

WATER PERMIT NO. 6111-3

Name of Applicant: Blumengard Colony

Address: 35075 148th St, Wecota SD 57438

Phone: 605 324-3243

Amount of Water Claimed: 0.444 cfs (200 gpm)

Total Acres: NA

Source of Water Supply: groundwater (one existing well)

Water to be used for: commercial County: Faulk

Type of Waste Disposal System:

Location: 14 miles north of Faulkton

PRIORITY Date Received: 10-30-98

Fee: \$250.00

Corrected Application Received: 11-6-98

Period of Annual Use: Jan 1 – Dec 31

Remarks: Same well as authorized by Water Permit No. 5942-3

Diversion Point: SW ¼ NE 1/4

Sec 5-T120N-R69W

Land to be Irrigated: NA

Depth of Well: 230 feet

Well Driller: Huron Drilling, Inc.

Remarks:

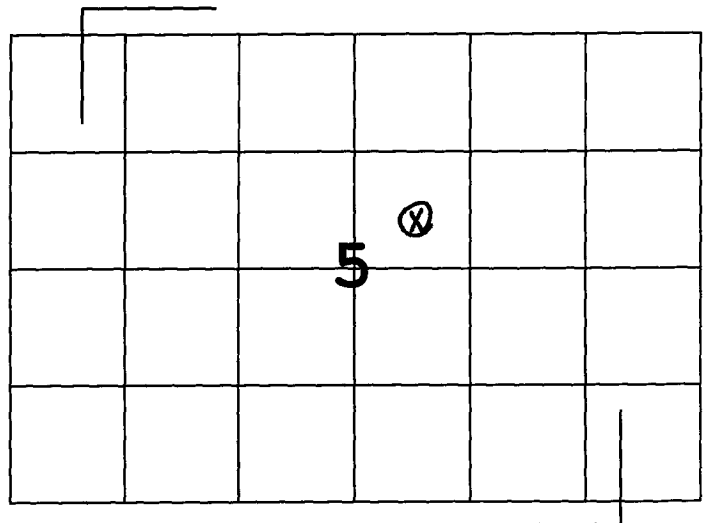
Type of Map: aerial

Prepared by: Jerry King, Faulk Co FSA

Reviewed and the Number Assigned on: 11-9-98

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



**SOUTH DAKOTA
WATER PERMIT NO. 6111-3**

Date of first receipt of application October 30, 1998.

Date of return to applicant for corrections, amendments or changes November 2, 1998.

Date of receipt of corrected application November 6, 1998.

The Water Management Board approved Water Permit Application No. 6111-3 on May 5, 1999 for Blumengard Colony, Paul Hofer, 35075 148th St, Wecota SD 57438 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 6111-3 appropriates 0.45 cubic feet of water per second (cfs) (200 gallons per minute) by increasing the diversion rate authorized by Water Permit No. 5942-3. Water Permit No. 5942-3 appropriates 0.22 cfs (100 gpm) from one well (Grand Aquifer) 230 feet deep located in the SW ¼ NE ¼ Section 5-T120N-R69W. This permit increases the water appropriation from the well from 0.22 cfs (100 gpm) to 0.67 cfs (300 gpm).
2. The water appropriated shall be used for the purpose of supplying water for commercial use in a hog confinement facility and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is October 30, 1998.
5. One-fifth of the construction is to be completed on or before November 5, 2001.
6. All construction is to be completed on or before May 5, 2004.
7. Water is to be put to beneficial use on or before May 5, 2008.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights
2. The well approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If this well is abandoned or the Permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.

(continued)

Water Permit No. 6111-3

Blumengard Colony

Page 2

3. Permit No. 6111-3 is subject to compliance with the existing and applicable Water Management Rules:

- a) Chapter 74:54:01 Ground Water Quality Standards,
- b) Chapter 74:54:02 Ground Water Discharge Permit,
- c) Chapter 74:51:01 Surface Water Quality Standards,
- d) Chapter 74:51:02 Uses Assigned to Lakes,
- e) Chapter 74:51:03 Uses Assigned to Streams, and
- f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

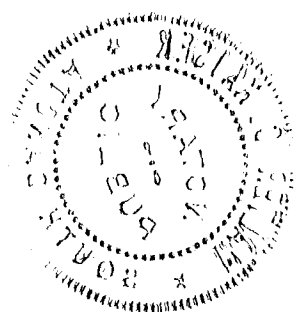
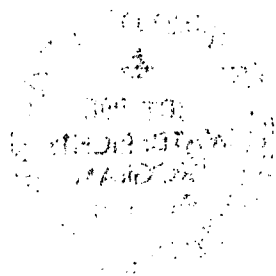
WATER MANAGEMENT BOARD

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

AUG 6 1999
date



Notary Public signature



Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction

- a) Drill Hole Diameter 12 1/4" Depth 300'
- b) Casing Type P.V.C. Diameter 8' Thickness .500
- c) Screen Type Stainless Diameter 4 Thickness 304 Stainless
- d) Gravel Pack 2" Length of Gravel Pack 60'
- e) Depth to Top of Water Bearing Material 230
- f) Depth to Water (ground surface to water level) Surface
- g) Distance to nearest existing domestic well:
- On applicants property X 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

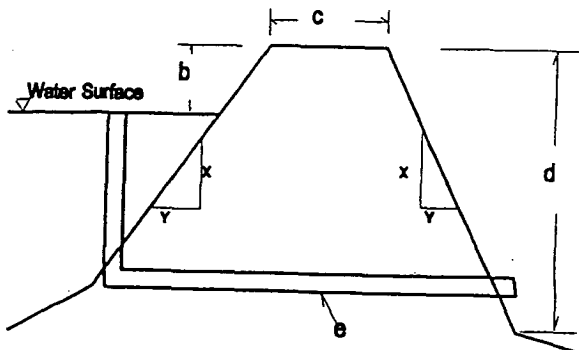
- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

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:

- 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



RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

NO 415912

Pierre, November 6, 19 98

RECEIVED OF Blumengard Hutterian Brethren, Inc., 33075 - 148th St., Faulkton, SD 57038-9302
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>6111-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	250	00
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>6111-3</u> _____	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	300 00

By _____
Chief Engineer

John Hatcher



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

November 2, 1998

Blumengard Colony
Paul Hofer
35075 148th St
Wecota SD 57438

Dear Mr. Hofer:

Thank you for submitting your Application for a Permit to Appropriate Water. In order to complete the application the following questions need to be answered.

Is the 200 gallons per minute (gpm) requested on this new application from the same well as authorized by Water Permit No. 5942-3 or does the colony plan to drill a new well?

Answer existing well 200gpm add'l for total of 300gpm

If this application is for an additional well, is the 200 gpm requested from the new well or a total from both wells?

Answer _____

If the well is an additional well, then we will need a map showing the location of the well in relation to a government section corner or quarter corner by direction and distance. The map must be signed by one of the following: Registered Land Surveyor, Registered Professional Engineer or by any other government employee who normally prepares maps as a part of his assigned duties (i.e. local NRCS office).

The application filing fee is based on the amount of water requested. After the above questions are answered, we can determine what the application filing fee will be.

