

WATER PERMIT NO. 6212-3

Name of Applicant: John Ulmer

Address: Rt 1 Box 109, Menno SD 57045 Phone: 605 387-5660

Amount of Water Claimed: 25AF Total Acres: 20

Source of Water Supply: groundwater and storage dam

Water to be used for: irrigation County: Hutchinson

Type of Waste Disposal System:

Location: 4 miles southwest of Menno

PRIORITY Date Received: 5-30-2000

Fee: \$150

Corrected Application Received::

Period of Annual Use: April 1 – October 31

Remarks: Allow flow from well to maintain small dam to irrigate corners not covered by existing center pivot authorized by No. 5457-3

Diversion Point: SW ¼ NE ¼ Sec 29-T97N-R57W

Water Impounded: E ½ NW ¼, W ½ NE ¼
Sec 29-T97N-R57W

Depth of Well: NA

Well Driller: : NA

Remarks:

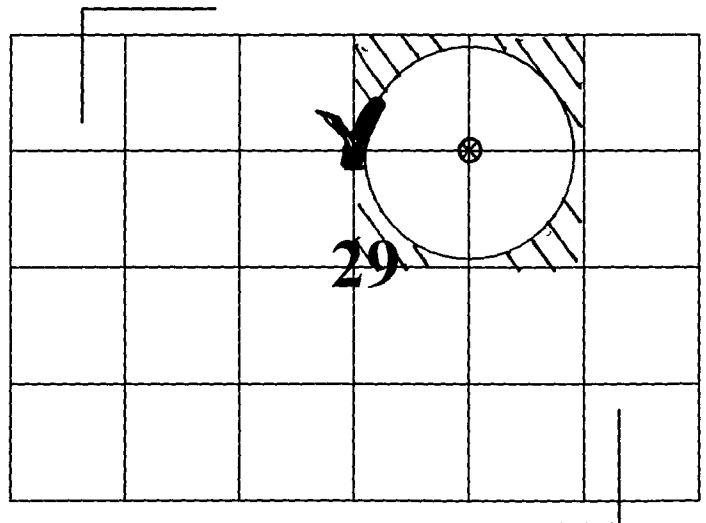
Type of Map: aerial

Prepared by: Barry McLaury

Reviewed and the Number Assigned on: 6-2-2000

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



SOUTH DAKOTA
WATER PERMIT NO. 6212-3 FOR IRRIGATION

Date of first receipt of application May 30, 2000.

The Water Management Board approved Water Permit Application No. 6212-3 on December 6, 2000 for John Ulmer, 42963 Maxwell Rd, Menno SD 57045 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 6212-3 authorizes impoundment of 25 acre-feet from surface water runoff in an existing dam located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29 with water impounded in the E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29; all in T97N-R57W. Water Right No. 5457-3 authorizes 1.88 cubic feet of water (cfs) from a well located in the center of the NE $\frac{1}{4}$ Section 29 to irrigate 132 acres in the NE $\frac{1}{4}$ Section 29-T97N-R57W. This permit authorizes diversion of water from this well to maintain the dam. Water will be pumped from the dam at a rate of 0.89 cfs to irrigate 20 acres located in the corners of the NE $\frac{1}{4}$ Section 29.
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 May 30, 2000.
4. One-fifth of the construction is to be completed on or before June 6, 2000.
5. All construction is to be completed on or before December 6, 2005.
6. Water is to be put to beneficial use on or before December 6, 2009.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Water Permit No. 6212-3 authorizes a dam with storage capacity of 25 acre feet of water. The dam may be filled one or more times per year from surface runoff and the well authorized by Water Right No. 5457-3. Water will be diverted from the dam for irrigation of 20 acres.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 6212-3 authorizes a maximum diversion rate of 0.89 cfs for the irrigation of 20 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Applicant is not permitted to irrigate under this permit unless water is maintained over the culvert on the land of the Zeeb's or their successors. The intent of this condition is that when the applicant irrigates he maintains water in the area shown on the photograph labeled Harold's land, dated 11/10/00. The culvert described is the culvert between the lands of the applicant and the opponent.

