

WATER PERMIT NO. 6165-3

Name of Applicant: Alex A/Ann L Falk

Address: 1301 N 4th St, Aberdeen SD 57401

Phone: 605 229-3035

Amount of Water Claimed: 120 AF storage dam

Total Acres: NA

Source of Water Supply: Missouri River and runoff

Water to be used for: irrigation County: Hughes

Type of Waste Disposal System: NA

Location: about 23 miles southeast of Pierre

PRIORITY Date Received: 1-5-2000

Fee: \$150

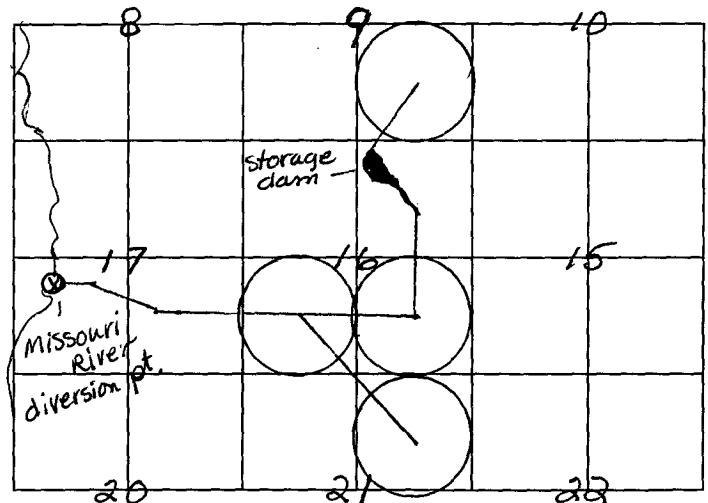
Corrected Application Received:

Period of Annual Use: April 1 – October 31

Remarks: Water diverted from storage dam is used to irrigate portions of land covered by
Water Permit No. 2709-3

Storage dam: NW ¼ NE ¼ Sec 16-T109N-R75W

Land to be Irrigated: SE ¼ Sec 9-T109N-R75W



Depth of Well: NA

Well Driller:

Remarks:

Type of Map: topo

Prepared by: Lynn Beck

Reviewed and the Number Assigned on: 1-5-2000

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 6165-3

Date of first receipt of application January 4, 2000.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 6165-3 to Alex A/Ann L Falk, 1301 N 4th St, Aberdeen SD 57401 authorizing the water use system and subject to the following limitations, conditions and qualifications:

1. Water Permit No. 6165-3 authorizes impoundment of 120 acre-feet of runoff and Missouri River water in an existing dam. Water Permit No. 2709-3 appropriates 18.41 cubic feet of water per second (cfs) from the Missouri River located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17-T109N-R75W for irrigation of 1289 acres. A licensing investigation of Permit No. 2709-3 found the Missouri River supplying 3.67 cfs to irrigate 528 developed acres located in the S $\frac{1}{2}$ Section 16, NE $\frac{1}{4}$ Section 21 and SE $\frac{1}{4}$ Section 9; all in T109N-R75W. Water is applied directly for irrigation or diverted to a dam. This permit authorizes the existing 120 acre-foot storage dam. Water is pumped from the Missouri River into the storage dam located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 16-T109N-R75W. The dam also receives incidental surface runoff. Water is diverted from the storage dam at a rate of 1.78 cfs to irrigate the lands located in the SE $\frac{1}{4}$ Section 9-T109N-R75W. No increase in the developed diversion rate or number of acres being irrigated is authorized by this permit.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – October 31.
3. The date from which applicant may claim right is January 4, 2000 (for storage).
4. The date of approval of Permit No. 6165-3 is March 20, 2000.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

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

APR 10 2000

date



FORM 2: Application for irrigation in South Dakota
(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>6165-3</u>	Hydrologic Unit <u>10140101</u>
	Basin <u>Missouri River</u>	
	Newspaper <u>Capital Journal, Pierre, SD</u>	

Application For Permit To Appropriate Water For Irrigation

Type of Application: X New Vested Right Amendment/Correction to Permit No.
(Use predates Mar 2, 1955)

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

1. Name of Applicant Alex A./Ann L. Falk Phone (605) 229-3035
(check one) Owner Tenant/lessee

Mailing Address 1301 N. 4th St., Aberdeen State SD 57401
(Street, RR, or Box and City) (Zip Code)

2. Amount of water claimed ~~178~~ *CFS or ~~800~~ **GPM 120 ***AF Total Acreage ~~178~~
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
The amount of water is covered under Permit No. 2709-3.

3. Source of water supply Tributary to the Missouri River

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) NW1/4 NE1/4 Section 16, T109N, R75W. (Storage dam)
County Hughes

5. County or counties where water will be used Hughes

6. Annual period during which water is to be used April 1 through October 31

7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

All in Section 9, T109N, R75W: Acres covered under 2709-3

Land Description	Acres	Land Description	Acres
NE1/4 SE1/4	33		
NW1/4 SE1/4	33		
SW1/4 SE1/4	33		
SE1/4 SE1/4	33		

8. Give a description of the project. (Attach sheet if more space is needed)

Water is diverted from the Missouri River into a dam located in the NW1/4 NE1/4 Section 16 to irrigate 132 acres in the SE1/4 of Section 9 using a center pivot. The irrigated acres are under Water Permit 2709-3. See 2709-3 for other acres irrigated and a licensing acres outside of the permitted area report. This application is for storage in the dam. License the two permits together.

STATE OF SOUTH DAKOTA) SS

County of Brown)

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)

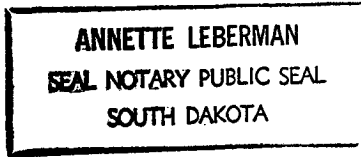
I, Alex Falk, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Alex Falk

Subscribed and sworn to before me this 29 day of December 1999

Annette Leberman
Notary Public signature

3-98



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

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

2. Wastewater Disposal System Information

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

3. Dugout Information

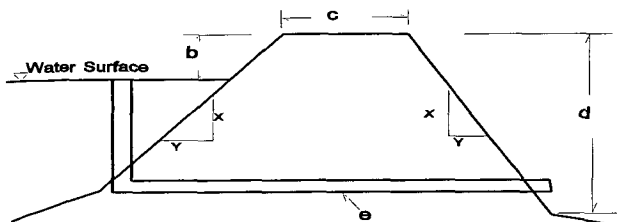
- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

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:

Earth spillway at the NE end of the dam.



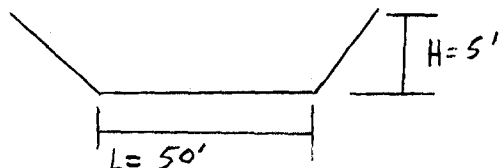
- b) Freeboard 5 feet
- c) Crest Width 25 feet
Crest Length 530 feet
- d) Height 27 feet to top of dam
- e) Primary Outlet Capacity 1450 cfs
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width 50 feet
- g) X & Y Slope _____
Upstream _____
Downstream _____
- h) Surface Area of Impoundment 14 acres
- i) Storage 120 Acre Feet
- j) Drainage Area Above Dam 875 Acres



Application No. 6165-2

Alex A. / Ann L. Falk

Spillway Capacity:



$$Q = CLH^{\frac{3}{2}}$$

C = Constant = 2.6

L = Bottom width or spillway width

H = Height or freeboard

$$Q = 2.6(50')(5')^{\frac{3}{2}} = 1453 \text{ cfs}$$

$$\text{Watershed: } Q_{25} = 83.4 A^{0.60} S^{0.44} S_i^{-0.72}$$

$$Q_{50} = 106 A^{0.63} S^{0.45} S_i^{-0.69}$$

$$Q_{100} = 132 A^{0.65} S^{0.46} S_i^{-0.67}$$

A = Calculate size of watershed = mi^2

S = Slope = $\frac{\text{ft}}{\text{mi}^2}$
 S_i = Soil infiltration, use map of state

$$Q_{25} = 83.4 (1.36 \text{ mi}^2)^{0.60} \left(\frac{89 \text{ ft}}{\text{mi}} \right)^{0.44} (3.33 \text{ inches})^{-0.72} = 304 \text{ cfs}$$

$$Q_{50} = 106 (1.36 \text{ mi}^2)^{0.63} \left(\frac{89 \text{ ft}}{\text{mi}} \right)^{0.45} (3.33 \text{ inches})^{-0.69} = 4228 \text{ cfs}$$

$$Q_{100} = 132 (1.36 \text{ mi}^2)^{0.65} \left(\frac{89 \text{ ft}}{\text{mi}} \right)^{0.46} (3.33 \text{ inches})^{-0.67} = 5671.6 \text{ cfs}$$

$$Q_{\text{spillway}} \rightarrow Q_{100}$$

$$S = 520 \frac{\text{ft}}{\text{mi}} (.10) + (.90) \frac{41 \text{ ft}}{\text{mi}} = 89 \frac{\text{ft}}{\text{mi}}$$

$$\frac{1.9''}{1720 - 1690} = 30'$$

$$1.9'' \times 2030 \frac{.8 \text{ ft}}{\text{mi}} = 3858 \text{ ft}$$

$$\frac{30'}{3858'} = \frac{7.78 \times 10^{-3}'}{1} \times \frac{5280'}{\text{mi}} = 41 \frac{\text{ft}}{\text{mi}}$$

$$S_i = 3.33 \text{ inches}$$

$$A = 1.36 \text{ mi}^2$$



R 75 W

8	9	10
17	16X	15
20	21	22

T 109 N

Permits downstream of dam:

2709-3 Alex A / Ann L Falk - Part of new application

Category 3 spillway design flood exception 74:02:08:07.01 Calculation

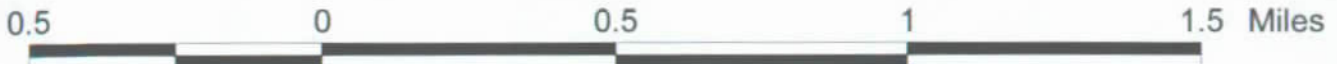
Maximum storage capacity = 120 acre-feet

Height to top of dam = 27 ft

$$(120 \text{ acre-feet})(27 \text{ ft}) = 3240 \text{ acre ft}^2 > 3000$$

Spillway Design Flood would be for a 50-year frequency.

