

WATER PERMIT NO. 6049-3

Name of Applicant: City of Eureka

Address: PO Box 655, Eureka SD

Phone: 605 284-2441

Amount of Water Claimed: 1,027 AF storage and 341 gpm from well Total Acres: NA

Source of Water Supply: runoff and well

Water to be used for: recreational use

County: McPherson

Type of Waste Disposal System: NA

Location: within city limits

PRIORITY Date Received: 8-25-1997

Fee: \$400.00

Corrected Application Received: 2-13-1998

Period of Annual Use: January 1 - December 31

Remarks:

Diversion Point: well - SW 1/4 SE 1/4

Section 25 and spillway - S 1/2 SE 1/4 Section 34;
all in T127N-R73W

Land to be Irrigated: NA

Depth of Well: 2100 feet

Well Driller:

Remarks:

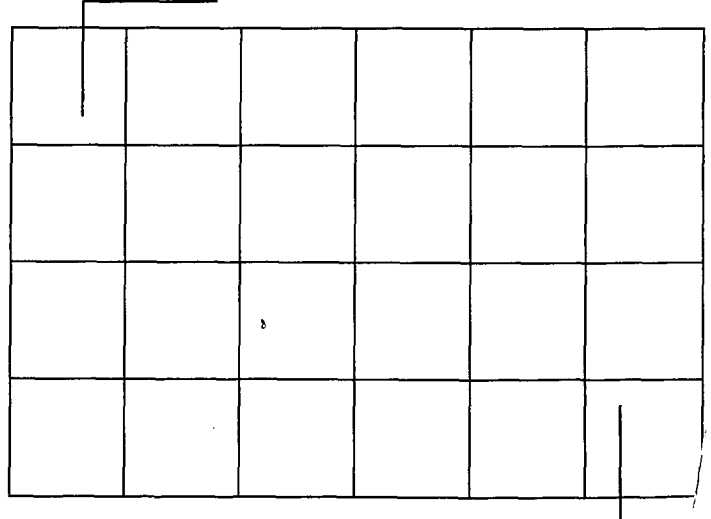
Type of Map: plat

Prepared by: John G Ladson, P.E.

Reviewed and the Number Assigned on: 2-13-1998

By: Karen Schlaak

Notice of Hearing - date to intervene: _____





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 20, 2001

Terry Helms
Helms and Associates
PO Box 11
Aberdeen, SD 57402-0111

Dear Mr. Helms:

Enclosed are application forms for irrigation in South Dakota. If the City of Eureka continues to irrigate from the reservoir, they will need to file for an irrigation permit. The other day, we also discussed the City wanting to raise the outlet elevation 15 inches to increase the storage capacity. The increased capacity should also be included in the application.

Our file indicates that the present outlet elevation was established at the original elevation of 1843, with the new secondary spillway at 1845 and the top of dam elevation at 1846. The new outlet elevation and increased capacity, if approved, will receive a new priority date. There are several factors that should receive careful consideration before raising the outlet elevation. The project will still be required to pass a 100 year event without overtopping the embankment. Also, what affect will the increased reservoir elevation have on the park facilities, trees, bridges, etc.:

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

Sincerely,

Timothy G. Schaal, P.E.
Natural Resources Engineer Specialist
Water Right Program
(605) 773-3352

enclosure

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 6049-3

(1) The City of Eureka, PO Box 655, Eureka SD 57437-0655 made Application No. 6049-3, August 25, 1997 for a water permit to impound 885 acre-feet of water in an existing dam, McPherson County, South Dakota for recreational purposes. Permit No. 6049-3, with a priority date of February 13, 1998 was approved July 8, 1998 and issued to the applicant for diversion of water with construction of the described water supply system completed and the application to beneficial use of said water completed.

This dam forms what is commonly know as West Eureka Lake and is supplied water from local runoff and the well authorized by Water Permit No. 723A-3. Vested Right No. 6068-3 is held by the City for East Eureka Lake and Water Right No. 723A-3 is for the well used to maintain the water level in East and West Eureka Lakes.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the storage dam and is entitled to impound 885 acre-feet of water for beneficial use with sufficient water annually to maintain the water level to the primary spillway elevation of 1843.0 feet mean sea level. The location of the storage dam (primary spillway) is 790 feet west and 590 feet north of the northeast corner of Section 34-T127N-R73W (SE ¼ SE ¼)

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use.

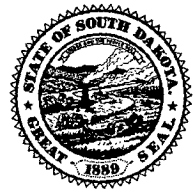
(4) Pursuant to South Dakota Water Law 46-5-30.1 the City of Eureka, PO Box 655, Eureka SD 57437-0655 the holder and/or owner of Water Right No. 6049-3 is issued a license to appropriate water, the right to impound 885 acre-feet of water from runoff with sufficient water annually to maintain the water level to the primary spillway elevation of 1843.0 feet mean sea level with a priority date of February 13, 1998 from the location specified in (2) of this license for recreational purposes. This license is subject to any limitations or qualifications listed in Water Right No. 6049-3 and subject to South Dakota State Law.



JOHN HATCH, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

APR 26 1999

date



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	No. <u>6049-3</u>	(office use only) Hydrologic Unit <u>10130106</u>
	Basin <u>Missouri River</u>	
	Newspaper <u>Northwest Blade, Eureka, SD</u>	



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. _____

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

1. Name of Applicant City of Eureka, SD Phone 605-284-2441
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address P.O. Box 655, Eureka State SD 57437-0655
(Street, RR, or Box) (Zip Code)

2. Amount of water claimed *CFS or **GPM 815 ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Surface run off ~~and flowing well~~

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) ~~Well - Block 13, CW 1 SE 1/4~~
~~Sec. 25, T127N - R73W~~ Spillway 1/2 SE 1/4 Sec. 34 T127N - R73W
S County McPherson

5. County or counties where water will be used McPherson

6. Annual period during which water is to be used Yearly Part 1 - Dec. 31

7. 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)

Existing Dam - request high water elevation to be established
See Attachments. The flowing well will be covered under separate application.

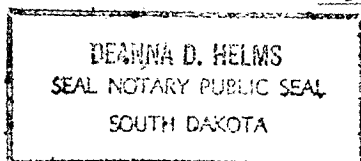
STATE OF SOUTH DAKOTA)
County of McPherson SS

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)

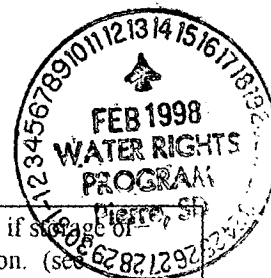
I, Ervin Gebhardt, Mayor, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Signed Ervin H Gebhardt

Subscribed and sworn to before me this 22 day of August 19 97

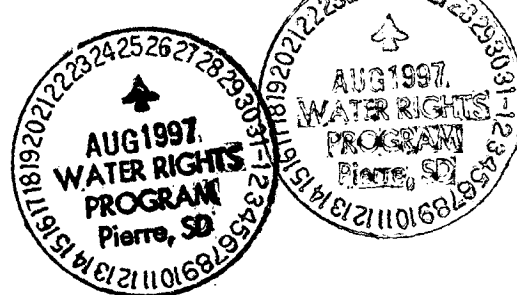


Deanna D Helms
Notary Public



Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction

4" larger than

- a) Drill Hole Diameter casing Depth 2100'
- b) Casing Type steel Diameter 4" 2004 L.F. Thickness _____
steel Diameter 8" 160 L.F. Thickness _____
- c) Screen Type None Diameter _____ Thickness _____
- d) Gravel Pack None 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 _____ Depth _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

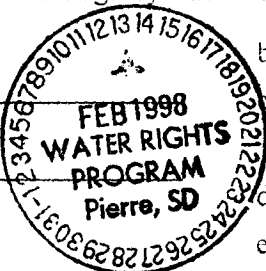
If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

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

Helms and Associates

P.O. Box 111

Aberdeen, SD 57402



b) Freeboard 2 1/2 ft.

c) Crest Width 30'

Crest Length 1500'

d) Height 13'

e) Primary Outlet Capacity 198 cfs

If pipe, diameter 42" RCP

f) Secondary Spillway Capacity 615 cfs

Spillway Width 25 ft.

g) X & Y Slope _____

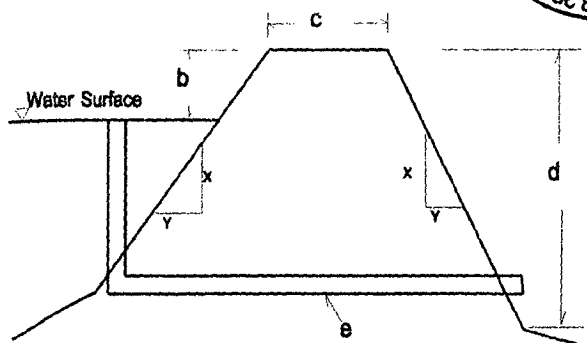
Upstream 1 & 6

Downstream 1 & 4

h) Surface Area of Impoundment 133.37 acres

i) Storage 1027 Acre Feet

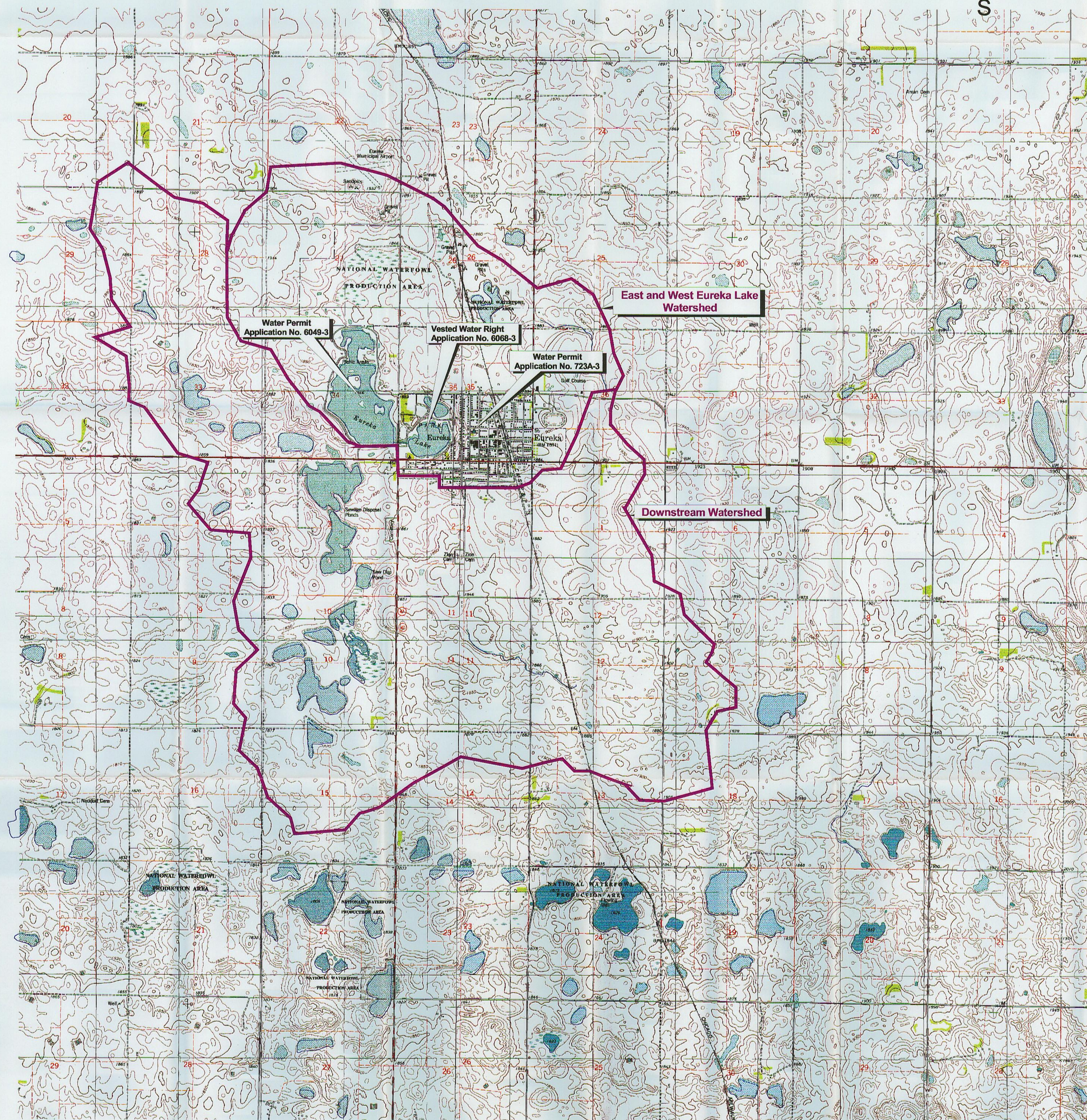
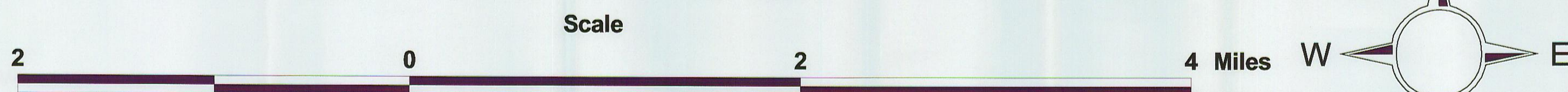
j) Drainage Area Above Dam 7089 Acres

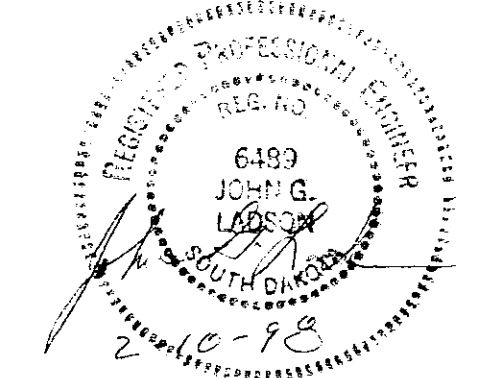
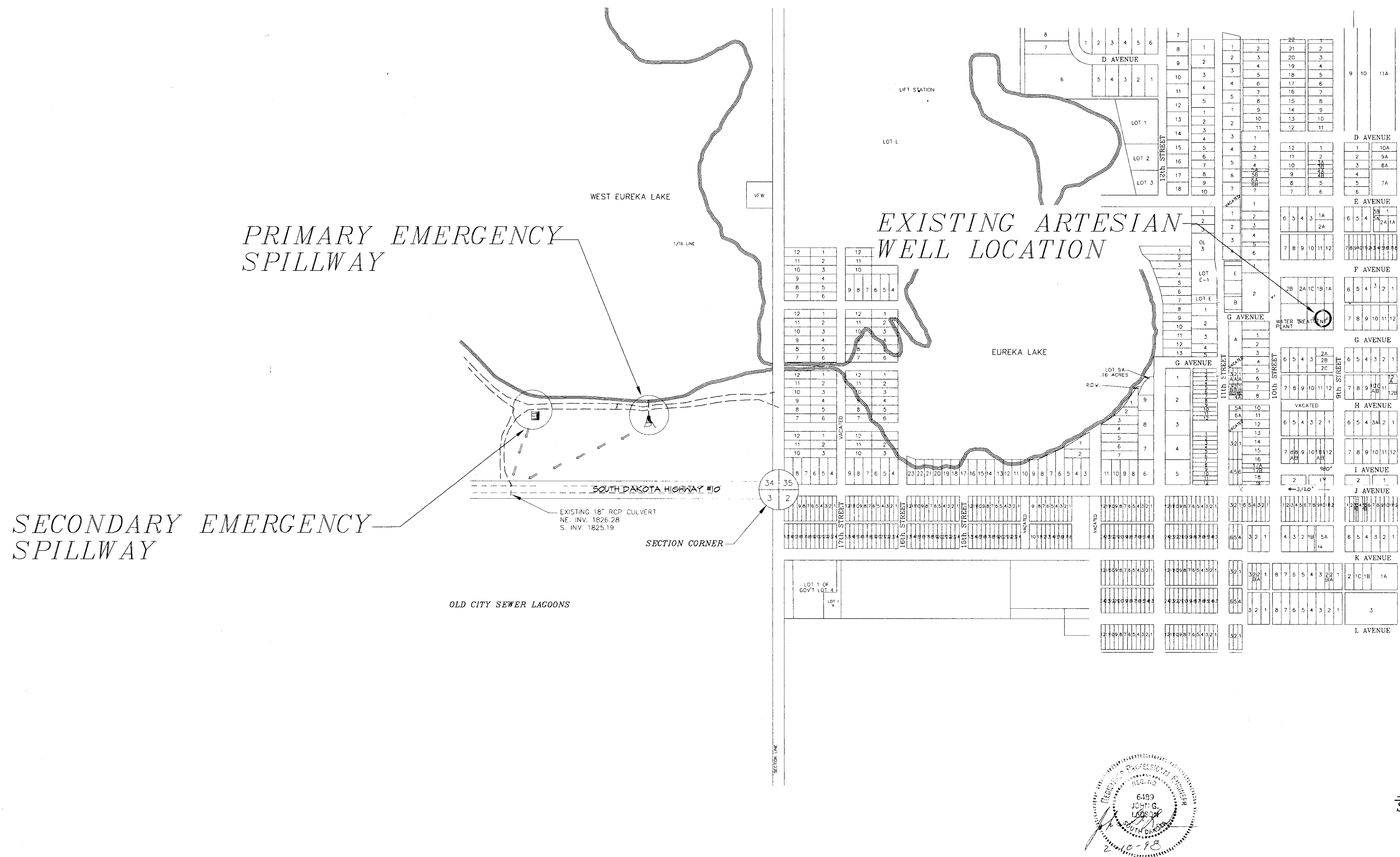
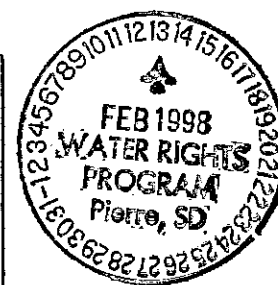


Water Permit Application Nos. 723A-3, 6049-3, and Vested Water Right Application No. 6068-3 for the City of Eureka

6068-3

(Map made from United States Department of the Interior Geological Survey 7.5 Minute Series Topographic Maps)





EUREKA
SOUTH DAKOTA

60493

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6049-3, City of Eureka**

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. 6049-3, City of Eureka, Mayor Ervin Gebhardt, P.O. Box 655, Eureka, SD 57437-0655.