(continued)

5. Applicant shall when irrigating maintain the dam at a level above the culvert described in the paragraph above.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer

Water Rights Program

Department of Environment and Natural Resources

MAR 13 2001

date



ESG
5/10/00

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>6212-3</u>	(office use only)
	Basin <u>James River</u>	Hydrologic Unit <u>10160011</u>
	Newspaper <u>Hutchinson Co. Herald, Menno</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.)
Additional acres to irrigated corners in NE 1/4 Section 29 & authorize using a small dam as a regulating structure.

- Name of Applicant John Ulmer Phone 387-5660
(check one) Owner Tenant/lessee
Mailing Address Rt 1, Box 109, 42963 Maxwell Rd Menno State SD 57045
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed no add'l *CFS or 25 **GPM ***AF Total Acreage 20
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Well authorized by Water Right No. 5457-3
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) Well - Center of NE 1/4 Section 29, T97N, R57W dam - See Attached map SW 1/4 NE 1/4 Sec 29
Water Impounded: E 1/2 NW 1/4, W 1/2 NE 1/4 Sec. 29 County Hutchinson
- County or counties where water will be used Hutchinson
- Annual period during which water is to be used April 1 - October 31
- 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)

Land Description	Acres	Land Description	Acres
<u>Corners of NE 1/4 Sec 29, T97N R57W</u>	<u>20</u>		

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

Intend to allow flow from well to maintain a small dam for the purpose of irrigating corners not covered by existing center pivot. Water will be diverted from the dam and applied to the corners by a traveling gun or some other means.

STATE OF SOUTH DAKOTA) SS
County of Hutchinson

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, John Ulmer, 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 John Ulmer

Subscribed and sworn to before me this 26th day of May 20 00

Mary Mettler

Notary Public signature

Supplemental Information

(Complete applicable portions only)

(type or print in ink)

1. Well Information - Proposed Construction

See existing Water Right No. 5457-3

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

2. Wastewater Disposal System Information

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

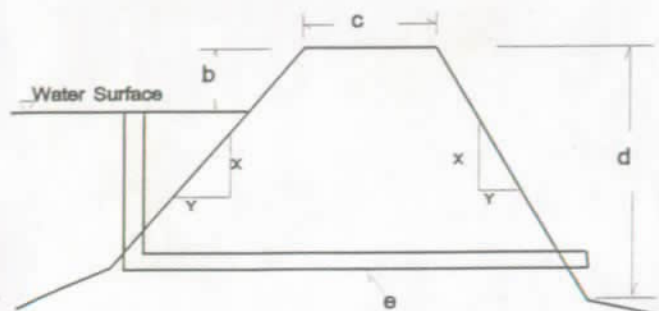
3. Dugout Information

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

4. Water Storage Dams

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

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



- b) Freeboard 10'
- c) Crest Width 17
Crest Length 130
- d) Height 28
- e) Primary Outlet Capacity 36"
If pipe, diameter 36"
- f) Secondary Spillway Capacity 6 x 40
Spillway Width 40'
- g) X & Y Slope 3-1
Upstream _____
Downstream _____
- h) Surface Area of Impoundment 1.8 Acres
- i) Storage 25.2 Acre Feet
- j) Drainage Area Above Dam 2000 Acres

5457-3

NOT TO SCALE



Barry McLaury *Barry McLaury*
 Environmental Scientist
 Division of Water Rights
 Date November 9, 1995

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

No 416535

Pierre, May 30, 2000

RECEIVED OF John & Cheryl Ulmer, 42963 Maxwell Rd., Menno, SD 57045
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 _____	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. _____	50 00
Fee for Filing Transfer Form _____	
Fee for Filing Extension Request _____	
Fee for _____	

(Any Other Work Provided by Law)	
Total	200 00

By

Chief Engineer

Harold E. Eide



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 10, 2000

John Ulmer
Rt 1, Box 109
Menno, SD 57045

Dear Mr. Ulmer:

I am writing in response to our telephone conversation regarding your irrigation system in the NE¼ of Section 29, T97N, R57W. You indicated wanting to use a small dam supplied by the well to irrigate the corner areas not covered by the pivot. You asked that I review the file and give you some direction on the necessary steps that need to be taken to adhere to state water rights law.

First, Water Permit No. 5457-3 authorized irrigation of 152 acres for irrigation in the NE¼ of Section 29 from one well. However, in November 1995 a Water Rights staff person conducted a licensing investigation. Based on this investigation the water license was issued for only the 132 acres that was being irrigated at that time. Water licenses are issued only to reflect what was actually developed for irrigation at the end of the construction period. Please see a copy of the enclosed water license, investigation report and map for further reference. If you need further explanation on why the water right was reduced by 20 acres, please give me a call.

