

WATER PERMIT NO. 6068-3

Name of Applicant: City of Eureka

Address: PO Box 655, Eureka SD 57437-0655

Phone: 605 284-2441

Amount of Water Claimed: 224 acre-feet

Total Acres: NA

Source of Water Supply: runoff and flowing well

Water to be used for: recreational use

County: McPherson

Type of Waste Disposal System: NA

Location: within City limits

PRIORITY Date Received: 4-2-1998

Fee: \$15

Corrected Application Received:

Period of Annual Use: January 1 – December 31

Remarks: Claimed priority date of 1933

Diversion Point: SW ¼ SE ¼ Sec 35-
T127N-R73W

Land to be Irrigated: NA

		35			

Depth of Well:

Well Driller:

Remarks:

Type of Map: topo

Prepared by: Lynn Beck

Reviewed and the Number Assigned on: 4-2-1998

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

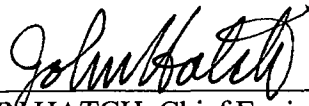
STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 6068-3

(1) The City of Eureka, PO Box 655, Eureka SD 57437-0655 made Application No. 6068-3, for validation of a vested right claim to appropriate 224 acre feet of water from the municipal storm sewer, a well authorized by Water Permit No. 723A-3, groundwater and its connection to West Eureka Lake, McPherson County, South Dakota, for recreational purposes in East Eureka Lake. Vested Water Right No. 6068-3 was validated July 8, 1998 with a priority date of January 1, 1933. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

(2) It is certified that the vested right owner is entitled to impound 224 acre feet of water for beneficial use with sufficient water annually to maintain the water level to the spillway elevation. The location of the lake is the SW 1/4 Section 35-T127N-R73W.

(3) Pursuant to Section 46-5-30.1 the City of Eureka, PO Box 655, Eureka SD 57437-0655 the holder and/or owner of Vested Water Right No. 6068-3 with a priority date of January 1, 1933 is issued a license to impound 224 acre feet of water from the municipal storm sewer, a well authorized by Water Permit No. 723A-3, groundwater and its connection to West Eureka Lake, in East Eureka Lake with sufficient water annually to maintain the water level to the spillway elevation. The water is to be used for recreational purposes. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 6068-3 and subject to South Dakota State Law.



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

APR 26 1999

date



**SOUTH DAKOTA
VESTED WATER RIGHT NO. 6068-3**

Date of Receipt of Claim April 2, 1998.

Date of Validation July 8, 1998.

The Water Management Board validated Vested Water Right Claim No. 6068-3 for City of Eureka, PO Box 655, Eureka SD 57437-0655 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 6068-3 validates a vested water right claim for a 224 acre-foot impoundment known as East Eureka Lake. The lake is a non-meandered lake located in the SW ¼ 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.
2. The water is appropriated from the municipal storm sewer, a well authorized by Water Permit No. 723A-3, groundwater and its connection to West Eureka Lake (Water Permit No. 6049-3) and is used for impounding water in East Eureka Lake and may not exceed the amount of water needed for beneficial use for recreational use.
3. The water is to be used during the following annual period: January 1 – December 31.
4. The priority date of the Vested Water Right is January 1, 1933.
5. The water use system has been constructed and water has been applied to beneficial use.
6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: _____

