

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)
	No. <u>6908-3</u> Hydrologic Unit <u>10160007</u>
	Basin <u>James River</u>
	Newspaper <u>Northwest Blade, P.O. Box 797, Eureka</u>

RECEIVED
OCT 12 2007
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: X New Vested Right Amendment/Correction to Permit No.

(Use predates Mar 2, 1955)

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

- Name of Applicant HARLAN AMAN Phone
(check one) X Owner Tenant/lessee
Mailing Address 33788 121ST STREET HOSMER State SD 57448
2.0 (Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 2.2 *CFS or 900 **GPM ***AF Total Acreage 160
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply WELL WITH PUMP
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) NE1/4-SW1/4-34-126-71
 County MCPHERSON
- County or counties where water will be used MCPHERSON
- Annual period during which water is to be used MAY 1 TO OCTOBER 31
- List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
NW 1/4 SW 1/4 34-126-71	40		
SW 1/4 SW 1/4 34-126-71	40		
SW 1/4 NW 1/4 34-126-71	40		
SE 1/4 NW 1/4 34-126-71	40		

- Give a description of the project. (Attach sheet if more space is needed)
INSTALL CENTER PIVOT TO WATER
THE SW 1/4 OF SECTION 34

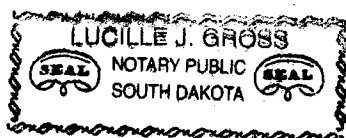
STATE OF SOUTH DAKOTA)
County of McPherson SS

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

I, Harlan Aman, 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 x Harlan Aman

Subscribed and sworn to before me this 7th day of October 20 07



Lucille J. Gross
Notary Public signature
My Commission Expires 6-29-2011

SOUTH DAKOTA
WATER PERMIT NO. 6908-3 FOR IRRIGATION

Date of first receipt of application October 12, 2007.

Date of return to applicant for corrections, amendments or changes October 12, 2007.

Date of receipt of corrected application October 19, 2007.

The Water Management Board approved Water Permit No. 6908-3 on May 7, 2008 for Harlan Aman, 33788 121st St, Hosmer SD 57448 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. 6908-3 appropriates 2.0 cubic feet of water per second from one well completed into the Hillview Aquifer (approximately 110 feet deep) located in the NE ¼ SW ¼ Section 34 to irrigate 160 acres located in the W ½ SW ¼, S ½ NW ¼ Section 34; all in T126N-R71W. This new well may be used to irrigate the E ½ SW ¼ Section 34 which is authorized by Water Right No. 2893-3.
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 October 12, 2007.
4. One-fifth of the construction is to be completed on or before November 7, 2010.
5. All construction is to be completed on or before May 7, 2013.
6. Water is to be put to beneficial use on or before May 7, 2017.
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. 6908-3 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) pursuant to Section 74:02:04:28.
3. 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

MAR 27 2009

date



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter 30" Depth 110'
- b) Casing Type PVC Diameter 16" Thickness _____
- c) Screen Type SS Diameter 16" Thickness _____
- d) Gravel Pack _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material TBD
- f) Depth to Water (ground surface to water level) TBD
- g) Distance to nearest existing domestic well:
On applicants property 1/2 mile On property owned by others 1+ mile

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 _____

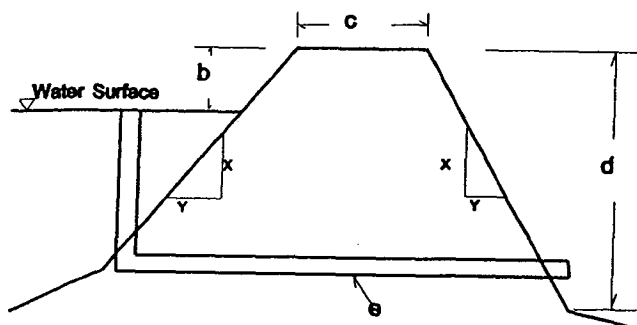
3. Dugout Information

- 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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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www.state.sd.us/denr

October 12, 2007

Harlan Aman
33788 121st St
Hosmer SD 57448

Dear Mr. Aman:

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 aerial photo 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 (McPherson County Farm Service Agency).
- The application/license filing fee will be \$300.00.
- The map indicates the location of the test hole. If available, please submit the test hole log signed by a licensed South Dakota well driller.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

enclosure



United States Department of Agriculture
Farm Service Agency

34-126N-71W

McPherson County, SD

1 inch equals 703 feet

RECEIVED

January 25, 2007

OCT 19 2007

WATER RIGHTS
PROGRAM

Carol Brundage, Acting CEO

McPherson Co. FSA

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 10/19, 20 07

RECEIVED OF HAYLON ARNOLD 33778 121st St HOBBS SD 57448

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

Fee for Application for Permit No. <u>16908-3</u> to Appropriate Water, to construct and to put water to beneficial use	250	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>16908-3</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	300	00

No. 03186

By Donald E. White
Chief Engineer

REPORT ON WATER PERMIT APPLICATION NO. 6908-3

For Harlan Aman

October 24, 2007

Application No. 6908-3 proposes to appropriate 2.0 cfs (900 gpm) from one well approximately 110 feet deep located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 34 to irrigate 160 acres located in the W $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NW $\frac{1}{4}$ of section 34; all in T126N R71W in McPherson County.

AQUIFER- HILLSVIEW (HV)

The Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage (Hedges, 1982). In the immediate area of this application the aquifer is under water table conditions and appears to be a surficial aquifer. At this proposed site the aquifer will probably be buried but still under water table conditions. The county study report (Hamilton, 1982) does not even map the aquifer or name it the Hillsview but simply groups this aquifer under "other aquifers" in McPherson County and indicates that well yields of 500 gpm may be possible.

No test well was drilled for this application. There is some information in the area from the county study, other irrigation and domestic wells and observation wells to evaluate this application. This data would indicate the aquifer has a limited amount of water available. However, this aquifer is not well defined and there is very little development. The proposed depth should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.

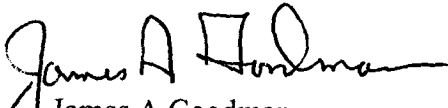
The Water Rights Program monitors two observation wells completed into the Hillview aquifer and within two miles of this proposed well. Water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals (Water Rights, 2007). Hydrographs for observation wells MP-80G (located about one and one-half miles northwest) and MP-80H (located about one-half mile northeast) of this proposed well are included with this report. Note the lack of affect of pumping on the hydrographs, this is to be expected under water table conditions, and the general effects of the very wet years in the mid 1990's.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are three existing irrigation wells within one mile of this proposed well. These are Water Right No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Right No. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No. 4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells drawdown is not expected to be significant. The observation well record reinforces this conclusion.

CONCLUSIONS

1. Water is available from the Hillsview aquifer.
2. The aquifer may be buried at this site however it will probably be under water table conditions at this site. Drawdown is not expected to be significant and interference should not be a concern.
3. The well authorized by this application must be constructed in accordance with SD Well Construction Standards.
4. Test wells will need to be constructed to fully evaluate the aquifer potential at this site.


James A Goodman
Natural Resources Engineer

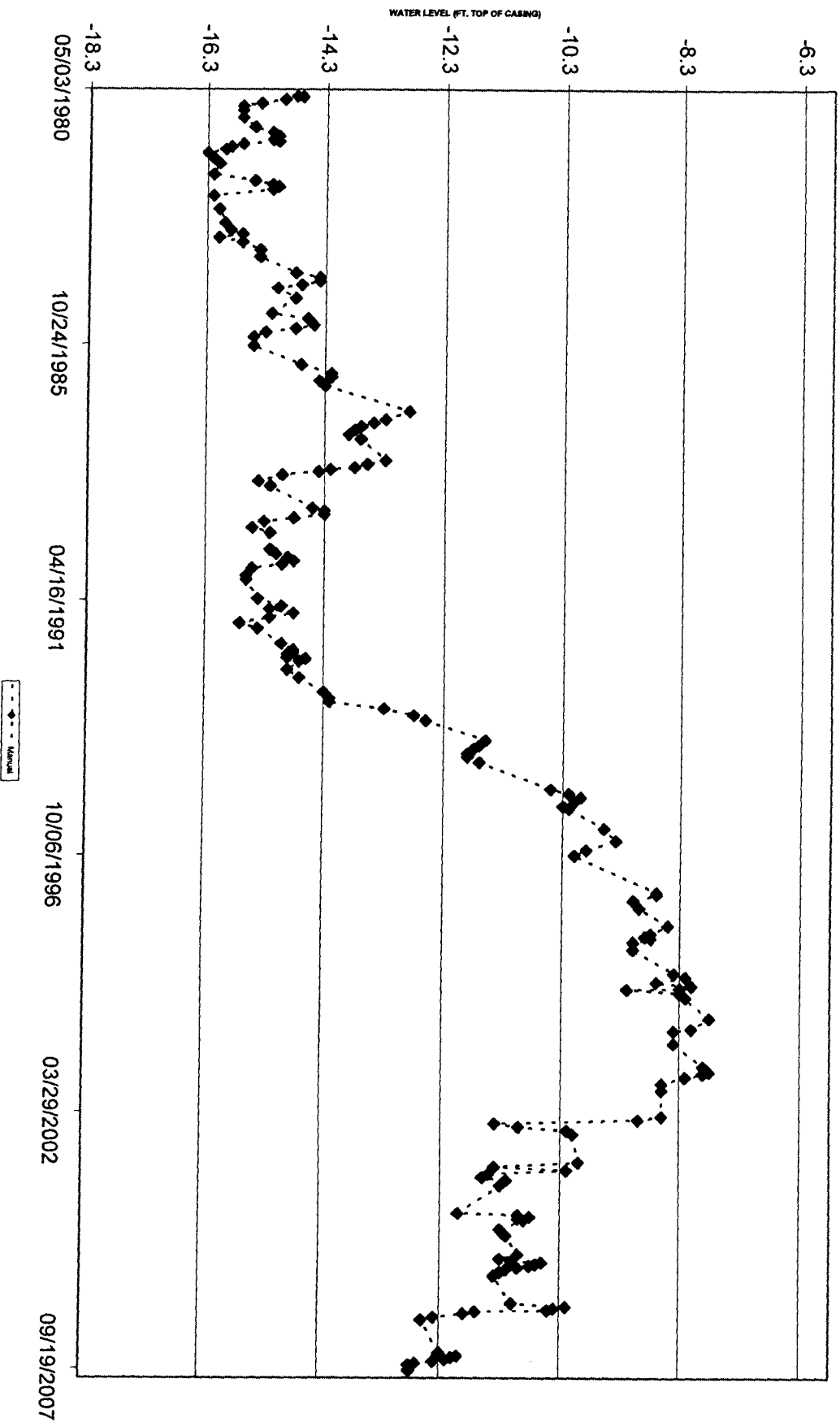
BIBLIOGRAPHY

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

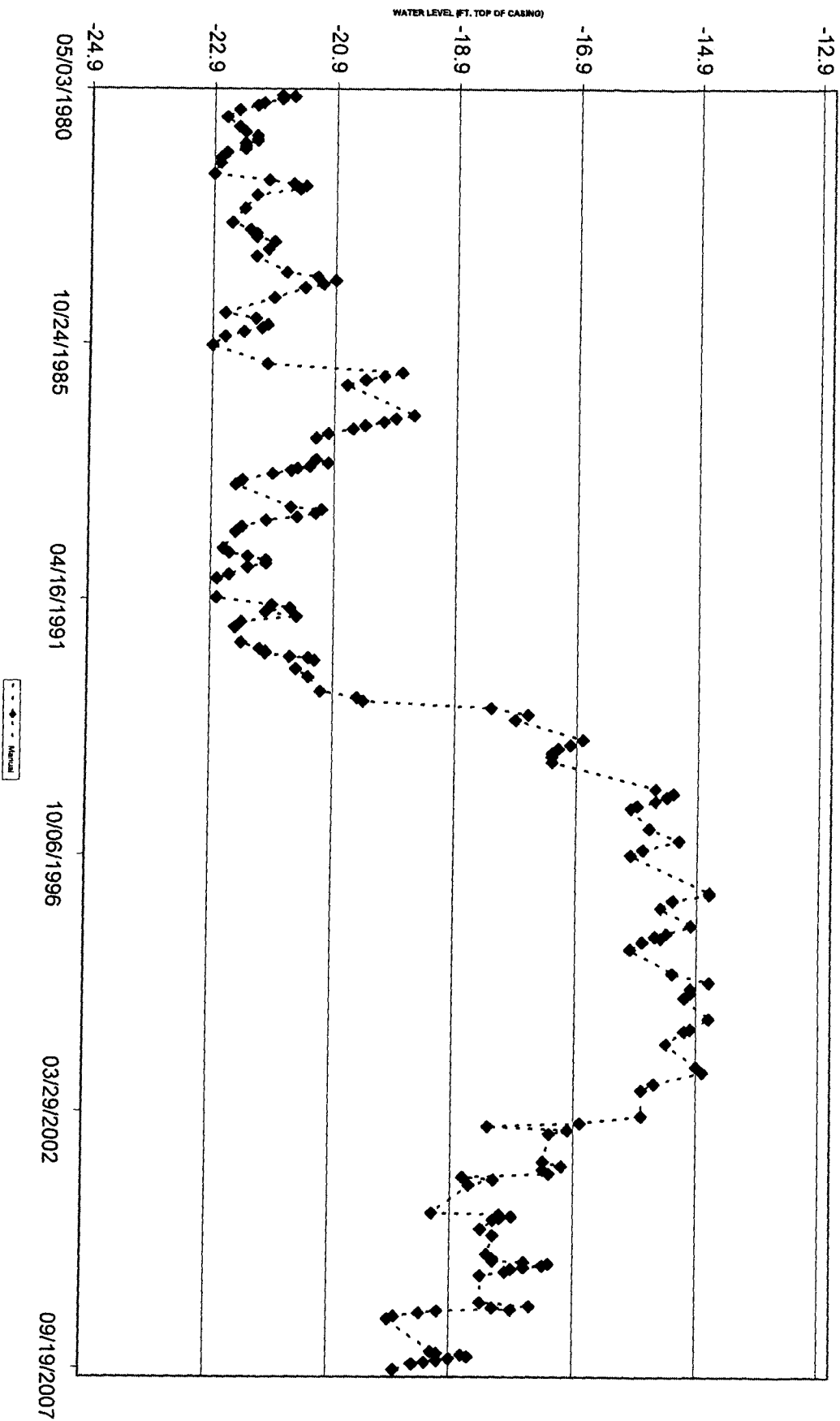
Hedges, L.S., and others, 1982, Evaluation of Ground Water Resources Eastern SD and Upper Big Sioux River SD and Iowa, for US Army Corps of Engineers, SD DENR, SDGS, Vermillion, SD, 57069.

Water Rights, 2007, Unpublished Observation Well Data for McPherson County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

WATER RIGHTS' OBSERVATION WELL
MP-80H



WATER RIGHTS' OBSERVATION WELL MP-80G





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 6908-3, Harlan Aman**

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. 6908-3, Harlan Aman, 33788 121st Street, Hosmer, SD 57448.

The Chief Engineer is recommending APPROVAL of Application No. 6908-3 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. 6908-3 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) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
October 26, 2007



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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523 EAST CAPITOL
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www.state.sd.us/denr

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

October 29, 2007

Harlan Aman
33788 121st St
Hosmer SD 57437

Dear Mr. Aman:

Water Permit Application No. 6908-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Northwest Blade printed at Eureka SD (Ph # 605-284-2631). 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 report on the application is 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 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. 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 applications.

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

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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

October 29, 2007

Northwest Blade
PO Box 797
Eureka SD 57437

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 6908-3 to Appropriate Water to be published twice. Please publish the first notice on November 7, 2007 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

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 Harlan Aman, 33788 121st St, Hosmer SD 57448 (Ph # 605-283-2323).

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. 6908-3

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

Date _____

We are in receipt of your letter of October 29, 2007 enclosing Notice to Appropriate Water by Application No. 6908-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name _____

Newspaper _____

Instruction to Newspaper - Publish first Notice on November 7, 2007 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 6908-3 to Appropriate Water

Notice is given that Harlan Aman, 33788 121st St, Hosmer SD 57448 has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Hillsview Aquifer (approximately 110 feet deep) located in NE ¼ SW ¼ Section 34 to irrigate 160 acres located in the W ½ SW ¼, S ½ NW ¼ Section 34; all in T126N-R71W. This new well may be used to irrigate the E ½ SW ¼ of section 34 which is authorized by Water Right No. 2893-3.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6908-3 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 this 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 this 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 recommendations 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 November 26, 2007.

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.

RECEIVED

NOV - 8 2007

WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of McPherson) SS

I, Arlo C. Mehlhoff

certify that the attached printed Notice was
taken

from the Northwest Block

printed and published in Nov. 7, 2007

County of McPherson and

state of South Dakota. The notice was
published

in the newspaper on the following two dates:

Nov. 7, 2007

Nov. 14, 2007

Cost of Printing \$52.02

Arlo C. Mehlhoff
(Signature)

President
(Title)

Nov. 6, 2007
(Date Signed)

**NOTICE OF APPLICATION
NO. 6908-3 TO APPROPRIATE
WATER**

Notice is hereby given that Harlan Aman, 33788 121st Street, Hosmer, S. D. 57448 has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Hillsview Aquifer (approximately 110 feet deep) located in NE1/4SW 1/4 Section 34 to irrigate 160 acres located in the W1/2SW1/4, S1/2NW 1/4 Section 34, all in T126N-R71W. This new well may be used to irrigate the E1/2SW1/4 of section 34 which is authorized by Water Right No. 2893-3.

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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 Ronlund 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.

TONNER, TOBIN & KING, LLP

ATTORNEYS AT LAW
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

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NOV 20 2007

**WATER RIGHTS
PROGRAM**

ATTORNEYS:

THOMAS P. TONNER
THOMAS M. TOBIN
HIRAM I. KING

RESEARCH & INVESTIGATION:

CHARLES A. BENSEN

TELEPHONE: (605) 225-1000

FAX: (605) 225-0625

E-Mail: ttonner@nvc.net

November 19, 2007

Mr. Garland Erbele
Chief Engineer - Water Rights Program
Joe Foss Building
523 E. Capital
Pierre, SD 57501

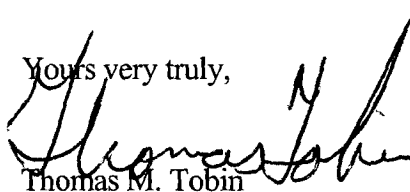
RE: Application No. 6908-3, Harlan Aman

Dear Mr. Erbele:

I am enclosing Petitions in Opposition to Application No. 6908-3 which have been signed by Raymond Groft, Allen Hieb, Delores Hieb, Dale Mohr and Herbert Groft. Also enclosed is a Certificate of Service.

Thanking you, I remain,

Yours very truly,



Thomas M. Tobin

TMT:dh

Enclosure

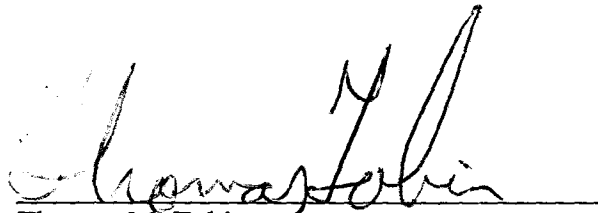
pc: Harlan Aman w/enclosures
Steven M. Pipner w/enclosures

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on the 19th day of November, 2007, Petitions in Opposition to Application No. 6908-3, Harlan Aman, Hosmer South Dakota, signed by Raymond Groat, Allen Hieb, Delores Hieb, Dale Mohr and Herbert Groat, were mailed by first class mail to the following:

Mr. Garland Erbele
Chief Engineer - Water Rights Program
Joe Foss Building
523 E. Capital
Pierre, SD 57501

Mr. Harlan Aman
33788 121st ST.
Hosmer, SD 57448



Thomas M. Tobin

**PETITION IN OPPOSITION TO APPLICATION NO. 6908-3, Harlan Aman, Hosmer,
South Dakota.**

COMES NOW, the undersigned, Raymond Groft, and hereby oppose the approval of Application No. 6908-3, filed by Harlan Aman of Hosmer, South Dakota. I am opposed, as I would be an effected landowner concerning the geographical area effected by the application and the approval of Application No. 6908-3, would also cause a detrimental effect on my water rights as they presently exist. I also am a prior user of the water located in the Hillview Aquifer. I believe that the approval of Application No. 6908-3 will negatively effect the water levels, the availability of water, and the usefulness of my existing wells. I also oppose said approval because I believe that it would have a detrimental effect on the value of my property, and my ability to provide water for domestic use and for livestock use.

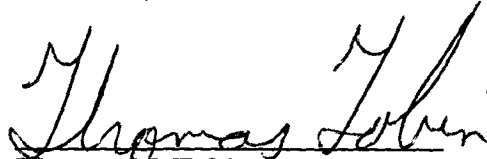
I further oppose the approval of Application No. 6908-3, because the engineers recommendation is impractical to enforce and it would put the burden on myself and others in the area to provide the actual controls of the withdraws from the aquifer.

I also believe that the existing irrigation that has been already allowed from the aquifer is already having a negative impact on the value of my land, the availability of water for domestic and animal use, and my prior water rights by adding an additional irrigation unit, pursuant to Application No. 6908-3 would magnify and exaggerate the current problems that we have with the water levels going down when the irrigation is being conducted.

Therefore, I resist the approval of Application No. 6908-3, and wish participate in a hearing, and be present at a hearing regarding said application.

Dated this 19th day of November, 2007.


Raymond Groft
1701 3rd Ave., SE Apt. 103
Aberdeen, SD 57401


Thomas M. Tobin
Attorney for Allen Hieb
P.O. Box 1456
Aberdeen, SD 57402
605-225-1000

PETITION IN OPPOSITION TO APPLICATION NO. 6908-3, Harlan Aman, Hosmer,
South Dakota.

COMES NOW, the undersigned, Allen Hieb, and hereby oppose the approval of Application No. 6908-3, filed by Harlan Aman of Hosmer, South Dakota. I am opposed, as I would be an effected landowner concerning the geographical area effected by the application and the approval of Application No. 6908-3, would also cause a detrimental effect on my water rights as they presently exist. I also am a prior user of the water located in the Hillview Aquifer. I believe that the approval of Application No. 6908-3 will negatively effect the water levels, the availability of water, and the usefulness of my existing wells. I also oppose said approval because I believe that it would have a detrimental effect on the value of my property, and my ability to provide water for domestic use and for livestock use.

I further oppose the approval of Application No. 6908-3, because the engineers recommendation is impractical to enforce and it would put the burden on myself and others in the area to provide the actual controls of the withdraws from the aquifer.

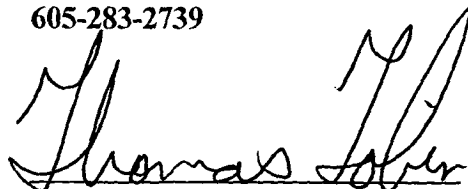
I also believe that the existing irrigation that has been already allowed from the aquifer is already having a negative impact on the value of my land, the availability of water for domestic and animal use, and my prior water rights by adding an additional irrigation unit, pursuant to Application No. 6908-3 would magnify and exaggerate the current problems that we have with the water levels going down when the irrigation is being conducted.

Therefore, I resist the approval of Application No. 6908-3, and wish participate in a hearing, and be present at a hearing regarding said application.

Dated this 17 day of November, 2007.



Allen Hieb
11585 340th Ave.
Hosmer, SD 57448
605-283-2739



Thomas M. Tobin
Attorney for Allen Hieb
P.O. Box 1456
Aberdeen, SD 57402
605-225-1000

PETITION IN OPPOSITION TO APPLICATION NO. 6908-3, Harlan Aman, Hosmer,
South Dakota.

COMES NOW, the undersigned, Delores Hieb, and hereby oppose the approval of Application No. 6908-3, filed by Harlan Aman of Hosmer, South Dakota. I am opposed, as I would be an effected landowner concerning the geographical area effected by the application and the approval of Application No. 6908-3, would also cause a detrimental effect on my water rights as they presently exist. I also am a prior user of the water located in the Hillsvie Aquifer. I believe that the approval of Application No. 6908-3 will negatively effect the water levels, the availability of water, and the usefulness of my existing wells. I also oppose said approval because I believe that it would have a detrimental effect on the value of my property, and my ability to provide water for domestic use and for livestock use.

I further oppose the approval of Application No. 6908-3, because the engineers recommendation is impractical to enforce and it would put the burden on myself and others in the area to provide the actual controls of the withdraws from the aquifer.

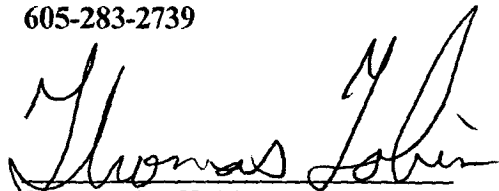
I also believe that the existing irrigation that has been already allowed from the aquifer is already having a negative impact on the value of my land, the availability of water for domestic and animal use, and my prior water rights by adding an additional irrigation unit, pursuant to Application No. 6908-3 would magnify and exaggerate the current problems that we have with the water levels going down when the irrigation is being conducted.

Therefore, I resist the approval of Application No. 6908-3, and wish participate in a hearing, and be present at a hearing regarding said application.

Dated this 17 day of November, 2007.



Delores Hieb
11585 340th Ave.
Hosmer, SD 57448
605-283-2739



Thomas M. Tobin
Attorney for Allen Hieb
P.O. Box 1456
Aberdeen, SD 57402
605-225-1000

PETITION IN OPPOSITION TO APPLICATION NO. 6908-3, Harlan Aman, Hosmer,
South Dakota.

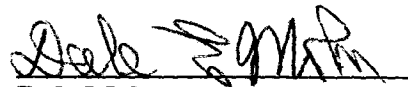
COMES NOW, the undersigned, Dale Mohr, and hereby oppose the approval of Application No. 6908-3, filed by Harlan Aman of Hosmer, South Dakota. I am opposed, as I would be an effected landowner concerning the geographical area effected by the application and the approval of Application No. 6908-3, would also cause a detrimental effect on my water rights as they presently exist. I also am a prior user of the water located in the Hillview Aquifer. I believe that the approval of Application No. 6908-3 will negatively effect the water levels, the availability of water, and the usefulness of my existing wells. I also oppose said approval because I believe that it would have a detrimental effect on the value of my property, and my ability to provide water for domestic use and for livestock use.

I further oppose the approval of Application No. 6908-3, because the engineers recommendation is impractical to enforce and it would put the burden on myself and others in the area to provide the actual controls of the withdraws from the aquifer.

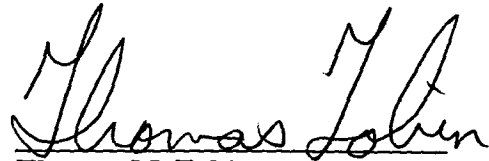
I also believe that the existing irrigation that has been already allowed from the aquifer is already having a negative impact on the value of my land, the availability of water for domestic and animal use, and my prior water rights by adding an additional irrigation unit, pursuant to Application No. 6908-3 would magnify and exaggerate the current problems that we have with the water levels going down when the irrigation is being conducted.

Therefore, I resist the approval of Application No. 6908-3, and wish participate in a hearing, and be present at a hearing regarding said application.

Dated this 17 day of November, 2007.



Dale Mohr
Hosmer, SD 57448



Thomas M. Tobin
Attorney for Allen Hieb
P.O. Box 1456
Aberdeen, SD 57402
605-225-1000

PETITION IN OPPOSITION TO APPLICATION NO. 6908-3, Harlan Aman, Hosmer,
South Dakota.

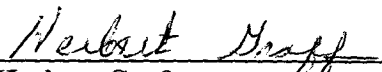
COMES NOW, the undersigned, Herbert Groft, and hereby oppose the approval of Application No. 6908-3, filed by Harlan Aman of Hosmer, South Dakota. I am opposed, as I would be an effected landowner concerning the geographical area effected by the application and the approval of Application No. 6908-3, would also cause a detrimental effect on my water rights as they presently exist. I also am a prior user of the water located in the Hillsvie Aquifer. I believe that the approval of Application No. 6908-3 will negatively effect the water levels, the availability of water, and the usefulness of my existing wells. I also oppose said approval because I believe that it would have a detrimental effect on the value of my property, and my ability to provide water for domestic use and for livestock use.

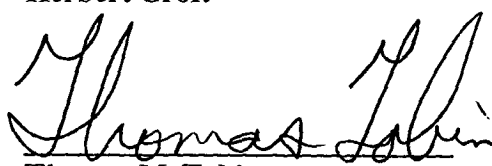
I further oppose the approval of Application No. 6908-3, because the engineers recommendation is impractical to enforce and it would put the burden on myself and others in the area to provide the actual controls of the withdraws from the aquifer.

I also believe that the existing irrigation that has been already allowed from the aquifer is already having a negative impact on the value of my land, the availability of water for domestic and animal use, and my prior water rights by adding an additional irrigation unit, pursuant to Application No. 6908-3 would magnify and exaggerate the current problems that we have with the water levels going down when the irrigation is being conducted.

Therefore, I resist the approval of Application No. 6908-3, and wish participate in a hearing, and be present at a hearing regarding said application.

Dated this 17 day of November, 2007.


Herbert Groft


Thomas M. Tobin
Attorney for Allen Hieb
P.O. Box 1456
Aberdeen, SD 57402
605-225-1000



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

November 26, 2007

NOTICE

TO: Harlan Aman
33788 121st Street
Hosmer SD 57448

Thomas M. Tobin
Attorney for Petitioners
PO Box 1456
Aberdeen SD 57402

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 6908-3, Harlan Aman

Petitions to intervene have been filed in response to the public notice of Water Permit Application No. 6908-3 filed by Harlan Aman. This notice schedules a hearing before the Water Management Board to consider Application No. 6908-3. Enclosed is a copy of the staff report, recommendation and the petitions to intervene.

As specified in the publication notice, Application No. 6908-3 proposes to appropriate 2.0 cubic feet of water per second from one well to be completed into the Hillsview Aquifer (approximately 110 feet deep) located in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34 to irrigate 160 acres located in the W $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 34; all in T126N-R71W. This new well may be used to irrigate the E $\frac{1}{2}$ SW $\frac{1}{4}$ of section 34 which is authorized by Water Right No. 2893-3.

The Water Management Board will conduct a hearing to consider Application No. 6908-3 at 1:30 PM on Tuesday, March 11, 2008 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. The hearing time is an estimate and may be delayed due to prior agenda items. Notice will be provided to all parties of record of any change in the hearing time or date.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 6908-3 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 March 11, 2008, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any party who timely filed a petition opposing the application. The request for an automatic delay must be filed by February 29, 2008.

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 individual with disabilities that this hearing is being held in a physically accessible facility. Please notify Eric Gronlund at (605) 773-3352 by February 29, 2008, 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 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

enclosures

c: Diane Best, Assistant Attorney General

NOTE: Since this matter does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case need not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by February 29, 2008.

CERTIFICATION

I hereby certify that on November 26, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 26, 2007, regarding scheduling of hearing for Water Right Permit Application No. 6908-3, Harlan Aman, as addressed below and on the attached parties of record.

Harlan Aman
33788 121st Street
Hosmer SD 57448

Thomas M. Tobin
PO Box 1456
Aberdeen SD 57402

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

Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



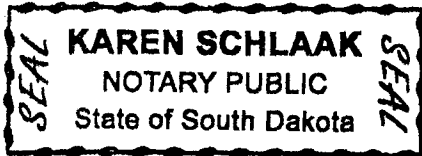
Gail Jacobson, Secretary
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of November, 2007.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 14, 2008

NOTICE

TO: Harlan Aman
33788 121st Street
Hosmer SD 57448

Thomas M. Tobin
Attorney for Petitioners
PO Box 1456
Aberdeen SD 57402

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Hearing on Water Permit Application No. 6908-3, Harlan Aman

Application No. 6908-3 proposes to appropriate 2.0 cubic feet of water per second from one well completed into the Hillsvew Aquifer located in NE ¼ SW ¼ Section 34 to irrigate 160 acres located in the W ½ SW ¼, S ½ NW ¼ Section 34; all in T126N-R71W. This new well may be used to irrigate the E ½ SW ¼ of section 34 which is authorized by Water Right No. 2893-3.

The Water Management Board will conduct a hearing to consider Application No. 6908-3 at 1:30 PM on Tuesday, March 11, 2008, 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.

Applicable provisions of the public notice published in the Northwest Blade and the notice dated November 26, 2007, 2007 will still apply. 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.

Enclosed is a copy of the report, recommendation and petition in the matter of Water Permit Application No. 6908-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. This same information will be sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules". You are encouraged to review these documents prior to the hearing.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the upcoming hearing before the Board.

enclosures

c: Diane Best, Assistant Attorney General

CERTIFICATION

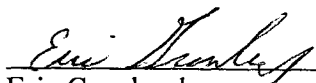
I hereby certify that on February 15, 2008, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 15, 2008, regarding the hearing for Water Right Permit Application No. 6908-3, Harlan Aman, as addressed below and on the attached parties of record.

Harlan Aman
33788 121st Street
Hosmer SD 57448

Thomas M. Tobin
PO Box 1456
Aberdeen SD 57402

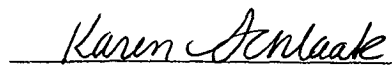
A copy of the above described Notice was sent Inter-office to:

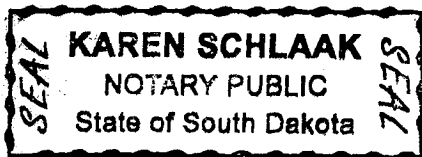
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of February 2008.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013





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 17, 2008

NOTICE

TO: Margo Northrup
Riter, Rogers, Wattier & Brown
PO Box 280
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402-1456

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

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

The Water Management Board directed Margo Northrup to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application No. 6908-3 filed by Harlan Aman. The Board will consider adoption of Findings, Conclusions and Final Decision at 1:00 PM, on May 7, 2008, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by April 11, 2008. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by April 28, 2008.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on May 7, 2008. The public hearing was completed on March 11, 2008. No additional testimony will be received.

If you have questions about the findings process, please contact Eric Gronlund at (605) 773-3352.

Enclosure

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 17, 2008, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 17, 2008, regarding preparation of findings of fact, conclusions of law and final decision for Water Right Permit Application No. 6908-3, Harlan Aman, addressed as stated below :

Margo Northrup
Riter, Rogers, Wattier & Brown
PO Box 280
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402-1456

Sent Notice Inter-Office mail to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501

Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



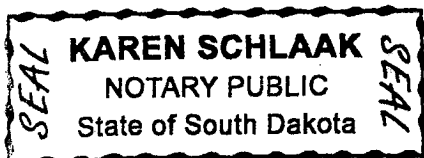
Gail Jacobson
Water Right Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of March 2008.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**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, 2008

Allen Hieb
11585 340th Avenue
Hosmer SD 57448

Dear Mr. Hieb:

As per your request after the hearing on Mr. Aman's water permit application, please find enclosed a copy of the notice which sets forth the timeframes for consideration of findings of fact, conclusions of law and final decision on this application.

If you have any questions on the findings process, please do not hesitate to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

enclosure



Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
Margo D. Northrup

RECEIVED

APR 14 2008

WATER RIGHTS
PROGRAM

Associate:
Lindsey Riter-Rapp

Of Counsel:
Robert D. Hofer

April 10, 2008

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 E Capitol Avenue
Pierre SD 57501

Re: Water Permit Application No. 6908.3 – Harlan Aman

To Whom It May Concern:

Enclosed are the Original Proposed Findings of Fact, Conclusion of Law and Certificate of Service in the above reference matter. Please file the same in your office.

Yours truly,

RITER, ROGERS, WATTIER
& NORTHRUP LLP

By:

FOL
Margo D. Northrup

MDN/lma

Enclosure

Law Office
Riter, Rogers, Wattier, & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
319 South Coteau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED

APR 14 2008

WATER RIGHTS
PROGRAM

IN THE MATTER OF	)	
WATER PERMIT	)	
APPLICATION NO. 6908-3,	)	Findings of Fact,
Harlan Aman	)	Conclusion of Law

Certificate of Service

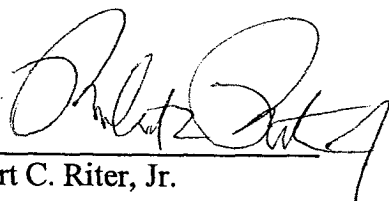
I, Robert C. Riter, Jr., hereby certify that a true and correct original of the Findings of Facts and Conclusion of Law was sent by first class mail on this 10th day of April, 2008 upon:

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol Ave
Pierre SD 57501

I, Robert C. Riter, Jr., hereby certify that a true and correct copy of the Findings of Facts and Conclusion of Law was sent by first class mail on this 10th day of April, 2008 upon:

Diane Best
Attorney General Office
1302 E Hwy 14, #1
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402



Robert C. Riter, Jr.

RECEIVED

APR 14 2008

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF	)	
WATER PERMIT	)	
APPLICATION NO. 6908-3,	)	Findings of Fact,
Harlan Aman	)	Conclusion of Law,
	)	Final Decision and Order

This matter having come on for hearing before the South Dakota Water Management Board on the 11th day of March, 2008 and the applicant appearing personally and by and through attorneys Riter, Rogers, Wattier and Northrup, LLP of Pierre, South Dakota and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Water Board and Thomas Tobin of Aberdeen, South Dakota appearing on behalf of Intervenor, Allen Heib, Deloris Heib, Dale Mohr and Raymond Graff, and the Board having considered the evidence presented, all records and documents on file herein and good cause appearing therefore, now enters the following Findings of Facts and Conclusion of Law:

FINDINGS OF FACT

1. Harlan Aman filed Application No. 6908-3 (hereinafter the "Application") for a water permit for irrigation purposes.
2. The Application proposes to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well is to be completed into the Hillview Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. The well

may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right NO. 2893-3.

3. The Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. The proposed depth of 110 feet should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.
5. Although no test well was drilled for this application, there is sufficient information from a County Study, other wells in the area, other irrigation wells, and two observation wells (MP80G and MP80H) that the Water Rights Program monitors. The observation wells are within two miles of this proposed well site. Water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well support that the aquifer is capable of sustaining additional withdrawals.
6. There are three existing irrigation wells within one mile of this proposed well. These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No.

4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells, drawdown is not expected to be significant. The observation well record reinforces this conclusion.

7. Harlan Aman has never experienced problems with the existing irrigation wells located on his property.
8. Allen Hieb intervened in this matter and is opposed to the granting of the application as proposed. Allen Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site.
9. Allen Heib has wells on his property for domestic use and livestock use. Some of the wells are drilled at a depth of 140 feet. The wells at a depth of 140 feet are good, high producing wells. One of the wells was drilled at a depth of thirty feet. This well went dry in 2006.
10. Delores Hieb intervened in this matter and is opposed to the granting of the application as proposed. Delores Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. Dolores Heib is the mother of Allen Heib and also uses wells for domestic use and livestock use.
11. Dale Mohr intervened in this matter and is opposed to the granting of the application as proposed. Dale Mohr lives on a ranch one mile east of the proposed well site.
12. Dale Mohr has drilled three wells on his property. Two of those wells are at a depth of 140 feet. The wells at a depth of 140 feet are working properly. One of the wells was drilled at a depth of 40 feet. The well at a depth of 40 feet went dry.
13. Raymond Graff intervened in this matter and is opposed to the granting of the application as proposed. Raymond Graff currently lives in Aberdeen, South Dakota but owns land

within approximately one (1) mile to one mile and one quarter of a mile (1 1/4) from the proposed well site.

14. Raymond Graff currently has two wells on the property for domestic use and they are working properly.

15. The wells that have been replaced by Allen Heib and Dale Morh were 25 to 45 feet deep. They were replaced during dry years or drought years. The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the forgoing Findings of Facts and Conclusion of Law, the Board now enters the following:

FINAL DECISION AND ORDER

1. The application for Water Permit No. 6908.3 is hereby granted with the following qualifications:

- A. 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.
- B. The well authorized by Permit No. 6908-3 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) pursuant to Section 74:02:04:28.
- C. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

DATED this ____ day of April, 2008.

By the Board:

Chairman



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
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LARRY LONG
ATTORNEY GENERAL

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APR 29 2008

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

MEMORANDUM

To: Water Management Board and interested parties
From: Diane Best, Counsel for DENR Water Rights Program
Subject: In the Matter of Water Permit Application No. 6908-3, Harlan Aman
Date: April 28, 2008

Consistent with the Board's direction, I am enclosing the DENR responses to proposed Findings of Fact and Conclusions of Law in the above-referenced matter.

For your reference, I am also enclosing a copy of the proposal filed by Applicant Aman on April 10.

DB/sk

RECEIVED

MAY - 1 2008

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF	)	DENR RESPONSE TO
WATER PERMIT	)	PROPOSED FINDINGS OF FACT,
APPLICATION NO. 6908-3,	)	CONCLUSIONS OF LAW, AND
Harlan Aman	)	FINAL DECISION

COMES NOW, the South Dakota Department of Environment and Natural Resources, Water Rights Program (DENR) and makes its response to the Applicant's proposed Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter:

1. The introductory comments should reflect that undersigned counsel appeared on behalf of the Department of Environment and Natural Resources, Water Rights Program. The South Dakota Water Management Board was represented by Jeff Hallem.
2. On page 2, the DENR proposes additional language with respect to Finding of Fact 5. Finding of Fact 5 should reflect that the County Study referenced on line 2 was a 1982 study conducted by the South Dakota Geological Survey and is the most recent water study conducted for this aquifer. Also, an additional sentence should be added to the end of Finding of Fact 5 as follows: "The hydrograph for observation well

MP-80G (located about 1 1/2 miles Northwest of the proposed well) also supports the conclusion that the aquifer is capable of sustaining additional withdrawals.

3. Following Finding of Fact 5, the DENR would propose an additional Findings of Fact as follows:

DENR witness, James Goodman, a natural resources engineer, reviewed the Permit Application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie Aquifer, reviewed information obtained from the two state observation wells (MP-80G and MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.

Witness Goodman testified that the Hillsvie Aquifer is capable of sustaining additional withdrawals and, further, that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of this testimony as well as the observation well hydrographs contained with the Goodman report and the testimony of all parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.

4. The DENR also asked that additional Findings of Fact be included, which would state as follows:

This Board's conclusion that the proposed diversion can be developed without unlawful impairment of existing rights relies on both the Goodman expert testimony as well as the chief engineer's proposed qualifications for the proposed permit. The permit would be qualified so as to protect nearby domestic wells and other wells which may obtain water from the same aquifer and which hold priority rights. The proposed qualification provides that the well owner must 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. This includes both existing irrigation rights as well as domestic wells which are not required to be permitted.

The Board finds that the testimony presented by the applicant and intervenors in this matter, when fully considered in light of all the evidence in the record, weighs in favor of determining that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, and also weighs in favor of finding that the proposed diversion can be developed without unlawful impairment of existing rights.

5. The DENR proposes a small change on proposed Finding of Fact 6, line 6. This Finding of Fact should reflect that the well for Water Permit No. 2893-3 is located about 1,900 feet northwest of the proposed site.

6. The DENR proposes additional language at the end of Finding of Fact 9:

The year 2006 was a drought year. The 30 foot well at this location is responsive to fluctuations in the aquifer due to drought. Moreover, the Board recognizes that the DENR monitoring wells, which are close to the proposed well site and to Aman's existing wells show that fluctuation is much more attributable to climatic conditions than it is to irrigation. In fact, the DENR expert testified that fluctuation in

water levels would be attributable to climatic conditions rather than irrigation.

7. The DENR also proposes additional language at the end of proposed Finding of Fact 12. The language is as follows:

The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.

8. Finding of Fact 15 contains a typographical error. The spelling of Dale Mohr's name is incorrect in this Finding.

9. The DENR also proposes additional new Findings of Fact at the end of the proposed Findings of Fact offered by the applicant:

The Intervenor's assert that the application at issue will result in a situation where 240 acres will be irrigated from the proposed well. The actual new acreage that would be irrigated under this permit would be up to 160 acres. In addition, part of the application is to allow irrigation of an additional 64 acres that is already irrigated under another water right. The additional 64 acres are located in the east half of the southwest quarter of Section 34, which is authorized by Water Right No. 2893-3. Granting this permit allows use of water from the new well authorized under this permit as an alternative to the well now used under Water Right No. 2893-3 for the 64 acres. This does not allow the Applicant to "double up" and apply more total water per acre than that authorized under SDCL 46-5-6. Further, allowing irrigation of this 80 acres from the presently pending permit does not authorize the transfer or change in acreage of any rights granted under Water Right No. 2893-3.

