

1. Considered MAY 24 19 79
2. Name of Applicant TOWN OF WORTHING
3. Post Office Address _____
4. Amount of Water Claimed .8 TO 23 CFS *REQUEST THIS BE REDUCED*
5. Source of Water Supply 467' & 482' (EXISTING) (NEW 480')
6. Water to be used for MAIN
7. Acres to be irrigated - maximum acre feet _____
8. Water to be diverted and used in LINCOLN County
about IN CITY LIMITS miles _____ of _____
9. PROOF OF PUBLICATION Received 6-19-79 3-23-81
Not Received _____

APPLICATION

Approved 1/29/81 (attorney 1:50 PM)

FFCL - March 26, 1981

Subject to State of Nebraska

*does not affect 10 cfs
covered by 1695-3
earlier priority*

Not Approved _____

Action deferred 5-24-79 - pending outcome of
So. Lincoln RWE Permit in Court.

Priority

Date

Received 3-15-79 Application Complete YES no _____ FEE N/A

3-15-79

3-23-81

Remarks _____

Date information and/or

fee or corrected Application received _____

Period of Annual use CONTINUOUSLY

WATER
QUALITY

N/A

Received yes _____ no _____ APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as application yes _____ no _____ Remarks _____

Disapproved _____

Return _____

Diversion Point _____

NW⁴ NW⁴ - 9-98N-50W

Lands to be irrigated _____

WELL
LOG

Remarks No log - Info can be obtained from State

Geol. Survey on Form 3A

Driller _____ Licensed yes _____ no _____

Depth 480' new well

MAP Map No. 1223-3 #
3590-3 Map located in Water Right ✓ Map file _____
Type of Map drawn Prepared by PE

+++++

REVIEWED This Application was reviewed within 30 days of date received, accepted as complete. Number assigned and written up for advertisement before the Board on May 24, 1979.
Bj Westlund
(Signed)

+++++

PROTESTS Letters/Petitions in File - yes _____ no _____ Remarks _____

REMARKS Date _____
F.F. & C Final Decision, including F.F. & C of Law were adopted _____
OF LAW, Date _____
FINAL Final Decision mailed to parties and/or parties notified that Final Decision
DECISIONS was adopted _____
ETC. Remarks: _____

Map No. 3590-3
1223-3Water Division No. 3 Big Sioux River
(blanks to be filled by the Engineer for the W. R. C.)

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota
SEE # 1695-3

(NOTE: Draw a line through items not applicable)

1. Name of Applicant: TOWN OF WORTHING
Postoffice address: WORTHING, State SOUTH DAKOTA
If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor): CONTRACT
3. Name of diversion work: CITY WELL WORTHING WELLS # 1, 2 & 3
4. Amount of water claimed (cubic feet per second): 0.8 CFS
5. Source of water supply: Three City wells
6. Location of point of diversion: within the Town of Worthing as shown on attached map #1 - Lot 13, Block 8, #2 - Lot 13, Block 8, AND #3 - Lot 3, Block 3, ORIG WORTHING, ALL NW 1/4, SEC 9 - T78N - R50W, County Lincoln
7. Annual period or period during which water is to be used: daily
8. Use to be made of water (irrigation, industrial, municipal, commercial, recreation, etc.): Municipal
9. For irrigation use, Total number of acres to be irrigated: _____

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: 2 years. Additional time required to complete application of water to the proposed beneficial use: 1 years. Edw Hoyer
11. Choice of newspaper for Notice of Intent to Appropriate Water publication: Lennox INDEPENDENT
57039
12. Principal Features of the Proposed Water Supply System.

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

Two existing wells
One proposed well

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

Existing City distribution system

C. Works proposed to apply water to beneficial use.

Existing City distribution systemEstimated Total Cost \$ 45,000Attachments: 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 LincolnI, Jessie T. Talcott 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 constructionSigned Jessie T. TalcottSubscribed and sworn to before me this 5 day of May, 1922

Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 4401-3

TOWN OF WORTHING
(Applicant)

(Post Office Address)

SOUTH DAKOTA 57077 Will the following modifications:
(State)

This Permit is approved for .23 c.f.s. subject to the following qualifications:

1. That no more than sixty five acre feet per year may be withdrawn under this Permit
2. That the Town of Worthing report to the Board annually the amount of water withdrawn each year.
3. The 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 adequate domestic wells or in wells having prior water rights.

Date of first receipt of application March 15, 1979

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

Date of receipt of corrected application , 19

Approved March 26, 1981, Recorded in Book 22 Page 232

WATER RIGHT PERMIT NO. 4401-3

The Water Rights Commission hereby grants and issues this Water Right Permit No. 4401-3 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 March 15, 1979
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before March 26, 1982
3. The whole of said work is to be completed on or before March 26, 1983
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is March 26, 1984
5. The water appropriated shall be used for the purpose of MUNICIPAL 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 .23 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial use ~~and if for the irrigation purpose said appropriation must be limited to not more than 2 acre feet per acre per year and be limited to not more than one twentieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before~~ March 26, 1984; said water to be used during the following described annual period: Continuously
USED FOR MUNICIPAL PURPOSES

Witness my hand this 13th day of July, 1981

WATER RIGHTS COMMISSION

By:

John Hatch
Chief Engineer, Executive Officer

JOHN HATCH

Certificate of Construction Issued , 19

Water License Issued , 19

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

D. Well Information or Estimates

* #1-8" #2-12" #1-469 #2-482
 (1) Drill Hole, Diameter #3-12" , Depth #3-480

(2) Casing, Type Steel #1-6" #2-8"
 (wood, concrete, steel, etc) Diameter #3-8" Thickness _____

(3) Perforated Screen.

#1-Brass #2-unknown #1-5" #2-unknown #1-15' #2-unknown
 Type #3-proposed Stainless Steel , Diameter #3-8" , Length #3-15' to 18'

(4) Gravel Pack, Thickness #1-3" , Length of gravel pack #1-18' #2-unknown
 #2-unknown #3-4" #3-18' to 20'

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-more information available
from the State Geological Service

Depth to top of water bearing material _____

Depth to bottom of water bearing material _____

Thickness of water bearing material _____

Depth to water (ground surface to water level) _____

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

On same owner's property _____rds. On property owned by others _____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.

* #1 and #2 wells are existing
 #3 is the proposed well


 Signature of Applicant

No. 4401-3

Publish first publication, on or before May 4, 1979

NOTICE OF HEARING ON
APPLICATION TO APPROPRIATE WATER

Pierre, South Dakota 57501

April 19, 1979

Notice is hereby given that the Town of Worthing ~~has post office~~

~~address is~~ TS, South Dakota, has made an application 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, 46-6-3.1, 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 appropriate for beneficial use .8 cubic feet of water per second of time from groundwater (two new well) ~~existing~~ 6.1 through the Worthing Wells #1, 2, & 3, the point(s) of diversion of which ~~is~~ (are) to be located in the NW 1/4 NW 1/4

of Section 9, Twp. 98N, Range 50W. Said water to be used for the purpose of providing ~~irrigation on portions of the following described land:~~

water supplies for Municipal Use.

This Application No. 4401-3 will be considered by the Water Rights Commission at Howard Johnson's Motel, 2211 Lacrosse, Rapid City, SD 57701 upon the 24th day of May, 1979

at 10 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.

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 Commission may be appealed to the Courts as provided by law.

WATER RIGHTS COMMISSION

Betty Westlund,
Water Rights Specialist

BW:plh
cc: Town of Worthing, SD 57077

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA }
COUNTY OF LINCOLN }

88.

Mary Hofer

being first duly sworn, disposes and says: That (he) (she) is a resident of the County of Lincoln and State of South Dakota; that the LENNOX INDEPENDENT is a weekly legal newspaper of general circulation, printed and published in Lennox, in said County and State, and is now, and has been such newspaper continuously, during all the times hereinafter mentioned; that the affiant is affiliated with said newspaper as employer or employee and has personal knowledge of all the facts stated in this affidavit, and the notice and advertisement headed

Notice of Hearing
on application to
appropriate water

a printed copy of which is hereonto attached and made a part hereof, was printed and published in the said newspaper 2 successive issues. That the first publication of said notice in said newspaper aforesaid was on Thursday, the 26 day of April A.D. 19 79 and that the succeeding publication was severally

on Thursday the 3 day of May A.D. 19 79
on Thursday the _____ day of _____ A.D., 19 ____
on Thursday the _____ day of _____ A.D., 19 ____
on Thursday the _____ day of _____ A.D., 19 ____
on Thursday the _____ day of _____ A.D., 19 ____
on Thursday the _____ day of _____ A.D., 19 ____

that the fees charged for the printing and publication of said notice and advertisement in said newspaper as aforesaid were 26 Dollars 07 Cents, and that said fees for the printing and publishing of said notice and advertisement, and for the affidavit as aforesaid, have been fully paid; that the full amount of the fee charged for the publishing of the said attached and annexed notice and advertisement inures to the benefit of the publishers of the said Lennox Independent, that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person, whomever.

Mary Hofer

Subscribed and sworn to before me this 22 day of

March, 19 87.

James S. Simon
Notary Public.

