

WATER PERMIT NO. 7173-3

Name of Applicant: **BallaCostain LLP**

Address: **c/o Doug Flygt, 1626 Capital Ave, Madison WI 53705**

Phone: **608 238-9949**

Amount of Water Claimed: **0.86** Total Acres: **140**

Source of Water Supply: **groundwater (one well)**

Water to be used for: **irrigation** County: **Turner**

Type of Waste Disposal System: **NA**

Location: **1 mile SE of Parker**

PRIORITY Date Received: **12-2-09**

Application/License Fee: **\$1050.00**

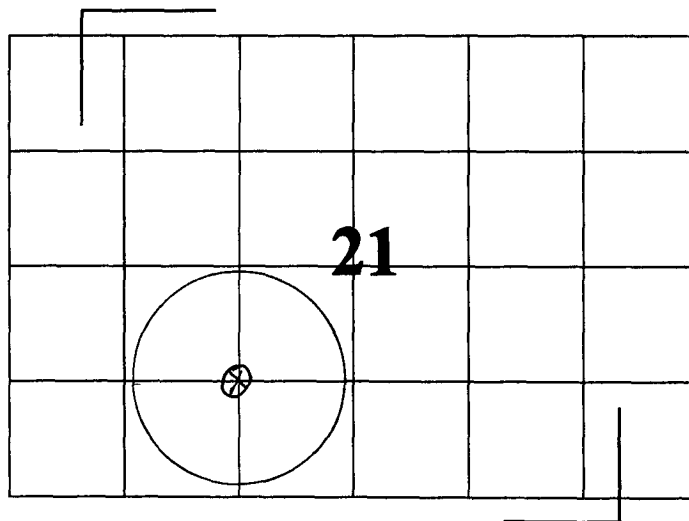
Corrected Application Received: **12-23-09**

Period of Annual Use: **May 1 – September 30**

Remarks:

Diversion Point: **Center SW ¼ Sec 21-T99N-R53W**

Land to be Irrigated: **SW ¼ Sec 21-T99N-R53W**



Depth of Well: **78 feet deep**

Well Driller: **Wetmore-Hammond Drilling**

Remarks:

Type of Map: **aerial**

Prepared by: **Merris Miller NRCS**

Reviewed and the Number Assigned on: **12-23-09**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)	
	No. <u>7173-3</u>	Hydrologic Unit <u>10170102</u>
	Basin <u>Vermillion River</u>	
	Newspaper <u>Viborg Ent / Hurley Leader PDBord 4</u> <u>605-766-7827</u> <u>Viborg 57070</u>	

RECEIVED
DEC - 2 2009
WATER RIGHTS PROGRAM

Application For Permit To Appropriate Water For Irrigation

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

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

- Name of Applicant BallaCostain LLP Phone (608) 238-9949
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address c/o Doug Flygt 1626 Capital Ave. Madison State WI 53705
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 1.45 *CFS or 650 **GPM ***AF Total Acreage 140
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply groundwater well
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) County Turner
one well in the center of SW 1/4 Section 21 T99N - R53W
- County or counties where water will be used Turner
- Annual period during which water is to be used May - September 30
- List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
SW 1/4 of SW 1/4 Section 21, T99N - R53W	35		
SE 1/4 of SW 1/4 Section 21, T99N - R53W	35		
NW 1/4 of SW 1/4 Section 21, T99N - R53W	35		
NE 1/4 of SW 1/4 Section 21, T99N - R53W	35		

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

Irrigate 140 acres of Section 21, T99N - R53W with center pivot, with the well to be located approximately 30 feet east of center

STATE OF SOUTH DAKOTA SS
County of Dane

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

I, Douglas Flygt, a partner of _____, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Douglas Flygt

Subscribed and sworn to before me this 30th day of November 2009

Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 7173-3**

Date of first receipt of application December 2, 2009.

Date of return to applicant for corrections, amendments or changes December 15, 2009.

Date of receipt of corrected application December 23, 2009.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 7173-3 to BallaCostain LLP c/o Doug Flygt, 1626 Capital Ave, Madison WI 53705 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 7173-3 appropriates 1.45 cubic feet of water per second from one well to be completed into the Vermillion: West Fork Aquifer (approximately 78 feet deep) located in approximate center of the SW 1/4 Section 21 to irrigate 140 acres located in the SW 1/4 Section 21; all in T99N-R53W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – September 30.
3. The date from which applicant may claim right is December 2, 2009.
4. The date of approval of Permit No. 7173-3 is March 15, 2010.
5. One-fifth of the construction is to be completed on or before September 15, 2012.
6. All construction is to be completed on or before March 15, 2015.
7. Water is to be put to beneficial use on or before March 15, 2019.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 7173-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

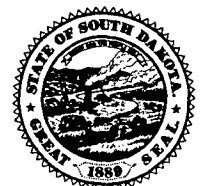
WATER MANAGEMENT BOARD

By: Garland Erbele

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

JUL 15 2010

date



(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter 24" Depth 85'
- b) Casing Type Plastic Diameter 16" Thickness .080"
- c) Screen Type Stainless Diameter 16" Thickness .060"
- d) Gravel Pack 4" Length of Gravel Pack 35'
- e) Depth to Top of Water Bearing Material 50'
- f) Depth to Water (ground surface to water level) 50'
- g) Distance to nearest existing domestic well:
On applicants property n/a On property owned by others 1,400'

2. Wastewater Disposal System Information

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

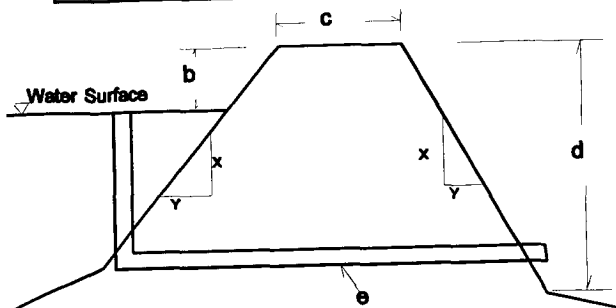
3. Dugout Information

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

4. Water Storage Dams

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

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



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



United States Department of Agriculture Farm Service Agency

Ballacostain L.L.P.



M. Miller
South Dakota
Turner County

MERRIS MILLER, DC NRCS

605-297-5564 x3
Farm Number
5815

Township-Range-Section
99N53W21

Legend

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation Compliance Provisions
- CLU Field Boundary
- Tract Boundary



1:8,258

USDA FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or the 2008 orthorectified imagery for South Dakota. The producer accepts the data 'as is' and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside of FSA Programs. Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

Apr 21, 2009

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 12/2, 20 09

RECEIVED OF Ballacostain LLP 1626 Capital Ave Madison WI 53705

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

Fee for Application for Permit No. <u>7173-3</u> to Appropriate Water, to construct and to put water to beneficial use	850	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>7173-3</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	1050 00

No. 04255

By Michael Erbelle
Chief Engineer

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DEC - 2 2009

WATER RIGHTS
PROGRAM

November 30, 2009

Department of Environment & Natural Resources,
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Water Rights

Dear Mr. Gronlund:

Enclosed please find Form 2 (Application for Permit To Appropriate Water for Irrigation), together with Form 2A and a check for \$1,050.00, for filing on behalf of BallaCostain LLP.

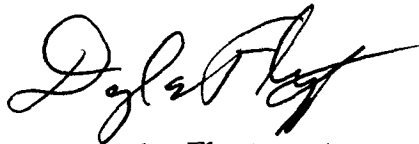
Mr. Hammond of Hammond - Wetmore Drilling has done a test well on the property and I asked him last week to forward to you directly a copy of his test log materials in order for such test log to be a part of this Application.

As indicated on the Application, the well is expected to be essentially in the center of the Quarter Section. With respect to the requirement for a properly signed 8" x 11" map, Mr. Hammond and our tenant will arrange for such map to be forwarded to you to be a part of this application.

Please advise if there is anything further that is needed at this time.
Thank you.