R75W



Lynn Beck
Natural Resources Engineer
DENR, Water Rights Program
Sept. 28, 1999



6165-3

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

N2 416328

Pierre, January 4, 2000

RECEIVED OF Big Bend Ranch Hunting, Inc., 1301 N. 4th, Aberdeen, SD 57401
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>6165-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	150	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>6165-3</u> _____	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	200 00

By John H. Hester
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 3, 1999

Alex A. Falk
1301 N. 4th St.
Aberdeen, SD 57401

Dear Mr. Falk:

Enclosed is a partially completed application form and instruction sheet. You will not have to provide a map as stated in item 2.) on the instruction sheet. I have already prepared one. The enclosed copy is yours to keep.

An inspection of Permit No. 2709-3 found water storage in a dam that is not on the permit or any other permit. The water storage needs a new application. I may have already sent you a partially completed application for the dam with a storage amount on it. I received additional information that reduced the amount of storage in the dam. This application is for storage of 120 acre-feet of water.

A \$150.00 fee is required for the application and an additional \$50.00 is needed for the inspection/licensing fee.

If you have any questions, please feel free to contact me a (605) 773-3352.

Sincerely,

Lynn Beck
Natural Resources Engineer III

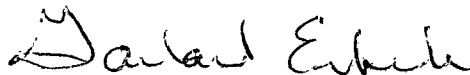
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6165-3, Alex and Ann Falk**

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. 6165-3, Alex A. and Ann L. Falk, 1301 North 4th Street, Aberdeen SD 57401.

The Chief Engineer is recommending APPROVAL of Application No. 6165-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualification:

This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

A handwritten signature in cursive script, appearing to read "Garland Erbele".

Garland Erbele, Chief Engineer

February 23, 2000

REPORT ON WATER PERMIT APPLICATION NO. 6165-3

Alex A. & Ann L. Falk

February 17, 2000

Application No. 6165-3, Alex A. & Ann L. Falk, is for the storage of 120 acre-feet of runoff and Missouri River water to an existing storage dam. Water Permit No. 2709-3 appropriates 18.41 cubic feet of water per second (cfs) from the Missouri River from two diversion points. The diversion points are located at the NW ¼ NE ¼ of Section 16 (storage dam) and in the NW ¼ SW ¼ of Section 17 (Missouri River); all in T109N-R75W, to irrigate 1289 acres. A licensing investigation of Water Permit No. 2709-3 found the Missouri River supplying 3.67 cfs to irrigate 528 developed acres. The dam is located in the NW ¼ NE ¼ Section 16-T109N-R75W. The irrigated acreage is located in the S ½ Section 16, NE ¼ Section 21 and SE ¼ Section 9; all in T109N-R75W. This application is to add the existing 120 acre-feet storage dam to this irrigation project. No increase in the developed diversion rate or number of acres being irrigated is authorized by this application.

Review of the Proposed Project and Existing Water

The dam impounds 120 acre-feet and its effective height is 22 feet. This dam is classified as a category 3, small size dam. The date of construction of the dam is unknown. If the dam were built after 1986 the spillway requirements of the Safety of Dams Rules, Chapter 74:02:08 would apply to it. If this were the case the spillway would be required to pass the 50-year event. The spillway will pass more than a 100-year event.

The dam is located on an unnamed tributary of the Missouri River, approximately 24.75 miles west and 7 miles south of Pierre, South Dakota. There are no other existing water rights/permits downstream that should be adversely affected by the storage dam.

On May 19, 1976, a letter was received from Wallace G. Dunker, Field Solicitor for the United States Department of the Interior, in which the Crow Creek Indian Reservation objected to Water Permit No. 2709-3 to "appropriate ground water from within the boundaries of the Crow Creek Indian Reservation." Water Permit No. 2709-3 does not use any ground water. The only concern with Water Permit No. 6165-3 would be if the Crow Creek Indian Reservation has an objection to it.

If approved, Water Permit No. 2709-3 will be incorporated into No. 6165-3. And a water license will be issued for the project.

Conclusions

1. Water is available from the drainage and the Missouri River for storage in the dam.
2. Existing water rights will not be impaired.
3. The spillway will pass more than a 100-year runoff event.
4. Crow Creek Indian Reservation may have objections to this water permit application.

Stacy J. Johnson

Stacy J. Johnson

Natural Resources Engineer I

Reviewed by:

Mark D. Rath

Mark D. Rath

Natural Resources Engineer III

References

Jones, F. Burton. Letter in regard to Water Permit No. 2709-3. 19 May 1976.



**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.

February 24, 2000

Alex A. & Ann L. Falk
1301 N. 4th St.
Aberdeen, SD 57401

Dear Mr. and Ms. Falk:

Water Permit Application No. 6165-3 for irrigation 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 Capital Journal printed at Pierre, SD (Ph # (605) 224-7301). 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

February 24, 2000

Capital Journal
P.O. Box 878
Pierre, SD 57501-0878

ATTENTION: Legal Public Notice

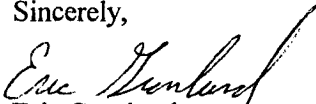
Enclosed is a Notice of Hearing on Application No. 6165-3 to Appropriate Water to be published twice. Please publish the first notice on March 3, 2000, with the second publication 7 days later.

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 APPLICANTS are Alex A. & Ann L. Falk, 1301 N. 4th St., Aberdeen, SD 57401 (Ph # (605) 229-3035).

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. 6165-3

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

Date _____

We are in receipt of your letter of February 24, 2000, enclosing Notice of Hearing to Appropriate Water by Application No. 6165-3 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 March 3, 2000, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 6165-3 to Appropriate Water

Notice is given that Alex A. & Ann L. Falk, 1301 N 4th St, Aberdeen SD 57401 has filed an application for a water permit to impound 120 acre-feet of runoff and Missouri River water in an existing dam. Water Permit No. 2709-3 appropriates 18.41 cubic feet of water per second (cfs) from the Missouri River located in the NW ¼ SW ¼ Section 17-T109N-R75W for irrigation of 1289 acres. A licensing investigation of Permit No. 2709-3 found the Missouri River supplying 3.67 cfs to irrigate 528 developed acres located in the S ½ Section 16, NE ¼ Section 21 and SE ¼ Section 9; all in T109N-R75W. Water is applied directly for irrigation or diverted to a dam. This application is to authorize the existing 120 acre-feet storage dam. Water is pumped from the Missouri River into the storage dam located in the NW ¼ NE ¼ Section 16-T109N-R75W. The dam also receives incidental surface runoff. Water is diverted from the storage dam at a rate of 1.78 cfs to irrigate the lands located in the SE ¼ Section 9-T109N-R75W. No increase in the developed diversion rate or number of acres being irrigated is authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6165-3 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. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by March 20, 2000.

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

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Hughes) SSI, Peggy Warner

certify that the attached printed Notice was taken

from the Capital Journalprinted and published in PierreCounty of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

March 3, 2000March 10, 2000Cost of Printing \$49.29Peggy Warner
(Signature)Legal Ad Representative
(Title)March 13, 2000
(Date Signed)

No. 2986 2tdly 3/3, 3/10

NOTICE OF APPLICATION**NO. 6165-3 to****Appropriate Water**

Notice is given that Alex A. & Ann L. Falk, 1301 N. Fourth St., Aberdeen SD 57401 has filed an application for a water permit to impound 120 acre-feet of runoff and Missouri River water in an existing dam. Water Permit No. 2709-3 appropriates 18.41 cubic feet of water per second (cfs) from the Missouri River located in the NW1/4SW1/4 Section 17-T109N-R75W for irrigation of 1289 acres. A licensing investigation of Permit No. 2709-3 found the Missouri River supplying 3.67 cfs to irrigate 528 developed acres located in the S1/2Section 16, NE1/4 Section 21 and SE1/4 Section 9; all in T109N-R75W. Water is applied directly for irrigation or diverted to a dam. This application is to authorize the existing 120 acre-foot storage dam. Water is pumped from the Missouri River into the storage dam located in the NW1/4NE1/4 Section 16 T109N-R75W. The dam also received incidental surface runoff. Water is diverted from the storage dam at a rate of 1.78 cfs to irrigate the lands located in the SE1/4 Section 9-T109N-R75W. No increase in the developed diversion rate or number of acres being irrigated is authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6165-3 because 1) unappropriated water is available, 2) existing rights will not be lawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and the Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address in "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 March 20, 2000.

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

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 24, 2000

Emmett White Temple
Crow Creek Sioux Tribe
PO Box 50
Fort Thompson SD 57339

Dear Mr. White Temple:

Please find enclosed a copy of the report, recommendation and public notice regarding Water Right Permit Application No. 6165-3 filed by Alex & Ann Falk. This application is to authorize the existing storage dam used in their irrigation system.

The notice is scheduled to be published in the Capital Journal on March 3 and 10, 2000. Petitions in support or opposition to the application must be submitted by March 20, 2000.

This information is being sent to you because of the irrigation systems proximity to the Crow Creek Sioux Tribe Reservation. Please feel free to contact me if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure

Permit Nos. 2709-3 & 6165-3Missouri 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, August 10, 1999 made a thorough examination of the water use system constructed by Alex A./Ann L. Falk of 1301 N. 4th St., Aberdeen, SD 57401 holder of Permit Nos. 2709-3 & 6165-3, bearing the priority of April 29, 1976 authorizing the diversion of 18.41 cu. ft. per second and a priority of January 4, 2000 authorizing the storage of 120 acre-feet of the waters of Missouri River for irrigation purposes, in Hughes County.

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

A. Works used to divert the water:

At the Missouri River: 3 – Cornell pumps 850 gpm capacity each, 3 – Marathon motors 100 hp each.

At the dam: Cornell pump 800 gpm capacity, GE motor model 5K6257XH2003A – 60 hp.

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

7144' of 10" aluminum above ground; 6376' of 10" pvc; 2484' of 14" pvc; 2263' of 8" steel.