Please answer these questions in the space provided and return in the enclosed postage paid envelope. If you have any questions, please contact Jim Goodman or me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosure

*talked w/ Paul Hofer
11/5/98*

*he requested an invoice
for appl fee. He also stated he knew
when they drilled the 2nd well they'd
need an add'l permit.*



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

* INVOICE *

Invoice No. 2020-8-11/05/98

Blumengard Colony
Paul Hofer
35075 148th St
Wecota SD 57438

Water Permit Application fee	\$250.00
Water License fee	50.00

PLEASE PAY THIS AMOUNT:	\$300.00
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Karen Schlaak
Water Rights Program
(605) 773-3352

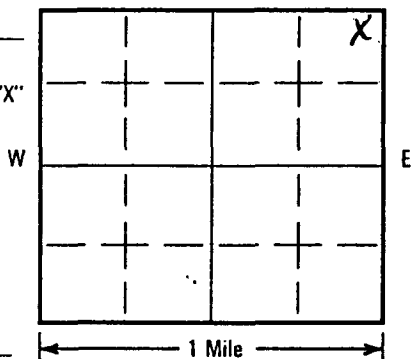
Div Exp # 2

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NE 1/4 NE 1/4 Sec 8 Twp 120 Rg 69
County Frank. North

Please mark well location with an "X"



Well Completion Date

8/15/98

Well Owner: Loren Seibschlaw
Business Name: Seibschlaw
Address: 14909 351 ave
weeta 50 57438

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Yellow clay</u>	<u>0</u>	<u>30</u>
<u>Blue clay</u>	<u>30</u>	<u>170</u>
<u>fine sand</u>	<u>170</u>	<u>240</u>

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? in pasture ft. from (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Rotary

CASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u> </u> LB/FT	<u>5</u> IN	<u>0</u> FT	<u>210</u> FT	<u>8 1/2</u> IN
<u> </u> LB/FT	<u> </u> IN	<u> </u> FT	<u> </u> FT	<u> </u> IN
<u> </u> LB/FT	<u> </u> IN	<u> </u> FT	<u> </u> FT	<u> </u> IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Cement</u>	<u>4</u>	<u> </u> lb./gal	<u>0</u> ft	<u>20</u> ft
<u>red clay</u>	<u>5</u>	<u> </u> lb./gal	<u>20</u> ft	<u>160</u> ft

Describe grouting procedure line to 160 ft.

SCREEN: ☐ Perforated pipe ☒ Manufactured

Diameter 5 IN Length 30 FEET

Material rub.

Slot Size 6/16 Set From 210 Feet to 240 Feet

Other information Gravel packed

WAS A PACKER OR SEAL USED? ☐ YES ☐ NO

If so, what material?

Describe packer(s) and location?

DISINFECTION: Was well disinfected upon completion?

☒ YES, How: Pellato

Laboratory sent to for water quality analysis

☐ NO, Why Not?

STATIC WATER LEVEL Ground level Feet

If flowing: closed in pressure PSI

GPM flow through inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced Flowrate GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe: 160 ft
☐ Bailed air compressor
☐ Other

Pumping Level Below Land Surface

 ft. After Hrs. pumped GPM

 ft. After Hrs. pumped GPM

If pump installed, pump rate

REMARKS

This well was drilled under license # 440

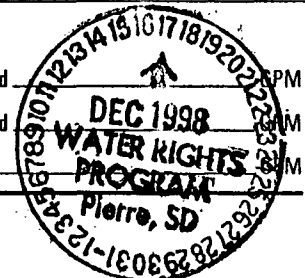
And this report is true and accurate.

Drilling firm Bullman well drilling

Signature of License Representative: B. S. Kuhl

Signature of Well Owner or Equitable Property Holder:

Date:

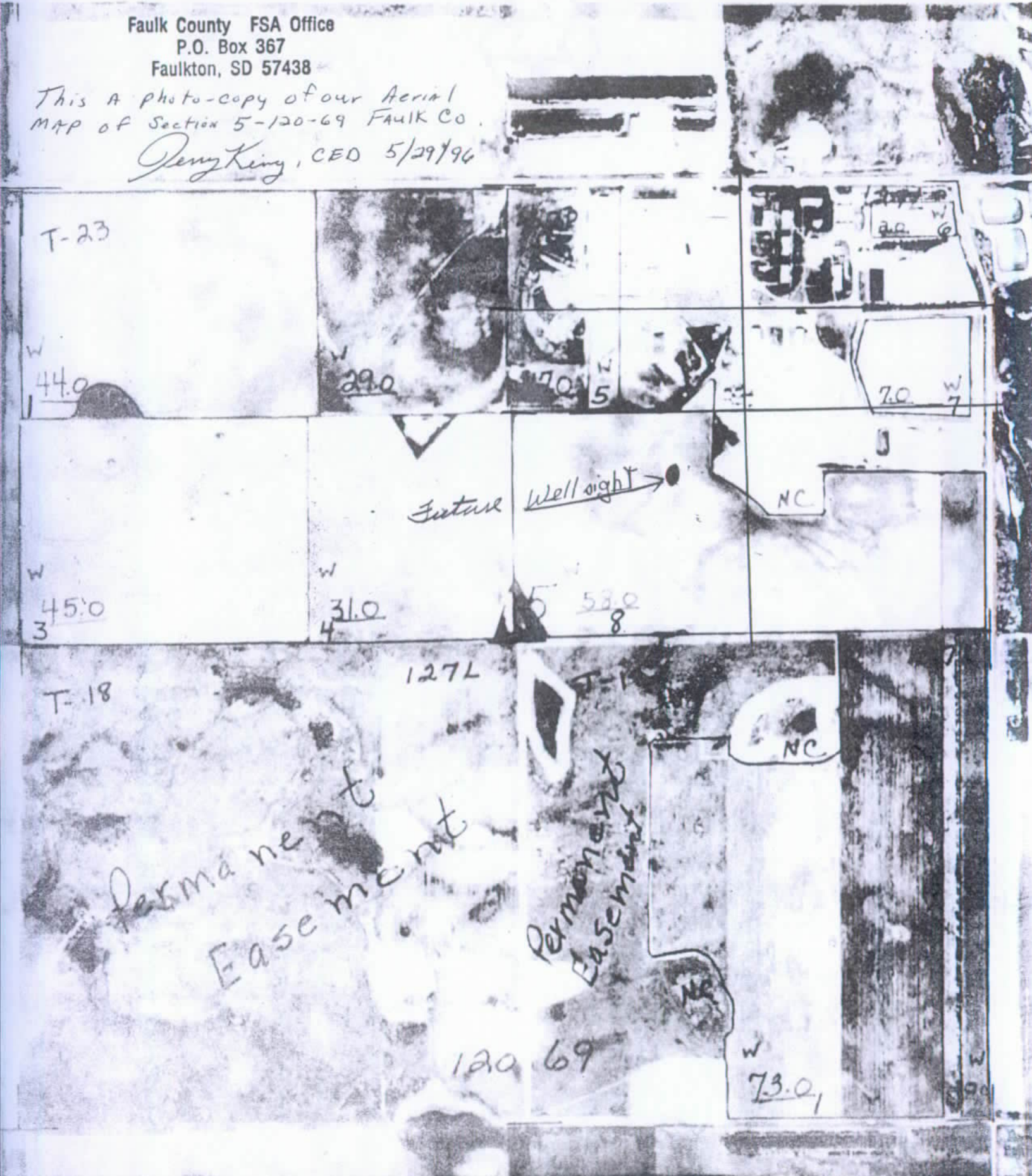


MAP NOT TO SCALE
THIS IS NOT AN OFFICIAL WETLAND MAP.

Faulk County FSA Office
P.O. Box 367
Faulkton, SD 57438

This A photo-copy of our Aerial
MAP of Section 5-120-69 FAULK CO.

