

WATER PERMIT NO. 6403-3

Name of Applicant: Rick Even

Address: 48504 210th St, Elkton SD 57026

Phone: 542-4021

Amount of Water Claimed: 1.78 cfs

Total Acres: 100 acres

Source of Water Supply: groundwater

Water to be used for: irrigation

County: Brookings

Type of Waste Disposal System:

Location: 2 miles north of Elkton

PRIORITY Date Received: 4-3-2003

Application/License Fee: \$275

Corrected Application Received: 4-7-2003

Period of Annual Use: May 1 – October 31

Remarks:

Diversion Point: S ½ SE ¼ Sec 33-T110N-R47W

Land to be Irrigated: SE ¼ Sec 33-T110N-R47W

Depth of Well: 190 feet

Well Driller: : Pullman Drilling

Remarks:

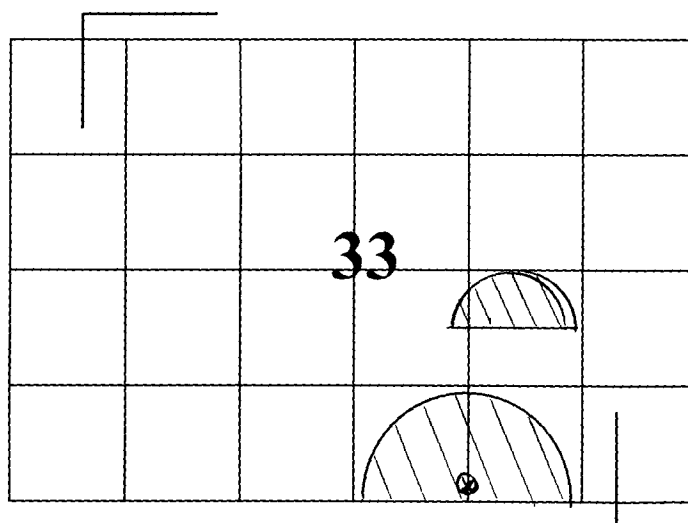
Type of Map: aerial

Prepared by: Daniel Cranbois, NRCS

Reviewed and the Number Assigned on: 4-7-03

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



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	No. <u>6403-3</u> (office use only)
	Hydrologic Unit <u>10170203</u>
	Basin <u>Sioux River</u>
Newspaper <u>Brookings Register, Brookings</u>	

RECEIVED

APR - 3 2003

WATER RIGHTS
PROGRAM
Application For Permit To Appropriate Water For Irrigation

 Type of Application: ☒ 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.)

- Name of Applicant Rick Euen Phone 605-542-4021
 (check one) ☒ Owner ☐ Tenant/lessee
 Mailing Address 48504 210th St Ertton State So Dak 57026
 (Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 1.78 *CFS or 800 **GPM ***AF Total Acreage 100A
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Well
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Brookings
south center of SW1/4 of section 33
by Road
- County or counties where water will be used Brookings
- Annual period during which water is to be used May 1 to Oct 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
SW 1/4 of the SE 1/4 of Section 33	110-47	35	40
SE 1/4 of the SE 1/4 of Section 33	110-47	35	40
NE 1/4 of the SE 1/4 of Section 33	110-47	25	40
NW 1/4 SE 1/4		5	

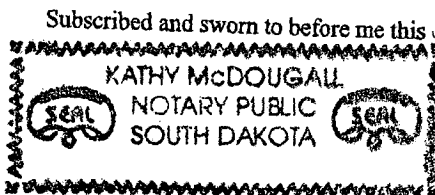
- Give a description of the project. (Attach sheet if more space is needed)

STATE OF SOUTH DAKOTA) SS

County of Brookings

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, Rick Euen, 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 Rick Euen
 Subscribed and sworn to before me this 31st day of March 20 03

 Notary Public signature Kathy McDougall
 My Commission Expires 8-5-2004

SOUTH DAKOTA
WATER PERMIT NO. 6403-3 FOR IRRIGATION

Date of first receipt of application April 3, 2003.

Date of return to applicant for corrections, amendments or changes April 3, 2003.

Date of receipt of corrected application April 7, 2003.

The Water Management Board approved Water Permit No. 6403-3 on March 3, 2004 for Rick Even, 48504 210th St, Elkton SD 57026 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. 6403-3 appropriates 1.78 cubic feet of water per second (cfs) from one well (Rutland Aquifer) 190 feet deep located in the S ½ SE ¼ Section 33 to irrigate 100 acres located in the SE ¼ Section 33; all in T110N-R47W.
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: May 1 – October 31.
3. The date from which applicant may claim right is April 3, 2003.
4. One-fifth of the construction is to be completed on or before September 3, 2006.
5. All construction is to be completed on or before March 3, 2009.
6. Water is to be put to beneficial use on or before March 3, 2013.
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. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 6403-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.
3. 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. 6403-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 100 acres with an annual volume not to exceed 2 acre-feet of water per acre per year.
4. 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

MAY 10 2004

date



Form 2A **Supplemental Information**
(Complete applicable portions only)

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter 24" Depth 190
- b) Casing Type 16" PVC Diameter 16" Thickness 1/2
- c) Screen Type PVC Diameter 16" Thickness 1/4
- d) Gravel Pack 3/16 by 1/4 Length of Gravel Pack 60ft
- e) Depth to Top of Water Bearing Material 160ft
- f) Depth to Water (ground surface to water level) 50ft
- g) Distance to nearest existing domestic well:
On applicants property none On property owned by others 1900ft

2. Wastewater Disposal System Information

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

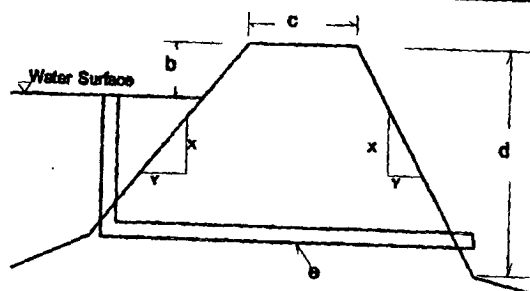
3. Dugout Information

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

4. Water Storage Dams

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

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



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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date APRIL 3, 2003

RECEIVED OF Even's Northfork Farms Inc., 48504 210th St., Elkton SD 57026-8706

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

Fee for Application for Permit No. <u>16403-3</u> to Appropriate Water, to construct and to put water to beneficial use	225	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>16403-3</u>	50	00
Fee for Filing Transfer Form _____		
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	275.00

No.

000741

By

Darland Ebel

Chief Engineer

gm

3023
4062
4151

FEB 15 1984

NOT TO SCALE

T1361

110-47

176.5

17.9

44.3

D17

126.2

Danell W. 88
Danell Cranbois
District Conservationist

2 NHEL

1 NHEL

5.3

3 NHEL

4 NHEL

10.9 10.5
5 NHEL

2.9

1 NHEL

33

41.5 T1355

44.2
Hail

35.5

T1363

1 NHEL

1 NHEL

2 NHEL

30

5 NHEL

19.2

3 NHEL

36

2 NHEL

110-47

4 NHEL

Well

6403-3

PULLMAN DRILLING, INC. - DRILLER'S LOG**(605) 883-4532
1-800-451-4884**

Rick Evens JOB NAME		Elkton S.D. LOCATION		3-25-03 DATE	11 RIG NO	Paul Hoban FOREMAN
Jt No	DEPTH	TIME	REMARKS			
1	20		0-20 Yellow clay			
2	40		20-30 Yellow gravel 30-40 Yellow clay w/sand streaks			
3	60		40-47 Yellow clay 47-60 Blue clay w/rocks			
4	80		60-80 Blue clay			
5	100		80-100 Blue clay			
6	120		100-115 Blue clay 115-120 Yellow clay			
7	140		120-140 Yellow clay w/rocks			
8	160		140- 155 Yellow clay w/sand streak 158-160 Yellow sand & gravel			
9	180		160-180 Coarse yellow sand & gravel			
10	180		180-187 Coarse yellow gravel 187-190 Blue clay			
11						
12			Stay at 187'			
13						
14						
15			3" Well			
16			T.O. 190'			
17			20' .025 3" slotted			
18			170' 3" blank			
19			Pumped w/ gir 60 G.P.M.			
20			Water head 50'			
21						
22						
23						
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28						
29						
30						
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35						
36						
37						
38			Paul Hoban			
39						
40						

REMARKS:



April 3, 2003

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCESJOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denrRick Even
48504 210th St
Elkton SD 57026

RECEIVED

APR - 7 2003

WATER RIGHTS
PROGRAM

Dear Mr. Even:

Thank you for submitting the *Application for a Permit to Appropriate Water* for irrigation. In order to complete the application the following is required.

Enclosed is the map submitted with the application. The map must be signed by one of the following: Registered Land Surveyor, Registered Professional Engineer or by any other government employee who normally prepares maps as a part of his assigned duties (i.e. local NRCS office).

Item No. 2 of the application indicates the amount of water claimed to be 800 gallons per minute (gpm). State Statutes limit diversions to 1 cubic feet of water per second (cfs) for each 70 acres irrigated. This would mean that you are allowed approximately 640 gpm for the 100 acres to be irrigated. We understand that in order to operate systems such as you are proposing, a greater diversion rate is required. Please justify in writing your request for a diversion rate greater than the statutory limit.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352

enclosure

The amount of water was 800 gal/minute
Karen Schlaak with 1/2 circles you may have
to run system back dry and
it is only a time factor
We ~~you~~ won't use any more water
than what 640 gpm will pump per year

Rick Even

REPORT ON WATER PERMIT NO. 6403-3

For Rick Even

April 24, 2003

Application No. 6403-3 proposes to appropriate 1.78 cfs (800 gpm) from one well approximately 190 feet deep located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of section 33 to irrigate 100 acres located in the SE $\frac{1}{4}$ of section 33; all in T110N R47W in Brookings County. The applicant is requesting a diversion rate greater than the statutory limit of one cfs per 70 acres.