The Chief Engineer is recommending APPROVAL of Application No. 6049-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion has been 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:

Water Permit No. 6049-3 authorizes storage of 885 acre feet of water and sufficient water annually to maintain the water level in East Eureka Lake at elevation 1843.0 fmsl.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", with a stylized flourish at the end.

JOHN HATCH, Chief Engineer
June 2, 1998

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6049-3, City of Eureka**

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. 6049-3, City of Eureka, Mayor Ervin Gebhardt, P.O. Box 655, Eureka, SD 57437-0655.

The Chief Engineer is recommending DEFERRAL of Application No. 6049-3 for the City of Eureka to submit a revised set of plans on the Eureka Dam spillway and allow staff to review the plans prior to completing the report on the application.

A handwritten signature in black ink, appearing to read "John Hatch", with a stylized flourish at the end.

JOHN HATCH, Chief Engineer
April 3, 1998

REPORT ON WATER PERMIT APPLICATION NO. 6049-3

The City of Eureka

May 26, 1998

Application No. 6049-3 proposes to allow storage of 885 acre feet of water from local runoff in an existing dam. The dam is located in the SE¼ Section 34-T127N-R73W and water is impounded in the E½ and SW¼ Section 27 and in Section 34, all in T127N-R73W. The water is used for recreational purposes.

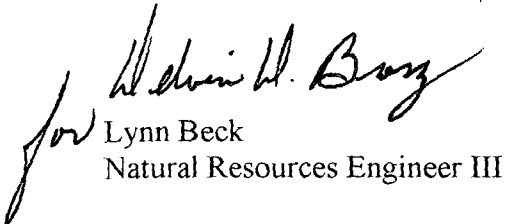
The dam is a category 2 dam due to Highway 10 downstream of the dam. The dam is to undergo maintenance to the spillways. The primary spillway will retain the historic overflow elevation of 1843.0 feet mean sea level and will handle a 25 year precipitation event with a flow of 266 cubic feet of water per second. The combined primary and secondary spillways are designed to handle the 100 year precipitation event without overtopping the structure. Since the construction is considered maintenance and the dam was built before 1985, the structure does not have to meet the dam safety rules for spillway design.

The source of water for the dam is local runoff and a flowing artesian well in the town of Eureka. Discharge from the well enters East Eureka Lake and flows to the dam through a canal constructed between East Eureka Lake and the dam known as West Eureka Lake. The city has applied for use of water from this well in Application No. 723A-3. The well was the subject of a complaint that resulted in a notice to the City of Eureka control the flow from the well.

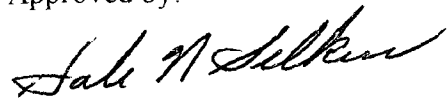
There are no existing water rights on the drainage downstream of the dam.

Conclusions

1. Water Permit No. 6049-3 should be approved since unappropriated water is available and approval will not have any adverse effects on existing Water Permits/Rights.
2. Use of water from the flowing artesian well, which discharges to the dam, has been applied for under Application No. 723A-3.
3. The City of Eureka has been noticed to control the flow of the artesian well that discharges to the dam.


for Lynn Beck
Natural Resources Engineer III

Approved by:



Gale N. Selken, P.E.
Natural Resources Engineer IV



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

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

June 4, 1998

City of Eureka
%Mayor Ervin Gebhardt
P.O. Box 655
Eureka, SD 57437-0655

Dear Mayor Gebhardt:

Water Permit Application Nos. 723A-3, 6049-3 and Vested Water Right Application No. 6068-3 for recreational use have 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 Northwest Blade printed at Eureka, SD (Ph # (605) 284-2631). For your information, a copy of the notices, the recommendations of the Chief Engineer and a report on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. 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 been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Ron Hemmingson, Water Superintendent, City of Eureka.

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

Instruction to Newspaper - Publish first Notice on June 10, 1998, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Water Permit Application Nos. 723A-3, 6049-3 and Vested Water Right Application No. 6068-3

Notice is given that the City of Eureka, c/o Mayor Ervin Gebhardt, P.O. Box 655, Eureka, SD 57437-0655 has filed applications for water permits and a vested water right application for issues involving East and West Eureka Lake and the well that is used to assist in maintaining the lake level.

Water Permit Application No. 723A-3 proposes to amend Water Right No. 723-3 to authorize the additional uses of recreational and fire protection to the water right. Water Right No. 723-3 appropriates 0.76 cubic feet of water per second (cfs) from an Inyan Kara Formation well (2,100 feet deep) located in the SW1/4 SE1/4 Section 35, T127N, R73W for municipal purposes. The current maximum diversion from the well is 0.44 cfs and the water right will be reissued to reflect this quantity. This application proposes to add recreational use to allow use of the well to maintain the water level of East and West Eureka Lake. Discharge from the well enters East Eureka Lake and flows via a narrow channel to West Eureka Lake. The city also intends to use the well for fire protection.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 723A-3 with a qualification requiring the well to be valved and the flow reduce to the amount needed or to a minimum when not needed for recreational and municipal purposes because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Water Permit Application No. 6049-3 proposes to appropriate 885 acre feet of water of storage for recreational use in the existing dam. The dam is located in the SE1/4 Section 34 and impounds water in the E1/2 and SW1/4 of Section 27 and in portions of Section 34; all in T127N, R73W. The dam forms what is commonly known as West Eureka Lake and is supplied water from local runoff and the well listed in Application No. 723A-3 (see above). The dam which forms West Eureka Lake is to undergo maintenance to the primary and secondary spillways. The primary spillway will be designed for the 25 year precipitation event and will retain the historic elevation of 1,843.0 feet mean sea level. The combined primary and secondary spillways are designed to handle the 100 year precipitation event.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 6049-3 because 1) unappropriated water is available, 2) existing rights have not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

Vested Water Right Application No. 6068-3 claims 224 acre feet of water of storage in East Eureka Lake for recreational purposes. The lake is a non-meandered lake located in the SW1/4 of Section 35, T127N, R73W. East Eureka lake is a man-made lake within the city limits. The lake was constructed as a Public Works Administration (WPA) project in 1933. Rather than a typical impoundment type reservoir, the lake was excavated and the shoreline rip-rapped. Sources of water for the lake include the municipal storm sewer, a well (see Application No. 723A-3), ground water, and its connection to West Eureka Lake.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 6068-3 because 1) water has been appropriated as describe for recreation use with a priority

date of January 1, 1933, 2) the use has been developed without unlawful impairment of existing rights, 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 June 29, 1998. 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 10:00 a.m. (CDT), July 8, 1998, at the Staurolite Inn, U.S. Hwy. 14 and I-29, Brookings, 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 these applications based on the facts presented at the public hearing. The July 8, 1998, 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 June 29, 1998.

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 June 29, 1998, 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.

These applications are 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-18, 46-2A-20, 46-2A-21, 46-2A-22; 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:0201:19 thru 74:02:01:22. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication

COUNTY OF McPHERSON

STATE OF SOUTH DAKOTA

Arlo C. Mehlhoff of said county being duly sworn, on oath says that he is the publisher of The Northwest Blade, a weekly newspaper published in Eureka in said County of McPherson and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least 200 copies weekly, and has been published within said County for fifty-two successive weeks next to prior to the publication of the notice herein mentioned and was and is printed wholly or in part in an office maintained at said place of publication; that the advertisement, a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for TWO successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

June 10 1998; _____ 19____;
June 17 1998; _____ 19____;
_____ 19____; _____ 19____;
_____ 19____; _____ 19____;
_____ 19____; _____ 19____;
_____ 19____; _____ 19____;

that the full amount of the fees for the publication of the annexed notice is \$ 105.77

Arlo C. Mehlhoff

Subscribed and sworn to before me this 24th

day of June, 19 98

Notary Public

County of McPherson, South Dakota

ARNOLD J. LAPP
Notary Public-South Dakota
My commission expires Aug. 1, 2000

NOTICE OF HEARING on Water Permit Application Nos. 723A-3, 6049-3 and Vested Water Right Application No. 6068-3

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends Approval of Application No. 723A-3 with a qualification requiring the well to be valved and the flow reduce to the amount needed or to a minimum when not needed for recreational and municipal purposes because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 6068-3 because 1) water has been appropriated as describe for recreation use with a priority date of Jan. 1, 1933, 2) the use has been developed without unlawful impairment of existing rights, 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, S.D. 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 1998. 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 10 a.m. (CDT), July 8, 1998, at the Staurolite Inn, U.S. Hwy. 14 and I-29, Brookings, S.D. 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 these applications based on the

facts presented at the public hearing. The July 8, 1998, 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 June 29, 1998.

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 of the State of South Dakota or the Supreme Court as provided in SDCL 1-26. Auto-jet applies relmb. \$47.79. Auto-jet man mileage \$78.00. Joan Anderson engraving awards \$30.00. Kathryn & Academy Trophy & between School District misc. McDonald Supply Co. repairs \$90.88. & M Products awards \$69.25. A. Y. \$107,780.81

8,984.15 174,272.13 7,893.41 36,229.25 22,477.45 4,490.71

**P.O. Box 655
EUREKA, SOUTH DAKOTA 57437
605-284-2441**

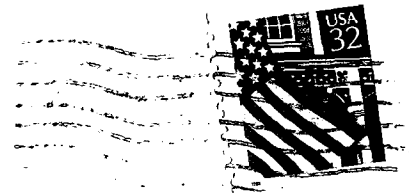
Mr. John Hatch, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Ervin Gebhardt, Mayor

CITY OF EUREKA

P. O. Box 655

Eureka, South Dakota 57437



Mr. John Hatch, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181



Beck, Lynn

From: Beck, Lynn
To: Selken, Gale; Hatch, John
Cc: Beck, Lynn
Subject: Outlet elevation for Lake Eureka.
Date: Wednesday, July 16, 1997 3:50PM

July 16, 1997 we received a request from the City of Eureka to set an outlet elevation for Lake Eureka. There is a small dam or dike in the outlet and the City wants to put in an emergency spillway.

Beck, Lynn

From: Beck, Lynn
To: Selken, Gale; Hatch, John
Cc: Gronlund, Eric; Beck, Lynn; Rath, Mark
Subject: Eureka Dam
Date: Wednesday, August 06, 1997 4:46PM

Eureka dam does not have a spillway, due to recent water levels and the need to siphon water over the dam to keep the dam from overtopping, City officials are interested in constructing a primary spillway. City officials came to us asking for an official outlet elevation so they could construct a primary spillway.

I did not know if the existing structure was a dam or a dike and because it was connected to a natural lake I went to Eureka to investigate the outlet elevation. The structure is definitely a dam, 16 feet high, and is connected to a natural lake by a manmade channel. The flow line in the manmade channel connecting the natural lake to the dam is 1840.04 fmsl and the top of the dam is 1846.30fmsl, the toe of the dam is 1830.68 fmsl. An old spillway which was made nonfunctional many years ago had an overflow elevation of 1843.0 fmsl. Trees along the natural lake fall between 1844 and 1845 fmsl. Contours prior to the channel between the natural lake and the dam indicate that the natural outlet elevation of the lake was somewhere between 1843 and 1844 fmsl.

I discussed the risk assessment with Gale and Tim and it was felt that the dam should be a category 2 small size dam able to pass the 100 year event. Highway 10 is a few 100 feet south of the toe of the dam and has only an 18" culvert to pass drainage to the south. If the town of Eureka submits a Water Right application and plans and specs for the primary spillway, I think the outlet elevation can be indicated on the permit rather than going before the board and treating the outlet elevation as a separate issue. I also recommended that they talk to DOT about the 18" culvert in Highway 10.

Eureka would like to do the work this fall, I am not sure it will get before the Board until Dec. that is if it needs to go before the Board.

Eureka does not have a Water Right to impound the water behind the dam.



HELMS and ASSOCIATES

CONSULTING ENGINEERS • LAND SURVEYORS

S P N

A DIVISION OF
SCHMUCKER, PAUL, NOHR and ASSOC.

BOX 111

BERKSHIRE PLAZA

ABERDEEN, SD 57402-0111

405 8th AVENUE NW

PHONE (605) 225-1212

FAX: (605) 225-3189

August 22, 1997

Ms. Lynn Beck
Water Rights Program
Joe Foss Building
523 E Capitol
Pierre, SD.. 57501-3181



Re: Eureka Lake
A-1974

Dear Lynn:

Enclosed please find the following information for the referenced Lake:

- Application for Permit to Appropriate Water Within the State of South Dakota
- City of Eureka check in the amount of \$400.00
- Flow data for lake elevation of 1844.00
- 2 copies of our topographic survey of the existing dam.

Please attach this information to our report previously submitted to you.

If you have any questions, please contact this office.

Very truly yours,
Helms and Associates

Terry D. Helms, P.E.
TDH:dh

CC: City of Eureka



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 26, 1997

Ervin Gebhardt, Mayor
City of Eureka
PO Box 655
Eureka SD 57437-2441

Dear Mayor Gebhardt:

Thank you for submitting your *Application for a Permit to Appropriate Water* for Eureka Lake. It is our understanding that the city intends to secure the proper water right permit for the lake and obtain a determination on the outlet elevation for the purpose of constructing a new outlet structure.

Several items need to be addressed before we can continue processing of this application. First, your signature on the application needs to be notarized. Please state under Item No. 2 of the application the approximate flow, in gallons per minute, from the well. Additionally, provide under Item No. 4, the legal description of the well and the outlet structure.

I understand that the flowing well has been in existence for numerous years. Does the city have any information on the well such as year constructed, well depth, or casing diameter? If so, this information should be provided under the well information section of the Supplemental Information form.

A map is also required. The map needs to show the location of the well, location of the outlet structure, and outline the area where water will be impounded in relation to a government section corner or quarter corner by direction and distance. This map needs to be signed by a professional engineer.

The topographic survey for the existing dam was submitted with the application. However, in order to review the planned outlet structure, plans and specifications for the project must be provided. The contents of the plans and specifications are provided for under Safety of Dams rule 74:02:08:09. A copy of the rules are included with this correspondence and have been provided to Terry Helms.

If you have any questions, please contact Lynn Beck or me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352

enclosure

c: Terry D. Helms, P.E., Helms and Associates

Beck, Lynn

From: Beck, Lynn
To: Stoneback, Susan
Cc: Best, Diane; Selken, Gale; Hatch, John; Beck, Lynn; Rath, Mark
Subject: Delzer phone call.
Date: Tuesday, September 09, 1997 9:41AM

I spoke with Erdie Delzer (mother) first and her concerns were that the city of Eureka is ponding water on their property by siphoning water out of Eureka dam; the water reaching their property was sewage water; the city would not give them any compensation. Duard Delzer (son) had the same concerns and in addition said that they had taken the city to court last spring to get an injunction. It was not granted.

I gathered some information on the court case and found out that the preliminary injunction hearing was held but a final hearing has not been held. Duard Delzer said that he did not get the injunction because of the emergency need to get water out of Eureka dam. The dam was in danger of overtopping and there is no spillway on the dam. Duard does intend to file another case in court concerning the continual dumping of water. The city is in the process of getting a water right to store water and an outlet elevation in order to construct a new spillway.

The area is a pothole region therefore water fills up one pothole until it dumps to another. The discharge from the dam is filling up a pothole on the Delzer property. Whether or not the dam was in place drainage would make its way to the Delzer property. Without the dam, there could be more water on the Delzer property. There is an artesian well which flows to the lake for which the city has a licensed water right.

As to the concern that the water reaching the Delzer property is sewage water, the discharge from the dam passes through Eureka's old sewage ponds. The sludge should be stable at the bottom and the water on top not a concern. I told Duard that he could register a complaint with Air and Surface Water here at DENR, he did not seem to want to do that.

As far as compensation, it sounds like the Delzers will be filing a case in court soon. However there is some talk about getting some of the Delzer property under the Marsh Management program which has the potential to settle the dispute.

When I spoke to Erdie Delzer she wondered if my call meant she would not hear from the Governor. I told her I would be updating you after speaking with her and Duard.