Based on above information, for you now to irrigate the corners will require a new water right permit to be obtained. Enclosed are application forms to file to irrigated for the additional corner acres and to include the small dam as a means of irrigating. I have partially completed the application form as I understand your plans and highlighted those areas you need to address. As I understand your plans, you will not be increasing the diversion rate from the well above the 1.88 cfs (850 gpm) than it currently produces. I have also included a blank application form if substantial changes are necessary.

I now view this as a new application because new acres will be irrigated above the number authorized by Water License No. 5457-3. The application/licensing fee to add acres (less than 60 acres) and include this dam as a regulating structure is \$200.

John, feel free to give me a call if you have additional questions.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosures

Water Rights Program - File Documentation

File No. XX

NAME: John Ulmer

ADDRESS: Menno

DATE: 6-2-2000

COUNTY: HT

TELEPHONE: 605 387-5660

RE: Pending application

COMMENTS:

John Ulmer called and stated the location of the dam was as shown on the aerial photo:
E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29-T97N-R57W

I stated that it appeared from the photo that the pivot went through the dam. Mr. Ulmer indicated it did not. They use extended end guns.

Karen Schlaak
Karen Schlaak
Environmental Scientist

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 6212-3, John Ulmer

ADDRESS: COUNTY: Hutchinson

DATE: July 24, 2000 TELEPHONE: 387-5660

RE: diversion rate from dam

COMMENTS:

I contacted Mr. Ulmer regarding the intended diversion rate from the dam to irrigate 20 acres. Mr. Ulmer stated he intended to use a big gun capable of diverting at a rate of 400 gpm (0.89 cfs). This is the operating diversion rate of the big gun.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Stenlund



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6212-3, John Ulmer**

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. 6212-3, John Ulmer, Rt 1 Box 109, Menno, SD 57045.

The Chief Engineer is recommending APPROVAL of Application No. 6212-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Water Permit No. 6212-3 authorizes a dam with storage capacity of 25 acre feet of water. The dam may be filled one or more times per year from surface runoff and the well authorized by Water Right No. 5457-3. Water will be diverted from the dam for irrigation of 20 acres.
2. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 6212-3 authorizes a maximum diversion rate of 0.89 cfs for the irrigation of 20 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
August 14, 2000

John Ulmer new Qualification Nos. 4 & 5

4. Applicant is not permitted to irrigate under this permit unless water is maintained over the culvert on the land of the Zeeb's or their successors. The intent of this condition is that when the applicant irrigates he maintains water in the area shown on the photograph labeled Harold's land, dated 11/10/00. The culvert described is the culvert between the lands of the applicant and the opponent.
5. Applicant shall when irrigating maintain the dam at a level above the culvert described in the paragraph above.

REPORT ON WATER PERMIT APPLICATION NO. 6212-3
for John Ulmer
July 19, 2000

Application No. 6212-3 proposes to impound 25 acre feet from runoff in an existing dam located in the SW 1/4 NE 1/4 of section 29 with water impounded in the E 1/2 NW 1/4, W1/2 NE 1/4 of section 29; all in T97N R57W. Water Right No. 5457-3 authorized 1.88 cfs from a well located in the center of the NE 1/4 of section 29 to irrigate 132 acres in the NE 1/4 of section 29, T97N R57W in Hutchinson County. This application proposes to divert water from the well to maintain the dam. Water will be pumped from the dam to irrigate 20 acres located in the corners of the NE 1/4 of section 29.

AQUIFER- LOWER JAMES MISSOURI (LJM)

The Lower James Missouri is a buried outwash (sand and gravel) which is under water table conditions in this area. The driller's log filed with Water Right No. 5457-3 indicates sand and gravel beginning at a depth of 120 feet to a total depth of 230 feet. The completed well had a static water level of 125 feet below land surface and was capable of producing 850 gpm with five feet of drawdown. This results in a specific capacity of 170 gpm/ft of drawdown which is very good. The aquifer can be found under artesian conditions at any individual site but in general the aquifer behaves as if it is under water table conditions. The aquifer extends into Yankton County to the south and is hydraulically connected to the James River.