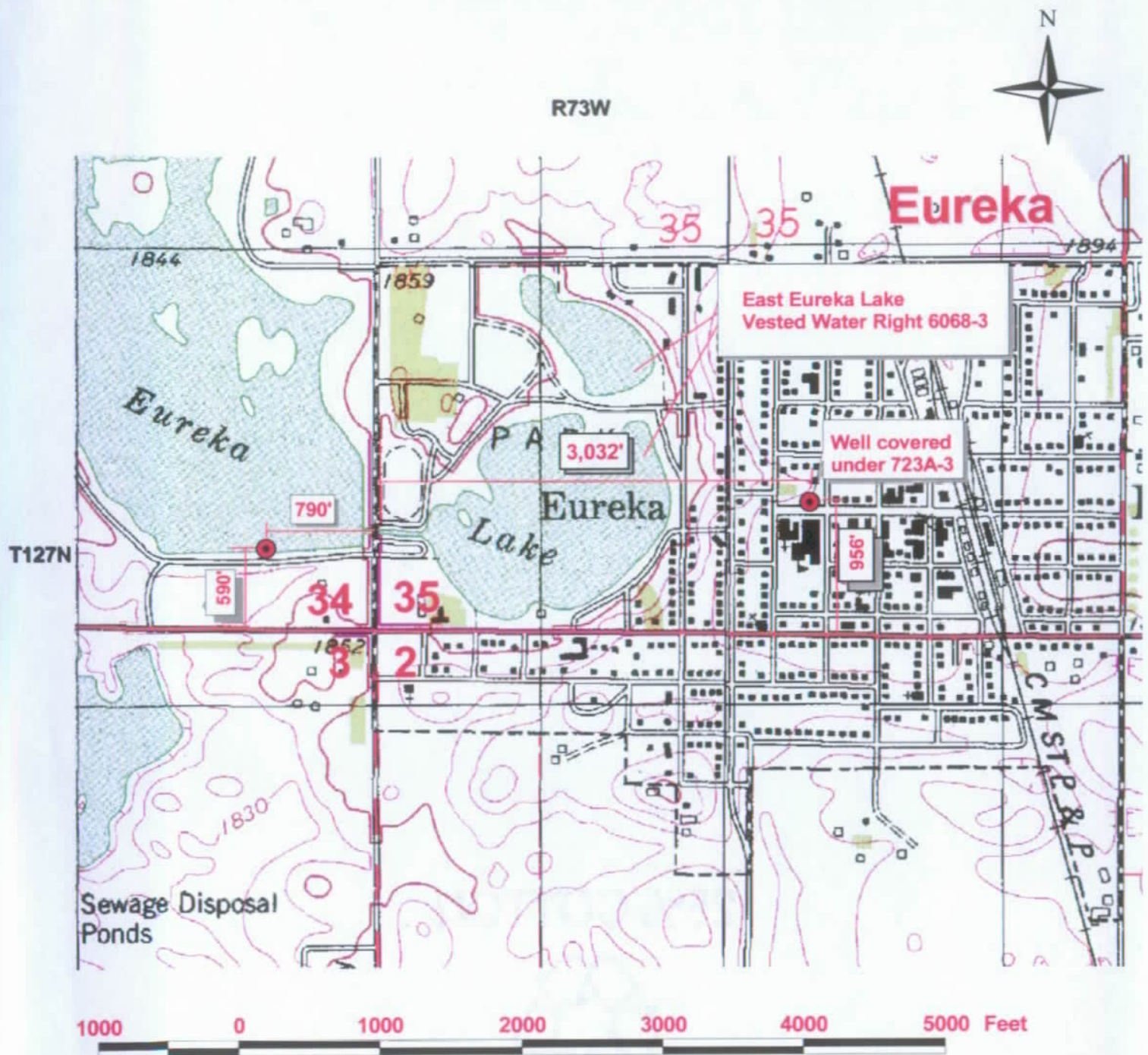
John Hatch
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

APR 26 1999

date



Water Right No. 6068-3



Lynn Beck

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

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

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)	
	No. <u>6068-3</u>	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: (check one)
☐ New ☒ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☐ Amendment/Correction to Permit No. _____

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

- Name of Applicant Town of Eureka 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)
- Amount of water claimed _____ *CFS or _____ **GPM 224 ***AF
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acres Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Surface runoff and flowing well.
- Location of point of diversion (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W) Storage in the SW 1/4 Section 35 T127N-R73W. The flowing well is located in block 13, SW 1/4 SE 1/4 Section 35-T127N-R73W.
 County McPherson
- County or counties where water will be used McPherson
- Annual period during which water is to be used Jan. 1 thru Dec. 31
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)
East Eureka Lake is a man-made lake within the city limits of the town of Eureka. The lake was created as a WPA project in 1933, by excavating an existing low spot. The artesian well that now flows into the lake will be covered under a separate application as it does not have vested status.

