

WATER PERMIT NO. 8002-3

Name of Applicant: **Todd Block**

Address: **PO Box 135, Grenville SD 57239**

Phone: **605 237-2233**

Amount of Water Claimed: **1.44 cfs**

Total Acres: **120 acres**

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

Water to be used for: **irrigation**

County: **Day**

Type of Waste Disposal System:

Location: **1/2 mile west of Grenville**

PRIORITY

Date Received: **4-14-14**

Application/License Fee: **\$ 950**

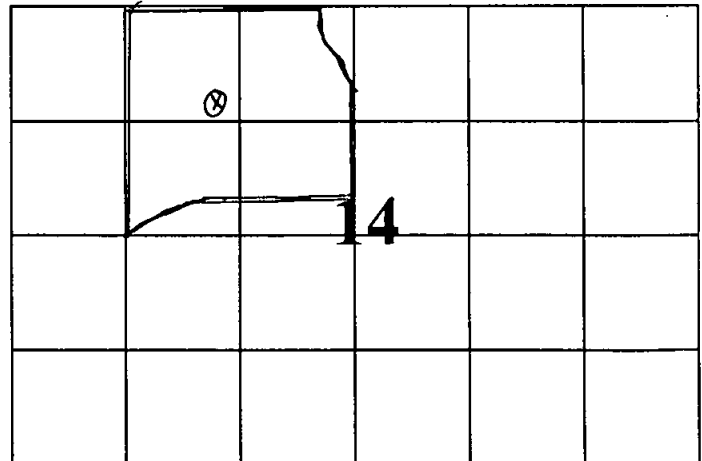
Corrected Application Received:

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

Remarks:

Diversion Point: **NW 1/4 NW 1/4 Sec 14-T123N-
R54W**

Land to be Irrigated: **NW 1/4 Sec 14-T123N-
R54W**



Depth of Well: **109 feet deep**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **4-14-14**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

RECEIVED
APR 14 2014
WATER RIGHTS
PROGRAMMail to:
PMB 2020
DENR - Water Rights
523 E Capitol Ave
Pierre, SD 57501-3182
ph. (605) 773-3352

No. 8002-3 (office use only) Hydrologic Unit 10160010
 Basin James River 605-345-3356
 Newspaper Reporter Farmer, 516 Main, Watertown 605-886
Public Opinion, Box 10, Watertown 57201 605-886

57274

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.)

1. Name to Appear on Irrigation Permit Todd Block

(check one) ☒ Owner ☐ Tenant/lessee ☐ Owner's Legal Agent

(name and complete address if different than above name)

Mailing Address PO Box 135 Grenville SD 57239
 (Address) (City) (State) (Zip Code)

Todd cell 605 237-2233 Mike 605 880-2912 Email tKelcao7@hotmail.com
 Home Phone

2. Amount of water claimed 1.44*CFS or 650 **GPM ***AF Total Acreage 120
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Well - NW 1/4 NW 1/4 Sec 14 - T123N - R55W

4. Location of point of diversion 1200' from the north and 1200' from the south, 1300'
 (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)
from the east and 1300' from the west of the NW 1/4 Sec 14 County Day

5. County or counties where water will be used Day

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
NE 1/4 of the NW 1/4 Sec 14 T123 R55W	30		
NW 1/4 of the NW 1/4 Sec 14 T123 R55W	30		
SE 1/4 of the NW 1/4 Sec 14 T123 R55W	30		
SW 1/4 of the NW 1/4 Sec 14 T123 R55W	30		

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

I, Todd Block Todd Block, the applicant, certify that I have read this application, have examined the attached map, and that the matters stated are true.

SOUTH DAKOTA
WATER PERMIT NO. 8002-3 FOR IRRIGATION

Date of first receipt of application April 14, 2014.

The Water Management Board approved Water Permit No. 8002-3 on December 3, 2014 for Todd Block, PO Box 135, Grenville SD 57239 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. 8002-3 appropriates 1.44 cubic feet of water per second from one well to be completed into the Coteau Lakes Aquifer (109 feet deep) located in the NW 1/4 NW 1/4 Section 14 for irrigation of 120 acres located in the NW 1/4 Section 14; all in T123N-R55W.
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 April 14, 2014.
4. One-fifth of the construction is to be completed on or before June 3, 2017.
5. All construction is to be completed on or before December 3, 2019.
6. Water is to be put to beneficial use on or before December 3, 2023.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The new well authorized by Permit No. 8002-3 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: *Jeanne Goodman*

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

FEB 17 2015

date



Supplemental Information

(type or print)

1. Well Information

(check one or both as applicable) ☐ Drilling new well(s) ☐ Using existing well(s)

- a) If new wells, how many 1 Have test holes been drilled ☒ Yes ☐ No Drilled by staff
(if yes, please provide copies of logs)
- b) If existing wells, how many Provide copy of log(s), if available. Drilled by
- c) Well Depth 109 Depth to Top of Water Bearing Material 75 Depth to Water from Surface 75
- d) Distance to nearest existing domestic well:
On applicant's property None On property owned by others 0

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

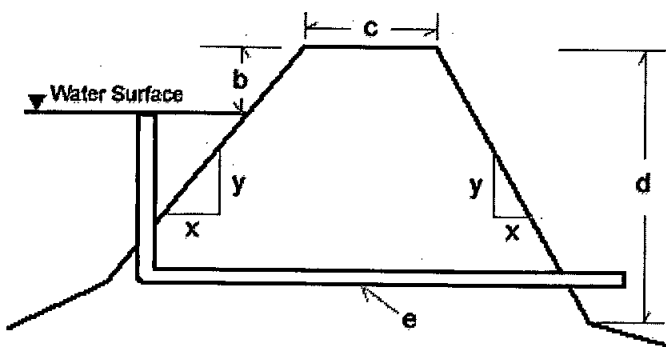
3. Dugout Information

- 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 (e.g. 3 to 1 is a typical slope)
Upstream
Downstream
- h) Surface Area of Impoundment
- i) Storage Acre Feet
- j) Drainage Area Above Dam Acres

BLOCK

Well

Range designation
on map is wrong

ELG

PPLS: 14_T123N 54W

RECEIVED

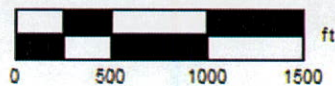
Data use subject to license.

© DeLorme. XMap® 7.

www.delorme.com

APR 14 2014

WATER RIGHTS
PROGRAM



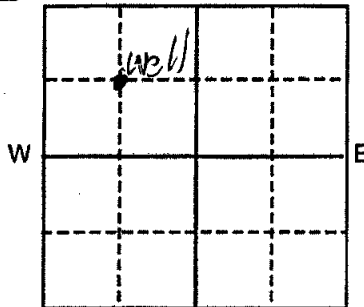
Data Zoom 14-1

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SE 1/4 NE 1/4 Sec 14 Twp 123N Rg 55WCounty Day

North

Please mark well
location with an "X"

Well Completion Date

Test Hole 3/29/12

1 Mile

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

PROPOSED USE:

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

METHOD OF DRILLING:

mud rotary

CASING DATA:

☐ Steel ☐ Plastic ☐ Other

If other describe _____

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
HS Bentonite	5	Lb/gal	0.0 Ft	198.0 Ft
<u>TRÉMIE</u>		Lb/gal	Ft	Ft

Describe grouting procedure

SCREEN:

☐ Perforated pipe ☐ Manufactured

Diameter _____ Inches Length _____ Feet

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information

WAS A PACKER OR SEAL USED?

