

WATER PERMIT NO. 7385-3

Name of Applicant: Sam Fousek

Address: 29972 396th Ave, Wagner SD 57380 Phone: 605 491-5474

Amount of Water Claimed: 3.33 cfs Total Acres: ~~166~~ 80

Source of Water Supply: groundwater (one well)

Water to be used for: irrigation County: Charles Mix

Type of Waste Disposal System:

Location: 2 miles south of Wagner

PRIORITY Date Received: 7-25-12 Application/License Fee: \$ 1050.00

Corrected Application Received: Period of Annual Use: April 1 – September 30

Remarks:

Diversion Point: NE ¼ NE ¼ Sec 22-T95N-R63W

Land to be Irrigated: E ½ NE ¼ Sec 22 and SE ¼ Sec 15; all in T95N-R63W

Depth of Well: 260 feet deep

Well Driller:

Remarks:

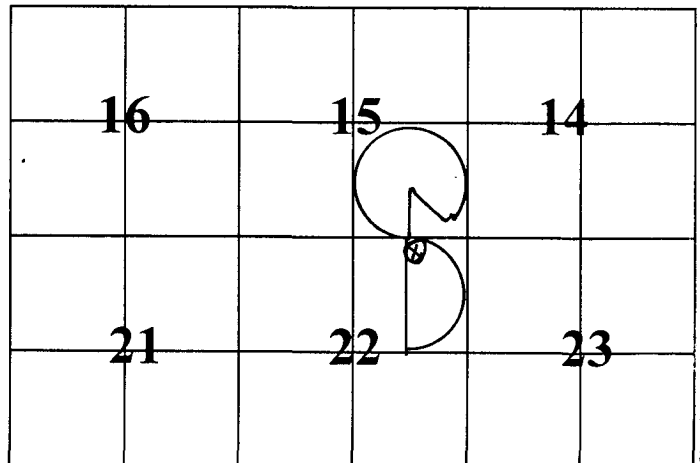
Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 7-25-2012

By: Karen Schlaak

Notice of Hearing - date to intervene: _____



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

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>7385-3</u> (office use only)
	Hydrologic Unit <u>10120101</u>
	Basin <u>Missouri River</u>
	Newspaper <u>Wagner Post PO Box 757380 605-384-5616</u> <u>Press of Dakotan 319 Walnut Yankton 57078 605-665-7811</u>

RECEIVED
JUL 25 2012
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

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

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

- Name of Applicant Sam Fousek Phone 605 491 5474
(check one) X Owner Tenant/lessee
Mailing Address 29972 39th Ave Wagner SD 57380
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed 3.33*CFS or 1500**GPM ***AF Total Acreage 180
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable
- Source of water supply Well
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) 1 well -
Lots 1465 & 837 Sec 22 T195N R63W
County Charles mix
- County or counties where water will be used Charles mix
- Annual period during which water is to be used April thru September
- 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
22-95N-63W	66		
15-96N-63W			
Lots 1465 & 87			
see file document Lot 1435			

8. Give a description of the project. (Attach sheet if more space is needed)
- Well will be in section 22. One pivot to irrigate approx 66 acres
+ one pivot to irrigate approx 120 acres.
applicant is requesting diversion Rate greater than 1cfs per 70 acres

STATE OF SOUTH DAKOTA) SS
County of Charles mix

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, Sam Fousek, 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 Sam Fousek

Subscribed and sworn to before me this 20th day of July 20 12

Marcia R. Honomichi, Notary Public
My commission expires Feb. 22, 2018

[Signature]
Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 7385-3**

Date of first receipt of application July 25, 2012.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 7385-3 to Sam Fousek, 29972 396th Ave, Wagner SD 57380 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. 7385-3 appropriates 3.33 cubic feet of water per second (cfs) from one well to be completed into the Choteau:West Aquifer (260 feet deep) for irrigation of 180 acres with well and acreage all located in the Lots One Thousand Four Hundred Sixty-Five (1465) and Eight Hundred Thirty-Seven (837) of Section 22 and Lot One Thousand Four Hundred Thirty-Five (1435) of Section 15; all in T95N-R63W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – September 30.
3. The date from which applicant may claim right is July 25, 2012.
4. The date of approval of Permit No. 7385-3 is October 9, 2012.
5. One-fifth of the construction is to be completed on or before April 9, 2015.
6. All construction is to be completed on or before October 9, 2017.
7. Water is to be put to beneficial use on or before October 9, 2021.
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 well authorized by Permit No. 7385-3 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

OCT 29 2012
date



Supplemental Information

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter 34 Depth 260 Ft
- b) Casing Type PVC Diameter 16" Thickness 1/2"
- c) Screen Type Slotted Diameter 16" Thickness 1/2"
- d) Gravel Pack Wash rock Length of Gravel Pack 50'
- e) Depth to Top of Water Bearing Material 160'
- f) Depth to Water (ground surface to water level) 90'
- g) Distance to nearest existing domestic well:
- On applicants property 1/2 mile On property owned by others _____

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) 1600 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 _____

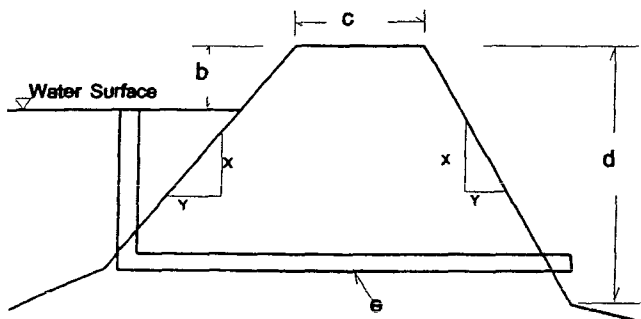
Upstream _____

Downstream _____

- h) Surface Area of Impoundment _____

- i) Storage _____ Acre Feet

- j) Drainage Area Above Dam _____ Acres





United States Department of Agriculture
Farm Service Agency

PLSS: 22_95N_63W
Farm: 7645

Charles Mix County

1:8,652

Disclaimer: 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.

2010 Ortho-Photography - Not to Scale

June 19, 2012



Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation Compliance Provisions

Common Land Units
RECEIVED

JUL 25 2012

**WATER RIGHTS
PROGRAM**



United States Department of Agriculture
Farm Service Agency

PLSS: 15_95N_63W
Farm: 7557

Charles Mix County

1:8,628

Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area.
Refer to your original dermination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

June 19, 2012



Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation Compliance Provisions

RECEIVED

JUL 25 2012

**WATER RIGHTS
PROGRAM**

2010 Ortho-Photography - Not to Scale

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

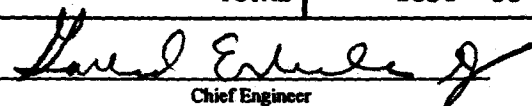
Date 7/25, 20 12

RECEIVED OF Fousek Farm & Ranch 29972 396th Ave Wagner SD 57380

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

Fee for Application for Permit No. <u>7385-3</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>7385-3</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. **05501**

By 
Chief Engineer

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Application No. 7385-3, Sam Fousek

ADDRESS: 29972 396th Ave, Wagner SD 57380 COUNTY: Todd County

DATE: July 31, 2012 TELEPHONE: 605 491-5474

RE: Application

I contacted Mr. Fousek regarding question regarding his application.

1. Based on the Charles Mix County landowner directory (plat map) lists Marilyn Wright as owner of the SE $\frac{1}{4}$ Section 15 and Mr. Fousek owning the N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 22. Mr. Fousek represented that he purchased the SE $\frac{1}{4}$ of Section 15 from Marilyn Wright and that he owns the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 22.
2. I explained that his application is not consistent with the number of acres to be irrigated. He indicated that the pivot in the SE $\frac{1}{4}$ Section 15 will make just over a $\frac{3}{4}$ rotation and the pivot in the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 22 will make a 66 acre windshield wipe rotation.

NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T95N, R63W	33 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T95N, R63W	33 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T95N, R63W	33 acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T95N, R63W	15 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T95N, R63W	33 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T95N, R63W	33 acres
TOTAL	180 acres

3. Finally I asked about the legal description due to the boundaries of the Yankton Sioux Tribe. As far as he knew the legal description is the SE $\frac{1}{4}$ Section 15 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 22, T95N, R63W. However, he was going to pull the deed on both parcels and send to me.

NAME: Eric Henderson

Sam & Angie Fousek
29972 396th Ave.
Wagner, SD. 57380
605-491-5474(Sam's cell)

RECEIVED

AUG 06 2012

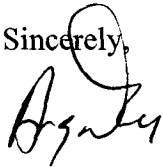
**WATER RIGHTS
PROGRAM**

August 2, 2012

Dear Eric,

Enclosed are the copies of the land we are proposing to set up for irrigation. If you have any questions please call Sam's cell as it is the easiest way to get in touch with him. Thank You.

Sincerely,

A handwritten signature in cursive script, appearing to read "Angie", with a circular flourish above the first letter.

Angie Fousek

RECEIVED

AUG 06 2012

WATER RIGHTS
PROGRAM

COPY

This document drafted by:

Bradley D. Kerner

Attorney at law

PO Box 371

Armour, South Dakota 57313

605-724-2313

CONTRACT FOR DEED

THIS AGREEMENT made and entered into this 19 day of June, 2012, by and between Marilyn Wright, a single person, of Wagner, South Dakota 57580, hereinafter called Seller, and Sam Fousek and Angie Fousek, Husband and Wife, as joint tenants with right of survivorship, of Box 88, Wagner, South Dakota 57380, hereinafter called Buyers.

RECITALS:

That the Seller hereby agrees to and does sell to the Buyers, and the Buyers hereby agree to and do purchase from the Seller, the following described real estate, upon the terms and conditions hereinafter set forth. Therefore, it is agreed that if the Buyers shall make the payments and fulfill the covenants hereinafter mentioned on their part to be made and performed, the Seller hereby

covenants and agrees to convey and assure to the Buyers, free of all liens and encumbrances, taxes and special assessments whatsoever, by a good and sufficient warranty deed, together with such sum of money as is required by the State of South Dakota for transfer fees, and a title insurance commitment to the said property showing marketable title in the Seller, the following described real estate situated in the county of Charles Mix and State of South Dakota:

DESCRIPTION:

Lots 1443, 1458, and 1459, of Section Fifteen, Township Ninety-five North, Range Sixty-three West of the 5th p.m.

CONSIDERATION:

That the Buyers covenant and agree to pay to the Seller for the above described premises the sum of \$516,000.00, with interest on the balance of the purchase price remaining from time to time unpaid at the rate of 4.5 % percent per annum; as shown by the attached amortization schedule from the Commercial State Bank.

TERMS OF PAYMENT:

That the purchase price and interest thereon shall be paid and settled for at the following time and in the following manner, to-wit:

The sum of \$516,000.00 shall be due and payable as follows: The sum of \$60,000.00 shall be due and payable on July 2, 2012. The sum of \$125,000 shall be due and payable on September 5, 2012. The balance of \$331,000.00 shall be due

and payable as follows: The sum of \$92,2666.69 shall be due and payable on September 5, 2013, September 5, 2014. September 5, 2015 and September 5, 2016, all according to the attached schedule of payments attached hereto and incorporated herein by reference.

It is understood and agreed that the payments described above constitutes both principal and interest at the rate of 4.5% percent per annum payable on the whole principal sum remaining from time to time unpaid.

All principal and interest payments made under this Agreement shall be delivered by Buyers to the Seller, at such address as Seller may give to Buyers.

PREPAYMENT:

Buyers shall not be permitted to accelerate principal payments without Seller's prior written permission.

POSSESSION:

It is further understood and agreed that the Buyers shall have possession of the hereinbefore described real estate immediately, except possession to the house shall be August 1, 2012.

TAXES:

It is further agreed by and between the parties hereto that the Seller shall pay the taxes pro-rated to the date of possession. Seller pays the 2011 due in 2012 and the 2012 due in 2013. Buyers shall pay all subsequent taxes.

TITLE INSURANCE:

It is further agreed by and between the parties hereto that the Seller will, on

demand, deliver to the Buyers, or their designated attorney, for examination, the title insurance commitment to the property. The Buyers shall have thirty (30) days thereafter to examine or have the same examined, and make known to the Seller any defects or objections to the title as shown by the title insurance commitment, the elimination of which is necessary before the title insurance commitment shows marketable title in the Seller. That the Seller shall not be required or be responsible for any defects or objections shown on the title insurance commitment if such defects or objections do not make the title to said property unmarketable.

If the Buyers fail to make any objections to the title as shown by the title insurance commitment in writing within thirty (30) days after delivery, the Buyers shall be deemed to have waived any and all objections to the title.

It is understood and agreed that the cost of the owner's title insurance commitment will be shared equally by the Seller and the Buyers.

WARRANTY DEED:

Contemporaneously with the execution of this agreement, Seller will execute a warranty deed to the property described herein, in favor of Buyers. The warranty deed will be held in escrow until final payment, at which time it will be delivered to Buyers.

DEFAULT:

It is agreed by and between the parties hereto that in case of the failure of the Buyers to pay any taxes, assessments or impositions or any part thereof

required by them to be paid, or in case of the failure of the Buyers to make the payments as herein agreed upon or to perform any of the covenants on their part made and entered into, then the whole unpaid balance, including accrued interest, shall, at the option of the Seller, become immediately due and payable, and this Agreement shall at the option of the Seller be forfeited and determined.

In the event of such default, then the Seller, at Seller's option, shall retain as damages the amount that the Buyers have provided Seller pursuant to this agreement or shall receive as liquidated damages an amount equal to the sum of the following:

- 1) The fair rental value of the property described herein;
- 2) Damage to or depreciation of the property;
- 3) Any decline in value attributable to a change in market value not included in number (2) above;
- 4) Attorney fees the Seller has incurred in conjunction with enforcing the default clause of this Contract for Deed;
- 5) Unpaid real estate taxes that were to have been paid by the Buyers;

REMEDIES:

In such event, Seller shall have the right to re-enter the premises and take possession of the premises; provided, however, the amount owing on this Agreement, and the due date for payment thereof may not be accelerated, nor shall the Agreement be forfeited and determined unless the Seller shall first give the Buyers written notice by Certified Mail addressed to the Buyers at Buyers'

current address, or such other address as has been given to the Seller by the Buyers in writing, in which the claimed default is specified, and the Buyers do not within 30 days thereafter remedy or cure any such default stated in such notice.

In the event of foreclosure as a remedy, it is expressly stipulated and agreed between the parties hereto that as part of the consideration of this contract, as actual damages are and would be difficult to ascertain or determine in the event of breach of this contract by the Buyers, then the forfeiture as above described under DEFAULT and REMEDIES shall constitute and be considered by both parties hereto as liquidated damages.

For the purposes of this contract, Buyers hereby relinquish and waive any and all homestead rights in and to the above stated property, so long as there remains an unpaid balance due and owing to the Seller.

That if the Seller shall fail to perform any of the covenants herein agreed upon, then in that event the Buyers may proceed by action to enforce specific performance of this Agreement.

INSURANCE:

None required.

