

No. 107-3Water Division No. 3Vermillion River District

(Blanks to be filled by the Engineer for the W. R. C.)

Vested Right

STATE

PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To appropriate Water within the State of South Dakota

(NOTE—Draw a line through items not applicable.)

1. Name of applicant South Dakota Department of Game, Fish and ParksPostoffice address Pierre, County Hughes, State S. Dak.

I. If a corporation

(a) Name of same

(b) Date and place of incorporation

(c) Amount of capital stock

(d) Amount paid in

(e) Names and addresses of directors

(NOTE—A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

(a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)

(b) Cash on hand, \$

(c) Treasury stock, \$

(d) Bonds to be issued, \$

(e) Other resources, \$

2. Name of diversion work LAKE THOMPSON, Kingsbury CountyAs required to fill lake to outlet level - approximately 27,5003. Amount of water claimed acres-foot-per-year, cubic feet per second4. Source of water supply Sec. 205. Location of point of diversion 3 points in watershed - SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22;NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28, Township 110 Range 55 West. bank County.6. Annual period or periods during which water is to be used Continuously

7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system?

(a) Number of acres to be irrigated acres.

(b) Legal subdivisions to be irrigated

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

(c) Statement as to domestic use (giving location, etc.) A meandered lake in Township 110N.

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

(a) Nature of use Public Recreational Purposes

Name any of the above uses claimed

(b) Amount of power to be generated horse power.

Amount claimed for engine cooling

(c) Location of plant

(d) Method of developing power

(e) Point where water will be returned to stream

8. Estimated cost of work:

(a) Head Gates, \$----- (b) Pumping plant, \$-----
 (c) Fluming, \$----- (d) Canal-earth, \$----- Rock, \$-----
 (e) Other structures ----- \$----- Total, \$-----

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)

Information requested not applicable. Lake Thompson is a meandered Lake.
 Maximum depth is approximately 8 1/2 feet

II. Dimensions of works.

(a) Dam: Height ----- feet; length at bottom ----- feet; length at top ----- feet; thickness at bottom ----- feet; thickness at top ----- feet; slope at front water face -----; slope at back face -----
 material used in construction -----
 (b) Reservoir: Capacity when filled ----- acre feet. Surface area at highwater mark 9.185 ----- acres.

DEPTH AT OUTLET- FEET	SURFACE AREA AT EACH DEPTH AT OUTLET--ACRES	FEET	ACRE- FEET CAPACITY

(c)* Head gate: Width ----- feet; height ----- feet;
 Material -----
 (d) Canal: Total length ----- miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER-LINE	GRADE PER MILE
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work ----- completed - not applicable
 11. Time required for complete application of water to the proposed beneficial use ----- completed, not applicable
 12. Choice of newspaper for publication of notice of intention to appropriate -----
 ----- Not applicable

STATE OF SOUTH DAKOTA }
 County of ----- Hughes ----- } ss.

I, ----- Harry L. Woodward -----, being first duly sworn
 on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have
 read the above foregoing statement, examined the map accompanying the same, and that I know of my own
 personal knowledge that the matters therein stated and shown are true.

Signed ----- Harry L. Woodward -----

Subscribed and sworn to before me this ----- 12 ----- day of ----- April ----- 1960

 Notary Public (or other qualified officer)

Remarks by State Water Resources Commission:

"Vested Right Claimed"

STATE OF SOUTH DAKOTA
County of Hughes } ss.

Pierre, South Dakota, April 27, 1960

This is to certify that the foregoing application was received by the Commission at 10:30 o'clock
a.m. upon the 15th day of April, 1960.

State Water Resources Commission

By:

Barton Stone
for Chief Engineer, Executive Officer

Number of permit 707-3

Date of first receipt of application April 15, 1960

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right 1889, 1960

Approved April 27, 1960, Recorded in Book 6 Page 39

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth of the work above specified is ~~to be~~ completed on or before _____, 19____

2nd. The whole of said work is ~~to be~~ completed on or before _____, 1960

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is _____, 19____

4th. The water appropriated shall be used for the purpose of public recreation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 27,500 acre feet annually, cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually used for public recreation

and beneficially ~~applied for irrigation~~ on or before June 30, 1958; said water to be used during the following described annual period:

Continuously
Witness my hand this 27th day of April, 1960

State Water Resources Commission

By:

John B. Stone
Chief Engineer, Executive Officer

Certificate of Construction Issued April 27, 1960

Water License Issued April 27, 1960

STATE OF SOUTH DAKOTA

WATER LICENSE No. 707-3

WHEREAS, On the 15th day of April A. D. 1960

The Department of Game, Fish and Parks

of Pierre County of Hughes and State of South Dakota vested right duly made application (No. 707-3) to us for a permit to use 27,500 acre feet annually cubic feet per second of the waters of local watersheds County of Kingsbury, State of South Dakota, for public recreation purposes; and

WHEREAS, On the 27th day of April A. D. 1960

vested right Permit No. 707-3 was issued to said applicant for the diversion of said water, and recognizing the completion of the works of diversion therein described on or before the and for the application to beneficial use of said water on or before and,

WHEREAS, On the 15th day of April A. D. 1960

vested right the holder of said permit duly made proof of the completion of adequate works for the diversion of 27,500 acre feet annually cubic feet per second of said waters, as evidenced by our Certificate No. 707-3 dated April 27, 1960 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 27,500 acre feet annually cubic feet per second of water, with date of priority of 1889 and,

WHEREAS, On the 15th day of April A. D. 1960

proof was duly made of the application to beneficial use of 27,500 acre feet annually cubic feet per second of said water; to be used in place for public recreation

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,
We hereby grant and confirm to the Department of Game, Fish and Parks vested right
of Pierre the holder and owner of said permit No. 707-3
a water right, dating from 1889 to the use of 27,500 acre-feet annually
~~subject to the~~ of the waters of local watersheds
in the County of Kingsbury and State of South Dakota, or so much thereof as may be
necessray for the purposes hereinbelow mentioned, to be diverted at three points more specifically
described in the Certificate of Location of Works
used in place
and ~~conveyed to and upon~~

for the purpose of public recreation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and seal of our office at Pierre South Dakota,
this 27th day of April A. D. Nineteen
Hundred and sixty

State Water Resources Commission
By:
J.W. GRIMES, Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA	
Water License No. _____	
To _____	

Source of Supply _____	

County _____	
Amt _____ c. f. s.	
Point of Diversion _____	

Place of Use _____	

Purpose _____	

Date of Priority _____	
Recorded _____	
Book _____ of _____ Page _____	

Permit No. 707-3Water Division No. 3 Vermillion Water District
River**Certificate of Completion of Works**

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the Department of Game, Fish and Parksof Pierre, County of Hughes, and State of
South Dakota the holder of Permit No. 707-3, Issued upon Application
No. 707-3, bearing date of priority of 1889, authorizing the diversion of27,500 acre feet annually of the waters of local water
County of Kingsbury, State of South Dakota, at points in the SW¹/₄ NW¹/₄,
Sec 20, NE¹/₄ S¹/₄, Sec 22 and the NE¹/₄ SE¹/₄, Sec 28 T 11N R 55Wfor public recreation
purposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said permit; that said works are vested right recognized as
found to be satisfactory
condition for diverting and conveying to the place of intended use 27,500 acre feet annually
of water; and that the use of said water are described as follows,
to-wit: to be used in place for public recreationWitness my hand this 27th day of April A. D. 1960.

State Water Resources Commission

By:

J.W. ORIMES,

Chief Engineer, Executive Officer

Location No.

Water Division No. Water District

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. South Dakota Department of Game, Fish and Parks, Pierre, S. Dak.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent,) your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State date of posting and date of recording notice of appropriation.

Ans.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Local watershed - 3 points in the watershed - SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 20, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22
NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28, Township 110 Range 55 West.

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.

Ans. A meandered lake - depth 8 $\frac{1}{2}$ feet - 9185 surface acres

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. Public recreational purposes

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. Used in place in lake or reservoir

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. As required to fill lake to outlet level approximately 27,500 acre feet
per year.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans.

Ques. 10. State when, how, in what amount and to what extent, the water diverted under above mentioned permit has been used.

Ans. A meandered lake. Used by the public for uses specified except for that amount lost by evaporation and seepage. Used by state for public recreational purposes since 1889.

(Sign) Lacey K. Woodward

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Pierre, County of Hughes

State of South Dakota, on this 12 day of April A. D. 1960

Witnesses. Edward Johnson

I, the undersigned, do hereby certify that I am a duly qualified elector residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Location No.

PROOF OF APPLICATION OF
WATER TO BENEFICIAL USE

PETITION OF HOLDER

Amount of Water c. f. s.

Source

County

Purpose

Place of Use

Date of recording

Received and filed

SOUTH DAKOTA
Department of
Water & Natural Resources

Joe Foss Building
 523 East Capitol
 Pierre, South Dakota 57501-3181

September 21, 1988

Richard Beringson, Secretary
 Department of Game, Fish and Parks
 Anderson Building
 445 E Capitol
 Pierre SD 57501

Dear Mr. Beringson:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of all Department of Game, Fish and Parks Vested Water Right Claims for lakes for the following reasons:

1. Until the outlet elevation for each lake is surveyed and the outlet elevation is set by the Water Management Board.
2. To allow the Vested Water Right Claim to be amended, if necessary, as follows:
 - a) Include the outlet elevation;
 - b) To correct the amount of water claimed;
 - c) To add the qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d) To add any amendments and qualifications necessary to clarify a Vested Right Claim.

Also, that I intend to oppose validation of all Department of Game, Fish and Parks Vested Water Right Claims for dams to allow the Vested Water Right Claim to be amended, if necessary, as follows:

1. To include the spillway elevation;
2. To correct the amount of water claimed; and
3. To add any amendments and qualifications necessary to clarify a Vested Right Claim.

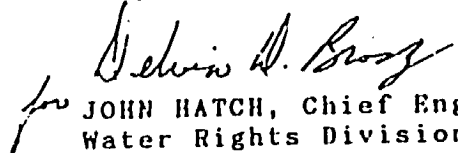


September 21, 1988
Richard Beringson, Secretary
Page 2

We will be working with your staff on these validations. We have already discussed setting outlet elevations before validating claims for lakes. Although the work necessary to complete the validation process will take several years to complete, the results should be of benefit to the public and to your Department. As the work is completed to validate each claim, the claim will be presented to the Water Management Board for validation.

Please advise if you have any questions.

Very truly yours,


for JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352

cc: Ron Koth, Department of Game, Fish and Parks

LAKE THOMPSON – KINGSBURY & HAMLIN COUNTIES

ESTABLISHMENT OF THE OUTLET ELEVATION

January 9, 2013

INTRODUCTION

On September 5, 2012, the Department of Environment and Natural Resources – Water Rights Program received a petition from Gass Law Office, Gregg A. Gass on behalf of the Kingsbury County Commission, which requested the Water Management Board to determine the outlet elevation for Lake Thompson. The Water Management Board has not set an Ordinary High Water Mark for Lake Thompson.

The Water Management Board has the authority to set the outlet elevation under the following:

74:02:01:50. Outlet elevation -- Inclusion in existing water rights or permits. When determining an ordinary high-water mark, the board may also set the outlet elevation consistent with the existing water rights or permits. The board may clarify or amend existing water rights or permits to include the outlet elevation consistent with chapter 46-2A.

46-1-14. Terms and conditions of permits and licenses--Amendment. The Water Management Board may issue any permit or license subject to terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity consistent with this chapter which it considers necessary to protect the public interest and which are related to matters within the jurisdiction of the board. Water rights issued pursuant to this section may be amended by the board and priority is retained upon amendment. Upon amendment the board may alter terms, conditions, restrictions, qualifications, or quantifications consistent with this chapter.

46-2-5. Rules to establish procedures and practices of board. The Water Management Board may promulgate rules pursuant to chapter 1-26 to:

- (1) Establish procedures for submitting applications;
- (2) Establish procedures and criteria for issuing, amending, renewing, qualifying, inspecting, reinstating, suspending, and cancelling permits, rights, and licenses;
- (3) Establish procedures and criteria for regulating water uses;
- (4) Establish practice requirements and procedures for issuing declaratory rulings and conducting contested cases; and
- (5) Establish procedures for determining ordinary high and low water marks and outlet elevations.

This report is based on the results of the field work and Global Positioning System (GPS) survey conducted October 30, 2012 by Jeremy Schelhaas and Lynn Beck engineering staff with the Department of Environment and Natural Resources. It is important to note that elevations in this report are in the National Geodetic Vertical Datum of 1929.

GENERAL INFORMATION

Lake Thompson is a natural lake located in Kingsbury and Hamlin counties. For many years the lake was approximately 5,000 surface acres and essentially dry. Since 1984, the lake has filled and presently covers approximately 18,000 acres and spills to the East Fork of the Vermillion River. The lake extends approximately 15.5 miles from the north end to the outlet located at the south end of the lake in the approximate center of the W½ of Section 25, T108N, R55W. Lake Thompson is 5 miles east and 4 miles south of the town of DeSmet, SD. See map Attachment 1.

INVESTIGATION

The existing outlet for Lake Thompson is located in the approximate center of the W½ of Section 25, T108N, R55W.

The outlet is a natural ground elevation subject to both deposition and erosion. Several surveys have been performed at the outlet location since 1983 with varying results. Past surveyed elevations have ranged from 1686.7 to 1688.6 feet mean sea level (fmssl). In 1998 a survey was conducted resulting in the lowest noted elevation. The lowest elevation is the result of subtracting the sediment deposition noted in the area from the survey elevation resulting in a hard bottom elevation of 1686.7 fmssl.

On October 30, 2012, a GPS survey was conducted resulting in a hard bottom elevation at the outlet location of 1687.5 fmssl. The survey also included invert elevations of culverts located at channel crossings north of the outlet to Oldham Road (218th Street). An invert elevation was also taken at the box culvert immediately downstream of the outlet location. The resulting elevations and their locations show that the outlet is located at the approximate center of the W½ of Section 25, T108N, R55W at an elevation of 1687.5 fmssl. A majority of the hard bottom elevations taken in the flat channel bottom were at or near 1687.5 fmssl. A channel profile and the outlet cross section are shown in Attachments 2 and 3.

The cross section at the outlet location shows that the lowest hard bottom point surveyed is approximately one foot lower than the recommended outlet elevation of 1687.5 fmssl. This does not represent the channel cross section as a whole as it represents a very small area of the channel. To construct an efficient outlet at the elevation of the lowest point in the cross section would affect the Ordinary High Water Mark. Even though an official OHWM has not been set by the Water Management Board one exists in nature.

All elevations in this report are referenced to a United States Department of the Interior, Geological Survey benchmark with a 1929 sea level datum described as follows:

Base Station Benchmark – The benchmark is located 3 miles west and 8 miles south of the town of Oldham, SD; near the corner of Sections 25, 30, 31, and 36 T108N between R 54 and 55 W; 36 feet south and 34 feet east and 0.9 feet lower than the crossroads; 5

feet south of a power pole; in the top of a concrete post a standard plate stamped “26 BRL 1759” with a published elevation of 1759.316 fmsl.

The survey closed back on the base station with an elevation difference of less than 0.01 feet. The largest differences in elevation checks were 0.06 to 0.20 feet on benchmarks found 15 miles from the base station. The further from the base station the more error incurred. The outlet location is only a mile from the base station. These checks indicate that the survey is accurate.

WATER RIGHTS

Vested Water Right Claim No. 707-3 held by the South Dakota Department of Game, Fish and Parks is the only existing claim on file for water in Lake Thompson (Water Rights, 2013a). However, domestic uses (i.e. livestock watering, dams, dugouts, etc.) are present within the Lake Thompson drainage basin.

Vested Water Right Claim No. 707-3 claims an 1889 priority date, and approximately 27,500 acre-feet of water per year to fill Lake Thompson to the outlet level for recreational purposes. The locations of the points of diversion are as follows: SW¼ NW¼ Section 20, NE¼ SW¼ Section 22, and NE¼ SE¼ Section 28, all in T110N-R55W.

Pursuant to SDCL 46-2A-16 the validation of Vested Water Right Claim No. 707-3 was published June 22, and 29, 1988 in the DeSmet News. That notice stated the Chief Engineer’s recommendation will be to validate the water right claim for sufficient water to fill the lake annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is lower. The only petition received opposing the validation was filed September 21, 1988 by the Chief Engineer of the Water Rights Division. The intent of the petition was to postpone validation for the following reasons.

1. Until the outlet elevation for the lake is surveyed and the outlet elevation is set by the Water Management Board.
2. To all the vested water right claim to be amended, if necessary, as follows:
 - a) Included the outlet elevation;
 - b) To correct the amount of water claimed;
 - c) To add a qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d) To add any amendments and qualifications necessary to clarify a vested right claim.

Vested Water Right Claim No. 707-3 can now be validated, stating that the amount of water claimed shall be “sufficient to fill Lake Thompson annually to the established outlet elevation of 1687.5 fmsl.”

CONCLUSIONS

1. The Water Management Board has the authority to set the outlet elevation for Lake Thompson or any other water body.
2. A request has been received to set the outlet elevation for Lake Thompson.
3. The Department of Game, Fish, and Parks presently holds recognized Vested Water Right Claim No. 707-3 for Lake Thompson. However, the claim has not been validated pursuant to SDCL 46-2A-16 and SDCL 46-2A-17.
4. The outlet for Lake Thompson is in the W½ of Section 25, T108N, R55W at an elevation of 1687.5 feet mean sea level.
5. The Department of Game, Fish, and Parks Vested Water Right Claim No. 707-3 should be validated to allow storage of water to elevation 1687.5 feet mean sea level with a priority date of November 2, 1889 (date of statehood).



Lynn Beck
Natural Resources Engineer III
DENR – Water Rights Program

REFERENCES

- Water Rights. 2013a. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.
- Water Rights. 2013b. Water General Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER ON ESTABLISHMENT OF AN
OUTLET ELEVATION FOR LAKE THOMPSON**

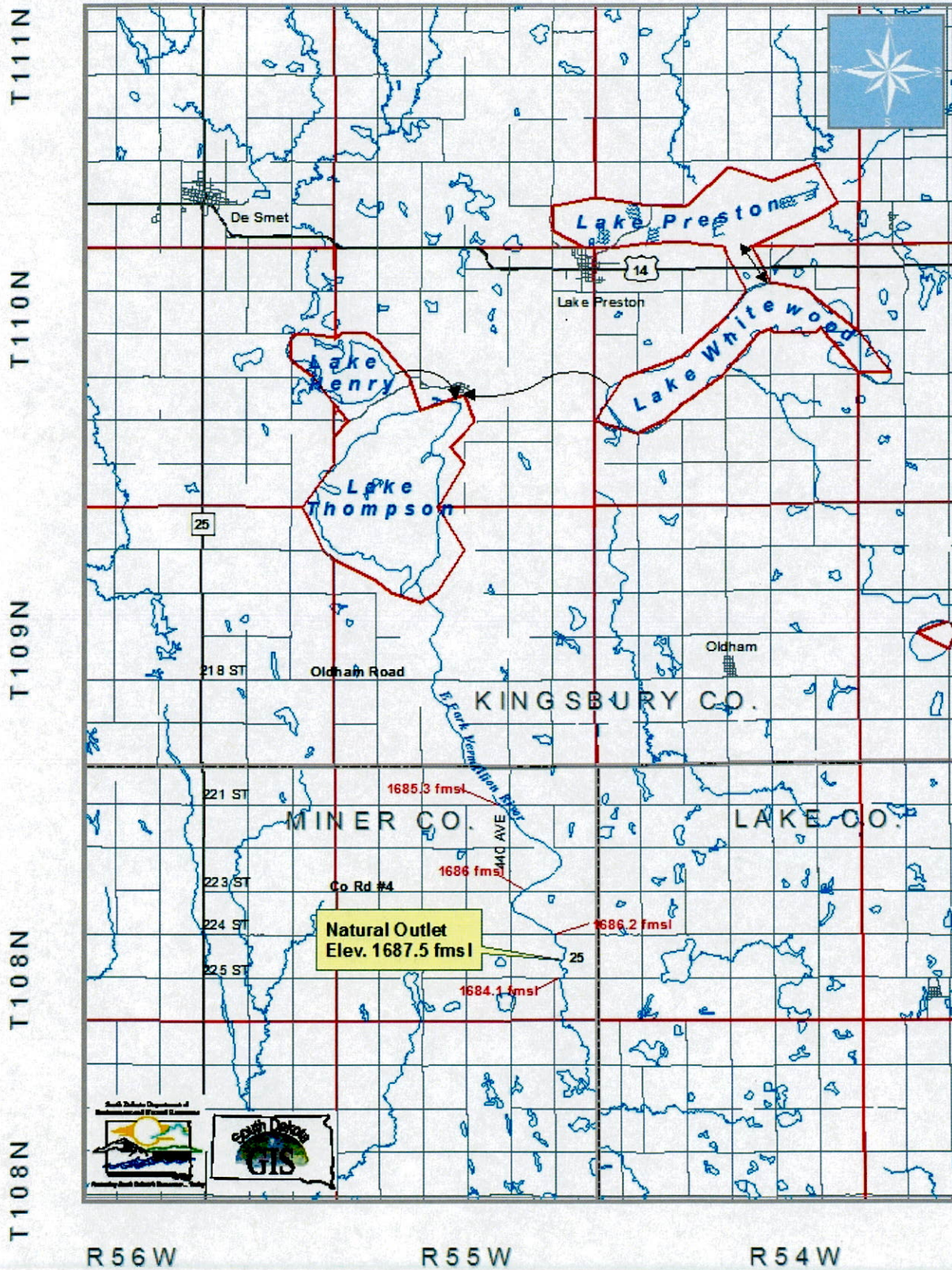
Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning establishment of an outlet elevation for Lake Thompson in Kingsbury and Miner Counties. The request was filed on behalf of the Kingsbury County Commission by Gregg A. Gass, Gass Law Office, PO Box 35, DeSmet SD 57231.

The Chief Engineer of the Water Rights Program of the Department of Environment and Natural Resource recommends that the outlet elevation for Lake Thompson be established at an elevation of 1687.5 feet mean sea level (fmsl). The recommendation is based on a survey conducted in the fall of 2012 of hard bottom elevations at the outlet location.

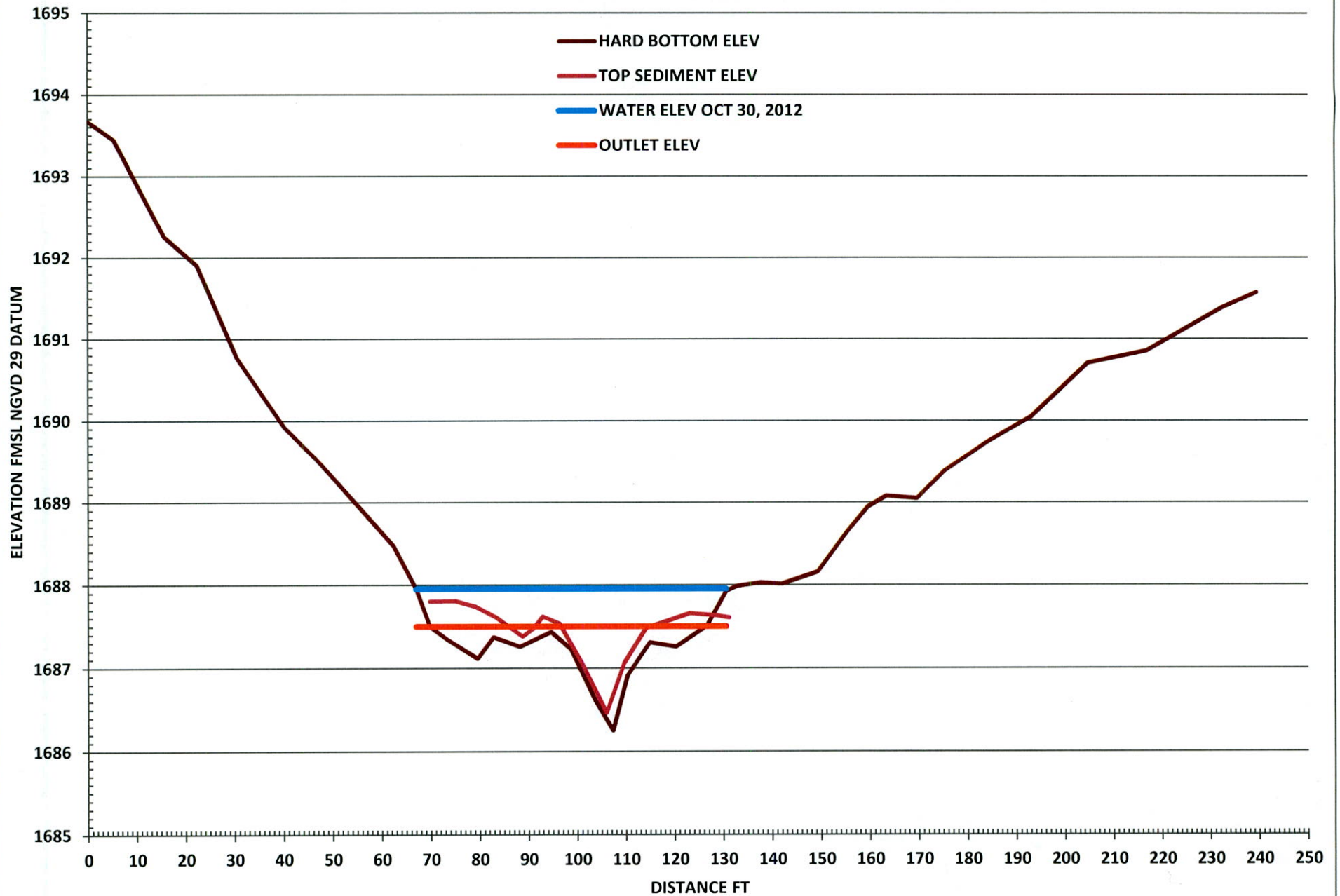
See report on application for additional information.

Garland Erbele, Chief Engineer
January 29, 2013

LAKE THOMPSON OUTLET CHANNEL

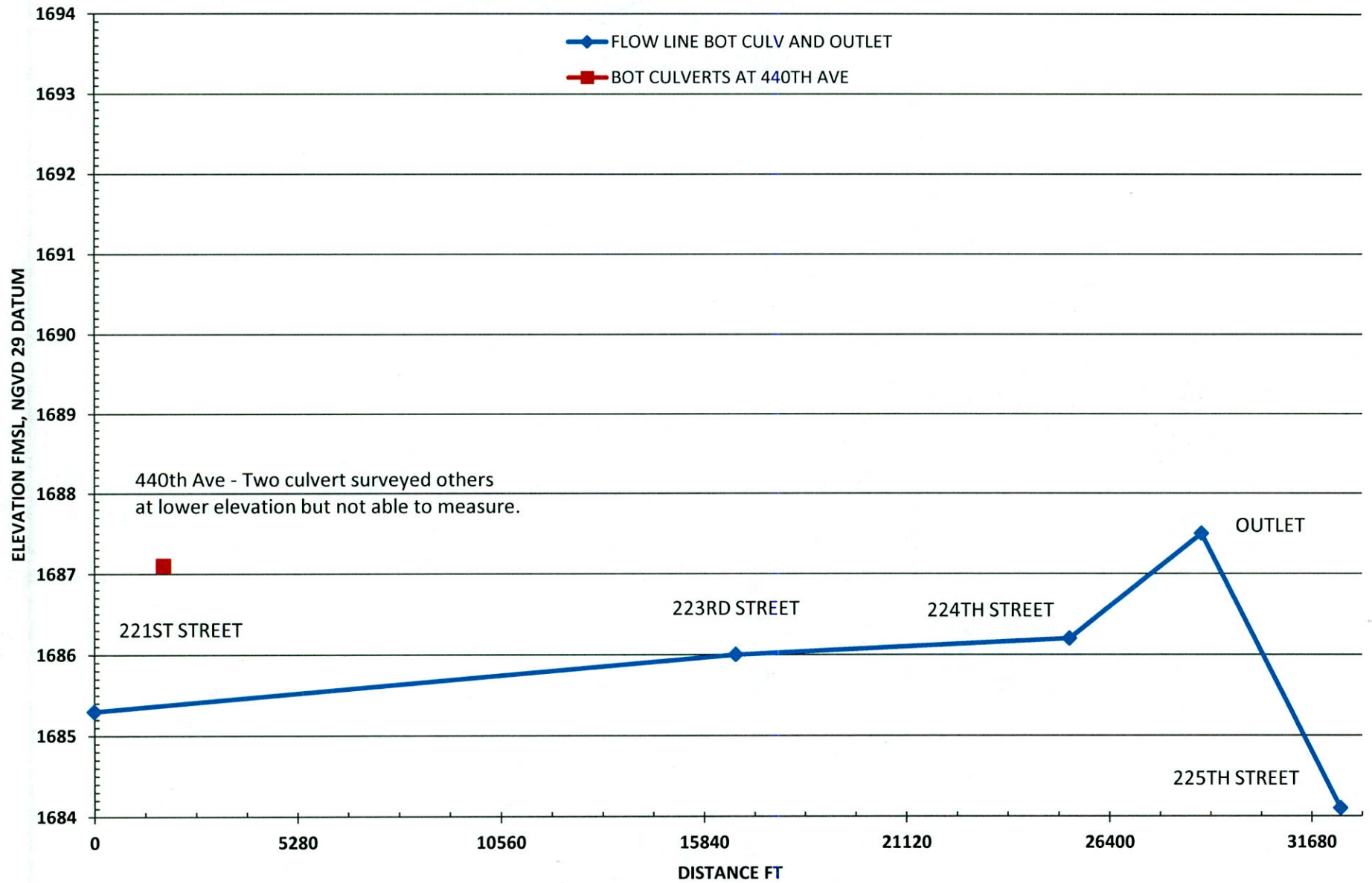


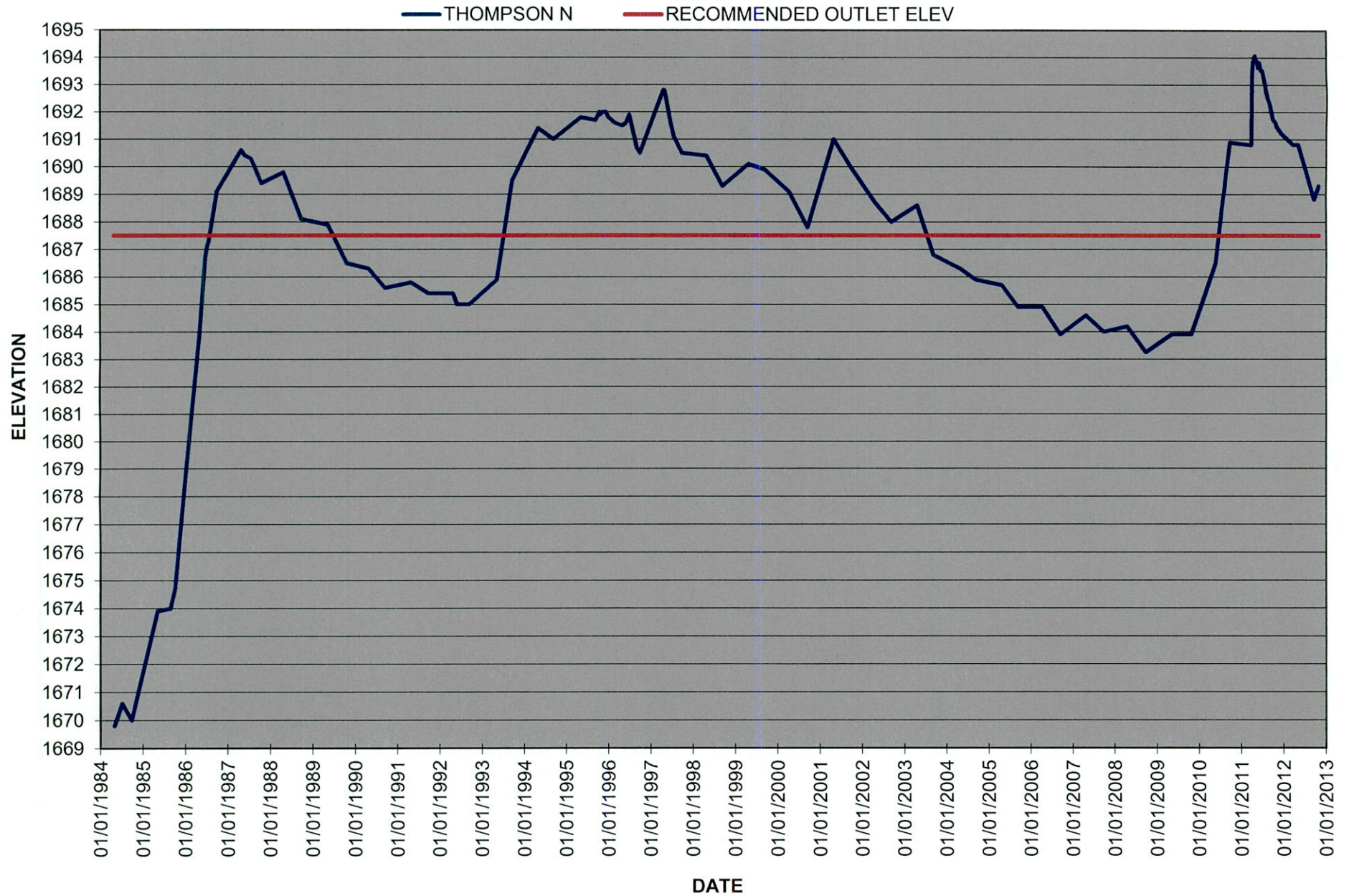
CHANNEL X-SECTION AT LAKE THOMPSON OUTLET LOCATION



ATTACHMENT NO. 3

LAKE THOMPSON CHANNEL PROFILE BOTTOM OF CULVERTS AND OUTLET



**THOMPSON, KINGSBURY CO
1929 DATUM**



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

January 31, 2013

NOTICE

TO: Leslie Murphy
SD Dept. of Game Fish & Parks
523 E Capital Ave.
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer
Water Rights Program
605-773-3352

SUBJECT: Hearing to Consider Validation of Recognized Vested Water Right Claim No.
707-3 for Lake Thompson

A Notice of Intent to validate recognized Vested Water Right Claim No. 707-3 for Lake Thompson was published in the DeSmet News on June 22 and 29, 1988. The Notice was published to validate the claim for sufficient water to fill Lake Thompson annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is lower. The Chief Engineer petitioned opposing validation of all Department of Game, Fish and Parks vested water right claims for lakes until the outlet elevation for a lake is set by the Water Management Board.

I am recommending the Water Management Board validate the recognized Vested Water Right Claim No. 707-3 for sufficient water annually to maintain the water to the outlet elevation of 1,687.5 feet mean sea level. The recommendation is enclosed.

The Water Management Board will consider validation of Claim No. 707-3 at 8:45 A.M. on March 6, 2013 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD. The validation of recognized Claim No. 707-3 is being scheduled before the Water Management Board in conjunction with the hearing on the Kingsbury County Commission's request to establish Lake Thompson's outlet elevation.

Applicable provisions of the published notice of intent to validate Claim No. 707-3 will still apply at this hearing.

Contact Eric Gronlund or Lynn Beck if you have any questions. (605-773-3352).

Enclosure

c: Diane Best, Assistant Attorney General



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER ON VALIDATION OF
RECOGNIZED VESTED WATER RIGHT CLAIM NO. 707-3 for LAKE THOMPSON,
DEPARTMENT OF GAME, FISH and PARKS**

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 validation of Recognized Vested Water Right Claim No. 707-3, c/o Leslie Murphy, Department of Game, Fish and Parks, 523 E. Capitol Avenue, Pierre, SD.

The Chief Engineer of the Water Rights Program recommends VALIDATION of recognized Vested Water Right Claim No. 707-3 for sufficient water to maintain the water level to the outlet elevation of 1,687.5 feet mean sea level. The vested water right will have a priority date of November 2, 1889.

This recommendation is based on a staff investigation and the staff report prepared on establishment of an outlet elevation for Lake Thompson.

Garland Erbele, Chief Engineer
January 31, 2013

CERTIFICATION

I hereby certify that on January 31, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated January 31, 2013 regarding Vested Water Right Claim No. 707-3 – Lake Thompson outlet level addressed as stated below:

Leslie Murphy --- (Hand delivered) G F & Parks, Joe Foss Bldg. 523 E Capitol Ave. Pierre SD 57501

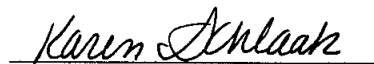
Diane Best, Assistant Atty. General, 317 N Main, Sioux Falls SD 57104



Gail Jacobson
Secretary/Water Rights

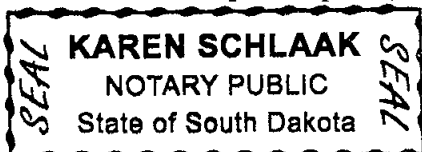
STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of January, 2013.



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

denr.sd.gov

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATE, CONTACT
THE NEWSPAPER(S) RIGHT AWAY.

January 31, 2013

Kingsbury County Commission
Gregg A Gass- Gass Law Office
PO Box 35
DeSmet SD 57231

Dear Mr. Gass:

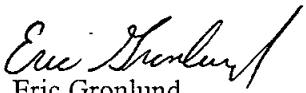
Notice for establishing the outlet level on Lake Thompson has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the following papers:

- ✓DeSmet News, DeSmet SD (Ph # 605-854-3331)
- ✓Arlington Sun, Arlington SD (Ph # 605-983-5491)
- ✓Miner County Pioneer, Howard SD (Ph # 605-772-5644)
- ✓Madison Daily Leader, Madison SD (Ph # 605-256-4555)
- ✓Brookings Register, Brookings SD (Ph # 605-692-6271)
- ✓Lake Preston Times, Lake Preston SD (Ph # 605-847-4421)

You will need to contact the newspaper(s) and authorize publication of this notice for two consecutive weeks. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the request are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. 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 request.

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.

Instruction to Newspaper – Publish the first Notice on February 6 or 7, 2013, with a second publication 7 days later. Kingsbury County is responsible for payment.

NOTICE OF HEARING TO ESTABLISH THE OUTLET ELEVATION FOR LAKE THOMPSON,
KINGSBURY AND MINER COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner Counties. The lake for many years was approximately 5000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W ½ Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45AM on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and Chief Engineer. Kingsbury County must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above Chief Engineer's address to request copies of the staff report, recommendation, the County's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and Board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of _____.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 31, 2013

Lake Preston Times
PO Box 368
Lake Preston SD 57249

ATTENTION: Legal Public Notice

Enclosed is a Notice to establish an outlet level on Lake Thompson. Please publish the notice twice on February 6, 2013 and seven 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Kingsbury County Commission, Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 (Ph # 605-854-3224).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 31, 2013

Miner County Pioneer
PO Box 220
Howard SD 57349

ATTENTION: Legal Public Notice

Enclosed is a Notice to establish an outlet level on Lake Thompson. Please publish the notice twice on February 7, 2013 and seven 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Kingsbury County Commission, Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 (Ph # 605-854-3224).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

January 31, 2013

DeSmet News
PO Box 69
DeSmet SD 57231

ATTENTION: Legal Public Notice

Enclosed is a Notice to establish an outlet level on Lake Thompson. Please publish the notice twice on February 6, 2013 and seven 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Kingsbury County Commission, Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 (Ph # 605-854-3224).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

January 31, 2013

Brookings Register
PO Box 177
Brookings SD 57006

ATTENTION: Legal Public Notice

Enclosed is a Notice to establish an outlet level on Lake Thompson. Please publish the notice twice on February 7, 2013 and seven 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Kingsbury County Commission, Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 (Ph # 605-854-3224).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 31, 2013

Arlington Sun
PO Box 37
Arlington SD 57212

ATTENTION: Legal Public Notice

Enclosed is a Notice to establish an outlet level on Lake Thompson. Please publish the notice twice on February 7, 2013 and seven 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Kingsbury County Commission, Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 (Ph # 605-854-3224).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

January 31, 2013

Madison Daily Leader
PO Box 348
Madison SD 57042

ATTENTION: Legal Public Notice

Enclosed is a Notice to establish an outlet level on Lake Thompson. Please publish the notice twice on February 7, 2013 and seven 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 and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Kingsbury County Commission, Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 (Ph # 605-854-3224).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

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

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, February 01, 2013 10:18 AM
To: 'mail@lakeprestontimes.net'
Subject: Notice of Hearing for Lake Thompson
Attachments: Lake Thompson public wmb.docx

Attached is the Notice of Hearing to Establish the Outlet Elevation for Lake Thompson. This notice is to be published Feb 6 & 13. The Kingsbury County Commission, c/o Gregg A Gass, Gass Law Office, PO Box 35, DeSmet is responsible for payment. Please send us the affidavit ASAP. This was also mailed to you January 31.

Let me know if you have questions.

Karen Schlaak
Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, February 01, 2013 10:16 AM
To: 'Madison Daily Leader (ann@madisondailyleader.com)'
Subject: Notice of Hearing for Lake Thompson
Attachments: Lake Thompson public wmb.docx

Contacts: Madison Daily Leader

Attached is the Notice of Hearing to Establish the Outlet Elevation for Lake Thompson. This notice is to be published Feb 7 & 14. The Kingsbury County Commission, c/o Gregg A Gass, Gass Law Office, PO Box 35, DeSmet is responsible for payment. Please send us the affidavit ASAP. This was also mailed to you January 31.

Let me know if you have questions.

Karen Schlaak
Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, February 01, 2013 10:12 AM
To: 'Arlington Sun (asn@mchsi.com)'
Subject: Notice of Hearing for Lake Thompson
Attachments: Lake Thompson public wmb.docx

Contacts: Arlington Sun

Attached is the Notice of Hearing to Establish the Outlet Elevation for Lake Thompson. This notice is to be published Feb 7 & 14. The Kingsbury County Commission, c/o Gregg A Gass, Gass Law Office, PO Box 35, DeSmet is responsible for payment. Please send us the affidavit ASAP. This was also mailed to you January 31.

Let me know if you have questions.

Karen Schlaak
Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, February 01, 2013 10:11 AM
To: 'registerclassifieds@brookingsregister.com'
Subject: Notice of Hearing for Lake Thompson
Attachments: Lake Thompson public wmb.docx

Attached is the Notice of Hearing to Establish the Outlet Elevation for Lake Thompson. This notice is to be published Feb 7 & 14. The Kingsbury County Commission, c/o Gregg A Gass, Gass Law Office, PO Box 35, DeSmet is responsible for payment. Please send us the affidavit ASAP. This was also mailed to you January 31.

Let me know if you have questions.

Karen Schlaak

Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, February 01, 2013 10:08 AM
To: 'Howard Miner County Pioneer (news@minercountypioneer.com)'
Subject: Notice of Hearing for Lake Thompson
Attachments: Lake Thompson public wmb.docx

Contacts: Howard Miner County Pioneer

Attached is the Notice of Hearing to Establish the Outlet Elevation for Lake Thompson. This notice is to be published Feb & 14. The Kingsbury County Commission, c/o Gregg A Gass, Gass Law Office, PO Box 35, DeSmet is responsible for payment. Please send us the affidavit ASAP. This was also mailed to you January 31.

Let me know if you have questions.

Karen Schlaak
Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Schlaak, Karen

From: Schlaak, Karen
Sent: Friday, February 01, 2013 10:06 AM
To: mail@desmetnews.com
Subject: Notice of Hearing for Lake Thompson
Attachments: Lake Thompson public wmb.docx

Lynn,

Attached is the Notice of Hearing to Establish the Outlet Elevation for Lake Thompson. This notice is to be published Feb 6 & 13. The Kingsbury County Commission, c/o Gregg A Gass, Gass Law Office, PO Box 35, DeSmet is responsible for payment. Please send us the affidavit ASAP. This was also mailed to you January 31.

Let me know if you have questions.

Karen Schlaak
Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, February 05, 2013 9:27 AM
To: Miner County Pioneer News (news@minercountypioneer.com); registerclassifieds (registerclassifieds@brookingsregister.com); Chris Schumacher (asn@mchsi.com); Ann Koch (ann@madisondailyleader.com)
Subject: Notice of Hearing for Lake Thompson

On Friday I emailed your paper the text of a Notice of Hearing to Establish the Outlet Elevation for Lake Thompson to be published this week and next week.

Please make the following change (shown below) at the end of the notice. Change the words "Published once" to Published twice". If it is too late to make the change for this week's publication, please make the change for next week.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published twice at an approximate cost of_____.

Let me know if you have questions.

Karen Schlaak
Water Rights Program
Phone: 605 773-3352
Fax: 605 773-4068

Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA,

SS.

MAR - 4 2013

County of Kingsbury

WATER RIGHTS
PROGRAM

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

Gass Law Office

Legal 1996, a printed copy of which, taken from the paper in which the same was published, it attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for two successive weeks, on the day of each week on which said newspaper was regularly published to wit:

February 7, 20 13; _____, 20 _____

February 14, 20 13; _____, 20 _____

_____, 20 _____; _____, 20 _____

_____, 20 _____; _____, 20 _____

_____, 20 _____; _____, 20 _____

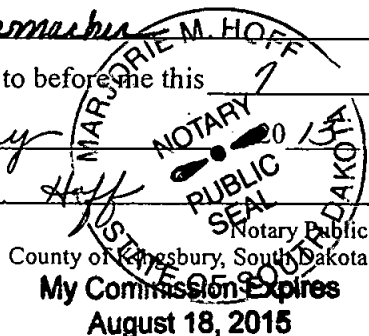
that the full amount of the fees for the publication of the annexed notice is \$ 102.83

Linda R. Schumacher

Subscribed and sworn to before me this

day of February

Margerie M. Hoff



Legal #1996 2xAS 2-7, 2-14
NOTICE OF HEARING TO
ESTABLISH THE OUTLET
ELEVATION FOR LAKE
THOMPSON, KINGSBURY AND
MINER COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner Counties. The lake for many years was approximately 5000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W 1/2 Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45AM on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4)

Affidavit of Publication

STATE OF SOUTH DAKOTA,

SS.

County of Kingsbury

OFFICE OF REGISTER OF DEEDS

I hereby certify that the within Instrument was
filed in this office for record on the _____

day of _____ A.D., 20____, at _____

o'clock _____ M., and was duly recorded in Book _____

of _____

on page _____

Register of Deeds
Deputy

By _____

defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and Chief Engineer. Kingsbury County must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of

changes to the hearing date or time. Contact Eric Gronlund by February 25, 2013, at the above Chief Engineer's address to request copies of the staff report, recommendation, the County's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and Board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner, Secretary
Department of Environment and
Natural Resources.

Published twice at an approximate cost of \$102.24

FEB 19 2013

WATER RIGHTS
PROGRAM

Affidavit of Publication

10/

State of South Dakota

Exhibit "A"

ss

County of Brookings

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

Leg#971 Notice of Hearing

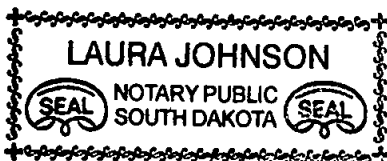
same was published, is hereto attached marked Exhibit said newspaper for _____ 2 times, to-wit:

February 7, 2013

February 14, 2013

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

one hundred three dollars and seventy-seven cents \$103.77



Chaylee Duis
15th _____ day of

February

2013

Laura Johnson

Notary Public in and for the County of Brookings, South Dakota
My Commission expires August 3, 2017.

Legal 971, 2x, 2/7, 14
NOTICE OF HEARING
TO ESTABLISH THE
OUTLET ELEVATION
FOR LAKE THOMP-
SON, KINGSBURY
AND MINER COUNTY
The Kingsbury County
Commission, c/o Gregg
A. Gass, Gass Law
Office, PO Box 35,
DeSmet SD 57231 has
requested the Water
Management Board
establish the official out-
let elevation for Lake
Thompson. Lake
Thompson is a natural
lake located in
Kingsbury and Miner
Counties. The lake for
many years was
approximately 5000
acres. Since 1984 the
lake has filled and
presently covers
approximately 18,000
acres and is spilling into
the East Fork of the
Vermillion River. Lake
Thompson is located in
portions of Sections 14,
19 thru 23, 27 thru 34 of
T110N, R55W; Sections
24, 25 and 36 of T110N,
R56W; Section 3 thru
10, 14 thru 17, 20 thru
23, 27 thru 29, 33, 34, of
T109N, R55W; Section
1 and 12 of T109N,
R56W; Sections 3, 4,
10, 11, 13, 14, 22, 23,
24, 25 and 26 of T108N,
R55W. The outlet is
located near the center
of the W 1/2 Section 25,
T108N, R55W in Miner
County. The SD
Department of Game,
Fish and Parks holds
recognized Vested
Water Right No. 707-3
for Lake Thompson. A
public hearing will be
held by the Water
Management Board to
consider establishment
of the outlet elevation
for Lake Thompson.
The ordinary high water
mark and ordinary low
water mark for Lake
Thompson have not
been set and are not
under consideration at
this hearing.
The Water Management
Board will consider the
request to establish the
outlet elevation for Lake
Thompson at 8:45AM
on March 6, 2013 in the
Matthew Training

Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and Chief Engineer. Kingsbury County must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner

or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above Chief Engineer's address to request copies of the staff report, recommendation, the County's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that if the amount in controversy exceeds \$2,500.00 or if a proper-

ty right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17. This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and Board rules ARSD 74:02:01:50 thru 74:02:01:52. Published twice at the total approximate cost of \$103.77.

RECEIVED

FEB 19 2013

Form 8

WATER RIGHTS
PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Kingsbury) SS

I, Matt Heinrichs

certify that the attached printed Notice was
taken

from the Lake Preston Times

printed and published in Lake Preston

County of Kingsbury and

state of South Dakota. The notice was
published

in the newspaper on the following date:

Feb 6, 2013 & Feb. 13, 2013

Cost of Printing \$121.86

Matt Heinrichs

(Signature)

Editor

(Title)

2-14-13

(Date Signed)

NOTICE OF HEARING
TO ESTABLISH THE OUTLET
ELEVATION FOR LAKE
THOMPSON, KINGSBURY
AND MINER COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, P.O. Box 35, De Smet, SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner counties. The lake for many years was approximately 5,000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W 1/2 Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45 a.m. on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The chief engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson

$$\begin{array}{r} \text{WK1 } 2-6 \quad 182 \times .372 = 67.70 \\ \text{WK2 } 2-13 \quad 80\% = \frac{54.16}{121.86} \end{array}$$

be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the chief engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report online is <http://denr.sd.gov/des/wr/thompson.pdf>.

The chief engineer's recommendation is not final or binding upon the board. The board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the chief engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and chief engineer. Kingsbury County must also file a petition if opposed to the chief engineer's recommendation. The chief engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the board may be appealed to the circuit court and State Supreme Court as provided by law.

The March 6, 2013, hearing date will be automatically delayed for at least 20 days upon written request to the chief engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above chief engineer's address to request copies of the staff report, recommendation, the county's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than 10 days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a notice of hearing, service is being provided by publication, and the applicable date to give notice to the chief engineer is Feb. 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500 or termination of a property right the chief engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner
Secretary

Department of Environment
& Natural Resources

Published twice at an approximate
cost of \$121.19.

2-6-lwc-2-13

**NOTICE OF HEARING TO
ESTABLISH THE OUTLET
ELEVATION FOR LAKE
THOMPSON, KINGSBURY
AND MINER COUNTY**

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, PO Box 35, DeSmet, SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner Counties. The lake for many years was approximately 5000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T109N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W 1/2 Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45 a.m. on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and Chief Engineer. Kingsbury County must also file a petition if

RECEIVED

FEB 14 2013

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA, County of Miner: ss.

Carla Poulson of said County and State, being duly sworn, on her oath says: That the Miner County Pioneer is a legal newspaper of general circulation, printed and published in Howard, said County and State, by Carla Poulson, and has been such newspaper during the time hereinafter mentioned: and that I, Carla Poulson the undersigned, am publisher of said newspaper, in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the advertisement or notice headed

Notice of Hearing To Establish The
Outlet Elevation For Lake Thompson, Kingsbury
and Miner County

A printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper and not in a supplement, once each week for successive weeks, the first publication being made on the day of Feb. 2013.

And the last publication on the day of Feb. 2013.

The first publication being made on the day of 20.....

The second publication being made on the day of 20.....

The third publication being made on the day of 20.....

The fourth publication being made on the day of 20.....

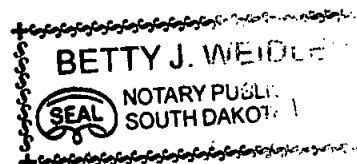
The fifth publication being made on the day of 20.....

That said newspaper is a legal newspaper, and has a bona fide circulation of more than two hundred copies weekly, and has been published within the County of Miner, for more than fifty-two successive weeks next prior to the first publication of said notice, and is printed in on office maintained in Howard, South Dakota, the place of publication of said newspaper. That the full amount of fees for publication of the annexed notice is \$95.99, and insures solely to the benefit of said publisher; that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any person whomever.

Subscribed and sworn to me this day of Feb. 2013.

Betty J. Weidner

My commission expires the day of April 2016.



opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above Chief Engineer's address to request copies of the staff report, recommendation, the County's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and Board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner, Secretary,
Department of Environment and
Natural Resources.

Published twice at the
approximate total cost of \$95.45.
(Feb. 7 & 14)

RECEIVED

FEB 19 2013

WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Kingsbury) SS

I, David Trifle

certify that the attached printed Notice was
taken

from the The DeSmet News

printed and published in DeSmet

County of Kingsbury and

state of South Dakota. The notice was
published

in the newspaper on the following date:

2/6 + 2/13

Cost of Printing \$121.86

[Signature]
(Signature)

Assistant Editor
(Title)

2-15-13
(Date Signed)

NOTICE OF HEARING
TO ESTABLISH THE OUTLET
ELEVATION FOR LAKE
THOMPSON, KINGSBURY
AND MINER COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, P.O. Box 35, De Smet, SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner counties. The lake for many years was approximately 5,000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W 1/2 Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45 a.m. on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave., Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The chief engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the chief engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report online is <http://denr.sd.gov/des/wr/thompson.pdf>.

$$\begin{array}{r} 1) 182 \times .372 = 67.70 \\ 2) \times 80\% \quad 54.16 \\ \hline 121.86 \end{array}$$

The chief engineer's recommendation is not final or binding upon the board. The board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the chief engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and chief engineer. Kingsbury County must also file a petition if opposed to the chief engineer's recommendation. The chief engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the board may be appealed to the circuit court and State Supreme Court as provided by law.

The March 6, 2013, hearing date will be automatically delayed for at least 20 days upon written request to the chief engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above chief engineer's address to request copies of the staff report, recommendation, the county's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than 10 days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a notice of hearing, service is being provided by publication, and the applicable date to give notice to the chief engineer is Feb. 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500 or termination of a property right the chief engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner
Secretary

Department of Environment
& Natural Resources

Published twice at an approximate
cost of \$121.19.

2-6-lwc-2-13

AFFIDAVIT OF PUBLICATION

FEB 19 2013

STATE OF SOUTH DAKOTA }
 County of Lake } ss.

WATER RIGHTS
PROGRAM

Sue Anne Artko of the City of Madison, County of Lake, State of South Dakota, being first duly sworn on oath, deposes and says:

The Madison Daily Leader is a daily legal newspaper of general circulation, printed and published in the City of Madison, in said County of Lake, by Hunter Publishing, Inc., Jon M. Hunter, publisher, and has been such legal newspaper during the times hereinafter mentioned; that the said Madison Daily Leader has been in existence as such legal newspaper for more than one year prior to the publication of the notice hereunto attached, and has during all of said time had, and how has, more than 200 bona fide subscribers; that the undersigned, the affiant, is the Secretary of the said newspaper, in charge of the advertising department thereof and has personal knowledge of all the facts stated in this affidavit and the advertisement headed

Gass Law Office/Kingsbury County Commission

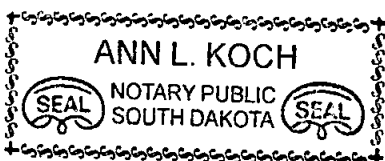
Hearing to Establish the Outlet Elevation for Lake Thompson

printed copy of which hereunto attached, was printed and published in the said newspaper for Two successive weeks, once each week and on the same day of the week, on the following dates, to-wit:

On Thursday, the 7th day of February, 2013;
 On Thursday, the 14th day of February, 2013;
 On _____, the _____ day of _____, 20____;
 On _____, the _____ day of _____, 20____;
 On _____, the _____ day of _____, 20____;
 On _____, the _____ day of _____, 20____;
 On _____, the _____ day of _____, 20____;
 On _____, the _____ day of _____, 20____;

That \$ 114.45 being the full amount of the fees for publication of the attached notice inures solely for the benefit of the publisher of the said newspaper; that no arrangement or understanding for a division thereof has been made with any other person and that no part thereof has been agreed to be paid to any other person whomsoever.