The Lower James Missouri aquifer underlies 268 square miles and contains an estimated 2.367 million acre feet of water in storage (Lindgren, 1990). Ground water movement is from northeast to southwest and toward the James River in this area.

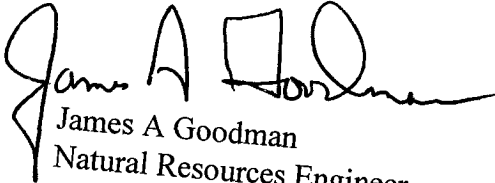
The Water Rights Program does monitor observation wells completed into the aquifer in this area. Observation well, YA-80Q is located about two miles southeast of this application. Water levels for this well show good response to climatic conditions, that is, rising water levels during wet years (recharge) and gradually declining water levels during dry years. A hydrograph for this observation well is included with this report (Water Rights, 2000).

REVIEW OF EXISTING WATER PERMITS/RIGHTS

The nearest existing water right is No. 5911-3 (John Ulmer) and is located about one mile southeast of this application. Interference is not a concern. Drawdown created by pumping does not cause any problems now and this application will not change that. The original permit application for water right No. 5457-3 caused some controversy. The application was contested and heard before the Water Management Board. The resulting approval of the permit did not cause adverse effects on domestic wells in the area and there have been no further complaints.

CONCLUSIONS

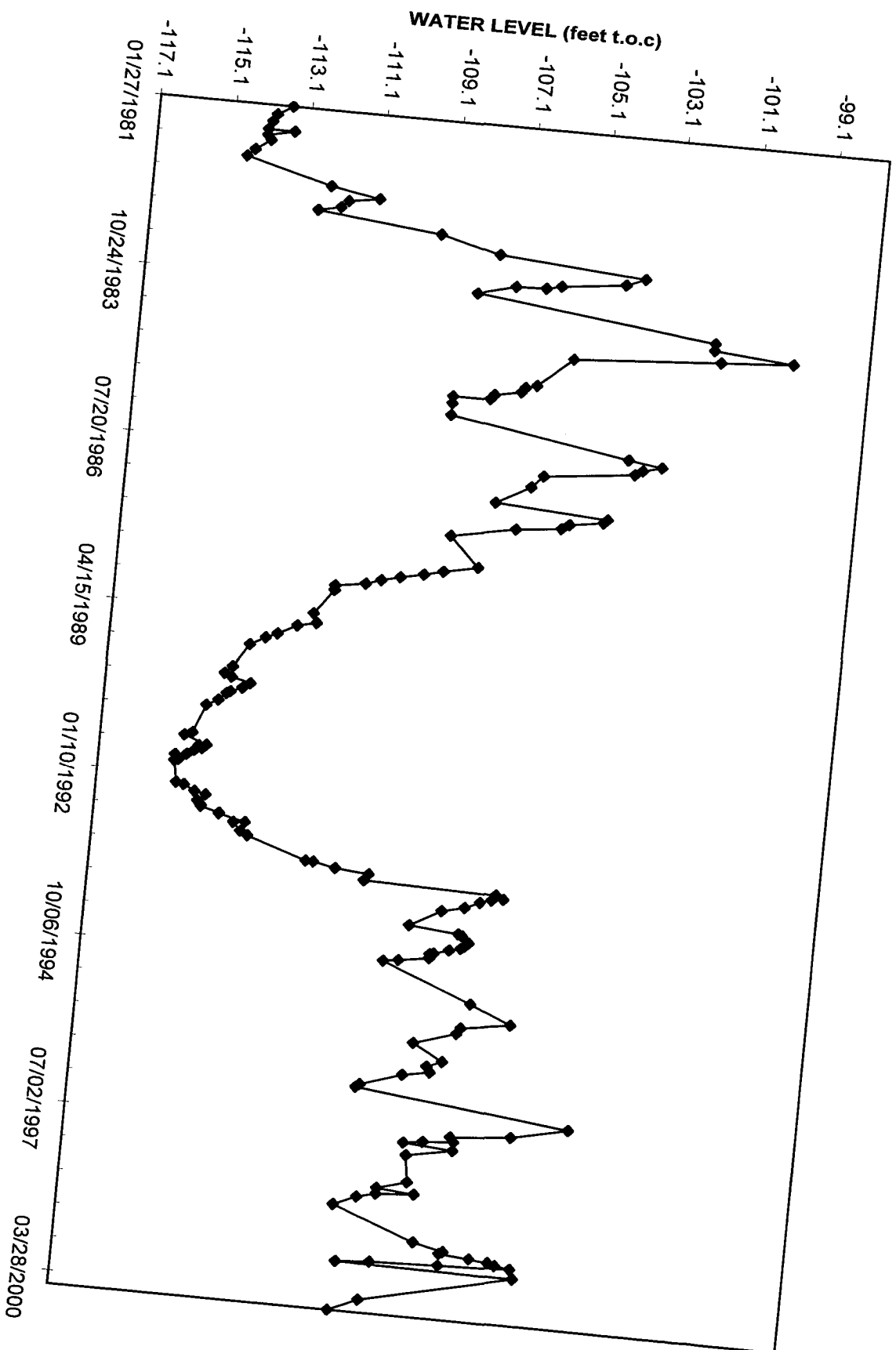
1. Water is available from the Lower James Missouri aquifer.
2. The aquifer is under water table conditions at this site, and drawdown is not expected to be significant. Interference is not a concern.
3. This is an existing licensed well and has been constructed in accordance with SD Well Construction Standards.
4. This application includes a dam which is capable of storing 25 acre feet of runoff water. This is an existing dam. Apparently ground water will be diverted from the well to the dam and then potentially pumped from the dam to irrigate 20 acres of land (the corners of the center pivot). This permit would allow a diversion rate of 1.88 cfs from the well to the dam. The diversion rate from the dam is not specified. For 20 acres the rate would be 0.29 cfs.
5. Dam safety requirements are not applicable to this permit application.
6. This permit application needs a diversion rate from the dam specified. Mr. Ulmer has indicated he will use a big gun that diverts at 400 gpm (0.89 cfs).