Sincerely,

BallaCostain LLP



by: Douglas Flygt, partner
1626 Capital Avenue
Madison, WI 53705
608-238-9949



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 15, 2009

BallaCostain LLP
Douglas Flygt
1626 Capital Ave
Madison WI 53705

Dear Mr. Flygt:

Thank you for submitting the *Application for a Permit to Appropriate Water* for irrigation in Turner County. The letter submitted with the application indicated the additional information would be coming. As of today, we have not received the following:

- A map (aerial photo) showing the proposed location of the well in relation to a government section corner or quarter corner by direction and distance is required. Please outline the acres to be irrigated.
- The map must be signed by one of the following: Registered Land Surveyor, Registered Professional Engineer or by any other government employee who normally prepares maps as a part of his assigned duties (i.e. local NRCS office).
- A well log or test hole log signed by a licensed South Dakota well driller.

If you have any questions, please contact me.

Sincerely,

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

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DEC 29 2009

WATER RIGHTS
PROGRAM

December 21, 2009

Karen Schlaak
Water Rights Program
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Water Rights

Dear Ms. Schlaak:

Thank you for your letter of December 15, 2009, copy attached. There was some misunderstandings on my end regarding who was doing what.

With respect to the third bullet point in your letter, I enclose a copy of the test well report done by Hammond-Wetmore.

With respect to the first two bullet points in your letter (relating to the map), our tenant was supposed to get a formal map signed by NRCS last week and send it directly to Mr. Gronlund. Accordingly, I would hope that everything has now been submitted to your office.

Please advise if there is anything further that is needed at this time.
Thank you.

Sincerely,

BallaCostain LLP



by: Douglas Flygt, partner
1626 Capital Avenue
Madison, WI 53705
608-238-9949



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 7173-3, BallaCostain LLP**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 7173-3, BallaCostain LLP, c/o Douglas Flygt, 1626 Capital Avenue, Madison WI 53705.

The Chief Engineer is recommending APPROVAL of Application No. 7173-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 7173-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
February 11, 2010

REPORT ON WATER PERMIT APPLICATION NO. 7173-3
For BallaCostain LLP
January 21, 2010

Application No. 7173-3 proposes to appropriate 1.45 cfs (650 gpm) from one well approximately 78 feet deep located in the center of the SW $\frac{1}{4}$ of section 21 to irrigate 140 acres located in the SW $\frac{1}{4}$ of section 21; all in T99N R53W in Turner County.

AQUIFER – VERMILLION WEST FORK (VWF)

The Vermillion West Fork is a predominantly surficial outwash (sand and gravel) under water table conditions in Turner County. However, at this site the aquifer appears to be buried but apparently still under water table conditions. The aquifer underlies about 18 square miles and contains an estimated 51,000 acre-feet of water in storage in Turner County (Lindgren, 1990). The aquifer extends into McCook County to the north blends into the Vermillion East Fork aquifer to the east and blends into the much larger Parker Centerville aquifer to the south. The aquifer is also hydraulically connected to the West Fork and East Fork of the Vermillion River. Ground water movement is probably from west to east and locally toward the river (Lindgren, 1990). The aquifer covers a relatively small land area and appears to be relatively thin over this area and therefore would be more dependent upon flows in the river. Also the area of this application was not mapped as aquifer. It appears that the aquifer does underlie a larger area than is mapped in the county study. As usual with this type of aquifer, test drilling is needed to explore the best site in the aquifer to develop a production well.

This proposed site is about one mile south of the mapped boundary for the Vermillion West Fork aquifer and about one mile northwest of the mapped boundary for the Parker Centerville aquifer. Basically the two aquifer management units are similar and hydraulically connected but it appears logical to categorize this application as Vermillion West Fork aquifer.

Test well drilling on the property indicates coarse gravel from 40 to 71 feet below land surface and white to pink sand from 71 to 78 feet below land surface with a static water level of 51 feet below land surface. Also records of nearby domestic wells all indicate that this site is probably underlain by the Vermillion West Fork aquifer. Although the information does look favorable for development the saturated thickness may not be sufficient to obtain the amount of water requested. But of course this can not be predicted until production testing is conducted to determine well yield. Because the sand and gravel is relatively thin and the water levels are expected to be relatively deep (only 27 feet of saturated thickness) it may prove necessary to put in more wells to obtain the amount of water requested. Also because this site appears to be near the boundary of the aquifer the production well yields may be impacted.

Recharge to the aquifer has been estimated to be moderate in the range of 2.0 to 5.6 inches per year (Hedges, 1982). The nearby Parker Centerville aquifer has an estimated recharge rate of 4.9 inches per year and is similar geologically and hydrologically to the Vermillion West Fork aquifer. A good volume recharge estimate using the recharge rate for the Parker Centerville aquifer would be 4,700 acre feet per year. This recharge rate is reasonable.

Water use from the aquifer (for irrigation purposes) and from a total of eight individual permits/rights was 558 acre-feet in 2008, 484 acre-feet in 2007, 511 acre-feet in 2006, 442 acre-feet in 2005, and 479 acre-feet in 2004. The only other permit/right holder from the aquifer is the City of Parker with Water

Right No. 4797-3 for 1.6 cfs and Future Use Permit No. 4798-3 for 340 acre-feet annually. A total use for the City of Parker based upon these permits would be expected to be about 1,035 acre-feet annually. This estimate is based upon the assumption of a maximum use of about 60% of the 1.6 cfs diversion rate annually. An additional water permit No. 7151-3 has been issued (1.78 cfs, 320 acres) which has not been added to the water use calculations because it is a new permit. The combined water use from irrigation and optimizing water use from the city has been about 1,530 acre-feet annually. The recharge potential to the aquifer is more than sufficient to sustain the existing permits plus this application.

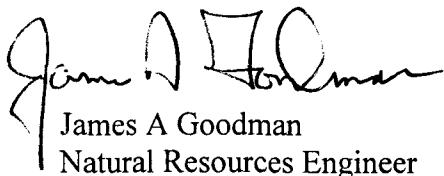
The Water Rights Program monitors an observation well TU-80CR located about two miles northeast of this application and TU-79A located about one and one-half miles southeast of this application. Water levels for these observation wells show good response to climatic conditions that is rising water levels during wet years (recharge) and gradually declining water levels during dry years. Hydrographs of these observation wells are included with this report (Water Rights, 2010). In general, the water level record indicates that the aquifer is capable of sustaining additional withdrawals.

REVIEW OF EXISTING WATER PERMITS/RIGHTS

There are nine irrigation permits/rights from the Vermillion West Fork aquifer. Also the town of Parker holds water rights for 1.6 cfs and a Future Use of 340 acre feet annually. The nearest existing permitted wells to this application would be a recently approved Water Permit No. 7151-3 located about one mile north of this application. Interference is not expected to be a concern. Drawdown created by pumping should not extend very far from individual production wells.

CONCLUSIONS

1. Water is available from the Vermillion West Fork aquifer.
2. The aquifer appears to be under water table conditions at this site. Drawdown created by pumping is not expected to be significant. Interference is not a concern.
3. The well authorized by this application must be constructed in accordance with SD Well Construction Standards.
4. The information available indicates the aquifer is larger than mapped for the county study. Also it appears the saturated thickness of the aquifer may be about 27 feet. Without proper testing of a production well it can not be determined if a well will produce the amount of water requested.
5. For practical purposes the water source for this application could have been either the Vermillion West Fork or the Parker Centerville aquifer. In either case there is water available for appropriation.