The proposed Water Permit is for use for irrigation. This Board has previously found on several occasions

that the use of water for irrigation for farm crops is a beneficial use and is in the public interest. This use is beneficial to the appropriator insofar as the appropriator desires to increase its capacity to grow agriculture crops. The use is also consistent with the interest of the public of this state and the best utilization of water supplies in that it provides for use of water to support the State's agricultural economy. Further, it is in the public interest to promote the maximum beneficial use of water. Accordingly, the proposed use is beneficial within the meaning of SDCL 46-1-6(3).

The proposed use is in the public interest insofar as it provides water for irrigation which would, in turn, benefit the general economic development of the area in question.

Dated this 28th day of April, 2008.



Diane Best
Assistant Attorney General
1302 E. Highway 14, Ste. 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

s-pld_db FOF, COL & Decision (Water Permit app - Harlan Aman)

STATE OF SOUTH DAKOTA
~~BEFORE THE~~ WATER MANAGEMENT BOARD

IN THE MATTER OF	)	
WATER PERMIT	)	Findings of Fact,
APPLICATION NO. 6908-3,	)	Conclusion of Law,
Harlan Aman	)	Final Decision and Order

This matter having come on for hearing before the South Dakota Water Management Board on the 11th day of March, 2008 and the applicant appearing personally and by and through attorneys Riter, Rogers, Wattier and Northrup, LLP of Pierre, South Dakota and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Water Board and Thomas Tobin of Aberdeen, South Dakota appearing on behalf of Intervenor, Allen Heib, Deloris Heib, Dale Mohr and Raymond Graff, and the Board having considered the evidence presented, all records and documents on file herein and good cause appearing therefore, now enters the following Findings of Facts and Conclusion of Law:

FINDINGS OF FACT

1. Harlan Aman filed Application No. 6908-3 (hereinafter the "Application") for a water permit for irrigation purposes.
2. The Application proposes to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well is to be completed into the Hillsview Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. The well

may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right NO. 2893-3.

3. The Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. The proposed depth of 110 feet should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.
5. Although no test well was drilled for this application, there is sufficient information from a County Study^{Co}, other wells in the area, other irrigation wells, and two observation wells (MP80G and MP80H) that the Water Rights Program monitors. The observation wells are within two miles of this proposed well site. Water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well support that the aquifer is capable of sustaining additional withdrawals.
6. There are three existing irrigation wells within one mile of this proposed well. These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No.

4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells, drawdown is not expected to be significant. The observation well record reinforces this conclusion.

7. Harlan Aman has never experienced problems with the existing irrigation wells located on his property.
8. Allen Hieb intervened in this matter and is opposed to the granting of the application as proposed. Allen Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site.
9. Allen Heib has wells on his property for domestic use and livestock use. Some of the wells are drilled at a depth of 140 feet. The wells at a depth of 140 feet are good, high producing wells. One of the wells was drilled at a depth of thirty feet. This well went dry in 2006.
10. Delores Hieb intervened in this matter and is opposed to the granting of the application as proposed. Delores Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. Dolores Heib is the mother of Allen Heib and also uses wells for domestic use and livestock use.
11. Dale Mohr intervened in this matter and is opposed to the granting of the application as proposed. Dale Mohr lives on a ranch one mile east of the proposed well site.
12. Dale Mohr has drilled three wells on his property. Two of those wells are at a depth of 140 feet. The wells at a depth of 140 feet are working properly. One of the wells was drilled at a depth of 40 feet. The well at a depth of 40 feet went dry.
13. Raymond Graff intervened in this matter and is opposed to the granting of the application as proposed. Raymond Graff currently lives in Aberdeen, South Dakota but owns land

within approximately one (1) mile to one mile and one quarter of a mile (1 1/4) from the proposed well site.

14. Raymond Graff currently has two wells on the property for domestic use and they are working properly.
15. The wells that have been replaced by Allen Heib and Dale Morh were 25 to 45 feet deep. They were replaced during dry years or drought years. The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the forgoing Findings of Facts and Conclusion of Law, the Board now enters the following:

FINAL DECISION AND ORDER

1. The application for Water Permit No. 6908.3 is hereby granted with the following qualifications:

- A. 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.
- B. The well authorized by Permit No. 6908-3 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) pursuant to Section 74:02:04:28.
- C. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

DATED this ____ day of April, 2008.

By the Board:

Chairman

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 6908-3,) CERTIFICATE OF SERVICE
Harlan Aman)

The undersigned hereby certifies that true and correct copies of proposed Findings of Fact, Conclusions of Law and Final Decision 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 28th day of April, 2008:

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401

Leo Holzbauer
29416 395th Ave.
Wagner, SD 57380

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

Bernita Loucks
219 42nd St.
Rapid City, SD 57702

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

James Hutmacher
802 E. Seventh St.
Oacoma, SD 57365

Tim Bjork
112 W. Oak St.
Pierre, SD 57501

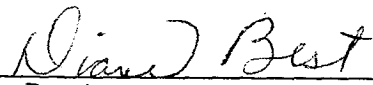
Thomas Tobin
Attorney at Law
P.O. Box 1456
Aberdeen, SD 57402

and sent on the same date by interoffice mail to:

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

and by hand delivery on the same date to:

Jeffrey P. Hallem
Assistant Attorney General
Mickelson Bldg.
Pierre, SD 57501


Diane Best
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 6908-3,)
Harlan Aman)

SUPPLEMENTAL
CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of proposed Findings of Fact, Conclusions of Law and Final Decision were served upon each of the following by facsimile and 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 30th day of April, 2008:

Margo Northrup
Attorney at Law
P.O. Box 280
Pierre, SD 57501
FAX: 605-224-7102

and sent on the same date by first class mail to:

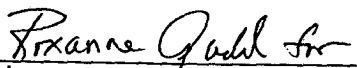
Thomas Tobin
Attorney at Law
P.O. Box 1456
Aberdeen, SD 57402

and sent on the same date by interoffice mail to:

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

and by hand delivery on the same date to:

Jeffrey P. Hallem
Assistant Attorney General
Mickelson Bldg.
Pierre, SD 57501



Diane Best
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

TONNER, TOBIN & KING, LLP

ATTORNEYS AT LAW
404 S. Lincoln St.
PO Box 1456
Aberdeen, SD 57402-1456

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ATTORNEYS:
THOMAS P. TONNER
THOMAS M. TOBIN
HIRAM I. KING

TELEPHONE: (605) 225-1000
FAX: (605) 225-0625
E-Mail: ttobin@nvc.net

RESEARCH & INVESTIGATION:
CHARLES A. BENSEN

April 30, 2008

State of South Dakota
Water Management Board
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Water Permit Application No. 6908-3 Harlan Aman

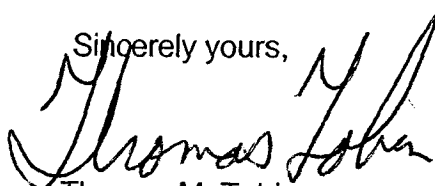
Dear Sir/Madam:

Enclosed please find the original Objection to Findings of Fact and Conclusions of Law and Intervener's Proposed Findings of Fact and Conclusions of Law with regard to the above-entitled matter.

If you should have any questions, please do not hesitate to contact me.

Thanking you, I remain,

Sincerely yours,



Thomas M. Tobin

TMT:tj

Enclosures

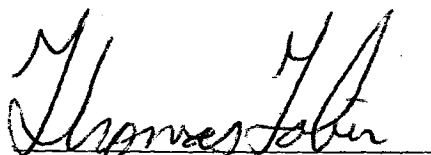
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STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF	)	Objections to
WATER PERMIT	)	Findings of Fact
APPLICATION NO. 6908-3,	)	Conclusion of Law,
Harlan Aman	)	Final Decision and Order

Comes Now, Thomas M. Tobin, the attorney for the interveners, Alan Hieb, Delores Hieb, Dale Mohr, and Raymond Groft, objects to the proposed Findings of Fact 4, 5, 6, 7, and 15, and Conclusions of Law 2, 3, and 5.

Dated this 30th day of April, 2008.



Thomas M. Tobin
Attorney for Intervenors
404 S. Lincoln
P.O. Box 1456
Aberdeen, SD 57402-1456
(605) 225-1000

CERTIFICATE OF SERVICE

I, Thomas M. Tobin, hereby certify that I have today; this 30th day of April, 2008, served the attached Intervener's Objection to Plaintiff's Findings of Fact and Conclusions of Law upon:

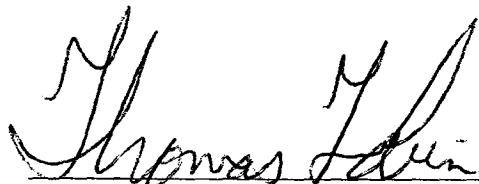
Ms. Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
P.O. Box 280
Pierre, SD 57501-0280

Mr. Jeff Hallam
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, South Dakota 57501-8501

Ms. Diane Best
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, South Dakota 57501-8501

By depositing a copy of the said documents in the United States mail at Aberdeen, South Dakota,

addressed to the above-named persons at the above-described address, postage prepaid.


Thomas M. Tobin

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF	)	Interveners' Proposed
WATER PERMIT	)	Findings of Fact
APPLICATION NO. 6908-3,	)	Conclusion of Law,
Harlan Aman	)	Final Decision and Order

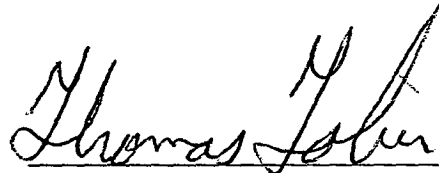
FINDINGS OF FACT

1. There is insufficient data available to the department to determine the amount of recoverable water storage in the area proposed for the irrigation well.
2. No test holes have been drilled in the proposed area, and no test pumping has been done, to determine the effect of the proposed well site on the surrounding wells in existence.
3. All of the interveners have as their only water source wells that have been drilled in the immediate area of the proposed well site.
4. All of the interveners would have rights prior in time and rights that would need to be protected by the department before granting this permit.
5. Intervener, Dale Mohr, lives one mile east of Alan Hieb, and has drilled two wells in the area, and renovated one well. His pasture well was 140 ft. deep and was replaced with a well that was 120 ft. deep and it filled with sand and it would not produce. The second well of intervener, Dale Mohr, was drilled to replace a 50 ft. well, both wells were drilled in 2004, and not as a result of the drought in 2006.
6. The interveners Alan Hieb, Delores Hieb and Dale Mohr, all believe and testified that the proposed well will have a detrimental impact on the wells that they rely upon for their livestock and domestic purposes.
7. Intervener, Alan Hieb, has had approximately a thousand head of cattle, depending upon his well water, in any given year.
8. The intervener, Alan Hieb, has observed the domestic wells, water table drop 25 ft. to 30 ft. While the present irrigation pumps that do exist are pumping.
9. The interveners would suffer a lack of water and availability of water if another irrigation system would be added to the existing drawdowns from the irrigation pumps and existing wells.
10. In August of 2006, Intervener, Alan Hieb, had a well that was pumping at 30 ft, and it went dry.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter.
2. There is not a reasonable probability that there is inappropriate water available for the applicant's proposed use in this specific area.
3. Proposed diversion cannot be developed without unlawful impairment of existing rights.
4. It is not in the public's interest to grant the application, subject to the qualifications set forth in the recommendations of the department.

Dated this 30th day of April, 2008.



Thomas M. Tobin
Attorney for Interveners
404 S. Lincoln
P.O. Box 1456
Aberdeen, SD 57402-1456
(605) 225-1000

FINAL DECISION AND ORDER

1. The Application of water permit No. 6903-3 is hereby denied.

Dated this ____ day of _____, 2008.

Board

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
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LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

May 1, 2008

Ms. Margo D. Northrup
Attorney at Law
P.O. Box 280
Pierre, SD 57501-0280

Diane Best
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501

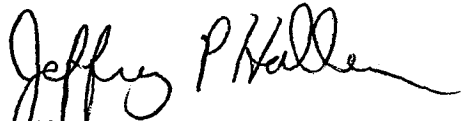
Thomas M. Tobin
Attorney at Law
P.O. Box 1456
Aberdeen, SD 57402-1456

RE: In the Matter of Water Permit Application No. 6908-3, Harlan Aman

Dear Counsel:

Enclosed herewith please find my letter of May 1, 2008, to the members of the South Dakota Water Management Board enclosing proposed rulings on the parties' submissions and revised Findings of Fact, Conclusions of Law, Final Decision and Order, that I prepared for their consideration at the May 7, 2008, Board meeting.

Very truly yours,


Jeffrey P. Hallem
Assistant Attorney General

JPH/kak

Enclosures

cc/enc: Garland Eberle, Chief Engineer (Interoffice)



Diane Best
hand delivered

OFFICE OF ATTORNEY GENERAL

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LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

May 1, 2008

Francis E. Brink
1214 S. Wells St.
Aberdeen, SD 57401

Leo Holzbauer
29416 395th Ave.
Wagner, SD 57380

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

Bernita Loucks
219 42nd St.
Rapid City, SD 57702

Everett Hoyt
4422 Carriage Hills Dr.
Rapid City, SD 57702

James Hutmacher
802 E. Seventh St.
Oacoma, SD 57365

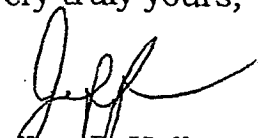
Tim Bjork
112 W. Oak St.
Pierre, SD 57501

RE: In the Matter of Water Permit Application No. 6908-3, Harlan Aman

Dear Board Members:

Enclosed please find proposed rulings on the parties' submissions and revised Findings of Fact, Conclusions of Law, Final Decision and Order, that I have prepared for your consideration at the May 7, 2008, Board meeting.

Very truly yours,


Jeffrey R. Hallem
Assistant Attorney General

JPH/kak

Enclosures

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF	)	WATER MANAGEMENT BOARD'S
WATER PERMIT	)	RULINGS ON APPLICANT'S
APPLICATION NO. 6908-3,	)	PROPOSED
Harlan Aman	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER;
	)	DENR RESPONSE TO
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION;
	)	INTERVENORS'
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER
	)	AND INTERVENORS' OBJECTIONS TO
	)	APPLICANT'S PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER

Pursuant to directions of the Water Management Board, counsel for Applicant submitted Proposed Findings of Fact, Conclusions of Law, Final Decision and Order. Subsequently, counsel for the Department of Environment and Natural Resources, Water Rights Program, submitted DENR Response to Proposed Findings and Fact, Conclusions of Law, and Final Decision; and counsel for Intervenor Allen Hieb, Delores Hieb, Dale Mohr, and Raymond Groft, submitted Intervenor's Proposed Findings of Fact, Conclusions of Law, Final Decision and Order, and Intervenor's Objections to Findings of Fact, Conclusions of Law, Final Decision and Order. The Board,

upon review of the parties' submissions and the administrative record, and having orally entered its decision, hereby enters the following rulings:

- A. Applicant's proposed introductory paragraph is adopted as modified to be consistent with the modification included in DENR Response No. 1, and the additional references to the Board's oral decision and ruling on the parties' submissions.
- B. Applicant's proposed Findings of Fact Nos. 1, 2, 3, 4, 7, 8, and 10, are adopted by the Board.
- C. Applicant's proposed Finding of Fact No. 5 is adopted by the Board as modified to include the additional findings set forth in DENR Response No. 2.
- D. Applicant's proposed Finding of Fact No. 6 is adopted by the Board as modified to reflect the addition set forth in DENR's Response No. 5; and the correction of a typographical error on line 4 from "1.88 crs" to "1.88 cfs."
- E. Applicant's proposed Finding of Fact No. 9 is adopted by the Board as modified to include the additions set forth in DENR Response No. 6.
- F. Applicant's proposed Finding of Fact No. 11 is adopted by the Board as modified to accurately reflect the record that Intervenor Mohr's ranch is one mile east of Allen Hieb as set forth in Intervenor's proposed Finding of Fact No. 5.

- G. Applicant's proposed Finding of Fact No. 12 is rejected by the Board as inconsistent with the record. Instead, the Board adopts an alternative finding that includes the additions set forth in DENR Response No. 7, portions of Intervenor's proposed Findings of Fact No. 5 and evidence in the record. The revised Finding is as follows:

Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a depth of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.

- H. Applicant's proposed Finding of Fact Nos. 13 and 14 are adopted by the Board as modified to correct the spelling of Intervenor Raymond Groft's name.
- I. Applicant's proposed Finding of Fact No. 15 is adopted by the Board as modified to correct Intervenor Mohr's name as set forth in DENR Response No. 8.
- J. Applicant's proposed Conclusions of Law Nos. 1, 2, 3, 4, and 5, and Final Decision and Order are adopted by the Board.
- K. DENR's Response Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9, are adopted by the Board as being consistent with the administrative record and the Board's Final Decision.

- L. Intervenor's proposed Findings of Fact Nos. 1 and 9 are rejected by the Board on the basis that they are inconsistent with the evidence in the record, the DENR expert testimony, the Board's oral decision, and the ruling set forth above.
- M. Intervenor's proposed Finding of Fact No. 2 is adopted by the Board to the extent it is consistent with Applicant's proposed Findings of Fact Nos. 4 and 5 adopted in Bond C above.
- N. Intervenor's proposed Finding of Fact No. 3 is adopted as modified by the Board to accurately reflect the record. The adopted finding is as follows: "All the Intervenor's have as their only water source wells that have been drilled in the area of Applicant's proposed well site." The remaining of the proposed Finding is rejected as inconsistent with the record.
- O. ~~Applicant's~~ proposed Finding of Fact No. 4 is rejected by the Board on the basis that it is inconsistent with the record and state law. Only permitted wells have priority date and corresponding right. The record reflects that all of Intervenor's wells are domestic wells and none of them were drilled as a result of receiving a permit under state law.
- P. Intervenor's proposed Finding of Fact No. 5 is adopted by the Board to the extent it is consistent with the Finding of Fact adopted by the Board in No. G. above.

- Q. Intervenor's proposed Findings of Fact Nos. 6 and 8 are rejected by the Board on the basis that each is inconsistent with the DENR expert testimony and the observations noted in the proposed findings do not provide a basis for the Board to deny Applicant his permit.
- R. Intervenor's proposed Finding of Fact No. 7 is rejected by the Board on the basis that the evidence has no impact on the Board's decision whether to grant or deny Applicant's permit given the Board's findings set forth in the above rulings regarding the availability of water and the granting of the permit will not result in any unlawful impairment of existing water rights.
- S. Intervenor's proposed Finding of Fact No. 10 is adopted by the Board to the extent set forth in Applicant's proposed Finding of Fact No. 9 which was adopted by the Board in E above.
- T. Intervenor's proposed Conclusions of Law Nos. 2, 3, 4, and proposed Final Decision and Order are rejected by the Board on the basis they are inconsistent with the evidence in the record, the DENR expert testimony, the Board's oral decision and the rulings set forth above.
- U. Intervenor's proposed Conclusion of Law No. 1 is adopted by the Board to the extent consistent with Applicant's proposed Conclusion of Law No. 1 which was adopted by the Board in J, above.

V. Intervenor's objections to Applicant's proposed Findings of Fact Nos. 4, 5, 6, 7, and 15, and Conclusions of Law 2, 3, and 5, are rejected by the Board on the basis that Intervenor's have failed to provide a basis for the objections and except for the minor modifications set forth in the Board's above rulings, Appellant's Findings and Conclusions objected to are consistent with the evidence in the record, the expert testimony submitted, the Board's oral decision, and the rulings set forth above.

The Board attorney is directed to prepare findings of fact, conclusions of law, and final decision consistent with above-rulings to be executed by the chairman of the Board or Board designee without further motion or hearing.

Dated this ____ day of April, 2008.

BY THE BOARD:

James Hutmacher
Chairman

pld JPH 04 29 08 FoF CoL & Final Decision - Water Permit App - Harlan Aman kak

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF	)	
WATER PERMIT	)	
APPLICATION NO. 6908-3,	)	FINDINGS OF FACT,
Harlan Aman	)	CONCLUSIONS OF LAW,
		FINAL DECISION AND ORDER

This matter having come on for hearing before the South Dakota Water Management Board on the 11th day of March, 2008, and the Applicant appearing personally and by and through attorneys Riter, Rogers, Wattier, and Northrup, LLP, of Pierre, South Dakota, and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program, and Thomas Tobin of Aberdeen, South Dakota, appearing on behalf of Intervenors, Allen Heib, Deloris Heib, Dale Mohr, and Raymond Groft, and the Board having considered the evidence presented; all records and documents on file herein, having entered its oral decision and rulings on the parties' submissions and good cause appearing therefore, now enters the following Findings and Fact and Conclusions of Law:

FINDINGS OF FACT

1. Harlan Aman filed Application No. 6908-3 (hereinafter "Application") for a water permit for irrigation purposes.
2. The Application proposes to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well is to be completed into the

Hillsvew Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. The well may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right No. 2893-3.

3. The Hillsvew Aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. The proposed depth of 110 feet should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.
5. Although no test well was drilled for this Application, there is sufficient information from a County Study conducted in 1982 by the South Dakota Geological Survey (the most recent water study conducted for this aquifer), other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within two miles of this proposed well site. Water levels for these wells show good response to climatic

conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well support that the aquifer is capable of sustaining additional withdrawals. The hydrograph for observation well MP-80G (located about 1 ½ miles northwest of proposed well) also supports the conclusion that the aquifer is capable of sustaining additional withdrawals.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie Aquifer, reviewed information obtained from the two state observation wells (MP-80G and MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.
7. Witness Goodman testified that the Hillsvie Aquifer is capable of sustaining additional withdrawals and, further, that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the

information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of this testimony as well as the observation well hydrographs contained with the Goodman report and the testimony of all parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.

8. There are three existing irrigation wells within one mile of this proposed well. These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-9 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 feet northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No. 4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells, drawdown is not expected to be significant. The observation well record reinforces this conclusion.
9. Harlan Aman has never experienced problems with the existing irrigation wells located on his property.

10. Allen Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Allen Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site.
11. Allen Hieb has wells on his property for domestic use and livestock use. Some of the wells are drilled at the depth of 140 feet. The wells at a depth of 140 feet are good, high producing wells. One of the wells was drilled at a depth of thirty feet. This well went dry in 2006. The year 2006 was a drought year. The 30 foot well at this location is responsive to fluctuations in the aquifer due to drought. Moreover, the Board recognizes that the DENR monitoring wells, which are close to the proposed well site and to Aman's existing wells show that fluctuation is much more attributable to climatic conditions than it is to irrigation. In fact, the DENR expert testified that fluctuation in water levels would be attributable to climatic conditions rather than irrigation.
12. Delores Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Delores Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. Delores Hieb is the mother of Allen Hieb and also uses wells for domestic use and livestock use.
13. Dale Mohr intervened in this matter and is opposed to the granting of the Application as proposed. Dale Mohr lives on a ranch one mile east Allen Hieb.

14. Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a dept of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.
15. Raymond Groft intervened in this matter and is opposed to the granting of the Application as proposed. Raymond Groft currently lives in Aberdeen, South Dakota but owns land within approximately one (1) mile to one mile and one quarter of a mile ($1 \frac{1}{4}$) from the proposed well site.
16. Raymond Groft currently has two wells on the property for domestic use and they are working properly.
17. The wells that have been replaced by Allen Hieb and Dale Mohr were 25 to 45 feet deep. They were replaced during dry years or drought years. The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells.

18. All Intervenors have as their only water source wells that have been drilled in the area of Applicant's proposed well site.
19. This Board's conclusion that the proposed diversion can be developed without unlawful impairment of existing rights relies on both the Goodman expert testimony as well as the chief engineer's proposed qualifications for the proposed permit. The permit would be qualified so as to protect nearby domestic wells and other wells which may obtain water from the same aquifer and which hold priority rights. The proposed qualification provides that the well owner must 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. This includes both existing irrigation rights as well as domestic wells which are not required to be permitted.
20. The Board finds that the testimony presented by the applicant and intervenors in this matter, when fully considered in light of all the evidence in the record, weighs in favor of determining that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, and also weighs in favor of finding that the proposed diversion can be developed without unlawful impairment of existing rights.
21. The Intervenors assert that the Application at issue will result in a situation where 240 acres will be irrigated from the proposed well. The

actual new acreage that would be irrigated under this permit would be up to 160 acres. In addition, part of the Application is to allow irrigation of an additional 64 acres that is already irrigated under another water right. The additional 64 acres are located in the east half of the southwest quarter of Section 34, which is authorized by Water Right No. 2893-3. Granting this permit allows use of water from the new well authorized under this permit as an alternative to the well now used under Water Right No. 2893-3 for the 64 acres. This does not allow the Applicant to "double up" and apply more total water per acre than that authorized under SDCL 46-5-6. Further, allowing irrigation of this 80 acres from the presently pending permit does not authorize the transfer or change in acreage of any rights granted under Water Right No. 2893-3.

22. The proposed Water Permit is for use for irrigation. This Board has previously found on several occasions that the use of water for irrigation for farm crops is a beneficial use and is in the public interest. This use is beneficial to the appropriator insofar as the appropriator desires to increase its capacity to grow agriculture crops. The use is also consistent with the interest of the public of this state and the best utilization of water supplies in that it provides for use of water to support the State's agricultural economy. Further, it is in the public interest to

promote the maximum beneficial use of water. Accordingly, the proposed use is beneficial within the meaning of SDCL 46-1-6(3).

23. The proposed use is in the public interest insofar as it provides water for irrigation which would, in turn, benefit the general economic development of the area in question.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the foregoing Findings of Fact and Conclusions of Law, the Board now enters the following:

FINAL DECISION AND ORDER

1. The Application for Water Permit No. 6908-3 is hereby granted with the following qualifications:
 - A. 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.

- B. The well authorized by Permit No. 6908-3 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) pursuant to Section 74:02:04:25.
- C. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this ____ day of April, 2008.

BY THE BOARD:

James Hutmacher
Chairman

pld JPH 04 29 08 Water Permit App - Harlan Aman kak

WATER MANAGEMENT BOARD

IN THE MATTER OF
WATER PERMIT
APPLICATION NO. 6908-3,
Harlan Aman

WATER MANAGEMENT BOARD'S
RULINGS ON APPLICANT'S
PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
FINAL DECISION AND ORDER;
DENR RESPONSE TO
PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL DECISION;
INTERVENORS'
PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
FINAL DECISION AND ORDER
AND INTERVENORS' OBJECTIONS TO
APPLICANT'S PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
FINAL DECISION AND ORDER

Pursuant to directions of the Water Management Board, counsel for Applicant submitted Proposed Findings of Fact, Conclusions of Law, Final Decision and Order. Subsequently, counsel for the Department of Environment and Natural Resources, Water Rights Program, submitted DENR Response to Proposed Findings and Fact, Conclusions of Law, and Final Decision; and counsel for Intervenors Allen Hieb, Delores Hieb, Dale Mohr, and Raymond Groot, submitted Intervenors' Proposed Findings of Fact, Conclusions of Law, Final Decision and Order, and Intervenors' Objections to Findings of Fact, Conclusions of Law, Final Decision and Order. The Board,

upon review of the parties' submissions and the administrative record, and having orally entered its decision, hereby enters the following rulings:

- A. Applicant's proposed introductory paragraph is adopted as modified to be consistent with the modification included in DENR Response No. 1, and the additional references to the Board's oral decision and ruling on the parties' submissions.
- B. Applicant's proposed Findings of Fact Nos. 1, 2, 3, 4, 7, 8, and 10, are adopted by the Board.
- C. Applicant's proposed Finding of Fact No. 5 is adopted by the Board as modified to include the additional findings set forth in DENR Response No. 2.
- D. Applicant's proposed Finding of Fact No. 6 is adopted by the Board as modified to reflect the addition set forth in DENR's Response No. 5; and the correction of a typographical error on line 4 from "1.88 crs" to "1.88 cfs."
- E. Applicant's proposed Finding of Fact No. 9 is adopted by the Board as modified to include the additions set forth in DENR Response No. 6.
- F. Applicant's proposed Finding of Fact No. 11 is adopted by the Board as modified to accurately reflect the record that Intervenor Mohr's ranch is one mile east of Allen Hieb as set forth in Intervenor's proposed Finding of Fact No. 5.

- G. Applicant's proposed Finding of Fact No. 12 is rejected by the Board as inconsistent with the record. Instead, the Board adopts an alternative finding that includes the additions set forth in DENR Response No. 7, portions of Intervenor's proposed Findings of Fact No. 5 and evidence in the record. The revised Finding is as follows:

Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a depth of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.

- H. Applicant's proposed Finding of Fact Nos. 13 and 14 are adopted by the Board as modified to correct the spelling of Intervenor Raymond Groft's name.
- I. Applicant's proposed Finding of Fact No. 15 is adopted by the Board as modified to correct Intervenor Mohr's name as set forth in DENR Response No. 8.
- J. Applicant's proposed Conclusions of Law Nos. 1, 2, 3, 4, and 5, and Final Decision and Order are adopted by the Board.
- K. DENR's Response Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9, are adopted by the Board as being consistent with the administrative record and the Board's Final Decision.

- L. Intervenor's proposed Findings of Fact Nos. 1 and 9 are rejected by the Board on the basis that they are inconsistent with the evidence in the record, the DENR expert testimony, the Board's oral decision, and the ruling set forth above.
- M. Intervenor's proposed Finding of Fact No. 2 is adopted by the Board to the extent it is consistent with Applicant's proposed Findings of Fact Nos. 4 and 5 adopted in Bond C above.
- N. Intervenor's proposed Finding of Fact No. 3 is adopted as modified by the Board to accurately reflect the record. The adopted finding is as follows: "All the Intervenor's have as their only water source wells that have been drilled in the area of Applicant's proposed well site." The remaining of the proposed Finding is rejected as inconsistent with the record.
- O. ~~Applicant's~~ ^{Intervenor's JW} proposed Finding of Fact No. 4 is rejected by the Board on the basis that it is inconsistent with the record and state law. Only permitted wells have priority date and corresponding right. The record reflects that all of Intervenor's wells are domestic wells and none of them were drilled as a result of receiving a permit under state law.
- P. Intervenor's proposed Finding of Fact No. 5 is adopted by the Board to the extent it is consistent with the Finding of Fact adopted by the Board in No. G. above.

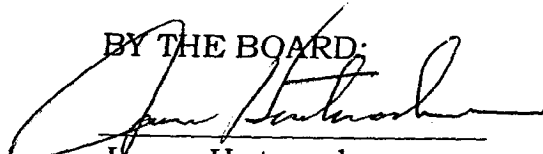
- Q. Intervenor's proposed Findings of Fact Nos. 6 and 8 are rejected by the Board on the basis that each is inconsistent with the DENR expert testimony and the observations noted in the proposed findings do not provide a basis for the Board to deny Applicant his permit.
- R. Intervenor's proposed Finding of Fact No. 7 is rejected by the Board on the basis that the evidence has no impact on the Board's decision whether to grant or deny Applicant's permit given the Board's findings set forth in the above rulings regarding the availability of water and the granting of the permit will not result in any unlawful impairment of existing water rights.
- S. Intervenor's proposed Finding of Fact No. 10 is adopted by the Board to the extent set forth in Applicant's proposed Finding of Fact No. 9 which was adopted by the Board in E above.
- T. Intervenor's proposed Conclusions of Law Nos. 2, 3, 4, and proposed Final Decision and Order are rejected by the Board on the basis they are inconsistent with the evidence in the record, the DENR expert testimony, the Board's oral decision and the rulings set forth above.
- U. Intervenor's proposed Conclusion of Law No. 1 is adopted by the Board to the extent consistent with Applicant's proposed Conclusion of Law No. 1 which was adopted by the Board in J, above.

V. Intervenor's objections to Applicant's proposed Findings of Fact Nos. 4, 5, 6, 7, and 15, and Conclusions of Law 2, 3, and 5, are rejected by the Board on the basis that Intervenor's have failed to provide a basis for the objections and except for the minor modifications set forth in the Board's above rulings, Appellant's Findings and Conclusions objected to are consistent with the evidence in the record, the expert testimony submitted, the Board's oral decision, and the rulings set forth above.

The Board attorney is directed to prepare findings of fact, conclusions of law, and final decision consistent with above-rulings to be executed by the chairman of the Board or Board designee without further motion or hearing.

Dated this 7th day of May, 2008.

BY THE BOARD:


James Hutmacher
Chairman

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF
WATER PERMIT
APPLICATION NO. 6908-3,
Harlan Aman

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)
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FINDINGS OF FACT,
CONCLUSIONS OF LAW,
FINAL DECISION AND ORDER

This matter having come on for hearing before the South Dakota Water Management Board on the 11th day of March, 2008, and the Applicant appearing personally and by and through attorneys Riter, Rogers, Wattier, and Northrup, LLP, of Pierre, South Dakota, and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program, and Thomas Tobin of Aberdeen, South Dakota, appearing on behalf of Intervenors, Allen Heib, Deloris Heib, Dale Mohr, and Raymond Groft, and the Board having considered the evidence presented, all records and documents on file herein, having entered its oral decision and rulings on the parties' submissions and good cause appearing therefore, now enters the following Findings and Fact and Conclusions of Law:

FINDINGS OF FACT

1. Harlan Aman filed Application No. 6908-3 (hereinafter "Application") for a water permit for irrigation purposes.
2. The Application proposes to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well is to be completed into the

Hillsvew Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. The well may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right No. 2893-3.

3. The Hillsvew Aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. The proposed depth of 110 feet should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.
5. Although no test well was drilled for this Application, there is sufficient information from a County Study conducted in 1982 by the South Dakota Geological Survey (the most recent water study conducted for this aquifer), other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within two miles of this proposed well site. Water levels for these wells show good response to climatic

conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well support that the aquifer is capable of sustaining additional withdrawals. The hydrograph for observation well MP-80G (located about 1 ½ miles northwest of proposed well) also supports the conclusion that the aquifer is capable of sustaining additional withdrawals.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie Aquifer, reviewed information obtained from the two state observation wells (MP-80G and MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.
7. Witness Goodman testified that the Hillsvie Aquifer is capable of sustaining additional withdrawals and, further, that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the

information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of this testimony as well as the observation well hydrographs contained with the Goodman report and the testimony of all parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.

8. There are three existing irrigation wells within one mile of this proposed well. These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-9 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 feet northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No. 4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells, drawdown is not expected to be significant. The observation well record reinforces this conclusion.
9. Harlan Aman has never experienced problems with the existing irrigation wells located on his property.

10. Allen Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Allen Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site.
11. Allen Hieb has wells on his property for domestic use and livestock use. Some of the wells are drilled at the depth of 140 feet. The wells at a depth of 140 feet are good, high producing wells. One of the wells was drilled at a depth of thirty feet. This well went dry in 2006. The year 2006 was a drought year. The 30 foot well at this location is responsive to fluctuations in the aquifer due to drought. Moreover, the Board recognizes that the DENR monitoring wells, which are close to the proposed well site and to Aman's existing wells show that fluctuation is much more attributable to climatic conditions than it is to irrigation. In fact, the DENR expert testified that fluctuation in water levels would be attributable to climatic conditions rather than irrigation.
12. Delores Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Delores Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. Delores Hieb is the mother of Allen Hieb and also uses wells for domestic use and livestock use.
13. Dale Mohr intervened in this matter and is opposed to the granting of the Application as proposed. Dale Mohr lives on a ranch one mile east Allen Hieb.

14. Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a dept of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.
15. Raymond Groft intervened in this matter and is opposed to the granting of the Application as proposed. Raymond Groft currently lives in Aberdeen, South Dakota but owns land within approximately one (1) mile to one mile and one quarter of a mile (1 ¼) from the proposed well site.
16. Raymond Groft currently has two wells on the property for domestic us and they are working properly.
17. The wells that have been replaced by Allen Hieb and Dale Mohr were 25 to 45 feet deep. They were replaced during dry years or drought years. The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells.

18. All Intervenor have as their only water source wells that have been drilled in the area of Applicant's proposed well site.
19. This Board's conclusion that the proposed diversion can be developed without unlawful impairment of existing rights relies on both the Goodman expert testimony as well as the chief engineer's proposed qualifications for the proposed permit. The permit would be qualified so as to protect nearby domestic wells and other wells which may obtain water from the same aquifer and which hold priority rights. The proposed qualification provides that the well owner must 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. This includes both existing irrigation rights as well as domestic wells which are not required to be permitted.
20. The Board finds that the testimony presented by the applicant and intervenors in this matter, when fully considered in light of all the evidence in the record, weighs in favor of determining that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, and also weighs in favor of finding that the proposed diversion can be developed without unlawful impairment of existing rights.
21. The Intervenor assert that the Application at issue will result in a situation where 240 acres will be irrigated from the proposed well. The

actual new acreage that would be irrigated under this permit would be up to 160 acres. In addition, part of the Application is to allow irrigation of an additional 64 acres that is already irrigated under another water right. The additional 64 acres are located in the east half of the southwest quarter of Section 34, which is authorized by Water Right No. 2893-3. Granting this permit allows use of water from the new well authorized under this permit as an alternative to the well now used under Water Right No. 2893-3 for the 64 acres. This does not allow the Applicant to "double up" and apply more total water per acre than that authorized under SDCL 46-5-6. Further, allowing irrigation of this 80 acres from the presently pending permit does not authorize the transfer or change in acreage of any rights granted under Water Right No. 2893-3.

22. The proposed Water Permit is for use for irrigation. This Board has previously found on several occasions that the use of water for irrigation for farm crops is a beneficial use and is in the public interest. This use is beneficial to the appropriator insofar as the appropriator desires to increase its capacity to grow agriculture crops. The use is also consistent with the interest of the public of this state and the best utilization of water supplies in that it provides for use of water to support the State's agricultural economy. Further, it is in the public interest to

promote the maximum beneficial use of water. Accordingly, the proposed use is beneficial within the meaning of SDCL 46-1-6(3).

23. The proposed use is in the public interest insofar as it provides water for irrigation which would, in turn, benefit the general economic development of the area in question.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the foregoing Findings of Fact and Conclusions of Law, the Board now enters the following:

FINAL DECISION AND ORDER

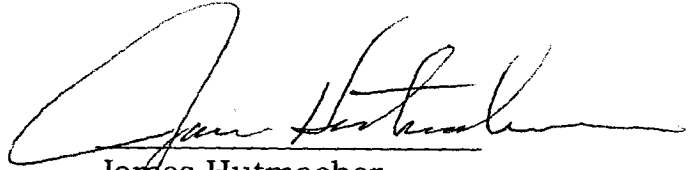
1. The Application for Water Permit No. 6908-3 is hereby granted with the following qualifications:
 - A. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his

withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

- B. The well authorized by Permit No. 6908-3 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) pursuant to Section 74:02:04:25.
- C. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 7th day of May, 2008.

BY THE BOARD:

A handwritten signature in black ink, appearing to read "James Hutmacher", written over a horizontal line.

James Hutmacher
Chairman

pld JPH 04 29 08 Water Permit App - Harlan Aman kak



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 9, 2008

NOTICE

TO: Margo Northrup
Riter, Rogers, Wattier & Brown
PO Box 280
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402-1456

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 Water Management Board adopted its Final Decision, including Findings of Fact and Conclusions of Law on May 7, 2008, approving Water Permit Application Nos. 6908-3 filed by the Harlan Aman. A copy of the signed Findings of Fact, Conclusions of Law and Final Decisions are 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.

Enclosures

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Allen Hieb, 11585 340th Avenue, Hosmer SD 57448

CERTIFICATION

I hereby certify that on May 9, 2008, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 9, 2008, regarding adoption of findings of fact, conclusions of law and final decision for Water Right Permit Application No. 6908-3, Harlan Aman, addressed as stated below :

Margo Northrup
Riter, Rogers, Wattier & Brown
PO Box 280
Pierre SD 57501

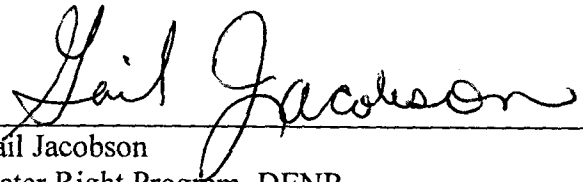
Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402-1456

Allen Hieb
11585 340th Avenue
Hosmer SD 57448

Sent Notice Inter-Office mail to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501

Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



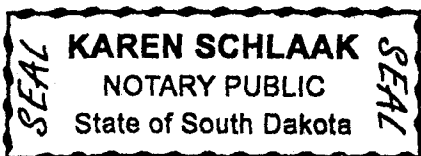
Gail Jacobson
Water Right Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of May 2008.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF
WATER PERMIT
APPLICATION NO. 6908-3,
Harlan Aman

)
)
)
)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
FINAL DECISION AND ORDER

This matter having come on for hearing before the South Dakota Water Management Board on the 11th day of March, 2008, and the Applicant appearing personally and by and through attorneys Riter, Rogers, Wattier, and Northrup, LLP, of Pierre, South Dakota, and Assistant Attorney General Diane Best appearing on behalf of the South Dakota Department of Environment and Natural Resources, Water Rights Program, and Thomas Tobin of Aberdeen, South Dakota, appearing on behalf of Intervenors, Allen Heib, Deloris Heib, Dale Mohr, and Raymond Groft, and the Board having considered the evidence presented, all records and documents on file herein, having entered its oral decision and rulings on the parties' submissions and good cause appearing therefore, now enters the following Findings and Fact and Conclusions of Law:

FINDINGS OF FACT

1. Harlan Aman filed Application No. 6908-3 (hereinafter "Application") for a water permit for irrigation purposes.
2. The Application proposes to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well is to be completed into the

Hillsvie Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. The well may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right No. 2893-3.

3. The Hillsvie Aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. In the immediate area of this Application, the aquifer is under water table conditions and appears to be a surficial aquifer.
4. The proposed depth of 110 feet should be sufficient to penetrate the entire aquifer thickness but until test holes are drilled the best site for a production well is not known.
5. Although no test well was drilled for this Application, there is sufficient information from a County Study conducted in 1982 by the South Dakota Geological Survey (the most recent water study conducted for this aquifer), other wells in the area, other irrigation wells, and two observation wells (MP-80G and MP-80H) that the Water Rights Program monitors. The observation wells are within two miles of this proposed well site. Water levels for these wells show good response to climatic

conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. The water level record indicates the aquifer is capable of sustaining additional withdrawals. Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well support that the aquifer is capable of sustaining additional withdrawals. The hydrograph for observation well MP-80G (located about 1 ½ miles northwest of proposed well) also supports the conclusion that the aquifer is capable of sustaining additional withdrawals.

6. DENR witness, James Goodman, a natural resources engineer, reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsvie Aquifer, reviewed information obtained from the two state observation wells (MP-80G and MP-80H) and examined information obtained regarding other nearby irrigation permits. James Goodman is an expert in ground water hydrology and has previously appeared before the South Dakota Water Management Board as an expert. Goodman was the only hydrology expert to testify in this proceeding.
7. Witness Goodman testified that the Hillsvie Aquifer is capable of sustaining additional withdrawals and, further, that interference with other irrigation wells is not expected to be a concern. Goodman's conclusion was based on his experience and background, as well as the

information pertaining to the irrigation wells and the studies referenced in his report. Further, he concluded that at this distance between wells, drawdown is not expected to be significant. In light of this testimony as well as the observation well hydrographs contained with the Goodman report and the testimony of all parties, this Board finds that there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use and that the proposed diversion can be developed without unlawful impairment of existing rights.

8. There are three existing irrigation wells within one mile of this proposed well. These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-9 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). The well for No. 2893-3 is located about 1,900 feet northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No. 4129-3 is located about 4,200 feet northwest of this proposed site. Interference is not expected to be a concern. At this distance between wells, drawdown is not expected to be significant. The observation well record reinforces this conclusion.
9. Harlan Aman has never experienced problems with the existing irrigation wells located on his property.

10. Allen Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Allen Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site.
11. Allen Hieb has wells on his property for domestic use and livestock use. Some of the wells are drilled at the depth of 140 feet. The wells at a depth of 140 feet are good, high producing wells. One of the wells was drilled at a depth of thirty feet. This well went dry in 2006. The year 2006 was a drought year. The 30 foot well at this location is responsive to fluctuations in the aquifer due to drought. Moreover, the Board recognizes that the DENR monitoring wells, which are close to the proposed well site and to Aman's existing wells show that fluctuation is much more attributable to climatic conditions than it is to irrigation. In fact, the DENR expert testified that fluctuation in water levels would be attributable to climatic conditions rather than irrigation.
12. Delores Hieb intervened in this matter and is opposed to the granting of the Application as proposed. Delores Hieb lives on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. Delores Hieb is the mother of Allen Hieb and also uses wells for domestic use and livestock use.
13. Dale Mohr intervened in this matter and is opposed to the granting of the Application as proposed. Dale Mohr lives on a ranch one mile east Allen Hieb.

14. Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a dept of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.
15. Raymond Groft intervened in this matter and is opposed to the granting of the Application as proposed. Raymond Groft currently lives in Aberdeen, South Dakota but owns land within approximately one (1) mile to one mile and one quarter of a mile (1 ¼) from the proposed well site.
16. Raymond Groft currently has two wells on the property for domestic us and they are working properly.
17. The wells that have been replaced by Allen Hieb and Dale Mohr were 25 to 45 feet deep. They were replaced during dry years or drought years. The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells.