Sue Anne Artko
 Subscribed and sworn to before me this 15th day of February, 2013



Ann L. Koch
 Notary Public, Lake County, South Dakota

Thursday, Feb. 7 & 14

NOTICE OF HEARING
TO ESTABLISH THE
OUTLET ELEVATION FOR
LAKE THOMPSON,
KINGSBURY AND MINER
COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, PO Box 35,

DeSmet SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner Counties. The lake for many years was approximately 5000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Sections 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Sections 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W 1/2 Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45 A.M. on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

Publicat

Notary Fe

To

Received

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Department of Environment
and Natural Resources
Published twice at the total
approximate cost of \$114.45

**MINER COUNTY
REGISTER OF DEEDS**

Karla Neises
PO Box 546
Howard, SD 57349

Phone: 605-772-5621

Fax: 605-772-2138

To: Eric 1-605-773-4068From: KarlaDate: 9:45 A.M.Time: 2/1/13Special Instructions: addressesTotal number of pages including this cover sheet: 3

The information accompanying this transmission contains confidential and/or legally privileged material and is intended only for the use of the individual or entity named on the transmission. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of the message and/or information is strictly prohibited, and that the documents should be returned to this sender and/or facility immediately. In this regard, if you have received this information in error, please notify us by telephone immediately, so that we can arrange for the return of the documents to us. Miner County Register of Deeds Office - 605-772-5621

Karla Neises

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Friday, January 25, 2013 2:53 PM
To: Register of Deeds
Subject: Request for assistand in obtaining addresses certain sections within Belleview Township.

Karla

I spoke with you on the phone regarding Kingsbury County's request for establishment of an outlet elevation for Lake Thompson. A portion of Lake Thompson and the channel that leads to the outlet in Miner County are in Belleview Township T108N, R55W). DENR is planning to provide notice to all landowners along Lake Thompson and the channel to the outlet. I review the 2012 Miner County directory for ownership of areas where Lake Thompson and the channel exist for the purpose of obtaining land ownership and addresses. I obtained the names but many of the addresses were not in the directory. Listed below are the names that I could not find an address. Again, all are in Belleview Township (T108N, R55W)

Section 3 - Elene Schrepel and Longville Legacy Partnership
Section 13 - Donna Bickett and Helen Bickett
Section 22- Landaker Family Trust
SW1/4 Section 24 - Margorie Haskins Trustee
Section 25 - Gladys Runestad and Gregory Hanson
Section 26 - Margarita Hanson

Be assured that the public notice will be sent to the Miner County Commission for their review.

Thank you very much for your willingness to help.

Eric Gronlund
Water Rights Program, DENR

Elene Schrepel
22909 458th Ave
Madison, SD 57042

Longville Legacy Partnership
c/o Elisabeth Nelson
618 3rd St NE
Lake Preston, SD 57249

Donna Bickett
313 N Epton Ave
Oldham, SD 57051

Helen Bickett
PO Box E
Oldham, SD 57051

Landaker Family Trust
PO Box 336
Howard, SD 57349
(optional address)
6112 Corsica Circle
Long Beach, CA 90803

Marjorie Haskins
1023 S Egan Ave Unit A
Madison, SD 57042
(optional address)
c/o Wells Fargo Bank ATTN : Kim
PO Box 5953
Sioux Falls, SD 57117

Gladys Runestad
c/o Sharon Abraham
402 N Harth Ave
Madison, SD 57042

Gregory Hanson
603 NE 5th St
Madison, SD 57042
(optional address)
12 S Barkway Lane
State College, PA 16803

Margarita Hanson
5825 W 50th St
Sioux Falls, SD 57106



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

February 4, 2013

TO: McCook County Commission, GERALYN SHERMAN - Auditor

FROM: Eric Gronlund *Eric Gronlund*
Water Rights Program

SUBJECT: Establishment of Outlet Elevation for Lake Thompson

Kingsbury County Commission has petitioned the Water Management Board to establish the outlet elevation for Lake Thompson. Please find enclosed the notice scheduling a March 6, 2013 hearing that is to be published for two consecutive weeks in the DeSmet News, the Miner County Pioneer, the Lake Preston Times, the Arlington Sun, the Madison Daily Leader and the Brookings Register. The staff report may be found and downloaded online at <http://denr.sd.gov/des/wr/thompson.pdf>

Any person who intends to participate in this hearing on the establishment of the outlet elevation must file a written petition to the Chief Engineer by February 25, 2013. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501".

The Water Management Board will consider the petition to establish outlet level for Lake Thompson at 8:45 A.M. on March 6, 2013 in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. Following setting an outlet level, the Board will consider validation of Vested Water Right Claim No. 707-3 to the established outlet elevation. Only individuals filing a petition will be notified of scheduling changes.

If you have any questions regarding the outlet elevation, please contact Eric Gronlund or Lynn Beck at (605) 773-3352.

c: Leslie Murphy, SD Game Fish and Parks
Jay Gilbertson, East Dakota Water Dev. Dist., 1328 Airport Ave., Brookings SD 57006

Instruction to Newspaper – Publish the first Notice on February 6 or 7, 2013, with a second publication 7 days later. Kingsbury County is responsible for payment.

NOTICE OF HEARING TO ESTABLISH THE OUTLET ELEVATION FOR LAKE THOMPSON,
KINGSBURY AND MINER COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner Counties. The lake for many years was approximately 5000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W ½ Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45AM on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmssl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and Chief Engineer. Kingsbury County must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above Chief Engineer's address to request copies of the staff report, recommendation, the County's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and Board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of _____.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

February 4, 2013

TO: Kingsbury County Commission, c/o County Auditor
Miner County Commission, c/o County Auditor
Lake County Commission, c/o County Auditor
Turner County Commission, c/o County Auditor
Clay County Commission, c/o County Auditor
Lake Thompson Riparian Landowners

FROM:

Eric Gronlund

Water Rights Program

SUBJECT: Establishment of Outlet Elevation for Lake Thompson

Kingsbury County Commission has petitioned the Water Management Board to establish the outlet elevation for Lake Thompson. Please find enclosed the notice scheduling a March 6, 2013 hearing that is to be published for two consecutive weeks in the DeSmet News, the Miner County Pioneer, the Lake Preston Times, the Arlington Sun, the Madison Daily Leader and the Brookings Register. The staff report may be found and downloaded online at <http://denr.sd.gov/des/wr/thompson.pdf>

Any person who intends to participate in this hearing on the establishment of the outlet elevation must file a written petition to the Chief Engineer by February 25, 2013. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre, SD 57501".

The Water Management Board will consider the petition to establish outlet level for Lake Thompson at 8:45 A.M. on March 6, 2013 in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. Following setting an outlet level, the Board will consider validation of Vested Water Right Claim No. 707-3 to the established outlet elevation. Only individuals filing a petition will be notified of scheduling changes.

If you have any questions regarding the outlet elevation, please contact Eric Gronlund or Lynn Beck at (605) 773-3352.

c: Leslie Murphy, SD Game Fish and Parks

Jay Gilbertson, East Dakota Water Dev. Dist., 1328 Airport Ave., Brookings SD 57006

Instruction to Newspaper – Publish the first Notice on February 6 or 7, 2013, with a second publication 7 days later. Kingsbury County is responsible for payment.

NOTICE OF HEARING TO ESTABLISH THE OUTLET ELEVATION FOR LAKE THOMPSON,
KINGSBURY AND MINER COUNTY

The Kingsbury County Commission, c/o Gregg A. Gass, Gass Law Office, PO Box 35, DeSmet SD 57231 has requested the Water Management Board establish the official outlet elevation for Lake Thompson. Lake Thompson is a natural lake located in Kingsbury and Miner Counties. The lake for many years was approximately 5000 acres. Since 1984 the lake has filled and presently covers approximately 18,000 acres and is spilling into the East Fork of the Vermillion River. Lake Thompson is located in portions of Sections 14, 19 thru 23, 27 thru 34 of T110N, R55W; Sections 24, 25 and 36 of T110N, R56W; Section 3 thru 10, 14 thru 17, 20 thru 23, 27 thru 29, 33, 34, of T109N, R55W; Section 1 and 12 of T109N, R56W; Sections 3, 4, 10, 11, 13, 14, 22, 23, 24, 25 and 26 of T108N, R55W. The outlet is located near the center of the W ½ Section 25, T108N, R55W in Miner County. The SD Department of Game, Fish and Parks holds recognized Vested Water Right No. 707-3 for Lake Thompson. A public hearing will be held by the Water Management Board to consider establishment of the outlet elevation for Lake Thompson. The ordinary high water mark and ordinary low water mark for Lake Thompson have not been set and are not under consideration at this hearing.

The Water Management Board will consider the request to establish the outlet elevation for Lake Thompson at 8:45AM on March 6, 2013 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. Testimony will be limited to establishment of an outlet elevation for Lake Thompson.

The Chief Engineer of the Water Rights Program recommends that the outlet elevation for Lake Thompson be established at an elevation of 1,687.5 feet mean sea level (fmsl). The basis for the Chief Engineer's recommendation is found in the report prepared for this request to establish an outlet elevation. The link to view and download the report on-line is <http://denr.sd.gov/des/wr/thompson.pdf>.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) accept, 2) reject, 3) revise, or 4) defer action on the Chief Engineer's recommendation based on the facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the request for establishment of the outlet elevation and the petition shall be filed with BOTH the Kingsbury County Commission and Chief Engineer. Kingsbury County must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the mailing address for the county's legal counsel is given above. A petition filed by either an interested person or the county must be filed by February 25, 2013. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the request, the petitioner's reasons for opposing or supporting the request, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 6, 2013 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the county or any person who has filed a petition to oppose or support the request for establishment of the outlet elevation. The request for an automatic delay must be filed by February 25, 2013. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location. Only petitioners will be notified of changes to the hearing date or time.

Contact Eric Gronlund by February 25, 2013, at the above Chief Engineer's address to request copies of the staff report, recommendation, the County's request or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is February 25, 2013. However, since this particular matter is a request for establishment of an outlet elevation and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; 46-1-1 thru 46-1-4, 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-6; SDCL 43-17-1 thru 46-17-3, 43-17-20, 43-17-21, 43-17-23 thru 43-17-28 and Board rules ARSD 74:02:01:50 thru 74:02:01:52.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of _____.

Lake Thompson Parties of Record List

TIMOTHY JOHN FALSETTA
21009 441ST AVE
LAKE PRESTON SD 57249

DARYL G WILLIAMS
21049 441ST AVE
LAKE PRESTON SD 57249

VIRCHOW PROPERTIES, LLC
20327 441ST AVE
LAKE PRESTON SD 57249

BERNARD S AND DARLENE F MALONE LVG TRUST
300 2ND ST SE
LAKE PRESTON SD 57249

WARREN A & CAROLYN L CASPER LVNG TRUST
44049 214TH ST
LAKE PRESTON SD 57249

PAUL CASPER
44095 212TH ST
LAKE PRESTON SD 57249

TODD CASPER
29056 441ST AVE
LAKE PRESTON SD 57249

TIMOTHY CASPER
300 WALTER AVE S
LAKE PRESTON SD 57249

STEVE JOHNSON
506 HIGHLAND ST S
ARLINGTON SD 57212

GARY W JENSEN
PO BOX 529
BROOKINGS SD 57006

KENNETH E TJADEN
112 FRANCIS RD
DE SMET SD 57231

MIKE MILLER & JEAN WITTROCK
2805 GEORGE ST S
SIOUX FALLS SD 57110

JEREN HOMES INC
26987 HANSON PL
SIOUX FALLS SD 57108

JEFF HEIDELBAUER TRUST
PO BOX 292
CUSTER SD 57730

CHAD M & STEPAHNIE J SHERARD
46722 MEADOWLARK LANE
SIOUX FALLS SD 57107

PHILLIP C BOSSELER
6008 QUARTZITE DR
SIOUX FALLS SD 57110

TIMOTHY J KAPPENMAN
2306 ST GEORGE DR E
SIOUX FALLS SD 57103

JAY KAPPENMAN
5704 W 41ST ST
SIOUX FALLS SD 57106

Lake Thompson Parties of Record List

WILLIAM A RIGSBEE JR & JULIE RIEF
11655 CTY RD 153
COLOGNE MN 55322

GOEDEN LIVING TRUST
3501 RIVER BLULFF RD S
SIOUX FALLS SD 57110

RICHARD HARR JR
26507 483RD AVE
BRANDON SD 57005

DAVID WOOD
1509 TAHOE TRAIL
SIOUX FALLS SD 57110

LAKE HOME LLC
47104 TALLGRASS CIR
HARRISBURG SD 57032

JENNIFER & MIKE GLEASON
54738 853 ROAD
PIERCE NE 68767

HAROLD GOEDEN
3501 RIVER BLUFF S
SIOUX FALLS SD 57110

TERRY SCHNEIDER
205 BIRCHWOOD
BRANDON SD 57005

CHARLES MICHAEL BERG
2304 S WOODBINE LN
SIOUX FALLS SD 57103-4332

KELLY BALES
295 9TH ST NE
HURON SD 57350

DENNIS G LAPE
212 CLIFF
VALLEY SPRINGS SD 57068

MICHAEL P YOUNG
27127 480TH AVE
HARRISBURG SD 57032

JAMES H EIDE
PO BOX 496
HARRISBURG SD 57032

THOMAS AMMERMAN CFM-CAROLYN MCMASTERS
BOX 528
CLARA CITY MN 56222

KEVIN KORN
244 FRANCIS RD
DE SMET SD 57231

TIM J BOWLING
6704 W 11TH ST
SIOUX FALLS SD 57106

TOM KEPFORD
925 5TH ST S #1
BROOKINGS SD 57106

DAVID & JODI PEDERSON
46232 220TH ST
VOLGA SD 57071

Lake Thompson Parties of Record List

LARRY BRASEL
6605 W 11TH ST
SIOUX FALLS SD 57107

KATE SCHILDHAUER
5709 W 15TH ST
SIOUX FALLS SD 57106

ALVIN D STEEVER
46957 273RD ST
TEA SD 57064

DAVID WOOD
1509 TAHOE TRAIL
SIOUX FALLS SD 57110

LYNN SCHMIDT & TRISH KINDT
PO BOX 41
VALLEY SPRINGS SD 57068

ANTHONY L INGLIS
413 8TH AVE
BRANDON SD 57005

CHRIS HILLIGAS
6005 W MISTY GLEN
SIOUX FALLS SD 57106

ANDREW J WOOD
2200 S FOX TR
SIOUX FALLS SD 57103

CHRISTIAN J JENSEN
208 FRONT ST
AURORA SD 57002

JAYME NELSON
2308 HOLLY AVE S
SIOUX FALLS SD 57105

THOMAS BOWLING
3305 S WEST AVE
SIOUX FALLS SD 57105

WILLIAM PERKINS
6901 HUGHES ST S
SIOUX FALLS SD 57108

JERRUD J KRUSE
44382 222ND ST
RAMONA SD 57054

DARROLD D QUAM
2400 S WESTERN AVE
SIOUX FALLS SD 57105

KEN LANIER
27093 MARIAH PL
HARRISBURG SD 57032

MIKE LARSON
4408 MESA PASS W
SIOUX FALLS SD 57106

CHRIS JENSEN
PO BOX 55
AURORA SD 57002

JEROME KAPPERMAN
3909 RONNING DR E
SIOUX FALLS SD 57103

Lake Thompson Parties of Record List

BARRY WILLIAMS
309 CEDAR ST
BRANDON SD 57005

KATHY HESS-WILLIAMS
309 E CEDAR ST
BRANDON SD 57005

RICHARD KRENZ
504 N TETON DR
BRANDON SD 57005

MARK HAVARD
306 NICOLETTE ST
AURORA SD 57002

CAROLYN MCMASTERS
45787 216TH ST
VOLGA SD 57071

JERRY QUAM
1429 E 3RD
SIOUX FALLS SD 57103

KENNETH A LANIER JR
27093 MARIAH PL
HARRISBURG SD 57032

DENA M HILL
3812 SIOUX RIVER RD
SIOUX CITY IA 51109

JEROME KAPPERMAN
3909 RONNING DR E
SIOUX FALLS SD 57103

ROBERT REDETZKE
25445 477TH AVE
GARRETSON SD 57030

BRENT A FORD
178 THIRD ST NE
WATERTOWN SD 57201

DEORVAL B PURINTUN
1114 2ND AVE SE
WATERTOWN SD 57201

BRIAN G LOUNSBERY
5000 S BRIARWOOD AVE
SIOUX FALLS SD 57108

ROBERT J HOLMES
520 W BAILEY
SIOUX FALLS SD 57104

DARVIN A SANDVE
PO BOX 546
ALEXANDRIA SD 57311

JOEL CLARK
25052 474TH AVE
BAL TIC SD 57003

JOHN HOFTS
3205 AUBURN HILL CIR W
SIOUX FALLS SD 57108

DENNIS MACHACEK
JUDY MACHACEK
209 9TH ST E
CROOKS SD 57020

Lake Thompson Parties of Record List

PAUL MCMASTERS
43799 TWIN LAKES RD
LAKE PRESTON SD 57249

WEATHERLY INVESTMENTS INC
PO BOX 355
ARLINGTON SD 57212

BRIAN LOWE
24216 SD HWY 19
MADISON SD 57042

LARRY D LIENHARD
1506 S DEERBERRY TRAIL
SIOUX FALLS SD 57106

PAUL TUNGE
45019 268TH ST
MONROE SD 57047

CLINTON L MARTENS
PO BOX 199
DE SMET SD 57231-0199

MIKE MAY
700 OUTLOOK DR S
SIOUX FALLS SD 57106

GREGORY R. KOHEL
1420 W 23RD AVE
MITCHELL SD 57301

JEFFERY J MADISON
23275 453RD AVE
MADISON SD 57042

LEONARD J KRUMRIE
405 S MAIN ST
WENTWORTH SD 57075

STEVEN SANDHURST
4025 BRADY CT S
SIOUX FALLS SD 57103-7227

DENNIS R MILLARD
PO BOX 308
LAKE PRESTON SD 57249

ANNETTE ROWCLIFFE
17959 SD HWY 15
CLEAR LAKE SD 57226

WAYNE A NEGSTAD
21518 US HWY 81
ARLINGTON SD 57212

WARREN D HEITHER
1530 TWIN LAKES RD
LAKE PRESTON SD 57249

TERRY L SOUTAR
904 S ANNWAY
SIOUX FALLS SD 57103

DONALD R PROUTY
19293 444TH AVE
BRYANT SD 57221

NICHOLE NELSON
503 N BROADWAY
CANTON SD 57013

Lake Thompson Parties of Record List

GARY F JUSTESEN
2347 N SHORE DR
LAKE PRESTON SD 57249

KEN JESSEN
48311 221ST ST
ELKTON SD 57026

STACEY M BEBO & BRUCE BEBO
17453 PLAINVIEW AVE
REDFIELD SD 57469

TAMMY S VEDVEI
1212 6TH ST
BROOKINGS SD 57006

JERALD L ZURN
17482 145TH ST NE
FORESTON MN 56330-9627

JOHN SHAVER
48035 SNOWBIRD CIR
SIOUX FALLS SD 57108

BUTLER FAMILY REVOCABLE TRUST
2213 TWIN LAKES RD
LAKE PRESTON SD 57249

WILLIAM C BIBEE TRUST
2200 36TH ST UNIT #2A
ROCK ISLAND IL 61201

JEFFREY J JUSTESEN
1805 S OXFORD AVE
SIOUX FALLS SD 57106

LARRY L APLAND
2109 TWIN LAKES RD
LAKE PRESTON SD 57249

GREGORY R HAUCK
43938 212TH ST
LAKE PRESTON SD 57249-6515

KINGBROOK RURAL WATER INC.
PO DRAWER 299
ARLINGTON SD 57212-0299

MERRILL A NELSON
PO BOX 746
LAKE PRESTON SD 57249

STEPHEN A & DENNIS D NODING
21340 439TH AVE
LAKE PRESTON SD 57249

STEPHEN A & DENNIS D NODING
21340 439TH AVE
LAKE PRESTON SD 57249

RYAN SAUTER
21280 439TH AVE
LAKE PRESTON SD 57249

RUSS D LARSEN
2917 PRAIRIE S
SIOUX FALLS SD 57105

FRANK E VIRCHOW LIVING TRUST
20327 441ST AVE
LAKE PRESTON SD 57249

Lake Thompson Parties of Record List

RONALD A THON
1010 MAY LANE
YANKTON SD 57078

PAUL J HAISCH
29746 485TH AVE
HAWARDEN IA 51023

TIMOTHY J GREENWOOD
900 W CHERRY
CHEROKEE IA 51012

ALAN L SANDVIG
48104 289TH ST
CANTON SD 57013

ALAN TEACH
2392 BEECH AVE
INWOOD IA 51240

STANLEY W SABIE
413 4TH AVE
JASPER MN 56144

JOHN S DUPREY
5200 SUNDOWNER AVE
SIOUX FALLS SD 57106

CLAYTON G & MARIE RAMSDELL
21259 VANTAGE POINT DR
LAKE PRESTON SD 57249

THOMAS A KUHN
4101 W 89TH ST
SIOUX FALLS SD 57108

DEUTSCHE BANK NATIONAL TRUST CO TRUSTEE
1661 WORTHINGTON ROAD # 100
WEST PALM BEACH FL 33409

MARK E JOHNSON
21067 431ST AVE
DE SMET SD 57231

DAS PROPERTIES
47096 OAKBROOK LOOP
BROOKINGS SD 57006

GARRETT L SCHROEDER
21275 VANTAGE POINT DR
LAKE PRESTON SD 57249

GRAF WERNER STAMPHAUS
C/O IRENE MARAK
11125 PALMERAS DR
SUN CITY AZ 85373

NOTICE OF LIS PENDENS: USA
C/O JOANNE BENDER, US ATTORNEY'S OFFICE
PO BOX 2638
SIOUX FALLS, SD 57101-2638

SOLOMON G SEMMLER
45995 269TH ST
CHANCELLOR SD 57015

LARRY J TILDEN
43572 241ST ST
CANOVA SD 57321

FREDERICK P BETTNER
1216 10TH ST E
PLANKINTON SD 57368

Lake Thompson Parties of Record List

EDWARD J BRECK
4309 ELLIS RD S
SIOUX FALLS SD 57106-7036

RODNEY L CASPER TRUST
21397 440TH AVE
LAKE PRESTON SD 57249-6508

SHELLEY J EISENBEISZ
21635 441ST AVE
WEST FARGO ND 58078

ERIC CASPER
21420 441ST AVE
LAKE PRESTON SD 57249

FRANK E VIRCHOW
20327 441ST AVE
LAKE PRESTON SD 57249

ROBERT H SNEESBY LIVING TRUST
NORMA J SNEESBY LIVING TRUST
21563 442ND AVE
LAKE PRESTON SD 57249

WADE JENSEN
20128 445TH AVE
LAKE PRESTON SD 57249

JOHN DAN & RICHARD DOUGHERTY
3710 WESTPORT AVE S
SIOUX FALLS SD 57106-6343

JERRY J & JEANNIE GRUENHAGEN
526 HWY 25 S
DE SMET SD 57231

BROOKE & PAIGE VIRCHOW
20327 441ST AVE
LAKE PRESTON SD 57249

RICK OSVOG
PO BOX 1690
WATERTOWN SD 57201

DREW SCHELLPEPER
409 GERALDINE ST
FAIRMONT MN 56031

DONNA M JURRENS
48228 219TH ST
ELKTON SD 57026

DOUGLAS R BUMANN
44222 209TH ST
LAKE PRESTON SD 57249

MATTHEW & MARK JENSEN
44190 215TH ST
LAKE PRESTON SD 57249

C/O KAY SCHELLPEPER
433 LAKE LARK BLVD
FAIRMONT MN 56031

DAVID EUGENE OLSON
22004 BLAINE AVE
FARMINGTON MN 55024

WESLEY C JONES TRUST
HELEN JONES TRUST
43811 US HWY 14
LAKE PRESTON SD 57249-5903

Lake Thompson Parties of Record List

DALE HOYER
22520 437TH AVE
HOWARD SD 57349

JAMES L JOHNSON
1900 DEVON DR S
SIOUX FALLS SD 57106

JOEL JORGENSEN
530 W LAKE DR
LAKE NORDEN SD 57248

DEAN M POPPINGA
5937 S LOIS LANE
SIOUX FALLS SD 57108

DALE WELLS ESTATE
C/O JANET JORGENSEN
530 W LAKE DR
LAKE NORDEN SD 57248

NANCY A SWANSON
730 ARROWHEAD PASS
BROOKINGS SD 57006-3950

GARY E KRIER
801 PAR TEE DR
HARTFORD SD 57033

BRADLEY ALBRECHT
45484 207TH ST
ARLINGTON SD 57212

DOROTHY E STREETER
206 2ND E
VOLGA SD 57071

MARLA BERTSCH
315 SPRING AVE N
LAKE PRESTON SD 57249

DEANNA STREETER
4700 E 6TH ST # 103
SIOUX FALLS SD 57110

ALAN STREETER
3 ELM COURT
OSAGE IA 50461

E JOHN BRUNER
22289 422ND AVE
WINFRED SD 57076

CLINT D HOYER
44145 223RD ST
WINFRED SD 57076-9657

GERALD & LAUVERNE HARR LTD PARTNERSHIP
3920 RIVER BLUFF RD S
SIOUX FALLS SD 57110

STEVEN J DUFFY
44325 217TH ST
OLDHAM SD 57051

TOM WALLUM
121 KIOWA ST W
IROQUOIS SD 57353

DAKOTA LOG HOME BUILDERS LLC
107 ALEXANDER LN
PIERRE SD 57501

Lake Thompson Parties of Record List

B ARNOLD DYRDAHL
227 8TH ST SW, #45
MADISON SD 57042

THOMAS H KATTKE
44630 222ND ST
RAMONA SD 57054

THE POWELL COMPANY LIMITED PARTNERSHIP
43648 223RD ST
HOWARD SD 57349

JON C ALBRECHT
22286 SD HWY 25
HOWARD SD 57349

JOHN E ALBRECHT
43484 218TH ST
DE SMET SD 57231

DORIS E MOOSE
PO BOX 245
MADISON SD 57042

ROGER MOOSE
220 N LEE
MADISON SD 57042

MARY JENSEN
BOX 374
VOLGA SD 57071

CHRISTOPHER J WAGNER
5724 W BREAM DR
SIOUX FALLS SD 57101

CASSANDRA L NELSON
611 S COLUMBIA ST
HARRISBURG SD 57032

CALLIE MOLENGRAAF
1417 PHEASANT RUN RD
BROOKINGS SD 57006

BRETT JODOZI
21914 438TH AVE
OLDHAM SD 57051

CHAD JODOZI
30653 417TH AVE
TYNDALL SD 57066

DEANNA HOYER
21377 US HWY 85
LEAD SD 57754

CODY D HOYER
43775 221ST ST
OLDHAM SD 57051

CLARK D HOYER
712 W 3RD ST
DELL RAPIDS SD 57022

ELENE SCHREPEL
22909 458TH AVE
MADISON SD 57042

RONALD W REED CREDIT TRUST
21859 441ST AVE
OLDHAM SD 57051-7104

Lake Thompson Parties of Record List

EDDIE & PATRICIA JOHNSON
PO BOX 126
ESTELLINE SD 57234

WAYNE GUNDERSON
25085 SVERDUP AVE
BALTIC SD 57003

ROBERT & JOANNE MCADARAGH REVOCABLE TRUST
314 3RD ST SW
DE SMET SD 57231

JEFFRY J GRUENHAGEN
43221 208TH ST
DE SMET SD 57231

ROBERT FYLLING
PO BOX 77
LENNOX SD 57039

JAMES R LUTHER TRUST
MARY L JOHNSON LUTHER TRUST
PO BOX 212
DE SMET SD 57231

JOHN ALBRECHT
106 N VERMILLION DR
HOWARD SD 57349

DALE HOYER
22520 437TH AVE
HOWARD SD 57349

EDWARD BECKER
22157 440TH AVE
OLDHAM SD 57051

KENNETH BORAH
44003 222ND
OLDHAM SD 57051

ELENE SCHREPEL
22909 458TH AVE
MADISON SD 57042

LONGVILLE LEGACY PARTNERSHIP
ELISABETH NELSON
618 3RD ST NE
LAKE PRESTON SD 57249

DONNA BICKETT
313 EPTON AVE
OLDHAM SD 57051

HELEN BICKETT
PO BOX E
OLDHAM SD 57051

LANDAKER FAMILY TRUST
PO BOX 336
HOWARD SD 57349

MARJORIE HASKINS
1023 S EGAN AVE #A
MADISON SD 57042

GLADYS RUNESTAD
C/O SHARON ABRAHAM
402 N HARTH AVE
MADISON SD 57042

Lake Thompson Parties of Record List

GREGORY HANSON
602 NE 5TH ST
MADISON SD 57042

MARGARITA HANSON
5825 W 50TH ST
SIOUX FALLS SD 57106

Lake Thompson Parties of Record List

GREGORY HANSON
602 NE 5TH ST
MADISON SD 57042

MARGARITA HANSON
5825 W 50TH ST
SIOUX FALLS SD 57106

KINGSBURY CO COMMISSION
J ALBRECHT – AUDITOR
PO BOX 196
ESMET SD 57231

LAKE CO COMMISSION
R JANKE – AUDITOR
200 E CENTER ST
MADISON SD 57042

MINER CO COMMISSION
CONNOR – AUDITOR
301 N MAIN
HOWARD SD 57349

TURNER CO COMMISSION
HAGEMANN – AUDITOR
PO BOX 370
PARKER SD 57053

CLAY CO COMMISSION
R A BREMER – AUDITOR
211 W MAIN AVE # 200
VERMILLION SD 57069

JAY GILBERTSON
EAST DAK WATER DEV DIST
1328 AIRPORT AVE
BROOKINGS SD 57006

LESLIE MURPHY -- G F & P -- INTEROFFICE

RECEIVED

FEB 13 2013

WATER RIGHTS
PROGRAM

21340 439th Avenue
Lake Preston, SD 57249
605-254-4088
nodingfarms@yahoo.com

February 12, 2013

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

Dear Chief Engineer:

I am writing this letter in opposition of establishing the outlet elevation for Lake Thompson at 1,687.5 fmsl. I certainly empathize and understand the reasoning behind this proposal; however, I am concerned that the environment, wild life, etc. will suffer if this proposal is approved. I lived in Louisiana for over 20 years. The people who live on the banks of bayous, rivers, lakes, etc. have elevated houses to minimize any damage due to high water. When my house was built in 2006, I had a 3 foot berme installed around my house because I knew that sooner or later there would be a flood. Wherever there is a significant body of water, flooding will occur. It is not a question of "if" but "when". Therefore, if anyone builds near water, they should anticipate flooding. During the latest "flood" my house was saved by the berme. However, I lost the use of over 100 acres of pasture land. My losses certainly were not as severe as some. I am sensitive to and sympathize with their hardships, but, I believe that those home/property owners should accept responsibility and accountability for their decisions and actions. If they would have adequately planned for a flood, their losses would have been mitigated, and this proposal may not be before the Board.

My opposition is based on my belief that a relatively high lake level keeps the local water table high and is economically, recreationally, and socially beneficial to everyone using or visiting the lake. The overflow from a high lake level fills the sloughs and marshes which provide an excellent habitat for all kinds of birds, amphibians, and baitfish which feed game fish, herons, gulls, egrets, and other animals. There has been a large influx of geese, ducks, beavers, turtles, mink, weasels, muskrats, etc., as well. In addition, this proliferation of wildlife has led to the appearance of other animals not common to this area. I have seen two otters on my property since the "flood". In fact, one came right up to my house. Ferruginous hawks have visited my property a number of times. A relatively high water level is an animal/wildlife magnet. As the lake level lowers, the sloughs empty and therefore are less conducive to support such large amounts of diverse wildlife. Healthy marshes equal a healthy lake.

If this proposal is approved, the silt will be removed to the indicated level over a 2 mile stretch of outlet and will allow the water to flow faster out of the lake resulting in lower slough/marsh water levels and the destruction of vegetation and nesting/feeding sites. After removal, what will be the silt's destination, utilization, and cost? I suggest that an environmental impact study be conducted upstream and downstream of the outlet. Whatever the initial cost, this process will have to be repeated again and again destroying more habitats and costing more money. I wish those monies would be spent preserving our wetlands instead of decreasing them which I believe this proposal will do. It may be many, many years before the next high water mark. Let nature lower or raise the water level.

As an alternative, I suggest that a barrier such as a sluice gate be placed under the bridge/overpass on 218th Street. It would maintain a desired high water level in the sloughs and marshes and provide lake level control. Another alternative would be to establish an outlet elevation at least 1 foot higher than 1,687.5 fmsl. Therefore, I respectfully urge the Water Management Board to consider the following: 1) leave things as they are by rejecting the proposal to set the outlet elevation at 1,687.5 fmsl; or 2) revise the outlet elevation to 1,688.5 fmsl or higher; or 3) place a water restrictive device at the 218th Street bridge/overpass to maintain the lake level near or at 1691 fmsl.

Respectfully,



Dr. Stephen Noding
cc. Kingsbury County Commission, c/o Gregg A. Gass
cc. Dennis Noding
cc. Shelly Nelson

GASS & WOFFICE

ATTORNEYS & ADVISORS

RECEIVED

FEB 20 2013

WATER RIGHTS
PROGRAM

BROOKINGS OFFICE

PO BOX 486
Brookings, SD 57006
TEL 605.692.4277
FAX 888.688.4378

GREGG A. GASS

JARED I. GASS

ATTORNEYS AT LAW
EMAIL gregg@gasslawoffice.com
EMAIL jared@gasslawoffice.com

DeSMET OFFICE

PO BOX 35 | 202 Calumet Ave.
DeSmet, SD 57231
TEL 605.854.3224
FAX 605.854.3226

ARLINGTON OFFICE

PO BOX 357 | 116 S. Main St.
Arlington, SD 57212
TEL 605.983.5891
FAX 605.983.4643

February 19, 2013

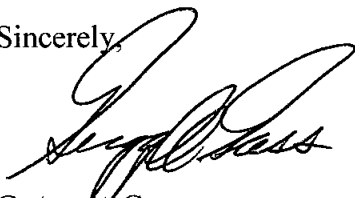
Chief Engineer
Water Rights program
Foss Building
523 East Capitol
Pierre, SD 57501

Dear Sir:

Enclosed please find a letter from the Kingsbury County Commission supporting the chief engineer's recommendation that the outlet elevation for Lake Thompson be established at an elevation of 16,875 ft. If there is anything further you need, please let me know.

Thank you very much.

Sincerely,



Gregg A. Gass
Attorney at Law

GG:cs
encls.

RECEIVED
FEB 20 2013
WATER RIGHTS
PROGRAM

February 19, 2013

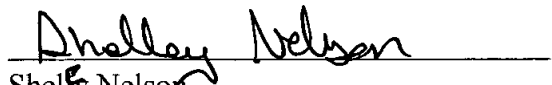
Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Dear Sir:

The Kingsbury County Commission supports the Chief Engineer's recommendation that the outlet elevation for Lake Thompson be established at an elevation of 1687.5 feet mean sea level. Kingsbury County is an interested party in this matter given that the majority of Lake Thompson lies within Kingsbury County and also based on the County's initial request to establish an outlet elevation.

Based on the various informal historical outlet elevations, the County believes that the elevation recommended by the Chief Engineer is reasonable and would provide certainty concerning possible further litigation.

As the entity making the initial request, it is probably not necessary to file a petition with you. However, Kingsbury County wants to make sure that we have the opportunity to participate in the hearing.


Shelly Nelson
Chairman Kingsbury County Commission
PO Box 196
De Smet, SD 57231

Gregg A. Gass
Attorney at Law
PO Box 35
De Smet, SD 57231



E. John Bruner (brunerlimousin@hotmail Actions

To: ericgronlund@state.sd.us

Cc: E. John Bruner

RECEIVED

FEB 25 2013

WATER RIGHTS
PROGRAM

To: Chief Engineer
Water right's Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Kingsbury County Commission
c/o Gregg A. Gass
Gass Law Office
P.O. Box 35
DeSmet, SD 57231

Dear Sir:

I would like to speak and participate at the hearing for the establishment of the outlet elevation of Lake Thompson on March 6, 2013.

I am a flooded land owner. I was a member of the Lake Thompson Task Force appointed by former Gov. Michelsen and also Chairman of the Lake Thompson Committee (a group of affected landowners).

Sincerely,

E. John Bruner

2-23-2013

RECEIVED

FEB 25 2013

WATER RIGHTS
PROGRAM

Kingsbury County Commissioners
Chief Engineer, D & N R

To whom it may concern -

I am filing this Written petition to the Chief Engineer and to the Kingsbury County Commissioners to oppose the request for establishment of the outlet elevation of Lake Thompson at 1687.5 fsl.

We own property adjacent to Lake Thompson as well as $2\frac{1}{2}$ quarters of land under Lake Thompson. We are opposed to establishing the outlet elevation at 1687.5 because that level is too high.

Thank You

Jerry Gruenhagen
Jerry Gruenhagen
526 Hwy 25 South
De Smet, SD 57231
605-703-1156

2/22/13

RECEIVED
FEB 25 2013
WATER RIGHTS
PROGRAM

To whom it may concern,

I reject the 1687.5 foot level, and would support a level of 1685.0. The lake should end near the 220 street or the Kingsbury-Miner County line; not Section 25 in Miner County (look at any map of the lake).

I have two quarters that water backs into; we have lost 40 Acres of production over the years well over the \$2500. The run off on the south of the lake is not fast enough, or low enough to take care of the inflow during spring runoff season; thus backing water on to our land. Our land is a mile from the lake banks. There has been an excessive amount of silt and cattail debris washed into the old channel the last 25 years and before those artificial blocks. Roads, dams, and in the 30's blow soil filled the channel. The lake has been artificially high since the mid-80. We haven't ever seen these levels since the 20's, and then the channel was in place to drain the excessive water that came in from the north. There wasn't the backwater that we contend with today.

My grandfather homesteaded on the northeast corner of Lake Thompson in the 1880's so one knows a little of the history of the Lake.

Respectfully,

Merrill Nelson

628 3rd Street NE

Lake Preston, SD 57249

Gronlund, Eric

From: Gronlund, Eric
Sent: Thursday, February 28, 2013 3:40 PM
To: "rfreeman.huronlaw@midconetwork.com" (rfreeman.huronlaw@midconetwork.com); "Ev Hoyt" (evhoyt@rap.midco.net); Dixon, Peggy; "Bonnie & Tim Bjork" (bjork10@pie.midco.net); "holzbauerleo@yahoo.com" (holzbauerleo@yahoo.com); "jimhutmacher_9@hotmail.com" (jimhutmacher_9@hotmail.com); "chad.comes@cityofmadisonsd.com" (chad.comes@cityofmadisonsd.com)
Cc: Hallem, Jeff; Best, Diane; Erbele, Garland; Binegar, Brenda; Giedd, Roxanne; Hicks, Matt; Jacobson, Gail
Subject: March 6 - 7 Water Management Board meeting - supplement to Board packet
Attachments: March 2013amended.doc; Brunerpetition.pdf; thompsonpetition.pdf; Swanpetition.pdf; Andersonwithdrawal.pdf; BHwildhorsepleading.pdf

Since the Board packet was mailed, additional petitions have been received which are being forwarded as attachments in this email. Hard copies of the attachments will be provided at the Board meeting. Specifically attached are:

1. Amended agenda which removed the Binger and Marshall Brother applications from the 9:00 AM Thursday item since they have been auto-delayed. The Wieting and Oscar Inc applications are still scheduled for hearing
2. 8:30 AM, Wednesday – 3 additional petitions to establishment of Lake Thompson outlet elevation (Brunerpetition.pdf & thompsonpetition.pdf)
3. 11:00 AM, Wednesday – letter from Wild Horse Sanctuary regarding setting hearing date in Powertech matter (BHwildhorsepleading.pdf)
4. 1:00 PM, Wednesday – petition in Upper Vermillion:Missouri Aquifer (Swanpetition.pdf)
5. 2:00 PM, Thursday – withdrawal of opposition to Lucas Family Investments (Andersonwithdrawal.pdf)

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



E. John Bruner (brunerlimousin@hotmail.com)

To: ericgronlund@state.sd.us

Cc: E. John Bruner

RECEIVED

FEB 25 2013

WATER RIGHTS
PROGRAM

To: Chief Engineer
Water right's Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Kingsbury County Commission
c/o Gregg A. Gass
Gass Law Office
P.O. Box 35
DeSmet, SD 57231

Dear Sir:

I would like to speak and participate at the hearing for the establishment of the outlet elevation of Lake Thompson on March 6, 2013.

I am a flooded land owner. I was a member of the Lake Thompson Task Force appointed by former Gov. Michelsen and also Chairman of the Lake Thompson Committee (a group of affected landowners).

Sincerely,

E. John Bruner

2/22/13

RECEIVED
FEB 25 2013
WATER RIGHTS
PROGRAM

To whom it may concern,

I reject the 1687.5 foot level, and would support a level of 1685.0. The lake should end near the 220 street or the Kingsbury-Miner County line; not Section 25 in Miner County (look at any map of the lake).

I have two quarters that water backs into; we have lost 40 Acres of production over the years well over the \$2500. The run off on the south of the lake is not fast enough, or low enough to take care of the inflow during spring runoff season; thus backing water on to our land. Our land is a mile from the lake banks. There has been an excessive amount of silt and cattail debris washed into the old channel the last 25 years and before those artificial blocks. Roads, dams, and in the 30's blow soil filled the channel. The lake has been artificially high since the mid-80. We haven't ever seen these levels since the 20's, and then the channel was in place to drain the excessive water that came in from the north. There wasn't the backwater that we contend with today.

My grandfather homesteaded on the northeast corner of Lake Thompson in the 1880's so one knows a little of the history of the Lake.

Respectfully,

Merrill Nelson

628 3rd Street NE

Lake Preston, SD 57249

2-23-2013

RECEIVED

FEB 25 2013

WATER RIGHTS
PROGRAM

Hempstead County Commission
Chiy Kongmoo, ASMR

to whom it may concern -

I am filing this written petition to the
Chiy Kongmoo and to the Hempstead
County Commission to approve the request
for establishment of the water allocation
of Lake Thompson at 1687.5 gpm.

We own property adjacent to Lake Thompson
as well as 2 1/2 quarters of land & make
Lake Thompson. We are opposed to
establishing the water allocation at 1687
because that level is too high.

Thank you

Jeff Thompson
526 Hwy 25 South
Apt 2231
Apt 2231

RECEIVED

FEB 27 2013

WATER RIGHTS
PROGRAM

February 25, 2013

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

PETITION IN OPPOSITION TO APPLICATIONS TO APPROPRIATE WATER

Re: WATER PERMIT APPLICATIONS NOS.
7441-3 & 7442-3, Gary or Julie Peterson
7452-3, Jerome Hult
7466-3, Bethel Hagen Trust
7467-3 & 7468-3, Cleland Hagen Trust
7535-3, Donald D. Bensen

Greetings:

We each own real property located at Swan Lake. Swan Lake is located squarely within the Upper Vermillion Missouri aquifer. As residents of Swan Lake, we have observed downward trending water levels at the lake that mirror the downward trending water levels from the observation wells discussed in the Report to the Chief Engineer.

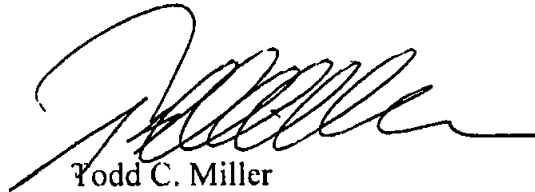
We support of the Chief Engineer's Recommendation that each of the above listed applications be deferred pending further research. Based on existing information, there does not appear to be unappropriated water available to fill these applications. The Chief Engineer's Recommendation wisely indicates a need for further study of the effects of the rural water system withdrawals on the aquifer. We believe additional research must be completed to ensure that the requirements of SDCL §§ 46-2A-9 and 46-6-3.1 are met and to protect all of the South Dakotans served by the Upper Vermillion Missouri aquifer.

Our addresses and contact information follow our signatures below. The Applicants and/or their counsel of record will be served by copy of this Petition. Thank you.

Sincerely,



Carey A. Miller
Woods Fuller Shultz & Smith P.C.
300 S. Phillips Ave., Suite 300
Sioux Falls, SD 57104



Todd C. Miller
Attorney at Law
141 N. Main Ave., Suite 504
Sioux Falls, SD 57104

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
WATER MANAGEMENT BOARD**

RECEIVED

FEB 27 2013

**WATER RIGHTS
PROGRAM**

In re: Application Nos. 7441-3 and 7442-3 (Gary or Julie Peterson)
Application No. 7452-3 (Jerome Hult)
Application No. 7466-3 (Bethel Hagen Trust)
Application No. 7535-3 (Donald D. Benson)
Application Nos. 7467-3, 7468-3 and 7558-3 (Cleland Hagen Trust)

I hereby certify that on the 25th day of February, 2013, I sent by United States first-class mail, postage prepaid, a true and correct copy of a Petition in Opposition to Applications to Appropriate Water to the following:

Mr. Jason Rumpca
Peterson, Stuart, Rumpca & Rasmussen
103 North 3rd Street
Beresford, SD 57004
Attorneys for Gary and Julie Peterson

Jerome Hult
45958 Hwy 18
Davis, SD 57021

Bethel Hagen Trust
c/o Bruce Hagen
1300 West Murphy Drive
Sioux Falls, SD 57108

Cleland Hagen Trust
c/o Bruce Hagen
1300 West Murphy Drive
Sioux Falls, SD 57108

Donald D. Benson
45067 284th Street
Hurley, SD 57036

Mr. Garland Erbele, Chief Engineer
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501

Dated this 25th day of February, 2013.

WOODS, FULLER, SHULTZ & SMITH P.C.

By Carey A. Miller
Carey A. Miller
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, South Dakota 57117-5027
(605) 336-3890

Legal Authority

A. Application to Establish Outlet Elevation

46-2-5. Rules to establish procedures and practices of board. The Water Management Board may promulgate rules pursuant to chapter 1-26 to:

- (1) Establish procedures for submitting applications. . . .
- (5) Establish procedures for determining ordinary high and low water marks and outlet elevations.

74:02:01:50. When determining an ordinary high-water mark, the board may also set the outlet elevation consistent with the existing water rights or permits. The board may clarify or amend existing water rights or permits to include the outlet elevation consistent with chapter 46-2A.

B. Validation of Vested Right-Game, Fish, and Parks

46-1-9. The term, vested rights, used in this title means:

(1) The right of a riparian owner to continue to use water actually applied to any beneficial use on March 2, 1955, or within three years immediately before that date to the extent of the existing beneficial use made of the water. . .

(5) Uses of water under diversions and applications of water before the passage of the 1907 water law and not subsequently abandoned or forfeited.

46-2A-16. Any claim for vested rights as defined in § 46-1-9 or 46-6-1 that has been accepted for filing by the chief engineer or Board of Water Management, prior to July 1, 1986, is eligible for validation. The chief engineer shall prepare a list based on the point of diversion of these vested rights on a county-by-county basis. By July 31, 1988, the chief engineer shall cause to be published once a week for two consecutive weeks in a newspaper of general circulation in each county a notice of these vested rights in the county in which the notice is published. The notice shall include the following:

- (1) The name and address of these vested right holders;
- (2) The legal description of the diversion points and, if the water is used for irrigation purposes, the legal description of the land on which the water has been used;
- (3) The source of water;

(4) A statement that any person who wishes to oppose validation of any such vested right shall, within ninety days of the date of the last publication, file a petition of intent to oppose the validation with the department and with the vested right holder; and

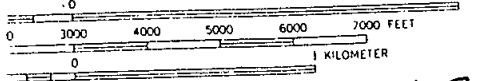
(5) A statement that any interested person may obtain a copy of the chief engineer's vested right list for other counties from the department.

A copy of each notice published in a county shall be mailed by the chief engineer by first class mail to all known water right or water permit holders in that county. No hearing may be scheduled unless a petition of intent to oppose is filed.

46-2A-17. If a petition of intent to oppose the validation of a recognized vested water right claim is filed pursuant to § 46-2A-16, the Board of Water Management shall hear and determine the matter de novo. Further published notice is not necessary, but the parties shall be notified of the hearing by first class mail. If no petition opposing validation of the recognized water right claim is filed pursuant to § 46-2A-16, the board shall issue an order validating the vested right claim.

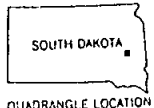


OLDHAM NW
6572 III SW
SCALE 1:24,000



VERTICAL INTERVAL 10 FEET
REPRESENT 5-FOOT CONTOURS
M IS MEAN SEA LEVEL

1696.3



ROAD CLASSIFICATION
 Secondary highway, all weather, Light duty road, all weather
 hard surface improved surface
 Unimproved road, fair or dry weather

OLDHAM NW, S. 1
N4407.5—W9722.5/

1968

AMS 6572 III NW—SERIES

11th NATIONAL MAP ACCURACY STANDARDS
 Y, DENVER, COLORADO 80225, OR WASHINGTON, D. C. 20242
 PHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

1968
 Brunner
 ex. A.

Ex B.

1695 level Brunner ex. C

MS 6471 I SW—SERIES

LAKE THOMPSON, KINGSBURY CO. WRITTEN AND ANECDOTAL HISTORY

**DENR
EXHIBIT 6**

Bruner B

DATE	COMMENTS:
1857	Lake Thompson described as being 10 miles in length and 5 to 6 miles in width.
1867-69	Local Indians referred to the lake as Dry Woods lake.
1874	When the meander line survey was conducted Lake Thompson was described as shallow and white with alkali.
1879-80	Area was dry, railroad tracks were laid in the bed of Lake Preston and Silver Lake.
1880's & 90's	The shore's of Lake Thompson are settled – many left starting in the late 80's due to drought, grasshoppers, and the "Panic of 1893-94".
1880-81	Referred to as the year of the Long or Hard Winter, received 12 to 15 feet of snow. Lake Henry and Lake Thompson spilled.
1883	Lakes Henry and Thompson stocked with fish via pickerel migrating up the Vermillion River from the Missouri.
1885	Crops in the area good until 1885.
1886	The area is very dry. The flats of Thompson are referred to as "The Poverty Flats".
1890	From the De Smit News..."There is a hole in the bottom of the sea. It is reported Lake Henry is drying fast. Dries up several feet a day. Plug it up."
1900	Maps show Thompson almost dry, but a wet cycle is beginning.
1906	Mail route from Oldham is established across the flats of Thompson.
1910's	Lots of recreation on the lakes in the area.
1925-26	Lakes are starting to dry up.
1930	Lakes are all dry – lake beds farmed and fenced for pasture.
1936-37	Lake Henry received 4' of water after a great amount of snow.
1942	Lake Henry filled and put 4' of water into Lake Thompson.
1946-52	Fishing was good in Lake Henry. Fires often burned off the grass in the flats of Thompson. Deer, geese, and ducks made Thompson a great wildlife spot.
1952-72	Lake Henry ran over in 1952, 1962 and 1972.
1983	Lake Thompson water level 1668.3 fmsl.
1986-87	Lake Thompson overflowed the natural outlet (1688.6 fmsl) to the East Fork Vermillion River for the first time this century. Lake level reached 1690.6 fmsl. The lake was also stocked with fish.
1996	Water 3' above Lake Thompson's natural outlet.
1997	Water in Lake Thompson reached its maximum measured level of 1692.8 fmsl.
1998	Vermillion River Watershed Authority petitioned the Water Management Board to set the outlet elevation for Lake Thompson. First step in a project to try to regulate water in Lake Thompson and the Vermillion River.
1999	March 3, 1999 Water Management Board Meeting – Lake Thompson outlet elevation. The Board elected not to act on the request until the outcome of two pending lawsuits, Bruner, et al. v. State of SD and Bruner, et al. v. Belleview Township. The rulings could have the effect of restraining what the Board could do.
2000	Vermillion River Watershed Authority withdraws request to set the outlet elevation for Lake Thompson.
2003	Bruner, et al. v. State of SD case is dismissed on June 24, 2003.
2006	Fall water level in Lake Thompson at elevation 1683.9 fmsl.
2011	Spring water level in Lake Thompson at elevation 1694 fmsl
2012	September 5 th DENR-Water Rights Program received a petition from Kingsbury County Commission to set the outlet elevation for Lake Thompson.

LAKE THOMPSON OUTLET CHANNEL

DENR
EXHIBIT 4

T111N
T110N
T109N
T108N



R56W

R55W

R54W

LAKE THOMPSON OUTLET AREA

DENR
EXHIBIT 5



At the outlet looking east.



At the outlet looking north.



At the outlet looking south.



At 225th Street, first road crossing downstream of the outlet.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

March 12, 2013

NOTICE

TO: Gregg A Gass
Gass Law Office
PO Box 35
DeSmet SD 57231

E John Bruner
22289 422nd Ave
Winfred SD 57076

Merrill Nelson
628 3rd Street NE
Lake Preston SD 57249

Leslie Murphy
Dept. of Game, Fish and Parks
523 E Capitol Ave
Pierre SD 57501

FROM: Garland Erbele, Chief Engineer
Water Rights Program

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

The Water Management Board directed Gregg Gass to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the establishment of Lake Thompson's outlet elevation and validation of Vested Water Right No. 707-3. The Board will consider adoption of Findings, Conclusions and Final Decision at 8:30 AM, on Thursday, May 2, 2013, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. Notice will be provided if there is a change in the hearing date or time.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by April 9, 2013. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) and parties of record by April 19, 2013. Board counsel requests that the draft findings or alternative findings be provided in a WORD format file via email to jeff.hallem@state.sd.us.

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 2, 2013. The public hearing was completed on March 6, 2013. No additional testimony will be received.

If you have questions about the findings process, please contact Diane Best at (605) 367-5880.