C. Works used to apply water to beneficial use:

9 tower Valley center pivot 1320' long with an end gun, low pressure system, 850 gpm capacity.

2-7 tower Valley center pivots 1320' long with an end gun, low pressure system, 800 gpm capacity.

7 tower Rankee center pivot 1320' long with an end gun, low pressure system, 800 gpm capacity.

The system is in the following condition good. The points of diversion are located 760' E and 2150' N of the SW corner of Section 17 at the Missouri River and 188' S and 2750' E of the NW corner Section 16 at the dam, all in T109N, R75W. The works are capable of diverting and conveying to the place of use 3.67 cu. ft. per second of water and/or storage of 120 acre feet of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

All in T109N, R75W:

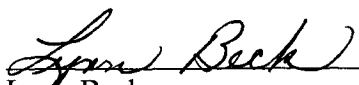
<u>Section 16</u>	<u>Section 21</u>	<u>Section 9</u>
<u>NE SW 33 acres</u>	<u>NE NE 33 acres</u>	<u>NE SE 33 acres</u>
<u>NW SW 33 acres</u>	<u>NW NE 33 acres</u>	<u>NW SE 33 acres</u>
<u>SW SW 33 acres</u>	<u>SW NE 33 acres</u>	<u>SW SE 33 acres</u>
<u>SE SW 33 acres</u>	<u>SE NE 33 acres</u>	<u>SE SE 33 acres</u>
<u>NE SE 33 acres</u>		
<u>NW SE 33 acres</u>		
<u>SW SE 33 acres</u>		
<u>SE SE 33 acres</u>		

Comprising a total of 528 acres of land and the license should be issued for 3.67 cfs and/or 120 acre-feet of storage.

Applicable permit qualifications have been complied with: yes

Exceptions to compliance are: none

Comments: Runs two center pivots at a time for a maximum pump rate of 1650 gpm also fills the dam at a rate of 1650 gpm.


Lynn Beck

Mar 21, 2000
Date

Natural Resources Engineer
DENR, Water Rights Program

REPORT ON INSPECTION OF PERMIT NO. 2709-3 & 6165-3

DATE OF INSPECTION: 8-10-99

Other permit(s) associated with the project: #

NAME & ADDRESS OF INSPECTION CONTACT: Gary Jenson, Big Bend Ranch

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: Manager

NAME & ADDRESS OF PERMIT HOLDER: Alex A./Ann L. Falk, 1301 N. 4th St., Aberdeen, SD 57401

DIVERSION POINT LEGAL LOCATION: At the Missouri River: 760' E and 2150' N of the SW corner Section 17, T109N, R75W. In the NW SW Section 17. At the dam: 188' S and 2750' E of the NW corner of Section 16, T109N, R75W. In the NW NE Section 16.

PUMP SITE AT THE MISSOURI RIVER: 760' E and 2150' N of the SW corner Section 17, T109N, R75W.

Pump:

- 1) Make 3 - Cornells
- 2) Model #
- 3) Size #
- 4) Capacity each 850 GPM

Motor:

- 1) Make 3 - Marathons
- 2) Model No. #
- 3) Horsepower rating each 100 hp

BOOSTER PUMP SITE: At the center of the SW¹/₄ Section 16, T109N, R75W.

Pump:

- 1) Make 3 - pumps
- 2) Model #
- 3) Size #
- 4) Capacity each 800 GPM

Motor:

- 1) Make 3 - motors
- 2) Model No. #
- 3) Horsepower rating 50; 75; 75 hp

DAM PUMP SITE: 188' S and 2750' E of the NW corner Section 16, T109N, R75W.

Pump:

- 1) Make Cornell
- 2) Model #
- 3) Size #
- 4) Capacity 800 GPM

Motor:

- 1) Make GE
- 2) Model No. 5K6257XH2003A
- 4) Horsepower rating 60 hp

DISTRIBUTION LINES OR CANALS:

- 1) Type aluminum 2) Size 10" 3) Length 7144 feet
- 2) Type pvc 2) Size 10" 3) Length 6376 feet
- 3) Type pvc 2) Size 14" 3) Length 2484 feet
- 4) Type steel 2) Size 8" 3) Length 2263 feet

SYSTEM TYPE:

Center Pivot: SE¼ Section 16, T109N, R75W.

- 1) Make Rankee
- 2) Overall length 1320
- 3) Number of towers 7
- 4) End gun yes
- 5) High or low pressure low
- 6) Capacity 800 GPM

Center Pivot: SW¼ Section 16, T109N, R75W.

- 1) Make Valley
- 2) Overall length 1320
- 3) Number of towers 7
- 4) End gun yes
- 5) High or low pressure low
- 7) Capacity 800 GPM

Center Pivot: NE¼ Section 21, T109N, R75W.

- 1) Make Valley
- 2) Overall length 1320
- 3) Number of towers 9
- 4) End gun yes
- 5) High or low pressure high
- 8) Capacity 850 GPM

Center Pivot: SE¼ Section 9, T109N, R75W.

- 1) Make Valley
- 2) Overall length 1320
- 3) Number of towers 7
- 4) End gun yes
- 5) High or low pressure low
- 9) Capacity 800 GPM

DAM INFORMATION:

- 1) Height to crest 27 feet
- 2) Height to primary spillway 22 feet
- 3) Height to secondary spillway na feet
- 4) Crest width 25 feet
- 5) Crest length 530 feet
- 6) Spillway length # feet
- 7) Spillway width 50 feet
- 8) Approx. storage 95 ac-ft
- 9) Approx. Storage to crest 120 ac-ft
- 10) Date constructed: unknown
- 11) Outlet tubes: **none**
 - a) diameter # inches
 - b) type #
 - c) valved #
 - d) valve type #
 - e) location on structure #
- 12) Category of Dam 3
- 13) Inspection Sheet Completed no

CHEMIGATION EQUIPMENT:

- 1) Does chemigate yes
- 2) Main line check valve yes
- 3) Inspection port/air relief yes
- 4) Low pressure drain yes
- 5) Discharge is 20' from source yes
- 6) Interlock type #
- 7) Injection pump type electric
- 8) Injection check valve yes
- 9) Injection line check valve or positive displacement pump yes
- 10) All chemigation equipment appears to be installed in the proper position and complies with chemigation laws and rules yes
- 11) Comments : **Chemigates with nitrogen at the center pivots.**

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Special qualifications to permit being abided by yes
- 2) All structures, wells and lands on map yes
- 3) Irrigation questionnaires checked to determine if permit owner started irrigation by the end of construction period yes

Licensing of Acreage Outside of Permitted Area

NAME: Alex A./Ann L. Falk

ADDRESS: 1301 N. 4th St., Aberdeen, SD 57401

DATE: November 3, 1999

COUNTY: Hughes

TELEPHONE: (605) 229-3035

AUTHORITY

Pursuant to SDCL 46-5-30.5, acreage developed for irrigation outside of the area described on the permit may be licensed provided the following conditions are met:

NO INCREASE IN PERMITTED ACREAGE OR WATER APPROPRIATED:

The acreage developed for irrigation is 528 acres as compared to 1289 acres authorized by the permit. Licensing of the permit will result in a reduction in the amount of water appropriated.

UNPERMITTED ACREAGE:

- **Contiguous to Permitted Acreage**

The W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 9 is contiguous to acres advertised under Permit No. 2709-3. The advertised acres were in error and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ Section 9 should have been included. The signed permit contains the acres mentioned above.

- **Owned by Same Property Owner**

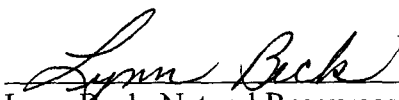
yes

- **Developed Prior to Expiration of Construction Period**

yes

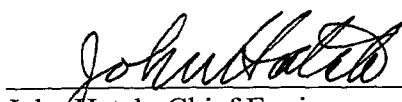
RECOMMENDED ACTION

Based on the above criteria, it is recommended that the 66 acre area be included in the water license.


Lynn Beck, Natural Resources Engineer
Water Rights Program

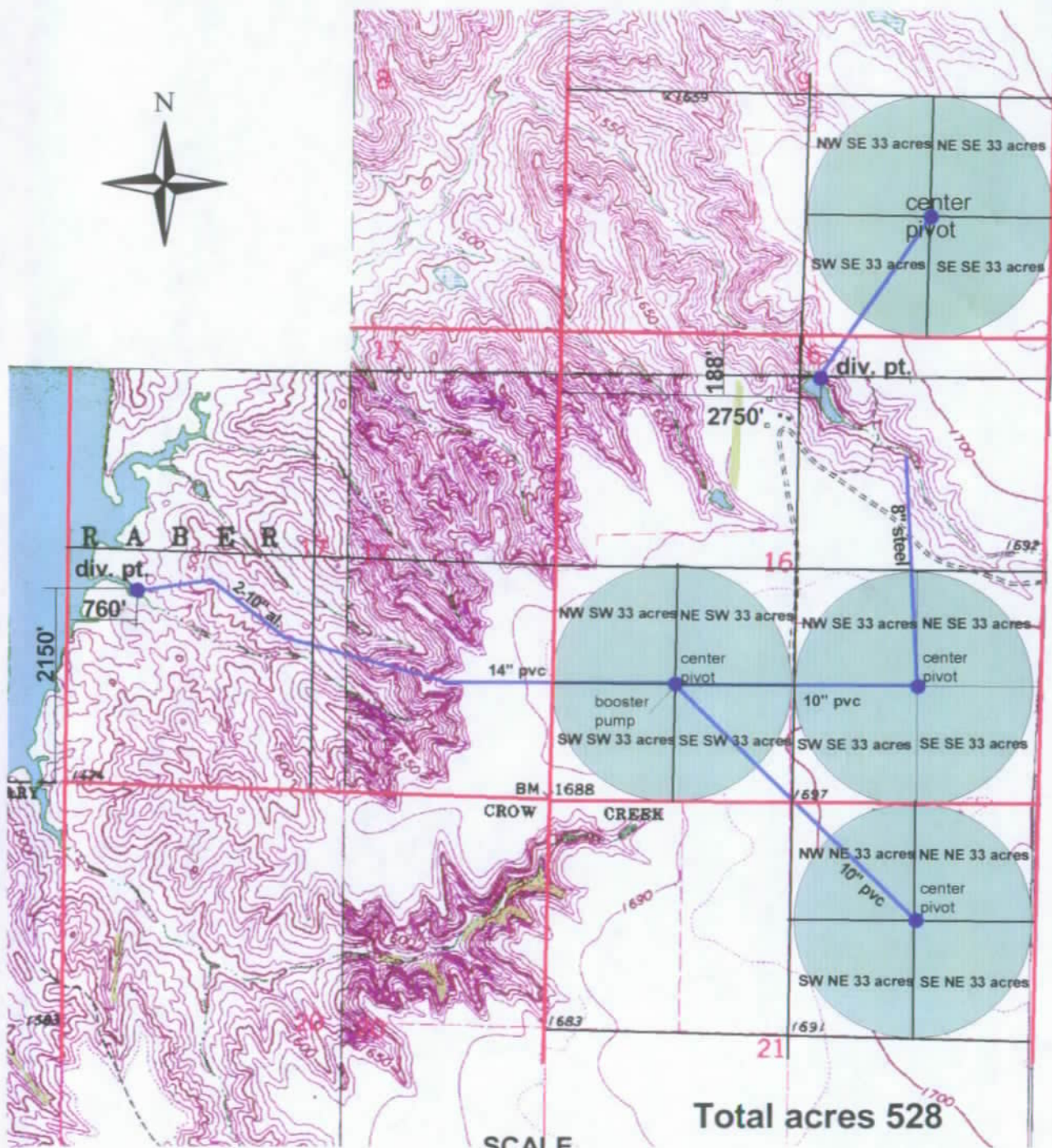
The Chief Engineer makes a finding pursuant to SDCL 46-5-30.5 that:

