

WATER PERMIT NO. 5403A-3

Name of Applicant: Butterflake Aquafarms

Address: PO Box 1283, Watertown SD 57201

Phone: 605 886-3390

Amount of Water Claimed: no additional

Total Acres:

Source of Water Supply: groundwater (one well)

Water to be used for: commercial use

County: Brookings

Type of Waste Disposal System:

Location: northwest edge of Bruce

PRIORITY

Date Received: 5-9-2002

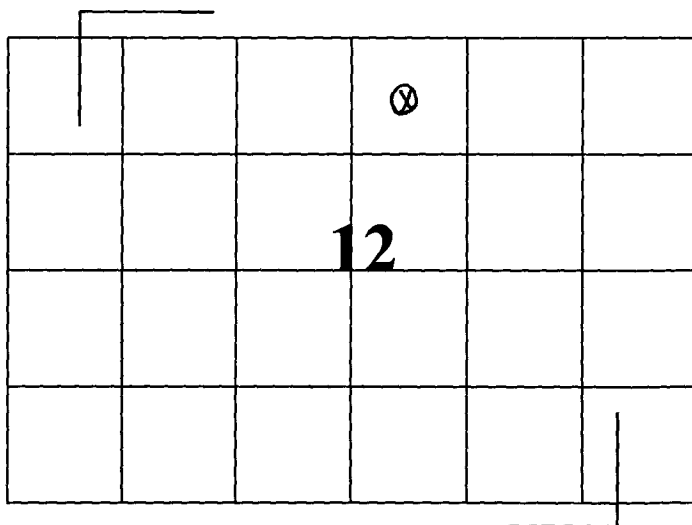
Fee: \$50

Corrected Application Received:

Period of Annual Use: January 1 – December 31

Remarks: Add commercial use to Water Right No. 5403-3 which was authorized for irrigation also changes the annual period of use

Diversion Point: NW ¼ NE ¼ Sec 12-T111N-R51W



Land to be Irrigated:

Depth of Well: 22 feet deep

Well Driller: :

Remarks:

Type of Map: aerial photo

Prepared by: Jeff Schaefer

Reviewed and the Number Assigned on: 5-8-2002

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

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

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)	
	No. <u>5403A-3</u>	Hydrologic Unit <u>10170202</u>
	Basin <u>Sioux River</u>	
	Newspaper <u>Brookings Register, Brookings</u>	

RECEIVED
MAY 09 2002
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: ☐ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
(check one) ☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☒ Amendment/Correction to Permit No. 5403-3

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) Add an
additional use to Permit #5403-3 + change annual period of use

- Name of Applicant Butterflake Aquafarms Phone (605) 886-3390
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address PO Box 1283 Watertown State SD 57201
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed No addition *CFS or **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***) Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Permit #5403-3
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) well authorized under
Permit #5403-3 NW 1/4 NE 1/4 Sec 12 - T111N - R51W
County Brookings
- County or counties where water will be used Brookings
- Annual period during which water is to be used year-round use 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) Construct dugout and maintain water level for fish propagation. Dugout will be lined to prevent percolation of water.

STATE OF SOUTH DAKOTA)
County of CODINGTON 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, ROBERT B. FLEEGER, 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 Robert B. Fleeger

Subscribed and sworn to before me this 6 day of May 2002

Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 5403A-3**

Date of first receipt of application May 9, 2002.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 5403A-3 to Butterflake Aquafarms, PO Box 1283, Watertown SD 57201 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 5403A-3 authorizes the addition of commercial use and changes the annual period of use. Water Right No. 5403-3 authorizes 0.17 cfs from one well located in the NW ¼ NE ¼ Section 12 to irrigate 16 acres located in the NW ¼ NE ¼ Section 12; all in T111N-R51W. Water will be pumped from the well into dugouts/ponds and the water level maintained for fish propagation. Water Right No. 5403-3 authorizes an annual period of use from May 1st through September 30st. This permit authorizes an annual period of use from January 1st through December 31st. No increase in the diversion rate is authorized by this application and water will continue to be used for irrigation.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 5403A-3 is June 24, 2002.
5. The date from which applicant may claim right is May 9, 2002.
6. One-fifth of the construction is to be completed on or before December 24, 2004.
7. All construction is to be completed on or before June 24, 2007.
8. Water is to be put to beneficial use on or before June 24, 2011.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

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

WATER MANAGEMENT BOARD

By: Garland Erbele

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

JUL 31 2002

date



Form 2A

Supplemental Information

(Complete applicable portions only)

(type or print in ink)

1. Well Information - Proposed Construction

SEE Permit # 5403-3

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
- On applicants property _____ On property owned by others _____

2. Wastewater Disposal System Information

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

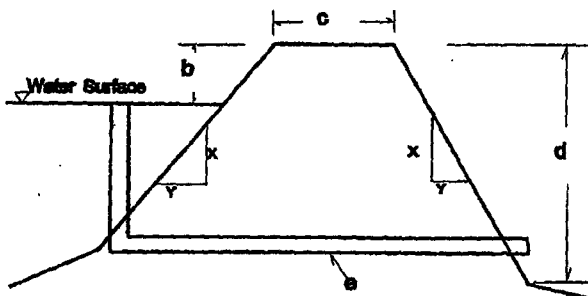
3. Dugout Information

- a) Surface Dimensions 3 dugouts 98' x 148' - 5' DEEP 3 dugouts 148' x 298' - 5' DEEP Depth _____
- b) Depth to water (ground surface to water level) 18" TO 24"

4. Water Storage Dams

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

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



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

WILES & RYLANDCE LLP
A Registered Limited Liability Partnership
ATTORNEYS AT LAW

3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

RECEIVED
MAY 09 2002

**WATER RIGHTS
PROGRAM**

PARTNERS:

John C. Wiles, P.C.
Raymond D. Rylandce, P.C.

