

WATER PERMIT NO. 5101A-3

Name of Applicant: City of Lennox

Address: PO Box 228, Lennox SD 57039

Phone: 605647-2286

Amount of Water Claimed: no add'l

Total Acres: no add'l

Source of Water Supply: groundwater

Water to be used for: municipal use

County: Lincoln

Type of Waste Disposal System:

Location: 4 miles southeast of Lennox

PRIORITY

Date Received: 12-4-06

Application/License Fee: \$50

Corrected Application Received:

Period of Annual Use: Jan 1- Dec 31

Remarks: Extends the boundaries of the future use area authorized by No. 5101A-3

Area to be included in future use: SE 1/4 Sec 12-

T98N-R51W

Land to be Irrigated: NA

Depth of Well:

Well Driller: :

Remarks:

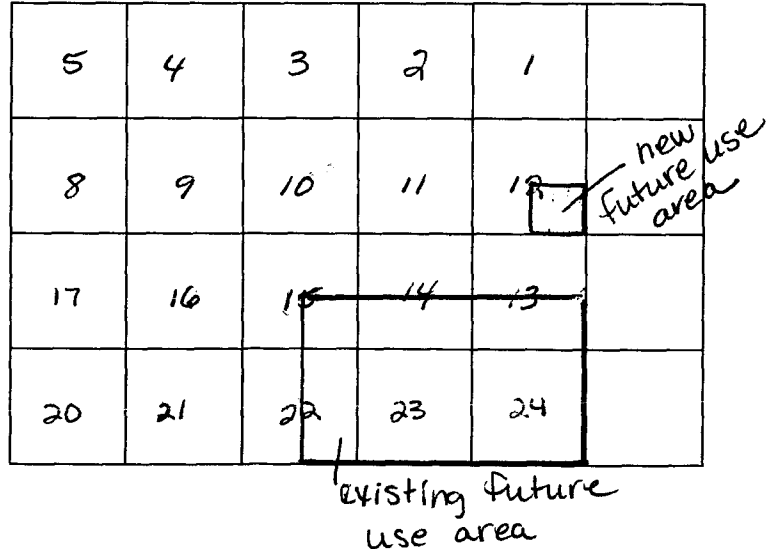
Type of Map: aerial

Prepared by: Camden A Hofer, PE

Reviewed and the Number Assigned on: 12-4-06

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>5101A-3</u> (office use only) Hydrologic Unit <u>10170102</u>
	Basin <u>Vermillion River</u>
	Newspaper <u>Lennox Independent PO Box 71</u> <u>647-2284</u> <u>57039</u>

RECEIVED
DEC - 4 2006
WATER RIGHTS
PROGRAM

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

Check use(s) of water:

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

Type of Application: (check one)

- ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 5101-3

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

Add area to the future use boundary. The added area includes Well "E" which is located in the SE 1/4 of Section 12, T98 N, R51 W.

- Name of Applicant City of Lennox Phone (605) 647-2286
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address PO Box 228 Lennox State SD 57039
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed _____ *CFS or _____ **GPM no add'l ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply 3 new wells
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Lincoln
No additional water is added.
Include SE 1/4 Sec 12 T98N R51W in future use
- County or counties where water will be used Lincoln area
- Annual period during which water is to be used 356 days Jan 1 - Dec 31
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

The Well "E" area is added to the Future Use Permit.

STATE OF SOUTH DAKOTA)
County of Lincoln) SS

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

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

Applicant's signature Orville Wiebers

Subscribed and sworn to before me this 30 day of November 2006

Judy J. Finnell
Notary Public signature
My Commission Expires July 5, 2010

**SOUTH DAKOTA
FUTURE USE PERMIT NO. 5101A-3**

Date of first receipt of application December 4, 2006.

The Water Management Board approved Future Use Permit No. 5101A-3 on July 11, 2007 for the City of Lennox, PO Box 228, Lennox SD 57039 subject to the following limitations, conditions and qualifications:

1. Future Use Permit No. 5101A-3 amends Future Use Permit No. 5101-3 by expanding the area reserved for future use. Permit No. 5101-3 reserves 129 acre-feet annually from the Dakota Formation located in the S ½ Section 13 and 14; SE ¼ Section 15; E ½ Section 22; Sections 23 and 24; all in T98N-R51W. This permit includes the SE ¼ Section 12-T98N-R51W to the future use area with no increase in the amount of water reserved for future use by No. 5101-3.
2. The water appropriated shall be used for the purpose of municipal use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is August 27, 1986 (established by Permit No. 5101-3).
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Permit Nos. 5101-3 and 5101A-3, combined, reserve 129 acre feet of water annually from the Dakota Formation.
2. That Future Use Permit No. 5101A-3 is approved with the stipulation that this Permit is subject to review in conjunction with Permit No. 5101-3 by the Water Management Board in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1.

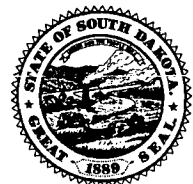
WATER MANAGEMENT BOARD

By: Garland Erbele

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

OCT 19 2007

date



Lennox, SD



468th Avenue

469th Avenue

470th Avenue

SD HWY 44

281 St

282 St / County Highway 128

Interstate 29

By: Camden A. Hofer
Date: 11-28-2019
8322
REGISTERED PROFESSIONAL ENGINEER
SOUTH DAKOTA
CAMDEN A. HOFFER

New Well Sites

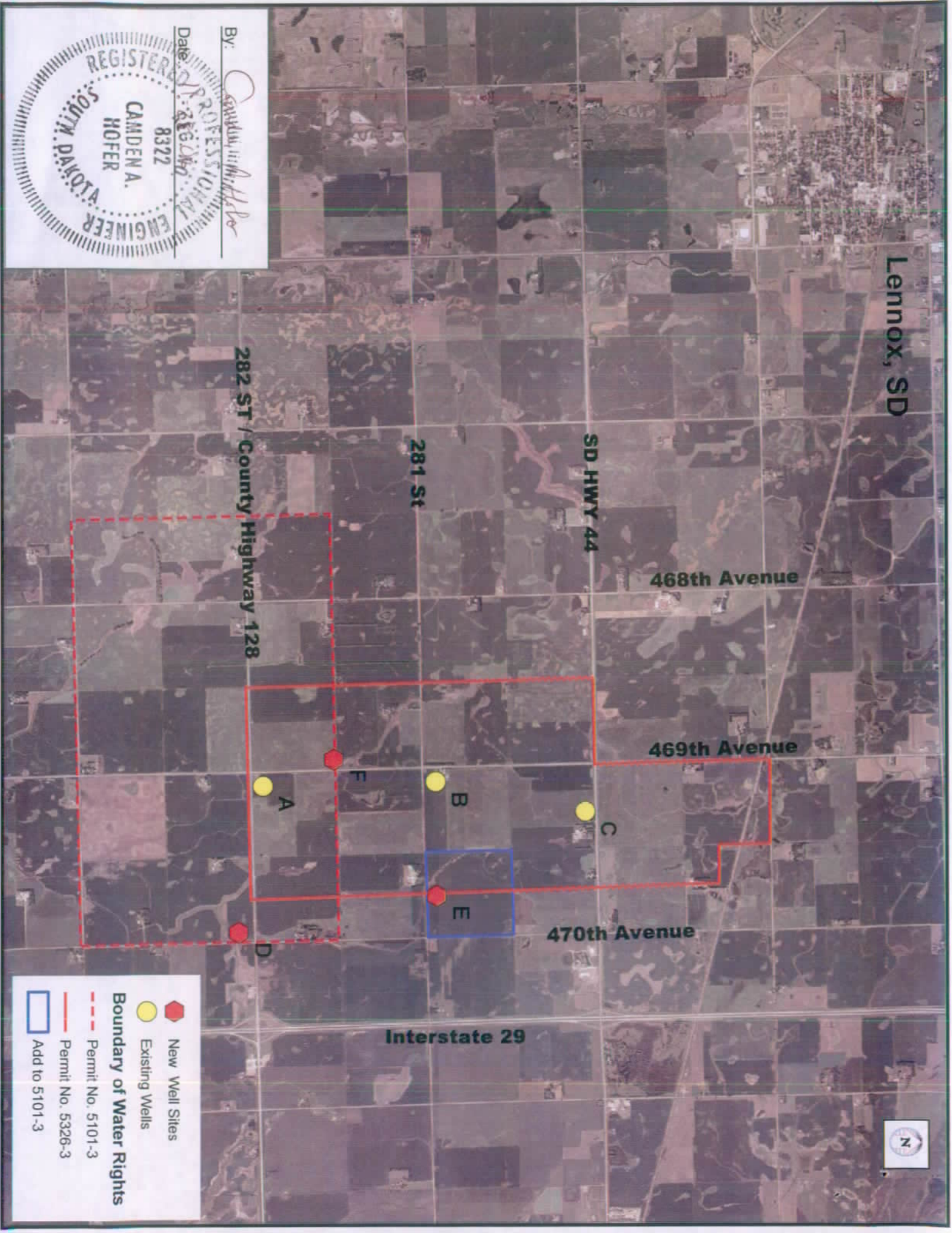
Existing Wells

Boundary of Water Rights

Permit No. 5101-3

Permit No. 5326-3

Add to 5101-3



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date December 4, 20 06

RECEIVED OF City of Lennox, PO Box 228, Lennox SD 57039-0228

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	50 00	
Fee for Application for Permit No. <u>5101A-3</u> 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. _____		
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	50.00

No.

02662

By

Darlene Erbe

Chief Engineer

gm



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
APPLICATION NO. 5101A-3, City of Lennox**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit Application No. 5101A-3, City of Lennox, c/o Mayor Orville Wiebers, PO Box 228, Lennox SD 57039.

The Chief Engineer is recommending APPROVAL of Application 5101A-3 because 1) the applicant has demonstrated a reasonable need for the water reserved, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Permit Nos. 5101-3 and 5101A-3, combined, reserve 129 acre feet of water annually from the Dakota Formation.
2. That Future Use Permit No. 5101A-3 is approved with the stipulation that this Permit is subject to review in conjunction with Permit No. 5101-3 by the Water Management Board in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1.

See report on application for additional information.

Garland Erbele, Chief Engineer
January 26, 2007

REPORT ON WATER PERMIT APPLICATION NO. 5101A-3
For City of Lennox
January 18, 2007

Application No. 5101A-3 proposes to amend Future Use Permit No. 5101-3 by expanding the area reserved for future use. Permit No. 5101-3 reserves 129 acre-feet annually from the Dakota Formation located in the S $\frac{1}{2}$ of sections 23 and 14; the SE $\frac{1}{4}$ of section 15; E $\frac{1}{2}$ of section 22; sections 23 and 24; all in T98N R51W in Lincoln County. This application requests that the SE $\frac{1}{4}$ of section 12, T98N R51W be added to the existing future use area with no increase in the amount of water reserved by Future Use Permit No. 5101-3. This water is reserved for future municipal use by the City of Lennox.

AQUIFER – DAKOTA FORMATION (DKOT)

The Dakota Formation is a buried sand, sandstone and shale under confined or artesian conditions in this area. The aquifer underlies 484 square miles and contains an estimated 4.298 million acre-feet of recoverable water in storage in Lincoln County (Hedges, 1982). The aquifer extends laterally into Iowa to the east, into Union County to the south and into Clay and Turner Counties to the south and west. The aquifer is bounded on the north in the subsurface by the Sioux Quartzite and groundwater movement is southerly (Niehus, 1994). The aquifer is probably hydraulically connected to the Upper Vermillion Missouri aquifer to the west and north and to the Sioux Quartzite to the north.

Test well data for well "E" site (this is the area of this future use request) indicates that sandstone was encountered at 387 to 397 feet, 400 to 405 feet and 409 to 544 feet. This would be a total thickness of sandstone of about 150 feet.