Enclosure

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Dr. Stephen Noding, 21340 439th Avenue, Lake Preston SD 57249
Miner County Commission, c/o Susan Connor, Auditor, PO Box 86, Howard SD 57348

2013 WATER MANAGEMENT BOARD MEMBERS

Chad Comes **Vice-Chairman**
PO Box 308
Madison SD 57042

Leo Holzbauer
PO Box 877
Wagner SD 57380

Rodney Freeman Jr **Chairman**
PO Box 176
Huron SD 57350

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Tim Bjork **Secretary**
112 W Oak St
Pierre SD 57501

Jim Hutmacher
802 E 7th Street
Oacoma SD 57365

BOARD ATTORNEY

Jeff Hallem, Assistant Attorney General
Natural Resources Section
Office of Attorney General
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Garland Erbele Chief Engineer
Water Rights Program
523 East Capitol Ave
Pierre SD 57501-3181

STAFF ATTORNEY

Diane Best - Assistant Attorney General
Office of Attorney General
Natural Resources Section
317 N Main
Sioux Falls SD 57104-6004

CERTIFICATION

I hereby certify that on March 12, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 12, 2013, regarding preparation of findings of fact, conclusions of law and final decision in the matter of establishment of an outlet elevation for Lake Thompson and validation of Vested Water Right No. 707-3, as set forth below:

Gregg A Gass
Gass Law Office
PO Box 35
DeSmet SD 57231

E John Bruner
22289 422nd Ave
Winfred SD 57076

Diane Best, Assistant Attorney General
317 N Main Avenue
Sioux Falls SD 57104

Merrill Nelson
628 3rd Street NE
Lake Preston SD 57249

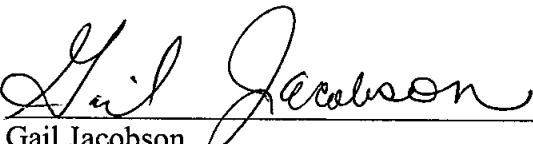
Dr. Stephen Noding
21340 439th Avenue
Lake Preston SD 57249

Miner County Commission
c/o Susan Connor, Auditor
PO Box 86
Howard SD 57348

Sent Inter-Office

Jeff Hallem, Assistant Attorney General
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre SD 57501

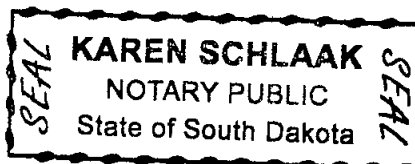
Leslie Murphy
Dept of Game, Fish and Parks
523 E Capitol Ave
Pierre SD 57501


Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of March, 2013


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

denr.sd.gov

April 22, 2013

NOTICE

TO: Gregg A Gass
Gass Law Office
PO Box 35
DeSmet SD 57231

E John Bruner
22289 422nd Ave
Winfred SD 57076

Merrill Nelson
628 3rd Street NE
Lake Preston SD 57249

Leslie Murphy
Dept. of Game, Fish and Parks
523 E Capitol Ave
Pierre SD 57501

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Time of Hearing for Findings of Fact, Conclusions of Law and Final Decision

The time for Water Management Board consideration of Findings of Fact, Conclusions of Law and a Final Decision in the matter of the establishment of Lake Thompson's outlet elevation and validation of Vested Water Right No. 707-3 has been changed. The Board will now consider adoption of Findings, Conclusions and Final Decision at 1:00 PM, on Thursday, May 2, 2013, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General
Dr. Stephen Noding, 21340 439th Avenue, Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney, 200 East Center Street, Madison SD 57042
Gregory A Protsch, Miner County State's Attorney, PO Box 189, Howard SD 57349
Jerry Gruenhagen, 526 Hwy 25 S, DeSmet SD 57231
Mike C Fink, McCook County State's Attorney, PO Box 444, Bridgewater SD 57319
Teddi J Gertsma, Clay County State's Attorney, 211 W Main St, Suite 204, Vermillion SD 57069
Matthew L Olson, Turner County State's Attorney, PO Box 700, Parker SD 57053
Richard J. Neill, Attorney, Dept. Game, Fish & Parks, 523 E Capitol Avenue, Pierre SD 57501

CERTIFICATION

I hereby certify that on April 22, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 22, 2013, regarding change of hearing time for consideration of findings of fact, conclusions of law and final decision in the matter of establishment of an outlet elevation for Lake Thompson and validation of Vested Water Right No. 707-3, as set forth below:

Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231
E John Bruner, 22289 422nd Ave, Winfred SD 57076
Diane Best, Assistant Attorney General, 317 N Main Avenue, Sioux Falls SD 57104
Merrill Nelson, 628 3rd Street NE, Lake Preston SD 57249
Dr. Stephen Noding, 21340 439th Avenue, Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney, 200 East Center Street, Madison SD 57042
Gregory A Protsch, Miner County State's Attorney, PO Box 189, Howard SD 57349
Jerry Gruenhagen, 526 Hwy 25 S, DeSmet SD 57231
Mike C Fink, McCook County State's Attorney, PO Box 444, Bridgewater SD 57319
Teddi J Gertsma, Clay County State's Attorney, 211 W Main St, Suite 204, Vermillion SD 57069
Matthew L Olson, Turner County State's Attorney, PO Box 700, Parker SD 57053

Sent Inter-Office

Jeff Hallem, Assistant Attorney General, George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1, Pierre SD 57501
Richard J. Neill, Attorney, Dept. Game, Fish & Parks, 523 E Capitol Avenue, Pierre SD 57501
Leslie Murphy, Dept. of Game, Fish & Parks, 523 E Capitol Ave, Pierre SD 57501

Gail Jacobson

Water Rights Program, DENR

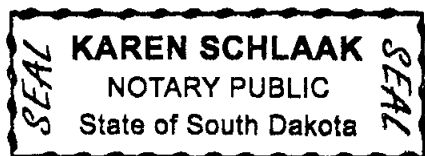
[illegible]

Sworn to, before me, this 22nd day of April, 2013

Karen Schlaak
Karen Schlaak

Notary Public

My Commission expires April 1, 2019



STATE OF SOUTH DAKOTA



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

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED
APR 24 2013
WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 23, 2013

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

Chad Comes
P.O. Box 308
Madison, SD 57042

Leo Holzbauer
P.O. Box
Wagner, SD 57380

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

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Peggy Dixon
3311 Hogan Ct.
Rapid City, SD 57702

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

Diane Best
Office of the Attorney General
317 N. Main Ave.
Sioux Falls, SD 57104-6004

Gregory A. Protsch
Miner County State's Attorney
P.O. Box 189
Howard, SD 57349-0189

Merrill Nelson
628 3rd St. NE
Lake Preston, SD 57249

Dr. Stephen Noding
21340 439th Ave.
Lake Preston, SD 57249

Gregg A. Gass
Kingsbury County State's Attorney
P.O. Box 29
De Smet, SD 57231

E. John Bruner
22289 422nd Ave.
Winfred, SD 57076

Jerry Gruenhagen
526 Hwy. 25 S.
De Smet, SD 57231

Leslie Murphy
Dick Neill
Dept. of Game, Fish & Parks
523 E. Capitol Ave.
Pierre, SD 57501

Teddi J. Gersma
Clay County State's Attorney
211 West Main, Suite 204
Vermillion, SD 57069

Chris S. Giles
Lake County State's Attorney's Office
200 East Center Street
Madison, SD 57042

Jeanne Goodman
DENR - Joe Foss Bldg.
523 East Capitol
Pierre, SD 57501-3182

Re: *In the Matter of the Establishment of the Outlet Elevation for Lake Thompson; In the Matter of the Validation of Vested Water Right No. 707-3, South Dakota Department of Game, Fish and Parks*

Dear Board Members, Counsel, Chief Engineer and Parties:

The Board is currently scheduled to consider Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter on May 2, 2013 at 1:00 p.m. Subsequent to the conclusion of the proceeding on March 6, 2013, there have been a number of submissions filed by Parties and non-party counties. A number of these filings are outside of the anticipated filings regarding proposed Findings of Fact, Conclusions of Law and Final Decision for the Board's consideration at its upcoming meeting.

The Board has received requests for intervention, reconsideration, and consideration of evidence that was not submitted during the March 6th, proceeding. A comment letter, dated April 12, 2013, was submitted by Secretary Vonk on behalf of Department of Game, Fish and Parks, a party to the proceedings. Therein, Secretary Vonk asks the Board to consider evidence that was not previously submitted. In addition, Miner County and Lake County have filed Motions to Intervene, Motions for Reconsideration, and Objections to Findings of Facts, Conclusions of Law, and Final Decision proposed by Kingsbury County, and proposed Findings of Fact, Conclusions of Law and Final Decision. Clay County has filed a Motion to Intervene and Motion for Reconsideration. Finally, Intervener Dr. Steven Noding filed a letter in opposition to the Kingsbury County proposals based in part upon the fact that he was unable to attend for weather related purposes the contested case proceeding. These filings are unprecedented during my tenure as your legal counsel.

Given the nature of these additional filings, as well as the proposals received from the Parties, I have concluded that I am unable to prepare proposed rulings or findings of fact, conclusions of law and final decision. In my opinion, to prepare proposed rulings and proposed findings of fact, conclusions of law

and final decision, would require me to exercise my judgment on certain issues that is outside of the guidance I received from the Board through its oral decision in this matter.

I have discussed my dilemma with the Board Chairman. In lieu of my submission of proposed rulings, and proposed findings of fact and conclusions of law and final decision, I am setting forth what I would foresee as a procedure to address the filings when this matter is considered during the Board's May 2nd meeting.

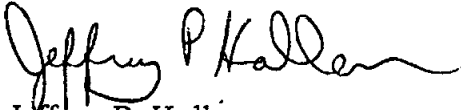
1. The Board take up Miner, Lake and Clay Counties' Motions to Intervene and Reconsideration followed by the Department of Game, Fish and Parks comment letter.
2. Depending upon the determinations made on the above filings, the Board would next address Kingsbury County's proposed Findings of Fact, Conclusions of Law and Final Decision, and the remaining submissions in response or in opposition to Kingsbury County's proposals.

Currently, the evidence phase of the proceeding has been closed and the Board has made an oral decision. This oral decision, however, is not the final decision of the Board. Based upon the submissions that it has received the Board has several options. These options include: 1) based upon the current record finalize documents that would confirm the oral decision; 2) modify or change the oral decision based upon the current record that was closed at the March 6th proceeding; or 3) reopening the proceeding with or without additional parties to either reconsider the matter as a whole or to allow additional evidence and argument on legal issues the Board determines to exist. The Board's options in modifying or changing its decision range from concluding based upon review of the record that the outlet evaluation is to be set at a different level; or, since subject matter jurisdiction can be raised by any time including by the Board itself, that upon further consideration conclude that the Board rules do not authorize the setting of an outlet elevation in this matter since it is not associated with a determination on the ordinary high-water mark for Lake Thompson.

To assist the Board in preparing for the May 2nd meeting, I asked Eric Gronlund to forward to each Board member a copy of the transcript of the March 6th proceeding. Further, I will be prepared to answer to the best of my ability any Board questions as to my legal opinions or advice regarding any of the Motions and documents that have been filed.

I have included all parties and counsel for Miner, Lake and Clay Counties so that they are aware I will not be submitting specific proposals for your consideration and the proposed procedures I have outlined.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey P. Hallen", with a stylized, flowing script.

Jeffrey P. Hallen
Assistant Attorney General

JPH/jm



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

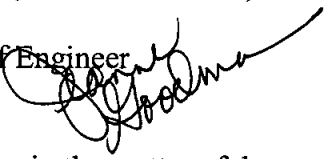
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

May 6, 2013

NOTICE

TO: Gregg A Gass
Gass Law Office
PO Box 35
DeSmet SD 57231
And Parties of Record (see attached sheet)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Reopening of the hearing in the matter of the establishment of the outlet elevation for Lake Thompson and the validation of Vested Water Right Claim No. 707-3

On May 2, 2013, the Water Management Board considered motions to intervene and motions for reconsideration in the matter of the establishment of the outlet elevation for Lake Thompson and the validation of Vested Water Right Claim No. 707-3 filed by Turner County, Clay County, Lake County and Miner County. The Board granted the motions to intervene. The Board further ruled that there was merit to reopening the hearing.

The Water Management Board will reopen the hearing in the matter of the establishment of the outlet elevation for Lake Thompson and the validation of Vested Water Right Claim No. 707-3 at 8:30 AM, on Wednesday, July 10, 2013, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The Board has allotted the morning of July 10th to this matter. Notice will be provided to all parties if there is a change in the hearing date or time.

The Board verbally set forth a procedural order with a deadline of June 25, 2013, for parties to disclose the material they intend to present and provide witness lists. Parties discussed entering into mediation for the purpose of resolution of this matter. The Board set July 2, 2013, for the conclusion of mediation among parties that choose to participate in that process.

Applicable provisions of the notice of hearing published in area newspapers the weeks of February 4 and 11, 2013, will still apply at the hearing as will testimony provided at the March 6, 2013, hearing as deemed appropriate by the Board.

If you have any questions on this matter, please contact either Eric Gronlund with the Water Rights Program at (605) 773-3352 or Diane Best, Assistant Attorney General at (605) 367-5880 extension 105.

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

PARTIES OF RECORD

IN THE MATTER OF THE ESTABLISHMENT OF THE OUTLET ELEVATION FOR
LAKE THOMPSON AND VALIDATION OF VESTED WATER RIGHT CLAIM NO. 707-3

Gregg A Gass Gass Law Office PO Box 35 DeSmet SD 57231	E John Bruner 22289 422 nd Ave Winfred SD 57076
Merrill Nelson 628 3 rd Street NE Lake Preston SD 57249	Dr. Stephen Noding 21340 439 th Avenue Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney 200 East Center Street Madison SD 57042	Gregory Protsch, Miner County State's Attorney PO Box 189 Howard SD 57349
Jerry Gruenhagen 526 Hwy 25 S DeSmet SD 57231	Richard J. Neill, Attorney Dept. Game, Fish & Parks 523 E Capitol Avenue Pierre SD 57501
Teddi J Gertsma, Clay County State's Attorney 211 W Main St, Suite 204 Vermillion SD 57069	Matthew L Olson, Turner County State's Attorney PO Box 700 Parker SD 57053

CERTIFICATION

I hereby certify that on May 6, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 6, 2013, regarding reopening of the hearing in the matter of establishment of an outlet elevation for Lake Thompson and validation of Vested Water Right No. 707-3, as set forth below:

Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231
E John Bruner, 22289 422nd Ave, Winfred SD 57076
Diane Best, Assistant Attorney General, 317 N Main Avenue, Sioux Falls SD 57104
Merrill Nelson, 628 3rd Street NE, Lake Preston SD 57249
Dr. Stephen Noding, 21340 439th Avenue, Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney, 200 East Center Street, Madison SD 57042
Gregory A Protsch, Miner County State's Attorney, PO Box 189, Howard SD 57349
Jerry Gruenhagen, 526 Hwy 25 S, DeSmet SD 57231
Teddi J Gertsma, Clay County State's Attorney, 211 W Main St, Suite 204, Vermillion SD 57069
Matthew L Olson, Turner County State's Attorney, PO Box 700, Parker SD 57053

Sent Inter-Office

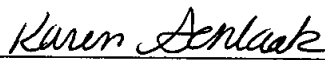
Jeff Hallem, Assistant Attorney General, George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1, Pierre SD 57501
Richard J. Neill, Attorney, Dept. Game, Fish & Parks, 523 E Capitol Avenue, Pierre SD 57501



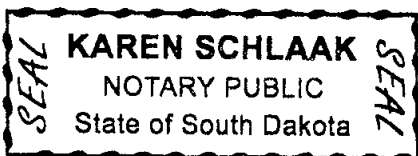
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of May, 2013



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

May 7, 2013

Lake Thompson Concerned Citizen:

Thank you for the email correspondence expressing concerns with the Board of Water Management's establishment of an outlet elevation for Lake Thompson. The Department of Environment and Natural Resources (DENR) wants to inform you that at the May 2nd hearing, the Board granted formal motions to intervene by Miner, Clay, Turner, and Lake Counties. The Board also decided to reopen the hearing to the current parties to consider the outlet elevation issue more fully.

As a legal matter, the Board's legal counsel advised that this case hinges on the varying interpretations of the legal definition of the term "outlet elevation." This term is not expressly defined in state statute or administrative rule. The Board indicated it will hear legal argument and, if necessary, evidence in that regard. This hearing will be a quasi-judicial proceeding much like parties in a dispute before a judge. Therefore, only applicants, DENR, and those individuals or entities that timely filed petitions or were granted intervener status by the Board will formally participate in the hearing.

DENR is attaching to this letter a Parties of Record list to the proceeding. If you have further comments or relevant evidence to this issue, DENR encourages you to contact one of the parties so that they are aware of it and may incorporate into their presentation before the Board as they deem appropriate.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
523 E Capitol Avenue
Pierre SD 57501

Enclosure

cc: Parties of Record

PARTIES OF RECORD

IN THE MATTER OF THE ESTABLISHMENT OF THE OUTLET ELEVATION FOR
LAKE THOMPSON AND VALIDATION OF VESTED WATER RIGHT CLAIM NO. 707-3

Gregg A Gass Gass Law Office Attorney for Kingsbury County PO Box 35 DeSmet SD 57231	E John Bruner 22289 422 nd Ave Winfred SD 57076
Merrill Nelson 628 3 rd Street NE Lake Preston SD 57249	Dr. Stephen Noding 21340 439 th Avenue Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney 200 East Center Street Madison SD 57042	Gregory Protsch, Miner County State's Attorney PO Box 189 Howard SD 57349
Jerry Gruenhagen 526 Hwy 25 S DeSmet SD 57231	Richard J. Neill, Attorney Dept. Game, Fish & Parks 523 E Capitol Avenue Pierre SD 57501
Teddi J Gertsma, Clay County State's Attorney 211 W Main St, Suite 204 Vermillion SD 57069	Matthew L Olson, Turner County State's Attorney PO Box 700 Parker SD 57053

LARRY LEWIS
40750 102ND ST
HECLA SD 57446

BEAU BAKER
208 S RED WILLOW AVE
SIOUX FALLS SD 57110

WARREN JACKSON
PO BOX 7
EGAN SD 57024

MIKE BAKER
25777 476TH AVE
SIOUX FALLS SD 57104

PATRICK GROSS
310 FOREST AVE
VERMILLION SD 57069

PAUL LEPISTO
1115 S CLEVELAND AVE
PIERRE SD 57501

CHARLES ROKUSEK
5208 W EMMITT CR
SIOUX FALLS SD 57106

MARVIN STOTERAU
6200 N CLIFF AVE # 160
SIOUX FALLS SD 57104

JEFF ALBRECHT
131 58TH AVE
BROOKINGS SD 57006

BILL ANTONIDES
514 N ARCH ST
ABERDEEN SD 57401

GEORGE VANDEL
911 WOODRIDGE DR
PIERRE SD 57501

JIM MADSEN
1452 S LAKE DR
WATERTOWN SD 57201

JOHN SIMPSON
318 W PLEASANT DR
PIERRE SD 57501

NANCY HILDING
6300 W ELM
BLACK HAWK SD 57718

JAN NICOLAY
4041 BRANT LAKE HI
CHESTER SD 57016

LEONARD SPOMER
20476 BROWNING RD
PIERRE SD 57501

CHUCK CLAYTON
798 11TH ST SW
HURON SD 57350

MATT KOST
2113 MELANIE LN
SIOUX FALLS SD 57103

CHET HOFER
26662 465TH AVE
HARTFORD SD 57033

DEAN FITZLER
4001 S CRESCENT DR
SIOUX FALLS SD 57105

KATHY HEITHER
1530 TWIN LAKES RD
LAKE PRESTON SD 57249

Gronlund, Eric

From: Larry Lewis <lew@nrctv.com>
Sent: Thursday, May 02, 2013 11:33 PM
To: Gronlund, Eric
Subject: Proposed lowering of Lake Thompson outlet

Dear Mr. Gronlund,

Please be advised that as a SD resident, voter and sportsman that returned to retire in his home state I oppose lowering the outlet elevation of Lake Thompson. The public benefits of floodwater retention, water quality improvement, fishing and hunting recreation, etc. for SD residents and those downstream who need no additional water during periods of flooding far outweigh the private gain of those who benefit economically from the proposed lower water levels. I have seen the results of this "drain for my private gain" in viewing the landscape of Iowa and Southern Minnesota. Please don't let private greed reduce our public benefits. Once they are flushed downstream they are gone!

Keep this "drain for my private gain" attitude from eroding away our State of South Dakota resources!

Larry Lewis
40750 102nd St.
Hecla, SD 57446

Ph. 605-994-2069

Gronlund, Eric

From: Beau Baker <beau.baker@howeinc.com>
Sent: Thursday, May 02, 2013 10:30 AM
To: Gronlund, Eric
Subject: Lake Thompson outlet level

To whom it may concern:

I am writing this email in regards to the proposed outlet level change at Lake Thompson. First thing, why has this even been proposed? What benefit could come from lowering the outlet level? I am against lowering the water level on Lake Thompson because of the impact it will have on the recreational activities it provides and the lost revenue that the GFP and private businesses will experience. Also, people who own cabins and homes around this lake will be affected by the decreased value of their property. At present, this lake offers great fishing, camping, hunting, and relaxation for many people from all walks of the outdoors, including resident and non-resident outdoorsmen/women and their families. The GFP has put a large amount of effort and funding at this location, so what impact will this have on the time and money they have invested at Lake Thompson? How much more money will they have to put into Lake Thompson to make it accessible if the water level is lowered? Also, what about the private businesses/campgrounds surrounding the lake? There would be a huge impact to them as well. Last, but not least, have the people who own lake front property and cabins on this lake been contacted about this proposition? I am positive all of these people are against lowering the outlet level as well as many others who frequent Lake Thompson. In addition, how many bodies of water will be affected due to this proposal, not only to the South, but all directions from Lake Thompson. I'm from Sioux Falls and Lake Thompson has been a great place for a day or weekend fishing trip. It's isn't a great distance for me or my family to drive and has many different recreational options besides fishing. It is one of my favorites along with many other people from South Dakota and the surrounding states. It is also a great source of revenue for the surrounding small towns. How will their businesses be affected if the lake becomes unusable? Will they be forced to close?

Again, I am against lowering the outlet level of Lake Thompson for many reasons.

Beau Baker
208 S. Red Willow Ave.
Sioux Falls, SD 57110

Gronlund, Eric

From: Warren and Marilyn Jackson <roscoedakota@mcisweb.com>
Sent: Thursday, May 02, 2013 9:24 AM
To: Gronlund, Eric
Subject: Fw: Lake Thompson outlet level

----- Original Message -----

From: Warren and Marilyn Jackson
To: eric.gronlund@state.sd.us
Sent: Thursday, May 02, 2013 9:16 AM
Subject: Lake Thompson outlet level

Dear DENR and Water Management Board:

I am writing to support the recommendation of the Chief Engineer to set the outlet level of Lake Thompson at 1687.5.

This level is important to preserve the investments that have been made in boat ramps and park facilities on the lake and for sustaining the fishery.

Setting the lake level lower than 1687.5 would be a mistake.

Sincerely,

Warren Jackson - PO Box 7
Egan, SD 57024

Gronlund, Eric

From: Mike Baker <MBaker@baldwinsupply.com>
Sent: Thursday, May 02, 2013 9:23 AM
To: Gronlund, Eric
Subject: Lake Thompson

Dear Dept. of DENR & Water Mgmt. Board:

I am writing to you about the Lake Thompson outlet elevation which is being considered. I have some concerns about how this elevation is being set. When the chief engineer recommends 1687.5 fmsl and the board wants to set this at 1686.3 fmsl which is 1.2 fmsl lower than that recommendation made by the chief engineer. My concerns deal with the boat ramps on this lake and will they be service able at this level and my knowledge of this lake and how it continues to drop during the summer months I dont believe these boat ramps will be available for the fishing public to enjoy. The state of South Dakota through the G, F & P has spent considerable amounts of money putting in these boat ramps and establishing a Park on this lake. If this level is approved the money spent on this development will all be for nothing as no one will be able to use them and people will not come to Lake Thompson to enjoy some fairly good fishing.

Also, I feel the fisheries itself will be stressed and it may even end up becoming a marginal fisheries if there is some type of winter or summer kill on this lake from lower water levels and again all of the sports men and women money spent on this lake to make it a good fisheries will have gone down the tubes.

I also feel that the shore fisherman will also be negatively impacted by this decision as it will change where and how these people can fish as this lake is dropped.

With that said I am against the elevation of the outlet being set at 1686.3 fmsl.

Thank You for your time and consideration on this issue.

Mike Baker
25777 476th Ave
Sioux Falls, SD 57104

Disclaimer: This communication, along with any documents, files or attachments, is the property of Baldwin Supply Company and is intended only for the use of the addressee(s) and may contain privileged, confidential or inside information, and may be subject to attorney-client privilege or work-product protection. If you have received this message in error, please notify the sender immediately and destroy the original communication and its attachments without reading, printing or saving in any manner. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of any information contained in or attached to this communication is strictly prohibited. Any comments, statements or opinions expressed in this communication do not necessarily reflect those of Baldwin Supply Company or its subsidiaries and affiliates.

Gronlund, Eric

From: pgross@vyn.midco.net
Sent: Wednesday, May 01, 2013 5:15 PM
To: Gronlund, Eric
Subject: Lake Thompson management

This comment is regarding the emerging conflict coming from what appears to be arbitrary policy-making by the water management board on lake levels at Lake Thompson.

All decision makers should remember that the body of water being discussed is at the top of a critical multi-county watershed whose balance and health depend on sound management decisions. It appears that professional advice was ignored on lake level recommendations and the public deserves to know why. Also ignored are the multiple investments made by the federal government following severe flooding in the 1990's from water in and exiting Lake Thompson. The March management decision also begs the question of negative impacts on financial investments made by individuals and the State of SD on behalf of its citizens.

Please reconsider the March decision. I appreciate your willingness to consider my remarks

Patrick Gross *310 Forest Ave*
Vermillion

Sent from my iPhone

To: The SD DENR and the State Water Management Board
Re: Lake Thompson Outlet

Thank you for the opportunity to provide comment on the Lake Thompson outlet elevation.

I have several concerns about how the elevation is being set. The chief engineer recommended an elevation of 1687.5 fmsl. The Water Board did not follow the recommendation and set the elevation 1.2 fmsl lower at 1686.3 fmsl.

One of the concerns with this lower elevation is the impact it will have on recreation and tourism, the state's second largest industry. At the lower elevation boat ramps on the lake may become unusable. SD Game, Fish and Parks (GF&P) have done a great job putting in boat ramps, recreation areas and a park on Lake Thompson. The lake is a popular fishing and recreational area. Visitors generate a big year round economic boost and create jobs in the area. That economic impact could be lost with the lower level. Also, if the lower level is approved the considerable money spent on developing recreational access will be lost. The GF&P estimates it would cost about \$800,000 to restore just one of the boat ramps on Lake Thompson to allow access at the lower elevation. The lower elevation could negatively impact the fishery. Fish in Lake Thompson could die from winter or summer kills as a direct result of lower water levels.

Another concern is the impact the lower elevation will have on neighboring South Dakota landowners and county governments. Lake, Miner, Turner, Clay and other counties have filed motions to intervene because of the amount of water that could flow into these counties from Lake Thompson if the lower outlet level is approved. The outflow could damage roads, culverts, bridges and other needed infrastructure.

Finally it appears this is an attempt to treat a symptom while ignoring the disease. A study needs to be done to find the true impact of surface and tile drainage in the Lake Thompson and other watersheds in the state. That study would determine what wetland drainage in South Dakota is doing to the levels of our state's lakes and ponds. It's long past time for drainage to be controlled and regulated.

Please revert back to the recommendation of the chief engineer and set the Lake Thompson outlet level at 1687.5 fmsl.

Thank you for your time and consideration.

Paul Lepisto
1115 South Cleveland Avenue
Pierre, SD 57501-4456
Pauldonna2@pie.midco.net
605-224-1770
605-220-1219 cell

Gronlund, Eric

From: cstoterau@sio.midco.net
Sent: Wednesday, May 01, 2013 9:19 PM
To: Gronlund, Eric

to whom it concerns about the Lake Thompson water levels....I am an avid sportsman and would like to comment.....Due to the fact that we will have another year or two of this drought cycle,if the lake is lowered 2 ft. it will be back to a duck slough like it was, and the Sportsmen have a lot of money tied up in the boat docks and parks and we will lose everything in the drought.I recommend leaving it alone. Thank you very much for your time.....Sincerely,Marvin Stoterau Sioux Falls,SD

6200 N Cliff Ave 57104 507160

Sent from Windows Mail

Gronlund, Eric

From: Jeff Albrecht <gopack@svtv.com>
Sent: Wednesday, May 01, 2013 9:38 PM
To: Gronlund, Eric
Subject: Lake Thompson Water Level

To whom it may concern:

I am writing in regards to the lake level of Lake Thompson. Prior to two years ago Lake Thompson lost a foot of water level per year for the previous 9 years. Those low water levels deemed the boat ramps on the lake either marginal or useless. Now the DENR wants to lower the level of the lake to or below those low water levels. Lake Thompson has one of eastern SD's most popular state parks as well as a very popular tournament site. By lowering the water levels you will be impacting the recreation of many folks from Sioux Falls, Huron, Mitchell, Brookings and Watertown.

Also when you lower the level of the lake you will impact many landowners down stream. The DENR needs to act to hold more water not less. Thank you for your consideration.

Jeff Albrecht 131 58th Ave
Brookings, SD
57006

Gronlund, Eric

From: Bill Antonides <billantonides@abe.midco.net>
Sent: Wednesday, May 01, 2013 9:41 PM
To: Gronlund, Eric
Subject: Lake Thompson outlet elevation

Good day,

I happen to be quite familiar with the Lake Thompson area, and in fact my in-laws sold the GF&P some of the land for the state park.

Dropping the elevation is simply going to drown out neighbors to the south at a huge cost to those landowners, taxpayers and sportsmen. The current problems I see in the area appear to be caused by grassland conversion to cropland, along with artificial drainage of cropland.

Simply designing and enforcing a decent cropland drainage ordinance would solve most of the current problems experienced by landowners in the area, as would a cropland insurance program that required reasonable conservation efforts. I understand this is beyond the scope of the immediate question, but simply flooding downstream landowners at a HUGE expense to others is not the answer. Lake Thompson is now one of the largest lakes in the state, and deserves to be treated like the fantastic natural resource and fishery it has become.

Thank you,

Bill

Bill Antonides
514 North Arch Street
Aberdeen, SD 57401-2951

Phone 605-380-8586 or 229-4712
billantonides@abe.midco.net

Gronlund, Eric

From: george vandel <gvan3@pie.midco.net>
Sent: Wednesday, May 01, 2013 9:43 PM
To: Gronlund, Eric
Subject: Lake Thompson outlet elevation

Please relay to the WMB my request they establish the outlet elevation for Lake Thompson at the recommended elevation of 1,687.5 fmsl. Anything less than that elevation will have irreparable negative impact on the public use of Lake Thompson. I was involved in some of the initial efforts to find locations for boat ramps on the lake and it was exceedingly difficult to find a spot with enough relief to allow adequate slope to accommodate boats used by our modern anglers. Lowering the lake elevation as the Board recommends will negate all the hard work of GFP on behalf of the public. I urge you to do what is best for the citizens of SD and set an outlet elevation to accurately reflect the 30 years of consistent public use of this lake.

George Vandel
911 Woodridge Dr.
Pierre, SD 57501

Gronlund, Eric

From: Jim Madsen <jimmadsen@iw.net>
Sent: Wednesday, May 01, 2013 3:33 PM
To: Gronlund, Eric
Subject: Lake Thompson Outlet Elevation

I am writing this e-mail to encourage the DENR to set the outlet elevation of Lake Thompson at 1687.5 or higher. Setting the elevation below the suggested level will not only negatively impact downstream landowners and residents but have a serious impact to access of Lake Thompson and potentially to the degradation of the Lake Thompson fishery.

Thank you for your consideration

Jim Madsen, Watertown South Dakota
57201

1452 S Lake Dr

Gronlund, Eric

From: John Simpson <jrsimpson@pie.midco.net>
Sent: Wednesday, May 01, 2013 2:51 PM
To: Gronlund, Eric
Subject: Thompson Outlet

318 W Pleasant Dr.
Pierre 57501

As a citizen conservationist, and interested person I would like the board to be aware I support them setting the outlet elevation for Lake Thompson at a minimum of 1687.5. Thanks!

Gronlund, Eric

From: Nancy Hilding <nihilshat@rapidnet.com>
Sent: Wednesday, May 01, 2013 3:02 PM
To: Gronlund, Eric
Subject: Lake Thompson Draining comments

Nancy Hilding
6300 West Elm
Black Hawk, SD 57718
May 1st, 2013

Lake Thompson Draining comments

Dear Eric Gronlund (For DENR and Water Management Board),

I am opposed to the proposed partial draining of Lake Thompson. I have these concerns,

- 1) That the lowering of the Lake will isolate existing boot ramps and require SD Game, Fish and Parks to spend money to replace the ramps.
- 2) There may be issues with flooding or inundation down stream, which adverse impacts must be fully explored before draining.
- 3) DENR should fully investigate the degree to which draining of wetlands in the surrounding area has added to the load of water in the Lake and raised high water mark. DENR should evaluate it's past performance to see if it is enforcing laws that protect wetlands and allowing too much drainage. A solution to water load of Lake, might be to better enforce laws that protect wetlands..

Thanks,

Nancy Hilding

=====
Nancy Hilding
Black Hawk, SD 57718
nihilshat@rapidnet.com
605-787-6779
605-787-6466

Gronlund, Eric

From: jann@itctel.com
Sent: Wednesday, May 01, 2013 2:06 PM
To: Gronlund, Eric
Subject: Lake Thompson

I encourage the Board of Water Management to support the DENR engineer's original recommendation for the level of the water on Lake Thompson,

As a member of the Lake County Water Quality Committee, I am deeply concerned about the possibility of more water descending on Lake County. The committee has been reviewing the county situation which includes sources of water, run off and drainage. There is potential for a negative impact on the area. The county is not immune to flooding on lakes, city of Madison, etc. We don't need more water.

I am personally concerned about the impact of the lower lake level on recreational uses of the lake. During low water levels the boat ramps are not usable and sportsmen and women contributed to the cost of placing ramps on the lake so the people of SD could use them. I am concerned about the impact of the low water during dry years since we know Lake Thompson loses water and is saved by extreme rain/snow events. What impact will this have on the fish.

I am also concerned about the impact to local businesses. I know from eating at a nearby cafe they depend on the people who visit Lake Thompson for revenue.

I hope the Board will adopt the original recommendation.

Jan Nicolay
Chester, SD

4041 Brant Lake HI
57016

Gronlund, Eric

From: Leonard Spomer <leonard.spomer@beckmtr.com>
Sent: Wednesday, May 01, 2013 1:25 PM
To: Gronlund, Eric
Subject: FW: Lake Thompson

Mr. Gronlund

Would you please forward these comments to the appropriate staff in DENR, and also to the Water Management Board.

To Whom it may concern;

It is my understanding the chief engineer has recommended the outlet elevation at Lake Thompson be set at 1687.5 fmsl.

It is also my understanding the Water Mangement Board wants to lower this elevation to approximately 1686.3 fmsl.

I am against the change suggested by the Board, and would instead encourage original elevation of 1687.5 fmsl be adopted.

I am against the lower elevation, because of the amount of money that has been spent by sportsman and taxpayers to establish boat ramps, parks, etc that surround the lake.

The lower proposed level, could also have a devastating effect upon the fisheries of Lake Thompson, that residents from accross the State use on a regular basis.

Please support the original elevation of 1687.5 fmsl for the Lake Thompson outlet.

Thank you.

Leonard Spomer
20476 Browning Road
Pierre, SD 57501

Gronlund, Eric

From: Chuck Clayton <clayton@hur.midco.net>
Sent: Wednesday, May 01, 2013 12:48 PM
To: Gronlund, Eric
Subject: Lake Thompson

Vested water rights Claim No. 707.3.

DENR and State Water Board,

I am contacting you with great concern about the Water Board's decision to disregard the Chief Engineers recommendations for the outlet elevation on Lake Thompson, Kingsbury County, SD.

"March 6, 2013-DENR Water Management Board met to establish Lake Thompson's outlet elevation and the validation of recognized vested water rights Claim No. 707.3. The chief engineer recommended the outlet level of 1,687.5 fmsl. The Board did not follow the recommendation of the chief engineer and set the outlet level at 1,686.3 fmsl."

The development of Lake Thompson has occurred over the last 20 to 25 years, since the wet periods of the late 80's and 90's. The development has been both public and private. Many private lake properties have sprung up along with public recreation development and facilities.

I am not an engineer, but I do survey for a living. After researching the evaporation rates in the area of Lake Thompson, I fear establishing an outlet level of 1686.3 fmsl, will have disastrous implications, not only for the development that has occurred on lake Thompson, but for the down stream folks in the counties of the Vermillion River watershed.

Establishing an outlet elevation lower than the recommendation from the Chief Engineer, combined with the average annual evaporation rates in the Lake Thompson area, will render the boat ramps unusable, and many private developments less attractive to tenants and customers. Recreation in the area of Lake Thompson is a multi million-dollar industry.

The average evaporation rates for the area are between 2 and 3 feet, depending on which study you look at posted below, but all the elevations would render the boat ramps unusable if you establish the outlet elevation at 1686.3 fmsl.

Please follow the recommendation of the Chief Engineer, and establish the outlet elevation at 1687.5 fmsl. (Studies cited below)

Chuck Clayton 798 11th St. SW

President, Prairie Pothole Consulting

605-354-0955

Huron, SD 57350

<http://library.ndsu.edu/exhibits/text/potholes/585b.html>

<http://conservancy.umn.edu/bitstream/117629/1/pr506.pdf>

<http://pubs.usgs.gov/pp/0272d/report.pdf>

<http://pubstorage.sdstate.edu/wfs/thesis/Schmidt-Artwin-E-M-S-1968.pdf>

Gronlund, Eric

From: Duvall, Ron
Sent: Monday, April 29, 2013 6:48 AM
To: Beck, Lynn; Gronlund, Eric
Cc: Goodman, Jeanne; Smith, Kim
Subject: FW: Lake Thompson

Another one...

NOTE: When replying to this email do NOT click the person's [\[mailto:myname@email.com\]](mailto:myname@email.com) address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

From: Matt Kost [\[mailto:matt.k@trusspros.com\]](mailto:matt.k@trusspros.com)
Sent: Monday, April 29, 2013 6:48 AM
To: DENR INTERNET INFORMATION
Subject: Lake Thompson

Dear Dept. of DENR & Water Mgmt. Board:

I am writing to you about the Lake Thompson outlet elevation which is being considered. I have some concerns about how this elevation is being set. When the chief engineer recommends 1687.5 fmsl and the board wants to set this at 1686.3 fmsl which is 1.2 fmsl lower than that recommendation made by the chief engineer. My concerns deal with the boat ramps on this lake and will they be service able at this level and my knowledge of this lake and how it continues to drop during the summer months I don't believe these boat ramps will be available for the fishing public to enjoy. The state of South Dakota through the G, F & P has spent considerable amounts of money putting in these boat ramps and establishing a Park on this lake. If this level is approved the money spent on this development will all be for nothing as no one will be able to use them and people will not come to Lake Thompson to enjoy some fairly good fishing.

Also, I feel the fisheries itself will be stressed and it may even end up becoming a marginal fisheries if there is some type of winter or summer kill on this lake from lower water levels and again all of the sports men and women money spent on this lake to make it a good fisheries will have gone down the tubes.

I also feel that the shore fisherman will also be negatively impacted by this decision as it will change where and how these people can fish as this lake is dropped.

With that said I am against the elevation of the outlet being set at 1686.3 fmsl.

Thank You for your time and consideration on this issue.

Sincerely,

Matt Kost
2113 S. Melanie Lane *5 Falls 57103*

Gronlund, Eric

From: charles rokusek <rokusekc@q.com>
Sent: Wednesday, May 01, 2013 8:13 PM
To: Gronlund, Eric
Cc: Aker, Corey; sio.midco.net, abrown; Gabbert, Andy; Bern, Arlan L; Bill Antonides; alliancecom.net, elkman@alliancecom.net; Brad Bennett; Carol Stoterau; Charles Blain; Chet Hofer; Chris Hesla; Dan Poss; sio.midco.net, renopipe; Dave Bennett; Dave Dittloff; sio.midco.net, dakotafallswinery; Dean Fitzler; Dean Schueler; Doug Mofle; Doug Noteboom; Duane Schatz; Eric Olson; Eric Reisenweber; Greg Boddicker; Harold Goeden; Jan Nicolay; Glover, Jason; Jeff Bickel; Jeff Clow; Jeff Decker; sio.midco.net, sekliwj; Jerry Lulewicz; Jim Hummel; Jim Kayl; Jim Snyder; Joe Rodriguez; Leader, Argus; John Pollmann; Kristine Goeden; Kyle Aspaas; Lynn Bennett; Mark Wahlstrom; Matt s.; Matt Thornton; McGregor, Jeremy; Mike Baker; gmail.com, mschatz40; Widman, Mark; Neil Bien; Pliska, Shawn; Pliska, Shawn; Rich Widman; Rod Carlson; Ron Gustafson; Ron Schauer; Ross Blank-Libra; S Pliska; Scott Hed; Spencer. Vaa; Steve Bertrand; steveandmary sio.midco.net; Terry Midden; Todd Heidelberg; Woody and Ruth Tiggelaar; Zach Hummel; bill.donovanshsc@midconetwork.com; sio.midco.net, schlenker; Melanie Seiter; Nick Tunge; Rick Snyders; alliancecom.net, apjjj; Bill Clayton; Chad Weber; charles.dieter@gmail.com; CJ Bren; Dan Anderson; Dan Jennings; Dick Brown; Dick Lund; Doug & Maggie Day; sio.midco.net, halge; M Thompson; Mark Mattison; Mark S. Anderson; Mark Willadsen; Matt Brown; Mike Anderson; Nick Seiter; Paul Stark; Robert Lowrey
Subject: Lake Thompson outlet

Dear Dept. of DENR & Water Mgmt. Board:

I am writing to you about the Lake Thompson outlet elevation which is being considered. I have some concerns about how this elevation is being set. When the chief engineer recommends 1687.5 fmsl and the board wants to set this at 1686.3 fmsl which is 1.2 fmsl lower than that recommendation made by the chief engineer. My concerns deal with the boat ramps on this lake and will they be service able at this level and my knowledge of this lake and how it continues to drop during the summer months I don't believe these boat ramps will be available for the fishing public to enjoy. The state of South Dakota through the G, F & P has spent considerable amounts of money putting in these boat ramps and establishing a Park on this lake. If this level is approved the money spent on this development will all be for nothing as no one will be able to use them and people will not come to Lake Thompson to enjoy some fairly good fishing.

Also, I feel the fisheries itself will be stressed and it may even end up becoming a marginal fisheries if there is some type of winter or summer kill on this lake from lower water levels and again all of the sports men and women money spent on this lake to make it a good fisheries will have gone down the tubes.

I also feel that the shore fisherman will also be negatively impacted by this decision as it will change where and how these people can fish as this lake is dropped.

With that said I am against the elevation of the outlet being set at 1686.3 fmsl.

Thank You for your time and consideration on this issue.

Sincerely,

Charles Rokusek

5208 W. Emmitt Circle
Sioux Falls, South Dakota 57106

605-362-9827

Gronlund, Eric

From: Duvall, Ron
Sent: Monday, April 29, 2013 6:19 AM
To: Beck, Lynn; Gronlund, Eric
Cc: Goodman, Jeanne; Smith, Kim
Subject: FW: Lake Thompson

Another Lake Thompson email...

NOTE: When replying to this email do NOT click the person's [\[mailto:myname@email.com\]](mailto:myname@email.com) address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

From: charles rokusek [\[mailto:rokusekc@q.com\]](mailto:rokusekc@q.com)
Sent: Sunday, April 28, 2013 3:49 PM
To: DENR INTERNET INFORMATION
Cc: Chris Hesla; Aker, Corey; sio.midco.net, abrown; Gabbert, Andy; Bern, Arlan L; Bill Antonides; alliancecom.net, elkman@alliancecom.net; Brad Bennett; Carol Stoterau; Charles Blain; Chet Hofer; Dan Poss; sio.midco.net, renopipe; Dave Bennett; Dave Dittloff; sio.midco.net, dakotafallswinery; Dean Fitzler; Dean Schueler; Doug Mofle; Doug Noteboom; Duane Schatz; Eric Olson; Eric Reisenweber; Greg Boddicker; Harold Goeden; Jan Nicolay; Glover, Jason; Jeff Bickel; Jeff Clow; Jeff Decker; sio.midco.net, sekliwj; Jerry Lulewicz; Jim Hummel; Jim Kayl; Jim Snyder; Joe Rodriguez; Leader, Argus; John Pollmann; Kristine Goeden; Kyle Aspaas; Lynn Bennett; Mark Wahlstrom; Matt s.; Matt Thornton; McGregor, Jeremy; Mike Baker; gmail.com, mschatz40; Widman, Mark; Neil Bien; Pliska, Shawn; Pliska, Shawn; Rich Widman; Rod Carlson; Ron Gustafson; Ron Schauer; Ross Blank-Libra; S Pliska; Scott Hed; Spencer. Vaa; Steve Bertrand; steveandmary sio.midco.net; Terry Midden; Todd Heidelbauer; Woody and Ruth Tiggelaar; Zach Hummel; bill.donovanshsc@midconetwork.com; sio.midco.net, schlenker; Melanie Seiter; Nick Tunge; Rick Snyders; alliancecom.net, apjjj; Bill Clayton; Chad Weber; charles.dieter@gmail.com; CJ Bren; Dan Anderson; Dan Jennings; Dick Brown; Dick Lund; Doug & Maggie Day; sio.midco.net, halge; M Thompson; Mark Mattison; Mark S. Anderson; Mark Willadsen; Matt Brown; Mike Anderson; Nick Seiter; Paul Stark; Robert Lowrey
Subject: Lake Thompson

Dear Dept. of DENR & Water Mgmt. Board:

I am writing to you about the Lake Thompson outlet elevation which is being considered. I have some concerns about how this elevation is being set. When the chief engineer recommends 1687.5 fmsl and the board wants to set this at 1686.3 fmsl which is 1.2 fmsl lower than that recommendation made by the chief engineer. My concerns deal with the boat ramps on this lake and will they be service able at this level and my knowledge of this lake and how it continues to drop during the summer months I don't believe these boat ramps will be available for the fishing public to enjoy. The state of South Dakota through the G, F & P has spent considerable amounts of money putting in these boat ramps and establishing a Park on this lake. If this level is approved the money spent on this development will all be for nothing as no one will be able to use them and people will not come to Lake Thompson to enjoy some fairly good fishing.

Also, I feel the fisheries itself will be stressed and it may even end up becoming a marginal fisheries if there is some type of winter or summer kill on this lake from lower water levels and again all of the sports men and women money spent on this lake to make it a good fisheries will have gone down the tubes.

I also feel that the shore fisherman will also be negatively impacted by this decision as it will change where and how these people can fish as this lake is dropped.

With that said I am against the elevation of the outlet being set at 1686.3 fmsl.

Thank You for your time and consideration on this issue.

Sincerely,

Charles Rokusek
5208 W. Emmitt Circle
Sioux Falls, South Dakota 57106

605-362-9827

Gronlund, Eric

From: Duvall, Ron
Sent: Monday, April 29, 2013 6:24 AM
To: Beck, Lynn; Gronlund, Eric
Cc: Goodman, Jeanne; Smith, Kim
Subject: FW:

Another comment...

NOTE: When replying to this email do NOT click the person's [\[mailto:myname@email.com\]](mailto:myname@email.com) address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

From: chet hofer [\[mailto:chofer@mail.svtv.com\]](mailto:chofer@mail.svtv.com)
Sent: Monday, April 29, 2013 6:23 AM
To: DENR INTERNET INFORMATION
Subject:

Please maintain the outlet level on Lake Thompson at the engineers suggestion of 1,687.5 and not lower it, because of all the problems it would cause. Thank You.

Chet Hofer
26662 465 Ave.
Hartford SD 57033

Gronlund, Eric

From: Duvall, Ron
Sent: Monday, April 29, 2013 6:17 AM
To: Beck, Lynn; Gronlund, Eric
Cc: Goodman, Jeanne; Smith, Kim
Subject: FW: Lake Thomppson's Level

FYI – your call on acknowledgment of receipt of his message...

NOTE: When replying to this email do NOT click the person's [<mailto:myname@email.com>] address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

From: Dean Fitzler [<mailto:dkf@sio.midco.net>]
Sent: Sunday, April 28, 2013 8:39 PM
To: DENR INTERNET INFORMATION
Cc: rokuskc@q.com
Subject: Lake Thomppson's Level

Gentlemen;

I would very much like to see the water level outlet be 1,687.5 fmsl, as the chief engineer recommended, for the sake of all South Dakotans.

Thank you for serving the State.

Dean Fitzler
4001 S. Crescent Dr.
Sioux Falls,SD 57106

Gronlund, Eric

From: Goodman, Jeanne
Sent: Wednesday, May 01, 2013 10:00 AM
To: Gronlund, Eric; Best, Diane
Subject: FW: Lake Thompson outlet elevation May 2 meeting

From: Duvall, Ron
Sent: Wednesday, May 01, 2013 7:15 AM
To: Beck, Lynn
Cc: Rath, Mark; Smith, Kim; Goodman, Jeanne
Subject: FW: Lake Thompson outlet elevation May 2 meeting

Lynn, another email...

NOTE: If replying to this email do NOT click the person's [\[mailto:myname@email.com\]](mailto:myname@email.com) address since this may result in your reply being undeliverable. Either copy and paste just the email address (e.g. myname@email.com) or type just the address into your reply message.

From: Warren Heither [\[mailto:wheither@gmail.com\]](mailto:wheither@gmail.com)
Sent: Tuesday, April 30, 2013 10:25 PM
To: DENR INTERNET INFORMATION
Subject: Lake Thompson outlet elevation May 2 meeting

I am questioning why the Board did not follow the recommendation of the chief engineer and set the outlet level at 1,686.3 fmsl. This lower level will have a negative impact on recreation and homeowners on the lake. My husband and myself are permanent, full time residents at Lake Thompson and purchased our property 9 years ago so have seen many changes in the lake levels. We lived thru the flooding of this lake where we were forced out of our home because of high water so we know what damage having the lake too high can be but we also know that the damage from having the water too low can cause just as much damage. I would ask that the outlet level. I ask that you consider following the recommendation of the chief engineer and reset the level from 1,685.5 to 1,686.3

Sincerely, Kathy Heither 1530 Twin Lakes Rd. Lake Preston, SD 57249

The Office of the State's Attorney
MINER COUNTY
PO BOX 189
HOWARD, SOUTH DAKOTA 57349-0189

Telephone (605)772-4488
Telefax (605)772-5648

GREGORY A. PROTSCH
STATE'S ATTORNEY

RECEIVED
JUN 20 2013
WATER RIGHTS
PROGRAM

June 19th, 2013

Transmitted by First Class mail and E-mail: Eric.Gronlund@state.sd.us

Eric Gronlund
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: In the Matter of the Establishment of the Outlet Elevation for Lake Thompson and the Validation of Vested Water Right No. 707-3 of South Dakota Game, Fish, and Parks for Lake Thompson in Kingsbury County and Miner County, South Dakota

Dear Mr. Gronlund,

Please find enclosed a Stipulation for filing in regard to the above-mentioned which I have signed on behalf of Miner County. It is my understanding that this matter has been set for consideration before the Water Management Board at 8:30AM on July 10, 2013. If you have any questions or concerns, please feel free to give me a call.

Sincerely,


Gregory A. Protsch
Miner County State's Attorney

GAC:smc

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

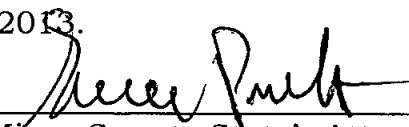
Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this 18 day of June, 2013.



Miner County State's Attorney
On behalf of Miner County

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

RECEIVED

JUN 20 2013

WATER RIGHTS
PROGRAM

202 CALUMET AVE., S.E.

P.O. Box 35

DE SMET, SOUTH DAKOTA 57231

TELEPHONE: 605-854-3224

FAX: 605-854-3226

KINGSBURY COUNTY

STATE'S ATTORNEY

GREGG A. GASS

JARED I. GASS, DEPUTY

E-MAIL: gregg@gasslawoffice.com

116 S. MAIN ST.

P.O. Box 357

ARLINGTON, SOUTH DAKOTA 57212

TELEPHONE: 605-983-5891

FAX: 605-983-4643

June 19, 2013

Reply to De Smet Office

Eric Gronland
Dept. of Environment & Natural Resources
PMB 2020 Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182

RE: Lake Thompson Stipulation

Dear Eric:

Enclosed please find the original Stipulation signed by Shelley Nelson, Chairman of the Kingsbury County Commission. It is my understanding that the hearing on the matter is scheduled for 8:30 A.M. on Wednesday, July 10th. If there is anything further you need, please let me know.

Sincerely,



Gregg A. Gass
State's Attorney
Kingsbury County

GG:cs
encls.

RECEIVED

JUN 20 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this 18 day of June, 2013.

Shelly Nelson
Shelly Nelson
Kingsbury County Commissioner (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

Lake County State's Attorney's Office

Chris S. Giles – State's Attorney

Email: chris.giles@lakecountysd.com

200 East Center Street

Madison, South Dakota, 57042

Phone 605.256.7630

Fax 605.256.7632

Paralegal - Jennie Thompson & Legal Secretary - Shelli Gust

Web Address: <http://www.lakecountysd.com/statesattorney/index.html>

RECEIVED

JUN 20 2013

WATER RIGHTS
PROGRAM

June 18, 2013

Transmitted by First Class Mail and E-mail: Eric.Gronlund@state.sd.us

Eric Gronlund
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: In the Matter of the Establishment of the Outlet Elevation for Lake Thompson and the Validation of Vested Water Right No. 707-3 of South Dakota Game, Fish, and Parks for Lake Thompson in Kingsbury County and Miner County, South Dakota

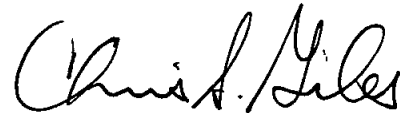
Dear Mr. Gronlund:

Enclosed for filing in this matter, please find a Stipulation which I have signed on behalf of Lake County. It is my understanding that this matter has been set for consideration before the Water Management Board at 8:30 a.m. on July 10, 2013. If you have any questions or concerns, please feel free to give me a call.

Sincerely,

Office of the Lake County State's Attorney

By:



Chris S. Giles, State's Attorney

CSG/slg

Enclosure

RECEIVED

JUN 20 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this 18th day of June, 2013.



Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

RECEIVED

JUN 20 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this 17th day of June, 2013.

M. B. Bho
Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

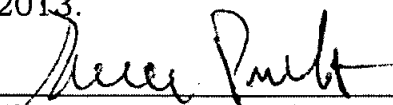
Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this 18 day of June, 2013.



Miner County State's Attorney
On behalf of Miner County

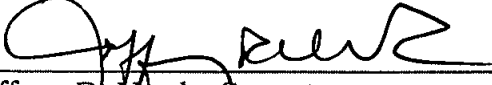
Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this 20th day of June, 2013.



Jeffrey R. Monk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this 20th day of June, 2013.



Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

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

**IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)**

STIPULATION

**IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)**

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.**
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.**
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."**
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.**
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.**

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this 18 day of June, 2013.

Shelly Nelson
Shelly Nelson
Kingsbury County Commissioner (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

) Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

) Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this 18th day of June, 2013.

Jeddi J. Kertsma
Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this 17th day of June, 2013.

M. DeHo

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

RECEIVED

JUN 21 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this 18th day of June, 2013.

Jeddi J. Kerkma
Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

317 N. Main Avenue
Sioux Falls, South Dakota 57104
Phone (605) 367-5880
FAX (605) 367-5886
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY

Merrill Nelson
628 3rd St. NE
Lake Preston, SD 57249

Dr. Stephen Noding
21340 439th Ave.
Lake Preston, SD 57249

E. John Bruner
22289 422nd Ave
Winfred, SD 57076

Re: Lake Thompson

Gentlemen:

As you are aware the South Dakota Water Management Board has required that all parties disclose their witnesses and exhibits to each other on or before June 25 for the reconsideration hearing regarding the Lake Thompson outlet. The Board also scheduled the reconsideration hearing for July 10 at 8:30 am at the Matthews Training Center in Pierre.

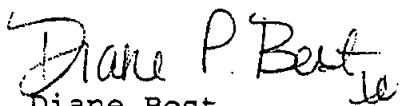
When the Board last met on this matter, it encouraged settlement. This is to let you know that the counties and state agencies have reached an agreement. It is attached. This letter is to extend you the opportunity to join in this stipulated agreement. Please give this careful consideration. If you wish to sign the agreement, please return a signed copy to me at the above address as soon as possible.

I intend to send a status report to the Board on June 25 that will include a copy of the settlement agreement and will inform the Board as to the number of parties that have signed as of that date. I hope I will be able to count you as one of the parties that has agreed to this compromise.

Ultimately, the Board will rule on whether to accept or reject the agreement on July 10 at 8:30 am. If all parties have agreed to the settlement, I personally expect there would be no reason for testimony, cross examination, objections, or other procedure, except possibly answering Board questions, if any. On the other hand, if some parties do not agree and have properly disclosed their witnesses and exhibits by June 25, I expect the Board may consider such materials, assuming it is not cumulative of evidence already received, and is otherwise consistent with the Rules of Evidence. The Board itself would, of course, determine the exact course of the proceeding.

Thank you for your interest in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Diane P. Best". The signature is written in dark ink and is positioned above the typed name.

Diane Best
Assistant Attorney General
Counsel for Department of
Environment and Natural Resources

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

STIPULATION

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

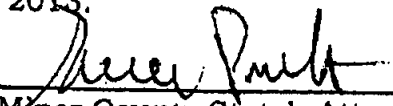
Dated this _____ day of June, 2013.

Kingsbury County _____(title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this 18 day of June, 2013.



Miner County State's Attorney
On behalf of Miner County

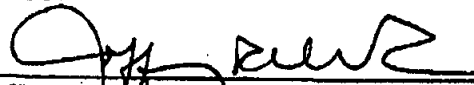
Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this 20th day of June, 2013.



Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this 20th day of June, 2013.



Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this 18 day of June, 2013.

Shelly Nelson
Shelly Nelson
Kingsbury County Commissioner (title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this 18th day of June, 2013.



Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

) Dated this 18th day of June, 2013.

Jeddi J. Aultma
Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this 17th day of June, 2013.

M. B. B.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

Gronlund, Eric

From: Best, Diane
Sent: Tuesday, June 25, 2013 10:17 AM
To: Gronlund, Eric
Subject: FW: Outlet Opposition

fyi

From: Best, Diane
Sent: Tuesday, June 25, 2013 10:17 AM
To: 'Steve N'
Cc: mpp@alliancecom.net; Gregg Gass (gregg@gasslawoffice.com); Neill, Richard; Chris Giles; matt@turnercountysd.org; Philip Terwilliger (Philip.Terwilliger@claycountysd.org)
Subject: Outlet Opposition

Mr. Noding, today is the day to disclose any new exhibits that are not already in the record to all other parties. And today is the day to disclose witnesses..

The purpose of the disclosures is to address the reconsideration of the prior decision that the Board made. All parties must make sure disclosures of new exhibits and witnesses if they intend to rely on matters not already in the record.. I assume this is intended as your disclosure and you do not intend to bring new exhibits to the Board hearing. And that you intend to testify and do not intend to call other witnesses.

Since your email was not copied to any other parties, I am forwarding it to them in this email.

I also received a phone call from you with some questions. If you still have questions, call me at 367-5880 Ext. 105.

From: Steve N [<mailto:nodingfarms@yahoo.com>]
Sent: Tuesday, June 25, 2013 10:01 AM
To: Best, Diane; Hallem, Jeff
Subject: Outlet Opposition

June 25, 2013

Diane Best

RE: Opposition to Lake Thompson Outlet Elevation

I am writing this letter in opposition to the proposed Findings, Conclusions and Final Decision for the July 10, 2013 meeting. I want to participate in that hearing to state my opposition of establishing the outlet elevation.