Lincoln County, South Dakota.

My Commission expires July 27, 19 86.

NOTICE OF HEARING ON APPLICATION TO APPROPRIATE WATER

Pierre, S.D. 57501

April 19, 1979

Notice is hereby given that the Town of Worthing, South Dakota, has made an application 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 46-1-1 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 Commission Rules ARSD 52:01:01:01 thru 52:2:01:01:13, for a permit to appropriate for beneficial use .8 cubic feet of water per second of time from groundwater (two new well) existing & 1 through the Worthing Wells #1, 2, & 3, the point(s) of diversion of which are to be located in the NW¼ NW¼ of Section 9, Twp. 98N, Range 50W. Said water to be used for the purpose of providing water supplies for Municipal Use.

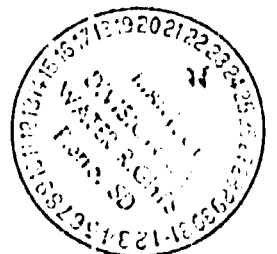
This Application No. 4401-3 will be considered by the Water Rights Commission at Howard Johnson's Motel, 2211 Lacrosse, Rapid City, S.D. 57701 upon the 24th day of May, 1979 at 10 A.M. The Commission is authorized to make a determination on this application at the hearing. All interested persons may 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.

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 Commission may be appealed to the Courts as provided by law.

WATER RIGHTS COMMISSION

Betty Westlund,
Water Rights Specialist

17-21



ATTORNEY
GENERAL

JE *DD*
83433
Heck
6/11

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

SS JUN 28 1981

11 CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

*
IN RE: APPLICATION FOR A PERMIT *
No. 4401-3 by the CITY OF *
WORTHING and SOUTH LINCOLN RURAL*
WATER SYSTEM PERMIT No. 4300-3A.*
*

MEMORANDUM DECISION

ACTION

This is an appeal from a final decision of the South Dakota Water Management Board which granted water permit No. 4401-3 to the City of Worthing, but denied South Lincoln Rural Water System's request for relief from a condition contained in water permit No. 4300-3A. This Court affirms the Water Board's decision.

PARTIES

The parties to this action consist of appellant, the South Lincoln Rural Water System, and appellees consisting of the Water Management Board (Board), the City of Worthing (Worthing), and the Friends of the Dakota Sandstone Aquifer (FODSA).

FACTS

On December 12, 1978 the Board granted Appellant's application for water permit No. 4300-3. This permit allowed Appellant to withdraw two cubic feet of water per second from the Dakota Sandstone formation subject to certain conditions and requirements. Although

FODSA appealed the Board's decision to grant the permit to both this Court and the Supreme Court, both Courts affirmed the Board's decision. In re South Lincoln Rural Water System Application for Permit No. 4300-3. 295 N.W.2d 743 (S.D. 1980).

On September 3, 1980 Appellant filed an application to modify permit No. 4300-3 with the Board. Appellant requested, among other things, that the Board delete condition number seven from the permit. This condition required that:

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

On September 25, 1980 the Board held a hearing on Appellant's requested modification. At the hearing, the Board determined that construction and development of the Davis well field was necessary in order ~~to~~ insure the availability of "an immediate alternate source of water", and refused to delete the requirement. The Board amended the permit, however, to require that the alternate Davis line "be fully operational by November 1, 1981".

On January 29, 1981 the Board held another hearing which ultimately resulted in the final decision now on appeal. At the hearing, the Board considered the City of Worthing's request for water permit No. 4401-3. This permit allowed Worthing to withdraw .23 cubic feet of water per second from the Dakota formation without the requirement that the city develop an alternate water source. It was also at this hearing that Appellant again requested that the Board delete the requirement of an alternate water source (condition no. 7) from its permit.

After extensive testimony, the Board granted Worthing's permit No. 4401-3 and refused to delete the requirement of an alternate water source from Appellant's permit. Appellant filed a Notice of Appeal with this Court on March 25, 1981, and hearing thereon was held on April 29, 1981.

ISSUES

I.

WHETHER THE BOARD'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE CLEARLY ERRONEOUS IN LIGHT OF THE ENTIRE EVIDENCE IN THE RECORD? No.

II.

WHETHER THE BOARD'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE ARBITRARY AND CAPRICIOUS OR CHARACTERIZED BY ABUSIVE AND CLEARLY UNWARRANTED EXERCISE OF DISCRETION? No.

SCOPE OF REVIEW

This Court's review of administrative agency decisions is limited in scope by SDCL 1-26-35 and 1-26-36. SDCL 1-26-35 requires that the review conducted by the court be confined to the record of the agency. SDCL 1-26-36 mandates that the court give great weight to the agency's findings of fact and inferences therefrom. The court, in reviewing the decision, may not reverse unless substantial rights have been prejudiced by an 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) affected 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.

An agency's decision must be upheld unless the court is left with a definite and firm conviction that a mistake has been committed. Fraser v. Water Rights Commission of Department of Natural Resource Development, 294 N.W.2d 784, 798 (S.D. 1980); In Re Estate of Hobelsberger, 181 N.W.2d 455, 459 (S.D. 1970). In the case at bar, Appellant contends that the Board's decision was clearly erroneous in light of the entire evidence in the record and also arbitrary and capricious.

DECISION

I.

Appellant first contends that the Board's decision not to delete the requirement of an alternate source of water from its permit is clearly erroneous in light of the entire evidence in the record. More specifically, appellant argues that recent testing of the Dakota formation has revealed that there is substantially more water within the aquifer than the Board originally anticipated. Appellant contends that this fact alone should relieve it of the burden of developing the alternate water system and that the Board acted unreasonably in not removing the requirement from its permit.

This Court agrees with Appellant's assertion that there appears to be substantially more water in the Dakota formation than originally anticipated. All the experts who testified at the hearing generally agreed that the aquifer contained a significant amount of water. This is not the only factor which the Board considered, however, when it imposed the requirement of an alternate water system on Appellant's permit. The Board was very concerned about possible head pressure decline once Appellant began pumping water from the Dakota formation. This concern is evidenced by condition number five which the Board also placed on Appellant's permit. This condition requires that Appellant shut down its line and apparently switch to the alternate Davis line if the aquifer head pressure declines more than twenty feet in a four year period of time.

The expert testimony at the January 29 hearing did little to relieve the Board's concern over this matter. Assad Bassari, an expert from the South Dakota Geological Survey, testified that he could not predict either the amount of the drawdown or the effects of the drawdown upon the aquifer once Appellant began pumping water from the formation. The other experts testified in a similar manner concerning both drawdown and possible head pressure decline. Further, not one of the experts could predict within any degree of certainty the source of the recharge, the rate of the recharge, or the quality of the recharge water within the aquifer.

The Board, after hearing all of the testimony and considering all the evidence, determined that there was still insufficient data

to relieve Appellant of the requirement of an alternate water system. This Court must give great weight to the agency's findings of fact, SDCL 1-26-36, and will not substitute its judgment for that of the Board. The record clearly reflects that the Board could have reasonably found that there was insufficient data to warrant the elimination of the requirement that Appellant develop an alternate water source. Although this Court may not have reached the same decision as did the Board, it is not left with a definite and firm conviction that a mistake has been committed. Fraser v. Water Rights Commission of Department of Natural Resource Development, supra.

II.

Appellant next contends that the Board acted in an arbitrary and capricious manner by not requiring Worthing to develop an alternate water source and by not deleting a similar requirement from Appellant's permit. This Court does not agree.

There are significant differences within the two permits which would allow the Board to treat the applicants differently. Appellant's permit allows the withdrawal of 455 acre feet of water per year from the formation, while Worthing is limited to withdrawing 65 acre feet per year. The rate of withdrawal is also significantly different. Appellant is entitled to withdraw two cubic feet per second while Worthing is limited to .23 cubic feet per second. Furthermore, federal funding is currently available for development of Appellant's alternate water source, while Worthing does not enjoy such an advantage.

The Legislature has given the Board the authority to issue water permits subject to such terms, conditions, and requirements as it deems necessary to protect the public interest. SDCL 46-1-4. In exercising its discretion under this statute, the Board specifically determined that it was not feasible to require Worthing to develop an alternate water source because the city could not comply with such a requirement. This Court is not of the opinion that the Board is required to impose similar conditions and requirements upon water permits especially when the permits are significantly different. Based upon the record, the Board could have reasonably determined that the requirement of an alternate water system in Appellant's permit was necessary in order to protect the public interest, yet totally unwarranted in Worthing's permit. Again, this Court will not substitute its judgment for that of the Board.

CONCLUSION

The Board's decision to grant Worthing's water permit without the requirement of an alternate water source and its refusal to delete a similar requirement from Appellant's permit is not clearly erroneous in light of the entire evidence in the record, arbitrary and capricious, or an abuse of discretion. The decision must therefore be affirmed.

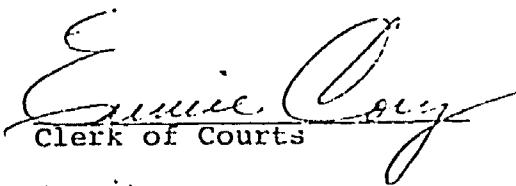
Counsel for the Board is directed to prepare an order consistent with this opinion.