☐ Yes ☐ No

If so, what material? _____

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How?

☐ No, Why Not?
Lab to which water
quality sample sent for analysisWell Owner: Todd Block

Business Name: _____

Address: 604 2nd STCity, State, Zip: Roslyn SD 57261

WELL LOG:

			DEPTH	
FORMATION			FROM	TO
top soil	blk / tan	M	0	1
gravel	yellow	coarse	1	15
clay	tan	M	15	40
clay	blue	M	40	54
gravel	yellow	coarse	54	61
clay/rocks	blue	M-H	61	72
clay	blue	M	72	75
sand/gravel	tan	12-30slt	75	109
clay	grey	S	109	162

STATIC WATER LEVEL

FEET

If flowing: closed in pressure _____

PSI

GPM flow _____

through _____

Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____

GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe: _____

☐ Bailed

☐ Other

Pumping Level Below Land Surface

Ft. After _____

Hrs. pumped _____

GPM

Ft. After _____

Hrs. pumped _____

GPM

If pump installed, pump rate: _____

GPM

REMARKS

sand/gravel blue 18-100slt 162

Note: 162-174: 18-30slt

174-198: 30-100slt

198
RECEIVED

APR 14 2014

WATER RIGHTS
PROGRAMThis well was drilled under license # 463 and this report is true and accurate.Drilling firm: Steffl Drilling & Pump Inc

Signature of License Representative: _____

Signature of Well Owner or Equitable Property Holder: _____

Date: _____

4/6/12

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 4/14, 20 14

RECEIVED OF Mike Block PO Bmx 135 Grenville SD 57239

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

Fee for Application for Permit No. <u>8002-3</u> to Appropriate Water, to construct and to put water to beneficial use	750	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.	200	00
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8002-3</u>		
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	950 00

No. **06830**

By J. Lorne Toolman
Chief Engineer



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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



**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8002-3, Todd Block**

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. 8002-3, Todd Block, PO Box 135, Grenville SD 57239.

The Chief Engineer is recommending APPROVAL of Application No. 8002-3 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. 8002-3 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.

Jeanne Goodman, Chief Engineer
June 16, 2014

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8002-3
TODD BLOCK
JUNE 16, 2014

Water Permit Application No. 8002-3 proposes to appropriate water at a maximum diversion rate of 1.44 cubic feet of water per second (cfs) from one well to be completed into the Coteau Lakes aquifer (approximately 109 feet deep) located in the NW ¼ NW ¼ Section 14; T123N-R55W. The water is to be used for irrigation of up to 120 acres located in the NW ¼ Section 14; T123N-R55W all in Day County.

AQUIFER: Coteau Lakes (COL)

HYDROGEOLOGY:

This application proposes to use a well to be completed into an outwash body that has been mapped by several different geologists and called several different names. The shallow outwash in Day County is several discontinuous outwash bodies generally surrounding and underlying the area lakes. Leap (1988) separated the outwash deposits into several aquifers dependent on location and depth to aquifer material. However, Hedges and others (1982) lumped the outwash deposits under one name, the Coteau Lakes aquifer. This report will use the Hedges and others (1982) designation.

The Coteau Lakes aquifer as described by Hedges and others (1982) is a group of unconsolidated sand and gravel outwash deposits that are at or near ground surface in southeastern Marshall, eastern Day, and southwestern Roberts County. These deposits may or may not be hydraulically connected, but because of their similarities they have been considered collectively as the Coteau Lakes aquifer by Gilbertson (1996) or the Coteau Lakes aquifer system by Thompson (2001). These discontinuous outwash deposits are often connected through buried channels of outwash and fairly permeable till (Leap, 1988). Hedges and others (1982) estimated the areal extent and volume of recoverable water in storage for the entirety of the Coteau Lakes aquifer. These estimates are shown in Table 1.

County	Areal Extent (ac)	Recoverable Water in Storage (ac-ft)
Day	58,200	130,910+
Marshall	32,000	120,000
Roberts	NA	NA
Total	90,200	250,910+

NA= Insufficient data available

Table 1- Areal extent and recoverable water in storage in the Coteau Lakes aquifer by county (Hedges et. al, 1982)

Thompson (2001) reported the Coteau Lakes aquifer system underlies approximately 102.9 square miles (65,856 acres) in Roberts County but did not have an estimate for water in storage.

The Coteau Lakes aquifer in the area of the proposed well site is primarily composed of fine to coarse sand and gravel approximately 90 to 120 feet below grade (SDGS, 2014; Water Rights, 2014c). The static water level is approximately 70 feet below ground surface in the area of the well (Water Rights, 2014a). This portion of the Coteau Lakes aquifer is generally under confined conditions but can become unconfined during dry periods.

Historically, the Water Management Board has approved water permit applications to appropriate water from the Coteau Lakes aquifer. However, in interpreting 46-6-3.1, the First Judicial Circuit Court ruled in *Hanson County Dairy v. Bender* that evidence needs to show that water is available for the proposed appropriation. In other words, data must be presented to show that the average annual recharge exceeds the average annual discharge by at least the amount requested by the water permit application being considered (Memorandum Decision April 11, 2012). This could be interpreted as necessitating the identification and quantification of recharge and discharge of an individual outwash deposit of the Coteau Lakes aquifer from which the applicant proposes to withdraw water.

The areal extent of this portion of the Coteau Lakes aquifer was identified by examining SD DENR-Geological Survey test hole logs (SDGS, 2014), Leap's 1988 and 1972 aquifer maps, and SD DENR-Water Rights Program observation well records (2014a) and water well completion reports (2014c). This portion of the aquifer is generally found in the 1,735 to 1,760 feet above mean sea level (fmsl) (30 to 100 feet below grade) range underlying Waubay Lake and the surrounding area. This portion of the Coteau Lakes aquifer underlies approximately 21,800 acres in Day County. Figure 1 shows the approximate areal extent of this portion of the Coteau Lakes aquifer as well as observation wells completed into and water rights/permits authorized to withdraw water from this portion of the aquifer.

South Dakota Codified Law (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for this 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 availability of unappropriated water and effects on existing rights from the aquifer that are pertinent to this application.

WATER AVAILABILITY:

This application proposes to appropriate water from the Coteau Lakes aquifer. The probability of unappropriated water available from the 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." If the source of the water is older or lower than the Greenhorn Formation and a public water system has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this case, the aquifer is not stratigraphically lower than the Greenhorn Formation and the applicant is not a public water system.