My opposition is based on data submitted by the Chief Engineer: specifically Attachment 2. I want to show that removing the silt will not make any difference to the effects experienced by some property. Over two years ago, several property owners on Lake Thompson experienced flooding, etc. due to a combination of high winds and high water levels. The wind was over 50 mph from the south and the water level was around 1694 feet mean sea level (fmsl). In reaction to this, they filed a petition with the South Dakota Water Management Board to establish an outlet elevation at the lowest point of 1686.3 fmsl in order to remove silt from an approximate 2 mile portion of the outlet channel. It is my contention that removing the silt and vegetation will not make any difference to the outflow when the water level is at the levels the flooding occurred. However, I believe removing the silt will only result in destroying habitat including the natural fish hatcheries and vegetation as well as being a waste of time, money, and resources.

Using Attachment 2, I came to the following conclusions:

1. The profile shows a narrow "V" geological feature at the outlet. In addition, the cross section also shows that no more than 8 inches of silt has been deposited in the channel over the decades. This amount seems extremely low for an alleged culprit contributing to the flooding. It also implies that an equilibrium or balance between flow and deposition exists.
2. Using the profile, the silt plays no role when the water level is at 1686.3 fmsl. The outflow is only a trickle, at best.
3. The state's Chief Engineer recommended a level of 1687.5 fmsl after an investigation and survey (Attachment 2). By calculating the area per linear foot using the channel's cross sectional survey at this level, the silt represents ~ 44% of the total available volume confined by the channel's geological shape over a 2 mile stretch upstream of the outlet. Because of the relatively huge reservoir of water in lake, the flow is basically unchanged.
4. When the water level is at 1688 fmsl, the silt represents ~ 36% of the volume in a 2 mile stretch of the channel preceding the outlet.
5. At 1689 fmsl, the silt represents ~ 10 %.
6. At 1690 fmsl, the silt represents ~ 7%.
7. At 1691 fmsl, the silt represents ~ 2%.
8. At 1694 fmsl where the flooding occurred, the silt contribution to the incident is minuscule at best.

Due to these observations, it is my belief that removing the silt will do nothing to diminish or limit the effects of high water and winds. It will only disrupt and harm the ecological equilibrium or balance that now exists. I am not aware of any evidence or data that supports the idea that removing the silt will in any way alleviate the effects of high wind and high water levels as experienced a couple of years ago. Therefore, I see no reason why the silt should be removed.

Respectively,

Dr. Stephen Noding



DEPARTMENT of GAME, FISH, AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182

RECEIVED

JUN 25 2013

**WATER RIGHTS
PROGRAM**

June 25, 2013

Gregg A. Gass
Gass Law Office
PO Box 35
DeSmet, SD 57231

Chris S. Giles
Lake County State's Attorney
200 East Center Street
Madison, SD 57042

Gregory Protsch
Miner County State's Attorney
PO Box 189
Howard, SD 57349

Matthew L. Olson
Turner County State's Attorney
PO Box 700
Parker, SD 57053

Phillip Terwilliger
Clay County Deputy State's Attorney
211 W. Main St., Suite 204
Vermillion, SD 57069

Merrill Nelson
628 3rd Street NE
Lake Preston, SD 57249

E. John Bruner
22289 422nd Ave.
Winfred, SD 57076

Dr. Stephen Noding
21340 439th Avenue
Lake Preston, SD 57249

Jerry Gruenhagen
526 Hwy 25 S
DeSmet, SD 57231

Diane Best
Attorney General's Office
317 N. Main Ave.
Sioux Falls, SD 57104

Jeanne Goodman
Chief Engineer
DENR – Foss Building
523 East Capitol Ave.

Re: In the Matter of the Establishment of the Outlet Elevation for Lake Thompson; In the Matter of the Validation of Vested Water Right No. 707-3, South Dakota Department of Game, Fish and Parks

Dear Counsel, Chief Engineer and Parties of Record:

Pursuant to the procedural order entered by the Water Management Board on May 2, 2013, this letter is intended to disclose the material and witnesses the

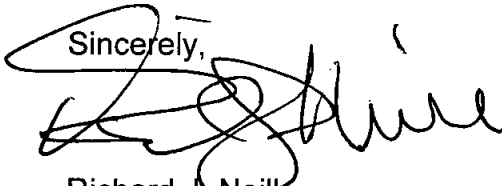
Department of Game, Fish and Parks intends to present at the reopened hearing in the above referenced matter scheduled for Wednesday, July 10, 2013, before the Water Management Board.

Witnesses the Department of Game, Fish and Parks would anticipate calling to testify are Al Nedved, Assistant Director, Planning & Development, Division of Parks and Recreation, SD Department of Game, Fish and Parks, and Greg Otkin, Engineer's Assistant, Division of Parks and Recreation, SD Department of Game, Fish and Parks, 523 E. Capitol Avenue, Pierre, SD 57501. The key elements of Mr. Nedved's testimony are contained in the enclosed summary. Mr. Otkin would be available to answer any questions the parties or Board might have concerning the engineer's drawings referred to below as Exhibits D and D-1. I anticipate that the following exhibits will also be introduced in conjunction with Mr. Nedved's testimony:

1. Exhibit A – Lake Thompson/Henry Boat Ramp locations
2. Exhibit B – Lake Thompson Elevation 1983 – 2013
3. Exhibit C – Photograph of Lake Thompson Recreation Area boat ramp during low water conditions
4. Exhibits D & D-1 – Engineer's drawings of the likely boat ramp launching facility that could be constructed at one location on Lake Thompson to achieve a service level of 1580 fmsl.

Thank you and best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Neill", written over the word "Sincerely,".

Richard J. Neill
Special Assistant Attorney General/General Counsel
South Dakota Department of Game, Fish and Parks

Encl.

cc: Jeffrey P. Hallem, Assistant Attorney General
Eric Gronlund, DENR, Water Rights Program
Leslie Murphy

RECEIVED

JUN 25 2013

WATER RIGHTS
PROGRAM

Summary
Lake Thompson Outlet Elevation
South Dakota Department of Game, Fish and Parks

The South Dakota Department of Game, Fish and Parks respectfully wishes to provide comment on the proposed decision of the Water Management Board to set the outlet elevation of Lake Thompson at 1,686.3 feet mean sea level (MSL), the decision having been rendered following hearing in this matter on March 6, 2013. In this regard, the Department has been provided with proposed Findings of Fact, Conclusions of Law, and Final Decision prepared by the State's Attorney for the applicant, Kingsbury County.

The South Dakota Department of Game, Fish and Parks claims an interest in this matter by virtue of its Vested Water Right Claim No. 707-3 held for public recreational purposes for water in Lake Thompson. The Department believes that if the Board sets the outlet elevation of Lake Thompson at 1,686.3' MSL, public recreational access to Lake Thompson may be adversely impacted.

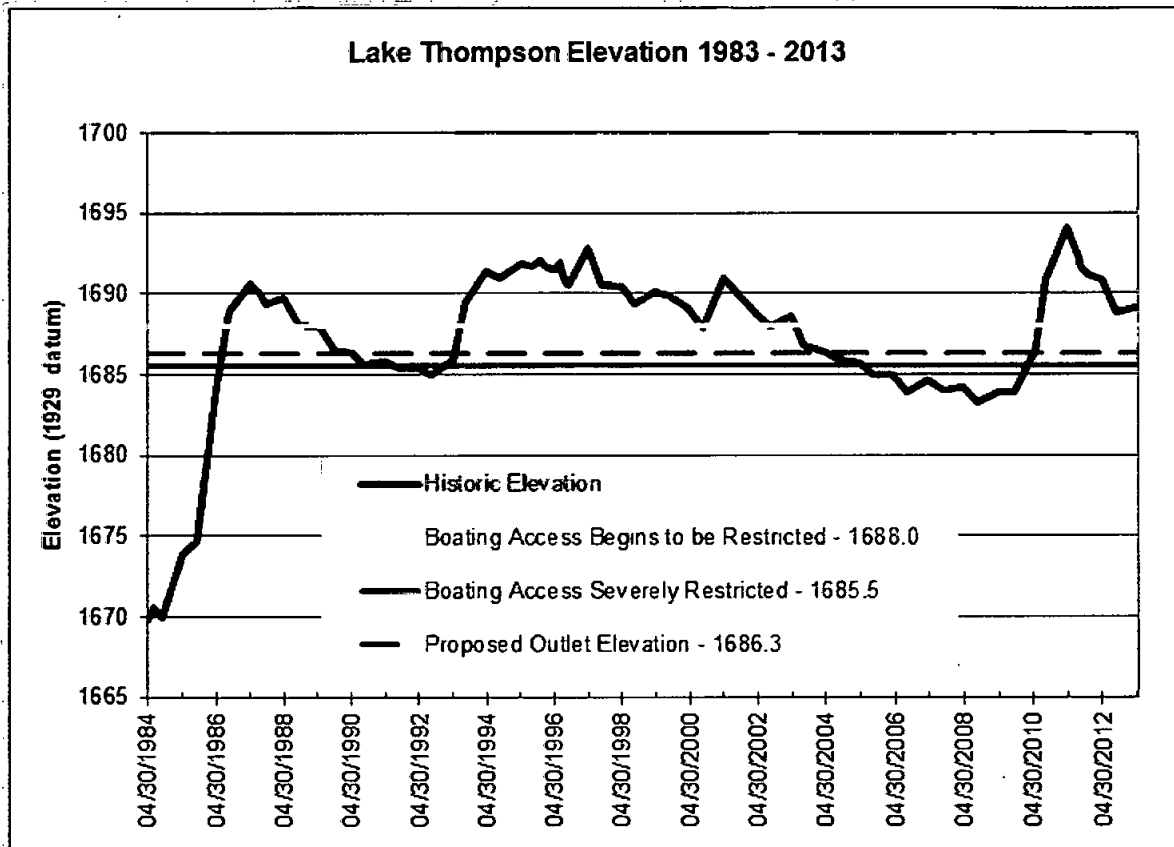
Water levels on Lake Thompson have been monitored by DENR since 1984. That data shows that Lake Thompson does not sustain a relatively static elevation through year-to-year precipitation and runoff cycles like many other prairie pothole lakes. Instead, Lake Thompson is constantly in a state of declining elevation, only interrupted by two drastic runoff events since 1987, which was when the lake most recently filled. The first time was in 1993-1994 and the second was in 2010-2011. From the fall of 2005 until the fall of 2009, Lake Thompson experienced the lowest levels since 1986.

Lake Thompson is a popular destination for outdoor recreation. Fishing and boating are the primary activities afforded by the lake. After the lake filled in 1987, public demand for boating access and supporting facilities such as campgrounds and picnic areas quickly followed. This resulted in the construction of four public boat ramps on Lake Thompson, and one on adjoining Lake Henry. The Department of Game, Fish and Parks acquired additional property on the north shore of Lake Thompson, and developed it into a modern recreation area in 1998.

The outlet elevation and corresponding water levels have the most direct impact towards boating access to the lake amongst all other associated recreational activities on Lake Thompson. This is the basis for the Department's concern. The following table represents the existing elevations of the four ramps on Lake Thompson and the one on Lake Henry. The locations of these ramps are provided in Exhibit A. The serviceability of these ramps is calculated by adding three feet to the lowest elevation of the boat ramp concrete, which is what is generally required to launch the average sized boat.

<u>Ramp</u>	<u>Bottom of Ramp</u>	<u>Service Elevation</u>
Henry	1685.0' MSL	1688.0 MSL
SW Thompson	1683.0' MSL	1686.0 MSL
Rec Area Ramp	1682.5' MSL	1685.5 MSL
NE Access	1683.7' MSL	1686.7 MSL
NW Lakeside Use Area	1684.3' MSL	1687.3 MSL

Boating access begins to be restricted on Lake Henry at 1688.0' MSL and on Lake Thompson at 1687.3' MSL. Boating access on Lake Thompson becomes severely restricted and mostly eliminated at 1685.5' MSL. The following graph, Exhibit B, shows the historical lake elevations with the corresponding range of boating access limitations based upon the existing construction of the boat ramps provided above.



Using this period and existing boat ramp criteria, Lake Thompson was in a state of limited boating access from approximately September, 1988 to May, 1993 (4 years, 8 months) and also from April, 2003 to September, 2010 (7 years, 4 months). In the 26 years since the lake filled in 1987, the lake was in a state of restricted access approximately 46% of the time.

The lake was in a state of severely restricted access briefly in 1991-1992 and again from April of 2005 until May of 2010. Boating access is generally restricted to small, lightweight watercraft, or eliminated altogether during these levels. Launching was hazardous, requiring posting signs of the location of the end of the boat ramp to warn users. Docks were elevated due to lack of depth and slope. Exhibit C is a photo of the Recreation Area ramp during low water conditions.

A lowered outlet elevation would accelerate the amount of water evacuated during the naturally-occurring drawdown periods. As a result, the lakes would enter drought periods at a lower level, and through increased evaporation and lower inflows would reach even lower elevations than previously experienced. For the period of 2004-2009,

this would have resulted in a total loss of boating access during this period, and likely during the period of 1990-1992 as well. When one takes into consideration the fact that 90% of summer fishing on Lake Thompson is done from boats, the loss of access becomes quite significant. Low water levels likely reduce shore fishing opportunities as well.

Adding, extending, or relocating boat ramp sites on Lake Thompson to accommodate lower water levels will be difficult, expensive, and will result in facilities that will be largely inconvenient to use. Because Lake Thompson is a traditional flat-bottomed glacial lake, providing a low water ramp would require building a long, heavily armored jetty or road out into the lake bed with a boat ramp and turn around at the end. Cost estimates to construct such a structure that would withstand wave and ice action were developed during the last low water period. The plans indicated that it would cost approximately \$800,000 to restore just one boating access point on Lake Thompson to achieve low water access to 1575 msl. A low-water ramp would also necessitate walking distances of over 500-1,000 feet from launch point to the parking lot.

Exhibit D illustrates the most likely boat ramp launching facility that could be constructed at one location on Lake Thompson to achieve a service level of 1580 msl. There are no known areas along the shoreline under Game, Fish and Parks management that would be more favorable or less expensive.

The Department is deeply concerned about the potentially negative impacts of setting the outlet elevation of Lake Thompson at 1,686.3 feet mean sea level and desires to bring its concerns to the attention of the Board prior to the Board entering its final decision in this matter. A lower outlet elevation could drastically affect boating access on Lake Thompson, and provide for long periods of time when the lake would be inaccessible to boaters, depriving enthusiasts and families from outdoor recreational opportunities. This would also likely have a negative effect on the local businesses that depend on the visitor spending that is provided by these persons.

Exhibit A Lake Thompson/Henry Boat Ramp Locations

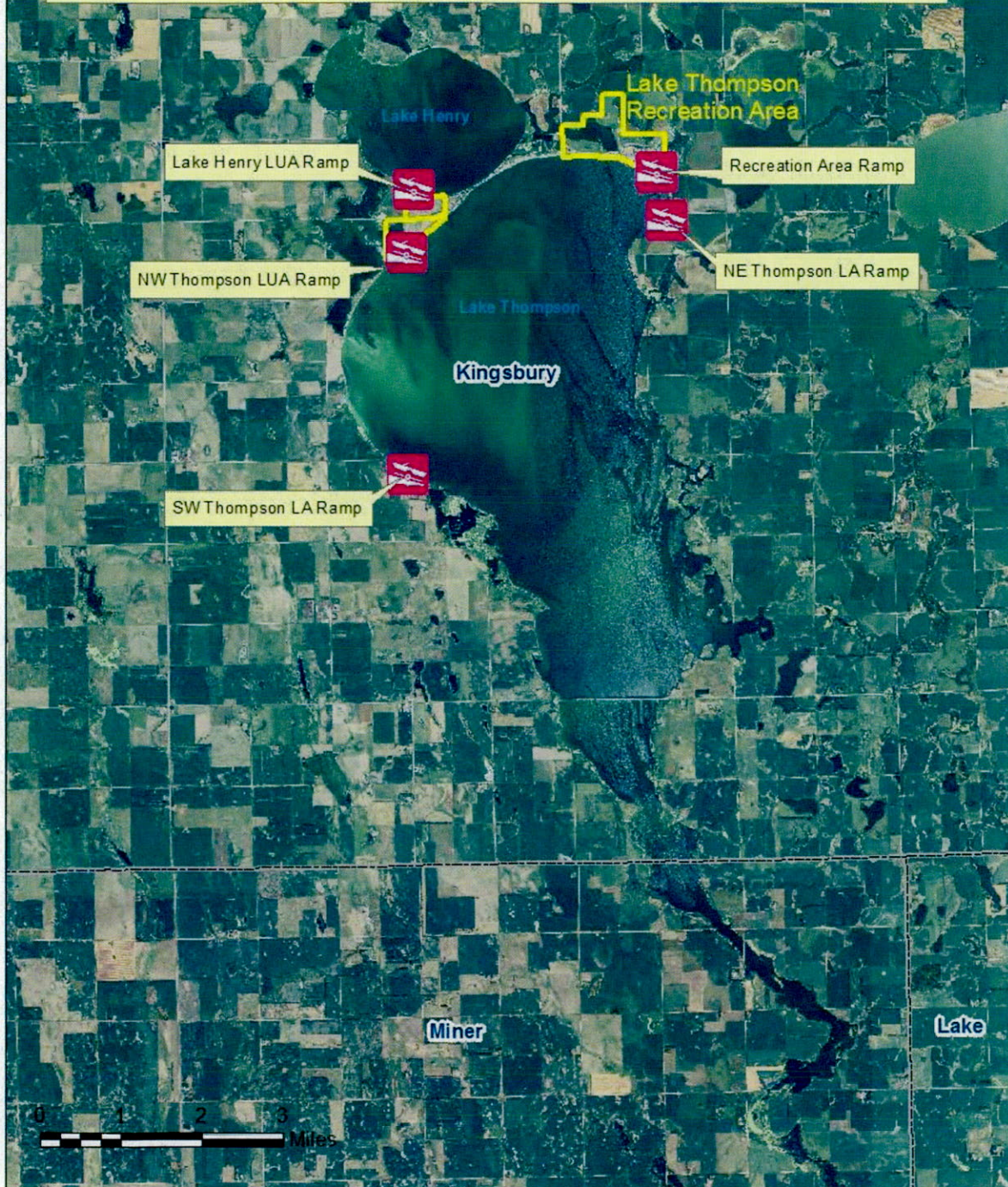


EXHIBIT B
Lake Thompson Elevation 1983 - 2013

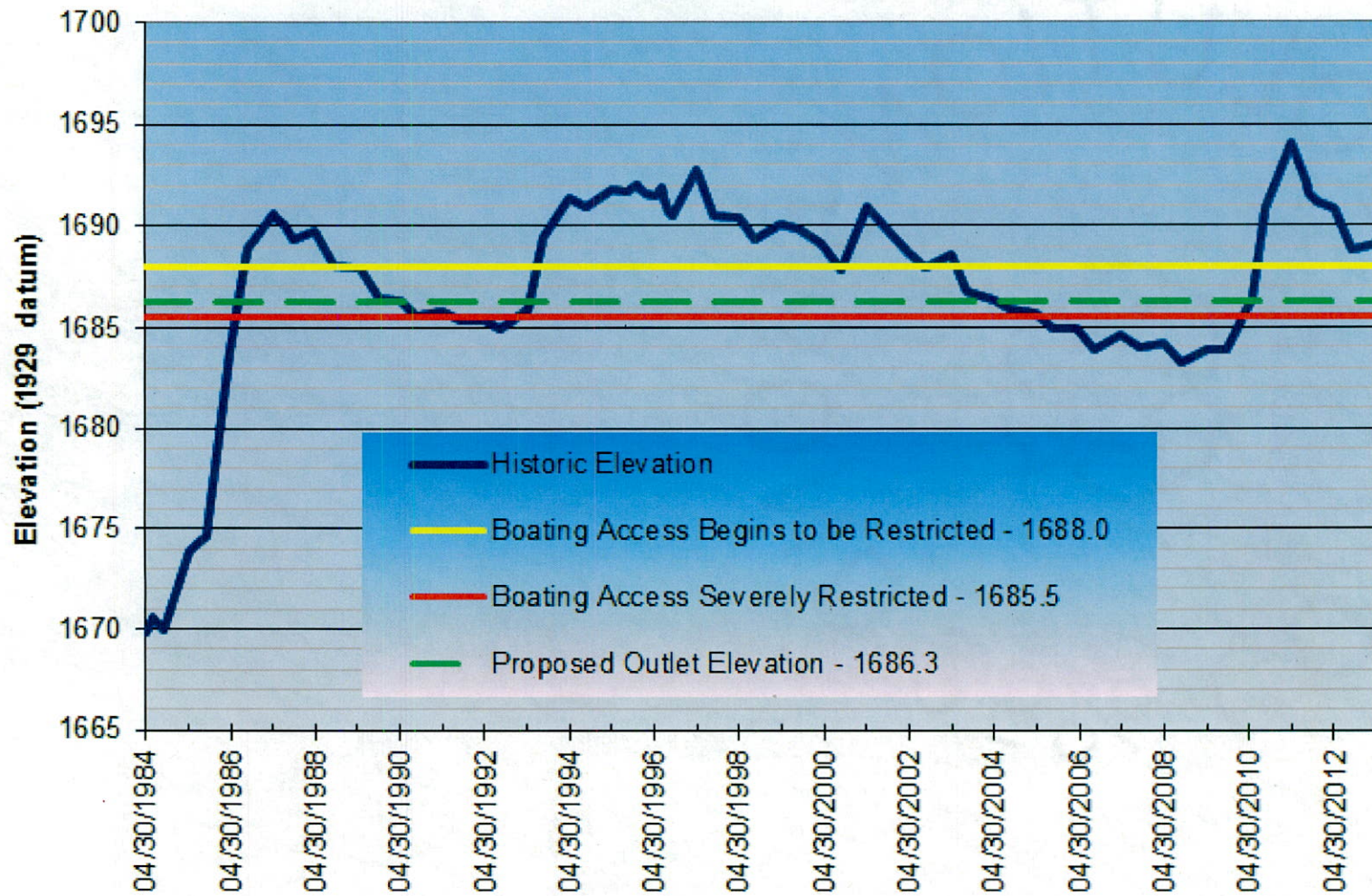
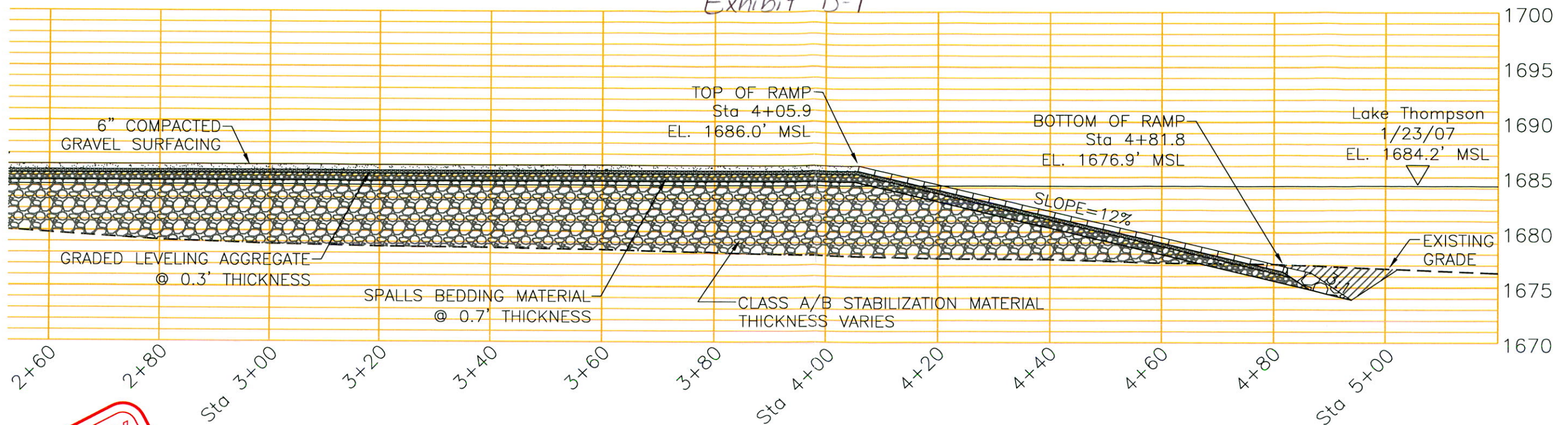


EXHIBIT C



Exhibit D-1

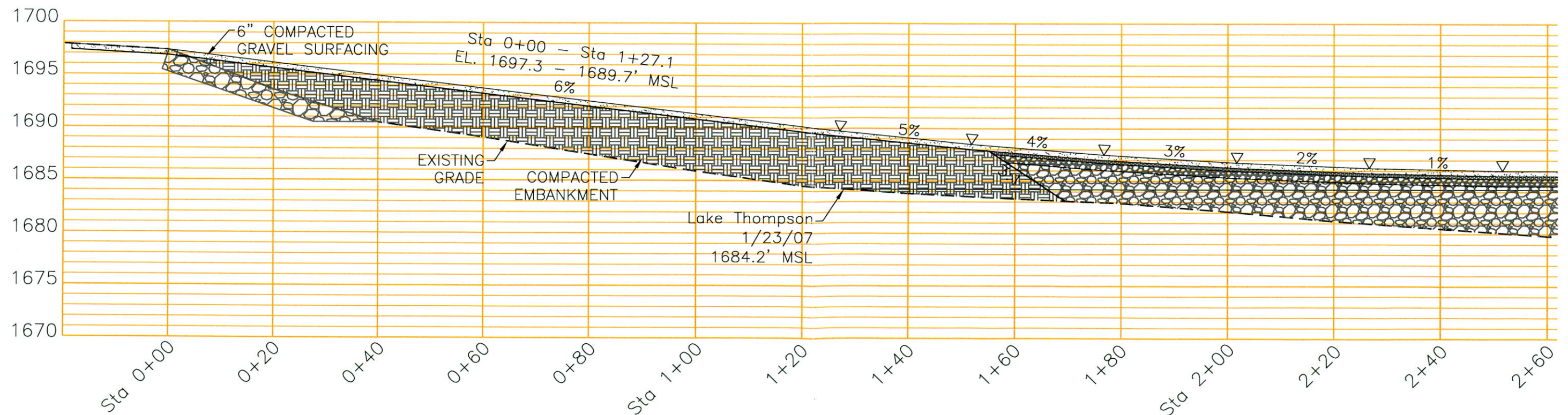


CENTERLINE PROFILE Sta 2+60 – Sta 5+00

HORIZONTAL SCALE: 1"=20'

VERTICAL SCALE: 1"=10'

PRELIMINARY



CENTERLINE PROFILE Sta 0+00 – Sta 2+60

HORIZONTAL SCALE: 1"=20'

VERTICAL SCALE: 1"=10'

Exhibit D

SCALE: 1"=40'

PRELIMINARY

EXISTING BOAT RAMP & PARKING LOT FACILITY

BM 1
TOP OF RAMP
EL. 1694.0' MSL

TOP OF RAMP
Sta 4+05.9
EL. 1686.0' MSL

BOTTOM OF RAMP
Sta 4+81.8
EL. 1676.9' MSL

REMOVE & SALVAGE EXISTING RIPRAP FOR THE ENTIRE WIDTH OF THE COMPACTED EMBANKMENT SECTION REINSTALL AS PART OF PROJECT

MATCH INTO EXISTING PARKING LOT
Sta 0-18.5
EL. 1698' MSL

Lake Thompson
1/23/07
EL. 1684.2' MSL

CENTER OF TURNAROUND
Sta 3+60.9
EL. 1686.0' MSL

EXCAVATE AS REQUIRED TO INSTALL 1' MINIMUM BEDDING MATERIAL THICKNESS AND ASSOCIATED RIPRAP SHOULDER THICKNESS FOR SECTION BACKSLOPE @ 3:1±

PLAN

SCALE: 1"=40'

Division of Administration
Foss Building
523 E. Capitol Ave.
Pierre, South Dakota 57501-3182
Phone: (605) 773 - 6082


Department of Game, Fish & Parks

DATE	2/28/07
PROJECT NUMBER	AWO
DRAWN BY	JJP
CHECKED BY	

LOW WATER RAMP CONSTRUCTION
LAKE THOMPSON RA
KINGSBURY COUNTY, SOUTH DAKOTA

OF

RECEIVED
JUN 27 2013
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

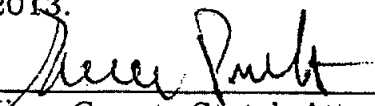
Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this 18 day of June, 2013.



Miner County State's Attorney
On behalf of Miner County

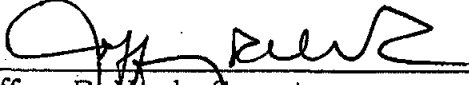
Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

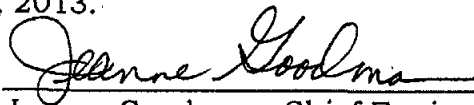
Turner County State's Attorney
On behalf of Turner County

Dated this 20th day of June, 2013.



Jeffrey R. Monk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this 20th day of June, 2013.



Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this 18 day of June, 2013.

Shelly Nelson
Shelly Nelson
Kingsbury County Commissioner (title)
On behalf of Kingsbury County

Dated this _____ day of June , 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June , 2013.

Miner County State's Attorney
On behalf of Miner County

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this 18th day of June, 2013.



Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this 18th day of June, 2013.

Jeddi J. Bertsma
Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this 17th day of June, 2013.

M. B. Bha

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson



OFFICE OF ATTORNEY GENERAL

317 N. Main Avenue
Sioux Falls, South Dakota 57104
Phone (605) 367-5880
FAX (605) 367-5886
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUN 27 2013

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY

June 25, 2013

Leo Holzbauer
PO Box 877
Wagner, SD 57380

Chad Comes
PO Box 308
Madison, SD 57042

Jeff Hallem
Board Counsel
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

Rodney Freeman, Jr.
PO Box 176
Huron, SD 57350

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57702

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

Tim Bjork
112 W. Oak Street
Pierre, SD 57501

Jim Hutmacher
802 East 7th Street
Oacoma, SD 57365

Re: Lake Thompson Reconsideration.

Dear Board Members and Board Counsel,

The Board directed all parties to disclose copies of their exhibits and witnesses to each other by today, June 25, for the upcoming hearing on Lake Thompson.

In the meantime, some of the parties have reached agreement. I am enclosing a Stipulation and proposed Order. To explain, I am also enclosing a Prehearing Statement and Designation of Witnesses and Exhibits. I may offer witnesses and exhibits to respond to any questions or objections to the stipulation. I am sending a copy of this letter and the documents to all parties.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best

Assistant Attorney General
Counsel for Water Rights Program

RECEIVED
JUN 27 2013
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

ORDER APPROVING
STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

Several parties in the above entitled matter have entered into a Stipulation in the above entitled matter (attached). The Stipulation would fully dispose of all claims and issues concerning the pending contested case concerning the Lake Thompson outlet elevation and the GFP vested right. Having considered the evidence and legal argument submitted in this matter, as well as the filed Stipulation, the Board hereby ORDERS the following:

1. The Stipulation is hereby approved,
2. The GFP vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 feet mean sea level (fmsl).
3. The outlet elevation is hereby declared to be 1687.5 fmsl and the Board hereby acknowledges that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location, neither GFP nor anyone else may construct any outlet structure at 1687.5 or any other elevation unless approval is granted by this Board. Further, the entire outlet configuration must be analyzed and approval of this Board must be obtained before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.

5. The Board retains jurisdiction to address any changes to the outlet elevation, if requested.

Dated this _____ day of July

ON BEHALF OF THE BOARD:

Chairman
South Dakota Water Management Board

RECEIVED

JUN 27 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

PREHEARING

IN THE MATTER OF THE) STATEMENT AND DESIGNATION
VALIDATION OF VESTED WATER) OF WITNESSES AND EXHIBITS
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

PREHEARING STATEMENT

Summary of Stipulation. Several parties have entered into a Stipulation that would fully dispose of all issues concerning the outlet elevation and the GFP vested right. GFP's vested water right claim would be validated for sufficient water to maintain the water level up to 1687.5 fmsl. This reflects the natural outlet elevation.

However, under this stipulation the entire outlet configuration would need to be analyzed before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state. The Board would retain jurisdiction to address any such changes.

No applications have been filed that propose construction. Upon information and belief, no party intends to construct a structure in the near future or engage in any excavation of the hard bottom of the channel.

Party Status. The parties that have signed the stipulation include GFP and DENR as well as all counties that are parties. Due to timing, the stipulation has not been signed by the three individual intervenors, John Bruner, Merrill Nelson, and Stephen Noding.¹ Each has been provided with a copy of the agreement and obviously the remaining parties would welcome their participation if that occurs.

To refresh the Board's memory, Bruner and Nelson appeared at the initial hearing on March 6, 2013, and requested an elevation of 1685 fmsl.

Mr. Noding did not appear on March 6, but was at the motion hearing in May. In his February 12 intervention letter, he proposed an outlet elevation of "at least one foot higher" than the 1,687.5 fmsl proposed by the Chief Engineer. In a letter dated April 15, 2013, Noding proposed that the outlet elevation be at least 1687.5 fmsl or a higher elevation that would include installation of sluice gates at the 218th St. overpass and maintaining the lake's water level at 1689 fmsl.

¹ A fourth individual, Jerry Gruenhagen, is no longer a party. He originally sent a written petition to the Chief Engineer opposing the Chief Engineer's proposed elevation of 1687.5 fmsl "because that level is too high." Although provided with Notice, Gruenhagen did not appear at the hearing on March 6, file responses to any motions, or appear at the Motion hearing on May 2. He has forfeited his right to participate. SDCL 1-26-17. Although he has waived his right to receive additional notices (ARSD 74:02:01:12.02), he has been provided with courtesy copies of Motions and other filings including this Prehearing Statement and Designation of Witnesses and Exhibits.

Outlet Elevation Definition. At the Board's previous Motion hearing, the Board asked the Parties to address the definition of the term "outlet elevation" at the reconsideration hearing in July. The Stipulation offers the following explanation of the term:

This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.

This explanation is proper in light of the statutory framework and administrative rule involved.

More specifically, the word "outlet elevation" is used in ARSD 74:02:01:50 (...The Board may clarify or amend existing water rights or permits to include the outlet elevation). While the term is not specifically defined in the rule, court cases provide guidance. The state Supreme Court has held that words in statutes are to be given "their plain meaning and effect" and that it is necessary to "read statutes as a whole, as well as enactments relating to the same subject." *State v. Anders*, 2009 S.D. 15, ¶10, 763 N.W.2d 547, 551. DENR submits that the rules of statutory construction should also apply to interpreting the rule at hand.

The "plain meaning" of the term "outlet" in the context of the "rule as a whole" obviously refers to water leaving or going out of a lake as referenced in a water right or water permit. In the case at hand, the only water right involved is that of Game, Fish, and Parks. GFP relies on use of water from the natural

outlet elevation. There is no constructed or designed elevation for this water right and GFP is not requesting one.

To determine the natural outlet elevation it is useful to examine “other enactments relating to the same subject.” SDCL 46-5-1.1 explains the scenarios that are *not natural*: changes in the stage, level, or flow of waters of the state. SDCL 46-5-1.1 makes it clear that any structures that change the stage, level, or flow of waters of the state are *not* natural outlet elevations and instead require permits for the new elevation. It stands to reason that the converse is true: that a “natural outlet elevation” would be one that does not change the stage, level, or flow of waters of the state.

As such, the declared “natural elevation” should actual water flows from a lake, not just the lowest level where water will trickle out. If the Board were to declare a “natural outlet” elevation as the very lowest level in the channel, construction at such a level would still have the tendency to change the stage, level, or flow of waters of the state and would not be “natural.”

Finally, it should be noted, that the parties have agreed, in the Stipulation, to obtain permission from the Board before constructing any outlet whatsoever. This is due to the varying configuration of this particular outlet. Regardless of the stipulation, of course, the foregoing explanation of the “natural outlet elevation” applies.

Proposed Procedure. At present, the stipulation has been signed by only a portion of the parties. If the stipulation is ultimately signed by all parties, the Board need only approve the stipulation and enter an order accordingly. A proposed order is attached.

However, if the stipulation is signed by some, but not all, of the parties, additional procedure is in order. The controlling case concerning the issue at hand is, coincidentally, another water case. *Steiner v. Marshall County* 1997 SD 109, 568 N.W.2d 627. Marshall County and a landowner association stipulated to entry of a Consent Judgment providing that Marshall County would install a culvert of a specific size at a specific location in a county road. Two intervenors objected and were allowed to present objections. After hearing from the intervenors, the circuit court approved the Consent Judgment. The intervenors appealed, seeking to set aside the Consent Judgment. The South Dakota Supreme Court held:

[i]t has never been supposed that one party—whether an original party, a party that was joined later, or an intervenor—could preclude other parties from settling their own disputes and thereby withdrawing from litigation. Thus, while an intervenor is entitled to present evidence and have its objection heard at the hearings on whether to approve a consent decree, it does not have the power to block the decree merely by withholding its consent.

(citing *Local Number 93 v. City of Cleveland*, 478 U.S. 501 (1986)).

The Chief Engineer submits that the same procedure ought to apply here. If the intervenors have objections and evidence to refute the stipulation, they should be permitted to present it (assuming the evidence otherwise complies with the rules of evidence and is not cumulative). However, the fact the intervenors did not sign the stipulation should not bar consideration of the stipulation in deciding the ultimate issues.

In addition, the *Steiner* parties stipulated that the Consent Judgment would not “create rights” or “create any obligation” to any individuals other than those signing the agreement. This related to a cross claim filed by the

intervenors. The court allowed the intervenors to present their cross claim stating that the “the consent judgment must not prevent Intervenor from litigating any possible claims.” *Id.* at ¶ 13. The cross claim was resolved in the same *Steiner* litigation, but was considered independent of the Consent Order. *Id.* at ¶¶ 15-24. Consequently, if the intervenors in the above entitled proceeding had raised independent legal issues or claims, they would be entitled to bring them in the upcoming hearing. In fact, if cross claims existed, it would be would be incumbent on the intervenors to present any such claims at the hearing, given the doctrines of *res judicata* and *collateral estoppel*. *Jundt v. The Hon. A.P. Fuller*, 2007 S.D. 62, 736 N.W.2d 508. However no such independent claims have been raised by any party.

In sum, the Chief Engineer (and other parties) will ask the Board to approve the stipulation. The Board should consider the stipulation, but render its independent determination after hearing evidence from any party that has not signed the agreement and objects, provided that the evidence is consistent with the rules of evidence and is not cumulative.

DESIGNATION OF WITNESSES AND EXHIBITS

To the extent necessary to respond to claims made by intervenors who have not signed the stipulation or to respond to any questions by the Board, the following DENR witnesses may testify: Engineer Lynn Beck and Chief Engineer Jeanne Goodman. Both are employed by the DENR with offices located at 523 E. Capitol Ave., Pierre, SD.

Further, to the extent necessary, the DENR will rely on evidence previously submitted to the Board and may submit DENR Exhibit 7, showing

the cross section of the outlet channel, as surveyed. The exhibit is large in size and is available for viewing by the parties at the offices of the DENR. This is in addition to the condensed channel outlet graphic that is already in the record as DENR 2, Attachment 2. Also, the DENR reserves the right to call rebuttal witnesses and present rebuttal exhibits, if necessary.

Dated this 25th day of June, 2013.



Diane Best
Assistant Attorney General
317 N. Main Ave.
Sioux Falls, SD 57104-6004

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the (a) Stipulation, (b) Prehearing Statement and Designation of Witnesses and Exhibits, and (c) proposed Order in the above entitled matter was served on the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the US mail, Sioux Falls, SD on this 25th day of June, 2013:

Chad Comes, Vice Chairman
PO Box 308
Madison, SD 57042

Rodney Freeman, Jr., Chairman
PO Box 176
Huron, SD 57350

Everett Hoyt
4422 Carriage Hills Dr
Rapid City, SD 57702

Leo Holzbauer
PO Box 877
Wagner, SD 57380

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57702

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

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Jeff Hallem, Asst. Attorney General
Office of Attorney General
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

Merrill Nelson
628 3rd St. NE
Lake Preston, SD 57249

Dr. Stephen Noding
21340 439th Ave.
Lake Preston, SD 57249

Gregg A. Gass
Kingsbury County State's Attorney
PO Box 29
DeSmet, SD 57231

E. John Bruner
22289 422nd Ave
Winfred, SD 57076

Greg Protsch
Miner County State's Attorney
Howard, SD

Jerry Gruenhagen
526 Hwy 25 S.
De Smet, SD 57231

And that on the same date the foregoing documents were sent to the following parties via email as requested:

Dick Neill, Game, Fish, and Parks: Richard.Neill@state.sd.us

Leslie Murphy, Game, Fish, and Parks: Leslie.Murphy@state.sd.us

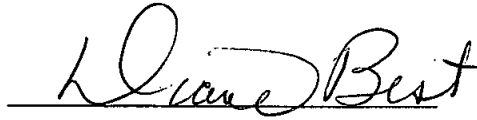
Chris Giles, Lake County State's Attorney: Chris.Giles@lakecountysd.com

Philip Terwilliger, Clay County Deputy State's Attorney:

Philip.Terwilliger@claycountysd.org

Matt Olson, Turner County State's Attorney: matt@turnercountysd.org

And that on the same date the original documents were filed with Jeanne Goodman, Chief Engineer, Water Rights Program, Dept. of Environment and Natural Resources, at 523 East Capitol Ave., Pierre, SD 57501-3181.

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
317 N. Main Ave.
Sioux Falls, SD 57104-6004



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

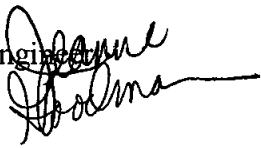
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

July 17, 2013

NOTICE

TO: Gregg A Gass
Gass Law Office
PO Box 35
DeSmet SD 57231
And Parties of Record (see attached sheet)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

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

Diane Best, Assistant Attorney General, is preparing proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the order approving the stipulation, the establishment of Lake Thompson's outlet elevation and validation of Vested Water Right No. 707-3. The Board will consider adoption of Findings, Conclusions and Final Decision at 8:30 AM, on Thursday, October 3, 2013, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. Notice will be provided if there is a change in the hearing date or time.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by September 3, 2013. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) and parties of record by September 17, 2013. Board counsel requests that the draft findings or alternative findings be provided in a WORD format file via email to jeff.hallem@state.sd.us.

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 October 3, 2013. The hearing was completed on July 10, 2013. No additional testimony will be received.

If you have any questions on this matter, please contact Diane Best, Assistant Attorney General at (605) 367-5880 extension 105.

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

PARTIES OF RECORD

IN THE MATTER OF THE ESTABLISHMENT OF THE OUTLET ELEVATION FOR
LAKE THOMPSON AND VALIDATION OF VESTED WATER RIGHT CLAIM NO. 707-3

Gregg A Gass Gass Law Office PO Box 35 DeSmet SD 57231	E John Bruner 22289 422 nd Ave Winfred SD 57076
Merrill Nelson 628 3 rd Street NE Lake Preston SD 57249	Dr. Stephen Noding 21340 439 th Avenue Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney 200 East Center Street Madison SD 57042	Gregory Protsch, Miner County State's Attorney PO Box 189 Howard SD 57349
Jerry Gruenhagen 526 Hwy 25 S DeSmet SD 57231	Richard J. Neill, Attorney Dept. Game, Fish & Parks 523 E Capitol Avenue Pierre SD 57501
Teddi J Gertsma, Clay County State's Attorney 211 W Main St, Suite 204 Vermillion SD 57069	Matthew L Olson, Turner County State's Attorney PO Box 700 Parker SD 57053

CERTIFICATION

I hereby certify that on July 17, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 17, 2013, regarding preparation of findings of fact, conclusions of law and final decision in the matter of establishment of an outlet elevation for Lake Thompson and validation of Vested Water Right No. 707-3, as set forth below:

Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231
E John Bruner, 22289 422nd Ave, Winfred SD 57076
Diane Best, Assistant Attorney General, 317 N Main Avenue, Sioux Falls SD 57104
Merrill Nelson, 628 3rd Street NE, Lake Preston SD 57249
Dr. Stephen Noding, 21340 439th Avenue, Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney, 200 East Center Street, Madison SD 57042
Gregory A Protsch, Miner County State's Attorney, PO Box 189, Howard SD 57349
Jerry Gruenhagen, 526 Hwy 25 S, DeSmet SD 57231
Teddi J Gertsma, Clay County State's Attorney, 211 W Main St, Suite 204, Vermillion SD 57069
Matthew L Olson, Turner County State's Attorney, PO Box 700, Parker SD 57053

Sent Inter-Office

Jeff Hallem, Assistant Attorney General, George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1, Pierre SD 57501
Richard J. Neill, Attorney, Dept. Game, Fish & Parks, 523 E Capitol Avenue, Pierre SD 57501



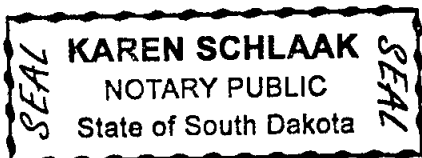
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of July, 2013



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



Gronlund, Eric

From: Best, Diane
Sent: Saturday, August 17, 2013 1:38 PM
To: Hallem, Jeff
Cc: Philip.Terwilliger@claycountysd.org; teddi.gertsma@claycountysd.org; Matt Olson; Mumford, Protsch & Pardy (mpp@alliancecom.net); ggass33@hotmail.com; Neill, Richard; 'Chris Giles'; nodingfarms@yahoo.com
Subject: Lake Thompson proposed Findings of Fact, Conclusions of Law, and Final Order
Attachments: Lake Thompson Findings 8-17-13 (w GG Changes).doc

As directed by the South Dakota Water Management Board, I am enclosing proposed Findings of Fact, Conclusions of Law and Final Order in the Lake Thompson matter.

I believe the counties and the GFP are in agreement with this proposal.

I'm sending this email to all parties for which I have email addresses.

Further, I will also be mailing a hard copy to the Board and to all parties.

The hard copy includes the stipulation that is incorporated by reference and intended as an attachment.

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE THOMPSON)

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH DAKOTA)
DEPARTMENT OF GAME, FISH, AND)
PARKS)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

The South Dakota Water Management Board ("Board"), having considered the evidence and argument presented by the parties at its March 6, May 1, and July 10, 2013 hearings, as well as all written submissions, hereby makes the following:

FINDINGS OF FACT

1. The parties are the Chief Engineer and Water Rights Program in the Department of Environment and Natural Resources (collectively "DENR"), the Department of Game, Fish, and Parks ("GFP"), Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding.

2. GFP filed Vested Water Right Claim No. 707-3 in 1988. It was published June 22, and 29, 1988 in the De Smet News. The Notice stated the Chief Engineer's recommendation will be to validate the water right claim for sufficient water to fill the lake annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is lower. The only petition received opposing the validation was filed September 21, 1988 by the Chief Engineer of the Water Rights Division. The intent of the petition was to postpone validation for the following reasons.

- Until the outlet elevation for the lake is surveyed and the outlet elevation is set by the Water Management Board.
- To allow the vested water right claim to be amended, if necessary, as follows:
 - a. Include the outlet elevation;
 - b. To correct the amount of water claimed;
 - c. To add a qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d. To add any amendments and qualifications necessary to clarify a vested right claim.

3. In 2012 Kingsbury County made application to set the outlet elevation for Lake Thompson, which is located in Kingsbury and Miner Counties. As part of this proceeding, the Board also considered the previously filed vested right claim filed by GFP.

4. DENR conducted a field investigation to ascertain the physical data to identify the outlet elevation of Lake Thompson and Lynn Beck, a DENR engineer, issued a report. Based on the Beck report, the Chief Engineer proposed an elevation of 1687.5 feet mean sea level (fmsl).

5. DENR mailed a Notice of Hearing to Kingsbury, Miner, Lake, McCook, Turner, and Clay counties and riparian landowners. The Notice was also published in the DeSmet News, the Miner County Pioneer, the Brookings Register, the Madison Daily Leader, the Arlington Sun, and the Lake Preston Times. The Notice allowed for intervention and scheduled an evidentiary hearing for March 6, 2013.

6. On February 19, 2013, Kingsbury County filed a letter supporting the Chief Engineer's recommendation. During the March 6 evidentiary hearing Kingsbury County supported the Chief Engineer's recommendation, but also was not opposed to a lower level of 1686.3 fmsl.

7. Merrill Nelson and E. John Brunner filed petitions to intervene. Both Mr. Nelson and Mr. Bruner own land in the Lake Thompson drainage basin and appeared at the evidentiary

hearing on March 6. They advocated for an elevation of 1685 fmsl. They did not appear at any later hearings or file any additional motions or responses.

8. Jerry Gruenhagen filed a written petition opposing the Chief Engineer's proposed elevation of 1687.5 fmsl "because that level is too high." Although provided with Notice, Gruenhagen did not appear at any of the three hearings or file responses to any motions.

9. Dr. Stephen Noding intervened on February 12, 2013, proposing an outlet elevation of "at least one foot higher" than the 1,687.5 fmsl proposed by the Chief Engineer. He did not appear at the March 6 evidentiary hearing, but did appear at later hearings on May 1 and July 10. In a letter dated April 15, 2013, Noding proposed that the outlet elevation be at least 1687.5 fmsl or preferably a higher elevation that would include installation of sluice gates at the 218th St. overpass and maintaining the lake's water level at 1689 fmsl.

10. At the close of hearing on March 6, the Board made an oral ruling that the outlet elevation should be 1686.3 fmsl. The oral determination was not final; the Board required the parties to submit proposed Findings of Fact and Conclusions of Law for consideration on May 1.

11. Miner, Turner, Clay, and Lake counties subsequently petitioned to intervene and were granted party status on May 1. The Board also granted their request for reconsideration and set a reconsideration hearing for July 10.

12. At the reconsideration hearing DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, and Clay County offered a Stipulation to address both the outlet elevation and GFP vested right. GFP also presented evidence showing that the 1686.3 fmsl outlet elevation would have a detrimental effect on its several boat ramps on Lake Thompson and urged the Board to adopt the stipulation instead. Bruner and Nelson did not appear.

13. Noding appeared in opposition to the stipulation at the July 10 hearing. He argued that Section 6 of the stipulation improperly contemplated clean out of silt from the lake outlet area and that silt removal is unnecessary and unwarranted.

14. The ordinary high water mark and the ordinary low water mark for Lake Thompson have not been set and were not under consideration in these proceedings.

15. Since 1984, Lake Thompson has filled and now covers approximately 18,000 acres and spills into the East Fork of the Vermillion River.

16. The outlet for Lake Thompson is located in the approximate center of the W $\frac{1}{2}$ Section 25, T108N-R55W, Miner County, South Dakota. The outlet consists of a broad, relatively flat channel bottom which spills into the East Fork of the Vermillion River.

17. Water in Lake Thompson must pass through the outlet before flowing into the East Fork of the Vermillion River. The outlet is a natural elevation subject to deposition and erosion.

18. The hard bottom elevations taken in the channel bottom are shown in Attachment 2 of the recommendation of the Chief Engineer on Establishment of an Outlet Elevation for Lake Thompson. Several of those elevations are at or near 1,687.5 fmsl. A cross section at the outlet location shows that the lowest hard bottom point surveyed is 1686.3 fmsl.

19. The Board relies upon evidence from the expert for the DENR, Lynn Beck, including Attachment No. 2 of Ms. Beck's report which is attached hereto and incorporated by reference.

20. The Board recognizes that the entire outlet configuration should be analyzed if any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the OHWM or would otherwise affect the stage, level or flow of waters of the state. Such future changes to the outlet itself would need to be assessed when they are planned.

21. GFP claims a 1889 priority date for public recreational purposes. It is undisputed that while water levels changed over the years, at any given time, Lake Thompson was used for public recreational purposes on a legally continuous basis since statehood in 1889. Such public recreational purposes include use of the lake for fishing, boating, swimming, picnicking, hunting and other recreational purposes. There are several public boat ramps on this lake.

22. GFP Vested Water Right Claim No. 707-3 is the only existing claim on file for water in Lake Thompson. However, domestic uses (i.e. livestock watering, dams, dugouts, etc.) are present within the Lake Thompson drainage basin.

23. Vested Water Right Claim No. 707-3 claims approximately 27,500 acre-feet of water per year to fill Lake Thompson to the outlet level for recreational purposes.

24. Vested Water Right Claim No. 707-3 can now be validated, stating that the amount of water claimed should be “sufficient to fill Lake Thompson annually to the established outlet elevation of 1,687.5 fmsl.”

CONCLUSIONS OF LAW

1. This Board has the jurisdiction and authority to set the outlet elevation for Lake Thompson under SDCL 46-1-1, 46-1-2, 46-2-9, and ARSD 74:02:01:50.

2. This Board has the jurisdiction and authority to validate the vested right for GFP under SDCL 46-1-1, 46-1-2, 46-2-9, 46-2-11, 46-2A-16, 46-2A-17, and 46-5-9.

3. Notice of Hearing was properly made and published pursuant to law.

4. The Chief Engineer made recommendations on both the outlet level and on the vested right. The Chief Engineer’s recommendations are not final or binding on the Board, who is authorized to accept, reject, revise or defer action on the Chief Engineer’s recommendation.

5. The parties are DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding. Jerry Gruenhagen did not appear at any hearings and forfeited his right to participate. SDCL 1-26-17. Although he was provided with courtesy copies of Motions and other filings, he has waived the right to receive additional notices under ARSD 74:02:01:12.02.

6. DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County entered into a Stipulation. During hearing on July 10 the parties to the stipulation orally agreed to change section 6 of the stipulation to read: "Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed pursuant to SDCL 46-5-1.1."

7. The term "outlet elevation" is not specifically defined by South Dakota Codified Law or administrative rule, but the definition can be ascertained by the context. The Stipulation offers the following explanation of the term:

This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.

This explanation is proper in light of the statutory framework and administrative rule involved.

8. The word "outlet elevation" is used in ARSD 74:02:01:50 (...The Board may clarify or amend existing water rights or permits to include the outlet elevation). While the term is not specifically defined in the rule, court cases provide that words in statutes are to be given "their plain meaning and effect" and that it is necessary to "read statutes as a whole, as well as enactments relating to the same subject." *State v. Anders*, 2009 S.D. 15, ¶10, 763 N.W.2d 547, 551. These rules of construction apply.

9. The “plain meaning” of the term “outlet” in the context of the “rule as a whole” refers to water leaving or going out of a lake as referenced in a water right or water permit. In the case at hand, the only water right involved is that of GFP. GFP relies on use of water from the natural outlet elevation. There is no constructed or designed elevation and GFP is not requesting one.

10. To define the natural outlet elevation it is also useful to examine “other enactments relating to the same subject.” SDCL 46-5-1.1 explains the scenarios that are *not natural* : changes in the stage, level, or flow of waters of the state. SDCL 46-5-1.1 makes it clear that any structures that change the stage, level, or flow of waters of the state are *not* natural outlet elevations and instead require permits for the new elevation. It stands to reason that the converse is true: that a “natural outlet elevation” would be one that does not change the stage, level, or flow of waters of the state.

11. The declared “natural outlet elevation” should reflect actual water flow elevations from a lake (in this case as shown by Attachment No. 2), not just the lowest level where water will trickle out. If this Board were to declare a “natural outlet” elevation as the very lowest level in the channel, construction at such a level, if it changed other outlet elevations in the channel, would still have the tendency to change the stage, level, or flow of waters of the state and would not be “natural.”

12. The parties to the Stipulation agreed to obtain permission from the Board before constructing any outlet structure. This is due to the varying configuration of this particular outlet. Regardless of the stipulation, of course, the foregoing explanation of the “natural outlet elevation” applies.

13. The stipulation was signed by all parties except Bruner, Nelson, and Noding. Bruner and Nelson did not appear at the July 10 hearing or otherwise file any opposition to the Board's consideration of the stipulation.

14. Noding opposes the stipulation. Noding's opposition to the Stipulation does not prevent the Board from considering it. *Steiner v. Marshall County* 1997 SD 109, 568 N.W.2d 627. Noding, as an intervenor, was afforded the opportunity to present evidence and have his objection heard at the July 10 hearing.

15. Noding's objection to the Stipulation arises from his understanding of Section 6 of the stipulation. Section 6, read in conjunction with the remainder of the stipulation, provides that the parties do not need to approach this Board for ordinary maintenance of the outlet so long as such maintenance does not amount to any structural changes, excavation of the hard bottom of the channel, or change in location of the outlet that would impact the Ordinary High Water Mark, if one is established, or would affect the stage, level, or flow of Lake Thompson or the waters of the state. Similarly, SDCL 46-5-1.1 does not require Board action for routine maintenance like tree removal or removal of silt, but would require action if structural changes or excavation was undertaken that changes the stage, level, or flow of the water. Consequently, Section 6, as amended by the parties at hearing, provides the same as the law already provides. Section 6 is proper and can be approved.

15. In light of SDCL 46-5-1.1, any future proposed structural changes, excavation of the hard bottom of this channel, or change in location of the outlet must be analyzed to determine whether they affect the OHWM or otherwise affect the stage, level, or flow of Lake Thompson or the downstream channel or other waters. At such time the outlet configuration would need to be analyzed and appropriate plans submitted to the Chief Engineer for analysis.

16. The Board should retain jurisdiction over this matter to address any proposed changes that would affect the OHWM or otherwise affect the stage, level, or flow of waters of the state.