Dated this 19th day of June, 1981.

BY THE COURT:


Robert A. Miller
Presiding Circuit Judge

ATTEST:


Clerk of Courts

(SEAL)

CEDAR

STREET

Warren C. Stephens
Reg. No. 2301

Site of Proposed
Well No. 3

JUNIPER

STREET

FIRST

SECOND

THIRD

MAIN

STREET

STREET

STREET

STREET

POPLAR

STREET

Well No. 2

Well No. 1

MAP No 3590-3

APP. 44C

March 12, 1979

Town of Worthing
Worthing 59 57077

Dear Sir:

Enclosed please find the application for a permit for municipal use of water for the Town of Worthing. On the application please complete No. 6, the location of the point of diversion. The point of diversion must be stated according to the section, township and range. The map, also enclosed, should have the section, township and range for the locations of the wells.

Upon receipt of the completed application and map, further processing of your water right application will proceed.

Sincerely,

Karen Wernsmann
Secretary III

kjw

enclosure



Department of Natural Resource Development

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

March 15, 1979



Town of Worthing
Worthing SD 57077

Dear Sir:

Enclosed please find the application for a permit for municipal use of water for the Town of Worthing. On the application please complete No.6, the location of the point of diversion. The point of diversion must be stated according to the section, township and range. The map, also enclosed, should have the section, township and range for the locations of the wells.

Upon receipt of the completed application and map, further processing of your water right application will proceed.

Sincerely,

Karen Vernsmann

Karen Vernsmann
Secretary III

kjw

enclosure

NW⁴

- # 1 - Lot 13 - Blk 8 - Orig Worthing - Sec 9 Twp 75 - Range 50
- # 2 Lot 13 Blk 8 Orig Worthing Sec 9 - Twp 98 - Range 50
- # 3 Lot 3 Blk 3 Orig Worthing Sec 9 - Twp 98 - Range 50

Adm-3

3-4-80

PHONE CALL FROM

224-7421
E.S.F.

JOE TOOLEY

CITY COUNCIL, WORTHING

WONDERING ABOUT THEIR DEFERRED

APPLICATION - TOLD HIM WE

WOULD NOT DO ANYTHING UNTIL

THE S. LINCOLN COUNTY MATTER

WAS SETTLED - AND THAT THEY

WOULD BE NOTICED OF THE

RECONSIDERATION

HAS NO GOOD TO SAY ABOUT

WANDA SLETTEN

JOE TOOLEY

5-30-80

Called and said that he had
been in Lincoln County and
had seen it was going to
be a problem.

XXXXX 3352

June 6, 1979

Town of Worthing
Worthing, SD 57077

Gentlemen:

RE: 4401-3

This letter is to inform you that the Water Rights Commission deferred action on your Application No. 4401-3 at the May 24-25, 1979 Commission meeting, pending the outcome of the South Lincoln County Rural Water System's water right application.

Also, please submit proof of publication, as we have not received it yet.

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

Sincerely,

BETTY WESTLUND
Water Rights Specialist I

BW/gy

**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.

CH:kw

Equal Opportunity Employer

WNR-101-9/79

**South Dakota Department of
Water & Natural Resources**
Water Rights Division
605 773-3352

600 Foss Building
Pierre, South Dakota 57501

February 9, 1981

Town of Worthing
Worthing SD 57077

Dear Sirs:

RE: 4401-3

The Water Management Board requested that proposed Findings of Fact, Conclusions of Law and a proposed Decision regarding Water Right Permit No. 4401-3 for the Town of Worthing 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 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

kw
cc: Craig E Sewell
605 Rock Cr Drive No. 181
Sioux Falls SD 57301

Equal Opportunity Employer

SOUTH DAKOTA

Department of Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

March 9, 1981

Town of Worthing
Worthing,
South Dakota 57077

Dear Sirs:

RE: 4401-3

As of this date, we have only received the first notice of publication for Application No. 4401-3. Please submit the affidavit of publication by March 24, 1981 so the proposed Findings of Fact, Conclusions of Law and Final Decision can be acted on at the March 25 & 26, 1981 Water Management Board Meeting.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

cc: Craig E Sewell
605 Rock Cr Dr No. 181
Sioux Falls SD 57103

Equal Opportunity Employer

NR-101-9/79

**South Dakota Department of
Water & Natural Resources**
Joe Foss Building
Pierre, South Dakota 57501
Water Rights Division
605 773-3352

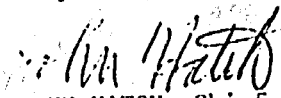
March 18, 1981

Town of Worthing
Worthing,
South Dakota 57077

Dear Sirs:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law and Final Decision on Application No. 4401-3, Town of Worthing, as prepared by the Attorney General's Office.

Very truly yours,


JOHN HATCH, Chief Engineer
Water Rights Division

JH:kw

enclosure

cc: Graig E Sewell
605 Rock Cr Cr No. 181
Sioux Falls SD 57103

Equal Opportunity Employer

NR-101-9/79

Division of Water Rights
605 773-3352

April 10, 1981

Town of Worthing
Worthing,
South Dakota 57077

Dear Sirs:

This is to notify you that final Decisions including Findings of Fact and Conclusions of Law were adopted by the Water Management Board on Application No. 4401-3, Town of Worthing at the March meeting.

The final Decision, Findings and Conclusions are enclosed. 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

kw

cc: Craig E Sewell
Jeff M. Madsen

South Lincoln file GENERAL
MAY 15 1981

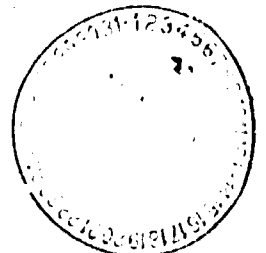
STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

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.
4300-3A.

MEMORANDUM DECISION

The above captioned matter is an appeal from a final decision of the South Dakota Water Management Board (Board) which granted a water permit to the City of Worthing but denied South Lincoln Rural Water System's (SLRWS) request for relief from a condition contained in the water permit granted to SLRWS by the Board on December 12, 1978. SLRWS, the appellant in this matter, seeks, pursuant to SDCL 1-26-32, a stay of the Board's final decision pending an appeal to this court. SLRWS's motion for a stay does not include or effect the Board's decision pertaining to the City of Worthing. Friends of the Dakota Sandstone Aquifer (FODSA) which is composed of residents of the area that is serviced by already existing wells which obtain their water from the Dakota Sandstone Aquifer, resists the motion for stay. The Board has indicated that it has no objection to the issuance of a stay, provided that the appellant is required to post a bond in the amount of the construction costs for the pipeline that the Board has required SLRWS to build as a condition when it issued the water permit to SLRWS in December of 1978.



The above captioned matter was heard by this court on April 28, 1981. After reviewing the record and considering the arguments of counsel the motion for stay will be denied for the reasons set forth below.

DECISION

SDCL 1-26-32 provides:

The appeal shall operate as a stay of all proceedings under such order or decision for a period of ten days, but shall not operate as a stay for a longer time, unless the court, upon at least three days' notice to the parties and the agents, shall in its discretion, order a further stay, pending final decision of such court. The court, as a condition of granting the further stay, may require the appellant to furnish such security as the court may direct to indemnify the state or agency or any person from loss, damage, or costs through such further stay.

There are no South Dakota Supreme Court cases interpreting this statute. This court has on several occasions in the past, when dealing with stay applications in administrative law matters, applied the same standards as are applied in injunction actions, since the relief requested is injunctive in nature.

The factors which must be considered are best set forth in Baggett Transportation Co. v. Hughes Transportation, Inc., 393 F2d 710 (8th Cir., 1978) as:

. . . (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal?

. . . (2) Has the petitioner shown that without such relief, it will be irreparably injured? . . .
(3) Would the issuance of a stay substantially harm other parties interested in the proceedings?
. . . (4) Where lies the public interest?

See also Loften v. McLucas, 383 F.Supp. 1208 (S.D. 1914) and Ottertail Power Company v. Sioux Valley Empire Electric Assn., 131 NW2d 111 (S.D. 1964).

LIKELIHOOD TO PREVAIL ON THE MERITS. Although this inquiry requires speculation as to the eventual outcome of the appeal, it is this court's opinion that appellants have not made a strong showing that they could very well prevail on the merits. Even if appellants had made a strong showing there is very little need for a stay considering the briefing schedule which has been established. In all likelihood this court will issue its opinion on the merits by July 1, 1981. John Madden, an engineer for SLRWS, testified that it would take fifteen weeks to obtain the materials and construct a pipeline to the Davis well field. Thus, if this court issues its opinion by July 1, 1981, and it goes against appellants, there will be sufficient time to construct the pipeline by November 1, 1981, in compliance with condition NO. 7 of the water permit.

There has been in this Court's opinion an insufficient showing that appellant would suffer irreparable injury were the stay not granted, nor has there been any showing that the public interest requires granting of the stay.

For all of the foregoing reasons the motion for stay will be denied. However, if the parties to this appeal can agree to stipulate to the stay, SLRWS will be required to post a bond in the amount of \$384,000.00 to cover the costs of construction of the pipeline to the Davis well field before this court will approve such a stipulation.