Beck, Lynn

From: McCrea, Don
To: Best, Diane; Beck, Lynn
Cc: McGuigan, Dave; Streckfuss, JT; Todd Crownover
Subject: RE: Delzer v. City of Eureka
Date: Tuesday, September 09, 1997 9:35AM

Diane,

Any questions or inquiries for GFP regarding any possible land acquisitions should be directed towards David McGuigan our Habitat/Land Management Section Chief in Pierre or Jerry Streckfuss, Regional Land Management Supervisor out of Aberdeen. Dave's # is 605-773-4194 and Jerry's is 605-626-2391. I have visited with Mr. Kallenberger, but Dave or Jerry would be the ones working on any potential acquisition.

From: Best, Diane
To: Beck, Lynn
Cc: McCrea, Don
Subject: Delzer v. City of Eureka
Date: Monday, September 08, 1997 3:36PM

You called to find out the status of the above case since you got a phone message from Delzers this morning. . I followed up with the city attorney (Kallenberger). He will be sending me a copy of the preliminary injunction (final hearing has never been held) as well as any information he has on an outlet elevation... there might be something in some old papers he has.
Sounds like city and Delzer are waiting for GFP as far as acquiring some of the Delzer property under the Marsh Managment program.(is this the right name?) This has the potential to settle the dispute. Don, apparently you are the GFP point person on this issue. . Kallenberger says he got a call from NRCS today, too, so it sounds like Delzers are placing calls generally trying to get some activity on this issue . Do I have the status of this right??.



STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR



September 10, 1997

Duard Delzer
PO Box 232
Eureka, SD 57437

Dear Duard:

I reviewed the notes from Erdie's call regarding water that is ending up on your land due to releases from the City of Eureka. I asked Lynn Beck in the Department of Environment and Natural Resources (DENR) to contact you, and I know that you and Erdie spoke with her this week.

As Lynn noted, your issue with the city as to compensation for your pasture land and cultivated land is a civil matter. I understand that you may be pursuing it in court. As Governor, I am forbidden by the State Constitution from becoming involved in legal matters other than my own private legal issues and those of the state. I'm sure you can understand this separation of power between the executive and judicial branches of government. Consequently, I can't become involved in this situation.

You may pursue the issues connected with your concern that these water problems include sewage with the DENR by registering a complaint with the Air and Surface Water program. If you wish to speak with someone in that office, please call (605) 773-3351. Please do not hesitate to contact Lynn again if you have further questions about the situation. She will assist you or direct you to the appropriate office.

Although I personally won't be handling your problems, thanks for bringing them to my attention.

Sincerely,

William J. Janklow

WJJ:ss

EXECUTIVE OFFICE
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
605-773-3212

Beck, Lynn

From: Beck, Lynn
To: Best, Diane
Cc: Selken, Gale; Hatch, John; Beck, Lynn; Rath, Mark
Subject: RE: Eureka
Date: Monday, September 15, 1997 10:44AM

I had verbally recommended that they stay with the 1843 elevation to provide freeboard. However Safety of Dams Rules only require that they pass the 100 year event and whether they use an earthen spillway, drop tube, or a combination is up to them. The only concern I have as to the outlet elevation is that the water impounded by the dam is connected to Eureka Lake by a manmade channel. Some preliminary surveying found large trees, though dead, at elevation 1844 and the top of a park road at elevation 1847.

I spoke with Jerry Streckfuss, GFP, he is waiting for some direction on the acquisition of Delzer's land.

From: Best, Diane
To: Beck, Lynn
Subject: Eureka
Date: Thursday, September 11, 1997 6:10PM

Kallenberger called and he is still sending the prelim. injunction. He says the planned elev. is at 1844. the former elevation is at 1843. Is that consistent with your findings? Also he's trying to get the GFP buyout off dead center. I told him to talk to Cooper. Also, I told him that hearing on the application would be, at the very earliest, Dec. 3....If downstream guys object it could be March..

Beck, Lynn

From: Beck, Lynn
To: Phillips, Rich
Cc: Selken, Gale; Beck, Lynn
Subject: Eureka Dam
Date: Tuesday, October 21, 1997 9:31AM

According to the "Inventory of Dams in the United States" Eureka Dam has a normal impounding capacity of 594 ac.-ft. A report was done titled "Eureka Lake 100 Year Study A-1974" done by Nicholas E. Hoffman of Schmucher, Paul, Nohr, and Associates in Mitchell for Helms and Associates in Aberdeen. This report states that the max. storage capacity is 1428 ac. ft. and the 24 hr. 100 yr. storm is a 5" rainfall. Mr. Hoffman estimates the drainage area to be 7100 acres or 11 sq. mi. According to the inflow hydrograph the max. inflow was calculated to be 960 cfs and max. outflow without a spillway structure was almost 600 cfs.

I don't know what the latest configuration for a spillway structure is so I can not estimate its capacity. Hope this is helpful.

Beck, Lynn

From: Phillips, Rich
To: Beck, Lynn
Subject: FW: SD 10 at Eureka
Date: Tuesday, October 21, 1997 9:16AM

What do your records show have for drainage area at the dam, 100 year Q, 25 yr Q, etc.? Also what criteria for the spillway - frequency, etc.?

From: Weiss, Larry
To: Phillips, Rich
Cc: Cole, John; Weiss, Larry; Schochenmaier, Leon (Region); Goldsmith, Todd
Subject: FW: SD 10 at Eureka
Date: Monday, October 20, 1997 9:31PM

Q -

Capacity of 18" based on available head?

Spillway design capacity based on 100 yr runoff event?

Previous issues at this location?

Advise Leon.

LLW

From: Schochenmaier, Leon
To: Weiss, Larry
Cc: Goldsmith, Todd
Subject: FW: SD 10 at Eureka
Date: Monday, October 20, 1997 4:36PM

Do you think that Rich Phillips should look at this? We do not believe this to be a major problem at this time. Since we had no water over the road this spring, it is doubtful how frequently this will occur. Perhaps a wait and see approach will suffice. If Rich has any concerns, we can address.

From: Goldsmith, Todd
To: Schochenmaier, Leon
Subject: RE: SD 10 at Eureka
Date: Monday, October 20, 1997 2:25PM

We have an 18" pipe at this location. This is too small for any significant rain fall amount assuming the lake is full. Yet, we have not had a problem at this location in the past to my knowledge. If we did get a 100 year event and the lake was full the water would probably flow over highway 10 and an approach. Maybe Rich Phillips should review the City's outlet design and make a recommendation. I expect that if the City manages the lake level we won't need to increase capacity. But, if they don't manage the level we may have to increase capacity to 190 cfs.

From: Schochenmaier, Leon
To: Goldsmith, Todd
Subject: SD 10 at Eureka
Date: Monday, October 20, 1997 1:41PM

Terry Helms called and advised me of a potential issue near Eureka. Terry is working with the City to install a Category 2 dam outlet on Eureka Lake. The dam is located just north of SD 10. In working with DENR on this issue, Lynn Beck from DENR advised Terry and the City to coordinate their efforts with DOT since we also have a drainage structure that will have to carry any discharge from Eureka Lake. The new 100 year discharge structure from the lake is designed to handle 190 CFS.

Mike Durick also mentioned this issue to me. I discussed the issue further with Lynn Beck and she indicated that her comment was strictly intended to assure that coordination was taking place between

the City and DOT. I believe that this section of SD 10 did not get covered with water this last spring, is this true? If so, I am not all that concerned about our drainage structure, maybe we should just monitor this one and see if we think there is a problem after the City completes their new spillway and we have received several runoff events. What is the impact of a short term inundation in this location? Any problems?

Your thoughts?

LEONS!

Plans and Specs referred to in this letter were revised and original
P&S not used. L.B. 7-22-98.



HELMS and ASSOCIATES

CONSULTING ENGINEERS • LAND SURVEYORS

S P N

A DIVISION OF
SCHMUCKER, PAUL, NOHR and ASSOC.

BOX 111

BERKSHIRE PLAZA

ABERDEEN, SD 57402-0111

405 8th AVENUE NW

PHONE (605) 225-1212

FAX: (605) 225-3189

February 12, 1998

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



Re: West Eureka Lake Emergency Spillway
A-1974

Dear Lynn,

Enclosed please find the following information for the referenced project:

1. Application for Permit to Appropriate Water Within the State of South Dakota including a map showing the location of the artisan well which was drilled in 1983 and the proposed primary and secondary emergency spillway.
2. Plans and Specifications for the project. We have contacted the SD-DOT and informed them of the 25 year storm runoff carried by the primary emergency spillway and the 100 year storm runoff carried by the secondary emergency spillway. They have not returned an answer as to their intentions on installing a box culvert across Highway 10.

Please attach this information previously submitted to you. If throughout your review you should have any questions, please give our office a call.

Sincerely,
Helms and Associates

John G. Ladson, P.E.

Enclosure

cc: Tonya Maier, Eureka Finance Officer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 24, 1998

John G. Ladson, P.E.
Helms & Associates
PO Box 111
Aberdeen, SD 57401

Dear Mr. Ladson:

I am writing in reference to our review of the plans and specifications for the West Eureka Lake Project and the phone conversation you had with Tim Schaal and Lynn Beck yesterday. The following items need to be addressed before we can approve the plans and specifications.

1. The location of the earthcut secondary spillway needs to be moved off of the dam embankment. This spillway should be located west of the access road off of Highway 10, which would correspond to the location indicated on the old plan sheet from J.T. Banner & Associates.
2. The 4 to 12 inch riprap below both spillway structures appears to be small and should be upgraded to a Class II size. A filter fabric should also be placed under the riprap and the riprap should probably be listed on the bid sheet in cubic yards or tons.
3. The 100 year flood routing will need to be recalculated. The HEC-1 routing titled "Eureka Lake 100 Year Drainage Study" appears to be accurate up to the point of routing the event through the dam. The equation listed in assumption No. 5 for flow through the low-level outlet appears to have an error. The exponent for h , representing head in the equation, should be 0.5 not 1.5. Also, this routing only had one spillway present and the centerline elevation was listed at 1843 feet. Number 6 of Section 74:02:08:09 of our Safety of Dams Rules also requires that the discharge capacities of the spillways, along with the formulas used, must be included in the minimum plans and specifications.
4. There needs to be more detail shown for the concrete box inlet structure. The use of a precast base concerns us. We usually see the riser inserted into a poured base, thus eliminating the need for an epoxy grouted joint at the base. You mentioned a poured floor inside the drop inlet structure, which may work but it needs to be indicated on the plan sheets. The trash rack over the inlet opening should be something more substantial than the wire mesh indicated.
5. The crest of the embankment should be leveled to a uniform Top of Dam elevation of 1847 feet.

John G. Ladson, PE
Helms & Associates
Page 2
February 24, 1998

Enclosed is a copy of our Safety of Dams Rules, Chapter 74:02:08 and the old plan sheet from J.T. Banner and Associates. The contents of the minimum plans and specifications are listed in Section 74:02:08:09.

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

Sincerely,

A handwritten signature in cursive script, reading "Gale N. Selken".

Gale N. Selken, P.E.
Natural Resources Engineer IV
for John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

c: Tonya Maier, Eureka Finance Officer

Beck, Lynn

From: Schaal, Tim
To: Selken, Gale; Beck, Lynn
Subject: FW: Eureka Dam Letter
Date: Friday, February 27, 1998 1:40PM

I don't plan on responding to Rich. We have told him several times that we are only concerned about the dam passing the 100 year flood thru BOTH spillways.

From: Phillips, Rich
To: Schaal, Tim
Subject: Eureka Dam Letter
Date: Friday, February 27, 1998 1:01PM

I just finished reviewing the Eureka Dam letter to Helms. I noted a couple things:

1. You reference "Class II Riprap". Is this intended to follow DOT Specs. If yes, we have recently changed our spec. from roman numeral to letter designations and have changed the gradations in the classes. We changed to follow FHWA design guidelines. The new specification books are available from our Project Development Office.

2. While your design is based upon the 100 year design, our design for smaller culverts is based upon the 25 year design with freeboard and then to evaluate the impacts of the 100 year event. We will be interested in the 25 year for consideration in our culvert.



30-98

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 4, 1998

Kelly Weaver
Northeast Council of Governments
PO Box 1985
Aberdeen SD 57402-1985

Dear Kelly:

The South Dakota Department of Environment and Natural Resources (DENR) has reviewed the project proposed by the City of Eureka concerning the construction of an emergency spillway for West Eureka Lake. The DENR finds that this construction, using conventional construction techniques, should not cause violation of any statutes or regulations administered by the DENR based on the following recommendations:

1. Best Management Practices (BMP) for sediment and erosion control should be incorporated into the planning, design, and construction of this project. Copies of the BMP Guide are available upon request from this Office.
2. A Surface Water Discharge (SWD) permit may be required if any construction dewatering should occur as a result of this project. Please contact this office for more information.
3. West Eureka Lake and wetlands may be impacted by this project. They are considered waters of the state and are protected under the South Dakota Surface Water Quality Standards. The discharge of pollutants from any source, including indiscriminate use of fill material, may not cause destruction or impairment of wetlands except where authorized under Sections 402 or 404 of the Federal Water Pollution Control Act. Please contact the U.S. Army Corps of Engineers concerning these permits.

4. West Eureka Lake is classified by the South Dakota Surface Water Quality Standards and Uses Assigned to Lakes for the following beneficial uses:

- (5) Warmwater semipermanent fish life propagation waters;
- (7) Immersion recreation waters;
- (8) Limited contact recreation waters; and
- (9) Wildlife propagation and stock watering waters.

Because of these beneficial uses, special construction measures may have to be taken to ensure that the total suspended solids standard of 90 mg/L is not violated.

If you have any questions concerning these comments, please contact me at the number listed below.

Sincerely,

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

John Miller
Environmental Project Scientist
Surface Water Quality Program
(605) 773-3351



Northeast Council Of Governments

February 9, 1998

P.O. Box 1985
Aberdeen, SD 57402-1985
605-626-2595
605-626-2975 fax

Executive Director
Faye Kann

MEMORANDUM

TO: SD Historical Preservation Office
US Fish and Wildlife Service
SD Department of Game, Fish and Parks,
US Natural Resource Conservation Service
US Army Corps of Engineers, Flood Plain Management Branch
SD Department of Environment and Natural Resources:
Water Quality, Air Quality, Solid Waste

FROM: Kelly Weaver, Program Coordinator

RE: Eureka Spillway Project

The City of Eureka has received funding for flood recovery projects under the Community Development Block Grant program. As such, an environmental assessment is required for the work they will complete with this funding. Comments from appropriate agencies regarding flood plain, wildlife, environmental and historical concerns are requested regarding the project as described below.

The City of Eureka is planning to provide an emergency spillway for West Eureka Lake. The project will consist of providing a primary emergency spillway including approximately 80 linear feet of 42" RCP culvert with an inlet structure and a secondary emergency spillway constructed of earthen material to provide relief for a 100 year storm of West Eureka Lake. The spillway structures will be located on the south end of the lake in an area described as the South 1/2 of the Southeast 1/4 of Section 34, T127N, R73W. The appropriate permits have been submitted to the Department of Environment and Natural Resources for review and approval. A map of the project area is attached.

Thank you for your prompt response to this request. Should you have any questions, please feel free to contact me at (605) 626-2595.

AIR QUALITY DETERMINATION

It appears, based on the information provided, that this project will have little or no impact on the air quality in this area. This project is approved.

Approved By Brenda Schultz

Date 2-13-98

(605) 51 FAX - (605) 773-6035

SD DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

SERVING LOCAL UNITS OF GOVERNMENT

Planning * Technical Assistance * Project Packaging * Data Source

city map
of
EUREKA
McPherson Co. - South Dakota

T 126 - 127 N - R 73 W



WEST
EUREKA
LAKE

West Eureka
Lake

Project Area ↗

EUREKA
LAKE



Beck, Lynn

From: Beck, Lynn
To: John Ladson, Helms and Assoc.
Cc: Gronlund, Eric; Beck, Lynn
Subject: Eureka's water right applications.
Date: Monday, March 09, 1998 2:16PM
Priority: High

Please find attached partially filled out water right applications for the Town of Eureka. The Vested Claim application needs an Affidavit of Water Use to prove use prior to 1955. Item A on the affidavit form can be ignored. The signed title sheet for the spillway plans includes a map with a location of East Eureka Lake and the well. This can serve as the map listed under item number 2 on the instruction sheet for a Vested Right Claim. The fee for a Vested Claim application is \$15.00 as discussed under item number 5.

The application for the well is an amendment to Water Right 723-3 held by the Town of Eureka. The amendment is a change in use from a municipal use to a recreational use. The fee is \$50.00 and is discussed in item number 5 on the Application Instruction Sheet For Water Permit for Nonirrigation. As stated above the title sheet will serve as the map required under item number 2.

I have made changes to the application already received for the dam spillway. I put a copy of the changed in the mail to you. If they are OK please let me know.

The attachment are in Word.

<<File Attachment: EREKA2AP.DOC>> <<File Attachment: EUREKAAP.DOC>>



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-1181

FAX TRANSMITTAL COVER PAGE

DATE: 3-11-98

TO: John Ladson
Helms and Associates

PHONE #: 225-1212 FAX #: 225-3189

NUMBER OF PAGES INCLUDING COVER PAGE 9

MESSAGE: Complete the applications and mail back.
Need to know what the well is flowing at and if it is
free flowing or has a control on it. Controlled meaning
if it is valved and the flow can be reduced to the
amount needed or to a minimum when not being used.