ASSOCIATE:

Rebecca L. Morlock Reeves

May 8, 2002

Water Rights Program
Joe Foss Building
523 E Capitol
Pierre, SD 57501-3181

Re: Butterflake Aquafarms
Permit No. 5403-3

Dear Water Rights Program:

Enclosed are the following documents: Application for Permit to Appropriate Water Within the State of South Dakota, Notice of Transfer of Ownership, and Supplemental Information, along with two maps of the property. Also enclosed is a check in the amount of \$102.50.

Thank you.

Very truly yours,

WILES & RYLANDCE LLP

Raymond D. Rylandce

RDR:bjs

Enclosures

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

417162

Pierre, May 9, 2002

RECEIVED OF Butterflake Aquafarms Inc., PO Box 1283, Watertown, SD 57201
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>5403A-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	50	00
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>5403A-3</u>	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

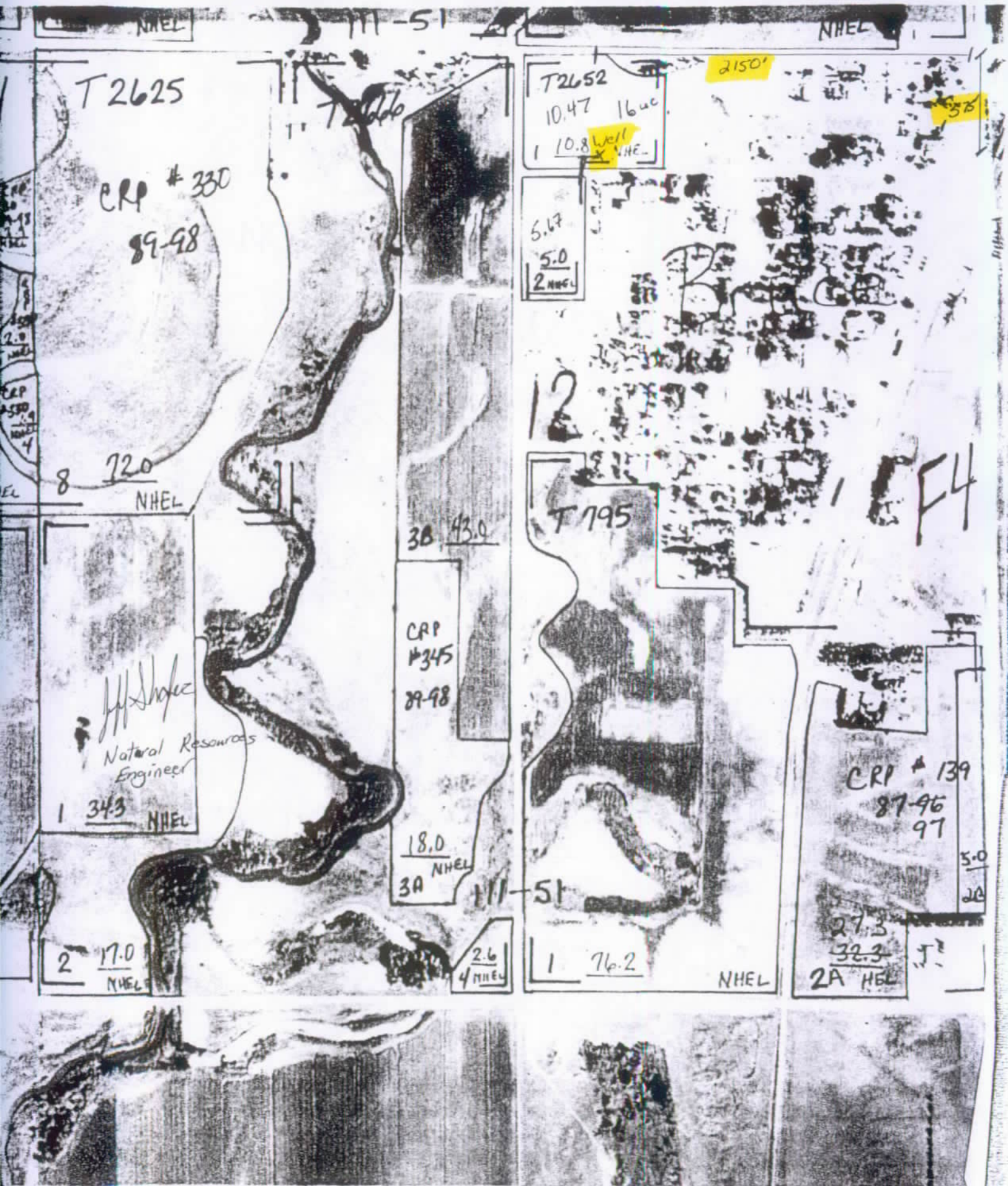
(Any Other Work Provided by Law)	Total	100 00