Counsel for the Board is directed to prepare an order accordingly.

Dated this 4th day of May, 1981.

BY THE COURT:



Robert A. Miller
Presiding Circuit Judge

ATTEST:

Clerk of Courts

(SEAL)

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

TOWN OF WORTHING'S WATER PERMIT	)	FINDINGS OF FACT
APPLICATION NO. 4401-3	)	CONCLUSIONS OF LAW
	)	FINAL DECISION

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 on March 15, 1979 Water Permit Application No. 4401-3 was submitted to the Water Management Board by the Town of Worthing.
2. That the water applied for was to be used for municipal uses.
3. That the application was complete and has been duly advertised in the Lennox Independent on April 19 and April 26, 1979.
4. That the source of the water applied for is from the Dakota Formation.
5. That at the May 24 and 25, 1979 meeting of the Water Management Board the application was deferred.
6. That the applicant presently has a water right for .1 c.f.s. out of the Dakota Formation.
7. That the additional request presented by the applicant was for .23 c.f.s.
8. That the applicant does not need to withdraw .23 c.f.s. on this application on a constant basis.
9. That sixty-five acre feet per year is a sufficient amount of withdrawal to satisfy the reasonably anticipated needs of the Town of Worthing.
10. That to condition this permit by requiring the Town of Worthing to have an 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.

11. That the Town of Worthing is aware that there are senior appropriators from the Dakota Formation whose water rights must be satisfied even if it requires the Town to be shut off from this source to the extent of .23 c.f.s.

12. That it appears that there is unappropriated water available.

13. That the plans of the project are feasible and granting Water Permit No. 4401-3 is in the public interest.

CONCLUSIONS OF LAW

1. That the Water Management Board has jurisdiction to consider the granting or denying of this application.

2. That the Board has the authority to condition a water permit so as to serve the best interests of the State of South Dakota by making the most efficient use of the waters of this state.

3. That the Board need not treat each applicant for a water permit utilizing the same source of water in an identical manner when circumstances indicated that such treatment would not be the wisest use of the state's resources.

4. That it is not in the state's interest to grant a water permit subject to such conditions that effectively deny the applicant the 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.

5. That in the event senior water right holders or adequate domestic well owners are being interfered with or if the Dakota Formation is declining to the degree necessary to take preventive action to stop the decline, the Town of Worthing will be required by law to be shut off from the Dakota Formation prior to senior water right holders to the extent of .23 c.f.s.

6. That all legal requirements for a water permit have been met and Application No. 4401-3 should be granted.

FINAL DECISION

Water Permit Application No. 4401-3 is hereby approved for .23 c.f.s. subject to the following conditions:

1. That no more than sixty-five acre feet per year may be withdrawn under this permit.
2. That the Town of Worthing report to the Board annually the amount of water withdrawn each year.
3. The 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 adequate domestic wells or in wells having prior water rights.

Dated this 30th day of March, 1981.


CHAIRMAN


SECRETARY

Water Rights Division
605 773-3352

April 1, 1983

4401-3

Joseph Tooley, President
Town Board
PO Box 277
Worthing SD 57077

Dear Mr. Tooley:

March 26, 1981 your Permit No. 4401-3 was approved with the following qualification: "That the Town of Worthing report to the Board annually the amount of water withdrawn under this Permit." As of this date we have not received anything from you concerning your use of water under this permit. Please submit a letter to this office containing the amount of water pumped in 1982. If you have any questions, please contact this office.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:KL:ks



**Department of
Water & Natural Resources**

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

November 28, 1983

4401-3

N O T I C E

Joseph Tooley, President and
Members of the Town Board
PO Box 277
Worthing SD 57077

Mr. Tooley and Members of the Town Board:

This Notice is in regard to the Town of Worthing's Water Permit No. 4401-3.
One of the qualifications to Permit No. 4401-3 is:

"That the Town of Worthing report to the (Water Management) Board
annually the amount of water withdrawn each year."

A letter to Mr. Tooley dated April 1, 1983 advised that the required pumping
records, the total amount of water pumped during 1982, had not been submitted
and requested the 1982 pumping records. Since the 1982 pumping records have
not been received, the Town of Worthing is in violation of its Water Permit.
Please submit the required 1982 pumping records by December 20, 1983.

The 1983 pumping records will need to be submitted by January 20, 1984. Failure
to submit the required pumping records will result in Water Permit No. 4401-3
being noticed for hearing before the Water Management Board to consider dis-
ciplinary action including suspension of the permit.

Please advise if there are any questions.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

cc: Berniece Miles, Town Clerk

Certification of Mailing

I hereby certify that on November 28, 1983, I have personally deposited with the U.S. Mail, postage prepaid envelope containing the attached notice addressed to Joseph Tooley, President & Members of the Town Board
PO Box 277
Worthing SD 57077

Karen Schlaak
Karen Schlaak
Administrative Aide

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 28 day of November, 1983.

Carolyn Ingerson
Notary Public

TOWN OF WORTHING

Box 277

Worthing, South Dakota 57077

WORTHING, SOUTH DAKOTA
JANUARY 9, 1984

JOHN HATCH

Dear Sir:

We dont have any meter readings for the year 1982 as every time we would try and get readings the meters would plug with sand. The following readings are what we have:

SMALL WELL 12829400 (1983 January)

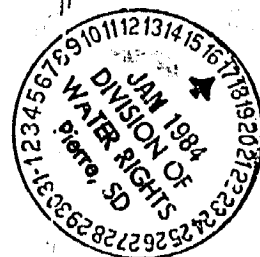
13054300 (1984 January)

Large Well 6556300 (January 1983)

6677800 (January 1984)

Hope this is the information you needed.

Yours Truly
Town of Worthing
Worthing, South Dakota
57077



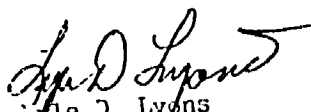
*This info not correct
J. Hatch*

Worthing, SD

March 28, 1984

Mr. John Hatch
Water Rights Division
Foss Building
Pierre, S. Dak. 57501

The billed gallons Town of Worthing, SD during 1983 was 8, 871,810 Gallons.


Lyle D. Lyons
Water Bill Clerk
Worthing, S. Dak.



Water Rights Division - DWNR
Conversation or File Documentation

File No. 4401-3

NAME OF PERSON OR FILE: Town of Worthing

ADDRESS: Box 277 Worthing 57677 COUNTY Lincoln

DATE: 3-29-84 TELEPHONE _____

RE: Mandatory submission of Annual Water use

COMMENTS: March 27, 1984

I contacted Town of Worthing Officials - Terry Hanson, Town Board Trustee; Lyle D. Lyons, Water Bill Clerk; & Verlyn Green, ³⁷²⁻⁴⁵⁷¹ Water Superintendent concerning 1983 water use records. Mr. Lyons advised he would add up the billed gallons for 1983. We received 1983 water use March 28, 1984. The 8,871,810 gallons billed equals 27.23 AF.

Mr. Green advised the ^{MASTER} meters were now working. He has only been Water Supt. for about 6 months. He now records the meter readings the first of each month.

1984 readings

	<u>Large well</u>	<u>Small well</u>	
Jan 2	6677800	13054300	559,100 gal
Feb 3	6677800	13,613,400	1.716 AF
Mar 1	6729000	14,147,700	534,300 51,200 = 1.797 AF 585,500

Projected use (winter use _{w/o summer}) $1.797 \times 12 = 21.56$ AF

Small well (pumps about 20 gpm) is used ^{first} in winter months so elevated storage does not freeze up. Can pump all night w/o overflowing.

Large well not used in winter unless needed.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: John Hatch

81-103

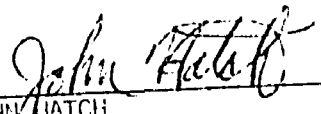
STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

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:

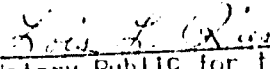
That the following documents are true and accurate photocopies of original documents on file in the offices of the Division of Water Rights and that these documents constitute the Administrative Record for the appeal of in Re Application for Permit No. 4401-3 by the City of Worthing and South Lincoln Rural Water System Permit No. 4300-3.

Application No. 4401-3 file, Town of Worthing & Minutes May 24 & 25, 1979
Letter dated September 3, 1980 from Cliff Morren
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 Dewild Grant Reckert & 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 28 & 29, 1981
Transcript of Hearing held January 29th, 1981
Maps dated January 29, 1981 presented to Water Management Board by Derric Illies
Letter dated February 4, 1981 from John Hatch
Letter dated February 9, 1981 from Wanda Sletten
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 14 day of April, 1981.

LOIS L. RIES, Notary Public
My Commission Expires
February 3, 1982


Notary Public for the State of
South Dakota



**Department of
Water & Natural Resources**

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Division of Water Rights
605 773-3352

No. 4401-3

October 29, 1985

Town of Worthing
Joseph Toohey, Town President
PO Box 277
Worthing, South Dakota 57077

Dear Sir:

The inspection of your water use system and inspection of the extent of the application of water to beneficial use, as developed under your Water Right No. 4401-3 has been completed. Your final water right document, the Water License, can now be issued.