STATE OF SOUTH DAKOTA)
 County of McPherson) SS

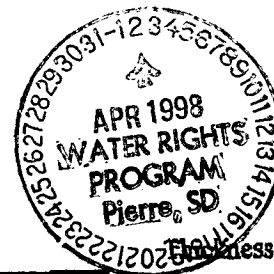
Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

I, Ervin Gebhardt, 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 30 day of March 1998
[Signature]
 Notary Public
 EXP-10-8-02

Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction

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

On applicants property _____ On property owned by others _____

2. Wastewater Disposal System Information

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

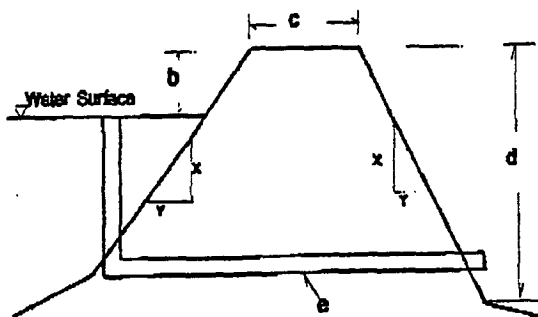
3. Dugout Information

- a) Surface Dimensions _____ 40 Surface Acres _____ Depth 14 Feet _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

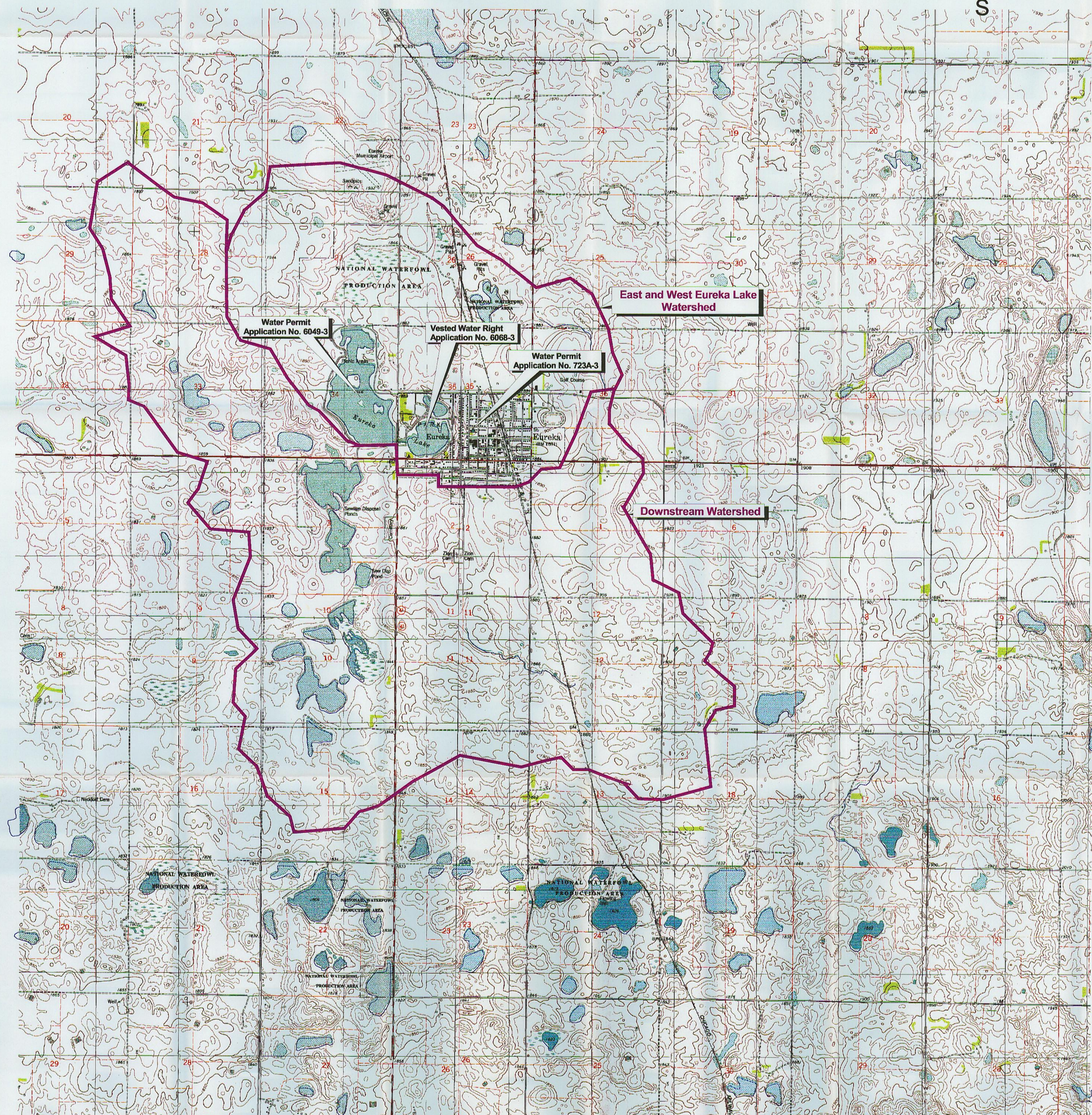
If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