By

Darland Elbe
Chief Engineer

gm

NOT TO SCALE



5403A-3

MAP NOT TO SCALE Dawn Byers, PT
THIS IS NOT AN OFFICIAL WETLAND MAP 5/7/02



Enlarged view
of property
school



REPORT ON WATER PERMIT APPLICATION NO. 5403A-3
For Butterflake Aquafarms
May 22, 2002

Application No. 5403A-3 proposes to add commercial use and change the annual period of water use. Water Right No. 5403-3 authorized 0.17 cfs from one well located in the NW 1/4 NE 1/4 of section 12 to irrigate 16 acres located in the NW 1/4 NE 1/4 of section 12; all in T11N R51W in Brookings County. This application requests the addition of commercial use. Water will be pumped from the well into six dugouts/ponds and the water levels maintained for fish propagation. Water Right No. 5403-3 authorizes an annual period of use from May 1st through September 31st. This application requests an annual use period from January 1st through December 31st. No increase in the diversion rate is authorized by this application.

AQUIFER – BIG SIOUX BROOKINGS (BS-B)

The Big Sioux Brookings is a surficial outwash (sand and gravel) which is under water table conditions in this area. The aquifer underlies 74,500 acres and contains an estimated 245,850 acre-feet of recoverable water in storage in Brookings County (Hedges, 1982). The aquifer extends into Hamlin County to the north and is hydraulically connected to the Big Sioux River. The USGS reported the entire Big Sioux aquifer underlies 540 square miles and contains an estimated 2.0 million acre-feet of water in storage in Brookings and Kingsbury Counties (Hamilton, 1989). The major reason for the apparent discrepancy in estimates is that the Hedges report breaks up the Big Sioux aquifer into a series of management units based upon hydrologic criteria. Also, the Hamilton report has the benefit of better geologic data and mapping that resulted in a larger area underlain by the aquifer. Ground water movement is toward the Big Sioux River and in general from the north to south in the area of this application.

The test well information filed with the original Water Right No. 5403-3 indicates sand and gravel from one to 22 feet below land surface with a static water level of about eight feet below land surface. The inspection report for Water Right No 5403-3 indicates an eight-inch diameter well approximately 22 feet deep with eight feet of slotted plastic screen capable of pumping 75 gpm.

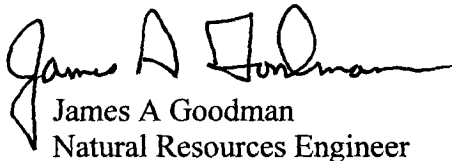
The Water Rights Program monitors two observation wells completed into the Big Sioux Brookings aquifer and located within a two-mile radius of this application. These are observation wells BG-75E and BG-75F. Water levels for these wells show good response to climatic conditions, that is, rising water levels during wet years (recharge) and gradually declining water levels during dry years. In general, the water level record indicates that the aquifer is capable of sustaining additional withdrawals (Water Rights, 2002). Hydrographs for these two are included with this report.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

The city of Bruce has a municipal well (Water Right No. 4950-3) located about one-half mile southeast of this application. However, the city is supplied with water from Brookings-Deuel RWS. Interference is not a concern. These are existing wells and have been in use for many years with no apparent problems. Drawdown created by pumping is not significant at these diversion rates and will not extend very far from the production wells.

CONCLUSIONS

1. Water is available from the Big Sioux Brookings aquifer.
2. The aquifer is under water table conditions and pumping at the requested rate will not create significant drawdown. Interference is not a concern.
3. The application indicates there will be a series of dugouts (almost four acres) for fish propagation at this site. The application also indicates that the dugouts will need to be lined to prevent leakage. Also, it appears that under "normal" conditions the ground water level would be below the bottom of the dugouts meaning leakage from the dugouts would be a significant problem.
4. This facility will generate wastewater. The facility overlies the Big Sioux aquifer and is within one-quarter mile of the Big Sioux River. No plans or specifications for this facility have been submitted to the Department for review.