Statutes require that we charge a \$50.00 fee for the inspection and issuing of the Water License. Upon receipt of the \$50.00 fee from you, your Water License will be sent to you.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until this \$50.00 license fee has been paid. Please contact us if you have any questions.

Sincerely,

Maxine Stirling
Staff Assistant

ms/

NOTE: On form of payment, please include the number of the water permit.
This insures proper handling of the fee.

Permit No. 4401-3Vermillion River Water District**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWNR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by The Town
of Worthing holder ofPermit No. 1695-3 & 4401-3 bearing the priority of 1950, Sept. 11, 1969, March 15, 1979 authorizingthe diversion of 0.33 ²³ ^(2nd) cu. ft. per second of the waters of Groundwaterfor Municipal purposes in Lincoln County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water: Well #1 469 FT. deep, 4 inch submersible, 25 gpmWell #2 482 FT. deep, 4 inch submersible, 50 gpm& Well info in permit no. 1695-3

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

City water supply system

C. Works used to apply water to beneficial use:

The system is in the following condition: goodThe point of diversion is located Well #1 and Well #2 1200 FT. East and 600 Ft.
South of NW corner of Section 9 - T98N-R50WThe works are capable of diverting and conveying to the place of use 0.17cu. ft. per second of water which is to be used for municipal water supplyWater has been put to beneficial use to the maximum extent as follows: Water License shouldbe issued for the following .022 cfs priority 1950.078 cfs priority Sept. 11, 1969.070 cfs priority March 15, 1979and will incorporate 1695-3 and 4401-3~~the license should be issued for~~ 0.17 cfsApplicable permit qualifications have been complied with X Yes NoExceptions to compliance are: Date 5-5-85Kevin P. Larson
SIGNED

State of South Dakota
Water License No. 4401-3

(1) The Town of Worthing
of Box 277, Worthing, South Dakota
made Application No. 4401-3, March 15, 1979 for a water permit to appropriate
0.23 cubic feet per second of water from groundwater (three wells),
Lincoln County, South Dakota for municipal purposes.
Permit No. 4401-3, with a priority date of March 15, 1979
was approved March 26, 1981 and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before March 26, 1983 and for the application to beneficial use of said
water on or before March 26, 1984.

The applicable portions of Water Right No. 1695-3 have been incorporated into this
Water License No. 4401-3.
Priority dates of 1950 for .022 cfs, September 11, 1969 for .078 cfs (from Water
Right No. 1695-3) and .070 cfs from March 15, 1979 (Permit No. 4401-3) will be
retained.

and

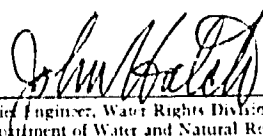
(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of
the construction of the water supply system and is entitled to divert 0.17 cubic feet per second of water
for beneficial use. The location of the diversion point(s) is are well #1 and well #2, 1200'E and
600'S of the NW Corner of Section 9, T96N, R50W.

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, water is diverted through the city's distribution system.

(4) Pursuant to §46-5-30.1 the Town of Worthing
of Box 277, Worthing, South Dakota
the holder(s) and/or owner(s) of Water Permit No. 4401-3 is issued a license to appropriate water, the right to use
0.17 cubic feet per second of water from groundwater (two wells) with a priority date
.022 cfs from 1950; .078 cfs from September 11, 1969
of and .070 cfs from March 15, 1979 from the location specified in (2) of this license. The water to be
conducted to and upon lands specified in (3) of this license for the purpose of municipal use

This license is subject to any limitations or qualifications listed in Water Permit No. 4401-3 and subject
to South Dakota State Law.


Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

DEC 20 1985

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

No 4 10229

Pierre, November 7, 1977

RECEIVED OF Town of Worthing, Box 277, Worthing, SD 57177
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. 665175	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	50 00

By John H. Hatcher
Chief Engineer JOHN HATCHER



Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
Phone (605) 773-3352

No. 4401-3

DEC 20 1995

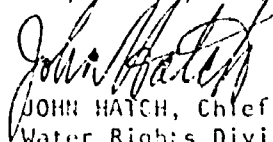
Town of Worthing
Box 277
Worthing, South Dakota 57077

Dear Sir:

Enclosed herewith is, Water License No. 4401-3. 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 Laws provide that you have a continuing right to use the water.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:ms

Enclosures

Applicable portions of Water Right No. 1695-3 have been incorporated into this Water License No. 4401-3.

WNR-817 3/83

Transmittal of Water License

4401-3

WATER RIGHTS DIVISION
(605) 773-3352

January 20, 1987

Town of Worthing
Box 277
Worthing, South Dakota 57077

ATTENTION: Linus Miles

Dear Mr. Miles:

Pursuant to the qualification on Permit No. 4401-3, the Water Rights Division is requesting a report of the Town of Worthing's Annual Water Usage for 1986.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:KB:ms



Department of Water & Natural Resources

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

WATER RIGHTS DIVISION
(605) 773-3352

4401-3

March 12, 1987

Linus Miles
Town of Worthing
Box 277
Worthing, South Dakota 57077

Dear Mr. Miles:

We have not received the town of Worthing's Water Usage Report as requested by our January 20, 1987 letter. Please submit the 1986 water use report.

Worthing is required to submit a Water Usage Report to the Division of Water Rights annually by qualification to Water Permit No. 4401-3. Failure to meet the water permit qualification will result in a hearing before the Water Management Board.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:ms

cc: Joe Tooley, Pres. Town Board
Darlene Schliem, Finance Officer

South Dakota

GREAT FACES. GREAT PLACES.

MAY 10 1991

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

4401-3

George Zahn, Town President
Town of Worthing
PO Box 277
Worthing SD 57077

Dear President Zahn:

The Water Management Board has validated the enclosed Vested Water Right No. 4401-3. This validation gives legal status to the claim and is the final document for your vested right.

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

Very truly yours,

John Hatch

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

enclosure

SOUTH DAKOTA

VALIDATION OF (PARTIAL) VESTED WATER RIGHT CLAIM NO. 4401-3

Date Claim Accepted For Filing March 15, 1979.

Date of Validation September 27, 1989.

Pursuant to SDCL 46-2A-17 the Water Management Board validated Vested Water Right Claim No. 4401-3 for the Town of Worthing, P O Box 277, Worthing, South Dakota 57077 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 4401-3 appropriates 0.022 cubic feet of water per second from two wells approximately 469 and 482 feet deep and located in the NW 1/4 NW 1/4, Section 9, T98N, R50W.

2. The appropriated water is used for supplying water for the Town of Worthing and may not exceed the amount of water needed for beneficial use for municipal purposes.

The water is to be used during the following annual period:
January 1 - December 31

3. The priority date of the Vested Water Right is: January 1, 1950.

4. The water use system has been constructed and water has been applied to beneficial use.

5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: John Batisto
Chief Engineer
Division of Water Rights
Dept. of Water and Natural Resources

MAY 10 1991

date



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 6, 1993

Cecil Coombs
Howard Green Co.
3504 South Minnesota Ave.
Sioux Falls, SD 57105

Dear Mr. Coombs:

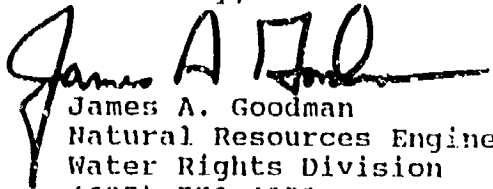
I have included copies of the license for Water Right No. 4401-3 (Worthing), a water analysis for each well, some information of well #2 and pumping records reported by the Town of Worthing. Worthing does not have a permit to drill a new well. A new well can be drilled to replace an existing well without a new permit, but if more water will be used, then a new permit would be necessary for the additional diversion. The existing Water Right authorizes two wells and a total diversion rate of 0.17 cfs.

Worthing reported the following annual diversions from the two wells:

1983	8,871,810 gallons	1984	8,946,200 gallons
1985	8,803,600 gallons	1986	8,287,500 gallons
1987	10,351,000 gallons	1988	8,484,000 gallons
1989	9,988,600 gallons	1990	8,356,500 gallons
1991	9,081,200 gallons	1992	no report yet

If I can be of further assistance, please feel free to contact me.

Sincerely,


James A. Goodman
Natural Resources Engineer
Water Rights Division
(605) 773-3352

encl

4401-3

Large Well

Feb. 3 - 84

6,677,800

Dec. 4 - 84

10,644,400

Jan. 4 - 85

10,832,000

Feb. 1 - 85

10,870,000

12.86 AF

Small Well

Feb. 3 - 84

13,613,400

Dec. 4 - 84

17,108,700

Jan. 4 - 85

17,770,800

Feb. 1 - 85

18,307,400

14.58 AF

Worthing - 7 FEB 85

RECORD DETAINED READINGS

FROM CITY -

1984 wage 12.86 AF
14.58 AF
27.44 AF

(Same wage in 1985 usage)

Conversation or File Documentation

NAME OF PERSON OR FILE: Town of WorthingADDRESS: Box 277 Worthing 57677 COUNTY LincolnDATE: 3-27-84 TELEPHONE _____RE: Mandatory submission of Annual Water UseCOMMENTS: March 27, 1984

I contacted Town of Worthing Officials - Terry Hanson Town Board Trustee; Lyle D. Lyone, Water Bill Clerk; & Verlyn Green, Water Superintendent concerning 1983 water use records. Mr. Lyone advised he would add up the billed gallons for 1983. We received 1983 water use March 28, 1984. The 8,871,810 gallons billed equals 27.23 AF.