OTHER: It is agreed between the parties that are obligations/debts of the Seller to commercial State Bank in Wagner, South which are both unsecured and secured by a mortgage on the subject property. It is further agreed that on September 5, 2012; upon receipt of the first installment payment from Buyer, Seller will pay off all obligations to Commercial State Bank and at that time the mortgage shall be

satisfied.

WARRANTIES:

It is further agreed by and between the parties hereto that the Buyers have inspected the property, the subject of this Agreement, and all of the improvements thereon, and know the condition of the same, and that the Seller has made no warranties or representations whatsoever as to the condition of the property or any improvements thereon, and it is specifically agreed that any representation, promise or agreement made by any representative of or by any of the parties hereto not contained in this Agreement shall not be binding upon the parties hereto, and all not effect the validity of this Agreement or any party thereto.

It is agreed by and between the parties hereto that the Seller has not and does not make any representations or warranties as to the amount of land embraced within the tract of land hereinbefore described, nor as to any property lines. That the Buyers have made an inspection and rely on their own inspection as to the property being herewith sold to the Buyers.

TIME:

It is mutually agreed by and between the parties hereto that the time of payment shall be an essential part of this Agreement and that time is of the essence thereof, and further that all of the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, personal representatives, successors and assigns of the respective parties.

In Testimony Whereof the parties have hereunto set their hands the day and year first above written.

SELLER

Marilyn Wright
Marilyn Wright

BUYERS

Sam Fousek
Sam Fousek
Angie Fousek
Angie Fousek

State of South Dakota)
)SS
County of Charles Mix)

On this 19 day of June, 2012, before me, the undersigned officer, personally appeared, Marilyn Wright, a single person, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Seal)

Notary Public
My Commission Expires: _____

David W. Kotab

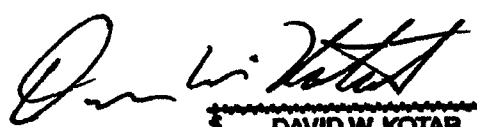


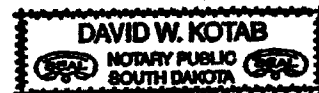
State of South Dakota)
)SS
County of Charles Mix)

On this 19 day of June, 2012, before me, the undersigned officer, personally appeared, a Sam Fousek and Angie Fousek, husband and wife, known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

(Seal)


Notary Public
My Commission Expires:



My Commission Expires 03/07/2018

PREPARED BY:
Anderson Law Office, P.C.
P.O. Box 425
Wagner, SD 57380
(605) 384-5970

STATE OF SOUTH DAKOTA

COUNTY OF

Charles Mix

Filed for record this 18th day of
February, 2005 at 3:05 o'clock P.m.,
and recorded in Book 120 of Deeds,
Page 78

By

Julie Pavel
Deputy #200502187

Monica Walden
Register of Deeds

RECEIVED

AUG 06 2012

WATER RIGHTS
PROGRAM

CONTRACT FOR DEED

This agreement is made and entered into by and between Romaine F. Kocer and Helen Marie Kocer, of P.O. Box 417, Wagner, South Dakota 57380, hereinafter referred to as SELLER(S), and Samuel D. Fousek and Angie Fousek, of 106 Railroad Street, Wagner, South Dakota 57380, hereinafter referred to as BUYER(S).

1. Sale: For and in consideration of the payments, conditions, covenants and obligations hereinafter set forth, SELLER(S) agree to sell and BUYER(S) agree to buy the following described real property, situated in Charles Mix County, State of South Dakota, and more particularly described as:

Lots One Thousand Four Hundred Sixty-five (1465) and Eight Hundred Thirty Seven (837), ~~Section Twenty-five (25)~~, Township Ninety-five (95) North, Range Sixty-three (63) West of the 5th P.M., Charles Mix County, South Dakota

Also described as:

Lots One Thousand Four Hundred Sixty-five (1465) and Eight Hundred Thirty Seven (837), according to the survey of the Yankton Indian Reservation, Charles Mix County, South Dakota

2. Purchase Price: BUYER(S) agree to pay SELLER the sum of Ninety-six Thousand Dollars and No/100 (\$96,000.00) payable as follows:

The sum of Fourteen Thousand Four Hundred Dollars (\$14,400.00) at the execution of this Agreement, receipt of is hereby acknowledged by SELLER(S);

The balance of Eighty-one Thousand Six Hundred Dollars and No/100 (\$81,600.00) shall be paid in fourteen (14) equal annual installments of Eight Thousand Five Hundred Nine Dollars and 18/100 (\$8,509.18), commencing February 10, 2006, (and on the 10th day of February each year thereafter until paid in full), which amount includes principal and interest at Five and one-half (5.5%) percent, all in accordance with the attached amortization schedule.

BUYER(S) may not prepay the balance due upon the purchase price without the written consent of SELLER(S).

All payments and notices required herein shall be made to the respective party at the address designated below, unless otherwise directed by such party in writing.

SELLER(S)
Romaine & Helen Kocer
P.O. Box 417
Wagner, SD 57380

BUYER(S)
Sam & Angie Fousek
P.O. Box 88
Wagner, SD 57380

3. Taxes and Assessments: SELLER(S) shall pay all 2003 real estate taxes due in 2004 and all prior years. BUYER(S) shall pay the 2004 taxes due in 2005 upon the execution of this agreement. BUYER(S) shall promptly pay all taxes for all subsequent years as the same become due and payable.

Should BUYER(S) fail to pay the real estate taxes as herein required, SELLER(S) may at his discretion and option, pay the same and any amount so paid shall be paid by BUYER(S), upon demand, including a penalty of 10% of said taxes paid as well as further interest at the rate of ten percent (10%) per annum thereon, from the date of payment, until said taxes are paid.

4. Possession: BUYER(S) shall have possession of said property on January 1, 2005. BUYER(S) shall, so long as they are in compliance with the terms of this Agreement, be entitled to all rents, issues, and profits from the property described herein. BUYER(S) may use and occupy said premises during compliance with the terms hereof, but if default of any condition herein shall be made, and BUYER(S) are permitted to remain in possession, BUYER(S) shall be considered to be a tenant of said premises from month to month and shall be entitled to only such notice to vacate as provided by law, and delivery of such notice to vacate shall be deemed to be a declaration of the termination of this contract, and BUYER(S) shall be required to surrender possession of the property to SELLER(S) promptly.
5. Insurance: BUYER(S) also shall maintain liability insurance with a minimum coverage of \$300,000.00 naming BUYER(S) and SELLER(S) as insured on the entire premises. Said insurance shall also require the insurer to give notice to SELLER(S) in the event of cancellation or termination, as well as notice of BUYER(S) failure to make premium payments when due.

In the event BUYER(S) fail to make the premium payments for said insurance coverage described above, SELLER(S) may at their discretion and option, pay the same and any amount so paid shall be paid by BUYER(S) upon demand, including interest at the rate of 10% per annum thereon, from the date of payment.

6. Conveyance: The parties agree that SELLER(S) shall convey the property to

BUYER(S) by a good and sufficient warranty deed with the transfer fee paid. Title shall be transferred to BUYER(S) as Samuel D. Fousek and Angie Fousek, as joint tenants with right of survivorship and not as tenants in common.

7. Title Assurance: SELLER(S) shall convey, by good and sufficient Warranty Deed properly executed, merchantable title to said property, with the necessary transfer fee paid for recording. SELLER(S) agrees to provide BUYER(S) as promptly as possible, with a preliminary title insurance report showing marketable title in SELLER(S), and BUYER(S) may examine the same and report to SELLER(S) any encumbrances, defects or exceptions to which BUYER(S) object, and the same shall be eliminated prior to closing. Upon closing, SELLER(S) shall issue to BUYER(S) a policy of title insurance issued by a reputable title insurer on its standard form, with such exceptions as are customary with said company and any further exceptions and encumbrances as are agreed to by the parties. In the event that SELLER(S) cannot cure any title defects they shall be notified of by BUYER(S) before the date of closing, then, in that event, the date of closing shall be extended until such time as is mutually agreed upon by the parties.