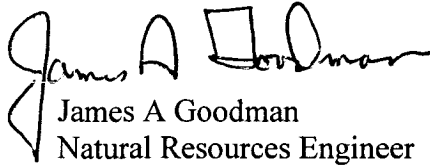
The Water Right Program monitors five observation wells completed into the Dakota Formation and located within a three mile radius of this application. Water levels for these wells all show the same characteristics. A brief period in the late 1970's of predevelopment showing relatively stable water levels followed by periods of declining water levels then stable and then declining all of this dependent upon the development history either of the Rural Water System or City of Lennox in the area near a particular observation well. Hydrographs for observation wells LN-77A, LN-77F, LN-79D, LN-80I and LN-92A are included with this report.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

The only other user in this immediate area other than the City of Lennox is Water Permit No. 6449-3 (0.222 cfs, Dakota Formation). Water Permit No. 6449-3 is located over one mile to the northeast of the area for this application. Interference should not be a concern at this distance but also would depend upon pumping rates. Since this is simply a future use area expansion interference can not be evaluated until a specific application to put water to use is made.

CONCLUSIONS

1. This application is a proposal to add area to the existing future use area specified in Permit No. 5101-3 of the town of Lennox.
2. No additional water is requested by this application.
3. The amount of water remaining in Future Use Permit No. 5101-3 and this application remains at 129 acre-feet per year from the Dakota Formation.
4. The City of Lennox will need to make a water permit application to put this reserved water to beneficial use.



James A Goodman
Natural Resources Engineer

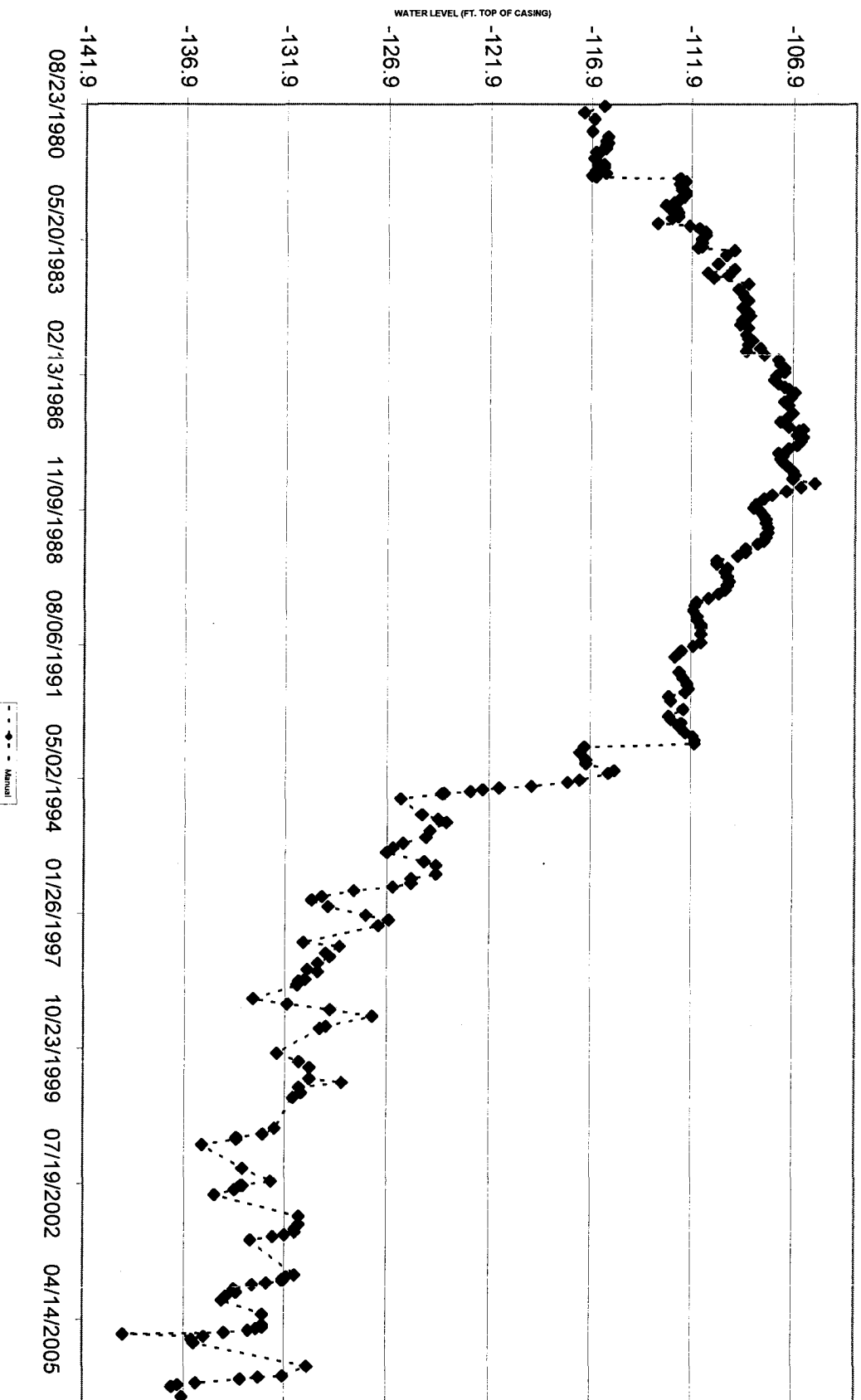
BIBLIOGRAPHY

Hedges, L.S., and others, 1982, Evaluation of Ground-Water Resources Eastern SD and Upper Big Sioux River, SD and Iowa, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 58069.

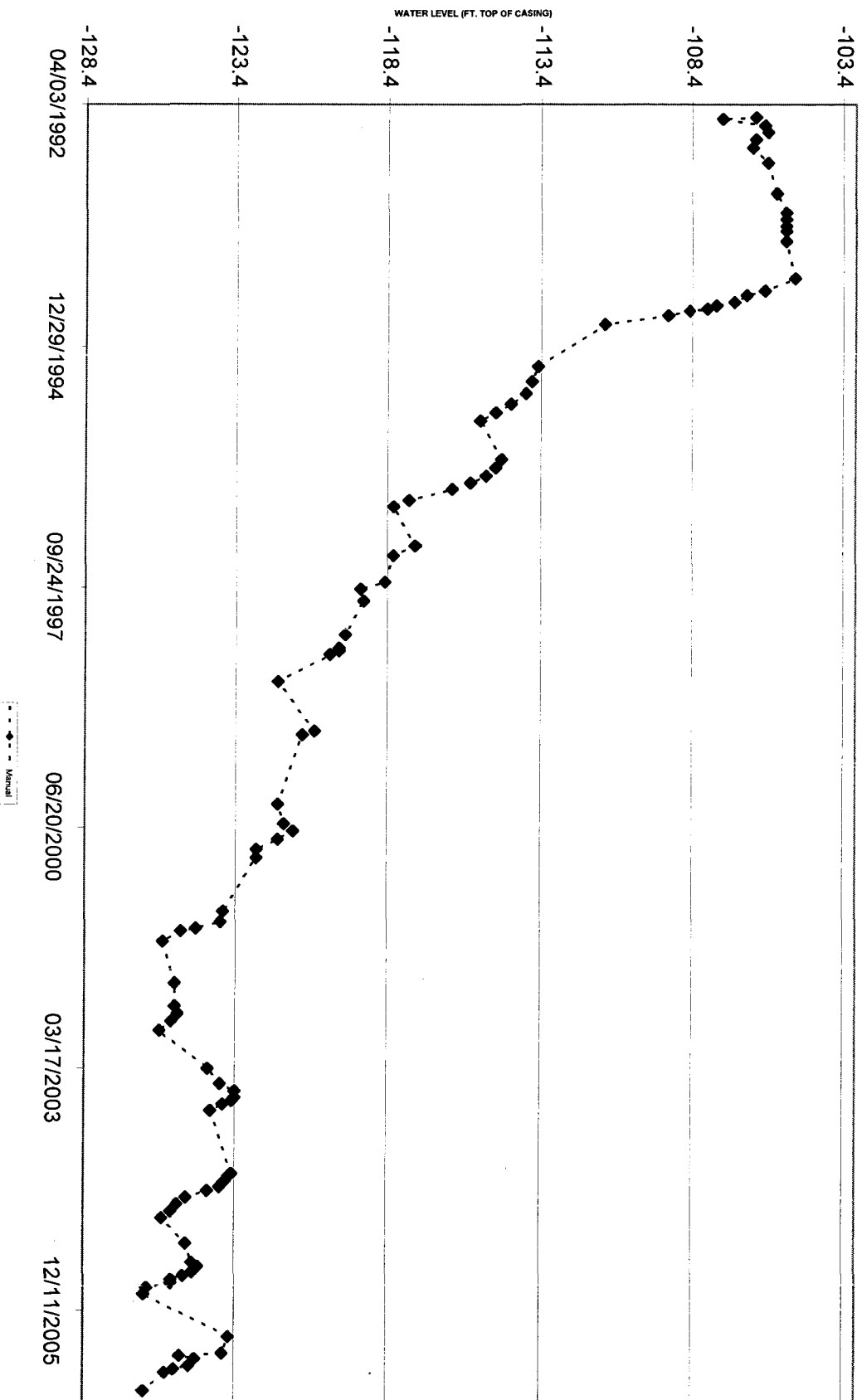
Niehus, C.A., 1994, Water Resources of Lincoln and Union Counties, South Dakota, Water-Resources Investigations Report 93-4195, USGS, Rapid City, SD, 57702.

Water Rights, 2007, Unpublished Observation Well Data for Lincoln County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