Mr. Green advised the ^{master} meters were now working. He has only been water supt. for about 6 months. He now records the meter readings the first of each month.

1984 readings

	<u>Large well</u>	<u>Small well</u>	
Jan 2	6677800	13054300	559,100 gal
Feb 3	6677800	13,613,400	1.716 AF
Mar 1	6729000	14,147,700	534,300 51,200 = 1.797 AF 585,500

Projected use (winter use) $1.797 \times 12 = 21.56$ AF
w/o summer

Small well (pumps about 20 gpm) is used ^{first} in winter months so elevated storage does not freeze up. Can pump all night w/o overflowing.

Large well not used in winter unless needed.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: John Hatch

4401-3

Worthing, SD

March 28, 1984

Mr. John Hatch
Water Rights Division
Foss Building
Pierre, S. Dak. 57501

The billed gallons Town of Worthing, SD during 1983 was 8, 871,810 Gallons.

= 27.23 AF

Lyle D. Lyons
Lyle D. Lyons
Water Bill Clerk
Worthing, S. Dak.



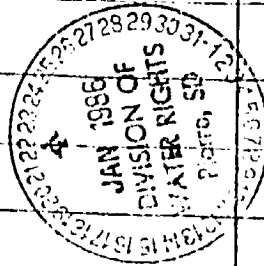
TOWN OF WORTHING

Box 277

Worthing, South Dakota 57077

well meter readings for 1985

wall no 1 25 G.P.M.		wall no 2 50 G.P.M.	
Date			
Jan. 4	17,770,800		10,832,000
Feb 3	18,360,200		11,231,000
march 5	18,880,300		11,627,000
april 3	19,991,100		11,647,000
may 5	20,901,100		11,701,100
June 4	21,481,100		11,789,100
July 3	21,611,100		12,129,500
aug 5	23,041,600		12,136,400
Sept 4	23,911,400		12,280,300
OCT 8	23,980,200		12,402,600
Nov 9	24,038,200		13,021,900
Dec 11	24,137,100		13,269,300
Totals	16,366,300		2,437,300
used 1985			



Total water used Both wells 1985

18,803,600 gal



Line 411
Box 277
Worthing So. Dak.
57077

Water Meter Readings for 1985

Worthing, So. Dak.

January

begining-

end-

February-

March-

April-

May-

June-

July-

August-

September-

October-

November-

December-



TOWN OF WORTHING

Box 277

Worthing, South Dakota 57077

John Hatch
Chief Engineer
Water Rights Division



att: Mr Hatch

Dear Mr Hatch,

In regard to your Jan. 6th letter
pursuant to Permit # 4401-3 water rights
Division. Requesting the annual water
usage for 1987 is as follows.

January 1, 1987 to December 31, 1987

Total
10,351,000

Very truly yours

Linus Miles
Water Supt.

Box 124

Worthing So. Dak. 57077



Department of Water & Natural Resources

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

NOTICE

February 10, 1989

Linus Miles, Water Supt.
Town of Worthing
Box 277
Worthing, SD 57077

Dear Mr. Miles:

Pursuant to qualification No. 2 on Water Permit No. 4401-3, the Water Rights Division is requesting a report of the Town of Worthing's Annual Water Usage for 1988. This qualification states that the Town of Worthing must report to the Water Management Board annually the amount of water withdrawn each year.

Very truly yours,

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

cc: Joe Tooley, Town President



TOWN OF WORTHING

Box 277

Worthing, South Dakota 57077



Town of worthing
water Dept
2-8-89

Dept of water & natural Resources
Joe Fass Building
Pierre, South Dak 57501-3181
ATT: John Hatch

Dear Mr. Hatch,
The Town of worthing's water usage
for 1988. is as follows.

~~total~~ total (8,484,000 gal)

very truly yours
Lenis Miles
water Supr

1984
SOUTH LINCOLN RURAL WATER SYSTEM, INC.
- PUMPING RECORDS -

	Worthing Well No. 1			Worthing Well No. 2			Worthing Well No. 3			Worthing Well No. 4		
	Final	Initial 01-01-	Total year	Final	Initial	Total year	Final	Initial 01-01-	Total year	Final	Initial	Total year
For the year 1986	766,686	73708	19,277,850	733,644	644,864	109,157,360	946,762,000	77,853,000	16,817,000	742,484	25,306,000	16,700,000

Total Dollars 213,033,000



1984
SOUTH LINCOLN RURAL WATER SYSTEM, INC.
- PUMPING RECORDS -

	Working Well No. 1			Working Well No. 2			Working Well No. 3			All Working Wells		
	Final	Initial 01-01-	Total year	Final	Initial	Total year	Final	Initial 01-01-8	Total year	Final	Initial	Total year
For the year 1986	766,686	73708	19,372,603	1,733,649	642,069	109,502,300	246,702,000	77,855,000	16,817,000	192,089,000	25,308,000	16,760,000

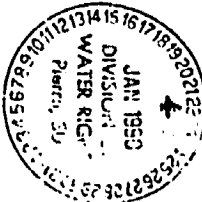
202,67 AF

101,117
Pumping
0000

234,19 AF

51,01 AF

51,01 AF



Total Dollars 212,032,000

650.7 AF

745

LETTER SENT TO MURDER
25 JAN 86

4/401-7

Department of
Water and Natural Resources
Water Rights Division

Sir,

The Town of Worthings annual
water usage for 1989 is as
follows

well #1

4,865,700

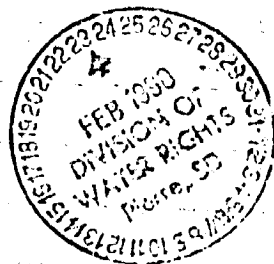
well #2

5,122,900

Total for 1989 = 9,988,600

Very truly yours

Louis Miller





Department of Water & Natural Resources

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

4401-3
1990 Reports

December 5, 1990

TOWN OF WORTHING
LINUS MILES
BOX 277
WORTHING SD 57077

Dear MR. MILES:

Pursuant to a qualification on Water Permit/Right No(s). 4401-3, we are requesting that the TOWN OF WORTHING report to the Chief Engineer the amount of water withdrawn for the year 1990. Please respond by JANUARY 31, 1991.

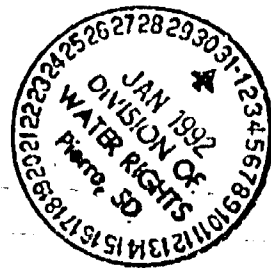
If you have any questions concerning this or other water rights questions, please contact Regan Fanning, Natural Resource Analyst, (605) 773-3352.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ron Duvall". The signature is stylized with a large, looped "R" and a cursive "Duvall".

Ron Duvall,
Natural Resource Engineer
for JOHN HATCH, Chief Engineer
Water Rights Division

4401-3



Mr. John Hatch.

In pursuant to a qualification
on water Permit / right no. 4401-3

the town of Worthing
has for the year of 1991
withdrawn a total of.

(9,081,200) gal of
water.

Leino Miles

Water usage for 1992

well #1 = 6,536,800

well #2 = 2,057,300

Total 8,594,100
For 1992

Town of Worthing

Box 277

Worthing S.D. 57077

By Linus Miles





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

December 23, 1992

Linus Miles
Town of Worthing
Box 277
Worthing SD 57077

Dear Mr. Miles:

Pursuant to a qualification on Water Permit/Right No(s). 4401-3, I am requesting that the Town of Worthing report the amount of water diverted under the permit(s) during 1992. Please respond by January 15, 1993.

If you have any questions concerning this or other water rights questions, please contact Barry McLaury, Natural Resources Analyst, (605) 773-3352.

Very truly yours,

RON DUVAL, Natural Resources Engineer
for JOHN HATCH, Chief Engineer
Water Rights Division



1992

4401-3

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 26, 1993

SECOND NOTICE

Linus Miles
Town of Worthing
Box 277
Worthing, SD 57077

Dear Mr. Miles:

Pursuant to a qualification on Water Permit/Right No(s). 4401-3, we requested in our December 23, 1992 letter that the Town of Worthing report the amount of water withdrawn during 1992. We have not received a reply and would appreciate your earliest response.

If you have any questions concerning this or other water rights questions, please contact Barry McLaury, Natural Resources Analyst, at (605) 773-3352.

Very truly yours,

RON DUVAL, Natural Resources Engineer
for JOHN HATCH, Chief Engineer
Water Rights Division



4401-3

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

January 13, 1994

Linus Miles
Town of Worthing
Box 277
Worthing, SD 57077

Dear Mr. Miles:

Pursuant to a qualification on Water Permit/Right No. 4401-3, I am requesting that the Town of Worthing report the total amount of water diverted in 1993. Please respond by January 31, 1994.