Should SELLER(S) be unable to convey marketable title, this agreement shall be terminated and of no force or effect, and BUYER(S) down payment shall be refunded.

The parties agree to divide and pay the costs of said title insurance issued for any BUYER(S) title insurance coverage on a 50/50 basis.

8. Liens and Repairs: When this agreement is entered into, neither party shall take any action or do anything in any manner whatsoever which would cause any type of encumbrance, lien, mortgage, or other cloud on title, and shall take all other necessary steps to insure that title to the property remains marketable during the duration of this agreement. BUYER(S) shall not and will not suffer or permit any lien to attach to or be filed against or upon the property aforesaid, which shall or may be superior to the rights of SELLER(S), unless agreed to by the SELLER(S) in writing.

Upon execution of this contract, BUYER(S) shall be responsible for any and all repairs, improvements or maintenance of the premise, and shall not commit, or allow to be committed, waste upon the property, and shall further keep and maintain the premises in good repair. BUYER(S) shall not do any renovation, improvements, or demolition on the property, without SELLER(S) express written consent. No such work may be commenced without delivering to SELLER(S) written mechanic's lien waivers by all contractors, subcontractors, and material suppliers involved in such work.

9. Title to Improvements: In the event of termination of this agreement by lapse of time, forfeiture or otherwise, all improvements, whether finished or unfinished, on the premises, which may be put upon said premises, whether by BUYER(S) or another, shall belong to and become property of SELLER(S) without liability or obligation on their part to account to BUYER(S) therefore or for any part thereof.
10. Modification: No extension, change, modification, or amendment to or of this instrument of any kind whatsoever, shall or will be made or claimed by the parties, and no notice of any extension, change or modification or amendment made or claimed by the parties shall

have any force or effect whatsoever, except as the same shall be in writing and signed by both parties.

11. Remedies: In case of the failure of BUYER(S) to make the payments or any part thereof, or perform any of the covenants on their part hereby made and entered into, the whole of said payments and interest shall at the election of SELLER(S) become immediately due and payable, and this contract shall, at the option of SELLER(S), be forfeited and determined by giving to BUYER(S) thirty (30) days notice in writing of the intention of said SELLER(S) to cancel and determine the contract, setting forth in said notice the amount due upon said contract, and the time and place, and when and where payments can be made by BUYER(S).

It is mutually understood and agreed by and between the parties to this Contract that thirty (30) days is a reasonable and sufficient notice to be so given to said BUYER(S) in case of failure to perform any of the covenants on part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of SELLER(S) and fully reinvest SELLER(S) with all right, title and interest hereby agreed to be conveyed and BUYER(S) shall forfeit all payments made by them on this Contract, and all right, title and interest in all buildings, fences and other improvements whatsoever, and such payments and improvements shall be retained by the SELLER(S) in full satisfaction and in liquidation of all damages by them sustained, and SELLER(S) shall have the right to re-enter and take possession of the premises aforesaid.

Upon default BUYER(S) shall have the right to grant, convey and deliver to SELLER(S) a sufficient Quit Claim Deed whereby BUYER(S) assign and quit claims all its right, title and interest in the property to SELLER(S). Upon delivery by BUYER(S) to SELLER(S) of such Quit Claim Deed, all interest of BUYER(S) in the property and in this Contract for Deed shall be terminated and SELLER(S) shall have no further claim against BUYER(S) for any deficiency except that BUYER(S) shall pay SELLER(S) a reasonable sum to compensate SELLER(S) for any period of occupancy by BUYER(S) for which no payment was made by BUYER(S) to SELLER(S) hereunder, or otherwise to compensate seller for any damages upon the premises.

BUYER(S) may not assign or convey the property herein described without the express written consent of SELLER(S). SELLER(S) also retain all other remedies at law or equity, including their right to claims for damages and specific performance.

12. Waiver: Waiver by either party of any covenant, condition, or obligation herein contained shall not invalidate the same or any other covenant, condition, or obligation contained herein.
13. Time of the Essence: It is mutually agreed by and between the parties hereto that the time of payment shall be an essential part of this contract, and that time is of the essence of this agreement.
14. Entire Agreement: This is the entire agreement between the parties and shall be binding upon each party hereto as well as their heirs, estate, executors, representatives, successors

and assigns. This agreement shall be binding upon and shall inure to the benefit of the successors in interest of the parties hereto.

Dated this 18 day of February, 2005.

Romaine F Kocer
Romaine F. Kocer ~ Seller

Helen M. Kocer
Helen M. Kocer ~ Seller


Samuel D. Fousek ~ Buyer


Angie Fousek ~ Buyer

[illegible]

On this the 18 day of February, 2005, before me, the undersigned officer, personally appeared **Romaine F. Kocer and Helen M. Kocer**, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I have hereunto set my hand and official seal.

My Commission Expires:
(SEAL) 1-77-05

hand and official seal.



Notary Public

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF CHARLES MIX)

On this the 18 day of February, 2005, before me, the undersigned officer, personally appeared **Samuel D. Fousek and Angie Fousek**, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I have hereunto set my hand and official seal.

My Commission Expires:
(SEAL)


Notary Public

Loan Amortization Schedule
Loan Amortized at 5 1/2%

Date	Payment Number	Payment Amount	Principal	Interest	Principal Balance
Opening Balance					81,600.00
2/16/2005	1	8,509.18	4,021.18	4,488.00	77,578.82
2/16/2006	2	8,509.18	4,242.34	4,266.84	73,336.48
2/16/2007	3	8,509.18	4,475.67	4,033.51	68,860.81
2/16/2008	4	8,509.18	4,721.84	3,787.34	64,138.97
2/16/2009	5	8,509.18	4,981.54	3,527.64	59,157.43
2/16/2010	6	8,509.18	5,255.52	3,253.66	53,901.91
2/16/2011	7	8,509.18	5,544.57	2,964.61	48,357.34
2/16/2012	8	8,509.18	5,849.53	2,659.65	42,507.81
2/16/2013	9	8,509.18	6,171.25	2,337.93	36,336.56
2/16/2014	10	8,509.18	6,510.67	1,998.51	29,825.89
2/16/2015	11	8,509.18	6,868.76	1,640.42	22,957.13
2/16/2016	12	8,509.18	7,246.54	1,262.64	15,710.59
2/16/2017	13	8,509.18	7,645.10	864.08	8,065.49
2/16/2018	14	8,509.09	8,065.49	443.60	0.00
GRAND TOTAL		119,128.43	81,600.00	37,528.43	0.00

ANDERSON LAW OFFICE, P.C.

120 Second St. SE
P.O. Box 425
Wagner, SD 57380

BRUCE V. ANDERSON
DAVA A. WANTOCH
ATTORNEYS AT LAW

TELEPHONE
605-384-5970
FAX 605-384-3679

February 16, 2005

Karol Kniffen
Charles Mix County Treasurer
P.O. Box 339
Lake Andes, SD 57356

Re: Lots One Thousand Four Hundred Sixty-five (1465) and Eight Hundred Thirty-seven (837) of Section Twenty-two (22), Township Ninety-five (95) North, Range Sixty-three (63) West of the 5th P.M., in Charles Mix County, South Dakota; (Kocer/Fousek CFD)

Dear Karol:

I am enclosing a check from my escrow in the amount of \$643.22 for the 2004 real estate taxes concerning the above-referenced real estate. Please return a receipt showing payment of these taxes to my office. Should you have any questions, please contact me.