James A Goodman
Natural Resources Engineer

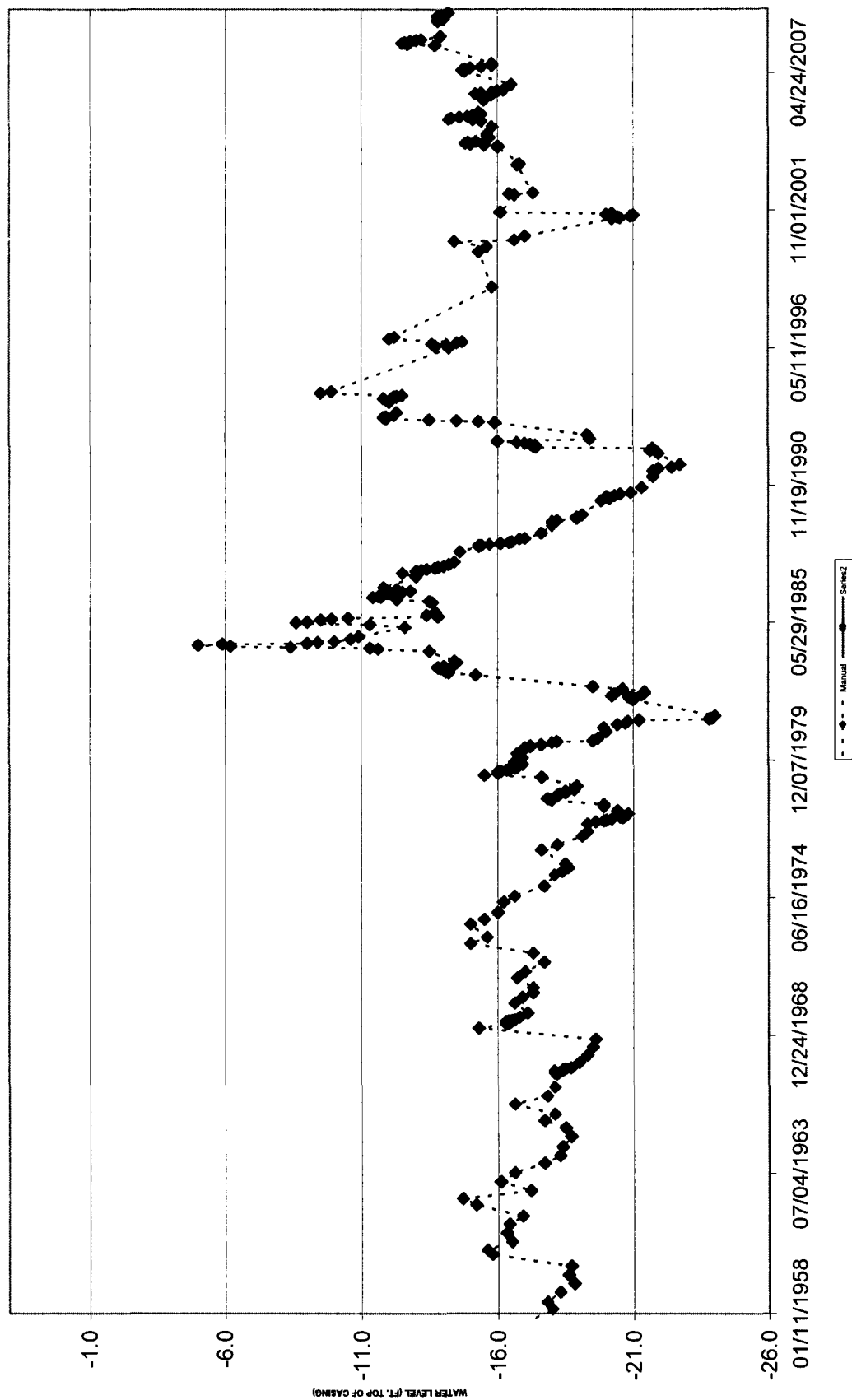
BIBLIOGRAPHY

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

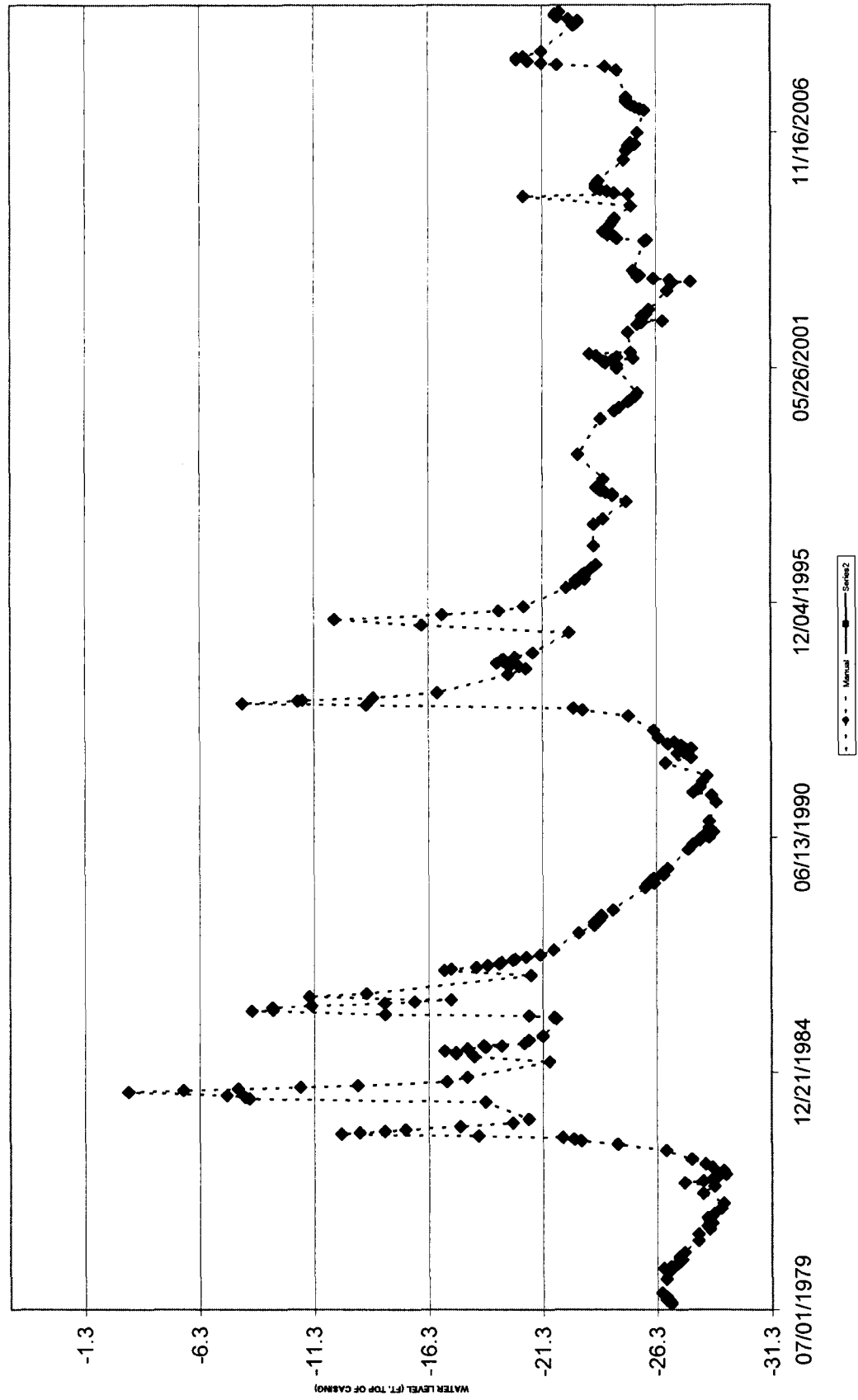
Lindgren, R.J., D.S. Hansen, 1990, Water Resources of Hutchinson and Turner Counties, South Dakota, Water-Resources Investigations Report 90-4093, USGS, Huron, SD, 57350.

Water Rights, 2010, Unpublished Observation Well Data for Turner County, SD DENR, DES, Water Rights Program, Pierre, SD, 57501.