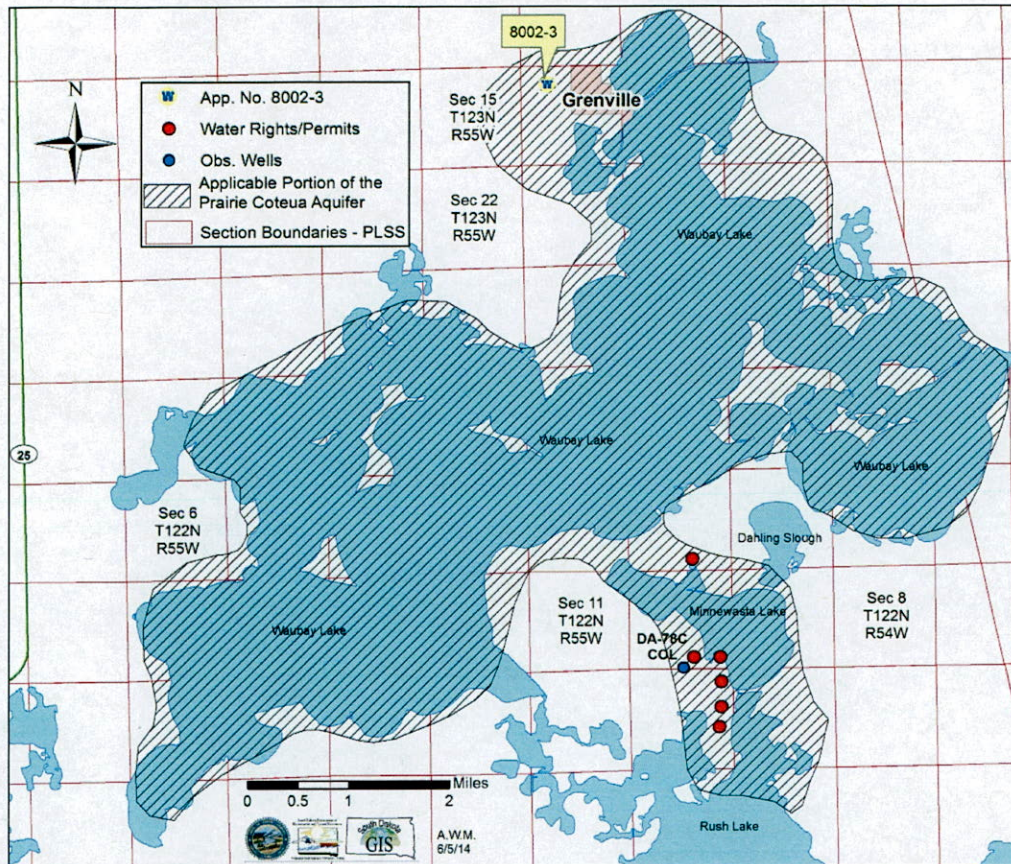


Figure 1- Map of the area of Permit Application No. 8002-3 (modified from: Leap, 1988; Leap, 1972)

Hydrologic Budget:

Recharge:

Recharge to the Coteau Lakes aquifer is primarily by infiltration of rainfall and snowmelt, but at times it may be possible that adjacent lakes could recharge the aquifer (Thompson, 2001). Hedges and others (1985) estimated recharge to the Coteau Lakes aquifer to be 4.5 inches per year using observation well analysis. That equates to an approximate recharge of 8,175 ac-ft per year (ac-ft/yr) for the portion of the aquifer this application proposes to use.

Discharge:

Discharge from the Coteau Lakes aquifer occurs through evapotranspiration, seepage to lakes, and well withdrawals. Currently, there are three water rights/permits authorized to withdraw water from this portion of the aquifer, and all three are for irrigation. Historic irrigation water use from this portion of the Coteau Lakes aquifer is shown in Table 2. There was no irrigation development from this portion of the Coteau Lakes aquifer prior to 1983. The average annual use for irrigation purposes from this particular portion of the aquifer, illustrated in Figure 1, is 49.6 ac-ft/yr. However, there were no irrigation withdrawals until 1994. The average annual withdrawal from 1994 to 2012 is 88.7 ac-ft/yr.

Year	No. of Permits Reporting	Appropriation (ac-ft)	Pumpage (ac-ft)
2012	2	1290	167.93
2011	3	1370	0
2010	3	1370	64.3
2009	2	1160	30.64
2008	2	1160	68.84
2007	2	1160	106.06
2006	2	1160	130.81
2005	2	1160	168.42
2004	2	1160	180.89
2003	2	1160	208.29
2002	2	1160	197.83
2001	2	1160	99.1
2000	2	1160	100.76
1999	2	1160	10.61
1998	2	1160	31.82
1997	2	1160	18
1996	2	1160	58.04
1995	2	1160	0
1994	2	1160	43.74
1993	3	2240	0
1992	1	80	0
1991	1	80	0
1990	1	80	0
1989	0	0	0
1988	1	80	0
1987	1	80	0
1986	1	80	0
1985	0	0	0
1984	0	0	0
1983	1	80	0
1982	0	0	0
1981	0	0	0
1980	0	0	0
1979	0	0	0
Min	0	0	0
Max	3	2240	208.29
Avg.	1.5	746.8	49.6
Avg. 1994 to 2012			88.7

Table 2- Historic irrigation water usage from the same portion of the Coteau Lakes aquifer as App No. 8002-3 proposes to use (Water Rights, 1980-2013)

Hydrologic Budget:

The estimated average annual withdrawal from this portion of the Coteau Lakes aquifer is 88.7 ac-ft/yr over the period of use (1994 to 2012). The estimated average annual recharge to this portion of the aquifer is 8,175 ac-ft/yr. That is significantly more recharge than withdrawals. Therefore, there is a reasonable probability that there is unappropriated water available for this proposed appropriation.

Observation Well Data:

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 of the aquifer.

The DENR-Water Rights Program monitors one observation well completed into this portion of the Coteau Lakes aquifer (Water Rights, 2014a). The observation well, DA-78C, is approximately six miles south of the proposed well site. The water level in the observation well shows good response to climatic conditions. The water level rises (recharge) during wet years and gradually declines during dry years. The observation well hydrograph also shows the effects from pumping the nearby irrigation wells. There are nine irrigation wells within approximately 1.1 miles of observation well DA-78C. However, the climatic effects on water level mask the temporal impacts of well withdrawal. Therefore, recharge to and natural discharge from the Coteau Lakes aquifer significantly exceeds pumping. Recognizing that natural discharge can be captured for pumping, the hydrograph documents that unappropriated water is available for this proposed appropriation. The hydrograph for DA-78C is similar to the hydrographs for other observation wells in other portions of the aquifer and are representative of the aquifer. Figure 2 shows the hydrograph for DA-78C.