James A Goodman
Natural Resources Engineer

BIBLIOGRAPHY

- Lindgren, R.J., D.S. Hansen, 1990, Water Resources of Hutchinson and Turner Counties, South Dakota, WRI 90-4093, USGS, Huron, SD, 57350.
- Water Rights, 2000, Unpublished Observation Well Data for the Lower James Missouri aquifer, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

WATER RIGHTS' OBSERVATION WELL
YA-80Q





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 17, 2000

Hutchison Co. Herald
Box 537
Menno SD 57045-0537

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 6212-3 to Appropriate Water to be published twice. Please publish the first notice on August 23, 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 APPLICANT is John Ulmer, Rt 1 Box 109, Menno SD 57045 (Ph # 605 387-5660).

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. 6212-3

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

Date _____

We are in receipt of your letter of August 17, 2000 enclosing Notice of Hearing to Appropriate Water by Application No. 6212-3 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

August 17, 2000

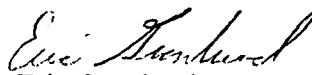
John Ulmer
Rt 1 Box 109
Menno SD 57045

Dear Mr. Ulmer:

Water Permit Application No. 6212-3 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 Hutchinson Co. Herald printed at Menno, SD (Ph # 605 387-5158). 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.

Affidavit of Publication



State of South Dakota
County of Hutchinson

William J. Headley of said county being first duly sworn, on oath says that he is the publisher of the Hutchinson Herald, a weekly newspaper printed and published in Menno said County of Hutchinson and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of

publication; that the **NOTICE OF HEARING APP. #6212-3**

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each

week for **TWO** successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

AUGUST 23 & 30, 2000

that the full amount of the fees for the publication of the annexed

notice is **\$45.52.**

W.J. Headley

Subscribed and sworn to before me this **30TH** day of

AUGUST 2000.

Donna Dattler
Notary Public

County of Hutchinson, South Dakota

My Commission Expires ~~6/10/01~~ **2-9-03**

NOTICE OF APPLICATION NO. 6212-3 to Appropriate Water

Notice is given that John Ulmer, Route 1, Box 109, Menno, S. Dak. 57045 has filed an application for a water permit to impound 25 acre-feet from surface water runoff in an existing dam located in the SW1/4 NE1/4 Section 29 with water impounded in the E1/2 NW1/4, W1/2 NE1/4 Section 29; all in T97N-R57W. Water Right No. 5457-3 authorizes 1.88 cubic feet of water (cfs) from a well located in the center of the NE1/4 Section 29 to irrigate 132 acres in the NE1/4 Section 29-T97N-R57W. This application proposes to divert water from this well to maintain the dam. Water will be pumped from the dam at a rate of 0.89 cfs to irrigate 20 acres located in the corners of the NE1/4 Section 29. This diversion rate is in excess of the 1 cfs for each 70 acres, however, pursuant to SDCL 46-5-6 this may be allowed if the method of irrigation, time constraints on diversion of water, or type of soil so requires.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application 6212-3 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, S. Dak. 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 September 11, 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. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