**WATER RIGHTS' OBSERVATION WELL
TU-80CR**



WATER RIGHTS' OBSERVATION WELL
TU-79A



RECEIVED

MAR 17 2010

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF TURNER)

Allyson M. Hill, being first duly sworn, on oath says the VIBORG ENTERPRISE is a WEEKLY newspaper published in VIBORG in said county of TURNER, State of South Dakota; and that she is authorized to and does make this affidavit on behalf of said VIBORG ENTERPRISE; that affiant has personal knowledge of all facts stated in this affidavit; that said newspaper is a legal newspaper as defined by SDCL 17-2-2.1 through 17-2-2.4 inclusive as amended, has a bona fide circulation of at least two hundred copies WEEKLY, has been published in the English language within said county and has been admitted to the United States mail under the second class mailing privilege, for at least one year continuously 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 said notice, a printed copy of which taken from the paper in which the same was published is hereto attached and is made part of this affidavit, was published in said newspaper

2 time(s) as follows: that the first publication of said

notice in said newspaper aforesaid was on Thursday

the 25 day of February, 2010,

and that the succeeding publications were severally

on Thursday, the 4 day of March, 2010;

on Thursday, the ____ day of _____, 2010;

on Thursday, the ____ day of _____, 2010;

on Thursday, the ____ day of _____, 2010;

Affiant further says that the full amount of the fees charged for the publication of said notice inures to the benefit of the publishers of said newspaper; that no agreement of understanding for the division thereof has been made with any other person, that no part thereof has been agreed to be paid to any person whomsoever; and that the fees charged for the publication thereof are:

DOLLARS (\$ 37.44)

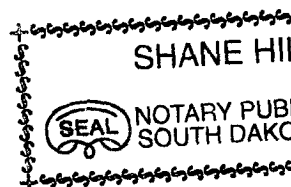
(x) Allyson M. Hill, Allyson M. Hill

Subscribed and sworn to before me this 15 day of

March, 2010

Notary Public

My commission expires 11/14/2012



**NOTICE OF APPLICATION NO. 7173-3 to
Appropriate Water**

Notice is given that Balla-Costain LLP, c/o Douglas Flygt 1626 Capital Ave, Madison WI 53705 has filed an application for a water permit to appropriate 1.45 cubic feet of water per second from one well to be completed into the Vermillion West Fork Aquifer (approximately 78 feet deep) located in approximate center of the SW 1/4 Section 21 to irrigate 140 acres located in the SW 1/4 Section 21; all in T99N-R53W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7173-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by March 15, 2010.

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

Published twice at the total approximate cost of \$37.44.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 17, 2010

Viborg Enterprise/Hurley Leader
PO Box 164
Viborg SD 57070

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 7173-3 to Appropriate Water to be published twice. Please publish the first notice on February 25, 2010 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is BallaCostain LLP, c/o Douglas Flygt, 1626 Capital Ave., Madison WI 53705 (Ph # 608-238-9949).

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

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 7173-3

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

Date _____

We are in receipt of your letter of February 17, 2010 enclosing Notice to Appropriate Water by Application No. 7173-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

February 17, 2010

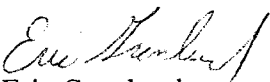
BallaCostain LLP
c/o Douglas Flygt
1626 Capital Ave
Madison WI 53705

Dear Mr. Flygt:

Water Permit Application No. 7173-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Viborg Enterprise/Hurley Leader printed at Viborg SD (Ph # 605-766-7827). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,


Eric Gronlund
Natural Resources Engineer
(605) 773-3352
eric.gronlund@state.sd.us

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 first Notice on February 25, 2010 with the second publication 7 days later. The applicant is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF APPLICATION NO. 7173-3 to Appropriate Water

Notice is given that BallaCostain LLP, c/o Douglas Flygt 1626 Capital Ave, Madison WI 53705 has filed an application for a water permit to appropriate 1.45 cubic feet of water per second from one well to be completed into the Vermillion:West Fork Aquifer (approximately 78 feet deep) located in approximate center of the SW ¼ Section 21 to irrigate 140 acres located in the SW ¼ Section 21; all in T99N-R53W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7173-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by March 15, 2010.

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

Published twice at the total 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

JUL 15 2010

BallaCostain LLP
Doug Flygt
1626 Capital Ave
Madison WI 53705

Dear Mr. Flygt:

Enclosed is Water Permit No. 7173-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

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

enclosures

RECEIVED

MAR 14 2011

WATER RIGHTS
PROGRAM

March 11, 2011

Karen Schlaak

Department of Environment and Natural Resources – Water Rights

PMB 2020

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3182

Dear Ms. Schlaak:

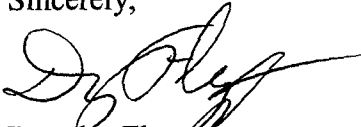
Enclosed please find the amendment materials regarding Permit No. 7173-3, together with a map of the quarter section noting the placement of the two wells and the center pivot.

I also enclose a copy of the Form 10 indicating that the project was completed and irrigation water used on July 5, 2010.

I hope that the enclosed materials provide a satisfactory response to the issues that have been raised. If not, please advise me as to any additional materials that need to be filed regarding this permit.

Thank you.

Sincerely,



Douglas Flygt, partner

BallaCostain LLP

1626 Capital Avenue

Madison, WI 53705

RECEIVED

MAR 14 2011

WATER RIGHTS
PROGRAM

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

Date 3/11/2011

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

FROM: Balla Custain LLP
(name)
1626 Capital Avenue
(address)
Madison, WI 53705 (608) 238-9949
(city, state, zip) (phone)

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

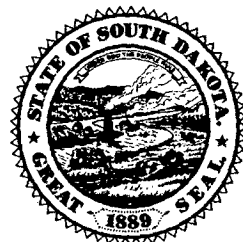
Water Permit No. 7173-3 states that the water use system is to be constructed by 3/15/2015, and water is to be put to beneficial use by 3/15/2019.
(date) (date)

The water use system was completed on July 5, 2010.
(date)

Applying the water to beneficial use was completed on July 5, 2010.
(date)

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

[Signature]
(signature) Balla Custain LLP



FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)
	No. _____ Hydrologic Unit _____
	Basin _____
	Newspaper _____

RECEIVED
MAR 14 2011
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: _____ New _____ Vested Right X Amendment/Correction to Permit No. 7173-3
(Use predates Mar 2, 1955)

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

Requesting an additional well pursuant to SDCL 46-5-13.1

1. Name of Applicant BallaCostain LLP c/o Doug Flygt Phone (608) 238-9949
(check one) _____ Owner _____ Tenant/lessee _____
Mailing Address 1626 Capital Ave, Madison State WI 53705
(Street, RR, or Box and City) (Zip Code)

2. Amount of water claimed no add'l*CFS or **GPM ***AF Total Acreage no add'l
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply groundwater (2 wells)

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) _____
approximate center of SW 1/4 Sec 21-T99N-R53W
County Turner