If you have any questions concerning this or other water rights questions, please contact Barry McLaury, Natural Resources Analyst, (605) 773-3352.

Sincerely,

RON DUVALL, Natural Resources Engineer
for JOHN HATCH, Chief Engineer
Water Rights Division

Total water pumped
1993
well
#1 2,566,200 #2 5,325,600

Total 7,891,800

Lincoln Mts,

Town of Worthy

4401-3

EPA 0377



4401-3

Town of Worthing (2 wells)

1983		8,871,810	= 27.2 AF
1984		8,946,200	= 27.5 AF
1985		8,802,600 gal	= 27.0 AF
1986		8,287,500 gal	= 25.4 AF
1987	Jan 1, 1987 to Dec 31, 1987	10,351,000 gal	= 31.8 AF
1988		8,424,000 gal	= 26.0 AF

* Some overlap w/ 1985 - Jan

File No. 4401-3

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Tony Nelson, Town of Worthing, PO Box 277, Worthing, SD 57077

DATE: January 4, 2000

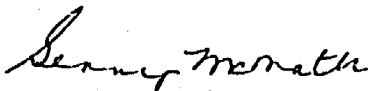
TELEPHONE:

RE: annual water use report for Water Right No. 4401-3

COMMENTS:

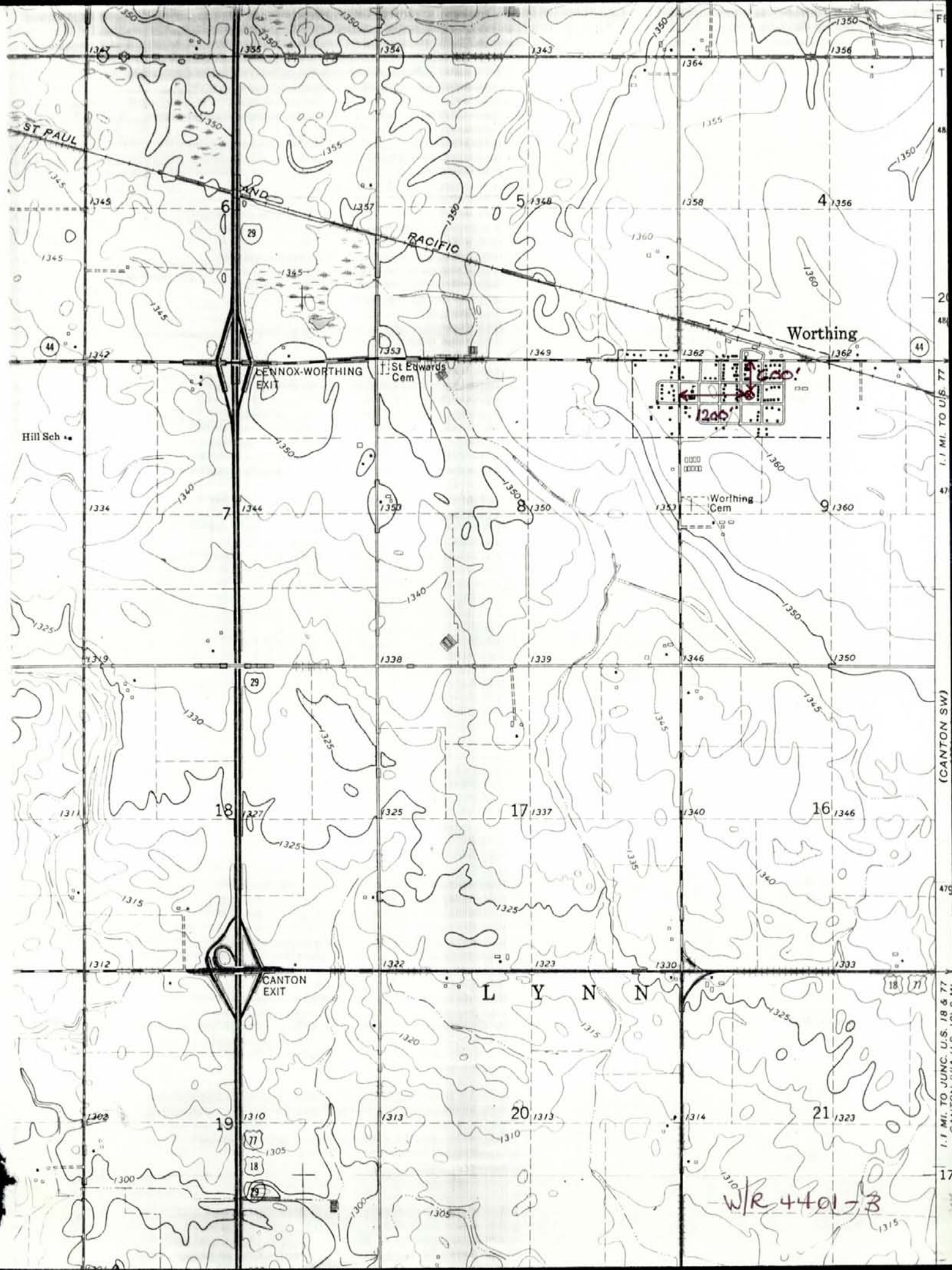
Tony Nelson called to report that they used a total of 1,292,956 gallons of water in 1999.

He also wanted to let us know that Roger Knutson was no longer the water superintendent. **We** should direct our future correspondence to Tony Nelson. Roger still works there but not in the same capacity.