Sincerely,

ANDERSON LAW OFFICE, P.C.


Bruce V. Anderson

CHARLES MIX COUNTY
1049-0042 1/1 2/18/05 03:11PM CHECK
Receipt 63660.0 RE/D4 Full \$643.22
Taxes Penalty Costs Credit
\$643.22 \$0.00 \$0.00 \$0.00
514W Parcel 15.22.1010 Seq # 755
Owner KOGER, ROMANE F S

** Total ** \$643.22

CHECK 2597 02/18/05 1 \$643.22
Paid By ANDERSON LAW OFFICE

Date: 06/18/2012

Commercial State Bank of Wagner

Page 1

Funding Date: 09/05/2012
First Payment Date: 09/05/2013

Compounding: U.S. Rule
Period: Actual/365
Pmt Schedule: Annually

Principal: 331,000.00
Initial Interest Rate: 0.000%
Interest Rate: 4.500%
Pmt Amount: 92,266.69

Payment Number	Payment Date	Days	Payment Amount	Interest Amount	Principal Reduction	Outstanding Balance	Equity Built
1	09/05/2013	365	\$92,266.69	14,895.00	77,371.69	253,628.31	\$77,371.69
2	09/05/2014	365	\$92,266.69	11,413.27	80,853.42	172,774.89	\$158,225.11
3	09/05/2015	365	\$92,266.69	7,774.87	84,491.82	88,283.07	\$242,716.93
4	09/05/2016	366	\$92,266.69	3,983.62	88,283.07	.00	\$331,000.00
2016	Totals:		369,066.76	38,066.76	331,000.00		
	Grand Totals:		369,066.76	38,066.76	331,000.00		

This amortization schedule is provided to you for your convenience. The amortization may include estimates based upon information provided by you. Actual terms of credit offered by us may vary from this amortization schedule. The outstanding balance shown above will vary from your actual outstanding balance owed to the Bank because of the timing of payments.

RECEIVED

AUG 06 2012

WATER RIGHTS
PROGRAM

RECEIVED

AUG 06 2012

WATER RIGHTS
PROGRAM

PURCHASE AGREEMENT

This Agreement, made and entered into this 10 day of January, 2009, between Marilyn K. Wright, hereinafter described as Seller; and Sam Fousek, hereinafter described as Buyer;

WITNESSETH:

The Seller agree to sell to and the Buyer agree to purchase from the Seller the following described real property and all appurtenances located thereon situated in Charles Mix County, South Dakota, and more particularly described as follows:

Lot 1435 of Section Fifteen (15), Township Ninety-five (95) North, Range Sixty-three (63) West of the 5th P.M., Charles Mix County, South Dakota.

All upon the following conditions and terms mutually understood and agreed upon by and between the Parties hereto:

SECTION ONE

PURCHASE PRICE:

The total purchase price for the above described real estate, together with all appurtenances thereon, shall be the total sum of Sixty-six Thousand Dollars (\$66,000).

SECTION TWO

MANNER OF PAYMENT:

The sum of \$2,150 the date of this agreement, the balance upon closing. Closing will be within January 30, 2009 or whenever the closing attorney advises title insurance is ready.

SECTION THREE

PLACE OF PAYMENT:

The parties hereto agree that the place for all payments hereunder, shall and are to be made by the Buyer directly to the Seller. Closing will be at Kerner Law Office, Armour, South Dakota.

**SECTION FOUR
TITLE INSURANCE**

It is further agreed by and between the parties hereto that Seller will deliver to Buyer for examination, a commitment of title insurance for the premises issued for a company licensed to do business in the State of South Dakota, showing the title in the seller to be good and marketable and free of any liens or encumbrances, or other conditions of title which would render the title unmarketable under the title standards in effect in the State of South Dakota. The parties shall share the costs of the title insurance one half each. Sellers shall promptly take such action, if any, to cure any defect or exception to the title disclosed in title commitment. That closing, Seller shall delivery to Buyer a warrant deed to said property.

**SECTION FIVE
TAXES**

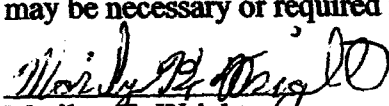
The real estate taxes shall be pro-rated between the Buyer and Seller as follows: The Sellers agrees to pay the 2008 real estate taxes due and payable in 2009, and the 2009 taxes will be pro rated. Buyer shall be responsible for the subsequent real estate taxes.

**SECTION SIX
POSSESSION**

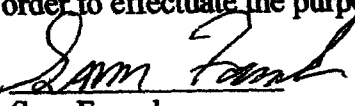
Possession of the real property premise herein is to be given to Buyer immediate following closing.

**SECTION SEVEN
OTHER DOCUMENTS**

Both Seller and Buyer agree to execute any and all other formal documents which may be necessary or required in order to effectuate the purpose of this Agreement.


Marilyn K. Wright

Date: 11/4/09


Sam Fousek

Date: 11/6/09



**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 FOR WATER PERMIT
APPLICATION NO. 7385-3, Sam Fousek**

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. 7385-3, Sam Fousek, 29972 396th Avenue, Wagner SD 57380.

The Chief Engineer is recommending APPROVAL of Application No. 7385-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 7385-3 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
September 18, 2012

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO.7385-3
SAM FOUSEK
SEPTEMBER 3, 2012

Water Permit Application No. 7385-3 proposes to appropriate up to 332 acre-feet annually (ac-ft/yr) at a maximum diversion rate of 3.33 cubic feet of water per second (cfs) from one well completed into the West management unit of the Choteau aquifer. The well is to be located in Lot 1465 or Lot 837 of Section 22, T95N-R63W and is expected to be approximately 260 feet deep. The water will be used to irrigate 166 acres located in Lot 1465 or Lot 837 of Section 22, T95N-R63W and in Lot 1435 of Section 15, T95N-R63W. The application proposes a diversion rate in excess of the statutory limit of one cfs per 70 acres.

AQUIFER: West Management Unit of the Choteau Aquifer: (CH-W)

GEOLOGY AND AQUIFER CHARACTERISTICS:

The West management unit of the Choteau is a buried aquifer consisting of glacial outwash and western derived stream deposits (Kume, 1977), that was deposited as several layers within the glacial till in Choteau bedrock valley. The Choteau: West aquifer underlies approximately 169,600 acres of Charles Mix County and extends into Bon Homme and Douglas Counties (Hedges and others, 1982) (see Figure 1).

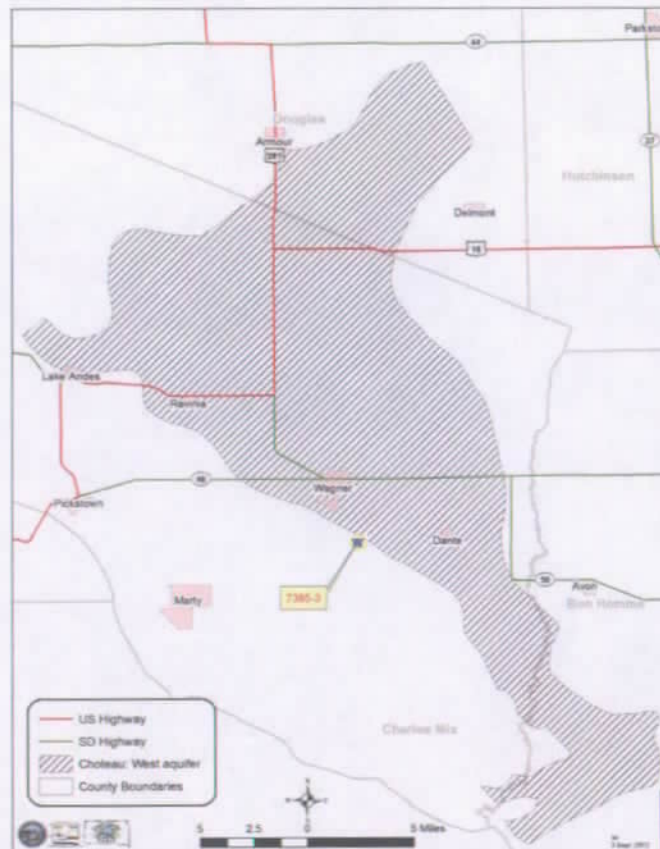


Figure 1. The location of the Choteau: West aquifer (modified from Hedges and others, 1982)

