stick even marginally close to it. An open-ended discussion of the permit conditions as you have requested does not give any guidance to the Board in setting an agenda for the meeting. This is not in the interest of the Board, the parties involved, or persons present for other scheduled items.

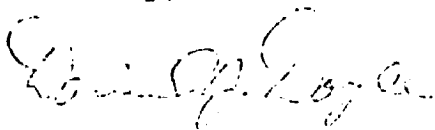
Ms. Wanda Sletten, Secretary

Page 2

October 28, 1981

For these reasons, I will repeat John's position of requesting from you a more detailed statement of those conditions you feel need to be clarified and in what manner those conditions are ambiguous. If we receive the statement from you at least two weeks prior to the Board hearing, the matter will be placed on the agenda and the discussion will be expected to be limited to the issues enumerated in the statement.

Sincerely,



Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room B-102, Anderson Building
Pierre, South Dakota 57501
Telephone: (605) 773-4075

DJD:ln

cc: Mr. John Hatch, Chief Engineer
Division of Water Rights

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

November 3, 1981



Mr. John Hatch
Water Rights Division
Department of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

Dear John:

Re: South Lincoln Rural Water System
Permits #4300-3 & 4300-3A

As previously stated, it appears that a difference of opinion exists on the intent of the Water Management Board on the qualifications attached to the above permits. Therefore, we are again requesting to be placed on the agenda for the December meeting of the Water Management Board in Sioux Falls for the purpose of having the members of the Board clarify the qualifications and as follows:

Qualification #1 of Final Decision dated February 3, 1979:

The South Lincoln County Rural Water System, Application No. 4300-3, is approved for 2.0 cfs (898 gpm) from 3 - 650 foot deep Dakota Formation wells, with the annual withdrawal limited to 455 acre feet and that the total withdrawal is subject to review and adjustment by the Water Rights Commission.

Since this qualification has been amended, we wish clarification by the Water Management Board on this qualification, as amended, as it relates to previous amendments, actual existing conditions, future conditions and to qualifications 2, 4, 5, 6 and 7.

Qualification #2 of Final Decision dated February 3, 1979:

Before any water is used, all proposed wells must be installed at least 2½ miles apart, with all three wells ready for pumping prior to any use of water.

Since relief from this qualification has already been granted, we wish clarification by the Water Management Board on this qualification, as amended, as it relates to previous amendments, actual existing conditions, future conditions and to qualifications 1, 4, 5, 6 and 7.

Qualification #3 of Final Decision dated February 3, 1979:

The system install one observation well into the upper layer of the Dakota Formation about 200 feet from each production well to be used for monitoring drawdown near the production well.

Since relief from this qualification has already been granted, this may or may not have to be discussed.

Mr. John Hatch
November 3, 1981

-2-

Qualification #4 of Final Decision dated February 3, 1979:

The rural water system wells approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights. Withdrawals will be restricted, if the aquifer head pressure declines 20 feet at designated measuring points during a four year period, beginning with the date the first water is pumped into distribution system. The head pressure decline is to be determined by using an average of three of the seven proposed observation wells located at least 2 miles from one or more production wells. The lowest measurements, to be based upon an average of each observation well measurements taken over a three month period, will be used in determining head pressure decline.

While it appears the South Lincoln Rural Water System is in compliance with this restriction, the observation wells have not been designated and the four year period has started. Clarification of this qualification by the Water Management Board is necessary as it relates to previous amendments, actual existing conditions, future conditions and to qualifications 1, 2, 5, 6 and 7.

Qualification #5 of Final Decision dated February 3, 1979:

If the aquifer head pressure does decline more than 20 feet in the four year period, or if observation well measurement data indicates the 20 foot head pressure decline level would be reached in the four year period, the rural water system upon order of the Commission will have to change to a new source of water.

Since the four year period apparently started June 1, 1981, this qualification needs to be clarified by the Water Management Board as it relates to previous amendments, actual existing conditions, future conditions and to qualifications 1, 2, 4, 6 and 7.

Qualification #6 of Final Decision dated February 3, 1979:

No wells shall be located within 1,300 feet of existing Dakota Formation wells unless waived by the well owner.

It appears that the South Lincoln Rural Water System is in compliance with this qualification. However, we would like the option left open for discussion of this qualification as it relates to other discussions.

Qualification #7 of Final Decision dated February 3, 1979:

The Davis area well field shall be developed and placed on line prior to pumping from any Dakota Formation wells.

This qualification was amended by the Board with Findings and Conclusions adopted November 19, 1980 and now reads as follows:

Mr. John Hatch
November 3, 1981

-3-

The Davis area well field shall be developed and therein be fully operational by November 1, 1981.

This qualification needs to be clarified by the Water Management Board as it relates to the amendment thereof, previous amendments, actual existing conditions, future conditions and to qualifications 1, 2, 4, 5 and 6.

Among other things, reference was made by Dan Doyle in his letter to me dated October 28, 1981 and during our telephone conversation of November 2, 1981 regarding time budgeting. To alleviate this problem, we are requesting that our request for a place on the agenda be scheduled for 10 A.M. on December 3, 1981. This would eliminate infringement on other persons attending this December meeting.

I trust the above meets your stringent requirements and that we will be notified as to our placement on the agenda.

Sincerely,



Wanda Sletten
Secretary

cc: Daniel J. Doyle



**Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

November 4, 1981

Wanda Sletten, Secretary
Friends of the Dakota Sandstone Aquifer
Rt 2, Box 82
Beresford SD 57004

Dear Mrs. Sletten:

RE: 4300-3 & 4300-3A

This will acknowledge your letter dated November 3, 1981 and your request for time on the December Water Management Board Agenda for the purpose of having the members of the Board clarify the South Lincoln Rural Water System Permits No. 4300-3 & 4300-3A qualifications. Your letter still does not contain any actual substance or allegation as to how the Rural Water System is not in compliance with its permits or how the conditions are ambiguous. You only state that there is a difference of opinion between yourself and Water Rights staff on the intent of the qualifications to the above permits and you are requesting the Board to clarify the qualifications.