FROM: Lynn Beck
Water Rights Program

PHONE #: 773-3352 FAX #: (605) 773-4068



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 23, 1998

Mark K. Kroontje
Knoontje Law Office
PO Box 38
Herreid, SD 57632-0038

Dear Mr. Kroontje:

This is in response to your letter dated March 19, 1998, regarding proposed funding for a spillway at the city of Eureka. There seems to be a misunderstanding concerning this project. The Department of Environment and Natural Resources, which acts as staff support for the Board of Water and Natural Resources, has not received an application from the city of Eureka to fund a spillway project. Also, this project is not eligible for funding at this time because it is not on the State Water Plan. All water related projects requesting funding through the Board of Water and Natural Resources must be on the State Water Plan.

If you have any questions, please call me at (605) 773-4216.

Sincerely,

James Feeney
Program Administrator
Division of Financial and Technical Assistance

cc: Lynn Beck, Water Rights ✓



HELMS and ASSOCIATES

CONSULTING ENGINEERS • LAND SURVEYORS

S P N

A DIVISION OF
SCHMUCKER, PAUL, NOHR and ASSOC.

BOX 111

BERKSHIRE PLAZA

ABERDEEN, SD 57402-0111

405 8th AVENUE NW

PHONE (605) 225-1212

FAX: (605) 225-3189

March 27, 1998

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



Re: West Eureka Lake Emergency Spillway
A-1974

Dear Lynn,

Enclosed please find the following information for the referenced project:

1. The changes to the last page of the Application for Permit to Appropriate Water Within the State of South Dakota.
2. The discharge capacities of the spillways including the formulas used in calculations from the HEC-1 Analysis Program.
3. Plans and Specifications for the project. We need to know what the SD-DOT would like to do with the highway. The current 18" culvert will not handle the runoff by itself. We have shown a 24" culvert to be installed just west of the access road across Highway 10. This culvert size was chosen due to the Highway elevation. There isn't enough room to install a larger culvert unless the highway is raised. We need to decide how to handle that situation. Please let me know what you find out.

Please attach or replace this information previously submitted to you. If throughout your review you should have any questions, please give our office a call.

Sincerely,
Helms and Associates

John G. Ladson, P.E.

Enclosure

cc: Tonya Maier, Eureka Finance Officer

Water Rights Division - DENR

Conversation or File Documentation

**Name of Person: John Ladson, Helms and Associates
Nick Hoffman, Schmucker, Paul, and Nohr**

File No. Water Right Application No. 6049-3

Address:	Helms and Associates	Schmucker, Paul, and Nohr
	P.O. Box 111	620 North Lawler P.O. Box 398
	Aberdeen, SD 57402	Mitchell, SD 57301

County: Application in McPherson County

Date: April 10, 1998

Telephone: Conference call with (605) 225-1212 Helms and (605) 996-7761 S, P, and N

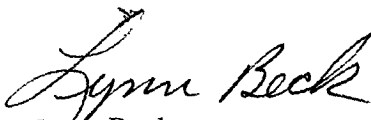
RE: Eureka's application for Eureka Dam and the spillway design.

Comments:

A conference call was held on April 10, 1998 to discuss the spillway design for Eureka dam. In attendance were John Ladson with Helms and Associates; Nick Hoffman with Schmucker, Paul and Nohr; Tim Schaal, Gale Selken and Lynn Beck all with Water Rights Program, DENR.

There seemed to be some confusion as to design of the primary spillway configuration and what would pass the 100 year flood. It was discussed that if the design of the overflow was at the original elevation, 1843 fmsl, it could be considered maintenance and the spillway(s) would not have to meet the 100 year criteria. Even though there would be no design requirements from this office concerning flood routing the dam owner is still responsible for a safe design. The designers were told that whatever they felt necessary to ensure a safe design needed to be discussed between them and the dam owner.

John Ladson felt the City of Eureka would have no problem going with an overflow elevation of 1843 fmsl instead of the preferred 1844 fmsl. Tim Schaal still recommended that the design include an earthen emergency spillway since originally the dam had one. The plans still need to be sent in, however we do not need flood routing. A permit to store the water is still required.



**Lynn Beck
Natural Resources Engineer**



HELMS and ASSOCIATES

CONSULTING ENGINEERS • LAND SURVEYORS

S P N

A DIVISION OF
SCHMUCKER, PAUL, NOHR and ASSOC.

BOX 111

BERKSHIRE PLAZA

ABERDEEN, SD 57402-0111

405 8th AVENUE NW

PHONE (605) 225-1212

FAX: (605) 225-3189

April 14, 1998

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



Re: West Eureka Lake Emergency Spillway
A-1974

Dear Lynn,

After the phone conversation with you and Tom Schall, we revised the primary emergency spillway and set the inlet structure at elevation 1843.0 so that it is at the same elevation as the original inlet structure. According to our phone conversation, this would be classified as maintenance to the previous dam and we wouldn't have to meet all the safety dam requirements. We would keep the original secondary spillway elevation at 1845.0. The primary spillway inlet and tube are designed to handle a 25 year storm which would produce a flow of 266 cfs and the primary spillway and the secondary spillway are designed to handle a 100 year storm. During a 100 year storm the primary spillway will carry 318 cfs and the secondary spillway will carry 64 cfs. Enclosed please find the following information for the referenced project:

1. The revised plans for the project.
2. The revised specification sheets to be inserted in the specification book that was submitted earlier.

We still need to get recommendations from the DOT to decide what to do with the highway. Please attach or replace this information with the information previously submitted to you. If throughout your review you should have any questions, please give our office a call.

Sincerely,
Helms and Associates

John G. Ladson, P.E.

Enclosure

cc: Tonya Maier, Eureka Finance Officer

Beck, Lynn

From: Beck, Lynn
To: Phillips, Rich
Cc: Selken, Gale; Beck, Lynn; Schaal, Tim
Subject: Eureka Dam spillway plans.
Date: Friday, April 17, 1998 9:54AM

We have reviewed the plans and have no further comments on the spillway design. The spillway is to be replaced at the old elevation and therefore flood routing is not required. My calculations show a capacity of 276 cfs with water at top of dam. The primary spillway discharge at top of dam is 210 cfs and the secondary is 66 cfs. They will need to send in a plan for closing the highway should the dam fail. Any concerns about the culverts through the highway need to be addressed by DOT and Helms and Associates.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 20, 1998

John G. Ladson, P.E.
Helms & Associates
PO Box 111
Aberdeen, SD 57401

Dear Mr. Ladson:

Thank you for sending the revised plans for the Eureka Dam spillways. We have reviewed the plans and have no further comments regarding the spillway design. However, as Tim Schaal stated during the conference call on April 10, 1998, an emergency plan is needed because of the downstream highway.

The plan does not have to be elaborate. A letter stating the procedures for monitoring the dam and closing the downstream highway during flooding conditions is sufficient. We also need a revised storage capacity at spillway elevation 1843 feet mean sea level. This is for the water permit application. The application fee may need to be adjusted.

If you have any questions, please feel free to contact Lynn Beck.

Sincerely,

Gale N. Selken, P.E.
Natural Resources Engineer IV
for John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

c: Tonya Maier, Eureka Finance Officer

Beck, Lynn

From: Best, Diane
To: Beck, Lynn
Cc: Selken, Gale; Hatch, John; Schaal, Tim
Subject: RE: Lake Eureka
Date: Wednesday, April 22, 1998 2:50PM

I didn't get into the particulars of what the report would say other than to mention that you were reviewing generally as far as any safety concerns. I wasn't sure where you were at with the report. If the report has gone out, did Kroontje get one?? I'm assuming I'm getting one. -----

>From: Beck, Lynn
>To: Best, Diane
>Cc: Selken, Gale; Hatch, John; Beck, Lynn; Schaal, Tim
>Subject: RE: Lake Eureka
>Date: Wednesday, April 22, 1998 2:38PM
>
>Eureka has decided to go with the original overflow elevation
>from the old spillway. This is considered maintenance or
>replacement and they do not have to meet the safety of dams
>rules, that is the 100 year event. We did review the plans and
>have no further comments on the spillway. The dam owner is
>still responsible for a safe structure even though it does not
>have to meet safety of dams rules. This was explained to the
>engineer designing the spillway. Of course Eureka still has to
>get a permit to store the water.
>
>The application report for an additional use for the artesian
>well recommends that the well be reduced to a minimum when
>water is flowing out of Eureka dam. The minimum would be 5 gpm
>or less.

>-----
>>From: Best, Diane
>>To: Beck, Lynn; Schaal, Tim
>>Subject: Lake Eureka
>>Date: Wednesday, April 22, 1998 1:18PM
>>
>>I called Mark Kroontje on another issue and brought up the
>>Delzer/Eureka matter. He tells me that if city discontinues
>>use of the artesian well, that his client won't have a
>>significant problem with the Lake drainage. He still has
>>concerns about the way the lake is being used for stormwater
>>and wastewater discharge and clearly understands that these
>>matters are separate but unrelated issues. DU is talking to
>>Delzer about purchasing land or an easement downstream of the
>>lake. I advised that you are reviewing for safety and that
>>the requirements will include a recommendation on an adequate
>>spillway. He didn't seem to have a huge problem, but then he
>>thinks that a spillway would not be used very frequently if the
>>artesian wells did not flow to waste. Anyway, we also
>>discussed the possibility of using a mediation or CRM process.
>>I suggested that he visit with the client and others that have
>>been involved in this type of process to see whether this would
>>be something they want to do. I indicated that I would mention
>>it to you. Also, he tells me that there has been no new
>>litigation filed in this matter this spring.
>>
>

SCHMUCKER, PAUL, NOHR & ASSOCIATES
PO BOX 398, 620 N. LAWLER
MITCHELL, SOUTH DAKOTA 57301
Telephone - (605)996-7761
Fax - (605)996-0015

FACSIMILE TRANSMITTAL

DATE: April 27, 1998

TO: HELMS AND ASSOCIATES
ABERDEEN, SD 57402
PHONE: (605) 225-1212

ATTN: JOHN LADSON, PE
PROJECT ENGINEER

FROM: NICK HOFFMAN, EIT
PROJECT ENGINEER

RE: EUREKA LAKE DAM
EUREKA, SD
HELMS PROJECT NUMBER A-1976

REMARKS:

Enclosed in this facsimile are the storage values for the West Eureka Lake. These values were obtained from the one hundred year rainfall event with an orifice at an elevation of 1843 feet with a cross-sectional area equal to 28.3 square feet and a spillway twenty-five feet long at an elevation of 1845 feet.

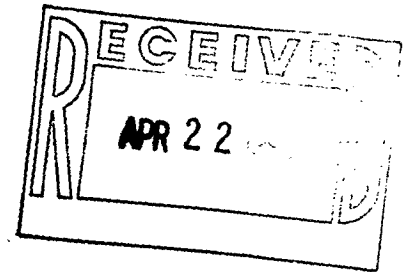
ELEVATION (FEET)	STORAGE (ACRE- FEET)
1843.00	884.5
1843.50	949.0
1844.00	1019.5
1844.50	1080.3
1845.00	1146.4
1845.50	1218.5



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 20, 1998



John G. Ladson, P.E.
Helms & Associates
PO Box 111
Aberdeen, SD 57401

Dear Mr. Ladson:

Thank you for sending the revised plans for the Eureka Dam spillways. We have reviewed the plans and have no further comments regarding the spillway design. However, as Tim Schaal stated during the conference call on April 10, 1998, an emergency plan is needed because of the downstream highway.

The plan does not have to be elaborate. A letter stating the procedures for monitoring the dam and closing the downstream highway during flooding conditions is sufficient. We also need a revised storage capacity at spillway elevation 1843 feet mean sea level. This is for the water permit application. The application fee may need to be adjusted.

If you have any questions, please feel free to contact Lynn Beck.

Sincerely,

Gale N. Selken, P.E.
Natural Resources Engineer IV
for John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

c: Tonya Maier, Eureka Finance Officer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

June 4, 1998

Mark Kroontje
P.O. Box 38
Herreid, SD 57632-0038

Dear Mr. Kroontje:

Please find enclosed a copy of the reports and recommendation and public notice for the City of Eureka's Water Permit Application Nos. 723A-3 and 6049-3 and Vested Water Right Application No. 6068-3. The notice of hearing for these application will be published on June 10 and 17, 1998, in the Northwest Blade.

The hearing on these applications is scheduled for July 8, 1998 beginning at 10:00 AM at the Staurolite Inn in Brookings, SD.

If you have any questions on the applications, please contact Lynn Beck at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

June 4, 1998

Richard Sommers
305 6th Avenue SE
Aberdeen, SD 57401

Dear Mr. Sommers:

Please find enclosed a copy of the reports and recommendation and public notice for the City of Eureka's Water Permit Application Nos. 723A-3 and 6049-3 and Vested Water Right Application No. 6068-3. The notice of hearing for these application will be published on June 10 and 17, 1998, in the Northwest Blade.

The hearing on these applications is scheduled for July 8, 1998 beginning at 10:00 AM at the Stauroilite Inn in Brookings, SD.

If you have any questions on the applications, please contact Lynn Beck at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

June 4, 1998

John Ladson, PE
Helms and Associates
Box 111
Aberdeen, SD 57402-0111

Dear Mr. Ladson:

Please find enclosed a copy of the reports and recommendation and public notice for the City of Eureka's Water Permit Application Nos. 723A-3 and 6049-3 and Vested Water Right Application No. 6068-3. The notice of hearing for these application will be published on June 10 and 17, 1998, in the Northwest Blade.

The hearing on these applications is scheduled for July 8, 1998 beginning at 10:00 AM at the Staurolite Inn in Brookings, SD.

If you have any questions on the applications, please contact Lynn Beck at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

KROONTJE LAW OFFICE

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632 0038
(605) 437-2426

Mark K. Kroontje

*Also admitted in North Dakota

FACSIMILE TRANSACTION SHEET

DATE: JUNE 30, 1998
TO: ERIC GRONLUND OR
LYNN BECK
FAX NO: 1-605-773-4068
FROM: MARK K. KROONTJE
TELEPHONE NO.: (605) 437-2426



WE ARE SENDING YOU 12 PAGES, PLUS THIS PAGE.

ORIGINAL (S): _____ not mailed _____
_____ sent by overnight courier x mailed

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, OR YOU DO NOT
RECEIVE ALL PAGES, PLEASE CALL: (605) 437-2426

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE OR
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THE ATTORNEY/CLIENT PRIVILEGE AND/OR ATTORNEY WORK PRODUCT
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ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL REIMBURSE
YOU FOR POSTAGE. THANK YOU.

KROONTJE LAW OFFICE

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2426

Mark K. Kroontje

*Also admitted in North Dakota

June 30, 1998

Mayor Ervin Gebhardt
P.O. Box 655
Eureka, SD 57437-0655

Eric Gronlund
Water Rights Program
Dept. of Environment and Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

RE: PETITION

Dear Mayor Ervin Gebhardt and Mr. Gronlund:

Please consider this letter as Harvey & Duard Delzer's petition or statement in opposition to Water Permit Application No. 723A-3, report on Water Permit Application No. 6049-3, recommendation of Chief Engineer for Water Permit Application No. 6049-3, and report on Vested Water Rights Application No. 6068-3, and recommendation of Chief Engineer for validation of Vested Water Rights Application No. 6068-3.

Harvey Delzer and Duard Delzer are interested parties in that they own land which is down stream from the proposed drainage by the City of Eureka.

The address of Harvey Delzer is 508 11th Street, Eureka, SD 57437.

The address of Duard Delzer is P.O. Box 232, Eureka, SD 57437.

Harvey and Duard Delzer desire that the water management board be fully aware of all the implications in their decision on the various applications contained herein. You will find enclosed, a variety of objections which were originally filed in relation to the assessment of the Eureka Spillway Project No. 9797-684, but a review of those objections should give the Water Management Board a clearer understanding of what has been taking place over the years in regard to the City of Eureka's drainage, and the problem with the drainage ending up on Harvey and Duard Delzer's land and staying there. Please consider the objections to the assessment of the Eureka Spillway Project No. 9797-684 as a part of this Petition.

Essentially, a brief summary of the situation is as follows. The City of Eureka had an unrestricted flowing artesian well, which I understand may have now been capped, which flowed into East Lake Eureka. It is my understanding that the City of Eureka's storm sewer water also flows and ends up in East Lake Eureka. From East Lake Eureka, the water flows into West Lake Eureka. In 1994, 1995, 1997, the excess water in West Lake Eureka was siphoned out of West Lake Eureka and allowed to flow into an unreclaimed sewage lake located south of Highway 10. Finally, in 1994, 1995, 1997, the water which accumulated in the unreclaimed sewage lake overflowed onto Harvey and Duard Delzer's land.

It is Harvey and Duard Delzer's position, that the City of Eureka by collecting their storm sewer water and allowing the artesian well to flow unrestricted, have created this problem. Although it is said that there were some kind of spillway drains that at one point were cemented shut, there has been no showing that such devices were ever used on West Lake Eureka.

On behalf of Harvey and Duard Delzer, it can be asserted that it is not in the public's best interest to allow water to flow unrestricted through an unreclaimed sewage lake to ultimately rest on private property. Obviously the problems have been exacerbated by high levels of water and natural drainage in recent years, but the answer should not be for the City of Eureka to receive a vested right to simply dump water on private property. The City of Eureka has created an artificial hazard by collecting flowing artesian well water, storm sewer water, and natural flowing waters in man made lakes and an unreclaimed sewage lake. They dump their overflow on Harvey and Duard Delzer's property, and this is wrong.