James A Goodman
Natural Resources Engineer

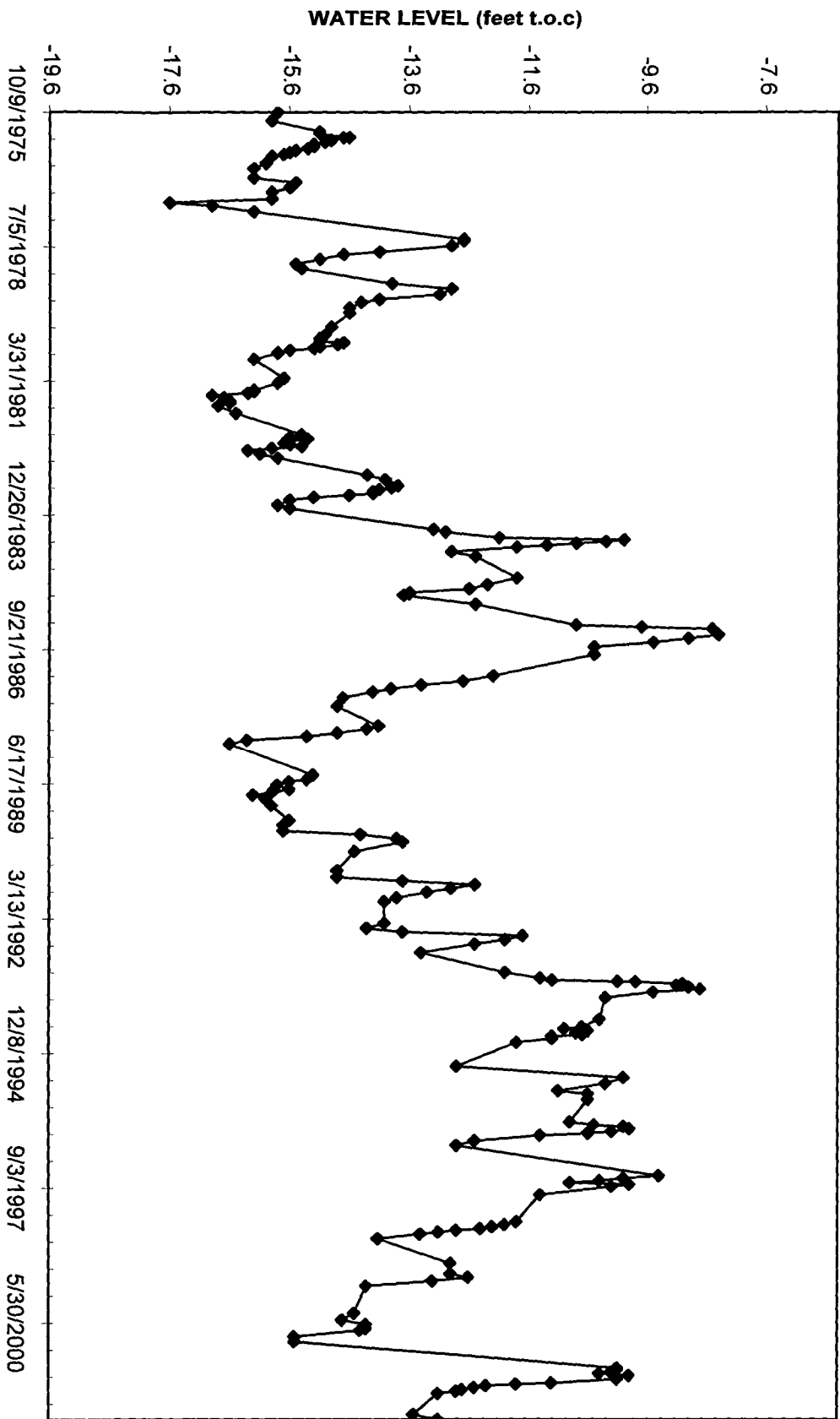
BIBLIOGRAPHY

Hamilton, L.J., 1989, Water Resources of Brookings and Kingsbury Counties, South Dakota, WRI 88-4185, Huron, SD, 57350.

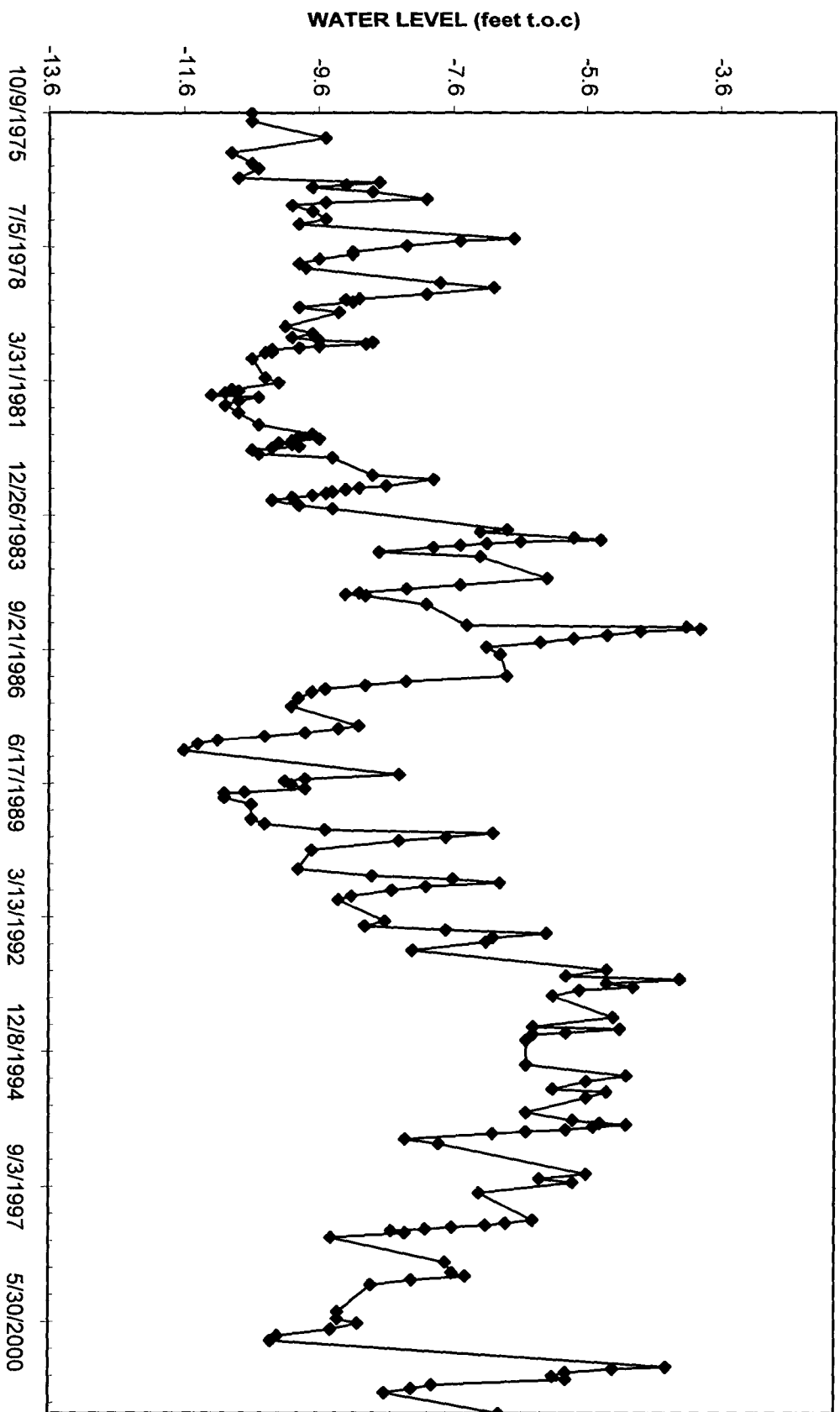
Hedges, L.S., 1982, Evaluation of Ground-Water Resources Eastern SD and Upper Big Sioux River, SD and Iowa, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 57069.