The staff position is that the System has been and continues to be in compliance with their permits. I am providing a copy of your letter and previous correspondence to the Board. If they believe that Permits No. 4300-3 & 4300-3A should be opened up for reconsideration which is what your request without specifics amount to, then they can direct that your request be noticed for hearing.

I have had Dan Doyle review your letter and he concurs with my decision. He has suggested that you have your Attorney, Mr. McFarland contact him regarding this matter.

We do not believe the Board can reopen every controversial permit for a general discussion and "Fishing Expedition" by the opposition without actual specifics or allegations. Frankly, we do not believe your letter gives notice to anyone as to what the concerns of FODSA actually are.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

cc: Water Management Board

bcc: Bob Timm

Equal Opportunity Employer

NOV 09 1981

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

November 6, 1981

Mr. Daniel J. Doyle
Assistant Attorney General
Natural Resources Section
Room E-102, Anderson Bldg.
Pierre, South Dakota 57501

Dear Mr. Doyle:

Following up on your conversation of this date with Dennis McFarland, we would like to be placed on the agenda for the December meeting of the Water Management Board in Sioux Falls to discuss three items:

1. The establishment of observation wells pursuant to qualification #4 of Final Decision dated February 3, 1979.
2. Whether the Board will allow SLRWS to extract 455 acre feet of water from two points of diversion that each have the capability of 350 gpm and a third point of diversion that has the capability of approximately 50 gpm.
3. Whether or not the development of the Davis source complies with the requirements that it be fully operational, in that it only has a portable generator, etc.

It is difficult to be more specific regarding item #3, because there is apparently some lack of information about its development and also a lack of interest in finding out anything about it, at least according to Mr. Hatch's letter of September 17, wherein he states that it is the system's problem.

Mr. McFarland indicated, with the above information, you would place us on the agenda. If that is not the case, please advise.

We would appreciate the following information:

1. Pumping records of SLRWS from both sources of water (Dakota - Davis).
2. Does the System have a portable generator they intend to use? If so, please advise the following:

Mr. Daniel J. Doyle
November 6, 1981

-2-

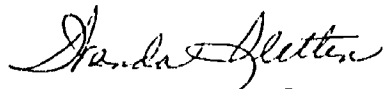
- a. Manufacturer
- b. Model number
- c. Is it continuous duty?
- d. Type of fuel to be used.

3. Information on the pump at the Davis site:

- a. Manufacturer
- b. Pumping capacity
- c. Pump curve

Also, Mr. McFarland asked if it would be possible to be placed on the agenda on Thursday, December 3. Please advise.

Sincerely,



Wanda Sletten, Secretary

cc: John Hatch
Dennis McFarland

South Dakota Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

November 17, 1981

Wanda Sletten, Secretary
Friends of Dakota Sandstone Aquifer
Rt 2, Box 82
Beresford SD 57004

RE: 4300-3 & 4300-3A

Dear Mrs. Sletten

Enclosed is a copy of the hearing notice placing clarification of three South Lincoln County Rural Water System Qualifications on the December, 1981 Water Management Board Meeting Agenda. The time is the same as the Rural Water System's future use application hearing.

The pumping records for the Dakota wells are as follows:

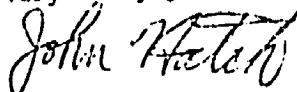
	gallons	acre feet
4-21-81 to 5-31-81	2,996,440	9.20
June	4,607,790	14.14
July	4,949,330	15.19
August	5,400,000	16.57
September	7,700,000	23.63
October	7,284,290	22.36
		101.09

Other than test pumping of the Davis well field to determine compliance with the November 1, 1981 deadline, additional pumping has not occurred.

Enclosed is the pump curve you have requested. The following is the information on the portable generator:

Generator Manufacturer	Kohler
Generator Model	4T7.5
Phase	3
Ampere	226
Voltage	277/480
Continuous Standby KW/KVA	150/187.5
Fuel	#2 Diesel
Engine Model	150R0Z71
Engine Manufacturer	John Deere Model 6466A
Rated RPM	1800
Maximum Horsepower/KW at Rated RPM	240/179