When the City of Eureka obtained additional land for drainage in regard to their sewer lagoon and lakes, they simply purchased the land and had more room for drainage. What the City of Eureka is requesting in the vested water right permits addressed herein is the unrestricted right to deposit the water which they have collected, onto a private parties property. This should not be allowed. Safe guards must also be made such that the artesian water flow is controlled in anticipation and in conjunction with heavy rainfalls.

Thank you for your consideration of these various issues. Thank you also for considering the objections to the Environmental Assessment end of the Eureka spillway, as those objections also relate directly to the impact which will result from the granting of the permits addressed herein.

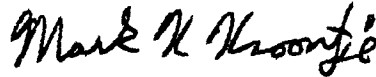
Gebhardt and Gronlund Letter
6-30-98
Page Three

It should also be noted that the City of Eureka's drainage activity is the subject of current litigation based upon the enclosed complaint and notice has been filed that an additional suit may be filed against the City of Eureka based upon their unlawful taking of Delzer's land.

The letter I received from Eric Gronlund indicated that the hearing in this matter is scheduled for July 8, 1998 at 10:00 a.m. at the Staurolite Inn in Brookings, South Dakota and at this time I plan to attend with Harvey and Duard Delzer.

Sincerely,

On behalf of Harvey and Duard Delzer,



Mark K. Kroontje

MKK/sjk

pc: Harvey Delzer
Duard Delzer

daily\gronlund.ltr

**OBJECTIONS TO ENVIRONMENTAL
ASSESSMENT OF EUREKA SPILLWAY
PROJECT # 9797-684**

OBJECTION I

Under the Land Development Impact Category dealing with Erosion a finding has been made that the project will not negatively impact or be impacted by erosion. This finding is objected to on the basis that substantial soil erosion has resulted from The City of Eureka's release of water from West Lake Eureka in the spring of 1994, 1995, and 1997 and again in the summer of 1997. This water flows through an unreclaimed sewage lake, where it is released upon the private property of Harvey and Duard Delzer resulting in soil erosion and damage to the soil and property. Future releases of water will certainly result in additional soil erosion.

OBJECTION II

Under the Land Development Impact Category dealing with Hazards and Nuisances including Site Safety HUD Notice 79-33-24 CFR Part 51 C & D a finding has been made that no-man made hazards were identified on or near the site to adversely impact the project. This finding is objected too on three grounds.

First, due to substantial releases of water by the City of Eureka from West Lake Eureka in 1994, 1995, and 1997 a public nuisance has been created by the flow of water through an unreclaimed sewage lake creating a stagnant lake on private property.

Second, this nuisance is exacerbated by the City of Eureka's collection of city storm sewer waters in Lake Eureka and West Lake Eureka. This excess water has been siphoned into an unreclaimed sewage lake in 1994, 1995, and 1997, which overflows on to the private land of Harvey Delzer, Duard Delzer and others, where the water remains.

Third, this nuisance is exacerbated by the City of Eureka's maintenance of an unrestricted continuously flowing artesian well which water flows into West Lake Eureka. This excess water has been pumped into an unreclaimed sewage lake where it overflows on to the land of Harvey Delzer, Duard Delzer and remains. This artesian well is maintained in violation of South Dakota Administrative Rule 74:02:04:74 which requires the capping or controlling of artesian wells in such a manner that the well owner can reduce the flow to no more than five gallons per minute. This well is also in violation of South Dakota Codified Law 46-6-14 which requires that artesian wells are not to be allowed to flow to waste and South Dakota Codified Law 46-6-21 which requires the control of large capacity artesian wells.

The above three considerations constitute the creation of a nuisance which will be exacerbated by the construction of a spillway which will speed the flow of this water to where it collects and remains on private property.

OBJECTION III

Under the Land Development Impact category dealing with Environmental Design and historic values under the Visual Quality - Coherence, Diversity, Compatible Use, and Scale, a finding is made that the project will be compatible with and complimentary to the surrounding area.

This finding is objected to on the ground that the excess water generated by the City of Eureka in flowing through the proposed spillway and unreclaimed sewage lake collects on private property, is possibly contaminated, and thus creates a nuisance and may negatively impact the quality of the ground water and surface water of the area. This is not compatible with and complimentary to the surrounding area, and is in violation of South Dakota state law and likely is in violation of Federal Environmental law.

OBJECTION IV

Under the Land Development Impact Category dealing with Socioeconomic impact under the Displacement Category a finding has been made that the project will not create any displacement.

This finding is objected to on the basis that displacement has occurred in 1994, 1995, and 1997 in that Harvey and Duard Delzer and others have been effectively displaced from their private land by the City of Eureka's drainage activity. The construction of the proposed spillway will continue to expand this displacement and will effectively result in a "taking" under State and Federal law.

OBJECTION V

Under the Land Development Impact Category dealing with Community Facilities and Services under the waste water, storm water and water supply categories, findings have been made that the project will not have an adverse effect on waste water systems, storm water systems, and water supply.

The three findings noted here under Objection V are objected to on the basis that the City of Eureka has no right, license, or permit to discharge their excess waste water and storm water onto private property.

In recent years the City of Eureka has repeatedly discharged excess waste water from its lagoons into an unreclaimed sewage lake. Excess storm sewage and artesian well water flows into West Lake Eureka where in 1994, 1995, and 1997 it also was siphoned into the unreclaimed sewage lake. The overflow from the unreclaimed sewage lake ends up on the private land of Harvey and

Duard Delzer and others. The proposed spillway will exacerbate the problem created by the flow of water from all of the various sources noted herein onto private property.

The City of Eureka is essentially using the unreclaimed sewage lake and private property as a part of its waste water and storm water disposal system. The City of Eureka's excess waste water, storm water and artesian well water is dumped into the unreclaimed sewage lake, which cannot hold it all, and overflows onto private property.

An objection is also made in regard to the possible impact of this drainage on local water supply. Clearly the release of water through an unreclaimed sewage lake may have possible effects on the surrounding area's water supply. The construction of the proposed spillway will contribute to any negative impact on the water supply system, and the undersigned is aware of no studies or testing which has been done to verify what the impact of the drainage has been on the water supply.

OBJECTION VI

Under the Land Development Impact Category dealing with natural features, under the water resources, surface water, floodplains, and wetlands categories the four separate findings state that there will be no impact in each of these categories and that 404 permits are pending on some sites.

Objection V should be considered in relation to each of these four categories and is incorporated in this objection by this reference.

Water Resources may specifically be impacted by possible contamination by water flowing through the unreclaimed sewage lake and discharges from the City of Eureka's waste water system when combined with the flow of water through the proposed spillway. The same is true for surface waters and floodplains.

An objection can additionally be raised in regards to the finding that there will be no impact on agricultural lands. Clearly, agricultural land is being flooded and rendered useless for agricultural purposes by past discharges of water by the City of Eureka and proposed future discharges through the proposed spillway.

OBJECTION VII

The summary of Findings and Conclusions is specifically objected to in that the alleged use of the proposed spillway drainage in times of high water levels is inaccurate. The City of Eureka's artesian well is continuously running. In mid summer in 1997 substantial discharges occurred after normal amounts of

rainfall subsequent to the drainage which occurred to eliminate spring runoff. Regular drainage in 1994, 1995 and 1997 makes the characterization of the project as one providing relief for a 100 year storm inappropriate where substantial drainage has occurred in three of the last four years. The finding that there will be no adverse impact associated with the project is simply incorrect.

OBJECTION VIII

Under the Project Modifications and Alternatives considered, no alternatives were considered. An objection is raised here as alternatives to the construction of the spillway should be considered.

First, the alternatives inherent in reducing the flow of water into West Lake Eureka must be considered. Control of the artesian well should be considered. Alternatives for the disposal of the City of Eureka's storm water should be considered. Construction of a lagoon, or holding facility for the City of Eureka's storm water should also be considered. Each of these alternatives should be considered and seem to be preferable to hastening the flow of the City of Eureka's excess water onto private land.

OBJECTION IX

Under the additional studies section, no additional studies were suggested in conjunction with this project. The primary objection raised here, is that the excess water to be disposed of through the spillway runs into an unreclaimed sewage lake and has been allowed to overflow through a culvert maintained by the City of Eureka for this purpose on to private land. Studies should be done to determine what contamination occurs in the overflow, and additionally as to what effect this may have upon the ground water and surface water. Studies should also be done as to the effect of the discharges of water from the City of Eureka's waste water facility which is mixed with the water that overflows onto private property. Studies should also be done in regard to alternatives to the spillway.

OBJECTION X

Under the Mitigation Measures needed, it is asserted that no adverse impacts were identified in the environmental assessment and therefore no mitigation measures are needed. This finding is objected to based on all of the foregoing objections. Mitigation measures should be examined in respect to controlling the unrestricted flow of artesian well water into West Lake Eureka. Mitigation measures should also be explored in respect to controlling or finding alternatives to allowing the City of Eureka storm water to flow into West Lake Eureka.

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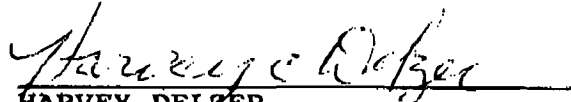
On page 7 of the Environmental Check List a finding that the project is in compliance with applicable law and regulations is questioned where a portion of the water to flow over the proposed spillway comes from an unrestricted flowing artesian well and the water is ultimately deposited on private ground where it remains.

The finding that an EIS (Environmental Impact Study) is not required on page 7 is also objected to based upon the foregoing objections.

The finding of No Significant Impact on page 7 of the Environmental Assessment is objected to based upon the foregoing objections and unknown effect of the impact of the City of Eureka's water overflow from the unreclaimed sewage lake on to private property in this case.

Based upon the foregoing objections and U.S.C.A. section 4332 the undersigned hereby request that an appropriate Environmental Impact study be prepared in accordance with Federal law and that the recommendations of such statement be considered and followed accordingly.

Dated this 26th day of March, 1998.


HARVEY DELZER


MARK K. KROONTJE
Attorney for Harvey Delzer
KROONTJE LAW OFFICE
P.O. Box 38
204 Main Street
Herreid, SD 57632
605-437-2426

FILED

JUL 23 1996

COPY

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:SS. RONDA L. GEFFRE
COUNTY OF McPHERSON McPHERSON COUNTY CLERK OF DISTRICT JUDICIAL CIRCUIT

HARVEY DELZER and DUARD DELZER,

CIV. 96-15

Plaintiffs,

vs.

VERIFIED COMPLAINT

CITY OF EUREKA, a political
subdivision of the State of
South Dakota,

Defendant.

COMES NOW the above named Plaintiffs and for their causes of
action against the above named Defendants allege and state as
follows:

GENERAL ALLEGATIONS

I.

That the Plaintiffs are residents of the County of
McPherson, State of South Dakota.

II.

Defendant, City of Eureka, hereinafter referred to as
"Defendant" is and at all times herein mentioned was a political
subdivision of the State of South Dakota duly organized and
existing under and by virtue of the laws of the State of South
Dakota.

III.

That Plaintiffs are and at all times herein mentioned the
owners of and have an interest in land located in McPherson
County, South Dakota.

IV.

That the Plaintiffs have used their land for farming
purposes, including the growing of crops and grazing of
livestock.

V.

That the City of Eureka has caused water and treated sewage water to be drained on property owned by Plaintiffs located in Sections 10 and 15, Township 126 North, Range 73 West, of the Fifth Principal Meridian in McPherson County, South Dakota from and after March of 1995, and at various times through the present time.

VI.

That the origin of the water Defendant drained on Plaintiffs' land was from an artesian well, treated sewage water, surface drainage water from the City of Eureka, and from two artificially created lakes near the City of Eureka.

VII.

That the waters drained by Defendant onto Plaintiffs' land could no longer be considered surface waters, as the water drained came from artificially created lakes, ponds, holding areas and an artesian well.

VIII.

That the notice required to be given by SDCL 3-21-2 as a prerequisite for this suit was dated August 21, 1995, and admission of service of said notice was made by Ervin Gebhart on August 22, 1995.

IX.

That Plaintiffs have made repeated demands on Defendant City to either halt the drainage activity or provide suitable and reasonable compensation for the damage done to Plaintiffs' land.

X.

That Plaintiffs affirmatively allege that they have been damaged by Defendant's actions, and that a substantial portion of their pasture, hay and crop land has been flooded as a direct result of Defendant's drainage activity.

COUNT ONE

NEGLIGENCE

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That Defendant has negligently caused water to be drained upon Plaintiffs' land, altering the natural flow of said water, and as a direct proximate result of the aforesaid negligence, the natural drainage has been altered, and the final result has been flooding and damage done to Plaintiffs' land.

XII.

As a further direct proximate result of the aforesaid negligence of Defendant, such flooding of Plaintiffs' land has resulted in severe damage to Plaintiffs' land causing past and future losses of revenue to said Plaintiffs.

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Plaintiffs affirmatively assert that unless this Court issues an injunction compelling Defendant to cease drainage activity resulting in the drainage of water by Defendant onto Plaintiffs' land, Plaintiffs' land and farm will continue to suffer irreparable damage.

XIV.

That Plaintiffs have no adequate remedy at law, for the reason that the amount of damages Plaintiffs will incur in the future if the aforesaid negligent acts of Defendant City are not enjoined by this Court, cannot be calculated with any degree of accuracy.

Realleging and restating the preceding paragraphs, the Plaintiffs further state and allege:

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NUISANCE

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That Defendant, by omission to perform, as hereinabove alleged and requested by Plaintiffs, have: (1) annoyed, injured, and endangered the comfort, repose, health, and/or safety of the Plaintiffs; and (2) have rendered the Plaintiffs insecure in life, or in the use of their property.

XVI.

That the omissions of the Defendant constitute a public nuisance, and the drainage, if not abated, will continue to flood a considerable amount of land, which at the same time will affect the entire community, and a considerable number of persons.

WHEREFORE, Plaintiffs request the following relief:

1. That an Order be issued directing the Defendant to appear on a day certain to be fixed by the Court and then and there show cause, if any they have, why a preliminary injunction should not be issued restraining the Defendant and its agents, servants and employees from continuing to alter the natural flow of water to Defendant's property, and to further prohibit drainage of the artificially collected lake water, artesian well water and City of Eureka storm sewer water onto Defendant's property.

2. That the Defendant be enjoined and restrained, and those succeeding them, from continuing to allow and maintain the public nuisance as above mentioned.

3. That the Court enter a judgment and decree compelling the Defendant to either remove the water which they have deposited on Plaintiffs' land, or that this Court enter judgment against Defendant City in a sum sufficient to compensate them for the damages which Plaintiffs have incurred as a result of Defendant's negligent actions.

4. That Plaintiffs be granted payment for their costs and disbursements incurred herein; and

5. That Plaintiffs be granted such other and further relief as the Court may deem just and proper.

Dated this 21 day of July, 1996.

CAIN & ASSOCIATES

By: Mark K. Kroontje
Mark K. Kroontje
Attorney for Plaintiffs
P.O. Box 38
Herreid, SD 57632
(605) 437-2426

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632 0038
(605) 437-2426

*Also admitted in North Dakota

DATE: JUNE 30, 1998

TO: ERIC GRONLUND OR
LYNN BECK

FAX NO: 1-605-773-4068

FROM: MARK K. KROONTJE

TELEPHONE NO.: (605) 437-2426

WE ARE SENDING YOU 12 PAGES, PLUS THIS PAGE.

A circular black ink stamp. The outer ring contains numbers 1 through 31, arranged clockwise starting from the top right. In the center, there is a small four-pointed star symbol above the text "JUN 1998". Below this, the words "WATER RIGHTS PROGRAM" are printed in a bold, sans-serif font. At the bottom of the central text area, "Pierre, SD" is written in a smaller font.

Hard copy received
282930.3? July 2, 1998

ORIGINAL (S): ___ not mailed _x_ mailed
 sent by overnight courier

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, OR YOU DO NOT
RECEIVE ALL PAGES, PLEASE CALL: (605) 437-2426

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE OR ACCOMPANYING THIS TRANSMISSION IS PRIVILEGED INFORMATION UNDER THE ATTORNEY/CLIENT PRIVILEGE AND/OR ATTORNEY WORK PRODUCT PRIVILEGE; THEREFORE IT IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL REIMBURSE YOU FOR POSTAGE. THANK YOU.

KROONTJE LAW OFFICE

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2426

Mark K. Kroontje

*Also admitted in North Dakota

June 30, 1998

Mayor Ervin Gebhardt
P.O. Box 655
Eureka, SD 57437-0655

Eric Gronlund
Water Rights Program
Dept. of Environment and Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

RE: PETITION

Dear Mayor Ervin Gebhardt and Mr. Gronlund:

Please consider this letter as Harvey & Duard Delzer's petition or statement in opposition to Water Permit Application No. 723A-3, report on Water Permit Application No. 6049-3, recommendation of Chief Engineer for Water Permit Application No. 6049-3, and report on Vested Water Rights Application No. 6068-3, and recommendation of Chief Engineer for validation of Vested Water Rights Application No. 6068-3.

Harvey Delzer and Duard Delzer are interested parties in that they own land which is down stream from the proposed drainage by the City of Eureka.