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



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

6068-3



Affidavit of Water Use

Form 2B

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit is needed to document historical water use, primarily with vested right claims.

Affidavit Of Construction Of Water Use System And Application Of Water To Beneficial Use

Name of Applicant (Same as Form 2) City of Eureka

Mailing Address P.O. Box 655 Eureka, SD 57437
(Street, RR or Box) (City) (State) (Zip Code)

- A. Notice of Appropriation _____ Date of Posting _____
Date of Recording _____ Recording Date _____
- B. Date of start of construction of water supply system 1933
- C. Date that water was first applied to beneficial use 1933
- D. Name of owner of original water supply system City of Eureka
- E. Amount of water originally applied to beneficial use 40 Acres
- F. Present use of water - amount of water now being used recreational
Date that this water was first used 1933
- G. Chronological History of Water Use

Constructed in 1933 for recreational use and is currently used for recreation.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)
County of McPherson) SS

I, Ervin Gebhardt
(print or type)

the applicant, certify that I have read the foregoing and that the matters therein are true.

Signed Ervin H. Gebhardt

Subscribed and sworn to before me March 30, 1998

[Signature]
Notary Public Exp. 6-8-02

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein are true.

_____, 19____
(Print Name)

_____, 19____
(Print Name)

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

12 415721

Pierre, April 2, 19 98

RECEIVED OF City of Eureka, P.O. Box 6555 Eureka, SD 57437

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

Fee for Application for Permit No. 6068-3 to Appropriate Water, to construct and to put water to beneficial use	15	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	15 00

By
Chief Engineer

John Hatcher

REPORT ON VESTED WATER RIGHT CLAIM NO. 6068-3

The City of Eureka

April 6, 1998

Vested Water Right Claim No. 6068-3, filed by the City of Eureka, claims 224 acre feet of water stored in East Eureka Lake for recreational purposes. The claim has a 1933 priority date. The lake is a nonmeandered lake located in the SW $\frac{1}{4}$ Section 35-T127N-R73W in the city of Eureka, McPherson County.

History and Background

East Eureka Lake is a man-made lake located within Eureka's city limits. The lake was constructed as a Public Works Administration (WPA) project in 1933, by excavating an existing low spot. Prior to 1933 the area was used as a solid waste dump and as a discharge point for the City's wastewater sewer line. The existing low spot was cleaned up, solid waste was relocated and the sewer line was rerouted away from the lake. Rather than a typical impoundment type reservoir, the lake was excavated, the shoreline rip-rapped, and a park was developed around the perimeter.