This acreage change does not impair existing water rights and the overall project, as developed, is consistent with the original application. Licensing of the unpermitted acreage may occur without application or publication pursuant to SDCL 46-2A-4.

 1-6-2000
John Hatch, Chief Engineer
Water Rights Program

WATER RIGHT NO. 2709-3

R75W



T109N

SCALE

Total acres 528

0.5 0 0.5 1 1.5 Miles

Lynn Beck

Lynn Beck
Natural Resources Engineer
DENR, Water Rights Program
Sept. 28, 1999



South Dakota Department of
Environment and Natural Resources



Protecting South Dakota's Tomorrow... Today

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 6165-3

(1) Alex A and Ann L Falk, 1301 N 4th St, Aberdeen SD 57401 made Application No. 6165-3, January 4, 2000 for a water permit to authorize storage of 120 acre-feet of water annually from runoff and the Missouri River, Hughes County, South Dakota for irrigation purposes. Permit No. 6165-3, with a priority date of January 4, 2000 was approved March 20, 2000. The storage dam had been constructed as a part of the water use system authorized under Water Permit No. 2709-3.

A licensing investigation of Water Permit No. 2709-3, with a priority date of April 29, 1976, found the Missouri River supplying 3.67 cubic feet of water per second (cfs) to irrigate 528 acres. Water is applied directly for irrigation or diverted to the dam. Water Permit No. 6165-3 did not allow for an increase in the developed diversion rate or number of acres being irrigated under No. 2709-3. The applicable portions of No. 2709-3 are incorporated into this Water License No. 6165-3.

On April 29, 1992, Water Permit No. 2709-3 was transferred to Alex A and Ann L Falk.

(2) It is certified that the permit holders have complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and are entitled to divert 3.67 cfs from the Missouri River for beneficial use. The permit holder diverts from the Missouri River directly for irrigation or to the storage dam. The system is capable of diverting 3.67 cfs from the Missouri River and at the same time diverting 1.78 cfs from the 120 acre-foot storage dam for irrigation purposes. The location of the diversion points are: Missouri River – 760 feet east and 2,150 feet north of the southwest corner (NW ¼ SW ¼) Section 17-T109N-R75W and the storage dam – 188 feet south and 2,750 feet east of the northwest corner (NW ¼ NE ¼) Section 16-T109N-R75W.

(3) The permit holders have complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

All in T109N-R75W			
Section 16		Section 21	
NE ¼ SW ¼	33 acres	NE ¼ NE ¼	33 acres
NW ¼ SW ¼	33 acres	NW ¼ NE ¼	33 acres
SW ¼ SW ¼	33 acres	SW ¼ NE ¼	33 acres
SE ¼ SW ¼	33 acres	SE ¼ NE ¼	33 acres
Section 16		Section 9	
NE ¼ SE ¼	33 acres	NE ¼ SE ¼	33 acres
NW ¼ SE ¼	33 acres	NW ¼ SE ¼	33 acres
SW ¼ SE ¼	33 acres	SW ¼ SE ¼	33 acres
SE ¼ SE ¼	33 acres	SE ¼ SE ¼	33 acres
Total 528 acres			

(continued)

Water License No. 6165-3

Alex A and Ann Falk

Page 2

(4) Pursuant to South Dakota Water Law 46-5-30.1 Alex A and Ann L Falk, 1301 N 4th St, Aberdeen SD 57401 the holder and/or owner of Incorporated Water Right No. 6165-3 are issued a license to appropriate water, the right to use 3.67 cubic feet of water per second from the Missouri River with a priority date of April 29, 1976 and 120 acre-feet storage dam with priority date of January 4, 2000 from the locations specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Incorporated Water Right No. 6165-3 and subject to South Dakota State Law.



GARLAND ERBELE, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

APR 10 2000

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

APR 10 2000

6165-3

Alex A. and Ann L. Falk
1301 N. 4th St.
Aberdeen, SD 57401

Dear Mr. and Ms. Falk:

Enclosed are Water Permit and Water License No. 6165-3. Water License No. 6165-3 is the final document which completes the process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

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

ks
enclosures

NOTE: The applicable portions of No. 2709-3 are incorporated into this Water License No. 6165-3.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 19, 2001

NOTICE

TO: ALEX A/ANN L FALK, 1301 N 4TH ST, ABERDEEN, SD 57401
FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2000 Irrigation Questionnaire(s)

Our records indicate that the 2000 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 6165-3. The request for the Questionnaire was dated October 20, 2000. The Water Management Board has directed that owners of water permits who have not submitted the 2000 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 6165-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 10:00 am, March 7, 2001 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 6165-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before March 2, 2001, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

6165-3

SENDER: COMPLETE THIS SECTION

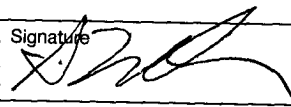
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ALEX A/ANN L FALK
1301 N 4TH ST
ABERDEEN SD 57401

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature  ☐ Agent
☒ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7000 0600 0026 9814 2553

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 6, 2001

6165-3

Alex & Ann Falk
1301 N 4th St
Aberdeen, SD 57401

Dear Mr. & Mrs. Falk:

I am writing to acknowledge receipt of your 2000 irrigation questionnaire. You may disregard the January 19, 2001, "Notice" concerning reporting requirements for Water Right No. 6165-3.

The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 16, 2002

NOTICE

TO: ALEX A/ANN L FALK, 1301 N 4TH ST, ABERDEEN, SD 57401

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2001 Irrigation Questionnaire(s)

Our records indicate that the 2001 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 6165-3. The request for the Questionnaire was dated October 12, 2001. The Water Management Board has directed that owners of water permits who have not submitted the 2001 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 6165-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 10:00 am, March 13, 2002 in the Visitor Center (west side of Capitol Lake), 650 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 6165-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before March 8, 2002, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

6165-3

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ALEX A/ANN L FALK
1301 N 4TH ST
ABERDEEN SD 57401

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Alex Falk

B. Date of Delivery

1-20-02

C. Signature

X Alex Falk

☐ Agent☐ AddresseeD. Is delivery address different from item 1? ☒ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☒ Certified Mail☐ Registered☐ Insured Mail☐ Express Mail☐ Registered Mail☐ C.O.D.☐ Return Receipt for Merchandise

4. Restricted Delivery? (Extra fee)

☐ Yes

2

7001 2510 0004 4797 4395

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 25, 2002

6165-3

Alex and Ann Falk
1301 N 4th St
Aberdeen, SD 57401

Dear Mr. & Mrs. Falk:

I am writing to acknowledge receipt of your 2001 irrigation questionnaire. You may disregard the January 16, 2002, "Notice" concerning reporting requirements for Water Right No. 6165-3.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



6165-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 14, 2004

NOTICE

TO: ALEX A/ANN L FALK, 1301 N 4TH ST, ABERDEEN, SD 57401

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaire(s)

Our records indicate that the 2003 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 6165-3. The request for the Questionnaire was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 6165-3 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 8:30 am, March 3, 2004 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 6165-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before February 27, 2004, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



6165-3

Track & Confirm

Current Status

You entered 2301 3460 0000 8515 9043

Your item was delivered at 11:35 am on January 31, 2004 in ABERDEEN, SD 57401. The item was signed for by A FALK.

[Shipment Details >](#)

Notification Options

▶ Track & Confirm by email

[What is this?](#)

[Go >](#)

▶ Request Proof of Delivery

[What is this?](#)

[Go >](#)

POSTAL INSPECTORS
Preserving the Trust

[site map](#) [contact us](#) [government services](#)

Copyright © 1999-2002 USPS. All Rights Reserved. Terms of Use Privacy Policy

Track & Confirm

Enter label number:

[Track & Confirm FAQs](#)

U.S. Postal Service Signature Confirmation Receipt

SIGNATURE CONFIRMATION NUMBER:
2301 3460 0000 8515 9043

ALEX A/ANN L FALK
1301 N 4TH ST
ABERDEEN SD 57401

Waiver of Signature ☐ YES ☐ NO

Postmark
Here

POSTAL CUSTOMER:

Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☐ Priority Mail®
☐ Package Services

PS Form 153, July 2001

(See Reverse)



6165-3

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 8, 2004

NOTICE OF ONE YEAR SUSPENSION OF WATER RIGHT

TO: Alex and Ann Falk, 1301 N 4th St, Aberdeen SD 57401

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

SUBJECT: One Year Suspension of Water Right No. 6165-3

On March 3, 2004, the Water Management Board ordered:

That Water Right No. 6165-3 is suspended until December 31, 2004, for failure to submit the 2003 irrigation questionnaire.