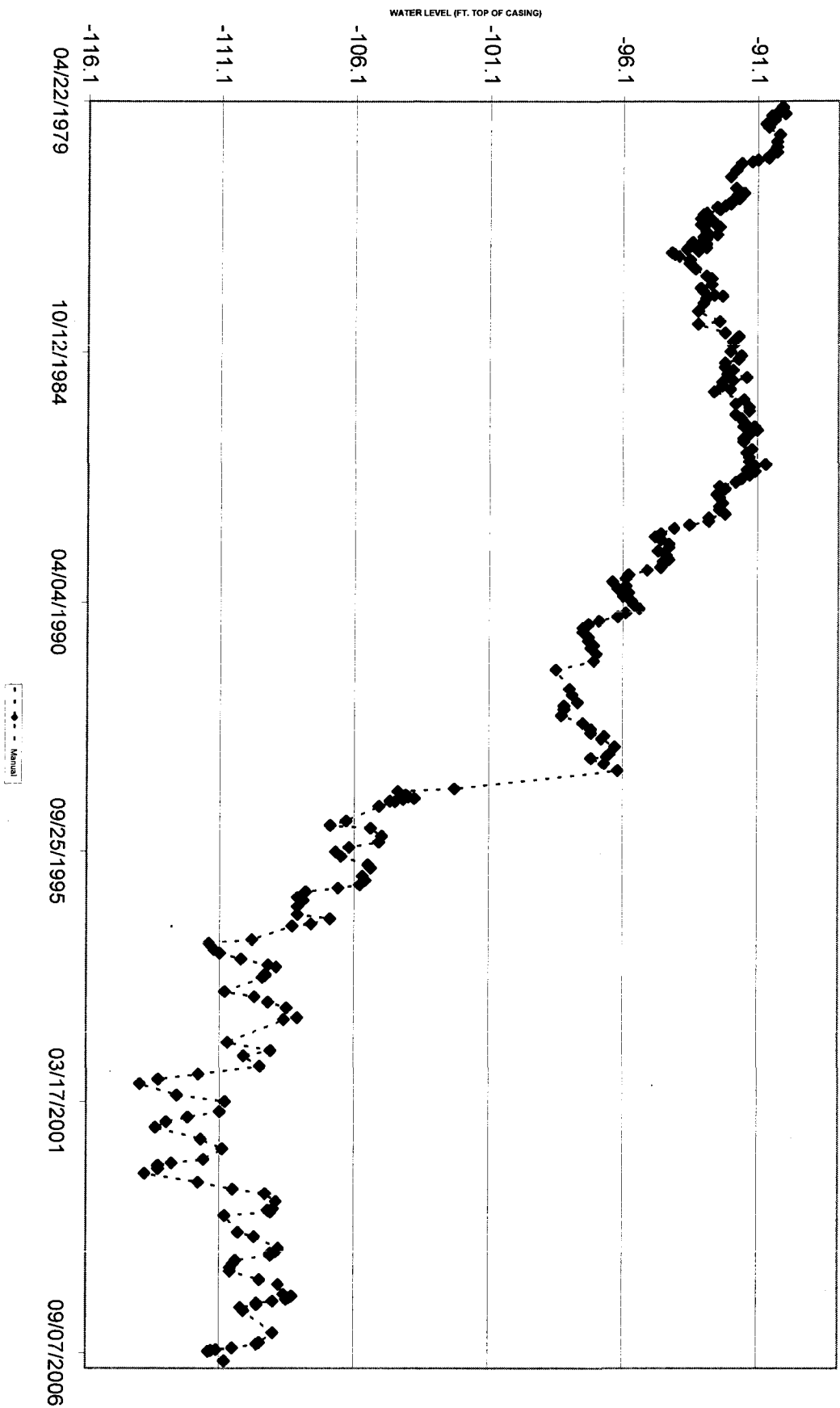
WATER RIGHTS' OBSERVATION WELL
LN-801



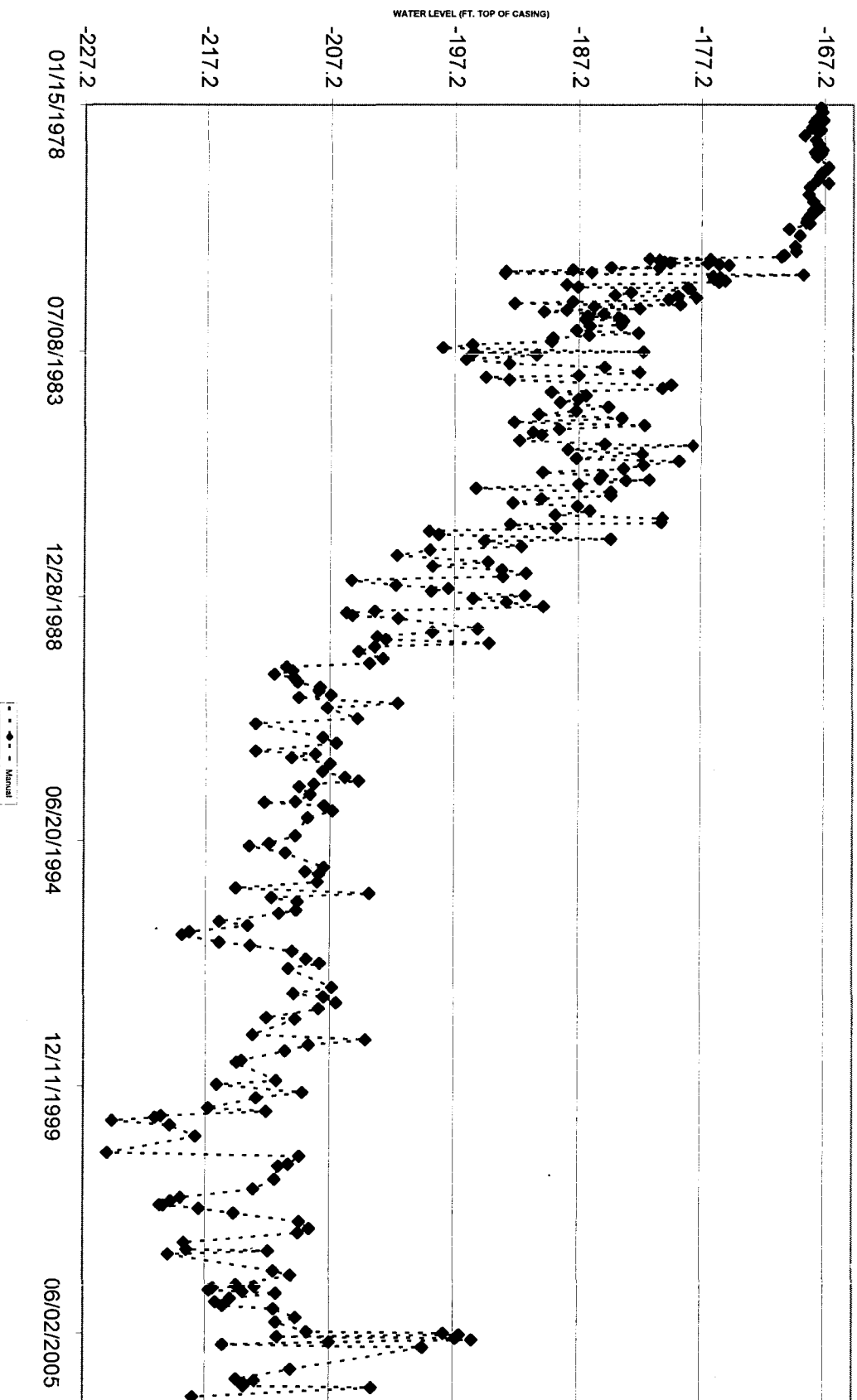
WATER RIGHTS' OBSERVATION WELL
LN-92A



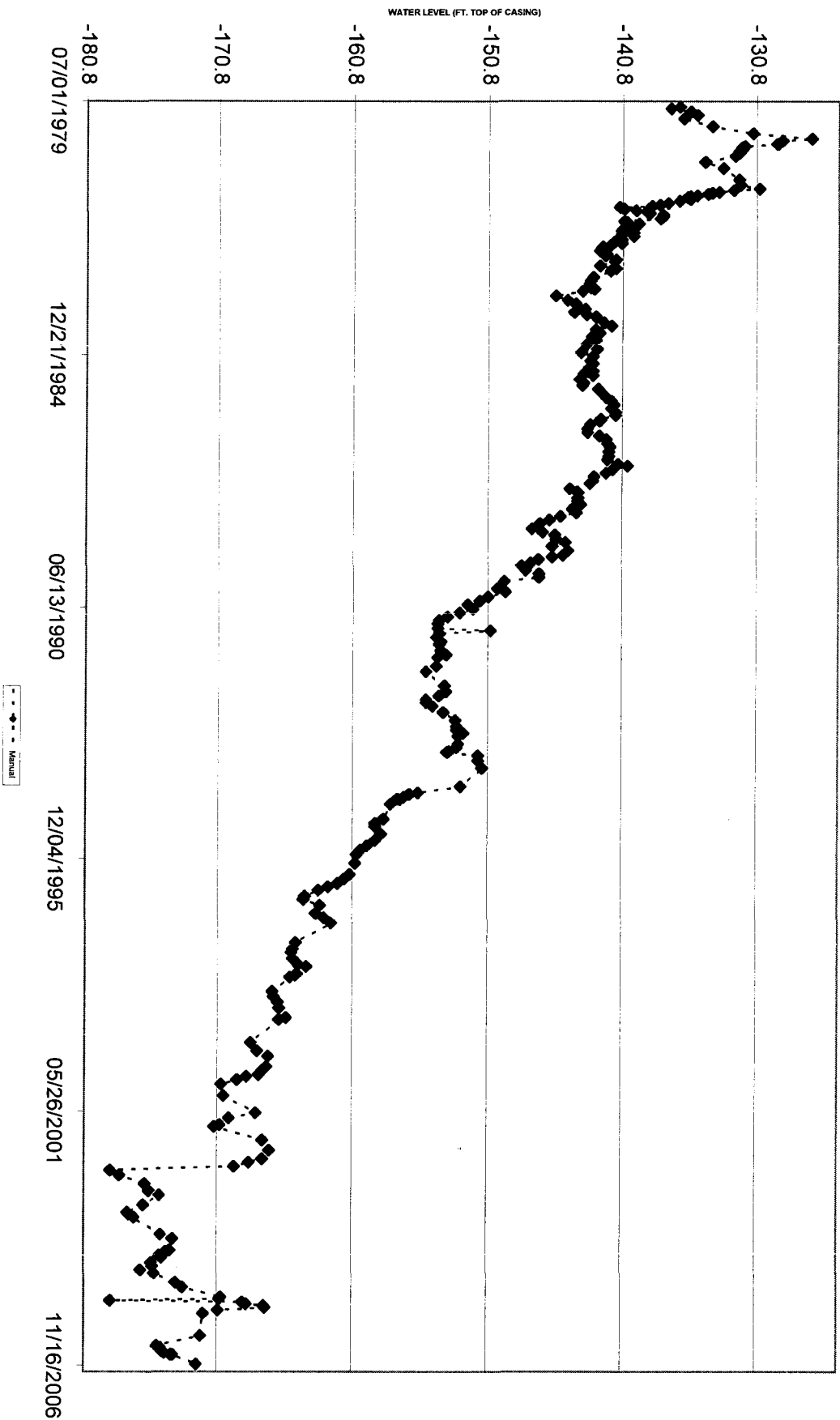
WATER RIGHTS' OBSERVATION WELL
LN-77F



WATER RIGHTS' OBSERVATION WELL
LN-77A



WATER RIGHTS' OBSERVATION WELL
LN-79D



RECEIVED

FEB 23 2007

WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Lincoln) SS

I, Rebbie Schmidt

certify that the attached printed Notice was taken

from the Linnox Independent

printed and published in Linnox

County of Lincoln and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

Feb 8, 2007

Feb 15, 2007

Cost of Printing \$1.90

Rebbie Schmidt
(Signature)

Editor/Publisher
(Title)

2-15-07

(Date Signed)

NOTICE OF HEARING on APPLICATION NOS. 5 10 1 A-3 and 6778-3 to amend a Future Use Area and Construct and Place Water To Beneficial Use

Notice is given that the City of Lennox, c/o Orville Wiebers, Mayor, PO Box 228, Lennox SD 57039 has filed the following applications, for a water permit.

Application No. 5 10 1 A-3 proposes to amend Future Use Permit No. 5101-3 by expanding the area reserved for future use. Permit No. 5101-3 reserves 129 acre-feet annually from the Dakota Formation located in the S 1/2 Sections 13 and 14; SE 1/4 Section 15; E 1/2 Section 22; Sections 23 and 24; all in T98N-R51 W. This application requests including the SE 1/4 Section 12-T9 8N-R51 W to the future use area with no increase in the amount of water reserved for future use by No. 5101-3. The water is reserved for future municipal use by the City of Lennox.

Application No. 6778-3 proposes to construct and place to beneficial use the remaining 129 acre-feet of water authorized by Future Use Permit No. 5101-3. The application proposes to appropriate 1.58 cubic feet of water per second from three wells to be completed into the Dakota Formation (approximately 520 to 607 feet deep) and located in the NE 1/4 NE 1/4 Section 24, W 1/2 SE 1/4 Section 12 and the NE 1/4 SE 1/4 Section 14; all in T98N-R51W. The water is for municipal use by the City of Lennox.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 5 10 1 A-3 and 6778-3 because 1) water has been appropriated and reserved by Permit No. 5101-3, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 26, 2007. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider these applications at 1:15 PM on March 7, 2007, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny either application based on the facts presented at the public hearing. The March 7, 2007 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by February 26, 2007.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by February 26, 2007, at the above Water Rights Program address to request copies of information pertaining to these applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

Since these applications do not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case may not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by February 26, 2007.

These applications is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; 46-5-38 thru 46-5-40; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:24 thru 74:02:01:25 Steven M. Pimer, Secretary, Department of Environment and Natural Resources.

(2-8, 15)



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 29, 2007

Lennox Independent
PO Box 76
Lennox SD 57039-0076

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application Nos. 5101A-3 and 6778-3 to Appropriate Water to be published twice. Please publish the first notice on February 8, 2007 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is City of Lennox, c/o Mayor Orville Wiebers, PO Box 228, Lennox SD (Ph # 647-2286).

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

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

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 5101A-3 & 6778-3

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

Date _____

We are in receipt of your letter of January 29, 2007 enclosing Notice to Appropriate Water by Applications No. 5101A-3 & 6778-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

January 29, 2007

Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

Honorable Mayor Wiebers:

Water Permit Application Nos. 5101A-3 and 6778-3 for municipal use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Lennox Independent printed at Lennox SD (Ph # 647-2284). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Camden Hofer, SPN Consulting Engineers, 620 N Lawlor Street, Mitchell SD 57301

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

Instruction to Newspaper - Publish first Notice on February 8, 2007 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on APPLICATION NOS. 5101A-3 and 6778-3 to amend a Future Use Area and Construct and Place Water To Beneficial Use

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 5101A-3 and 6778-3 because 1) water has been appropriated and reserved by Permit No. 5101-3, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Any person interested in opposing or supporting these applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 26, 2007. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

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Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

I am hereby filing a petition of opposition to application NO. 5101A-3 in which The City of Hennox proposes to amend Future Use Permit No. 5101-3 by expanding the area reserved for future use.