17. The Department of Game, Fish, and Parks presently holds recognized Vested Water Right Claim No. 707-3 for Lake Thompson. However, the claim had not been previously validated pursuant to SDCL 46-2A-16 and SDCL 46-2A-17.

18. The Department of Game, Fish, and Parks Vested Water Right Claim No. 707-3 is validated to allow storage of water to elevation 1,687.5 fmsl with a priority date of November 2, 1889 (date of statehood).

19. Having considered the evidence and legal argument submitted, as well as the filed Stipulation, and having rendered the foregoing Findings of Fact and Conclusions of Law, the Board hereby makes the following:

ORDER

1. The Stipulation is hereby approved and is incorporated by reference as though set forth herein.

2. The GFP vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 fmsl.

3. The outlet elevation is hereby declared to be 1687.5 fmsl and the Board hereby acknowledges that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location, neither GFP nor anyone else may construct any outlet structure at 1687.5 or any other elevation unless approval is granted by this Board. Further, the entire outlet configuration must be analyzed and approval of this Board must be obtained before

any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.

5. The Board retains jurisdiction to address any changes to the outlet elevation, if requested.

Dated this _____ day of October, 2013.

BY THE BOARD:

Chad Comes, Chairman



OFFICE OF ATTORNEY GENERAL

317 N. Main Avenue
Sioux Falls, South Dakota 57104
Phone (605) 367-5880
FAX (605) 367-5886
www.state.sd.us/atg

RECEIVED

AUG 21 2013

WATER RIGHTS
PROGRAM

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY

August 19, 2013

Chad Comes, Vice Chairman
PO Box 308
Madison, SD 57042

Rodney Freeman, Jr., Chairman
PO Box 176
Huron, SD 57350

Everett Hoyt
4422 Carriage Hills Dr
Rapid City, SD 57702

Leo Holzbauer
PO Box 877
Wagner, SD 57380

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57702

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

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Jeff Hallem, Asst. Attorney General
Office of Attorney General
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

Re: Lake Thompson Outlet Elevation

Dear Board Members and Board Counsel:

On behalf of DENR I am enclosing proposed Findings of Fact, Conclusions of Law, and Final Decision. This draft was prepared with input from the GFP and all counties involved and it is my understanding that they all agree. Further, a copy is being provided to all parties. Consistent with the Board's requirements a Word version of this document is being provided to Board Counsel, Jeff Hallem.

Sincerely,

A handwritten signature in cursive script that reads "Diane Best".

Diane Best

RECEIVED

AUG 21 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)
) CERTIFICATE OF SERVICE
IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

The undersigned hereby certifies that true and correct copies of the DENR proposed Findings of Fact, Conclusions of Law, and Final Order in the above entitled matter were served on the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the U.S. Mail, Sioux Falls, South Dakota on August 19, 2013:

Chad Comes
PO Box 308
Madison, SD 57042

Rodney Freeman, Jr.
PO Box 176
Huron, SD 57350

Everett Hoyt
4422 Carriage Hills Dr
Rapid City, SD 57702

Leo Holzbauer
PO Box 877
Wagner, SD 57380

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57702

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

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Jeff Hallem, Asst. Attorney General
Office of Attorney General
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

Merrill Nelson
628 3rd St. NE
Lake Preston, SD 57249

Dr. Stephen Noding
21340 439th Ave.
Lake Preston, SD 57249

Jerry Gruenhagen
526 Hwy 25 S.
De Smet, SD 57231

E. John Bruner
22289 422nd Ave
Winfred, SD 57076

Chris S. Giles
Lake County State's Attorney
200 East Center St.
Madison, SD 57042

Gregg A. Gass
Kingsbury County State's Attorney
PO Box 35
DeSmet, SD 57231

Matthew L. Olson
Turner County State's Attorney
PO Box 700
Parker, SD 57053

Gregory Protsch
Miner County State's Attorney
P.O. Box 189
Howard, SD 57349

Teddi J. Gertsma
Philip Terwilliger
Clay County State's Attorney
211 W. Main St. Suite 204
Vermillion, SD 57069

Leslie Murphy
Richard J. Neill
Dept. of Game, Fish & Parks
523 E. Capitol Ave.
Pierre, SD 57501

And that on the same date the original was filed with the Chief Engineer, Water Rights Program, Dept. of Environment and Natural Resources, at 523 East Capitol Ave., Pierre, SD 57501-3181.

A handwritten signature in cursive script, appearing to read "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
317 N. Main Ave.
Sioux Falls, SD 57104-6004

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

RECEIVED
AUG 21 2013
WATER RIGHTS
PROGRAM

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE THOMPSON)
)
IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH DAKOTA)
DEPARTMENT OF GAME, FISH, AND)
PARKS)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

The South Dakota Water Management Board ("Board"), having considered the evidence and argument presented by the parties at its March 6, May 1, and July 10, 2013 hearings, as well as all written submissions, hereby makes the following:

FINDINGS OF FACT

1. The parties are the Chief Engineer and Water Rights Program in the Department of Environment and Natural Resources (collectively "DENR"), the Department of Game, Fish, and Parks ("GFP"), Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding.

2. GFP filed Vested Water Right Claim No. 707-3 in 1988. It was published June 22, and 29, 1988 in the De Smet News. The Notice stated the Chief Engineer's recommendation will be to validate the water right claim for sufficient water to fill the lake annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is lower. The only petition received opposing the validation was filed September 21, 1988 by the Chief Engineer of the Water Rights Division. The intent of the petition was to postpone validation for the following reasons.

- Until the outlet elevation for the lake is surveyed and the outlet elevation is set by the Water Management Board.
- To allow the vested water right claim to be amended, if necessary, as follows:
 - a. Include the outlet elevation;
 - b. To correct the amount of water claimed;
 - c. To add a qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d. To add any amendments and qualifications necessary to clarify a vested right claim.

3. In 2012 Kingsbury County made application to set the outlet elevation for Lake Thompson, which is located in Kingsbury and Miner Counties. As part of this proceeding, the Board also considered the previously filed vested right claim filed by GFP.

4. DENR conducted a field investigation to ascertain the physical data to identify the outlet elevation of Lake Thompson and Lynn Beck, a DENR engineer, issued a report. Based on the Beck report, the Chief Engineer proposed an elevation of 1687.5 feet mean sea level (fmsl).

5. DENR mailed a Notice of Hearing to Kingsbury, Miner, Lake, McCook, Turner, and Clay counties and riparian landowners. The Notice was also published in the DeSmet News, the Miner County Pioneer, the Brookings Register, the Madison Daily Leader, the Arlington Sun, and the Lake Preston Times. The Notice allowed for intervention and scheduled an evidentiary hearing for March 6, 2013.

6. On February 19, 2013, Kingsbury County filed a letter supporting the Chief Engineer's recommendation. During the March 6 evidentiary hearing Kingsbury County supported the Chief Engineer's recommendation, but also was not opposed to a lower level of 1686.3 fmsl.

7. Merrill Nelson and E. John Brunner filed petitions to intervene. Both Mr. Nelson and Mr. Bruner own land in the Lake Thompson drainage basin and appeared at the evidentiary

hearing on March 6. They advocated for an elevation of 1685 fmsl. They did not appear at any later hearings or file any additional motions or responses.

8. Jerry Gruenhagen filed a written petition opposing the Chief Engineer's proposed elevation of 1687.5 fmsl "because that level is too high." Although provided with Notice, Gruenhagen did not appear at any of the three hearings or file responses to any motions.

9. Dr. Stephen Noding intervened on February 12, 2013, proposing an outlet elevation of "at least one foot higher" than the 1,687.5 fmsl proposed by the Chief Engineer. He did not appear at the March 6 evidentiary hearing, but did appear at later hearings on May 1 and July 10. In a letter dated April 15, 2013, Noding proposed that the outlet elevation be at least 1687.5 fmsl or preferably a higher elevation that would include installation of sluice gates at the 218th St. overpass and maintaining the lake's water level at 1689 fmsl.

10. At the close of hearing on March 6, the Board made an oral ruling that the outlet elevation should be 1686.3 fmsl. The oral determination was not final; the Board required the parties to submit proposed Findings of Fact and Conclusions of Law for consideration on May 1.

11. Miner, Turner, Clay, and Lake counties subsequently petitioned to intervene and were granted party status on May 1. The Board also granted their request for reconsideration and set a reconsideration hearing for July 10.

12. At the reconsideration hearing DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, and Clay County offered a Stipulation to address both the outlet elevation and GFP vested right. GFP also presented evidence showing that the 1686.3 fmsl outlet elevation would have a detrimental effect on its several boat ramps on Lake Thompson and urged the Board to adopt the stipulation instead. Bruner and Nelson did not appear.

13. Noding appeared in opposition to the stipulation at the July 10 hearing. He argued that Section 6 of the stipulation improperly contemplated clean out of silt from the lake outlet area and that silt removal is unnecessary and unwarranted.

14. The ordinary high water mark and the ordinary low water mark for Lake Thompson have not been set and were not under consideration in these proceedings.

15. Since 1984, Lake Thompson has filled and now covers approximately 18,000 acres and spills into the East Fork of the Vermillion River.

16. The outlet for Lake Thompson is located in the approximate center of the W ½ Section 25, T108N-R55W, Miner County, South Dakota. The outlet consists of a broad, relatively flat channel bottom which spills into the East Fork of the Vermillion River.

17. Water in Lake Thompson must pass through the outlet before flowing into the East Fork of the Vermillion River. The outlet is a natural elevation subject to deposition and erosion.

18. The hard bottom elevations taken in the channel bottom are shown in Attachment 2 of the recommendation of the Chief Engineer on Establishment of an Outlet Elevation for Lake Thompson. Several of those elevations are at or near 1,687.5 fmsl. A cross section at the outlet location shows that the lowest hard bottom point surveyed is 1686.3 fmsl.

19. The Board relies upon evidence from the expert for the DENR, Lynn Beck, including Attachment No. 2 of Ms. Beck's report which is attached hereto and incorporated by reference.

20. The Board recognizes that the entire outlet configuration should be analyzed if any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the OHWM or would otherwise affect the stage, level or flow of waters of the state. Such future changes to the outlet itself would need to be assessed when they are planned.

21. GFP claims a 1889 priority date for public recreational purposes. It is undisputed that while water levels changed over the years, at any given time, Lake Thompson was used for public recreational purposes on a legally continuous basis since statehood in 1889. Such public recreational purposes include use of the lake for fishing, boating, swimming, picnicking, hunting and other recreational purposes. There are several public boat ramps on this lake.

22. GFP Vested Water Right Claim No. 707-3 is the only existing claim on file for water in Lake Thompson. However, domestic uses (i.e. livestock watering, dams, dugouts, etc.) are present within the Lake Thompson drainage basin.

23. Vested Water Right Claim No. 707-3 claims approximately 27,500 acre-feet of water per year to fill Lake Thompson to the outlet level for recreational purposes.

24. Vested Water Right Claim No. 707-3 can now be validated, stating that the amount of water claimed should be “sufficient to fill Lake Thompson annually to the established outlet elevation of 1,687.5 fmsl.”

CONCLUSIONS OF LAW

1. This Board has the jurisdiction and authority to set the outlet elevation for Lake Thompson under SDCL 46-1-1, 46-1-2, 46-2-9, and ARSD 74:02:01:50.

2. This Board has the jurisdiction and authority to validate the vested right for GFP under SDCL 46-1-1, 46-1-2, 46-2-9, 46-2-11, 46-2A-16, 46-2A-17, and 46-5-9.

3. Notice of Hearing was properly made and published pursuant to law.

4. The Chief Engineer made recommendations on both the outlet level and on the vested right. The Chief Engineer’s recommendations are not final or binding on the Board, who is authorized to accept, reject, revise or defer action on the Chief Engineer’s recommendation.

5. The parties are DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding. Jerry Gruenhagen did not appear at any hearings and forfeited his right to participate. SDCL 1-26-17. Although he was provided with courtesy copies of Motions and other filings, he has waived the right to receive additional notices under ARSD 74:02:01:12.02.

6. DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County entered into a Stipulation. During hearing on July 10 the parties to the stipulation orally agreed to change section 6 of the stipulation to read: "Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed pursuant to SDCL 46-5-1.1."

7. The term "outlet elevation" is not specifically defined by South Dakota Codified Law or administrative rule, but the definition can be ascertained by the context. The Stipulation offers the following explanation of the term:

This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.

This explanation is proper in light of the statutory framework and administrative rule involved.

8. The word "outlet elevation" is used in ARSD 74:02:01:50 (...The Board may clarify or amend existing water rights or permits to include the outlet elevation ...). While the term is not specifically defined in the rule, court cases provide that words in statutes are to be given "their plain meaning and effect" and that it is necessary to "read statutes as a whole, as well as enactments relating to the same subject." *State v. Anders*, 2009 S.D. 15, ¶10, 763 N.W.2d 547, 551. These rules of construction apply.

9. The “plain meaning” of the term “outlet” in the context of the “rule as a whole” refers to water leaving or going out of a lake as referenced in a water right or water permit. In the case at hand, the only water right involved is that of GFP. GFP relies on use of water from the natural outlet elevation. There is no constructed or designed elevation and GFP is not requesting one.

10. To define the natural outlet elevation it is also useful to examine “other enactments relating to the same subject.” SDCL 46-5-1.1 explains the scenarios that are *not natural* : changes in the stage, level, or flow of waters of the state. SDCL 46-5-1.1 makes it clear that any structures that change the stage, level, or flow of waters of the state are *not* natural outlet elevations and instead require permits for the new elevation. It stands to reason that the converse is true: that a “natural outlet elevation” would be one that does not change the stage, level, or flow of waters of the state.

11. The declared “natural outlet elevation” should reflect actual water flow elevations from a lake (in this case as shown by Attachment No. 2), not just the lowest level where water will trickle out. If this Board were to declare a “natural outlet” elevation as the very lowest level in the channel, construction at such a level, if it changed other outlet elevations in the channel, would still have the tendency to change the stage, level, or flow of waters of the state and would not be “natural.”

12. The parties to the Stipulation agreed to obtain permission from the Board before constructing any outlet structure. This is due to the varying configuration of this particular outlet. Regardless of the stipulation, of course, the foregoing explanation of the “natural outlet elevation” applies.

13. The stipulation was signed by all parties except Bruner, Nelson, and Noding. Bruner and Nelson did not appear at the July 10 hearing or otherwise file any opposition to the Board's consideration of the stipulation.

14. Noding opposes the stipulation. Noding's opposition to the Stipulation does not prevent the Board from considering it. *Steiner v. Marshall County* 1997 SD 109, 568 N.W.2d 627. Noding, as an intervenor, was afforded the opportunity to present evidence and have his objection heard at the July 10 hearing.

15. Noding's objection to the Stipulation arises from his understanding of Section 6 of the stipulation. Section 6, read in conjunction with the remainder of the stipulation, provides that the parties do not need to approach this Board for ordinary maintenance of the outlet so long as such maintenance does not amount to any structural changes, excavation of the hard bottom of the channel, or change in location of the outlet that would impact the Ordinary High Water Mark, if one is established, or would affect the stage, level, or flow of Lake Thompson or the waters of the state. Similarly, SDCL 46-5-1.1 does not require Board action for routine maintenance like tree removal or removal of silt, but would require action if structural changes or excavation was undertaken that changes the stage, level, or flow of the water. Consequently, Section 6, as amended by the parties at hearing, provides the same as the law already provides. Section 6 is proper and can be approved.

15. In light of SDCL 46-5-1.1, any future proposed structural changes, excavation of the hard bottom of this channel, or change in location of the outlet must be analyzed to determine whether they affect the OHWM or otherwise affect the stage, level, or flow of Lake Thompson or the downstream channel or other waters. At such time the outlet configuration would need to be analyzed and appropriate plans submitted to the Chief Engineer for analysis.

16. The Board should retain jurisdiction over this matter to address any proposed changes that would affect the OHWM or otherwise affect the stage, level, or flow of waters of the state.

17. The Department of Game, Fish, and Parks presently holds recognized Vested Water Right Claim No. 707-3 for Lake Thompson. However, the claim had not been previously validated pursuant to SDCL 46-2A-16 and SDCL 46-2A-17.

18. The Department of Game, Fish, and Parks Vested Water Right Claim No. 707-3 is validated to allow storage of water to elevation 1,687.5 fmsl with a priority date of November 2, 1889 (date of statehood).

19. Having considered the evidence and legal argument submitted, as well as the filed Stipulation, and having rendered the foregoing Findings of Fact and Conclusions of Law, the Board hereby makes the following:

ORDER

1. The Stipulation is hereby approved and is incorporated by reference as though set forth herein.

2. The GFP vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 fmsl.

3. The outlet elevation is hereby declared to be 1687.5 fmsl and the Board hereby acknowledges that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location, neither GFP nor anyone else may construct any outlet structure at 1687.5 or any other elevation unless approval is granted by this Board. Further, the entire outlet configuration must be analyzed and approval of this Board must be obtained before

any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.

5. The Board retains jurisdiction to address any changes to the outlet elevation, if requested.

Dated this _____ day of October, 2013.

BY THE BOARD:

Chad Comes, Chairman

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

STIPULATION

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

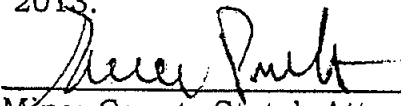
Dated this _____ day of June, 2013.

Kingsbury County _____(title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this 18 day of June, 2013.



Miner County State's Attorney
On behalf of Miner County

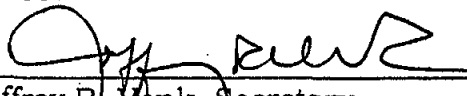
Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this 20th day of June, 2013.



Jeffrey R. Monk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this 20th day of June, 2013.



Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this 18 day of June, 2013.

Shelly Nelson
Shelly Nelson
Kingsbury County Commissioner (title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

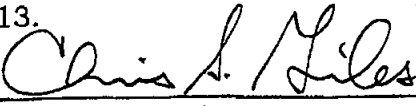
Miner County State's Attorney
On behalf of Miner County

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this 18th day of June, 2013.



Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this 18th day of June, 2013.

Jeddi J. Kerkma
Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this 17th day of June, 2013.

M. B. B. B.
Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

21340 439th Avenue
Lake Preston, SD 57249
September 10, 2013

TO: Jeanne Goodman, Chief Engineer
Water Rights Program
523 East Capitol Ave.
Pierre, SD 57501-3181
And Parties of Record

RECEIVED
SEP 12 2013
WATER RIGHTS
PROGRAM

SUBJECT: Opposition to Findings of Fact, Conclusions of Law and Final Decision

Dear Board Members and Concerned Parties:

I oppose any action allowing the removal of silt and vegetation from the Lake Thompson outlet channel at this time. These proceedings were started because some property owners suffered damage due to the combination of high wind and water levels. High winds or high water levels by themselves did not cause the damage. It was the combination that caused the problems. This occurrence is rare and may not happen again for many, many years. But, it will happen again. Removing the silt will not prevent that. As I stated at the last meeting, no one forced any of us to buy property or build near the water. That was our decision. With that decision come risks, and it is totally the property owner's responsibility to manage that risk and protect their property. Living near a relatively large body of water, storms such as this should be expected. However, due to the storm, the vulnerable areas are now identified. So, to prepare for the next incident, the "at risk" shorelines can be reinforced/butressed, roads, trails, and bike paths can be moved or raised, berms can be placed around susceptible buildings or they can be elevated. These modifications will have much less of an adverse environmental impact than removing the outlet channel's silt and vegetation.

There is no evidence that removing the silt will improve the situation or mitigate the effects when the combination of high winds and water levels occurs. Using the data supplied by the Chief Engineer, only an extremely small amount of silt has been deposited on the plateaus over hundreds of years. In the "V" channel, even less has been deposited. As I pointed out during the July 10th meeting, it is the channel's geometric shape, geological structure and the extremely small angle/slope of declination over more than 7 miles that controls the outlet flow and not the amount of existing silt or vegetation. At a water level of 1687.5 fmsl, the silt occupies ~44% of the volume confined by the channel's geological shape. At 1688, the silt occupies ~36%. At 1689, it represents ~10%, at 1690 fmsl, the silt represents less than 7%, and at 1691 fmsl it represents less than 2%. Above 1691 fmsl, the silt represents an increasing small percentage of the volume enclosed by the channel. At 1694 fmsl, where the damages were experienced, the volume is less than 0.1%. Therefore, it can be correctly concluded that the silt did not contribute to the damaged incurred during the high water and wind incident.

If the silt and vegetation are removed, not only will it damage habitat and destroy wildlife, the flow dynamics and currents will change along with other parameters. Changing that equilibrium may result in unwanted, unpredictable and undesirable repercussions up and down stream in the coming years. For example, one reason the "V" channel is essentially silt free is that the current in the "V" is faster and more turbulent than the surrounding currents. If the silt on the plateaus is removed, the currents will change and the flow differential and turbulence in the "V" may decrease. This will allow more silt to settle in the "V" over time. So, it is possible that this unique natural feature will disappear. That

would be a travesty. In addition, removing the silt may result in mistakes which would harm the hard pan and change the flow dynamics even more and take eons, if ever, to repair. Once the hard pan is damaged, it cannot be undone. During the last meeting, it was mentioned that to minimize those mistakes, an extensive/exhaustive survey would be conducted. However, that would be expensive, and it will still be possible for mistakes to happen. There are just too many things that could go wrong if the silt is allowed to be removed.

Concerning debris and dead vegetation, no evidence or history of any problems has been presented to the best of knowledge. It should also be remembered that debris is home and food for many of nature's creatures. It is part of the natural cycle of life. At levels above 1691 fmsl, I don't believe it is a contributing factor. Since dead vegetation floats and is biodegradable, relatively high water levels will flush it away from the outlet channel. At low water levels, it doesn't matter. If debris forms a blockage, it might be beneficial in that it could limit the outflow rate to some extent and keep the lake's level from decreasing faster during dry periods. This would be a benefit because low water levels are more of a problem for the Department of Game, Fish, and Parks than high water as given in testimony at the July 10th meeting. However, in the unlikely event that debris becomes a hindrance, it can be safely removed without using heavy equipment, harming the habitat, silt and live vegetation, damage the hard pan, or change the channel's flow dynamics.

Finally, the Finding of Facts showed that SDCL 46-5-1.1 "does not require Board action for routine maintenance like tree removal or removal of silt". My questions are: 1) Who determines when the silt should be removed? 2) How much silt is needed before being considered for removal? 3) What constitutes "routine maintenance"? 4) Who will supervise? and 5) What safeguards are in place? I think these questions and others need to be answered before this action is granted. I contend that the current amount of silt is not enough to warrant removal at this time. It has taken perhaps hundreds of years or more to deposit 4 to 8 inches of silt. I see no urgency nor need to remove the silt.

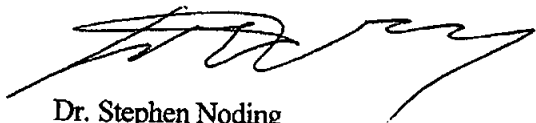
To sum up my position on this matter:

1. There is no evidence that the very small amount of silt accumulated in the channel over hundreds of years contributes in any manner to high water levels.
2. There is no evidence that removing the silt will improve the situation in any form or diminish the impact when a combination of high winds and water levels occurs.
3. Removing the silt will result in changing the channel's flow dynamics and lead to undesirable repercussions including the disappearance of the "V" outlet. Once the silt is removed, the damage will be done and cannot be undone.
4. It is the property owner's responsibility to protect their assets and to prepare/plan for natural occurrences and the like.
5. There is no assurance/guarantee that if the silt and vegetation are removed, irreparable damage to the hard pan will not occur.
6. There is neither evidence nor history that debris has ever been a problem restricting outlet flow or that it will ever become a problem.
7. Removing the silt and vegetation will not accomplish anything constructive but will waste time, money, and resources as well as destroy habitat.
8. If/when silt removal is allowed; benchmarks should be set before such action is undertaken and guidelines followed.

September 10, 2013

In a previous meeting, we were reminded that the Water Management Board is a legal entity. Legal decisions like scientific issues are based on best evidence. In this case, there is no evidence that the silt neither was responsible for the high water nor would its removal do anything to prevent, alleviate or minimize its effects. The outflow mechanism is now in balance/equilibrium. If the silt is removed, whole new set parameters will be in play. The silt has not been a problem before and there is no reason to believe that it will be a problem in the near future or beyond. It is the property owners' responsibilities to protect their investments. Silt removal may be allowed under SDCL 46-5-1.1, but haphazard silt removal should not be. There must be guidelines and benchmarks set in place to ensure that removal is warranted and not based on intuition, etc. There must be a true need to remove the silt. I believe that removal is not warranted at this time. Therefore, I request that the proposal to establish an outlet elevation be 1) rejected; or 2) prohibit the removal of silt and vegetation from the channel; or 3) set the outlet elevation to at least 1689 fmsl.

Sincerely,



Dr. Stephen Noding

cc: Gregg A. Gass
Gregory Protsch
Matthew L. Olson
Peggy Dixon
Jeff Hallem

E. John Bruner
Jerry Gruenhagen
Chad Comes, Chairman
Everett Hoyt
Diane Best

Merrill Nelson
Richard J. Neill
Leo Holzbauer
Tim Bjork

Chris S. Giles
Teddi J. Gertsma
Rodney Freeman, Jr.
Jim Hutmacher



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

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
SEP 25 2013
WATER RIGHTS
PROGRAM

September 24, 2013

Jeanne Goodman
Chief Engineer, DENR
Water Rights Program
523 E. Capitol Ave
Pierre, SD 57501

Diane Best
Assistant Attorney General
317 N. Main Ave.
Sioux Falls, SD 57104-6004

Gregg A. Gass
Kingsbury County State's Attorney
PO Box 35
DeSmet, SD 57231

Chris S. Giles
Lake County State's Attorney
200 East Center St.
Madison, SD 57042

Dr. Stephen Noding
21340 439th Ave.
Lake Preston, SD 57249

Merrill Nelson
628 3rd St. NE
Lake Preston, SD 57249

Matthew L. Olson
Turner County State's Attorney
PO Box 700
Parker, SD 57053

Gregory Protsch
Miner County State's Attorney
P.O. Box 189
Howard, SD 57349

Richard J. Neill
Dept. of Game, Fish & Parks
523 E. Capitol Ave.
Pierre, SD 57501

Teddi J. Gertsma
Philip Terwilliger
Clay County State's Attorney
211 W. Main St. Suite 204
Vermillion, SD 57069

E. John Bruner
22289 422nd Ave
Winfred, SD 57076

Matthew L. Olson
Turner County State's Attorney
PO Box 700
Parker, SD 57053

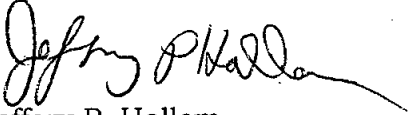
Jerry Gruenhagen
526 Hwy 25 S.
De Smet, SD 57231

Re: *In the Matter of the Establishment of the Outlet Elevation for Lake Thompson and
Validation of Vested Water Right No. 707-3, South Dakota
Department of Game, Fish, and Parks*

Dear Counsel and Parties:

Enclosed please find the proposed Water Management Board Rulings on Parties Submissions and Findings of Fact, Conclusions of Law and Final Order I have prepared in the above matter. The documents were prepared consistent with the statements made at the July 10, 2013 meeting of the South Dakota Water Management Board. The Board will consider these proposals at its October 3, 2013 meeting. It is within the Board's discretion whether oral arguments by the parties will be afforded prior to considering the matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffery P. Hallem", with a long, sweeping horizontal line extending to the right.

Jeffery P. Hallem
Assistant Attorney General

JPH/rar

Enclosures

cc w/encl: Water Management Board

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
ESTABLISHMENT OF THE OUTLET	)	WATER MANAGEMENT BOARD'S
ELEVATION FOR LAKE THOMPSON	)	RULINGS ON PARTIES
	)	SUBMISSIONS
IN THE MATTER OF THE VALIDATION	)	
OF VESTED WATER RIGHT NO. 707-3,	)	
SOUTH DAKOTA DEPARTMENT OF	)	
GAME, FISH, AND PARKS	)	

Pursuant to direction of the Water Management Board, counsel for Department of Environment and Natural Resources, Water Rights Program (DENR) submitted proposed Findings of Fact, Conclusions of Law and Final Order. DENR's proposal was prepared with input from the Department of Game, Fish, and Parks, and the five counties that are parties to this proceeding, all whom entered a Stipulation. Intervenor Stephen Noding submitted his opposition to the Findings of Fact, Conclusions of Law and Final Order submitted by the DENR through a document dated September 10, 2013. No other parties submitted additional proposed findings of fact and conclusions of law or objections to the DENR proposed Findings of Fact, Conclusions of Law and Final Order. The Board, upon review of the submissions received, the administrative record, and having orally entered its revised decision on July 10, 2013 (oral decision), hereby enters the following rulings:

A. DENR's proposed Findings of Fact Nos. 1-24 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision.

B. DENR's proposed Conclusions of Law are accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision, and the Findings of Fact adopted by the Board in the above ruling as renumbered Conclusions of Law Nos. 1-20.

C. DENR's proposed Final Order is accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision and the Findings of Fact and Conclusions of Law adopted by the Board in the above rulings.

D. Intervenor Noding's Opposition to the Findings of Fact, Conclusions of Law and Final Decision submitted by the DENR are rejected and denied. There is no factual or legal support for an outlet elevation of "at least 1689 fmsl." Further, Intervenor's opposition to the removal of silt as set forth in revised Section 6 of the Stipulation is inconsistent with the provisions of SDCL 46-5-1.1.

The Board's attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Order consistent with the above rulings to be executed by the Chairman of the Board or the Board's designee without further notice or hearing.

Dated this _____ day of October, 2013.

BY THE BOARD:

Chad Comes, Chairman
S.D. Water Management Board

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

The South Dakota Water Management Board ("Board"), having considered the evidence and argument presented by the parties at its March 6, May 1 and July 10, 2013 hearings, as well as all written submissions, hereby makes the following:

FINDINGS OF FACT

1. The parties are the Chief Engineer and Water Rights Program in the Department of Environment and Natural Resources (collectively "DENR"), the Department of Game, Fish, and Parks ("GFP"), Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding.

2. GFP filed Vested Water Right Claim No. 707-3 in 1988. It was published June 22 and 29, 1988, in the De Smet News. The Notice stated the Chief Engineer's recommendation will be to validate the water right claim for sufficient water to fill the lake annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is

lower. The only petition received opposing the validation was filed September 21, 1988 by the Chief Engineer of the Water Rights Division. The intent of the petition was to postpone validation for the following reasons.

- Until the outlet elevation for the lake is surveyed and the outlet elevation is set by the Water Management Board.
- To allow the vested water right claim to be amended, if necessary, as follows:
 - a. Include the outlet elevation;
 - b. To correct the amount of water claimed;
 - c. To add a qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d. To add any amendments and qualifications necessary to clarify a vested right claim.

3. In 2012 Kingsbury County made application to set the outlet elevation for Lake Thompson, which is located in Kingsbury and Miner Counties. As part of this proceeding, the Board also considered the previously filed vested right claim filed by GFP.

4. DENR conducted a field investigation to ascertain the physical data to identify the outlet elevation of Lake Thompson and Lynn Beck, a DENR engineer, issued a report. Based on the Beck report, the Chief Engineer proposed an elevation of 1687.5 feet mean sea level (fmsl).

5. DENR mailed a Notice of Hearing to Kingsbury, Miner, Lake, McCook, Turner, and Clay counties and riparian landowners. The Notice was also published in the DeSmet News, the Miner County Pioneer, the Brookings

Register, the Madison Daily Leader, the Arlington Sun, and the Lake Preston Times. The Notice allowed for intervention and scheduled an evidentiary hearing for March 6, 2013.

6. On February 19, 2013, Kingsbury County filed a letter supporting the Chief Engineer's recommendation. During the March 6 evidentiary hearing Kingsbury County supported the Chief Engineer's recommendation, but also was not opposed to a lower level of 1686.3 fmsl.

7. Merrill Nelson and E. John Brunner filed petitions to intervene. Both Mr. Nelson and Mr. Bruner own land in the Lake Thompson drainage basin and appeared at the evidentiary hearing on March 6. They advocated for an elevation of 1685 fmsl. They did not appear at any later hearings or file any additional motions or responses.

8. Jerry Gruenhagen filed a written petition opposing the Chief Engineer's proposed elevation of 1687.5 fmsl "because that level is too high." Although provided with Notice, Gruenhagen did not appear at any of the three hearings or file responses to any motions.

9. Dr. Stephen Noding intervened on February 12, 2013, proposing an outlet elevation of "at least one foot higher" than the 1,687.5 fmsl proposed by the Chief Engineer. He did not appear at the March 6 evidentiary hearing, but did appear at later hearings on May 1 and July 10. In a letter dated April 15, 2013, Noding proposed that the outlet elevation be at least 1687.5 fmsl or preferably a higher elevation that would include installation of sluice gates at the 218th St. overpass and maintaining the lake's water level at 1689 fmsl.

10. At the close of hearing on March 6, the Board made an oral ruling that the outlet elevation should be 1686.3 fmsl. The oral determination was not final; the Board required the parties to submit proposed Findings of Fact and Conclusions of Law for consideration on May 1.

11. Miner, Turner, Clay, and Lake Counties subsequently petitioned to intervene and were granted party status on May 1. The Board also granted their request for reconsideration and set a reconsideration hearing for July 10.

12. At the reconsideration hearing DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, and Clay County offered a Stipulation to address both the outlet elevation and GFP vested right. GFP also presented evidence showing that the 1686.3 fmsl outlet elevation would have a detrimental effect on its several boat ramps on Lake Thompson and urged the Board to adopt the stipulation instead. Bruner and Nelson did not appear.

13. Noding appeared in opposition to the stipulation at the July 10 hearing. He argued that Section 6 of the stipulation improperly contemplated clean out of silt from the lake outlet area and that silt removal is unnecessary and unwarranted.

14. The ordinary high water mark and the ordinary low water mark for Lake Thompson have not been set and were not under consideration in these proceedings.

15. Since 1984, Lake Thompson has filled and now covers approximately 18,000 acres and spills into the East Fork of the Vermillion River.

16. The outlet for Lake Thompson is located in the approximate center of the W ½ Section 25, T108N-R55W, Miner County, South Dakota. The outlet consists of a broad, relatively flat channel bottom which spills into the East Fork of the Vermillion River.

17. Water in Lake Thompson must pass through the outlet before flowing into the East Fork of the Vermillion River. The outlet is a natural elevation subject to deposition and erosion.

18. The hard bottom elevations taken in the channel bottom are shown in Attachment 2 of the recommendation of the Chief Engineer on Establishment of an Outlet Elevation for Lake Thompson. Several of those elevations are at or near 1,687.5 fmsl. A cross section at the outlet location shows that the lowest hard bottom point surveyed is 1686.3 fmsl.

19. The Board relies upon evidence from the expert for the DENR, Lynn Beck, including Attachment No. 2 of Ms. Beck's report which is attached hereto and incorporated by reference.

20. The Board recognizes that the entire outlet configuration should be analyzed if any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the OHWM or would otherwise affect the stage, level or flow of waters of the state. Such future changes to the outlet itself would need to be assessed when they are planned.

21. GFP claims a 1889 priority date for public recreational purposes. It is undisputed that while water levels changed over the years, at any given

time, Lake Thompson was used for public recreational purposes on a legally continuous basis since statehood in 1889. Such public recreational purposes include use of the lake for fishing, boating, swimming, picnicking, hunting and other recreational purposes. There are several public boat ramps on this lake.

22. GFP Vested Water Right Claim No. 707-3 is the only existing claim on file for water in Lake Thompson. However, domestic uses (i.e. livestock watering, dams, dugouts, etc.) are present within the Lake Thompson drainage basin.

23. Vested Water Right Claim No. 707-3 claims approximately 27,500 acre-feet of water per year to fill Lake Thompson to the outlet level for recreational purposes.

24. Vested Water Right Claim No. 707-3 can now be validated, stating that the amount of water claimed should be "sufficient to fill Lake Thompson annually to the established outlet elevation of 1,687.5 fmsl."

CONCLUSIONS OF LAW

1. This Board has the jurisdiction and authority to set the outlet elevation for Lake Thompson under SDCL 46-1-1, 46-1-2, 46-2-9, and ARSD 74:02:01:50.

2. This Board has the jurisdiction and authority to validate the vested right for GFP under SDCL 46-1-1, 46-1-2, 46-2-9, 46-2-11, 46-2A-16, 46-2A-17, and 46-5-9.

3. Notice of Hearing was properly made and published pursuant to law.

4. The Chief Engineer made recommendations on both the outlet level and on the vested right. The Chief Engineer's recommendations are not final or binding on the Board, who is authorized to accept, reject, revise or defer action on the Chief Engineer's recommendation.

5. The parties are DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding. Jerry Gruenhagen did not appear at any hearings and forfeited his right to participate. SDCL 1-26-17. Although he was provided with courtesy copies of Motions and other filings, he has waived the right to receive additional notices under ARSD 74:02:01:12.02.

6. DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County entered into a Stipulation. During hearing on July 10 the parties to the stipulation orally agreed to change section 6 of the stipulation to read: "Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed pursuant to SDCL 46-5-1.1."

7. The term "outlet elevation" is not specifically defined by South Dakota Codified Law or administrative rule, but the definition can be ascertained by the context. The Stipulation offers the following explanation of the term:

This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the

water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.

This explanation is proper in light of the statutory framework and administrative rule involved.

8. The word “outlet elevation” is used in ARSD 74:02:01:50 (. . . The Board may clarify or amend existing water rights or permits to include the outlet elevation . . .). While the term is not specifically defined in the rule, court cases provide that words in statutes are to be given “their plain meaning and effect” and that it is necessary to “read statutes as a whole, as well as enactments relating to the same subject.” *State v. Anders*, 2009 S.D. 15, ¶ 10, 763 N.W.2d 547, 551. These rules of construction apply.

9. The “plain meaning” of the term “outlet” in the context of the “rule as a whole” refers to water leaving or going out of a lake as referenced in a water right or water permit. In the case at hand, the only water right involved is that of GFP. GFP relies on use of water from the natural outlet elevation. There is no constructed or designed elevation and GFP is not requesting one.

10. To define the natural outlet elevation it is also useful to examine “other enactments relating to the same subject.” SDCL 46-5-1.1 explains the scenarios that are *not natural*: changes in the stage, level, or flow of waters of the state. SDCL 46-5-1.1 makes it clear that any structures that change the stage, level, or flow of waters of the state are *not* natural outlet elevations and instead require permits for the new elevation. It stands to reason that the converse is true: that a “natural outlet elevation” would be one that does not change the stage, level, or flow of waters of the state.

11. The declared “natural outlet elevation” should reflect actual water flow elevations from a lake (in this case as shown by Attachment No. 2), not just the lowest level where water will trickle out. If this Board were to declare a “natural outlet” elevation as the very lowest level in the channel, construction at such a level, if it changed other outlet elevations in the channel, would still have the tendency to change the stage, level, or flow of waters of the state and would not be “natural.”

12. The parties to the Stipulation agreed to obtain permission from the Board before constructing any outlet structure. This is due to the varying configuration of this particular outlet. Regardless of the stipulation, of course, the foregoing explanation of the “natural outlet elevation” applies.

13. The stipulation was signed by all parties except Bruner, Nelson, and Noding. Bruner and Nelson did not appear at the July 10 hearing or otherwise file any opposition to the Board’s consideration of the stipulation.

14. Noding opposes the stipulation. Noding’s opposition to the Stipulation does not prevent the Board from considering it. *Steiner v. Marshall County* 1997 S.D. 109, 568 N.W.2d 627. Noding, as an intervenor, was afforded the opportunity to present evidence and have his objection heard at the July 10 hearing.

15. Noding’s objection to the Stipulation arises from his understanding of Section 6 of the stipulation. Section 6, read in conjunction with the remainder of the stipulation, provides that the parties do not need to approach this Board for ordinary maintenance of the outlet so long as such maintenance

does not amount to any structural changes, excavation of the hard bottom of the channel, or change in location of the outlet that would impact the Ordinary High Water Mark, if one is established, or would affect the stage, level, or flow of Lake Thompson or the waters of the state. Similarly, SDCL 46-5-1.1 does not require Board action for routine maintenance like tree removal or removal of silt, but would require action if structural changes or excavation was undertaken that changes the stage, level, or flow of the water. Consequently, Section 6, as amended by the parties at hearing, provides the same as the law already provides. Section 6 is proper and can be approved.

16. In light of SDCL 46-5-1.1, any future proposed structural changes, excavation of the hard bottom of this channel, or change in location of the outlet must be analyzed to determine whether they affect the OHWM or otherwise affect the stage, level, or flow of Lake Thompson or the downstream channel or other waters. At such time the outlet configuration would need to be analyzed and appropriate plans submitted to the Chief Engineer for analysis.

17. The Board should retain jurisdiction over this matter to address any proposed changes that would affect the OHWM or otherwise affect the stage, level, or flow of waters of the state.

18. The Department of Game, Fish, and Parks presently holds recognized Vested Water Right Claim No. 707-3 for Lake Thompson. However, the claim had not been previously validated pursuant to SDCL 46-2A-16 and SDCL 46-2A-17.

19. The Department of Game, Fish, and Parks Vested Water Right Claim No. 707-3 is validated to allow storage of water to elevation 1,687.5 fmsl with a priority date of November 2, 1889 (date of statehood).

20. Having considered the evidence and legal argument submitted, as well as the filed Stipulation, and having rendered the foregoing Findings of Fact and Conclusions of Law, the Board hereby makes the following:

ORDER

1. The Stipulation is hereby approved and is incorporated by reference as though set forth herein.

2. The GFP vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 fmsl.

3. The outlet elevation is hereby declared to be 1687.5 fmsl and the Board hereby acknowledges that there exist within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location, neither GFP nor anyone else may construct any outlet structure at 1687.5 or any other elevation unless approval is granted by this Board. Further, the entire outlet configuration must be analyzed and approval of this Board must be obtained before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.

5. The Board retains jurisdiction to address any changes to the outlet elevation, if requested.

Dated this _____ day of October, 2013.

BY THE BOARD:

Chad Comes, Chairman
S.D. Water Management Board

pId_JPH_Water Board - Lake Thompson FOF COL Order (br)

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

STIPULATION

COME NOW, the undersigned parties and hereby stipulate as follows:

- 1) This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.
- 2) The outlet for Lake Thompson is located in the W ½ of Section 25, T108N, R55 W, Miner County, South Dakota.
- 3) The cross-section of elevations at the outlet location is shown by "Attachment No. 2" of a report prepared by Lynn Beck, Natural Resources Engineer with DENR and incorporated herein by reference as "Exhibit A."
- 4) The bottom of the channel at the outlet is irregular, with its lowest elevation at 1686.3 feet mean sea level. The outlet elevation must take into consideration the configuration of the entire outlet cross section and not merely the lowest elevation point found in a narrow portion of the outlet cross section.
- 5) The outlet elevation should be established at 1687.5 feet mean sea level, with an acknowledgement that there exists within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

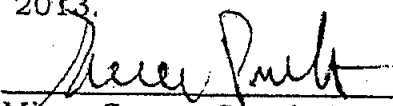
Dated this _____ day of June, 2013.

Kingsbury County _____(title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this 18 day of June, 2013.



Miner County State's Attorney
On behalf of Miner County

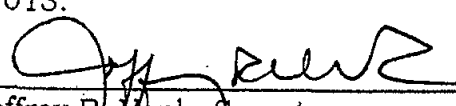
Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this 20th day of June, 2013.



Jeffrey R. Monk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this 20th day of June, 2013.



Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this 18 day of June, 2013.

Shelly Nelson
Shelly Nelson
Kingsbury County Commissioner (title)
On behalf of Kingsbury County

Dated this _____ day of June, 2013.

Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

- 6) Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed, subject to jurisdiction of the board.
- 7) However, the entire outlet configuration should be analyzed in this case before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- 8) The Board should retain jurisdiction to address any potential changes to the hard bottom of the outlet that would affect the Ordinary High Water Mark, if one is established, or otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state, including any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet.
- 9) Vested Water Right Claim No. 707-3 of South Dakota Game, Fish, and Parks should be validated for sufficient water to maintain the water level up to 1687.5 fmsl.
- 10) This agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same document.

Dated this _____ day of June, 2013.

Kingsbury County _____ (title)
On behalf of Kingsbury County

Dated this 18th day of June, 2013.



Lake County State's Attorney
On behalf of Lake County

Dated this _____ day of June, 2013.

Miner County State's Attorney
On behalf of Miner County

Dated this 18th day of June, 2013.

Jeddi J. Reulma
Clay County State's Attorney
On behalf of Clay County

Dated this _____ day of June, 2013.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

Dated this _____ day of June, 2013.

Clay County State's Attorney
On behalf of Clay County

Dated this 17th day of June, 2013.

M. B. B. B.

Turner County State's Attorney
On behalf of Turner County

Dated this _____ day of June, 2013.

Jeffrey R. Vonk, Secretary
On behalf of the South Dakota
Department of Game, Fish, and Parks

Dated this _____ day of June, 2013.

Jeanne Goodman, Chief Engineer
On behalf of the South Dakota
Department of Environment and Natural
Resources, Water Rights Program

Dated this _____ day of June, 2013.

Steven Noding

Dated this _____ day of June, 2013.

John Bruner

Dated this _____ day of June, 2013.

Merrill Nelson

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE THOMPSON.)

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH DAKOTA)
DEPARTMENT OF GAME, FISH, AND)
PARKS)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Water Management Board Rulings on Parties Submissions and Findings of Fact, Conclusions of Law, and Final Order in the above entitled matter were served on the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the U.S. Mail, Pierre, South Dakota on September 24th, 2013:

Chad Comes
PO Box 308
Madison, SD 57042

Rodney Freeman, Jr.
PO Box 176
Huron, SD 57350

Everett Hoyt
4422 Carriage Hills Dr
Rapid City, SD 57702

Leo Holzbauer
PO Box 877
Wagner, SD 57380

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57702

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

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Diane Best, Asst. Attorney General
Office of Attorney General
317 N. Main
Sioux Falls, SD 57104-6004

Merrill Nelson
628 3rd St. NE
Lake Preston, SD 57249

Dr. Stephen Noding
21340 439th Ave.
Lake Preston, SD 57249

Jerry Gruenhagen
526 Hwy 25 S.
De Smet, SD 57231

E. John Bruner
22289 422nd Ave
Winfred, SD 57076

Chris S. Giles
Lake County State's Attorney
200 East Center St.
Madison, SD 57042

Gregg A. Gass
Kingsbury County State's Attorney
PO Box 35
DeSmet, SD 57231

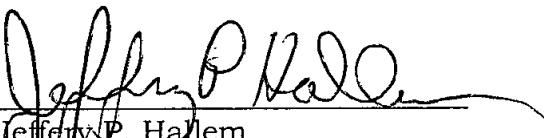
Matthew L. Olson
Turner County State's Attorney
PO Box 700
Parker, SD 57053

Gregory Protsch
Miner County State's Attorney
P.O. Box 189
Howard, SD 57349

Teddi J. Gertsma
Philip Terwilliger
Clay County State's Attorney
211 W. Main St. Suite 204
Vermillion, SD 57069

Richard J. Neill
Dept. of Game, Fish & Parks
523 E. Capitol Ave.
Pierre, SD 57501

And that on the same date the original was filed with the Chief Engineer, Water Rights Program, Dept. of Environment and Natural Resources, at 523 East Capitol Ave., Pierre, SD 57501-3181.


Jeffery P. Hallem
Assistant Attorney General

RECEIVED

SEP 25 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
ESTABLISHMENT OF THE OUTLET	)	WATER MANAGEMENT BOARD'S
ELEVATION FOR LAKE THOMPSON	)	RULINGS ON PARTIES
	)	SUBMISSIONS
IN THE MATTER OF THE VALIDATION	)	
OF VESTED WATER RIGHT NO. 707-3,	)	
SOUTH DAKOTA DEPARTMENT OF	)	
GAME, FISH, AND PARKS	)	

Pursuant to direction of the Water Management Board, counsel for Department of Environment and Natural Resources, Water Rights Program (DENR) submitted proposed Findings of Fact, Conclusions of Law and Final Order. DENR's proposal was prepared with input from the Department of Game, Fish, and Parks, and the five counties that are parties to this proceeding, all whom entered a Stipulation. Intervenor Stephen Noding submitted his opposition to the Findings of Fact, Conclusions of Law and Final Order submitted by the DENR through a document dated September 10, 2013. No other parties submitted additional proposed findings of fact and conclusions of law or objections to the DENR proposed Findings of Fact, Conclusions of Law and Final Order. The Board, upon review of the submissions received, the administrative record, and having orally entered its revised decision on July 10, 2013 (oral decision), hereby enters the following rulings:

A. DENR's proposed Findings of Fact Nos. 1-24 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision.

B. DENR's proposed Conclusions of Law are accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision, and the Findings of Fact adopted by the Board in the above ruling as renumbered Conclusions of Law Nos. 1-20.

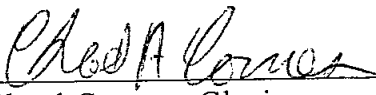
C. DENR's proposed Final Order is accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision and the Findings of Fact and Conclusions of Law adopted by the Board in the above rulings.

D. Intervenor Noding's Opposition to the Findings of Fact, Conclusions of Law and Final Decision submitted by the DENR are rejected and denied. There is no factual or legal support for an outlet elevation of "at least 1689 fmsl." Further, Intervenor's opposition to the removal of silt as set forth in revised Section 6 of the Stipulation is inconsistent with the provisions of SDCL 46-5-1.1.

The Board's attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Order consistent with the above rulings to be executed by the Chairman of the Board or the Board's designee without further notice or hearing.

Dated this 3 day of October, 2013.

BY THE BOARD:


Chad Comes, Chairman
S.D. Water Management Board



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

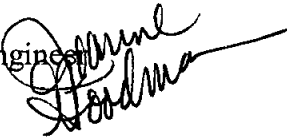
PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

October 4, 2013

NOTICE

TO: Gregg A Gass
Gass Law Office
PO Box 35
DeSmet SD 57231
And Parties of Record (see attached sheet)

FROM: Jeanne Goodman, Chief Engineer 
Water Rights Program

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision in the matter
of Establishment of an Outlet Elevation for Lake Thompson and Validation of Vested
Water Right No. 707-3

This is to notify you that the Water Management Board's Ruling and the Final Decision, including Findings of Fact and Conclusions of Law, were adopted October 3, 2013, by the Water Management Board in the matter of the establishment of an outlet elevation for Lake Thompson and validation of Vested Water Right No. 707-3. The Board ruling and signed Findings of Fact, Conclusions of Law and Final Decision are enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts pursuant to the procedures established in SDCL 1-26-31 and 1-26-32.

Enclosures

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

PARTIES OF RECORD

IN THE MATTER OF THE ESTABLISHMENT OF THE OUTLET ELEVATION FOR
LAKE THOMPSON AND VALIDATION OF VESTED WATER RIGHT CLAIM NO. 707-3

Gregg A Gass Gass Law Office PO Box 35 DeSmet SD 57231	E John Bruner 22289 422 nd Ave Winfred SD 57076
Merrill Nelson 628 3 rd Street NE Lake Preston SD 57249	Dr. Stephen Noding 21340 439 th Avenue Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney 200 East Center Street Madison SD 57042	Gregory Protsch, Miner County State's Attorney PO Box 189 Howard SD 57349
Jerry Gruenhagen 526 Hwy 25 S DeSmet SD 57231	Richard J. Neill, Attorney Dept. Game, Fish & Parks 523 E Capitol Avenue Pierre SD 57501
Teddi J Gertsma, Clay County State's Attorney 211 W Main St, Suite 204 Vermillion SD 57069	Matthew L Olson, Turner County State's Attorney PO Box 700 Parker SD 57053

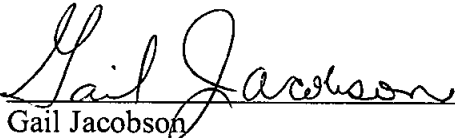
CERTIFICATION

I hereby certify that on October 4, 2013, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 4, 2013, regarding the adoption of findings of fact, conclusions of law and final decision in the matter of establishment of an outlet elevation for Lake Thompson and validation of Vested Water Right No. 707-3, as set forth below:

Gregg A Gass, Gass Law Office, PO Box 35, DeSmet SD 57231
E John Bruner, 22289 422nd Ave, Winfred SD 57076
Diane Best, Assistant Attorney General, 317 N Main Avenue, Sioux Falls SD 57104
Merrill Nelson, 628 3rd Street NE, Lake Preston SD 57249
Dr. Stephen Noding, 21340 439th Avenue, Lake Preston SD 57249
Chris S Giles, Lake County State's Attorney, 200 East Center Street, Madison SD 57042
Gregory A Protsch, Miner County State's Attorney, PO Box 189, Howard SD 57349
Jerry Gruenhagen, 526 Hwy 25 S, DeSmet SD 57231
Teddi J Gertsma, Clay County State's Attorney, 211 W Main St, Suite 204, Vermillion SD 57069
Matthew L Olson, Turner County State's Attorney, PO Box 700, Parker SD 57053

Sent Inter-Office

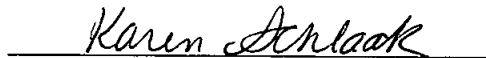
Jeff Hallem, Assistant Attorney General, George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1, Pierre SD 57501
Richard J. Neill, Attorney, Dept. Game, Fish & Parks, 523 E Capitol Avenue, Pierre SD 57501



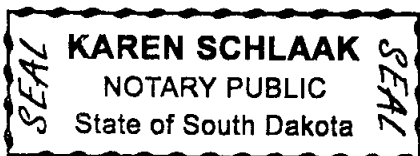
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of October, 2013



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



RECEIVED

SEP 25 2013

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	
ESTABLISHMENT OF THE OUTLET	)	WATER MANAGEMENT BOARD'S
ELEVATION FOR LAKE THOMPSON	)	RULINGS ON PARTIES
	)	SUBMISSIONS
IN THE MATTER OF THE VALIDATION	)	
OF VESTED WATER RIGHT NO. 707-3,	)	
SOUTH DAKOTA DEPARTMENT OF	)	
GAME, FISH, AND PARKS	)	

Pursuant to direction of the Water Management Board, counsel for Department of Environment and Natural Resources, Water Rights Program (DENR) submitted proposed Findings of Fact, Conclusions of Law and Final Order. DENR's proposal was prepared with input from the Department of Game, Fish, and Parks, and the five counties that are parties to this proceeding, all whom entered a Stipulation. Intervenor Stephen Noding submitted his opposition to the Findings of Fact, Conclusions of Law and Final Order submitted by the DENR through a document dated September 10, 2013. No other parties submitted additional proposed findings of fact and conclusions of law or objections to the DENR proposed Findings of Fact, Conclusions of Law and Final Order. The Board, upon review of the submissions received, the administrative record, and having orally entered its revised decision on July 10, 2013 (oral decision), hereby enters the following rulings:

A. DENR's proposed Findings of Fact Nos. 1-24 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision.

B. DENR's proposed Conclusions of Law are accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision, and the Findings of Fact adopted by the Board in the above ruling as renumbered Conclusions of Law Nos. 1-20.

C. DENR's proposed Final Order is accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision and the Findings of Fact and Conclusions of Law adopted by the Board in the above rulings.

D. Intervenor Noding's Opposition to the Findings of Fact, Conclusions of Law and Final Decision submitted by the DENR are rejected and denied. There is no factual or legal support for an outlet elevation of "at least 1689 fmsl." Further, Intervenor's opposition to the removal of silt as set forth in revised Section 6 of the Stipulation is inconsistent with the provisions of SDCL 46-5-1.1.

The Board's attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Order consistent with the above rulings to be executed by the Chairman of the Board or the Board's designee without further notice or hearing.

Dated this 3 day of October, 2013.

BY THE BOARD:


Chad Comes, Chairman
S.D. Water Management Board

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE)
ESTABLISHMENT OF THE OUTLET)
ELEVATION FOR LAKE)
THOMPSON)

IN THE MATTER OF THE)
VALIDATION OF VESTED WATER)
RIGHT NO. 707-3, SOUTH)
DAKOTA DEPARTMENT OF GAME,)
FISH, AND PARKS)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

The South Dakota Water Management Board ("Board"), having considered the evidence and argument presented by the parties at its March 6, May 1 and July 10, 2013 hearings, as well as all written submissions, hereby makes the following:

FINDINGS OF FACT

1. The parties are the Chief Engineer and Water Rights Program in the Department of Environment and Natural Resources (collectively "DENR"), the Department of Game, Fish, and Parks ("GFP"), Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding.

2. GFP filed Vested Water Right Claim No. 707-3 in 1988. It was published June 22 and 29, 1988, in the De Smet News. The Notice stated the Chief Engineer's recommendation will be to validate the water right claim for sufficient water to fill the lake annually to the outlet elevation or to the elevation necessary to maintain the ordinary high water mark, whichever is

lower. The only petition received opposing the validation was filed September 21, 1988 by the Chief Engineer of the Water Rights Division. The intent of the petition was to postpone validation for the following reasons.