AQUIFER – RUTLAND (RUT)

The Rutland is a buried outwash (sand and gravel) which is under confined or artesian conditions at this site. The aquifer underlies 240 square miles and contains an estimated 400,000 acre-feet of water in storage in Brookings County (Hamilton, 1989). Ground water is from east to west and the aquifer extends into the Minnesota to the east, into Deuel County to the north, and into Hamlin County to the south. The aquifer averages about 15 feet in thickness and this could be a limiting factor to the development of the aquifer.

A test well log submitted with the application indicates clay from the surface to a depth of 158 feet where sand and gravel was encountered to a depth of 187 feet. The well had a static water level of about 50 feet below land surface and was capable of producing about 60 gpm using air to develop.

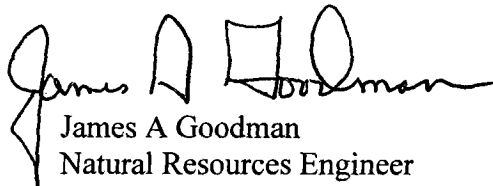
The Water Rights Program monitors an observation well (BG-78E) completed into the Rutland aquifer and located about two miles northwest of this site. Water levels for this well show good response to pumping and to climatic conditions, that is, rising water levels during wet years (recharge) and declining water levels during dry years. Also, the water levels fluctuate significantly due to pumping. There are two irrigation wells located within one mile of this observation well. In general, the water level record indicates that the aquifer is capable of sustaining additional withdrawals (Water Rights, 2003). A hydrograph for this observation well is included with this report.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There is one other permitted water user from this aquifer within one mile of this site. This is water right No. 3047-3, licensed for 1.88 cfs for irrigation, with the well located about $\frac{3}{4}$ mile south of the well for this application. Interference will occur. That is, drawdown created by pumping will extend between the well sites. This is not expected to be adverse but may require the lowering of pumps in order to maintain the volume of water needed. There are two other irrigation rights and a three other diversions for dairy operations or domestic use within a three mile radius of this site.

CONCLUSIONS

1. Water is available from the Rutland aquifer.
2. The aquifer is confined and under artesian conditions at this site. Drawdown will occur as a result of pumping. The amount of drawdown in the area is significant as shown by the observation well hydrograph. This additional diversion is not expected to change the overall pattern of fluctuation in the aquifer. It may become necessary to install pumps to a greater depth or make other changes in order to maintain the volume of water needed to both domestic users and permitted users.
3. The well authorized by this application must be constructed in accordance with SD Well Construction Standards.
4. The permit requests a diversion rate greater than one cfs per 70 acres. Because of the design of this system it may be necessary to pump at the greater diversion rate. This is a reasonable request and can be approved.

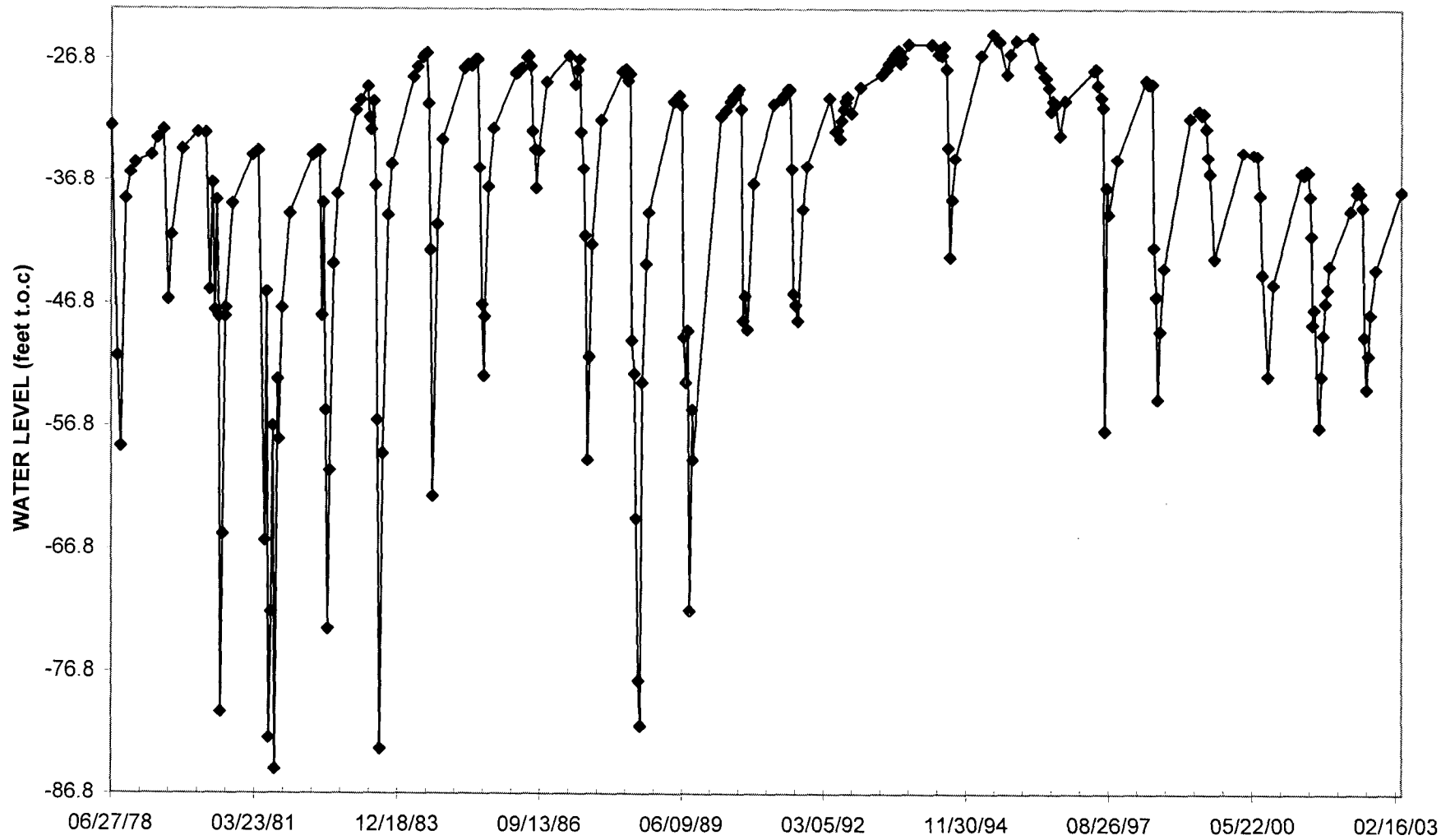


James A Goodman
Natural Resources Engineer

BIBLIOGRAPHY

- Hamilton, L.J., 1989, Water Resources of Brookings and Kingsbury Counties, South Dakota, Water Resources Investigations Report 88-4185, USGS, Huron, SD, 57350.
- Water Rights, 2003, Unpublished Observation Well Data for Brookings County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

**WATER RIGHTS' OBSERVATION WELL
BG-78E**





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6403-3, Rick Even**

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. 6403-3, Rick Even, 48504 210th Street, Elkton SD 57026.

The Chief Engineer is recommending APPROVAL of Application No. 6403-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 6403-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.
3. 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. 6403-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 100 acres with an annual volume not to exceed 2 acre-feet of water per acre per year.
4. 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
June 16, 2003

Affidavit of Publication

State of South Dakota

Exhibit "A"

SS

County of Brookings

Jessica Johnson of said county, first duly sworn, on oath, says: That she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," hereto attached and herein mentioned, and was and is printed in the office maintained at said place of publication; and that the

Legal # 677: " App # 6403-3~ Appropriate Water"

Brookings and State of South Dakota, for more than one a printed copy of which, taken from the paper in which the same was published, is hereto attached marked Exhibit "A," and is made a part of this affidavit, was published in said newspaper for _____ 2 times, to-wit:

June 25, 2003

July 2, 2003

said Exhibit "A" inures to the sole benefit fo the publishers of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Thirty nine dollars and twenty-four cents \$ 39.24

Legal 677, 1x, 6/25, 7/2

NOTICE OF APPLICATION NO. 6403-3 to Appropriate Water

Notice is given that Rick Even, 48504 210th St, Elkton, SD 57026 has filed an appliaction for a water permit to appropriate 1.78 cubic feet of water per second (cfs) from one well (Rutland Aquifer) 190 feet deep located in the S 1/2 SE 1/4 Section 33 to irrigate 100 acres located in teh SE 1/4 Section 33; all in T110N-R47W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6304-3 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 July 14, 2003.

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.

Subscribed and sworn to before me this

14th

day of

July

2003.

Notary Public in and for the County of Brookings, South Dakota.
My Commission expires April 27, 2006

RECEIVED
JUL 15 2003
WATER RIGHTS
PROGRAM

Instruction to Newspaper - Publish first Notice on June 25, 2003 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 6403-3 to Appropriate Water

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 18, 2003

Brookings Register
PO Box 177
Brookings SD 57006-0177

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 6403-3 to Appropriate Water to be published twice. Please publish the first notice on June 25, 2003 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 Rick Even, 48504 210th St., Elkton SD (Ph # 605-542-4021).