18. All Intervenors have as their only water source wells that have been drilled in the area of Applicant's proposed well site.
19. This Board's conclusion that the proposed diversion can be developed without unlawful impairment of existing rights relies on both the Goodman expert testimony as well as the chief engineer's proposed qualifications for the proposed permit. The permit would be qualified so as to protect nearby domestic wells and other wells which may obtain water from the same aquifer and which hold priority rights. The proposed qualification provides that the well owner must 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. This includes both existing irrigation rights as well as domestic wells which are not required to be permitted.
20. The Board finds that the testimony presented by the applicant and intervenors in this matter, when fully considered in light of all the evidence in the record, weighs in favor of determining that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, and also weighs in favor of finding that the proposed diversion can be developed without unlawful impairment of existing rights.
21. The Intervenors assert that the Application at issue will result in a situation where 240 acres will be irrigated from the proposed well. The

actual new acreage that would be irrigated under this permit would be up to 160 acres. In addition, part of the Application is to allow irrigation of an additional 64 acres that is already irrigated under another water right. The additional 64 acres are located in the east half of the southwest quarter of Section 34, which is authorized by Water Right No. 2893-3. Granting this permit allows use of water from the new well authorized under this permit as an alternative to the well now used under Water Right No. 2893-3 for the 64 acres. This does not allow the Applicant to "double up" and apply more total water per acre than that authorized under SDCL 46-5-6. Further, allowing irrigation of this 80 acres from the presently pending permit does not authorize the transfer or change in acreage of any rights granted under Water Right No. 2893-3.

22. The proposed Water Permit is for use for irrigation. This Board has previously found on several occasions that the use of water for irrigation for farm crops is a beneficial use and is in the public interest. This use is beneficial to the appropriator insofar as the appropriator desires to increase its capacity to grow agriculture crops. The use is also consistent with the interest of the public of this state and the best utilization of water supplies in that it provides for use of water to support the State's agricultural economy. Further, it is in the public interest to

promote the maximum beneficial use of water. Accordingly, the proposed use is beneficial within the meaning of SDCL 46-1-6(3).

23. The proposed use is in the public interest insofar as it provides water for irrigation which would, in turn, benefit the general economic development of the area in question.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the matter.
2. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.
3. The proposed diversion can be developed without unlawful impairment of existing rights.
4. The proposed use is a beneficial use.
5. It is in the public interest to grant the application subject to the qualifications set forth in the Final Decision below.

From the foregoing Findings of Fact and Conclusions of Law, the Board now enters the following:

FINAL DECISION AND ORDER

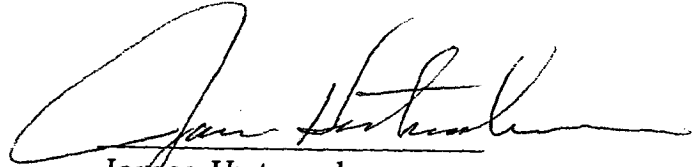
1. The Application for Water Permit No. 6908-3 is hereby granted with the following qualifications:
 - A. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his

withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

- B. The well authorized by Permit No. 6908-3 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) pursuant to Section 74:02:04:25.
- C. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 7th day of May, 2008.

BY THE BOARD:



James Hutmacher
Chairman

pld JPH 04 29 08 Water Permit App - Harlan Aman kak

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF	)	WATER MANAGEMENT BOARD'S
WATER PERMIT	)	RULINGS ON APPLICANT'S
APPLICATION NO. 6908-3,	)	PROPOSED
Harlan Aman	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER;
	)	DENR RESPONSE TO
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION;
	)	INTERVENORS'
	)	PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER
	)	AND INTERVENORS' OBJECTIONS TO
	)	APPLICANT'S PROPOSED
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	FINAL DECISION AND ORDER

Pursuant to directions of the Water Management Board, counsel for Applicant submitted Proposed Findings of Fact, Conclusions of Law, Final Decision and Order. Subsequently, counsel for the Department of Environment and Natural Resources, Water Rights Program, submitted DENR Response to Proposed Findings and Fact, Conclusions of Law, and Final Decision; and counsel for Intervenor Allen Hieb, Delores Hieb, Dale Mohr, and Raymond Groft, submitted Intervenor's Proposed Findings of Fact, Conclusions of Law, Final Decision and Order, and Intervenor's Objections to Findings of Fact, Conclusions of Law, Final Decision and Order. The Board,

upon review of the parties' submissions and the administrative record, and having orally entered its decision, hereby enters the following rulings:

- A. Applicant's proposed introductory paragraph is adopted as modified to be consistent with the modification included in DENR Response No. 1, and the additional references to the Board's oral decision and ruling on the parties' submissions.
- B. Applicant's proposed Findings of Fact Nos. 1, 2, 3, 4, 7, 8, and 10, are adopted by the Board.
- C. Applicant's proposed Finding of Fact No. 5 is adopted by the Board as modified to include the additional findings set forth in DENR Response No. 2.
- D. Applicant's proposed Finding of Fact No. 6 is adopted by the Board as modified to reflect the addition set forth in DENR's Response No. 5; and the correction of a typographical error on line 4 from "1.88 crs" to "1.88 cfs."
- E. Applicant's proposed Finding of Fact No. 9 is adopted by the Board as modified to include the additions set forth in DENR Response No. 6.
- F. Applicant's proposed Finding of Fact No. 11 is adopted by the Board as modified to accurately reflect the record that Intervenor Mohr's ranch is one mile east of Allen Hieb as set forth in Intervenor's proposed Finding of Fact No. 5.

- G. Applicant's proposed Finding of Fact No. 12 is rejected by the Board as inconsistent with the record. Instead, the Board adopts an alternative finding that includes the additions set forth in DENR Response No. 7, portions of Intervenor's proposed Findings of Fact No. 5 and evidence in the record. The revised Finding is as follows:

Dale Mohr currently has three wells on his property. All three wells were drilled at a depth of approximately 140 feet. The current wells are working properly. Two of the wells were drilled in 2004. One of these wells was to replace an old well that was drilled at a depth of 45 feet that went dry. Mohr has had well problems due to sandy soil. The Mohr situation is similar to that of the Allen Hieb well. This Board finds, as it has with respect to the Allen Hieb well that wells in this area will be responsive to climatic influences, and that based upon expert testimony and the DENR's monitoring wells, the fluctuations are not caused by nearby irrigation.

- H. Applicant's proposed Finding of Fact Nos. 13 and 14 are adopted by the Board as modified to correct the spelling of Intervenor Raymond Groft's name.
- I. Applicant's proposed Finding of Fact No. 15 is adopted by the Board as modified to correct Intervenor Mohr's name as set forth in DENR Response No. 8.
- J. Applicant's proposed Conclusions of Law Nos. 1, 2, 3, 4, and 5, and Final Decision and Order are adopted by the Board.
- K. DENR's Response Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9, are adopted by the Board as being consistent with the administrative record and the Board's Final Decision.

- L. Intervenor's proposed Findings of Fact Nos. 1 and 9 are rejected by the Board on the basis that they are inconsistent with the evidence in the record, the DENR expert testimony, the Board's oral decision, and the ruling set forth above.
- M. Intervenor's proposed Finding of Fact No. 2 is adopted by the Board to the extent it is consistent with Applicant's proposed Findings of Fact Nos. 4 and 5 adopted in Bond C above.
- N. Intervenor's proposed Finding of Fact No. 3 is adopted as modified by the Board to accurately reflect the record. The adopted finding is as follows: "All the Intervenor's have as their only water source wells that have been drilled in the area of Applicant's proposed well site." The remaining of the proposed Finding is rejected as inconsistent with the record.
- O. ~~Applicant's~~ ^{Intervenor's JD} proposed Finding of Fact No. 4 is rejected by the Board on the basis that it is inconsistent with the record and state law. Only permitted wells have priority date and corresponding right. The record reflects that all of Intervenor's wells are domestic wells and none of them were drilled as a result of receiving a permit under state law.
- P. Intervenor's proposed Finding of Fact No. 5 is adopted by the Board to the extent it is consistent with the Finding of Fact adopted by the Board in No. G. above.

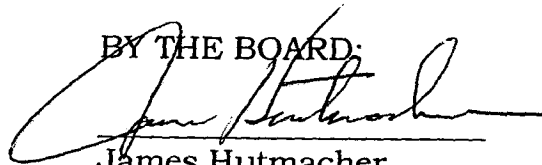
- Q. Intervenor's proposed Findings of Fact Nos. 6 and 8 are rejected by the Board on the basis that each is inconsistent with the DENR expert testimony and the observations noted in the proposed findings do not provide a basis for the Board to deny Applicant his permit.
- R. Intervenor's proposed Finding of Fact No. 7 is rejected by the Board on the basis that the evidence has no impact on the Board's decision whether to grant or deny Applicant's permit given the Board's findings set forth in the above rulings regarding the availability of water and the granting of the permit will not result in any unlawful impairment of existing water rights.
- S. Intervenor's proposed Finding of Fact No. 10 is adopted by the Board to the extent set forth in Applicant's proposed Finding of Fact No. 9 which was adopted by the Board in E above.
- T. Intervenor's proposed Conclusions of Law Nos. 2, 3, 4, and proposed Final Decision and Order are rejected by the Board on the basis they are inconsistent with the evidence in the record, the DENR expert testimony, the Board's oral decision and the rulings set forth above.
- U. Intervenor's proposed Conclusion of Law No. 1 is adopted by the Board to the extent consistent with Applicant's proposed Conclusion of Law No. 1 which was adopted by the Board in J, above.

V. Intervenor's objections to Applicant's proposed Findings of Fact Nos. 4, 5, 6, 7, and 15, and Conclusions of Law 2, 3, and 5, are rejected by the Board on the basis that Intervenor's have failed to provide a basis for the objections and except for the minor modifications set forth in the Board's above rulings, Appellant's Findings and Conclusions objected to are consistent with the evidence in the record, the expert testimony submitted, the Board's oral decision, and the rulings set forth above.

The Board attorney is directed to prepare findings of fact, conclusions of law, and final decision consistent with above-rulings to be executed by the chairman of the Board or Board designee without further motion or hearing.

Dated this 7th day of May, 2008.

BY THE BOARD:


James Hutmacher
Chairman

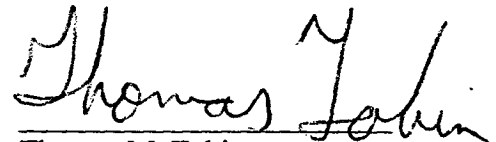
STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED
JUN 12 2008
WATER RIGHTS
PROGRAM

IN THE MATTER OF)
WATER PERMIT) NOTICE OF APPEAL
APPLICATION NO. 6908-3,)
Harlan Aman)

COMES NOW, Thomas M. Tobin, the attorney for the Interveners, Allen Hieb, Deloris Hieb, Dale Mohr, and Raymond Groft hereby appeals the Decision of the Water Management Board, the State of South Dakota Department of Natural Resources, date the 7th day of May 2008. The parties consist of the Water Management Board for the State of South Dakota, the Petitioner, Harlan Aman, and the above-named Interveners.

Dated this 11th day of June, 2008.



Thomas M. Tobin
Attorney for Appellants
P.O. Box 1456
404 S. Lincoln
Aberdeen, SD 57402-1456

CERTIFICATE OF SERVICE

I, Thomas M. Tobin, hereby certify that I have today; this 11th day of June, 2008, served the attached Notice of Appeal and Statement of Issues upon:

Mr. James Hutmacher
Chief Engineer – Water Rights Program
Joe Foss Building
523 E. Capital
Pierre, SD 57501

Ms. Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
P.O. Box 280
Pierre, SD 57501

Mr. Jeff Hallam
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

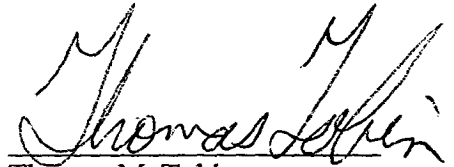
IN THE MATTER OF)
WATER PERMIT)
APPLICATION NO. 6908-3,)
Harlan Aman)

STATEMENT OF ISSUES

COMES NOW, Thomas M. Tobin, the attorney for the Interveners, Allen Hieb, Deloris Hieb, Dale Mohr and Raymond Groft states as issues in this case as follows:

1. Whether the Findings of Fact, as adopted by the Board, are substantiated by the record.
2. Whether the Conclusions of Law, as adopted by the Board, are substantiated by the Findings of Fact and the record in this case.
3. Whether or not the Board acted reasonably in denying to adopt, as Findings of Fact in this case, the Findings of Fact that were proposed by the Interveners.
4. Whether or not the action taken by the Board is consistent with the requirements of South Dakota Law, and whether their evidence supports their position that the statutory requirements had been met by the applicant.
5. Whether the Findings of Fact are clearly erroneous and whether or not they are supported by the evidence introduced at the hearing.

Dated this 11th day of June, 2008.



Thomas M. Tobin
Attorney for Appellant
P.O. Box 1456
404 S. Lincoln
Aberdeen, SD 57402-1456



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 14, 2008

Ronda Geffre
Clerk of Courts
PO Box 248
Leola SD 57456

Re: Transmittal of Record in the Matter of Water Right Permit Application No.
6908-3, Harlan Aman (McPherson County Civ. No. 08-30)

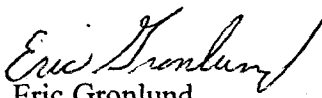
Dear Clerk:

Consistent with SDCL 1-26-33, I am transmitting the agency record for the above entitled matters to the Fifth Judicial Circuit Court in McPherson County. The following is enclosed:

1. agency record (administrative file, exhibits, transcript)
2. transmittal of record
3. chronological index
4. alphabetical index
5. list of exhibits

Note that Intervenor Exhibit No. 20 is not enclosed. This exhibit is comprised of a glass jar of sand. Please let me know if the court wants physical possession of this exhibit.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



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 14, 2008

NOTICE

TO: Margo Northrup
Riter, Rogers, Wattier & Brown
PO Box 280
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402-1456

FROM: *for* Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

Eric Henderson

SUBJECT: In the Matter of the Water Permit No. 6908-3, Harlan Aman

Consistent with SDCL 1-26-33, the agency record for the above entitled matter is being transmitted to the Fifth Judicial Circuit Court in McPherson County. A chronological and alphabetical index of the agency record and a list of exhibits is also being transmitted to the court. A copy of the transmittal of record and each index is enclosed.

enclosures

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on July 14, 2008, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 14, 2008, regarding transmittal of the administrative record to the Fifth Judicial Court of Water Right Permit Application No. 6908-3, Harlan Aman, addressed as stated below :

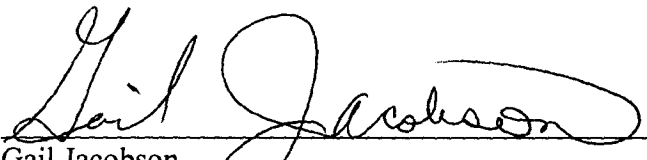
Margo Northrup
Riter, Rogers, Wattier & Brown
PO Box 280
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402-1456

Sent Notice Inter-Office mail to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501

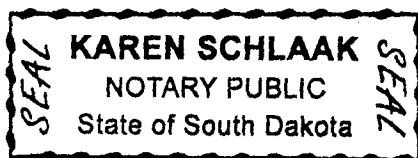
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Gail Jacobson
Water Right Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of July 2008.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA

COUNTY OF MCPHERSON

)

: SS

)

IN CIRCUIT COURT

FIFTH JUDICIAL COURT

(08-30)

IN THE MATTER OF THE APPLICATION)
FOR PERMIT TO APPROPRIATE WATER)
NO. 6908-3, HARLAN AMAN)

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STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

: SS

COUNTY OF MCPHERSON

)

FIFTH JUDICIAL COURT

(08-30)

IN THE MATTER OF THE APPLICATION)
FOR PERMIT TO APPROPRIATE WATER)
NO. 6908-3, HARLAN AMAN)

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Exhibits Introduced into Evidence

in the Matter of Water Permit Application No. 6908-3, Harlan Aman

Pending in the Fifth Judicial Court (Docket 08-30)

Exhibit No.	Description
DENR-1	Vita – James A Goodman
DENR-2	DENR file on Water Permit Application No. 6908-3, Harlan Aman
DENR-3	Map of Proposed Project
Applicant-1	Three Maps (with markings) of Well Locations
Intervenor-1	Two Well Completion Reports for Erwin Dale Mohr
Intervenor-2	Well Completion Report for Allan Hieb
Intervenor-3	Drillers Log for Ferdinand Hieb
Intervenor-4	Notice of Well Construction for John Treftz
Intervenor-5	Drillers Log for Otto Hieb
Intervenor-6	Three Well Completion Reports for Milton Hieb and Delores Hieb
Intervenor-7	Well Completion Report for Rudy Aman
Intervenor-8	Two Well Drillers Reports for Dallas Anderson
Intervenor-9	Two pages with 4 pictures each dated 11/25/2007
Intervenor-10	Enlarged picture dated 11/25/2007
Intervenor-11	nothing listed on transcript
Intervenor-12	Notice of Well Construction for Albert Kirschenmann
Intervenor-13	Well Driller Report for Joe & Jerome Kirschenmann
Intervenor-14	Water Rights Observation Well Log & Hydrograph for MP-80E
Intervenor-15	Water Rights Observation Well Log & Hydrograph for MP-80D and MP-80B
Intervenor-16	Drillers Log for Kenneth Thorstenson
Intervenor-17	Drillers Log for Ferdinand Hieb
Intervenor-18	Water Rights Observation Well Log & Hydrograph for MP-80C
Intervenor-19	Well Completion Report for Deloris Hieb
Intervenor-20	Bottle of Sand

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER MANGEMENT BOARD

=====

IN THE MATTER OF THE WATER PERMIT
APPLICATION NO. 6908-2, HARLAN AMAN

=====

Transcript of Proceedings
March 11, 2008

=====

BOARD MEMBERS PRESENT

Mr. Jim Hutmacher, Chairman
Ms. Bernita Loucks
Mr. Rodney Freeman
Mr. Francis Brink
Mr. Tim Bjork
Mr. Jeff Hallem, Counsel for the Board

ORIGINAL

APPEARANCES

MS. DIANE BEST,
Assistant Attorney General; 1302 East
Highway 34, Pierre, South Dakota 57501,
appearing on behalf of DENR;

MR. JOHN BROWN and MS. MARGO NORTHRUP,
Riter, Rogers, Wattier & Brown,
Attorneys at Law, 319 South Coteau, Pierre,
South Dakota 57501,
appearing on behalf of the Applicant;

MR. THOMAS M. TOBIN,
Tonner, Tobin & King, P.O. Box 1456,
Aberdeen, South Dakota 57402,
appearing on behalf of the Intervenors.

Reported by Carla A. Bachand, RMR, CRR

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1 TUESDAY, MARCH 11, 2008

2 CHAIRMAN HUTMACHER: Water permit application number
3 6908-3, Harlan Aman.

4 MS. BEST: If I may, for the record, I'm Diane Best,
5 Assistant Attorney General, on behalf of the chief engineer.
6 What I'd like to do in this proceeding, if it's acceptable to
7 the board, is this is a new water permit application and Mr.
8 Aman has the burden of proof in this proceeding. With the
9 chief engineer staff, Jim Goodman would be willing to proceed
10 first, explain the place of the project and what the chief
11 engineer's recommendation is and do that overview and then the
12 applicant would go and then the intervenor would go. That's
13 the procedure I would propose.

14 CHAIRMAN HUTMACHER: John, we would like to do
15 appearances, if you would.

16 MR. BROWN: John Brown on behalf of Harlan and Lester
17 Aman, the applicants, and I have with me Margo Northrup from
18 our office as well.

19 CHAIRMAN HUTMACHER: Do you have any objection to the
20 order Ms. Best described?

21 MR. BROWN: None at all.

22 MR. TOBIN: Thank you. My name is Tom Tobin and I
23 represent the intervenors here. They are also present,
24 although just two of them are sitting at the table with me, but
25 the other ones are present also. And we have no objection to

1 the procedure that was outlined by Diane.

2 CHAIRMAN HUTMACHER: Thank you. Mr. Goodman.

3 MS. BEST: If I may first, before we get rolling here,
4 the DENR only has two exhibits in this proceeding and I'll just
5 go ahead and ask that they be admitted at this time. The first
6 one is a vita of the expert qualifications of witness Jim
7 Goodman. Rather than go into a lengthy dialogue regarding his
8 qualifications, I would ask that his CV be admitted into
9 evidence as DENR 1. And then also the other exhibit is DENR 2,
10 which is a copy of the application, the chief engineer's
11 recommendation, the Goodman expert report, the newspaper
12 notice, and the petitions to intervene. And that's marked as
13 DENR 2 and I would ask that those two exhibits be accepted as
14 evidence in this proceeding.

15 CHAIRMAN HUTMACHER: Mr. Brown, do you have any
16 objection?

17 MR. BROWN: No objection.

18 MR. TOBIN: No objections.

19 EXHIBITS:

20 (DENR Exhibit Nos. 1 and 2 received into evidence.)

21 CHAIRMAN HUTMACHER: Okay, I would also note that the
22 board received in their packet the report that Mr. Goodman is
23 about to give and the engineer's recommendation and also
24 letters from the intervenors. Mr. Goodman, go ahead.
25 Thereupon,

1 JIM GOODMAN,
2 called as a witness, having been previously duly sworn as
3 hereinafter certified, testified as follows:

4 MR. GOODMAN: Thank you. I'm here to present a report
5 on water permit application number 6908-3 for Harlan Aman.
6 Geographically, this is located about 10 miles east and five
7 miles south of Eureka. This application proposes to
8 appropriate 2.0 CFS or approximately 900 gallons per minute
9 from one well proposed to be 110 feet deep. That well is
10 located in the -- to be located in the northeast quarter of the
11 southwest quarter of Section 34 to irrigate 160 acres located
12 in the west half of the southwest and the south half of the
13 northwest of Section 34, all in Township 126 North, Range 71
14 West, and this is in McPherson County.

15 The aquifer here is what we have called the Hillsvew.
16 Hillsvew is predominantly now over the area as mapped is a
17 buried outwash. Outwash is just sand and gravel. Buried means
18 that there's a till overlaying the sand and gravel. The
19 aquifer underlies approximately 51,200 acres and contains an
20 estimated 230,000 acre-feet of recoverable water in storage.
21 In this immediate area of this application, the aquifer appears
22 to be under water table conditions and it also appears to be a
23 surficial aquifer, although that characteristic changes
24 quickly.

25 The two observation wells that we have in the

1 immediate area, there is no till overlaying the sand and
2 gravel. Some of the domestic and other wells in the area just
3 show sand and gravel from the surface. However, predominantly
4 the aquifer is overlain by clay.

5 No test wells were drilled at this particular site.
6 However, there was sufficient information from the county
7 study, other wells in the area, some other irrigation wells,
8 and then the two observation wells we have in the area that I
9 felt that we could evaluate this application. The two monitor
10 wells that we developed there in the Hillsvew are called
11 MP-80G and MP-80H. MP-80G is located about one and a half
12 miles northwest of this proposed site and MP-80H is located
13 about one-half mile to the northeast of this site. I have
14 included copies of both of those hydrographs in the report for
15 you to review.

16 To me what those hydrographs mean to me is, number
17 one, there's very little fluctuation, annual fluctuation in
18 this aquifer. In other words, it's very hard to discern any
19 pumping effects from the irrigation on this particular aquifer.
20 You could maybe, using your imagination, you could get it down
21 to half a foot or something like that. But what it does show,
22 and both of them are very similar in this, is that beginning in
23 about 1980, we had a little wet period there in '86, '87 where
24 the water levels came up, went back to a little dryer period,
25 and then in the nineties when it got extremely wet, the water

1 levels came up.

2 Now, since basically 2001 the water levels have been
3 gradually going down and I believe everybody in the room that
4 lives up here would confirm that those general climatic
5 conditions existed up there during that time period and I do
6 believe the water levels are a mirror of the climatic
7 conditions that we have. And in fact these two particular
8 hydrographs look just like any hydrograph I would pick up from
9 Todd or Union County or anywhere else. We have had roughly the
10 same kind of climatic conditions since 1980 everywhere in
11 eastern South Dakota.

12 When I looked at reviewing the existing water permits
13 in this area, there are three existing irrigation rights within
14 a half -- within a mile to mile and a half of this proposed
15 well. Two of them are -- this application is for Harlan Aman.
16 Two of the applications are for Aman, Aman brothers and a
17 Lester Aman. I don't know the relationship. It's Aman. Then
18 one is for a Jacob and Janice Kirschenmann. These irrigation
19 wells, and I've listed them, they have all been inspected and
20 they are all licensed, they are all water rights. And I've
21 listed the distances the wells are from this proposed site.

22 It appears to me that we are going to have -- there's
23 going to be a potential here at 1900 feet, 4200 feet, and I'm
24 not sure -- I'm not following where the other one is here, but
25 at those distances I do not expect the drawdowns will be

1 significant or will there be any adverse effect on the existing
2 irrigation wells in the area.

3 There's always that argument that, well, you have to
4 put the well in and test it and see what's going to happen, and
5 I'll buy off on that argument a little bit, but on the other
6 hand, we have had irrigation going on here for over 30 years
7 and we haven't seen that kind of drawdown before and I don't
8 know why one more is going to make that much difference. So
9 anyway, looking at the other irrigation, the existing rights in
10 the area, I don't think there will be any adverse effects on
11 them.

12 I concluded that water is available from the Hillsvier
13 aquifer. The aquifer may be buried at this site where they are
14 drilling. However, I expect because the observation wells and
15 some of the other wells in the area are very near here are
16 under water table conditions, I don't expect drawdown to be
17 significant because generally when we go from confined or
18 artesian conditions to water table conditions, the drawdown
19 virtually disappears.

20 The well authorized by this application must be
21 constructed in accordance with our standards, and what they
22 will need to do, though, however, is drill test holes at this
23 site to fully evaluate the site just to make sure that it's
24 worth the trouble to even put a production well in. That's the
25 one thing about not drilling test holes, it's one thing to look

1 at the data around the area, but you still have to drill the
2 actual site, because you don't know, you can make all the
3 guesses you want to about that, yeah, it's going to be there,
4 it's going to be this thick, but you still have to drill the
5 site or you are not going to spend the money. That's the way
6 it is.

7 This application was contested. I believe you have
8 been introduced to everybody. At this time I think -- first of
9 all, the chief engineer is making a recommendation for approval
10 of this application based on our standard list of
11 qualifications. You have been introduced to the participants
12 here. My review was real short and simple and hopefully
13 coherent. I'm having a little trouble talking today. So if
14 there are any questions at this time from anybody, I'd be glad
15 to entertain them. Otherwise we can move on to the next party.

16 CHAIRMAN HUTMACHER: Diane, do you have anything?

17 DIRECT EXAMINATION

18 BY MS. BEST:

19 Q. Jim, I just want you to explain for the record whether
20 this application has -- whether there's any issue with this
21 issue of annual -- exceeding the annual recharge for this
22 aquifer, that issue is not present in this case; is that right?

23 A. I don't think so.

24 MS. BEST: I have nothing further.

25 CHAIRMAN HUTMACHER: Mr. Brown, do you have any

1 questions?

2 CROSS-EXAMINATION

3 BY MR. BROWN:

4 Q. The only thing, I would call your attention to the
5 report, Jim, on -- I believe you identified the location of two
6 of the wells. I think your report indicates that the other
7 well is one-half mile west of the proposed location of the
8 well; is that correct?

9 A. Right, that's right.

10 Q. The proximity of these wells, of your test wells and
11 the other irrigation wells that are there, do you feel that's
12 an adequate representation of what you could expect at that
13 well?

14 A. Okay, do I feel that the water levels that we are
15 measuring in monitoring wells adequately reflect what's going
16 on out in the well field?

17 Q. Yes.

18 A. Yes.

19 MR. BROWN: Nothing further.

20 CHAIRMAN HUTMACHER: Mr. Tobin, do you have any
21 questions of Mr. Goodman?

22 CROSS-EXAMINATION

23 BY MR. TOBIN:

24 Q. Yes, Mr. Goodman, did anyone go out and interview the
25 people that have existing wells in this aquifer to get some

1 type of reference as to what is taking place with their wells?

2 A. No, sir.

3 Q. Did your study take into account, other than the
4 irrigation wells, the other wells that are pulling out of this
5 aquifer, as far as the other landowners that are on top of the
6 aquifer?

7 A. I usually look at records in our office. We get
8 domestic well logs, if that's what you are referring to. I
9 look at all the permitted users for sure, because they are
10 required to give water rights. They are the major users.
11 Domestic users are generally very small. There are a number of
12 domestic wells scattered all over the place that are used for
13 livestock and household use and that sort of thing. I look at
14 them, but generally their use is so small, in the overall
15 scheme of things, it's minimal to the impact -- one irrigation
16 well is going to use way more water than those guys will ever
17 use in the year.

18 Q. It's noted that they intend on drawing 900 -- I think
19 it was 900, wasn't it, 900 gallons a minute --

20 A. Yes, sir.

21 Q. -- from the irrigation well? Are the other irrigation
22 wells the same size?

23 A. I think they are all a little bit different. Down
24 under the review, if you look down there, I give the permitted
25 rate. That was when we inspected them and licensed them for

1 that amount of water, so they are in a range of around that.
2 It's based a little bit on the acreages on the original permit
3 application, it's based on the acreage and you get a certain
4 amount of water. It is a bit of a guess. Once it gets
5 developed, we come out and inspect it, then we license it for
6 what they use. The three that are there are licensed, that's
7 what they showed that they used. This one would be a bit of a
8 guess till we get it licensed, but it's close.

9 Q. I think one of the representations of the chief
10 engineer was that the well owner, under this particular permit,
11 would have to control his withdrawals so that it would not be a
12 reduction of needed water supplies in adequate domestic wells
13 or adequate wells having prior water rights.

14 A. That's true. It's standard.

15 Q. How does that happen? What's the practical
16 implementation of that particular recommendation?

17 A. First of all, that's a standard recommendation that
18 goes on everything. That applies to everybody, no matter
19 whether it's irrigation or municipal or any kind of use, that
20 applies because domestic use, under our state law, takes
21 preference over other uses. Now, what the law is established
22 to do, at least in my opinion what it's established to do, is
23 to put everybody on the same level ground.

24 You have your right to domestic water. When they get
25 their permit to irrigate, if they get it, they have the same

1 right to that water as you do. In other words, there are
2 standards set in the statute and rules that require certain
3 conditions be met. They have to meet those standards, you have
4 to meet those standards as a domestic well owner.

5 Now, that term is called adequate well and if your
6 well is deemed to be adequate, you are protected. If it's not,
7 you may not be protected. The question of being protected or
8 not is irrelevant, generally speaking, because in a situation
9 like this where we may have shallow sands and gravels, the
10 drawdown isn't significant and probably wouldn't even extend a
11 half mile away. Anybody living further than a half mile away
12 wouldn't even know it was going on.

13 Now, serendipity is an amazing thing. I have worked
14 here long enough to know serendipity causes a lot of problems
15 and by that I mean if somebody has a well that goes bad in
16 1978, it was because that guy started irrigating in '76 or
17 something like that. Not necessarily true. So there are some
18 standards that have been developed over the years looking at
19 wells and adequate wells and how much water you get out of a
20 well.

21 And these guys know, these guys absolutely know if
22 they have got a good well or a bad well. They know if they
23 have got a gallon a minute, they know if they have got 20
24 gallons a minute. They know which wells they have had trouble
25 with and the ones they haven't. There isn't anybody fooling

1 anybody.

2 Q. What happens if there is a reduction in the amount
3 that causes inadequate domestic well supply?

4 A. Inadequate?

5 Q. Yeah.

6 A. We wouldn't protect an inadequate well. If it was an
7 adequate well, we would protect that by either regulating the
8 pumping or giving the pumper some choice. He could replace the
9 well, he could lower the pulp, he could do a lot of things, but
10 if the pump has to be lowered, it would probably be inadequate.
11 But if there is a situation where you have an adequate well and
12 it is adversely impacted, then it's the responsibility of that
13 person that has the permit or develops the water, it would be
14 his responsibility to fix your problem. Now, that may not --
15 you may not like his fix. He may hook you up to rural water,
16 he may drill you a new well, he may clean out your old well.
17 There's some things that could be done here to fix the problem.

18 Q. But as I understand you, then, but at no time does he
19 have to shut off his well?

20 A. He might.

21 Q. But is this something that the person that is causing
22 the issue to come about, that he gets to choose how he solves
23 or how he provides the remedy?

24 A. First of all, there has to be a problem. If we assume
25 there is a problem and we come out there and look at it and

1 say, yes, Houston, there is a problem and you have caused it,
2 then we would get into the remedies. That doesn't happen very
3 often, almost never.

4 Q. It's the almost one that is concerning my clients.
5 But I guess what I'm getting at is that until you come out and
6 verify the cause and effect of the problem, the pumping goes
7 on, the irrigation well continues to pump.

8 A. Probably. It's going to be -- I'm assuming it would
9 start with a phone call to me or to Garland and we would
10 investigate it as fast as we could.

11 MR. TOBIN: That's all the questions I have, thank
12 you.

13 MR. GOODMAN: You bet.

14 CHAIRMAN HUTMACHER: Any questions of the board? Did
15 you have anything, Diane?

16 MS. BEST: I have a little bit of redirect here.

17 MR. GOODMAN: I must have said something stupid.

18 MS. BEST: No, you didn't.

19 REDIRECT EXAMINATION

20 BY MS. BEST:

21 Q. Jim, can you explain what the standards are for an
22 adequate well?

23 A. Well, every situation seems to be a bit different, but
24 an adequate well is just basically one that you penetrate into
25 the aquifer at least 20 feet and be able to lower your pump at

1 least 20 feet into that aquifer. Now, where the concerns about
2 adequate wells generally arise is two. That's basically it in
3 a nutshell, that's it. I'll elaborate by saying the two types
4 of wells that people get most concerned about are, number one,
5 where there's an artesian condition, in other words, you have
6 got a confined aquifer and the water level comes up. You
7 didn't hit the aquifer till, say, 90 feet below land surface
8 but the water level is at 10 feet, and when somebody pumps in a
9 high capacity well near that, you will get some fluctuation.

10 Now, in the old days when people had pump jacks and
11 cylinders and things like that that they used to supply water,
12 you might get enough drawdown somebody had to put another rod
13 on or something like that because they had to follow the water
14 level down. And a lot of those wells were two- or three-inch
15 diameter. Well, it used to be the confusion arises that's an
16 inadequate well. Not necessarily. It's a lot of people didn't
17 want to follow it down, and that's what the law does, it
18 requires you to follow the water down in that situation. If
19 you can get your pump 20 feet into the aquifer, you have an
20 adequate well. You couldn't put a submersible in there, there
21 was a lot of things you couldn't do. So those type of wells
22 were basically obsolete. I think they were obsolete in the
23 fifties, but people still use them.

24 The next thing is the bored well, which I don't think
25 that first type most of these guys don't have up there. They

1 have more of the bored well, they have the very large diameter
2 concrete curve that leaked from bottom to top. Sometimes they
3 are constructed, they may have a screen in the bottom, they may
4 not. Sometimes they get down into some sand and gravel, they
5 slush it in, bucket it in, whatever, and the water table, they
6 will get water out of sand and gravel down there at 30, 40, 50
7 feet. The diameter of the well serves the purpose of providing
8 storage so they can put a little bigger pump in there. It has
9 nothing to do with whether the aquifer will produce or not, in
10 fact a lot of times they don't produce real well. They provide
11 storage so that you can pump a little more water out of them
12 faster. They pump down and then they recover over time because
13 most of the time you don't use that much water anyway. That's
14 kind of the two biggest ones we have had historically the
15 problem with.

16 Q. Jim, is it necessary when you evaluate whether water
17 is available in an aquifer, the availability part, when you
18 evaluate that, you testified regarding the hydrograph. Is it
19 necessary to interview domestic water users to determine
20 whether water is available?

21 A. I don't know -- no, I don't think so. I mean, I have
22 some of their well logs. I review that. No, it just isn't
23 necessary.

24 Q. And with regard to whether there would be an
25 impairment of existing domestic rights, domestic water use

1 rights or other water rights, here, for example, other
2 irrigation rights, is there an opportunity for such other water
3 users to comment as to whether or not impairment would occur?

4 A. I'm sorry, I didn't follow that.

5 Q. I think there was a previous question to you as far as
6 whether domestic water users are able to have their water use
7 examined or their comments afforded credence in the water
8 rights review for whether a water permit should be granted. Do
9 domestic water users have that opportunity?

10 A. Do you mean can they register their well, is that what
11 you are driving at?

12 Q. Can they register their well or --

13 A. Yes, they can.

14 Q. And have any of -- okay, and also do domestic water
15 users have an opportunity to call the state and voice their
16 concerns regarding pending applications?

17 A. Sure, and I think I've talked to some of these guys
18 that are here. I accept any and all phone calls all the time
19 because honestly, until we advertise things like this, we don't
20 know what -- a lot of times what some of the issues might be
21 out in some of these areas. It's the way we get folks
22 together.

23 Q. Just a second, I may have one additional question.
24 Now, the chief engineer's recommendation is for approval of the
25 permit as applied for and that would be -- can you explain how

1 that would be in priority with respect to domestic use or other
2 water users in the area? What would the priorities be?

3 A. Well, domestic use, under state law, domestic use has
4 preference over every other use. Even if this irrigation
5 permit were issued and 20 years from now somebody drilled a
6 domestic well, that still takes preference over this other
7 stuff that's gone on.

8 Q. So long as --

9 A. In my mind.

10 Q. So long as that new well is adequate?

11 A. Yeah, so long as it's an adequate well.

12 Q. With respect to other irrigation, state granted
13 irrigation rights in the area, they would have priority over
14 this one; isn't that correct?

15 A. Well, domestic use takes -- yeah, takes preference now
16 over all the existing permitted users that are there, now and
17 in the future.

18 Q. And previously granted irrigation permits --

19 A. Take preference over this one.

20 MS. BEST: I have nothing further.

21 CHAIRMAN HUTMACHER: John, do you have any?

22 MR. BROWN: Just a couple follow-ups.

23 RECROSS-EXAMINATION

24 BY MR. BROWN:

25 Q. And Diane had asked the question about adequacy. But

1 have you had an opportunity to look at the intervenors' wells
2 with respect to adequacy?

3 A. No.

4 Q. Have you --

5 A. I've looked at some well logs, but I don't know which
6 ones they are concerned about.

7 Q. You have observed some well logs for the domestic
8 wells that are in that area from the intervenors?

9 A. Yes, there are some in our files, yes.

10 Q. Is there anything about those logs that -- well, one,
11 do those logs appear to place the well into the same aquifer
12 that we are talking about here or are you able to determine
13 that just from the logs?

14 A. Yeah, some of them look like they are in the same
15 aquifer, yes.

16 MR. BROWN: No further questions.

17 CHAIRMAN HUTMACHER: Mr. Tobin, do you have cross?

18 MR. TOBIN: Yes, thank you.

19 RECROSS-EXAMINATION

20 BY MR. TOBIN:

21 Q. I believe that the well that's proposed would have to
22 be drilled in approximately a 40-acre square; is that right?

23 A. It's advertised for somewhere inside that area.

24 Q. Yeah, it indicates here it has to be in the northwest
25 quarter of the southwest quarter of Section 34, but the water

1 from that well could be pumped to other land areas.

2 A. Oh, certainly.

3 Q. In fact in your recommendation it was other than just
4 to irrigate 160 acres, there is actually another 80 acres that
5 lies next to this area that could also be irrigated from this
6 well.

7 A. Yeah, whatever that area that's advertised, somewhere
8 in that area, not all of it, but at least part of it. We
9 advertised for the whole area.

10 Q. And is the two CFS the maximum amount of water that
11 can be drawn?

12 A. Under this application, yes, sir.

13 Q. But there is no time limit as far as when they can
14 start and when they can stop.

15 A. Yes, there is a time limit. They have five years to
16 develop it.

17 Q. I mean as far as once they get the well in, they could
18 start irrigating May 1st and they can continue to irrigate
19 through November 1st if they wanted to.

20 A. There is a time limit on the permit, I'm not sure what
21 it is on this one, it usually goes from April through October.

22 Q. In your report, you indicate that there's an estimated
23 230,000 acre-feet of recoverable water.

24 A. Uh-huh.

25 Q. That was based upon a 1982 report. In your tables

1 here, your water rights observation well, historically, I don't
2 know what these negative numbers mean on the left side over
3 here, but --

4 A. That's the depth of the water.

5 Q. Okay. If in fact the water got down to the levels
6 that it was in 1985 or 1991, would your recommendation be the
7 same?

8 A. Yes.

9 Q. So the fact that the well has it looks like
10 approximately maybe as much as varied five feet, it still would
11 not change your recommendation?

12 A. No.

13 Q. Has the state, since 1982, done any studies to try to
14 determine the capacity of the aquifer?

15 A. Not looking at just the Hillsvew, no, sir. We have
16 done a little work looking at this aquifer system in Faulk and
17 Edmunds County, but not specifically in this area nor at the
18 Hillsvew aquifer, no. The closest thing we did was a city
19 study for Hoven where we looked at a period of outwash there.

20 Q. How close together do irrigation pumps have to be
21 before they would affect each other?

22 A. In my mind there's a big difference between effect and
23 adverse effect. Now, under water table conditions where you
24 have sand and gravel and water at we will say an example of 10
25 feet and you put in a 1,000 gallons a minute well and let's say

1 that it's 100 gallons per foot of drawdown, which is a really
2 good well, that would be 10 feet of drawdown inside the pumping
3 well. That drawdown I would expect to be just a mere inch or
4 two after 30 days at 660 feet or at 1320 feet away. It would
5 be very little.

6 However, on the other hand, where you had artesian
7 conditions and you hit the aquifer we will say at 100 feet and
8 the water level comes up to 10 feet and they put that same
9 1,000 gallons a minute pump in there, you might be able to
10 measure drawdown one or two or three days away at that 1300
11 feet, for sure after three days, but you may -- and I have
12 actually measured drawdown in domestic wells or observation
13 wells as far away as four or five miles, in a situation when
14 you have got really clean, confined, perfect conditions, not a
15 situation here where you go -- you have got a buried, confined
16 water table where it's a mish mash thing like that, you don't
17 typically see those kind of drawdowns. But where you have a
18 perfectly confined condition, you can see drawdown quite a ways
19 away.

20 For these guys who live up here, there is one of these
21 type of aquifers at depth called the Grand, it's a little bit
22 to the west of you, where you can get those kind of artesian
23 conditions and get that fluctuation. Over around Mound City,
24 we can get 20 or 30 or 40 feet of drawdown from those
25 irrigation wells, and it happens relatively quickly. So it's

1 not -- I don't anticipate this particular scenario to be
2 anything like that at all.

3 MR. TOBIN: That's all the questions I have. Thank
4 you.

5 CHAIRMAN HUTMACHER: Questions of the board. If not,
6 thank you, Jim.

7 MR. BRINK: This permit is limited to one. Is there
8 any reason why it's limited to one? Can -- one well.

9 MR. GOODMAN: Yes, sir, that's what they asked for.

10 MR. BRINK: That's what they asked for, okay.

11 CHAIRMAN HUTMACHER: Thank you, Jim. Do you have any
12 more witnesses you want to call, Diane?

13 MS. BEST: No, I do not. Thank you.

14 CHAIRMAN HUTMACHER: Mr. Brown, do you have witnesses
15 you would like to call?

16 MR. BROWN: Yes, I want to call Harlan Aman and I do
17 have some exhibits here that I should have had marked
18 previously. I think these can be marked as just one single
19 exhibit, actually.

20 EXHIBITS:

21 (Applicant Exhibit No. 1 marked for identification.)

22 MR. BROWN: I would like to tape them up. Should I
23 tape them up there?

24 MR. HALLEM: We are back on the record. Dealing with
25 the exhibit on it, you have one extra copy for the board. You

1 have provided copies to counsel and you had the original that's
2 been marked; is that correct?

3 MR. BROWN: That's correct.

4 CHAIRMAN HUTMACHER: Is there any objections, Diane?

5 MS. BEST: I need a copy or I need to just look at it.
6 Can I look over your shoulder? No objection.

7 MR. BROWN: If I could, to make it easier --

8 CHAIRMAN HUTMACHER: Mr. Tobin, do you have any
9 objections to accepting that?

10 MR. TOBIN: I have no objection to the exhibit. I'm
11 not sure how the writing on it is all going to fit in and maybe
12 the relevancy is an issue, but I have no objection to the
13 exhibit.

14 CHAIRMAN HUTMACHER: We will accept Applicant's 1.

15 EXHIBITS:

16 (Applicant Exhibit No. 1 received into evidence.)

17 MR. BROWN: I thought maybe if I could tape it up here
18 to kind of give a visual representation of general locations.