- Until the outlet elevation for the lake is surveyed and the outlet elevation is set by the Water Management Board.
- To allow the vested water right claim to be amended, if necessary, as follows:
 - a. Include the outlet elevation;
 - b. To correct the amount of water claimed;
 - c. To add a qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d. To add any amendments and qualifications necessary to clarify a vested right claim.

3. In 2012 Kingsbury County made application to set the outlet elevation for Lake Thompson, which is located in Kingsbury and Miner Counties. As part of this proceeding, the Board also considered the previously filed vested right claim filed by GFP.

4. DENR conducted a field investigation to ascertain the physical data to identify the outlet elevation of Lake Thompson and Lynn Beck, a DENR engineer, issued a report. Based on the Beck report, the Chief Engineer proposed an elevation of 1687.5 feet mean sea level (fmsl).

5. DENR mailed a Notice of Hearing to Kingsbury, Miner, Lake, McCook, Turner, and Clay counties and riparian landowners. The Notice was also published in the DeSmet News, the Miner County Pioneer, the Brookings

Register, the Madison Daily Leader, the Arlington Sun, and the Lake Preston Times. The Notice allowed for intervention and scheduled an evidentiary hearing for March 6, 2013.

6. On February 19, 2013, Kingsbury County filed a letter supporting the Chief Engineer's recommendation. During the March 6 evidentiary hearing Kingsbury County supported the Chief Engineer's recommendation, but also was not opposed to a lower level of 1686.3 fmsl.

7. Merrill Nelson and E. John Brunner filed petitions to intervene. Both Mr. Nelson and Mr. Bruner own land in the Lake Thompson drainage basin and appeared at the evidentiary hearing on March 6. They advocated for an elevation of 1685 fmsl. They did not appear at any later hearings or file any additional motions or responses.

8. Jerry Gruenhagen filed a written petition opposing the Chief Engineer's proposed elevation of 1687.5 fmsl "because that level is too high." Although provided with Notice, Gruenhagen did not appear at any of the three hearings or file responses to any motions.

9. Dr. Stephen Noding intervened on February 12, 2013, proposing an outlet elevation of "at least one foot higher" than the 1,687.5 fmsl proposed by the Chief Engineer. He did not appear at the March 6 evidentiary hearing, but did appear at later hearings on May 1 and July 10. In a letter dated April 15, 2013, Noding proposed that the outlet elevation be at least 1687.5 fmsl or preferably a higher elevation that would include installation of sluice gates at the 218th St. overpass and maintaining the lake's water level at 1689 fmsl.

10. At the close of hearing on March 6, the Board made an oral ruling that the outlet elevation should be 1686.3 fmsl. The oral determination was not final; the Board required the parties to submit proposed Findings of Fact and Conclusions of Law for consideration on May 1.

11. Miner, Turner, Clay, and Lake Counties subsequently petitioned to intervene and were granted party status on May 1. The Board also granted their request for reconsideration and set a reconsideration hearing for July 10.

12. At the reconsideration hearing DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, and Clay County offered a Stipulation to address both the outlet elevation and GFP vested right. GFP also presented evidence showing that the 1686.3 fmsl outlet elevation would have a detrimental effect on its several boat ramps on Lake Thompson and urged the Board to adopt the stipulation instead. Bruner and Nelson did not appear.

13. Noding appeared in opposition to the stipulation at the July 10 hearing. He argued that Section 6 of the stipulation improperly contemplated clean out of silt from the lake outlet area and that silt removal is unnecessary and unwarranted.

14. The ordinary high water mark and the ordinary low water mark for Lake Thompson have not been set and were not under consideration in these proceedings.

15. Since 1984, Lake Thompson has filled and now covers approximately 18,000 acres and spills into the East Fork of the Vermillion River.

16. The outlet for Lake Thompson is located in the approximate center of the W ½ Section 25, T108N-R55W, Miner County, South Dakota. The outlet consists of a broad, relatively flat channel bottom which spills into the East Fork of the Vermillion River.

17. Water in Lake Thompson must pass through the outlet before flowing into the East Fork of the Vermillion River. The outlet is a natural elevation subject to deposition and erosion.

18. The hard bottom elevations taken in the channel bottom are shown in Attachment 2 of the recommendation of the Chief Engineer on Establishment of an Outlet Elevation for Lake Thompson. Several of those elevations are at or near 1,687.5 fmsl. A cross section at the outlet location shows that the lowest hard bottom point surveyed is 1686.3 fmsl.

19. The Board relies upon evidence from the expert for the DENR, Lynn Beck, including Attachment No. 2 of Ms. Beck's report which is attached hereto and incorporated by reference.

20. The Board recognizes that the entire outlet configuration should be analyzed if any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is contemplated in the future that may impact the OHWM or would otherwise affect the stage, level or flow of waters of the state. Such future changes to the outlet itself would need to be assessed when they are planned.

21. GFP claims a 1889 priority date for public recreational purposes. It is undisputed that while water levels changed over the years, at any given

time, Lake Thompson was used for public recreational purposes on a legally continuous basis since statehood in 1889. Such public recreational purposes include use of the lake for fishing, boating, swimming, picnicking, hunting and other recreational purposes. There are several public boat ramps on this lake.

22. GFP Vested Water Right Claim No. 707-3 is the only existing claim on file for water in Lake Thompson. However, domestic uses (i.e. livestock watering, dams, dugouts, etc.) are present within the Lake Thompson drainage basin.

23. Vested Water Right Claim No. 707-3 claims approximately 27,500 acre-feet of water per year to fill Lake Thompson to the outlet level for recreational purposes.

24. Vested Water Right Claim No. 707-3 can now be validated, stating that the amount of water claimed should be "sufficient to fill Lake Thompson annually to the established outlet elevation of 1,687.5 fmsl."

CONCLUSIONS OF LAW

1. This Board has the jurisdiction and authority to set the outlet elevation for Lake Thompson under SDCL 46-1-1, 46-1-2, 46-2-9, and ARSD 74:02:01:50.

2. This Board has the jurisdiction and authority to validate the vested right for GFP under SDCL 46-1-1, 46-1-2, 46-2-9, 46-2-11, 46-2A-16, 46-2A-17, and 46-5-9.

3. Notice of Hearing was properly made and published pursuant to law.

4. The Chief Engineer made recommendations on both the outlet level and on the vested right. The Chief Engineer's recommendations are not final or binding on the Board, who is authorized to accept, reject, revise or defer action on the Chief Engineer's recommendation.

5. The parties are DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County, and individuals Merrill Nelson, E. John Bruner, and Stephen Noding. Jerry Gruenhagen did not appear at any hearings and forfeited his right to participate. SDCL 1-26-17. Although he was provided with courtesy copies of Motions and other filings, he has waived the right to receive additional notices under ARSD 74:02:01:12.02.

6. DENR, GFP, Kingsbury County, Miner County, Lake County, Turner County, Clay County entered into a Stipulation. During hearing on July 10 the parties to the stipulation orally agreed to change section 6 of the stipulation to read: "Maintenance to the depth of the hard bottom elevations within the outlet cross section should be allowed pursuant to SDCL 46-5-1.1."

7. The term "outlet elevation" is not specifically defined by South Dakota Codified Law or administrative rule, but the definition can be ascertained by the context. The Stipulation offers the following explanation of the term:

This matter pertains to the natural outlet elevation for Lake Thompson. Interpreting SDCL 46-5-1.1 and ARSD 74:02:01:50 together, along with the plain meaning of the term "outlet," the "outlet elevation" of a lake is the lowest elevation at which water leaves or "outlets" a lake while maintaining the lake's natural stage, level or flow. The "outlet elevation" is distinguished from a designed or constructed outlet elevation when the designed or constructed outlet elevation changes the stage, level or flow of the

water of the state and requires a flood control permit or other water permit in light of SDCL 46-5-1.1.

This explanation is proper in light of the statutory framework and administrative rule involved.

8. The word “outlet elevation” is used in ARSD 74:02:01:50 (. . . The Board may clarify or amend existing water rights or permits to include the outlet elevation . . .). While the term is not specifically defined in the rule, court cases provide that words in statutes are to be given “their plain meaning and effect” and that it is necessary to “read statutes as a whole, as well as enactments relating to the same subject.” *State v. Anders*, 2009 S.D. 15, ¶ 10, 763 N.W.2d 547, 551. These rules of construction apply.

9. The “plain meaning” of the term “outlet” in the context of the “rule as a whole” refers to water leaving or going out of a lake as referenced in a water right or water permit. In the case at hand, the only water right involved is that of GFP. GFP relies on use of water from the natural outlet elevation. There is no constructed or designed elevation and GFP is not requesting one.

10. To define the natural outlet elevation it is also useful to examine “other enactments relating to the same subject.” SDCL 46-5-1.1 explains the scenarios that are *not natural*: changes in the stage, level, or flow of waters of the state. SDCL 46-5-1.1 makes it clear that any structures that change the stage, level, or flow of waters of the state are *not* natural outlet elevations and instead require permits for the new elevation. It stands to reason that the converse is true: that a “natural outlet elevation” would be one that does not change the stage, level, or flow of waters of the state.

11. The declared “natural outlet elevation” should reflect actual water flow elevations from a lake (in this case as shown by Attachment No. 2), not just the lowest level where water will trickle out. If this Board were to declare a “natural outlet” elevation as the very lowest level in the channel, construction at such a level, if it changed other outlet elevations in the channel, would still have the tendency to change the stage, level, or flow of waters of the state and would not be “natural.”

12. The parties to the Stipulation agreed to obtain permission from the Board before constructing any outlet structure. This is due to the varying configuration of this particular outlet. Regardless of the stipulation, of course, the foregoing explanation of the “natural outlet elevation” applies.

13. The stipulation was signed by all parties except Bruner, Nelson, and Noding. Bruner and Nelson did not appear at the July 10 hearing or otherwise file any opposition to the Board’s consideration of the stipulation.

14. Noding opposes the stipulation. Noding’s opposition to the Stipulation does not prevent the Board from considering it. *Steiner v. Marshall County* 1997 S.D. 109, 568 N.W.2d 627. Noding, as an intervenor, was afforded the opportunity to present evidence and have his objection heard at the July 10 hearing.

15. Noding’s objection to the Stipulation arises from his understanding of Section 6 of the stipulation. Section 6, read in conjunction with the remainder of the stipulation, provides that the parties do not need to approach this Board for ordinary maintenance of the outlet so long as such maintenance

does not amount to any structural changes, excavation of the hard bottom of the channel, or change in location of the outlet that would impact the Ordinary High Water Mark, if one is established, or would affect the stage, level, or flow of Lake Thompson or the waters of the state. Similarly, SDCL 46-5-1.1 does not require Board action for routine maintenance like tree removal or removal of silt, but would require action if structural changes or excavation was undertaken that changes the stage, level, or flow of the water. Consequently, Section 6, as amended by the parties at hearing, provides the same as the law already provides. Section 6 is proper and can be approved.

16. In light of SDCL 46-5-1.1, any future proposed structural changes, excavation of the hard bottom of this channel, or change in location of the outlet must be analyzed to determine whether they affect the OHWM or otherwise affect the stage, level, or flow of Lake Thompson or the downstream channel or other waters. At such time the outlet configuration would need to be analyzed and appropriate plans submitted to the Chief Engineer for analysis.

17. The Board should retain jurisdiction over this matter to address any proposed changes that would affect the OHWM or otherwise affect the stage, level, or flow of waters of the state.

18. The Department of Game, Fish, and Parks presently holds recognized Vested Water Right Claim No. 707-3 for Lake Thompson. However, the claim had not been previously validated pursuant to SDCL 46-2A-16 and SDCL 46-2A-17.

19. The Department of Game, Fish, and Parks Vested Water Right Claim No. 707-3 is validated to allow storage of water to elevation 1,687.5 fmsl with a priority date of November 2, 1889 (date of statehood).

20. Having considered the evidence and legal argument submitted, as well as the filed Stipulation, and having rendered the foregoing Findings of Fact and Conclusions of Law, the Board hereby makes the following:

ORDER

1. The Stipulation is hereby approved and is incorporated by reference as though set forth herein.

2. The GFP vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 fmsl.

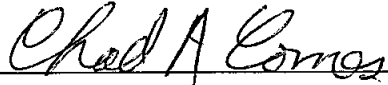
3. The outlet elevation is hereby declared to be 1687.5 fmsl and the Board hereby acknowledges that there exist within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.

4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location, neither GFP nor anyone else may construct any outlet structure at 1687.5 or any other elevation unless approval is granted by this Board. Further, the entire outlet configuration must be analyzed and approval of this Board must be obtained before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.

5. The Board retains jurisdiction to address any changes to the outlet elevation, if requested.

Dated this 3 day of October, 2013.

BY THE BOARD:


Chad Comes, Chairman
S.D. Water Management Board

pld_JPH_Water Board - Lake Thompson FOF COL Order (br)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

707-3

NOV 21 2013

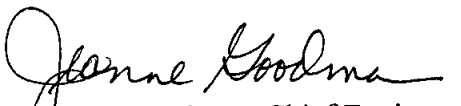
South Dakota Department of Game, Fish & Parks
c/o Leslie Murphy
523 E Capitol
Pierre SD 57501

Dear Ms. Murphy:

The Water Management Board has validated the enclosed Vested Water Right No. 707-3. This validation gives legal status to the claim and is the final document for a vested right. Enclosed is the reissued water license which reflects the right as validated by the Board.

As long as the Department of Game, Fish & Parks uses the water beneficially, as stated in the validation, State Water Laws provide a continuing right to use the water.

Sincerely,


Jeanne Goodman, Chief Engineer
Water Rights Program
605 773-3352

enclosures

REISSUED

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 707-3

(1) The South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD was issued Water License No. 707-3, for a vested right claim to appropriate 27,500 acre-feet of water annually in Lake Thompson from runoff, Kingsbury County, South Dakota, for public recreation purposes.

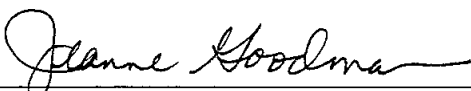
On October 3, 2013, the Water Management Board validated Vested Right No. 707-3. Vested Right No. 707-3 is being reissued to reflect the outlet elevation as it currently exists.

(2) Water in Lake Thompson has been applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the Department of Game, Fish and Parks holds Vested Water Right No. 707-3. The license is reissued, bearing the priority date of November 2, 1889.

The outlet for Lake Thompson is located in the approximate center of the W 1/2 Section 25-T108N-R55W. The Department of Game, Fish & Parks vested water right claim is validated for sufficient water to maintain the water level up to 1687.5 feet mean sea level (fmssl).

(3) This license is subject to South Dakota Water Law and the following Order by the Water Management Board:

- The Stipulation is hereby approved and is incorporated by reference as though set forth herein.
- The Department of Game, Fish & Parks vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 fmssl.
- The outlet elevation is hereby declared to be 1687.5 fmssl and the Board hereby acknowledges that there exist within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmssl.
- Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location neither, the Department of Game, Fish and Parks nor anyone else may construct any outlet structure at 1687.5 fmssl or any other elevation unless approval is granted by the Water Management Board. Further, the entire outlet configuration must be analyzed and approval by the Board must be obtained before any structural changes, excavation of the hard bottom of the channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
- The Board retains jurisdiction to address any changes to the outlet elevation, if requested.



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 21 2013

date



SOUTH DAKOTA
VESTED WATER RIGHT NO. 707-3

Date of Receipt of Claim April 15, 1960.

Date of Validation October 3, 2013.

The Water Management Board validated Vested Water Right Claim No. 707-3 for South Dakota Department of Game, Fish & Parks, 523 E Capitol, Pierre SD 57501 with the following limitations, conditions and order:

1. Vested Water Right No. 707-3 is for sufficient water annually to maintain the water to the outlet elevation of 1,687.5 feet mean sea level (fmsl) for Lake Thompson. The outlet for Lake Thompson is located in the approximate center of the W 1/2 Section 25-T108N-R55W.
2. The appropriated water is used for fish and wildlife propagation and recreational use and may not exceed the amount of water needed for beneficial use.

The water is to be used during the following annual period: January 1 – December 31.

3. The priority date of the Vested Water Right No. 707-3 is November 2, 1889.
4. The water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

Order by Water Management Board

1. The Stipulation is hereby approved and is incorporated by reference as though set forth herein.
2. The Department of Game, Fish & Parks vested water right claim is hereby validated for sufficient water to maintain the water level up to 1687.5 fmsl.
3. The outlet elevation is hereby declared to be 1687.5 fmsl and the Board hereby acknowledges that there exist within the outlet cross section various hard bottom elevations, including a minimum elevation of 1686.3 fmsl.
4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location neither, the Department of Game, Fish and Parks nor anyone else may construct any outlet structure at 1687.5 fmsl or any other elevation unless approval is granted by the Water Management Board. Further, the entire outlet configuration must be analyzed and approval by the Board must be obtained before any structural changes, excavation of the hard bottom of the channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.
5. The Board retains jurisdiction to address any changes to the outlet elevation, if requested.

WATER MANAGEMENT BOARD

By: *Jeanne Goodman*

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 21 2013

date



Water Rights Program - DENR

File Documentation

County: *Kingsbury/Miner*

Name of Person: *Kingsbury County Commission*

File: No. 707-3

Address: *DeSmet SD*

Date: *07-12-2019*

RE: *Lake Thompson Flooding and Outlet Excavation-Cleanout*

Comments: On Thursday July 11, 2019, DENR Natural Resources Engineer Timothy Magstad and I, at the request of Kingsbury County State's Attorney Gregg Gass, met with Kingsbury County Commissioners Shelly Nelson and Delmer Wolkow, Dr. Jim Knight, a local cabin owner, Todd St. Sauver and Kip Rounds with GFP-Wildlife Division, John Christianson and Becky Grass with GF&P-Parks Division, and Michael Siefker a reporter with the DeSmet News.

We drove to the Lake Thompson outlet area located in the W½ of Section 25 T108N-R55W at the half mile line. The outlet is a natural high spot, elevation 1687.5 fmsl (NGVD29 datum) in a 60 to 70 foot wide earthen channel that becomes the East Fork of the Vermillion River in Miner County (Figures 1 & 2).



Fig 1 – Outlet Area for Lake Thompson, photo 07-11-2019



Fig 2 – Outlet Area for Lake Thompson, drone photo 05-30-2019

Dr. Knight authored a report “High Water Measurements at Lake Thompson – 2019; Potential Solutions to Flooding” (attached). In the report, Dr. Knight proposes to increase outflow in the channel from the lake by excavating sediment and removing vegetation from both sides of the channel at the outlet area. It should be noted the recently collected EDWDD elevation information listed in Dr. Knight’s report are referenced to the NAVD88 vertical survey datum. The lake outlet elevation set by the Water Management Board is referenced to the NGVD29 survey datum. A correction factor of 0.95 feet needs to be subtracted from NAVD88 referenced elevations to match up with NGVD29 referenced elevations. Dr. Knight was informed of this and he indicated he would adjust the elevations referenced in his report accordingly.

The Lake Thompson outlet and outflow to the East Fork of the Vermillion River has been a reoccurring issue since 1984 when the lake began to fill. The most recent action concerning the outlet was taken in 2012 when the Kingsbury County Commission petitioned the Water Management Board to determine the outlet elevation for Lake Thompson. Following a 2013 contested case hearing where a Stipulation Agreement between Kingsbury, Miner, Lake, Turner, and Clay Counties along with SD GF&P and DENR was submitted and incorporated into the final order, the Water Management Board set the outlet elevation at 1687.5 fmsl. In the adopted Findings of Fact, Conclusion of Law and Final Order, No. 4 of the Final Order the Water Management Board stated:

4. Based on the unique circumstances of this particular matter as well as the configuration of the outlet and its location, neither GFP nor anyone else may construct any outlet structure at 1687.5 or any other elevation unless approval is granted by this Board. Further, the entire outlet configuration must be analyzed and approval of this Board must be obtained before any structural changes, excavation of the hard bottom of this channel, or change in location of the outlet is undertaken that would impact the Ordinary High Water Mark, if one is established, or would otherwise affect the stage, level, or flow of Lake Thompson or the waters of the state.

Since the 2013 Water Management decision, no outlet configuration analysis work has been done.

Following a review of Dr. Knight's proposal and the Final Order of the Water Management Board by Water Rights staff and the Chief Engineer, it was determined any excavation of sediment and vegetation at the outlet area allowing the outlet area to pass more water would have an effect on the configuration of the outlet and stage, level, and flow of Lake Thompson and waters of the state, and therefore, the issue needs to be heard by the Water Management Board per their Final Order as adopted in 2013.

During the site visit, I informed the individuals in attendance they would need to take their request to modify the outlet to the Water Management Board. I told them they should submit a plan on what they proposed to do, including the location, the depth, width, and length of the excavations. I suggested they should have engineering plans and analysis demonstrating the proposal would provide a benefit by moving more water but without causing issues downstream. I reminded them there were several downstream counties in addition to the two state departments that were part of the stipulation agreement that need to be consulted in this issue.

They asked when the Water Management Board would be able to consider this issue. I told them likely it would be at the scheduled October 2019 meeting. I did mention they could request a

special hearing. I also advised the individuals to contact the US Army Corps of Engineers Regulatory Office to determine whether or not a 404 permit would be required to perform the excavation work they are proposing.

Following the site visit, I and the other DENR engineer obtained lake levels for Lake Thompson. The 07-11-2019 lake elevation was 1693.91 fmsl. This level is 0.4 feet higher than what was measured on 05-30-2019. The previously highest recorded lake level was taken on 05-04-2011 at 1693.86 fmsl, which is 0.05 feet lower than this most recent level.

A handwritten signature in black ink, appearing to read "Mark D Rath". The signature is fluid and cursive, with the first name "Mark" and last name "Rath" clearly distinguishable.

Mark D Rath
Natural Resources Engineer

No. 707-3

The Water Management Board conducted a hearing on Kingsbury County's motion to allow maintenance of the Lake Thompson outlet on September 11, 2019. The Board's order is being placed in the administrative record for Vested Water Right No. 707-3. The administrative record regarding Kingsbury County's motion has been placed in the "Lakes" file drawer under Kingsbury County. There are also Board minutes for the September 11, 2019 meeting.

RECEIVED

SEP 18 2019

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE	)	FILE # 707-3
ESTABLISHMENT OF THE OUTLET	)	
ELEVATION FOR LAKE THOMPSON	)	ORDER MOTION FOR EXPEDITED
	)	HEARING
IN THE MATTER OF VESTED WATER	)	
RIGHT NO. 707-3, SOUTH DAKOTA	)	ORDER ON MOTION TO ALLOW
DEPARTMENT OF GAME FISH AND	)	MAINTAINENCE OF LAKE
PARKS	)	THOMPSON OUTLET
	)	

WHEREAS, Gregg Gass, Kingsbury County State's Attorney, filed Motion to Allow Maintenance of the Lake Thompson Outlet and a Motion for an Expedited Hearing alleging various exigent circumstances; and

WHEREAS, a Special Board Meeting was held on September 11, 2019; and

WHEREAS, a hearing was held during that Special Meeting; and

WHEREAS, Ann F. Mines-Bailey appeared as Counsel for the Water Rights Program; and

WHEREAS, Gregg Gass appeared on behalf Kingsbury County; and

WHEREAS, John Kotilnek appeared on behalf of the South Dakota Department of Game, Fish, & Parks; and

WHEREAS, Gregory A. Protsch appeared on behalf of Minor County; and

WHEREAS, E. John Bruner appeared *pro se*.

NOW THEREFORE, upon consideration of the Motions, the evidence and testimony presented, and the administrative record, the following Order shall be entered in the above captioned action.

It is ORDERED:

1. The Motion for an Expedited Hearing is GRANTED.
2. The Motion to Allow Maintenance of Lake Thompson is GRANTED, for ordinary maintenance, subject to DENR's approval of a proposal demonstrating that the maintenance plan does not amount to any structural changes to the outlet or excavation of the hard bottom of the channel. Such plan, at a minimum, will account for measurement, disposal of material consistent with Corps of Engineer's requirements, and any other matter DENR may require for approval.
3. The Order made on the record at the Hearing is incorporated herein and made a part hereof, as if set forth in full herein. Any conflict between the Order as stated on the record and this written Order shall be resolved in favor of this written Order.

Dated this 16th day of September 2019.

BY THE BOARD:

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

James Hutmacher
Chair

South Dakota Water Management Board



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

October 11, 2019

707-3

Gregg Gass
Kingsbury County State's Attorney
202 Calumet Ave SE
DeSmet SD 57231

Dear Mr. Gass,

This letter is in reference to Kingsbury County's proposed Lake Thompson outlet maintenance plan that was submitted to DENR Water Rights Program for our review and comments. Conceptually the plan has merit, but certain items need to be expanded upon to insure the maintenance plan meets the intent of the Water Management Board's 2013 Order for the setting of the outlet elevation for Lake Thompson.

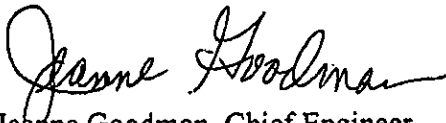
Plans and specifications signed by a South Dakota Registered Professional Engineer would be preferred. Regardless, below is a minimum list of items that need to be addressed in your proposed plan:

- Is Kingsbury County the responsible entity assuring all needed environmental permits are obtained and conditions are met in the field? If not, who will be responsible?
- Who will be the representative of the named responsible entity on-site ensuring the work is done according to the plan and meets the legal requirements?
- There must be a set of plans and specifications showing the reach of channel where the excavation will occur. The plans should include an excavated channel profile indicating the existing and target elevations (in NGVD29) in 50-foot intervals along the length of the excavation. The plans must also include the surveyed depths before and after excavation.
- Will the excavator float on a barge or will it be in the water crawling up the channel as it excavates the sediment? If the excavator is in the water, what measures will be taken to avoid erosion and sedimentation impacts to the water body from disturbed sediments. Any unwanted disturbance of the sediment must be addressed.

- The proposed plan indicates the excavated sediment will initially be deposited on upland along the channel bank. How will the sediment be prevented from washing or flowing back into the channel?
- Regarding the monitoring of outflow increases during the excavation process, the flows must be measured and the water levels surveyed on the culvert. There must be a specific plan as to how such monitoring will occur. There is too much discrepancy in measuring the flows simply by putting a mark so many inches below the top of the culvert. The monitoring plan should address the following: Where will the measurements be taken? How does wind affect the level of the water? What were the flows when the water was flowing four inches, six inches, and nine inches from the top of the culvert, and what were the impacts of those flows downstream of the culvert? What is the expected outflow increase, measured at the 225th Ave culvert, between the initial condition of nine inches below top of culvert and the final target of three inches below top of culvert as proposed?

If you have any questions on the content of this letter and expected information, please contact me or Mark Rath of the Water Rights Program at (605) 773-3352.

Sincerely,



Jeanne Goodman, Chief Engineer
Water Rights Program

- c: Kelly Hepler, Secretary - SD Dept of Game Fish and Parks
Alexis A. Tracy - Clay County States Attorney
Wendy Kloepner - Lake County States Attorney
Greg Protsch - Miner County States Attorney
Katelynn Hoffman - Turner County States Attorney

Lake Thompson Outlet Maintenance Plan

Submitted by Kingsbury County Commissioners

Kingsbury County is proposing to remove vegetation and silt at the legally established outlet of Lake Thompson. The project will remove silt and vegetation to reestablish a 50-60 foot channel at an elevation above the hard bottom and above the legally established outlet level of 1687.5 NGVD 1929 (1693.84 NAVD 1988). The silt and vegetation removal will extend 400 feet above and 400 feet below the outlet. Monitoring of water volume will be done at the culvert bridge at 225th St.

On September 16, 2019, the South Dakota Water Management Board granted a motion by Kingsbury County to allow maintenance of Lake Thompson outlet subject to Department of Environment and Natural Resources "approval of a proposal demonstrating that the maintenance plan does not amount to any structural changes to the outlet or excavation of the hard bottom of the channel".

The location of the Lake Thompson outlet is in the approximate center of the W ½ Section 25, T108N-R55W, Miner County, South Dakota. The location of the outlet was established by Lynn Beck in the 2013 DENR report "Lake Thompson- Kingsbury and Hamlin Counties Establishment of the Outlet Elevation." (Attachment No. 1)

The proposed plan is to remove silt and vegetation to reestablish a 50 foot channel at an elevation above the hard bottom and above the legally established outlet level of 1687.5 NGVD 1929 (1688.45 NAVD 1988). Excavation will stay above the channel cross section that was illustrated by Beck in the report referenced above (Attachment No. 2). The sediment removal area will start 400 feet north of the outlet and end 400 feet south of the outlet. Grade stakes will be placed to mark the hard bottom along the 50 foot channel and up the slope.

A tracked excavator will be used to remove the sediment. The operator has many years of experience removing sediment and can accurately "feel" the difference between hard bottom and sediment. However, to further ensure the hard bottom is not breached, the excavator is equipped with a GPS, laser-grade, visual guidance system. This will allow the operator to enter input parameters such as depth and slope so dig accuracy can stay within an inch of the preset criteria. An in-cab screen shows how far the bucket is from the preset target depth (a horizontal green line) and provides a light bar to help the operator gauge how close he is getting with each pass. If the light bar is green the operator is on grade. If he sees orange or red he needs to back off. When reestablishing the 50-60 foot channel bottom, the depth will be set at 1689.5 NAVD1988

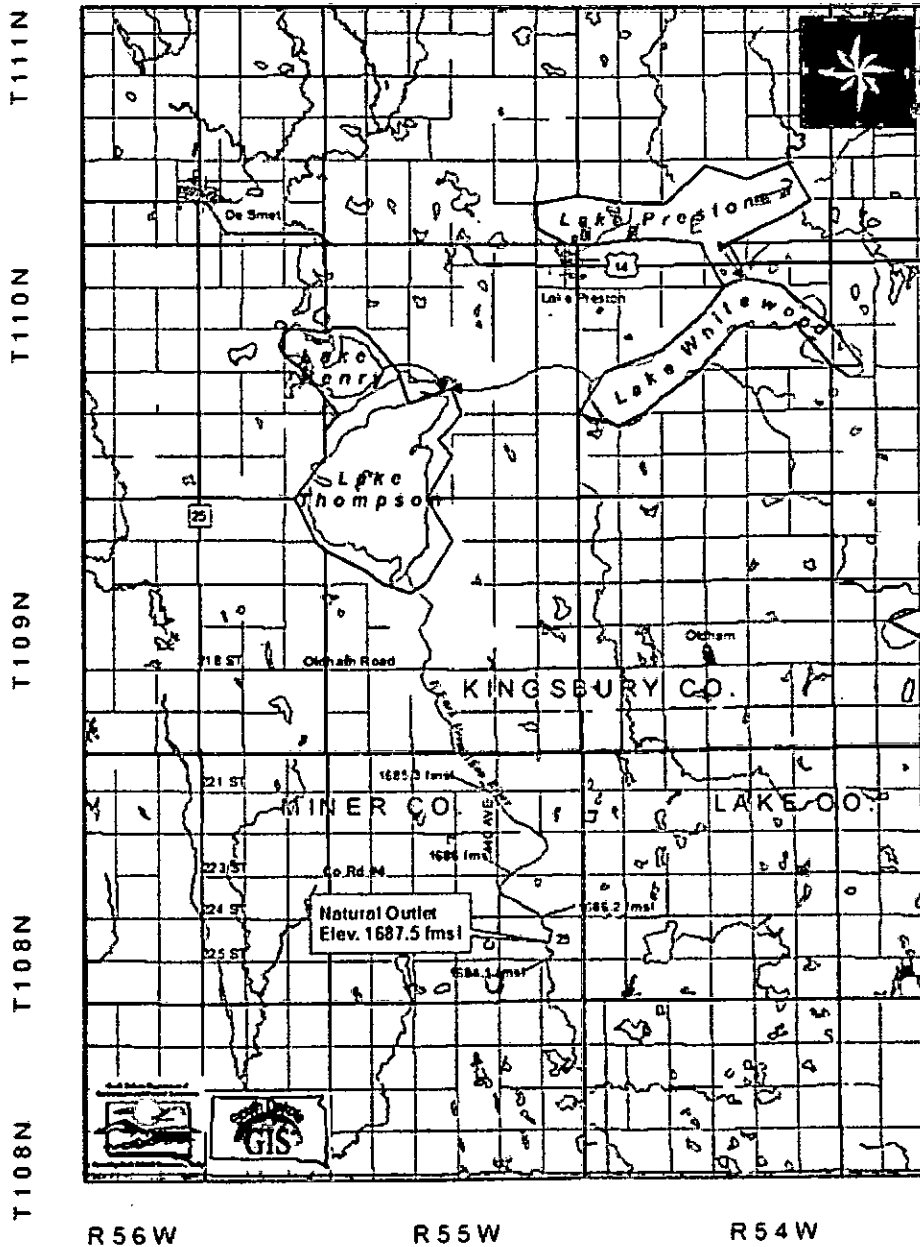
(1688.55 NAVD1929) to keep the excavation at least a foot above the legal outlet level and the hard bottom. Likewise, when the slope is being cleaned, the slope angle will be entered to be sure the bucket stays above the hard bottom. Grade stakes have been placed to indicate the hard bottom along the slope.

Sediment removed will be placed in the upland area adjacent to the excavation area. Landowners are allowing placement of the sediment along the cornfields in a manner that will prevent it from being washed back into the water. After the corn is harvested, the sediment will be spread in the fields. Estimates from a report by CDI Engineering (Lake Thompson Outlet Maintenance Evaluation, August 16, 2019) show a maximum of 1396 cubic feet of sediment and vegetation will be removed from the outlet to 400 ft. north. To the south of the outlet, 868 cubic feet will be removed in the 400 ft. The US Army Corp of Engineers has issued a permit for this maintenance project. *This needs to be done.*

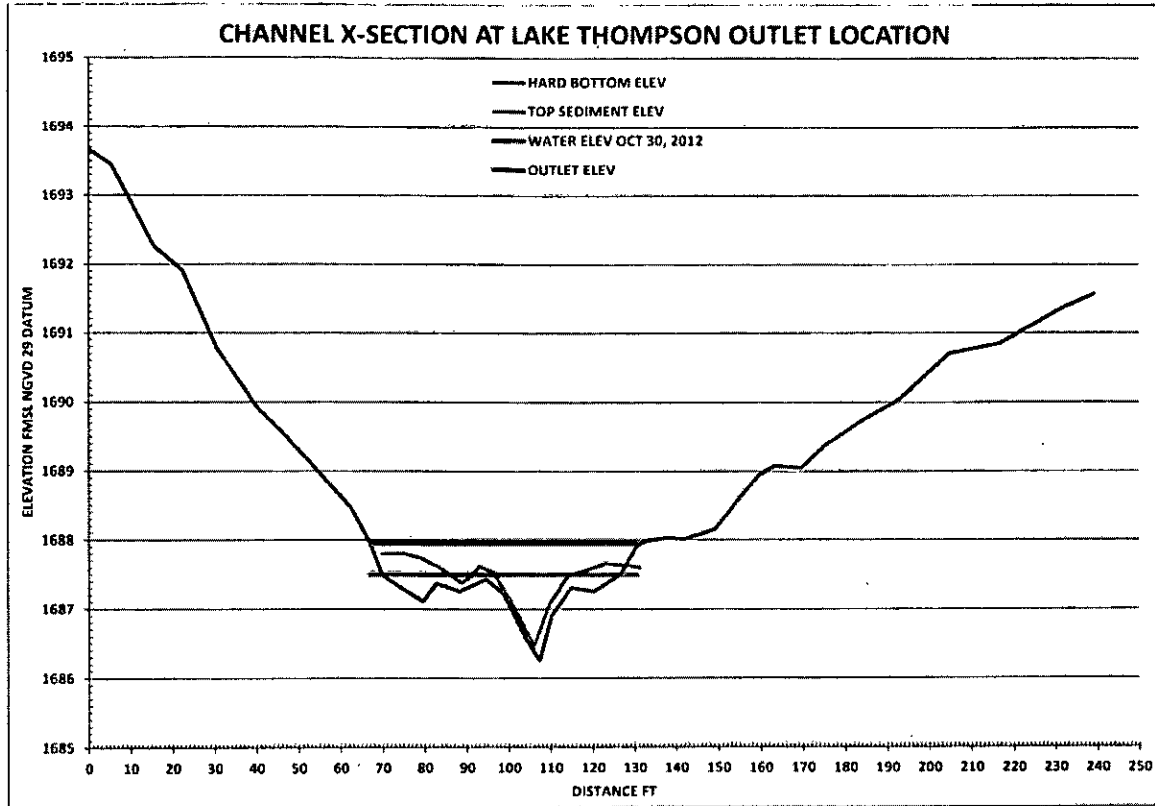
Monitoring of flow increases will take place at the cement culvert at the 225th St. bridge ½ mile south of the Lake Thompson outlet. This monitoring will take place at least hourly during the excavation of the outlet. To ensure downstream flows that increase because of the outlet maintenance do not pose a threat to downstream properties, excavation will cease when the water level increases by over 3 inches. Measurements taken throughout the summer have shown that the maximum, free-of-water opening of the culvert was 12 inches between the water and the top of the culvert opening. Prior to the heavy rain the week of September 9th, it was 9.5 inches. Currently the free-of-water opening is 4 inches. We will not begin excavation until the opening is back to 9 inches. The excavation will continue only when the free-of-water opening is greater than 6 inches and significant rain is not in the forecast.

ATTACHMENT NO. 1

LAKE THOMPSON OUTLET CHANNEL



ATTACHMENT NO. 2



GASS & WOFFICE**ATTORNEYS & ADVISORS****BROOKINGS OFFICE**

212 5th Ave., Ste. 2
 PO Box 486
 Brookings, SD 57006
 TEL 605.692.4277
 FAX 888.688.4378

GREGG A. GASS

JARED I. GASS
 ATTORNEYS AT LAW
 EMAIL gregg@gasslawoffice.com
 EMAIL jared@gasslawoffice.com

DeSMET OFFICE

202 Calumet Ave.
 PO Box 35
 DeSmet, SD 57231
 TEL 605.854.3224
 FAX 888.688.4378

Reply to DeSmet Office

November 8, 2019

Dear Ms. Goodman,

This letter is in reference to your October 11, 2019 letter concerning the plan for maintenance of the Lake Thompson outlet. We want to meet the intent of the Water Management Board's 2013 Order for the setting of the outlet elevation for Lake Thompson and the intent of the 2019 Order to allow for maintenance of the outlet.

Plans and specifications have been signed by Mr. Jason Peterson, a South Dakota Registered Professional Engineer in his report entitled Lake Thompson Outlet Maintenance Evaluation (August 16, 2019) which was presented at the Water Board Hearing on September 11, 2019. However, further measurements and surveys have been conducted to develop the plans and specifications you have requested in your letter of October 11, 2019.

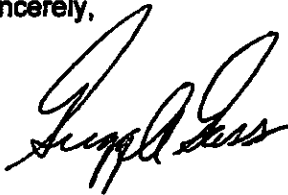
Below is a list addressing your questions/concerns related to our proposed plan:

- Kingsbury County is the entity responsible for ensuring all needed environmental permits are obtained and conditions are met in the field.
- Dr. James Knight will be the on-site entity ensuring the work is done according to the plan and meets the legal requirements.
- We have attached a set of plans and specifications. Figure 1 shows the reach of the channel excavation. Figure 2 shows the channel profile before and after excavation using cross-sections at 50-foot intervals along the length of the excavation. These indicate the survey of the existing depths (in NGVD29) and the target elevations (in NGVD29) after excavation.
- The excavator will work from shore on both sides of the outlet. Only material that can be reached from shore will be removed so there will be no erosion or sediment issues.
- Sediment and vegetation will be placed along the corn fields in a manner that the slope and distance from the water edge will prevent washing or flowing back into the channel.
- The purpose of the outflow monitoring is to ensure downstream flows do not cause increased flooding. Our methods of measurement and monitoring are extremely conservative. Monitoring of outflow will take place at the 225th St. culvert bridge. Wind from the south will have very little effect on the level of the water because of the windbreaks from that direction. Wind from the north could increase the flow of water and, if extreme, may cause a reading which could delay starting the project or cause excavation work to be stopped. At the current time the culvert is full to its maximum capacity of 6' from the bottom to the top of the culvert. According to the hydraulic data

sheet the peak flow is 1679 cfs. At 5.6' deep (or 4" inches from the top of the culvert) the flow is 1200 cfs. So when the water is 4 inches from the top of the culvert flow is estimated at 1360 cfs. At 6 inches it is 1200 cfs and at 9 inches from the top of the culvert the estimated flow is 960 cfs. With the maximum flows which have been occurring for the past 2 weeks, the downstream roads are still flooded as they have been since late May. Further downstream (beyond the Montrose area) the East Vermillion River is now within it's banks. We will not begin our work until the water level is 9 inches below the top of the culvert (960 cfs) and work will cease when/if the level increases to 6 inches below the top of the culvert (1200 cfs). (Not 3 inches below the top of the culvert as stated in your letter.)

If you have any questions, please let us know.

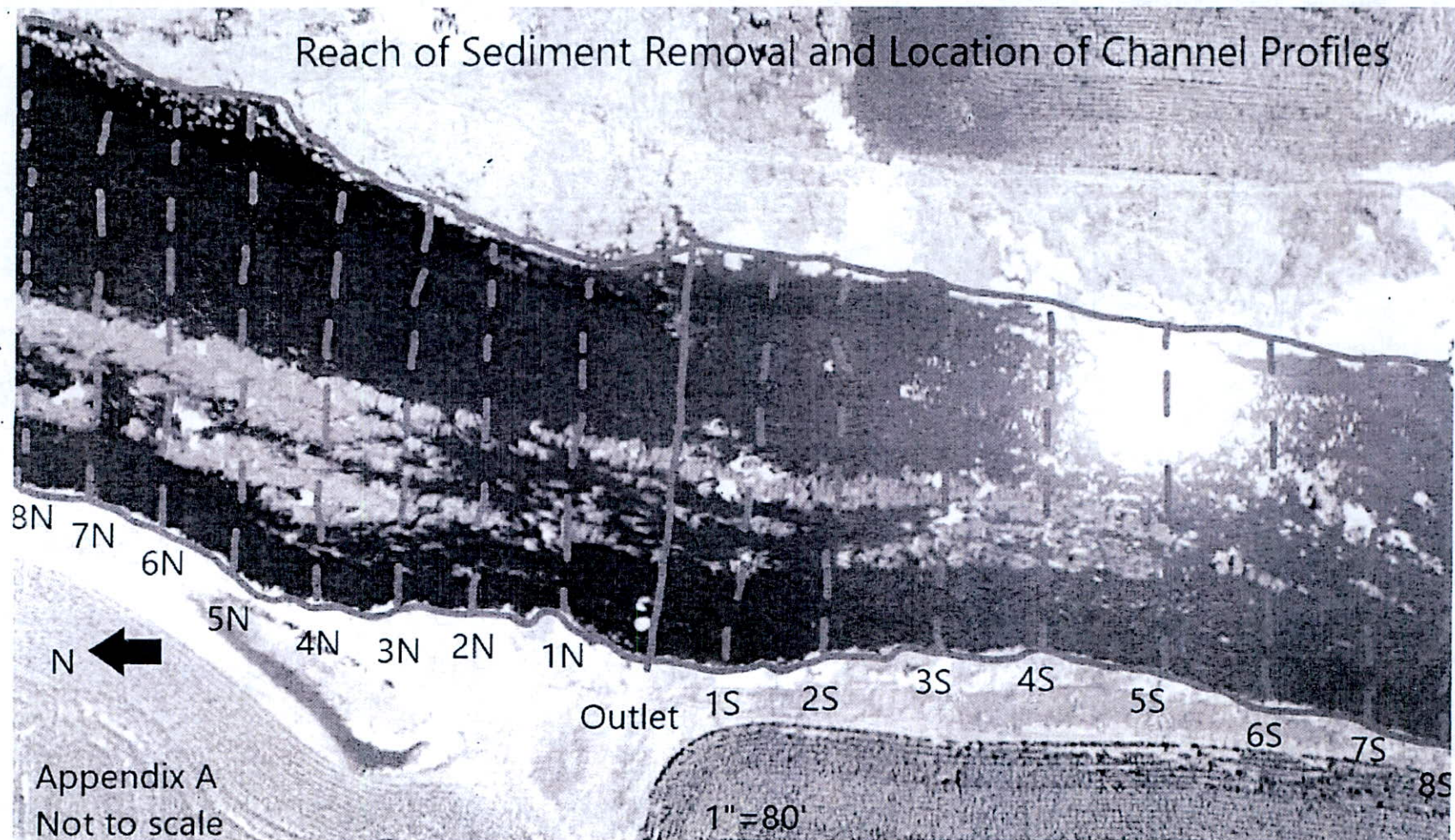
Sincerely,

A handwritten signature in black ink, appearing to read "Gregg A. Gass". The signature is fluid and cursive, with a large initial "G" and "A".

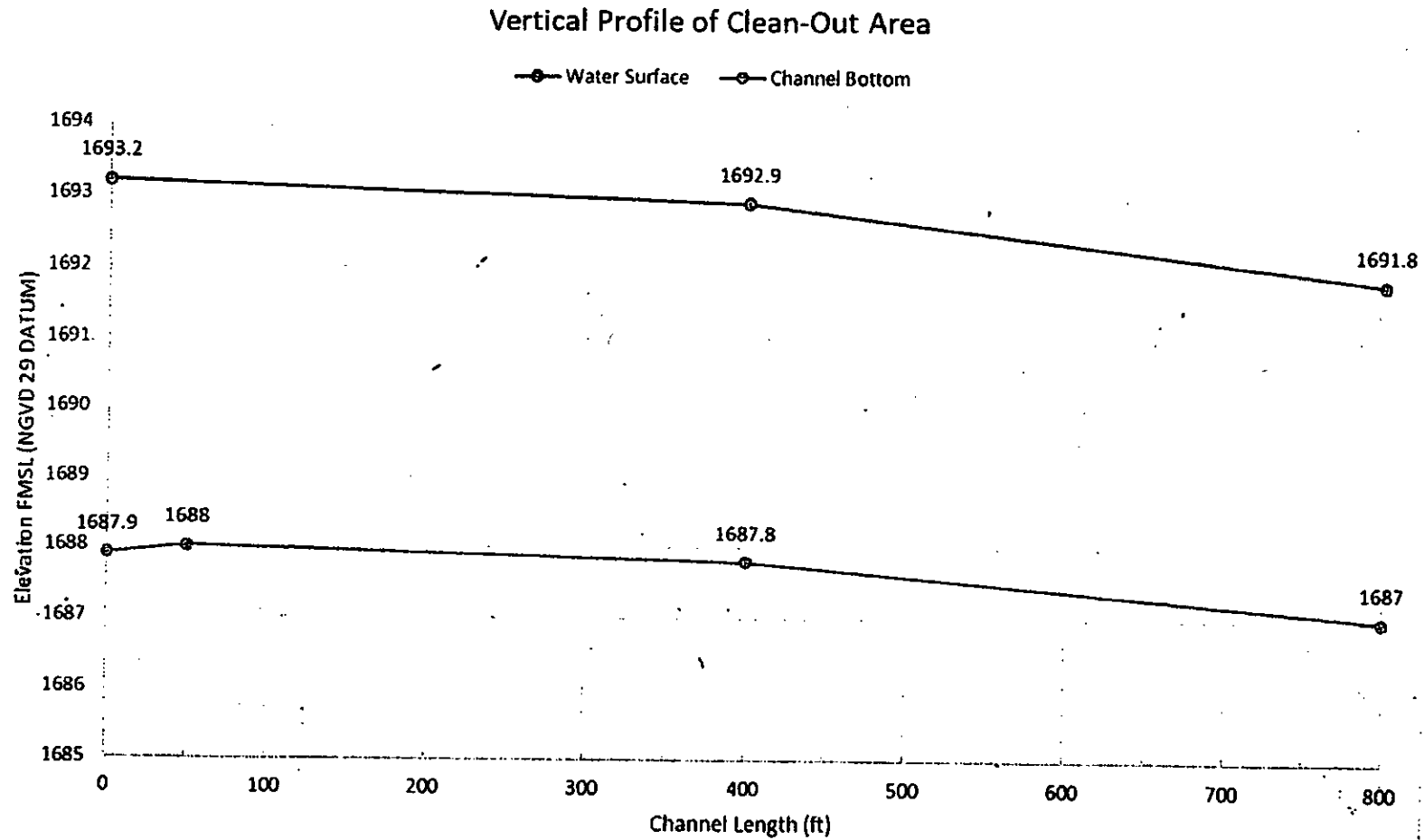
Gregg A. Gass
Attorney at Law

GG:ap

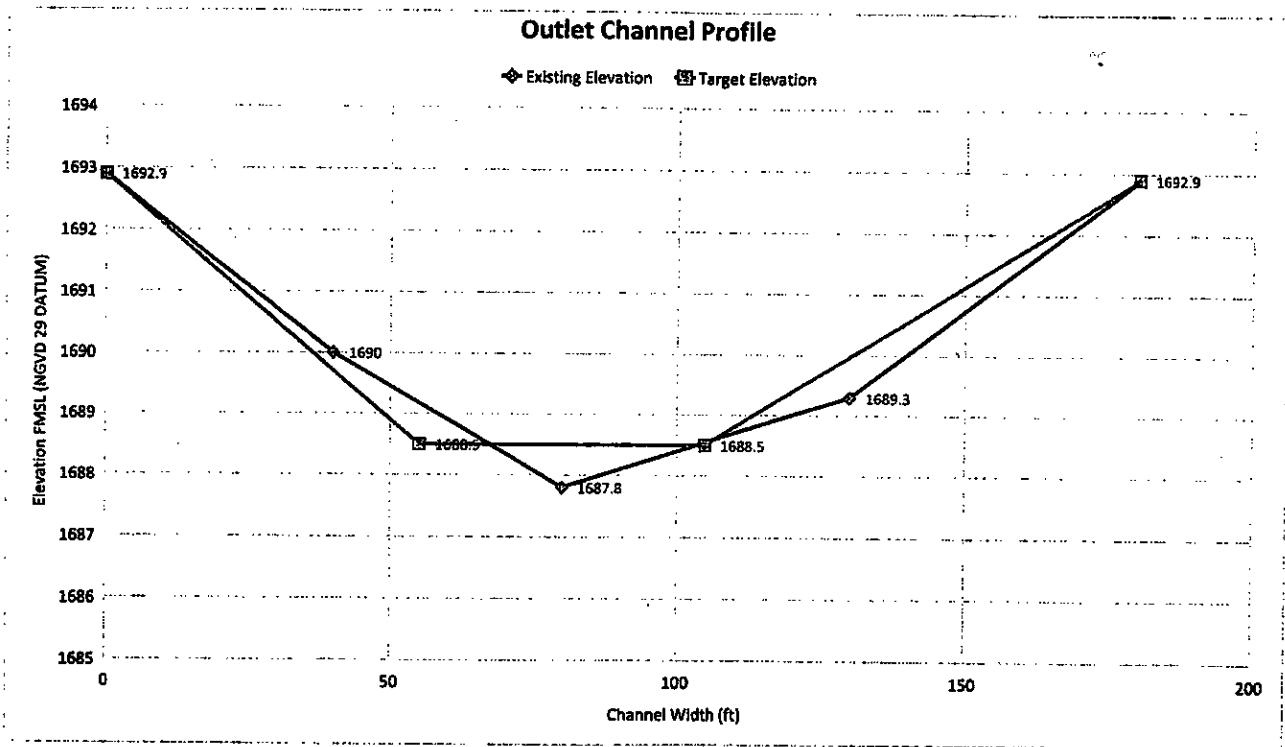
APPENDIX A. Reach of Sediment removal area and location of cross-channel profiles.



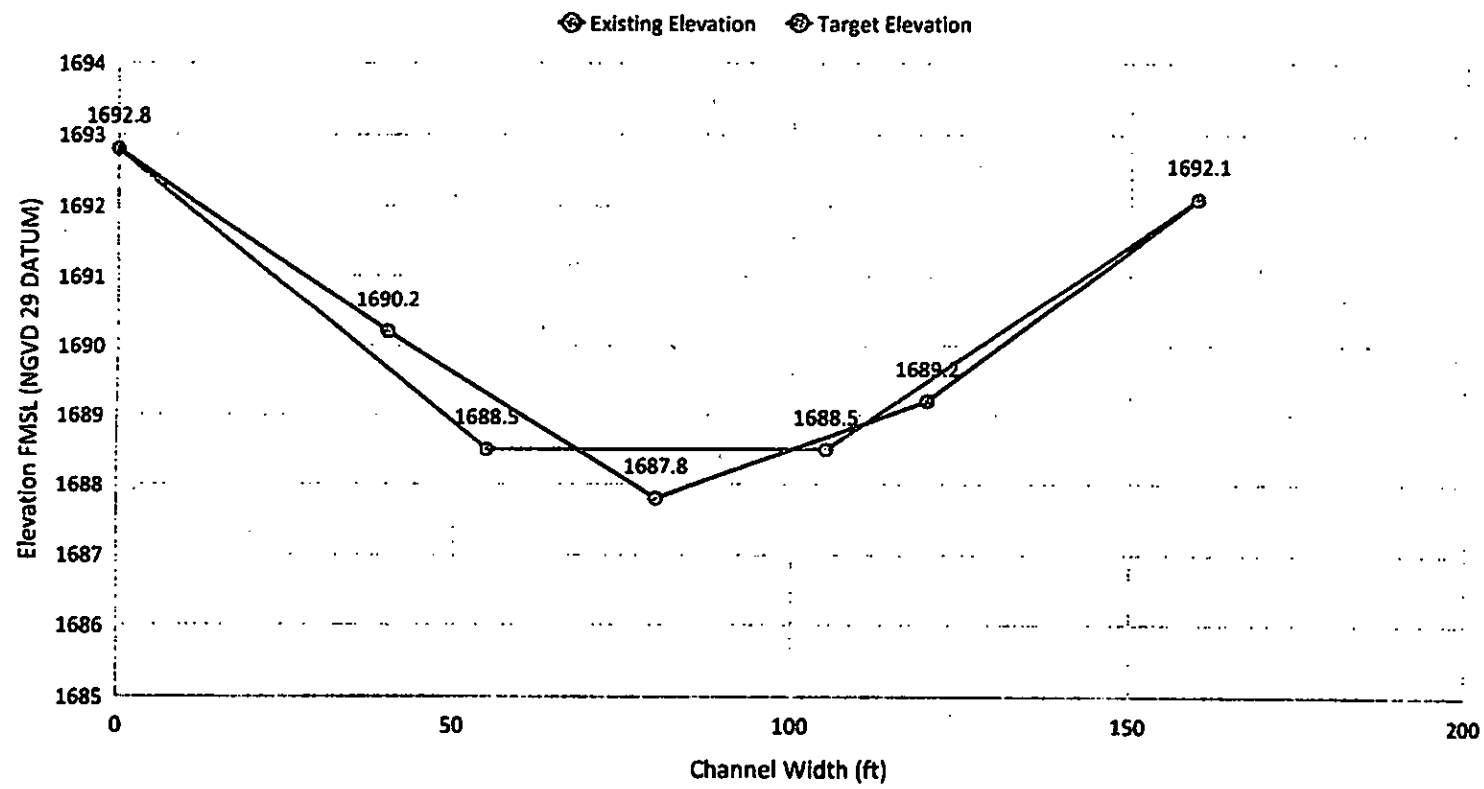
APPENDIX B. Vertical profile of clean-out area.