Denny King, CED 5/29/96



REPORT ON WATER PERMIT APPLICATION NO. 6111-3
for Blumengard Colony
January 4, 1999

Application No. 6111-3 proposes to appropriate 0.45 cfs (200 gpm) by increasing the diversions rate authorized by Water Permit No. 5942-3. Water Permit No. 5942-3 appropriates 0.22 cfs (100 gpm) from one well approximately 230 feet deep located in the SW 1/4 NE 1/4 of Section 5, T120N-R69W in Faulk County. This permit will increase the water appropriation from the well from 0.22 cfs to 0.67 cfs (300 gpm). The water is for commercial use in a hog confinement facility.

AQUIFER - GRAND (G)

The Grand aquifer is a buried outwash (sand and gravel) which is under confined or artesian conditions at this site. The Grand aquifer underlies 74,200 acres and contains an estimated 556,000 acre feet of recoverable water in storage in Faulk County (Hedges, 1982). The aquifer is very large extending into Edmunds, Mcpherson and Campbell Counties to the north and west and blends into the Tulare aquifer to the south and east in Hand and Spink Counties. The direction of ground water movement is from west to east in the area of this application (Hamilton, 1982).

The driller's completion report supplied with the application indicates the top of the aquifer (sand and gravel) was encountered at a depth of 200 feet and continued to a depth of 230 feet below land surface. The well was free flowing at the land surface and when pumped at a rate of 100 gpm had a pumping level of 20 feet below land surface.

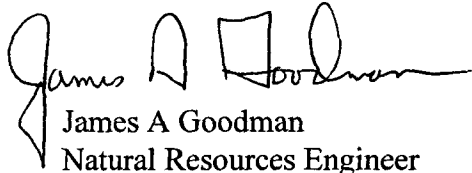
The Water Rights Program does monitor an observation well FA-80A completed into the Grand aquifer and located about two miles east of this application. Water levels for the observation well are considerably lower than the water level at the site of the application. The difference in water levels is about 150 feet in a distance of only two miles. While this is certainly possible it cannot be easily explained. A hydrograph for observation well FA-80A is included with this report (Water Rights, 1999).

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are no other existing water permits/rights except for the existing water permit No. 5942-3 for water from the Grand aquifer in this area. There are domestic wells in the area which obtain water from the Grand aquifer. Additional drawdown will be created by pumping this well at a greater rate. One complaint (Jack Jones) has been received concerning diversions from the existing well for a domestic well located about one-half mile south of this application. The gist of the problem was pumping had created drawdown which had lowered the water level enough in the domestic well to stop the well from free flowing. It will be necessary to install a pump to maintain the supply of water needed.

CONCLUSIONS

1. Water is available from the Grand aquifer.
2. The aquifer is confined and under artesian conditions at this site. Additional drawdown will be created by pumping this existing well at a greater rate.
3. A complaint was filed in September of 1998 by Jack Jones concerning a domestic well. The domestic well had ceased to free flow at the land surface and this was attributed to the Colony pumping. An investigation of the complaint was conducted on September 17, 1998. The investigation determined that the Colony was probably pumping at a greater rate than their permit allowed and that pumping was probably affecting the water levels sufficiently to cause the domestic well to cease to flow. The Colony applied for additional water with this application and the domestic well owner was told it would be necessary to pump the well.
4. The existing well for this application has been constructed in accordance with SD Well Construction Standards.
5. Plans and specifications for the animal waste management system have been approved by the department.



James A Goodman
Natural Resources Engineer

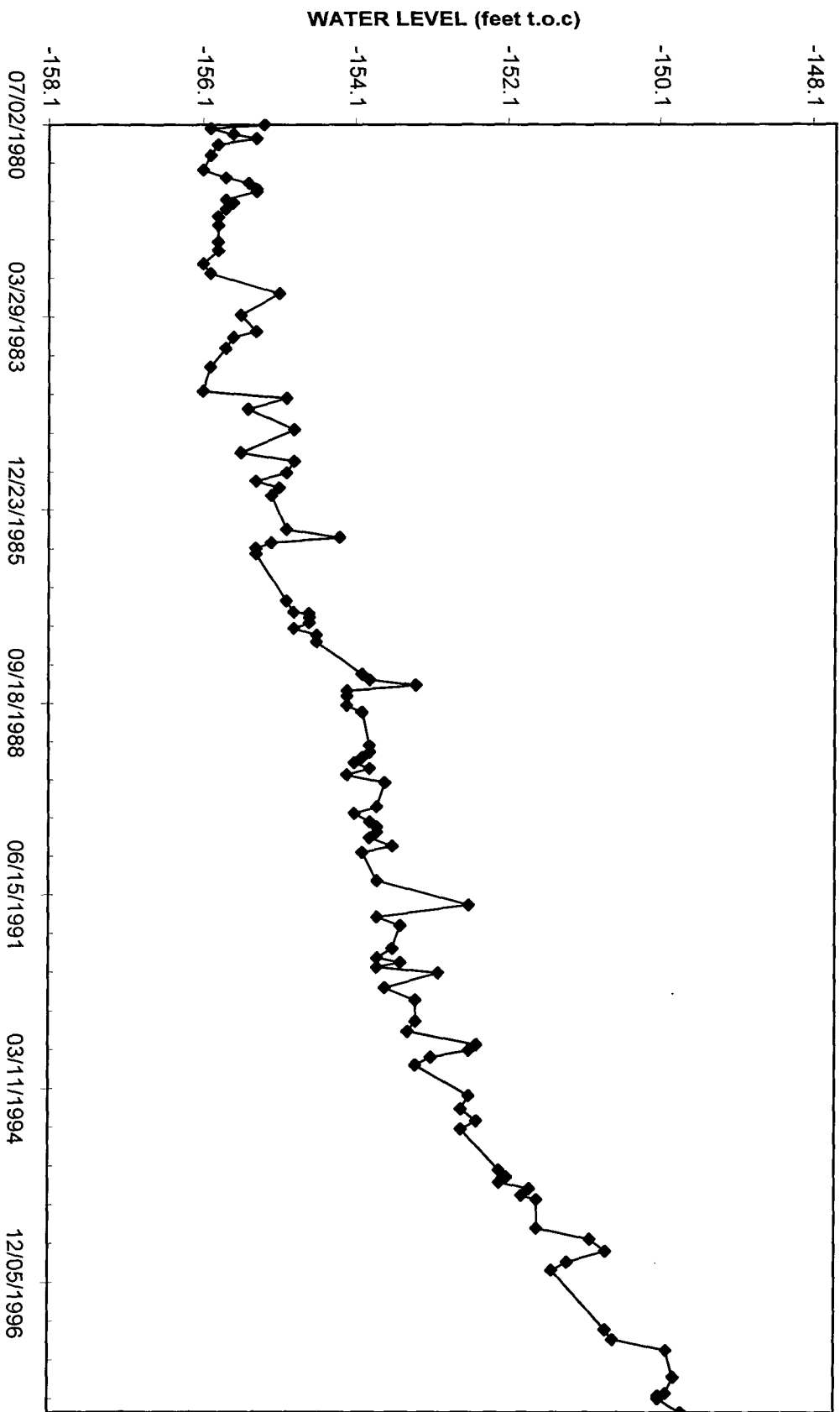
BIBLIOGRAPHY

Hamilton, L.J., 1982, Geology and Water Resources of McPherson, Edmunds, and Faulk Counties, South Dakota, Bulletin 26, SDGS, Vermillion, SD, 57069.

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

Water Rights, 1999, Unpublished Observation Well Data for the Grand Aquifer, SD DENR, Division of Environmental Services, Pierre, SD, 57501.

WATER RIGHTS' OBSERVATION WELL
FA-80A



**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6111-3, Blumengard Colony**

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. 6111-3, Blumengard Colony, c/o Paul Hofer, 35075 148 Street, Wecota SD 57438.