Water Rights, 2002, Unpublished Observation Well Data for Brookings County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

WATER RIGHTS' OBSERVATION WELL
BG-75E



WATER RIGHTS' OBSERVATION WELL
BG-75F





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 5403A-3, Butterflake Aquafarm**

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. 5403A-3, Butterflake Aquafarm, c/o Robert B. Fleeger, PO Box 1283, Watertown SD 57201.

The Chief Engineer is recommending APPROVAL of Application No. 5403A-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 qualification:

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

See report on application for additional information.

Garland Erbele, Chief Engineer
May 28, 2002



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 28, 2002

Brookings Register
PO Box 177
Brookings, SD 57006-0177

ATTENTION: Legal Public Notice

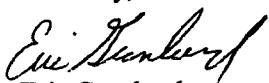
Enclosed is a Notice of Hearing on Application No. 5403A-3 to Appropriate Water to be published twice. Please publish the first notice on June 5, 2002 with the second publication 7 days later.

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 Butterflake Aquafarms, %Robert B Fleeger, PO Box 1283, Watertown, SD 57201 (Ph # 605-886-3390).

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. 5403A-3

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

Date _____

We are in receipt of your letter of May 28, 2002 enclosing Notice of Hearing to Appropriate Water by Application No. 5403A-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**

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

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

May 28, 2002

Butterflake Aquafarms
% Robert B. Fleeger
PO Box 1283
Watertown, SD 57201

Dear Mr. Fleeger:

Water Permit Application No. 5403A-3 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Brookings Register printed at Brookings, SD (Ph # 605-692-6271). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and 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 of Hearing 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 with the last publication to occur twenty days before the board meeting. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,


Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's 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 June 5, 2002 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 5403A-3 to Appropriate Water
to Amend Water Right No. 5403-3

Notice is given that Butterflake Aquafarms, c/o Robert B Fleeger, PO Box 1283, Watertown SD 57201 has filed an application for a water permit to add commercial use and change the annual period of use. Water Right No. 5403-3 authorizes 0.17 cfs from one well located in the NW ¼ NE ¼ Section 12 to irrigate 16 acres located in the NW ¼ NE ¼ Section 12; all in T111N-R51W. This application requests the addition of commercial use. Water will be pumped from the well into dugouts/ponds and the water level maintained for fish propagation. Water Right No. 5403-3 authorizes an annual period of use from May 1st through September 30st. This application requests an annual period of use from January 1st through December 31st. No increase in the diversion rate is authorized by this application and water will continue to be used for irrigation.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5403A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 24, 2002.

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

Affidavit of Publication

State of South Dakota

SS

Exhibit "A"

County of Brookings

Robyn Overby of said county, first duly sworn, on oath, says: That she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," hereto attached and herein mentioned, and was and is printed in the office maintained at said place of publication; and that the

Legal # 722 Application 5403A-3

Brookings and State of South Dakota, for more than one a printed copy of which, taken from the paper in which the same was published, is hereto attached marked Exhibit "A," and is made a part of this affidavit, was published in said newspaper for 2 times, to-wit:

June 5, 2002

June 12, 2002

said Exhibit "A" inures to the sole benefit to the publishers of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Forty-nine dollars and fifty-seven cents \$49.57

Subscribed and sworn to before me this

12th

day of

June

2002.

Christina Nelson

Notary Public in and for the County of Brookings, South Dakota.
My Commission expires April 27, 2006

Legal 722, 2x, 6/5, 12
Public Notice
NOTICE OF
APPLICATION NO.
5403A-3 to Appropriate
Water to Amend Water
Right No. 5403-3

Notice is given that Butterflake Aquafarms, c/o Robert B Fleeger, PO Box 1283, Watertown SD 57201 has filed an application for a water permit to add commercial use and change the annual period of use. Water Right No. 5403-3 authorizes 0.17 cfs from one well located in the NW 1/4 NE 1/4 Section 12 to irrigate 16 acres located in the NW 1/4 NE 1/4 Section 12; all in T111N-R51W. This application requests the addition of commercial use. Water will be pumped from the well into dugouts/ponds and the water level maintained for fish propagation. Water Right No. 5403-3 authorizes an annual period of use from May 1st through

September 30th. This application requests an annual period of use from January 1st through December 31st. No increase in the diversion rate is authorized by this application and water will continue to be used for irrigation.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5403A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501, (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 24, 2002.