Kume (1972) estimated the Choteau: West aquifer contained 2,200,000 acre-feet of water in transient storage in Charles Mix County. Hedges and others, (1982) estimated the aquifer contained 1,225,370 acre-feet of recoverable water in storage in the county. The saturated thickness of the Choteau: West ranges from 5-89 feet (Kume, 1977). The well site proposed by this application is very close to the edge of the Choteau bedrock valley and consequently the edge of the Choteau aquifer. A domestic well located approximately three-fourths of a mile west-northwest of the well site proposed by this application identifies aquifer sand and gravel from 110—220 feet below grade, yet a second domestic well located approximately 2.3 miles southwest of this well site did not encounter the Choteau aquifer (Water Rights, 2012c). A test hole drilled by the SD Geological Survey approximately one and one-quarter miles east of the well site proposed by this application indicates two feet of aquifer (“Lithologic Logs Database”).

The logs show: (1) the variability of the aquifer’s thickness; (2) the multiple layered nature of the aquifer; and (3) that the total depth of a well at this proposed site can be expected to be in the neighborhood of 300 feet.

The Choteau: West aquifer is under confined conditions and although the potentiometric surface is relatively flat in this area (Kume, 1972) the groundwater movement in the area appears to be from the northwest to the southeast. The static water level at the well site proposed by this application is expected to be 90 feet below grade.

Capacities of eight nearby irrigation wells that are completed into the Choteau: West aquifer range from 700- 2,200 gpm and specific capacities of the wells range from under 18.92 (gpm)/ft. to 100 (gpm)/ft., (Water Rights, 2012c). The transmissivity of the aquifer calculated from the reported specific capacities ranges of 37,840-200,000 gal/day/ft. (“Transmissivity From Specific Capacity”).

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest. This report will address the water availability and existing rights issues pertinent to this application.

WATER AVAILABILITY:

This application proposes to appropriate 332 acre-feet annually from the Choteau: West aquifer. Although the actual water use if this application is approved will be less than 332 acre-feet/year. The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

Recharge versus Withdrawals:

Recharge:

Recharge to the Choteau: West aquifer comes mostly from leakage from the adjacent glacial till and the underlying Niobrara and Codell aquifers.

Withdrawal:

Some natural discharge may occur from the Choteau: West aquifer through leakage to adjacent aquifers, however withdrawals from the Choteau: West aquifer are primarily through pumping. There are 40 water rights/permits appropriating water from the Choteau: West aquifer, with 33 of these in Charles Mix County (Water Rights, 2012b). Water rights/permits from the Choteau: West appropriate water for commercial use (one permit for a CAFO), municipal use (two Water Rights for Wagner) [Note: Wagner is currently on rural water (Friedeman)], recreational use (two water rights), and irrigation use. Historic Choteau: West irrigation data is shown in table 2.

YEAR	NO.PMTS	APPROPRIATION (ac-ft. /yr.)	PUMPAGE (ac-ft. /yr.)
1979	49	21477	2933
1980	47	21477	2644
1981	48	21657	3132
1982	39	20935.8	1647.15
1983	40	21761.8	1368.89
1984	44	24770.8	1692
1985	43	23810.8	2377
1986	42	23108.8	2986
1987	42	23080.8	2198
1988	44	23245.8	4537.4
1989	45	23565.8	3984.1
1990	45	23400.8	3716
1991	45	23080.8	4056.5
1992	46	23224.8	1682.6
1993	45	21835.8	334.2
1994	41	20146.8	2026.03
1995	42	20410.8	999.46
1996	42	19087.8	1795.61
1997	42	19087.8	1509
1998	42	18975.8	697.51
1999	40	19675.8	1248.07
2000	33	16475.8	3009.11
2001	33	16475.8	1625.24
2002	33	15995.8	3223.92
2003	33	15696	2526.26
2004	34	18843.8	2819.08
2005	36	19563.8	2896.82
2006	34	19943.8	3598.83
2007	34	19108.12	3363.59
2008	34	19212.12	2443.95
2009	35	19492.12	1163.81
2010	35	19324.12	614.83
2011	35	19324.12	1872.77

Table 2. Historic irrigation from the Choteau: West aquifer

Observation Well Data:

The best information that is reasonably available to evaluate the availability of unappropriated water from the Choteau: West aquifer is the DENR-Water Rights' observation well network. In addition, Administrative Rule of South Dakota Section 74:02:05:07 requires that "the Water

Management Board shall rely upon the record of observation well measurements to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer”.

The DENR-Water Rights Program monitors 24 observation wells completed into the Choteau: West aquifer, with 19 of these wells in Charles Mix County (Water Rights, 2012a). The nearest observation well to the well site proposed by this application is observation well CM-60B which is located approximately 4.7 miles to the east-southeast. A hydrograph for the observation well are shown in Figure 2.

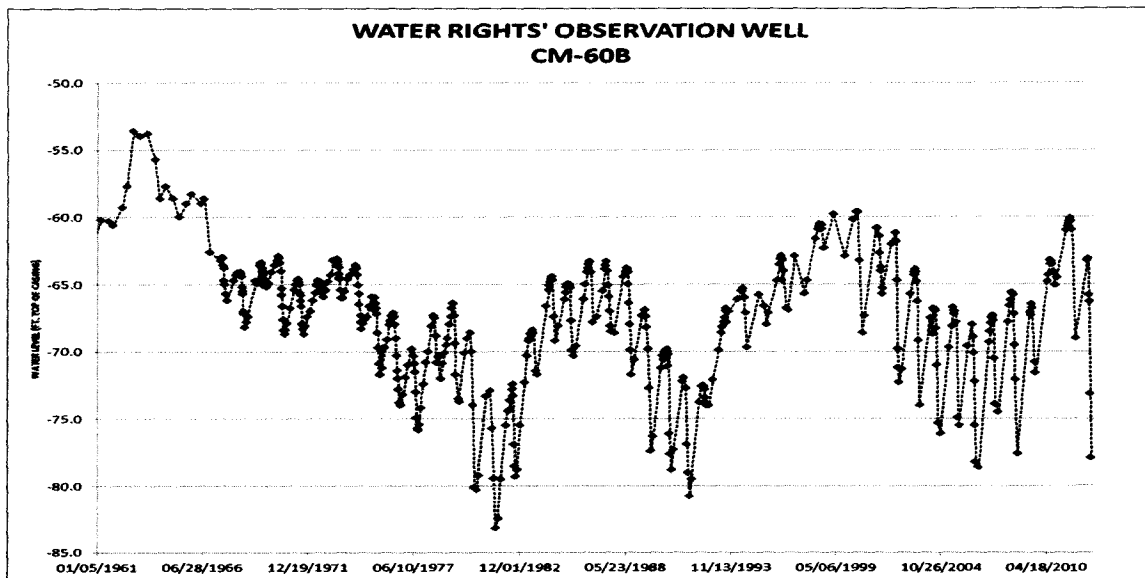


Figure 2. Hydrograph for DENR-Water Rights Observation Well CM-72C.