Suspension of a water permit or right means water may not be pumped during the 2004 irrigation season. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

If you wish to petition the Water Management Board to rescind the suspension, you will need to submit the 2003 irrigation questionnaire and a letter to our office requesting time on the agenda for the Water Management Board meeting scheduled for May 12, 2004 in Pierre, SD. The letter should include your reasons for not completing the 2003 irrigation questionnaire.

Please contact Genny McMath (605) 773-3352, if you have any questions.

CERTIFICATION

6165-3

I hereby certify that on March 8, 2004, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 8, 2004 regarding Notice of One Year Suspension Water Right No. 3451-3, 2366-3, 2453-3, 3332-3, 6165-3, 3198A-3, 2480A-3, 1723-2, 921-1, 1080-2, 2696-3A, 4414-3, 4658-3, 6073-3, Amendment of Water Right #470A-1 & one Year Suspension of Water Right #1554-1, Amendment of Water Right #4528-3 & One Year Suspension of Water Right #4535-3 Three Year Suspension of Water Right No. 932-2, One Year Suspension of Water Permit #2464-3, 5353-3, 5552-3, 1362-3, 1363-2 & 1365-2 addressed as stated below:

3451-3
Martin Bertrand
48342 W Authier Rd
Jefferson SD 57038

2366-3
Wayne W Brown
48113 SD 48
Akron IA 51001

2453-3
Jack & Gale Coleman
41247 SD Hwy 37
Springfield SD 57062-6324

3332-3
John W Collins
RFD 148
Aurora SD 57002

6165-3
Alex and Ann Falk
1301 N 4th St
Aberdeen SD 57401

3198A-3
J V Kenneally
PO Box 50
Raymond SD 57258-0050

2480A-3
Dennis H & Jackie McDowell
227 W Lakeshore Dr
Carrollton GA 30117

1723-2
Tim Palmer
HC 2 Box 19A
Martin SD 57551

921-1
Wendelyn Richter
RR 2 Box 198
Whitewood SD 57793

1080-2
Larry Schell
Schell Ranch
22955 Jensen Rd
Wall SD 57790

2696-3A, 4414-3, 4658-3
Donald Schmidt
HCR 3 Box 16
Willow Lake SD 57278-9515

6073-3
Dirk Byers
Six Mile Creek Golf Course
PO Box 93
White SD 57267-0093

470A-1 & 1554-1
Stanley Wood
18950 137th Ave
Newell SD 57750

4528-3, 4535-3
Dwight Brenner
28-53 397th Ave
Armour SD 57313

4528-3, 4535-3
Elsie Sanders
3366 Midway Ave
Grant Pass OR 97527

4528-3, 4535-3
Jerry Peacock
2032 Central Blvd
Rapid City SD 57702

932-2
Wayne Sanderson
PO Box 306
Murdo SD 57559-0306

2464-3
John R Talsma
41125 Bottom Rd
Springfield SD 57062

5353-3
Michael A Koslowski
13329 443rd Ave
Waubay SD 57273

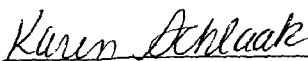
5552-3
Robert V Kellen
Kellen & Streit Inc.
30662 SW Jim River Rd
Yankton SD 57078-6018

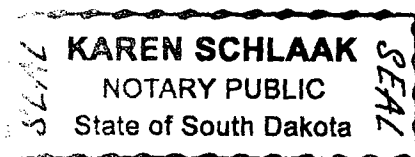
1362-2, 1363-2 & 1365-2
Oakley Eide
RR 2 Box 26
Burke SD 57523


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of March, 2004.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
803 SOUTH PIERRE STREET
P.O. BOX 180
PIERRE, SOUTH DAKOTA 57501-0180
SINCE 1881
www.magt.com

THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT W. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BRETT KOENECKE

RECEIVED
MAR 26 2004
WATER RIGHTS
PROGRAM

OF COURTESY
WARREN W. MAY
GLENN W. MARTENS 1881-1883
KAHL GOLDSMITH 1885-1886

TELEPHONE
605 224-8803

TELECOPIER
605 224-8888

Telecommunications Information Page
Telecopier: 605-224-6289

11:07
AM

TO: Garland Erbele
FAX NO.: (605) 773-4068
FROM: Brent A. Wilbur
DATE: March 26, 2004
OUR FILE: #2284 - Alex Falk
TOTAL PAGES INCLUDING THIS PAGE: 9
ADDITIONAL MESSAGE:

If you do not receive legible copies of all pages, please
contact PAT at 605-224-8803.

Original(s): ☒ Not Sent
☐ First Class Mail
☐ Sent by Overnight Courier
☐ Hand Delivered

The information contained in this facsimile message is attorney-client privileged and
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, or the employee or agent responsible to
deliver it to 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 notify us immediately by telephone, and return the original
message to us at the above address via U.S. Postal Service.

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
803 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BRETT KOENECKE

SINCE 1881
www.magt.com

OF COUNSEL
WARREN W. MAY
GLENN W. MARTENS 1981-1983
KAHL GOLDSMITH 1988-1988

TELEPHONE
605 224-8803

TELECOPIER
605 224-8868

March 26, 2004

baw@magt.com

VIA TELEFAX ONLY - (605) 773-4068

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment
& Natural Resources
523 East Capitol
Pierre, SD 57501-3182

RE: Alex Falk
Our File: 2284

Dear Garland:

Attached is the 2003 water management board irrigation questionnaire for Alex and Annie Falk of Aberdeen, South Dakota. The property being located is located in that area of Hughes County generally known as the pocket.

If at all possible Alex would very much like to do some irrigating prior to the May 12, 2004 board meeting.

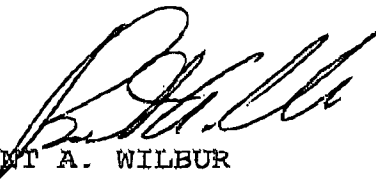
It is my understanding that Alex has never had a problem with turning in his questionnaire previously. It was not turned in last fall because a previous manager failed to fill out the report. Alex will be sending a letter to the board concerning that problem.

Garland Erbele, Chief Engineer
March 26, 2004
Page 2

Alex and his wife will be out of the state on a prior commitment on May 12th. Therefore, they have asked me to appear at the Water Board meeting for them. I would appreciate it if you could give me notice of the exact time and location of the meeting.

Sincerely,

MAY, ADAM, GERDES & THOMPSON LLP



BRENT A. WILBUR

BAW:lar
Enclosure
cc: Alex Falk

March 25, 2004

RECEIVED

MAR 29 2004

WATER RIGHTS
PROGRAM

Garland Erbele
Chief Engineer
Water Rights Program
Department of Environment and Natural Resources
523 East Capitol
Pierre, SD 57501-3182

Dear Mr. Eberle,

Please find enclosed a copy of my 2003 Irrigation Questionnaire. I apologize for the report being late. I am petitioning the Water Management Board to rescind the "one year suspension of water right" and also request time of the Water Management Board meeting scheduled May 12, 2004. Unfortunately, my wife and I have an irrevocable commitment out of town on May 12 and will be unable to attend the meeting. My attorney, Brent Wilber, will be representing me at that meeting.

The 2003 Irrigation Questionnaire was not turned in on time due to miscommunication between former employees. My farm manager that ran the irrigation system in 2003 resigned in September. Another irrigation worker resigned in November. These employees had been directed to fill out the questionnaire but did not complete it despite multiple requests. My new farm manager made several attempts to meet with them without success until recently, therefore the report was late. It was necessary for the new farm manager to obtain information from the previous manager to insure an accurate report.

I have provided my new manager and irrigation system operator copies of the irrigation report form to use as a log. These will be placed in each pivot to facilitate reports in the future.

We would like to fill our irrigation reservoir in April and May and do pre-plant irrigation this year. If there is a way we could pump in April it would be greatly appreciated.

Sincerely,



Alex Falk

Big Bend Ranch
1301 North 4th Street
Aberdeen, SD 57401

cc: Brent Wilbur



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 30, 2004

NOTICE

TO: Brent A Wilbur, May, Adam, Gerdes & Thompson LLP, PO Box 160, Pierre SD 57501-0160

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

SUBJECT: Notice of Hearing to Consider Request to Rescind Suspension of Water Right No. 6165-3

On March 26, 2004, we received your letter explaining circumstances involving the delay in submission of the 2003 irrigation questionnaire for Alex and Ann Falk. The 2003 questionnaire accompanied the letter.

Your request to have the suspension of Water Right No. 6165-3 reconsidered by the Water Management Board has been scheduled for **10:00 am, May 12, 2004, in the Community Room, Chamber of Commerce, 800 W Dakota Ave., Pierre, SD.**

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26.

After all evidence is taken at the hearing, the Board may issue a decision to rescind either the suspension of the water right, defer action or take no action. The hearing is an adversary proceeding and any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing. Any decision rendered by the Board may be appealed to the Circuit Court or to the State Supreme Court as provided by law.

The letter also states that Mr. Falk would like to irrigate prior to the May 12th board meeting. There simply is not a provision in which I can grant the right to irrigate under a suspended water right. The decision to suspend the water right for one year can only be rescinded by Board action. The hearing to consider reinstating the water right is scheduled for their next meeting on May 12th.

If you have any questions concerning this notice or the hearing process, please contact Genny McMath at (605) 773-3352.

c: Alex and Ann Falk
Diane Best, Assistant Attorney General

Note: Prior to April 27, 2001, please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

CERTIFICATION

I hereby certify that on March 30, 2004, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 30, 2004 regarding Notice of Hearing to Consider Request to Rescind Suspension of Water Right No. 6165-3 addressed as stated below:

Brent A Wilbur
May Adam Gerdes & Thompson LLP
PO Box 160
Pierre SD 57501

Alex & Ann Falk
1301 N 4th St
Aberdeen SD 57401

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

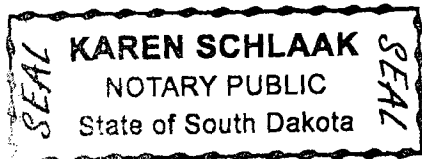
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of March, 2004.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



WATER RIGHT NO. 6165-3

ALEX AND ANN FALK

BRIEF DESCRIPTION:

Water Right No. 6165-3 was approved with the irrigation questionnaire qualification. The water right authorizes diversion of 3.67 cfs of water from the Missouri River and runoff to irrigate 528 acres in the SE ¼ Section 9, S ½ Section 16 and NE ¼ Section 21, T109N, R75W, Hughes County.