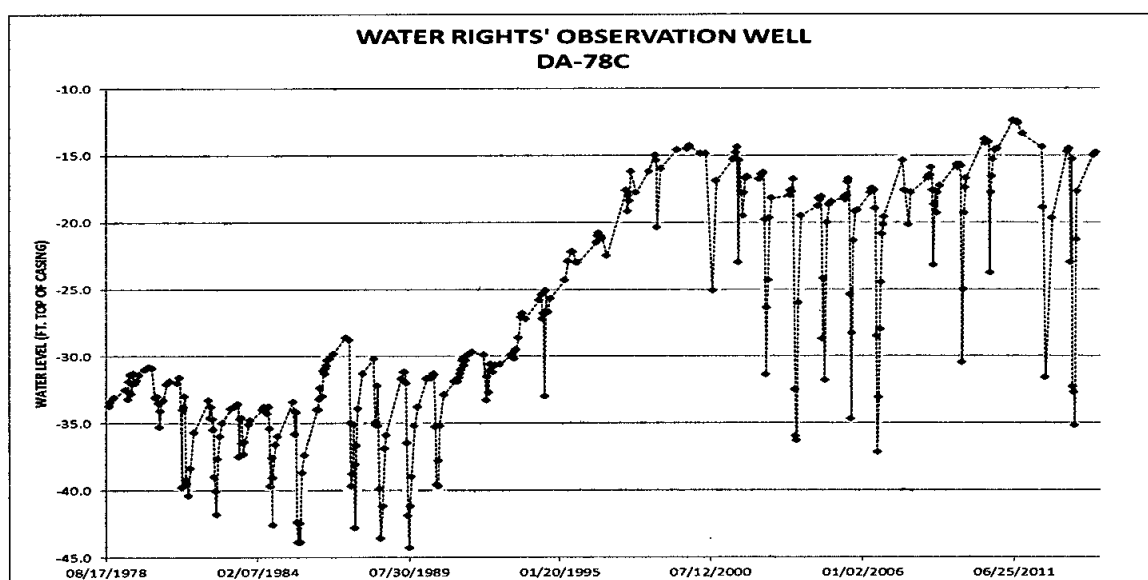


Figure 2- Hydrograph for observation well DA-78C (Water Rights, 2014a)

EXISTING WATER RIGHTS:

The nearest well authorized by a water right/permit is approximately five miles south of the proposed well site (Water Rights, 2014b). There is one domestic well on file with the SD DENR-Water Rights Program within approximately two miles of the well this application proposes to use (Water Rights, 2014c). The nearest domestic well on file is approximately 0.8 miles northwest of the proposed well site (Water Rights, 2014a). In the area of the proposed well site, Coteau Lakes aquifer is generally under confined conditions, drawdown created from pumping the proposed well may extend some distance from the well. However, Observation well DA-78C is within approximately 1.1 miles of nine irrigation wells the most drawdown experienced in any irrigation season was 20 feet in the observation well. There was still approximately 30 feet of saturated thickness below the lowest recorded water level at DA-78C.

Since this portion of the Coteau Lakes aquifer is generally under confined conditions, drawdown may extend some distance from a pumped well. It may be possible that drawdown from this

proposed diversion may be measurable in nearby domestic wells. However, the impact of drawdown is not expected to be significant due to the distance between wells.

SDCL 46-6-6.1 does not protect artesian head pressure as a means of delivery and the Water Management Board has consistently recognized that to place water to maximum beneficial use a certain amount of drawdown may occur. In order to balance interests between irrigation use and delivery of water by artesian pressure, the Water Management Board defined an "adversely impacted domestic well" in ARSD 74:02:04:20(7) as:

"a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs"

Depending on the specific characteristics of the Coteau Lakes aquifer at the well site proposed by this application, some existing well owners may need to lower their pumps to accommodate for deeper water levels. However when considering the statute (SDCL 46-6-6.1) and rule (ARSD 74:02:04:20(7)), well interference from the proposed diversion is not likely to cause a significant impact. Therefore, there is a reasonable probability that any interference will not be adverse.

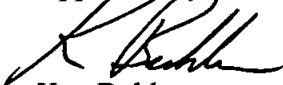
CONCLUSIONS:

1. This application proposes to appropriate water 1.4 cfs from the Coteau Lakes aquifer for the irrigation of 120 acres in Day County.
2. The Coteau Lakes aquifer is the name of a collective group of disconnected outwash deposits surrounding the area lakes and lining shallow buried channels between the lakes.
3. There is a reasonable probability that unappropriated water is available from this portion of the Coteau Lakes aquifer for this proposed appropriation.
4. This portion of the Coteau Lakes aquifer is generally under confined conditions, but can become unconfined during dry periods.
5. There is a reasonable probability that the diversion proposed by this application will not adversely impact existing appropriative or domestic users.



Adam Mathiowetz
SD DENR-Water Rights Program

Approved by:



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Gilbertson, J.P. 1996. Investigation of Ground Water Resources in Portions of Roberts County, South Dakota. SD DENR-Geological Survey Open-File Report 81-UR. SD DENR-Geological Survey, Vermillion, South Dakota.
- Hedges, L.S., Allen, J., Holly D.E., 1985, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 7: Ground Water Recharge; U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
- Hedges, L.S., S.L. Burch, D.L. Iles, R.A. Barari, and R.A. Schoon. 1982. Evaluation of Ground-water Resources in 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.
- In the Matter of Water Permit Application No. 7239-3, by Hanson County Dairy v. Robert Bender and Stace Nelson, South Dakota First Judicial Court Civ. No. 11-54 (Memorandum Decision, April 11, 2012)
- Leap, D.I. 1988. Geology and Hydrology of Day County, South Dakota. Bulletin 24. SD DENR-Geological Survey, Vermillion, South Dakota.
- Leap, D.I. 1972. Major Aquifers and Sand and Gravel Resources in Day County, South Dakota. SD DENR-Geological Survey Information Pamphlet No. 3. Vermillion, South Dakota.
- SDGS. Lithologic Logs Database Search. < <http://www.sddenr.net/publist/>>. Accessed: 29 May, 2014. SD DENR-Geological Survey. Vermillion, South Dakota.
- Thompson, R.F. 2001. Water Resources of Lake Traverse Reservations, South and North Dakota, Roberts County, South Dakota. U.S. Geological Survey Water-Resources Investigations Report 01-4219
- Water Rights. 1980-2013. "1979-2012 Irrigation Summaries by Aquifer": SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD.
- Water Rights. 2014a. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2014b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2014c. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

RECEIVED

JUN 25 2014

Form 8

WATER RIGHTS
PROGRAM

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Day) SS

I, John Suhr

certify that the attached printed Notice was taken

from the Reporter & Farmer

printed and published in Webster

County of Day and

state of South Dakota. The notice was published

in the newspaper on the following date:

June 23rd, 2014

Cost of Printing \$26.01

[Signature]
(Signature)

Publisk
(Title)

6/23/14
(Date Signed)

Water application

NOTICE OF APPLICATION NO. 8002-3 TO APPROPRIATE WATER

Notice is given that Todd Block, PO Box 135, Grenville, SD 57239 has filed an application for a water permit. Application No. 8002-3 proposes to appropriate 1.44 cubic feet of water per second (cfs) from one well to be completed into the Coteau Lakes Aquifer (109 feet deep) located in the NW 1/4 NW 1/4 Section 14 for irrigation of 120 acres located in the NW 1/4 Section 14; all in T123N-R55W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8002-3 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.