The Chief Engineer is recommending APPROVAL of Application No. 6111-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights
2. The well approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If this well is abandoned or the Permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
3. Permit No. 6111-3 is subject to compliance with the existing and applicable Water Management Rules:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

See report on application for additional information.



JOHN HATCH, Chief Engineer
January 20, 1999



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 25, 1999

Jack Jones
PO Box 143
Faulkton SD 57438

Dear Mr. Jones:

I am enclosing a copy of a notice of hearing for Water Right Permit Application No. 6111-3 filed by Blumengard Colony. This application proposes to increase the diversion rate from their well. Also, enclosed is a copy of the staff report prepared by Jim Goodman. This information is being sent to you based on your past concerns regarding the colony's water use.

The notice of hearing is scheduled to be published February 3 and 10, 1999 in the Faulk Co. Record. The Water Management Board will consider the application at their March 3rd meeting in Pierre. If you want to participate in the hearing before the Board you will need to file a petition by February 22, 1999.

If you have any questions, please feel free to contact Jim Goodman or myself 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

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

January 25, 1999

Blumengard Colony
%Paul Hofer
35075 148th St.
Wecota, SD 57438

Dear Mr. Hofer:

Water Permit Application No. 6111-3 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Faulk Co. Record printed at Faulkton, SD (Ph # (605) 598-6525). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. 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 application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

Faulk Co. Record
Box 68
Faulkton, SD 57438-0068

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. 6111-3 to Appropriate Water to be published twice. Please publish the first notice on February 3, 1999, 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 Blumengard Colony, %Paul Hofer, 35075 148th St., Wecota, SD 57438 (Ph # (605) 324-3243).

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

-----CU T HERE-----

No. 6111-3

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

Date _____

We are in receipt of your letter of January 25, 1999, enclosing Notice of Hearing to Appropriate Water by Application No. 6111-3 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 February 3, 1999, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 6111-3 to Appropriate Water

Notice is given that Blumengard Colony, c/o Paul Hofer, 35075 148 St, Wecota SD 57438 has filed an application for a water permit to appropriate 0.45 cubic feet of water per second (cfs) (200 gallons per minute) by increasing the diversion rate authorized by Water Permit No. 5942-3. Water Permit No. 5942-3 appropriates 0.22 cfs (100 gpm) from one well (Grand Aquifer) 230 feet deep located in the SW ¼ NE ¼ Section 5-T120N-R69W. This permit will increase the water appropriation from the well from 0.22 cfs (100 gpm) to 0.67 cfs (300 gpm). The water is for commercial use in a hog confinement facility.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6111-3 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.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 22, 1999. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 a.m., March 3, 1999, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The March 3, 1999, 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 application. The request for an automatic delay must be filed by February 22, 1999.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by February 22, 1999, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

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



OK

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Faulk) SS

I, James B. Moritz

certify that the attached printed Notice was taken

from the Faulk County
Record

printed and published in Faulkton

County of Faulk and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

Wednesday, Feb. 3, '99
Wednesday, Feb. 10, '99

Cost of Printing

\$ 57.20

James B. Moritz
(Signature)

Editor/Publisher
(Title)

2-10-99
(Date Signed)

No. 25, Feb. 3 & 10, 1999

Notice

Of Application No. 6111-3 to
Appropriate Water

Notice is given that Blumengard Colony, c/o Paul Hofer, 35075 148 St., Wecota SD 57438 has filed an application for a water permit to appropriate 0.45 cubic feet of water per second (cfs) (200 gallons per minute) by increasing the diversion rate authorized by Water Permit No. 5942-3. Water Permit No. 5942-3 appropriates 0.22 cfs (100 gpm) from one well (Grand Aquifer) 230 feet deep located in the SW 1/4 NE 1/4 Section 5-T120N-R69W. This permit will increase the water appropriation from the well from 0.22 cfs (100 gpm) to 0.67 cfs (300 gpm). The water is for commercial use in a hog confinement facility.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6111-3 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.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 22, 1999. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 10:00 a.m., March 3, 1999, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts pre-

sented at the public hearing. The March 3, 1999, 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 application. The request for an automatic delay must be filed by February 22, 1999.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by

February 22, 1999, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 3, 1999

Evangeline Seidschlaw
Box 307
Faulkton SD 57438

Dear Ms. Seidschlaw:

The Governor's Office asked that I send you a copy of the notice of hearing, report and recommendation on a water right permit application for Blumengard Colony. This application proposes to appropriate additional water from the colony's well.

A hearing on this application is scheduled before the Water Management Board on March 3, 1999 in Pierre. If you want to participate in the hearing and voice your objections, a letter of opposition must be filed by February 22, 1999, as set forth in the enclosed notice of hearing. This notice of hearing is also being published February 3rd and 10th in the Faulk Co. Record.

Please feel free to contact me if you have any question on how to file a petition of opposition or the hearing process.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 4, 1999

Paul Hofer
Blumengard Colony
35075 148th Street
Wecota SD 57438

Dear Mr. Hofer:

Enclosed is a petition to Blumengard Colony's Water Permit Application No. 6111-3 filed by the Seidschlaw Family Living Trust and Jack Jones.

The hearing on the Colony's water permit application is scheduled for March 3, 1999 at 10:00 AM in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD.

Please feel free to contact Jim Goodman or myself at (605) 773-3352 if you have any questions on the hearing process.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 9, 1999

Paul Hofer
Blumengard Colony
35075 148th Street
Wecota SD 57438

Dear Mr. Hofer:

Enclosed is another petition filed in response to Blumengard Colony's water right permit application.

Please feel free to contact Jim Goodman or myself at (605) 773-3352 if you have any questions on the hearing process.

Sincerely,

A handwritten signature in cursive script, reading "Eric Gronlund".

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure

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

February 12, 1999

Jeffrey T. Sveen
Attorney at Law
P.O. Box 490
Aberdeen, SD 57402-0490

Re: Blumengard Colony

Dear Mr. Sveen:

Consistent with our previous conversation, I am enclosing a copy of the Report and Recommendation on the Water Permit Application for Blumengard Colony, along with the Petitions to Intervene. At the present time, this matter is still scheduled for hearing for March 3, 1999. If additional petitions are filed, I will forward them to you. The time for intervention expires on February 22. Further, please note that the provisions of SDCL 46-2A-4 allow for automatic delay upon the request of intervenor.

Sincerely,


Diane Best
Assistant Attorney General

DB:sk
Encs.
cc: Eric Gronlund

s-ltr55.db

HOLSING FARMS



Gene Holsing, President

Kurt Holt, Manager

Angus Cattle Since 1929

I am writing this letter to let you know that the Water Right Permit No. 6111-3 will affect our cattle operation.

We currently have 4 wells on this same aquifer.

We have a substantial cattle herd both cows and yearlings and use of this water is essential to keep us in business.

In the event of a dry year these wells in some pastures are the only source of water.

We are concerned that if this permit is granted it could cause serious problems for our operation.

We realize water is for everyone to share but our concern is that this is excessive.

We want you to realize that other lives and operations are affected by your decision.

Thank you,

Kurt Holt

Gene Holsing

Kurt Holt

Gene Holsing

Opponent's
EX A
3-3-99



PETITION TO CONTEST

The Petitioners, Dave Olen and Don Olen are interested in Application No. 6111-3 because they rent land from Mary Olen, on which a well is located, that will be affected if Application No. 6111-3 is approved. Petitioners contest Application No. 6111-3 and the Recommendation of the Chief Engineer, John Hatch for the following reasons:

L.