SUBMISSION OF PAST IRRIGATION QUESTIONNAIRES:

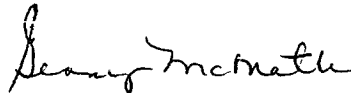
DATE MAILED	DATE DUE IN OFFICE	DATE RECEIVED	BOARD ACTION
October 2000	December 1, 2000	March 6, 2001	none
October 2001	December 1, 2001	February 25, 2002	none
October, 2002	December 2, 2002	November 14, 2002	none
October, 2003	December 1, 2003	March 26, 2004	March 3, 2004

January 14, 2004: A notice was sent (with signature confirmation) to Alex A & Ann L Falk requesting the 2003 irrigation questionnaire be returned prior to the March 3, 2004, hearing date. The notice outlined what action the Board could take concerning the past due questionnaire. The signature confirmation card indicated the mail was signed for A Falk on January 31st.

March 3, 2004: The Board suspended Water Right No. 6165-3 for one year for failure to submit the 2003 irrigation questionnaire.

March 26, 2004: A fax letter was received from Brent Wilbur with May, Adam, Gerdes and Thompson LLP indicating his firm was representing Alex and Ann Falk. They would like the water right suspension reconsidered by the Board on May 12th. The letter included the 2003 irrigation questionnaire (copy of letter attached).

March 30, 2004: A notice was mailed to Brent Wilbur and Alex and Ann Falk notifying them of the time, date and place of the May 12th hearing at which the suspended water right would be reconsidered by the Board.



Genny McMath
Water Rights Program
March 31, 2004



6165-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 14, 2004

NOTICE

TO: Alex & Ann Falk, 1301 N 4th St, Aberdeen SD 57401
Brent Wilbur, May, Adam, Gerdes & Thompson LLP, PO Box 160, Pierre SD
57501-0160

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

SUBJECT: Reinstatement of Water Right No. 6165-3

On May 12, 2004, the Water Management Board passed a motion to reinstate Water Right No. 6165-3, effective immediately. The Board's motion included the following statement:

- Failure to submit future required irrigation questionnaires will result in a one year suspension without reinstatement or the possibility of cancellation.

The Board took into consideration that the irrigation questionnaire was now on file with the Water Rights Program and that this was your first violation. Violations of any qualifications on irrigation rights and the subsequent Board action become part of the permanent record. Failure to submit future irrigation questionnaires will result in past violations being reviewed by the Water Management Board.

If you have any questions concerning your water right or the Board's action, please contact Genny McMath at (605) 773-3352.

c: Diane Best, Assistant Attorney General

CERTIFICATION

6165-3

I hereby certify that on May 14, 2004, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 14, 2004 regarding Notice of reinstatement of Water Right No. 6165-3, 6073-3, 2696-3A, 4414-3, 4658-3, 2366-3, & 4535-3 addressed as stated below:

6165-3
Alex & Ann Falk
1301 N 4th St
Aberdeen SD 57401

6165-3
Brent Wilbur
May Adam Gerdes & Thompson LLP
PO Box 160
Pierre SD 57501-0160

6073-3
Lew Weeks President
Six Mile Creek Golf Course
PO Box 66
White SD 57267-0066

6073-3
Curt Mortenson
Mortenson Law Office
32 E Main Ave
Ft Pierre SD 57532

2696-3A, 4414-3, 4658-3
Donald Schmidt
HCR 3 Box 16
Willow Lake SD 57278-9515

2366-3
Wayne W Brown
48113 SD Hwy 48
Akron IA 51001

4535-3
Dwight Brenner
28053 397th Ave
Armour SD 57313

4535-3
Elsie Sanders
3366 Midway Ave
Grants Pass OR 97527

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

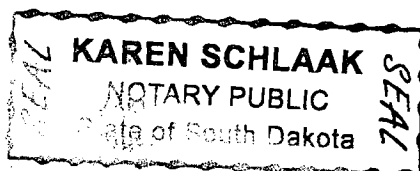
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of May, 2004.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 28, 2004

6165-3

Alex A & Ann L Falk
1411 N 4th St
Aberdeen SD 57401-1938

Dear Mr. & Mrs. Falk:

Enclosed is a "Notice" dated October 22, 2004 concerning the 2004 irrigation questionnaire. The notice was originally mailed to 1301 N 4th St, Aberdeen SD 57401. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

enclosures

6165-3



**Rabo
AgriFinance**

RECEIVED

NOV 16 2007

WATER RIGHTS
PROGRAM

November 15, 2007

Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501

Kris Adler
Loan Closing Specialist
Office One CityPlace Drive
Address Suite 200
St. Louis, MO 63141
Tel 314-687-4109
Fax 314-687-4432
kristin.adler@raboag.com

RE: Loan 106729 - FALK
Water Permit No. 2709-3
Water Permit No. 6165-3

Dear Sir or Madam:

Enclosed herein is the check no. 042128 in the amount of \$5.00 for the filing fee in regard to the enclosed Original Notice of Conditional Assignment of Ownership in regard to above referenced Borrower and Water Permits.

Also enclosed please find a copy of the South Dakota Mortgage for your information.

Please have the Notice of Conditional Assignment of Ownership filed and return to the undersigned in the postage paid addressed envelope.

If you have any questions, please feel free to call the undersigned at the above number. Thank you for your cooperation in this matter.

Sincerely,

Kris Adler,
Loan Closing Specialist

Enclosures

RECEIVED

NOV 16 2007

WATER RIGHTS
PROGRAM

#4699

STATE OF SOUTH DAKOTA } ss.
County of Hughes

Filed for record this 7 day of Nov. 2007

2:30 o'clock P.M., and recorded in

book 07 page 4406

PREPARED BY:
JOHN P. MANNING V
RABO AGRIFINANCE, INC.
P.O. BOX 411995
ST. LOUIS MO 63141
314-687-4000

Register of Deeds

Deputy

Fee \$28.00 pd.

Loan No. 106729

RETURN RECORDED DOCUMENT TO
RABO AGRIFINANCE, INC.
ONE CITY PLACE DRIVE, SUITE 200
ST. LOUIS, MISSOURI 63141

SOUTH DAKOTA MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage"), dated as of the 1ST day of NOVEMBER, 2007, is made between ALEX A. FALK and ANNIE M. FALK, whose principal residence is 1411 N. 4TH STREET, ABERDEEN, SD 57401, and all other persons executing this Mortgage, hereinafter called "Mortgagor," and AXA EQUITABLE LIFE INSURANCE COMPANY, a NEW YORK corporation, whose address is: TWELFTH FLOOR, 1290 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10104, hereinafter called "Mortgagee."

WITNESSETH that the Mortgagor by these presents does grant, bargain, sell, convey, transfer, assign, mortgage, pledge, warrant and confirm unto the Mortgagee all the property (the "Real Estate") hereinafter described, to wit:

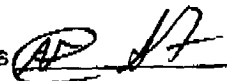
- I. The following described real property located in HUGHES COUNTY, SOUTH DAKOTA, to wit:

See attached Exhibit "A", which is incorporated herein by reference.

- II. The Mortgagor's interest as lessor in all leases (including, but not limited to, oil, gas and mineral leases) now or hereafter affecting the above described real property or any part thereof reserving, however, unto the Mortgagor the right, prior to any default hereunder, to collect and retain the income accruing under said leases.

TOGETHER WITH (1) all easements, rights-of-way and rights appurtenant to said Real Estate or used in connection therewith or as a means of access thereto; (2) all tenements,

Initials



hereditaments and appurtenances thereto, including all water and water rights appertaining thereto; (3) Mortgagor's interest as lessor in all leases affecting said Real Estate; (4) all buildings, structures, improvements, fixtures, attachments, appliances, equipment, machinery and other articles now or hereafter erected on, affixed or attached to, or located in or on said Real Estate which are real property, and all substitutions, replacements, additions and accessions thereof or thereto; (5) all rents, issues, profits, royalties, bonuses, income and other benefits derived from or produced by said Real Estate (subject, however, to the assignment of rents and profits to Mortgagee herein); and (6) all right, title, estate, interest, and other claim or demand, including, without limitation, all claims or demands to the proceeds of all insurance now or hereafter in effect with respect to said Real Estate, which Mortgagor now has or may hereafter acquire in said Real Estate, and all awards made for the taking by condemnation or the power of eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of said Real Estate.

AND ALSO, Mortgagor, as debtor, irrevocably grants and assigns to Mortgagee, as secured party, a security interest in all of the following collateral which is personal property now or hereafter owned by Mortgagor or in which Mortgagor now or hereafter has any rights and which is now or hereafter located on or at, or affixed or attached to, or produced from, or used in connection with said Real Estate, including but not limited to: All personal property described in Exhibit "B" attached hereto and made a part hereof and articles of personal or mixed property of every kind and nature whatsoever, including, without limitation, all (a) goods, including without limitation, equipment and machinery (excluding, however, automobiles, trucks, tractors, trailers, wheeled vehicles, planting and tillage equipment), watering and irrigation apparatus, pumps, motors, generators, pipes, center pivot irrigators and sprinklers, windmills, fences, fixtures, fittings, appliances, farm products, crops growing or to be grown, timber standing or to be cut, minerals or the like (including oil and gas), raw materials, inventory and work in process; (b) all water stock and water rights and, to the extent listed on the attached Exhibit "B", all investment property, including without limitation, certificated and uncertificated securities, securities entitlements, securities accounts and commodities accounts, including all stock, bonds and commodities contracts; (c) all permits and licenses used in the operation of the Real Estate and, to the extent listed on the attached Exhibit "B", general intangibles, including without limitation payment intangibles and software; (d) accounts, including without limitation all of Mortgagor's right to any payment arising out of the sale, lease or license of all kinds of tangible and intangible personal property, contract rights, general intangibles, instruments, documents, chattel paper, accounts receivable, deposits, fees, charges and other payments, income and cash receipts that are otherwise described in this paragraph; (e) personal property of the same general kind or class as otherwise described in this paragraph which Mortgagor may now own or hereafter acquire, wherever located, used or usable in the operation of or relating to the Real Estate; and all products and proceeds from the sale or other disposal thereof, including, without limitation, all payments under any insurance policies, substitutions and replacements, additions, accessions of or to said collateral and any indemnity, warranty or guaranty relating to any of the foregoing (all of the foregoing property shall be hereinafter collectively referred to as the "Collateral"; the Real Estate and the Collateral shall hereinafter be collectively referred to as the "Property"). **PROVIDED HOWEVER**, that nothing in this Mortgage shall prevent Mortgagor from obtaining secured crop financing which may include the perfection of a lien by the crop lender on the crops growing or to be grown for a period not to exceed the beginning of the next crop

year. If Mortgagor exercises its right to place a single crop lien on the crops grown or to be grown on the Real Estate hereunder, such crop lien shall automatically be a superior lien to the lien on such crop created hereby without the need for any consent or subordination from Mortgagee.