The observation well data shows the aquifer readily recharges and clearly documents the cyclic climatic conditions with wet and dry periods. The hydrograph also shows the aquifer's response to nearby pumping. The observation well data shows that at the current level of development, climatic conditions greatly mask the temporal effects of irrigation pumping. Therefore, recharge to and natural discharge from the Choteau: West aquifer significantly exceeds pumping. Recognizing that natural discharge from the aquifer can be captured for pumping. The hydrographs document that there is unappropriated water available from the aquifer to support this appropriation.

EXISTING WATER RIGHTS:

The nearest water right/permit appropriating water from the Choteau: West aquifer to the well site proposed by this application, (Water Right No. 2323A-3, Samuel & Angela M Fousek) is located approximately four miles north of this proposed well site. Well interference is not expected to be an issue at the distances involved.

Early irrigation development (i.e. 1950's) in this area was controversial. Irrigation well pumping caused water level fluctuations in domestic wells that resulted in wells no longer free flowing at the surface and caused other wells to have pumps lowered. Early controversies have been resolved and there have not been any issues in this area for a number of years. In addition, a

change in SD Water Law has been made so that artesian head pressure is no longer protected as a means of delivery. The earlier controversies would have been non-issues with the change in water law.

SDCL 46-5-6

Pursuant to SDCL 46-5-6, the diversion rater for an irrigation appropriation cannot be in excess of one cubic foot of water per second for every seventy acres, or "the equivalent thereof". The statute provides that the Water Management Board may allow a greater diversion if the method of irrigation so requires. Water Permit Application No. 7385-3 proposes to divert at a rate of 1.404 cfs per 70 acres to a center pivot irrigation system that will not make a full rotation. The diversion rate is required to properly operate the center pivot irrigation system and is reasonable for the proposed use.

CONCLUSIONS:

1. This application proposes to appropriate up to 332 acre-feet annually for irrigation but the amount of water that actually will be used is expected to be considerably less.
2. The well site proposed by this application appears to be on the edge of the Choteau: West aquifer.
3. There is a reasonable probability that unappropriated water is available from the Choteau: West aquifer to supply this proposed diversion.
4. There is a reasonable probability that the diversion requested by this application can be made without adversely effecting existing water rights.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

Friedeman, Barbara. Environmental Scientist, SD DENR-Drinking Water Program. Personal correspondence. 7 May 2012

Hedges, L.S., Burch, S.L., Iles, D.L., Barari, R.A., Schoon, R.A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report; U.S. Army Corps of Engineers Contract DACW 45-80-C-0185

Kume, J., 1972, Major Aquifers in Charles Mix and Douglas Counties, South Dakota: S.D. Geological Survey Information Pamphlet No.2, 6 p.

Kume, J., 1977, Geology and Water Resources of Charles Mix and Douglas Counties, South Dakota, Bon Homme County, South Dakota; Part II: Water Resources: S.D. Geological Survey Bulletin 21, 31 p.

“Lithologic Logs Database.” South Dakota Department of Environment & Natural Resources Geological Survey. 6 September. 2012

“Transmissivity from Specific Capacity.” Aquifer Test Forum sponsored by HydroSOLVE, Inc. 6 May 2011 < <http://www.aqtesolv.com/forum/transcap.asp>

Water Rights, 1980-2012, “Annual Irrigation Summary by Aquifer”: SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD

Water Rights, 2012a, Observation Well Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2012b, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Water Rights, 2012c, Well Completion Report Files, SD DENR-Water Rights Program, Joe Foss Bldg, Pierre, SD.

Affidavit of Publication

STATE OF SOUTH DAKOTA)

)SS

COUNTY OF CHARLES MIX)

RECEIVED

OCT 10 2012

WATER RIGHTS
PROGRAM

Stacy Irwin, of said County and State being first duly sworn on her oath says: That **The Wagner Post** is a legal newspaper of general circulation, printed and published in Wagner, in said County and State, by Stacy Irwin, and has been such newspaper during the time herein mentioned; and that I, Stacy Irwin, the undersigned, am Assistant Editor of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper and not in supplement, once each week for one successive weeks.

1st publication made on 26th day of September, 2012
2nd publication made on _____ day of _____, 2012
3rd publication made on _____ day of _____, 2012
4th publication made on _____ day of _____, 2012
5th publication made on _____ day of _____, 2012

That said newspaper is a legal newspaper, and has a bonafide circulation of more than two hundred copies weekly, and has been published within the County of Charles Mix for more than fifty-two successive weeks prior to the first publication of said notice, and is printed in an office maintained in Wagner, South Dakota, the place of publication of said newspaper. That the full amount of the fee for the publication of the annexed notice is

\$ 24.88

Stacy Irwin

Subscribed and sworn before me this 2 day of October, 2012.

Boudreaux

Notary Public

My commission expires 10/22/16

PUBLIC NOTICE

NOTICE OF APPLICATION NO. 7385-3 TO APPROPRIATE WATER

Notice is given that Sam Fousek, 29972 396th Ave, Wagner SD 57380 has filed an application for a water permit to appropriate 3.33 cubic feet of water per second (cfs) from one well to be completed into the Choteau West Aquifer (260 feet deep) for irrigation of 180 acres with well and acreage all located in the Lots One Thousand Four Hundred Sixty-Five (1465) and Eight Hundred Thirty-Seven (837) of Section 22 and Lot One Thousand Four Hundred Thirty-Five (1435) of Section 15; all in T95N-R63W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7385-3 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 October 9, 2012.

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 once at the total approximate cost of \$24.88

Pub: September 26, 2012

RECEIVED

OCT - 1 2012

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS AND DAKOTAN

Department of Environment and Natural Resources
PMB 2020 - Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT HE IS THE **MANAGING EDITOR** OF, YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID
COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED
Notice of Application No. 7385-3

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE **26th** DAY OF **September** 2012
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID **NOTICE** TO WIT **\$28.31** ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND 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.

PUBLISHED ON: **9/26/2012**

FILED ON: **9/26/2012**

SUBSCRIBED AND SWORN TO BEFORE ME THIS **26th** DAY OF **September** 2012

NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES **8/19/2015**

9+26
NOTICE OF APPLICATION
NO. 7385-3 to Appropriate Water **OK**

Notice is given that Sam Fousek, 29972 396th Ave. Wagner SD 57380 has filed an application for a water permit to appropriate 3.33 cubic feet of water per second (cfs) from one well to be completed into the Choteau-West Aquifer (260 feet deep) for irrigation of 180 acres with well and acreage all located in the Lots One Thousand Four Hundred Sixty-Five (1465) and Eight Hundred Thirty-Seven (837) of Section 22 and Lot One Thousand Four Hundred Thirty-Five (1435) of Section 15; all in T95N-R63W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7385-3 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 October 9, 2012.

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 once at the total approximate cost of \$28.31.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 19, 2012

Daily Press & Dakotan
319 Walnut
Yankton SD 57078

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 7385-3 to Appropriate Water. Please publish the notice once on September 26, 2012. 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 Sam Fousek, 29972 396th Ave., Wagner SD 57078 (Ph # 605-491-5474).

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

September 19, 2012

Wagner Post
PO Box 187
Wagner SD 57380

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 7385-3 to Appropriate Water. Please publish the notice once on September 26, 2012. 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 Sam Fousek, 29972 396th Ave., Wagner SD 57078 (Ph # 605-491-5474).