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

RECEIVED

JUN 19 2002

WATER RIGHTS
PROGRAM



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUL 31 2002

Butterflake Aquafarms
%Robert B. Fleeger
PO Box 1283
Watertown SD 57201

Dear Mr. Fleeger:

Enclosed is Water Permit No. 5403A-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

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

enclosures

5403A-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

February 3, 2005

Brad Farber
ButterFlake AquaFarms, Inc.
PO Box 286
Bruce SD 57220

Dear Mr. Farber:

I am writing in regard to the ButterFlake AquaFarms's request for an additional well to the two wells currently authorized by Water Permit Nos. 5403A-3 and 6329-3. The water permits, combined, appropriate 1.28 cubic feet of water per second (575 gallons per minute) from two wells constructed into the Brookings Management Unit of the Big Sioux Aquifer for commercial use in a fish farming operation.

Upon review of the request and pursuant to SDCL 46-5-13.1, the additional well is authorized without application or publication of a notice of hearing pursuant to SDCL 46-2A-4. A total of three wells located in the NW ¼ NE ¼ Section 12, T111N, R51W are authorized by Water Permit Nos. 5403A-3 and 6329-3. No increase in the diversion rate of 1.28 cfs is allowed

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

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program

Approval of Additional Diversion Point

NAME: Butterflake Aquafarms, c/o Brad Farber

ADDRESS: PO Box 286, Bruce SD 57220

DATE: February 1, 2005 **COUNTY:** Brookings **TELEPHONE:** 605 627-9334

Butterflake Aquafarms has made a request to authorize the use of an additional well which was drilled in May 2004. This new well is in addition to the two existing wells authorized by Water Permit Nos. 5403A-3 and 6329-3.

Water Permit No. 5403A-3 authorizes the addition of commercial use and changes the annual period of use of Water Right No. 5403-3. Water Right No. 5403-3 appropriates 0.17 cfs from one well (Big Sioux: Brookings Aquifer) located in the NW ¼ NE ¼ Section 12 to irrigate 16 acres located in the NW ¼ NE ¼ Section 12, T111N, R51W. Permit No. 5403A-3 authorized water to be pumped from the well into ponds for fish propagation. Water Right No. 5403-3 continues to authorize irrigation.

Water Permit No. 6329-3 appropriates 1.11 cfs from one well (Big Sioux: Brookings Aquifer) located in the NW ¼ NE ¼ Section 12, T111N, R51W for the same purpose of fish propagation. Water Permit Nos. 5403A-3 and 6329-3, combined, appropriate 1.28 cfs (575 gpm) from two wells for use in the aquafarm.

Butterflake Aquafarm had an additional well drilled for the operation in May 2004 by Lacey Well Drilling. This well is also located in the NW ¼ NE ¼ of Section 12, T111N, R51W. Butterflake Aquafarm was contacted about water permitting requirements for this new well. Based on this contact a request was filed to authorize an additional diversion point pursuant to SDCL 46-5-13.1.

Butterflake's request states that the two original wells are used only to fill and maintain four acres of above ground ponds. This diversion does not exceed two weeks each year. The new well is used to provide water to a flow through system for holding bait fish. The request states that the new well will not be used at the same time as the previously permitted wells, therefore, the permitted amount of 1.28 cfs will not be exceeded.

AUTHORITY:

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

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

The new well and the two existing wells are all constructed into the Brookings Management Unit of the Big Sioux Aquifer. All three wells are 20 to 25 feet deep. The three wells will not be operated at the same time so the authorized diversion rate of 1.28 cfs will not be exceeded.

- **If irrigation, no new land is irrigated**

This new well is used solely for the commercial use of fish farming. Water Right No. 5403-3 is the originating water right that appropriated water for irrigation of 16 acres. This irrigation component remains unchanged, although it is unclear whether irrigation is still intended. The annual irrigation submittal for this water rights shows no irrigation taking place the last four years. No action has been taken to reissue the water right for only commercial use. Regardless, no new land is being irrigated.

- **Review of Existing Diversions**

There are numerous domestic and irrigation wells on record in the area. The well log database maintained by the Water Rights Program shows seven domestic wells within a one mile radius of the ButterFlake's diversion. This review only represents the well reports on file. It does not account for wells in which the driller did not file a report. This review also does not represent whether these domestic wells are in use. A review of appropriate water rights finds eleven water rights in existence within a one mile radius.

Brookings-Deuel Rural Water System serves this area including the city of Bruce. Presumably many of the rural residents are supplied by the rural water system. Authorizing this additional diversion point will not adversely affect area wells. This request is not for an increase to the current diversion rate and is solely to allow diversions to be managed between three wells. The wells are used extensively but instead are used to make-up for incidental losses and evaporation.

RECOMMENDED ACTION

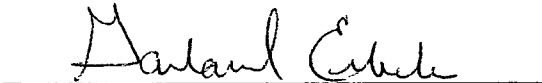
Based on the above criteria, it is recommended that the additional diversion point be authorized.