TO HAVE AND TO HOLD THE SAME unto the Mortgagee, its successors and assigns, forever as security for the payment to the Mortgagee, at its principal office or at such other place as the holder hereof may from time to time designate in writing, of the principal sum of ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,900,000.00), with interest thereon at the initial rate of SIX AND EIGHTY-FIVE HUNDREDTHS per centum (6.85%) per annum according to the terms of a certain [adjustable interest rate] promissory note (the "Note") in said principal amount bearing even date herewith and executed by:

ALEX A. FALK

ANNIE M. FALK

BIG BEND RANCH PARTNERSHIP, a South Dakota General Partnership

and providing for the payment thereof, with interest and other appurtenant charges as follows:

\$24,000.00 principal plus accrued interest on JULY 1, 2008, and \$24,000.00 principal plus accrued interest on the first day of each JANUARY and JULY thereafter until JULY 1, 2022 (the "Maturity Date"), when the entire unpaid balance of the principal and interest shall become due and payable, with interest on the unpaid principal balance thereof from the date of the loan disbursement, initially at the rate of SIX AND EIGHTY-FIVE HUNDREDTHS percent (6.85%) per annum, payable on each JULY 1, 2008, and SEMI-ANNUALLY on JULY 1 and JANUARY 1 thereafter, all in lawful money of the United States of America. Interest on the principal amount hereof from the day of disbursement to the first day of the regular installment period immediately following, is payable concurrently with and in addition to said first regular installment, but this provision applies only where the period from the day of disbursement to the first installment due date exceeds the regular installment period.

and finally maturing JULY 1, 2022, subject to acceleration of maturity on default in the payment of any installment of principal or interest as specified in said note.

PROVIDED, ALWAYS, that if the Mortgagor, his heirs, representatives, successors or assigns, shall pay unto the Mortgagee, its successors or assigns, the said sum of money mentioned in the Note and the interest thereon at the times and place in the manner specified in the Note, and all other sums that may become due and owing to the Mortgagee pursuant to any of the terms, covenants and conditions hereof, and perform all the conditions and covenants contained in this Mortgage, then these presents and the estate hereby granted shall cease, determine and be void, otherwise to remain in full force and effect.

AND SUBJECT to the covenants and conditions hereinafter set forth.

FIRST. The Mortgagor hereby covenants and agrees, to the extent permitted by law, as follows: (a) to pay promptly when due the principal and interest and other sums of money provided for in the Note and in this Mortgage or either; (b) to pay all taxes, assessments and other charges (including ditch, canal, reservoir, or other water charges, taxes or assessments) imposed by law upon the Property (c) to keep the Property and improvements on the Real Estate in good condition and repair and not to commit or suffer waste thereof, and except as authorized in any schedule annexed hereto and forming a part hereof, neither to remove nor permit the removal of any timber, buildings, oil, gas, minerals, stone, rock, clay, fertilizer, gravel or top soil without the prior written consent of the Mortgagee; (d) to maintain and deliver to the Mortgagee policies of insurance against such hazards on the buildings now or hereafter located on the Real Estate as the Mortgagee may require from time to time, in such companies and amounts and with such loss payable clauses as shall be satisfactory to the Mortgagee; in the event of loss the Mortgagee is expressly authorized to settle or compromise claims under said policies and the proceeds shall be paid to the Mortgagee who may apply same or any part thereof on the indebtedness secured hereby or towards the reconstruction or repair of said buildings or release same to the Mortgagor; (e) to pay any lien, claim or charge against the Real Estate which might take precedence over the lien hereof; (f) to pay on demand all legal expenses, title searches, or attorney fees reasonably incurred or paid by the Mortgagee to collect the Note or foreclose or protect the lien of the Mortgage; (g) to do any and all acts all in a timely and proper manner, requested by Mortgagee to protect and preserve the security interests granted hereunder, pursuant to the Uniform Commercial Code ("UCC") as in effect from time to time in the state where the Collateral is located except to the extent the UCC provides for the application of the law of the state of location of the Mortgagor in which event the UCC as in effect from time to time, in such state shall apply, in a form satisfactory to Mortgagee, and the payment of the cost of filing such statements in all public offices requested by Mortgagee; and to do any and all acts as shall hereafter be reasonably requested by Mortgagee to effectuate the intent hereof and to render all of the Property available for the security and satisfaction of the indebtedness secured hereby and to enable Mortgagee to sell and/or convey the Property pursuant to the terms hereof; (h) in the event Mortgagor shall fail to comply with the provisions of (a) through (g) above, the Mortgagee may take such action as is necessary to remedy such failure and all sums paid by the Mortgagee pursuant hereto with interest at the rate hereinafter provided shall constitute a lien upon the Property, shall be secured by this Mortgage, and shall be immediately due and repayable to the Mortgagee; (i) not to sell the Real Estate or any portions thereof, or, if the Mortgagor is a corporation not more than 0% of its corporate stock shall be sold, traded or disposed of to persons other than the present owners prior to the time the indebtedness secured hereby shall have been reduced (exclusive of prepayments not permitted by the note) to \$0; (j) if the Real Estate or any portion thereof shall be taken or damaged under the power of eminent domain, the award for any property so taken or damaged (including severance damages to the remaining premises) shall be paid to the Mortgagee and applied in full or in part at the option of the Mortgagee in reduction of the indebtedness hereby secured; (k) the Mortgagee shall have the right to inspect the Property at such reasonable times as the Mortgagee may desire to determine the Mortgagor's compliance with the covenants contained in the Mortgage; (l) the Mortgagee may release from the lien hereof any part of the above described Property without requiring any consideration therefor, and (m) Mortgagor is lawfully seized of said Real Estate in fee simple, the same is free from liens, security interests, encumbrances and any adverse claims of any kind whatsoever except as may otherwise be



specifically noted herein or waived in writing by the Mortgagee, Mortgagor will execute or procure any further necessary assurances of title and does hereby warrant generally the title to said Real Estate and will forever defend the same against the claims and demands of all persons whomsoever, and Mortgagor's separate estate, whether vested, contingent or in expectancy, is hereby conveyed and Mortgagor does hereby expressly waive, release and relinquish all rights and benefits of any homestead, dower, curtesy, appraisement, exemption and stay laws of this state. It is agreed that the interest provided for in subsection (h) above shall be 5% per annum above the contract/adjustable or the highest lawful rate permitted by contract under applicable law, whichever is less.

SECOND. Mortgagor agrees that all of said Collateral which is erected on, affixed or attached to, or located in or on said Real Estate shall be deemed to be real property and a part of said Real Estate. No fixtures or equipment (including watering and irrigation apparatus) shall be removed from said Real Estate without the prior written consent of Mortgagee, except that Mortgagor shall have the right, without such consent, to remove and dispose of free from the security interest hereof such fixtures and equipment as may from time to time become worn out or obsolete, provided that Mortgagor shall, simultaneously with or prior to such removal, replace such removed fixtures or equipment with replacement fixtures or equipment having a value, quality and utility at least equal to the removed fixtures or equipment. All agreements of Mortgagor herein, and all rights of Mortgagee herein, relating to said Real Estate shall apply to said Collateral whether or not expressly referred to herein. This Mortgage is a financing statement and covers goods included in said Collateral which are or are to become fixtures and is to be recorded in the real estate records. Mortgagor is the record owner of said Real Estate.

THIRD. If the Mortgagor shall default in the payment of the Note or in the performance of any of the covenants or agreements herein or in the Note or in any agreement collateral hereto contained, or if the then owner of the Property shall make an assignment for the benefit of creditors or shall file a petition for relief under the Bankruptcy Code of 1978, as amended, or under any similar statute, or shall be adjudicated bankrupt or insolvent, or if any receiver, liquidator or trustee shall be appointed for such then owner of any of his property, then in such event, the entire indebtedness hereby secured shall, at the option of the Mortgagee, be due and collectible at once by judicial foreclosure proceedings, or by advertisement as provided by statute or the rules of practice relating thereto and in such event this provision shall be deemed as authorizing and constituting a power of sale as mentioned in said statutes or rules and any amendatory thereof; that in addition to the rights and remedies herein, the Mortgagee is hereby authorized and empowered at its option to exercise forthwith and from time to time any further rights and remedies available to the Mortgagee under the laws of the state wherein the Property is situate. Mortgagee may pursue every legal and equitable remedy available at law and including, without limiting the generality of the foregoing, the remedies of a grantee under the UCC (regardless of whether the UCC has been enacted in the jurisdiction where rights or remedies are asserted), the right to take possession of the Collateral and enter the Real Estate on which the Collateral or any part thereof may be situated and remove the same therefrom, the right to resell the Collateral at any place Mortgagee elects and deliver a bill of sale therefor, the right to require Mortgagor to make the Collateral available to Mortgagee at a place designated by Mortgagee and reasonably convenient to both parties, and without removal, the right to render the Collateral unusable and to dispose of the Collateral; provided that unless the Collateral is perishable or threatens to decline speedily in value, Mortgagee shall send

Mortgagor at least ten (10) days prior written notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition is to be made, by United States mail, postage prepaid, to the address set forth above, and Mortgagee may bid and purchase Collateral at public or private sale.