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

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 6403-3

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

Date _____

We are in receipt of your letter of June 18, 2003 enclosing Notice of Hearing to Appropriate Water by Application No. 6403-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

www.state.sd.us/denr

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

June 18, 2003

Rick Even
48504 210th St
Elkton SD 57026

Dear Mr. Even:

Water Permit Application No. 6403-3 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 Brookings Register printed at Brookings, SD (Ph # 605-692-6271). You will need to contact the newspaper and authorize publication of this notice. 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. Upon receiving authorization, 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 also 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**

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

June 26, 2003

Maureen Hoogeveen
1403 Main Street
Rock Valley Iowa 51247

Dear Mrs. Hoogeveen:

Please find enclosed the information you requested on the South Dakota water permit applications filed by Rick Even and Andy Weber.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352
eric.gronlund@state.sd.us

enclosure

RECEIVED

JUL 11 2003

WATER RIGHTS
PROGRAM

**PETITION OPPOSING APPLICATION NOS. 6414-3
AND 6403-3 TO APPROPRIATE WATER AND
CONTESTING CHIEF ENGINEER'S RECOMMENDATION**

TO WHOM IT MAY CONCERN:

Please be advised that this constitutes our Petition opposing both Application No. 6414-3 filed by Andy Weber and Application No. 6403-3 filed by Rick Even to appropriate water and our Petition contesting the Chief Engineer's Recommendations regarding both applications.

The undersigned is the daughter of the Petitioner and legal counsel for Mary Ellen McGill and the Mary Ellen McGill Trust. Said Trust is the owner of the following described property:

That part of the E1/2 NE1/4 and the E1/2 NE1/4 North of Railway in Section 24 and part of the E1/2 of Section 24 South of Railway, ALL in Township 109 North, Range 47 West of the 5th P.M., Lincoln County, MN, and in Brookings Co., SD the East 1275.6 feet of Section 22 North of Railway and the W1/2 NW1/4 and SW1/4 EXCEPT building site and Lots 3 and 4 in Section 27, Township 109 North, Range 47 and the SW1/4 of Section 30, Township 109 North, Range 47 all West of the 5th P.M. for a total of 770 acres.

The undersigned further is filing this Petition on behalf of the said owner's tenant Harold Asmus as his rights will be impaired.

The Petitioner's farmland consisting of approximately 770 acres is located on the South Dakota/Minnesota border and contains a total of 4 wells. Two of the wells are located in South Dakota. It appears that these wells are located in the Big Sioux Aquifer and the well usage will likely not be adversely impacted by the proposed wells. However, in regard to the north well located on the Minnesota ground and after researching the same and contacting both the water rights divisions of the South Dakota Department of Natural Resources and the Minnesota Department of Natural Resources, it may be concluded that there is a reasonable probability that unappropriated water is not

available and the well usage of the Petitioner may be adversely impacted by the additional two wells in the Rutland Aquifer.

The Petitioner with the assistance of a ground water specialist in the water rights division of the Minnesota Department of Natural Resources has determined that the proposed wells are in a channel formation and therefore the draw downs of those wells located in the same aquifer will be exaggerated. The hydrographs included with James Goodman's recommendations reflect that there is potential for a draw down of at least 50 to 60 feet as it exists today. It is our understanding that the draw down of a well in an aquifer such as the Rutland has a cumulative effect so the potential for very significant draw downs will exist with the addition of the proposed wells. Due to the size of our system and the depth of our pump, it is arguable the pump cannot be lowered to accommodate the additional draw down. Additional wells will divert the currently appropriated water. Therefore, unappropriated water is not available due to the prior rights of the current well users. Consequently, this will adversely impact the well usage of the Petitioner.

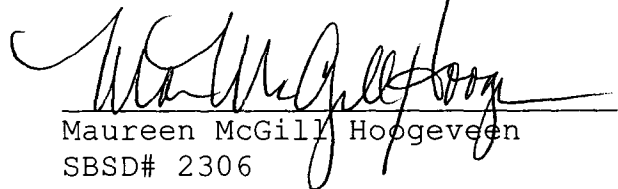
The exaggerated effect of draw downs caused in a formation such as the Rutland would extend well beyond the one mile radius utilized by the Engineer and into Minnesota. It does not appear that any information regarding the Minnesota wells located within three miles of the proposed wells were analyzed or considered in the Engineer's recommendations. It is the Petitioner's opinion that a review of the Minnesota wells and the effect the proposed wells may have on them would give rise to sufficient evidence to deny both Applications. The effect of the neighboring wells outside the radius of the observation wells regardless of whether they lie in South Dakota or Minnesota must be analyzed to properly determine whether the Petitioner's well usage will be adversely impacted and whether unappropriated water does exit.

For the above reasons, the undersigned requests that a Hearing be scheduled in the future which will allow the Petitioner sufficient time to obtain additional information and data regarding the Minnesota wells located near the proposed sites

which may be adversely impacted by the granting of the applications by both Andy Weber and Rick Even.

The undersigned further requests that at the Hearing the Board deny the Applications filed by both Andy Weber and Rick Even based on the evidence provided.

Respectfully submitted on
this 10th day of July, 2003



Maureen McGill Hooegeveen
SBSD# 2306
McGILL & McGILL
1403 Main Street
Rock Valley, IA 51247
Phone (712)476-5411
Fax (712)476-5958

Attorney for Petitioner
Mary Ellen McGill and
Mary Ellen McGill Trust

cc. Andy Weber
Rick Even
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

July 15, 2003

NOTICE

TO: Rick Even
48504 210th St
Elkton SD 57026

Maureen McGill Hooegeveen
McGill & McGill
1403 Main Street
Rock Valley IA 51247

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 6403-3, Rick Even

A petition has been submitted regarding Water Permit Application No. 6403-3 filed by Rick Even. The petition was filed in response to the Notice of Application to appropriate water published June 25 and July 2, 2003 in the Brookings Register. The petition opposing the application was submitted by Maureen McGill Hooegeveen, attorney representing Mary Ellen McGill and the Mary Ellen McGill Trust.

As specified in the publication notice, the application proposes to appropriate 1.78 cubic feet of water per second (cfs) from one well (Rutland Aquifer) 190 feet deep located in the S ½ SE ¼ Section 33 to irrigate 100 acres located in the SE ¼ Section 33; all in T110N-R47W.

Ms. Hooegeveen also filed a petition opposing the Application No. 6414-3 filed by Andy Weber. The hearings on Application Nos. 6403-3 and 6414-3 will be held concurrently.

The Water Management Board will conduct a hearing to consider Application No. 6403-3 at 11:00 AM, on Wednesday, October 1, 2003, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD 57501. 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 hearing time is an estimate and may be delayed due to prior agenda items. Future notice will be provided to all parties if there is a change in the hearing date or time.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6403-3 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. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the evidence presented at the public hearing.

The October 1, 2003, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by September 19, 2003.

This hearing may be an adversarial 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 September 19, 2003, 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; 46-5-1 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, 46-6-3, 46-6-3. 1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

c: Diane Best, Assistant Attorney General

NOTE: Based on South Dakota Codified Law 1-26-17, 1-26- 18.3 and 1-26D-10, parties to all administrative contested cases must receive notice that if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party may require the use of the Office of Hearing Examiners by giving notice of the request to the agency, no later than ten days after service of this notice of hearing. The matter at issue in this case does not, however, meet the criteria and the applicant and parties do not have the automatic right to a hearing examiner.

CERTIFICATION

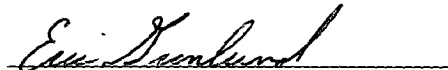
I hereby certify that on July 15, 2003 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 15, 2003 regarding Notice of Hearing on Water Permit Application No., 6403-3 addressed as stated below:

Rick Even
48504 210th St
Elkton SD 57026

Maureen McGill Hoogeveen
McGill & McGill
1403 Main Street
Rock Valley IA 51247

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

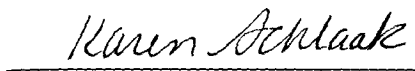
Diane Best, Assistant Attorney General, Capitol Building



Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of July, 2003.



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

September 17, 2003

NOTICE

TO: Andy Weber
RR 2 Box 145
Elkton SD 57062

Rick Even
48504 210th Street
Elkton SD 57026

Maureen McGill Hoogeveen
McGill & McGill
1403 Main Street
Rock Valley IA 51247

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

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 6414-3, Andy Weber and
Continuance of Hearing on Water Permit Application No. 6403-3, Rick Even

A petition was filed in response to the public notice for Water Permit Application Nos. 6414-3 and 6403-3. Subsequently, notice was sent to parties scheduling a October 1, 2003 hearing before the Water Management Board. In response to this notice, Mr. Weber made a formal request for postponement of the October 1st hearing date on his application. Therefore, the hearing on Weber's Application No. 6414-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 1, 2003.

Ms. Hoogeveen submitted one petition in response to the public notices opposing both of the Weber and Even applications. The Chief Engineer is postponing Mr. Even's application so that testimony on both applications will be heard concurrently. This decision is based on the fact that the Weber application was filed prior to the Even application and a Board decision must first be made on the earliest filed application. In addition, the testimony for the applications is anticipated to be the same. Therefore, the hearing on Even's Application No. 6403-3 is continued and will not be held on October 1, 2003.