Eric Gronlund, Natural Resources Engineer
Water Rights Program

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

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



Garland Erbele, Chief Engineer
Water Rights Program



www.butterflake.net

January 25, 2005

Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre SD 57502-3182

RECEIVED
JAN 27 2005
WATER RIGHTS
PROGRAM

Dear Ms. Schlaak:

I am writing in response to your letter dated January 20, 2005 regarding a well driller's report filed by Lacey Well Drilling for a new well at ButterFlake AquaFarms in Bruce SD. I spoke with Eric from your office about the new well and am requesting that this new well be considered for approval as an additional diversion point without application or publication of notice of hearing based on my discussions with him. The basis for this request is that the existing permits, Nos. 5403A-3 and 6329-3, allow for a total of 1.28 cfs for commercial use. These wells are only used for filling four acres of above ground, lined ponds as needed for stocking and raising of fish. They are in use less than two weeks total each year. They would not be used at the same time as the new well that was installed last May 28, 2004. Therefore, the existing permitted use of 1.28 cfs is sufficient to cover this additional diversion without exceeding the permitted amount. The new diversion pumps approximately 50 gallons per minute and is used for holding bait in a flow-through tank system which returns the water on a continual basis to a dugout pond in the aquifer. The only water use or loss is via evaporation.

I have enclosed an aerial photo of the farm with the existing permitted wells and the new well marked on the photo. If there are any questions from your office, please feel free to call us. If a site visit is needed, we would be happy to explain how the existing wells and new well are used at our facility.

Sincerely,

Brad Farber
Hatchery Manager
ButterFlake AquaFarms, Inc.
Bruce SD 57220
605-627-5660

CORPORATE OFFICE

P.O. Box 1283 • Watertown, SD 57201
Phone 605-886-3390 • Fax 605-886-3851

HATCHERY

P.O. Box 286 • Bruce, SD 57220
Phone 605-627-5660 • Fax 605-627-9334

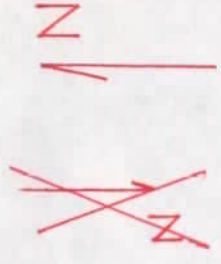


BUTTERFLAKE
AQUAFARMS
BLUE, SD.
605-627-5660

PERMIT No. 6329-3

PERMIT No. 5043A-3

NEW WELL



Butterflake Aquafarms Additional Well Request





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 20, 2005

Brad G Farber
PO Box 286
Bruce SD 57220

Dear Mr. Farber:

I am writing in regard to a well driller's report filed by Lacey Well Drilling. The report shows a new well was completed for Butterflake Aquafarms on May 28, 2004. A review of our files indicates that Butterflake Aquafarms holds Water Permit Nos. 5403A-3 and 6329-3. No. 5403A-3 authorizes 0.17 cubic feet per second (cfs) from one well and No. 6329-3 authorizes 1.11 cfs from one well, both for commercial use.

Mr. Farber, is the new well a replacement well or an additional well? I spoke with a woman from your Watertown office. She indicated she thought the well was a replacement but was not sure of the specifics.

South Dakota Codified Law 46-5-13.1 provides that a point of diversion may be changed or additional points of diversion may be approved without application or publication of a notice of hearing if the additional point of diversion is from the same source of water, no additional water is appropriated and the Chief Engineer makes a finding that the change does not increase the potential for interference with existing diversions.

Please let us know the status of this new well. If you have any questions, please contact Eric Gronlund or me. Thank you for your cooperation.

Sincerely,

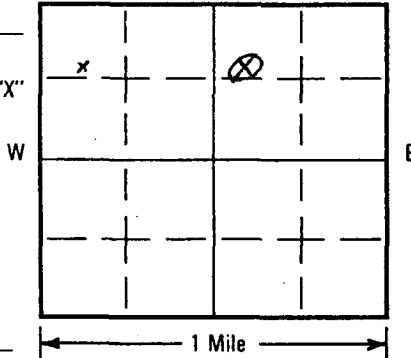
Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NW 1/4 NE 1/4 Sec 12 Twp 111-N Rg 51-WCounty Brookings North

Please mark well location with an "X"



Well Completion Date

5-28-04

LOCATION:

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

PROPOSED USE:

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

METHOD OF DRILLING: 20" FALSE CASINGCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>20 LB/FT</u>	<u>12 IN</u>	<u>+1 FT</u>	<u>17 FT</u>	<u>20 IN</u>
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
_____	_____	_____ lb./gal	_____ ft	_____ ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure NONE - ponds
50' from wellSCREEN: ☐ Perforated pipe ☐ ManufacturedDiameter 12" IN Length 5 FEETMaterial PVC - MfgdSlot Size 100 Set From 17 Feet to 22 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

☒ YES, How: chlorinated☐ NO, Why Not? pack andfill - water to be
used for drinking

Laboratory sent to for water quality analysis

NO

Well Owner: _____

Business Name: Butte Lake Fish FarmAddress: P.O. Box 286Bruce, South Dakota

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Sand</u>	<u>0</u>	<u>6</u>
<u>Gravel</u>	<u>6</u>	<u>22</u>
<u>Blue Clay</u>	<u>22</u>	

STATIC WATER LEVEL 14' Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ PumpedDescribe: pumped clear☐ Bailedaround 300 gpm☐ Other _____

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

This well was drilled under license # 111

And this report is true and accurate.

Drilling firm LACEY WELL DRILLING

Signature of License Representative:

James G. Lacey

Signature of Well Owner or Equitable Property Holder:

Brad E. LaceyDate: 6/21/2004RECEIVED
JAN - 5 2005WATER RIGHTS
PROGRAM



5403A-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

August 31, 2006

5403-3
5403A-3
6329-3

Brad Farber
Butterflake Aqua Farms
PO Box 286
Bruce SD 57220-0286

Dear Mr. Farber:

Thank you for calling concerning the need for ownership changes on Water Right No. 5403-3 and Water Permit Nos. 5403A-3 and 6329-3.