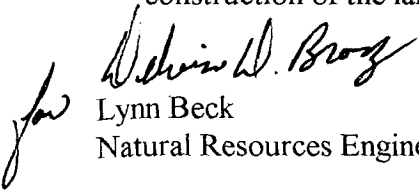
East Eureka Lake is a small lake with approximately 40 surface acres and a maximum depth of 14 feet. A narrow channel at the west end of East Eureka Lake connects the lake to West Eureka Lake. East Eureka Lake has a very small watershed. Sources of water for the lake include the municipal storm sewer outfall, a flowing artesian well, groundwater, and its connection to West Eureka Lake.

Review of Vested Water Right Claim No. 6068-3

Vested Water Right Claim No. 6068-3 is for an existing lake constructed in 1933. The lake is located in the SW $\frac{1}{4}$ Section 35-T127N-R73W within the City of Eureka. Documentation submitted by the applicant includes an affidavit stating the start of construction was in 1933. The claim is for 224 acre feet of water stored in Eureka Lake for recreational purposes.

Conclusions

1. Vested Water Right Claim No. 6068-3 claims storage of 224 acre feet of water in East Eureka Lake for recreational purposes.
2. Based on the Affidavit of Water Use and other supporting information concerning construction of the lake, a priority date of 1933 should be assigned to the claim.

 Lynn Beck
Natural Resources Engineer III

Approved by:


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

References

SD Department of Environment and Natural Resources. 1998. Water Rights Program files.

SD Department of Environment and Natural Resources. August, 1993. Lake Assessment Report East Eureka Lake McPherson County, South Dakota. Prepared by the Division of Water Resources Management.

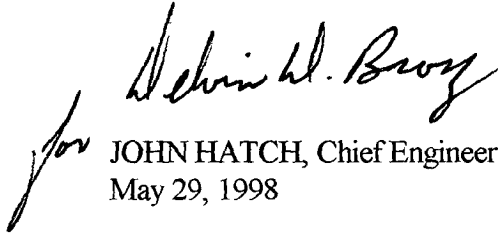
SD Department of Game, Fish, and Parks. Listing of Meandered Lakes. Prepared by Land Management Section, Edward M. Cassel, Chief.

**RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 6068-3, City of Eureka**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 6068-3, City of Eureka, c/o Ervin Gebhardt, Mayor, PO Box 655, Eureka, SD 57437-0655.

The Chief Engineer is recommending VALIDATION of Application No. 6068-3 for 224 acre feet of water because 1) water has been appropriated as described for recreational use with a priority date of January 1, 1933, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

See report on application for additional information.


for JOHN HATCH, Chief Engineer
May 29, 1998



**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.



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

Northwest Blade
Box 797
Eureka, SD 57437-0797

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application Nos. 723A-3, 6049-3 and Vested Water Right Application No. 6068-3 to Appropriate Water to be published twice. Please publish the first notice on June 10, 1998, with the second publication 7 days later.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is City of Eureka, %Mayor Ervin Gebhardt, P.O. Box 655, Eureka, SD 57437-0655 (Ph # (605) 284-2441).

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

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

Nos. 723A-3, 6049-3 & 6068-3

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

Date _____

We are in receipt of your letter of June 4, 1998, enclosing Notice of Hearing to Appropriate Water by Application Nos. 723A-3, 6049-3 & 6068-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

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

Samuel D. J. Lopez
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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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 SW $\frac{1}{4}$ 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 SE $\frac{1}{4}$ Section 34 and impounds water in the E $\frac{1}{2}$ and SW $\frac{1}{4}$ 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 been 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 SW $\frac{1}{4}$ 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 riprapped. 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 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 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, 46-6-30.2, 46-6-30.4, 46-6-31, 46-6-3, 46-6-3-1, 46-6-6.1, 46-6-20, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01.01 thru 74:02:01:15; 74:02:01: 19 thru 74:02:01:22. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

6-10-17-98

Permit No. 6068-3
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, March 26, 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. 6068-3, bearing the priority of January 1, 1933 authorizing the storage of 224 acre-feet of the waters of city storm sewer, a well authorized by Water Right 723A-3, ground water, and its connection to West Eureka Lake 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:

Well authorized by Water Right 723A-3 and Eureka Dam authorized by Water Right 6049-3.