19 CHAIRMAN HUTMACHER: That's fine.

20 MR. BROWN: I probably could have had a little better
21 exhibit, but I want to give a visual.

22 CHAIRMAN HUTMACHER: We are back in session.

23 MR. BROWN: Harlan, perhaps could you come up here to
24 the podium.

25 CHAIRMAN HUTMACHER: We will need to swear him in,

1 too.

2 Thereupon,

3 HARLAN AMAN,

4 called as a witness, being first duly sworn as hereinafter
5 certified, testified as follows:

6 CHAIRMAN HUTMACHER: State your name and address for
7 the court reporter.

8 THE WITNESS: Harlan Aman, Hosmer, South Dakota, 33788
9 121st Street.

10 DIRECT EXAMINATION

11 BY MR. BROWN:

12 Q. Harlan, I want you to, if you would take this marker
13 and just identify on the map, first I'd like you to just
14 identify with a number one the location of the well you are
15 proposing to put in.

16 A. Right here.

17 Q. Okay. Now, if you would also indicate -- right now
18 you are irrigating in that section, and I'd say that's Section
19 34.

20 A. This is the well that we irrigate this, this plus this
21 80 we are running back and forth.

22 Q. Mark that well number two, if you would, please. Now,
23 you indicated that you are irrigating 160 acres in, it would be
24 the southeast quarter of Section 34; is that correct?

25 A. This here, yeah.

1 Q. Are you also irrigating some acreage in the southwest
2 quarter?

3 A. This 80 with the same well, yeah.

4 Q. You are irrigating that right now with that well?

5 A. Right.

6 Q. Now, would you identify on there the acreage you are
7 proposing to irrigate with this new application?

8 A. Well, this and then we applied for 80 acres here to
9 set the old well on.

10 Q. Maybe you could just outline that area generally.

11 A. This here, we would irrigate about this 80 here, or
12 this we would circle and this would kind of be in between,
13 whatever we could. That's if -- that's proposed to do, but for
14 now we would just like to drill this one here, and like this
15 here, there was a test hole there some years ago, but the guy
16 never went through it before I bought it. He said there would
17 be good water there, but we applied to put it there in the
18 center for the circle.

19 Q. Why don't you go ahead and put a number three by that
20 test hole.

21 A. Three.

22 Q. Have you pumped, done any test pumps out of that test
23 hole yourself?

24 A. No.

25 Q. You don't have any data on that specifically?

1 A. No, we have never pumped it, but just what he told us,
2 it was a real good well and it would have done good.

3 Q. Now, you have also got maps there in Section 35 and
4 Section 26 with some marks on them. What are those marks?

5 A. These are my livestock domestic wells, this one and
6 this and this other, these three. No problems with them, real
7 good water.

8 Q. Have you experienced any difficulty with those wells
9 as a result of your pumping out of your current well?

10 A. No, huh-uh.

11 Q. Where in relation to your properties, then, is the
12 intervenors' property?

13 A. Home would be right up here where he lives, up in this
14 quarter here.

15 Q. You are indicating whose property is that?

16 A. That would be Allen Hieb.

17 Q. Allen Hieb?

18 A. Yeah.

19 Q. And that is -- his property lies north of Section 26,
20 that would be in Section 23 or 22 perhaps; is that correct?

21 A. Yeah, it's here, and then he's got some up along off
22 in here.

23 Q. And are you familiar at all with what wells they have
24 on their property?

25 A. Well, we got the same well driller, he drilled for us,

1 and I guess he's got some good wells and he had some that went
2 dry and he told me he had one that went -- in the fall it went
3 dry and they were going to wait to recharge it, but it never
4 did come back over the winter, so it --

5 Q. Those wells are located, at least from the indication
6 from the maps there, they would be located at least a mile and
7 a half from your present location.

8 A. Yeah, the distance is quite a ways here.

9 Q. This land you are proposing to irrigate, is this land
10 you have recently purchased?

11 A. Yeah. Yeah, that 80 there, yeah, or two eighties.

12 Q. That's the land you are proposing with the new well --

13 A. Yeah.

14 Q. -- to access?

15 A. Yeah.

16 Q. Did you have competition in purchasing that land?

17 A. Well, there was not much there, it was quite high.

18 Q. Would Mr. Hieb have been a potential buyer for that
19 property?

20 A. I don't think on that. On some other land we have,
21 but it's not involved in this deal.

22 Q. Did Mr. Hieb speak to you about the application that
23 you had made for the water permit here?

24 A. Well, I told him, he didn't want to, we wanted another
25 well.

1 Q. You toll him that --

2 A. Well, he told me he was going to try and stop us,
3 but. . .

4 Q. So you have had no discussions about any compromise or
5 any way of settling any differences?

6 A. No, we never talked about it.

7 Q. You are currently irrigating the 160, 240 acres in
8 this area, and you are proposing to add another 80 acres, or
9 another 160 acres?

10 A. 160 acres. Of course in the corners you would lose a
11 lot. The corners are not irrigated so it's quite a few less --
12 quite a few less acres.

13 Q. Are you farming this land currently?

14 A. Yeah, right.

15 Q. What are you proposing to grow on the property?

16 A. Oh, beans, corn, probably wheat.

17 Q. What time -- a question was asked earlier about the
18 period of time in which you would irrigate. Do you know what
19 your irrigation season is going to be?

20 A. Oh, more June through -- well, maybe a little to get
21 the corn started, then more June till it's finished, which
22 would be probably close to September.

23 Q. The property you are proposing to irrigate from the
24 maps indicate a fairly good size lake on the north side of that
25 property. Does that lake separate your property from the

1 property of the intervenors?

2 A. Yeah.

3 Q. And do you experience or do you feel you are
4 experiencing recharge into your aquifer from that lake?

5 A. We have never had a problem pumping it, it's never let
6 up. There's plenty of water there as far as I'm concerned,
7 when the lake has got the water there. It's never been dry.

8 MR. HIEB: That lake was dry in '88.

9 Q. (BY MR. BROWN) Harlan, how long have you irrigated
10 from the existing well that's in place?

11 A. About 10 years since we got in there.

12 Q. Have you ever experienced any difficulties with water
13 levels in that well?

14 A. No.

15 Q. You have never had to sink the pump deeper or anything
16 of that nature to access water?

17 A. No. It's never been any problems with water there, as
18 far as my use.

19 MR. BROWN: Nothing further.

20 CHAIRMAN HUTMACHER: Just a minute, Harlan.

21 MS. BEST: No questions.

22 CROSS-EXAMINATION

23 BY MR. TOBIN:

24 Q. Mr. Aman, if you go around the front of the podium,
25 you have three maps up there that were obtained from the Farm

1 Service Agency. Can you identify the top map as far as what
2 the quarter or the section that that refers to, that very top
3 one?

4 A. 26 that would be, Section 26.

5 Q. And then the one that would be as you face it on the
6 left side as you face it, what section does that refer to?

7 Yeah, on the left as you face it, the one on the left.

8 A. Down here, this one?

9 Q. Yeah.

10 A. 34. This is 35, 34.

11 Q. Wait a minute, when you point I'm not looking, it
12 doesn't make much sense. I want to know which one it is on the
13 left on the podium as it's taped there, what section does that
14 refer to?

15 A. Okay, that is 34.

16 Q. And then the one on the right, then, would have to be
17 35, Section 35.

18 A. Yeah, 35.

19 Q. Now, as I understand it, your application covers
20 Section 34; is that right?

21 A. Right, yeah, 34.

22 Q. You already have an irrigation well in that section?

23 A. Yeah, number two would be the one we are using.

24 Q. Now, on the exhibit that I have, approximately right
25 almost in the middle of that section right below the number

1 3260, there's a black dot. Does that reference your existing
2 irrigation well?

3 A. In the center of the quarter of that?

4 Q. No, right in the center of the whole section, there's
5 a black dot right under the --

6 A. Oh, that is the one, yeah, that I'm using.

7 Q. That's a current irrigation well?

8 A. Right, yep.

9 Q. Then your proposed new well location is just to the
10 left of there, isn't it?

11 A. Yeah, to the left and kind of down in the center of
12 that quarter.

13 Q. Okay. And it also indicated in your application that
14 you may want to irrigate north of your proposed well, which
15 would be the northwest quarter of that section; is that right?

16 A. Yeah, that 80 acres in there.

17 Q. You can't irrigate that from your current well?

18 A. Well, that's what -- if we get a well here, we would
19 move it over and use this and then I would put my current well
20 over to that to run the water on that.

21 Q. You made a statement -- the question was whether or
22 not if you thought you would have an adequate well there.
23 Maybe I shouldn't use adequate under these circumstances, that
24 you would have a well that would produce for you. You said
25 that's just what he told us, a real good well. Now, who told

1 you that?

2 A. The guy I bought it from, Meryl Hieb.

3 Q. The former owner.

4 A. The former owner.

5 Q. Do you know what he referenced or what he used as his
6 basis for telling you that?

7 A. Well, he talked about gravel and then he talked about
8 how many gallons a minute it would produce, the test well.

9 Q. Now, I want to draw your attention to Section 26, I
10 think that's the top map.

11 A. Yeah, that's this.

12 Q. It's just a little bit off center to the left there's
13 a circle and a black dot on there. Do you see that about in
14 the middle, just a little bit off center to the left?

15 A. Yeah.

16 Q. Is that a current domestic well of yours?

17 A. Yes.

18 Q. Isn't it true that you did have problems with that
19 well and you had to redrill it recently?

20 A. Well, it was a 20-, 30-foot well, they get down in the
21 water.

22 Q. But isn't it true you had problems, you had to redrill
23 it or re --

24 A. Just put a new one in there, no, it's one that was --
25 a new one that was put down, yep.

1 Q. And was it because it was no longer in the water?

2 A. Well, I guess we got more cattle now days than we used
3 to have and get more cattle in there, you need better wells,
4 and then the use of the pump, like them little cylinders and
5 submersibles and pumping a lot harder.

6 Q. Other than your domestic well you identified and your
7 current irrigation well, do you have any other wells in that
8 area?

9 A. Yeah, there's another one further on over on 26 in the
10 corner. It was the same deal, it was a slow well, somebody
11 complained not enough water, so I put a new well in for him, no
12 problems.

13 Q. And so there was a problem with getting enough water
14 out of an existing well and you had to redo it and put a
15 different pump down?

16 A. Well, went down deeper and got into good water.

17 Q. Now, what do you think changed regarding these two
18 wells that you had to redo? Did the water level change or did
19 the use change? What changed that caused you to have to
20 replace them?

21 A. They would go down there, down into the water, to the
22 shale, which these are all down in the shale and where they
23 should be.

24 Q. Have you already bought your irrigation system you are
25 going to use in this case?

1 A. Not this one here, no, I didn't.

2 Q. You have a new irrigation system out there. What's
3 that going to be used for?

4 A. That's on a different outfit, different system.

5 Q. Different pump?

6 A. Yeah.

7 Q. It's going to be put on this, the pump that you have
8 in the middle of Section 34?

9 A. No, huh-uh.

10 Q. Where is that one going to go?

11 A. It's some other land I bought from Hieb, too, another
12 quarter.

13 Q. You already have the permit for that well, then?

14 A. Yeah. There was a permit on that.

15 Q. How long have you lived in Hosmer?

16 A. Oh, all my life.

17 Q. And how long have you owned land in this area?

18 A. All my life.

19 Q. Do you remember in 1988 when the lake did go dry?

20 A. Yeah, at that time we -- I live about six miles from
21 there, but at that time we didn't irrigate up there yet.

22 Q. Were you up there in '76?

23 A. No, huh-uh.

24 MR. TOBIN: That's all the questions I have, thank
25 you.

1 CHAIRMAN HUTMACHER: Just a minute. Diane, do you
2 have anything?

3 MS. BEST: None, thank you.

4 CHAIRMAN HUTMACHER: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. In Section 26 you talked about the new wells you
8 drilled there. Again, the reason you drilled new wells in
9 those places was what?

10 A. To get more water. Oh, this was done about three
11 years ago we done this one here in 26 and the other one is just
12 about two years ago over further on over in 26.

13 Q. Do you know how old those existing wells were?

14 A. They were quite old. I don't remember them being
15 drilled.

16 Q. And at the time before you drilled new wells -- well,
17 I guess at the time when the wells would have been developed,
18 were they pumped with a high volume submersible?

19 A. No, more windmill and them cylinder, slower pumping.

20 Q. And when you were pumping or trying to water livestock
21 out of that, did you change to a higher volume pump?

22 A. Right, yeah, in fact I guess that's the reason why we
23 drilled it, put submersibles to get the water out faster.

24 MR. BROWN: Nothing further.

25 CHAIRMAN HUTMACHER: Mr. Tobin, anything on the

1 redirect?

2 MR. TOBIN: I don't. Thank you.

3 CHAIRMAN HUTMACHER: Questions of the board. I would
4 have just a couple, if you bear with me a minute.

5 EXAMINATION

6 BY CHAIRMAN HUTMACHER:

7 Q. The wells you said you replaced, do you know the depth
8 on those and the type of casing that was in them? Were they
9 bored wells with concrete casing in them or steel?

10 A. Steel.

11 Q. Small diameter?

12 A. Yeah, real small, two-inch cylinder I guess they had
13 in them, real small.

14 Q. So would you say they were like a three-inch pipe?

15 A. Probably a three. Yeah, I'd say three.

16 Q. Because you couldn't get a submersible into them,
17 right?

18 A. No.

19 Q. And then the irrigation well that you have down below,
20 is that -- how big is that well and what can you tell me about
21 that?

22 A. The one we are using now?

23 Q. Yes, the existing one.

24 A. It's I believe a 16-inch well, the casing.

25 Q. Okay, and is it PVC, steel?

1 A. Yeah, it's PVC.

2 CHAIRMAN HUTMACHER: That's all the questions I have.
3 Anybody else on the board?

4 EXAMINATION

5 BY MR. BJORK:

6 Q. What's the capacity of that well?

7 A. It was eight or 900, I think it's 900. I think 900 is
8 on the paper.

9 CHAIRMAN HUTMACHER: Anyone else? Okay. Thank you,
10 Harlan. John, do you have any more witnesses you would like to
11 call?

12 MR. BROWN: No.

13 CHAIRMAN HUTMACHER: Okay, Mr. Tobin, witnesses you
14 would like to call.

15 MR. TOBIN: We would start with Allen Hieb, please.
16 Thereupon,

17 ALLEN HIEB,
18 called as a witness, being first duly sworn as hereinafter
19 certified, testified as follows:

20 CHAIRMAN HUTMACHER: I think she's got your name, your
21 address.

22 THE WITNESS: Allen Hieb, 11585 340th Avenue, Hosmer,
23 South Dakota.

24 CHAIRMAN HUTMACHER: Thank you. Mr. Tobin.

25 DIRECT EXAMINATION

1 BY MR. TOBIN:

2 Q. Allen, how long have you lived in the area that you
3 just described?

4 A. My whole life.

5 Q. And what is your occupation?

6 A. Farm and ranch.

7 Q. And where do you live in relationship to this proposed
8 well?

9 A. Approximately a mile and a half to two miles.

10 Q. Which direction?

11 A. To the north.

12 Q. And who lives there with you at that location?

13 A. My mother does, Delores.

14 Q. Is she also involved in farming and ranching?

15 A. Yes.

16 Q. What type of operation do you have as far as the
17 cattle goes?

18 A. Mainly cow/calf pairs and feeder cattle.

19 Q. Do you do any irrigation?

20 A. No.

21 Q. What do you rely upon for your water source for your
22 domestic use and for your livestock use?

23 A. Wells.

24 Q. And are they located on land that you own?

25 A. Yes.

1 Q. And what type of wells do you have?

2 A. They are drilled wells, they are about four- to five-
3 inch diameter casings, plastic casing.

4 Q. And not just at your home place, do you also have
5 wells out in -- do you have any wells in pastures where you run
6 your cattle?

7 A. Yes, I do.

8 Q. And are they similar to the same type of wells you
9 described?

10 A. Yes.

11 Q. What would be the largest number of cattle that you
12 might have out on pasture at any given time?

13 A. We have had up to 1,000 head a year on the premises.

14 Q. That would include your feeder cattle, then, too?

15 A. Yes.

16 Q. Do you have any other water source other than the
17 wells that you described?

18 A. No, we do not, sir.

19 Q. Did the lake that Mr. Aman referred to, did that ever
20 go dry at any time, to your knowledge?

21 A. Yes, it did, in '88 it was bone dry, and in '76 it was
22 just a small amount of water left in it.

23 Q. Have you ever had any problem with your wells if there
24 is any irrigation pumps running?

25 A. Yes, we have.

1 Q. And how long have you had this particular problem?

2 A. It started in 2006.

3 Q. And what changed in 2006 do you think that caused the
4 problem?

5 A. Part of it was the major drought and the drop of the
6 water table.

7 Q. And what did you notice as how it affected your wells?

8 A. One of our wells went dry and the other wells are
9 basically dropping 25 to 30 feet while they are irrigating.

10 Q. Okay, how do you know that?

11 A. I've measured them.

12 Q. So while the irrigation pumps are running, do you
13 actually measure the drop in the well?

14 A. Yes.

15 Q. You think it went down 25 to 30 feet?

16 A. Yes.

17 Q. Which irrigation pump was running when you measured
18 it?

19 A. All of them were, all the irrigation pumps in the
20 neighborhood.

21 Q. How many irrigation pumps are in the neighborhood?

22 A. Kirschenmann has irrigation systems over there and so
23 do the Amans.

24 Q. I think the study indicated that there were three
25 existing irrigation pumps.

1 A. Yes.

2 Q. And so if this permit were to be granted, it would be
3 the fourth one in the area of which you own land?

4 A. Correct.

5 Q. And while the irrigation wells are running, you
6 measured your well. How did you know what the reference point
7 was? How did you know what the drop was?

8 A. When we had drilled the new well in 2006 because we
9 were running low on water, we knew what the reference point was
10 and then last year we measured them again at the start of the
11 season and at the end of the season, end of the irrigation
12 season.

13 Q. Are your wells in the Hillsvew aquifer?

14 A. Yes, they are.

15 Q. How far down do your wells go?

16 A. Some of them go down to 140 feet.

17 Q. And where was the well or wells that you measured to
18 determine your drop?

19 A. That was in Section 23, that would be in the --

20 Q. This would be about a mile and a half from the
21 proposed well?

22 A. Approximately, yes.

23 Q. Did you request some material from the department
24 regarding well drilling and that type of thing?

25 A. Yes, I did request some well logs, yes.

1 Q. And so if we have any well logs here, you would have
2 received them from the department?

3 A. Yes.

4 Q. And have you examined those well logs?

5 A. Yes, I have.

6 Q. And from your examination of the well logs, what does
7 it say to you as far as what does it reveal to you?

8 A. Some of these wells do not have enough water supplies
9 available if irrigation systems are being in operation.

10 Q. How do you know that?

11 A. Well, for one, personal experience, and two, from
12 watching the way the geographics are and what type of soils
13 there are in the wells.

14 Q. So the type of soils that there are in the wells
15 affect the drop in the water levels?

16 A. Yes, they affect the permeability of the water and
17 also the capacity of like the sands and the rocks and what have
18 you.

19 Q. As far as your one well you did redrill, did you
20 redrill it or did you just have to lower it?

21 A. No, we had made a new one just to help supply the rest
22 of the wells in the area because they were starting to also go
23 down.

24 Q. And the most current well you drilled, how deep did
25 you drill that well?

1 A. That one was 140 feet.

2 Q. And how much further down was that well compared to
3 your other existing wells?

4 A. It was in approximately the same depth.

5 Q. If your existing well is 140 feet and wasn't producing
6 any water, why would the well, the one you drilled produce
7 water at the same level?

8 A. The well that had gone dry was a 30-foot well, we had
9 drilled an additional 140-foot well.

10 Q. Do you believe that the granting of this permit would
11 adversely affect your domestic water use, being that for you
12 and your cattle?

13 A. Yes, I do.

14 Q. Is there anything else that you wish to say regarding
15 the granting of this permit that you believe the board should
16 hear?

17 A. Not at this time.

18 Q. I'm going to show you the well permits that you have
19 given to me. They have been marked as exhibits and as soon as
20 I get them separated here, I'm going to show you Exhibits 1
21 through 8 and ask that you look at those, Allen, and to see if
22 those are well permits that you have examined in preparation
23 for your testimony today.

24 A. Yes, these are.

25 Q. Have you had an opportunity to look at those well

1 permits, Allen?

2 A. Yes.

3 Q. Are those the ones that you reviewed for your
4 testimony today?

5 A. Yes, I have.

6 MR. TOBIN: We would offer Exhibits 1 through 8.

7 CHAIRMAN HUTMACHER: Do you have any objections,
8 Diane?

9 MS. BEST: The DENR would have no objection to
10 admission of these exhibits but would note for the record that
11 they are well completion reports and not permits in the sense
12 that there is no permit having been requested from the state
13 for issuance or for water withdrawal here.

14 CHAIRMAN HUTMACHER: Mr. Brown, do you have any
15 objections?

16 MR. BROWN: I don't believe so, with that
17 qualification that Ms. Best just gave.

18 CHAIRMAN HUTMACHER: With that, we will accept
19 Exhibits 1 through 8.

20 EXHIBITS:

21 (Intervenor Exhibit Nos. 1 through 8 received into
22 evidence.)

23 Q. (BY MR. TOBIN) Allen, I'm going to also show you
24 Exhibit No. 9. It consists of two pages and there's eight
25 pictures. Can you say what that exhibit refers to?

1 A. This would basically be a picture of one of the test
2 wells for where these irrigations are getting tested from and
3 also in correlation to a lake that is in very close proximity
4 to these wells.

5 Q. And what point are you trying to make if I indicate
6 that the test wells that were referred to in the report are
7 close to this lake, what point are you trying to make?

8 A. My point is very simple, that there's going to be
9 seepage that's going to be going down into these wells that's
10 going to basically alter what the readings are for these test
11 wells.

12 Q. I'm going to show you what's been marked as Exhibit
13 No. 10. Can you indicate what that picture represents?

14 A. That is a picture of the test well.

15 Q. And again you are trying to show the proximity to the
16 lake?

17 A. Correct.

18 Q. Now, Allen, I'm going to show you what's been marked
19 as Exhibits 12 through 18. Can you review those exhibits and
20 indicate what they are?

21 MS. BEST: Can we just take a break and go off the
22 record and the parties can talk about the numbering on these
23 exhibits? Would that be acceptable?

24 CHAIRMAN HUTMACHER: We can be at ease for a little
25 bit.

1 (Whereupon, the hearing was in recess at 2:30 p.m.,
2 and subsequently reconvened at 2:45 p.m., and the following
3 proceedings were had and entered of record:)

4 EXHIBITS:

5 (Intervenor Exhibit No. 19 marked for identification.)

6 MS. BEST: DENR would stipulate -- I think one through
7 eight are already in.

8 CHAIRMAN HUTMACHER: Yes.

9 MS. BEST: Nine and 10 are in?

10 CHAIRMAN HUTMACHER: No.

11 MS. BEST: We would stipulate 9 through 19.

12 MR. HALLEM: That's 9, 10 and 12 through 18, Exhibit
13 11 is not?

14 MR. TOBIN: We are not going to offer Exhibit 11.

15 MR. FREEMAN: 18 or 19?

16 MR. TOBIN: They are going to stipulate to 19, but we
17 haven't had the witness identify it yet.

18 CHAIRMAN HUTMACHER: Mr. Brown, do you have any
19 objections?

20 MR. BROWN: We will stipulate as to foundation. I
21 object only to the extent that we have not had an opportunity
22 to see these exhibits prior to this and just simply haven't had
23 an opportunity to review them for purposes of examination, but
24 we have no objection to foundation.

25 CHAIRMAN HUTMACHER: With that, we will accept

1 Exhibits 9, 10 and 12 through 19.

2 EXHIBITS:

3 (Intervenor Exhibit Nos. 9, 10 and 12 through 19
4 received into evidence.)

5 Q. (BY MR. TOBIN) Allen, I'm going to show you what's
6 been marked as Exhibit 19. Whose name is on the top of 19?

7 A. Delores Hieb.

8 Q. And what can you tell me about the well that's
9 referenced on Exhibit 19?

10 A. That well was originally drilled down to 100 foot and
11 the well driller decided to back it up to 30 feet because in
12 his findings there was more than adequate supplies of water at
13 that and it was basically useless to drop the pump down that
14 far when you didn't need to.

15 Q. And what happened after the well was completed?

16 A. We were able to pump it until about August of 2006 the
17 well went dry.

18 MR. TOBIN: We would offer Exhibit 19 at this time
19 also.

20 MR. HALLEM: It's already been admitted.

21 CHAIRMAN HUTMACHER: Do you have additional copies of
22 those, of that one?

23 MR. BJORK: Is that what this is right up here?

24 MR. TOBIN: No, that's not it. We'll make copies. We
25 only have one copy, I guess.

1 Q. (BY MR. TOBIN) Allen, is there anything else you want
2 to say in reference to this application?

3 A. No.

4 MR. TOBIN: That's all the questions I have.

5 CHAIRMAN HUTMACHER: John, do you have any cross for
6 this witness?

7 CROSS-EXAMINATION

8 BY MR. BROWN:

9 Q. With respect to Exhibit 19, this shows the well pump
10 was located at 30 feet; is that correct?

11 A. That is correct.

12 Q. And you said this is the well that went dry?

13 A. Yes.

14 Q. This well was located essentially in your farmyard; is
15 that correct?

16 A. No, it's out in the pasture.

17 Q. And were you piping that particular well anywhere?

18 A. No.

19 Q. So the flow was directly into a stock tank at that
20 location?

21 A. Into a stock tank, correct.

22 Q. This well was drilled when?

23 A. This was drilled in 2002.

24 Q. And it was your determination to set the level at 30
25 feet?

1 A. That's where the well driller set it. That well was
2 originally drilled down to 100 foot and he backfilled it up to
3 approximately that 30-foot level.

4 Q. This is the only well you have had go dry?

5 A. Yes.

6 MR. BROWN: Nothing further.

7 CHAIRMAN HUTMACHER: Diane, do you have any questions
8 of this witness?

9 MR. BROWN: Can I back up?

10 CHAIRMAN HUTMACHER: I guess we can let you do that.

11 MR. BROWN: I was asking on the one exhibit, but I
12 have some other questions here. Sorry.

13 Q. (BY MR. BROWN) Mr. Hieb, you have drilled -- since
14 this particular well was drilled, you have drilled two
15 additional wells in 2006; is that correct?

16 A. Correct.

17 Q. One of them approximately a mile and a half west of
18 this location, where your barn location is at least.

19 A. Yes.

20 Q. That's a good producing well, isn't it?

21 A. Yes, it is.

22 Q. And that's at a level of about 140 feet?

23 A. Correct.

24 Q. And you have also drilled a well half a mile east of
25 your farmyard location; is that correct?

1 A. Correct.

2 Q. And that's also at 140 feet?

3 A. Yes.

4 Q. That's a good, high-producing well; is that correct?

5 A. Yes, it is.

6 Q. And you have trenched that well to the east into your
7 feedlot or your farmyard; is that correct?

8 A. Correct.

9 Q. Have you trenched it elsewhere for your locations?

10 A. No.

11 Q. What about the well to the west, is that also trenched
12 into --

13 A. No, that is just in the pasture, that's it.

14 MR. BROWN: Nothing further.

15 CHAIRMAN HUTMACHER: Diane, do you have questions of
16 this witness?

17 MS. BEST: Yes, I do, thank you.

18 CROSS-EXAMINATION

19 BY MS. BEST:

20 Q. I think there was testimony about -- you testified at
21 the beginning of your testimony about being one and one-half to
22 two miles north. Are the wells that you are talking about here
23 all one and a half to two miles north of the proposed well in
24 this case?

25 A. Approximately, yes.

1 Q. You heard the testimony of Mr. Goodman indicating that
2 the state's monitoring well, one of the state's monitoring
3 wells was north of the site of the proposed application here;
4 did you hear that testimony?

5 A. Yes, I did.

6 Q. And his testimony was one and a half miles. So where
7 is the state's monitoring well from these wells you are talking
8 about?

9 A. The state's monitoring well is to the south and just
10 basically to the east. One of the wells is basically to the
11 east of this proposed well site, it's in the northeast.

12 Q. Okay, so your wells are straight north?

13 A. One of them is straight north and some of them are
14 slightly to the northeast.

15 Q. But yours are still a mile and a half and the state's
16 are a mile and a half?

17 A. Yes. Not exactly. Our wells are in Section 22 and in
18 Section 23. These would be down in Section 34 and five.

19 Q. Okay, and then the proposed location here -- the
20 proposed location here is Section 34, so your well -- so you
21 are the next township up.

22 A. No, we are in the same township.

23 Q. If I could take a minute and look at a township map, I
24 think I'm a little confused about how far away these wells are.
25 You have identified several well completion reports.

1 A. Correct.

2 Q. Of these water well completion reports, which one of
3 these wells is closest to the proposed water use here?

4 A. That would be the one that went dry in Section 22.

5 Q. And that's the 30-foot --

6 A. Yes.

7 Q. -- well?

8 A. Yes, the one that was backfilled to 30 foot.

9 Q. It went dry in 2006?

10 A. Correct.

11 Q. You probably remember, what was the annual
12 reprecipitation in McPherson County in '06?

13 A. Very little.

14 Q. Less than 10 inches, was it?

15 A. Correct.

16 Q. And the next closest well to that 30-foot well.

17 A. Would be at the farm, the main farm, in Section 33.

18 Q. That's a 140-foot well?

19 A. Yes.

20 Q. You have testified that the 140-foot well has gone
21 down 25 to 30 feet.

22 A. Correct.

23 Q. You attributed that to the existing irrigation
24 already --

25 A. Yes.

1 Q. -- of this applicant?

2 A. That's correct.

3 Q. Then for that 140-foot well, where is the pump placed
4 at in the well?

5 A. The level I believe is down at around 75, 80 foot
6 because the water level came up to 37 foot.

7 Q. I just need to look a second at which well log that
8 involves. There are several different well logs in evidence
9 here.

10 A. That well would be listed under Delores Hieb, that
11 well.

12 Q. Thank you, that will be helpful. When the well was
13 drilled, do you have a copy of that exhibit in front of you?

14 A. No, I do not.

15 Q. Looking at that log, does that tell you how many feet
16 of water was in the well when it was drilled?

17 A. It will give you a general idea because of the static
18 water level is at 14 feet.

19 Q. How many feet of water was in the well when it was
20 drilled?

21 A. Well, it would be 16 foot.

22 MS. BEST: I have no further questions, thank you.

23 CHAIRMAN HUTMACHER: Do you have any redirect, Mr.
24 Tobin?

25 MR. TOBIN: I do not.

1 CHAIRMAN HUTMACHER: Does the board have any
2 questions?

3 MR. BJORK: I need a clarification and I don't know
4 that this witness is the proper one to ask the question of.
5 Can I ask it of staff?

6 CHAIRMAN HUTMACHER: I think you probably can.

7 MR. BJORK: Mr. Goodman, does a 30-foot well into this
8 aquifer constitute an adequate well?

9 MR. GOODMAN: Yes, it could.

10 MR. BJORK: As a surficial aquifer?

11 MR. GOODMAN: Sure, it could, yes.

12 CHAIRMAN HUTMACHER: I would have just a couple
13 questions, if I could.

14 EXAMINATION

15 BY CHAIRMAN HUTMACHER:

16 Q. The new well that you said was put in was at 140 feet,
17 I'm not sure which one of these the well log is. It replaced
18 an old 30 footer.

19 A. No. That's not -- that 30 foot was a separate well.
20 That new well was just in addition to the other existing wells
21 we have.

22 Q. Okay. You said you measured water levels in those.
23 Did you do that when your pump was running or had been off?

24 | A. The pumps were off when I was measuring it.

25 Q. And had they been off a long time?

1 A. They were off usually -- they were off overnight and I
2 measured them in the morning.

3 Q. Did you do that on a daily basis, then?

4 A. No. I did it on a monthly basis.

5 Q. Okay, and did your measurement change? In other
6 words, could you tell without even looking if the pivot was
7 running? Could you tell by your water level in your well if
8 that irrigation system was on or off?

9 A. Yes, I could. If the pivot was on, the water level
10 had dropped anywhere from five to 10 feet after a couple of
11 days pumping, of the pivots pumping.

12 Q. And then that was without your pump being on at all
13 you could tell that difference?

14 A. Correct.

15 CHAIRMAN HUTMACHER: I don't have any further
16 questions. Next witness, Mr. Tobin.

17 MR. TOBIN: We will call Delores Hieb.

18 MR. HALLEM: Mr. Tobin, I know that we had Exhibits 12
19 through 19 admitted. I know you only had one copy of 19. How
20 about 12 through 18, were there additional copies?

21 MR. TOBIN: They are there. I tried to mark the front
22 one of each one as what exhibit it was.

23 MR. HALLEM: Thank you.

24 Thereupon,

25 DELORES HIEB,

1 called as a witness, being first duly sworn as hereinafter
2 certified, testified as follows:

3 CHAIRMAN HUTMACHER: If you would state your name and
4 address for the court reporter.

5 THE WITNESS: I'm Delores Hieb, 11574 340th Avenue,
6 Hosmer, South Dakota.

7 DIRECT EXAMINATION

8 BY MR. TOBIN:

9 Q. Delores, were you present when your son Allen
10 testified?

11 A. Yes.

12 Q. And he indicated that you and he live at the same farm
13 and ranch location at the same residence; is that correct?

14 A. Yes.

15 Q. And you evidently farm and ranch together.

16 A. Yes.

17 Q. Were you able to hear the questions and answers that
18 we proposed to Allen?

19 A. Yes.

20 Q. And is there anything that you feel that he was wrong
21 about or that you would like to change?

22 A. No.

23 Q. Is there anything that you would like to add to his
24 testimony?

25 A. Not that I know of.

1 Q. You have intervened in this case and you do oppose the
2 application.

3 A. Yes.

4 MR. TOBIN: That's all the questions I have.

5 CHAIRMAN HUTMACHER: Just a minute, Delores. Mr.
6 Brown, do you have any cross?

7 MR. BROWN: No.

8 CHAIRMAN HUTMACHER: Diane, do you have any cross for
9 this witness?

10 MS. BEST: I have none, thank you.

11 CHAIRMAN HUTMACHER: Does the board have any
12 questions? If not, thank you, Delores. Next witness.

13 MR. TOBIN: We would call Dale Mohr to the stand,
14 please.

15 Thereupon,

16 DALE MOHR,
17 called as a witness, being first duly sworn as hereinafter
18 certified, testified as follows:

19 CHAIRMAN HUTMACHER: State your name and address for
20 the court reporter.

21 THE WITNESS: Dale Mohr, 11505 341st Avenue, Hosmer,
22 South Dakota.

23 DIRECT EXAMINATION

24 BY MR. TOBIN:

25 Q. Raymond -- I mean, excuse me, Dale, you live in the

1 same area?

2 A. Uh-huh.

3 Q. You have to say yes or no for the court reporter.

4 A. Yes.

5 Q. And what is your occupation?

6 A. Rancher.

7 Q. And how far away do you live from Allen Hieb?

8 A. One mile.

9 Q. Which direction?

10 A. East.

11 Q. And how long have you lived in that area?

12 A. All my life.

13 Q. And how long have you been a rancher in that area?

14 A. Thirty years.

15 Q. As far as the water supply for your domestic use and
16 your livestock, what type of water supply do you utilize?

17 A. Wells.

18 Q. Do you have any other water source other than wells?

19 A. No.

20 Q. And how many wells do you have that support your
21 livestock in your domestic use?

22 A. Three.

23 Q. And are they all located within a mile of where you
24 live?

25 A. Yes.

1 Q. And how many head of livestock would depend upon your
2 water supply at any given time?

3 A. The most we could have is 80 head.

4 Q. Who lives there with you at your place of residence?

5 A. My mother and my wife.

6 Q. Have you had any experience in drilling wells in this
7 area?

8 A. Yes.

9 Q. And can you outline that experience?

10 A. We have very fine sand and if there's any fluctuation
11 in the wells, the sand will move, and as he had said, you can
12 go down in water, it's impossible because the sand will close
13 up, then you must drill new wells.

14 Q. What do you mean by going down to the water is not
15 possible?

16 A. Like he had said before --

17 Q. When you say he, who are you referring to?

18 A. The DENR representative.

19 Q. The gentleman that testified on behalf of the
20 department, that would be James Goodman?

21 A. Uh-huh. He said you can go down. That doesn't work
22 with this. I brought a sample of the sand that we have to
23 contend with.

24 EXHIBITS:

25 (Intervenor Exhibit No. 20 marked for identification.)

1 Q. (BY MR. TOBIN) I'll show you what's been marked as
2 Exhibit 20. Can you identify what Exhibit 20 is, please?

3 A. This is sand from the well that we had to renovate.
4 This was a bored well and it was able to pump, like Mr. Goodman
5 had said, at three gallons a minute and that's how fast the
6 water came through this sand and after a while it just didn't
7 work so we had to renovate that well and with the screen that
8 we used, sixteen thousandths of an inch, this will go through,
9 so if there's any fluctuation in the water level, we have no
10 wells and we have to go out and drill again and again.

11 MR. TOBIN: We would offer Exhibit No. 20.

12 CHAIRMAN HUTMACHER: Any objections from the
13 department, Diane?

14 MS. BEST: None.

15 MR. BROWN: I'll object as to foundation. It's not
16 established that we are in the same aquifer. It's not
17 established that it's of similar quality to the existing well
18 locations.

19 CHAIRMAN HUTMACHER: We are going to accept the
20 evidence in with your objection. We are going to accept it.

21 EXHIBITS:

22 (Intervenor Exhibit No. 20 received into evidence.)

23 Q. (BY MR. TOBIN) Do all of your wells go into the
24 Hillsvview aquifer?

25 A. Yes.

1 Q. And if you have been there 30 years, how many times
2 have you drilled a well in that area?

3 A. Three times.

4 Q. And how far away would the proposed irrigation well be
5 from your place?

6 A. About two miles, maybe a little more than two miles.

7 Q. Other than Exhibit 20, which is the jar of sand that
8 you brought, when you have drilled your wells, is that the type
9 of sand that you have encountered?

10 A. Always. It never changes. That's what we have to
11 live with, whether we like it or not. That's all part of the
12 same aquifer.

13 Q. Are you familiar with the land of Amans that have made
14 the application here?

15 A. Uh-huh.

16 Q. You have to say yes or no.

17 A. Yes.

18 Q. And do you know what type of land that they have?

19 A. Yes.

20 Q. What type of land do they have?

21 A. What do you mean by that question, as far as soil
22 type?

23 Q. Yeah.

24 A. It's very light soil. It must be irrigated for
25 something to grow. My grandfather had walked that land before

1 irrigation and nothing would grow on that. You absolutely have
2 to irrigate it.

3 MR. TOBIN: That's all the questions I have.

4 CHAIRMAN HUTMACHER: Just a minute. Do you have any
5 questions, Diane, of this witness?

6 MS. BEST: Yes, I do.

7 CROSS-EXAMINATION

8 BY MS. BEST:

9 Q. I just think a few. I'm showing you what's been
10 marked as DENR 3. Are you familiar with that document?

11 A. Uh-huh.

12 Q. Can you tell the board what it is?

13 A. This is a map of Kassel township and this is where we
14 live.

15 Q. Sir, could you put your initials where you live. And
16 that's in section twenty --

17 A. 23.

18 Q. -- three, the northeast 40 of 23; is that right?

19 A. Uh-huh.

20 Q. Is that where the wells are you were just talking
21 about?

22 A. Uh-huh.

23 MR. FREEMAN: You have to say yes.

24 A. Yes. Sorry.

25 MS. BEST: I would ask that DENR 3 be admitted into

1 evidence.

2 CHAIRMAN HUTMACHER: Mr. Brown, do you have any
3 objections?

4 MR. BROWN: No objection.

5 MR. TOBIN: I have no objection.

6 CHAIRMAN HUTMACHER: We will accept DENR 3.

7 EXHIBITS:

8 (DENR Exhibit No. 3 received into evidence.)

9 MR. FREEMAN: Could I see three? Bernita, could you
10 pass three down?

11 CHAIRMAN HUTMACHER: I think you are still on cross.

12 MS. BEST: I'm done.

13 CHAIRMAN HUTMACHER: Mr. Brown, do you have any
14 questions for this witness?

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q. You said you have drilled three wells.

18 A. Uh-huh.

19 Q. What depths are those wells?

20 A. Pardon?

21 Q. What depths are those wells?

22 A. 140 feet.

23 Q. All of them are?

24 A. (Witness indicating.)

25 Q. The one you referenced with respect to the exhibit

1 with the sand, where is that well located from your residence?

2 A. About 75 feet from my house.

3 Q. So it would be in the northwest quarter of Section 24?

4 A. Northeast.

5 Q. Are you in Section 24?

6 A. 23, I believe.

7 Q. Oh, you are in 23, okay.

8 MR. TOBIN: That number ten on that map is his
9 residence.

10 Q. (BY MR. BROWN) You said then you have two other wells
11 located -- where are those in relation to your residence
12 approximately?

13 A. One is about 100 feet northeast and the other one is
14 about 600 feet straight east.

15 Q. Have you experienced any difficulties with those wells
16 recently?

17 A. The new ones that we drilled, no, not yet.

18 Q. You haven't experienced any difficulty with the one at
19 your residence either; is that right?

20 A. We had to drill a new one because that one had gone
21 dry, too.

22 Q. Okay, but --

23 A. It was like the old ones, we had to dig a new well for
24 the house.

25 Q. Okay, and the new well you just talked about is 140

1 feet. What was the old well?

2 A. 45.

3 MR. BROWN: Nothing further.

4 CHAIRMAN HUTMACHER: Any questions of the board?

5 MR. BRINK: I would have one.

6 EXAMINATION

7 BY MR. BRINK:

8 Q. Regarding your Exhibit 20, how long after the well --
9 is this still passing sand after how long?

10 A. It never stops.

11 Q. When was the well drilled?

12 A. 2004.

13 Q. How --

14 A. You mean for this well where this sand came from?

15 Q. Yes.

16 A. 1948.

17 Q. How has it developed?

18 A. That was a bored well.

19 Q. You said you had sixteen thousandths --

20 A. Sixteen thousandths of an inch slot and that goes
21 through that.

22 MR. BRINK: I'm going to ask Mr. Goodman a question
23 later on, the terminology of developing a well, so maybe I can
24 arrive at what I need to know, which is beyond your scope.

25 Thank you.

1 CHAIRMAN HUTMACHER: I have just a couple of them.

2 EXAMINATION

3 BY CHAIRMAN HUTMACHER:

4 Q. The way I understand the Exhibit 20, that sand come
5 from an old bored well.

6 A. Uh-huh, we had to renovate that.

7 Q. Okay, that didn't come from your new 2004 well?

8 A. No, but I can go home and get you some sand from that.
9 They are the same water vein.

10 Q. Those pump sand as the water fluctuates up and down?

11 MR. HALLEM: You have to answer yes or no.

12 A. Yes.

13 Q. (BY CHAIRMAN HUTMACHER) And were you there when they
14 drilled those wells?

15 A. That one in 1948, no. The other ones, yes.

16 Q. The new ones.

17 A. Yes, those I had to do.

18 Q. Then was there any -- when you put the slotted plastic
19 pipe in there and they set the casing down, did they put some
20 gravel pack or sand pack around it?

21 A. Yes.

22 CHAIRMAN HUTMACHER: Okay, no further questions for
23 me.

24 MR. TOBIN: I have nothing further.

25 CHAIRMAN HUTMACHER: Thank you. Further witnesses.

1 MR. TOBIN: We would call Raymond Graff, please.
2 Thereupon,

3 RAYMOND GRAFF,
4 called as a witness, being first duly sworn as hereinafter
5 certified, testified as follows:

6 CHAIRMAN HUTMACHER: Please state your name and
7 address for the court reporter.

8 THE WITNESS: Raymond Graff, 1701 Third Avenue
9 Southeast, Aberdeen.

10 CHAIRMAN HUTMACHER: Mr. Tobin, your questions.

11 DIRECT EXAMINATION

12 BY MR. TOBIN:

13 Q. Raymond, you indicated you live in Aberdeen. Do you
14 own land in Kassel township?

15 A. Yes.

16 Q. And how long have you owned land there?

17 A. Well, since I inherited, dad owned that all his life.

18 Q. You grew up there?

19 A. Right.

20 Q. And then after -- maybe you and your dad worked
21 together, but then after he died, then you took over the land?

22 A. Right.

23 Q. Okay, and what is your water source for the land that
24 you own out in that area?

25 A. Drilled wells.

1 Q. Do you have any other water source other than drilled
2 wells?

3 A. No.

4 Q. And how far is your land from the proposed well to be
5 drilled?

6 A. Something like a mile, mile and a quarter.

7 Q. And what have you noticed over the years regarding the
8 performance of the wells that you have?

9 A. Well, I really haven't bothered too much, I mean, the
10 last few years there weren't all that many cattle in there.