My interest in this application comes from the fact that I have a domestic well in the aquifer near the area they are developing and propose to expand in. My well is located on my home site farmstead in the NE $\frac{1}{4}$ of Section 13 township 98N of Range 51 West.

I have a strong opposition to this expanding of use area because they are placing a well which is along the south edge of SE $\frac{1}{4}$ of section 12, Township 98N - Range 51W, putting it about 800 $\pm$ feet from my well. I feel this area is to my understanding approaching the Northern Boundary of the deep water aquifer and more likely to show a greater draw down of water levels in the future.

I wonder how they can be just now asking to expand into this area and in a separate application be asking to put a well to use when they have already drilled a well, built a pump house, dug in electric lines, and put in nearly $\frac{3}{4}$ of a mile of underground water transmission line.

continue on Page 2

It seems to me they have already done everything to construct and develop this area before asking the board to approve it.

In view of the placement in the aquifer and the fact it is so close to my well I have great concerns for the draw down on water levels and therefore I hope the board will reject this application.

Sincerely Concerned

Brian Abbas

Feb. 19, 2007

RECEIVED

FEB 23 2007

WATER RIGHTS
PROGRAM

Clifford Brian Abbas
4696S 281st Street
Wanthing SD 57077

I am submitting this written request to the Chief Engineer. Garland Erbele for an automatic delay to the hearing scheduled at 1:15 PM on March 7, 2007 for the consideration of applications S101A-3 and 6778-3 filed by the city of Hennox. Due to the short time period until the hearing and the need for me to gather more information and ect I feel I need this extension.

Thank you

C Brian Abbas



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 23, 2007

NOTICE

TO: Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Automatic Delay of Hearing on Water Permit Application Nos. 5101A-3 and 6778-3,
City of Lennox

In response to the notice of hearing published in the Lennox Independent on February 8 and 15, 2007, Mr. Clifford Brian Abbas filed a petition to intervene opposing Application Nos. 5101A-3 and 6778-3. A letter accompanied the petitions requesting an automatic delay of the March 7th hearing before the Water Management Board. A copy of Mr. Abbas' petitions and request of an automatic delay is enclosed. Therefore, the hearing on Application Nos. 5101A-3 and 6778-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on March 7, 2007.

The hearing to consider Application Nos. 5101A-3 and 6778-3 will be scheduled for the Water Management Board meeting tentatively set for May 9 - 10, 2007. Future notice will be provided to all parties of record of the time, date and location of the meeting.

Please contact Eric Gronlund, Water Rights Program at (605) 773-3352, if you have any questions.

Enclosure

c: Diane Best, Assistant Attorney General
Camden Hofer, SPN Consulting Engineers, 620 N Lawlor Street, Mitchell SD 57301



**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 28, 2007

NOTICE

TO: Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Scheduling of Hearing on Water Permit Application Nos. 5101A-3 and 6778-3, City of Lennox

The Water Management Board will consider Application Nos. 5101A-3 and 6778-3 filed by the city of Lennox on May 9, 2007, at 10:30 AM (CDT), in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Agenda time is an estimate and may be delayed due to prior agenda items. Notice will be provided to parties if there is a change in the hearing time.

Applicable provisions of the public notice published February 8 and 15, 2007 in the Lennox Independent will still apply at the May 9th hearing. This hearing may be an adversarial proceeding. Any party of record has the right to be present and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

I am enclosing a copy of the report, recommendation and petition in the matter of Water Permit Application Nos. 5101A-3 and 6778-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The enclosed material is the same information being sent to the Board members in advance of the hearing.

Please contact Eric Gronlund, Water Rights Program at (605) 773-3352, if you have any questions.

Enclosure

c: Diane Best, Assistant Attorney General
Camden Hofer, SPN Consulting Engineers, 620 N Lawlor Street, Mitchell SD 57301

CERTIFICATION

I hereby certify that on March 28, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 28, 2007, regarding scheduling of the hearing for Water Right Permit Application Nos. 5101A-3 and 6778-3, City of Lennox, addressed as stated below :

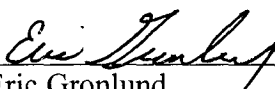
Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

Camden Hofer
SPN Consulting Engineers
620 N Lawlor Street
Mitchell SD 57301

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

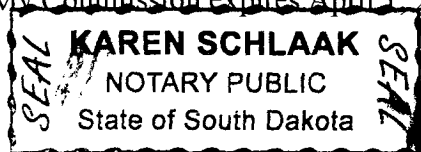
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Eric Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of March, 2007.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 14, 2007

NOTICE

TO: Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed Tom Frieberg, Lennox city attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application Nos. 5101A-3 and 6778-3 filed by the city of Lennox. The Board will consider adoption of Findings, Conclusions and Final Decision at 8:30 AM, on July 11, 2007, in the Community Room, Milbank Visitors Center, 1001 East 4th Avenue, Milbank SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by June 8, 2007. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by June 29, 2007.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on July 11, 2007. The public hearing was completed on May 9, 2007. No additional testimony will be received.

If you have questions about the findings process, please contact Eric Gronlund at (605) 773-3352.

Enclosure

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Thomas Frieberg, PO Box 511, Beresford SD 57004
Harlan Quenzer, SPN Consulting Engineers, 620 N Lawlor Street, Mitchell SD 57301

CERTIFICATION

I hereby certify that on May 14, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 14, 2007, regarding preparation of findings of fact, conclusions of law and final decision Water Right Permit Application Nos. 5101A-3 and 6778-3, City of Lennox, addressed as stated below :

Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

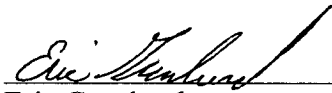
Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

Harlan Quenzer
SPN Consulting Engineers
620 N Lawlor Street
Mitchell SD 57301

Thomas Frieberg
PO Box 511
Beresford SD 57004

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

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



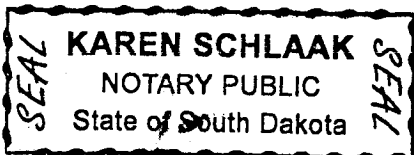
Eric Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of May, 2007.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



FRIEBERG, NELSON & ASK, L.L.P.

ATTORNEYS AT LAW
115 NORTH THIRD STREET
P.O. Box 511

AUGUST FRIEBERG (1863-1932)
ROSCOE A. FRIEBERG (1903-1982)
BLAINE O. RUDOLPH (Retired)

ROBERT B. FRIEBERG
THOMAS H. FRIEBERG
LARRY A. NELSON
BRENDA M. ASK (SD & IA)

BERESFORD, SOUTH DAKOTA 57004-0511
TELEPHONE: (605) 763-2107
TELECOPIER: (605) 763-2106

RECEIVED

JUN - 7 2007

**WATER RIGHTS
PROGRAM**

OFFICES ALSO LOCATED AT:

206 E. 5TH STREET
CANTON, SD 57013
(605) 987-2686

208 SOUTH MAIN
LENNOX, SD 57039
(605) 647-5152

June 4, 2007

COPY

Jeffrey P. Hallem
Attorney General's Office
1302 E. Highway 14, #1
Pierre, SD 57501

Diane Best
Attorney General's Office
1302 E. Highway 14, #1
Pierre, SD 57501

Clifford Brian Abbas
46965 281st Street
Worthing, SD 57077

Re: Water Permit Applications No. 5101A-3 and 6778-3

Dear Counsel and Mr. Abbas:

Enclosed herewith and served upon you please find the proposed Findings of Fact and Conclusions of Law for the City of Lennox with regard to the above referenced water permit applications. It is my understanding that the proposed Findings and Conclusions and Final Decision will be considered by the Board at its July 11, 2007, meeting. Further, it is my understanding that any response to the proposed Findings of Fact, Conclusions of Law and Final Decision as prepared by the City of Lennox will be due on or before June 29, 2007.

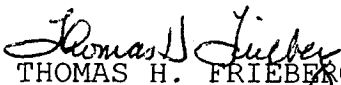
If the board would like to have an electronic version of the documents for purposes of edification before final approval, please let me know and I will be happy to forward the same to you in that format. If we are required to forward these directly to the board members, please let me know. I will need their names and addresses for mailing purposes. Also, if there are other parties who are not

Jeffrey P. Hallem
Diane Best
Clifford Brian Abbas
June 4, 2007
Page 2

provided with a copy of these documents either as an addressee or as noted has having been copied, please advise so I can forward the same to them.

Thank you for your attention to this matter.

Yours very truly,


THOMAS H. FRIEBERG
For the Firm

THF/lb

Enc.

pc: James Goodman
Garland Erbele
Eric Gronlund
Harlan Quenzer
Justin Weiland

RECEIVED
JUN - 7 2007
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
APPLICATION OF THE CITY	)	FINDINGS OF FACT,
OF LENNOX FOR WATER USE	)	CONCLUSIONS OF LAW,
PERMIT NO. 5101A-3	)	AND FINAL DECISION

The City of Lennox made application for amending Future Water Use Permit No. 5101-3 by expanding the area reserved for the future use by adding the Southeast Quarter of Section 12, Township 98 North, Range 51, West of the 5th P.M., Lincoln County, South Dakota, to the existing future use and without any request for an increase in the amount of water reserved by the Future Water Use Permit No. 5101-3.

Clifford Brian Abbas of 46965 281st Street, Worthing, South Dakota, 57077, contested the application and appeared at the hearing.

A hearing was held on the 9th day of May, 2007, at 10:30 a.m. in the Floyd Matthew Training Center, Joe Floss Building, 523 East Capitol Avenue, Pierre, South Dakota, at which time the City of Lennox appeared by and through its attorney, Thomas H. Frieberg of Frieberg, Nelson & Ask, L.L.P., along with Harlan Quenzer of Schmucker, Paul, Nohr & Associates engineering firm of Mitchell, South Dakota, and Clifford Brian Abbas also appearing. A quorum of the board was present.

James A. Goodman, Natural Resources Engineer, made presentation to the board regarding his report on the water

permit application. The chief engineer recommended approval of the application.

The applicant having presented testimony and exhibits and the contestant having presented testimony, and the board having made inquiry of the parties and being fully apprised of the premises, hereby makes the following:

FINDINGS OF FACT

1. Proper publication of water permit application 5101A-3 was timely made, as required by statute in the Lennox Independent, on February 8 and February 15, 2007. Said publication indicated a hearing to be held on March 7, 2007. Based upon the objection of Clifford Brian Abbas, the hearing was continued to May 9, 2007.

2. Attached hereto, incorporated herein, and marked as Exhibit A is the report on water permit application 5101A-3 dated January 18, 2007, prepared by James A. Goodman, Natural Resources Engineer. The findings set forth in the report are adopted by the board through this reference.

3. The chief engineer, pursuant to SDCL 46-2A-2, recommended approval of the application with three listed qualifications. A copy of the chief engineer's recommendation is attached hereto, incorporated herein, and marked as Exhibit B for reference.

4. The application proposes expansion of the area in which the future use permit 5101A-3 would use for appropriating the 129 acre feet of water reserved under permits 5101-3 and 5101A-3. No additional water was requested as a part of water permit application amending future use permit 5101A-3.

5. The City of Lennox has experienced growth which requires providing of additional water.

6. The City of Lennox is a member of the Lewis and Clark Rural Water System and is not expected to receive water from the system until 2015.

7. The allocation from Lewis and Clark Rural Water System to the City of Lennox will not be capable of providing all of the water needs for the City of Lennox.

8. The City of Lennox's current wells have reached maximum output and with any growth, will not be able to provide an adequate water supply to the City of Lennox.

9. Clifford Brian Abbas has a well located at a residence approximately 800 feet from one of the well sites being proposed by the City of Lennox. The draw down on Mr. Abbas' residential and agricultural well would be minimal.

10. Mr. Abbas currently does not use his well for domestic purposes and uses it only for minimal agricultural purposes. Mr. Abbas does not currently have livestock.

11. The City of Lennox will have six well sites from which to draw water and the expansion from three to six well sites will allow the wells to recover more adequately when they are rotated on a cyclical schedule.

12. The City of Lennox installed a production well rather than a test well in the expanded area contained in water permit application 5101A-3. The cost of the test well was deemed by the City to be too expensive and a production well was put in place in order to save costs in the event of approval of the application.

13. The City of Lennox has not begun production from the additional well contained in the expanded use area of this application.