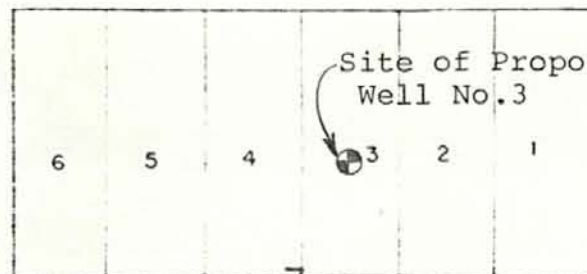
Genny McMath
Environmental Scientist

4 airt



STREET

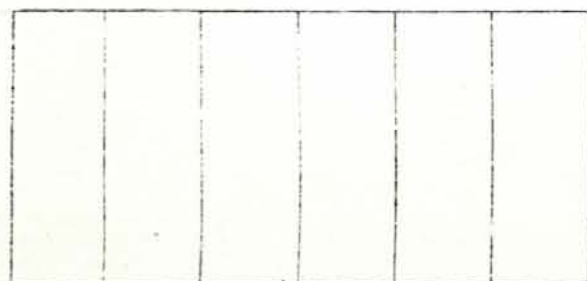
CEDAR



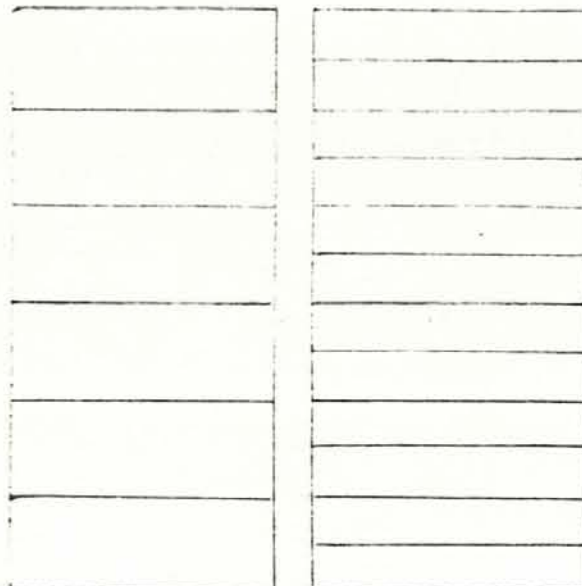
STREET



JUNIPER



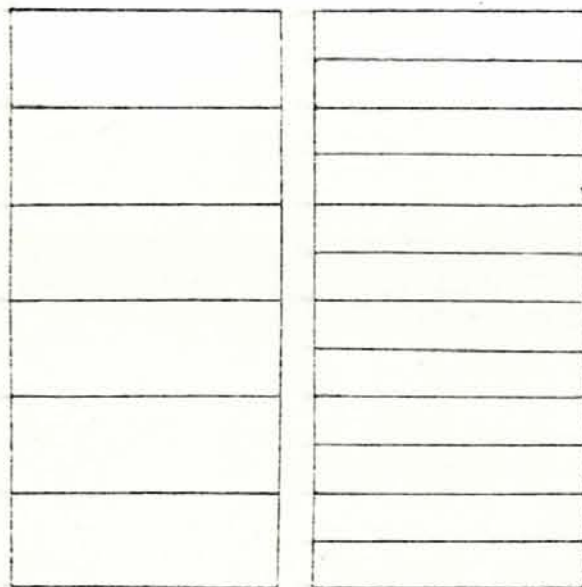
FIRST



STREET

MAIN

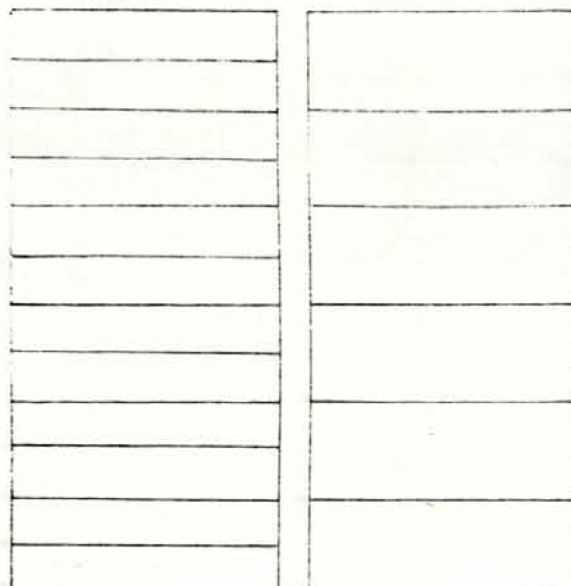
SECOND



THIRD



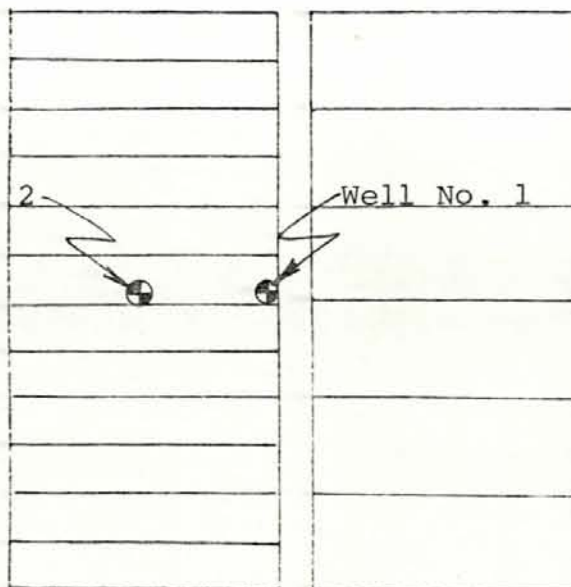
STREET



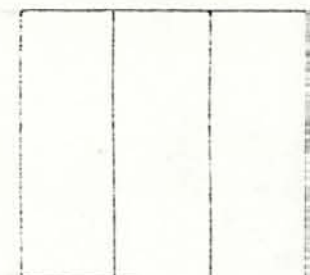
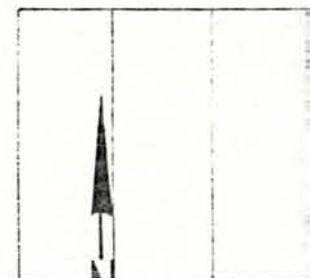
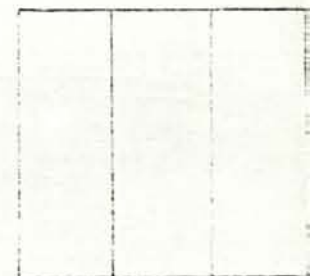
STREET

POPLAR

STREET



STREET



REGISTERED PROFESSIONAL ENGINEER
WARREN C. STEPHENS
Reg. No. 2301

File Nos. 5216-3, 5217-3, 5218-3, 5219-3, 6499-3,
1262A-3, 1262B-3, 1262C-3, 6743-3, 4401-3,
4982-3, 5647-3, 6490-3, 6311-3, 6300-3,
6435-3, 6456-3, 6727-3

Water Rights Program File Documentation

DATE: 04/02/2008

The table below represents the water use reported from the Dakota Formation from Lincoln County by the major water users (City of Canton, Town of Worthing, Town of Fairview and South Lincoln Rural Water Sytem).

	Canton	Worthing	Fairview	SLRWS
	Acre-feet per year*			
2006	406	110	10	863
2005	403	34	8	769
2004	411	37	5	904
2003	384	48	9.2	725
2002	352	NA	NA	786
2001	331	NA	NA	877
2000	370	NA	NA	843
1999	384	4	9.4	781
1998	395	33	12	693
1997	427	36	9	663
1996	394	34	13	689
1995	397	30	11	707
1994	383	25	13	766
1993	351	24	12	630
1992	345	26	8	680
1991	391	28	10	696
1990	401	26	9	669
1989	402	31	NA	650
1988	388	26	20	660
1987	430	32	14	453
1986	330	25	22	370
1985	334	27	22	370
1984	346	27	24	368
1983	330	27	NA	341

* Numbers shown in black originated from Non Irrigation Questioner Data Base

Numbers in blue originated from 4/2/2008 personal correspondence with John Sievers (SLRWS manager)

Numbers shown in red originated from Jim Goodman's report on Application Nos. 5155-3 and 5156-3 (with permit files)

NA= not available

Ken Buhler
Natural Resources Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

April 28, 2010

Jeff Tanner, City Administrator
City of Worthing
PO Box 277
Worthing SD 57077

Dear Mr. Tanner:

The city of Worthing holds Water Right No. 4401-3 (copy enclosed) authorizing an appropriation of water from two Dakota Formation wells. You called DENR to inquire regarding this water right as the city looks at alternatives regarding its wells. This letter is intended to inform the city of water rights law regarding maintaining the water right and when a water right becomes subject of cancellation.

South Dakota is a "use it or lose it" state where failure to beneficially use appropriated water can result in the water right becoming subject to cancellation. Specifically, if the owner abandons the works or fails to use beneficially all or any part of the water for the purpose it was appropriated, for a period of three years, such unused water shall revert to the public. There are administrative rules setting forth that a water right is invalid if the use has been abandoned or forfeited and procedures for cancellation of a water right. In the case of a cancellation proceeding, there is "due process" provided where the city is notified of the pending action and has an opportunity to object before the Water Management Board (citizen board entrusted with hearing contested water matters).

There is an exception to the forfeiture/abandonment of a water right set forth above. It is Administrative Rule of South Dakota 74:02:01:37.02.

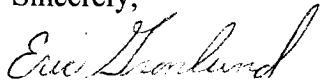
74:02:01:37.02. Exceptions to nonuse of water. A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

It is not uncommon for municipalities served by another source to maintain their wells for standby or fire protection purposes. This rule on exceptions to nonuse of water is

intended to allow the water right to remain valid in those instances. As you can see, the wells need to be maintained for immediate use upon demand. This means the pumps must be in place. If the wells are capped, the water right will become subject to cancellation pursuant to water rights law. If one well is abandoned and the other maintained for standby and fire protection the water right will ultimately become limited to diversion capability of the one well.

I hope this information helps the city make an informed decision. Please let me know if I may be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Gronlund".

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

enclosure



4401-3
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 10, 2011

Jeff Tanner, City Administrator
City of Worthing
PO Box 277
Worthing SD 57077

Dear Mr. Tanner:

The city of Worthing holds Water Right No. 4401-3 authorizing an appropriation of water from two Dakota Formation wells. You called DENR in follow-up to our conversation last April and my subsequent April 28, 2010 letter as the city continues to investigate alternatives regarding its wells.

My previous correspondence from April 2010 focused on informing the city of when a water right can be subject to cancellation and exception to forfeiture and/or abandonment when the wells are maintained for standby or fire protection purposes. The content of this previous letter is still applicable. In our recent discussion you posed a few scenarios the city is looking at. This letter is intended to discuss these matters.

First of all, Water Permit No. 4401-3 originally incorporated Water Right No. 1695-3 for an intended total appropriation of 0.23 cubic feet of water per second (cfs) from three wells (NOTE: a direct conversion is 1.0 cfs = 448.8 gallons per minute). The actual water license was limited to 0.17 cfs (76 gpm) from two wells to represent the level of development. The priority dates below reflect various dates of development.

0.022 cfs – January 1950 (pre-1955 qualifies for vested right status)
0.078 cfs – September 11, 1969
0.070 cfs – March 15, 1979

The city inquired whether there were any “red flags” regarding their water right. While only the Water Management Board can make a determination on the status of a water right, I see no grounds based on the representations made to me regarding the standby status of the wells that would lead DENR to pursue any type of cancellation of the water right. The only oddity is that while the water right clearly indicates there are two wells authorized, it only provides a precise location for one of the wells. I can not explain why two specific well locations are not cited in the water right. I do not view this as an issue limiting the water right to only one well as long as two wells have always been in existence and maintained.

It is my understanding that the city is investigating increasing the pump size in one of its wells and potentially abandoning the other well. The pump in the well may be changed to allow for a diversion of up to a 76 gpm diversion. The other well would then need to be abandoned and plugged in accordance with well construction standards. This all could be done without going through additional water permitting. However, the abandoned well would ultimately be forfeited from the water right. If the city decided to increase the diversion rate in the one well but keep both wells to meet fire protection needs, most likely additional water permitting will be required. Certainly, if the city's intent to increase its diversion ability above 76 gpm diversion, a new water permit will need to be obtained for the incremental increase above 76 gpm. This is a process that requires an application, DENR review and public notice.

There may be a number of other scenarios the city is investigating that have not been covered. Please let me know if the city has further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Gronlund".

Eric Gronlund

Water Rights Program, DENR

605 773-3352

eric.gronlund@state.sd.us