(Publish Aug. 23 & 30, 2000)



Instruction to Newspaper - Publish first Notice on August 23, 2000 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 6212-3 to Appropriate Water

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6212-3 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 September 11, 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. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

**HARMELINK & FOX LAW OFFICE
101 BROADWAY
P.O. BOX 18
YANKTON, SD 57078**



John Harmelink
Licensed in SD and IA
Wanda Howey-Fox
Licensed in SD and NE

TELEPHONE
605-665-1001
FAX
605-665-6781

September 11, 2000

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

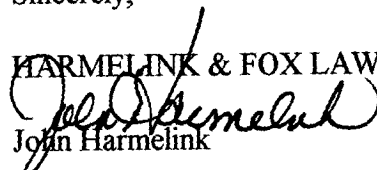
RE: Petition Contesting Chief Engineer's Approval of
Application 6212-3 – John Ulmer

Dear Sir:

Please be advised that I represent Harold Zeeb concerning the above referenced matter.

Enclosed please find the original Petition Contesting Chief Engineer's Approval of Application 6212-3 To Appropriate Water.

Sincerely,

HARMELINK & FOX LAW OFFICE

John Harmelink

JH(mj)

Enclosure

CC: Harold Zeeb
John Ulmer

**PETITION CONTESTING CHIEF ENGINEER'S
APPROVAL OF APPLICATION 6212-3
TO APPROPRIATE WATER**

COMES NOW Harold Zeeb, 211 High Street, Menno, South Dakota, by and through his attorney, John Harmelink, and contests the application for a water permit to impound 25 acre-feet from surface water runoff in an existing dam located in the SW1/2 NE1/4, Section 29, with water impounded in the E1/2 NW1/4 W1/2 NE1/4 Section 29, all in Township 97N, Range 57W, Hutchinson County, South Dakota. Opposition to the application for water permit filed by John Ulmer, RR 1, Box 109, Menno, South Dakota, is filed for the following reasons:

1. Harold Zeeb owns the land adjoining the land described above. The spillway and culvert are both located upon land owned by Harold Zeeb.
2. Mr. Zeeb estimates that between ten (10%) percent and fifteen (15%) percent of the water stored within the dam is located upon his property.
3. Mr. Ulmer has, without the permission of Mr. Zeeb, removed the boundary fence, which prevents the use of Mr. Zeeb's forty (40) acre pasture. The dam is partially located within this pasture.
4. Should the application by Mr. Ulmer be granted, serious erosion problems will result, thereby causing damage to Mr. Zeeb's land.
5. Unless the application is amended to restrict the accumulation of water to a level no higher than two (2) feet below the present culvert, erosion will result.

WHEREFORE, Harold Zeeb requests that a hearing be scheduled in this matter.

Dated this 11th day of September, 2000.

HARMELINK & FOX LAW OFFICE



John Harmelink
Attorney at Law
P.O. Box 18
Yankton, SD 57078
(605) 665-1001
(605) 665-6781 (fax)

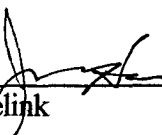
CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the PETITION CONTESTING CHIEF ENGINEER'S APPROVAL OF APPLICATION 6212-3 TO APPROPRIATE WATER were served upon the following by depositing said copies in the United States Post Office at Yankton, South Dakota, in envelopes with first class postage thereon prepaid, addressed to the following persons at their given addresses on the 11th day of September, 2000.

John Ulmer
RR 1, Box 109
Menno, SD 57045

Harold Zeeb
211 High Street
Menno, SD 57045

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501



John Harmelink



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 20, 2000

NOTICE

TO: John Ulmer
Rt. 1, Box 109
Menno, SD 57045

John Harmelink, Attorney
P.O. Box 18
Yankton, SD 57078

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Contested Water Right Permit Application No. 6212-3, John Ulmer

A petition in opposition to Application No. 6212-3 has been filed by John Harmelink, an attorney representing Harold Zeeb. The petition was filed in response to the Notice to appropriate water published August 23 and 30, 2000, in the Hutchinson Herald.