11 Q. You haven't measured your wells or anything like that?

12 A. No.

13 Q. How deep are your wells, do you know?

14 A. 40, 45.

15 Q. 45 foot deep. How many wells do you have on your
16 property?

17 A. On mine it's just one now, but the other 80 that dad
18 owned, that's the same depth.

19 Q. So you are familiar with two wells that are both at 45
20 foot deep?

21 A. Right.

22 Q. And do you oppose this application also?

23 A. Yes.

24 MR. TOBIN: That's all the questions we have.

25 CHAIRMAN HUTMACHER: Diane, any cross exam?

CROSS-EXAMINATION

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BY MS. BEST:

Q. Mr. Graff, there have been a number of well completion reports that have been put into evidence in this matter. Are any of those wells that you just testified to identified in these well completion reports? Your name isn't on any of them. I'm trying to tie up. The property that you are talking about -- let me just show you these well completion reports. It's not this one. It's not identified in Exhibit 1, is it?

A. No.

Q. Is it on Exhibit 2?

A. No.

Q. Is it on Exhibit 4, which refers to Section 24, 126-71?

A. No.

Q. Is it on Exhibit 5, which refers to the Otto Hieb property?

A. No.

Q. Is it on Exhibit 6, which refers to 22 --

A. No.

Q. Is it on Exhibit 7, which refers to Rudy Aman?

A. No.

Q. Or is it on the one that has Dallas Anderson's name on it, Exhibit 8?

A. No.

1 Q. And the wells that you are talking about were drilled
2 when do you think, those 45-foot wells?

3 A. One of them was drilled way back I'd say maybe in
4 1918, but the other one, it was in later thirties.

5 Q. Okay. That explains why we wouldn't have the well
6 completion reports.

7 A. They don't have any cattle in there right now, so when
8 we were still farming, that means the irrigation systems
9 weren't going at that time. Well, one of them, the
10 Kirschenmanns, but other than that, there was no irrigation so
11 we didn't have no trouble.

12 Q. Could you do this for me. DENR 3, the one that's in
13 evidence, are the wells that you are talking about, these 45-
14 foot wells, are they in Kassel township?

15 A. Right.

16 Q. Okay, could you just write your initial on where they
17 are at so the board has a good reference for that? I gave it
18 to you upside down, I'm sorry.

19 A. This here, I mean, I'm familiar with it, but that
20 belongs to my brother now. I initialed that, too. That's that
21 one here.

22 Q. Okay, the one you just initialed that you were talking
23 about that has the relationship with your brother, that's in
24 Section 21, isn't it?

25 A. No. I'm not familiar with that sections part. This

1 is in 27, though, and I think this -- yeah -- according to this
2 map here, yeah, that would be 21. Like I said, I am not that
3 familiar with sections.

4 Q. I ask the record to reflect Mr. Graff just initialed
5 the section he was referring to with respect to the
6 relationship with his brother is in Section 21. It would be
7 the southwest of 21 and the one he's talking about in 27 is the
8 southwest of 27.

9 MS. BEST: I have no further questions.

10 CROSS-EXAMINATION

11 BY MR. BROWN:

12 Q. Mr. Graff, I believe I heard you say that you only
13 have one well now that you are using.

14 A. Right, just the one on the 160 acres.

15 Q. And you indicated that you have not experienced any
16 problem with that well; is that right?

17 A. Right.

18 MR. BROWN: Nothing further.

19 CHAIRMAN HUTMACHER: Any questions from the board?
20 Thank you very much. Mr. Tobin, further witnesses.

21 MR. TOBIN: I have no other witnesses, Mr. Chairman.

22 CHAIRMAN HUTMACHER: Okay, we will do closing
23 argument. Okay, we can do that, do you have any rebuttal?

24 MS. BEST: The DENR would recall Jim Goodman.

25 Thereupon,

1 JIM GOODMAN,
2 called as a witness, having been previously duly sworn as
3 hereinafter certified, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BEST:

6 Q. Before we get started here, I want to make sure that
7 we have it all identified where the place of the project is, so
8 to speak. The present --

9 MR. GRAFF: I own this, but it hasn't got no well on
10 there.

11 CHAIRMAN HUTMACHER: Raymond, you can't talk now
12 because the court reporter can't get it when everyone is trying
13 to talk, she has trouble with that. Sorry.

14 Q. (BY MS. BEST) Jim, could you just initial or why
15 don't you circle the place of the application that's been heard
16 here today. That is in Section 34, correct?

17 A. It's mostly in the west half of Section 34.

18 Q. I will just provide this to the board. The idea here
19 is just to illustrate where these various locations are. Jim,
20 after hearing the testimony here today from the intervenors
21 concerning these various other wells in the area, does your
22 analysis change regarding whether the proposed use should be
23 granted in this matter?

24 A. No.

25 Q. Would the water -- would the water permit, if it was

1 granted, cause impairment of the domestic wells at issue here?

2 A. I don't think so.

3 Q. And if you could, please explain a little bit further
4 as to the intervenors are suggesting that there would be an
5 impairment and you have reviewed that and determined that you
6 do not believe there would be. Can you explain why?

7 A. I will try. Here is the basis of what I'm thinking.
8 The two monitor wells that we have in the adjacent area, MP-80H
9 is actually located in the northwest corner of Section 33.
10 Wait a minute, MP-80G is located in the northwest of 33 and
11 MP-80H is located in the southeast of the southeast of the
12 southeast of the northeast of 34. Now, those two particular
13 monitor wells are actually quite close to this site. MP-80G we
14 encountered sand and gravel from zero to 44 feet. MP-80G has
15 historical water level readings that vary from about 23 feet to
16 about 15 feet. On MP-80H, we encountered sand and gravel from
17 zero to 50 feet below land surface and then hit clay. The
18 water levels for MP-80H vary between 14 feet -- or 16 feet and
19 about eight feet from the highest to the lowest, probably about
20 seven and a half.

21 Now, you can see by the record, the water level record
22 that you can anticipate from drought just in the short,
23 relatively short time period that we have here dealing from
24 1980 to the present, I mean, that's 30 years, close to it, but
25 that's still relatively short, you can see that we have had

1 almost eight feet in probably -- probably close to eight feet
2 of fluctuation. So the question becomes in my mind, and it
3 probably relates to some other things, that when you are out
4 there and you drill a well that's only 25 feet deep and it's 20
5 feet to water and you have only got five feet of water, is that
6 going to be a dependable source in a drought? Probably not.

7 Is it being affected by these irrigation wells? It sure
8 doesn't appear to be, at least from the record that I've got.

9 I think that the testimony completely bears out
10 everything that's being said here. Most of the wells that have
11 been replaced were 25 to 45 feet deep. They were replaced
12 during dry years or drought years. They were replaced for a
13 variety of reasons, most of them being the well went dry or was
14 incapable of producing enough water for whatever use they
15 wanted at that time. But I don't think there's any relation to
16 the irrigation withdrawals whatsoever, the existing ones. That
17 combined with the fact that the monitor wells are very close or
18 at least as close or in many cases even closer than these
19 domestic wells, and I do not see that fluctuation in those
20 water levels that I could attribute to pumping on them.

21 So it gets back to that goofy phrase I used earlier
22 about serendipity. You know, when the well goes dry, I mean,
23 we look for something, we look for an excuse, and is that
24 irrigation the excuse? That irrigation has been going on some
25 of it since the mid seventies. Why did it pick 2006? Why

1 wasn't it 1982, why wasn't it some other year when it was dry
2 like '88 or '89? I guess I don't understand. I've been doing
3 this for thirty some years and this is the same kind of
4 question, it's a very difficult question, and it cannot be
5 answered.

6 I do not know what those domestic wells -- how they
7 are built. Unless I have the well log, I don't know the
8 history on them, and even if I did, I don't think it would
9 matter because I think I know enough about the irrigation
10 within this area based on the monitor wells and the historical
11 record we have got that I do not think we are seeing that kind
12 of fluctuation here. And that's about as simple as I can get.

13 I'm not saying I don't believe them, I believe what
14 they are saying. I'm not saying -- I'm not calling them a liar
15 or anything else. I'm just saying that my interpretation of
16 what they are saying and the information that I have here would
17 lead me to this opinion.

18 MS. BEST: I have no further questions.

19 CHAIRMAN HUTMACHER: Redirect.

20 MR. BROWN: Nothing.

21 MR. TOBIN: No, nothing.

22 MS. BEST: I have one additional --

23 CHAIRMAN HUTMACHER: Go ahead.

24 EXAMINATION

25 BY MR. BRINK:

1 Q. Jim, in your opinion, when a driller selects a screen
2 size, a slot size, what's his goal, to screen a certain size or
3 something that will naturally pack the well to some grain size
4 or how do they do that?

5 A. Well, everybody has got a little different idea. The
6 drillers, all of them have their own little idiosyncrasies and
7 most of the time for a domestic well it honestly doesn't
8 matter. They don't go to the detail if you were drilling a
9 municipal well or something where you really had to -- you
10 would grab sand samples, send them in, size your screen. I
11 doubt that any of these -- in a domestic well, that almost
12 never happens.

13 Q. All the wells we are talking about here are not high
14 production wells?

15 A. No, I'm sure that it's a judgment call by the driller
16 that's been in there before. He says you have got real fine
17 sand, I'm going to use this, and generally they will oversize
18 the hole and gravel pack it and then overdevelop it, try to get
19 the fines through the gravel pack and then once they get that
20 done and have evacuated that sand, what it does is if you put
21 enough screen in the hole and get enough open area, you slow
22 the velocity of that water down to a certain point where it
23 doesn't bring the sand with you. What guys -- what always
24 intrigues me, a sand pumper, it's probably because he's got one
25 hole down there and it's open and producing and the water comes

1 in so fast it brings the sand in, because the real key to
2 slowing down sand coming into a well is to slow the velocity
3 down. That means you gotta have more open areas, not
4 necessarily smaller than bigger ones. Obviously bigger holes
5 you got more area, but you want to slow the velocity down
6 coming into the well. That's what keeps the sand out. So by
7 drilling a bigger hole, putting more screen in, gravel packing
8 it, and that's an art in itself, which I'm sure that nobody
9 sized the gravel back on the screen and all that other stuff,
10 it's like this worked before, I'll do it again, and then what I
11 would call overdeveloping, spending a lot of time on developing
12 it, getting as much fine sand through the filter pack and out
13 of there as you can. Then making sure everything is open,
14 that's what would get you a sand --

15 Q. This really signifies nothing?

16 A. I don't think it signifies anything. I've heard this
17 a million times.

18 CHAIRMAN HUTMACHER: Any more questions from the
19 board? Thanks, Jim. Diane.

20 MS. BEST: I would recall Mr. Graff.

21 CHAIRMAN HUTMACHER: Mr. Graff.

22 Thereupon,

23 RAYMOND GRAFF,

24 called as a witness, having been previously duly sworn as
25 hereinafter certified, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. BEST:

3 Q. Let's just clean up this issue about where that ground
4 was that you identified previously.

5 A. This here, there's no well there, it's my land, but
6 the well is only --

7 MR. HALLEM: You are going to have to talk loud enough
8 so that the court reporter can hear you, not just Ms. Best.

9 A. I marked 80 acres here, which is mine, which I had
10 said it belongs to my brother, but that hasn't got no well on
11 there, it's just 160 acres of mine that's got a well on. And
12 then there are 80 acres that my brother owns that he used to
13 farm that has a well on there, too, that Allen Hieb is renting.

14 Q. (BY MS. BEST) Okay, so there is no well on the ground
15 that you marked in Section 21?

16 A. Both wells are in 27.

17 Q. Both wells are in 27?

18 A. Right, both are in 27. One is in the southwest corner
19 and one is in the northeast one-fourth.

20 Q. Okay, so can you just go ahead and mark the northeast
21 one-fourth of 27 with your initials, too?

22 A. This one here.

23 MS. BEST: Okay, now I think we have got that cleared
24 up.

25 EXAMINATION

1 BY MR. BRINK:

2 Q. Is that well being used to irrigate with?

3 A. Yeah.

4 Q. There was a statement you made someplace through here
5 that it didn't make any difference, you didn't use it or it
6 wasn't -- it wasn't irrigated at the time. That's not the one?

7 A. Well, the one that I said that I marked the 80 acres,
8 it's hay ground, there is no well on there. I marked the wrong
9 there where I had mentioned it belonged to my brother. But the
10 80 acres that belongs to my brother that I had said, that's in
11 the same section, Section 27, only that's in the northeast and
12 mine is in the southwest.

13 MR. BRINK: Thank you.

14 CHAIRMAN HUTMACHER: Further questions?

15 MR. TOBIN: I have one.

16 CROSS-EXAMINATION

17 BY MR. TOBIN:

18 Q. Raymond, you have no irrigation wells, though, at all?

19 A. No.

20 Q. The two wells you have testified to are both domestic
21 use wells?

22 A. Right.

23 MR. TOBIN: That's all the questions I have.

24 CHAIRMAN HUTMACHER: Thank you, Raymond. Mr. Brown,
25 do you have any witnesses you want to recall?

1 MR. BROWN: No.

2 CHAIRMAN HUTMACHER: Mr. Tobin?

3 MR. TOBIN: No.

4 CHAIRMAN HUTMACHER: Now I think we can do closing
5 arguments. Would you like to do that, Diane?

6 MS. BEST: You know, the chief engineer -- I would
7 just refer you to the chief engineer's recommendation in this
8 matter. It recommends approval, it has some conditions on it,
9 and I think I'll just ask that the board adopt the chief
10 engineer's recommendation in this matter. Obviously that's not
11 binding, you have heard other testimony offered by both sides
12 here today. We believe that the expert testimony offered by
13 Jim Goodman today supports the chief engineer's recommendation
14 and that it should be adopted.

15 CHAIRMAN HUTMACHER: Thank you. Mr. Brown.

16 MR. BROWN: I really don't have much to offer beyond
17 that as well. I would just point out that the well in the
18 approximate vicinity of this well and actually closer to the
19 intervenors' properties has been in operation for 10 years.
20 The problem that was encountered was encountered in 2006 in a
21 dry year with a well at the 30-foot level. The other wells we
22 have talked about are at that 30- to 45-foot level. The
23 closest wells to the subject property are located -- are either
24 the test wells, the state's test wells, which you have the
25 graphs on, which indicate the impact and drawdown during those

1 time periods. The other close well that had been testified to
2 here today is Mr. Graff's, which he indicated he didn't
3 experience any problem with. Beyond that, I think the evidence
4 shows that the Amans are entitled to apply water for irrigation
5 purposes as a beneficial use. We would encourage your approval
6 of the application. Thank you.

7 CHAIRMAN HUTMACHER: Mr. Tobin, closing remarks.

8 MR. TOBIN: Thank you. I think I have just a little
9 bit more to say than the other two. I think that the real
10 danger here is what's going on in farming and the intensity at
11 which farmers are going to attack the issue of underlying
12 aquifers. It doesn't take very many years of \$20 wheat or \$15
13 beans or \$5, \$6 corn to realize that there is going to be a
14 real problem with the domestic well users and the people that
15 rely upon wells for livestock to have their water sources
16 jeopardized or put in jeopardy because of the irrigation that's
17 going to take place.

18 The one problem in this case is that the data that's
19 being used is from 1982. That's where the only estimations of
20 the capacity of the aquifer were made, were made back in 1982.
21 There have been no mapping as such, and I don't even know if
22 it's possible, I don't know enough about underwater or
23 underground mapping to determine elevations, but it doesn't
24 take long to go out in the shallow water in any lake or in any
25 area of water and realize that what you might have in one area

1 you don't have in the other area. And consequently, your
2 depths that you may have in one area aren't true in the other
3 area and you can have problems.

4 There can be shallow water -- if any of you fish,
5 which I do, my depth finder will go -- if you ever fish Muth
6 Flats in the Missouri River, you are in 20 foot of water half a
7 mile or more out from shore and all of a sudden you are in six
8 and I'm sure if you had the well in the six foot and the people
9 were taking water out of the 20 feet that it would make a
10 difference to you, especially if you get into a smaller area,
11 which this is.

12 But I don't believe that there's enough information to
13 make calculated estimations. I think you can make the best
14 guess you want to make and I think that this is going to be, as
15 Mr. Goodman put it, where is the point of serendipity? Where
16 does serendipity end? And there's going to be an end to it at
17 some point in time and nobody knows when. And the problem is
18 there is no adequate remedy. Once the wells start pumping and
19 if the domestic water sources are no longer adequate, there is
20 no adequate remedy for the domestic water users.

21 If you have people who are domestic water users here
22 and you have people that have \$5 corn planting 30,000 plants an
23 acre, maybe not in that area, maybe 25,000 plants an acre that
24 are geared for irrigation, the irrigation pumps aren't going to
25 shut off until they figure out the problem. They are going to

1 keep pumping and pumping and pumping and there is no adequate
2 remedy for these people when the serendipity moment occurs.

3 The well history in the area is sketchy. There is all
4 kinds of experiences in this area, but these intervenors tried
5 to relay to you their experiences in the area. And it appears,
6 and I don't think Mr. Goodman would ever at this point in time,
7 with the usage at this point in time, ever have any correlation
8 between the domestic wells and the irrigation wells, I don't
9 think that he would ever concede that at this point in time.
10 It appears the theory is there's so much water there that you
11 can draw down and the water is going to be drawn from every
12 possible level in this underground lake, and as long as it
13 pulls from all the areas, then it's not going to have any
14 impact on the height of the water, no significant impact on the
15 height of the water regardless of the amount of pumping. I
16 wonder how many irrigation wells it would support. I don't
17 know, I don't know if anybody knows that, but I do know that
18 the information is old and even in the '82 report it admitted
19 that these are just guesses because really nobody has really
20 gone out and tried to figure out this. I think the only
21 information that is provided that probably is a constant data
22 are the two test wells that are there.

23 The well is designed -- excuse me, the application is
24 designed not just to irrigate 160 acres, it's also designed to
25 irrigate another 80 acres, which means there's going to be more

1 pumping. It's going to be 50 percent more than what it might
2 appear because if I were the Amans and if I could irrigate 240
3 acres with the same well, if it was possible, I would probably
4 irrigate the 240. I'm not going to stop at the 160 just
5 because -- especially with the way the farming is going today.
6 And I think that -- I don't know if anyone knows where the end
7 is.

8 I don't know if anybody knows where the number of
9 wells is in this particular aquifer, but I do know that nobody
10 knows, and that's the problem that the domestic users see, they
11 don't see how, with the lack of information, how they can be
12 protected because if by the time the serendipity moment really
13 occurred, meaning that it's not serendipity any more, it's
14 reality, they are going to be the ones that are out. Based
15 upon that, we would ask the board to deny the application.
16 Thank you.

17 CHAIRMAN HUTMACHER: Thank you, Mr. Tobin. Board
18 discussion and action.

19 MR. BROWN: There's just one point I want to clarify.
20 Mr. Tobin mentioned 240 acres. I want to make it clear that
21 the additional acreage that's being involved in this
22 application is only for 160 acres. Because of the way they are
23 going to configure their wells, this particular well may
24 address more than that 160, but the additional acreage that's
25 going in is only an additional 160 to what's already under

1 irrigation. I just wanted to make that point.

2 CHAIRMAN HUTMACHER: Okay. Board discussion and
3 action.

4 MR. BRINK: Mr. Chairman, I'm not ready to make a
5 motion yet, but appropriation of water is never 100 percent
6 sure whether they are going to have conflicts or you are not
7 going to have conflicts, but we have been I think pretty
8 consistent over the years in attempting to put the state's
9 water to its most beneficial use, and in so doing, we recognize
10 that the staff has put on certain safeguards and we have
11 endorsed those and we hope they are enforcing them. We don't
12 know whether there's been complaints and how those are handled,
13 whether there's been shut off notices. We catch those on the
14 rivers, but very seldom do we see them on private wells.

15 But I repeat myself, I think that there is no sure
16 thing, nobody knows everything about water to make a 100
17 percent guess. So I think we will probably have to treat this
18 one just like we do every other water application. I see no
19 evidence that we have had that it is going to damage personal
20 property, individual domestic wells, and it appears there's
21 water there. So with that, I would make a motion, if you are
22 ready for the motion.

23 CHAIRMAN HUTMACHER: I'm ready.

24 MR. BRINK: I would move that this permit 6908-3 be
25 granted with the conditions stated by the chief engineer and

1 that I assume we are going to need findings prepared.

2 MR. FREEMAN: I would second the motion, Mr. Chairman,
3 and explaining why, I agree with Mr. Tobin to a certain extent.
4 I have some real personal concerns with the price of
5 commodities and what they are, what's going to happen to an
6 awful lot of range land, pasture ground that probably shouldn't
7 be farmed, but that's not what I'm supposed to do on this
8 board. It's clear there is unappropriated water available, the
9 beneficial use clearly we have identified as irrigation, and I
10 believe the proposed diversion, according to Mr. Goodman, can
11 be developed without unlawful impairment, and we have
12 safeguards built in and I believe if a domestic user is being
13 impaired, that our division will work very quickly to shut off
14 and to eliminate the damage until such time as it can be
15 remedied. So I don't think irrigators continue pumping while
16 we twiddle our thumbs and try and beg people to fix the
17 solution. I think this division steps in immediately, shuts
18 off the irrigator who is damaging domestic rights and then they
19 talk about a solution. So I am in favor of the motion.

20 CHAIRMAN HUTMACHER: Okay, we have a motion by Fran,
21 second by Rodney. Further discussion on the motion.

22 MS. LOUCKS: I would just like to make a comment.
23 After hearing all of the information, and I realize that those
24 who are opposed have grave concern, but I feel that I have to
25 defer to Jim Goodman's expertise on this, and so I'll support

1 the motion.

2 CHAIRMAN HUTMACHER: Further comments. Anyone else?
3 I don't know that I'm going to spend time saying anything. I
4 think between Fran and Rodney they did a pretty good job of
5 defending the position I think that we have to take on this,
6 and with that, I'm going to call for a vote. Those in favor of
7 the motion signify by saying "aye."

8 (Whereupon, the motion passed unanimously.)

9 CHAIRMAN HUTMACHER: Opposed. Motion carried.

10 MR. TOBIN: Thank you for having us today.

11 CHAIRMAN HUTMACHER: Findings and conclusions, Mr.
12 Brown.

13 MR. BROWN: I can submit proposed findings and
14 conclusions. When is the next hearing?

15 CHAIRMAN HUTMACHER: May 6 and 7.

16 MR. HALLEM: 30 days?

17 MR. BROWN: I will be handing this off more than
18 likely to Ms. Northrup to prepare findings.

19 MR. HALLEM: That's what I was wondering, I assumed in
20 30 days you wouldn't be here, but 30 days proposed findings of
21 fact?

22 MS. NORTHRUP: That will be fine.

23 MR. HALLEM: Then 15 days after that, any objections
24 in proposals?

25 MR. TOBIN: That's fine.

1 MR. HALLEM: Then if objections and proposals are
2 submitted, I'll prepare rulings on the proposed findings of
3 fact and conclusions of law. They will be sent out to the
4 commission prior to that meeting in May, and I will send them
5 to counsel as well so you will have them. What they will be is
6 my comments and they will be subject to the board to make any
7 decisions on the rulings at the next meeting. If you are not
8 here the next meeting, you waive any ability to object other
9 than what you have had in your documents.

10 CHAIRMAN HUTMACHER: Is that okay with everyone?

11 MR. TOBIN: That's okay with me.

12 MS. BEST: I have down April 11th and April 26th. Is
13 that the right date?

14 MR. HALLEM: Those aren't like Saturdays or Sundays,
15 are they? April 11th is a Friday, April 26th is a Saturday, so
16 let's move it to April 28th.

17 MS. BEST: Okay.

18 CHAIRMAN HUTMACHER: Anything else? If not, we are in
19 recess till 8:30 tomorrow morning.

20 (Whereupon, the proceedings were concluded at 3:55
21 p.m.)

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

Dated this 13th day of March 2008.



Carla A. Bachand, RMR, CRR,
Freelance Court Reporter

JAMES A GOODMAN

EDUCATION

B.S. Geological Engineering, SDSM&T in 1971.
35 Graduate Credit Hours of Study at SDSM&T in 1974 and 1975.

REGISTRATIONS AND PROFESSIONAL SOCIETIES

Registered Professional Engineer in South Dakota (# 3587)
Member National Society of Professional Engineers
Member National Ground Water Association / Association of Ground Water Scientists and Engineers

CAREER EXPERIENCE

From 1999 to Present - Title: Natural Resources Engineering Director (DENR - Water Rights)
Responsibilities: Conducting ground water investigations and investigating complaints, managing the Observation Well Network, compiling water well data, preparing and reviewing reports for new ground water permit applications, providing technical assistance to the Chief Engineer and providing expert testimony to the Water Management Board on contested water permit applications.

From 1989 to 1999: Natural Resources Engineer IV (DENR - Water Rights)
Responsibilities: Supervising the ground water section, developing well construction standards and well driller licensing, preparing reports for new water permit applications, investigating complaints, providing testimony to the Water Management Board.

From 1980 to 1989: Hydrologist III (DWRN - Water Rights)
Responsibilities: Ground water investigations, supervise observation well maintenance and data collection, developing well construction rules and licensing water well drillers and investigating complaints.

From 1978 to 1980: Hydrologist II (DWRN - SDGS)
Responsibilities: Ground water investigations, observation well drilling, water sampling, surveying, preparing ground water assessments for the Water Rights Commission.

From 1976 to 1978: Engineer I (DWRN - Water Rights)
Responsibilities: Well complaints, ground water problems investigations, observation well drilling, and basic hydrologic data collection.

MISCELLANEOUS- Testimony to Water Management Board for the following water permit applications (since July of 1999).

Testified on 37 irrigation permit applications from the Tulare Hitchcock and Tulare Western Spink aquifers.
Nos. 6829-3, 6830-3, 6841-3, 6842-3, Patrick, Matthew and Merlyn Van Buskirk, T-WS and T-H aquifers.
No. 6803-3, for Scott Helmer, for commercial dairy in Minnehaha County, PSC aquifer.
No. 5101A-3 for the City of Lennox, add new area for Future Use.
No. 6778-3 for the City of Lennox, new city wells, put water to beneficial use.
Nos. 6676-3, 6677-3, deferred from the T-H aquifer until December of 2007.
Nos. 472A-3 and 472-3, cancellation of 472-3 and amending by 472A-3. Not cancelled so amendment withdrawn.
No. 5862-3 for the City of Watertown, consider a portion of the deferred Future Use for municipal purposes
No. 6338A-3 for Allen Gatzke for irrigation from the T-H aquifer.
No. 6728-3 for Ron Starr irrigation from the T-EJ aquifer.
No. 6715-3 for United Feeders LLP, dairy feedlot from T-EJ aquifer.
Nos. 6711-3 for Oscar Inc., 6712-3 and 6713-3 for Petersen Brothers, irrigation permits from T-EJ aquifer
Nos. 6655-3 (Oscar Inc.), 6656-3 (Peterson Bros), 6675-3 and 6676-3 (St. Clair) approval from T-EJ aquifer for irrigation.
Nos. 6693-3, 6694-3, 6695-3 (Gatzke), 6687-3, 6688-3 (Watson), 6689-3 (Watson) irrigation T-WS and T-H aquifers.
Nos. 6668-3, 6669-3, 6670-3, 6671-3 for irrigation Bixler Farms deferral from T-H aquifer.
Nos. 6660-3 and 6661-3, for Lee Gatzke, deferral of irrigation permits from Tulare Hitchcock aquifer
No. 4586A-3, for William St. Clair, irrigation permit transfer from Tulare East James aquifer
No. 6632-3, for Prairie Gold Dairy, LLC. (commercial dairy)
No. 6594-3, for Riverside Colony, irrigation (Tulare-Hitchcock aquifer)
No. 6576-3, for Lee Kleinschmidt, irrigation
No. 6560-3 and 6578-3, for Louis Fritz, irrigation near Raymond
No. 6581-3, for Fremark Feedlot, cattle feedlot near Miller



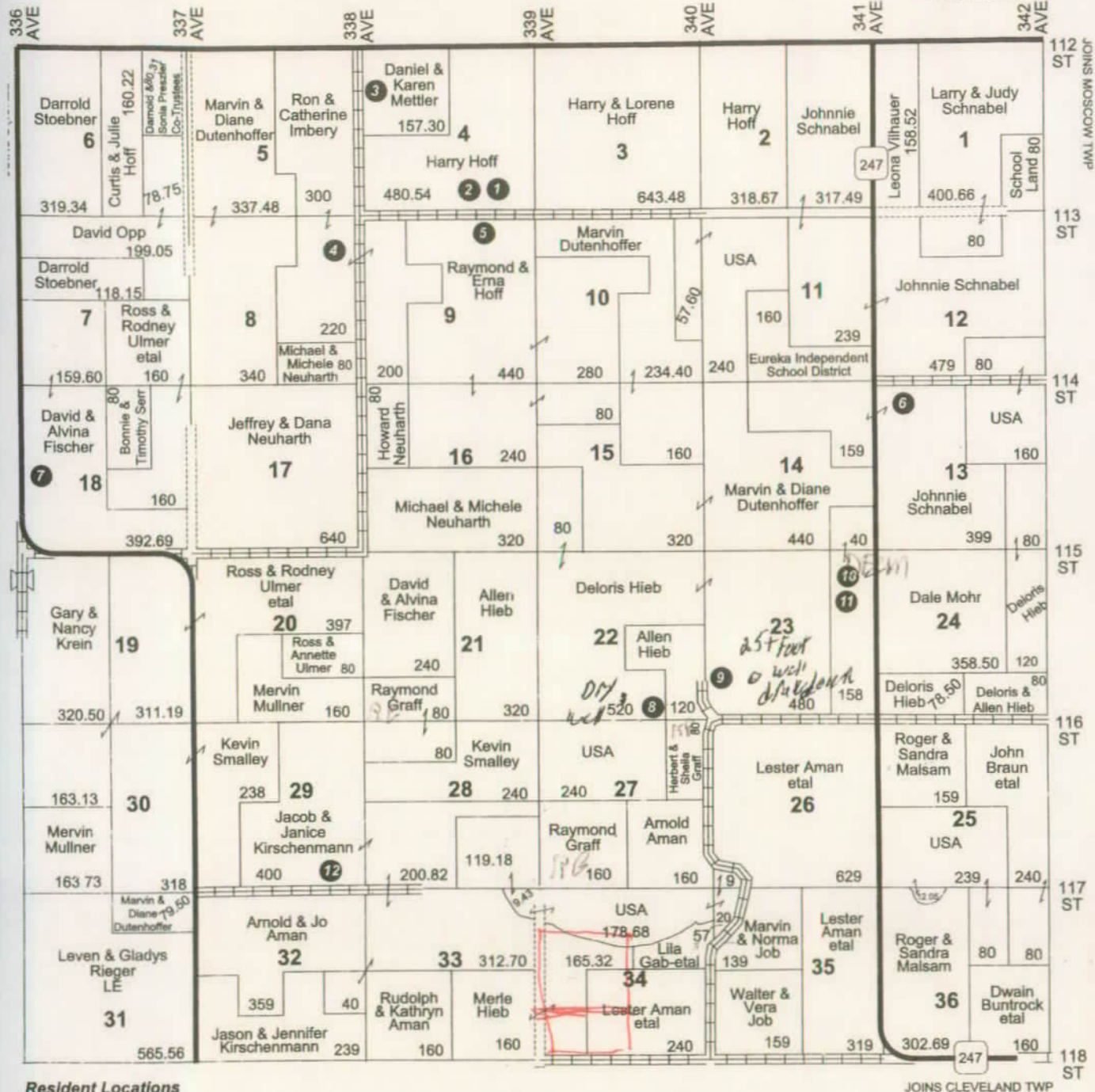
No. 6540-3, for Roger Mohr, irrigation use above Watertown Future Use Area
No. 6476-3, for Morris Inc, industrial use
Nos. 6460-3, 6461-3, 6462-3, 6463-3 for Gary Marshall, irrigation (deferral)
No. 6201A-3 (and 6334C-3) for Peterson Farms, irrigation
No. 6445-3 for Spink Colony, irrigation use, recommend denial
No. 6456-3 for South Lincoln Rural Water System, rural water use, Dakota formation
No. 6407-3 for Marshall Brothers, commercial use for an existing cattle feedlot
No. 6437-3 for Crosswinds Jerseys, commercial use for a dairy
No. 6439-3 for Norway Dakota, commercial use for an existing cattle feedlot
No. 6435-3 for South Lincoln Rural Water System, rural water use including the ethanol plant at Chancellor
No. 6403-3 for Rick Even, irrigation
No. 6414-3 for Andy Weber, irrigation
No. 6431-3, Philip Hines, irrigation
No. 6399-3 for Keith and Kip Krull, irrigation
No. 6425-3 for Harry Thomas, irrigation
No. 6382-3 for William St. Clair for irrigation
Nos. 6306-3 and 6416-3 for Haverhals Feedlot Inc., cattle feedlot
No. 6395-3 for Hutterville Hutterian Brethern, irrigation of garden
No. 6394-3 for Hutterville Hutterian Brethern, livestock and domestic use
No. 6386-3 for Tim Pazour, cattle feedlot
No. 6385-3 for SDAPV Dairy Development, LLC., dairy operation
No. 2729A-3 for Harvey Wollman, irrigation transfer
Nos. 5837A-3 and 5850A-3 for Taylor Properties, Inc., suburban housing development
No. 6339A-3 for Allen Gatzke, irrigation
No. 6341-3 for Jeffrey Gatzke, irrigation
No. 6374-3 for Bixler Farms, irrigation
Nos. 6376-3 and 6377-3, LDL cattle feedlot, commercial use
Tulare Western Spink, Tulare Hitchcock, irrigation report (22 applications)
No. 6341-3 for Jeffrey Gatzke, irrigation
No. 6362-3 for Rodney Zemlicka, irrigation
No. 6358-3 for Michael Johnson, commercial use (cattle)
No. 6342-3 for Ivan Sjovall, commercial use (cattle)
No. 4612A-3 for Oscar Inc., irrigation transfer
No. 6325-3 for VeraSun Energy, industrial use
No. 6287-3 for Oscar Inc., irrigation use
No. 6281-3 for Dakota Value Capture Cooperative, commercial use
No. 6260-3 for Heine Farms, commercial use
No. 6258-3 for Larry Krause and James Cremer, irrigation use.
No. 6257-3 for Thunderbird Colony, domestic use.
No. 6264-3 for Yankton Livestock Auction Market and Feedlot, commercial use.
No. 6255-3 for Turner County Dairy, LLP, commercial use.
No. 6252-3 for Haverhals Feedlot, Inc., commercial use.
No. 6227-3 for Goodwin Heritage Cattle, LLC, commercial use.
No. 6242-3 for Gary D Wipf, irrigation use.
No. 6228-3 for Sunburst (David Meyer), commercial use (swine).
No. 6212-3 for John Ulmer, irrigation and a small dam.
No. 6230-3 for Milbank Community Foundation, commercial use (dairy).
No. 6185-3 for Blumengaard Colony, domestic and commercial use (dairy).
No. 6158-3 for Ringling Cattle Company, commercial feedlot.
No. 6167-3 for Pearl Creek Hutterian Brethern, commercial use (turkeys).
No. 6150-3 for Classic Farms, LLC, commercial use (swine).
No. 6129-3 for Spring Tree AWMS, commercial use (swine).
No. 6128-3 for Deerfield Hutterian Brethern, Inc., domestic and commercial use.

KASSEL TWP

T 126 N

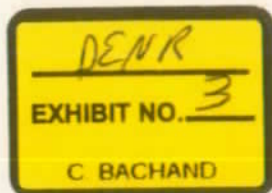
R 71 W

JOINS ODESSA TWP



Resident Locations

- 1 C. Hoff - 33880
- 2 H. Hoff - 33870
- 3 D. Mettler - 11220
- 4 R. Imbery - 11323
- 5 R. Hoff - 33877
- 6 L. Schnabel - 11410
- 7 D. Fischer - 11462



Spring Creek	Detmold	Petersburg	Bergdorf	Harrison	Wacker	Weber	Wichter
Gluckstadt	Rosenthal	Odessa	Long Lake	Highland	Hoffman	Koltz	Coff
Bauer	Sticks	Valley	Moscow	Arena	Spring	Leola	Willow
Jackson	Hillview	Cleveland	Rainier	Dewey	Howard	Washington	Union

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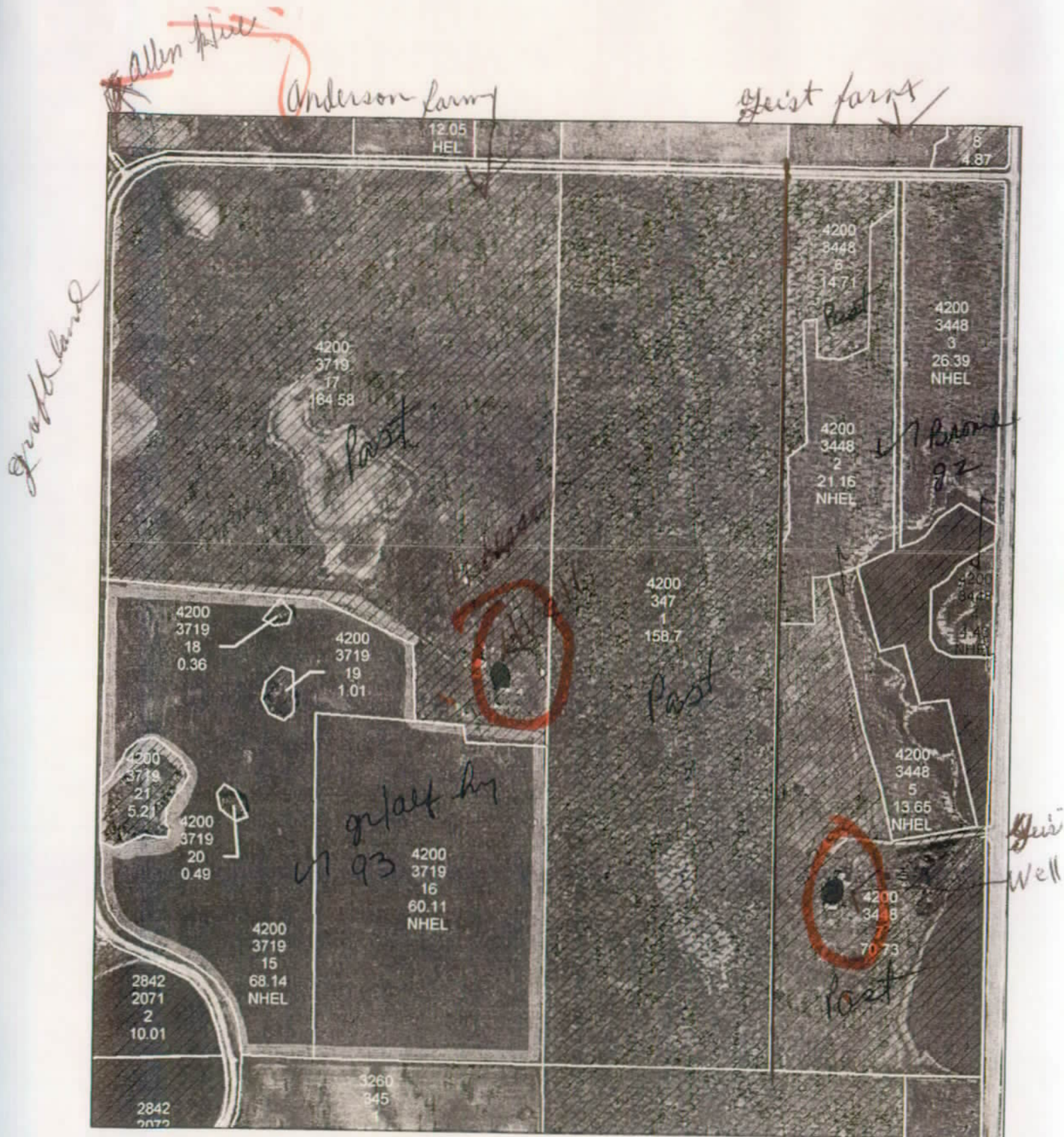
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633
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444

550

YANKTON

230
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MCPHERSON COUNTY



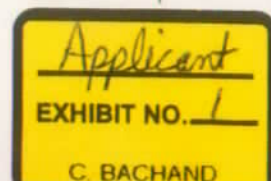
United States Department of Agriculture
Farm Service Agency

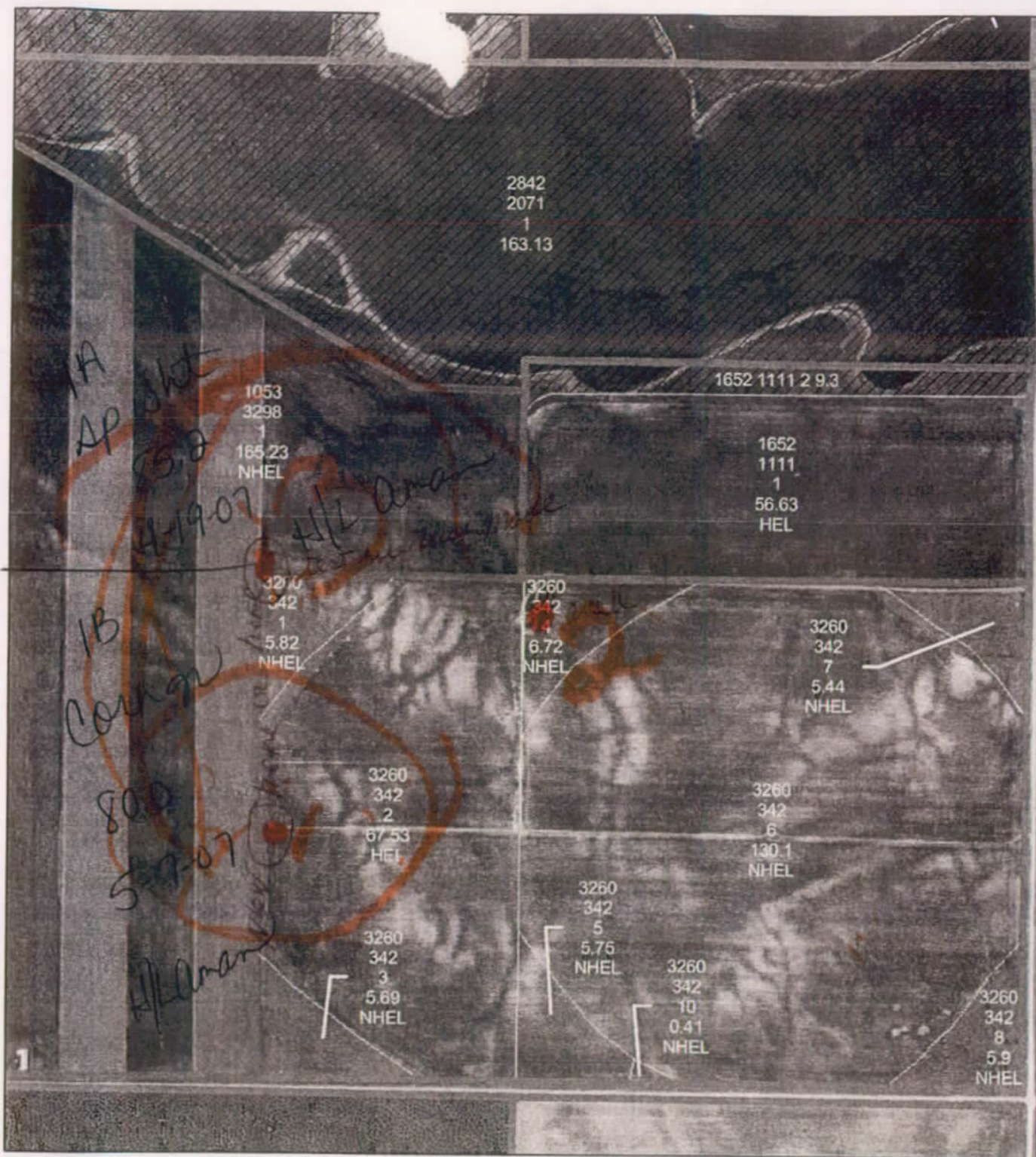
26-126N-71W

McPherson County, SD

1 inch equals 712 feet

January 25, 2007





United States Department of Agriculture
Farm Service Agency

34-126N-71W

McPherson County, SD

1 inch equals 703 feet



January 25, 2007

10.01

2842
2072
1
18.87

3260
345
1
28.85
NHSL

3260
345
2
9.49
NHSL

3260
345
4
0.91

3260
345
3
30.13
NHSL

3260
345
5
70.97

4200
1364
3
119.99

4200
1364
1
13.85
HEL

4200
1364
2
21.87
NHSL

3260
346
1
24.57
NHSL

3260
346
6
76.32
HEL

3260
346
3
48.44
NHSL

3260
346
5
2.78
NHSL

3260
343
2
2.79

3260
343
1
80.28
HEL

3260
343
4
2.83
HEL

3260
343
3
71.41

Past

Brown 9/2



United States Department of Agriculture
Farm Service Agency

McPherson County, SD

January 25, 2007

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

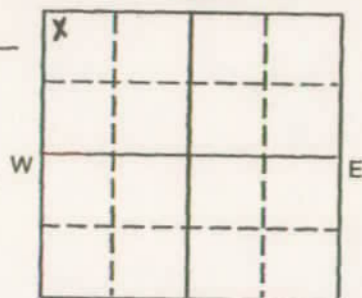
Location NW ¼ NW ¼ Sec 24 Twp 126 Rg 71

County

McPherson

North

Please mark well location with an "X"



Well Completion Date

7/9/2004

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

? ft. from _____ (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Forward

CASING DATA:

☐ Steel
 ☒ Plastic
 ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	5.00 IN	0.0 FT	120.0 FT	7.88 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	4	Lb/gal	0.0 FT	20.0 FT
Col Clay	6	Lb/gal	20.0 FT	100.0 FT

Describe grouting procedure
Line _____

SCREEN:

☐ Perforated pipe
 ☒ Manufactured
 Diameter 5.00 Inches Length 20.0 FeetMaterial PVCSlot Size .016 Set From 120.0 Feet to 140.0 Feet

Other information _____

WAS A PACKER OR SEAL USED?