The hearings to consider Application Nos. 6414-3 and 6403-3 will now be scheduled for the December 3 - 4, 2003, Water Management Board meeting in Pierre. Future notice of the exact date, time and place of the hearings for Application Nos. 6414-3 and 6403-3 will be provided to all parties of record.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 17, 2003 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 17, 2003 regarding Automatic Delay of Hearing on Water Permit Application # 6414-3 and Continuance of Hearing on Water Permit Application #6403-3 addressed as stated below:

Andy Weber
RR 2 Box 145
Elkton SD 57062

Maureen McGill Hooegeveen
McGill & McGill
1403 Main Street
Rock Valley IA 51247

Rick Even
48504 210th Street
Elkton SD 57026

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

Diane Best, Assistant Attorney General, Capitol Building



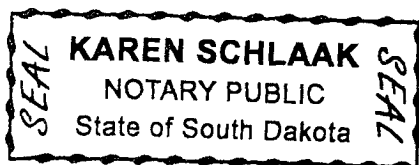
Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of September , 2003.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





PATRICIA A. CARLSON

Attorney at Law

1801 E. Wells Ave., Suite #1

PO Box 1235

Pierre, South Dakota 57501-1235



Phone: 605-224-5853

Fax: 605-224-5872

October 8, 2003

RECEIVED

OCT - 9 2003

WATER RIGHTS
PROGRAM

Garland Erbele, Chief Engineer
Dept. Of Environment and Natural Resources
Water Rights Program
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501

Re: In the matter of Water Permit Application 6414-3 & 6403-3 to
Appropriate Water

Dear Mr. Erbele:

Enclosed for filing in the above referenced case is my original Notice of Appearance. I will be substituting as counsel for Maureen Hoogeveen who filed the Petition in opposition to these water permit applications. I will also be acting with a Power of Attorney on behalf of Mary Ellen McGill and the Mary Ellen McGill Trust in the above referenced matter. Please forward any notices regarding this matter to my attention.

Cordially,

Patricia Carlson

PC/jm

Enclosure - Notice of Appearance

cc: Mary Ellen McGill
Maureen Hoogeveen
Andy Weber
Rick Even
Diane Best

RECEIVED

OCT - 9 2003

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE WATER)
PERMIT APPLICATION #6414-3 & 6403-3) NOTICE OF APPEARANCE
TO APPROPRIATE WATER)

TO: ANDY WEBER, RICK EVEN, DIANE BEST, AND GARLAND ERBELE:

Please take notice that I will appear with a Power of Attorney for and on behalf of Mary Ellen McGill and the Mary Ellen McGill Trust the above-referenced matter who has filed a Petition Opposing the Applications and Contesting the Chief Engineer's Recommendations and do hereby appear for the above named Petitioners.

Dated this 8th day of October, 2003.


Patricia A. Carlson
Attorney for Petitioners
P.O. Box 1235
Pierre, SD 57501
(605) 224-5853

CERTIFICATE OF SERVICE

Patricia A. Carlson, Attorney at Law, Carlson Law Office, PO Box 1235, Pierre, South Dakota, certifies that on the 8th day of October, 2003, she mailed a true and correct copy of this Notice of Appearance to the following:

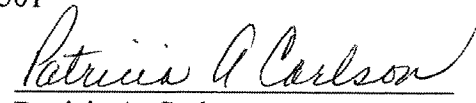
Andy Weber
RR 2, Box 145
Elkton, SD 57062

Rick Even
48504 210th St.
Elkton, SD 57026

In the Matter of the Water Permit Application 6403-3 and 6414-3 to Appropriate Water
NOTICE OF APPEARANCE

Diane Best
Asst. Attorney General
500 E. Capitol
Pierre, SD 57501

Garland Erbele, Chief Engineer
Dept. Of Environment and Natural Resources
Water Rights Program
Foss Bldg.,
523 E. Capitol Ave.
Pierre, SD 57501



Patricia A. Carlson

In the Matter of the Water Permit Application 6403-3 and 6414-3 to Appropriate Water
NOTICE OF APPEARANCE

Page 2



**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 16, 2003

NOTICE

TO: Andy Weber
RR 2, Box 145
Elkton SD 57062

Rick Even
48504 210th Street
Elkton SD 57026

Patricia A. Carlson
Attorney for Petitioner
PO Box 1235
Pierre SD 57501-1235

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of the Hearing on Water Right Permit Application Nos. 6403-3 and 6414-3, Rick Even and Andy Weber

Water Permit Application Nos. 6403-3 and 6414-3 were separately filed by Rick Even and Andy Weber. Each application proposes an appropriation of water from the Rutland Aquifer to irrigate lands north of Elkton in Brookings County. Maureen McGill Hooegeveen petitioned in opposition to both applications and requested a hearing before the Water Management Board. A hearing before the Board was scheduled for October 1, 2003. This October 1, 2003 hearing was automatically delayed at the request of Andy Weber. The hearing on Mr. Even's application was subsequently postponed so that testimony on both applications may be heard concurrently.

The Water Management Board will consider Application Nos. 6403-3 and 6414-3 at 11:00 AM on December 3, 2003, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. The hearing time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the public notices published June 25 and July 2, 2003, in the Brookings Register and the notice sent to parties on July 15, 2003 will still apply at the December 3, 2003 hearing before the Water Management Board. This hearing may be an adversarial proceeding. Any party of record has the right to be present and 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 State Supreme Court as provided by law.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
Maureen McGill Hooegeveen, 1403 Main Street, Rock Valley IA 51247

CERTIFICATION

I hereby certify that on October 16, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 16, 2003, regarding scheduling of the Hearing on Water Right Permit Application Nos. 6403-3 and 6414-3, Andy Weber and Rick Even, addressed as stated below:

Andy Weber
RR 2, Box 145
Elkton SD 57062

Rick Even
48504 210th Street
Elkton SD 57026

Patricia A. Carlson
Attorney for Petitioner
PO Box 1235
Pierre SD 57501-1235

Maureen McGill Hoogeveen
1403 Main Street
Rock Valley IA 51247

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

Diane Best, Assistant Attorney General, Capitol Building



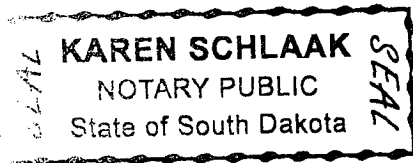
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 20th day of October, 2003.



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

December 9, 2003

NOTICE

TO: Andy Weber
RR 2, Box 145
Elkton SD 57062

Patricia A. Carlson
Attorney for Petitioner
PO Box 1235
Pierre SD 57501-1235

FROM: Rick Even
48504 210th Street
Elkton SD 57026

Garland Erbele, Chief Engineer
Water Rights Program

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

The Water Management Board directed John Guhin, the Board's Attorney, to prepare proposed Findings of Fact, Conclusions of Law and Final Decisions in the approval of Water Permit Application No. 6403-3 filed by Rick Even and Water Permit Application No. 6414-3 filed by Andy Weber. The Board will consider adoption of Findings, Conclusions and Final Decisions at 1:00 PM, on March 3, 2004, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

The Board requested that copies of the proposed Findings, Conclusions and Final Decisions be mailed to each Board member and parties by February 12, 2004. Written objections or comments in support of the proposed Findings, Conclusions and Final Decisions, or alternative Findings, Conclusions and Final Decisions are to be mailed to each Board member, the Board attorney (mailing list enclosed) by February 23, 2004.

Oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decisions, or alternative Findings, Conclusions and Final Decisions may be made on March 3, 2004. The public hearing was completed on December 3, 2003. No additional testimony will be received on March 3, 2004.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Maureen McGill Hooegeveen, 1403 Main Street, Rock Valley IA 51247

2003/2004 WATER MANAGEMENT BOARD MEMBERS

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

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

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

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

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

Dwayne Rollag
320 Lincoln Lane S
Brookings SD 57006-2741

BOARD ATTORNEY

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

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources

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

STAFF ATTORNEY

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

CERTIFICATION

I hereby certify that on December 9, 2003, I personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 9, 2003, regarding preparation of findings of fact, conclusions of law and final decisions in the matter of Water Permit Application No. 6403-3 filed by Rick Even and Water Permit Application No. 6414-3 filed by Andy Weber, addressed as stated below.

Andy Weber
RR 2, Box 145
Elkton SD 57062

Rick Even
48504 210th Street
Elkton SD 57026

Patricia A. Carlson
Attorney for Petitioner
PO Box 1235
Pierre SD 57501-1235

Maureen McGill Hoogeveen
1403 Main Street
Rock Valley IA 51247

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

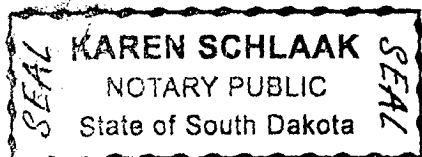
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General


Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of December, 2003.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

RECEIVED

FEB 12 2004

**WATER RIGHTS
PROGRAM**

MARK BARNETT

CHIEF DEPUTY ATTORNEY GENERAL

LARRY LONG
ATTORNEY GENERAL

MEMORANDUM

February 11, 2004

TO: Members of the Water Management Board and Interested Parties

FROM: John P. Guhin, Attorney for the Water Management Board *John P. Guhin*

RE: Proposed Findings of Fact, Conclusions of Law and Final Decision, on Water Permit Application No. 6403-3, Rick Even

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

Please consult the Notice of the Chief Engineer of December 9, 2003, for further information.

JPG/jmm

Enclosure

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
APPLICATION FOR WATER PERMIT	)	FINDINGS OF FACT, CONCLUSIONS
NO. 6403-3, RICK EVEN	)	OF LAW AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate 1.78 cfs (approximately 800 gpm) from one well approximately 190 feet deep to irrigate one hundred acres in Brookings County.

2. The Applicant requests a diversion rate greater than the statutory limit of 1 cfs per seventy acres.

3. The proposed source of the water is the Rutland aquifer, which is a buried outwash (sand and gravel) aquifer under confined or artesian conditions at the proposed well site. The aquifer underlies 240 square miles and contains an estimated 400,000 acre-feet of water in storage in Brookings County.