As specified in the publication notice, Application No. 6212-3 proposes approval of a water permit to impound 25 acre-feet from surface water runoff in an existing dam located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29 with water impounded in the E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29; all in T97N-R57W. Water Right No. 5457-3 authorizes 1.88 cubic feet of water (cfs) from a well located in the center of the NE $\frac{1}{4}$ Section 29 to irrigate 132 acres in the NE $\frac{1}{4}$ Section 29-T97N-R57W. This application proposes to divert water from this well to maintain the dam. Water will be pumped from the dam at a rate of 0.89 cfs to irrigate 20 acres located in the corners of the NE $\frac{1}{4}$ Section 29. This diversion rate is in excess of the 1 cfs for each 70 acres, however, pursuant to SDCL 46-5-6 this may be allowed if the method of irrigation, time constraints on diversion of water, or type of soil so requires.

The Water Management Board will conduct a hearing to consider Application No. 6212-3 at 9:00 AM, on December 6, 2000, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. The agenda time is an estimate and may be delayed due to prior agenda items.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6212-3 with qualifications 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. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on evidence and record of the public hearing.

The December 6, 2000, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any party of record opposing the application. The request for an automatic delay must be filed by November 24, 2000.

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

Notice is further given to persons with disabilities that this hearing is being held in a physically accessible place and that interpreter services will be provided, upon request, during the hearing. Please notify Eric Gronlund at (605) 773-3352 by November 24, 2000, if you have any questions about the hearing process or have special needs for which the department will make arrangements.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-23; 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 20, 2000, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 20, 2000, regarding Notice of Hearing on Water Right Permit Application No. 6212-3, John Ulmer, addressed as stated below:

John Ulmer
Rt. 1, Box 109
Menno, SD 57045

John Harmelink, Attorney
P.O. Box 18
Yankton, SD 57078

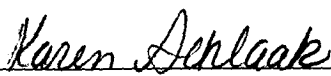
A copy of the above described Notice was sent Inter-office to:

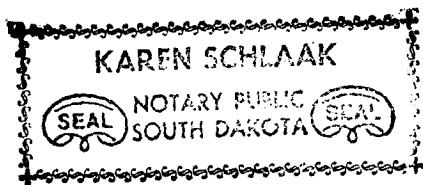
Diane Best, Assistant Attorney General, Capitol Building


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 21st day of September, 2000.


Karen Schlaak
Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2003



**Exhibit in hearing on Water Right Permit No. 6232-3, John Ulmer
(this picture is referred to in Qualification No. 4 of Permit No. 6232-3)**



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 12, 2001

John Ulmer
42963 Maxwell Rd
Menno SD 57045

LeRoy Zeeb
28944 429th Avenue
Menno SD 57045

Dear Mr. Ulmer and Mr. Zeeb:

Please find enclosed a copy of the Water Management Board minutes of their December 6, 2000 meeting. The Board adopted these minutes on March 7th. These minutes include a summary of the hearing on Water Permit Application No. 6212-3. The minutes are not a verbatim transcript of the hearing.

Water Permit No. 6212-3 is on the Chief Engineer's desk awaiting his signature and I expect the permit will be issued in the very near future.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352

enclosure



MAR 13 2001

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

John Ulmer
42963 Maxwell Rd
Menno, SD 57045

Dear Mr. Ulmer:

Enclosed is Water Permit No. 6212-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

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

enclosures

cc: LeRoy Zeeb

DENR - Water Rights Program
523 E Capitol
Pierre, SD 57501
Phone: 605 773-3352
Fax: 605 773-4068

State of South Dakota

Fax

To: John Ulmer

From: Genny McMath

Fax: 605 387-5190

Date: April 3, 2001

Phone: 605 387-5660

Pages: 19

Re: info sent to USDA – Risk Mgmt

CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

We are forwarding to you copies of the information requested by the USDA - Office of Risk Management. Water Permit Nos. 5912-3 & 6212-3 and Water Right Nos. 5457-3, 5392A-3 and 5911-3. The investigation reports are also included for those that have been licensed.