☒ Yes
 ☐ No
 If so, what material? Gravel

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 analysisWell Owner: Erwin Dale Mohr

Business Name: _____

Address: 11505 341st AveCity, State, Zip: Hosmer SD 57448

WELL LOG:

DEPTH

FORMATION	FROM	TO
Yellow Clay w/ Sand Strk & Rock	0	18
Blue Clay w/ Rocks	18	60
Blue Clay	60	120
Fine Sand w/ Clay Breaks	120	140
Shale	140	145

STATIC WATER LEVEL 63.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped Describe: 100 gpm with air
☐ Bailed
☐ Other

Pumping Level Below Land Surface

_____ Ft. After _____ Hrs. pumped _____ GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If 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:

Ken Palmer

Signature of Well Owner or Equitable Property Holder:

Date: 9-29-04

Interviewer
 EXHIBIT NO. 1
 C. BACHAND

RECEIVED

OCT - 1 2004

WATER RIGHTS
PROGRAM

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location NE 1/4 NE 1/4 Sec 23 Twp 126 Rg 71

County

McPherson

North

Please mark well location with an "X"

W

E

Well Completion Date

9/15/2004

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
☐ Irrigation
 ☐ Municipal
☐ Industrial
 ☐ Business
☐ Institutional
 ☐ Test Holes
☐ Monitoring well

METHOD OF DRILLING:

Forward

CASING DATA:

☐ Steel
 ☒ Plastic
 ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	5.00 IN	0.0 FT	117.0 FT	7.88 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Cement	4	Lb/gal	0.0 Ft	20.0 Ft
Col Clay	5	Lb/gal	20.0 Ft	110.0 Ft

Describe grouting procedure

Line

SCREEN:

☐ Perforated pipe
 ☒ Manufactured
 Diameter 5.00 Inches Length 20.0 FeetMaterial PVCSlot Size .025 Set From 117.0 Feet to 137.0 Feet

Other information

WAS A PACKER OR SEAL USED?

☒ Yes ☐ NoIf so, what material? Gravel

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: Erwin Dale Mohr

Business Name:

Address: 11505 341st AveCity, State, Zip: Hosmer SD 57448

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Yellow Clay w/ Sand Strk & Rock	0	18
Blue Clay	18	40
Blue Clay w/ Rock	40	60
Blue Clay	60	80
Blue Clay w/ Sand Streak & Rock	80	100
Blue Clay	100	116
Fine Sand	116	137
Shale	137	52

STATIC WATER LEVEL 45.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe: 100 gpm with air☐ Bailed☐ Other

Pumping Level Below Land Surface

_____ FL After _____ Hrs. pumped _____ GPM

_____ FL After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: _____ GPM

REMARKS

20 Grains HardThis well was drilled under license # 440

And this report is true and accurate.

Drilling firm: Pullman Well Drilling Inc.

Signature of License Representative:

Ken Palmer

Signature of Well Owner or Equitable Property Holder:

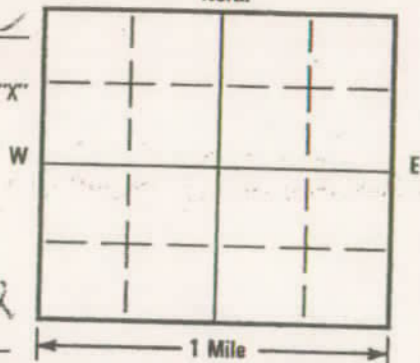
Date: 10-27-04

SOUT. JAKOTA WATER WELL COMPLETION REPORT

07-92

Location _____ 1/4 _____ 1/4 Sec 21 Twp 126 Rg 71
County McPherson North

Please mark well location with an "X"



Well Completion Date

7-26-02
McPherson

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 1/2 ft. from Acres (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>200</u> LB/FT	<u>5</u> IN	<u>+15</u> FT	<u>100</u> FT	<u>9</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Cement</u>	<u>10</u>	<u>15</u> lb./gal	<u>10</u> ft	<u>55</u> ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure _____

SCREEN: ☒ Perforated pipe ☐ Manufactured

Diameter 5 IN Length 40 FEET

Material _____

Slot Size 105 Set From 60 Feet to 100 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

☒ YES, How: Chlorine

☒ NO, Why Not? Chlorine

Laboratory sent to for water quality analysis _____

Well Owner: Allen Hick
Business Name: _____
Address: 11585 304 Hwy
Hammer, S. Dak

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Fill</u>	<u>0</u>	<u>10</u>
<u>Clay</u>	<u>10</u>	<u>27</u>
<u>Blue Clay</u>	<u>27</u>	<u>64</u>
<u>Fine Sands</u>	<u>64</u>	<u>78</u>
<u>Coarse Sand Gravel</u>	<u>78</u>	<u>91</u>
<u>with blue clay</u>	<u>91</u>	<u>100</u>

STATIC WATER LEVEL

45

Feet

If flowing: closed in pressure _____

PSI

GPM flow _____ through _____

inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____

GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped

Describe: Submersible

☐ Bailed

☐ Other

Pumping Level Below Land Surface

70 ft. After 3 Hrs. pumped 15 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____

GPM

REMARKS

Intervenor

EXHIBIT NO. 2

C. BACHAND

This well was drilled under license # 465

And this report is true and accurate.

Drilling firm Bachand Drilling & Equipment

Signature of License Representative: Robert Bachand

Signature of Well Owner or Equitable Property Holder: Allen Hick

Date: 8-1-02

HURON DRILLING INC. DEE LERS LOG

PAGE NO.

Ferdinand Hieb		NW-34-126-81 McPherson County		11/1/77	19	Steve Kuchl
JOB NAME		LOCATION		DATE	RIG NO.	FOREMAN
FT.	DEPTH	TIME	REMARKS			
			HOLE #1			
1	0-20		0 - 3 Top Soil			
			3 - 20 Yellow Sand			
2	20-35		Sand			
3	35-50		Med. Sand Some Water Loss			
4	55-65		50-55 Med. Sand 55 - 65 Coarse Sand and Gravel			
5	65-80		Coarse Gravel Some Water Loss			
6	80-95		Blue Clay and Streaks			
			MH			
			GHP 75			
			Casing 81 Ft.			
			Slotted 10 Ft.			
			Sand 1,500 lbs.			



FERDINAND HIEB
HOSMER, SOUTH DAKOTA 57448 1977
McPherson County
Phone - 283-2724

Supply Well

4882

WELL REPORT

Ferdinand Hieb
OWNER

McPherson County
NW-34-126-81
DESCRIPTION

HURON
DRILLING CO.
Hosmer, S. D.
NOV. 4, 1977
DATE

CASING LOG

Depth 81 ft.
Flows ... gpm 81 ft. 4" Plastic pipe to 81 ft.
Pumps 75 gpm ... ft. pipe to ... ft.
Head ... ft. pipe to ... ft.
10 ft. Slotted @ bottom ... ft. pipe to ... ft.
Remarks

REMARKS

1,500 lbs. Concrete Sand

1 day

Big No. 19

Steve Kuchl
Foreman

Interviewer

EXHIBIT NO. 3

C. BACHAND

NOTICE OF WELL CONSTRUCTION

(1) WELL CONSTRUCTION

Location of well NW 1/4 NW 1/4 Section 24 Township 126 Range 41
 Well owner John Treitz Eureka, S. Dak.
 Date well drilling completed 8-13-74 Purpose of well _____
(domestic, irrigation, municipal, industrial, other)

WELL LOG

Loggers, top to top to foot	Description of layer	Depth to top of water producing aquifer	ft.
1-3	Topsoil Black		
3-17	Clay, Reddish Yellow		
17-119	Clay, Blue		
119-	Sand		

Depth to static water level 55 ft.
 Name of producing aquifer (if known) _____
 Total depth of drill hole 119 ft.
 Depth to bottom of casing 119 ft.

Casing information in the space below show kind, size, weight, length per diameter, etc., for production casing and surface casing, if used.

1 1/2" #18 inch F.D. Concrete Casing

Screen information in the space below show length of screen below bottom of casing, diameter and kind of screen or casing perforations.

If a flowing well, flow of completed well _____ G.P.M.

Attach sheet if more space is needed

Leonard C. Brecht
 Name of Drilling Contractor

(2) PUMP INSTALLATION

Company name and size of pump _____ HP
 Type of pump _____ Capacity of installed pump _____ G.P.M.
 Depth of pump placement _____ ft., Date of pump installation _____

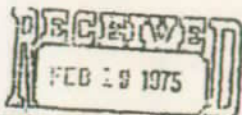
(3) WATER SURFACE MEASURING TUBE

On some wells an air-tight water surface measuring tube is required. See Section 45.408 of Chapter 45.4, MINNESOTA WELL CONSTRUCTION STANDARDS.

Show exact vertical length of water surface measuring tube, when installed _____ ft., tube diameter _____

Tube material _____

 Name of Pump Installation Contractor



STATE WATER RIGHTS COMM.
 Pierre, SOUTH DAKOTA



C. BACHAND

PAGE NO.

JOB NAME

55-126-71 McPherson
LOCATION County

Aug. 3, 1876

15

Steven
Kuehl

RIG NO.

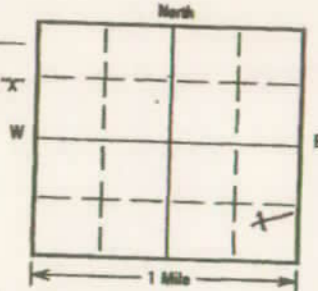
FOREMAN

DEPTH	TIME	REMARKS
1 0-20		0-3 Top soil, 3-20 Yellow sand and gravel
2 20-35		Sand and coarse gravel
3 35-50		35-40 sand and gravel, 40-50 Blue clay and gravel
4 50-60		Blue Clay
5 60-75		Blue Clay
6 75-90		Blue Clay
7 90-105		Blue clay and very little gravel
8 105-120		Blue clay and very little gravel
9 120-135		Blue clay and very little gravel
TD 135		
		Test Hole #2
1 0-20		0-3 Top soil, 3-20 Yellow Sand,
2 20-35		Medium gravel a little yellow
3 35-50		Medium gravel
4 50-65		Good gravel
5 65-80		Good gravel
6 80-95		Good gravel 80-88—
		Blue Clay 88-95
		Cased to 80 Ft.
		Slotted 40 Ft.
		GPM 150
		WN 26
		1,500# Concrete Sand

Location SE 1/4 SE 1/4 Sec. 22 Twp. 06 Rg. 71

County McPherson

Please mark well location with an "X"



Well Completion Date 5-29-93

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.): 200 ft. from Feddit-cornals (Identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Bored well

CASING DATA:

☐ Steel ☐ Plastic ☒ Other
If other describe Hydrite Concrete

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>80</u> LB/FT	<u>20"</u> IN	<u>10'</u> FT	<u>72'</u> FT	<u>28"</u> IN
<u>14.77</u> LB/FT	<u>5"</u> IN	<u>7'</u> FT	<u>10'</u> FT	<u>28"</u> IN
____ LB/FT	____ IN	____ FT	____ FT	____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Gravel Bedrock</u>	<u>6</u>	<u>13</u> lb./gal	<u>13'</u> ft	<u>28'</u> ft
<u>Neat Cement</u>	<u>3</u>	<u>13</u> lb./gal	<u>8'</u> ft	<u>13'</u> ft

Describe grouting procedure: pour in from top of grout surface

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter 20" IN Length 62' FEET
Material Porous Hydrite Concrete Casing
Slot Size _____ Set From _____ Feet to _____ Feet
Other information Gravel packed with bucket from 28' to 72'

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material?

Describe packer(s) and location?

DISINFECTION:

Was well disinfected upon completion? YES How: Chlorine Solution
____ NO, Why Not? gravel in well

Laboratory sent to for water quality analysis Pierre State Lab.

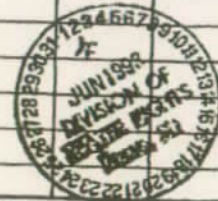
Well Owner: Milton Hoch

Business Name:

Address: RR 1 Box 44
Hosmer, S. Dak.

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Topsoil</u>	<u>0</u>	<u>1</u>
<u>Light brown gravel clay</u>	<u>1</u>	<u>4</u>
<u>Light to dark brown gumbo clay</u>	<u>4</u>	<u>22</u>
<u>Gray gumbo clay</u>	<u>22</u>	<u>28</u>
<u>Gray gumbo to sandy grading</u>	<u>28</u>	<u>44</u>
<u>Fine gray sand to rocks</u>	<u>44</u>	<u>45</u>
<u>Gray sandy soft clay</u>	<u>45</u>	<u>48</u>
<u>Gray tough gumbo clay</u>	<u>48</u>	<u>70</u>
<u>Fine gray sand to clay</u>	<u>70</u>	<u>72</u>



STATIC WATER LEVEL 28' Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped ☒ Bailed ☐ Other
Describe: Slushed well with 100 gallon bucket till clay

Pumping Level Below Land Surface

20 ft. After 4 hrs. pumped 768 GPM

____ ft. After _____ hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

Monitor Pitless adapter was installed on well right away 5' x 7' by owner will send water sample

This well was drilled under license # 231

And this report is true and accurate.

Drilling firm Cherle Well Service

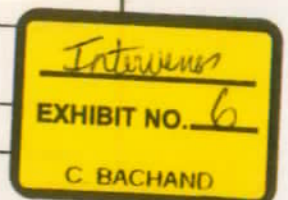
Signature of License Representative:

Ray Chumel

Signature of Well Owner or Equitable Property Holder:

Date:

6/14/93



SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location _____ Sec _____ Twp _____ Rg _____
County _____

Please mark well location with an "X"



Well Completion Date _____

Well Owner: _____
Business Name: _____
Address: _____

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

LOCATION:

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

PROPOSED USE:

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

METHOD OF DRILLING:

CASING DATA:

- ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No of Sacks	Grout Weight	From	To
_____	_____	_____ lb./gal	_____ ft	_____ ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure _____

SCREEN:

- ☒ Perforated pipe ☐ Manufactured

Diameter _____ IN Length _____ FEET

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☐ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION:

Was well disinfected upon completion?

☒ YES, How: _____

☐ NO, Why Not? _____

Laboratory sent to for water quality analysis _____

STATIC WATER LEVEL

_____ Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped _____ Describe: _____

☐ Bailed _____

☐ Other _____

Pumping Level Below Land Surface

_____ ft After _____ Hrs. pumped _____ GPM

_____ ft After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

This well was drilled under license # _____

And this report is true and accurate.

Drilling firm _____

Signature of License Representative _____

Signature of Well Owner or Equitable Property Holder _____

Date: 9-10-06

RECEIVED
SEP 15 2006

WATER RIGHTS
PROGRAM

SOUT. JAKOTA WATER WELL COMPLETION REPORT

07-92

Location 1/4 1/4 Sec 22 Twp 126 Rg 71

County McPherson

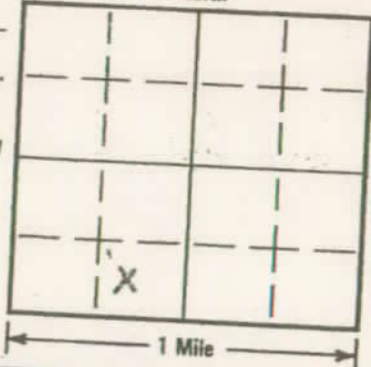
North

Please mark well location with an "X"

W

E

Well Completion Date



1 Mile

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 1/2 ft. from Hay Field (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotation

CASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT DIAMETER FROM TO HOLE DIAMETER
200 LB/FT 5 IN 12 FT 30 FT 9 IN
____ LB/FT ____ IN ____ FT ____ FT ____ IN
____ LB/FT ____ IN ____ FT ____ FT ____ IN

GROUTING DATA

Grout Type Series 1 No. of Sacks 2 Grout Weight 12 lb./gal From 5 ft To 12 ft
____ lb./gal ____ ft ____ ft

Describe grouting procedure

SCREEN: ☒ Perforated pipe ☐ Manufactured

Diameter 5 IN Length 20 FEET

Material

lot Size 1025 Set From 10 Feet to 30 Feet

ther information

AS A PACKER OR SEAL USED? ☐ YES ☒ NO

so, what material?

scribe packer(s) and location?

INFECTION: Was well disinfected upon completion?

X YES, How: 0.12
L NO, Why Not?

ratory sent to for water
ty analysis

Well Owner: Dolores Hick

Business Name:

Address: 11574 340 AV

Harmon, A. Duff

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>fill</u>	<u>0</u>	<u>2</u>
<u>brown clay</u>	<u>2</u>	<u>6</u>
<u>orange gravel</u>	<u>6</u>	<u>25</u>
<u>blue clay</u>	<u>25</u>	<u>30</u>

STATIC WATER LEVEL

14 Feet

If flowing: closed in pressure

GPM flow through _____ PSI

Controlled by ☐ Valve ☐ Reducers ☐ Other _____ inch pipe

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped Describe: Submersible

☐ Bailed

☐ Other

Pumping Level Below Land Surface

15 ft. After 5 Hrs. pumped 15 GPM

____ ft. After ____ Hrs. pumped ____ GPM

If pump installed, pump rate _____ GPM

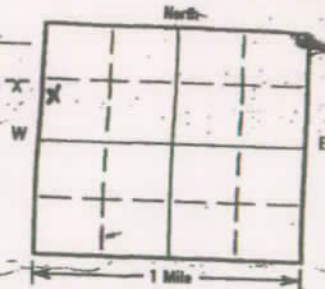
____ GPM

REMARKS

Location N 1/4 Sec 33 Twp 126 Rg 71

County McPherson

Please mark well location with an 'X'



Well Completion Date 4-21-94

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.) 1/2 mile from _____ (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotary

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT DIAMETER FROM TO HOLE DIAMETER
200 LB/FT 4 IN 12 FT 70 FT 2 IN
LB/FT IN FT FT IN
LB/FT IN FT FT IN

GROUTING DATA

Grout Type Cement No. of Sacks 10 Grout Weight 19 lb./gal From 2 ft To 35 ft
lb./gal ft ft

Describe grouting procedure _____

SCREEN: ☒ Perforated pipe ☐ Manufactured

Diameter 4 IN Length 20 FEET

Material Plastic

Slot Size 0.6 Set From 50 Feet to 70 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION:

Was well disinfected upon completion? ☒ YES, How: Chem
NO, Why Not? _____

Laboratory sent to for water quality analysis _____

Well ID Ruda Aron

Business Name: Boys 70 RR2

Address: Eureka, S. Dak. 57437

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>till</u>	<u>2</u>	<u>2</u>
<u>Brown Clay</u>	<u>2</u>	<u>7</u>
<u>Mixed Clay & Gravel</u>	<u>7</u>	<u>18</u>
<u>Blue Clay</u>	<u>18</u>	<u>42</u>
<u>Cement Sand</u>	<u>42</u>	<u>70</u>

Interwoven

EXHIBIT NO. 7

C. BACHAND

STATIC WATER LEVEL

12 Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped Describe: _____

☐ Bailed _____

☐ Other _____

Pumping Level Below Land Surface

15 ft. After 2 Hrs. pumped 15 GPM

ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS



This well was drilled under license # 465

And this report is true and accurate.

Drilling firm Boys 70 RR2

Signature of License Representative:

Robert Schumacher

Signature of Well Owner or Equitable Property Holder:

X Boys 70 RR2

Date 5-26-94

#1

WELL DRILLERS REPORT
SOUTH DAKOTA WATER RIGHTS COMMISSION

4-78

Well Owner:
Name Dallas Anderson
Address _____Water Level Information:
Static water level _____ below land surface
If flowing: closed in pressure _____ PSI
rate of flow _____ GPH
Controlled by:
☐ Valve ☐ Reducers ☐ Other
If other; specify _____Well Location:
Mark location with an "X"
V E
1 mileCounty McPherson
S.E. 1/4 Sec. 27 Twp. 19N Rg. 71Proposed Use:
☐ Domestic ☐ Municipal ☒ Test Holes
☐ Irrigation ☐ Industrial ☐ StockMethod of Drilling:
☐ Forward Rotary ☐ Bored ☐ Jetted
☐ Reverse Rotary ☐ Cable ☐ Other

Well Construction:

Diameter of Hole _____
Depth _____
Casing ☐ Steel ☐ Concrete
☐ Plastic ☐ Other
If other, specify _____Was casing end left open _____
Was a well screen installed _____
Describe Well Screen _____Diameter _____ Material _____
Slot size _____Was well gravel packed _____
Was well grouted _____
Was water sample taken _____

Well Test Data:

☐ Pumped
☐ Bailed Describe: _____
☐ Other _____
Pumping Level Below Land Surface
ft. After _____ Hrs. pumped _____ GPH
" " " " " "
" " " " " "

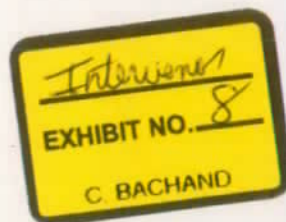
Well Log:

Formation	Depth	
	From	To
bedrock	0	1
clay	1	3
shale	3	8
blue clay	8	16
blue clay	16	95
with gravel and sand layers between 50 + 60		
also around 70		
drop hole		

(Use Back if Necessary)

Date Completed: Jan 19 1981Driller: Dakota Drilling 234
Driller's or Firm's Name License NO.
Box 57 Sebastian SD
AddressVergil H. W. W. 1/19/81
Signed By Date

Remarks:



6/60

Address Lebanon St
Signed By Herz W Worn Date 3/28/81

Well Location:

Mark location with an "X"

North

W E

1 mile

County McPherson 1 mile 2
 Twp. 126 Rg. 71 Sec. 25

Proposed Use: ☐ Domestic ☐ Municipal ☒ Test Holes
☒ Irrigation ☐ Industrial ☐ Stock

Method of Drilling: ☒ Forward Rotary ☐ Bored ☐ Jetted
☐ Reverse Rotary ☐ Cable ☐ Other

Well Construction:

Diameter of Hole _____
 Depth _____
 Casing ☒ Steel ☐ Concrete
 ☐ Plastic ☐ Other
 If other, specify _____

Was casing end left open

Was a wall screen installed

Describe Well Screen
Diameter _____ Material _____
Slot size _____

Was well gravel packed

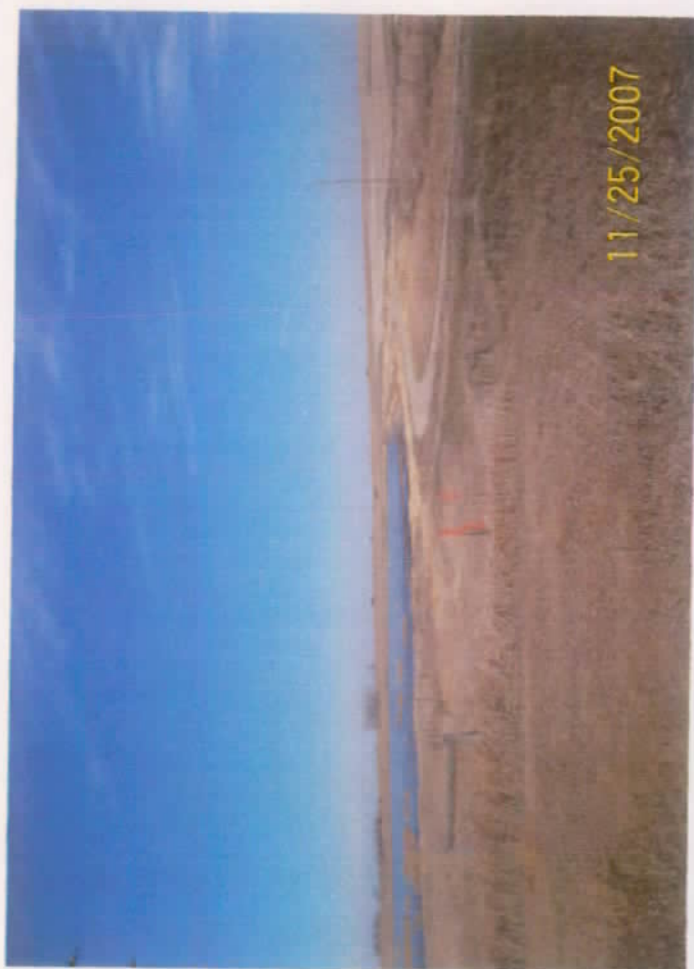
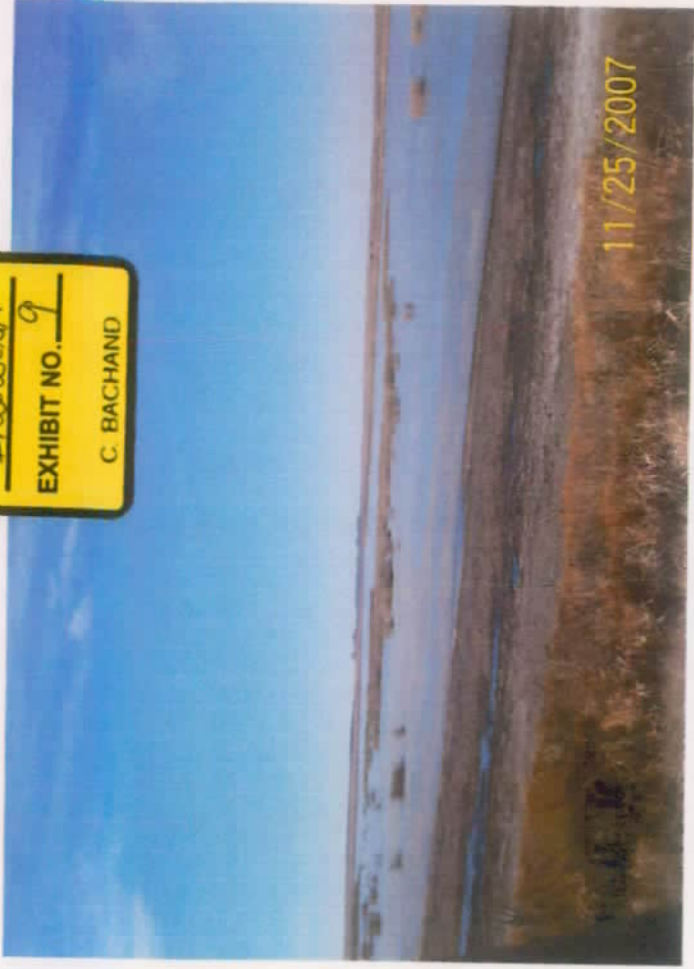
Was well grouted

Was water sample taken

Remarks :

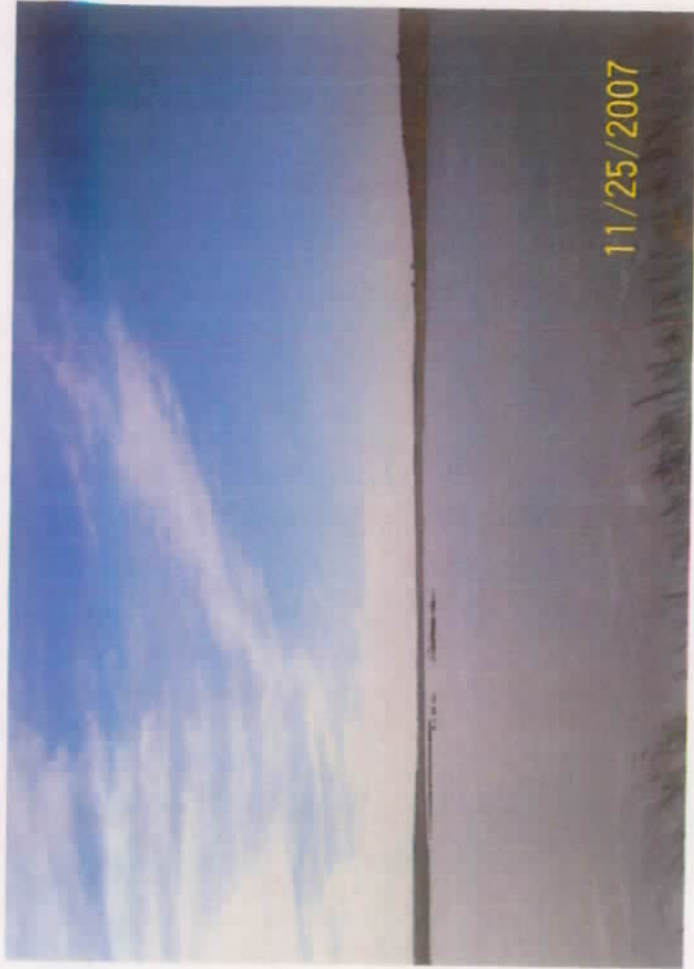


Interview
EXHIBIT NO. 9
C. BACHAND





11/25/2007



11/25/2007



11/25/2007



11/25/2007

Interwoven

EXHIBIT NO. 10

C. BACHAND

11/25/2007

1203 12/11/1915

(1) WELL CONSTRUCTION

Location of well NW 1/4 1/2E 14N 1/2E Section 2 Township 14N Range 7E
Well owner Alfred KIRSCHENMANN FLORA S.O.
(Name) (Address)
Date well drilling completed 2/27/75 Purpose of well for 418
(Domestic, irrigation, municipal, industrial, other)

WELL LOG

[illegible]

Attach about 12 more pages as needed.

If a flowing well, flow of completed well _____ G.P.M.

Name of Drilling Contractor

(2) PUMP INSTALLATION

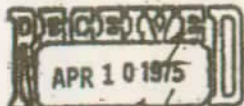
Company name and size of pump _____ HP _____
Type of pump _____ Capacity of installed pump _____ G.P.M.
Depth of pump placement _____ ft., Date of pump installation _____

(3) WATER SURFACE MEASURING TUBE

On some wells on air-tight water surface measuring tube is required: See Section 46.405 of Chapter 46.4, MINIMUM WELL CONSTRUCTION STANDARDS.

Show exact vertical length of water surface measuring tube, when installed _____ ft., tube diameter _____ tube material _____

News of Pump Investigation Contradicts



STATE WATER RIGHTS COMMISSION
PIERRE, SOUTH DAKOTA

think you will set your pump

6/60

Water Level Information:
 Static water level _____ below land surface
 If flowing: closed in pressure _____ PSI
 rate of flow _____ GPM
 Controlled by:
☒ Valve ☒ Reducers ☐ Other
 If other; specify _____

Well Test Data:

☐ Pumped

☐ Bailed Describe: _____

☐ Other _____

Pumping Level Below Land Surface				
	ft.	After	Hrs. pumped	GPH
_____	"	"	"	"
_____	"	"	"	"
_____	"	"	"	"

[illegible]

Date Completed: 2-16-81

Diameter of Hole 4 1/2
 Depth 100
 Casing ☐ Steel ☒ Concrete
☐ Plastic ☐ Other
 If other, specify _____

Driller: Dakota Boring Co 234
Driller's or Firm's Name License NO.

Lebanon SD
Address
Empire Wor
Signed By
Date 2-17-91

Remarks :



C. BACHAND

LOG AND INSPECTION SHEET

Well No. MP80E, Section 8888 23, Township 127N, Rge. 71W.

Well Driller Grimshaw Drilling (Larry Wold)

Date drilled 17 June 80 Dia. of Hole 4 3/4", Dia. of Casing 2"

LOG

Layers, Top to Top in feet	Description of Layer	Sampled
0-17	Gravel, brown & Sand coarse	
17-62	Clay, gray, pebbly, compact slow drilling (till)	
62-79	Clay, gray, sand layers	
79-93	Sand, clean, coarse	
93-100	Clay, dk. gray (shale)	

Interviewer
EXHIBIT NO. 14
 C BACHAND

Intervensi

EXHIBIT NO. 14

C BACHAND

Depth to saturated material

Feet

Depth to static water level

Feet

Total depth of drill hole

100 Feet

Total length of casing installed

86 Feet 6' screen

CHECK LIST

Well Point ✓

Waste Mounded ✓

Casing Packed ✓

Air Hole

Bentonite Placed ✓

Padlocked

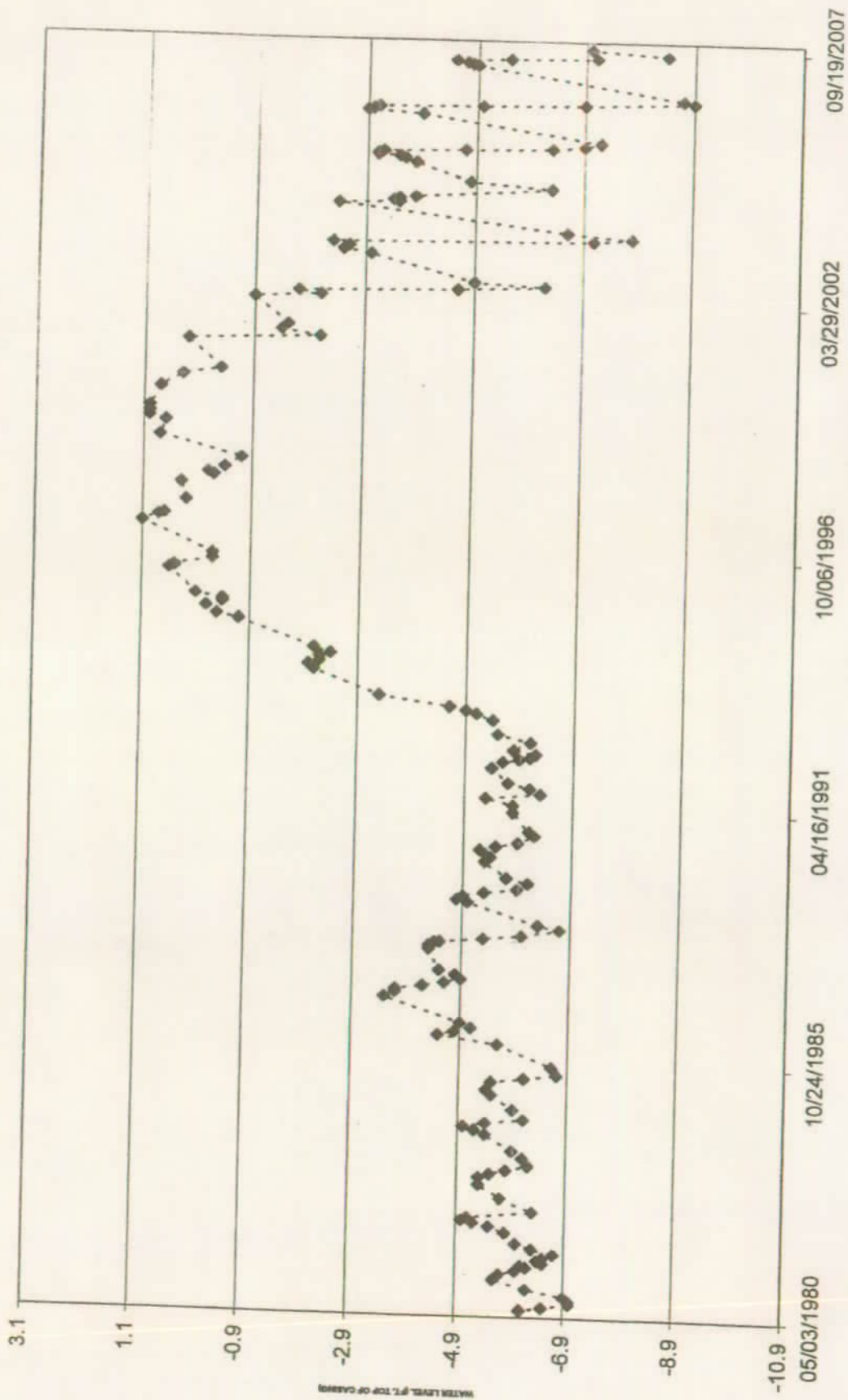
Well Tested _____

Post set

Stick up _____

Wm.

WATER RIGHTS' OBSERVATION WELL
MP-80E



1m NE Marvin Morlock

LOG AND INSPECTION SHEET

Well No. MP 80D, Section CDDP 16, Township 127 N, Rge. 71 W,

Well Driller Grimshaw Drilling (Larry Wold)

Date drilled 17 June 80 Dia. of Hole 4 3/4", Dia. of Casing 2"

LOG

Layers, Top to Top in feet	Description of Layer	Sampled
0 - 13	Clay, yellow brown, sandy	
13 - 36	clay, gray, pebbly	
36 - 40	clay, yellow brown	
40 - 50	clay, yellow brown, sandy	
50 - 62	sand, brown, fine to medium	
62 - 70	Clay, dk. gray, brittle (shale)	

Depth to saturated material

_____ Feet

Depth to static water level

_____ Feet

Total depth of drill hole

70 Feet

Total length of casing installed

66 Feet 6' screen



CHECK LIST

Well Point ☒

Casing Packed ☒

Bentonite Placed ☒

Well Tested ☐

Stick up ☐

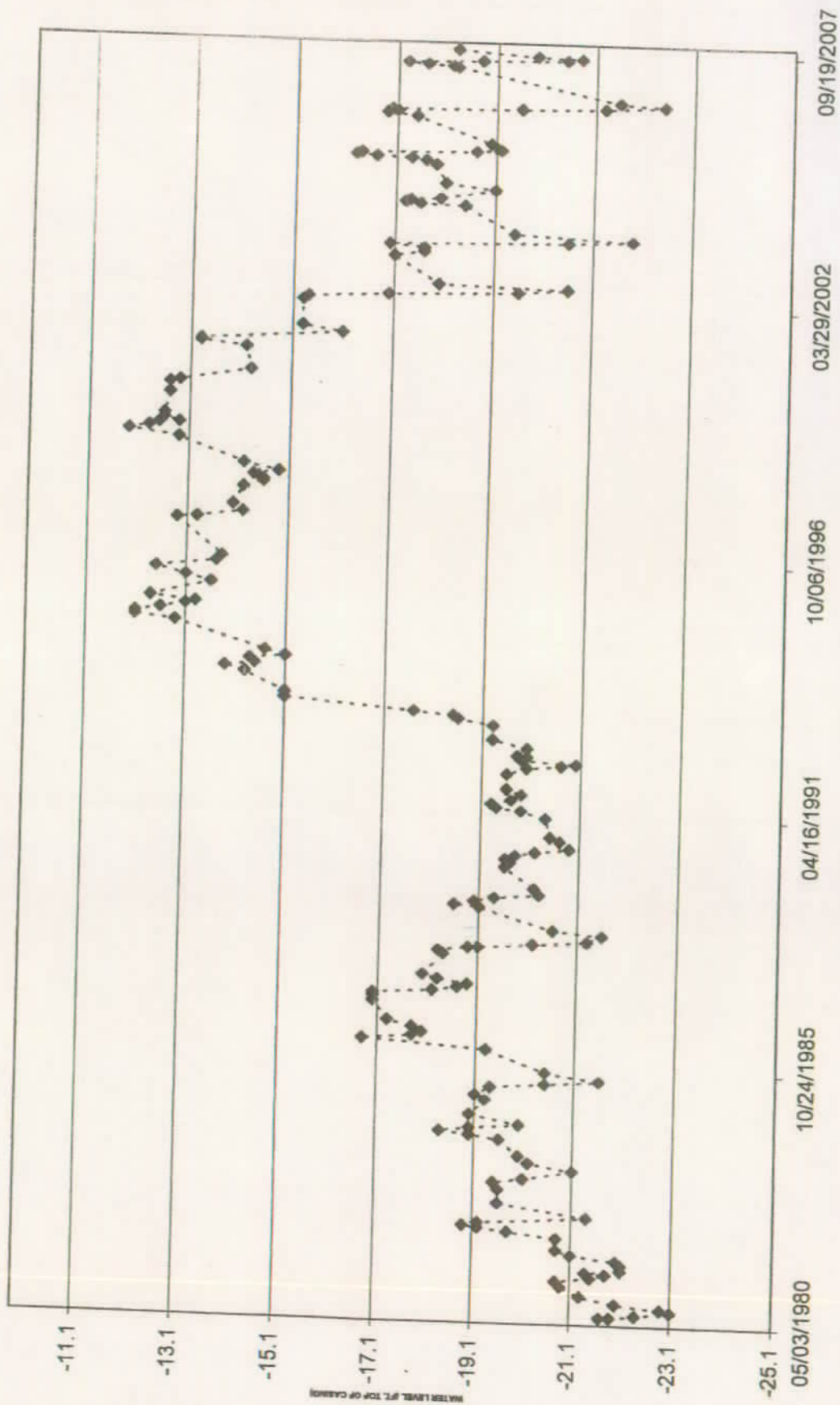
Waste Mounded ☒

Air Hole ☐

Padlocked ☐

Post set ☐

WATER RIGHTS' OBSERVATION WELL MP-80D



3m N Mark Morlock

LOG AND INSPECTION SHEET

Well No. MP 80 B, Section BBBB 15, Township 127 N, Rge. 72 W,Well Driller Grimshaw (Larry Wald)Date drilled 16 June 80 Dia. of Hole 4 3/4", Dia. of Casing 2"

LOG

Layers, Top to Top in feet	Description of Layer	Sampled
0-2	Topsoil	
2-4	Sands fine, brown	
4-7	Clay, yellow brown, (till)	
7-20	Sand, medium to coarse, brown	
20-32	Sand & Gravel lot of shale pebbles	
32-58	Clay, gray, pebbly rock @ 44'	
58-70	Sand, fine, brown	
70-80	Clay, dk. gray, greasy shale	

Depth to saturated material

Feet

Depth to static water level

Feet

Total depth of drill hole

80

Feet

Total length of casing installed

66

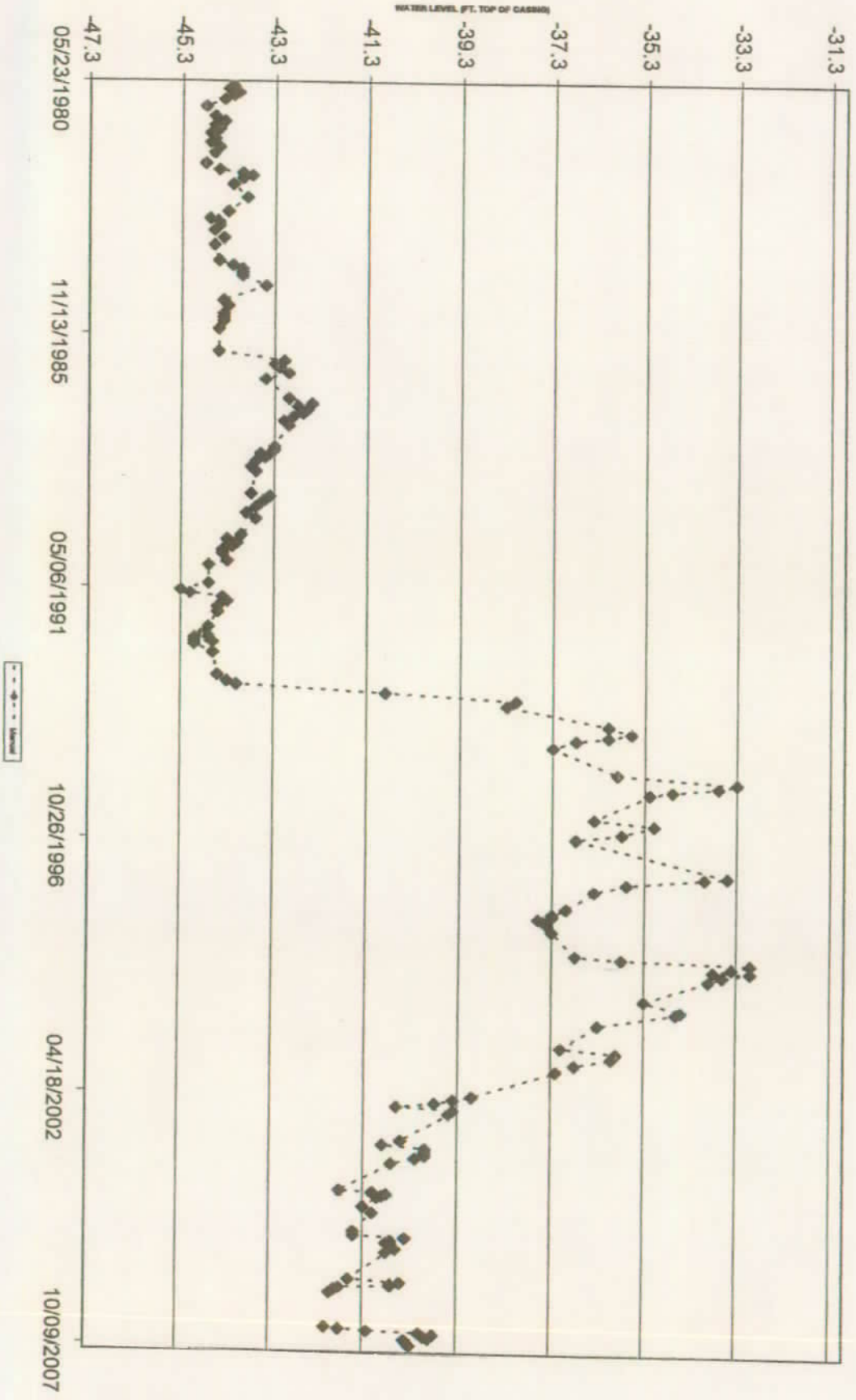
Feet

6' screen

CHECK LIST

Well Point ✓Waste Mounded ✓Casing Packed ✓Air Hole Bentonite Placed ✓Padlocked Well Tested Post set Stick up

WATER RIGHTS' OBSERVATION WELL MP-80B



3m N Teddy Opp

PAGE NO.