4. The ground water in this area moves from the east to the west. The aquifer averages about fifteen feet in thickness.

5. The evidence strongly supports a finding that there is a reasonable probability that there is water available for this application. First, a test well log submitted with the application indicates that there is clay from the surface to the depth of 158 feet. From 158 feet to 187 feet is a sand and gravel layer producing water. A well into the sand and gravel layer had a static water level of about fifty feet below land surface and was capable of producing about sixty gallons per

minute using air to develop. Thus, the water in the well rises over one hundred feet from the confined aquifer.

6. Furthermore, analysis of a nearby observation well supports the thesis that there is water available for this application. The observation well, BG-78E, is monitored by the Water Rights Program and is completed into the Rutland aquifer. It is located about two miles northwest of the proposed well site. The Board's analysis of the hydrograph for BG-78E indicates good response to pumping and to climatic conditions. In other words, rising levels occur during wet years (indicating recharge into the well) and declining water levels occur during dry years.

7. The hydrograph for BG-78E does indicate significant fluctuation in water levels due to pumping. Pumping, however, has never eliminated the artesian head pressure in the observation well.

8. It is uncontested that the use of water for irrigation in this area is a beneficial use.

9. The Board finds that the proposed irrigation well is likely to cause draw down in nearby irrigation and domestic wells; the extent of draw down will be such that pumps may be lowered into the well so that the owner of the well may still obtain all of the water to which he is entitled. There is no credible evidence in the record that any domestic or irrigation well owner would be unreasonably affected.

10. The opponent to the grant of the water permit did not testify directly but offered testimony by way of a "power of attorney" granted to a lawyer.

11. The lawyer testified, in the name of her client, that her client owned certain property which extended into Minnesota and which could be affected by the grant of the permit.

12. The lawyer testified that the client was already having problems with two wells and was experiencing a water shortage. The lawyer explained the theory that, although the client was located to the east of the proposed well and although the flow of ground water is from the east to the west, the client would nonetheless be affected; this is because, in the client's theory, the client's wells were more shallow than the proposed well to the west. There was no expert evidence to sustain this counter-intuitive theory and the Board rejects it.

13. The lawyer who testified in the name of her client was unable to testify as to how deep her client's wells were, the age of her client's wells, the pumping capacity of her client's wells, or whether the wells had been used for irrigation before 1955.

14. The lawyer was also uncertain as to which sections of land were affected. At one point, the lawyer testified that the issue involved Section 24. The lawyer at that time testified that her client had not identified Section 30 as a problem area. Later in the hearing, after a phone call had apparently been made, the lawyer testified that the problem was Section 27 which extends to Section 30.

15. The opponents to the permit did not offer credible evidence to undermine the testimony of the State's expert, Mr. Goodman.

16. Pursuant to SDCL 46-5-6, Water Management Board may allow a diversion greater than 1 cfs for each seventy acres if the method of irrigation so requires. In this case, the Applicant proposes to use partial circles instead of a full circle of a pivot. In such a case, it is much more efficient to pump at a greater rate than 1 cfs per acre.

17. The Board has also considered the opponent's request for an extension of time. The Board notes that the lawyer for the opponent to the permit attempted to subpoena an employee of the state of Minnesota who, the opponent believes, may have knowledge relevant to this matter. About three weeks before the hearing, Minnesota officials informed the opponents that the subpoena would not be honored. The lawyer for the opponent candidly informed the Board that she had no plans to attempt to procure an alternate expert. The lawyer informed the Board of her request that (1) the matter be delayed so that (2) employees of the South Dakota Water Rights Program could contact Minnesota officials in an attempt to (3) procure information held by Minnesota related to the present applications.

18. The Board appreciates the sincerity and clarity of the request by the lawyer for the opponent. Nonetheless, the Board finds that an extension of time would not be appropriate. First, it is unknown whether the Minnesota employee actually has relevant information. Second, there is no testimony as to

whether all avenues were explored with regard to obtaining the testimony of the Minnesota employee. It may have been possible, as it is in South Dakota, to privately contract with the Minnesota employee. It is also possible that the subpoena could have been enforced had appropriate judicial relief been sought. Third, even if the Minnesota employee could not have been utilized, the Board takes judicial notice that there are water rights experts available in South Dakota with appropriate expertise who could be hired by the opponent to conduct an investigation, and testify, if appropriate. Fourth, the Board takes notice that it is true in virtually all cases that more research and more investigation could be done; if delays were granted in all such cases, the Board would be unable to dispose of matters in the time periods contemplated in statute.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. There is a reasonable probability that there is unappropriated water available for the Applicant's proposed use, as set out more fully by the Findings above.
3. The proposed diversion can be developed without unlawful impairment of existing rights, as set forth more in detail in the Findings above.
4. The proposed use for irrigation is a beneficial use.
5. The proposed use is in the public interest. In coming to this conclusion, the Board has carefully considered the evidence to determine whether there is likely to be an affect on surrounding landowners' wells, whether adequate or not. It has

weighed this evidence against the benefits which can be obtained from allowing irrigation. As a likelihood a benefit is great, and because the evidence of harm is minimal, the grant of this permit would be in the public interest.

6. In coming to the foregoing conclusions, the Board has fully recognized its right and responsibility to extend protection to the use of water in the state of Minnesota. The Board specifically recognizes its responsibility to weigh the evidence of the effect of the proposed use in South Dakota on Minnesota uses to the same extent as it would weigh the effect on South Dakota uses. As noted, however, the Board has found no credible evidence of any effect on any use of water in Minnesota.

7. The Board allowed a lawyer to testify as to what her client would have testified as a "attorney in fact." Such evidence cannot be regarded as any more persuasive, however, than evidence given by affidavit. In either case, the person who has actual knowledge of the evidence is not before the Board nor is he or she available for cross-examination. The Board did not have an occasion to determine whether it would have allowed the "attorney in fact" testimony if an objection had been made because no objection was made. The Board leaves this issue for another day.

8. It would be contrary to the public interest to grant an extension of time in this case.

FINAL DECISION

The Application for Water Permit No. 6403-3 is GRANTED with the following qualifications:

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

2. The well authorized by Permit No. 6403-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

3. 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. 6403-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of one hundred acres with an annual volume not to exceed two acre-feet of water per acre per year.

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

Dated this _____ day of _____, 2004.

BY THE BOARD

Chairman

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
APPLICATION FOR WATER PERMIT) CERTIFICATE OF SERVICE
NO. 6403-3, RICK EVEN)

The undersigned hereby certifies that true and correct copies of proposed Findings of Fact, Conclusions of Law and Final Decision In the Matter of the Application for Water Permit No. 6403-3, Rick Even were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 11th day of February, 2004:

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

Leo Holzbauer, Chairman
RR1, Box 170
Wagner, SD 57380-9681

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

Andy Weber
RR 2, Box 145
Elkton, SD 57062

Patricia A. Carlson
Attorney at Law
P.O. Box 1235
Pierre, SD 57501-1235

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

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

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

Rick Even
48504 210th Street
Elkton, SD 57026

Maureen McGill Hoogeveen
1403 Main Street
Rock Valley, IA 51247

By interoffice to:

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

By hand delivery to:

Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, SD 57501



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

pld.jpg (Certificate of Service Rick Even) (jmm)



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

RECEIVED

FEB 18 2004

WATER RIGHTS
PROGRAM

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

MEMORANDUM

February 17, 2004

TO: Members of the Water Management Board and Interested Parties

FROM: Diane Best, Attorney for Department of Environment and Natural Resources, Water Rights Program *DB*

RE: Proposed Findings of Fact, Conclusions of Law and Final Decision on Water Permit Application No. 6403-3, Rick Even

The Department of Environment and Natural Resources, Water Rights Program, has reviewed the February 12, 2004, proposed Findings of Fact, Conclusions of Law and Final Decision in the above-referenced matter. The DENR has no alternative findings or objections. Accordingly, the DENR urges adoption of the proposed document at its March 3, 2004, meeting.

DB/jmm

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE) APPLICATION FOR WATER PERMIT) NO. 6403-3, RICK EVEN)	CERTIFICATE OF SERVICE
---	------------------------

The undersigned hereby certifies that true and correct copies of Memorandum dated February 17, 2004, In the Matter of the Application for Water Permit No. 6403-3, Rick Even were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 17th day of February, 2004:

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

Leo Holzbauer, Chairman
RR1, Box 170
Wagner, SD 57380-9681

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

Andy Weber
RR 2, Box 145
Elkton, SD 57062

Patricia A. Carlson
Attorney at Law
P.O. Box 1235
Pierre, SD 57501-1235

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

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

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

Rick Even
48504 210th Street
Elkton, SD 57026

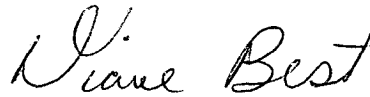
Maureen McGill Hoogeveen
1403 Main Street
Rock Valley, IA 51247

By interoffice to:

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

By hand delivery to:

John P. Guhin
Deputy Attorney General
500 East Capitol Avenue
Pierre, SD 57501



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

pld.db (Certificate of Service Rick Even) (jmm)

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	OBJECTIONS TO PROPOSED
APPLICATION FOR WATER PERMIT	)	FINDINGS OF FACT, CONCLUSIONS
NO. 6403-3, RICK EVEN	)	OF LAW AND FINAL DECISION

COMES NOW Patricia A. Carlson, Attorney at Law and with Power of Attorney for and on behalf of Mary Ellen McGill and Mary Ellen McGill Trust and files the following objections to the proposed Finding of Fact, Conclusions of Law and Final Decision in the above-referenced case:

1. Petitioner objects to Finding of Fact No. 1, 4, and 5 on the grounds that while the test results may support a finding that adequate water may be available in the Rutland aquifer to support the proposed 190' well of the applicant in addition to those existing at present, there is insufficient water available to allow this petitioner to draw from existing 110' wells on the Minnesota side of the same aquifer. This petitioner understands that the proposed wells are in a channel formation, and that therefore the draw down to those wells located in the same aquifer will be exaggerated. While the proposed well is 190' , the McGill wells and pumps are at 110' which is the maximum depth accessible as testified to during the hearing. Petitioner further bases her objections upon the fact that while the flow of the ground water is from east to west as set forth in Finding of Fact 4, this flow is a feeder into the Red River basin which flows from south to north and pulls an exaggerated amount from the Rutland Aquifer at times.