Based upon the foregoing Findings of Fact, the board hereby makes the following:

CONCLUSIONS OF LAW

1. The board has jurisdiction of this matter.
2. This application is not a request for an appropriation of additional water but only for an amendment to the future use permit 5101A-3.
3. Because the availability of a greater quantity of water was discovered in the Southeast Quarter of Section 12, Township 98 North, Range 51, West of the 5th P.M., Lincoln County, South Dakota, the City of Lennox shall be permitted to

place a well within the expanded area for purposes of providing its water distribution system with additional water.

4. The proposed use is for a water distribution system for the City of Lennox and is a beneficial use.

5. The beneficial effect of supplying high quality water to the City of Lennox supports the finding that the granting of this amended permit is in the public interest with the qualifications as set forth in the final order.

6. Since this application is an amendment to a future use permit, no additional appropriation of water is being requested and the City of Lennox will need to make separate application to appropriate the water to a beneficial use.

7. No substantial detriment shall be incurred by others, including Clifford Brian Abbas, by the granting of the permit as requested by the City of Lennox.

8. The City of Lennox has demonstrated a reasonable need for the expanded area for obtaining the previously reserved capacity.

9. The proposed use of the water is a beneficial use as defined by statute.

10. It is in the public interest to grant the City of Lennox the amendment contained in application 5101A-3 under the terms and conditions established by the chief engineer.

FINAL DECISION

The application for amendment to future use water permit application 5101A-3 is approved subject to the following qualifications:

1. Permits 5101-3 and 5101A-3, combined, reserve 129 acre feet of water annually from the Dakota Formation.

2. Future use permit 5101A-3 as amended to include the Southeast Quarter of Section 12, township 98 North, Range 51, West of the 5th P.M., Lincoln County, South Dakota, is approved with the stipulation that this permit is subject to review in conjunction with permit 5101-3 by the Water Management Board in developing reserved water upon expiration of seven years. This permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the permit.

3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1.

Dated this ____ day of July, 2007.

BY THE BOARD:

Chair

June 25, 2007

Written Opposition

Sent to: list on attached sheet

From: Clifford Brian Abbas
46965 281st Street
Worthing SO 57077

Subject: Objections to Findings of Fact
Conclusions of Law and Final
Decision; In The Matter of the
Application of the City of Hennox
For Water Use Permit No. 5101 A-3

I am writing to object to parts of the Findings of Fact and Conclusions of Law and Final Decision in hopes of changing the Board's vote to approve.

First I want to address Findings of Fact No. 2, the Natural Resource Engineers Report Exhibit A. I have stated that I question the true amount of water available in this part of the aquifer based on the amount of water the first 3 wells are able to pump and the number of test holes they drilled that were not acceptable for wells.

Secondly in Findings of Fact No. 9 it is stated the drawdown on my well would be minimal. This is not fact because there is already ± 29 feet of drawdown from the

first three wells at $\frac{1}{2}$ to 1 mile away and the well in this area is only 800 ft away. Mr. Goodman admitted they have done no projection on what the draw-down would be but he guessed it might be minimal. They know there would be a greater drawdown when pumping.

Third in NO. 10 I object to the statement that I only use my well for minimal Ag purposes, because during spring - summer while spraying fields and other outside of household uses the water used would be 1000's of gallons. When I come to these times I should not have to worry that the levels have been pumped down so I can't get enough water. I have said at this time I don't have livestock water use but I was running a 100 sow Farrow to Finish operation and should I resume this operation I would count on my well again for much more water.

Next referring to No 12. yes Kennox did probably save money by putting in a production well verses a test well but they went far beyond just a production well by putting in a fully operational pump house and spending a large amount on nearly $\frac{3}{4}$ of a mile of transmission line before any application for expansion was submitted to the board for approval.

Now I would like to go to conclusions of law No. 7. I do not agree that no substantial detriment will be incurred by me. By this I mean the changes in my water level and ability to pump water from my well and the expense it will cost me to redo my well or the expense to replace the water from other sources.

Finally in the Final Decision No. 3 I think they have already went beyond their rights by constructing of the well house and putting in the transmission line before approval.

Thank you
Brian Abbas



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 19, 2007

NOTICE

TO: Orville Wiebers, Mayor
City of Lennox
PO Box 228
Lennox SD 57039

Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Board's rulings and the Final Decisions, including Findings of Fact and Conclusions of Law, were adopted July 11, 2007, by the Water Management Board approving Water Permit Application Nos. 5101A-3 and 6778-3 filed by the city of Lennox. A copy of the Board rulings and signed Findings of Fact, Conclusions of Law and Final Decisions are enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosures

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Thomas Frieberg, PO Box 511, Beresford SD 57004
Harlan Quenzer, SPN Consulting Engineers, 620 N Lawlor Street, Mitchell SD 57301

CERTIFICATION

I hereby certify that on July 23, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 19, 2007 regarding the Water Management Board's ruling and adoption of findings of fact, conclusions of law and final decisions in the matter of Water Right Permit Nos. 5101A-3 and 6778-3, City of Lennox, addressed as stated below:

Orville Wiebers
City of Lennox
Po Box 228
Lennox SD 57039

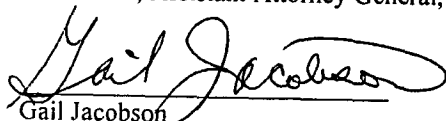
Clifford Brian Abbas
46965 281st Street
Worthing SD 57077

Harlan Quenzer
SPN Consulting Engineers
620 N Lawlor Street
Mitchell SD 57301

Thomas Frieberg
PO Box 511
Beresford SD 57004

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

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


Gail Jacobson
Secretary
Water Rights

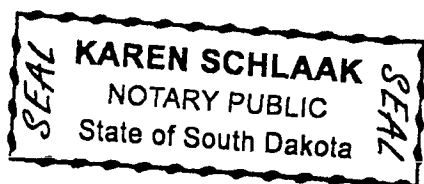
STATE OF SOUTH DAKOTA)

) SS

COUNTY OF HUGHES

Sworn to, before me, this 23rd day of July, 2007.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE	)	WATER MANAGEMENT
PERMIT APPLICATION NO. 5101A-3,	)	BOARD'S RULINGS
CITY OF LENNOX	)	ON APPLICANT'S
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
	)	AND FINAL DECISION;
	)	INTERVENOR'S OBJECTIONS
	)	TO FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
	)	AND FINAL DECISION

Pursuant to directions of the Water Management Board, Counsel for Applicant, City of Lennox, submitted Proposed Findings of Fact, Conclusions of Law, and Final Decision; subsequently, Intervenor, Clifford Brian Abbas, submitted Objections to Applicant's Proposed Findings of Fact, Conclusions of Law and Final Decision. The Board, upon review of the submissions and the administrative record, and having orally entered its decision hereby enters the following rulings:

A. Applicant's Proposed Findings of Fact Nos. 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, and 13, are accepted by the Board.

B. That Applicant's Proposed Finding of Fact No. 4 is accepted by the Board as modified below to more accurately reflect the administrative record.

4. The Application proposes to amend Future Use Permit No. 5101-3 by expanding the area reserved for appropriating 129 acre feet annually from the Dakota Formation to include the Southeast Quarter of Section 12, Township 98 North, Range 51, West of the 5th P.M. in Lincoln County, South Dakota. No additional water was requested as part of this Application.

C. Applicant's Proposed Finding of Fact No. 9 is accepted by the Board as modified below to more fully reflect the administrative record:

9. Intervenor Clifford Brian Abbas has a domestic well located approximately 800 feet from one of the well sites being proposed by the City of Lennox. Intervenor stated the cylinder pump for the well is located at approximately 177 feet which is not within the Dakota Formation to qualify as an "adversely impacted domestic well." Any drawdown at Intervenor's well resulting from Applicant's proposed wells would be due to a reduction of artesian wellhead pressure that could be rectified by Intervenor lowering his pump.

D. Applicant's Proposed Conclusions of Law 3, 4, 5, 6, 8, 9, and 10, are accepted by the Board.

E. Applicant's Proposed Conclusion of Law No. 1 is accepted by the Board as modified below to set forth the standard of review for this Application.

1. The Board has jurisdiction of this matter. SDCL 46-2A-12 provides that in order to grant an amendment to an existing permit the proposed change must not unlawfully impair existing rights and is for a beneficial use and in the public interest.

F. Applicant's Proposed Conclusion of Law No. 2 is accepted by the Board as modified by deleting "5101A-3" and inserting "5101-3."

G. Applicant's Proposed Conclusion of Law No. 7 is accepted by the Board as modified below to be more consistent with its oral decision and state law.

7. The amendment of the existing Future Use Permit No. 5101-3 to expand its area does not unlawfully impair any of the existing rights of others, including Intervenor Clifford Brian Abbas.

H. Applicant's Proposed Final Decision is accepted by the Board as modified below to more accurately reflect the Board's oral decision.

FINAL DECISION

Future Use Water Permit Application No. 5101A-3 which amends Future Use Permit No. 5101-3 by expanding the area to include the Southeast Quarter of Section 12, Township 98, North, Range 51, West, of the 5th P.M., Lincoln, South Dakota, is granted subject to the following qualifications:

1. Permit Nos. 5101-3 and 5101A-3, combined, reserve 129 acre feet of water annually from the Dakota Formation.
2. That Future Use Permit No. 5101A-3 is approved with the stipulation that this Permit is subject to review

in conjunction with Permit No. 5101-3 by the Water Management Board in developing reserve water upon expiration of seven (7) years. This permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.

3. At such time as definite plans are made to construct works and put water reserved by this permit to beneficial use, specific application for all or any part of the water reserve must be submitted and approved prior to construction at facilities pursuant to SDCL 46-5-38.1.

I. Intervenor's objection to Applicant's Proposed Findings of Fact No. 2 is refused by the Board on the ground it goes beyond the scope of the current application. The determination on the availability of water was previously made by the Board when it approved Future Use Permit No. 5101-3. Future Use Application No. 5101A-3 does not increase the amount of water reserved by Future Use Permit No. 5101-3. Further, the record contains no evidence that there is insufficient available water for the previously reserved 129 acre-feet annually from the Dakota Formation.

J. Intervenor's objection to Applicant's Proposed Finding of Fact No. 9 is refused on the ground it is inconsistent with the administrative record and the Board's oral decision to the extent the objection is not satisfied by the Board's modification of this Finding of Fact. There is nothing in the record to support a finding that any potential drawdown caused by wells constructed by Applicant in the area covered by Future use Permit No. 5101-3 or Future Use Permit Application No. 5101A-3 will illegally interfere with Intervenor's domestic well. Any potential drawdown of Intervenor's well that may occur will be due to a reduction in artesian wellhead pressure which is not protected. If Intervenor has an adequate well with a pump properly located, the record establishes that there should be no interference from the operation of Applicant's new wells.

K. Intervenor's objection to Applicant's Proposed Finding of Fact No. 10 is refused on the ground it is inconsistent with the administrative record and the Board's oral decision. The proposed finding accurately reflects the administrative record and Intervenor has provided no legitimate basis to challenge it.

L. Intervenor's objection to Applicant's Proposed Finding of Fact No. 12 is refused on the ground it is inconsistent with

the administrative record and the Board's oral decision. Finding of Fact No. 12 accurately reflects the evidence presented in the administrative record. Further, there is no evidence in the record that refutes Proposed Finding of Fact No. 13 that the city of Lennox has not begun production from that well.

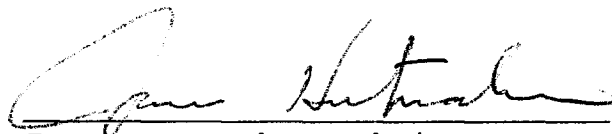
M. Intervenor's objection to Applicant's Proposed Conclusion of Law No. 7 is refused on the ground it is not consistent with the administrative record, the Board's oral decision, and state law, to the extent the objection is not satisfied by the Board's modification of this Proposed Conclusion of Law. The Record before the Board does not establish any unlawful impairment of Intervenor's rights. Artesian wellhead pressure is not protected under South Dakota law and as such drawdowns due to fluxuations does not unlawfully impair Intervenor's existing rights.