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

Encs
enclosure

SECTION 6000
CURVE NO. 33-040

6/1/60
Supersedes 0/1/77

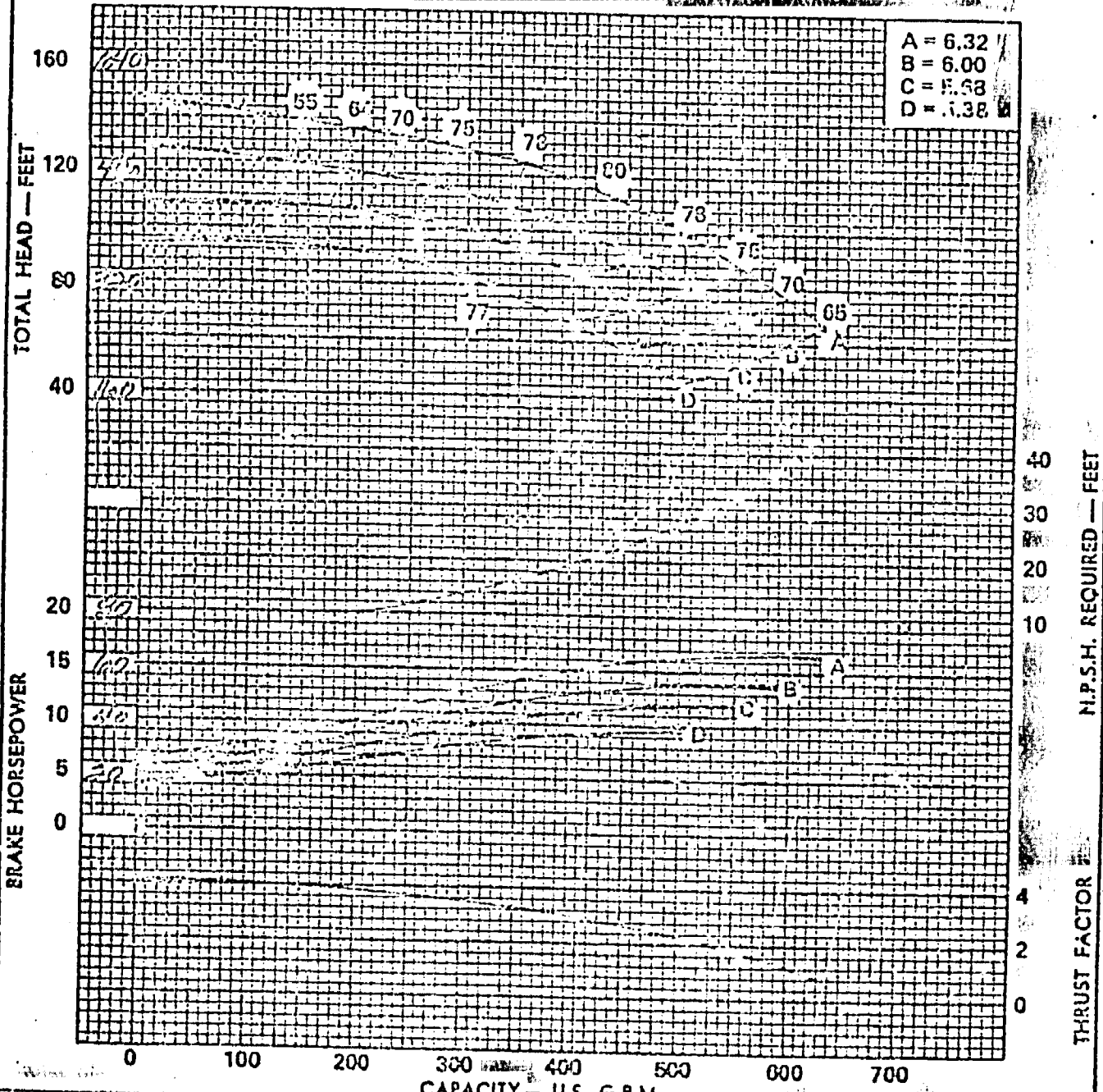
LAYNE & BOWLER, INC.
MEMPHIS, TENN.



BOWL 8PRHC
STAGES 4
RPM 3500

ONE (4)
STAGE STAGES

A = 6.32
B = 6.00
C = 5.68
D = 5.38



N.P.S.H. REQUIRED — FEET

THRUST FACTOR

CUSTOMER: _____		CUSTOMER NO: _____	LIQUID: <u>WATER</u>
JOB NAME: <u>S. L. LINDA H. P. W. ASSN</u>		REF JOB NO: _____	GPM: <u>400</u>
LOCATION: <u>CENTON, S. D. K.</u>		REF QUOTE NO: _____	TDH: <u>360</u>
APPLICATION: <u>DAMS D. E. A. W. E. L.</u>		SALES ORDER NO: _____	EFF: <u>78.5-70</u>
CONSULTING ENGR: <u>D. G. R. P. A. S. S. E.</u>		PUMP SERIAL NO: <u>70-1111E</u>	BHP: <u>40.5</u>
FOR APPROVAL: _____			SP. GR.: _____

South Dakota
**Department of
Water & Natural Resources**

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

November 17, 1981

NOTICE

TO: South Lincoln County Rural Water System, Canton, South Dakota
FROM: John Hatch, Chief Engineer, Water Rights Division *John Hatch*
SUBJECT: Notice of Friends of Dakota Sandstone Aquifer Request for Hearing to Clarify Three Qualifications of Permits No. 4300-3 and 4300-3A

The Water Management Board will consider the Friends of Dakota Sandstone Aquifer request to clarify three qualifications as listed in the attached letter of Permits No. 4300-3 and 4300-3A at 9:00 am, December 3, 1981 at the Howard Johnson Hotel, 3300 W Russell, Sioux Falls, South Dakota. A copy of the existing qualifications is also attached.

This hearing will be conducted in accordance with the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-14, 46-2-3.1, 46-2-9 thru 46-2-11, 46-2-13, 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-41, 46-6-3, 46-6-3.1, 46-6-5, 46-6-6.1, 46-6-10, 46-6-14, and Board Rules ARSD 52:01:01:01 thru 52:01:01:13.

After consideration of the request for clarification, the Board can clarify any of the three qualifications or take no action.

This hearing is an adversary proceeding. Any person 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 at the hearing. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any handicapped person wishing to attend this hearing can contact the Water Rights Division, DWNR, Joe Foss Building, Pierre SD, prior to the hearing date for assistance to assure access to the hearing.

FRIENDS OF DAKOTA SANDSTONE AQUIFER
Rt. 2 Box 82
Beresford, South Dakota 57004

December 10, 1981



Mr. John Hatch
Department of Water and Natural Resources
Water Rights Division
Joe Foss Building
Pierre, South Dakota 57501

Dear John:

As a result of the Water Management Board hearing on December 3, 1981, we are to request information from you, which, in turn, you will obtain from the South Lincoln Rural Water System and transmit to us. Therefore, we are requesting the following information:

1. The weekly total of gallons pumped from each of the two existing Rural Water System's Dakota production wells for each week since pumping commenced up to and including December 31, 1981, plus rate of pumping.

2. Readings taken by the State of the following observation wells for the 1981 year:

LN 77A	LN 77B	LN 77C
LN 77D	LN 77E	LN 77F
LN 79A	LN 79B	LN 79C
LN 79D	LN 79E	LN 79F
LN 79G	LN 80E	LN 80F
LN 80H	LN 80I	LN 80J
LN 80K	LN 80L	LN 80M
LN 80R	LN 80S	

3. Location and construction data on observation wells labeled LN 80N to LN 80R or the reason for the gap in the designation if there are no observation wells for LN 80N to LN 80R.
4. Pumping amounts as requested above, together with location, construction data and pumping amounts from any additional Rural Water System Dakota production wells, after December 31, 1981; these readings to be submitted to us quarterly.
5. Observation well readings of the above listed sites after December 31, 1981; these readings also to be transmitted to us quarterly.