5. County or counties where water will be used Turner

6. Annual period during which water is to be used May 1 - September 30

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

Land Description	Acres	Land Description	Acres
SW 1/4 Sec 21-T99N-R53W	140		

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

STATE OF ^{Wisconsin} ~~SOUTH DAKOTA~~ SS
County of Dane

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

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

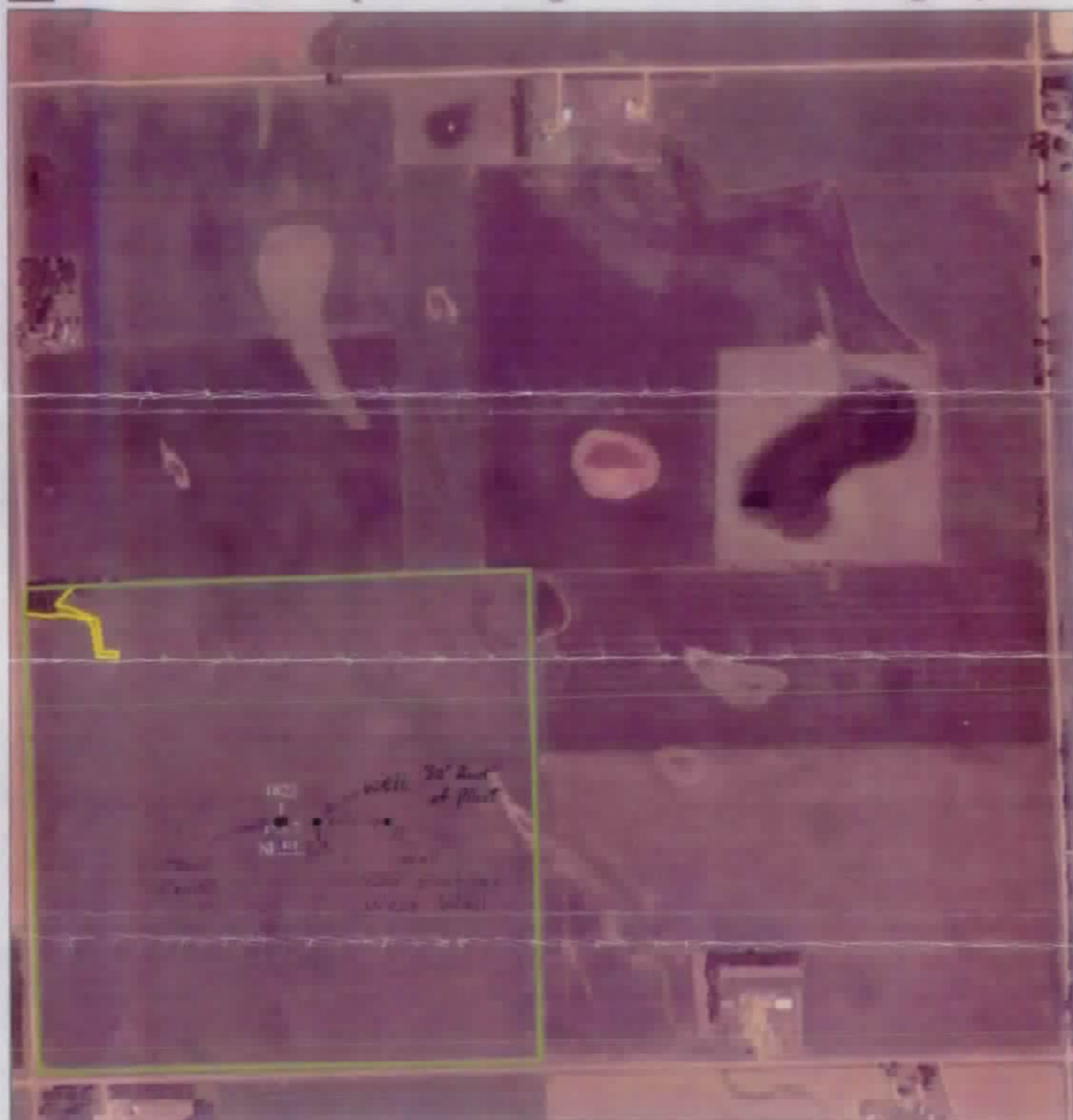
Applicant's signature Douglas Flygt

Subscribed and sworn to before me this 11th day of March 20 11

Martha L. B... exp. 5/14/2011
Notary Public signature

Bellows Institute L.L.P.

United States Department of Agriculture Farm Service Agency



1:8_258

South Dakota

Turner County

RECEIVED

MAR 14 2011

WATER RIGHTS PROGRAM

MELISSA ALDER, DC NMLS

Farm Number
5815

Township-Range-Section
90N53W21

Legend

- Historical Fire
 ■ Limited Restrictions
 ■ Exempt from Conservation
 Compliance Provisions
 □ C11: Field Boundary
 □ Tract Boundary

Apr 21, 2009

Request for Additional Diversion Point

NAME: BallaCostain LLP, c/o Douglas Flygt

ADDRESS: 1626 Capital Avenue, Madison WI 53705

DATE: December 13, 2010 **COUNTY:** Turner **TELEPHONE:**

Water Permit No. 7173-3 appropriates 1.45 cubic feet of water per second (650 gpm) from one well to be completed into the Vermillion:West Fork Aquifer (approximately 78 feet deep) located in approximate center of the SW ¼ Section 21, to irrigate 140 acres located in the SW ¼ Section 21; all in T99N, R53W.

Upon receipt of well completion reports submitted by Hammond Wetmore Drilling it was found that two wells were drilled to supply the center pivot. Mr. Flygt was contacted and informed of the need to request authorization for the additional well. The request was received on March 14, 2011.

The original well is located approximately 30 feet east of the center of the SW ¼ of Section 21, T99N, R53W. According to Mr. Flygt, the additional well is completed 425 feet to the east of the original well. This matches very closely to the well completion report submitted and the 2010 FSA aerial map of the section. It appears the second well is necessary to produce the requested diversion to operate the pivot. In fact, the staff report stated that the sand and gravel is relatively thin and it may be necessary to put in more wells to obtain the requested amount of water.

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- **Developed water source same as permitted source and no additional water appropriated**

The water source remains the Vermillion:West Fork Aquifer. Well completion reports on file reflect well depths of 70 and 71 feet. No additional water is to be appropriated by this request. The well authorized by Water Permit No. 7173-3 appropriates 1.45 cfs (650 gpm). The submitted request reflects that no additional diversion rate authority is requested.

- **Review of Existing Diversions (see map)**

The Water Rights Program's database of well completion reports was also reviewed for wells less than 100 feet deep and in a two mile radius. The nearest domestic well on file is 3,600 feet northeast of the location of the wells used to supply the irrigation system under Water Permit No. 7173-3. There are a

total of three domestic wells on file within the two mile radius that meet the depth criteria. The two others are north and very near the two mile limit.

The nearest water right using the Vermillion:West Fork Aquifer is held by Allen Merrill and located 4,600 feet north of these wells. The next closest is the city of Parker approximately 1 ¼ miles northwest. Finally, an irrigation right for Roger Ihnen is located 2 miles north.

The staff report for the most recent Merrill permit application was prepared in 2009. It concluded that drawdown created by pumping is not expected to be significant and interference is not a concern.

There is a significant amount of irrigation just a few miles to the east. The water source for these irrigation systems is the Parker Centerville Aquifer.

CONCLUSION

- The additional well does not appropriate additional water.
- The additional well is completed into the Vermillion:West Fork Aquifer.
- Interference is not expected to be a concern.
- Existing domestic wells will not be adversely impacted by authorizing this additional well.

RECOMMENDED ACTION

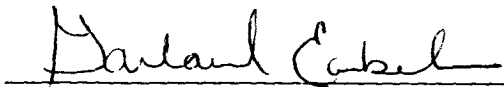
Based on the above criteria, it is recommended that the additional diversion point be authorized pursuant to SDCL 46-5-13.1.