N. Intervenor's objection to Applicant's Proposed Final Decision is refused on the ground it is inconsistent with the administrative record, the Board's oral decisions, and state law to the extent the objection is not satisfied by the Board's modification. The inclusion of the Chief Engineer's Proposed Recommendation No. 3 does not provide a basis to deny

Applicant's Amendment of the existing future use permit. The inclusion of SDCL 46-5-38.1 is merely a recognition that the Board's approval of future use permit or amendment thereto is not a grant of authority to construct works or put the water to beneficial use, and that an application for water permit must be pursued. In this case, the record reflects that the city of Lennox has complied with 46-5-38.1 in that a water permit application for the well site was contemporaneously pursued with the amendment of the existing future use permit. Given the need to drill test wells the city of Lennox's actions were consistent with its duty to conserve taxpayer dollars and there was no evidence in the record that water from the well was put to beneficial use.

Dated this 11 day of July, 2007.

SOUTH DAKOTA WATER MANAGEMENT BOARD


James Hutmacher, Chairman

pld JPH 06 28 07 Permit No S101A-3 kak

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF FUTURE USE	)	FINDINGS OF FACT,
APPLICATION NO. 5101A-3	)	CONCLUSIONS OF LAW,
CITY OF LENNOX	)	AND FINAL DECISION

The City of Lennox made application for amending Future Water Use Permit No. 5101-3 by expanding the area reserved for the future use by adding the Southeast Quarter of Section 12, Township 98 North, Range 51, West of the 5th P.M., Lincoln County, South Dakota, to the existing future use and without any request for an increase in the amount of water reserved by the Future Water Use Permit No. 5101-3.

Clifford Brian Abbas of 46965 281st Street, Worthing, South Dakota, 57077, contested the application and appeared at the hearing.

A hearing was held on the 9th day of May, 2007, at 10:30 a.m. in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, at which time the City of Lennox appeared by and through its attorney, Thomas H. Frieberg of Frieberg, Nelson & Ask, L.L.P., along with Harlan Quenzer of Schmucker, Paul, Nohr & Associates engineering firm of Mitchell, South Dakota, and Clifford Brian Abbas also appearing. A quorum of the board was present.

James A. Goodman, Natural Resources Engineer, made

presentation to the board regarding his report on the water permit application. The chief engineer recommended approval of the application.

The applicant having presented testimony and exhibits and the intervenor having presented testimony, and the board having made inquiry of the parties and being fully apprised of the premises, hereby makes the following:

FINDINGS OF FACT

1. Proper publication of water permit application 5101A-3 was timely made, as required by statute in the Lennox Independent, on February 8 and February 15, 2007. Said publication indicated a hearing to be held on March 7, 2007. Based upon the objection of Clifford Brian Abbas, the hearing was continued to May 9, 2007.

2. Attached hereto, incorporated herein, and marked as Exhibit A is the report on water permit application 5101A-3 dated January 18, 2007, prepared by James A. Goodman, Natural Resources Engineer. The findings set forth in the report are adopted by the board through this reference.

3. The chief engineer, pursuant to SDCL 46-2A-2, recommended approval of the application with three listed qualifications. A copy of the chief engineer's recommendation is attached hereto, incorporated herein, and marked as Exhibit B for reference.

4. The Application proposes to amend Future Use Permit No. 5101-3 by expanding the area reserved for appropriating 129 acre feet annually from the Dakota Formation to include the Southeast Quarter of Section 12, Township 98 North, Range 51, West of the 5th P.M. in Lincoln County, South Dakota. No additional water was requested as part of this Application.

5. The City of Lennox has experienced growth which requires providing of additional water.

6. The City of Lennox is a member of the Lewis and Clark Rural Water System and is not expected to receive water from the system until 2015.

7. The allocation from Lewis and Clark Rural Water System to the City of Lennox will not be capable of providing all of the water needs for the City of Lennox.

8. The City of Lennox's current wells have reached maximum output and with any growth, will not be able to provide an adequate water supply to the City of Lennox.

9. Intervenor Clifford Brian Abbas has a domestic well located approximately 800 feet from one of the well sites being proposed by the City of Lennox. Intervenor stated that the cylinder pump for the well is located at approximately 177 feet which is not within the Dakota Formation to qualify as an "adversely impacted domestic well." Any drawdown at Intervenor's well resulting from Applicant's proposed wells would be due a

reduction in artesian wellhead pressure that could be rectified by Intervenor lowering his pump.

10. Mr. Abbas currently does not use his well for domestic purposes and uses it only for minimal agricultural purposes. Mr. Abbas does not currently have livestock.

11. The City of Lennox will have six well sites from which to draw water and the expansion from three to six well sites will allow the wells to recover more adequately when they are rotated on a cyclical schedule.

12. The City of Lennox installed a production well rather than a test well in the expanded area contained in water permit application 5101A-3. The cost of the test well was deemed by the City to be too expensive and a production well was put in place in order to save costs in the event of approval of the application.

13. The City of Lennox has not begun production from the additional well contained in the expanded use area of this application.

Based upon the foregoing Findings of Fact, the board hereby makes the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter. SDCL 46-2A-12 provides that in order to grant an amendment to an existing permit the proposed change must not unlawfully impair existing

rights and is for a beneficial use and in the public interest.

2. This application is not a request for an appropriation of additional water but only for an amendment to the future use permit 5101-3.

3. Because the availability of a greater quantity of water was discovered in the Southeast Quarter of Section 12, Township 98 North, Range 51, West of the 5 P.M., Lincoln County, South Dakota, the City of Lennox shall be permitted to place a well within the expanded area for purposes of providing its water distribution system with additional water.

4. The proposed use is for a water distribution system for the City of Lennox and is a beneficial use.

5. The beneficial effect of supplying high quality water to the City of Lennox supports the finding that the granting of this amended permit is in the public interest with the qualifications as set forth in the final order.

6. Since this application is an amendment to a future use permit, no additional appropriation of water is being requested and the City of Lennox will need to make separate application to appropriate the water to a beneficial use.

7. The Amendment of the existing Future Use Permit No. 5101-3 to expand its area does not unlawfully impair any of the existing rights of others, including Intervenor Clifford Brian Abbas.

8. The City of Lennox has demonstrated a reasonable need for the expanded area for obtaining the previously reserved capacity.

9. The proposed use of the water is a beneficial use as defined by statute.

10. It is in the public interest to grant the City of Lennox the amendment contained in application 5101A-3 under the terms and conditions established by the chief engineer.

FINAL DECISION

Future Use Water Permit Application No. 5101A-3 which amends Future Use Permit No. 5101-3 by expanding the area to include the Southeast Quarter of Section 12, Township 98, North, Range 51, West, of the 5th P.M., Lincoln, South Dakota, is granted subject to the following qualifications:

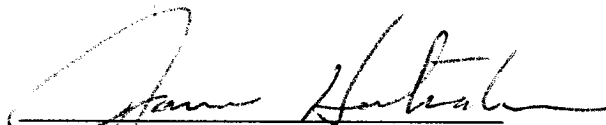
1. Permit Nos. 5101-3 and 5101A-3, combined, reserve 129 acre feet of water annually from the Dakota Formation.
2. That Future Use Permit No. 5101A-3 is approved with the stipulation that this Permit is subject to review in conjunction with Permit No. 5101-3 by the Water Management Board in developing reserve water upon expiration of seven (7) years. This permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a

reasonable need for the Permit.

3. At such time as definite plans are made to construct works and put water reserved by this permit to beneficial use, specific application for all or any part of the water reserve must be submitted and approved prior to construction at facilities pursuant to SDCL 46-5-38.1.

Dated this 11 day of July, 2007.

SOUTH DAKOTA WATER MANAGEMENT BOARD



James Hutmacher, Chairman

pld (scan) JPH 06 29 07 Permit No 5101A-3 kak

REPORT ON WATER PERMIT APPLICATION NO. 5101A-3
For City of Lennox
January 18, 2007

Application No. 5101A-3 proposes to amend Future Use Permit No. 5101-3 by expanding the area reserved for future use. Permit No. 5101-3 reserves 129 acre-feet annually from the Dakota Formation located in the S $\frac{1}{2}$ of sections 23 and 14; the SE $\frac{1}{4}$ of section 15; E $\frac{1}{2}$ of section 22; sections 23 and 24; all in T98N R51W in Lincoln County. This application requests that the SE $\frac{1}{4}$ of section 12, T98N R51W be added to the existing future use area with no increase in the amount of water reserved by Future Use Permit No. 5101-3. This water is reserved for future municipal use by the City of Lennox.

AQUIFER – DAKOTA FORMATION (DKOT)

The Dakota Formation is a buried sand, sandstone and shale under confined or artesian conditions in this area. The aquifer underlies 484 square miles and contains an estimated 4.298 million acre-feet of recoverable water in storage in Lincoln County (Hedges, 1982). The aquifer extends laterally into Iowa to the east, into Union County to the south and into Clay and Turner Counties to the south and west. The aquifer is bounded on the north in the subsurface by the Sioux Quartzite and groundwater movement is southerly (Niehus, 1994). The aquifer is probably hydraulically connected to the Upper Vermillion Missouri aquifer to the west and north and to the Sioux Quartzite to the north.

Test well data for well "E" site (this is the area of this future use request) indicates that sandstone was encountered at 387 to 397 feet, 400 to 405 feet and 409 to 544 feet. This would be a total thickness of sandstone of about 150 feet.

The Water Right Program monitors five observation wells completed into the Dakota Formation and located within a three mile radius of this application. Water levels for these wells all show the same characteristics. A brief period in the late 1970's of predevelopment showing relatively stable water levels followed by periods of declining water levels then stable and then declining all of this dependent upon the development history either of the Rural Water System or City of Lennox in the area near a particular observation well. Hydrographs for observation wells LN-77A, LN-77F, LN-79D, LN-80I and LN-92A are included with this report.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

The only other user in this immediate area other than the City of Lennox is Water Permit No. 6449-3 (0.222 cfs, Dakota Formation). Water Permit No. 6449-3 is located over one mile to the northeast of the area for this application. Interference should not be a concern at this distance but also would depend upon pumping rates. Since this is simply a future use area expansion interference can not be evaluated until a specific application to put water to use is made.

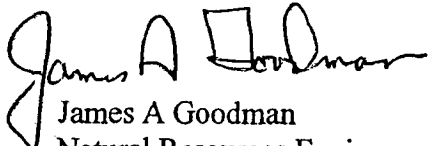
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CONCLUSIONS

1. This application is a proposal to add area to the existing future use area specified in Permit No. 5101-3 of the town of Lennox.
2. No additional water is requested by this application.
3. The amount of water remaining in Future Use Permit No. 5101-3 and this application remains at 129 acre-feet per year from the Dakota Formation.
4. The City of Lennox will need to make a water permit application to put this reserved water to beneficial use.