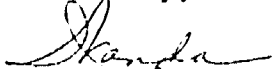
Mr. John Hatch
December 10, 1981

-2-

6. Location and construction data on observation wells installed in 1981 in Lincoln County. A determination will then be made of which of those observation well readings we would like to receive, which will be requested later.
7. Monthly pumping records, for now, from the Davis source; to be submitted to us quarterly.

I trust you will forward our request and that there will be no unnecessary delays in providing us this information on a continuous basis without periodic requests having to be made.

Sincerely,



Wanda Sletten
Secretary

cc: Dennis McFarland
Dennis Beissel
Robert Arend

December 14, 1981

John Hadden
Dorinda Grant & Rocker
315 First Avenue
Rock Rapids, Iowa 51246

Re: 4360-3

Dear Mr. Hadden:

Enclosed is a copy of a letter from Manda Stetten listing her requests for information. Items 1, 4 and 7 are information that we are requesting from the South Lincoln Rural Water System. Item 4 is not applicable at this time and we plan to answer Item 7 with the statement "No pumping records will be provided unless water from the Devils supply is pumped into the Rural Water System distribution system", unless you advise otherwise. Please review Item 1 and see if the information requested can be provided without too much time and cost. We would expect to report the pumping rate at 300 gpm $\pm$ 5 gpm unless you indicate otherwise.

Regarding your question on iron bacteria in observation wells - cross contamination between observation wells and subsequent contamination of the aquifer and nearby production wells or domestic wells, we will discuss this and provide an answer at a later date. Also enclosed is a copy of my response to Manda Stetten.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division
Phone: (605) 773-3352

cc: Jeff Easton, Attorney

101104JH.kr

Water Rights Division
605 773-3352

August 2, 1982

Wanda Sletten
Rt 2, Box 82
Beresford SD 57004

Dear Mrs. Sletten:

RE: 4300--3

Enclosed is a corrected copy of the South Lincoln Rural Water System quarterly pumping report for April, May and June, 1982.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

enclosure

 **South Dakota Department of
Water & Natural Resources**
Jon Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

August 2, 1982

Cliff Norren, Manager
South Lincoln Rural Water System
Box 193
Canton SD 57013

RE: 4300-3

Dear Mr. Norren:

Enclosed is a corrected copy of your quarterly pumping report for April, May and June, 1982. The final and initial figures need to be sequential without gaps by week, month or quarter in order to arrive at the correct pumping figures. I used your daily water readings to make the corrections.

Through June, 147.6 acre feet have been pumped into your system. If pumping continues the same as during May and June the annual use for 1982 (393 acre feet) will exceed the authorized 304 acre feet from two wells. Unless water usage declines, South Lincoln will need to reduce consumption, provide the third well or use water from the Davis well prior to the end of 1982.

I am providing a copy of this letter and the corrected quarterly report to Dave Holman for his information. Please advise if you have any questions or information that I am not aware of. Also, we would appreciate receiving the quarterly report by the 10th of the month following the end of the quarter.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

enclosure

cc: David Holman

4300-3

**SOUTH DAKOTA Department of
Water & Natural Resources**

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

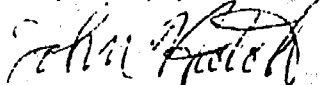
January 4, 1983

South Lincoln Rural Water System
Cliff Morren
Box 193
Canton SD 57013

Dear Mr. Morren:

The Division of Water Rights will as of January 1983 begin measuring the observation wells in the area near the South Lincoln Rural Water System wells on a one time per month schedule. Because the drawdowns have already begun to stabilize and no additional important changes are anticipated, the monthly schedule should be adequate to monitor water levels in the aquifer. If there are any questions, please feel free to contact our office.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:JG:ks

cc: John Madden
Wanda Sletten



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

February 11, 1983

4300-3

Cliff Morren, Manager
South Lincoln RWS
Box 193
Canton SD 57013

Dear Mr. Morren:

This letter is in regard to the pumping records for December, 1982 received in this office January 28, 1983 only after we had requested them. I do not believe that it is necessary for us to remind you each time pumping records are due.

In the future, we will expect to receive quarterly pumping reports by April 10, July 10, October 10 and January 10. I realize you have several matters to handle; however, it was also my understanding with your Board that pumping reports would be provided on a timely basis. Until a third well is connected to your distribution system and the four year period is up, submission of pumping records must receive some priority.

Also, please provide records of any Davis well field pumping for 1982.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

Water Rights Division
605 773-3352

March 25, 1983

4300-3

Mrs. Wanda Sletten
Rt 2, Box 82
Beresford SD 57004

Dear Mrs. Sletten:

I am finally able to respond to your request to know the quantity of water pumped from the Davis Well filed by the South Lincoln Rural Water System during 1982. I have received a letter that states in part:

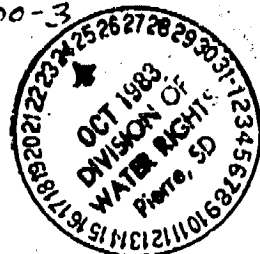
"South Lincoln Rural Water had no need to use the Davis Well field for supplying water to our customers, all the water sold came from the two Worthing Wells. South Lincoln in September of 1982 did pump the Davis Well field on separate days for an approximate total of 40,000-60,000 gallons which was flushed out of the fire hydrant on the Main Control Building site. The reason for this flush was for preventative maintenance of the water main and well."

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

File 4300-3



MEMORANDUM OF SUBSTANTIAL COMPLETION

SOUTH LINCOLN RURAL WATER SYSTEM
CANTON, SOUTH DAKOTA

This memorandum between South Lincoln Rural Water System,
Canton, South Dakota, (hereinafter called Owner), and

D. W. Proehl Construction Co. of Sioux Falls, South Dakota
(hereinafter called Contractor).

WITNESSETH

Whereas, Section 1.22 of the Contract General Conditions defines Substantial Completion as follows: "The date as certified by the Engineer when the construction of the project or a specified part thereof is sufficiently completed in accordance with the contract documents so that the project or specified part can be utilized for the purposes for which it is intended", and

Whereas Section 29.1 of the Contract General Conditions specifies as follows: "The Contractor shall guarantee all materials and equipment furnished and WORK performed for a period of one year from the date of Substantial Completion",

Now, therefore, it is herein recognized that the following sections of work or portions of the contracted work are herein recognized as being substantially completed on the date indicated and further recognized that the one-year guarantee period shall commence at the date indicated. The recognized portions are listed as follows:

<u>Item</u>	<u>Date</u>
Completion of Worthing Well No. 3	
Schedule 4 - Mechanical & Electrical	10/20/83

Recommended by: David Holman
DeWild Grant Reckert & Associates Co.