FOURTH. Mortgagor acknowledges that his/her current financial position is an important factor in Mortgagee's decision to advance the funds represented by the aforementioned Note. Mortgagor therefore has agreed, in order to provide assurance to Mortgagee with regard to Mortgagor's financial position, that it shall be an event of default for Mortgagor to allow any lien or encumbrance, other than this Mortgage and the lien for taxes which are not yet due and payable, to be placed on all or any part of the Real Estate and allowed to remain a lien for 30 days EXCEPT a lien junior and inferior to this Mortgage may be placed on all or a part of said Real Estate in favor of N/A in a principal amount not to exceed ZERO DOLLARS (\$0) to be placed of record no later than N/A.

FIFTH. The covenants herein contained shall bind, and the benefits and advantages thereof shall inure to the respective heirs, executors, administrators, successors, and assigns of the parties hereto. In this Mortgage unless the context otherwise requires words in the singular number include the plural and in the plural include the singular, and words in the masculine gender include the feminine and the neuter. Whenever the term "Mortgagor" shall include more than one person or entity, their liability hereunder shall be joint and several.

SIXTH. Mortgagor shall not suffer any waste of the Property and will not permit or conduct either the generation, treatment, storage or disposal of hazardous waste, as defined in the Resource Conservation and Recovery Act, or the disposal on the Real Estate of petroleum or any hazardous substance, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, and will perform all remedial actions reasonably necessary as the result of the presence of any such hazardous wastes, petroleum or hazardous substances on, at or near the Real Estate. Mortgagor shall be personally liable for and agrees to indemnify, defend with counsel satisfactory to Mortgagee and hold Mortgagee harmless against any loss, damage, or liability suffered by Mortgagee, including but not limited to attorney's fees, due to the presence of any such hazardous waste, petroleum or hazardous substance on, at, or near the Real Estate, and Mortgagor shall be liable for compliance (and for costs associated therewith) with any directive or order by any governmental entity relating to the presence of any such hazardous waste, petroleum or hazardous substance on, at, or near the Real Estate. Mortgagor will deliver promptly to Mortgagee (i) copies of any documents received from the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning Mortgagor's operations upon the Real Estate; and (ii) copies of any documents submitted by Mortgagor to the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning operations on the Real Estate. Mortgagor agrees that, notwithstanding any provision to the contrary in this Mortgage, this indemnification and hold harmless shall survive the release or reconveyance of this Mortgage, whether pursuant to payment in full of the Note, or judicial or non-judicial foreclosure under this Mortgage, or otherwise.

SEVENTH. Mortgagor, its successors and assigns and each of them, represent and warrant that the Property involved in this transaction does not represent the proceeds of some form of unlawful activity under any state, federal or foreign law.

EIGHTH. This Mortgage constitutes a security agreement within the meaning of the UCC with respect to any part of the Property which may now or hereafter be characterized by law as personal property, and in the event of any default under this Mortgage which continues beyond the applicable notice and cure period, if any, the Mortgagee shall have all the rights and remedies of a secured party under the UCC, as well as all other rights and remedies available hereunder or under this Mortgage at law or in equity. Mortgagor authorizes Mortgagee to file one or more financing statements and continuation statements describing the Collateral and hereby ratifies any such financing statement or continuation statement previously filed by Mortgagee. Mortgagor will, from time to time, within ten (10) days after request by the Mortgagee, execute, acknowledge and deliver any financing statement, continuation statement or other document that the Mortgagee might request in order to perfect, protect, preserve, continue, extend or maintain the security interest created by and the priority of this Mortgage and will, on demand, pay any expenses incurred by the Mortgagee in the preparation, execution and filing of any such documents. Mortgagor represents and warrants that: (a) all Collateral is located in the state in which the Real Estate is located; (b) Mortgagor's chief executive office or principal residence is Mortgagor's address set forth in the first paragraph of this Mortgage; (c) Mortgagor's state of organization, if applicable, is as set forth in the first paragraph of this Mortgage; and (d) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage.

NINTH. This Mortgage shall be governed by and construed and interpreted in accordance with the internal laws of the state in which the Real Estate is located, except and only to the extent the UCC provides otherwise.

IN WITNESS WHEREOF, each of the undersigned has signed, sealed and delivered this Mortgage as of the day, month and year first above written.


ALEX A. FALK

ANNIE M. FALK

Mortgagor's Tax Identification Number:

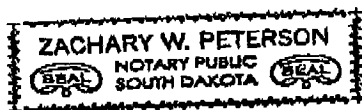
503-66-3632

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF BROWN)

On this 5 day of November, 2007, before me, Zachary W. Peterson
the undersigned officer, personally appeared ALEX A. FALK and ANNIE M. FALK, husband and
wife, known to me or satisfactorily proven to be the person whose names are subscribed to the
within instrument and acknowledged that they executed the same for the purposes therein
contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)



Zachary W. Peterson
Notary Public
Zachary W. Peterson
Print or Type Name

My commission expires: 8/31/2012

AF

Exhibit "A"

Legal Description

TOWNSHIP 109 NORTH, RANGE 75 WEST OF THE 5TH P.M., HUGHES COUNTY,
SOUTH DAKOTA;

SECTION 8: E1/2, less right-of-way and E1/2SW1/4SW1/4 less USA Take;

SECTION 9: All, less right-of-way;

SECTION 16: All, less right-of-way;

SECTION 17: All, less USA Take;

SECTION 20: E1/2;

SECTION 21: NE1/4, less right-of-way.

Exhibit "B"**Personal Property**

All fixtures, water rights, irrigation equipment, including but not limited to watering and irrigation apparatus, pumps, motors, generators, pipes, center pivot irrigators and sprinklers, frost protection apparatus, windmills, fences, fixtures, fittings, appliances, also including all grain bins, dump shed, legs, grain dryer, augers, conveyors, loading and unloading systems, stirators, dryer fans, scales, L P tanks whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

All easements, right-of-way, licenses and permits including without limitation water permit no. 2709-3 and water permit no. 6165-3; right of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges belonging to or in any way appertaining to the real property described in Exhibit "A", whether now or in the future; and Corps of Engineers Contract #DACW 45-2-77-6089 issued 6/28/1977.

NOTICE OF CONDITIONAL ASSIGNMENT OF OWNERSHIP

**To: Chief Engineer
Water Rights Division
Department of Environment & Natural Resources
523 East Capitol
Pierre, South Dakota 57501-3181**

RECEIVED

NOV 16 2007

**WATER RIGHTS
PROGRAM**

Date: November 1, 2007

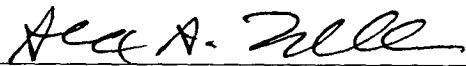
Please take notice that Alex A. Falk and Annie M. Falk, husband and wife, have granted to AXA Equitable Life Insurance Company, One CityPlace Dr., Suite 200, St. Louis, Missouri 63141 (the "Lender") a security interest in certain easements, water rights, water permits, and water licenses, evidencing water rights appurtenant to certain real property more fully described in Schedule "A" attached to this Notice and incorporated herein by this reference, including without limitation the following water permits and licenses:

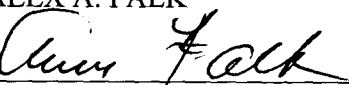
Water Permit No. 2709-3

The security interest granted by Alex A. Falk and Annie M. Falk to the Lender secures the principal sum of \$1,900,000.00, with interest thereon at the initial rate of Six and Eighty-five Hundredths percent (6.85%) per annum according to the terms of a certain Adjustable Rate Promissory Note, as well as other obligations as provided in the Security Agreement and other loan documents.

You are requested to file this Notice of Conditional Assignment in the appropriate file at the Division of Water Rights as evidence of the security interest granted to the Lender in all such water permits and water rights.

A fee of \$2.50 is attached to cover the filing fees as required under SDCL § 46-2-13.



ALEX A. FALK


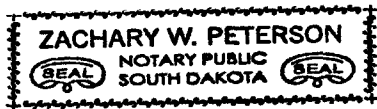
ANNIE M. FALK

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF BROWN)

On this 5 day of November, 2007, before me, Zachary W. Peterson, the undersigned officer, personally appeared Alex A. Falk and Annie M. Falk, husband and wife, known to me or satisfactorily proven to be the person whose names subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)



Zachary A. Wilson
Notary Public

Zachary W. Peterson
Print or Type Name

My commission expires: 8/31/2012

Exhibit "A"

Legal Description

TOWNSHIP 109 NORTH, RANGE 75 WEST OF THE 5TH P.M., HUGHES COUNTY,
SOUTH DAKOTA;

SECTION 8: E1/2, less right-of-way and E1/2SW1/4SW1/4 less USA Take;

SECTION 9: All, less right-of-way;

SECTION 16: All, less right-of-way;

SECTION 17: All, less USA Take;

SECTION 20: E1/2;

SECTION 21: NE1/4, less right-of-way.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 11/16, 2007

RECEIVED OF Rabo Agrifinance Inc PO Box 411995 St Louis MO 63141

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>6165-3</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2 50

No.

03209

By [Signature] [Signature]
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 27, 2008

2709-3
6165-3

Kris Adler
Rabo AgriFinance
One City Place Dr Suite 200
St Louis MO 63141

RE: Alex A and Annie M Falk to AXA Equitable Life Insurance Company

Dear Ms. Adler:

I am writing in regard to Water Right Nos. 2709-3 and 6165-3. The "*Conditional Assignment of Ownership*" filed November 15, 2007 was received on November 16th and effective the day it arrived.

Enclosed are your Receipt Nos. 03208 and 03209 in the amounts of \$2.50 each. The fee was paid for filing of the assignments.

For informational purposes for your records, all of the land authorized for irrigation purposes is now covered under Water Right No. 6165-3. At the time of licensing, No. 2709-3 was incorporated into No. 6165-3.

If you have any questions, please contact me.

Sincerely,

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

enclosures