James A Goodman
Natural Resources Engineer

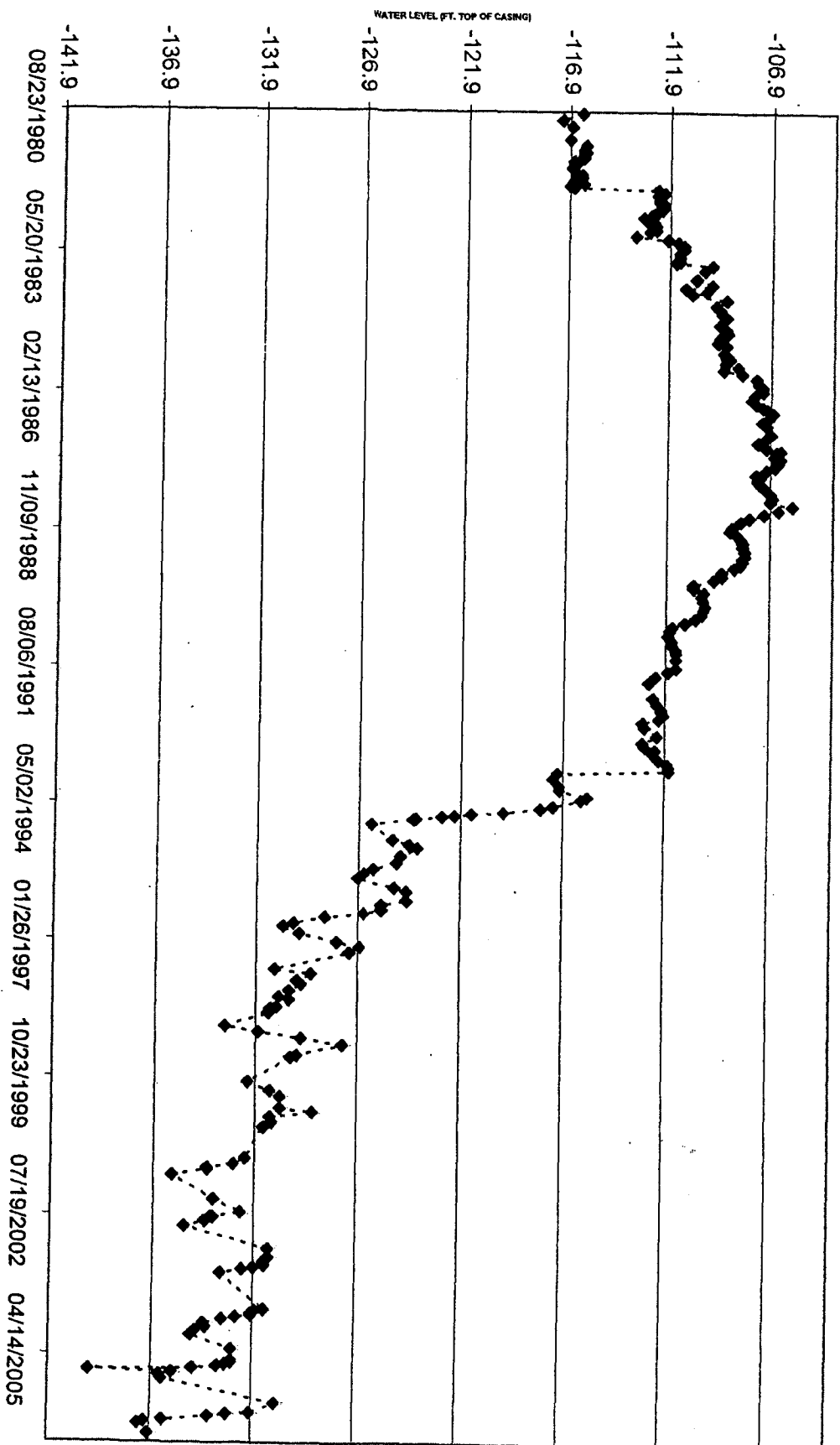
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Hedges, L.S., and others, 1982, Evaluation of Ground-Water Resources Eastern SD and Upper Big Sioux River, SD and Iowa, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 58069.

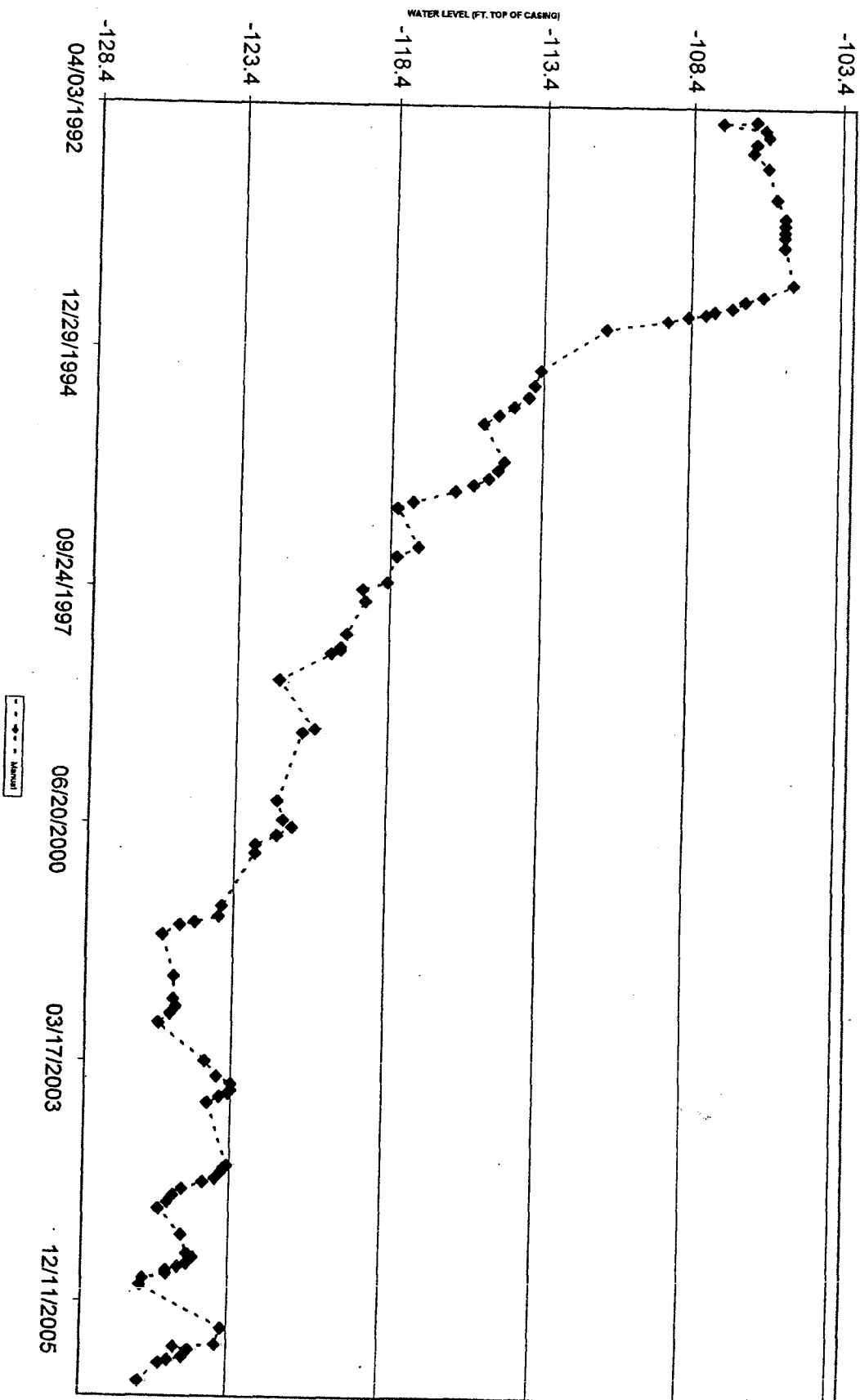
Niehus, C.A., 1994, Water Resources of Lincoln and Union Counties, South Dakota, Water-Resources Investigations Report 93-4195, USGS, Rapid City, SD, 57702.

Water Rights, 2007, Unpublished Observation Well Data for Lincoln County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