2. Petitioner objects to the finding that there is strong evidence of a reasonable probability of available water for this application, inasmuch as no consideration or testing has been done on the wells on the Minnesota side of the aquifer to determine whether they would be adversely affected. If this is not a concern because the current applicants are from South Dakota, Minnesota could take the same position in future applications to aquifers which cross state lines.
3. Petitioner objects to Finding of Fact 7. Current test results indicate that a significant fluctuation in water level occurs due to pumping, but that artesian head pressure has not been eliminated in the observation well during such pumping. No testing has been done to wells on the Minnesota side of the aquifer, nor have Minnesota testing results been obtained, to determine whether pressure in a similarly situated artesian observation well would maintain the requisite pressure on that side of the aquifer.
4. Petitioner objects to Finding of Fact 9 in that this Petitioner cannot lower pumps any deeper in its wells on the Minnesota side of the South Dakota/Minnesota land owned by Petitioner.
5. Petitioner objects to Finding of Fact 14. Petitioner clearly established in its original Petitioner that it had four wells, two of which were situated on the Big Sioux Aquifer and permitted in the State of South Dakota, and two which were located on the Minnesota side of the Rutland aquifer. This evidence was reiterated at the time of the hearing, and the Assistant Attorney General, Diane Best, challenged the right of the Petitioner to even irrigate on the South Dakota side of the border without an additional permit. She went so far as to have the matter

investigated during the recess, implying that the Petitioner was operating illegally. Later, this Petitioner received a letter from DENR indicating that the irrigation over the South Dakota border was so *de minimis* as to not require such a permit. Petitioner introduced exhibits of the platted areas showing the locations of the affected land/water masses.

6. Petitioner objects to Finding of Fact 17 and 18. Inasmuch as the state of South Dakota chooses to base its permitting process solely upon test results obtained from test sites within South Dakota borders for aquifers that not only cross state lines, but also from which Minnesota is issuing permits for other irrigation wells, it would seem incumbent upon the state engineer to submit findings from both states' to give the board a complete picture. Further, since public employees of the state of Minnesota need not honor a civil subpoena to appear before a South Dakota Administrative tribunal, it places an untenable burden on one private landowner to obtain engineering results from both sides of the border to justify a further investigation. Petitioner requested additional time to obtain such information, but the cost is prohibitive to one landowner.

CONCLUSIONS OF LAW

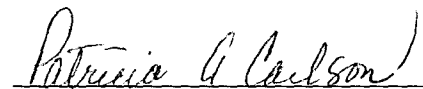
1. Petitioner objects to Conclusion of Law 2. Insufficient testing of the full aquifer has been done to determine the detrimental impact on existing licensed wells. Even though the Petitioner has Minnesota permits on these wells, and according to correspondence from DENR is not required to have a South Dakota permit after all, availability of water cannot be accurately determined from the limited testing conducted.

2. Petitioner objects to Conclusion of Law 6. The administrative board cannot recognize a responsibility to extend protection to the use of water in the state of Minnesota absent and findings from that state. If the responsibility is recognized and accepted, the facts must be obtained to justify the action taken.

FINAL DECISION

Petitioner objects to the issuance of Water Permit No. 6403-3 without further factual finding by the state engineer.

Dated this 23rd day of February, 2004.



Patricia A. Carlson
Attorney for Mary Ellen McGill and the
Mary Ellen McGill Trust
PO Box 1235
Pierre, South Dakota 57501
(605) 224-5853

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
APPLICATION FOR WATER PERMIT) CERTIFICATE OF SERVICE
NO. 6403-3, RICK EVEN)

The undersigned hereby certifies that true and correct copies of the Objections To Findings, In the Matter of the Application for Water Permit No. 6403-3, Rick Even were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 23rd Day of February, 2004:

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

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

Leo Holzbauer, Chairman
RR 1, Box 170
Wagner, Sd 57380-9681

Bernita Loucks
219 42nd Street
Rapid City, Sd 57702-2040

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

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

Andy Weber
RR 2, Box 145
Elkton, SD 57062

Rick Even
48504 210th Street
Elkton, SD 57026

Maureen McGill Hoogeveen
1403 Main Street
Rock Valley, IA 51247

By hand delivery to:

Diane Best
Assistant Attorney General
500 East Capitol Ave
Pierre, SD 57501-5070

Garland Erbele, Chief Engineer Water Rights Program
Dept of Environment & Natural Resources
Foss Building, 523 East Capitol
Pierre, SD 57501

John P. Guhin
Deputy Attorney General
500 East Capitol Ave
Pierre, SD 57501

A handwritten signature in cursive script, reading "Patricia A. Carlson", written over a horizontal line.

Patricia A. Carlson
Attorney at Law
1802 E. Wells, Suite 1
P.O. Box 1235
Pierre, South Dakota 57501-1235
605-224-5853

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	BOARD ATTORNEY'S RESPONSE
APPLICATION FOR WATER	)	TO OBJECTIONS TO PROPOSED
PERMIT NO. 6404-3, RICK	)	FINDINGS OF FACT,
EVEN	)	CONCLUSIONS OF LAW AND
	)	FINAL DECISION

Objection No. 1. Reject. First, Petitioner states an objection to proposed Findings of Fact No. 1, 4 and 5. None of the facts set out in Findings 1, 4 and 5 are, however, actually contested. Second, there is no credible evidence supporting the assertion that drawdown to wells on the Minnesota side of the border will be "exaggerated." Likewise, there is no credible evidence to support the hydrologic theory that the flow of ground water is a "feeder into the Red River basin" which "pulls an exaggerated amount from the Rutland Aquifer at times."

Objection No. 2. Reject. Analysis of two nearby observation wells yields strong evidence of the reasonable probability of water being available. State boundaries do not affect the boundaries of aquifers nor do state boundaries affect the performance of aquifers. No scientifically sound reason was set forth to require testing on the Minnesota side of the border.

Objection No. 3. Reject. See response to Objection No. 2.

Objection No. 4. Reject. Proposed Finding of Fact No. 9 does not state that this particular Petitioner can or cannot lower her pumps any deeper into her wells but that, to the extent that there are drawdowns with regard to well owners who do not have

pumps fully lowered into the wells, they will be able to do so. The Board further finds that Petitioner's evidence as to the workings of her well system cannot be relied upon because there was no testimony as to the age of the wells, the pumping capacity of the wells, or their condition. The Board finds that the condition of a well can greatly affect its ability to pump water which is available. Without better evidence of the condition of the opponent's wells, the opponent is poorly situated to make a claim with regard to a lack of water.

Objection No. 5. Reject. The facts set out in Finding of Fact No. 14 are those reflected in the record of testimony taken before the Board. The Board cannot consider a letter received by Petitioner after hearing because it has not been offered into evidence.

Objection No. 6. Reject. As set out above, the hydrologic evidence indicates that there is a reasonable probability that water is available for the proposed application. Furthermore, a party opposing the issuance of a water right assumes certain burdens to produce evidence. The onus for failing to produce such evidence falls upon the opponent, not upon the Water Rights Program which produced adequate evidence that water was available for the proposed application.

Objection to Conclusion of Law No. 2. Reject. The Board concludes that there has been sufficient testing of the aquifer to adjudge the condition of the aquifer on the Minnesota side of the border. Aquifers are not configured around state boundaries

and the opponent has failed to establish a scientifically based need for a further test in Minnesota.

Objection to Conclusion of Law No. 6. Reject. Proposed

Conclusion of Law No. 6 correctly states the law and the Board did carry out its responsibility as set out in proposed Conclusion of Law No. 6.

Dated this 27th day of February, 2004.


John E. Guhin
Deputy Attorney General
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215



**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 18, 2004

NOTICE

TO: Rick Even
48504 210th Street
Elkton SD 57062

Patricia A. Carlson
Attorney for Petitioner
PO Box 1235
Pierre SD 57501-1235

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

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

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted March 3, 2004, by the Water Management Board approving Water Permit No. 6403-3. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

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

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Maureen McGill Hoogeveen, 1403 Main Street, Rock Valley IA 51247

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
APPLICATION FOR WATER PERMIT) FINDINGS OF FACT, CONCLUSIONS
NO. 6403-3, RICK EVEN) OF LAW AND FINAL DECISION

FINDINGS OF FACT

1. This is an application to appropriate 1.78 cfs (approximately 800 gpm) from one well approximately 190 feet deep to irrigate one hundred acres in Brookings County.

2. The Applicant requests a diversion rate greater than the statutory limit of 1 cfs per seventy acres.

3. The proposed source of the water is the Rutland aquifer, which is a buried outwash (sand and gravel) aquifer under confined or artesian conditions at the proposed well site. The aquifer underlies 240 square miles and contains an estimated 400,000 acre-feet of water in storage in Brookings County.