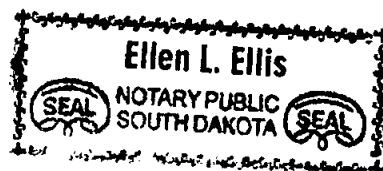
Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss 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 July 3, 2014.

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 \$26.01.

Ellen L. Ellis



RECEIVED

JUN 27 2014

WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Codington) SS

I, Monica K. Saathoff

certify that the attached printed Notice was
taken

from the Watertown Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was
published

in the newspaper on the following date:

June 23rd, 2014

Cost of Printing 54.39

Monica K. Saathoff
(Signature)

Bookkeeper

(Title)

June 23rd, 2014

(Date Signed)

DENR

NOTICE OF APPLICATION
NO. 8002-3 to Appropriate
Water

Notice is given that Todd Block, PO Box 135, Grenville SD 57239 has filed an application for a water permit. Application No. 8002-3 proposes to appropriate 1.44 cubic feet of water per second from one well to be completed into the Coteau Lakes Aquifer (109 feet deep) located in the NW 1/4 NW 1/4 Section 14 for irrigation of 120 acres located in the NW 1/4 Section 14; all in T123N-R55W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8002-3 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 July 3, 2014.

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 approximate cost of \$52.29.

(June 23, 2014)

All legal notices in the Public
Opinion and other South
Dakota newspapers can be
found at
www.sdpublicnotices.com



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



June 16, 2014

Reporter & Farmer
516 Main Ave
Webster SD 57274

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 8002-3 to Appropriate Water. Please publish the notice once on June 23, 2014. 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 Todd Block, PO Box 135, Grenville SD 57239 (Ph # 605-237-2233).

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

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



June 16, 2014

Public Opinion
PO Box 10
Watertown SD 57201

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 8002-3 to Appropriate Water. Please publish the notice once on June 23, 2014. 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 Todd Block, PO Box 135, Grenville SD 57239 (Ph # 605-237-2233).

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**

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(S) RIGHT AWAY.**

June 16, 2014

Todd Block
PO Box 135
Grenville SD 57239

Dear Mr. Block:

Water Permit Application No. 8002-3 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 Reporter & Farmer printed at Webster SD (Ph # 605-345-3356) and the Public Opinion printed at Watertown SD (Ph # 605-886-6901). 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 June 23, 2014. 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. 8002-3 to Appropriate Water

Notice is given that Todd Block, PO Box 135, Grenville SD 57239 has filed an application for a water permit. Application No. 8002-3 proposes to appropriate 1.44 cubic feet of water per second from one well to be completed into the Coteau Lakes Aquifer (109 feet deep) located in the NW 1/4 NW 1/4 Section 14 for irrigation of 120 acres located in the NW 1/4 Section 14; all in T123N-R55W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8002-3 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 July 3, 2014.

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 _____.

RECEIVED

JUL - 2 2014

WATER RIGHTS
PROGRAM

June 30, 2014

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

Hello Chief Engineer;

I am opposing the application for water permit; application #8002-3.

Statement:

Due to the water shed from portion of proposed area flowing to my land, thus increasing possible loss of more acres which already has increased due to flooding, and the chance of increased fertilizer and chemical runoff to my property. In the event we go to a dry cycle the draw from the well may lower the water table thus depleting the dugouts in my pastures.

Larry Ewalt



Larry Ewalt

43922 133rd St

Webster SD 57274

Gronlund, Eric

From: Gronlund, Eric
Sent: Wednesday, July 02, 2014 9:24 AM
To: 'tkelca07@hotmail.com'
Subject: petition received on water permit application No. 8002-3
Attachments: 8002-3petition.pdf

Mr. Block

Attached is the petition received on application No. 8002-3 to irrigate of the NW ¼ Section 14, T123N, R55W from a well.

A notice of hearing will be sent to parties scheduling a hearing before the Water Management Board. This notice will likely go out next week. The soonest it can be scheduled is the October meeting.

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

RECEIVED

JUL - 2 2014

WATER RIGHTS
PROGRAM

June 30, 2014

Water Rights Program

Foss Building

523 E. Capitol

Pierre, SD 57501

Hello Chief Engineer;

I am opposing the application for water permit; application #8002-3.

Statement:

Due to the water shed from portion of proposed area flowing to my land, thus increasing possible loss of more acres which already has increased due to flooding, and the chance of increased fertilizer and chemical runoff to my property. In the event we go to a dry cycle the draw from the well may lower the water table thus depleting the dugouts in my pastures.

Larry Ewalt



Larry Ewalt

43922 133rd St

Webster SD 57274



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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

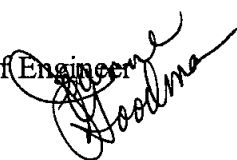


July 16, 2014

NOTICE OF HEARING

TO: Todd Block
PO Box 135
Grenville SD 57239

Larry Ewalt
43922 133rd Street
Webster SD 57274

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application No. 8002-3, Todd Block

A petition opposing approval of Water Permit Application No. 8002-3 has been filed in response to the Notice of Application published in the Webster Reporter & Farmer and Watertown Public Opinion. This notice schedules a hearing on the application before the South Dakota Water Management Board.

Water Permit Application No. 8002-3 proposes to appropriate 1.44 cubic feet of water per second from one well to be completed into the Coteau Lakes Aquifer (109 feet deep) located in the NW 1/4 NW 1/4 Section 14 for irrigation of 120 acres located in the NW 1/4 Section 14; all in T123N-R55W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8002-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 8002-3 at 1:00 PM on Wednesday, October 22, 2014 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time, date or location.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on the facts presented at the public hearing.