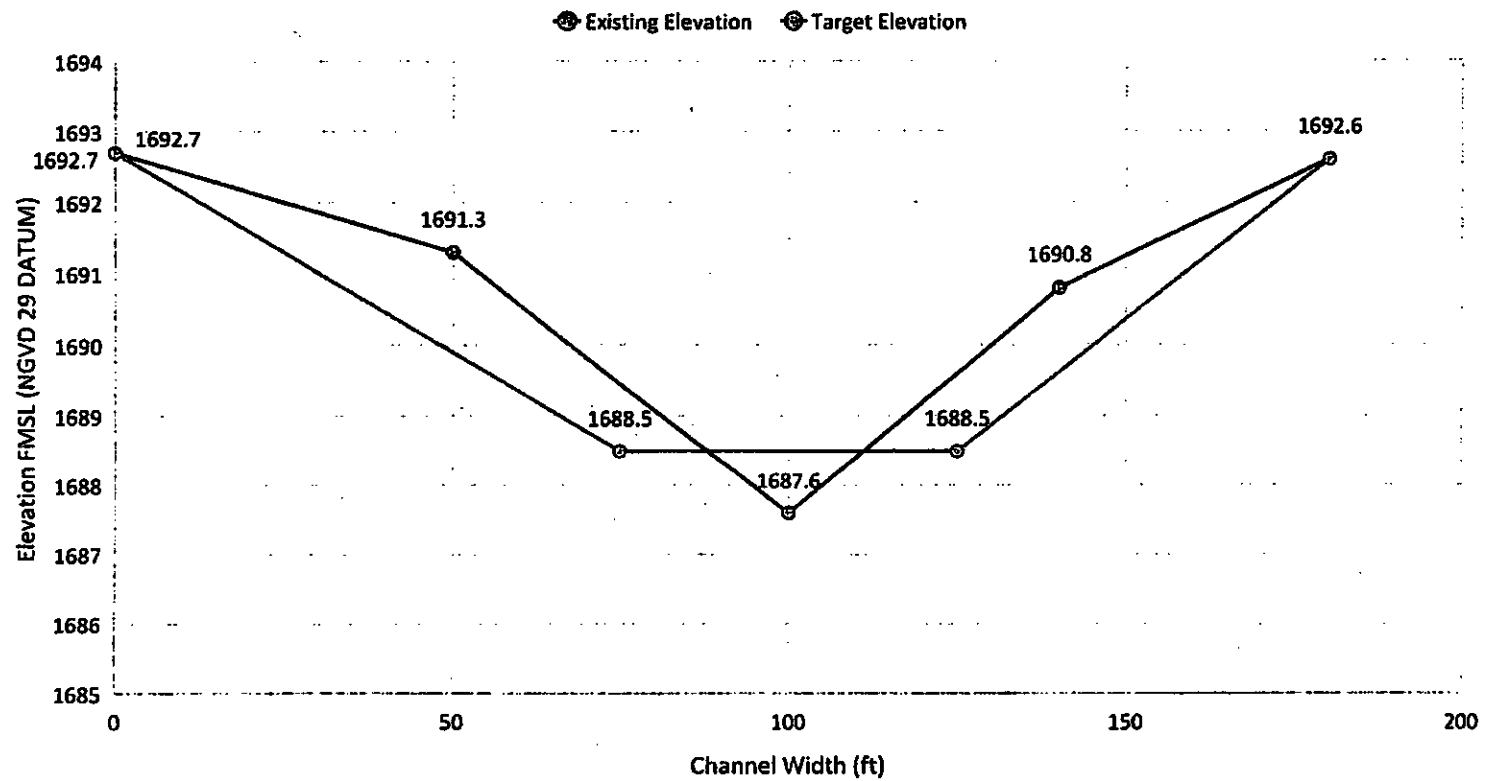
APPENDIX C. Channel cross-section profiles.



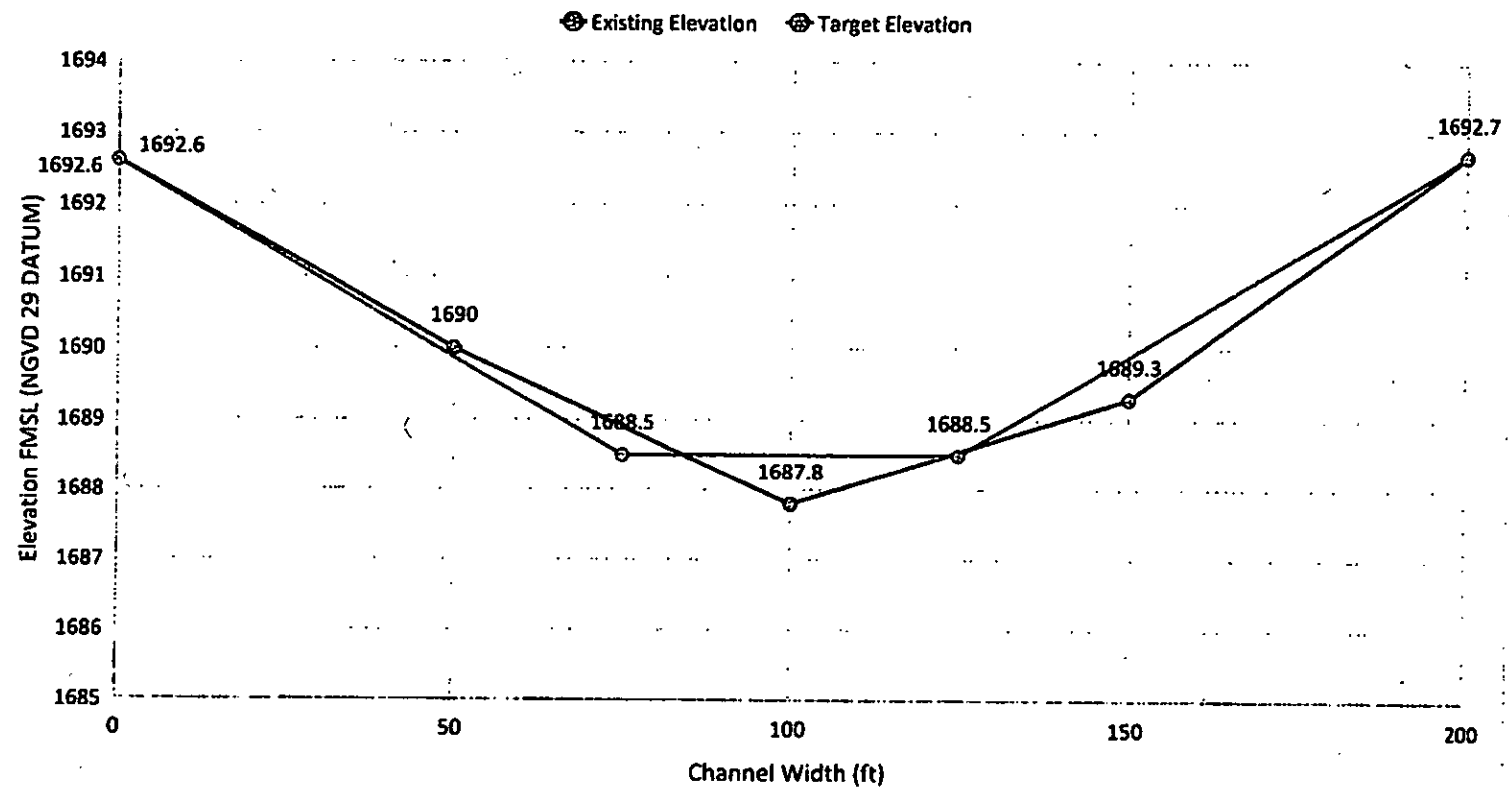
1N Channel Profile



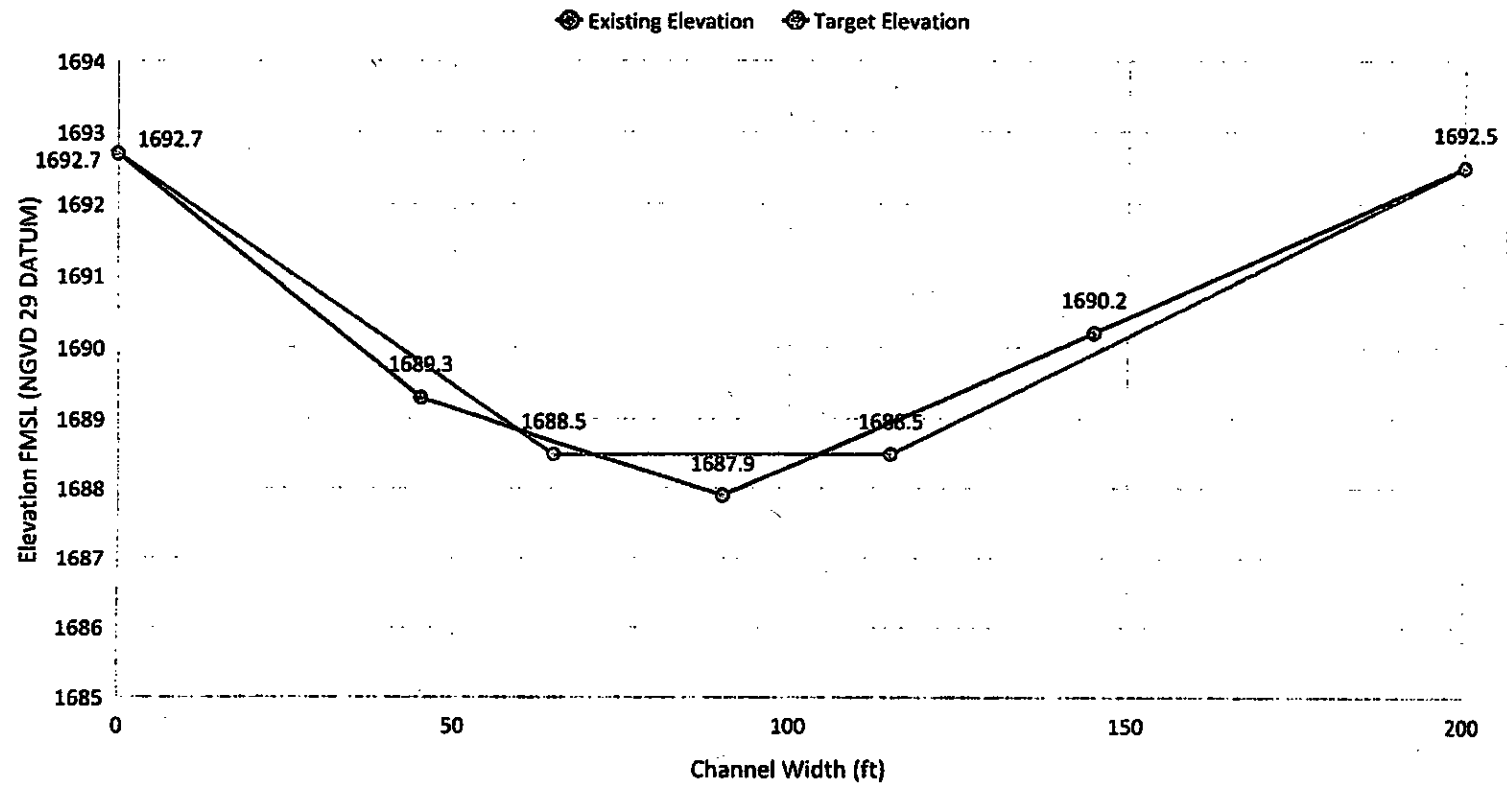
2N Channel Profile



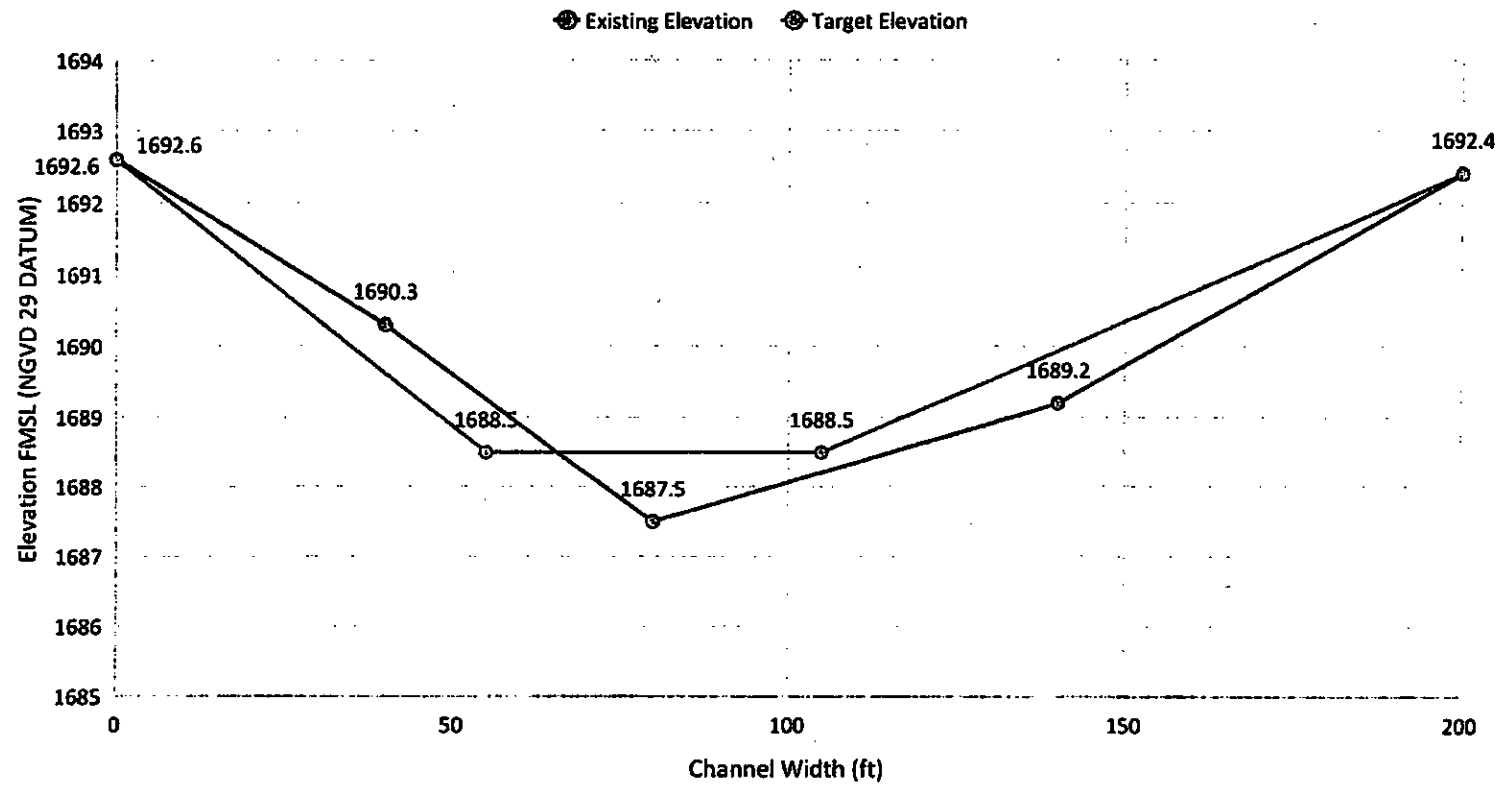
3N Channel Profile



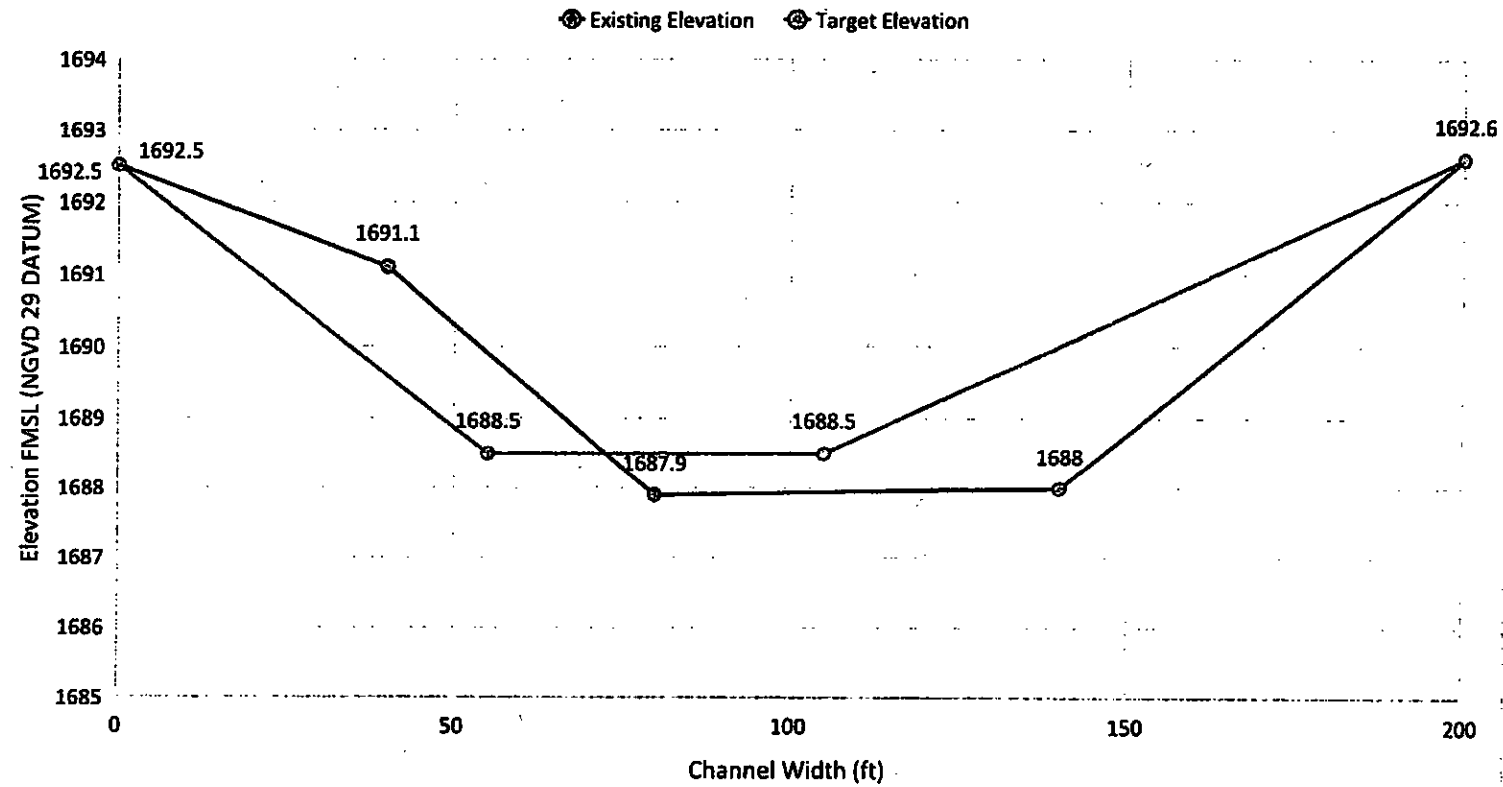
4N Channel Profile



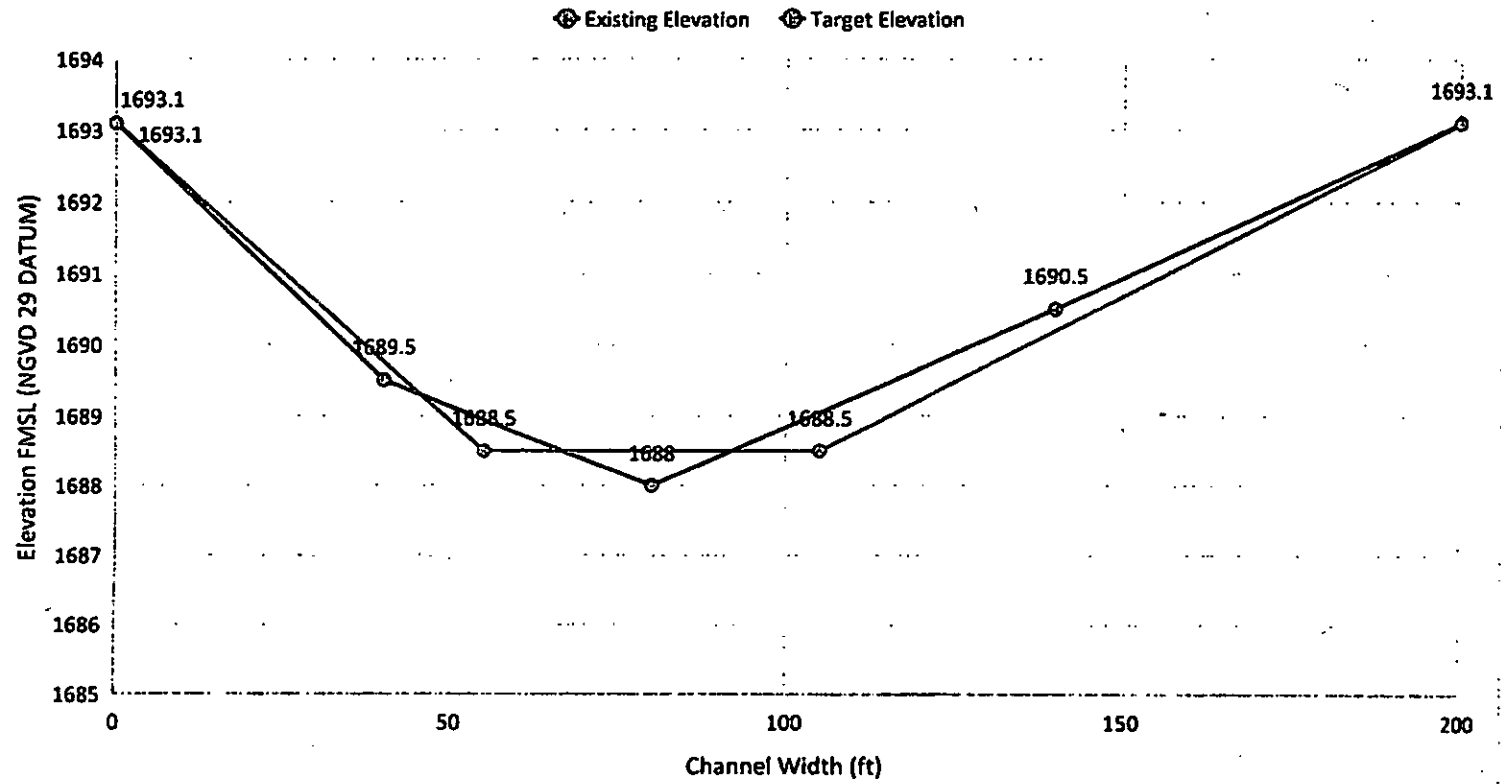
5N Channel Profile



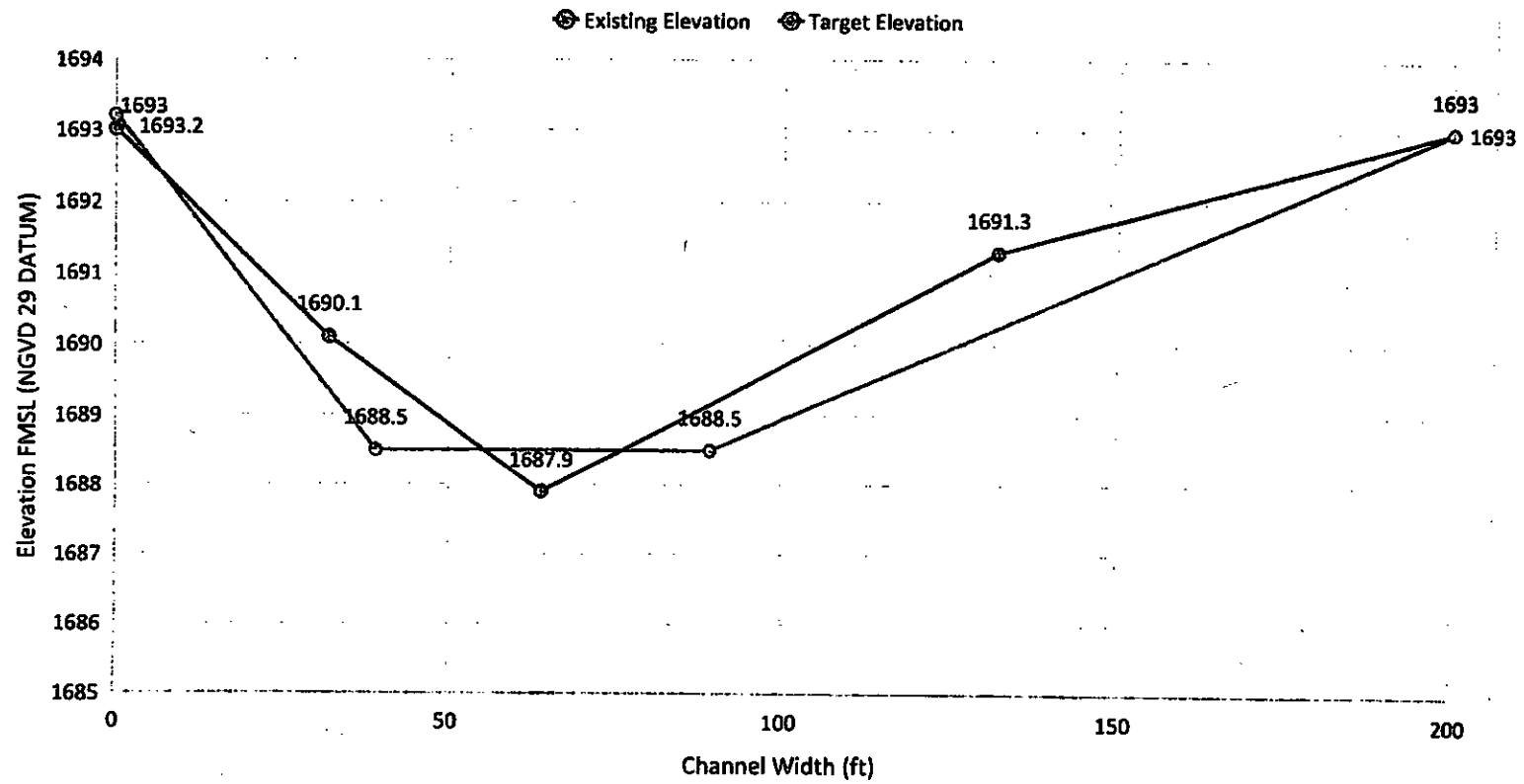
6N Channel Profile

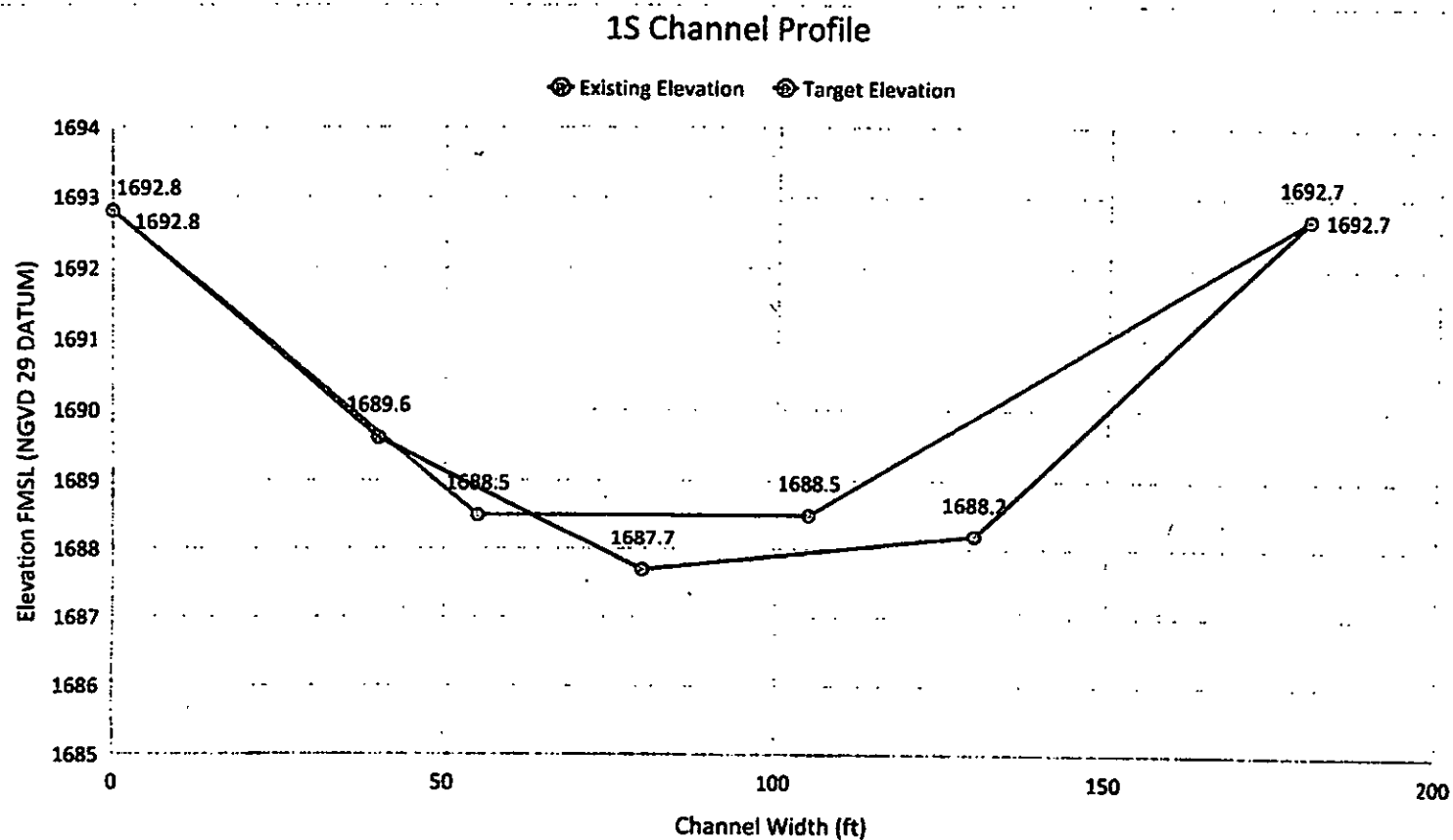


7N Channel Profile

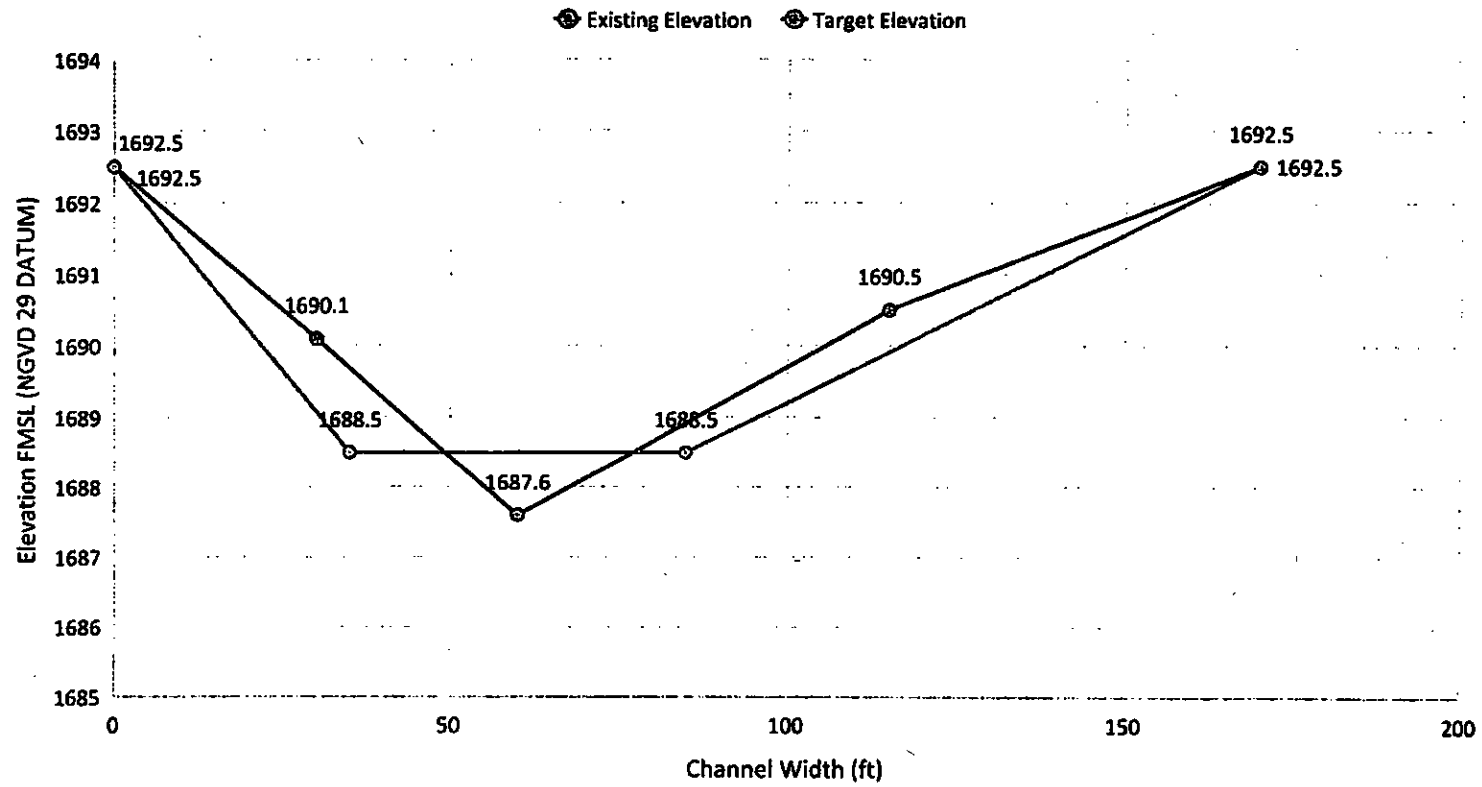


8N Channel Profile

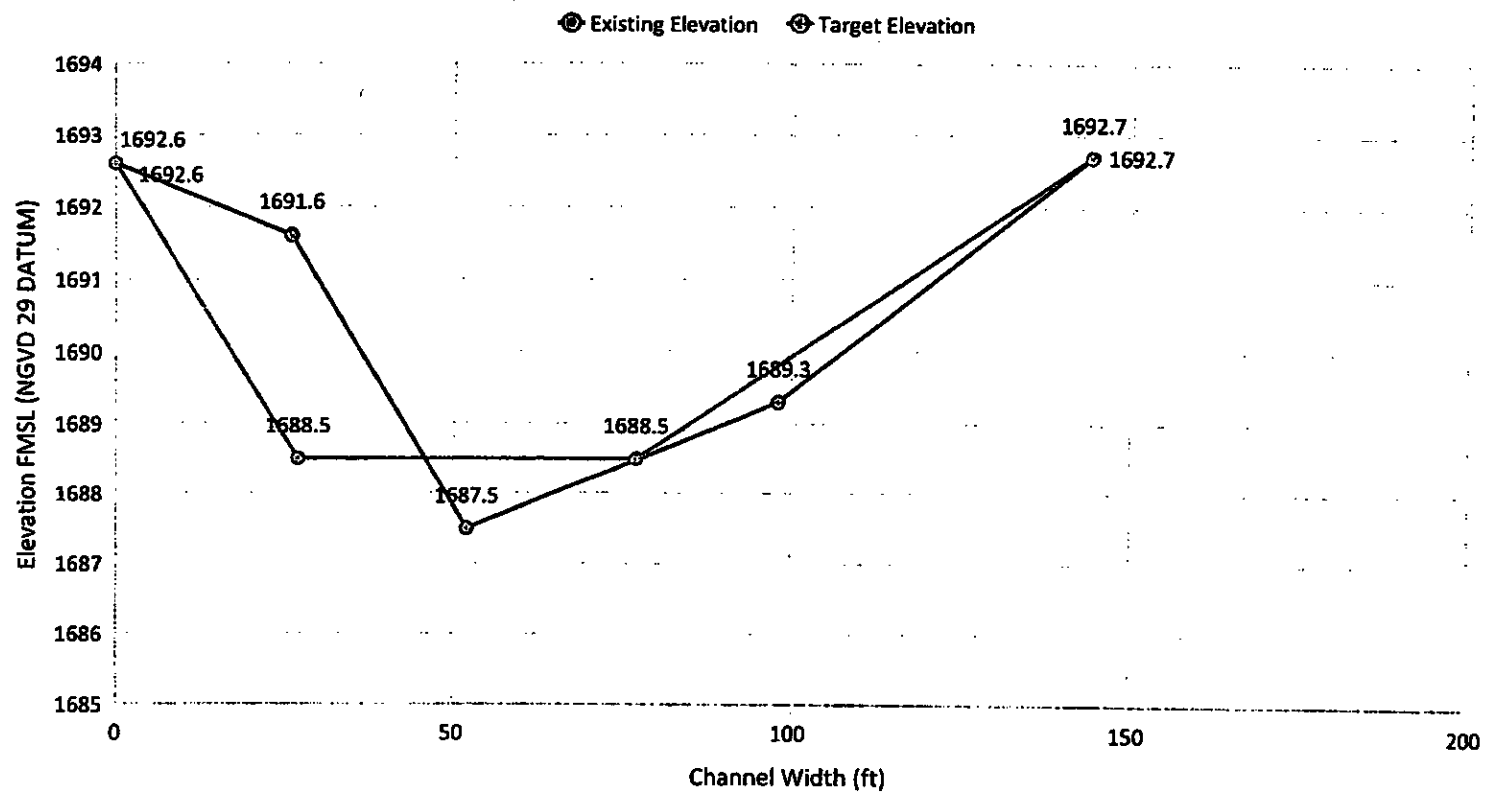




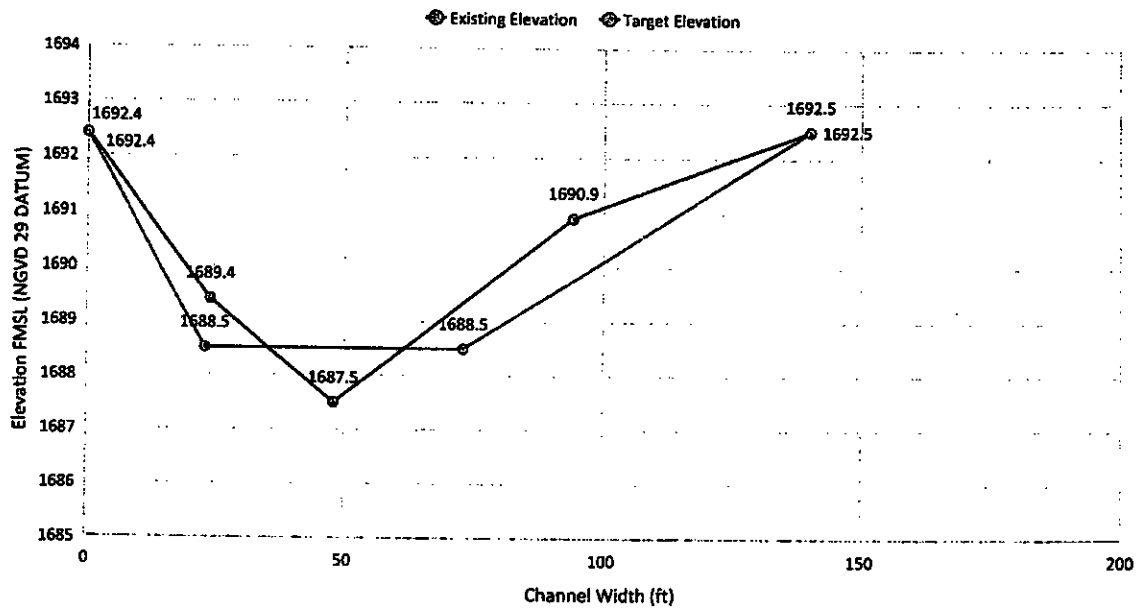
2S Channel Profile



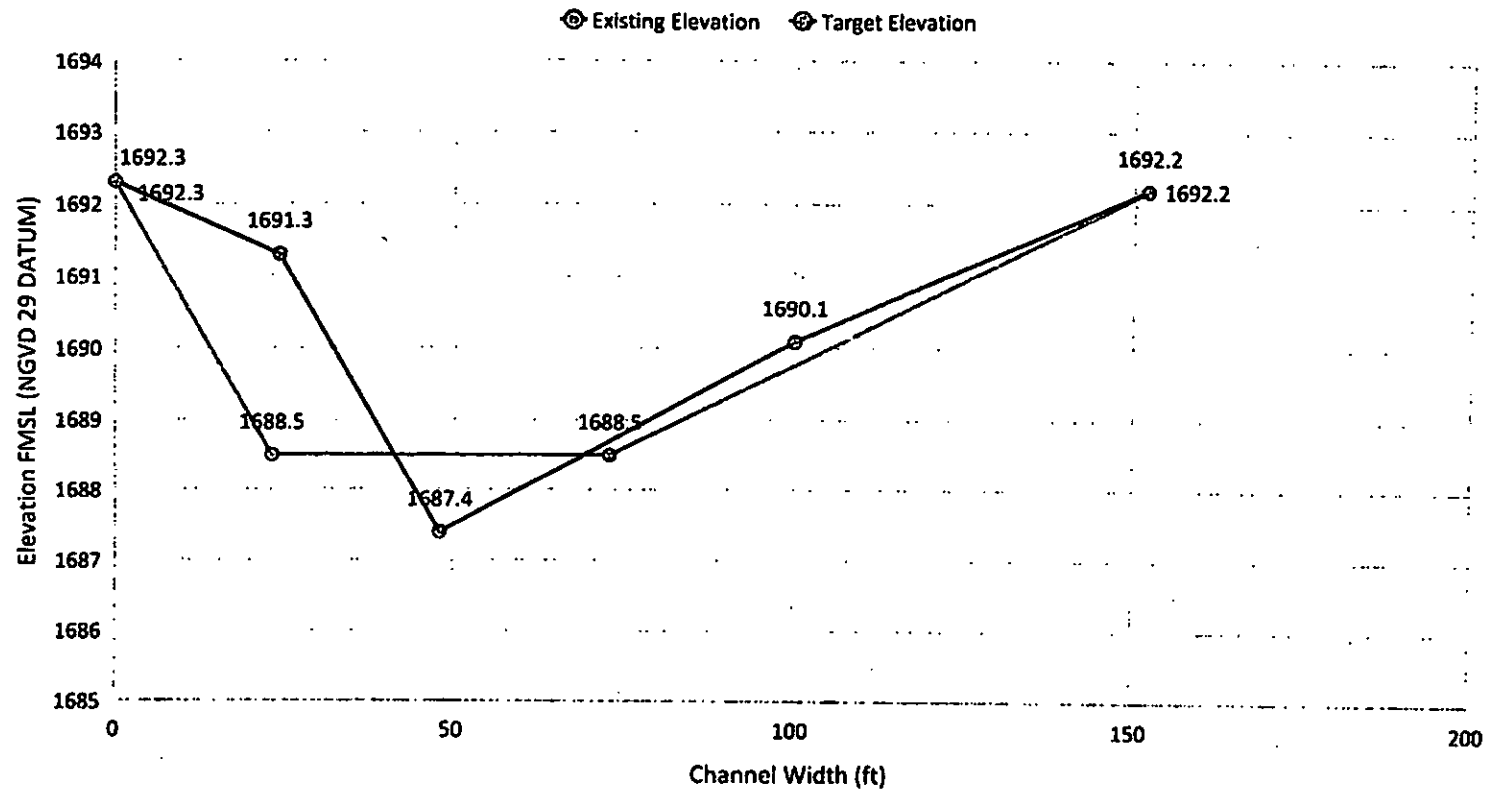
3S Channel Profile



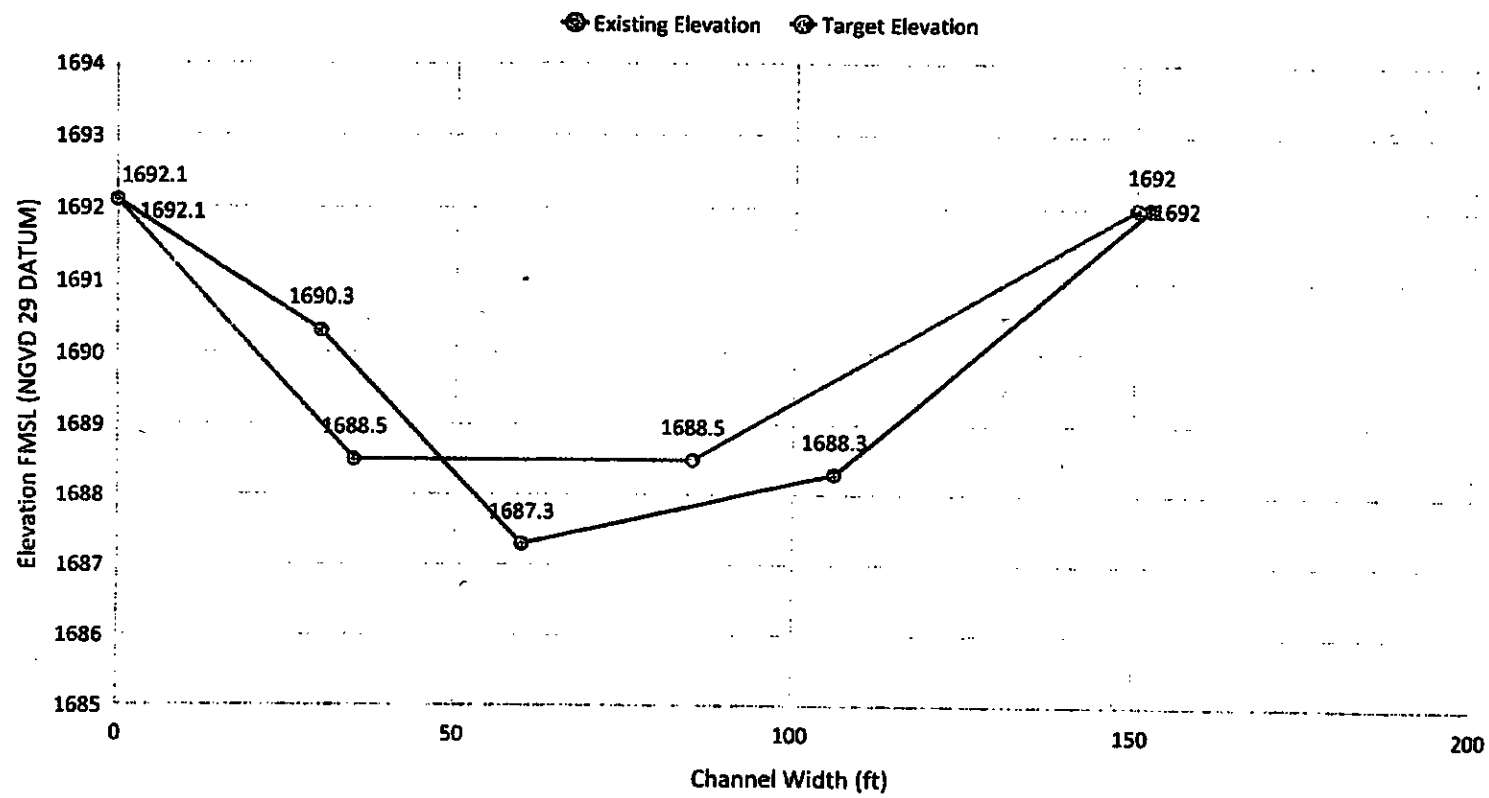
4S Channel Profile



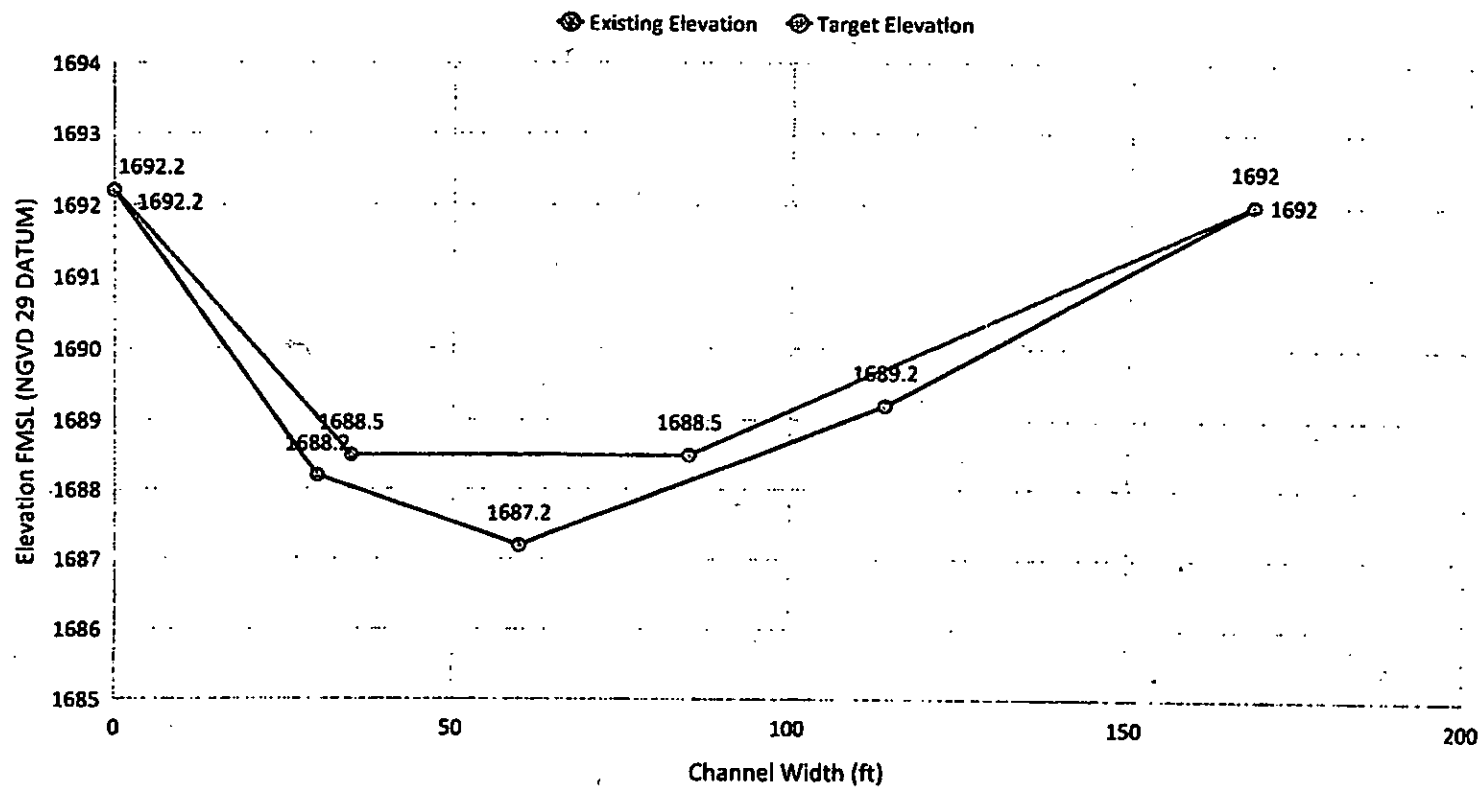
5S Channel Profile



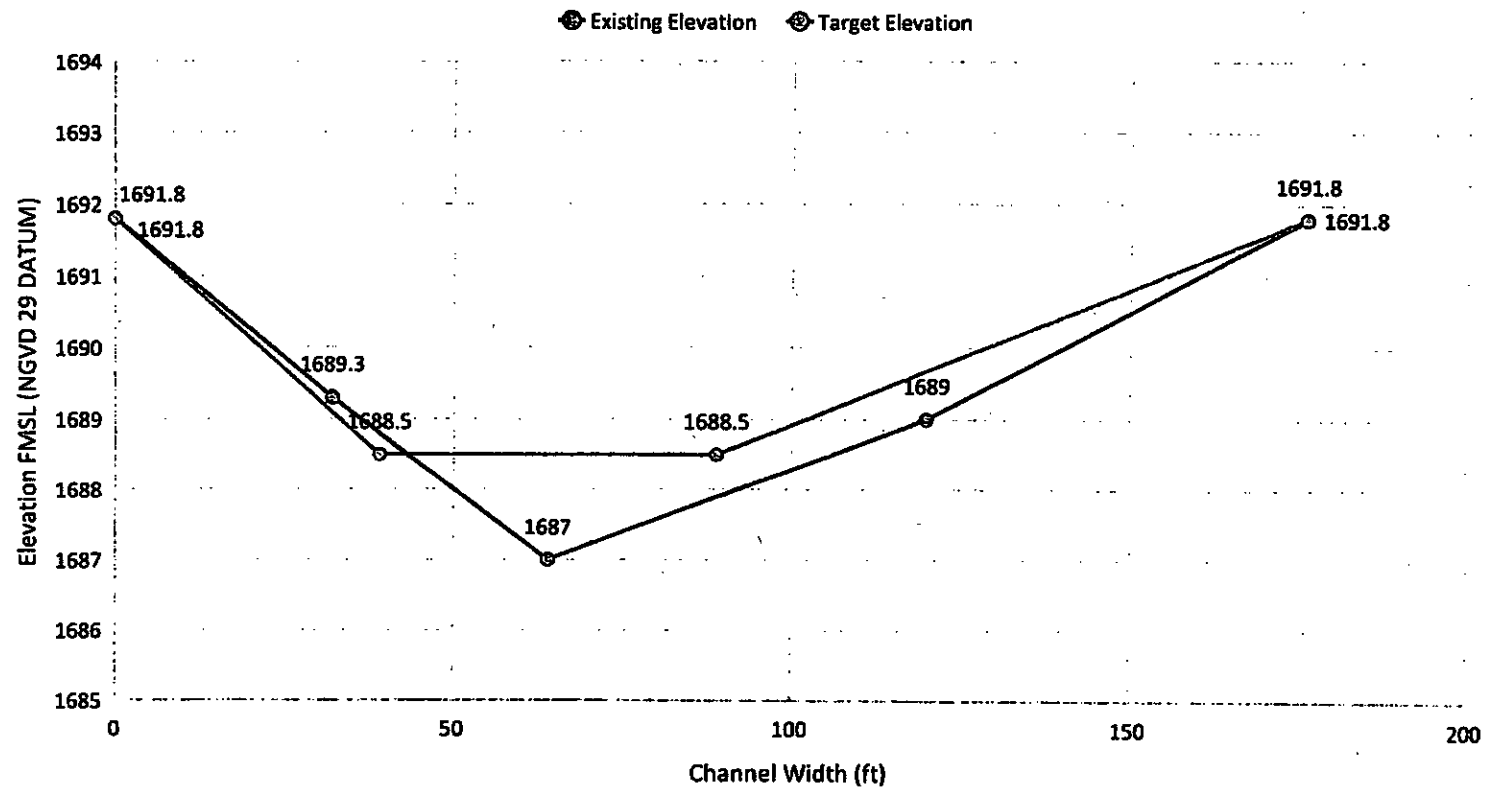
6S Channel Profile



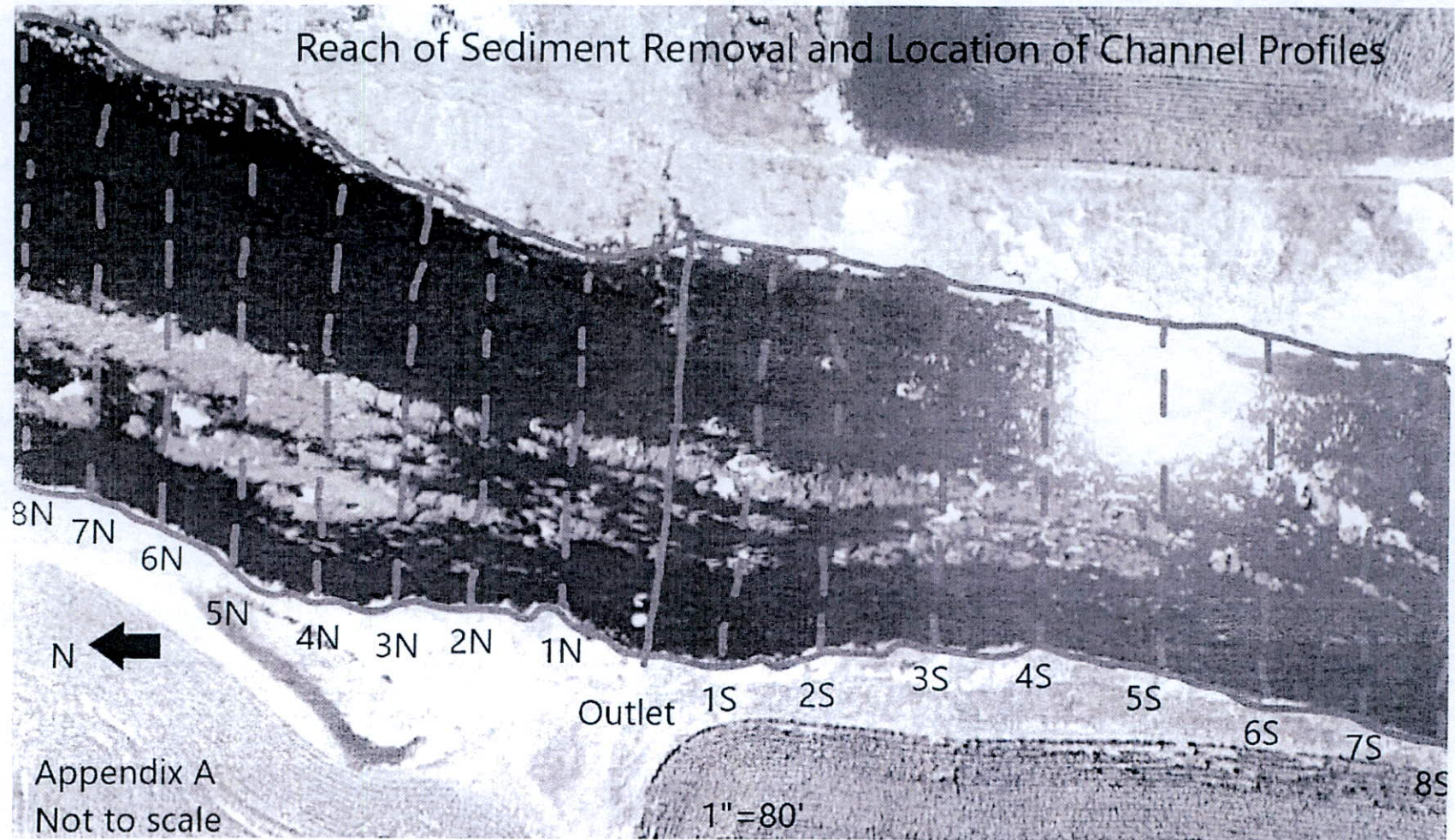
7S Channel Profile



8S Channel Profile



Reach of Sediment Removal and Location of Channel Profiles





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

November 20, 2019

707-3

Gregg Gass
Kingsbury County State's Attorney
202 Calumet Ave SE
DeSmet SD 57231

Dear Mr. Gass,

This is in response to your November 8, 2019, letter with the attached addendum to the Kingsbury County's Lake Thompson outlet maintenance plan which was previously submitted to DENR Water Rights Program on October 8, 2019. You recall the Order by the Water Management Board on September 16, 2019, granted the Motion to Allow Maintenance of Lake Thompson "for ordinary maintenance, subject to DENR's approval of a proposal demonstrating that the maintenance plan does not amount to any structural changes to the outlet or excavation of the hard bottom of the channel. Such plan, at a minimum, will account for measurement, disposal of material consistent with Corps of Engineer's requirements, and any other matter DENR may require for approval." As noted in the letter dated October 11, 2019, in response to your first proposal, and in accordance with the Board's Order dated September 16, 2019, the County must present precise plans and specifications which include measurements, calculations, and schematics before approval can be granted. While your submission does include some of the information requested in my October 11, 2019, letter, the plan still lacks the necessary engineering details, which are essential.