10-20-83
(Date)

Approved by: Charles Kiehl
South Lincoln Rural Water System

10-20-83
(Date)

Subscribed and sworn to before me this 20th day of October, 1983.

Acknowledged by: _____
Contractor.

Donna Seavers
(Date)

MSC-1

4300-3

SOUTH DAKOTA
Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

November 29, 1983

John Sievers, Manager
South Lincoln Rural Water
PO Box 155
Canton SD 57013

Dear Mr. Sievers:

This letter is in reference to the following Motion regarding Water Permits No. 4300-3 and 4300-3A adopted by the South Dakota Water Management Board April 15, 1983.

"That beginning today April 15, 1983, the four year period for determining the impact of the withdrawal from the Dakota Formation be stayed until water from the third well is being used in the South Lincoln Rural Water distribution system."

A sworn Memorandum of Substantial Completion was received by the Division of Water Rights October 24, 1983 which indicated that Well No. 3 was placed in use October 20, 1983.

Prior to April 15, 1983, one year, 10 months and 14 days of the four year head pressure decline monitoring period had been completed. Adding 47 days (16 days from April and 31 from May 1983) to October 19, 1983, the second year ends December 5, 1983 (12 days in October, 30 days in November and 5 days in December). The four year period for Permits No. 4300-3 and 4300-3A will now end December 5, 1985.

Please advise if there are any questions.

Very truly yours,

John Hatch

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

cc: Curtis Gubrud
Wanda Sletten
Water Management Board



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

December 1, 1983

RE: 4300-3
4300-3A

Harold Fischer, Chairman
Friends of Dakota Sandstone Aquifer
Rt 1, Box 58
Worthing SD 57077

Dear Mr. Fischer:

This will acknowledge your request that the Water Management Board clarify the acre feet limitation on the South Lincoln Rural Water (SLRW) Permits No. 4300-3 and 4300-3A. The Board Attorney, John Guhin presented your request to the Board November 30, 1983.

Mr. Guhin advised the Board that no action could be taken since SLRW had not been given either notice of your request nor an opportunity to be present. The Board directed that I advise you to follow the Petition for Declaratory Ruling process required by Board Rules 74:02:01:46 through 74:02:01:49 and SDCL 1-26-15.

I believe your request was based upon a telephone conversation between Wanda Sletten and myself November 23, 1983. I advised Mrs. Sletten that when I received written notification that SLRW had placed its third well on line October 20, 1983, it was my interpretation that the 455 acre foot annual withdrawal limitation was in effect.

As I interpret the qualifications to the two Water Permits, there is no basis for pro-rating the 455 acre foot limitation. Neither have I read in the Board minutes of any comment or discussion that pro-rating was intended nor was SLRW advised of such requirement.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Hatch". The signature is written in a cursive, flowing style.

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

83-103

4300-3



Clerk of Courts
Hughes County
104 East Capitol
Pierre, SD 57501

November 6, 1984

Mr. John Hatch
Chief Engineer of the Division of Water Rights
South Dakota Department of Water and Natural Resources
Joe Foss Building
Pierre, SD 57501

RE: In the matter of South Lincoln Rural Water System Amendments to
permit No. 4300-3.

Dear Sir:

Please be advised that a final decision and/or judgment has been filed in the above entitled action. Therefore, pursuant to Supreme Court Rule #82-22, I am returning the Administrative Record to your agency.

Please acknowledge receipt of the Administrative Record by signing below and returning the same to us. If you have any questions concerning this please do not hesitate to contact this office.

Thank you.

Sincerely,

Mary L. Erickson

Mary L. Erickson
Clerk of Courts
Hughes County

By: *Robert Meyer*

The Administrative Record in the above entitled action was received by this agency on the 8th day of November, 1984.

John Hatch

18 December 1980

Water Management Board
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501



Attention: John Hatch, Water Rights Engineer

Re: South Lincoln Rural Water Permit #4300-3

Dear Commission Members:

With reference to the above permit, we again respectfully request your reconsideration of the condition relating to placing the Davis well field on line (Condition No. 7). In making such a request, we would ask that you consider several factors:

1. New data unavailable at the time of the original permit approvals including:
 - a. The Sioux Falls 20 mile radius study.
 - b. Department of Water & Natural Resources monitoring data on observation wells, old and new.
 - c. Department of Water & Natural Resources (S.D. Geological Survey) drilling logs and results in the Canton area.
 - d. South Lincoln's test pump data on Worthing Well No. 3.
2. The economics of placing the Davis well line in operation. Knowing that FmHA has limited state funds and have agreed to fund the Davis construction, expenditure of such funds unless absolutely necessary will be at the expense of some other construction either on South Lincoln or another project within South Dakota.

Should you have questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Curtis Gubrud'.

Curtis Gubrud, Chairman
South Lincoln Rural Water System

CG:kld

cc: John Madden
Jeff Masten

303 Geo. Squire Building
335 N. Main
Sioux Falls, South Dakota 57102
Telephone 605 339 4157



cc: Curtis Gubrud
: Jeff Masten

January 8, 1921

Department of Water & Natural Resources
Tom Foss Building
Pierre, S.D.

Attn: John Hatch

Re: South Lincoln Rural Water

Water Quality Board Members:

Per the upcoming January board meeting, I respectfully request that our current observation wells and their respective locations relative to our producing wells be accepted as compliance with ^{condition #3 of} our water right permit. By carbon copy of this letter, I will have our engineers submit site plans showing the specific location of each.

Should you require additional information please contact our engineer. Thank you.