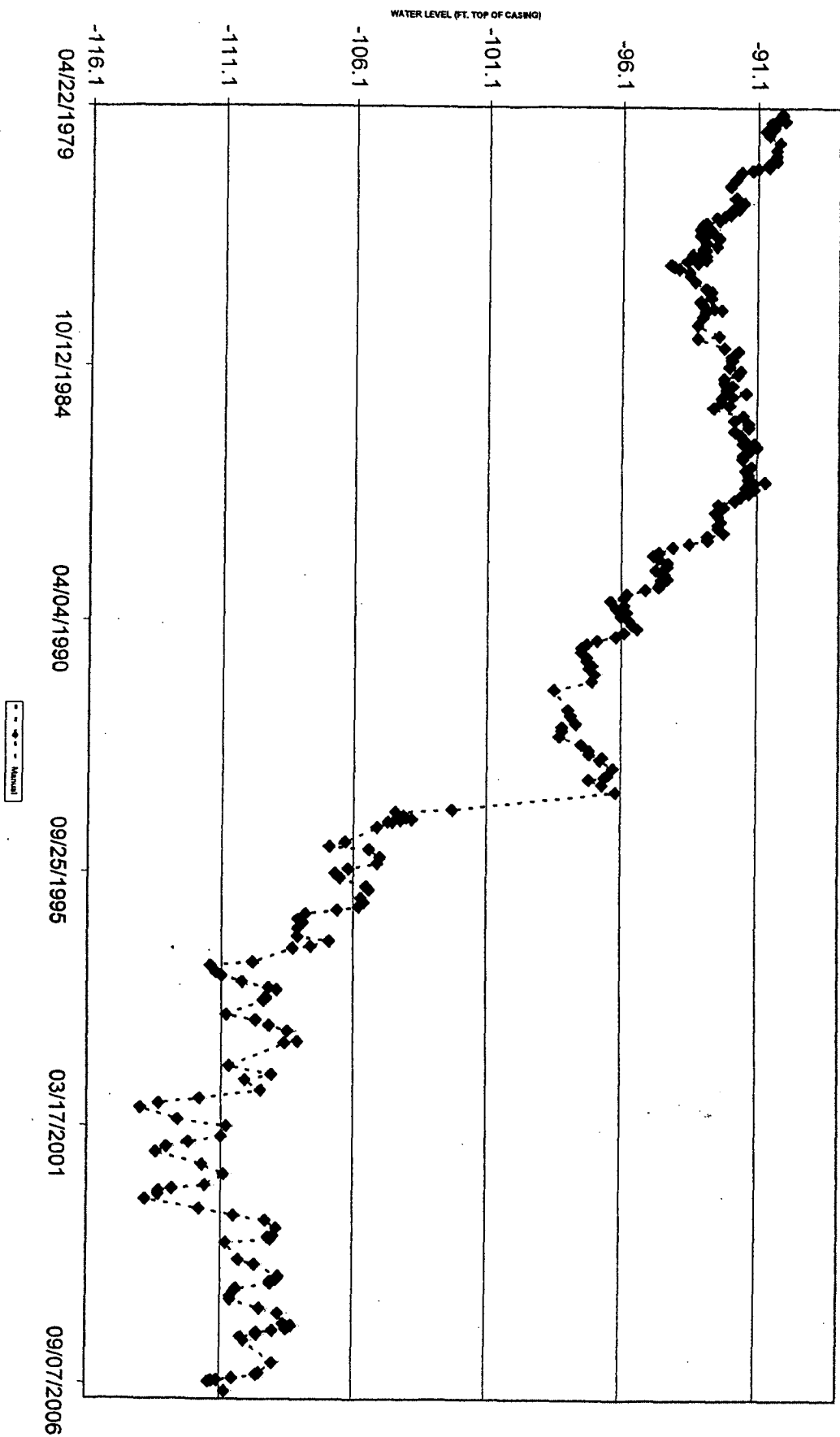
WATER RIGHTS' OBSERVATION WELL LN-801



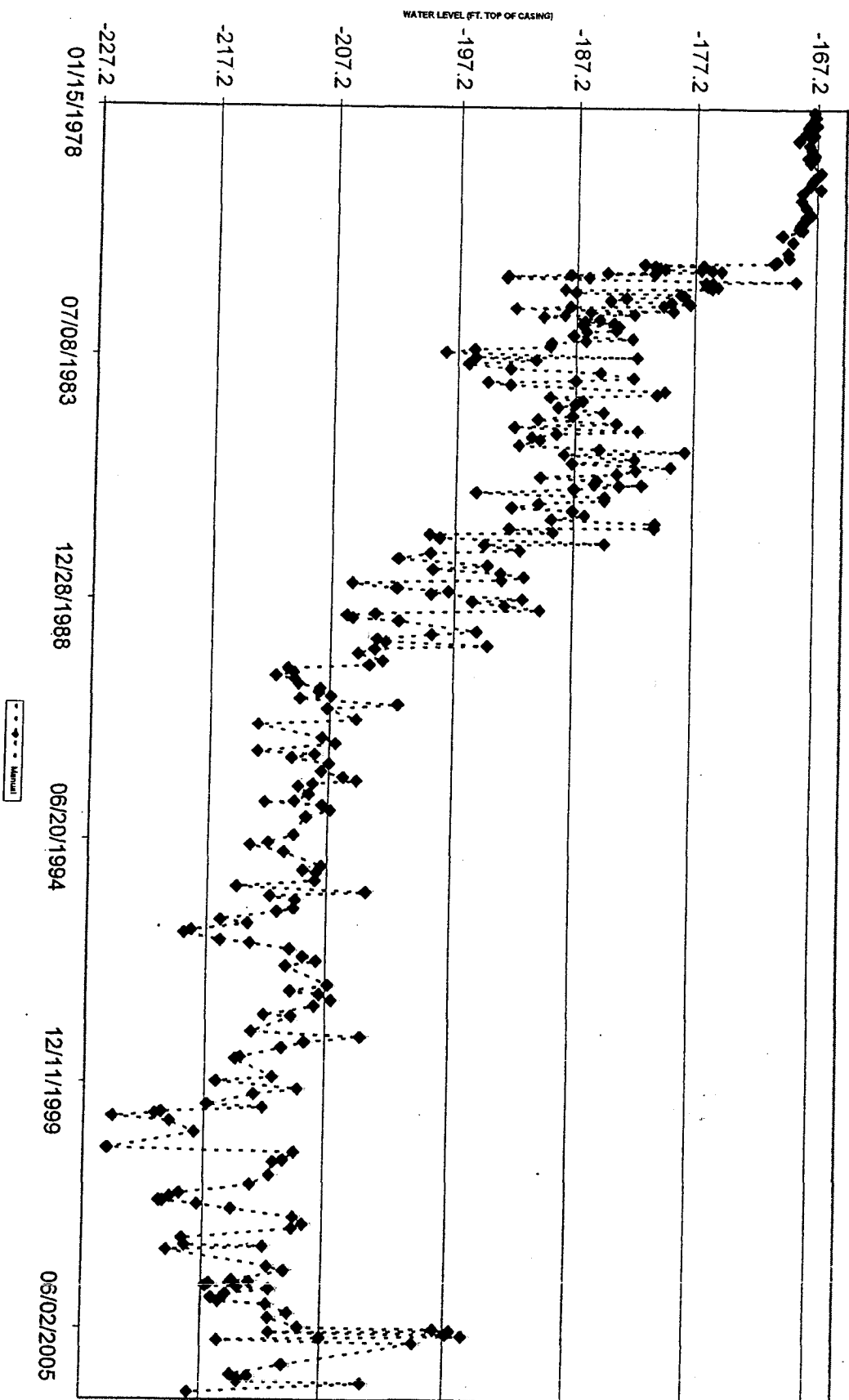
WATER RIGHTS' OBSERVATION WELL
LN-92A



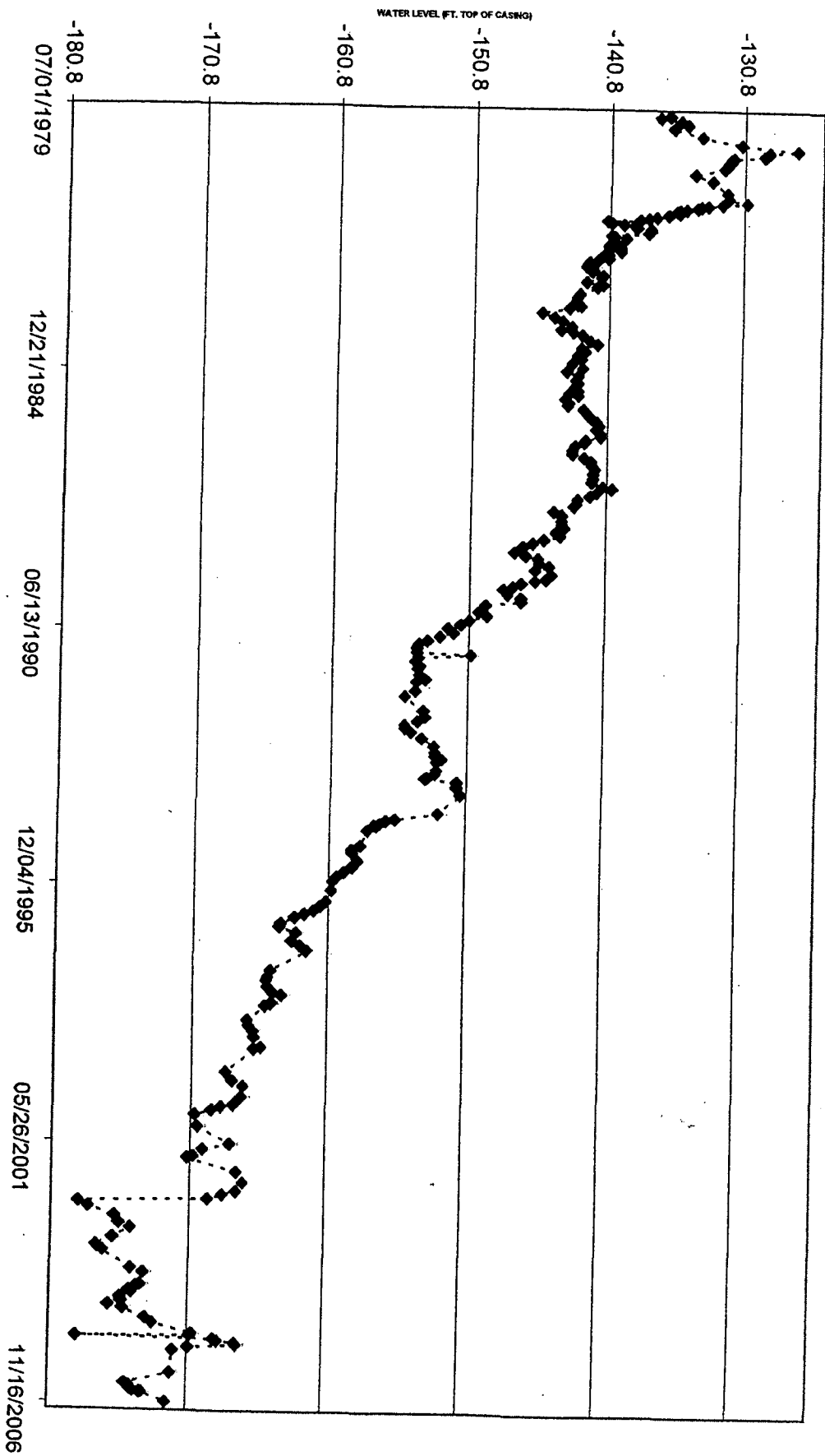
WATER RIGHTS' OBSERVATION WELL
LN-77F



WATER RIGHTS' OBSERVATION WELL
LN-77A



WATER RIGHTS' OBSERVATION WELL
LN-79D





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**RECOMMENDATION OF CHIEF ENGINEER FOR FUTURE USE WATER PERMIT
APPLICATION NO. 5101A-3, City of Lennox**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Future Use Water Permit Application No. 5101A-3, City of Lennox, c/o Mayor Orville Wiebers, PO Box 228, Lennox SD 57039.

The Chief Engineer is recommending APPROVAL of Application 5101A-3 because 1) the applicant has demonstrated a reasonable need for the water reserved, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Permit Nos. 5101-3 and 5101A-3, combined, reserve 129 acre feet of water annually from the Dakota Formation.
2. That Future Use Permit No. 5101A-3 is approved with the stipulation that this Permit is subject to review in conjunction with Permit No. 5101-3 by the Water Management Board in developing reserved water upon expiration of seven (7) years. This Permit shall be subject to cancellation if the Water Management Board determines during the review that the holder cannot demonstrate a reasonable need for the Permit.
3. At such time as definite plans are made to construct works and put the water reserved by this permit to beneficial use, specific application for all or any part of the reserved water must be submitted and approved prior to construction of facilities pursuant to SDCL 46-5-38.1.

See report on application for additional information.

Garland Erbele, Chief Engineer
January 26, 2007

EXHIBIT

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RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6778-3, City of Lennox

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 6778-3, City of Lennox, c/o Mayor Orville Wiebers, PO Box 228, Lennox SD 57039.

The Chief Engineer is recommending APPROVAL of Application No. 6778-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. 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 adequate wells having prior water rights.
2. The wells authorized by Permit No. 6778-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Right Nos. 5326-3 and 5753-3 and Permit No. 6778-3, combined, authorize a maximum annual withdrawal of 517 acre feet of water annually from the Dakota Formation.
4. The city of Lennox shall report to the Chief Engineer annually the amount of water withdrawn from the Dakota Formation.

See report on application for additional information.

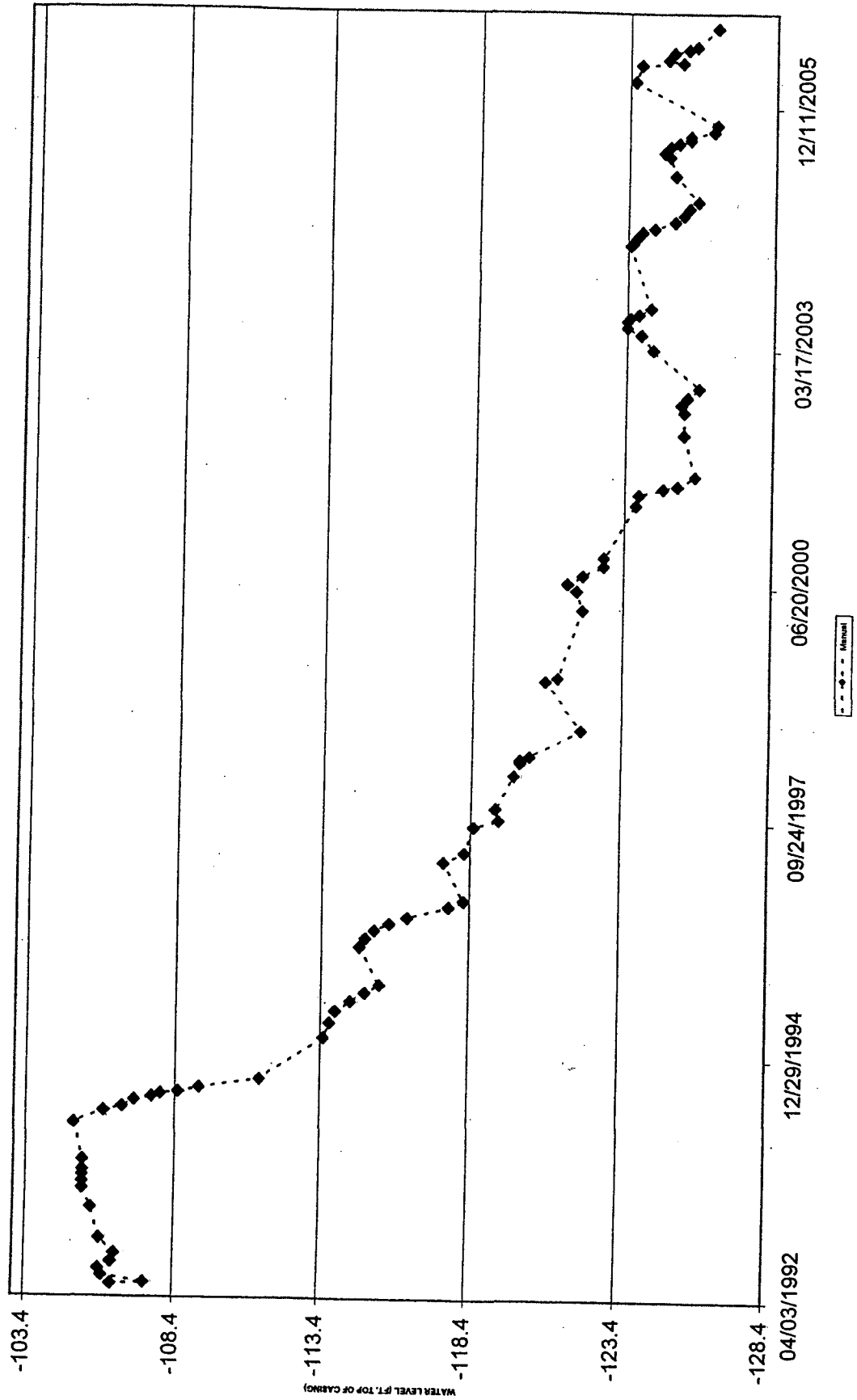
Garland Erbele, Chief Engineer
January 26, 2007

EXHIBIT

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WATER RIGHTS' OBSERVATION WELL
LN-92A





OCT 19 2007

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City of Lennox
Orville Wiebers, Mayor
PO Box 228
Lennox SD 57039

Dear Mayor Wiebers:

Enclosed is Future Use Permit No. 5101A-3 and Water Permit No. 6778-3 as approved by the Water Management Board. Future Use Permit No. 5101A-3 expanded the area reserved for future use as authorized by No. 5101-3. Water Permit No. 6778-3 authorized construction and placing to beneficial use the remaining 129 acre-feet of water authorized by Future Use Permit Nos. 5101-3 and 5101A-3 leaving zero in future use.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed for Water Permit No. 6778-3. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

Sincerely,

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

enclosures