In short, what is needed for DENR approval is construction plans and specifications, that can be easily understood and followed by a contractor in the field. At a minimum, the construction plans must be marked with grade stake identifiers for the contractor to refer to, so it can be determined the depth and the amount of sediment to be removed at each site. The specs must also include the elevation restriction below which there will be no excavation and that the hard bottom must not be disturbed. It is particularly concerning that the current proposal lacks notation or designation of the hardpan which, by order, cannot be altered. It is understood the contractor may be an experienced operator with laser and colored "warning" beams, but the operator must have the official plans and specs to know where exactly, they are supposed to set the equipment.

Concerning the contractor's removal of sediment from the channel, the plans must identify where the removed sediment will be placed and specifications, location, and installation of the sediment control structures to prevent the material from re-entering the water. It is likely the sediment will be fluid and must be contained. I understand that you have been in contact with the Army Corps of Engineers and have submitted a plan regarding the sediment for their review. It is possible that the materials which you submitted to the Corps would answer the questions which remain regarding the removed sediment.

In response to your bulleted items:

- As the responsible entity Kingsbury County will be accountable to ensure all conditions are met in the field, including controlling sediment runoff, not allowing any excavation below the hard bottom or elevation specified, and measurements taken to cease work when the outflow reaches the agreed upon level.
- Dr. Knight has been designated to represent the county on-site ensuring the work is done according to the plan, and the work meets the Board's Order. The county holds Dr. Knight responsible for meeting the requirements of the Board's Order and the commitments provided in the plan. Dr. Knight, or a county-designated responsible person, must always be on-site during work to ensure the contractor follows the approved plan.
- The cross-sectional plans do not indicate who conducted the measurements, at what grade stake locations the measurements were taken, the accuracy of the measurements, or the depth of the hardpan layer at each cross section. As the plans are currently presented, there is no way to determine reliability. Moreover, during the excavation process sediment removal must cease at the specified elevation or if the hardpan is encountered prior to reaching that elevation to protect the integrity of the channel from erosion. Thus, there must be designations in the plans of the hardpan.
- The proposed plan indicates the excavated sediment will initially be deposited on upland areas along the channel bank. There is no information on the slope, the amount of sediment anticipated, the distance to the channel, or the moisture content of the sediment to determine whether what is placed on the land will be contained and not flow back into the channel. You must submit the design of the sediment control structures or the erosion control measures or both prior to initiating the excavation. Again, these questions may be answered by submission of the documents which were presented to the Army Corps of Engineers.
- In your original plan you presented to the Board, you stated your intent was to increase the flow out of the outlet by 6%. Therefore, once your plan is approved and once the flow in the channel reaches nine inches below the top of the culvert at 225th Street, before any sediment is removed, you must measure the flow using a USGS acceptable flow measurement procedure or request the USGS perform the measurement. Once you have measured the flow, removal may commence in 100-foot channel-length increments. At the completion of each 100-foot increment, the flow must again be measured; if it exceeds 6% increase of the originally

measured flow, sediment removal must cease. If it does not exceed the 6%, sediment removal may continue in 100-foot increments until such time as the 6% flow increase is reached or the 800 feet of channel to be maintained is completed. Your plan must include this procedure for measuring and monitoring the flow. During the September 11, 2019, Special Water Management Board hearing on the matter, there was a discrepancy of approximately 800 cubic feet of water per second between the CDI Engineering modeled flows and the actual USGS and DENR measured flows taken in July and September 2019. We need a more precise determination of what the actual flows are. If you are not able to obtain a contractor to conduct the flow measurements as required above, you may want to contact Chris Laveau, the Hydrologic Data Program Chief for the USGS Dakota Water Science Center. The USGS may be able to assist you in determining flows. Chris's contact information is found below.

- To implement the flow monitoring plan, you must first develop an estimate of the lag time between when you begin sediment removal and when you see the increase in flow reach the culvert at 225th Street. In other words, how long does it take to see the increased flow out of the outlet to stabilize at the 225th Street culvert. Following the process above, the flow must be measured at the 225th Street culvert after the estimated lag time has elapsed from each 100-foot increment before further sediment removal is done. The lag time and how it was determined should be included in your plans and specifications.

If you have any questions on the content of this letter and what is expected, please contact me or Mark Rath of the Water Rights Program at (605) 773-3352.

Sincerely,



Jeanne Goodman, Chief Engineer
Water Rights Program

- c: Kelly Hepler, Secretary - SD Dept of Game Fish and Parks
Alexis A. Tracy - Clay County States Attorney
Wendy Kloepner - Lake County States Attorney
Greg Protsch - Miner County States Attorney
Katelynn Hoffman - Turner County States Attorney

USGS Monitoring Contact: Chris Laveau, Hydrologic Data Chief
USGS Dakota Water Science Center
4575 32nd Ave. S. Suite 6 Grand Forks, ND 58201
(701) 775-7221 Ext. 11
cdlaveau@usgs.gov

GASS aW OFFICE**ATTORNEYS & ADVISORS****BROOKINGS OFFICE**

212 5th Ave., Ste. 2
PO Box 486
Brookings, SD 57006
TEL 605.692.4277
FAX 888.688.4378

GREGG A. GASS**JARED I. GASS****ATTORNEYS AT LAW**

EMAIL gregg@gasslawoffice.com

EMAIL jared@gasslawoffice.com

DeSMET OFFICE

202 Calumet Ave.
PO Box 35
DeSmet, SD 57231
TEL 605.854.3224
FAX 888.688.4378

Reply to DeSmet Office

December 4, 2019

DENR

Attn: Jeanne Goodman, Chief Engineer

Joe Foss Building

523 E. Capitol

Pierre, SD 57501-3182

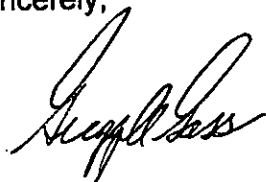
Dear Ms. Goodman:

On September 16, 2019, the South Dakota Water Management Board granted a motion by Kingsbury County to allow maintenance of the Lake Thompson outlet subject to approval by the Department of Environment and Natural Resources (DENR). Discussion which preceded passage of the motion indicates the intent of the Water Board was to allow removal of cattails with a minimal approval process.

Kingsbury County would like permission to cut cattails north of the outlet to improve flow of the floodwater out of Lake Thompson. Cattails will be removed in an area approximately 50 yards wide by 200 yards long beginning at the outlet. Cutting will be done to a depth of 4 feet with a submerged cutter mounted to a flat-bottom boat. Cut vegetation will be loaded onto other boats and hauled to the landing at 224th Street where it will be trailered to the De Smet landfill, subject to final approval by the city. Water level will be monitored at the 225th Street culvert to ensure downstream flow is not excessive.

We would like to initiate the cutting as soon as weather conditions allow. Dr. Jim Knight will oversee the cattail cutting to ensure the above plan is followed.

Sincerely,



Gregg A. Gass
Attorney at Law

GG:ap



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

December 5, 2019

707-3

Gregg Gass
Kingsbury County State's Attorney
202 Calumet Ave SE
DeSmet SD 57231

Dear Mr. Gass,

I approve Kingsbury County's request as proposed in the December 4, 2019, letter to conduct removal vegetation maintenance in the Lake Thompson outlet area. In the request, Kingsbury County intends to cut cattails in the outlet channel in Section 25 T108N-R55W. The request indicates cattails will be removed by use of a flat bottom boat with a submerged cutter.

We understand this maintenance will be completed as follows:

- Vegetation will be cut and removed from the outlet channel from a point located at half mile line of Section 25 T108N-R55W north in an approximate 50-yard-wide by 200-yard-long swath to a depth of 4 feet.
- Dr. Knight or a county designated representative will be present during vegetation removal to ensure the plan is followed.
- Cut vegetation will be removed from the site and trucked to the De Smet landfill for disposal, pending city approval.
- Water levels will be monitored at 225th Street culvert to ensure downstream flow is not excessive.

This approval does not authorize any sediment removal. If the County will provide a summary of the maintenance work that is completed including the water level measurements, I will update the Water Management Board of the work. If you have any questions on the content of this letter, please contact me or Mark Rath of the Water Rights Program at (605) 773-3352.

Sincerely,


Jeanne Goodman, Chief Engineer
Water Rights Program

Cc: John Kotilnik, SD Dept. of Game, Fish, and Parks



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 16, 2020

707-3

Gregg Gass
Kingsbury County State's Attorney
202 Calumet Ave SE
DeSmet SD 57231

SUBJECT: Approval of Lake Thompson Vegetation and Sediment Removal Plan with Conditions

Dear Mr. Gass,

This is in response to your June 8, 2020 letter regarding Kingsbury County's Lake Thompson outlet maintenance plan. The Water Management Board's Order dated September 16, 2019, granted Kingsbury County's Motion to Allow Maintenance of Lake Thompson "for ordinary maintenance, subject to DENR's approval of a proposal demonstrating that the maintenance plan does not amount to any structural changes to the outlet or excavation of the hard bottom of the channel.

The Water Management Board validated Vested Water Right No. 707-3 held by the Department of Game, Fish and Parks for sufficient water to maintain the water level up to the outlet elevation 1687.5 fmsl (NGVD29). The Board recognized the unique circumstance involving Lake Thompson's outlet configuration and set forth direction for approval of work. DENR's review of the submitted plan is to ensure adherence to the Board's Order to allow maintenance by allowing removal of vegetation and silt in a manner that will not result in a change to either the hard bottom channel configuration or the ordinary high water mark.

The letter and plan indicate the County retained the services of Brosz Engineering, Inc. of Sioux Falls, SD to survey the Lake Thompson outlet channel and create a topographic map of the hard bottom of an 800 feet reach. The 800 feet reach extends 400 feet both upstream and downstream from the outlet area located where the channel crosses the half mile line in the W½ of Section 25 T108N-R55W. This reach identifies the silt and vegetation to be removed per the Board's order while maintaining the configuration and integrity of the established outlet channel.

DENR approves Kingsbury County's vegetation and sediment removal plan at the Lake Thompson outlet as set forth in the submitted June 8, 2020 plan subject to the following conditions.

- Kingsbury County shall notify all parties 72 hours prior to beginning vegetation and sediment removal.
- An initial discharge measurement shall be taken within 24 hours prior to commencing work at the 225th Street to determine the baseline flow condition.
- The County shall use a GPS guidance enabled excavator to perform the silt and vegetation removal.
- The cross-sectional plans prepared by Brosz Engineering, Inc., in the form of AutoCAD .dwg and .xml data files, shall be utilized to ensure the excavator operator removes only the silt and vegetation above the channel hard bottom in the designated reach.
- Excavation may not be performed below 1687.5 fmsl (NGVD29) and excavation may not go below the hard bottom regardless of the elevation.
- Kingsbury County shall maintain a record of the flow measurements taken during the course of this project. Flow records shall be made available to the Chief Engineer upon request.
- Work will cease if the outlet flow increases by 6% above the pre-excavation measurement.
- Upon completion of the project, Kingsbury County shall have a post project cross section survey conducted at the outlet location and provide the pre and post project cross section elevation profile and pre and post flow measurements taken at 225th Street to the Chief Engineer.

Kingsbury County is the responsible entity that will be accountable to ensure all conditions are met in the field, including controlling sediment runoff, not allowing any excavation below the hard bottom or elevation specified, taking flow measurements, and ceasing work should the outflow reach 6 percent increase from the initial flow measurement.

A county-designated responsible person must always be on-site during work to ensure the contractor follows the approved plan and conditions.

If you have any questions on the content of this letter and what is expected, please contact me or Mark Rath of the Water Rights Program at (605) 773-3352.

Sincerely,



Eric Gronlund, Chief Engineer
Water Rights Program

c: \ Kelly Hepler, Secretary - SD Dept of Game Fish and Parks
Alexis A. Tracy - Clay County States Attorney
Wendy Kloepner - Lake County States Attorney
Greg Protsch - Miner County States Attorney
Katelynn Hoffman - Turner County States Attorney
E John Bruner

Merrill Nelson
Dr. Stephen Noding

USGS Monitoring Contact: Chris Leveau, Hydrologic Data Chief
USGS Dakota Water Science Center
4575 32nd Ave. S. Suite 6 Grand Forks, ND 58201
(701) 775-7221 Ext. 11
cdlaveau@usgs.gov

GASS LAW OFFICE

ATTORNEYS & ADVISORS

BROOKINGS OFFICE

212 5th Ave., Ste. 2
PO Box 486
Brookings, SD 57006
TEL 605.692.4277
FAX 888.688.4378

GREGG A. GASS

JARED I. GASS

ATTORNEYS AT LAW

EMAIL gregg@gasslawoffice.com

EMAIL jared@gasslawoffice.com

DeSMET OFFICE

202 Calumet Ave.
PO Box 35
DeSmet, SD 57231
TEL 605.854.3224
FAX 888.688.4378

Reply to DeSmet Office

RECEIVED

JUN 11 2020

WATER RIGHTS
PROGRAM

June 8, 2020

Jeanne Goodman
Chief Engineer
DENR
523 E. Capitol Ave.
Pierre, SD 57501

Dear Ms. Goodman:

This letter is in reference to your letter of November 20, 2019. We have attempted to address the requirements you have outlined. Because of winter weather and the resulting ice on Lake Thompson, we were not able to hire the engineering company to develop the plan and conduct the surveys until this spring. Thus, the delay since your previous correspondence.

We hope that this plan demonstrates the ability to implement the outlet maintenance on Lake Thompson in accordance with the South Dakota Water Board order "that the maintenance plan does not amount to any structural changes to the outlet or excavation of the hard bottom of the channel." The intent is to provide you with a plan that "will account for measurement, disposal of material consistent with Corps of Engineer's requirements, and any other matter DENR may require for approval."

Attached are construction plans and specifications that can be easily be understood by the contractor in the field. In fact, some local contractors have reviewed the plans to ensure all the information was included to allow them to implement the project.

Brosz Engineering, Inc., Sioux Falls, SD, conducted the survey of the hard bottom and provided the map and data for the software used by the excavator operators to conduct a precise vegetation and silt removal project.

A letter from the Corp of Engineers (attached) states they do not require a permit. However, you will see we have developed a very complete and effective strategy to safely handle the removed materials.

I have included a description of how the discharge will be monitored and actions related to any discharge increase about 6%. Likewise, your concerns about lag time between the outlet and the 225th culvert have been addressed.

The County responsibility and the on-site designee remains the same as in your November 20, 2019 letter.

We hope this information meets with your approval. Please contact James Knight or me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg A. Gass". The signature is fluid and cursive, with the first name "Gregg" being more prominent than the last name "Gass".

Gregg A. Gass
Attorney at Law



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
SOUTH DAKOTA REGULATORY OFFICE
28563 POWERHOUSE ROAD, ROOM 118
PIERRE, SOUTH DAKOTA 57501-6174

November 12, 2019

South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

Gass Law Office
Attn: Greg Gass
PO Box 35
DeSmet, South Dakota 57231

Dear Mr. Gass:

Reference is made to the information received October 30, 2019, concerning Section 404 of the Clean Water Act. After reviewing your proposal to remove sediment from the outlet of Lake Thompson, this office has determined that a Department of the Army permit will not be required. The proposed project is located in west half of Section 25, Township 108 North, Range 55 West, Kingsbury County, South Dakota.

However, if in the future you anticipate doing work or placing material in any waters of the United States, please provide this office with an application for review for possible permit requirements.

This letter addresses your proposed activity specifically and does not address nor include any consideration for geographical jurisdiction and shall not be interpreted as such.

Although a Department of the Army permit pursuant to Section 404 of the Clean Water Act is not required for the project, this does not eliminate the requirement that you obtain other applicable Federal, state, tribal and local permits as required.

If you have any questions, please feel free to contact this office at the above Regulatory Office address, or telephone Harry Decker at (605) 224-8531 and reference action ID NWO-2019-1867-PIE.

Sincerely,

A handwritten signature in black ink, reading "Steven E. Naylor".

Steven E. Naylor
Regulatory Program Manager,
South Dakota

Lake Thompson Outlet
Vegetation and Sediment Removal
Plans and Specifications
Kingsbury County, South Dakota
May 17, 2020

Overview

Kingsbury County has agreed to provide limited funding toward a plan to remove vegetation and silt at the legally established outlet of Lake Thompson. The project will remove silt and vegetation to reestablish a 50-60 foot channel at an elevation about the hard bottom and above the legally established outlet level of 1688.45 NAVD 1988 (1687.5 NGVD 1929). The silt and vegetation removal will extend 400 feet above and below the outlet. Monitoring of water flow will be done at the culvert bridge at 225th St.

Background

On September 16, 2019, the South Dakota Water Management Board granted a motion by Kingsbury County to allow maintenance of Lake Thompson outlet subject to Department of Environment and natural Resources "approval of a proposal demonstrating that the maintenance plan does not amount to any structural changes to the outlet or excavation of the hard bottom of the channel".

The location of the Lake Thompson outlet is the approximate center of the W ½ Section 25, T108N-R55W, Miner County, South Dakota.

Vegetation and Silt Removal Plans and Specifications

The proposed plan is to remove silt and vegetation to reestablish a 50 foot channel at an elevation above the hard bottom and above the legally established outlet level of 1688.45 NAVD 1988 (1687.5 NGVD 1929). The sediment removal area will start 400 feet north of the outlet and end 400 feet south of the outlet.

The map and drawing in Appendix A (attached) have been prepared by Brosz Engineering, Inc., Sioux Falls, SD. They have surveyed the hard bottom and prepared a contour map identifying the elevation of the hard bottom and the corresponding GPS coordinates of grade points and control points. Removal of silt and vegetation will extend from the permanent, capped survey pipe, indicated on the map, and extend 400 feet up and down stream on each side. Survey stakes mark each corner of the cleanout area and they can also be located using the GPS locations in Appendix B. The reach of

the excavator is about 20 feet so only the portion of the stream channel that can be reached from shore will be cleaned. The silt and vegetation will be placed 20 feet away from shore on the outside of a 24 inch silt fence.

Appendix B includes the map and the AutoCAD .dwg and .xml data files (opened with software on the excavator GPS guidance system) These will be used by the equipment operators to set parameters for precise silt and vegetation removal depths. The excavator will be equipped with a GPS guidance system. This system enables the operator to enter input parameters such as depth and slope so dig accuracy can stay within inches of the preset criteria.

GPS on excavators measure the position of the bucket's cutting edge using a small inertial measurement unit [IMU]. The operator will enter the digital map (the AutoCAD files developed by Brosz Engineering for this purpose) of the site into the excavator's monitor and either cuts to the line shown on the monitor or puts the system into full automation mode and lets the GPS positioning data guide the bucket to the exact contours of the design grade.

With the precise positioning of the bucket's edge made possible through the GPS excavator systems, the bucket will be set to stop exactly at the desired point on the contour, keeping the hard bottom of the outlet untouched.

Additionally, onshore laser levels will be used to periodically double check the precision of the material removal depth using location and elevation points established by Brosz Engineering surveyors (map and AutoCAD plans and specifications). Grade stakes have been placed as references for elevations identifying the hard bottom and there will be no vegetation or silt removal below these points. The hard bottom will not be disturbed neither in the main channel nor along the slope.

Only material which can be reached from shore by the tracked excavator will be removed. As stated above, when removing silt and vegetation from the 50-60-foot channel bottom, the depth will be set to keep the excavation above the legal outlet level and the hard bottom. Likewise, when the slope is being cleaned, the slope angle will be set to be sure the bucket stays above the hard bottom.

The Army Corp of Engineers has notified Kingsbury County that a permit is not required for this project. However, to ensure protection of the water resources the following steps will be taken. Sediment and vegetation which is removed will be placed in the upland area adjacent to the excavated area. The disposed materials will be at least 20 feet from the water's edge, with a 20-foot grass buffer and on flat ground. Twenty-four inch polypropylene Tenax silt fencing will be installed between the water and the disposed material on both sides of the channel all along the area to be cleaned. The landowners are allowing placement of the sediment and vegetation on the edge of their cornfields in relatively flat areas. After the corn is harvested, the material will be spread in the fields. Estimates from a report by CDI Engineering (Lake Thompson Outlet Maintenance Evaluation, August 16, 2019) show a maximum of 1396 cubic feet of sediment and

vegetation will be removed from the outlet to 400 ft. north. To the south of the outlet, 868 cubic feet will be removed in the 400 ft.

Monitoring of water discharge before, during and after silt and vegetation removal will take place at the cement culvert at the 225th St. bridge ½ mile south of the Lake Thompson outlet. According to USGS, discharge is the volume of water moving down a stream or river per unit of time, commonly expressed in cubic feet per second. In general, river discharge is computed by multiplying the area of water in a channel cross section by the average velocity of the water in that cross section: **discharge = area x velocity**. The area of the water is the **depth X width** of the of the column passing through the culvert. The culvert width is 56 feet, but the depth of the water will be measured on the day the removal is taking place. Velocity will be measured using a current meter. The most common current meter used by the USGS is the Price AA current meter.

Because we are concerned about changes that might occur due to vegetation and silt removal, we are interested in relative changes in discharge before, during and after removals. We are primarily concerned with relative changes in the water discharge due to our activity rather than the precision of the discharge which can change on a daily basis due to natural causes. However, once we know the dates of the cleanout project, we will be requesting USGS or East Dakota Water District to do a flow measurement so long-term changes can be determined.

The speed of the current will greatly influence lag time, or the amount of time it takes for the vegetation and silt removal to affect the water discharge at the 225th St culvert. Therefore, the lag time will be estimated on the day excavation commences. A current meter will be used to determine water velocity. Recent measurements determined that the current flow at the outlet is 3.1 fps. Because it is 2600 feet from the outlet to the 225th St. culvert, lag time is currently about 14 minutes ($2600 / 3.1 / 60 = 13.97$).

Our monitoring at the 225th St. culvert will take place at least hourly during vegetation and silt removal at the outlet. Additionally, at the completion of each 100-foot increment of silt and vegetation removal, work will cease until the lag time has elapsed and a discharge measurement is taken. Removal of silt and vegetation will cease when the discharge (cubic feet per second) of water increases by over 6 percent (above the starting discharge) at either the time of the hourly measurements or at the completion of 100-foot increments.

Contractors for the silt and vegetation removal will only be considered if their equipment and capabilities allow them to effectively address the stipulations and directions of this plan.

Appendix A . Map and drawing of cleanout area.

20929F01 11 X 17
BLANK PORTRAIT (1)

Appendix B. Control points, GPS and elevation data.

20929F01	20929F01.dwg	20929F01.xml
control.csv		

1	669087.004	2741984.179	1693.527	CP1
2	669489.72	2742025.983	1696.081	CP
3	668876.155	2741994.537	1693.898	CP
4	669129.369	2741995.42	1695.18	CP



```

<?xml version="1.0"?>
<LandXML xmlns="http://www.landxml.org/schema/LandXML-1.2"
xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
xsi:schemaLocation="http://www.landxml.org/schema/LandXML-1.2
http://www.landxml.org/schema/LandXML-1.2/LandXML-1.2.xsd" date="2020-
04-28" time="14:03:45" version="1.2" language="English"
readOnly="false">
  <Units>
    <Imperial areaUnit="squareFoot"
linearUnit="USSurveyFoot" volumeUnit="cubicYard"
temperatureUnit="fahrenheit" pressureUnit="inchHG" diameterUnit="inch"
angularUnit="decimal degrees" directionUnit="decimal degrees">
  </Imperial>
</Units>
  <CoordinateSystem desc="Minnesota DOT: Stearns County, US
Foot" ogcWktCode="PROJCS[&quot;StearnsMN-
F_1&quot;;GEOGCS[&quot;LL83&quot;;DATUM[&quot;NAD83&quot;;SPHEROID[&qu
ot;GRS1980&quot;;6378137.000,298.25722210]],PRIMEM[&quot;Greenwich&quo
t;;0],UNIT[&quot;Degree&quot;;0.017453292519943295]],PROJECTION[&quot;
Lambert Conformal Conic, Minnesota DOT
Variation&quot;],PARAMETER[&quot;false_easting&quot;;500000.000],PARAM
ETER[&quot;false_northing&quot;;100000.000],PARAMETER[&quot;central_me
ridian&quot;;-95.150000000000001],PARAMETER[&quot;latitude_of_origin&qu
ot;;45.28277777780000],PARAMETER[&quot;standard_parallel_1&quot;;45.70
000000000000],PARAMETER[&quot;standard_parallel_2&quot;;45.350000000000
000],PARAMETER[&quot;Average Elevation (system
unit)&quot;;1200.0000],UNIT[&quot;Foot_US&quot;;0.30480060960122]]"
horizontalDatum="NAD83" horizontalCoordinateSystemName="StearnsMN-F_1"
fileLocation="AutoCAD Map Zone Name"></CoordinateSystem>
  <Project name="S:\2020proj\20929F01\Survey\20929F01.dwg">
</Project>
  <Application name="Autodesk Civil 3D" desc="Civil 3D"
manufacturer="Autodesk, Inc." version="2018"
manufacturerURL="www.autodesk.com/civil" timeStamp="2020-04-
28T14:03:45"></Application>
  <CgPoints>
    <CgPoint name="1" code="CP1">669087.003999999957
2741984.1790000000004 1693.527</CgPoint>
    <CgPoint name="2" code="CP">669489.719999999972
2742025.9830000000007 1696.081</CgPoint>
    <CgPoint name="3" code="CP">668876.1550000000028
2741994.5370000000011 1693.898</CgPoint>
    <CgPoint name="4" code="CP">669129.3689999999948
2741995.4199999999925 1695.18</CgPoint>
    <CgPoint name="500" code="EW">669089.020999999995
2741984.7510000000164 1692.824</CgPoint>
    <CgPoint name="501" code="EW">669155.4209999999973
2741968.1030000000119 1692.769</CgPoint>
    <CgPoint name="502" code="EW">669210.5849999999963
2741968.1419999999993 1692.894</CgPoint>
    <CgPoint name="503" code="EW">669264.0709999999996
2741998.6269999999862 1692.909</CgPoint>
    <CgPoint name="504" code="EW">669318.5540000000004
2742030.4670000000179 1692.947</CgPoint>
    <CgPoint name="505" code="EW">669381.5879999999989

```


<CgPoint name="506" code="EW">669443.85400000005
2742049.078000000212 1692.812</CgPoint>
<CgPoint name="507" code="EW">669488.39599999995
2742045.586999999825 1692.906</CgPoint>
<CgPoint name="508" code="EW">669021.668999999994
2741990.601999999955 1692.796</CgPoint>
<CgPoint name="509" code="EW">668962.766999999993
2741998.327000000048 1692.582</CgPoint>
<CgPoint name="510" code="EW">668905.02899999998
2742001.101999999955 1692.542</CgPoint>
<CgPoint name="511" code="EW">668846.770000000019
2741999.819999999832 1692.536</CgPoint>
<CgPoint name="512" code="EW">668788.515000000014
2741994.223000000231 1692.53</CgPoint>
<CgPoint name="513" code="EW">668729.508000000031
2741982.910000000149 1692.505</CgPoint>
<CgPoint name="514" code="EW">668681.429000000004
2741976.413000000175 1692.332</CgPoint>
<CgPoint name="515" code="EW">669470.113000000012
2742103.084999999963 1687.589</CgPoint>
<CgPoint name="516" code="EW">669446.829000000027
2742154.450000000186 1687.024</CgPoint>
<CgPoint name="517" code="EW">669457.516999999993
2742233.140999999829 1688.099</CgPoint>
<CgPoint name="518" code="EW">669427.376999999979
2742278.549000000115 1689.543</CgPoint>
<CgPoint name="519" code="EW">669346.641999999993
2742220.939999999944 1689.542</CgPoint>
<CgPoint name="520" code="EW">669356.412999999942
2742197.816999999806 1689.657</CgPoint>
<CgPoint name="521" code="EW">669400.378000000026
2742158.524000000209 1688.095</CgPoint>
<CgPoint name="522" code="EW">669312.594999999972
2742141.373000000138 1688.113</CgPoint>
<CgPoint name="523" code="EW">669314.535000000033
2742181.558999999892 1688.512</CgPoint>
<CgPoint name="524" code="EW">669292.347999999998
2742205.583999999799 1689.967</CgPoint>
<CgPoint name="525" code="EW">669197.456000000006
2742178.151999999769 1689.934</CgPoint>
<CgPoint name="526" code="EW">669217.873000000021
2742155.549999999814 1689.006</CgPoint>
<CgPoint name="527" code="EW">669237.361000000034
2742120.518999999855 1689.039</CgPoint>
<CgPoint name="528" code="EW">669171.734999999986
2742101.512999999803 1686.899</CgPoint>
<CgPoint name="529" code="EW">669151.989999999991
2742125.10999999987 1689.363</CgPoint>
<CgPoint name="530" code="EW">669152.035999999964
2742157.328999999911 1689.366</CgPoint>
<CgPoint name="531" code="EW">669093.096999999951
2742133.623999999836 1688.879</CgPoint>
<CgPoint name="532" code="EW">669097.329000000027
2742094.69299999997 1688.386</CgPoint>
<CgPoint name="533" code="EW">669101.626999999979

2742032.546999999788 1688.921</CgPoint>
 <CgPoint name="535" code="EW">669010.199999999953
2742070.293000000063 1686.881</CgPoint>
 <CgPoint name="536" code="EW">669007.515000000014
2742108.686000000022 1686.84</CgPoint>
 <CgPoint name="537" code="EW">669006.236999999965
2742148.697000000016 1689.912</CgPoint>
 <CgPoint name="538" code="EW">668907.925000000047
2742139.2680000000156 1689.775</CgPoint>
 <CgPoint name="539" code="EW">668900.199999999953
2742110.608000000007 1688.732</CgPoint>
 <CgPoint name="540" code="EW">668910.940999999992
2742085.015000000013 1686.704</CgPoint>
 <CgPoint name="541" code="EW">668917.618999999948
2742042.9810000000145 1687.222</CgPoint>
 <CgPoint name="542" code="EW">668852.368999999948
2742058.2110000000127 1686.157</CgPoint>
 <CgPoint name="543" code="EW">668849.298999999999
2742080.35999999987 1687.707</CgPoint>
 <CgPoint name="544" code="EW">668843.043999999994
2742121.473999999929 1689.234</CgPoint>
 <CgPoint name="545" code="EW">668771.586000000001
2742109.8160000000108 1688.65</CgPoint>
 <CgPoint name="546" code="EW">668773.0810000000006
2742085.567999999997 1688.647</CgPoint>
 <CgPoint name="547" code="EW">668783.7070000000053
2742054.765000000013 1687.661</CgPoint>
 <CgPoint name="548" code="EW">668791.7460000000043
2742030.433999999892 1686.595</CgPoint>
 <CgPoint name="549" code="EW">668705.278999999998
2742016.5090000000078 1687.607</CgPoint>
 <CgPoint name="550" code="EW">668703.202999999998
2742040.6150000000224 1687.612</CgPoint>
 <CgPoint name="551" code="EW">668700.2639999999966
2742070.570999999996 1688.4</CgPoint>
 <CgPoint name="552" code="EW">668656.4860000000034
2742086.0090000000078 1692.333</CgPoint>
 <CgPoint name="553" code="EW">668656.971000000002
2742081.016999999993 1688.51</CgPoint>
 <CgPoint name="554" code="EW">668681.957999999984
2742110.262999999803 1692.556</CgPoint>
 <CgPoint name="555" code="EW">668688.0230000000045
2742130.5400000000037 1693.009</CgPoint>
 <CgPoint name="556" code="EW">668703.0540000000004
2742128.691999999806 1689.712</CgPoint>
 <CgPoint name="557" code="EW">668794.1119999999965
2742175.5030000000026 1692.676</CgPoint>
 <CgPoint name="558" code="EW">668796.3810000000052
2742160.867999999784 1688.585</CgPoint>
 <CgPoint name="559" code="EW">668911.695999999996
2742194.311999999918 1692.952</CgPoint>
 <CgPoint name="560" code="EW">668927.3220000000044
2742179.637999999803 1690.375</CgPoint>
 <CgPoint name="561" code="EW">669013.537999999942
2742194.3620000000197 1692.981</CgPoint>

<CgPoint name="563" code="EW">669087.869999999995
2742206.0269999999769 1692.844</CgPoint>
<CgPoint name="564" code="EW">669096.869999999995
2742192.370999999981 1690.946</CgPoint>
<CgPoint name="565" code="EW">669170.234000000055
2742208.9419999999806 1693.126</CgPoint>
<CgPoint name="566" code="EW">669175.305999999982
2742197.0389999999873 1690.053</CgPoint>
<CgPoint name="567" code="EW">669270.844999999972
2742254.839000000153 1693.346</CgPoint>
<CgPoint name="568" code="EW">669276.618999999948
2742238.959999999963 1690.118</CgPoint>
<CgPoint name="569" code="EW">669339.407000000007
2742321.149999999907 1691.183</CgPoint>
<CgPoint name="570" code="EW">669359.829000000027
2742263.098999999929 1691.163</CgPoint>
<CgPoint name="571" code="EW">669418.339000000036
2742370.132000000216 1691.157</CgPoint>
<CgPoint name="572" code="EW">669434.935000000056
2742341.674999999814 1690.699</CgPoint>
<CgPoint name="573" code="EW">669388.51800000004
2742409.76099999994 1693.008</CgPoint>
<CgPoint name="574" code="EW">669307.418999999994
2742353.004999999988 1693.112</CgPoint>
<CgPoint name="575" code="EW">668667.934000000008
2742068.7379999999896 1688.479</CgPoint>
<CgPoint name="576" code="EW">668667.947999999975
2742043.044000000227 1687.561</CgPoint>
<CgPoint name="577" code="EW">668680.618000000017
2742016.435000000056 1686.509</CgPoint>
<CgPoint name="578" code="EW">668689.621000000043
2741998.467000000179 1688.509</CgPoint>
<CgPoint name="579" code="EW">668695.123999999953
2741990.8629999999896 1689.633</CgPoint>
<CgPoint name="580" code="EW">668722.341000000015
2741993.904000000097 1690.121</CgPoint>
<CgPoint name="581" code="EW">668792.940999999992
2742014.800999999978 1687.659</CgPoint>
<CgPoint name="582" code="EW">668839.385000000009
2742018.385999999994 1688.21</CgPoint>
<CgPoint name="583" code="EW">668920.449999999953
2742029.5899999999851 1688.246</CgPoint>
<CgPoint name="584" code="EW">669007.035999999964
2742021.717000000179 1688.895</CgPoint>
<CgPoint name="585" code="EW">669078.464000000036
2742015.3429999999877 1688.916</CgPoint>
<CgPoint name="586" code="EW">669169.180999999982
2742005.859000000171 1690.374</CgPoint>
<CgPoint name="587" code="EW">669172.785000000033
2742032.413000000175 1686.895</CgPoint>
<CgPoint name="588" code="EW">669252.371999999974
2742040.3429999999877 1687.451</CgPoint>
<CgPoint name="589" code="EW">669258.577000000048
2742025.768000000156 1689.028</CgPoint>
<CgPoint name="590" code="EW">669324.478000000003

```

2742065.069999999832 1688.012</CgPoint>
      <CgPoint name="592" code="EW">669387.383000000031
2742053.069999999832 1690.622</CgPoint>
      <CgPoint name="593" code="EW">669385.466999999946
2742069.19700000016 1689.162</CgPoint>
      <CgPoint name="594" code="EW">669384.75
2742080.922999999952 1687.053</CgPoint>
      <CgPoint name="595" code="EW">669446.777000000002
2742062.348000000231 1690.393</CgPoint>
      <CgPoint name="596" code="EW">669438.302000000025
2742096.467999999877 1688.08</CgPoint>
    </CgPoints>
    <Surfaces>
      <Surface name="OG 4-28-2019" desc="LAKE THOMPSON
OUTLET">
          <SourceData></SourceData>
          <Definition surfType="TIN"
area2DSurf="187906.204387447506" area3DSurf="188873.491981932166"
elevMax="1696.081" elevMin="1685.918">
            <Pnts>
                <P id="5">669087.003999999957
2741984.179000000004 1693.527</P>
                <P id="6">668729.5080000000031
2741982.910000000149 1692.505</P>
                <P id="7">669489.719999999972
2742025.983000000007 1696.081</P>
                <P id="8">668681.429000000004
2741976.413000000175 1692.332</P>
                <P id="9">668876.155000000028
2741994.537000000011 1693.898</P>
                <P id="10">669470.113000000012
2742103.084999999963 1687.589</P>
                <P id="11">669089.02099999995
2741984.751000000164 1692.824</P>
                <P id="12">669129.368999999948
2741995.419999999925 1695.18</P>
                <P id="13">669446.829000000027
2742154.450000000186 1687.024</P>
                <P id="14">669155.420999999973
2741968.103000000119 1692.769</P>
                <P id="15">669210.584999999963
2741968.141999999993 1692.894</P>
                <P id="16">669264.070999999996
2741998.626999999862 1692.909</P>
                <P id="17">669318.554000000004
2742030.467000000179 1692.947</P>
                <P id="18">669381.587999999989
2742041.040000000037 1692.877</P>
                <P id="19">669443.854000000005
2742049.078000000212 1692.812</P>
                <P id="20">669488.39599999995
2742045.586999999825 1692.906</P>
                <P id="21">669021.668999999994
2741990.601999999955 1692.796</P>
                <P id="22">668962.766999999993

```

2742001.101999999955 1692.542</P>
2741999.819999999832 1692.536</P>
2741994.223000000231 1692.53</P>
2742233.140999999829 1688.099</P>
2742278.549000000115 1689.543</P>
2742220.939999999944 1689.542</P>
2742197.816999999806 1689.657</P>
2742158.524000000209 1688.095</P>
2742141.373000000138 1688.113</P>
2742181.558999999892 1688.512</P>
2742205.583999999799 1689.967</P>
2742178.151999999769 1689.934</P>
2742155.549999999814 1689.006</P>
2742120.518999999855 1689.039</P>
2742101.512999999803 1686.899</P>
2742125.10999999987 1689.363</P>
2742157.328999999911 1689.366</P>
2742133.623999999836 1688.879</P>
2742094.69299999997 1688.386</P>
2742053.384000000078 1685.918</P>
2742032.546999999788 1688.921</P>
2742070.293000000063 1686.881</P>
2742108.68600000022 1686.84</P>
2742148.69700000016 1689.912</P>
2742139.268000000156 1689.775</P>
2742110.608000000007 1688.732</P>
2742085.01500000013 1686.704</P>
2742042.981000000145 1687.222</P>

<P id="24">668846.770000000019
<P id="25">668788.515000000014
<P id="26">669457.516999999993
<P id="27">669427.376999999979
<P id="28">669346.641999999993
<P id="29">669356.412999999942
<P id="30">669400.378000000026
<P id="31">669312.594999999972
<P id="32">669314.535000000033
<P id="33">669292.347999999998
<P id="34">669197.456000000006
<P id="35">669217.873000000021
<P id="36">669237.361000000034
<P id="37">669171.734999999986
<P id="38">669151.989999999991
<P id="39">669152.035999999964
<P id="40">669093.096999999951
<P id="41">669097.329000000027
<P id="42">669101.626999999979
<P id="43">669011.844999999972
<P id="44">669010.199999999953
<P id="45">669007.515000000014
<P id="46">669006.236999999965
<P id="47">668907.925000000047
<P id="48">668900.199999999953
<P id="49">668910.940999999992
<P id="50">668917.618999999948

2742080.35999999987 1687.707</P>
2742121.473999999929 1689.234</P>
2742109.816000000108 1688.65</P>
2742085.56799999997 1688.647</P>
2742054.76500000013 1687.661</P>
2742030.433999999892 1686.595</P>
2742016.509000000078 1687.607</P>
2742040.615000000224 1687.612</P>
2742070.570999999996 1688.4</P>
2742086.009000000078 1692.333</P>
2742081.016999999993 1688.51</P>
2742110.262999999803 1692.556</P>
2742130.540000000037 1693.009</P>
2742128.691999999806 1689.712</P>
2742175.503000000026 1692.676</P>
2742160.867999999784 1688.585</P>
2742194.311999999918 1692.952</P>
2742179.637999999803 1690.375</P>
2742194.362000000197 1692.981</P>
2742179.944999999832 1689.824</P>
2742206.026999999769 1692.844</P>
2742192.37099999981 1690.946</P>
2742208.941999999806 1693.126</P>
2742197.038999999873 1690.053</P>
2742254.839000000153 1693.346</P>
2742238.959999999963 1690.118</P>
2742321.149999999907 1691.183</P>

<P id="52">668849.298999999999
<P id="53">668843.043999999994
<P id="54">668771.58600000001
<P id="55">668773.081000000006
<P id="56">668783.707000000053
<P id="57">668791.746000000043
<P id="58">668705.27899999998
<P id="59">668703.20299999998
<P id="60">668700.263999999966
<P id="61">668656.486000000034
<P id="62">668656.97100000002
<P id="63">668681.957999999984
<P id="64">668688.023000000045
<P id="65">668703.054000000004
<P id="66">668794.111999999965
<P id="67">668796.381000000052
<P id="68">668911.695999999996
<P id="69">668927.322000000044
<P id="70">669013.537999999942
<P id="71">669018.248000000021
<P id="72">669087.869999999995
<P id="73">669096.869999999995
<P id="74">669170.234000000055
<P id="75">669175.305999999982
<P id="76">669270.844999999972
<P id="77">669276.618999999948
<P id="78">669339.407000000007
<P id="79">669359.829000000027

2742370.132000000216 1691.157</P>

2742341.674999999814 1690.699</P>

2742409.76099999994 1693.008</P>

2742353.004999999888 1693.112</P>

2742068.737999999896 1688.479</P>

2742043.044000000227 1687.561</P>

2742016.435000000056 1686.509</P>

2741998.467000000179 1683.509</P>

2741990.862999999896 1689.633</P>

2741993.904000000097 1690.121</P>

2742014.800999999978 1687.659</P>

2742018.38599999994 1688.21</P>

2742029.589999999851 1688.246</P>

2742021.717000000179 1683.895</P>

2742015.342999999877 1688.916</P>

2742005.859000000171 1690.374</P>

2742032.413000000175 1686.895</P>

2742040.342999999877 1687.451</P>

2742025.768000000156 1689.028</P>

2742048.050999999978 1689.995</P>

id="100">669320.015000000014 2742065.069999999832 1688.012</P>

id="101">669387.383000000031 2742053.069999999832 1690.622</P>

id="102">669385.466999999946 2742069.197000000016 1689.162</P>

2742080.922999999952 1687.053</P>

id="104">669446.777000000002 2742062.348000000231 1690.393</P>

id="105">669438.302000000025 2742096.467999999877 1688.08</P>

</Pnts>

<Faces>

<P id="81">669434.935000000056

<P id="82">669388.51800000004

<P id="83">669307.418999999994

<P id="84">668667.934000000008

<P id="85">668667.947999999975

<P id="86">668680.618000000017

<P id="87">668689.621000000043

<P id="88">668695.123999999953

<P id="89">668722.341000000015

<P id="90">668792.940999999992

<P id="91">668839.385000000009

<P id="92">668920.449999999953

<P id="93">669007.035999999964

<P id="94">669078.464000000036

<P id="95">669169.180999999982

<P id="96">669172.785000000033

<P id="97">669252.371999999974

<P id="98">669258.577000000048

<P id="99">669324.478000000003

<P

<P

<P

<P id="103">669384.75

<P

<P

<F n="22 3 2">21 11 5</F>

<F n="1 3 0">21 5 14</F>

104</F>

<F n="4 0 9">88 6 8</F>
<F n="52 0 4">89 25 6</F>
<F n="0 8 47">20 7 19</F>
<F n="7 0 44">19 7 18</F>
<F n="5 10 133">88 8 87</F>
<F n="9 11 132">87 8 86</F>
<F n="10 0 136">86 8 85</F>
<F n="17 13 113">92 9 91</F>
<F n="12 14 50">91 9 24</F>
<F n="51 13 0">25 24 9</F>
<F n="28 0 16">22 21 9</F>
<F n="49 15 17">23 22 9</F>
<F n="12 49 16">9 92 23</F>
<F n="21 19 176">105 10

100</F>

<F n="18 0 47">104 10 20</F>
<F n="0 21 33">26 10 13</F>
<F n="32 20 18">105 13 10</F>
<F n="28 23 1">21 12 11</F>
<F n="3 22 29">14 11 12</F>
<F n="29 25 36">16 12 95</F>
<F n="24 26 168">95 12 94</F>
<F n="25 27 94">94 12 93</F>
<F n="28 48 26">12 22 93</F>
<F n="22 15 27">12 21 22</F>
<F n="24 35 23">12 16 14</F>
<F n="31 77 34">13 97 36</F>
<F n="32 39 30">13 100 97</F>
<F n="21 173 31">13 105

18</F>

<F n="53 20 34">30 26 13</F>
<F n="30 65 33">13 36 30</F>
<F n="29 0 0">14 16 15</F>
<F n="24 169 38">16 95 98</F>
<F n="0 38 41">18 16 17</F>
<F n="40 37 36">98 17 16</F>
<F n="42 40 31">100 17 97</F>
<F n="170 39 38">98 97 17</F>
<F n="43 37 42">99 18 17</F>
<F n="171 41 39">100 99 17</F>
<F n="45 41 171">102 18 99</F>
<F n="46 8 45">101 19 18</F>
<F n="174 44 43">102 101

101</F>

<F n="47 44 174">104 19

<F n="19 7 46">104 20 19</F>
<F n="27 49 93">93 22 92</F>
<F n="48 16 17">92 22 23</F>
<F n="13 51 130">91 24 90</F>
<F n="50 14 52">90 24 25</F>
<F n="51 6 129">90 25 89</F>
<F n="63 56 33">30 29 26</F>
<F n="0 55 57">81 26 27</F>
<F n="57 54 56">79 27 26</F>

<F n="61 59 62">33 28 29</F>
<F n="56 58 60">79 29 28</F>
<F n="59 61 163">79 28 77</F>
<F n="60 58 69">77 28 33</F>
<F n="58 63 67">33 29 32</F>
<F n="64 62 53">30 32 29</F>
<F n="63 65 66">32 30 31</F>
<F n="34 66 64">30 36 31</F>
<F n="64 65 67">32 31 36</F>
<F n="62 66 68">33 32 36</F>
<F n="67 75 70">33 36 35</F>
<F n="61 70 73">77 33 34</F>
<F n="72 69 68">35 34 33</F>
<F n="73 72 84">75 34 39</F>
<F n="71 70 74">39 34 35</F>
<F n="69 71 158">77 34 75</F>
<F n="72 75 82">39 35 38</F>
<F n="76 74 68">36 38 35</F>
<F n="75 77 78">38 36 37</F>
<F n="81 76 30">97 37 36</F>
<F n="83 76 79">41 38 37</F>
<F n="91 78 80">42 41 37</F>
<F n="92 79 81">96 42 37</F>
<F n="170 80 77">97 96 37</F>
<F n="85 74 83">40 39 38</F>
<F n="89 82 78">41 40 38</F>
<F n="71 85 157">75 39 73</F>
<F n="84 82 86">73 39 40</F>
<F n="85 87 154">73 40 71</F>
<F n="86 88 104">71 40 46</F>
<F n="87 89 103">46 40 45</F>
<F n="88 83 90">45 40 41</F>
<F n="89 91 99">45 41 44</F>
<F n="90 79 92">44 41 42</F>
<F n="98 91 80">96 44 42</F>
<F n="97 94 48">92 43 93</F>
<F n="26 93 95">94 93 43</F>
<F n="96 168 94">43 96 94</F>
<F n="95 97 98">96 43 50</F>
<F n="113 96 93">92 50 43</F>
<F n="96 101 92">96 50 44</F>
<F n="102 90 100">49 45 44</F>
<F n="101 111 99">44 51 49</F>
<F n="98 112 100">44 50 51</F>
<F n="108 103 99">49 47 45</F>
<F n="105 88 102">47 46 45</F>
<F n="87 105 148">71 46 67</F>
<F n="103 106 104">46 47

67</F>

<F n="107 119 105">47 53

67</F>

<F n="106 108 109">53 47

48</F>

<F n="110 107 102">49 48

47</F>

49</F>	<F n="109 108 111">52 48
51</F>	<F n="110 100 114">52 49
51</F>	<F n="113 116 101">50 91
	<F n="12 112 97">92 91 50</F>
51</F>	<F n="118 111 115">56 52
51</F>	<F n="126 114 116">57 56
51</F>	<F n="130 115 112">91 57
51</F>	<F n="121 109 118">55 53
52</F>	<F n="125 117 114">56 55
52</F>	<F n="120 146 106">53 65
67</F>	<F n="119 121 122">65 53
54</F>	<F n="123 120 117">55 54
53</F>	<F n="120 123 137">65 54
60</F>	<F n="122 121 124">60 54
55</F>	<F n="123 125 135">60 55
59</F>	<F n="124 118 127">59 55
56</F>	<F n="128 127 115">57 58
56</F>	<F n="125 126 131">59 56
58</F>	<F n="129 134 126">57 89
58</F>	<F n="52 128 130">90 89 57</F>
	<F n="50 129 116">91 90 57</F>
	<F n="136 127 132">86 59
58</F>	<F n="10 131 133">87 86 58</F>
	<F n="9 132 134">88 87 58</F>
	<F n="4 133 128">89 88 58</F>
	<F n="138 124 136">85 60
59</F>	<F n="11 135 131">86 85 59</F>
	<F n="122 138 143">65 60
84</F>	<F n="142 137 135">85 84
60</F>	<F n="141 140 143">84 61
63</F>	<F n="144 139 0">64 63 61</F>
	<F n="142 0 139">84 62 61</F>

63</F>	<F n="143 140 145">65 63
64</F>	<F n="146 144 0">66 65 64</F> <F n="119 145 147">67 65
66</F>	<F n="149 146 0">68 67 66</F> <F n="104 149 151">71 67
69</F>	<F n="148 147 150">69 67
68</F>	<F n="151 149 0">70 69 68</F> <F n="148 150 152">71 69
70</F>	<F n="154 151 153">72 71
70</F>	<F i="1" n="156 152 0">83 72
70</F>	<F n="86 152 155">73 71 72</F> <F n="157 154 156">74 73
72</F>	<F i="1" n="160 155 153">83 74
72</F>	<F n="84 155 158">75 73 74</F> <F n="73 157 159">77 75 74</F> <F n="158 160 163">77 74
76</F>	<F i="1" n="162 159 156">83 76
74</F>	<F n="164 163 162">78 79
76</F>	<F n="167 161 160">83 78
76</F>	<F n="60 159 161">79 77 76</F> <F n="165 57 161">78 81 79</F> <F n="164 166 0">81 78 80</F> <F n="0 165 167">82 80 78</F> <F n="0 166 162">83 82 78</F> <F n="25 95 169">95 94 96</F> <F n="36 168 170">98 95 96</F> <F n="169 81 40">98 96 97</F> <F n="43 42 172">102 99
100</F>	<F n="175 171 173">103 102
100</F>	<F n="32 175 172">100 105
103</F>	<F n="46 45 176">104 101
102</F>	<F n="176 172 173">105 102
103</F>	<F n="18 174 175">105 104
102</F>	

</Faces>
</Definition>

</LandXML>

GASSlawOFFICE

ATTORNEYS & ADVISORS

BROOKINGS OFFICE

212 5th Ave., Ste. 2
PO Box 486
Brookings, SD 57006
TEL 605.692.4277
FAX 888.688.4378

GREGG A. GASS

JARED I. GASS
ATTORNEYS AT LAW
EMAIL gregg@gasslawoffice.com
EMAIL jared@gasslawoffice.com

DeSMET OFFICE

202 Calumet Ave.
PO Box 35
DeSmet, SD 57231
TEL 605.854.3224
FAX 888.688.4378

Reply to DeSmet Office

August 27, 2020

RECEIVED

AUG 31 2020

WATER RIGHTS
PROGRAM

Eric Gronlund, Chief Engineer
Water Rights Program
Department of Environmental and Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182

Subject: Approval of Lake Thompson Vegetation and Sediment Removal Plan with Conditions

Dear Mr. Gronlund:

I have been informed by Jim Knight that the excavation contractor plans to start removing vegetation and sediment at the Lake Thompson outlet in accordance with the plan approved by the DENR sometime between September 2 and September 5, 2020. This letter is intended to provide the parties seventy-two hours' notice prior to the beginning of vegetation and the sediment removal in accordance with your letter dated June 16, 2020. Mr. Knight had not been given an exact start time from the contractor. If you need further information regarding that I am sure he would be more than helpful in providing that to you. If you need further information, his cell number is 406-581-4605. If there is anything further we need to discuss please contact me.

Sincerely,



Gregg A. Gass
Attorney at Law

GG:ap

cc: Kelly Hepler, Secretary – SD Dept of Game Fish and Parks
Alexis A. Tracy – Clay County States Attorney
Wendy Kloeppner – Lake County States Attorney
Greg Protsch – Miner County States Attorney
Katelynn Hoffman – Turner County States Attorney
E John Bruner
Merrill Nelson
Dr. Stephen Noding
Chris Leveau, Hydrologic Data Chief, USGS Dakota Water Science Center

Gronlund, Eric

From: Gregg Gass <gregg@gasslaw.com>
Sent: Wednesday, October 14, 2020 1:35 PM
To: Gronlund, Eric
Subject: Fwd: [EXT] Pre and Post Project information
Attachments: Pre and Post Construction Outlet Elevations.pdf

Please see forwarded post improvement measurements from Brosz Engineering. Please let me know if you need anything else. Thanks.

----- Forwarded message -----

From: Knight, James <jknight@montana.edu>
Date: Tue, Oct 13, 2020 at 9:32 AM
Subject: Pre and Post Project information
To: Gregg Gass <gregg@gasslaw.com>
Cc: jimknight50@gmail.com <jimknight50@gmail.com>

Good Morning Gregg:

I just received the pre and post project cross section elevation profile for the Lake Thompson outlet channel. The pdf file I received from Brosz Engineering is attached.

Here are the pre and post project flow measurements taken at 225th Street.

9-3-2020 8:25am 227.03 cu ft/sec

6:30 pm 231.05 cu ft/sec

9-4-2020 7:30 am 223.44 cu ft/sec

6:30 pm 229.22 cu ft/sec

Please let me know if you have any questions.

Jim

Jim Knight

2213 Twin Lakes Rd.

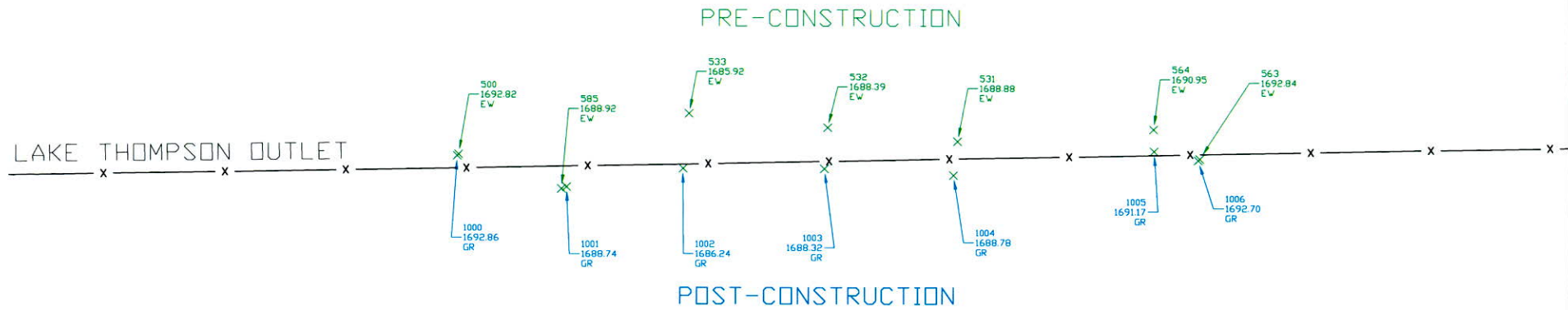
Lake Preston, SD 57249

406 5814605

Jimknight50@gmail.com



SCALE: 1"=30'



DRAWN BY:	CHECKED BY:	DATE:	PROJ. NO.:
CHS	SGZ	10/13/2020	20929F01