Enclosed are partially completed Notice of Transfer of Ownership forms for filing ownership changes. Please review the forms and make any necessary corrections. The forms will need to be signed by the new owner(s) and returned to our office with a required filing fee of \$2.50 each (\$7.50 total). The check or money order for the fee can be made payable to the Water Rights Program.

If I can answer any questions for you, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 5403A-3

Date: 9/4/06

I/We request that Water Permit No. 5403A-3

formerly owned by: Butterflake Aquafarms, PO Box 286, Bruce SD 57201

be transferred to: (name & address) BRAD G. FARBER, PO Box 286
BRUCE SD 57220

Telephone No. 605-627-5747

Title to the following described land(s)/property has been transferred as described above:

NW1/4 NE ¼ Section 12, T111N, R51W

I/We understand that the validity of Water Permit No. 5403A-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We BRAD G. FARBER, the new owner, certify that the above information is true and correct.

Brad G. Farber
(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIVED
SEP - 6 2006
WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date September 6, 20 06

RECEIVED OF Brad Farber, PO Box 286, Bruce SD 57220

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	2	50
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. _____		
Fee for Filing Transfer Form <u>5403A-3</u>		
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	2.50

No.

02575

By

Darland Eide
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

September 6, 2006

5403-3
5403A-3
6329-3

Brad G Farber
PO Box 286
Bruce SD 57220

Dear Mr. Farber:

I am writing to acknowledge receipt of the ownership changes you filed with Water Right No. 5403-3 and Water Permit Nos. 5403A-3 & 6329-3. The transfers have been completed. Nos. 5403-3, 5403A-3 and 6329-3, formerly held by Butterflake Aquafarms are now listed in your name.

Enclosed are your Receipt Nos. 02574, 02575 and 02576 in the amounts of \$2.50 each. You may keep these for your records.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 15, 2008

5403-3
5403A-3
6329-3

Greg Oswald
Oswald Fisheries Inc
PO Box 306
Ellendale MN 56026

Dear Mr. Oswald:

I am writing in follow up to our phone conversation concerning the transfer of Water Right No. 5403-3 and Water Permit Nos. 5403A-3 & 6329-3. I am enclosing copies of them for your review.

Water Right No. 5403-3 is strictly for irrigation use. Water Permit No. 5403A-3 was obtained to authorize use of the existing irrigation well for fish culture. No. 5403A-3 did not authorize additional water. You indicated that you do not irrigate and that water is only used for fish ponds. At some point in time, the project will be inspected for licensing and Nos. 5403-3 and 5403A-3 will be combined and the irrigation portion can be removed. Until that time, we can not cancel No. 5403-3 because the water for the fish ponds is authorized under that water right.

For now, what needs to occur is Nos. 5403-3; 5403A-3 and 6329-3 need to be transferred to reflect current ownership. Enclosed are partially completed Notice of Transfer of Ownership forms for filing the ownership changes. Upon completion, please sign and return them to our office with a required filing fee of \$2.50 each (total of \$7.50). The check or money order for the fee can be made payable to the Water Rights Program.

If you have any questions when completing the transfer forms, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED

OCT 30 2008

WATER RIGHTS
PROGRAM

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 5403A-3

Date: _____

I/We request that Water Permit No. 5403A-3

formerly owned by: Brad G Farber

be transferred to: (name & address) Greg Oswald

PO Box 306

Ellendale, Mn 56026 Telephone No. 507-684-2606

Title to the following described land(s)/property has been transferred as described above:

well located: NW1/4 NE 1/4 Section 12, T111N, R51W

I/We understand that the validity of Water Permit No. 5403A-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We GREG OSWALD, the new owner, certify that the above information is true and correct.

Greg Oswald

(Signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 10/20/2008

RECEIVED OF Oswald Fisheries PO Box 306 Ellendale ND 56026

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		
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. _____		
Fee for Filing Transfer Form <u>5403A-3</u>	2	50
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	2 50

No.

03782

By

Garland Estlund
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 31, 2008

5403-3
5403A-3
6329-3

Greg Oswald
PO Box 306
Ellendale MN 56026

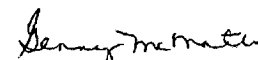
Dear Mr. Oswald:

I am writing to acknowledge receipt of the transfer forms and filing fees you submitted for Water Right No. 5403-3 and Water Permit Nos. 5403A-3 & 6329-3. The ownership changes have been completed. Nos. 5403-3, 5403A-3 and 6329-3 formerly held by Brad Farber are now listed in your name.

Enclosed are your Receipt Nos. 03781, 03782 and 03783 in the amount of \$2.50 each.

If you have any questions, please contact me.

Sincerely,


Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures



5403A-3

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

5403-3
5403A-3
6329-3

MAY 28 2015

Greg Oswald
PO Box 306
Ellendale MN 56026

Dear Mr. Oswald:

Enclosed is Water License No. 6329-3. This is the final water right document completing your process of obtaining a Water Right. Also, included with your license is a map prepared by the staff engineer who conducted the investigation.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the well authorized by Water Right No. 6329-3, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

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. If you have any questions, please contact our office.

Sincerely,

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

Note: The applicable portions of No. 5403-3 and 5403A-3 are incorporated into Water License No. 6239-3.