Petitioners rights will be unlawfully impaired by the approval of Application No. 6111-3. There is one domestic well located on land rented by Petitioners that is described as the Southeast Quarter (SE ¼) of Section One (1), Township One Hundred Twenty (120) in Range Seventy (70), Faulk County, South Dakota. Until Blumengard Colony received a permit to pump 100 gpm from the same well it is now applying for a permit to increase the water appropriation to 300 gpm, the well has always flowed. Since Blumengard Colony received a permit to pump 100 gpm from its well, Petitioners' well, which had been used to water livestock, has completely stopped flowing. Petitioners have now resorted to strictly relying on a dugout filled with water with the hope that the weather cooperates and rain continues to fill it. If the Colony is issued a permit to increase the water appropriation to 300 gpm, Petitioners will have to rely on the cooperation of the weather to fill the dugout or will have to expend money to install an expensive pump in the existing well, with no scientific assurance, but merely a probability, that unappropriated water will remain available for its use.

II.

The approval of Application No. 6111-3 is not in the public's interest for the above-mentioned reasons.

Dated February 3, 1999.


Dave Olen
14890 348th Ave.
Wecota, South Dakota 57438


Dan Olen
15266 349th Ave.
Wecota, South Dakota 57438

PETITION TO CONTEST

The Petitioners, trustees of the Seidschlaw Family Living Trust, and Jack Jones, husband of one of the trustees, are interested in Application No. 6111-3 because the Trust owns wells which will be affected if Application No. 6111-3 is approved. Petitioners contest Application No. 6111-3 and the Recommendation of the Chief Engineer, John Hatch for the following reasons:

I.

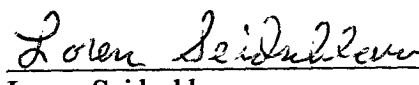
Petitioners' rights will be unlawfully impaired by the approval of Application No. 6111-3. There are two domestic wells located on land owned by the Seidschlaw Family Living Trust. One domestic well is located in the Northeast Quarter (NE¼) of Section Eight (8) and one domestic well is located in the Southwest (SW¼) of Section Five (5), both in Township One Hundred Twenty (120) in Range Sixty-Nine (69), in Faulk County, South Dakota. Until Blumengard Colony received a permit to pump 100 gpm from the same well it is now applying for a permit to increase the water appropriation to 300 gpm, both wells were free flowing. One of the wells located on the Trust's land is used to supply water to the farmstead for drinking and other household purposes and to water livestock. The Trust was forced to install a very expensive pump in this well in order to receive water after the Colony started to pump 100 gpm from its well. If the Colony is issued a permit to increase the water appropriation to 300 gpm, the Trust will be forced to expend even more money to dig the well deeper, with no scientific assurance, but merely a probability, that unappropriated water will remain available for its use.

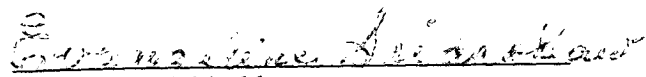
II.

The approval of Application No. 6111-3 is not in the public's interest for the above-mentioned reasons.

Dated February 2, 1999.


Sharon Jones
Trustee of Seidschlaw Family Living Trust
P.O. Box 143
Faulkton, South Dakota 57438


Loren Seidschlaw
Trustee of Seidschlaw Family Living Trust
14909 351st Ave.
Faulkton, South Dakota 57438


Evangeline Seidschlaw
Trustee of Seidschlaw Family Living Trust
P.O. Box 307
Faulkton, South Dakota 57438


Jack Jones
Husband of Sharon Jones
P.O. Box 143
Faulkton, South Dakota 57438



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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 5, 1999

NOTICE

TO: Blumengard Colony
Paul Hofer
35075 148th Street
Wecota SD 57438
and Parties of Record (see attached list)

Jeffrey T. Sveen
Attorney at Law
P. O. Box 490
Aberdeen SD 57402-0490

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

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

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision to approve Water Permit Application No. 6111-3. The Board will consider the proposed Findings, Conclusions and Final Decision at 8:45 AM on May 5, 1999, in the Conference Room, Floyd Matthew Training Center, 523 E. Capitol Ave., Pierre, SD 57501.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Parties of Record (parties list enclosed) by April 15, 1999. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) and all Parties of Record by April 26, 1999.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on May 5, 1999. The public hearing was completed March 3, 1999. No additional testimony will be received on May 5, 1999.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

Enclosure

PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 6111-3, Blumengard Colony

APPLICANT

Blumengard Colony
Paul Hofer
35075 148th Street
Wecota SD 57438

represented by:

Jeffrey T. Sveen
P. O. Box 490
Aberdeen SD 57402-0490

PETITIONERS

Sharon and Jack Jones
P.O. Box 143
Faulkton SD 57438

Loren Seidschlaw
14909 351st Avenue
Faulkton SD 57438

Evangeline Seidschlaw
P.O. Box 307
Faulkton SD 57438

David Olen
14890 348th Avenue
Wecota SD 57438

Don Olen
15266 349th Avenue
Wecota SD 57438

WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink, Chairman
1214 South Wells Street
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Joel Rickenbach
Box 97
Oelrichs, SD 57763-0097

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resource Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources

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

STAFF ATTORNEY

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resource Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on March 5, 1999, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 5, 1999, along with a copy of the Parties of Record List, and a copy of a list which contains the names and addresses of the board members, board attorney and staff attorney, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision, addressed as stated below, and on the attached Parties of Record list:

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

John Guhin, Deputy Attorney General, Capitol Building.

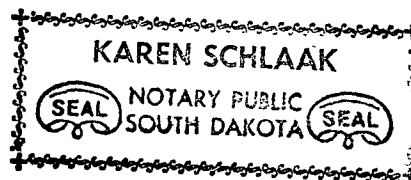
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of March, 1999


Notary Public



KAREN SCHLAAK, Notary Public
My Commission Expires
April 1, 2001

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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



MARK BARNETT
ATTORNEY GENERAL

LAWRENCE LONG
CHIEF DEPUTY ATTORNEY GENERAL

April 8, 1999

MEMORANDUM

TO: Members of the Water Management Board and Interested Parties

FROM: John P. Guhin, Deputy Attorney General *John Guhin*

RE: Proposed Findings of Fact, Conclusions of Law, and Final Decision in Water Permit Application No. 6111-3, Blumengard Colony

Pursuant to the direction of the Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter.

JPG:nan
Enclosure

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION NO. 6111-3,))
BLUMENGARD COLONY)
)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate .45 cfs or 200 gallons per minute by increasing the diversion rate authorized by existing Water Permit No. 5942-3 from .22 cfs to .67 cfs for a total of 300 gpm.

2. The water is intended for commercial use in a hog confinement facility in Faulk County. The intended source of water is the Grand Aquifer, which is a buried outwash of sand and gravel under confined or artesian conditions at the site. The Grand Aquifer underlies about 74,200 acres and contains an estimated 556,000 acre-feet of recoverable water into storage in Faulk County.

3. The Grand Aquifer extends into Edmunds, McPherson, and Campbell Counties to the north and west; it blends into the Tulare aquifer in the south and east in Hand and Spink Counties.

4. The evidence indicates that the Aquifer is encountered at the well location at a depth of about 200 feet and continues to a depth of 230 feet below the land surface. The well driller's report indicates that water was free flowing at the land surface prior to pumping. When the well was pumped at a rate of 100 gallons per minute, the pumping level dropped to 200 feet below the land surface.

5. Only a single observation well is available close to this location. FA-80A is completed into the Grand Aquifer about two miles east of the application. Water levels for this observation well are approximately 150 feet lower than at the well for which the permit at issue is requested; logs of the observation well show a gradually rising level of water.