The October 22, 2014, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by October 10, 2014. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

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

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

Enclosed is a copy of the report, recommendation, affidavits of publication and petition in the matter of Water Permit Application No. 8002-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is July 28, 2014. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosures

c: Ann Mines, Assistant Attorney General
 Matt Naasz, Assistant Attorney General

CERTIFICATION

I hereby certify that on July 16, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated July 16, 2014, regarding scheduling the hearing for Water Right Permit Application No. 8002-3, as addressed below:

Todd Block
PO Box 135
Grenville SD 57239

Larry Ewalt
43922 133rd Street
Webster SD 57274

Sent Inter-office to:

Ann Mines, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Matt Naasz, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



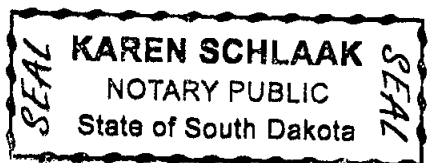
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 16th day of July, 2014



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



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

=====

IN THE MATTER OF THE WATER PERMIT
APPLICATION NO. 8002-3, TODD BLOCK

=====

Transcript of Proceedings
Wednesday, October 22, 2014
Floyd Matthews Training Center
523 East Capitol Avenue
Pierre, South Dakota

=====

BOARD MEMBERS PRESENT

Chad Comes, Chairman
Everett Hoyt
Leo Holzbauer
Rodney Freeman
Jim Hutmacher
Tim Bjork
Peggy Dixon

ORIGINAL

Mr. Jeff Hallem, Counsel for the Board

APPEARANCES

ANN MINES-BAILEY,
Assistant Attorney General, 1302 East
Highway 34, Pierre, South Dakota 57501,
appearing on behalf of DENR;

TODD BLOCK, P.O. Box 135, Grenville, SD 57239,
appearing Pro Se;

LARRY EWALT, 43922 133rd Street, Webster, SD 57274,
appearing Pro Se.

Reported by Carla A. Bachand, RMR, CRR, Capital Reporting
Services, P.O. Box 903, Pierre, SD 57501 (605) 224-7611

I N D E X

WITNESSES:

PAGE:

ADAM MATHIOWETZ

Direct by Ms. Mines-Bailey.	8
Cross by Mr. Ewalt.	18
Cross by Mr. Block.	21
Examination by Mr. Hutmacher.	21
Examination by Mr. Holzbauer.	22
Examination by Mr. Hoyt	22

TODD BLOCK

Testimony Under Oath.	24
Cross by Ms. Mines-Bailey	25
Examination by Mr. Hutmacher.	26
Examination by Mr. Hoyt	26
Examination by Ms. Dixon.	28
Cross by Mr. Ewalt.	28

LARRY EWALT

Testimony Under Oath.	29
Cross by Ms. Mines-Bailey	30
Cross by Mr. Block.	33
Examination by Mr. Hutmacher.	33
Cross by Mr. Block.	35

ADAM MATHIOWETZ

Direct by Ms. Mines-Bailey.	36
Cross by Mr. Ewalt.	38

EXHIBITS

RECEIVED:

DENR Exhibit No. 1.	8
DENR Exhibit No. 2.	8
DENR Exhibit No. 3.	12

Certificate of Court Reporter.	44
--	----

1 WEDNESDAY, OCTOBER 22, 2014

2 CHAIRMAN COMES: Thank you, it's one o'clock. We will
3 take up the matter before the Water Management Board of Water
4 Permit Application No. 8002-3, Todd Block. This is a hearing,
5 and before we get into the matters, could we ask for
6 appearances.

7 MS. MINES-BAILEY: Ann Mines-Bailey on behalf of the
8 Water Rights Program.

9 CHAIRMAN COMES: And is Mr. Block here.

10 MR. BLOCK: Yes, I am.

11 CHAIRMAN COMES: Mr. Todd Block?

12 MR. BLOCK: Yep.

13 CHAIRMAN COMES: Are there any intervenors present?

14 MR. EWALT: Larry Ewalt, E-W-A-L-T.

15 CHAIRMAN COMES: Are there any other intervenors here?
16 Very good, I would ask Mr. Hallem to go through what was
17 provided to the board prior to today.

18 MR. HALLEM: Prior to today's hearing, the board
19 received a copy of the report to the Chief Engineer on Water
20 Permit Application No. 8002-3, Todd Block, dated June 16th,
21 2014, it's signed by Adam Mathiowetz and approved by Ken
22 Buhler. A recommendation of Chief Engineer for Water Permit
23 Application No. 8002-3, Todd Block, signed by Chief Engineer
24 Goodman, dated June 16th, 2014. An intervention letter dated
25 June 30th, 2014, by Larry Ewalt. Notice of hearing dated July

1 16th, 2014, to Todd Block and Larry Ewalt from the Chief
2 Engineer scheduling the hearing on this matter for October
3 22nd, 2014. Certification of mailing of the notice, and
4 finally the official notices in the newspapers, the Reporter
5 and Farmer in Webster and the Watertown Public Opinion noticing
6 this matter.

7 In addition, since we have two individuals that are
8 not represented by counsel, I would like to go over a couple
9 things before we begin. First of all, you are wearing two
10 hats. You are a party, but you are also a lawyer, and for the
11 purposes of this hearing, you have to separate the two. So you
12 are going to have an opportunity to testify in your case, Mr.
13 Block, you will have an opportunity as applicant to testify,
14 and you can call any witnesses that you may have here to
15 testify as well. Mr. Ewalt, the same thing. That's your
16 opportunity to testify because you are going to be under oath
17 then versus anything else that you are doing is not under oath
18 and the board really can't consider it.

19 If you have exhibits that you wanted to introduce, if
20 you haven't done so already, they need to be marked and copies
21 available; so if you haven't done that, that's something that
22 you should do on it. The only exception to that is that the
23 department usually has the administrative file that is behind
24 this action. Those would be all the documents relative to the
25 application, and that's normally the first exhibit that's

1 introduced. You will have an opportunity to look at that
2 exhibit, and if there's objections, you can raise it.

3 With your attorney hat, you are limited to an opening
4 statement, basically saying, without facts, just what's your
5 position on it, you are opposed, you are in favor, you are here
6 to have the board make a determination, or you are going to
7 present evidence for specific purposes to show beneficial use
8 and also the public interest type of things, which would be the
9 applicant's burden, and why it shouldn't be done is what your
10 burden would be, Mr. Ewalt. In doing that, that's not
11 evidence, it's just to provide the board with what's going on.

12 You will also have the ability to object to questions
13 and also object to evidence, following legal procedures on it.
14 There is rules of evidence and so you are going to be subject
15 to those. Finally, you will have the opportunity to
16 cross-examine any witness. DENR, in most cases, the Water
17 Rights Program, will have an engineer testify. You will have
18 the opportunity to cross-examine and ask questions of that
19 engineer. And that's the same with any other witnesses or also
20 yourself on it, you will be subject to cross-examination by the
21 other party as well as Ms. Mines. Finally, the board may ask
22 questions and you are asked to respond to those questions. Do
23 either of you have any questions regarding the procedure?

24 MR. EWALT: First time.

25 MR. HALLEM: I understand that. We are not trying to

1 be difficult, but you made the decision to represent yourselves
2 and of course you are able to do that, but you also have to
3 understand by doing that, you are in a lawyer capacity on it
4 and we treat you different in your lawyer capacity than in your
5 capacity as a party and a witness. Please don't be upset if we
6 start talking legal stuff and you get confused on it and it's a
7 little bit of a matter of the system on it, and it's also a
8 matter of your decision and choice in representing yourself
9 here on it. I have nothing further.

10 CHAIRMAN COMES: Thank you for going over that. So
11 this would be the opportunity for the opening statement, and
12 Mr. Block, if you have any opening comments or statement you
13 would like to make, that would be great at this time.