4. The ground water in this area moves from the east to the west. The aquifer averages about fifteen feet in thickness.

5. The evidence strongly supports a finding that there is a reasonable probability that there is water available for this application. First, a test well log submitted with the application indicates that there is clay from the surface to the depth of 158 feet. From 158 feet to 187 feet is a sand and gravel layer producing water. A well into the sand and gravel layer had a static water level of about fifty feet below land surface and was capable of producing about sixty gallons per

minute using air to develop. Thus, the water in the well rises over one hundred feet from the confined aquifer.

6. Furthermore, analysis of a nearby observation well supports the thesis that there is water available for this application. The observation well, BG-78E, is monitored by the Water Rights Program and is completed into the Rutland aquifer. It is located about two miles northwest of the proposed well site. The Board's analysis of the hydrograph for BG-78E indicates good response to pumping and to climatic conditions. In other words, rising levels occur during wet years (indicating recharge into the well) and declining water levels occur during dry years.

7. The hydrograph for BG-78E does indicate significant fluctuation in water levels due to pumping. Pumping, however, has never eliminated the artesian head pressure in the observation well.

8. It is uncontested that the use of water for irrigation in this area is a beneficial use.

9. The Board finds that the proposed irrigation well is likely to cause draw down in nearby irrigation and domestic wells; the extent of draw down will be such that pumps may need to be lowered into the well so that the owner of the well may still obtain all of the water to which he is entitled. There is no credible evidence in the record that any domestic or irrigation well owner would be unreasonably affected.

10. The opponent to the grant of the water permit did not testify directly but offered testimony by way of a "power of attorney" granted to a lawyer.

11. The lawyer testified, in the name of her client, that her client owned certain property which extended into Minnesota and which could be affected by the grant of the permit.

12. The lawyer testified that the client was already having problems with two wells and was experiencing a water shortage. The lawyer explained the theory that, although the client was located to the east of the proposed well and although the flow of ground water is from the east to the west, the client would nonetheless be affected; this is because, in the client's theory, the client's wells were more shallow than the proposed well to the west. There was no expert evidence to sustain this counter-intuitive theory and the Board rejects it.

13. The lawyer who testified in the name of her client was unable to testify as to how deep her client's wells were, the age of her client's wells, the pumping capacity of her client's wells, or whether the wells had been used for irrigation before 1955.

14. The lawyer was also uncertain as to which sections of land were affected. At one point, the lawyer testified that the issue involved Section 24. The lawyer at that time testified that her client had not identified Section 30 as a problem area. Later in the hearing, after a phone call had apparently been made, the lawyer testified that the problem was Section 27 which extends to Section 30.

15. The opponents to the permit did not offer credible evidence to undermine the testimony of the State's expert, Mr. Goodman.

16. Pursuant to SDCL 46-5-6, Water Management Board may allow a diversion greater than 1 cfs for each seventy acres if the method of irrigation so requires. In this case, the Applicant proposes to use partial circles instead of a full circle of a pivot. In such a case, it is much more efficient to pump at a greater rate than 1 cfs per acre.

17. The Board has also considered the opponent's request for an extension of time. The Board notes that the lawyer for the opponent to the permit attempted to subpoena an employee of the state of Minnesota who, the opponent believes, may have knowledge relevant to this matter. About three weeks before the hearing, Minnesota officials informed the opponents that the subpoena would not be honored. The lawyer for the opponent candidly informed the Board that she had no plans to attempt to procure an alternate expert. The lawyer informed the Board of her request that (1) the matter be delayed so that (2) employees of the South Dakota Water Rights Program could contact Minnesota officials in an attempt to (3) procure information held by Minnesota related to the present applications.

18. The Board appreciates the sincerity and clarity of the request by the lawyer for the opponent. Nonetheless, the Board finds that an extension of time would not be appropriate. First, it is unknown whether the Minnesota employee actually has relevant information. Second, there is no testimony as to

whether all avenues were explored with regard to obtaining the testimony of the Minnesota employee. It may have been possible, as it is in South Dakota, to privately contract with the Minnesota employee. It is also possible that the subpoena could have been enforced had appropriate judicial relief been sought. Third, even if the Minnesota employee could not have been utilized, the Board takes judicial notice that there are water rights experts available in South Dakota with appropriate expertise who could be hired by the opponent to conduct an investigation, and testify, if appropriate. Fourth, the Board takes notice that it is true in virtually all cases that more research and more investigation could be done; if delays were granted in all such cases, the Board would be unable to dispose of matters in the time periods contemplated in statute.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter.
2. There is a reasonable probability that there is unappropriated water available for the Applicant's proposed use, as set out more fully by the Findings above.
3. The proposed diversion can be developed without unlawful impairment of existing rights, as set forth more in detail in the Findings above.
4. The proposed use for irrigation is a beneficial use.
5. The proposed use is in the public interest. In coming to this conclusion, the Board has carefully considered the evidence to determine whether there is likely to be an affect on surrounding landowners' wells, whether adequate or not. It has

weighed this evidence against the benefits which can be obtained from allowing irrigation. As a likelihood a benefit is great, and because the evidence of harm is minimal, the grant of this permit would be in the public interest.

6. In coming to the foregoing conclusions, the Board has fully recognized its right and responsibility to extend protection to the use of water in the state of Minnesota. The Board specifically recognizes its responsibility to weigh the evidence of the effect of the proposed use in South Dakota on Minnesota uses to the same extent as it would weigh the effect on South Dakota uses. As noted, however, the Board has found no credible evidence of any effect on any use of water in Minnesota.

7. The Board allowed a lawyer to testify as to what her client would have testified as a "attorney in fact." Such evidence cannot be regarded as any more persuasive, however, than evidence given by affidavit. In either case, the person who has actual knowledge of the evidence is not before the Board nor is he or she available for cross-examination. The Board did not have an occasion to determine whether it would have allowed the "attorney in fact" testimony if an objection had been made because no objection was made. The Board leaves this issue for another day.

8. It would be contrary to the public interest to grant an extension of time in this case.

FINAL DECISION

The Application for Water Permit No. 6403-3 is GRANTED with the following qualifications:

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

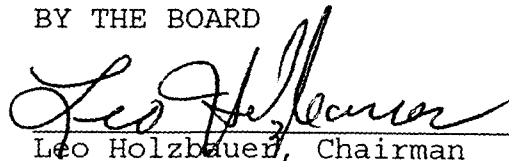
2. The well authorized by Permit No. 6403-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

3. 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. 6403-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of one hundred acres with an annual volume not to exceed two acre-feet of water per acre per year.

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

Dated this 16 day of March, 2004.

BY THE BOARD


Leo Holzbauer, Chairman

CERTIFICATION

I hereby certify that on March 18, 2004, I personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 18, 2004, regarding adoption of findings of fact, conclusions of law and final decision in the matter of Water Permit Application No. 6403-3, Rick Even, addressed as stated below.

Rick Even
48504 210th Street
Elkton SD 57062

Patricia A. Carlson
Attorney for Petitioner
PO Box 1235
Pierre SD 57501-1235

Maureen McGill Hoogeveen
1403 Main Street
Rock Valley IA 51247

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

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



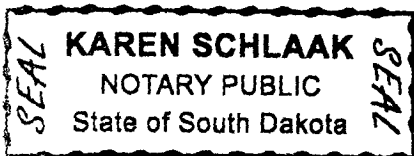
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of March, 2004.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





MAY 10 2004

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Rick Even
48504 210th St
Elkton SD 57026

Dear Mr. Even:

Enclosed is Water Permit No. 6403-3 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

6403-3

NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE

Date

8-6-04

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

RECEIVED

AUG 10 2004

WATER RIGHTS
PROGRAM

FROM:

RICK EVEN - EVENS NORTHFORK FARMS INC
(name)

48504 210TH ST
(address)

ELKTON SD 57026
(city, state, zip)

605 542-4021
(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

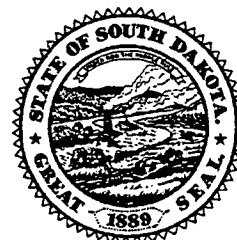
Water Permit No. 6403-3 states that the water use system is to be constructed by 3-3-09 (date), and water is to be put to beneficial use by 8-4-06 (date) 3-3-13 (date).

The water use system was completed on 8-4-04 (date).

Applying the water to beneficial use was completed on 8-5-04 (date).

You may schedule an investigation so that the water license may be issued.

Rick Even
(signature)



SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SE ¼ SE ¼ Sec 33 Twp 110 Rg 47

County

Brookings

North

Please mark well location with an "X"

W

E

Well Completion Date

5/19/2004

1 Mile

Distance to nearest potential pollution source (Septic tank, abandoned well, feed lot, etc.)

? ft. from In Pasture (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Reverse

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
26.0 LB/FT	16.00 IN	0.0 FT	67.0 FT	24.00 IN
40.0 LB/FT	16.00 IN	67.0 FT	167.0 FT	24.00 IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	50	Lb/gal	0.0 Ft	20.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure

SCREEN:

☐ Perforated pipe ☒ Manufactured
Diameter 16.00 Inches Length 15.0 FeetMaterial Stainless SteelSlot Size .060 Set From 167.0 Feet to 182.0 Feet

Other information

WAS A PACKER OR SEAL USED?

☒ Yes ☐ No
If so, what material? Pea Rock

Describe packer(s) and location

Gravel Packed

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? Pellets
☐ No, Why Not?