6. The difference in water levels of 150 feet in wells which are only two miles apart is not easily explainable. Nonetheless, the Board credits the evidence of the State's hydrologist that it is within the realm of possibility. No evidence appears to discredit any of the readings in this case.

7. Water Permit No. 5942-3, the permit now held by Blumengard Colony, is the only existing permitted water right in the area. That water right was granted for 100 gallons per minute. According to the testimony, the holders of the water right misinterpreted its terms and pumped at a maximum rate of approximately 200 gallons per minute. The holders of the water right explained their actions by their belief that the 100-gallon per minute allowed them was an average and was not a maximum.

8. The Board finds that the holders of the water permit made a legal error in so concluding, but the Board finds that this error, without more, should not affect whether the present permit is granted.

9. As a result of the pumping by the permit holders, drawdowns were caused in nearby domestic wells. The Trust has three wells within one-half mile to one and one-half miles of the well as to which the additional diversion is sought. In the past

year, two free-flowing wells on the trust property quit flowing. The Trust, therefore, installed a submersible pump, a supply tank, and automatic waterers at a cost of \$5,100 to ensure domestic water from one of the wells. The depth of the well which has been rehabilitated is 230 feet and the pump is at 100 feet. The representative of the trust testified that there have been no problems with the pump at the 100-foot level.

10. The representative of the Trust also directly addressed a second domestic well which had quit flowing. The Trust representative testified that the cost of rehabilitating the second well would be greater than the first well because the second well was located in a pasture where there was no electricity.

11. Testimony from the State's hydrologist demonstrated, to the satisfaction of the Board, that if the Trust places the pumps of its domestic wells twenty feet into the aquifer, or approximately 220 feet below ground level, that there would be water available to them. This evidence is credible given the great amount of water available in the aquifer and the fact that the water level in the well is over 100 feet above the tope of the Aquifer even with pumping.

12. The Board also finds that it is uncertain as to whether, if the permit at issue is granted, the Trust will be forced to lower its pump further than the 100 feet below ground surface that it presently is. The Board finds that, in such a case, there would be additional expenses to the Trust.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over this matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use. The amount of water in the Grand Aquifer can easily supply the needs of the applicant and the opponents of the permit.
3. The proposed diversion can be developed without unlawful impairment of existing rights. The Board in this respect concludes that the fact that the Trust may have to further lower the level of its pumps and thereby increase its expense does not unlawfully impair any existing right of the Trust.
4. The proposed commercial use in a hog confinement facility is a beneficial use as a matter of state law.
5. The proposed use is in the public interest. The Board in this regard has carefully weighed the interest of the Trust in maintaining head pressure within the Grand Aquifer against the interest of the Applicant in using water for a hog confinement facility. The Board concludes that it is in the public interest to allow the application. If the Board would conclude otherwise, the Board would effectively freeze water use in the area to protect head pressure and, therefore, would effectively end any further economic development dependent upon water in the area. The Board finds that such an action would be contrary to the public interest.
6. The Board further concludes that the public interest is aided by the qualifications adopted in the Final Decision.

FINAL DECISION

The application for Water Permit Application No. 6111-3 is granted with the following qualifications:

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

2. The well approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If this well is abandoned or the Permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.

3. Permit No. 6111-3 is subject to compliance with the existing and applicable Water Management Rules:

- a. Chapter 74:54:01 Ground Water Quality Standards;
- b. Chapter 74:54:02 Ground Water Discharge Permit;
- c. Chapter 74:51:01 Surface Water Quality Standards;
- d. Chapter 74:51:02 Uses Assigned to Lakes;
- e. Chapter 74:51:03 Uses Assigned to Streams;
and

f. Chapter 74:52:01 through 74:52:11 Surface
Water Discharge Provisions.

Dated this _____ day of April, 1999.

BY THE BOARD:

p1d406.jpg(nan)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of proposed Findings of Fact, Conclusions of Law, and Final Decision in In the Matter of Water Permit Application No. 6111-3, Blumengard Colony, was served by United States mail, first class, postage prepaid upon:

Francis E. Brink, Chairman
1214 South Wells Street
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Joel Rickenbach
Box 97
Oelrichs, SD 57763-0097

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Jeffrey T. Sveen
P.O. Box 490
Aberdeen, SD 57402-0490

Sharon and Jack Jones
P.O. Box 143
Faulkton, SD 57438-0143

Loren Seidschlaw
14909 351st Avenue
Faulkton, SD 57438

Evangeline Seidschlaw
P.O. Box 307
Faulkton, SD 57438-0307

David Olen
14890 348th Avenue
Wecota, SD 57438

Don Olen
15266 349th Avenue
Wecota, SD 57438

Blumengard Colony
Paul Hofer
35075 148th Street
Wecota, SD 57438

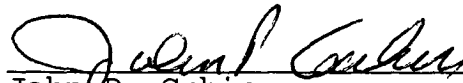
by interoffice mail upon:

John Hatch, Chief Engineer
Department of Environment
and Natural Resources
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181

and by hand delivery upon:

Diane Best
Assistant Attorney General
State Capitol Building
500 E. Capitol Avenue
Pierre, SD 57501-5070

on this 8th day of April, 1999.



John P. Guhin
Deputy Attorney General
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

pld406.jpg(nan)

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR RESPONSE TO
PERMIT APPLICATION NO. 6111-3,	)	PROPOSED FINDINGS OF
BLUMENGARD COLONY	)	FACT, CONCLUSIONS OF LAW
	)	AND FINAL DECISION

In response to the proposed Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter, the DENR makes the following proposals:

1. On page 1, Finding of Fact No. 4 (last sentence) discusses a drop in pumping level. Based upon testimony at hearing, the pumping level dropped to twenty feet below the land surface, rather than the number given. Accordingly, the DENR requests that this Finding of Fact be revised.

2. Finding of Fact No. 11 (last sentence) contains a typographical error. The word "tope" should be replaced with the word "top."

Dated this 15th day of April, 1999.

Respectfully submitted,

MARK BARNETT
ATTORNEY GENERAL



Diane Best
Assistant Attorney General
Office of Attorney General
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of DENR Response to Proposed Findings of Fact, Conclusions of Law, and Final Decision in In the Matter of Water Permit Application No. 6111-3, Blumengard Colony, were served by United States mail, first class, postage prepaid upon:

Francis E. Brink, Chairman
1214 South Wells Street
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Joel Rickenbach
Box 97
Oelrichs, SD 57763-0097

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Dwayne A. Rollag
320 Lincoln Lane South
Brookings, SD 57006-2741

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Jeffrey T. Sveen
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Aberdeen, SD 57402-0490

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Faulkton, SD 57438-0307

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15266 349th Avenue
Wecota, SD 57438

Blumengard Colony
Paul Hofer
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Wecota, SD 57438

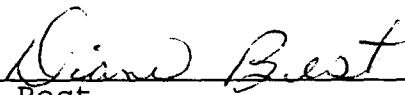
by interoffice mail upon:

John Hatch, Chief Engineer
Department of Environment
and Natural Resources
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181

and by hand delivery upon:

John P. Guhin
Deputy Attorney General
State Capitol Building
500 E. Capitol Avenue
Pierre, SD 57501-5070

on this _____ day of April, 1999.