14 MR. BLOCK: Do you want me to stand up?

15 MR. HALLEM: You can do it standing up or sitting
16 down.

17 MR. BLOCK: I guess my opening statement would be that
18 with Larry's objection, he's got it phrased two different ways,
19 that if I do get the permit to put up an irrigator, that I
20 would be pushing more chemical and fertilizer on runoff his
21 way, where I look at it that with an irrigator, you do not take
22 and make runoff with water, you are just putting enough out
23 there for the crop to support itself or to do better than what
24 it normally would do.

25 On the secondhand, with the drought, with draining or

1 pumping the water out of well water versus draining his stock
2 dam, you know, we are kind of talking two different things,
3 well water or surface water versus well water on the drought
4 end. That's all I have.

5 CHAIRMAN COMES: Thank you. Ms. Mines.

6 MS. MINES-BAILEY: I have no opening statement at this
7 time, thank you.

8 CHAIRMAN COMES: Mr. Ewalt.

9 MR. EWALT: My only concern is, as Todd alluded to, as
10 far as chemicals, be it fertilizer or whatever, also silt
11 coming in and taking up more acreage of the thing, because if
12 the ground is saturated or water to the rate and you get rain
13 on top of it, I don't know what the infiltration rate of that
14 soil is there, but if it's less than what we are getting and
15 it's already watered to meet the crop need and we get rain,
16 there is going to be more runoff than if it wasn't watered, I
17 believe. That's kind of the way I was looking at that.

18 CHAIRMAN COMES: Thank you. DENR, do you have any
19 witnesses you would like to call in this matter?

20 MS. MINES-BAILEY: We do. Although the applicant
21 bears the burden of proof in this matter, I have discussed it
22 with both Mr. Ewalt and Mr. Block, and they have agreed that we
23 could go ahead and proceed by presenting the administrative
24 file, which I have marked as DENR Exhibit No. 1. Both Mr.
25 Ewalt and Mr. Block have had an opportunity to look at that

1 file already.

2 CHAIRMAN COMES: Is there any objection, Mr. Block, of
3 admitting it into evidence?

4 MR. BLOCK: No.

5 CHAIRMAN COMES: Mr. Ewalt, any objections?

6 MR. EWALT: No.

7 CHAIRMAN COMES: We will accept that into evidence.

8 EXHIBITS:

9 (DENR Exhibit No. 1 received into evidence.)

10 MS. MINES: We call Adam Mathiowetz, the DENR
11 engineer.

12 Thereupon,

13 ADAM MATHIOWETZ,
14 called as a witness, having been previously duly sworn as
15 hereinafter certified, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MINES-BAILEY:

18 Q. Adam, for the record, would you state your name and
19 your position, please?

20 A. Adam Mathiowetz, M-A-T-H-I-O-W-E-T-Z. I am an
21 engineer with the DENR Water Rights Program.

22 Q. Adam, what's your background, educational background?

23 A. I earned a bachelor's and a master's of science in
24 agricultural and biosystems engineering from South Dakota State
25 University.

1 Q. How long have you been with DENR?

2 A. Just over two and a half years.

3 Q. I am showing you what I have marked as DENR Exhibit 2.

4 Is that your curriculum vita?

5 A. Yes.

6 Q. You created this yourself?

7 A. Yes.

8 MS. MINES-BAILEY: Water Rights would move DENR

9 Exhibit No. 2.

10 CHAIRMAN COMES: Any objections to that, Mr. Block?

11 MR. BLOCK: No.

12 CHAIRMAN COMES: Mr. Ewalt?

13 MR. EWALT: No.

14 CHAIRMAN COMES: We will accept that into evidence.

15 EXHIBITS:

16 (DENR Exhibit No. 2 received into evidence.)

17 Q. (BY MS. MINES-BAILEY) Adam, could you tell the board
18 part of your job descriptions?

19 A. My duties as an engineer in the Water Rights Program
20 include reviewing and analyzing new water permits, ground water
21 permit applications, inspections of ground water permits, as
22 well as complaint investigations and any assistance in
23 engineering matters that senior engineers require, as well as
24 technical assistance to the Chief Engineer and the Water
25 Management Board.

1 Q. About how many applications have you reviewed?

2 A. 151.

3 Q. And were you assigned to review Application 8002-3?

4 A. Yes, I was.

5 Q. Did you prepare a report for the Chief Engineer
6 regarding this application?

7 A. Yes, I did.

8 Q. Before we go any further, do you have any corrections
9 that you wish to make to that report?

10 A. Yes, I have three, if I remember correctly. On page
11 two, paragraph three, line four, there is 1,760 feet above,
12 that should be 1,830 feet above. On page five, paragraph two,
13 paragraph following the figure, on line five, I have a
14 reference that says water rights 2014A, that should be water
15 rights 2014C.

16 MR. FREEMAN: E or C?

17 A. It is A, it should be C. On page six under
18 conclusions, in conclusion number one, it shows 1.4 CFS, it
19 should be 1.44 CFS.

20 Q. (BY MS. MINES-BAILEY) Adam, could you tell us about
21 this application, what is it proposed to do?

22 A. This application proposes to appropriate ground water
23 at a maximum diversion rate of 1.44 cubic feet per second from
24 the Coteau Lakes Aquifer. The water should be used to irrigate
25 up to 120 acres located in the northwest quarter of Section 14,

1 Township 123 North, Range 55 West in Day County.

2 Q. And approximately where is that located?

3 A. This is located on the north end of Waubay Lake by
4 Grenville.

5 Q. You said that it seeks to divert from the Coteau Lakes
6 Aquifer. Could you describe that aquifer, some of the
7 characteristics of that aquifer?

8 A. The Coteau Lakes Aquifer is a name for a collection of
9 discontinuous shallow outwash bodies that surround and underlie
10 lakes in Day, Marshall and Roberts County.

11 Q. In preparation for the hearing today, did you create a
12 map --

13 A. Yes, I did.

14 Q. -- of this area? What did you use to create that map?

15 A. I used ARCGIS software along with the water rights
16 wells database and water permit -- water rights database as
17 well as some information I gathered from Mr. Ewalt during a
18 phone conversation I had with him.

19 Q. And is this program commonly used amongst DENR staff?

20 A. Yes.

21 Q. Is it considered reliable?

22 A. Yes.

23 Q. Do you believe that the map that you have created is
24 an accurate depiction --

25 A. Yes.

1 Q. -- of the area? And on this map, what landmarks did
2 you note?

3 A. I noted Waubay Lake and the town of Grenville as well
4 as the proposed location of Mr. Block's well, two wells for the
5 City of Grenville, and both of Mr. Ewalt's dugouts.

6 MS. MINES-BAILEY: DENR would move Exhibit 3 for
7 admission.

8 CHAIRMAN COMES: Are there any objections, Mr. Block?

9 MR. BLOCK: No.

10 CHAIRMAN COMES: Mr. Ewalt?

11 MR. EWALT: No.

12 CHAIRMAN COMES: We will admit that into evidence.

13 EXHIBITS:

14 (DENR Exhibit No. 3 received into evidence.)