Respectfully submitted,

Curtis Guérard

Curtis Guérard, Chairman
South Lincoln Rural Water

cc: DeWald Growth Record & Assoc.
Hatch, N.Y. & Sons

ATTACHMENT ON WATER PERMIT NO. 4300-3
SOUTH LINCOLN RURAL WATER SYSTEM

ATTACHMENT #2

4300-3

The following supercedes the previous qualifications:

1. That the System be limited to an annual withdrawal of 485 acre-feet and that the total withdrawals subject to review by the Board;
2. The System can be pumped with the two wells already completed, if annual withdrawal restrictions are limited to 304 acre feet until the 3rd well is developed and put on line (approved September 25, 1980 - Findings of Fact, Conclusions of Law, approved November 23, 1980); spacing between wells must be at least 2 1/2 miles;
3. That the rural water system wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this Permit shall control its withdrawals, to protect needed water supplies in adequate domestic wells or in wells having prior water rights.

Withdrawals will be restricted, if the aquifer head pressure declines 20 feet at designated measuring points during a four year period, beginning with the date the first water is pumped into distribution system. The head pressure decline will be determined by using an average of three of the seven proposed observation wells located at least two miles from one or more production wells. The lowest head pressure measurements, to be based upon an average of each observation well measurements taken over a three month period, will be used in determining head pressure decline;

4. If the aquifer head pressure does decline more than 20 feet in the four year period, or if observation well measurement data indicates the 20 foot head pressure decline level would be reached in the four year period, the rural water system in order of the Board will have to change to a new source of water;
5. That no wells be located within 1,300 feet of existing Lakota Formation wells unless waived by the well owner;
6. That the Davis area well field be developed and therein be fully operational by November 1, 1981.

ATTACHMENT #2

ATTACHMENT ON WATER PERMIT NO. 4300-3 SOUTH LINCOLN RURAL WATER SYSTEM

The following supercedes the previous qualifications:

1. That the System be limited to an annual withdrawal of 455 acre-feet and that the total withdrawal be subject to review by the Board;

* ~~2. The System can be pumped with the two wells already completed, if annual withdrawal restrictions are limited to 304 acre feet until the 3rd well is developed and on line (approved September 25, 1980 Findings of Fact, Conclusions of Law dated November 20, 1980); spacing between wells must be at least 2 1/2 miles.~~

3. That the rural water system wells approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The rural water system under this Permit shall control its withdrawals, to protect the water quality in the area. Domestic wells will have priority over water

~~4. The aquifer head pressure will be maintained, if the aquifer head pressure declines 20 feet or more at designated measuring points during a four year period, beginning with the date water is pumped into distribution system. The head pressure decline to be determined by using an average of three of the seven proposed observation wells. At least two miles from any one production well. The lowest head pressure at any one of the seven observation well measurements taken over a four year period, will be used in determining head pressure decline.~~

~~5. If the aquifer head pressure does decline more than 20 feet in the four year period or if observation well measurement data indicates the 20 foot head pressure level would be reached in the four year period, the rural water system will have to change to a new source of water.~~

~~6. That no wells be located within 1,000 feet of existing Dakota Formation wells owned or operated by the well owner.~~

~~7. That the Davis area well field be developed and therein be fully operational by 1981.~~

* *Corrections represent qualifications to No. 4300-3 & 4300-3A that will automatically terminate after December 5, 1985 or that are no longer pertinent.*

Water Rights Division
605 773-3352

October 31, 1985

Gene Irons
Masten, Myrabo & Irons
108 S Broadway
Canton SD 57013

Dear Mr. Irons:

As requested by Dave Holman of DGR & Associates, enclosed are copies of Water Permit nos. 4300-3, 4300-3A, 4301-3 and 4817-3 held by South Lincoln Rural Water System. If you should need further information or have any questions concerning the enclosed documents, please advise.

Sincerely,

GEMMY MCMATH
Natural Resources Analyst

cc: Dave Holman

Ph. 372.4211

Dept. of Water and Natural Resources
Joe Foss Building
Pierre, SD 57501
Attn: John Hatch

I would like to request a copy of the original water permits issued to South Lincoln Rural Water System, Inc. The permit numbers are 4300-3 and 4300-3A.

Thank you for your cooperation and time.

Jear Sorum
Secretary
South Lincoln Rural Water System, Inc.

4
OCT 1985
DIVISION OF
WATER RIGHTS
SALT LAKE CITY, UT

Water Rights Division
605 773-3352

October 31, 1985

Jean Sorum, Secretary
South Lincoln Rural Water System, Inc.
Box 155
Canton SD 57013

Dear Ms. Sorum:

As requested in your October 29, 1985 letter, enclosed are copies of Water Permit Applications No. 4300-3 and 4300-3A. There is no charge for the copies.

If we can be of further assistance, please contact this office.

Sincerely,

KAPEN SCHLAACK
Administrative Aide

enclosures

MYRABO & IRONS
ATTORNEYS AT LAW
108 SOUTH BROADWAY
CANTON, SOUTH DAKOTA
57013

LLOYD K. MYRABO
EUGENE J. IRONS

March 14, 1979

AREA CODE 605
TELEPHONE 987-2653

Mr. Merlin Tipton
South Dakota Geological Survey
University of South Dakota
Vermillion, South Dakota 57069

Mr. John Hatch
Chief Engineer
Department of Natural Resource Development
Water Rights Commission
Joe Foss Building
Pierre, South Dakota 57501

In Re: South Lincoln Rural Water System

Gentlemen:

Enclosed for your information please find a copy of the five page report of Mr. Richard E. Aten of Harza Engineering Company, a draft copy of this report having been previously submitted to you.

I thought you might wish to have this for your file.

Very truly yours,

Eugene J. Irons
OF MYRABO & IRONS

EJl:ds

Enclosure (1).

P.S. to John Hatch: Would you please send us three copies of the Minutes of the Special Meeting held on December 12, 1978, these Minutes consisting of 113 pages. Thank you very much for your cooperation.