Diane Best
Assistant Attorney General
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 14, 1999

NOTICE

TO: Blumengard Colony
Paul Hofer
35075 148th Street
Wecota SD 57438
and Parties of Record (see attached list)

Jeffrey T. Sveen
Attorney at Law
P. O. Box 490
Aberdeen SD 57402-0490

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

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

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted May 5, 1999, by the Water Management Board for Water Permit Application No. 6111-3, Blumengard Colony. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

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

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

Enclosure

PARTIES OF RECORD

WATER PERMIT APPLICATION NO. 6111-3, Blumengard Colony

APPLICANT

Blumengard Colony
Paul Hofer
35075 148th Street
Wecota SD 57438

represented by:

Jeffrey T. Sveen
P. O. Box 490
Aberdeen SD 57402-0490

PETITIONERS

Sharon and Jack Jones
P.O. Box 143
Faulkton SD 57438

Loren Seidschlaw
14909 351st Avenue
Faulkton SD 57438

Evangeline Seidschlaw
P.O. Box 307
Faulkton SD 57438

David Olen
14890 348th Avenue
Wecota SD 57438

Don Olen
15266 349th Avenue
Wecota SD 57438

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION NO. 6111-3,))
BLUMENGARD COLONY))
)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate .45 cfs or 200 gallons per minute by increasing the diversion rate authorized by existing Water Permit No. 5942-3 from .22 cfs to .67 cfs for a total of 300 gpm.

2. The water is intended for commercial use in a hog confinement facility in Faulk County. The intended source of water is the Grand Aquifer, which is a buried outwash of sand and gravel under confined or artesian conditions at the site. The Grand Aquifer underlies about 74,200 acres and contains an estimated 556,000 acre-feet of recoverable water into storage in Faulk County.

3. The Grand Aquifer extends into Edmunds, McPherson, and Campbell Counties to the north and west; it blends into the Tulare aquifer in the south and east in Hand and Spink Counties.

4. The evidence indicates that the Aquifer is encountered at the well location at a depth of about 200 feet and continues to a depth of 230 feet below the land surface. The well driller's report indicates that water was free flowing at the land surface prior to pumping. When the well was pumped at a rate of 100 gallons per minute, the pumping level dropped to 20 feet below the land surface.

5. Only a single observation well is available close to this location. FA-80A is completed into the Grand Aquifer about two miles east of the application. Water levels for this observation well are approximately 150 feet lower than at the well for which the permit at issue is requested; logs of the observation well show a gradually rising level of water.

6. The difference in water levels of 150 feet in wells which are only two miles apart is not easily explainable. Nonetheless, the Board credits the evidence of the State's hydrologist that it is within the realm of possibility. No evidence appears to discredit any of the readings in this case.

7. Water Permit No. 5942-3, the permit now held by Blumengard Colony, is the only existing permitted water right in the area. That water right was granted for 100 gallons per minute. According to the testimony, the holders of the water right misinterpreted its terms and pumped at a maximum rate of approximately 200 gallons per minute. The holders of the water right explained their actions by their belief that the 100-gallon per minute allowed them was an average and was not a maximum.

8. The Board finds that the holders of the water permit made a legal error in so concluding, but the Board finds that this error, without more, should not affect whether the present permit is granted.

9. As a result of the pumping by the permit holders, drawdowns were caused in nearby domestic wells. The Trust has three wells within one-half mile to one and one-half miles of the well as to which the additional diversion is sought. In the past

year, two free-flowing wells on the trust property quit flowing. The Trust, therefore, installed a submersible pump, a supply tank, and automatic waterers at a cost of \$5,100 to ensure domestic water from one of the wells. The depth of the well which has been rehabilitated is 230 feet and the pump is at 100 feet. The representative of the trust testified that there have been no problems with the pump at the 100-feet level.

10. The representative of the Trust also directly addressed a second domestic well which had quit flowing. The Trust representative testified that the cost of rehabilitating the second well would be greater than the first well because the second well was located in a pasture where there was no electricity.

11. Testimony from the State's hydrologist demonstrated, to the satisfaction of the Board, that if the Trust places the pumps of its domestic wells twenty feet into the aquifer, or approximately 220 feet below ground level, that there would be water available to them. This evidence is credible given the great amount of water available in the aquifer and the fact that the water level in the well is over 100 feet above the top of the Aquifer even with pumping.

12. The Board also finds that it is uncertain as to whether, if the permit at issue is granted, the Trust will be forced to lower its pump further than the 100 feet below ground surface that it presently is. The Board finds that, in such a case, there would be additional expenses to the Trust.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over this matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use. The amount of water in the Grand Aquifer can easily supply the needs of the applicant and the opponents of the permit.
3. The proposed diversion can be developed without unlawful impairment of existing rights. The Board in this respect concludes that the fact that the Trust may have to further lower the level of its pumps and thereby increase its expense does not unlawfully impair any existing right of the Trust.
4. The proposed commercial use in a hog confinement facility is a beneficial use as a matter of state law.
5. The proposed use is in the public interest. The Board in this regard has carefully weighed the interest of the Trust in maintaining head pressure within the Grand Aquifer against the interest of the Applicant in using water for a hog confinement facility. The Board concludes that it is in the public interest to allow the application. If the Board would conclude otherwise, the Board would effectively freeze water use in the area to protect head pressure and, therefore, would effectively end any further economic development dependent upon water in the area. The Board finds that such an action would be contrary to the public interest.
6. The Board further concludes that the public interest is aided by the qualifications adopted in the Final Decision.

FINAL DECISION

The application for Water Permit Application No. 6111-3 is granted with the following qualifications:

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

2. The well approved under this Permit shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If this well is abandoned or the Permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.

3. Permit No. 6111-3 is subject to compliance with the existing and applicable Water Management Rules:

- a. Chapter 74:54:01 Ground Water Quality Standards;
- b. Chapter 74:54:02 Ground Water Discharge Permit;
- c. Chapter 74:51:01 Surface Water Quality Standards;
- d. Chapter 74:51:02 Uses Assigned to Lakes;
- e. Chapter 74:51:03 Uses Assigned to Streams;
and

f. Chapter 74:52:01 through 74:52:11 Surface
Water Discharge Provisions.

Dated this 12th day of May, 1999.

BY THE BOARD:

Francis E. Brink

p1d406.jpg(nan)

CERTIFICATION

I hereby certify that on May 14, 1999, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 14, 1999, along with a copy of the Parties of Record List, and a copy of the Findings of Fact, Conclusions of Law, and Final Decision, regarding Adoption of Findings of fact, Conclusions of Law and Final Decision for Water Permit Application No. 6111-3, Blumengard Colony, addressed as stated below, and on the attached Parties of Record List:

A copy of the above described Notice and the attachments were sent Inter-office to:

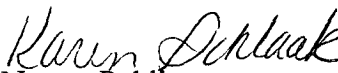
John Guhin, Deputy Attorney General, Capitol Building.

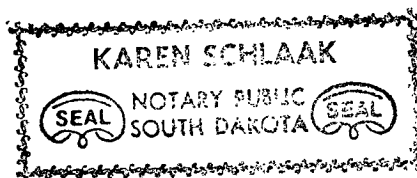
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of May, 1999


Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

AUG 6 1999

Blumengard Colony
Paul Hofer
25075 148th St.
Wecota, SD 57438

Dear Mr. Hofer:

Enclosed is Water Permit No. 6111-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Very truly yours,

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

enclosures

SIEGEL, BARNETT & SCHUTZ, L.L.P.