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

City storm sewer and channel connecting West and East Eureka lakes.

C. Works used to apply water to beneficial use:

East Eureka Lake.

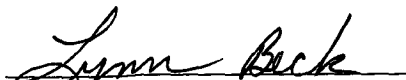
The system is in the following condition good. The point of diversion is located 3,032' E and 956' N of the SW corner of Section 35 and 790' W and 590' N of the SE corner of Section 34, all in T127N, R73W. The works are capable of storing 224 acre feet of water which is to be used for recreation. Water has been put to beneficial use to the maximum extent as follows:

SW $\frac{1}{4}$ Section 35, T127N, R73W

The license should be issued for 224 acre-feet of storage.

Applicable permit qualifications have been complied with: yes

Exceptions to compliance are: none


Lynn Beck

12-16-98
Date

Natural Resources Engineer
DENR, Water Rights Program

REPORT ON INSPECTION OF PERMIT NO. 6068-3

DATE OF INSPECTION: March 27, 1998

Other permit(s) associated with the project: 723A-3 and 6049-3

NAME & ADDRESS OF INSPECTION CONTACT: Ron Hemmingson

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: Eureka's Water Superintendent

NAME & ADDRESS OF PERMIT HOLDER: City of Eureka, P.O. Box 655, Eureka, SD 57437

DIVERSION POINT LEGAL LOCATION: SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35 (well under 723A-3) and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 34 (Eureka Dam).

WELL INFORMATION: The well is covered by Water Right 723A-3.

- 1) Well Drilling Firm: Russell Drilling
- 2) No. of Wells 1
- 3) Depth(s) 2100 feet
- 4) Well log is available yes

Casing:

- 1) Diameter 8 and 4 inches
- 2) Length 160 and 2004 feet
- 3) Type steel

Screen:

- 1) Type no screen
- 2) Length # feet
- 3) Static water level # feet

DAM INFORMATION: The dam is covered by Water Right 6049-3.

- 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



**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



**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 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

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

P. 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: 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 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.

Gebhardt and Gronlund Letter
6-30-98
Page Two

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.

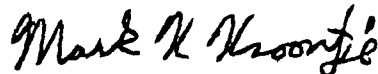
Gebhardt and Gronlund Letter
6-30-98
Page Three

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.

OBJECTION XI

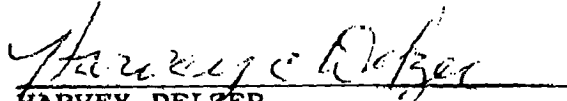
On page 7 of the Environmental Check List a finding that the project is in compliance with applicable law and regulations is questioned where a portion of the water to flow over the proposed spillway comes from an unrestricted flowing artesian well and the water is ultimately deposited on private ground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

COUNTY OF McPHERSON

:SS. RONDA L. GEFFRE

McPHERSON COUNTY CLERK OF DISTRICT JUDICIAL CIRCUIT

HARVEY DELZER and DUARD DELZER,
 Plaintiffs,

CIV. 96-15

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.

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

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

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

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

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.

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



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

MKK/sjk



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

1/16 LINE

WELL LOCATION

EUREKA LAKE

LOT 9A
.16 ACRES

R.O.W.

VACATED

LOT 9A—
.16 ACRES
R.D.W. _____

8

34	35
3	2

SECTION CORNER

LOT
A

LINE

L AVENUE

3

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6	5	4
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2022209876543

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LOT 1
A

LAGOONS



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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



**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