The address of Harvey Delzer is 508 11th Street, Eureka, SD 57437.

The address of Duard Delzer is P.O. Box 232, Eureka, SD 57437.

Harvey and Duard Delzer desire that the water management board be fully aware of all the implications in their decision on the various applications contained herein. You will find enclosed, a variety of objections which were originally filed in relation to the assessment of the Eureka Spillway Project No. 9797-684, but a review of those objections should give the Water Management Board a clearer understanding of what has been taking place over the years in regard to the City of Eureka's drainage, and the problem with the drainage ending up on Harvey and Duard Delzer's land and staying there. Please consider the objections to the assessment of the Eureka Spillway Project No. 9797-684 as a part of this Petition.

Essentially, a brief summary of the situation is as follows. The City of Eureka had an unrestricted flowing artesian well, which I understand may have now been capped, which flowed into East Lake Eureka. It is my understanding that the City of Eureka's storm sewer water also flows and ends up in East Lake Eureka. From East Lake Eureka, the water flows into West Lake Eureka. In 1994, 1995, 1997, the excess water in West Lake Eureka was siphoned out of West Lake Eureka and allowed to flow into an unreclaimed sewage lake located south of Highway 10. Finally, in 1994, 1995, 1997, the water which accumulated in the unreclaimed sewage lake overflowed onto Harvey and Duard Delzer's land.

It is Harvey and Duard Delzer's position, that the City of Eureka by collecting their storm sewer water and allowing the artesian well to flow unrestricted, have created this problem. Although it is said that there were some kind of spillway drains that at one point were cemented shut, there has been no showing that such devices were ever used on West Lake Eureka.

On behalf of Harvey and Duard Delzer, it can be asserted that it is not in the public's best interest to allow water to flow unrestricted through an unreclaimed sewage lake to ultimately rest on private property. Obviously the problems have been exacerbated by high levels of water and natural drainage in recent years, but the answer should not be for the City of Eureka to receive a vested right to simply dump water on private property. The City of Eureka has created an artificial hazard by collecting flowing artesian well water, storm sewer water, and natural flowing waters in man made lakes and an unreclaimed sewage lake. They dump their overflow on Harvey and Duard Delzer's property, and this is wrong.

When the City of Eureka obtained additional land for drainage in regard to their sewer lagoon and lakes, they simply purchased the land and had more room for drainage. What the City of Eureka is requesting in the vested water right permits addressed herein is the unrestricted right to deposit the water which they have collected, onto a private parties property. This should not be allowed. Safe guards must also be made such that the artesian water flow is controlled in anticipation and in conjunction with heavy rainfalls.

Thank you for your consideration of these various issues. Thank you also for considering the objections to the Environmental Assessment end of the Eureka spillway, as those objections also relate directly to the impact which will result from the granting of the permits addressed herein.

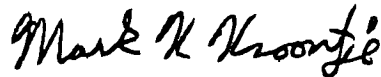
Gebhardt and Gronlund Letter
6-30-98
Page Three

It should also be noted that the City of Eureka's drainage activity is the subject of current litigation based upon the enclosed complaint and notice has been filed that an additional suit may be filed against the City of Eureka based upon their unlawful taking of Delzer's land.

The letter I received from Eric Gronlund indicated that the hearing in this matter is scheduled for July 8, 1998 at 10:00 a.m. at the Staurolite Inn in Brookings, South Dakota and at this time I plan to attend with Harvey and Duard Delzer.

Sincerely,

On behalf of Harvey and Duard Delzer,

A handwritten signature in cursive script that reads "Mark K. Kroontje".

Mark K. Kroontje

MKK/sjk

pc: Harvey Delzer
Duard Delzer

daily\gronlund.ltr

**OBJECTIONS TO ENVIRONMENTAL
ASSESSMENT OF EUREKA SPILLWAY
PROJECT # 9797-684**

OBJECTION I

Under the Land Development Impact Category dealing with Erosion a finding has been made that the project will not negatively impact or be impacted by erosion. This finding is objected to on the basis that substantial soil erosion has resulted from The City of Eureka's release of water from West Lake Eureka in the spring of 1994, 1995, and 1997 and again in the summer of 1997. This water flows through an unreclaimed sewage lake, where it is released upon the private property of Harvey and Duard Delzer resulting in soil erosion and damage to the soil and property. Future releases of water will certainly result in additional soil erosion.

OBJECTION II

Under the Land Development Impact Category dealing with Hazards and Nuisances including Site Safety HUD Notice 79-33-24 CFR Part 51 C & D a finding has been made that no-man made hazards were identified on or near the site to adversely impact the project. This finding is objected too on three grounds.

First, due to substantial releases of water by the City of Eureka from West Lake Eureka in 1994, 1995, and 1997 a public nuisance has been created by the flow of water through an unreclaimed sewage lake creating a stagnant lake on private property.

Second, this nuisance is exacerbated by the City of Eureka's collection of city storm sewer waters in Lake Eureka and West Lake Eureka. This excess water has been siphoned into an unreclaimed sewage lake in 1994, 1995, and 1997, which overflows on to the private land of Harvey Delzer, Duard Delzer and others, where the water remains.

Third, this nuisance is exacerbated by the City of Eureka's maintenance of an unrestricted continuously flowing artesian well which water flows into West Lake Eureka. This excess water has been pumped into an unreclaimed sewage lake where it overflows on to the land of Harvey Delzer, Duard Delzer and remains. This artesian well is maintained in violation of South Dakota Administrative Rule 74:02:04:74 which requires the capping or controlling of artesian wells in such a manner that the well owner can reduce the flow to no more than five gallons per minute. This well is also in violation of South Dakota Codified Law 46-6-14 which requires that artesian wells are not to be allowed to flow to waste and South Dakota Codified Law 46-6-21 which requires the control of large capacity artesian wells.

The above three considerations constitute the creation of a nuisance which will be exacerbated by the construction of a spillway which will speed the flow of this water to where it collects and remains on private property.

OBJECTION III

Under the Land Development Impact category dealing with Environmental Design and historic values under the Visual Quality - Coherence, Diversity, Compatible Use, and Scale, a finding is made that the project will be compatible with and complimentary to the surrounding area.

This finding is objected to on the ground that the excess water generated by the City of Eureka in flowing through the proposed spillway and unreclaimed sewage lake collects on private property, is possibly contaminated, and thus creates a nuisance and may negatively impact the quality of the ground water and surface water of the area. This is not compatible with and complimentary to the surrounding area, and is in violation of South Dakota state law and likely is in violation of Federal Environmental law.

OBJECTION IV

Under the Land Development Impact Category dealing with Socioeconomic impact under the Displacement Category a finding has been made that the project will not create any displacement.

This finding is objected to on the basis that displacement has occurred in 1994, 1995, and 1997 in that Harvey and Duard Delzer and others have been effectively displaced from their private land by the City of Eureka's drainage activity. The construction of the proposed spillway will continue to expand this displacement and will effectively result in a "taking" under State and Federal law.

OBJECTION V

Under the Land Development Impact Category dealing with Community Facilities and Services under the waste water, storm water and water supply categories, findings have been made that the project will not have an adverse effect on waste water systems, storm water systems, and water supply.

The three findings noted here under Objection V are objected to on the basis that the City of Eureka has no right, license, or permit to discharge their excess waste water and storm water onto private property.

In recent years the City of Eureka has repeatedly discharged excess waste water from its lagoons into an unreclaimed sewage lake. Excess storm sewage and artesian well water flows into West Lake Eureka where in 1994, 1995, and 1997 it also was siphoned into the unreclaimed sewage lake. The overflow from the unreclaimed sewage lake ends up on the private land of Harvey and

Duard Delzer and others. The proposed spillway will exacerbate the problem created by the flow of water from all of the various sources noted herein onto private property.

The City of Eureka is essentially using the unreclaimed sewage lake and private property as a part of its waste water and storm water disposal system. The City of Eureka's excess waste water, storm water and artesian well water is dumped into the unreclaimed sewage lake, which cannot hold it all, and overflows onto private property.

An objection is also made in regard to the possible impact of this drainage on local water supply. Clearly the release of water through an unreclaimed sewage lake may have possible effects on the surrounding area's water supply. The construction of the proposed spillway will contribute to any negative impact on the water supply system, and the undersigned is aware of no studies or testing which has been done to verify what the impact of the drainage has been on the water supply.

OBJECTION VI

Under the Land Development Impact Category dealing with natural features, under the water resources, surface water, floodplains, and wetlands categories the four separate findings state that there will be no impact in each of these categories and that 404 permits are pending on some sites.

Objection V should be considered in relation to each of these four categories and is incorporated in this objection by this reference.

Water Resources may specifically be impacted by possible contamination by water flowing through the unreclaimed sewage lake and discharges from the City of Eureka's waste water system when combined with the flow of water through the proposed spillway. The same is true for surface waters and floodplains.

An objection can additionally be raised in regards to the finding that there will be no impact on agricultural lands. Clearly, agricultural land is being flooded and rendered useless for agricultural purposes by past discharges of water by the City of Eureka and proposed future discharges through the proposed spillway.

OBJECTION VII

The summary of Findings and Conclusions is specifically objected to in that the alleged use of the proposed spillway drainage in times of high water levels is inaccurate. The City of Eureka's artesian well is continuously running. In mid summer in 1997 substantial discharges occurred after normal amounts of

rainfall subsequent to the drainage which occurred to eliminate spring runoff. Regular drainage in 1994, 1995 and 1997 makes the characterization of the project as one providing relief for a 100 year storm inappropriate where substantial drainage has occurred in three of the last four years. The finding that there will be no adverse impact associated with the project is simply incorrect.

OBJECTION VIII

Under the Project Modifications and Alternatives considered, no alternatives were considered. An objection is raised here as alternatives to the construction of the spillway should be considered.

First, the alternatives inherent in reducing the flow of water into West Lake Eureka must be considered. Control of the artesian well should be considered. Alternatives for the disposal of the City of Eureka's storm water should be considered. Construction of a lagoon, or holding facility for the City of Eureka's storm water should also be considered. Each of these alternatives should be considered and seem to be preferable to hastening the flow of the City of Eureka's excess water onto private land.

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Under the additional studies section, no additional studies were suggested in conjunction with this project. The primary objection raised here, is that the excess water to be disposed of through the spillway runs into an unreclaimed sewage lake and has been allowed to overflow through a culvert maintained by the City of Eureka for this purpose on to private land. Studies should be done to determine what contamination occurs in the overflow, and additionally as to what effect this may have upon the ground water and surface water. Studies should also be done as to the effect of the discharges of water from the City of Eureka's waste water facility which is mixed with the water that overflows onto private property. Studies should also be done in regard to alternatives to the spillway.

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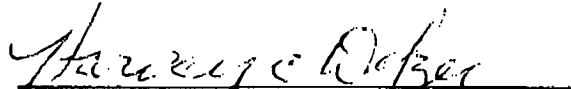
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Based upon the foregoing objections and U.S.C.A. section 4332 the undersigned hereby request that an appropriate Environmental Impact study be prepared in accordance with Federal law and that the recommendations of such statement be considered and followed accordingly.

Dated this 26th day of March, 1998.


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Dated this 21 day of July, 1996.

CAIN & ASSOCIATES

By: Mark K. Kroontje
Mark K. Kroontje
Attorney for Plaintiffs
P.O. Box 38
Herreid, SD 57632
(605) 437-2426

Faxed June 30, 1998

KROONTJE LAW OFFICE

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Mark K. Kroontje
*Also admitted in North Dakota



June 30, 1998

Mayor Ervin Gebhardt
P.O. Box 655
Eureka, SD 57437-0655

Eric Gronlund
Water Rights Program
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The address of Duard Delzer is P.O. Box 232, Eureka, SD 57437.

Harvey and Duard Delzer desire that the water management board be fully aware of all the implications in their decision on the various applications contained herein. You will find enclosed, a variety of objections which were originally filed in relation to the assessment of the Eureka Spillway Project No. 9797-684, but a review of those objections should give the Water Management Board a clearer understanding of what has been taking place over the years in regard to the City of Eureka's drainage, and the problem with the drainage ending up on Harvey and Duard Delzer's land and staying there. Please consider the objections to the assessment of the Eureka Spillway Project No. 9797-684 as a part of this Petition.

Essentially, a brief summary of the situation is as follows. The City of Eureka had an unrestricted flowing artesian well, which I understand may have now been capped, which flowed into East Lake Eureka. It is my understanding that the City of Eureka's storm sewer water also flows and ends up in East Lake Eureka. From East Lake Eureka, the water flows into West Lake Eureka. In 1994, 1995, 1997, the excess water in West Lake Eureka was siphoned out of West Lake Eureka and allowed to flow into an unreclaimed sewage lake located south of Highway 10. Finally, in 1994, 1995, 1997, the water which accumulated in the unreclaimed sewage lake overflowed onto Harvey and Duard Delzer's land.

It is Harvey and Duard Delzer's position, that the City of Eureka by collecting their storm sewer water and allowing the artesian well to flow unrestricted, have created this problem. Although it is said that there were some kind of spillway drains that at one point were cemented shut, there has been no showing that such devices were ever used on West Lake Eureka.

On behalf of Harvey and Duard Delzer, it can be asserted that it is not in the public's best interest to allow water to flow unrestricted through an unreclaimed sewage lake to ultimately rest on private property. Obviously the problems have been exacerbated by high levels of water and natural drainage in recent years, but the answer should not be for the City of Eureka to receive a vested right to simply dump water on private property. The City of Eureka has created an artificial hazard by collecting flowing artesian well water, storm sewer water, and natural flowing waters in man made lakes and an unreclaimed sewage lake. They dump their overflow on Harvey and Duard Delzer's property, and this is wrong.

When the City of Eureka obtained additional land for drainage in regard to their sewer lagoon and lakes, they simply purchased the land and had more room for drainage. What the City of Eureka is requesting in the vested water right permits addressed herein is the unrestricted right to deposit the water which they have collected, onto a private parties property. This should not be allowed. Safe guards must also be made such that the artesian water flow is controlled in anticipation and in conjunction with heavy rainfalls.

Thank you for your consideration of these various issues. Thank you also for considering the objections to the Environmental Assessment end of the Eureka spillway, as those objections also relate directly to the impact which will result from the granting of the permits addressed herein.

Gebhardt and Gronlund Letter
6-30-98
Page Three

It should also be noted that the City of Eureka's drainage activity is the subject of current litigation based upon the enclosed complaint and notice has been filed that an additional suit may be filed against the City of Eureka based upon their unlawful taking of Delzer's land.

The letter I received from Eric Gronlund indicated that the hearing in this matter is scheduled for July 8, 1998 at 10:00 a.m. at the Staurolite Inn in Brookings, South Dakota and at this time I plan to attend with Harvey and Duard Delzer.

Sincerely,

On behalf of Harvey and Duard Delzer,

A handwritten signature in cursive script that reads "Mark K. Kroontje".

Mark K. Kroontje

MKK/sjk

pc: Harvey Delzer
Duard Delzer

daily\gronlund.1tr

**OBJECTIONS TO ENVIRONMENTAL
ASSESSMENT OF EUREKA SPILLWAY
PROJECT # 9797-684**

OBJECTION I

Under the Land Development Impact Category dealing with Erosion a finding has been made that the project will not negatively impact or be impacted by erosion. This finding is objected to on the basis that substantial soil erosion has resulted from The City of Eureka's release of water from West Lake Eureka in the spring of 1994, 1995, and 1997 and again in the summer of 1997. This water flows through an unreclaimed sewage lake, where it is released upon the private property of Harvey and Duard Delzer resulting in soil erosion and damage to the soil and property. Future releases of water will certainly result in additional soil erosion.

OBJECTION II

Under the Land Development Impact Category dealing with Hazards and Nuisances including Site Safety HUD Notice 79-33-24 CFR Part 51 C & D a finding has been made that no-man made hazards were identified on or near the site to adversely impact the project. This finding is objected too on three grounds.

First, due to substantial releases of water by the City of Eureka from West Lake Eureka in 1994, 1995, and 1997 a public nuisance has been created by the flow of water through an unreclaimed sewage lake creating a stagnant lake on private property.

Second, this nuisance is exacerbated by the City of Eureka's collection of city storm sewer waters in Lake Eureka and West Lake Eureka. This excess water has been siphoned into an unreclaimed sewage lake in 1994, 1995, and 1997, which overflows on to the private land of Harvey Delzer, Duard Delzer and others, where the water remains.

Third, this nuisance is exacerbated by the City of Eureka's maintenance of an unrestricted continuously flowing artesian well which water flows into West Lake Eureka. This excess water has been pumped into an unreclaimed sewage lake where it overflows on to the land of Harvey Delzer, Duard Delzer and remains. This artesian well is maintained in violation of South Dakota Administrative Rule 74:02:04:74 which requires the capping or controlling of artesian wells in such a manner that the well owner can reduce the flow to no more than five gallons per minute. This well is also in violation of South Dakota Codified Law 46-6-14 which requires that artesian wells are not to be allowed to flow to waste and South Dakota Codified Law 46-6-21 which requires the control of large capacity artesian wells.

The above three considerations constitute the creation of a nuisance which will be exacerbated by the construction of a spillway which will speed the flow of this water to where it collects and remains on private property.