ATTORNEYS AT LAW
500 CAPITOL BUILDING
P.O. BOX 490

ABERDEEN, SOUTH DAKOTA 57402-0490

TELEPHONE (605) 225-5420

FAX (605) 226-1911

[E-Mail siegellawabr@midco.net]

September 20, 2000

RAYMOND M. SCHUTZ
HARVEY C. JEWETT
RORY KING
JEFFREY T. SVEEN
JOSEPH P. BARNETT
RONALD J. HALL*
PAUL T. BARNETT
REED RASMUSSEN
GREGG C. MAGERA
KATHRYN J. HOSKINS
RYAN N. BOE

*Also Licensed in North Dakota



STAN SIEGEL (1928-1996)
JOSEPH H. BARNETT (1931-1985)
TERENCE A. O'KEEFE (1938-1999)

SIoux FALLS OFFICE
300 NORTH DAKOTA AVENUE, SUITE 606
P.O. BOX 1286
SIoux FALLS, SOUTH DAKOTA 57101
TELEPHONE (605) 335-6250
FAX (605) 335-6749
[E-mail sbslawsf@midco.net]

Mr. Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and
Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

RE: Water Permit No. 6185-3--Blumengard Colony

Dear Garland:

As you know, our law firm represents Blumengard Colony in the above-captioned matter. As you know, the Colony received a favorable recommendation concerning Water Permit No. 6185-3. In order to save our clients the expense of a personal appearance in Rapid City, I wonder if I could appear via telephone? I will make myself available to either be called and/or call you in Rapid City. Please let me know if this is permissible. I have provided Attorney Diane Best and Francis Brink with a courtesy copy of this correspondence.

Thank you, Garland.

Very truly yours,

Gregg Magera
of SIEGEL, BARNETT & SCHUTZ, L.L.P.

GM:mm/ks

pc: Mr. Francis Brink
Ms. Diane Best
Mr. Harold Deering

Permit Nos. 5942-3 and 6111-3

James 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, November 3, 2005, made a thorough examination of the water use system constructed by Blumengard Colony of 35075 148th St., Wecota, SD 57438 holder of Permit Nos. 5942-3 and 6111-3, bearing the priority of May 24, 1996 and October 30, 1998 authorizing the diversion of 0.22 and 0.444 cu. ft. per second of the waters of Grand aquifer for commercial purposes, in Faulk County.

Inspection contact & relationship **Paul Hofer (605) 324-3243**
to permit holder, if applicable:

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Huron Drilling, Inc.
- 2) No. of Wells 1
- 3) Depth(s) 230 feet
- 4) Well log is available Y
- 5) Comment:

Casing:

- 1) Diameter 8 inches
- 2) Length 200 feet
- 3) Type Plastic

Screen:

- 1) Type 304 Stainless steel
- 2) Length 20 feet
- 3) Static water level _____ feet

Pump:

- 1) Make Grundfos
- 2) Model
- 3) Size 7.5 hp
- 4) Capacity 200 GPM

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

- 1) Type Plastic 2) Size 3-4 inches 3) Length approximately 900 feet

C. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Y
2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period NA
3) Exceptions to compliance are: None

The system is in good condition with the point(s) of diversion located as follows: Approximately 1630 feet south and 1620 feet west of the NE corner of Section 5-T120N-R69W (N 45.2404166, W -99.17115). The works are capable of diverting and conveying to the place of use 0.445 cu. ft. per second of water which is to be used for commercial use. Water has been put to beneficial use to the maximum extent as follows:

Water from the well is used to supply water for a hog confinement facility.

The license should be issued for 0.445 cfs.

All structures, wells and lands on map Y

Comments or other permit(s) associated with the project:

Water Permit No. 6111-3 appropriates 0.45 cfs (200 gpm) of water by increasing the diversion rate authorized by Water Permit No. 5942-3. Water Permit No. 5942-3 appropriates 0.22 cfs (100 gpm) from one well (Grand Aquifer) 230 feet deep located in the SW1/4 NE1/4 Section 5-T120N-R69W. This application increases the total water appropriation from the one well from 0.22 cfs to 0.67 cfs. However, the system as constructed is only capable of producing 0.445 cfs (200 gpm). Water Permit No. 5942-3 should be incorporated into Water Permit No. 6111-3 while each retaining their original priority dates of May 24, 1996 and October 30, 1998.



Mike DeFea

Natural Resources Project Engineer
DENR, Water Rights Program

Date report completed: February 14, 2006

Blumengard Colony
35075 148th St.
Wecota, SD-Faulk County

Water Permit Nos. 6111-3 and 5942-3



Mike DeFea

Mike DeFea
Natural Resources Engineer
DENR, Water Rights Program
February 14, 2006





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUN 12 2008

5942-3
6111-3
6185-3

Paul Hofer
Blumengard Colony
35075 148th St
Wecota SD 57438

Dear Mr. Hofer:

Enclosed are your Water License Nos. 6111-3 and 6185-3. They are the final water right documents completing your process of obtaining Water Rights. Also included are maps prepared by the staff engineer who conducted the field investigation.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the wells authorized by Water Right Nos. 6111-3 and 6185-3, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

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

enclosures

Note: The applicable portions of Water Permit No. 5942-3 were incorporated into Water License No. 6111-3.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 6111-3

(1) Blumengard Colony, 35075 148th St, Wecota SD 57438 made Application No. 6111-3, October 30, 1998 for a water permit to divert 0.45 cubic feet of water per second (cfs) from ground water (one existing well – Grand Aquifer), Faulk County, South Dakota for commercial purposes. Permit No. 6111-3, with a priority date of October 30, 1998 was approved May 5, 1999 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before May 5, 2004 and for the application to beneficial use of said water on or before May 5, 2008.

Water Permit No. 6111-3 was obtained to increase the diversion rate from the existing well authorized under Water Permit No. 5942-3. Water Permit No. 5942-3, with a priority date of May 24, 1996, appropriated 0.22 cfs (100 gallons per minute). No. 6111-3 increased the water appropriation from the well from 0.22 cfs (100 gpm) to 0.67 cfs (300 gpm). An investigation of the water use system found a total of 0.44 (200 gpm) had been developed. The applicable portions of Water Permit No. 5942-3 are incorporated into Water License No. 6111-3.

(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 water supply system and is entitled to divert 0.44 cubic feet of water per second for beneficial use. The location of the diversion point is approximately 1,630 feet S and 1,620 feet W of the NE corner of Section 5, T120N, R69W (SW ¼ NE ¼).

(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use in supplying water to a hog confinement facility.

(4) Pursuant to South Dakota Water Law 46-5-30.1 Blumengard Colony, 35075 148th St, Wecota SD 57438 the holder and/or owner of Incorporated Water Right No. 6111-3 is issued a license to appropriate water, the right to use 0.44 cubic feet of water per second from ground water (one well – Grand Aquifer) with a priority dates of May 24, 1996 (0.22 cfs) and October 30, 1998 (0.22 cfs) from the location specified in (2) of this license for commercial purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Incorporated Water Right No. 6111-3 and subject to the following qualifications:

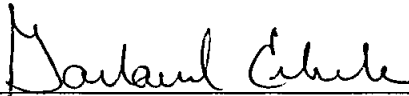
- The well approved under this Water Right will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- The well approved under this Water Right shall be valved and the flow reduced to the amount needed or to a minimum when not being used. If this well is abandoned or the Permit cancelled, the well must be plugged in accordance with Water Management Board Rules, Chapter 74:02:04.
- The facility shall be designed so that “clean” surface runoff from the surrounding drainage area is routed around the confinement lot area.

(continued)

PAGE 2

WATER LICENSE NO. 6111-3

- Operation of the disposal systems to dispose of waste and wastewater shall be in a manner that 1) prevents discharge of runoff from the disposal sites and 2) prevents disposal site runoff water from entering waters of the State.
- Design, construction and management of the lagoons shall be sufficient to maintain seepage rate of less than 1/16 of an inch per day. Compaction of the soils within the wastewater lagoon must be at least ninety percent of the Standard Procter Density (ASTM D6980-70).
- Incorporated Water Right No. 6111-3 is subject to compliance with the following applicable Water Management Board rules:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions



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

JUN 12 2008

date