Eric Gronlund, Natural Resources Engineer
Water Rights Program

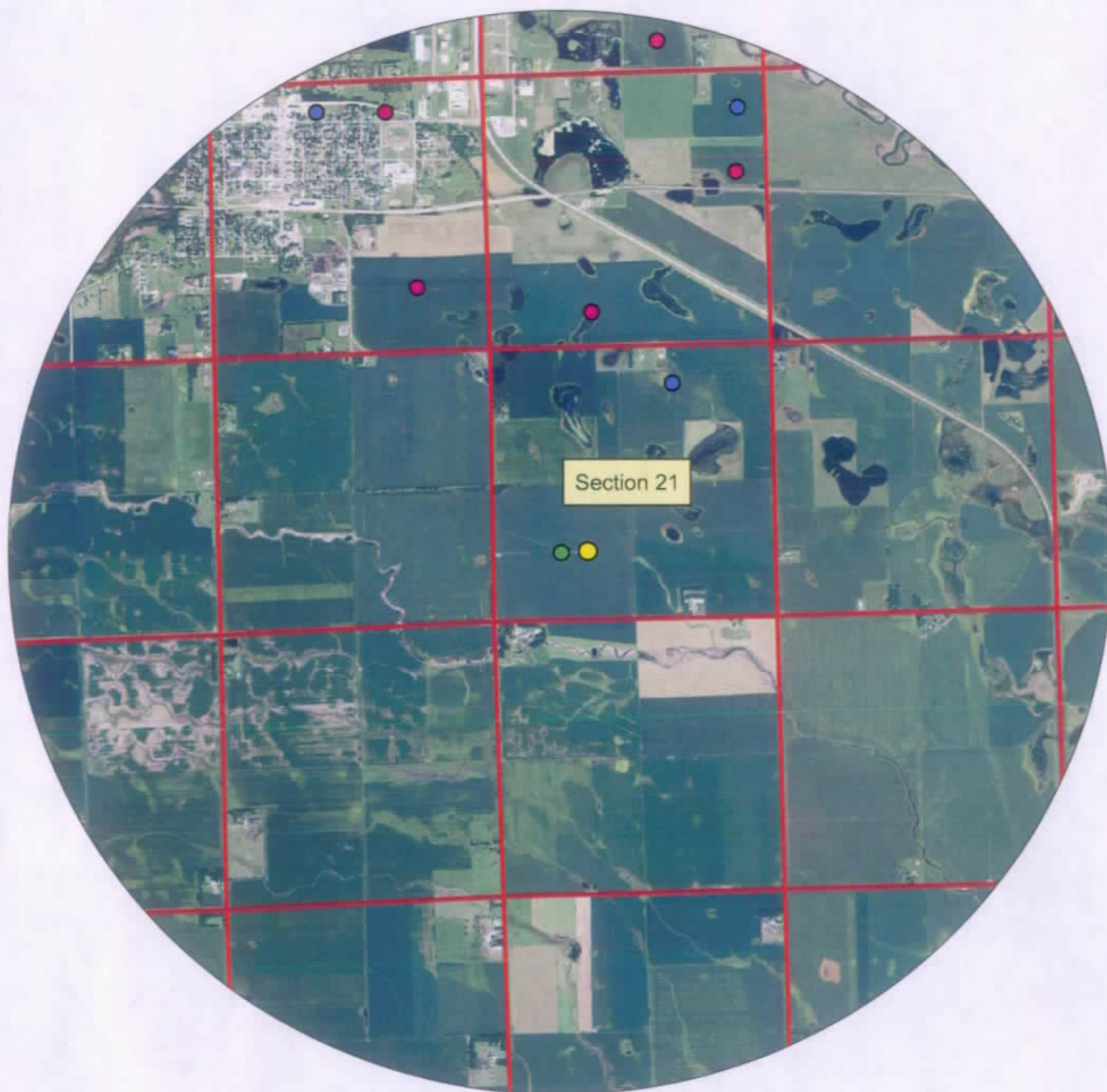
The Chief Engineer makes a finding pursuant SDCL 46-5-13.1 and ARSD 74:02:01:14.01 that:

This additional diversion point does not increase the potential for adverse effects to existing diversions.



Garland Erbele, Chief Engineer
Water Rights Program

REQUEST FOR ADDITIONAL WELL FOR WATER PERMIT NO. 7173-3, BallaCostain LLP



-  Original well location
-  Additional drilled well
-  Other water rights using same aquifer in 2 mile radius
-  Domestic wells less than 100 feet deep within 2 mile radius





7173-3
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 28, 2011

Douglas Flygt, Partner
BallaCostain LLP
1626 Capital Avenue
Madison WI 53705

Dear Mr. Flygt:

I am writing in regard to a request for an additional diversion point for irrigation authorized by Water Permit No. 7173-3.

Water Permit No. 7173-3 approved in March 2010 appropriates 1.45 cubic feet of water per second (650 gpm) from one well to be completed into the Vermillion:West Fork Aquifer (approximately 78 feet deep) located in approximate center of the SW ¼ Section 21, To irrigate 140 acres located in the SW ¼ Section 21; all in T99N, R53W.

Upon review of the request and pursuant to SDCL 46-5-13.1, the additional well is authorized without application or publication of a notice of hearing. The additional well is approximately 425 feet east of the well near the center of the SW ¼ Section 21.

No additional appropriation above the amounts authorized by Water Permit No. 7173-3 is authorized. If more than 1.45 cfs (650 gpm) is diverted or 140 acres irrigated is exceeded, a new water permit will need to be obtained.

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

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

No. 7173-3

July 22, 2015

Doug Flygt
BallaCostain LLP
1626 Capital Ave
Madison WI 53705

Dear Mr. Flygt:

On Thursday, July 16, 2015, a staff member from the Department of Environment and Natural Resources (DENR) observed overspray from the irrigation system located in the SW 1/4 Section 21-T99N-R53W onto the adjacent north/south oil road (see attached photo). This irrigation system is covered by Water Permit No. 7173-3 which is held by you.

It is common for center pivots to have stops which are used to shut off the end gun when the pivot nears a road. The end gun on the pivot had turned off but not soon enough to prevent spraying the road as shown in the photo. Please take steps to insure end gun stops are functioning properly so there is not direct overspray on to the road.

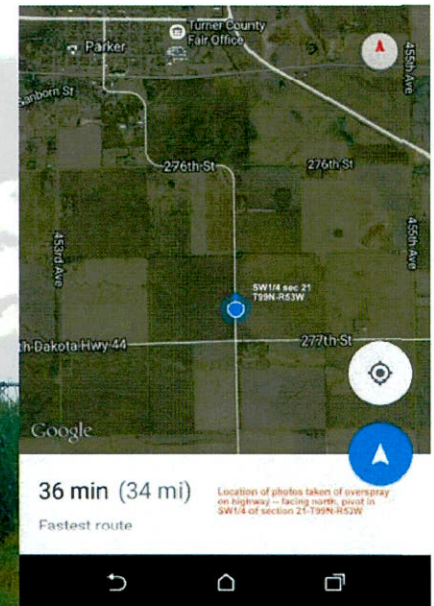
A water right holder is not allowed to operate an irrigation system in violation of state water law, which includes end gun overspray upon land not authorized by the water right. Continued overspray can result in DENR taking enforcement action.

If you don't believe this irrigation system is causing the overspray, or if you have any questions, please contact me at (605) 773-3352 or by email at eric.gronlund@state.sd.us.

Thank you for your cooperation,

Eric Gronlund
Water Rights Program, DENR
605 773-3352

enclosure



36 min (34 mi)

Fastest route

Location of photos taken of overspray on highway — facing north, pivot in SW 1/4 of section 21-73N-R53W



7173-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 23, 2020

NOTICE

TO: BALLACOSTAIN LLP, DOUGLAS FLYGT, PARTNER, 1626 CAPITAL AVE, MADISON, WI 53705

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2019 Irrigation Questionnaire(s)

Our records indicate your 2019 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3. The request for the Questionnaire was dated October 18, 2019. The Water Management Board has directed that owners of water permits who have not submitted the 2019 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3 qualification:

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

The hearing will be held at **Wednesday, February 26, 2020 at 8:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **February 26, 2020** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: XFCQTJ**

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

7173-3



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 3, 2020

Douglas Flygt
BallaCostain LLP
1626 Capital Ave
Madison WI 53705

RE: Water Permit or Right Nos. 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3

Dear Mr. Flygt:

I am writing to acknowledge receipt of your 2019 irrigation questionnaires.

You may disregard the January 23, 2020, "Notice" concerning reporting requirements for Water Permit or Right Nos. 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Genny McMath".

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

7173-3



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 2021

NOTICE

TO: BALLACOSTAIN LLP, DOUGLAS FLYGT, PARTNER, 1626 CAPITAL AVE, MADISON, WI 53705

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2020 Irrigation Questionnaire(s)

Our records indicate your 2020 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3. The request for the Questionnaire was dated October 23, 2020. The Water Management Board has directed that owners of water permits who have not submitted the 2020 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3 qualification:

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

The hearing will be held at **Wednesday, March 3, 2021 at 10:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 3, 2021** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: MYVLQY**

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

7173-3



DENR
SOUTH DAKOTA

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 3, 2021

Douglas Flygt
Ballacostain LLP
1626 Capital Ave
Madison WI 53705

RE: Water Right/Permit Nos. 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3

Dear Mr. Flygt:

I am writing to acknowledge receipt of your 2020 irrigation questionnaires.