53-126-71

McPherson County
LOCATION

July 29, 1976
DATE

15
RIG NO.

Steven
Kushl
FOREMAN

JOB NAME

[illegible]

Interviews

EXHIBIT NO.

C. BACHAND

LOG AND INSPECTION SHEET

Well No. MP80C, Section AAAA 24, Township 127 N, Rge. 72 W,Well Driller Grimshaw Drilling (Larry Wold)Date drilled 16 June 80 Dia. of Hole 4 3/4", Dia. of Casing 2"

LOG

Layers, Top to Top in feet	Description of Layer	Sampled
0-7	Topsoil	
1-2	Clay, yellow brown	
2-20	Sand, yellow brown, Fine	
20-40	Clay, gray, pebbly (till)	
40-65	Clay, gray, pebbly with gravel stringers (Rock @ 65)	
65-74	Gravel, clean	
74-75	Clay, gray	
75-76	Gravel	
76-80	Clay, dk. gray, greasy, shale	

Depth to saturated material

Feet

Depth to static water level

Feet

Total depth of drill hole

80

Feet

Total length of casing installed

76

Feet

6' screen

Interviewer

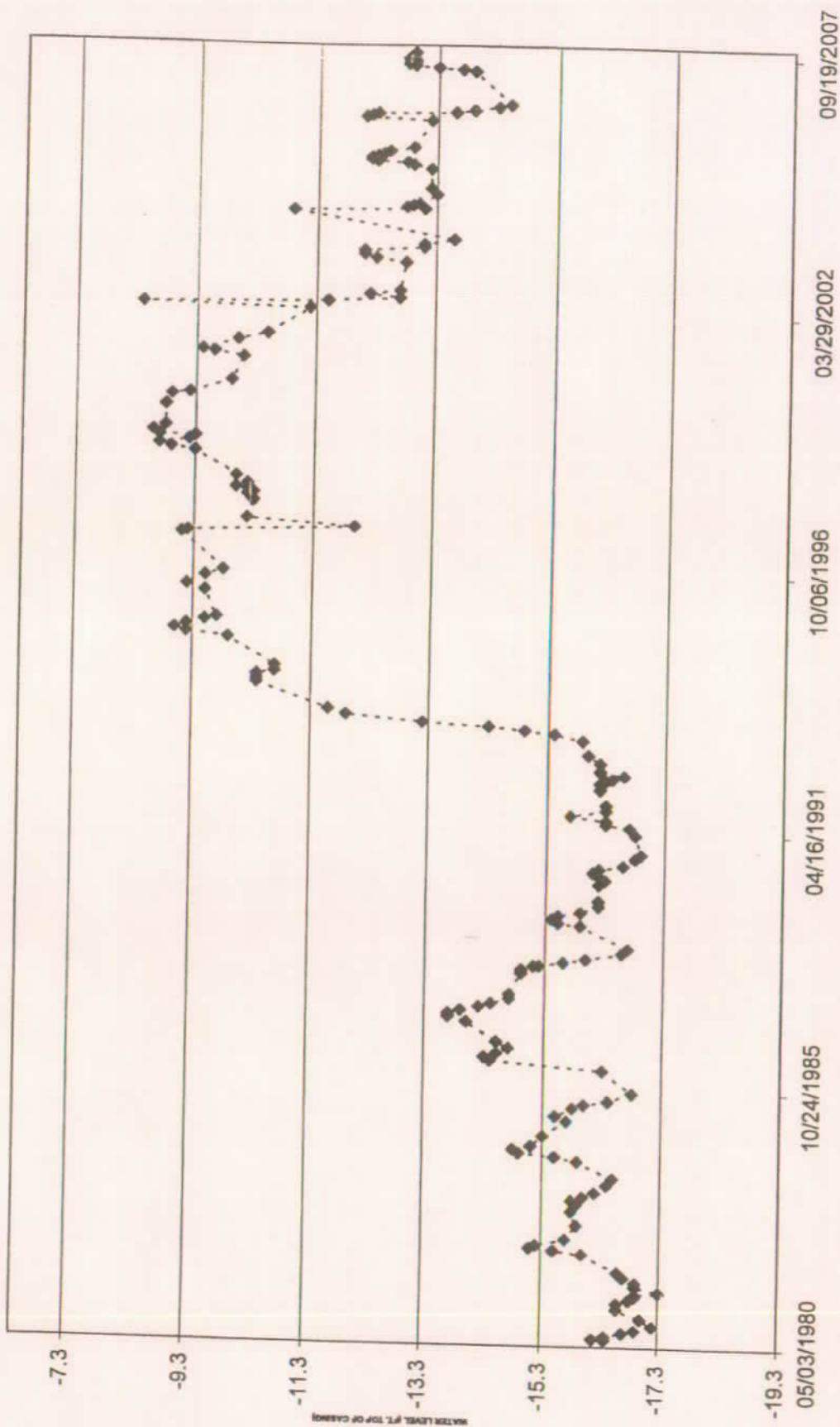
EXHIBIT NO. 18

C. BACHAND

CHECK LIST

Well Point ✓Waste Mounded ✓Casing Packed ✓Air Hole Bentonite Placed ✓Padlocked Well Tested Post set Stick up

WATER RIGHTS' OBSERVATION WELL MP-80C



— ♦ — Manual

Alfred Neuharth

SOUTH DAKOTA WATER WELL COMPLETION REPORT

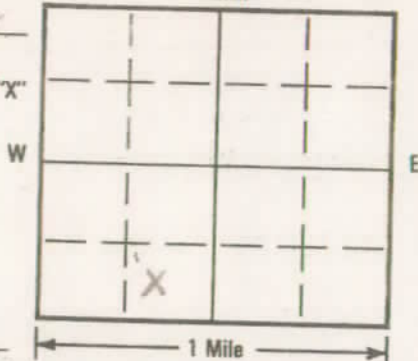
07-92

Location 1/4 Sec 22 Twp 126 Rg 71

County McPherson

North

Use mark well location with an "X"



Well Completion Date _____

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 100 ft. from Barren Field (Identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotation

CASING DATA:

- ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>200</u> LB/FT	<u>5</u> IN	<u>12</u> FT	<u>30</u> FT	<u>9</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Cement</u>	<u>3</u>	<u>15</u> lb./gal	<u>5</u> ft.	<u>12</u> ft.
_____	_____	_____ lb./gal	_____ ft.	_____ ft.

Describe grouting procedure _____

SCREEN: ☒ Perforated pipe ☐ Manufactured

Diameter 5 IN Length 20 FEET

Material _____

Slot Size .025 Set From 10 Feet to 30 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

X YES, How: Chlorine

NO NO, Why Not? _____

Water sent to for water quality analysis _____

Well Owner: Debris Hick

Business Name: _____

Address: 11574 340 AV
Flomona, S. Dak

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>fill</u>	<u>0</u>	<u>2</u>
<u>Shower Clay</u>	<u>2</u>	<u>10</u>
<u>Coarse Gravel</u>	<u>10</u>	<u>25</u>
<u>Blue Clay</u>	<u>25</u>	<u>30</u>

STATIC WATER LEVEL

14

Feet

If flowing: closed in pressure _____

PSI

GPM flow _____ through _____

inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____

GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped

Describe: Submersible

☐ Bailed

☐ Other

Pumping Level Below Land Surface

15 ft. After 5 Hrs. pumped 15 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____

GPM

REMARKS

Intervenor
EXHIBIT NO. 19

C. BACHAND

This well was drilled under license # 465

And this report is true and accurate.

Drilling firm: Bachand Drilling & Operating

Signature of License Representative: Robert Bachand

Signature of Well Owner or Equitable Property Holder: Debris Hick

Date: _____



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

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JUL 22 2008

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

July 18, 2008

Margo Northrup
Attorney at Law
P.O. Box 280
Pierre, SD 57501

Thomas M. Tobin
Attorney at Law
P.O. Box 1456
Aberdeen, SD 57402-1456

RE: Aman Water Permit Appeal

Dear Mr. Tobin and Ms. Northrup:

Under SDCL 1-26-33.2, the appellant's brief in the above-referenced matter would be due in the circuit court within thirty days after transmittal of the agency record. The agency record was sent to the Clerk on July 14, 2008, so the appellant's brief would be due in mid August. The briefs of Appellee Aman and the Chief Engineer would then be due in mid September.

I am writing this letter to propose a procedural schedule whereby the briefing period is extended an additional thirty days for each party. Under this proposal Mr. Tobin's brief would be due September 15, 2008. The Appellee's briefs would both be due November 15, 2008.

Please give this idea some consideration. I will be beginning a trial on September 2, 2008, that is expected to last until late October. Accordingly, this procedural schedule would be more convenient for me. Please let me know your thoughts on this idea. If you find it acceptable, I will draft a stipulation accordingly. Thank you in advance.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best
Assistant Attorney General
DB/kak



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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AUG - 5 2008
WATER RIGHTS
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August 5, 2008

Margo Northrup
Attorney at Law
P.O. Box 280
Pierre, SD 57501-0280

Thomas M. Tobin
Attorney at Law
P.O. Box 1456
Aberdeen, SD 57402-1456

Re: *In the Matter of the Application for Permit to Appropriate Water,
No. 6908-3, Harlan Aman*

Dear Ms. Northrup and Mr. Tobin:

Thank you for your courtesy in extending the time in the above-referenced matter. With this letter I am forwarding a signed Stipulation to Ms. Northrup for her signature. Please forward this document to Mr. Tobin for his signature. Mr. Tobin, I would appreciate it if you would file the final Stipulation and proposed Order with the Court.

Please note that I have also included a thirty-day time period for filing the reply brief in this matter. Since we are extending the opening briefs, I felt I needed to put some date in for the reply brief. If either of you believes that some other date is appropriate, I am agreeable to that date.

Sincerely,


Diane Best
Assistant Attorney General

DB/dh
Enclosures
cc/encs Eric Gronlund ✓

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF McPHERSON)

IN CIRCUIT COURT
FIFTH JUDICIAL COURT

IN THE MATTER OF THE)
APPLICATION FOR PERMIT TO)
APPROPRIATE WATER,)
NO. 6908-3, HARLAN AMAN)

Civ. 08-30
STIPULATION

COME NOW, Appellee Harlan Aman (by and through counsel Margo Northrup), Appellants Alan Hieb, Deloris Hieb, Dale Mohr, and Raymond Groft (by and through counsel Thomas M. Tobin), and Appellee South Dakota Water Rights Program (by and through Assistant Attorney General Diane Best), and stipulate and agree that Appellants' time for filing the opening brief in the above-referenced administrative appeal should be extended until September 15, 2008, with Appellees' briefs due sixty days thereafter. The parties further stipulate that any reply brief to be filed by the Appellants would be due thirty days after all Appellees' briefs have been filed. The parties further agree that this Stipulation may be presented to the Court for approval without hearing.

Dated this _____ day of August, 2008.

Thomas M. Tobin
Attorney at Law
P.O. Box 1456
Aberdeen, SD 57402-1456
(605) 225-1000

Dated this _____ day of August, 2008.

Margo Northrup
Attorney at Law
P.O. Box 280
Pierre, SD 57501-0280
(605) 224-5825

Dated this 5th day of August, 2008.


Diane Best
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
(605) 773-3215

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF McPHERSON)

IN CIRCUIT COURT

FIFTH JUDICIAL COURT

IN THE MATTER OF THE)
APPLICATION FOR PERMIT TO)
APPROPRIATE WATER,)
NO. 6908-3, HARLAN AMAN)

Civ. 08-30

ORDER EXTENDING
PROCEDURAL SCHEDULE

The parties in the above-referenced matter have agreed to extend the procedural schedule. Based upon the agreement, it is hereby ORDERED that Appellants' opening brief in this matter shall be due on or before September 15, 2008; that Appellees' responsive briefs shall be due sixty days thereafter; and that Appellants' reply brief (if any) will be due thirty days after all Appellees' briefs have been filed.

Dated this _____ day of August, 2008.

BY THE COURT:

The Honorable Jack R. Von Wald
Circuit Court Judge

ATTEST:

Clerk of Courts

By: _____
Deputy

(SEAL)

pld804_db(dh)

JUL 24 2008 Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
Margo D. Northrup



Associate:
Lindsey Riter-Rapp

Of Counsel:
Robert D. Hofer

July 23, 2008

Ms. Diane Best
Assistant Attorney General
1302 East Hwy 14, Suite 1
Pierre, SD 57501

Thomas Tobin
Attorney at Law
PO Box 1456
Aberdeen, SD 57402

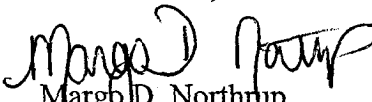
Re: Water Permit Application – Harlan Aman

Dear Ms. Best and Mr. Tobin:

My client and I have no objections to the proposal as contained in Ms. Best's letter dated July 18, 2008.

Thank you.

RITER, ROGERS, WATTIER &
NORTHROP, LLP

By: 
Margo D. Northrup

MDN/lma

cc: Client

306173

Attorney General

JUL 24 2008

ZIMMER, DUNCAN AND COLE, L.L.P.

Dennis L. Duncan
Jeffrey A. Cole
Drew C. Duncan

Of Counsel: John H. Zimmer

5000 S. Broadband Lane, Suite 107
Sioux Falls, SD 57108
Telephone 605-361-9840
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Parker Office:
P.O. Box 550
120 N. Main Street
Parker, SD 57053

Telephone 605-297-4446
Telecopier 605-297-4488

Please respond to the Sioux Falls office.

July 21, 2008

***Sent Via Fax – (605) 773-4106 and
US First Class Mail***

Diane Best
Asst. Attorney General
Office of Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501

RE: Lincoln County Rural Water System

Dear Diane:

This letter is in response to your letter to Larry Nelson of July 17, 2008. Please be advised, as Larry told you, that I will be representing Lincoln County Rural Water in this matter.

In response to your inquiry, Lincoln County Rural Water has authorized me to tell you that it will agree to delay the hearing until the December board meeting, which is now scheduled for December 10 -11, 2008. Please let me know if you need any further clarification on this issue.

Thank you.

Sincerely,



JEFF COLE

JC/djp

cc: Robin Dykstra via email only



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WATER RIGHTS
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Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
Margo D. Northrup

Associate:
Lindsey Riter-Rapp

Of Counsel:
Robert D. Hofer

November 5, 2008

McPherson Clerk of Courts
706 Main Street
PO Box 248
Leola SD 57456

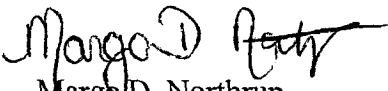
Re: Water Permit Application No. 6908.3 – Harlan Aman (Civ. 08-30)

To Whom It May Concern:

Enclosed herein please find the Certificate of Service showing the Appellee Brief has been served on the parties involved in this matter. Please file same in your office.

Thank you.

RITER, ROGERS, WATTIER &
NORTHROP, LLP

By: 
Margo D. Northrup

MDN/cs

Enclosure

cc: Thomas Tobin
Diane Best
Client

Law Office
Riter, Rogers, Wattier, & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
319 South Coteau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

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WATER RIGHTS
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IN THE MATTER OF)
WATER PERMIT) APPELLANT'S BRIEF
APPLICATION NO. 6908-3,)
Harlan Aman)

APPELLANT'S BRIEF

This case is an appeal from the decision of the Water Management Boards (hereafter referred to as Board) to approve the application of Harlan Aman for a water permit for irrigation purposes in McPherson County. Intervenor are Alan Hieb, Dale Mohr, Delores Hieb, and Raymond Groft. They will be referred to in this brief as Intervenor. A hearing was held in Pierre, South Dakota on March 11, 2008. The water management board adopted Findings of Fact and Conclusions of Law on May 7, 2008. All parties submitted Findings of Fact and Conclusions of Law. The Board ruled on the findings submitted on May 7, 2008.

Intervenor have appealed the decision of the Board and ask that the decision of the Board be overturned.

FACTS

Harlan Aman submitted an application to the Water Management Board for a water permit to allow for the appropriation of 2.0 cubic feet of water per second (900 gallons per minute) from a well to be approximately 110 feet deep on land owned by Aman in McPherson County. The irrigation well would irrigate 160 acres. The well could also be used to irrigate an additional 80 acres in an adjoining piece of property also owned by Aman.

The water would come from the Hillsview aquifer. The Hillsview aquifer has not been investigated very much in the past. A lot of the data used in the application process and at the hearing were estimates by staff from the Division of Environment and Natural Resources. As contained in Findings of Fact 3-4 and 5 point out the limited knowledge available regarding the Hillsview Aquifer and the effect of granting additional water permits to appropriate water for the Aquifer. The overall assumption is that the underground shore line is even and water would always flow to the well point from other parts of the aquifer.

Intervenors own property in the near vicinity and intervenors Allen Hieb, Delores Hieb and Dale Mohr live near the applicants proposed site for the well and maintain their homes and livestock water supplies from wells that use aquifer water as it's source. Intervenors have lived on these sites for over 30 – 40 years. Intervenors believe, based on their historical observations and experiences that the granting of the permit will jeopardize their domestic and animal water use. This belief is also based on the lack of information about the Hillsview aquifer. The studies done by the DENR looked at withdrawals of 500 gallons per minute. The application is for 900 gallons per minute withdrawal. One test well that was relied upon by DENR is outside the aquifer. Both test wells are 1 ½ -2 miles from the application site. Further, no test well was drilled for this application so no site information was obtained prior to approval. Intervenors also note that their domestic and animal use has priority over irrigation water permits, but the use granted to the applicant gives insufficient safeguards to Intervenors water source. The safeguard is

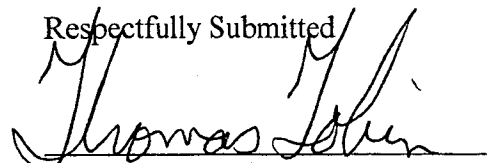
non-specific and gives no method or direction to applicant so that he can comply with paragraph 1.A of the order.

LEGAL ARGUMENT

It is intervenor's position that the record does not support the findings of fact and conclusions of law. The legal test for the granting of the application is found at SDCL 46-2A. Intervenor's believe that there was an inadequate record made as to whether or not SDCL 46-2A-9 was satisfied. There was no test well done in this case. Both test wells relied upon were 1 ½ - 2 miles from the proposed drilling site. There was no evidence refuting the testimony of the Intervenor's, but the Board relied upon the "guess" of the DENR staff. Further the restraints on the granting of the permit provide no guidance or objective standards or remedy for Intervenor's. Intervenor's believe that the Findings of Fact and Conclusions of Law submitted on their behalf would have been adopted by the Board and the permit denied.

CONCLUSION

Intervenor's respectfully request that the Water Management Board's decision to approve the permit application be denied.

Respectfully Submitted

Thomas M. Tobin

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WATER RIGHTS
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STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF)
WATER PERMIT) CERTIFICATE OF SERVICE
APPLICATION NO. 6908-3,)
Harlan Aman)

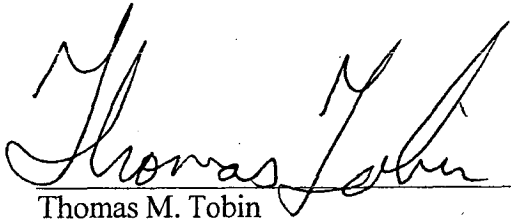
CERTIFICATE OF SERVICE

I, Thomas M. Tobin, hereby certify that I have today; this 6th day of October, 2008, served the attached Appellant's Brief upon:

Ms. Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
P.O. Box 280
Pierre, SD 57501

Ms. Diane Best
Assistant Attorney General
1302 East Hwy. 14, Suite 1
Pierre, SD 57501

By depositing a copy of the said documents in the United States mail at Aberdeen, South Dakota, addressed to the above-named persons at the above-described address, postage prepaid.


Thomas M. Tobin

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

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NOV - 5 2008

WATER RIGHTS
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IN THE MATTER OF)
WATER PERMIT)
APPLICATION NO. 6908-3,) APPELLEE BRIEF
Harlan Aman)

PRELIMINARY STATEMENT

Throughout the Brief, reference will be made to the Applicant/Appellee as "Applicant" or "Aman" and to the Intervenor/Appellant as "Intervenor".

Reference to the transcript will be referred to as "TR" followed by the specific page. Reference to the documents filed herein as reflected in the Register of Actions shall be referred to as "RA" followed by the specific page wherein the document begins. Reference to the Findings of Fact will be referred to as "FF" and the Conclusions of Law will be referred to as "CL".

JURISDICTIONAL STATEMENT

A hearing was held before the South Dakota Water Management Board (Board) on the 11th day of March, 2008. The Applicant appeared personally and by and through attorneys Riter, Rogers, Wattier and Northrup, LLP, of Pierre, South Dakota. Assistant Attorney General Diane Best appeared on behalf of the South Dakota Water Board. Thomas Tobin of Aberdeen, South Dakota appeared on behalf of Intervenor, Allen Heib, Deloris Heib, Dale Mohr and Raymond Graff. The Board adopted Findings of Fact and Conclusions of Law on May 7, 2008. Intervenor filed a Notice of Appeal and Statement of Issues on June 11, 2008.

STATEMENT OF LEGAL ISSUES

1. Whether the Findings of Fact, as adopted by the Board, are substantiated by the record.

2. Whether the Conclusions of Law, as adopted by the Board, are substantiated by the Findings of Fact and the record in this case.
3. Whether or not the Board acted reasonably in denying to adopt, as Findings of Fact in this case, the Findings of Fact that were proposed by the Intervenor.
4. Whether or not the action taken by the Board is consistent with the requirements of South Dakota Law, and whether the evidence supports its position that the statutory requirements had been met by the applicant.
5. Whether the Findings of Fact are clearly erroneous and whether or not they are supported by the evidence introduced at the hearing. (SR 109)

STATEMENT OF FACTS

Harlan Aman filed Application No. 6908-3 (hereinafter the "Application") for a water permit for irrigation purposes. (FF1; TR6) Mr. Aman is farming the land and plans to use the well to irrigate beans, corn and wheat from June until September. (TR31) The Application proposed to appropriate 2.0 cubic feet of water per second ("CFS") or approximately 900 gallons per minute from one well proposed to be 110 feet deep. (FF2,4; TR6) The well is to be completed into the Hillview Aquifer located in the northeast quarter of the southwest quarter of Section 34 to irrigate one hundred and sixty (160) acres located in the west half of the southwest quarter and the south half of the northwest quarter of section 34; all in Township 126 North, Range 71 West, McPherson County. (FF3; TR6) The well may also be used to irrigate the east half of the southwest quarter of section 34 which is authorized by Water Right NO. 2893-3. (FF2, 21)

The Hillview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. (FF3; TR6) The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. (FF3; TR6) In the immediate area of this application, the aquifer is under water table conditions and appears to be a surficial aquifer. (FF3; TR6)

Although no test well was drilled for this Application, there is sufficient information from a County Study conducted in 1982 by the South Dakota Geological Survey, other wells in the area, other irrigation wells, and two observation wells (MP80G and MP80H) that the Water Rights Program monitors. (FF5; TR7) The observation wells are within two miles of this proposed well site. (FF5; TR7) Water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. (FF5; TR8, 10) The water level record indicates the aquifer is capable of sustaining additional withdrawals. (FF5) Hydrographs for observation well MP-80H (located about one-half mile northeast) of this proposed well and hydrographs for MP-80G (located about 1 ½ miles northwest) of the proposed well support that the aquifer is capable of sustaining additional withdrawals. (FF5; TR7) The hydrographs show there is very little annual fluctuation of the aquifer. (TR7)

There are three existing irrigation wells within one mile of this proposed well. (FF8) These are Water Rights No. 2893-3 (one well, 76 feet deep, 2.0 cfs, irrigation of 202 acres) and Water Right No. 2951-3 (one well, 112 feet deep, 1.78 cfs, irrigation of 138 acres) and Water Rights No. 4129-3 (one well, 70 feet deep, 1.88 cfs, irrigation of 272 acres). (FF8; TR8) The well for No. 2893-3 is located about 1,900 feet northwest of this proposed site, the well for No. 2951-3 is located about one-half mile west of this proposed site and the well for No. 4129-3 is located about 4,200 feet northwest of this proposed site. (TR8) Two of these wells are owned by the Aman brothers. (TR8) Mr. Aman believes these wells are all good wells. (TR29) The wells have been licensed and inspected by the State of South Dakota. (TR8)

Allen Hieb, Delores Hieb, Dale Mohr, and Raymond Groft intervened in this matter and were opposed to the granting of the application as proposed. (FF11,12,13,15) Allen Heib lives

on a ranch approximately a mile and a half (1 ½) to two (2) miles north of the proposed well site. (FF11; TR41) Allen Heib has wells on his property for domestic use and livestock use. (FF11) Some of the wells are drilled at a depth of 140 feet. (FF11; TR41) He does not use wells for irrigation purposes. (TR41) The wells at a depth of 140 feet are good, high producing wells. (FF11; TR52,53) One of the wells was drilled at a depth of thirty feet. (FF11) This well went dry in 2006. (FF11; TR50) The well was replaced with a well that was 140 feet deep. (TR46) The replacement well is a good producing well. (TR52) Delores Hieb, Allen's mother intervened in this matter and is opposed to the granting of the application as proposed. (FF12; TR60)

Dale Mohr lives on a ranch one mile east of the proposed well site. (FF13; TR61) Dale Mohr has drilled three wells on his property. (FF14; TR61) Two of those wells are at a depth of 140 feet. (FF14; TR66) The wells at a depth of 140 feet are working properly. (FF14; TR67) One of the wells was drilled at a depth of 45 feet. (FF14; TR68) The well at a depth of 40 feet went dry. (FF14; TR67)

Raymond Graff currently lives in Aberdeen, South Dakota but owns land within approximately one (1) mile to one mile and one quarter of a mile (1 ¼) from the proposed well site. (FF15; TR70) Raymond Graff currently has two wells on the property for domestic use and they are working properly. (FF15; TR74)

The wells that have been replaced by Allen Heib and Dale Morh were 25 to 45 feet deep. (FF17; TR77) They were replaced during dry years or drought years. (FF17; TR77) The reason for the replacement of the wells has no relation to the irrigation withdrawals of the existing wells, but more likely the depth of the wells. (FF17; TR77)

ARGUMENT

A. Standard of Review

Intervenors appeal the Board's Findings of Fact and Conclusions of Law which are reviewed under the clearly erroneous standard. The decision is to be upheld unless the reviewing Court is left with a definite and firm conviction that a mistake has been committed. In re Water Right Claim No. 1927-2

524 N.W.2d 855, 857(SD 1994) (citing Fraser v. Water Rights Commission, 294 NW 2d 784 (SD 1980); Permann v. Dept. of Labor, Unemp. Ins. Div., 411 NW2d 113, 119 (SD 1987))

B. The Findings of Fact and Conclusions of law are properly supported by the record.

Intervenors have alleged that the Findings of Fact and Conclusions of Law are not substantiated by the record and that the Boards actions are not consistent with the requirements of South Dakota Law. Specifically, Intervenors allege that there is an inadequate record made as to whether or not SDCL 46-2A-9 was satisfied. SDCL 46-2A-9 states as follows:

A permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

There was sufficient evidence presented at the hearing on each of the elements contained in SDCL 46-2A-9.

1. There is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

James Goodman, a natural resources engineer and an expert in ground water hydrology, reviewed the Application and testified at the hearing. (FF6; DENR1) Mr. Goodman had

previously appeared before the South Dakota Water Management Board as an expert. (FF6)

Goodman was the only hydrology expert to testify in this proceeding. (FF6)

James Goodman reviewed the permit application, reviewed the County Study report conducted by the South Dakota Geological Survey, analyzed the hydrology of the Hillsview Aquifer, reviewed information obtained from the two state observation wells (MP-80G and MP-80H) and examined information obtained regarding other nearby irrigation permits. (FF6; TR7)

Mr. Goodman testified the Hillsview aquifer is a predominantly buried outwash (sand and gravel) in McPherson County. (FF3; TR6) The aquifer underlies 51,200 acres and contains an estimated 230,000 acre-feet of recoverable water in storage. (FF3; TR6) In the immediate area of this application, the aquifer is under water table conditions and appears to be a surficial aquifer. (FF3; TR6)

The two state observation wells are monitored by the Water Rights Program. (FF5; TR7) The observation wells show that water levels for these wells show good response to climatic conditions that is rising during wet periods (recharge) and gradually declining water levels during dry periods. (FF5) The water level record indicates the aquifer is capable of sustaining additional withdrawals. (FF5) In addition, hydrographs for observation well MP-80H and MP-80G support that the aquifer is capable of sustaining additional withdrawals. (FF5; TR7) The hydrographs show there is very little annual fluctuation of the aquifer. (TR7) Since the time the Department had monitored the well, it is hard to discern any pumping effects from the irrigation on this particular aquifer. (TR7) The times when the aquifer was lower, coincides with dryer periods in South Dakota. (TR7, 8) Mr. Goodman was convinced that the water levels mirrored the climatic conditions and is not due to irrigation. (TR8)

RITER, ROGERS, WATTIER
& NORTHRUP, LLP

BY: Margo D. Northrup
Margo D. Northrup
Member of the Firm
319 S. Coteau
P.O. Box 280
Pierre, SD 57501

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF	)	
WATER PERMIT	)	
APPLICATION NO. 6908-3,	)	APPELLEE BRIEF
Harlan Aman	)	

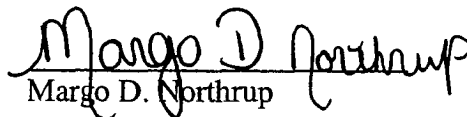
Certificate of Service

I, Margo D. Northrup, hereby certify that a true and correct copy of the Appellee's
Brief which was sent by first class mail on this 4 day of November, 2008 upon:

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol Ave
Pierre SD 57501

Diane Best
Attorney General Office
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LARRY LONG
ATTORNEY GENERAL

RECEIVED

NOV 19 2008

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 17, 2008

Ronda Geffre
McPherson County Clerk of Courts
P.O. Box 248
Leola, SD 57456-0248

Re: *In the Matter of the Application for Permit to Appropriate Water, No.
6908-3, Harlan Aman*

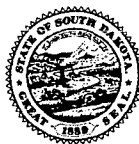
Dear Ms. Geffre:

Find enclosed Certificate of Service in the above-referenced matter. Thank you.

Sincerely,


Diane Best
Assistant Attorney General

DB/rar
Enclosure



OFFICE OF ATTORNEY GENERAL

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NOV 19 2008

**WATER RIGHTS
PROGRAM**

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 17, 2008

The Honorable Jack R. Von Wald
Circuit Court Judge
P.O. Box 1087
Aberdeen, SD 57402

Re: *In the Matter of the Application for Permit to Appropriate Water,*
No. 6908-3, Harlan Aman

Dear Judge Von Wald:

Enclosed find the Brief of Appellee Water Rights Program. By copy of this letter, service is intended upon Thomas Tobin and Margo D. Northrup.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best
Assistant Attorney General

DB/rar

Enclosure

cc: Thomas Tobin
Margo D. Northrup

RECEIVED

NOV 19 2008

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF McPHERSON	)	FIFTH JUDICIAL COURT
IN THE MATTER OF THE	)	Civ. 08-30
APPLICATION FOR PERMIT TO	)	
APPROPRIATE WATER,	)	BRIEF OF APPELLEE
NO. 6908-3, HARLAN AMAN	)	WATER RIGHTS PROGRAM

Comes now the South Dakota Department of Environment and Natural Resources, Water Rights Program ("DENR") and files its appellate brief in the above entitled matter.

PRELIMINARY STATEMENT

The administrative Board from which this appeal is taken is the South Dakota Water Management Board ("Board").

There are three sets of parties in this administrative appeal. Appellee Harlan Aman ("Aman") sought and received a water permit from the Board. Appellants intervened against Aman in his hearing before the Board. The Department of Environment and Natural Resources, Water Rights Program ("Water Rights Program") is also an appellee, having recommended approval of Aman's permit application.

Documents in the certified record will be referred to here as "AR," followed by the appropriate page number. The transcript of the evidentiary hearing held in this matter will be referred to as "TR," followed by the appropriate page number.

JURISDICTIONAL STATEMENT

The Water Rights Program accepts the Appellants' assertion that jurisdiction is properly before this Court. Notice of the Board's final decision was issued on May 9, 2008. AR 89-106. The Notice of Appeal was filed on June 11, 2008, pursuant to SDCL 1-26-31.

ISSUE PRESENTED

WHETHER THE BOARD PROPERLY GRANTED AMAN'S APPLICATION IN LIGHT OF THE FACTUAL EVIDENCE PRESENTED

The Board held that Aman's application met the standard in SDCL 46-2A-9 and it therefore granted the permit in question.

STATEMENT OF THE CASE

The Appellants make no allegations of procedural irregularities and the procedure is quite short.

The appeal involves a new water permit application for irrigation. Aman filed the application on October 12, 2007. AR 1. The water source for the permit request is the Hillview Aquifer, an aquifer used for irrigation in McPherson County. AR 6-9.

The Water Rights Program, headed by the Chief Engineer, processed the application as required by SDCL ch. 46-2A and SDCL ch. 1-26. The Chief Engineer reviewed the application and recommended approval. AR 10. Publication was made and parties were afforded an opportunity to intervene. AR 14. Appellants intervened against the application. AR 15-21.

Hearing was held before the Board on March 11, 2008. At the close of the hearing the Board made an oral determination. TR 88-91. The Board directed the applicant to prepare written Findings of Fact and Conclusions of Law. TR 91. The applicant filed proposed Findings of Fact and Conclusions of Law. AR 32-36. The Water Rights Program responded. AR 38-48. The Appellants filed their objections (AR 51-52) and alternative Findings of Fact and Conclusions of Law. AR 53-54

The Board ruled on the Findings of Fact and Conclusions of Law on May 7, 2008. AR 73-88. Final Notice was given on May 9, 2008. AR 89-106.

Notice of Appeal was made on June 11, 2008. AR 107-108.

STATEMENT OF FACTS

The focus of the Appellants' claims deals with the factual question of whether Aman's proposed water use would impair the rights of the Appellants to use water for irrigation and for their domestic use.

Aman's permit request was for authority to divert water at the rate of 2.0 cubic feet per second (cfs) from the Hillsvie Aquifer. At the time of hearing the well was not yet drilled. The permit requested authority to drill the well within a 40 acre parcel located in the NE1/4SW1/4 of Section 34, 7126N, R71W. (See DENR Exhibit 3, a township map.) Aman and other irrigators already have irrigation wells in this aquifer. Appellants have wells for domestic use in the aquifer and use the water for their livestock. AR 6-9.

At hearing DENR expert witness James Goodman testified regarding water availability and whether the water permit, if granted, would impair water uses of others. Goodman is a natural resources engineer with the Water Rights Program. DENR Exh. 1. Goodman holds a degree in geological engineering and is an expert in ground water hydrology. DENR Exh. 1. He has previously appeared before the South Dakota Water Management Board as an expert on several occasions. DENR Exh. 1. Goodman was the only hydrology expert to testify in this proceeding.

Goodman analyzed the permit application. He testified that he reviewed a study of the hydrology of the Hillsvie Aquifer that had been conducted in 1982 by the South Dakota Geological Survey. The 1982 study indicates that there is an estimated 230,000 acre feet of water in the aquifer and that yields of 500 gpm may be possible. AR 6. The study did not map the area of the aquifer. AR-6. Goodman also analyzed information from two state observation wells (MP-80G and MP-80H). AR 6, TR 7. The well known as MP-80G is located about one and one-half miles northwest of the proposed well. TR 7. The well known as MP-80H is located

about one-half mile to the northeast of the proposed well. TR 7. These observation wells were drilled by the state in 1980 for the purpose of state use in studying water levels in the area in question. Water information from these wells has been available since 1980 when the wells were drilled. AR 8-9. Witness Goodman presented graphs (hydrographs) showing the increases and decreases in elevations of the observation wells. AR 8-9. There is very little annual fluctuation in the Hillsvie Aquifer. TR 7. It is hard to discern any pumping effects from existing irrigation. TR 7. The observation wells do, however, show general increases over wet periods such as the 1990's when it was extremely wet. TR 7, AR 8-9. Since 2001, the water levels have been gradually going down and that trend mirrors the climatic conditions during that period. TR 8, AR 8-9. Goodman further testified that the water level the DENR is measuring in these monitoring wells adequately reflects what is going on in the well field. TR 11.

As part of his analysis, Goodman also examined water use data from existing irrigation wells in the area. Irrigation questionnaires are submitted each year by irrigators. There are three existing irrigation rights within a mile to a mile and a half of the proposed well. TR 8. Two are 1900 and 4200 feet from the proposed well site. TR 8-9. The other one is one-half mile west of the proposed site. TR 11. Goodman testified that he did not expect the proposed use to impair water use from those irrigation wells.

Goodman also examined information from well logs showing the location, depth and water level of area wells. These well logs include wells used for domestic purposes as well as irrigation. TR 12. The logs are filed with the state by well drillers when the wells are drilled, as required by SDCL 46-6-11. Generally domestic use in rural areas is small and involves household use and watering for livestock. TR 12. When examining the overall amount of water available from Hillsvie Aquifer, the domestic use was not quantified or considered a large use. TR 12. Use by other irrigators is a larger use. TR 12.

Based on his review of the extent of the aquifer and the use of the aquifer, witness Goodman testified that the Hillsvew Aquifer is capable of sustaining additional withdrawals and, further, that interference with other irrigation wells or domestic users is not expected to be a concern, particularly in light of the distance between the proposed well and other wells. TR 23-25. The type of aquifer (sand and gravel at water table conditions) would not have a likelihood of showing immediate adverse effects from irrigation like it would if it was an extension well. TR 24. Goodman's conclusion was based on his experience and background, as well as the information pertaining to the irrigation wells and the studies referenced in his report.

Goodman also testified that fluctuation in water levels in the DENR observation wells is attributable to climatic conditions rather than irrigation. TR 8. DENR observation wells, which are close to the proposed well site and to Aman's existing wells, show that fluctuation is much more attributable to climatic conditions than it is to irrigation.

Appellant Allen Hieb testified regarding his domestic wells in the Hillsvew Aquifer and his experience with drawdown. All the Hieb wells are one and one-half to two miles north of the proposed Aman well. TR 53. A well that Hieb used for a stock tank in a pasture went dry in 2006. Hieb's other wells dropped 25 to 30 feet and Heib attributed the drop in part to various irrigation pumps in the area. TR 43. Hieb testified that this occurred in 2006, which was also a "major drought" year. TR 43. There was less than 10 inches of precipitation in McPherson County in 2006. TR 55. The 25 to 30-foot drop was measured in Hieb's well in Section 23, one and one-half miles from the proposed Aman well. TR 44, 54. The well where the 25 to 30-foot drop was measured was a 140-foot well drilled in 2006. At the time it was drilled, the water level in the well was 14-feet below the surface according to Hieb. TR 56, according to the driller's log it was 34 feet. Exh. 6. The pump was placed at around 75 to 80-feet deep. In other words, because the pump is at 78 feet, it is placed sufficiently into the well to enable the water

user to draw water from Hillsview Aquifer even when drought situations (such as that occurring in 2006) occur. This is the case regardless of whether the static water level measured in 2006 was 34 feet or 14 feet from the surface.

Appellant Mohr lives a mile east of Allen Hieb. Mohr has three wells. TR 61. He testified that the fine sand in wells makes it impossible to lower the pumps. TR 62. One well is a bored well and does not produce water at a fast rate. TR 63. He is two miles from the proposed wells. TR 64. Mohr is in the NE1/4 of Section 23. DENR Exh. 3. The DENR observation wells are closer than the Mohr and Hieb wells. DENR Exh. 3.

Ray Graff also testified. He testified that he has a well 40 to 45-feet deep. TR 71. His dad also had a well that was the same depth. TR 71. One was drilled in 1918; the other was drilled in the 1930's. TR 73. He has experienced no problems with his well. TR 74.

The Board found, after considering all the testimony that wells in this area are responsive to climatic trends, and that based upon expert testimony and the DENR's observation wells, nearby irrigation does not result in the fluctuations from irrigation that are claimed by the Appellants. AR83, Finding of Fact 11.

Further, the Board added a condition to the Aman permit to make sure to protect the prior rights held by the Appellants. AR 88. The Board required that the permit be qualified so as to protect nearby domestic wells and other wells which may obtain water from the same aquifer and which hold priority rights. AR 85-88. The proposed qualification provides that the well owner (Aman) must 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. This includes both existing irrigation rights as well as domestic wells which are not required to be permitted. Because the rights of the Appellants include prior domestic uses they are protected by this qualification. The Board then held that the proposed use of the water should be granted since

there is a reasonable probability that the use would not impair other water uses and, further, that if such impairment did occur, the other users would be protected by the qualification. AR 85-88.

ARGUMENT

Standard of Review.

This Court's standard for review of an administrative agency decision is codified at SDCL 1-26-36. Under this statute, Appellants have the burden of showing that their substantial rights were prejudiced, and that one of the six violations listed in SDCL 1-26-36 has occurred.

Gratzfeld v. Bomgaars Supply, 391 N.W.2d 200 (S.D. 1986); Ashland v. South Dakota

Department of Labor Unemployment Ins. Div., 321 N.W.2d 103, 105 (S.D. 1982).

In analyzing whether Appellants have met their burden under SDCL 1-26-36, the initial inquiry is whether the matter is a question of law or one of fact. Questions of law are fully reviewable. Island v. Department of Corrections, 1996 S.D. 28, 545 N.W.2d 201 (1996). Mixed questions of fact and law that "require the application of a legal standard" are fully reviewable.

Abid v. Gateway 2000, 1996 S.D. 50, 547 N.W.2d 556. If, however, the issue involves a

question of fact or is "essentially factual," it is reviewed under the "clearly erroneous" standard.

Rios v. South Dakota Department of Social Servs., 420 N.W.2d 757 (S.D. 1988). Questions that are "essentially factual" are those that involve the exercise of judgment about the values

underlying legal principles. Id.

The issue here is factual and subject to the "clearly erroneous" standard. As such, the agency's determinations are given great weight. Fair v. Nash Finch Co., 2007 S.D. 16, 728

N.W.2d 623. Findings must be reviewed in light of the totality of the evidence in the record.

Matter of Ottertail Power Company, 2008 S.D. 5, N.W.2d 594. Under Ottertail, the Board's

findings are not to be overturned unless this Court is "definitely and firmly convinced that a mistake has been made." Id. at ¶ 26.

The issue presented here is a question of fact and the “clearly erroneous” standard applies. Appellants brief discusses the applicable facts and asks the Court to review the evidence and determine whether enough facts were presented to support the decision. The “clearly erroneous” standard applies.

Waiver.

Appellees cite no legal authority and appear to be making a factual argument only. Under Guthmiller v. DOT, 502 N.W.2d 586, 588 (S.D. 1993) Appellees have waived any legal argument in this case.