Lab sample sent to for water quality analysis

Well Owner: Rick Evens

Business Name:

Address: 48504 210th StCity, State, Zip: Elkton SD 57026

WELL LOG:

DEPTH

FORMATION	FROM	TO
Yellow Clay w/ Rocks	0	10
Yellow Clay w/ Small Sand Streak	10	30
Yellow Clay	30	35
Blue Clay	35	105
Yellow Clay	105	138
Yellow Sand	138	145
Blue Clay	145	155
Coarse Yellow Sand	155	183

STATIC WATER LEVEL

50

FEET

If flowing: closed in pressure

PSI

GPM flow through Inch pipeControlled by ☐ Valve ☐ Reducers ☐ OtherReduced flow rate GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe:
☐ Bailed
☐ Other

Pumping Level Below Land Surface

Ft. After Hrs. pumped GPMFt. After Hrs. pumped GPMIf pump installed, pump rate: GPM

REMARKS

This well was drilled under license # 440

And this report is true and accurate.

Drilling firm: Pullman Well Drilling Inc.

Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

Date:

9-29-04

RECEIVED

OCT - 1 2004

WATER RIGHTS PROGRAM

10-4-04

Permit No. 6403-3
Sioux 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 22, 2006**, made a thorough examination of the water use system constructed by **Rick Even** of **48504 210th St., Elkton, SD 57206** holder of Permit No. **6403-3**, bearing the priority of **April 3, 2003** authorizing the diversion of **1.78** cu. ft. per second of the waters of the **Rutland Aquifer** for Irrigation purposes, in **Brookings** County.

Inspection contact & relationship **Rick Even (542-4021)**
to permit holder, if applicable:

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: **Pullman Well Drilling Inc.**
- 2) No. of Wells **1**
- 3) Depth(s) **183** feet
- 4) Well log is available **Y**

Casing:

- 1) Diameter **16** inches
- 2) Length **167** feet
- 3) Type **Plastic**

Screen:

- 1) Type **Stainless Steel**
- 2) Length **15** feet
- 3) Static water level **50** feet

Pump:

- 1) Make **Flow Serve**
- 2) Model **121KS**
- 3) Size **8 inch**
- 4) Capacity **800** GPM

Motor:

- 1) Make John Deere
- 2) Model No. 4045TF150
- 3) Horsepower rating 100 hp

B. Works used to apply water to beneficial use:

Center pivot:

- 1) Make Valley
- 2) Number of towers 7
- 3) End gun Y
- 4) High or low pressure High

Chemigation Equipment:

- 1) Does chemigate N

C. Compliance with Permit Requirements:

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

The system is in Good condition with the point(s) of diversion located as follows: Approximately 25 feet north and 1315 west of the SE corner of Section 33-T110N-R47W (N 44.28251, W -96.47158). The works are capable of diverting and conveying to the place of use 1.78 cu. ft. per second of water which is to be used for Irrigation purposes. Water has been put to beneficial use to the maximum extent as follows:

Section 33-T110N-R47W

NW ¼ SE ¼ - 7 acres

NE ¼ SE ¼ - 34 acres

SW ¼ SE ¼ - 25 acres

SE ¼ SE ¼ - 34 acres

comprising a total of 100 acres of land and the license should be issued for 1.78 cfs.

All structures, wells and lands on map Y

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

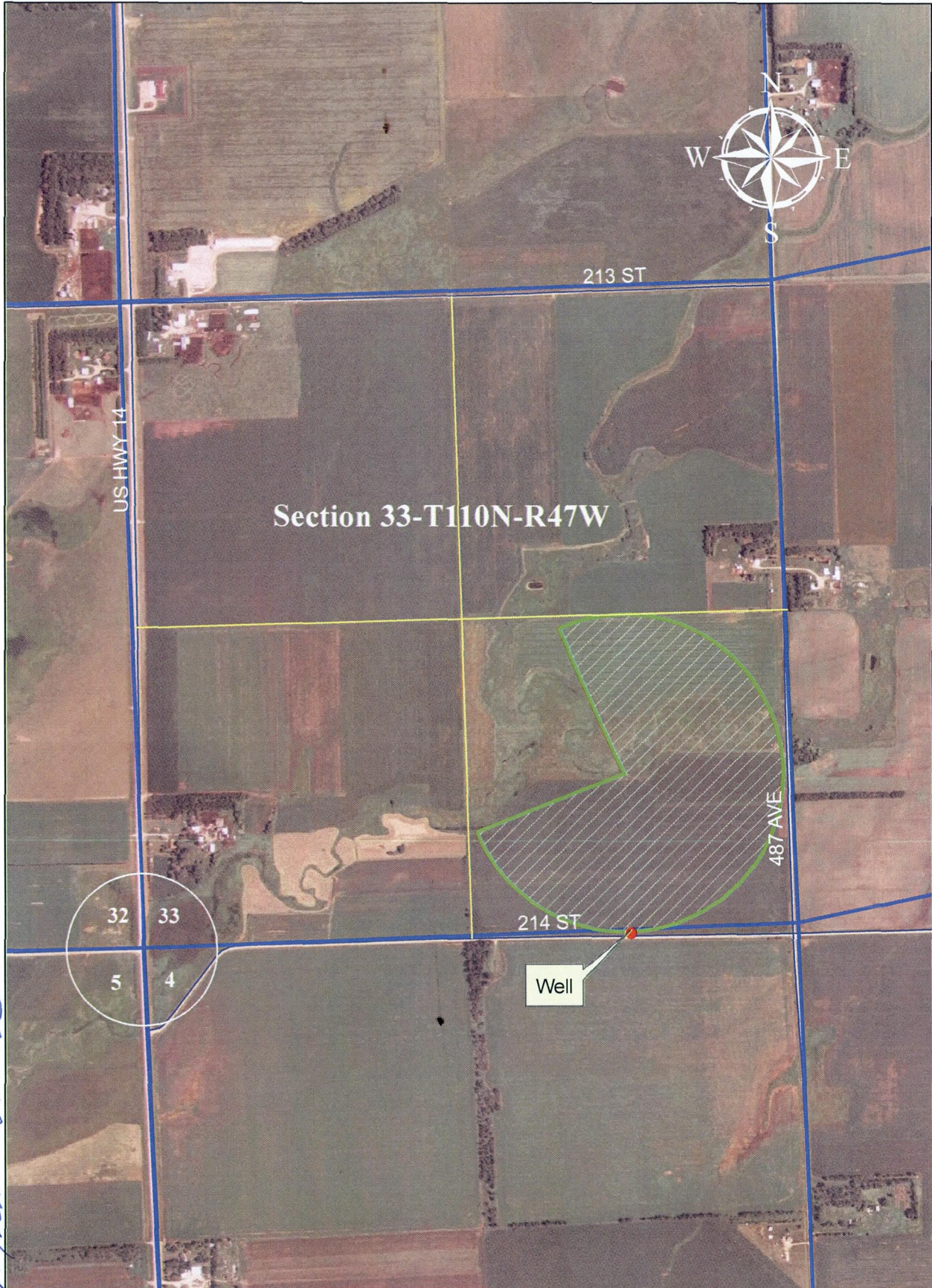

Mike DeFea

Natural Resources Project Engineer
DENR, Water Rights Program

Date report completed: June 12, 2007

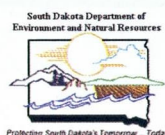
Rick Even
48504 210th St
Elkton, SD 57026
542-4021

Water Permit No. 6403-3



Mike DeFea

Mike DeFea
Natural Resources Engineer
DENR, Water Rights Program
June 12, 2007



0 900 1,800 3,600 Feet



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

AUG 03 2007

6403-3

Rich Even
48504 210TH St
Elkton SD 57206

Dear Mr. Even:

Enclosed is Water License No. 6403-3. This is the final water right document completing your process of obtaining a Water Right. Also, included with your license is a map prepared by the staff engineer who conducted the investigation.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the well authorized by Water Right No. 6403-3, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

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

Sincerely,

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

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 6403-3

(1) Rich Even, 48504 210th St, Elkton SD 57206 made Application No. 6403-3, April 3, 2003 for a water permit to divert 1.78 cubic feet of water per second from groundwater (one well), Brookings County, South Dakota for irrigation purposes. Permit No. 6403-3, with a priority date of April 3, 2003 was approved March 3, 2004 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 3, 2009 and for the application to beneficial use of water on or before March 3, 2013.

The permit holder submitted a *Notice of Completion of Works and Application of Water to Beneficial Use* on August 10, 2004. The *Notice* stated the diversion system was completed on August 4, 2004 and the water placed to beneficial use on August 5, 2004.

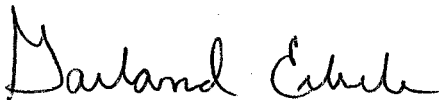
(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 6403-3 is issued a license, bearing a priority date of April 3, 2003 to appropriate 1.78 cubic feet of water per second from groundwater (one well) to irrigate 100 acres.

The diversion point is located: approximately 25 feet north and 1,315 feet west of the southeast corner of Section 33-T110N-R47W (SE ¼ SE ¼). The acres authorized for irrigation are as follows:

Section 33-T110N-R47W	NW ¼ SE ¼	7 acres
	NE ¼ SE ¼	34 acres
	SW ¼ SE ¼	25 acres
	SE ¼ SE ¼	34 acres
Total 100 acres		

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 6403-3 including the following now applicable qualifications:

- The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- The well authorized by Permit No. 6403-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.
- 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. 6403-3 authorizes a maximum diversion rate of 1.78 cfs for the irrigation of 100 acres with an annual volume not to exceed 2 acre-feet of water per acre per year.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.



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

AUG 03 2007

date