You may disregard the January 22, 2021, "Notice" concerning reporting requirements for Water Right or Permit Nos. 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Genny McMath".

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us



DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

January 20, 2022

NOTICE

TO: BALLACOSTAIN LLP, DOUGLAS FLYGT, PARTNER, 1626 CAPITAL AVE, MADISON, WI 53705

FROM: Ron Duvall, Water Rights Permitting Administrator
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2021 Irrigation Questionnaire(s)

Our records indicate your 2021 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3. The request for the Questionnaire was dated October 22, 2021. The Water Management Board has directed that owners of water permits who have not submitted the 2021 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3 qualification:

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

The hearing will be held at **Wednesday, March 2, 2022 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 2, 2022** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: WDZNMB**

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

7173-3



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

January 26, 2022

Douglas Flygt
Ballacostain LLP
1626 Capital Ave
Madison WI 53705

RE: Water Permit Nos. 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3

Dear Mr. Flygt:

I am writing to acknowledge receipt of your 2021 irrigation questionnaires.

You may disregard the January 20, 2022, "Notice" concerning reporting requirements for Water Permit Nos. 5679-3, 5680-3, 6126-3, 6127-3, 6843-3 & 7173-3. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us

3550-3, 7151-3, 7173-3,
7294-3, 7311-3, 7312-3
7438-3

**Water Rights Program
File Documentation**

File: Water Right/Permit Nos. 3550-3, 7151-3, 7173-3, 7294-3, 7311-3, 7312-3, & 7438-3

Date: 2024 June 21

County: Turner

RE: Aquifer designation

COMMENTS:

Water Right No. 3550-3 was advertised as appropriating water from "groundwater" and designated to belong to the Vermillion West Fork aquifer when the Water Rights Program named aquifers [1]. Water Permit Nos. 7151-3, 7173-3, 7294-3, 7311-3, 7312-3, and 7438-3 were advertised as appropriating water from the Vermillion West Fork aquifer [1]. In her review for Water Permit No. 8742-3, Kilts [2] delineated the Parker-Centerville aquifer based on best information available and this delineation included the above-mentioned permit numbers. Subsequently, the Water Rights Program is administratively changing the aquifer designation for the above water right permit numbers to the Parker-Centerville aquifer. This change of aquifer designation, to the Parker-Centerville aquifer, does not represent a physical change in the water source. It is an update to the name of the aquifer materials to reflect the currently best available information for aquifer extents. This update to the aquifer name does not authorize any increase in the amount of water appropriated by these water right permit numbers, relocation of existing wells, or completion of additional wells into the aquifer. Going forward, issuance of any pertinent documents will reflect the updated aquifer designation.



Kim Drennon
Natural Resources Engineer



Eric Gronlund
Chief Engineer

References

- [1] Water Rights Program, "Water Right Permit Files," SD DANR, Joe Foss Bldg., Pierre, South Dakota, 2024.
- [2] W. Kilts, "Report to the Chief Engineer on Water Permit Application No. 8742-3," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2023.

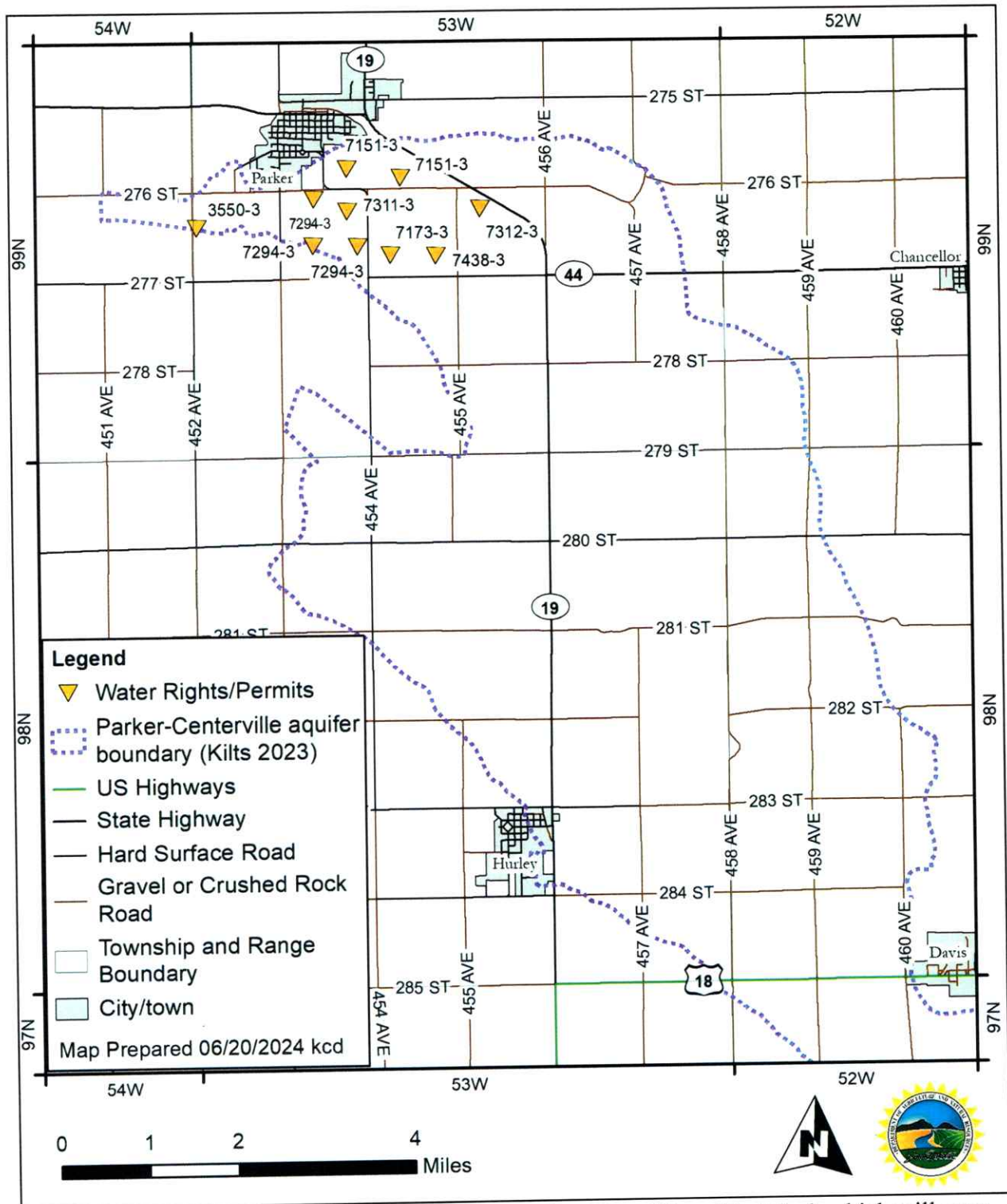


Figure 1: Water right permits previously categorized as Vermillion: West Fork which will now be categorized as Parker-Centerville.

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 7173-3

I have this day, October 18, 2024, made a thorough examination of the water use system constructed by BellaCostain, LLP, c/o Doug Flygt, 1626 Capital Ave, Madison, WI 53705 of Permit No. 7173-3, bearing the priority of December 2, 2009 authorizing the diversion of 1.45 cu. ft. per second of the waters of the Vermillion:West Fork Aquifer for irrigation purposes, in Turner County.