OBJECTION III

Under the Land Development Impact category dealing with Environmental Design and historic values under the Visual Quality - Coherence, Diversity, Compatible Use, and Scale, a finding is made that the project will be compatible with and complimentary to the surrounding area.

This finding is objected to on the ground that the excess water generated by the City of Eureka in flowing through the proposed spillway and unreclaimed sewage lake collects on private property, is possibly contaminated, and thus creates a nuisance and may negatively impact the quality of the ground water and surface water of the area. This is not compatible with and complimentary to the surrounding area, and is in violation of South Dakota state law and likely is in violation of Federal Environmental law.

OBJECTION IV

Under the Land Development Impact Category dealing with Socioeconomic impact under the Displacement Category a finding has been made that the project will not create any displacement.

This finding is objected to on the basis that displacement has occurred in 1994, 1995, and 1997 in that Harvey and Duard Delzer and others have been effectively displaced from their private land by the City of Eureka's drainage activity. The construction of the proposed spillway will continue to expand this displacement and will effectively result in a "taking" under State and Federal law.

OBJECTION V

Under the Land Development Impact Category dealing with Community Facilities and Services under the waste water, storm water and water supply categories, findings have been made that the project will not have an adverse effect on waste water systems, storm water systems, and water supply.

The three findings noted here under Objection V are objected to on the basis that the City of Eureka has no right, license, or permit to discharge their excess waste water and storm water onto private property.

In recent years the City of Eureka has repeatedly discharged excess waste water from its lagoons into an unreclaimed sewage lake. Excess storm sewage and artesian well water flows into West Lake Eureka where in 1994, 1995, and 1997 it also was siphoned into the unreclaimed sewage lake. The overflow from the unreclaimed sewage lake ends up on the private land of Harvey and

Duard Delzer and others. The proposed spillway will exacerbate the problem created by the flow of water from all of the various sources noted herein onto private property.

The City of Eureka is essentially using the unreclaimed sewage lake and private property as a part of its waste water and storm water disposal system. The City of Eureka's excess waste water, storm water and artesian well water is dumped into the unreclaimed sewage lake, which cannot hold it all, and overflows onto private property.

An objection is also made in regard to the possible impact of this drainage on local water supply. Clearly the release of water through an unreclaimed sewage lake may have possible effects on the surrounding area's water supply. The construction of the proposed spillway will contribute to any negative impact on the water supply system, and the undersigned is aware of no studies or testing which has been done to verify what the impact of the drainage has been on the water supply.

OBJECTION VI

Under the Land Development Impact Category dealing with natural features, under the water resources, surface water, floodplains, and wetlands categories the four separate findings state that there will be no impact in each of these categories and that 404 permits are pending on some sites.

Objection V should be considered in relation to each of these four categories and is incorporated in this objection by this reference.

Water Resources may specifically be impacted by possible contamination by water flowing through the unreclaimed sewage lake and discharges from the City of Eureka's waste water system when combined with the flow of water through the proposed spillway. The same is true for surface waters and floodplains.

An objection can additionally be raised in regards to the finding that there will be no impact on agricultural lands. Clearly, agricultural land is being flooded and rendered useless for agricultural purposes by past discharges of water by the City of Eureka and proposed future discharges through the proposed spillway.

OBJECTION VII

The summary of Findings and Conclusions is specifically objected to in that the alleged use of the proposed spillway drainage in times of high water levels is inaccurate. The City of Eureka's artesian well is continuously running. In mid summer in 1997 substantial discharges occurred after normal amounts of

rainfall subsequent to the drainage which occurred to eliminate spring runoff. Regular drainage in 1994, 1995 and 1997 makes the characterization of the project as one providing relief for a 100 year storm inappropriate where substantial drainage has occurred in three of the last four years. The finding that there will be no adverse impact associated with the project is simply incorrect.

OBJECTION VIII

Under the Project Modifications and Alternatives considered, no alternatives were considered. An objection is raised here as alternatives to the construction of the spillway should be considered.

First, the alternatives inherent in reducing the flow of water into West Lake Eureka must be considered. Control of the artesian well should be considered. Alternatives for the disposal of the City of Eureka's storm water should be considered. Construction of a lagoon, or holding facility for the City of Eureka's storm water should also be considered. Each of these alternatives should be considered and seem to be preferable to hastening the flow of the City of Eureka's excess water onto private land.

OBJECTION IX

Under the additional studies section, no additional studies were suggested in conjunction with this project. The primary objection raised here, is that the excess water to be disposed of through the spillway runs into an unreclaimed sewage lake and has been allowed to overflow through a culvert maintained by the City of Eureka for this purpose on to private land. Studies should be done to determine what contamination occurs in the overflow, and additionally as to what effect this may have upon the ground water and surface water. Studies should also be done as to the effect of the discharges of water from the City of Eureka's waste water facility which is mixed with the water that overflows onto private property. Studies should also be done in regard to alternatives to the spillway.

OBJECTION X

Under the Mitigation Measures needed, it is asserted that no adverse impacts were identified in the environmental assessment and therefore no mitigation measures are needed. This finding is objected to based on all of the foregoing objections. Mitigation measures should be examined in respect to controlling the unrestricted flow of artesian well water into West Lake Eureka. Mitigation measures should also be explored in respect to controlling or finding alternatives to allowing the City of Eureka storm water to flow into West Lake Eureka.

OBJECTION XI

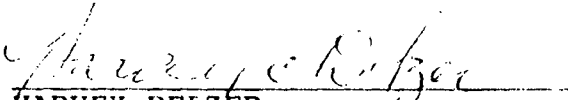
On page 7 of the Environmental Check List a finding that the project is in compliance with applicable law and regulations is questioned where a portion of the water to flow over the proposed spillway comes from an unrestricted flowing artesian well and the water is ultimately deposited on private ground where it remains.

The finding that an EIS (Environmental Impact Study) is not required on page 7 is also objected to based upon the foregoing objections.

The finding of No Significant Impact on page 7 of the Environmental Assessment is objected to based upon the foregoing objections and unknown effect of the impact of the City of Eureka's water overflow from the unreclaimed sewage lake on to private property in this case.

Based upon the foregoing objections and U.S.C.A. section 4332 the undersigned hereby request that an appropriate Environmental Impact study be prepared in accordance with Federal law and that the recommendations of such statement be considered and followed accordingly.

Dated this 26th day of March, 1998.


HARVEY DELZER


MARK K. KROONTJE
Attorney for Harvey Delzer
KROONTJE LAW OFFICE
P.O. Box 38
204 Main Street
Herreid, SD 57632
605-437-2426

FILED

JUL 23 1996

COPY

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:SS. RONDA L. GEFERE

COUNTY OF McPHERSON

McPHERSON COUNTY CLERK OF COURT SOUTH JUDICIAL CIRCUIT

HARVEY DELZER and DUARD DELZER,

CIV. 96-15

Plaintiffs,

vs.

VERIFIED COMPLAINT

CITY OF EUREKA, a political
subdivision of the State of
South Dakota,

Defendant.

COMES NOW the above named Plaintiffs and for their causes of action against the above named Defendants allege and state as follows:

GENERAL ALLEGATIONS

I.

That the Plaintiffs are residents of the County of McPherson, State of South Dakota.

II.

Defendant, City of Eureka, hereinafter referred to as "Defendant" is and at all times herein mentioned was a political subdivision of the State of South Dakota duly organized and existing under and by virtue of the laws of the State of South Dakota.

III.

That Plaintiffs are and at all times herein mentioned the owners of and have an interest in land located in McPherson County, South Dakota.

IV.

That the Plaintiffs have used their land for farming purposes, including the growing of crops and grazing of livestock.

V.

That the city of Eureka has caused water and treated sewage water to be drained on property owned by Plaintiffs located in Sections 10 and 15, Township 126 North, Range 73 West, of the Fifth Principal Meridian in McPherson County, South Dakota from and after March of 1995, and at various times through the present time.

VI.

That the origin of the water Defendant drained on Plaintiffs' land was from an artesian well, treated sewage water, surface drainage water from the City of Eureka, and from two artificially created lakes near the City of Eureka.

VII.

That the waters drained by Defendant onto Plaintiffs' land could no longer be considered surface waters, as the water drained came from artificially created lakes, ponds, holding areas and an artesian well.

VIII.

That the notice required to be given by SDCL 3-21-2 as a prerequisite for this suit was dated August 21, 1995, and admission of service of said notice was made by Ervin Gebhart on August 22, 1995.

IX.

That Plaintiffs have made repeated demands on Defendant City to either halt the drainage activity or provide suitable and reasonable compensation for the damage done to Plaintiffs' land.

X.

That Plaintiffs affirmatively allege that they have been damaged by Defendant's actions, and that a substantial portion of their pasture, hay and crop land has been flooded as a direct result of Defendant's drainage activity.

COUNT ONE

NEGLIGENCE

XI.

That Defendant has negligently caused water to be drained upon Plaintiffs' land, altering the natural flow of said water, and as a direct proximate result of the aforesaid negligence, the natural drainage has been altered, and the final result has been flooding and damage done to Plaintiffs' land.

XII.

As a further direct proximate result of the aforesaid negligence of Defendant, such flooding of Plaintiffs' land has resulted in severe damage to Plaintiffs' land causing past and future losses of revenue to said Plaintiffs.

XIII.

Plaintiffs affirmatively assert that unless this Court issues an injunction compelling Defendant to cease drainage activity resulting in the drainage of water by Defendant onto Plaintiffs' land, Plaintiffs' land and farm will continue to suffer irreparable damage.

XIV.

That Plaintiffs have no adequate remedy at law, for the reason that the amount of damages Plaintiffs will incur in the future if the aforesaid negligent acts of Defendant City are not enjoined by this Court, cannot be calculated with any degree of accuracy.

Realleging and restating the preceding paragraphs, the Plaintiffs further state and allege:

COUNT TWO

NUISANCE

XV.

That Defendant, by omission to perform, as hereinabove alleged and requested by Plaintiffs, have: (1) annoyed, injured, and endangered the comfort, repose, health, and/or safety of the Plaintiffs; and (2) have rendered the Plaintiffs insecure in life, or in the use of their property.

XVI.

That the omissions of the Defendant constitute a public nuisance, and the drainage, if not abated, will continue to flood a considerable amount of land, which at the same time will affect the entire community, and a considerable number of persons.

WHEREFORE, Plaintiffs request the following relief:

1. That an Order be issued directing the Defendant to appear on a day certain to be fixed by the Court and then and there show cause, if any they have, why a preliminary injunction should not be issued restraining the Defendant and its agents, servants and employees from continuing to alter the natural flow of water to Defendant's property, and to further prohibit drainage of the artificially collected lake water, artesian well water and City of Eureka storm sewer water onto Defendant's property.

2. That the Defendant be enjoined and restrained, and those succeeding them, from continuing to allow and maintain the public nuisance as above mentioned.

3. That the Court enter a judgment and decree compelling the Defendant to either remove the water which they have deposited on Plaintiffs' land, or that this Court enter judgment against Defendant City in a sum sufficient to compensate them for the damages which Plaintiffs have incurred as a result of Defendant's negligent actions.

4. That Plaintiffs be granted payment for their costs and disbursements incurred herein; and

5. That Plaintiffs be granted such other and further relief as the Court may deem just and proper.

Dated this 21 day of July, 1996.

CAIN & ASSOCIATES

By: Mark K. Kroontje

Mark K. Kroontje
Attorney for Plaintiffs
P.O. Box 38
Herreid, SD 57632
(605) 437-2426

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2426

Mark K. Kroontje
*Also admitted in North Dakota

I believe that the Notice for this deemed however is additional inherently flawed, in that the statements required by SDCL 46-2A-23 were not in the legal notice specifically, the statement at 46-2A-4 (10) appears no where in the Notice.

Beck. ltr
Page Two

Please advise as to what the Department of Environment and Natural Resources position will be concerning this matter. My clients desire to appear and present testimony concerning this matter. My clients may be willing to waive the Defective Notice if allowed to appear and testify, with full right to testify an appeal if necessary. Otherwise, I request that proper notice be given as required by law.

Sincerely,

KROONTJE LAW OFFICE

A handwritten signature in cursive script, reading "Mark K. Kroontje".

Mark K. Kroontje

MKK/drh

VALLEY TELCO COOP Fax: 605-437-2220 JUL 6 1998 10:25 17:01

KROONTJE LAW OFFICE
P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2426

Mark K. Kroontje
*Also admitted in North Dakota



FACSIMILE TRANSACTION SHEET

DATE: JULY 6, 1998

TO: LYNN BECK
DEPT OF ENVIRONMENT & NATURAL RESOURCES

FAX NO: 1-605-773-4068

FROM: MARK K. KROONTJE

TELEPHONE NO.: (605) 437-2426

WE ARE SENDING YOU 1 PAGE, PLUS THIS PAGE.

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 sent by overnight courier

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, OR YOU DO NOT
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HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING
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US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE
ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL REIMBURSE
YOU FOR POSTAGE. THANK YOU.

KROONTJE LAW OFFICE

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2426

Mark K. Kroontje

*Also admitted in North Dakota



July 6, 1998

Lynn Beck
Dept. of Environment & Natural
Resources
Joe Foss Bldg.
524 East Capital
Pierre, SD 57501-3180

RE: CITY OF EUREKA WATER PERMIT APPLICATION NOS. 723-A-3 &
6049-3 AND VESTED WATER RIGHT APPLICATION NO. 6068-3.

Dear Lynn:

After due consideration to the issues involved, my clients, Duard and Harvey Delzer have chosen not to attend the hearing on the above applications scheduled for July 8, 1998 at 10:00 a.m. in Brookings, South Dakota. It is my understanding that the applications for the water permits are not retroactive in effect, and the Vested Water Right Application relates only to Lake Eureka.

I do trust that the Water Board will be fully informed as to the fact that there have been problems containing the water in Lake Eureka and West Lake Eureka in the past few years, and that the spillway runs into an unreclaimed sewer lake, and that the City has allowed the water to freely flow through that unreclaimed sewage lake on to private property in the past few years. Any other representations I believe would be untruthful to the Water Board. They should have this information to make a fully informed decision.

Thank you for your assistance and consideration of this matter.

Sincerely,

KROONTJE LAW OFFICE

Mark K. Kroontje

MRK/sjk

KROONTJE LAW OFFICE

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2426

Faxed July 2, 1998

Mark K. Kroontje
*Also admitted in North Dakota

July 2, 1998



Lynn Beck
Dept. of Environment & Natural
Resources
Joe Foss Bldg.
524 East Capital
Pierre, SD 57501-3180

RE: NOTICE RELATING TO EUREKA'S WATER PERMIT APPLICATION
NOS. 723-A-3 6049-3 AND VESTED WATER RIGHT APPLICATION
NO. 6068-3.

Dear Lynn:

On behalf of Harvey and Duard Delzer, I believe that the Notice which was sent out concerning the hearing on the application set forth above was defective. Under SDCL 46-2A-23, the Notice shall contain the information provided for in subdivisions 46-2A-4 and (1) (2) (3) (5) (6) (10). If you look at SDCL 46-2A-4 (10) it is required to set forth in the Notice a statement that if the applicant does not contest the recommendation of the chief engineer and no petition to oppose the application is received, the engineer shall act upon the application pursuant to his recommendation and no hearing may be held before the board, unless the chief engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board. No where in the legal notice does it say a hearing will not be held if no petition is filed. I believe that is a very important requirement under the law and is mandatory.

I cannot find the statement 46-2A-4(10) anywhere in the Notice which I received, and which I understand has been published. When I received my letter of June 4, 1998 from Eric Gronlund, in the letter itself no mention is made of a required response, and I simply viewed the letter as an invitation to attend the hearing and present the Delzer's position. In fact, had I not by chance called you to discuss what would take place at the hearing, I would have not been alerted to the required response deadline.

I believe that the Notice for this deemed however is additional inherently flawed, in that the statements required by SDCL 46-2A-23 were not in the legal notice specifically, the statement at 46-2A-4 (10) appears no where in the Notice.

Beck. ltr
Page Two

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Sincerely,

KROONTJE LAW OFFICE

A handwritten signature in cursive script, reading "Mark K. Kroontje".

Mark K. Kroontje

MKK/drh

KROONTJE LAW OFFICE

P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57632-0038
(605) 437-2428

Mark K. Kroontje

*Also admitted in North Dakota

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P.O. Box 38 204 Main Street
HERREID, SOUTH DAKOTA 57832-0038
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Mark K. Kroontje
*Also admitted in North Dakota



July 6, 1998

Lynn Beck
Dept. of Environment & Natural
Resources
Joe Foss Bldg.
524 East Capital
Pierre, SD 57501-3180

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Thank you for your assistance and consideration of this matter.

Sincerely,

KROONTJE LAW OFFICE

Mark K. Kroontje

MKK/sjk

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX# (605) 773-4106



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

July 6, 1998

Mark K. Kroontje
Attorney at Law
P.O. Box 38
Herreid, SD 57632-0038

Re: City of Eureka Water Permit Applications

Dear Mr. Kroontje:

The Water Rights Program has received your correspondence of today's date regarding the City of Eureka's water permit applications which are scheduled for hearing on July 8, 1998.