The information we are faxing to you is being mailed today by first class mail to:

**Rmay Soske,
USDA – Office of Risk Management
3440 Federal Drive, Suite 200
Eagan, MN 55122**

If you have any questions, please contact Eric Gronlund with our office at (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

April 3, 2001

Rmay Soske
USDA – Office of Risk Management
3440 Federal Drive – Suite 200
Eagan, MN 55122

Dear Sir:

Enclosed, as you requested, are copies of Water Right Nos. 5457-3, 5392A-3 & 5911-3 and Water Permit Nos. 5912-3 and 6212-3. They are currently held by John Ulmer, Menno, South Dakota.

If you have any questions, please get in touch with me.

Sincerely,

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

enclosures



(6212-3)
5457-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

August 24, 2012

JOHN ULMER
42963 MAXWELL RD
MENNO, SD 57045

Dear Mr. Ulmer:

I am writing as a follow up to the conversation we had on August 21, 2012 concerning Water Permit No. 6212-3, which you obtained in 2000 to irrigate the corners of the NE ¼ of Section 29-T97N-R57W. The water source for this permit is the well previously authorized by Water Right No. 5457-3, and the small dam located on the property line shared with your neighbor, Mr. Leroy Zeeb.

As we discussed, Mr. Zeeb contacted us with concerns about seepage and erosion on the downstream slope of the dam. He had also contacted the Natural Resources Conservation Service (NRCS) and a copy of their letter is attached. I observed the same seepage/erosion as the NRCS did and would have the following suggestions to correct the problem. The seepage is more than likely occurring either around or through the spillway conduit. The conduit should be further investigated and replaced or maybe slip lined as we discussed. Another source of seepage may be along trees roots and possibly associated to higher than normal reservoir levels. It appears that the primary spillway inlet elevation has been raised and I would recommend that it be lowered to an elevation at least one foot lower than the current secondary spillway elevation. The NRCS letter also mentions this. I would also like to suggest that your practice of blocking off the spillway riser with boards when refilling the dam from the well be stopped. As I mentioned before, the increased reservoir level is not doing the embankment any good.

Trees and brush on the embankment pose a hazard due to the possibility of seepage along decayed root systems. The trees and brush and root systems of the larger trees should be removed and the holes backfilled with impervious material. This should especially include any trees located below the reservoir elevation.

Since this is a shared embankment, any changes or modification to the dam should be agreed upon between you and your neighbor, Mr. Zeeb. Please feel free to contact me if you have any questions.

Sincerely,

Timothy G. Schaal, P.E.

Engineer IV

SD DENR, Water Rights Program

(605) 773-3352

C: Leroy Zeeb, 28944 429th Ave., Menno SD 57045

United States Department of Agriculture



Natural Resources Conservation Service
1820 North Kimball, Suite 4
Mitchell, South Dakota 57301

Phone: (605) 996-1564 Ext. 5
Fax: (605) 996-6930

Subject: Erosion

Date: 8/03/12

To: Leroy Zabe
28944 429th Ave
Menno, SD 57045

Leroy,

After visiting your pond on 8/02/12, I had a few suggestions to help with the erosion problems on or near the embankment. First, the inlet riser seems to be set too high. The water level appeared to be near the crest of the emergency spillway, but it was still a few inches below the top of the riser. This will cause the emergency spillway to run more often therefore more erosion could occur. A solution that may help is lowering the inlet riser at least one foot below the emergency spillway crest.

On the downstream side of the embankment, I noticed cattails growing. After a little inspection, there was erosion occurring at this spot on the embankment. I believe seepage through the dam is the cause of the erosion. The seep is also causing the saturated soils which are the reason cattails are growing in this location. To fix this problem the dam would need to be breached, the seepage area removed, and backfilled with good clay material. There is no guarantee this would fix the seep, or another seep could occur elsewhere in the embankment.

We also looked at the cattle trail on the side hill next to the dam. The erosion in this area could be helped by diverting the water upstream away from the cattle trail towards more stable areas. A small earthen berm could be used to redirect the water flowing towards the cattle trail. In addition, could the cattle be fenced off from this area until it became stable with vegetation again? The cattle trail should be backfilled with soil and seeded with western wheatgrass (or another rhizomatous grass) to help with the recovery.

Please contact me if you have any questions.

Sincerely,

Jared Gelderman
Agricultural Engineer