A. Works used to divert the water:

Well Information:

- 1) Well Drilling Firm: Hammond-Wetmore Drilling
- 2) No. of Wells 2
- 3) Depth(s) "W" 71 & "E" 66 feet
- 4) Well log is available Y

Comments:

Casing:

- 1) Diameter 16 inches
- 2) Length "W" 41 "E" 46 feet
- 3) Type Plastic

Screen:

- 1) Type Stainless steel
- 2) Length "W" 30 & "E" 22 feet
- 3) Static water level 40 feet

Pump:

- 1) Make Submersible
- 2) Model Unknown
- 3) Size Unknown
- 4) Capacity 550 total GPM

Motor:

- 1) Make Unknown
- 2) Model No. Unknown
- 3) Horsepower rating Unknown hp

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

- 1) Type Aluminum & PVC 2) Size 8 & 6 inches 3) Length 20 & 265 feet

Comments: EAST well has 6-inch discharge

C. Works used to apply water to beneficial use:**Center pivot:**

- 1) Make Reinke
 2) Overall length 1300 feet
 3) Number of towers 7
 4) End gun Y
 5) Capacity 550 GPM

Chemigation Equipment:

- 1) Does chemigate N

D. Compliance with Permit Requirements:

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

E. Condition and Location:

1. The system is in good condition with the point(s) of diversion located as follows: WELL LOCATIONS
"W" Well: 1375 ft N & 1320 ft E from the SW corner Sec 21 T99N R53W, Lat 43.37664 Long - 97.11711 (approx. center of SW 1/4)
"E" Well: 1385 ft N & 1820 ft E from the SW corner Sec 21 T99N R53W, Lat 43.37663 Long - 97.11550 (NE 1/4 SW 1/4).
2. The works are capable of diverting and conveying to the place of use 1.23 cu. ft. per second of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:
- | <u>legal description/acreage</u> | <u>legal description/acreage</u> |
|----------------------------------|----------------------------------|
| All land in Sec 21 T99N R53W | |
| NW 1/4 SW 1/4 - 36 acres | |
| NE 1/4 SW 1/4 - 33 acres | |
| SE 1/4 SW 1/4 - 31 acres | |
| SW 1/4 SW 1/4 - 34 acres | |
- comprising a total of 134 acres of land and the license should be issued for 1.23 cfs
3. All structures, wells and lands on map Y

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

FSA maps and the ArcGIS program were used to construct the attached well location and irrigated area map which was used to estimate irrigated acreage.

The flow rate reported on the 2023 Irrigation Questionnaire was used to establish the system flow capacity.

The address and phone number in the permit application are current.

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

Darrell DeBoer
Water Rights Inspector
DENR, Water Rights Program

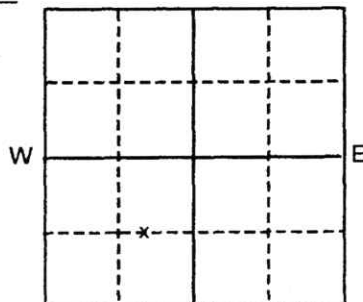
Date report completed: October 21, 2024

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location ne 1/4 SW 1/4 Sec 21 Twp 99n Rg 53wCounty turner

North

Please mark well
location with an "X"

Well Completion Date

July 22, 2010

1 Mile

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?
1,900.0 ft. from septic tank (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

bucket drill

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	16.00 IN	0.0 FT	46.0 FT	22.00 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
bent grt	18	9.5 Lb/gal	0.0 Ft	39.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
tremie

SCREEN:

☐ Perforated pipe ☒ Manufactured
Diameter 16.00 Inches Length 20.0 FeetMaterial PVCSlot Size 0.80 Set From 46.0 Feet to 66.0 Feet

Other information

WAS A PACKER OR SEAL USED?

☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? hth tablets
☐ No, Why Not?
Lab to which water
quality sample sent for analysisWell Owner: Ballacostain, Inc

Business Name:

Address: 1626 Capital AveCity, State, Zip: Madison WI 53705

WELL LOG:

DEPTH

FORMATION	DEPTH	
	FROM	TO
Clay, yellow brn to redbrn, pebbly	0	37
gravel, coarse	37	66
claystone, gray, sticky	66	70

STATIC WATER LEVEL 40.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in?

RECEIVED

WELL TEST DATA:

FEB - 4 2011

☒ Pumped Describe:

☐ Bailed

☐ Other
WATER RIGHTS
PROGRAM

Pumping Level Below Land Surface

54.0 Ft. After 8.0 Hrs. pumped 280.0 GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: 250.0 GPM

REMARKS

east well (500' east of pivot point) Well #2.

This well was drilled under license # 666 and this
report is true and accurate.Drilling firm: Hammond Wetmore Drilling

Signature of License Representative:

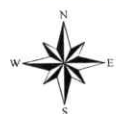
Signature of Well Owner or Equitable Property Holder:

Date: July 30, 2010



WELL LOCATIONS
From the SW corner
Sec 21 T99N R53W
"W" WELL
1375 ft N & 1320 ft E
Lat 43.37664 Long -97.11711
"E" WELL
1385 ft N & 1820 ft E
Lat 43.37663 Long -97.11550

IRRIGATED AREA
All land in Sec 21 T99N R53W
NW 1/4 SW 1/4 - 36 acres
NE 1/4 SW 1/4 - 33 acres
SE 1/4 SW 1/4 - 31 acres
SW 1/4 SW 1/4 - 34 acres



0 385 770 1,540 2,310 3,080 Feet



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

BallaCostain LLP
c/o Douglas Flygt
1626 Captial Ave
Madison, WI 53705

No. 7173-3

Dear Mr. Flygt:

Enclosed is Water License No. 7173-3. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

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

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

Sincerely,

Mark Mayer, PE
Director of Office of Water
(605) 773-3352

Note: While the original permit was issued for appropriations from the Vermillion: West Fork Aquifer, the aquifer designation has been changed to the Parker Centerville Aquifer, based on the best information available. Redesignation of the appropriated aquifer does not represent a physical change in water source.

enclosures

**STATE OF SOUTH DAKOTA
WATER LICENSE NO. 7173-3**

(1) BallaCostain LLP, c/o Doug Flygt, 1626 Capital Ave, Madison, WI 53705, made Application No. 7173-3, December 2, 2009, for a water permit to divert 1.45 cubic feet of water per second from groundwater, one well (Parker Centerville Aquifer), Turner County, South Dakota for irrigation purposes. Permit No. 7173-3, with a priority date of December 2, 2009, was approved March 15, 2010, and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 15, 2015, and for the application to beneficial use of water on or before March 15, 2019.

On March 14, 2011, the permit holder submitted a request to add an additional diversion point to be located in the approximate center of the SW $\frac{1}{4}$ Section 21, T99N, R53W. The request was reviewed and approved on April 28, 2011.

The permit holder submitted a Notice of Completion of Works and Application of Water to Beneficial Use form on March 14, 2011. The Notice stated the diversion system was completed on July 5, 2010, and the water was placed to beneficial use on July 5, 2010.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 1.23 cubic feet of water per second for beneficial use. The location of the diversion points are:

- 1,375 feet N and 1,320 feet E from the SW corner of Section 21, T99N, R53W
(approximate center of the SW $\frac{1}{4}$) (Latitude 43.37664 & Longitude -97.11711)
- 1,385 feet N and 1,820 feet E from the SW corner of Section 21, T99N, R53W
(NE $\frac{1}{4}$ SW $\frac{1}{4}$) (Latitude 43.37663 & Longitude -97.11550)

(3) The amount of appropriation may not exceed 2 acre-feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: May 1 – September 30.

(4) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate to following land:

Section 21, T99N, R53W
NE $\frac{1}{4}$ SW $\frac{1}{4}$ - 33 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$ - 36 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$ - 34 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$ - 31 acres
Total – 134 acres

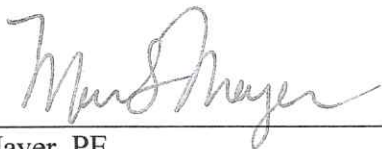
(5) Pursuant to South Dakota Water Law 46-5-30.1 BallaCostain LLP, the holder and/or owner of Water Right No. 7173-3 is issued a license to appropriate water, the right to use 1.23 cubic feet of water per second from groundwater, two wells (Parker Centerville Aquifer), with a priority date of December 2, 2009, from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 7173-3 and subject to the following qualifications:

continued

Qualifications

1. The wells approved under this Permit are located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 7173-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28. (The wells were drilled in 2010 by Hammond Wetmore Drilling. Copies of the well completion reports are on file with the Water Rights Program.)
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.



Mark Mayer, PE
Director of Office of Water



date