At hearing, the DENR will be taking the position that the City of Eureka's water permit application should be approved subject to the conditions recommended by the Chief Engineer. Those conditions include conditions pertaining to flowing wells. We have previously discussed the necessity for these conditions. Further, the DENR will be generally describing its review of the spillway structure, the outlet, and downstream effects of these permit applications. The DENR will not, however, be asking the Board to make any findings on whether the City has engaged in unlawful conduct with respect to water pollution control laws or whether the City has, in the past, wrongfully increased the flow of water to the detriment of downstream property holders. Fact-finding regarding the lawfulness of the City's past actions would appropriately be resolved in other forums. As previously stated, the City's applications for water permits are permits to appropriate waters. This issue is different from any issues pertaining to past claims of damages resulting from the City's previous actions.

Sincerely,


Diane Best
Assistant Attorney General

DB:nan
cc: Lynn Beck
Richard A. Sommers



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

July 15, 1998

Ervin Gebhardt, Mayor
PO Box 655
Eureka SD 57437-0655

Dear Mayor Gebhardt

On July 8, 1998, the Water Management Board approved several water permit applications for the City of Eureka. Regarding Water Permit No. 6049-3, a filing fee of \$400.00 was submitted. The filing fee is based on the amount of water claimed which was 885 acre-feet. The filing fee for 885 acre-feet is \$375.00. Therefore, \$25.00 will be refunded to the city. You should receive the refund within a couple of weeks.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

PAYMENT REQUEST FORM

PAYEE: City of Eureka
P.O. Box 655
Eureka, SD 57437-0655

FROM: Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Regarding Water Permit No. 6049-3, a filing fee of \$400.00 was submitted. The filing fee is based on the amount of water claimed which was 885 acre-feet. The filing fee for 885 acre-feet is \$375.00; therefore, \$25.00 needs to be refunded.

AMOUNT: \$25.00

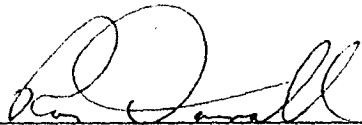
FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION: _____



7/15/98

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX# (605) 773-4106



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

July 30, 1998

Richard A. Sommers
P.O. Box 970
Aberdeen, SD 57402

Don W. Kallenberger
Attorney at Law
P.O. Box 547
Eureka, SD 57437

Re: City of Eureka Water Permit Application No. 723A-3,
6049-3, and Vested Water Right Application No. 6068-3.

Gentlemen:

Enclosed find correspondence between myself and Mark Kroontje dated July 6, 1998.

Mr. Kroontje and I exchanged this correspondence a few days before the South Dakota Water Management Board considered the applications filed by the City of Eureka. At that time, I also had telephone conversations with Mr. Sommers and Mr. Kroontje regarding the scope of the Water Management Board's hearing on the above-referenced Water Permit Application.

The main focus of these discussions involved the question of whether, or to what extent, evidence should be presented to the South Dakota Water Management Board regarding water discharges on the Delzer's property. It is my opinion that the scope of a water permit hearing should be limited to whether a water permit should be issued and is not the proper forum for resolving pollution matters, past grievances over surface water discharge, or even discussing whether flowage easements are appropriate. These issues are all issues which would be more properly addressed through negotiations among the parties or, if necessary, court action. Indeed, the South Dakota Water Management Board clearly does not have authority to issue judgments on property damage or money disputes.

Don W. Kallenberger
July 30, 1998
Page 2

Ultimately, the hearing was held before the South Dakota Water Management Board. Neither Mr. Kroontje nor the Delzers were present. The Water Management Board approved issuance of the permits as recommended by the Department of Environmental and Natural Resources.

Once the city confirms that one well is properly valved and controlled and the other well is plugged according to well construction standards, the permits will be issued.

I do not believe that the issuance of the permits resolves the lawsuit filed by the Delzers' against the City of Eureka. Further, nothing in the permit prohibits the Delzers from litigating their claims regarding past or future downstream discharges of surface water, whether polluted or not. I cannot offer an opinion as to the potential outcome of such litigation.

In addition, the permit does not make any determination with respect to the necessity for downstream easements of discharge and surface water. An easement is a separate private matter between the city and the downstream landowners.

You are likely already fully aware of the foregoing. I am, however, writing this letter to make sure that there is no misunderstanding on the part of the municipality. If you feel it is appropriate, please share this letter with the city council.

Sincerely,



Diane Best
Assistant Attorney General

DB:js
Enclosures

CITY OF EUREKA

P.O. Box 655
EUREKA, SOUTH DAKOTA 57437
605-284-2441



November 16, 1998

To whom it may concern,

The City of Eureka would like to inform everyone involved of the procedures that the City would take in case the overflow water from West Eureka Lake exceeds the capacity of an 18" culvert under SD Highway 10. The City will continuously monitor the depth of water next to Highway 10. If the depth of water comes within 6" of the elevation of the north shoulder of the Highway, the City will notify the appropriate personnel listed below. The City will then begin setting all necessary signs required to detour traffic around the Highway and covering the signs up until absolutely necessary. Should the water overtop the Highway from 0" – 6", the City officials will install signs which state "Water over road". Should the water exceed 6" over the road, the City will again notify the appropriate personnel listed below and remove all cardboard or plastic from the signs so that they can be viewed by traffic and detour the traffic around the submerged road. This detour shall remain in place until the water is not running over the Highway. The City will again notify the appropriate personnel listed below that the Highway is open again. The personnel listed below will be notified in case of the above situations:

John Villbrandt, Area Engineer, 605-845-3844
Leon Schochenmaier, Region Engineer, 605-773-4169
Roger Rohwedder, County Highway Superintendent, 605-439-3663
Jeanie Hoffman, Civil Defense Director, 605-439-3331
Ron Hemmingson, City Police, 605-284-2601
Guy Boschee, City Maintenance, 605-284-2601

Thank you for your cooperation. If there are any other precautions that would be of benefit, please call the City with your recommendations.

This memo has been sent to the following personnel:

John Villbrandt, Area Engineer
Leon Schochenmaier, Region Engineer
Roger Rohwedder, County Superintendent
Jeanie Hoffman, County Disaster Chief
Ron Hemmingson, City Police
Guy Boschee, City Maintenance Supervisor
Gale N. Selken, P. E. SD-DENR

Ervin H. Gebhardt
Ervin H. Gebhardt, Mayor

Permit No. 6049-3
Missouri River - Water District

Report Of Examination Of Works And/Or Application of Water To Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, **December 1, 1998** made a thorough examination of the water use system constructed by **City of Eureka of P.O. Box 655, Eureka, SD 57437** holder of Permit No. **6049-3**, bearing the priority of **February 13, 1998** authorizing the storage of **885** acre-feet of water from **surface runoff** for **recreational** purposes, in **McPherson** County.

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

A. Works used to divert the water and apply to beneficial use:

Dam 13' in height with a primary spillway elevation of 1843 fmsl and a secondary spillway elevation of 1845 fmsl. The primary spillway is a 5.5' x 5.5' concrete inlet and 48" RCP outlet tube. The secondary spillway has a 25' bottom width with 10:1 side slopes. See inventory of dams file for plan sheet.

The system is in the following condition **good**. The point of diversion is located **790' W and 590' N of the NE corner of Section 34, T127N, R73W**. The works are capable storing **885** acre feet of water which is to be used for **recreation**. Water has been put to beneficial use to the maximum extent as follows:

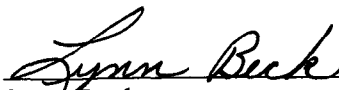
Water is impounded in the E½ SW¼ Section 27 and portions of Section 34, all in T127N, R73W.

The license should be issued for **885** acre-feet of storage.

Applicable permit qualifications have been complied with: **yes**

Exceptions to compliance are: **none**

Comments: **Original inspection done August 5, 1997, by Lynn Beck in conjunction with a request for an outlet elevation. Final inspection, after spillway replacement, was done December 1, 1998, by Gale Selken.**



Lynn Beck
Natural Resources Engineer
DENR, Water Rights Program

12-15-98
Date

REPORT ON INSPECTION OF PERMIT NO. 6049-3

DATE OF INSPECTION: 12-1-98

Other permit(s) associated with the project: 723A-3 and 6068-3

NAME & ADDRESS OF INSPECTION CONTACT: City of Eureka, P.O. Box 655, Eureka, SD 57437, (605)284-2441

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: n/a

NAME & ADDRESS OF PERMIT HOLDER: same as above

DIVERSION POINT LEGAL LOCATION: S½ SE¼ Section 34, T127N, R73W. 790' W and 590' N of the SE corner of Section 34.

DAM INFORMATION:

- 1) Height to crest 13 feet
- 2) Height to primary spillway 10 feet
- 3) Height to secondary spillway 12 feet
- 4) Crest width 32 feet
- 5) Crest length 1500 feet
- 6) Spillway length 132 feet
- 7) Spillway width 45 feet
- 8) Approx. storage # ac-ft
- 9) Approx. Storage to crest 885 ac-ft
- 10) Date constructed: 1962; 1972 berm added on downstream slope; 1998 spillways replaced.
- 11) Outlet tubes:
 - a) diameter 48 inches
 - b) type RCP
 - c) valved no
 - d) valve type n/a
 - e) location on structure near center
- 12) Category of Dam 2
- 13) Inspection Sheet Completed yes

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Special qualifications to permit being abided by yes
- 2) All structures, wells and lands on map yes

Beck, Lynn

From: Selken, Gale
Sent: Tuesday, December 15, 1998 9:45 AM
To: Beck, Lynn
Cc: Selken, Gale
Subject: Eureka

On December 1, 1998 in conjunction with the well plugging at the city of Eureka, I inspected the work on the dam and spillway for the city's lake.

The work was completed with an emergency spillway installed and riprapped. The approach channel to the spillway need the rushes and other vegetation removed. The primary overflow tube was installed and was spilling. The embankment around the overflow tube needed to be shaped and some material still need to be removed. John Ladison with Helm's and Associates Engineering stated that the work would be completed as soon as the embankment material froze hard enough to get equipment on it.

The work appeared to satisfactory and almost completed.

Gale N. Selken



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

December 30, 1998

Ervin Gebhardt, Mayor
City of Eureka
PO Box 655
Eureka SD 57437-0655

Dear Mayor Gebhardt:

The final investigation of the City of Eureka's Water Permit Nos. 723A-3 and 6049-3, was completed by Gale Selken, engineer with this office, on December 2, 1998. The final water right documents, the Water Licenses, can now be issued.

Statutes require that we charge a \$50.00 fee for the investigation and issuance of each Water License. Upon receipt of the \$100.00 fee, we will begin processing the Water Licenses.

**Please submit \$100.00 to: Department of Environment & Natural Resources
Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181**

Sincerely,

Karen Schlaak
Water Rights Program
(605) 773-3352

c: Tonya Maier, Finance Officer

NOTE: On check or money order, please specify the permit numbers. This will insure proper handling of the fee.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

APR 26 1999

Ervin Gebhardt, Mayor
City of Eureka
PO Box 655
Eureka SD 57437-0655

Dear Mayor Gebhardt:

Enclosed are Water Permit & Water License No. 723A-3, Water Permit & Water License No. 6049-3 and Vested Water Right & License No. 6068-3. Enclosed also are receipts for the fee assessed for the investigations and issuance of the licenses. These are the final documents which complete the process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water Licenses, State Water Laws provide that the City of Eureka has a continuing right to use the water.

Very truly yours,

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

ks

enclosures

SOUTH DAKOTA
WATER PERMIT NO. 6049-3

Date of first receipt of application August 25, 1997.

Date of return to applicant for corrections, amendments or changes August 26, 1997.

Date of receipt of corrected application February 13, 1998.

The Water Management Board approved Water Permit Application No. 6049-3 on July 8, 1998 for City of Eureka, PO Box 655, Eureka SD 57437-0655 authorizing the dam subject to the following limitations, conditions and qualifications:

1. Water Permit No. 6049-3 appropriates 885 acre-feet of water of storage for recreation use in the existing dam. The dam is located in the SE ¼ Section 34 and impounds water in the E ½ SW ¼ Section 27 and in portions of Section 34; all in T127N-R73W. The dam forms what is commonly known as West Eureka Lake and is supplied water from local runoff and the well authorized by Water Permit No. 723A-3. The primary spillway elevation is 1,843.0 feet mean sea level.

Vested Water Right No. 6068-3 is held by the City for East Eureka Lake and Water Permit No. 723A-3 is for the well used to maintain the water level in East & West Eureka Lakes.

2. The water appropriated shall be used for the purpose of impounding water in West Eureka Lake and may not exceed the amount of water needed for beneficial use for recreational purposes.
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 February 13, 1998.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

Water Permit No. 6049-3 authorizes storage of 885 acre-feet of water and sufficient water annually to maintain the water level in East Eureka Lake at elevation of 1843.0 feet mean sea level.

WATER MANAGEMENT BOARD

By: John Hatch
John Hatch, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

APR 26 1999

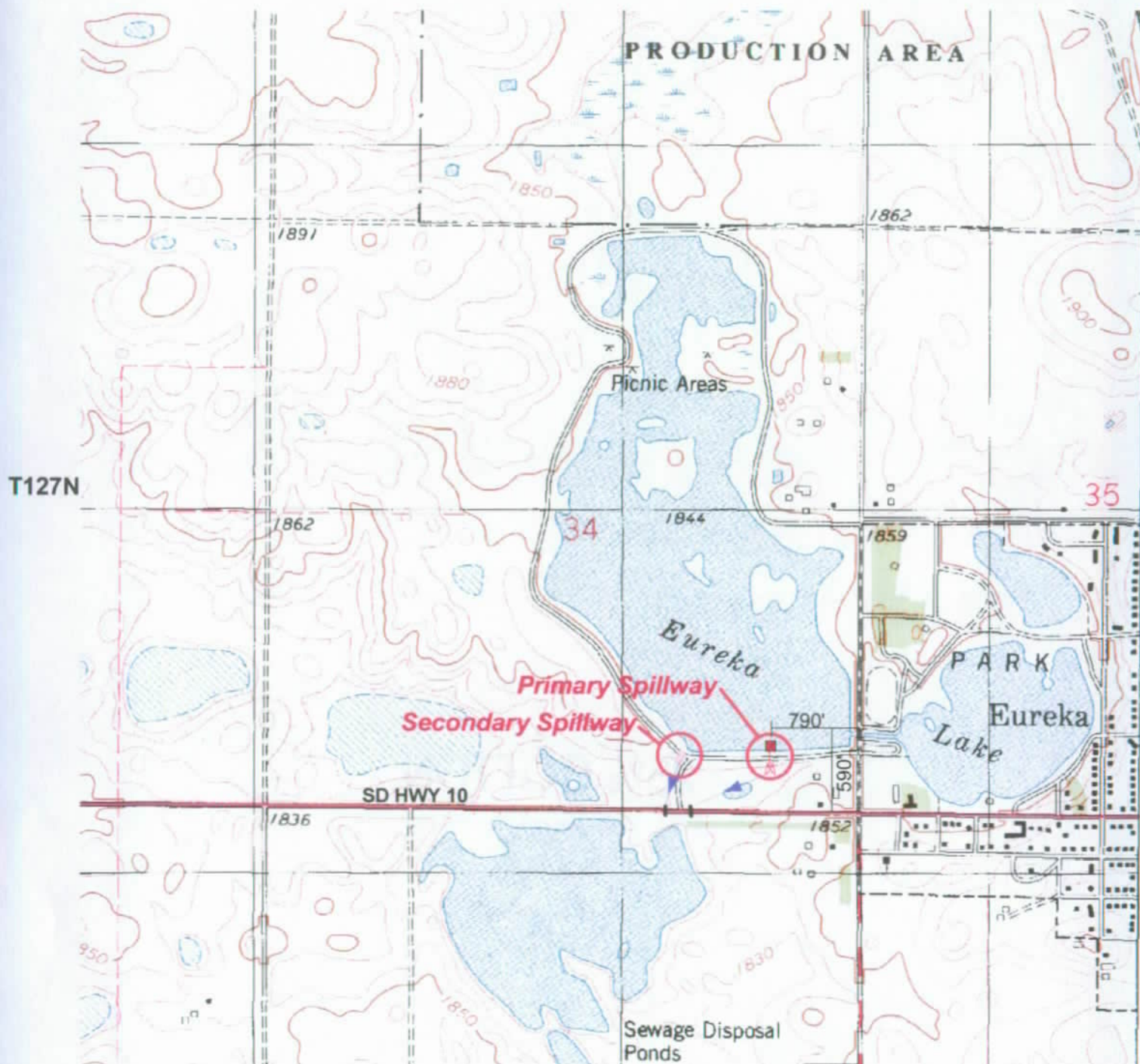
date



Water Right No. 6049-3



R73W



0.5 0 0.5 Miles

Lynn Beck
Lynn Beck
Natural Resources Engineer III
DENR, Water Rights Program
December 15, 1998

RECEIPT

415450

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ August 25, 19 97

RECEIVED OF City of Eureka, P.O. Box 655, Eureka, SD 57437

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

Fee for Application for Permit No. <u>60493</u> to Appropriate Water, to construct and to put water to beneficial use _____	400	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. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	400000

By John Hatch
Chief Engineer

RECEIPT
Water Rights Program
South Dakota Department of Environment and Natural Resources

№ 416009

Pierre, January 15 19 99

RECEIVED OF City of Eureka, P.O. Box 655, Eureka, SD 57437-0655
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. 6049-3

50 00

Fee for Filing Transfer Form _____

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

50 00

By _____
Chief Engineer



