Aten

Review of Findings on
Dakota Aquifer Development

South Lincoln County Rural Water Supply

Summary

The aquifer-test results and evaluation impacts produced by DeWild Grant Reckert & Associates (DGR) are considered adequate for well-field design purposes and for the evaluation or prediction of drawdown effects of aquifer development. Moreover the evaluation they have presented (DGR, 1977)^{1/} is considered reasonably accurate. As modified for the proposed^{2/} allocation, it shows that each well would cause a 4-year drawdown of about 8.4 feet in the immediate vicinity (r=100 ft) and that the combined drawdown at Worthing from three wells operating for that period would be about 7.4 feet.

Although one now can recognize improvements in the test installations and procedures, the aquifer test is unprecedented in scope and detail, and it has produced results that are considered usable.

Based on test results and other data, it is concluded that development of the Dakota aquifer by the South Lincoln Rural Water District and pumpage of 455 acre feet annually (afa) from that aquifer will not have a significant effect on the water levels or available supply for the aquifer.

Further refinement at present of aquifer properties at this site is not considered justifiable because future drawdown effects will be greatly influenced by other considerations such as the location and distance to the recharge source, physical properties of the aquifer in areas beyond the test site, and unknown present and future withdrawals by other users. The trial operation and monitoring approach proposed by the State Water Rights Commission should resolve two of these unknowns and therefore has great potential benefit to both this Project and other Dakota aquifer users in the entire Sioux Falls to Vermilion region.

Setting

Ground-water development has been proposed for the Dakota aquifer, a Cretaceous-age sandstone present throughout most of the state. The Dakota is widely developed, and

^{1/} Reference list follows report.

^{2/} As proposed by State Water Commission. Three wells pumped 94 gallons per minute on average.

pumpage in 21 counties in southeastern South Dakota probably amounted to nearly 100 cubic feet per second in 1965 (Schoon, 1971). Significant uncontrolled flow from "wild" wells occurs in the James and Missouri River lowlands. Some have estimated that 10,000 wells have been drilled in the Dakota formation in South Dakota.

The geology of the aquifer has not been studied in Lincoln County in detail, but it generally is understood to comprise three units described as follows (Barkley, 1952):

"The Dakota formation is made up of sandstones with some interbedded shales...

The Dakota lies conformably between the Graneros and Fuson formations. The upper part of the sandstone is a stratum generally presenting hard layers termed cap rock. After the cap rock has been penetrated, the sand can be drilled without much trouble. Drilling with a jetting machine, the water bearing sand can be detected by the familiar "bounce to the bit." The drillers have identified three flows in the Dakota which are separated by thin seams of clay. No accurate information could be found as to the depth at which these different flows were encountered...."

The character of the rock in Lincoln County may be indicated by the following extract (Schoon, 1971) which describes the Dakota in another three-unit sequence:

In the type area and in extensive areas in the eastern part of the State, the Dakota Formation can be subdivided into three units. The upper unit consists of light-brown to reddish-brown, fine- to medium-grained, friable, quartz and minor feldspar sandstone with interbeds of gray to dark-gray shale. In most cases it is approximately 65 feet thick.

The middle unit is a gray silty clay with small siderite pellets distribute throughout the interval... At least 55 feet of this clay is present... at Sergeant Bluff, Iowa, and a like thickness occurs at many areas in South Dakota...

The lower unit is medium- to coarse-grained quartz (minor feldspar) sandstone. Drill hole information indicates that the thickness is approximately 300 feet.

Based on the above earlier work and test holes drilled for this Project, the Dakota in Lincoln County evidently is a relatively flat-lying aquifer that ranges in total thickness from about 120 to 250 feet. The aquifer probably is separated into three zones by shale layers of 5 to 15 feet thick, as reported in many holes. The sandstone portion evidently is reasonably uniform.

Aquifer Test

Based on a review of the data and discussion with DGR and State personnel, it is concluded that the aquifer test was adequately conceived and executed. In general terms, it was an ambitious and comprehensive undertaking. Inquiry of DGR and State personnel did not reveal that any other aquifer test has been conducted on the Dakota formation in southeastern South Dakota; well tests apparently have not been reported either. Aquifer tests are relatively rare for other midwestern deep-sandstone aquifer units because of the cost and of the wide acceptance of assumed consistent aquifer properties. Aquifer tests are more complicated and exhaustive tests involving observation wells and extended time of pumping to determine aquifer hydraulic properties. Well tests are simpler and briefer efforts, normally involving only the pumping well and a few hours of operation to define well properties for well or pump design or equipment selection. The test was not witnessed, and the site has not been visited.

The selected spacing of observation wells (OW) is considered reasonable, and number is abundant. With present knowledge of the possible zoned-nature of the Dakota, one would want observation wells completed in all zones or, for a research-type test, to be able to measure pumped well flow from each zone or to isolate flow from one zone at-a-time.

Well-accepted equipment and instruments are understood to have been used to control pumping rates and to measure rates and water levels. Evidence of care in this phase of the test is indicated by the calibration shown for the electric water-level sounder used in OW-1 and OW-3. More frequent readings, and indication of synchronized times of observation, early in the test would have been desirable.

Test Analysis

Independent analysis of aquifer test results shows that values presented in DGR's report for aquifer coefficients of

20,000 gallons per day per foot (gpd/ft) transmissivity (T) and of 1.5×10^{-4} for Storage (S) are reasonable. Since there is a possibility that confining shale horizons separate the aquifer into three zones, T values they present for near OW's are considered to be low. These low values are offset by results for distant OW's which are considered to be excessive.

The confirming values are derived from analysis of pumped-well drawdown and recovery, assuming that composite effects are equivalent to a single aquifer unit. Results shown in Table 1 appear consistent. Coefficients were estimated also from OW data based on assumptions that the aquifer is zoned and that pumpage is proportional to the length of screened section, in the pumped well, opposite the zone. Results, also in Table 1, are less consistent for a given OW and differ more widely from the mean of the pumped-well values. To some extent, this is to be expected as each OW represents a different areal portion of the aquifer.

Approximate methods also provide rough checks. A low value of $T=10,000$ gpd/ft is obtained from pumped well specific-capacity data, and this would seem likely since mud-rotary drilling methods were used. No test was made to determine well efficiency. At of 20,000 is obtained by multiplying permeability (estimated from sieve analyses of samples from the pumped well) times aquifer thickness (estimated from drillers logs).