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

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

September 19, 2012

Sam Fousek
29972 396th Ave
Wagner SD 57380

Dear Mr. Fousek:

Water Permit Application No. 7385-3 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 Wagner Post printed at Wagner SD (Ph # 605-384-5616) and the Daily Press & Dakotan printed at Yankton SD (Ph # 605-665-1721). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application 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 application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

Instruction to Newspaper - Publish the Notice on September 26, 2012. 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. 7385-3 to Appropriate Water

Notice is given that Sam Fousek, 29972 396th Ave, Wagner SD 57380 has filed an application for a water permit to appropriate 3.33 cubic feet of water per second (cfs) from one well to be completed into the Choteau:West Aquifer (260 feet deep) for irrigation of 180 acres with well and acreage all located in the Lots One Thousand Four Hundred Sixty-Five (1465) and Eight Hundred Thirty-Seven (837) of Section 22 and Lot One Thousand Four Hundred Thirty-Five (1435) of Section 15; all in T95N-R63W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7385-3 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 October 9, 2012.

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 once 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

OCT 29 2012

Sam Fousek
29972 396th Ave
Wagner SD 57380

Dear Mr. Fousek:

Enclosed is Water Permit No. 7385-3 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

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Sam Fousek, 29972 396th Ave, Wagner SD 57380

DATE: May 20, 2014 **TELEPHONE:** 605 491-5474

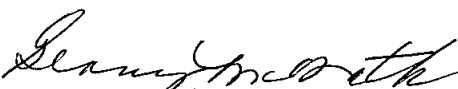
RE: irrigation questionnaires for 2013

On the 2013 irrigation questionnaires, Mr. Fousek wrote in irrigation starting in March and going thru October for corn and beans (20 days each month per pivot)

I called to ask him if he truly irrigated that much. He said no, he was just filling out all the blanks on the form. He indicated he started irrigating about mid June on the corn and then mid July on the beans. Sounded like he did not irrigate in October either.

For data entry for 2013, I put down part of June, July, August and September for the corn and part of July, August and September for the beans.

I reminded him of what the information on the forms is used for and that more accurate information needs to be reported. I also reminded him that irrigation under No. 7385-3 was limited to use from April 1 – Sept 30th. Irrigation under No. 2323A-3 is authorized between April 1st and October 31st.


Genny McMath
Water Rights Program

COPY

SOUTH DAKOTA WATER WELL COMPLETION REPORT

7385-3

11-02

Location SE 1/4 SE 1/4 Sec 15 Twp 95 Rg 63

County

Charles Mix

North

Please mark well location with an "X"

W

E

Well Completion Date

10/15/2012

1 Mile

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

? ft. from _____ (identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Reverse Rotary

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
37.0 LB/FT	16.00 IN	0.0 FT	173.0 FT	30.00 IN

LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Bentonite		14.0 Lb/gal	20.0 Ft	173.0 Ft

Describe grouting procedure _____

Tremmie

SCREEN:

☒ Perforated pipe ☐ Manufactured
Diameter 16.00 Inches Length 100.0 FeetMaterial 26 SDR PVC CasingSlot Size .085 Set From 173.0 Feet to 273.0 Feet

Other information _____

Gravel

WAS A PACKER OR SEAL USED?

☒ Yes ☐ No
If so, what material? Concrete

Describe packer(s) and location _____

20' to Surface

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? HTH
☐ No, Why Not? _____
 Lab sample sent to for water quality analysis
Well Owner: Sam Fousek

Business Name: _____

Address: 106 RR St.City, State, Zip: Wagner SD 57380

WELL LOG:

DEPTH

FORMATION	FROM	TO
0 To 29 yellow clay		
20 To 40 yellow into gray clay (rock at 27')		
40 To 80 gray clay		
80 To 104 gray clay w/ embedded gravel		
80 To 168 gray clay w/ embedded gravel (rock at 88')		
100 To 104 gray clay & rocks		
104 To 148 gray clay		
148 To 180 gray clay w/ embedded rocks & gravel		
180 To 184 gray clay		
184 To 193 sand		
193 To 197 gray clay		
197 To 200 sand w/ some fine gravel		
200 To 208 sand & some fine gravel w/ clay streaks		
208 To 211 clay		
211 To 220 sand & fine gravel w/ clay streaks		
220 To 240 sand, gravel & rock w/ possible clay streaks		
240 To 248 sand, gravel & rocks		
248 To 249 clay		
249 To 260 clay w/ sand & gravel layers		
260 To 274 sand & gravel & rocks w/ clay streaks, Big rock at 274' couldn't get thru		

STATIC WATER LEVEL 118.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow 1,000.0 through 8.62 Inch pipeControlled by ☐ Valve ☐ Reducers ☒ Other Sprinkler System

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe: _____☐ Bailed☐ Other

Pumping Level Below Land Surface

156.0 Ft. After 1.0 Hrs. pumped 700.0 GPM163.0 Ft. After 1.0 Hrs. pumped 1,400.0 GPMIf pump installed, pump rate: 1,000.0 GPM

REMARKS

This well was drilled under license # 273

And this report is true and accurate.

Drilling firm: Sargent Irrigation Co.

Signature of License Representative: _____



Signature of Well Owner or Equitable Property Holder: _____

Date: _____

RECEIVED

JAN 28 2015

WATER RIGHTS PROGRAM

1-28-15



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

January 20, 2023

NOTICE

TO: SAMUEL D & ANGELA M FOUSEK, 29972 396TH AVE, WAGNER, SD 57380

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

SUBJECT: Reporting Requirement for 2022 Irrigation Questionnaire(s)

Our records indicate your 2022 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2323A-3, 7385-3 & 7451-3. The request for the Questionnaire was dated October 21, 2022. The Water Management Board has directed owners of water permits who have not submitted the 2022 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) 2323A-3, 7385-3 & 7451-3 qualification:

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

The hearing will be held at **Wednesday, March 8, 2023 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) 2323A-3, 7385-3 & 7451-3 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 8, 2023** 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: ILEASJ**

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 31, 2023

2323A-3
7385-3
7451-3

Samuel & Angela Fousek
29972 396th Ave
Wagner SD 57380

Dear Mr. & Ms. Fousek:

I am writing to acknowledge receipt of your 2022 irrigation questionnaires.

You may disregard the January 20, 2023, "Notice" concerning reporting requirements for Water Right or Permit Nos. 2323A-3, 7385-3 & 7451-3. 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



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

January 14, 2025

NOTICE

TO: SAM & ANGIE FOUSEK, 29972 396TH AVE, WAGNER, SD 57380

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

SUBJECT: Reporting Requirement for 2024 Irrigation Questionnaire(s)

Our records indicate your 2024 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2323A-3, 7385-3, 7451-3 & 7952-3. The request for the Questionnaire was dated October 23, 2024. The Water Management Board has directed owners of water permits who have not submitted the 2024 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) 2323A-3, 7385-3, 7451-3 & 7952-3 qualification:

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

The hearing will be held on **Wednesday, March 5, 2025, 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) 2323A-3, 7385-3, 7451-3 & 7952-3 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 5, 2025**, 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 Amanda Dewell at (605) 773-3352 or email at amanda.dewell@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: LFOJPG or QFWVIF**

cc: ALLISON FISCHER, 9797 N SHORE DR, SPICER MN 56288

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 30, 2025

2323A-3, 7385-3, 7450A-3
7451-3 & 7952-3

Sam & Angie Fousek
29972 396th Ave
Wagner SD 57380

Dear Mr. & Mrs. Fousek:

I am writing to acknowledge the receipt of your 2024 irrigation questionnaire(s).

You may disregard the January 14, 2025, "Notice" concerning the reporting requirements for Water Permit No(s). 2323A-3, 7385-3, 7450A-3, 7451-3 & 7952-3. The information was received prior to the March 5, 2025, Water Management Board meeting and the above listed permit number(s) have been removed from the agenda.

If you have any questions or concerns, please contact me.

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us