In addition, the factual matters recited in Appellees brief do not contain references to the record and the Court’s holding in Klein v. Klein, 500 N.W.2d 236 (S.D. 1993) should be applicable. For example, Appellant’s Brief, at page 2, states that the decision was based on “the overall assumptions that the ground water shore line is even and water would always flow to the well point from other parts of the aquifer.” There is no citation to the record. It appears that Appellant’s counsel brought this up in closing statement. It is unclear what expert or factual information Appellant’s rely on to make this statement.

Application of SDCL 46-2A-9.

In the event that the Court rejects the above arguments and considers Appellants’ factual argument, the Water Rights Program submits its response below.

In considering the factual evidence pertaining to granting the water permit, the standard the Board is required to comply with is SDCL 46-2A-9. Under that statute, the Board is required to consider four factors: (a) whether the proposed use is in the public interest, (b) whether the public use is a beneficial use, (c) whether there is a reasonable probability that there is unappropriated water available for the proposed use, and (d) whether the proposed use would impair existing rights.

Two of the foregoing criteria appear to be undisputed in this appeal. Those criteria are the beneficial use and public interest criteria. The Board found, at Findings of Fact 22 and Conclusion of Law 4, that the use of water for irrigation is a beneficial use of the water. Under SDCL 46-1-6(3) beneficial use is "any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interest of the public of this state in the best utilization of water supplies." The Board found that use of water for irrigation is beneficial to the irrigator because it increases the capacity to grow crops. The Board further found that the use of water for irrigation is consistent with the interests of the public because providing water for growing crops to support the state's agricultural economy provides for maximum utilization of water supplies. Id. This meets the beneficial use standard.

The Board also found that the water permit would be in the public interest. Finding of Fact 23 and Conclusion of Law 4. The proposed use is in the public interest insofar as it provides water for irrigation which would, in turn, benefit the general economic development of the area in question. Id.

Appellants take issue with the Board's Findings and Conclusions regarding the other two criteria in SDCL 46-2A-9. Those criteria are: whether there is a reasonable probability that there is unappropriated water available for the proposed use and, further, whether the proposed use would impair existing rights.

Although Appellants seek to discount the expert testimony of the state, the testimony of DENR expert Goodman is sound. Goodman has substantial experience in the hydrology field. Exh. 1 (curriculum vita). The information he reviewed included not only a 1982 study conducted by the South Dakota geological survey, but also information from monitoring wells drilled by the state in 1980 in McPherson County for the purpose of studying this aquifer. Goodman reviewed the well levels since 1980 and therefore has information regarding the effect

that climate and irrigation in the area would have on other wells. Goodman stated that the Hillsview Aquifer is much more response to climate than it is to the amount of irrigation from the aquifer. TR 8-9.

Although Appellants claim on appeal that the 1982 study was too old, they produced no evidence at hearing and make no argument on appeal that the age of the study would necessarily invalidate the study. In other words, there is no issue of test methods that are outdated or factual information that is now found to be invalid. Ultimately, the 1982 study, supplemented by the information obtained from state observation wells since 1980 support the Goodman analysis.

Appellants also assert that the state monitoring wells are not useful for this analysis since they are too far away from the well sought to be permitted. One of the DENR observation wells is one-half mile away and the other is one and one-half miles away. TR 7. Both are in the same aquifer as the proposed application. TR 7. Both are closer to the proposed Aman well than the wells of the Appellants.

Appellants also assert that there should have been a specific test well constructed at this particular site to determine whether Aman's proposed well would interfere with other existing uses. Witness Goodman testified, however, that the two observation wells drilled by the state in 1980 (and measured thereafter) show the characteristics of this aquifer and was sufficient to evaluate the application, especially when considering that water use from other irrigation wells in the area was examined as well. TR 7, 9.

Appellants assert that Goodman simply made guesses. The well has not been drilled yet, so Goodman did testify that he was guessing as to the exact well depth for installation of the Aman well, and whether it would be capable of producing water at the anticipated depth. TR 9, 10. In that regard, the Board found that the proposed depth of 110 feet should be sufficient to

penetrate the entire aquifer thickness, but until holes are drilled the best location within the 40 acre parcel for a production well is not known. TR 9, 10; AR 80.

As to the hydrology of the aquifer and its water producing characteristics, however, Goodman did not make guesses. He examined the hydrology of the area, relied on his knowledge of the climate, examined the South Dakota Geological Survey study, reviewed the water levels in the state observation wells for a period in excess of 25 years, and examined the actual use for irrigation as reported by irrigators.

Based on this information, as well as his own 35 years of experience and background in this field, Goodman concluded that sufficient water in the aquifer would be available to support Aman's proposed use of water for irrigation. Goodman also relied on the same information to form his opinion that Aman's use of water for irrigation was unlikely to result in impairment of the Appellants existing rights.

Appellants point out that the applicant seeks 900 gallons per minute (2 cubic feet per second). Appellants assert that this rate is in excess of any other well examined and that the other wells examined were not fair comparisons.¹ However, the other existing irrigation wells in this area are comparable as noted by Goodman. TR 12, 13. One of those wells is licensed for 2.0 cfs, one is licensed for 1.78 cfs, and the third is licensed for 1.78 cfs. AR 6-9. They are licensed for the same or similar diversion rates.

Further, it should be noted that the water right authorized for the proposed use is for up to 900 gallons per minute (2 cfs). The 900 gpm is the maximum diversion rate that would be available for this proposed use. TR 12, 13. Water right applications are filed and processed

¹ Appellants brief refers to wells producing water at 500 gpm. The only evidence at hearing regarding 500 gpm wells was a reference in the Goodman report that the 1982 study projected that the aquifer would be capable of sustaining wells producing 500 gpm. AR 6. As it turns out, irrigation wells capable of producing in the neighborhood of 900 gpm (2 cfs) have now been constructed in this aquifer and they have not caused a discernable decline in the aquifer. TR 8-9.

according to the acreage sought to be irrigated. TR 12, 13. See SDCL 46-5-6 (two acre feet per acre per year). Once the water rights are granted and allow for the installation of a production well, the DENR inspects the well, pump and amount of land irrigated. At that point, the DENR issues a license that reflects the actual use. TR 12, 13. The irrigation wells that are used for comparison here are ones that are already licensed. TR 12, 13. The proposed use by Aman will ultimately go through that process, and the diversion rate licensed for the Aman well will be 2 cfs or less. TR 12, 13.

The Appellants are also concerned that the qualification on the permit is not capable of being enforced. Enforcement was discussed during hearing. TR 13. The qualification clearly provides that if the proposed use adversely impairs domestic use, the domestic user is entitled the prior right. See SDCL 46-1-5. Aman would need to shut off his use or otherwise mitigate the problem so that the domestic use was provided for. TR 13. The DENR would promptly investigate. TR 16. As pointed out at hearing this system does not hold domestic users harmless from other causes of diminished water supply, i.e. the domestic users own bad well or failure to construct their well so that it is properly designed to draw water from the aquifer. TR 13. The water rights law provides that water wells must be "adequate" wells to be afforded priority. ARSD 74:02:04:20(6). An "adequate" well is one that is constructed into the aquifer at least 20 feet and is sufficient to enable the pump to be lowered at least the 20 feet. TR 17. ARSD 74:02:04:20(6). In other words, some water users may install a pump so that it has the benefit of having water near the surface with little or no pumping, but they aren't guaranteed that they are entitled to continue to have this benefit against all other users. To absolutely protect water uses near the surface would mean that no other use of the water could occur in the area if one user happened to drill a very shallow well when the water table was particularly high. This would contravene South Dakota law providing that water should be placed to maximum

beneficial use. SDCL 46-1-4. Water users are, however, protected if they have an adequate well so that they can lower the pump if necessary. TR 17. According to the uncontroverted testimony of Goodman, the domestic wells in this area are predominately large diameter bored wells with concrete curb casing. TR 18. For these bored wells there are sometimes construction problems and production problems occur on their own without being caused by other water users. TR 18.

Further, domestic users are not guaranteed that an irrigator will cut off his water supply if the domestic user experiences difficulty with water at such a significant distance from the irrigation well that there is not a legitimate cause and effect relationship. TR 14.

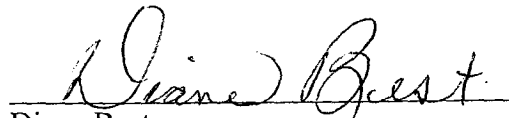
Although the permit condition was imposed out of an abundance of caution, Goodman testified that because the Mohr, Hieb, and Graff domestic use was more than one half mile away from the proposed use, there was unlikely to be interference. Indeed, the Hieb and Mohr wells are at least one and one half miles away. Further, the type of aquifer involved here (sand and gravel at water table conditions) would not have a likelihood of showing an immediate adverse effect from irrigation as opposed to other aquifers such as artesian aquifers that can show fluctuation quite quickly. TR 24.

As noted above, the DENR observation wells are in closer proximity to the proposed Aman wells than those of the Appellants and the DENR wells better reflect the history of the specific water conditions in the area where the proposed Aman wells will be located. The closer DENR observation wells will also be more able to measure the extent of drawdown caused the Aman well at this site, if such drawdown could be measured at the distances claimed by the Appellants. In the event of unexpected or precipitous levels of drawdown, the state observation well measurements should facilitate the enforcement of the conditions imposed in the permit before such drawdown occurred at the Appellants property further away.

SUMMARY

Based on the foregoing arguments and authorities, the Board's decision should be affirmed.

Dated this 17th day of November, 2008.

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
1302 E. Highway 14, Ste. 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

ccb_DB_Brief of Appellee Water Rights Prog (br)

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

) SS.

COUNTY OF McPHERSON

)

FIFTH JUDICIAL COURT

IN THE MATTER OF THE
APPLICATION FOR PERMIT TO
APPROPRIATE WATER,
NO. 6908-3, HARLAN AMAN

)

Civ. 08-30

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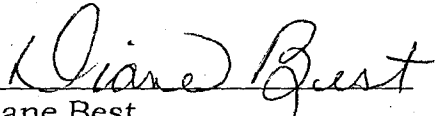
CERTIFICATE OF SERVICE

)

The undersigned hereby certifies that true and correct copy of Brief of Appellee Water Rights Program was served upon the following by enclosing the same in an envelope 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 November, 2008:

Thomas Tobin
Tonner, Tobin & King
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Aberdeen, SD 57402-1456

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Diane Best
Assistant Attorney General
1302 East Highway 14, Suite 1
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Telephone: (605) 773-3215



STATE OF SOUTH DAKOTA
FIFTH JUDICIAL CIRCUIT

**PRESIDING JUDGE**

Jack R. Von Wald

CIRCUIT JUDGES

Jon S. Flemmer

Scott P. Myren

Tony L. Portra

MAGISTRATE JUDGE

Mark A. Anderson

JACK R. VON WALD

Presiding Circuit Court Judge

Sara Van De Walle, RPR
Official Court Reporter101 SE 1st Ave Ste 300

P. O. Box 1087

Aberdeen, SD 57402-1087

Phone: 605-626-2450

Fax: 605-626-2491

Email: 5thcircuit@jis.state.sd.us**Attorney General**

January 29, 2009

JAN 30 2009

310864

Ms. Margo D. Northrup

Attorney at Law

PO Box 280

Pierre, SD 57501

Ms. Diane Best

Assistant Attorney General

1302 E. Highway 14, #1

Pierre, SD 57501

Mr. Thomas Tobin

TONNER, TOBIN & KING

Attorney at Law

PO Box 1456

Aberdeen, SD 57402

**RE: In The Matter of the Application For Permit to Appropriate Water, No. 6908-3,
Harlan Aman – McPherson County CIV. 08-30**

Dear Counsel:

Enclosed herewith is the Court's Memorandum Decision in the above-entitled matter.

Sincerely,

Jack R. Von Wald

Presiding Circuit Court Judge

JRVW/sjv

cc: McPherson County Clerk of Courts

Encl.

STATE OF SOUTH DAKOTA
COUNTY OF MCPHERSON

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

IN THE MATTER OF THE
APPLICATION FOR PERMIT TO
APPROPRIATE WATER,
NO. 6908-3, HARLAN AMAN

CIV. 08-30

MEMORANDUM DECISION

FACTS AND PROCEDURE

Harlan Aman (Aman) filed an application for a water permit for irrigation with the South Dakota Water Management Board (The Board) on October 12, 2007 (Application No. 6908-3). The permit proposed to appropriate 2.0 cubic feet of water per second or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well was to be completed in the Hillview Aquifer in McPherson County. The Water Rights Program, through the Chief Engineer, processed and reviewed the application and recommended its approval to The Board. Publication was made and parties were given the opportunity to intervene. Alan Hieb, Dale Mohr, Delores Hieb, and Raymond Groft (Intervenors), who own property near the area and have wells on the aquifer, intervened against Aman's application.

On March 11, 2008, a hearing was held before The Board. At the hearing, James Goodman, an expert for the South Dakota Department of Environment and Natural Resources, Water Rights Program (DENR), testified regarding water availability and potential impairment to the water uses of others. The Board also heard testimony from Allen Hieb, Dale Mohr, and Ray Groft. After receiving all of the testimony, The Board adopted Findings of Fact and Conclusions

¹ The spelling of Raymond's last name varies throughout the documents provided. Mr. Groft is referred to as Mr. Graff in some documents.

of Law and granted the permit on May 7, 2008. The Board found that there was a reasonable probability that there is unappropriated water available, that the proposed diversion could be developed without unlawful impairment of existing rights, the proposed use was beneficial and it was in the public interest to grant the application.

Pursuant to SDCL §1-26-31 a Notice of Appeal to this court was filed by Intervenors on June 11, 2008.

DECISION

SDCL §1-26-36 provides the standard of review of an administrative agency's decision.

It states:

The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

A court shall enter its own findings of fact and conclusions of law or may affirm the findings and conclusions entered by the agency as part of its judgment. The circuit court may award costs in the amount and manner specified in chapter 15-17.

"The standard of review used in administrative agency cases depends on whether the issue involved is a question of fact, or a question of law." *Rios v. South Dakota Dept. of Social*

Services, 420 N.W.2d 757, 759 (S.D. 1988). The issues in this appeal involve questions of fact rather than questions of law. Therefore the decision of The Board will be reviewed under the clearly erroneous standard and will be upheld unless the court is definitely and firmly convinced that a mistake has been made. *In re Otter Tail Power Co. ex rel. Big Stone II*, 744 N.W.2d 594, 602 (S.D. 2008); *See also Fair v. Nash Finch Co.*, 728 N.W.2d 623, 627 (S.D. 2007); *Rios*, 420 N.W.2d at 759; *In re Water Right Claim No. 1927-2*, 524 N.W.2d 855, 857 (S.D. 1994).

As DENR correctly points out, there is no legal authority cited by Intervenor in support of any of their contentions, nor is there any citation to the record regarding factual matters. "Failure to cite authority is waiver of an argument." *Guthmiller v. South Dakota Dept. of Transp.*, 502 N.W.2d 586, 589 (S.D. 1993); *See also* SDCL §15-26A-60(6). The court could disregard the arguments of Intervenor because the lack of citation amounts to a waiver and the court would affirm the decision of The Board. Moreover, SDCL §15-26A-60(5) requires that "[e]ach statement of a material fact shall be accompanied by a reference to the record where such fact appears." *See also Klein v. Klein*, 500 N.W.2d 236, 240 (S.D. 1993). This, the Intervenor have failed to do. However, even if the court examines the factual arguments of Intervenor, it reaches the same result.

SDCL §46-2A-9² sets out the requirements for a permit requesting the appropriation of water to be approved. There are essentially four elements within the statute that need to be met in order for the permit to be approved. Those elements include: (1) reasonable probability that there is unappropriated water available for the proposed use, (2) the proposed diversion can be developed without lawful impairment of existing rights, (3) the proposed use is a beneficial use,

² SDCL §46-2A-9: A permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

and (4) the proposed use is in the public interest. Intervenor claim that there was inadequate record made as to whether or not SDCL §46-2A-9 was satisfied. The court does not agree.

DENR provided expert testimony through James Goodman (Goodman), a natural resources engineer, regarding elements (1) and (2) of SDCL §46-2A-9 as set out above. After examining the application, a county study, the hydrology of the aquifer, information obtained from two state observation wells, information regarding other nearby irrigation permits, and relying on his experience and background, Goodman concluded, after discussing the effects of the current irrigation wells, that there was water available from the Hillview Aquifer for the proposed well. In other words, there was a reasonable probability that there is unappropriated water available in the aquifer to support the addition of Aman's proposed well. Goodman also determined that the addition of the proposed well could likely be developed without unlawful impairment of existing rights. The court has reviewed the transcript, as well as the evidence presented to The Board, and believes an adequate record was made to satisfy these requirements.

Regarding elements (3) and (4) of SDCL §46-2A-9, the court agrees with The Board's determination that under SDCL §46-1-6(3)³, irrigation is a beneficial use of the water. In addition, the court agrees that using the water for irrigation purposes is in the public interest because it provides water needed to support the crops growing on the land. Therefore, the court finds that the requirements in SDCL §46-2A-9 have been satisfied.

Intervenor also argue that no test well was done in this case. While this statement is true, Goodman explains that even without a test well he is able to evaluate the application by examining the county study, the other wells in the area, other irrigation wells, and the two observation wells in the area.

³ SDCL 46-1-6(3): "Beneficial use," any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies

Next, Intervenorors are apparently arguing that the test wells are too far away from the proposed site to be useful in the examination. Intervenorors claim that both test wells are one and one-half to two miles from the proposed drilling site. However, Goodman testified that one of the test wells was located one and one-half miles northwest of the proposed site while the other was located only one-half mile from the site. In addition, it appears from the testimony provided, that at least one of the test wells is closer to the proposed site than any of the Intervenorors' wells. Therefore, it appears that using the test wells in the examination was appropriate.

Intervenorors then argue that there was no evidence refuting their testimony and that The Board relied on the "guesses" of Goodman. While there was no direct evidence explicitly refuting the testimony of the Intervenorors, Goodman did testify as to his belief, based on his research, experience, and background, regarding the possible reasons for the problems Intervenorors have encountered. The "guesses" of Goodman regarding the available water as well as the unlikelihood of impairment of existing rights are not guesses. They are supported by the evidence including Goodman's experience and background.

The Intervenorors also argue that the studies done by DENR look at withdrawals of 500 gallons per minute while the application is for 900 gallons per minute and therefore, are not good comparisons. However, Goodman testified that the other irrigation wells in the area are comparable to the proposed well. In addition, the record shows that each of these wells is licensed for between 1.78 cfs and 2.0 cfs (900 gallons per minute).

Finally, Intervenorors argue that the restraints on the granting of the permit provide no guidance or objective standards or remedy for Intervenorors. Goodman adequately testified as to the procedure that is taken when a problem is encountered. After the problem is reported, the

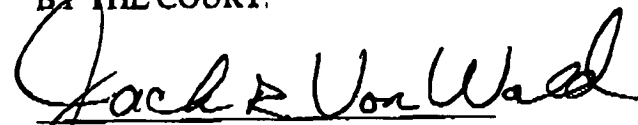
DENR will investigate. The person causing the problem would be required mitigate the problem in some way. Intervenor, while not expressly provided with the steps necessary for a remedy in the restraints, have been made aware of the procedures that will be taken if a problem occurs, through the testimony of Goodman.

CONCLUSION

Accordingly, the court finds that the decision of The Board is not clearly erroneous and the Findings of Fact and Conclusions of Law of The Board are affirmed.

Dated this 28th day of January, 2009.

BY THE COURT:


Jack R. Von Wald
Circuit Judge

ATTEST:

Ronda L. Geffre, Clerk of Courts

By: _____, Deputy



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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

February 4, 2009

The Honorable Charles Hoffman
South Dakota State Representative
Capitol Building
500 E. Capitol
Pierre, SD 57501

Dear Representative Hoffman:

My staff and I recently talked to you about Harlan Aman's water right application in McPherson County. Several neighbors had talked to you about their appeal of the Water Management Board's decision to issue the water right to circuit court. Judge Von Wald, Fifth Judicial Circuit, recently issued his decision in that case. Judge Von Wald affirmed the Board's decision. A copy of his decision is enclosed for your use and information.

If there is anything further you need from us on this matter, please feel free to contact us. Thank you again for bringing this matter to our attention.

Sincerely,

Steven M. Pirner
Secretary

Enclosure

Cc: Jason Glodt, Senior Policy Advisor, Governor's Office
Diane Best, Assistant Attorney General



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Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
Margo D. Northrup

Associate:
Lindsey Riter-Rapp

Of Counsel:
Robert D. Hofer

February 13, 2009

McPherson Clerk of Courts
706 Main Street
PO Box 248
Leola SD 57456

Re: Water Permit Application No. 6908.3 – Harlan Aman (Civ. 08-30)

To Whom It May Concern:

Enclosed please find a Notice of Entry of Order and Certificate of Service which I ask you file in regards to the above-referenced matter.

Thank you for your assistance in this matter.

RITER, ROGERS, WATTIER &
NORTHROP, LLP

By:
Margo D. Northrup

MDN/cs

Enclosure

Law Office
Riter, Rogers, Wattier, & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
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STATE OF SOUTH DAKOTA

FEB 12 2009

IN CIRCUIT COURT WATER RIGHTS PROGRAM

COUNTY OF McPHERSON

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
5TH CIRCUIT CLERK OF COURT

FIFTH JUDICIAL CIRCUIT

By: mlg

Civil 08-30

18

IN THE MATTER OF THE)
APPLICATION FOR PERMIT)
TO APPROPRIATE WATER NO.)
6908.3 HARLAN AMAN)

ORDER

The Intervenor, Allen Hieb, Delores Hieb, Dale Mohr and Raymond Graff, in the above-entitled matter, having filed with the Court a Notice of Appeal and Statement of Issues on June 11, 2008, appealing a decision of the South Dakota Water Management Board made on the 11th day of March, 2008. The Applicant, Harlan Aman, appeared by and through attorney, Margo D. Northrup of Riter, Rogers, Wattier & Northrup, LLP, of Pierre, South Dakota; Assistant Attorney General, Diane Best, appeared on behalf of the South Dakota Department of Environment and Natural Resources and attorney, Thomas Tobin of Tonner, Tobin & King, of Aberdeen, South Dakota appeared on behalf of Intervenor, Allen Hieb, Delores Hieb, Dale Mohr and Raymond Graff and the Court having considered the Briefs submitted by the parties, and all records and documents on file herein, and the Court having issued its Memorandum Decision and good cause appearing therefore,

ORDERED, ADJUDGED AND DECREED that the Court finds that the decision of the South Dakota Water Management Board is not clearly erroneous and the Findings of Fact and Conclusions of Law of the Board are affirmed.

Dated this 11 day of February, 2009.

BY THE COURT:

Jack R. Von Wald
Jack R. Von Wald
Circuit Judge

ATTEST

Ronda L. Geffre
Clerk

By: _____
Deputy

STATE OF SOUTH DAKOTA
Fifth Judicial Circuit Court

I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on file in my office on this date:

FEB 12 2009

Ronda L. Geffre
McPherson County Clerk of Courts

By: Ronda L. Geffre

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FEB 02 2009

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FEB 17 2009

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
5TH CIRCUIT CLERK OF COURT

IN CIRCUIT COURT

COUNTY OF MCPHERSON By



FIFTH JUDICIAL CIRCUIT

IN THE MATTER OF THE
APPLICATION FOR PERMIT TO
APPROPRIATE WATER,
NO. 6908-3, HARLAN AMAN

CIV. 08-30

MEMORANDUM DECISION

FACTS AND PROCEDURE

Harlan Aman (Aman) filed an application for a water permit for irrigation with the South Dakota Water Management Board (The Board) on October 12, 2007 (Application No. 6908-3). The permit proposed to appropriate 2.0 cubic feet of water per second or approximately 900 gallons per minute from one well proposed to be 110 feet deep. The well was to be completed in the Hillsview Aquifer in McPherson County. The Water Rights Program, through the Chief Engineer, processed and reviewed the application and recommended its approval to The Board. Publication was made and parties were given the opportunity to intervene. Alan Hieb, Dale Mohr, Delores Hieb, and Raymond Groft¹ (Intervenors), who own property near the area and have wells on the aquifer, intervened against Aman's application.

On March 11, 2008, a hearing was held before The Board. At the hearing, James Goodman, an expert for the South Dakota Department of Environment and Natural Resources, Water Rights Program (DENR), testified regarding water availability and potential impairment to the water uses of others. The Board also heard testimony from Allen Hieb, Dale Mohr, and Ray Groft. After receiving all of the testimony, The Board adopted Findings of Fact and Conclusions

¹ The spelling of Raymond's last name varies throughout the documents provided. Mr. Groft is referred to as Mr. Graff in some documents.

of Law and granted the permit on May 7, 2008. The Board found that there was a reasonable probability that there is unappropriated water available, that the proposed diversion could be developed without unlawful impairment of existing rights, the proposed use was beneficial and it was in the public interest to grant the application.

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“The standard of review used in administrative agency cases depends on whether the issue involved is a question of fact, or a question of law.” *Rios v. South Dakota Dept. of Social*

Services, 420 N.W.2d 757, 759 (S.D. 1988). The issues in this appeal involve questions of fact rather than questions of law. Therefore the decision of The Board will be reviewed under the clearly erroneous standard and will be upheld unless the court is definitely and firmly convinced that a mistake has been made. *In re Otter Tail Power Co. ex rel. Big Stone II*, 744 N.W.2d 594, 602 (S.D. 2008); *See also Fair v. Nash Finch Co.*, 728 N.W.2d 623, 627 (S.D. 2007); *Rios*, 420 N.W.2d at 759; *In re Water Right Claim No. 1927-2*, 524 N.W.2d 855, 857 (S.D. 1994).

As DENR correctly points out, there is no legal authority cited by Intervenor in support of any of their contentions, nor is there any citation to the record regarding factual matters. “Failure to cite authority is waiver of an argument.” *Guthmiller v. South Dakota Dept. of Transp.*, 502 N.W.2d 586, 589 (S.D. 1993); *See also* SDCL §15-26A-60(6). The court could disregard the arguments of Intervenor because the lack of citation amounts to a waiver and the court would affirm the decision of The Board. Moreover, SDCL §15-26A-60(5) requires that “[e]ach statement of a material fact shall be accompanied by a reference to the record where such fact appears.” *See also Klein v. Klein*, 500 N.W.2d 236, 240 (S.D.1993). This, the Intervenor has failed to do. However, even if the court examines the factual arguments of Intervenor, it reaches the same result.

SDCL §46-2A-9² sets out the requirements for a permit requesting the appropriation of water to be approved. There are essentially four elements within the statute that need to be met in order for the permit to be approved. Those elements include: (1) reasonable probability that there is unappropriated water available for the proposed use, (2) the proposed diversion can be developed without lawful impairment of existing rights, (3) the proposed use is a beneficial use,

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and (4) the proposed use is in the public interest. Intervenor claim that there was inadequate record made as to whether or not SDCL §46-2A-9 was satisfied. The court does not agree.

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Regarding elements (3) and (4) of SDCL §46-2A-9, the court agrees with The Board's determination that under SDCL §46-1-6(3)³, irrigation is a beneficial use of the water. In addition, the court agrees that using the water for irrigation purposes is in the public interest because it provides water needed to support the crops growing on the land. Therefore, the court finds that the requirements in SDCL §46-2A-9 have been satisfied.

Intervenor also argue that no test well was done in this case. While this statement is true, Goodman explains that even without a test well he is able to evaluate the application by examining the county study, the other wells in the area, other irrigation wells, and the two observation wells in the area.

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DENR will investigate. The person causing the problem would be required mitigate the problem in some way. Intervenor, while not expressly provided with the steps necessary for a remedy in the restraints, have been made aware of the procedures that will be taken if a problem occurs, through the testimony of Goodman.

CONCLUSION

Accordingly, the court finds that the decision of The Board is not clearly erroneous and the Findings of Fact and Conclusions of Law of The Board are affirmed.

Dated this 28th day of January, 2009.

BY THE COURT:

Jack R. Von Wald
Jack R. Von Wald
Circuit Judge

ATTEST:

Ronda L. Geffre, Clerk of Courts

By: Ronda L. Geffre, Deputy

STATE OF SOUTH DAKOTA
Fifth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:

FEB 02 2009

Ronda L. Geffre
McPherson County Clerk of Courts

By: Ronda L. Geffre

RECEIVED

FEB 17 2009

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF McPHERSON)

IN CIRCUIT COURT
WATER RIGHTS
PROGRAM
FIFTH JUDICIAL CIRCUIT

CIV08-30

IN THE MATTER OF THE)
APPLICATION FOR PERMIT)
TO APPROPRIATE WATER NO.)
6908.3, HARLAN AMAN)

NOTICE OF ENTRY OF ORDER

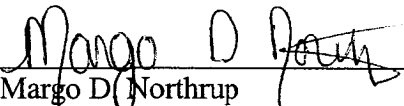
NOTICE IS HEREBY GIVEN that an Order has been signed and filed in the above entitled action and is now on file in the office of the Clerk of Courts of McPherson County, South Dakota;

That said Order was signed and filed on or about the 11th day of February, 2009 by the Honorable Jack Von Wald and filed on or about the 12th day of February, 2009.

DATED this 13 day of February, 2009.

RITER, ROGERS, WATTIER, &
NORTHROP, LLP

By:


Margo D. Northrup

A member of said firm

319 S. Coteau - P.O.Box 280

Pierre, SD 57501-0280

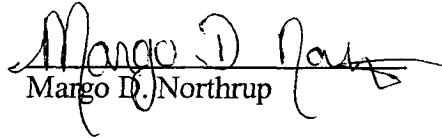
Certificate of Service

I, Margo D. Northrup, hereby certify that a true and correct copy of the Notice of Entry of Order and Order was sent by first class mail on this 13th day of February, 2009 upon:

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capitol Ave
Pierre SD 57501

Diane Best
Attorney General Office
1302 E Hwy 14, #1
Pierre SD 57501

Thomas Tobin
Tonner, Tobin & King
PO Box 1456
Aberdeen SD 57402


Margo D. Northrup



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

MAR 27 2009

Harlan Aman
33788 121st St
Hosmer SD 57448

Dear Mr. Aman:

Enclosed is Water Permit No. 6908-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

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

enclosures

cc: Margo Northrup, Attorney at Law, PO Box 280, Pierre SD 57501

SOUTH DAKOTA WATER WELL COMPLETION REPORT

6602

07-92

Location NE 1/4 SE 1/4 Sec 33 Twp 126N Rg 71WCounty McPherson

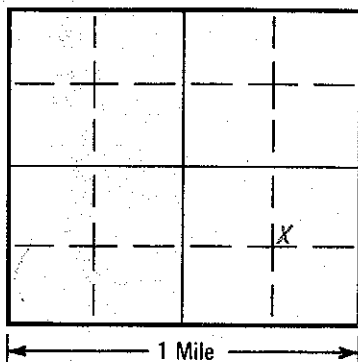
North

Please mark well location with an "X"

W

E

Well-Completion Date

3-18-09

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.) 2500 ft. from septic tank (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward RotaryCASING DATA: ☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>200 lb</u> LB/FT	<u>1"</u> IN	<u>11</u> FT	<u>110</u> FT	<u>4 3/4</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Portland Cement</u>	<u>3</u>	<u>9.8</u> lb./gal	<u>0</u> ft	<u>60</u> ft
_____	_____	_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure _____

SCREEN: ☒ Perforated pipe ☐ ManufacturedDiameter 1" IN Length 40 FEETMaterial PVCSlot Size 1/8" holes Set From 70 Feet to 110 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

X YES, How:chlorine

_____, NO, Why Not?

Laboratory sent to for water quality analysis _____

Well Owner: Aman Brothers FarmBusiness Name: OAddress: Hosmer, SD 57448

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top Soil	0	1
yellow clay	1	8
oxidized sand & gravel	8	55
Blue clay Till	55	70
Coarse Gravel	70	77
Blue clay Till		
with narrow Gravel strips	77	110
Rock	110	111

STATIC WATER LEVEL 44' 2" Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☐ Pumped Describe: _____☐ Bailed _____☐ Other _____

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

ob well

RECEIVED

MAR 23 2009

WATER RIGHTS PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.

Signature of License Representative:

Byron Manikowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

Date: _____

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NE 1/4 SE 1/4 Sec 33 Twp 126N Rg 91W

County McPherson

Please mark well location with an "X"

W

E

Well Completion Date

3-19-09



1 Mile

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 5000 ft. from stock yard (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotary

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>26.5</u> LB/FT	<u>5</u> IN	<u>71</u> FT	<u>55</u> FT	<u>8 3/4</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Portland Cement</u>	<u>3</u>	<u>9.7</u> lb./gal	<u>0</u> ft	<u>40</u> ft
<u>Grout</u>		_____ lb./gal	_____ ft	_____ ft

Describe grouting procedure Tram line from top of Sandpack to top of hole

SCREEN: ☐ Perforated pipe ☒ Manufactured

Diameter 5 IN Length 15 FEET

Material PVC

Slot Size 1050 Set From 55 Feet to 70 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

YES, How: chlorine

NO, Why Not? _____

Laboratory sent to for water quality analysis

Well Owner: Aman Brothers Farm

Business Name: _____

Address: Hosmer, SD 57448

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Top Soil</u>	<u>0</u>	<u>11</u>
<u>Oxidized sand & gravel</u>	<u>1</u>	<u>21</u>
<u>Fine, Medium to Coarse</u>	<u>21</u>	<u>40</u>
<u>Fine to medium sand</u>	<u>40</u>	<u>50</u>
<u>Medium to coarse clean</u>	<u>50</u>	<u>70</u>
<u>Blue clay</u>	<u>70</u>	<u>81</u>

STATIC WATER LEVEL 14 Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped Describe: Submersible Pump
☐ Bailed
☐ Other

Pumping Level Below Land Surface

16 ft. After 1 Hrs. pumped 60 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

Test well

RECEIVED

MAR 23 2009

WATER RIGHTS PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.

Signature of License Representative:

Byron Manikowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

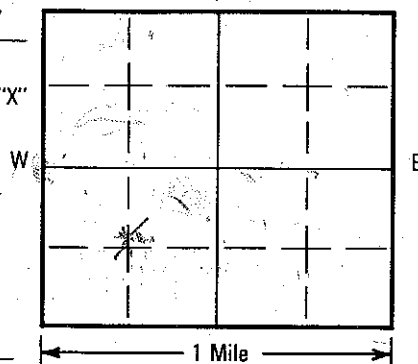
Date: _____

SOUTH DAKOTA WATER WELL COMPLETION REPORT

07-92

Location NW 1/4 SW 1/4 Sec 34 Twp 126N Rg 71N
 County McPherson North

Please mark well location with an "X"



Well-Completion Date

3-18-09

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.) 5000 ft. from stock yard (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotary

CASING DATA:

☐ Steel ☐ Plastic ☐ Other

If other describe installed 1"

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
<u>1655</u> LB/FT	<u>1"</u> IN	<u>11</u> FT	<u>90</u> FT	<u>4 3/4</u> IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type Bentonite No. of Sacks 3 Grout Weight 7.8 lb./gal From 0 ft. To 40' ft.
 lb./gal _____ ft. _____ ft.

Describe grouting procedure Tremie line pumped from bottom of hole to top

SCREEN: ☒ Perforated pipe ☐ Manufactured

Diameter 1" IN Length 20 FEET

Material PVC

Slot Size 1/8" Set From 50 Feet to 70 Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☒ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

YES, How: chlorine

NO, Why Not? _____

Laboratory sent to for water quality analysis _____

Well Owner:

Aman Brothers Farm

Business Name:

Address:

Hesmer, SD 57448

WELL LOG:

18 DEPTH

FORMATION	FROM	TO
Top Soil	0	1
Oxidized Sand & Gravel	1	49
Blue Clay	49	50
Grey Medium Sand	50	61
Coarse Sand & Gravel	61	70
Blue Clay	70	101

STATIC WATER LEVEL

28' 6"

Feet

If flowing: closed in pressure _____

PSI

GPM flow _____ through _____

inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____

GPM

Can well be completely shut in? _____

WELL TEST DATA:

☐ Pumped

Describe: _____

☐ Bailed

☐ Other

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped

GPM

_____ ft. After _____ Hrs. pumped

GPM

If pump installed, pump rate _____

GPM

REMARKS

RECEIVED

MAR 23 2009

WATER RIGHTS PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.

Signature of License Representative:

Byron Manikowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

Date: _____

SOUTH DAKOTA WATER WELL COMPLETION REPORT

66028

07-92

Location NW 1/4 SW 1/4 Sec 34 Twp 126N Rg 71W
 County McPherson

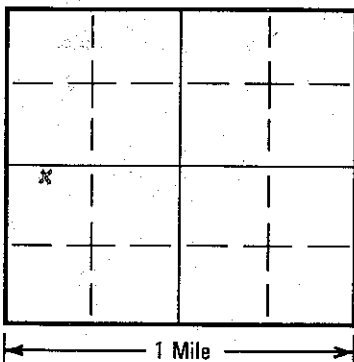
Please mark well location with an "X"

W

E

Well-Completion Date

3-19-09



LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.) 15000 ft. from stock yard (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotary

CASING DATA:

☐ Steel ☐ Plastic ☐ Other

If other describe

None installed

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN
_____ LB/FT	_____ IN	_____ FT	_____ FT	_____ IN

GROUTING DATA

Grout Type Portland Cement No. of Sacks 3 Grout Weight 9.8 lb./gal From 0 ft. To 81 ft.
 _____ lb./gal _____ ft.

Describe grouting procedure Tremie line pumped
Grout from bottom to top of hole

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter _____ IN Length _____ FEET

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☐ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

YES, How: _____

NO, Why Not? _____

Laboratory sent to for water
 quality analysis

Well Owner:

Aman Brothers Farm

Business Name:

Address:

Hosmer, SD 57448

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top Soil	0	3
Oxidized Sand + Gravel	3	21
Clean Fine to Medium Sand	21	50
Coarse Sand + Gravel	50	74
Blue Clay	74	81

STATIC WATER LEVEL

Feet

If flowing: closed in pressure

PSI

GPM flow _____ through _____

inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced Flowrate _____

GPM

Can well be completely shut in? _____

WELL TEST DATA:

☐ Pumped

Describe: _____

☐ Bailed☐ Other

Pumping Level Below Land Surface

_____ ft. After _____

Hrs. pumped _____

GPM

_____ ft. After _____

Hrs. pumped _____

GPM

If pump installed, pump rate _____

GPM

REMARKS

RECEIVED

MAR 23 2009

WATER RIGHTS
PROGRAM

This well was drilled under license #

285

And this report is true and accurate.

Drilling firm

Manikowski Well Drilling, Inc.

Signature of License Representative:

Byron Mankowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

Date: _____

3/24/09

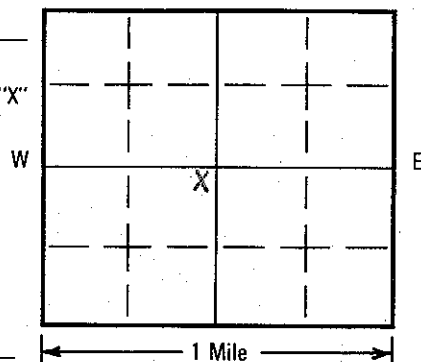
SOUTH DAKOTA WATER WELL COMPLETION REPORT

66018

07-92

Location NE 1/4 SW 1/4 Sec 34 Twp 106N Rg 71W
 County McPherson

Please mark well location with an "X"



Well-Completion Date

3-18-09

LOCATION:

Distance from nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)? 5,000 ft. from stock yard (identify source).

PROPOSED USE:

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

METHOD OF DRILLING:

Forward Rotary

CASING DATA:

☐ Steel ☐ Plastic ☐ Other

If other describe None Installed

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA

Grout Type Leak Sealant No. of Sacks 4 Grout Weight 9.8 lb./gal From 0 ft. To 130 ft.
 lb./gal ft. ft.

Describe grouting procedure Tremie line from bottom to top of hole

SCREEN: ☐ Perforated pipe ☐ Manufactured

Diameter _____ IN Length _____ FEET

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information _____

WAS A PACKER OR SEAL USED? ☐ YES ☐ NO

If so, what material? _____

Describe packer(s) and location? _____

DISINFECTION: Was well disinfected upon completion?

____ YES, How: _____

____ NO, Why Not? _____

Laboratory sent to for water quality analysis _____

Well Owner: Aman Brothers Farm

Business Name: _____

Address: Hosmer, SD

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
<u>Top Soil</u>	<u>0</u>	<u>1</u>
<u>oxidized sand & gravel</u>	<u>1</u>	<u>38</u>
<u>clean coarse sand</u>	<u>38</u>	<u>58</u>
<u>Coarse sand medium gravel</u>	<u>58</u>	<u>60</u>
<u>very coarse sand & gravel</u>	<u>60</u>	<u>70</u>
<u>Blue clay</u>	<u>70</u>	<u>97</u>
<u>Fine sand</u>	<u>97</u>	<u>110</u>
<u>Coarse sand & gravel some clays</u>	<u>110</u>	<u>120</u>
<u>Blue clay</u>	<u>120</u>	<u>130</u>

STATIC WATER LEVEL _____ Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced Flowrate _____ GPM

Can well be completely shut in? _____

WELL TEST DATA:

☐ Pumped Describe: _____

☐ Bailed _____

☐ Other _____

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate _____ GPM

REMARKS

RECEIVED

MAR 23 2009

WATER RIGHTS PROGRAM

This well was drilled under license # 285

And this report is true and accurate.

Drilling firm Manikowski Well Drilling, Inc.

Signature of License Representative:

Byron Manikowski

Signature of Well Owner or Equitable Property Holder:

Harlan Aman

Date: _____

3/24/09



6908-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 15, 2016

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448
FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2015 Irrigation Questionnaires

Our records indicate your 2015 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2015. The Water Management Board has directed that owners of water permits who have not submitted the 2015 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

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

The hearing will be held at **Thursday, March 3, 2016 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 3, 2016** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

February 24, 2016

2951-3
2951A-3
6908-3
6908A-3

Lester & Harlan Aman
33788 121st St
Hosmer SD 57448

Dear Sirs:

I am writing to acknowledge receipt of your 2015 irrigation questionnaires.

You may disregard the January 15, 2016, "Notice" concerning reporting requirements for Water Right No. 2951-3 and Water Permit Nos. 2951A-3, 6908-3 and 6908A-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



6908-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 26, 2018

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2017 Irrigation Questionnaires

Our records indicate your 2017 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 20, 2017. The Water Management Board has directed that owners of water permits who have not submitted the 2017 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

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

The hearing will be held at **Wednesday, March 7, 2018 at 10:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office before the **March 7, 2018** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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

6908-3



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 1, 2018

Harlan or Lester Aman
Aman Brothers
33788 121st St
Hosmer SD 57448

RE: Water Permit/Right Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3

Dear Sirs:

I am writing to acknowledge receipt of your 2017 irrigation questionnaires.

You may disregard the January 26, 2018, "Notice" concerning reporting requirements for Water Permit/Right Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Genny McMath". The signature is written in a cursive, flowing style.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 25, 2019

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2018 Irrigation Questionnaires

Our records indicate your 2018 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 30, 2018. The Water Management Board has directed that owners of water permits who have not submitted the 2018 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

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

The hearing will be held at **Wednesday, March 6, 2019 at 10:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office before the **March 6, 2019** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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

6908-3



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 30, 2019

Lester & Harlan Aman
33788 121st St
Hosmer SD 57448

RE: Water Right/Permit Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3

Dear Sirs:

I am writing to acknowledge receipt of your 2018 irrigation questionnaires.

You may disregard the January 25, 2019, "Notice" concerning reporting requirements for Water Right/Permit Nos. 2893-3, 2951-3, 2951A-3, 6908-3 & 6908A-3. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

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

6908-3



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 2021

NOTICE

TO: LESTER & HARLAN AMAN, 33788 121st ST, HOSMER, SD 57448

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2020 Irrigation Questionnaires

Our records indicate your 2020 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2020. The Water Management Board has directed that owners of water permits who have not submitted the 2020 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2893-3 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 qualification:

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

The hearing will be held at **Wednesday, March 3, 2021 at 10:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2951-3, 2951A-3, 6908-3 & 6908A-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2893-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office before the **March 3, 2021** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: QBJDUW**

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

6908-3



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 3, 2021

Lester & Harlan Aman
33778 121st St
Hosmer SD 57448

RE: Water Right or Permit Nos. 2951-3, 2951A-3, 2893-3, 6908-3 & 6908A-3

Dear Sirs:

I am writing to acknowledge receipt of your 2020 irrigation questionnaires. Jeff Aman called and completed the forms over the phone with me today.

You may disregard the January 22, 2021, "Notice" concerning reporting requirements for Water Right or Permit Nos. 2951-3, 2951A-3, 2893-3, 6908-3 & 6908A-3. The information was received in our office prior to the Water Management Board meeting and your names were deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Genny McMath". The signature is written in dark ink and is positioned above the printed name and contact information.

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us