Projected Impacts

Development and pumpage at an equivalent rate of 282 gallons per minute (gpm) would cause a drawdown effect ranging from about 9.6 ft at the center of the well field to 7.4 ft at Worthing. These estimates confirm projections by DGR as modified for the reduced level of allowed well-field production. The estimates are conservative since they assume no recharge.

The amount of drawdown normally would not be considered significant since water levels remain far above the top of the aquifer, and this amount of drawdown (increased lift) would not affect pump output for most existing well installations. It is conceivable that a few pumps that have been set with intakes near the limit of their own drawdown would need to be lowered, or that others where the present setting is near the limit of delivery-head capability of the pump would have to be replaced.

Development would cause flow toward the well field at imperceivable velocities in the order of a few hundredths of a foot per day at a distance of one mile from the well. Withdrawal of 282 gpm is insignificant also in terms of the aquifer capability. While complete data are not available on present usage, the total present underflow through Lincoln County may be in the order of 2,000 to 4,000 gpm. Limited water-level data indicate that pumpage of perhaps 175 gpm at Canton has not lowered levels in an extended area over the long term. No complaints or claims for damage are known. Uncontrolled flow from the aquifer from wild wells in other parts of the state is reported (Schoon, 1971) to exceed 11,000 gpm.

The assumption of no recharge is considered questionable. The relatively-good local water quality of the Dakota aquifer suggests possibly recent recharge, and the stratigraphic position of the unit suggests interesting possibilities. It probably abuts wash deposits present in some locations on the Sioux quartzite surface, and it conceivably could be recharged from shallower zones since in locations (such as Clay County) where water levels are relatively higher in the Dakota it discharges to outwash.

Direct surface recharge does not appear impossible, an aquifer at West Chicago receives an estimated (Zeizel, et al 1962) 65,000 gpd gallons per day (40 gpm) per square mile, and it is beneath 100 feet of clay till and 50 feet of shale and shaly dolomite. While this question cannot be resolved without operating experience or extensive further drilling and field measurement, it is considered an overly conservative constraint to exclude any recharge.

References Cited

- Barclay, Raymond C., Artesian Conditions in Southeastern South Dakota. South Dakota State Geological Survey, Report of Investigation No. 71, May 1952.
- De Wild Grant Reckert and Associates. Report of Groundwater Investigations, Lincoln and South Lincoln County Rural Water Systems, September, 1977.
- Schoon, Robert A., Geology and Hydrology of the Dakota Formation in South Dakota, South Dakota State Geological Survey Report of Investigation N. 104, 1971.
- Zeizel, Arthur J., William C. Walton, Robert T. Sasman, and Thomas A. Prickett, Ground-Water Resources of Ra Page County, Illinois, Cooperative Report No. 2, State Geological and Water Surveys, 1962.

STATE OF SOUTH DAKOTA

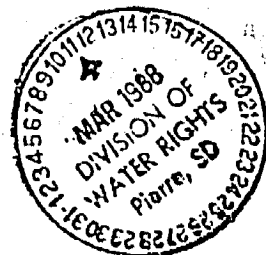


OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
Pierre, South Dakota 57501-5090
Phone (605) 773-3215

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

March 9, 1988



Mrs. Wanda J. Sletten
Rt. 2 Box 82
Beresford, South Dakota 57004

RE: South Lincoln Rural Water System

Dear Mrs. Sletten:

Thank you for your letter of March 3, 1988, concerning the above-noted rural water system. We have contacted Mr. John Hatch, Chief Engineer, Division of Water Rights, concerning your allegation that the rural water system is being operated without a license.

Mr. Hatch informs us that South Lincoln Rural Water System has approved permits, that an inspection was performed August 20, 1986, and the license fee of \$50.00 was received December 12, 1986. The Division of Water Rights has not yet issued the license because it knew at the time some changes were going to be made in the system. It appears to me, however, that South Lincoln Rural Water System has done what the statute requires and there is no violation.

Sincerely,

Roger A. Tellinghuisen

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

RAT:pjh

cc: John Hatch ✓

4300-3

 **Department of
Water & Natural Resources**

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

APR 25 1990

Charles Kuehl, Chairman
South Lincoln Rural Water System
PO Box 155
Canton SD 57013

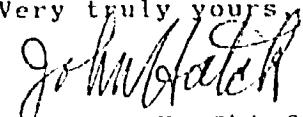
Dear Mr. Kuehl:

Enclosed is Water License No. 4300-3B. This is the final water right document completing your process of obtaining a water right.

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

The applicable portions of Water Permit Nos. 4300-3 and 4300-3A are incorporated into this Water License No. 4300-3B.

Very truly yours,


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

enclosures



4300-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 13, 1994

John Sievers
South Lincoln Rural Water System
Box 155
Canton, SD 57013

Dear Mr. Sievers:

Pursuant to a qualification on Water Permit/Right Nos. 4300-3; 4300-3A; 4300-3B & 5116-3, I am requesting that the South Lincoln Rural Water System report the total amount of water diverted during 1993. Please respond by January 31, 1994.

If you have any questions concerning this or other water rights questions, please contact Barry McLaurry, Natural Resources Analyst, (605) 773-3352.

Sincerely,

RON DUVALL, Natural Resources Engineer
for JOHN HATCH, Chief Engineer
Water Rights Division

SOUTH LINCOLN RURAL WATER SYSTEM, INC.
- PUMPING RECORDS 1993

	Worthing Well No. 1			Worthing Well No. 2			Worthing Well No. 3			Worthing Well #4		
	Final 12-31-92	Initial 01-01-93	Total year	Final 12-31-92	Initial 01-01-93	Total year	Final 12-31-92	Initial 01-01-93	Total year	Final 12-31-92 Present	Initial	Total year
For the year 1993	556,800	613,765	1,056,965	907,989	731,869	823,800	536,850	38,436,000	15,182,500	2,573,000	231,000	2,342,000



205,609,000 gallons
pumped.