15 MS. MINES-BAILEY: We also have copies for the members
16 of the board.

17 Q. (BY MS. MINES-BAILEY) Adam, what was the first thing
18 you did when you started reviewing this application?

19 A. When I received the application for review, I found a
20 test hole log in the application. Using the geologic
21 information on that log, I then determined the aquifer based on
22 depth as well as the physical location. I determined that the
23 aquifer that Mr. Block proposed to use was the Coteau Lakes
24 Aquifer.

25 Q. What was your next step?

1 A. My next step was to determine if unappropriated water
2 was available for Mr. Block's proposed appropriation.

3 Q. And what data did you examine to make that
4 determination?

5 A. I examined published reports as well as our own DENR
6 irrigation questionnaires that are submitted to us and other
7 water rights that we have.

8 Q. Did you also look at data from observation wells?

9 A. Yes, I also looked at observation wells, yes.

10 Q. And what were you able to conclude from that data?

11 A. From the data, from the publications, I determined,
12 based on the approximate area of this portion, as I previously
13 said, the Coteau Lakes is small discontinuous pockets of
14 outwash. From this portion, I determined there was
15 approximately 8,175 acre feet of recharge to it annually, and
16 then I went and determined the approximate withdrawals. There
17 are no nonirrigation appropriations from this portion. All
18 appropriative rights are for irrigation. On an annual basis,
19 the average annual irrigation water use from this portion was
20 88.7 acre feet. That left a total of 8,086 acre feet of
21 recharge exceeding average annual appropriative withdrawals.

22 Q. And what information did the observation wells give
23 you?

24 A. When I looked at the observation wells, I considered
25 the average change in -- overall change in water level across

1 the period of record. On page five of my report, figure two,
2 that is the only observation well we have completed into that
3 particular portion of the aquifer. As you can see on the
4 left-hand side, earlier in the period of record, in 1978 the
5 water level is several feet, almost 20 feet lower than it is at
6 present day. In that interpretation, that shows that over the
7 period of record, we have had more recharge to the aquifer than
8 we have had withdrawals.

9 Q. Okay, and based on all this information, what was your
10 determination as to the availability of unappropriated water?

11 A. Based on that information, I determined that there was
12 unappropriated water available for this proposed appropriation.

13 Q. Did you then examine the existence of any near by
14 water rights?

15 A. I did.

16 Q. And what did you find?

17 A. In terms of appropriative rights, the nearest
18 appropriative right to the proposed well location is
19 approximately five miles south, that's another irrigation
20 appropriation. There are domestic, we have one domestic well
21 log on record, but we are aware that there are domestic wells
22 there.

23 Q. Will there be any unlawful impairment of those
24 existing rights by this application?

25 A. For the appropriative right, no. For the domestic

1 wells, no.

2 Q. I'm sorry, I couldn't hear you.

3 A. For the domestic wells, no.

4 Q. Thank you, and what do you base that conclusion on?

5 A. The appropriative right being at five miles away, the
6 proposed diversion rate is not -- it's not significantly large
7 enough to create any measurable effect at that distance. On
8 the domestic wells, the consideration of an adequate domestic
9 well is completed into an aquifer at least 20 feet or if the
10 aquifer is not 20 feet thick, less than 20 feet thick, it's
11 fully penetrating. Using those standards, I did not believe
12 that pumping from Mr. Block's well would create an adverse
13 impact to domestic wells.

14 Q. What is the recommendation of the Chief Engineer in
15 this matter?

16 A. The Chief Engineer has recommended approval.

17 Q. And are there any qualifications proposed with this
18 application?

19 A. The Chief Engineer has included the three standard
20 qualifications that we do with irrigation applications. First
21 the well is located -- the proposed well is located near other
22 wells, domestic wells, as well as potentially wells with prior
23 water rights and the applicant gets to control their
24 withdrawals as to not to reduce needed water supplies to
25 pre-existing wells. The proposed well needs to be constructed

1 by a licensed well driller and needs to meet South Dakota well
2 construction standards. Thirdly, this is an irrigation
3 application. The applicant is subject to filing an annual
4 irrigation questionnaire.

5 Q. Are you aware of the petition in opposition to this
6 application?

7 A. Yes, I am.

8 Q. Could you tell us the substance of that petition?

9 A. The petition was submitted by Mr. Larry Ewalt. Mr.
10 Ewalt had concerns about runoff from Mr. Block's proposed
11 irrigation project increasing the loss of land he had due to
12 flooding, as well as an increased chance for fertilizer and
13 chemical runoff onto his property. Secondly, he had a concern
14 that during dry cycle, the drawdown from the proposed well
15 would lower the water table and thus dry his dugouts.

16 Q. Were you able to have a discussion with Mr. Ewalt
17 before the hearing?

18 A. Yes, I was.

19 Q. And based on that discussion, were you able to locate
20 where the dugouts are in conjunction with the proposed well
21 site?

22 A. Yes.

23 Q. Could you point those out on the map for the board,
24 please?

25 A. On the map, they are signified by the two green dots

1 here on the left-hand side.

2 Q. Approximately how far are Mr. Ewalt's dugouts from the
3 proposed well site?

4 A. The northern of the dugouts is approximately 2500 feet
5 away and the southern dugout is approximately 1800 feet.

6 Q. The petition expresses concern with the watershed for
7 the proposed area flowing onto his land and also a concern
8 regarding increased fertilizer and chemical runoff onto Mr.
9 Ewalt's property. Do either of those concerns affect your
10 determination as to the availability of unappropriated water?

11 A. No.

12 Q. Do either of those concerns affect your determination
13 as to your determination that there will be no unlawful
14 impairment of existing rights?

15 A. No.

16 Q. Mr. Ewalt also expresses concern regarding the well
17 lowering the water table and depleting his dugouts during the
18 dry season. Do you believe that the proposed well will
19 adversely impact Mr. Ewalt's dugouts?

20 A. No.

21 Q. What do you base that determination on?

22 A. If Mr. Ewalt's dugouts have a ground water component,
23 that would mean that they would be hydraulically connected to
24 the same aquifer as Mr. Block's well, which is also
25 hydraulically connected to Waubay Lake. Therefore, Mr. Block

1 would have to pump hard enough to draw down the lake.

2 Q. And if they do not have a ground water component?

3 A. Then there would be no hydraulic connection between
4 the ground water and this would be probably a surface water
5 inflow, which would have no connection and therefore no
6 consideration.

7 MS. MINES-BAILEY: That's all the questions I have for
8 you.

9 CHAIRMAN COMES: Mr. Block, do you have any questions
10 of Mr. Mathiowetz?

11 MR. BLOCK: No, I think they were pretty much all
12 answered.

13 CHAIRMAN COMES: Mr. Ewalt, do you have any questions
14 of Mr. Mathiowetz?

15 CROSS-EXAMINATION

16 BY MR. EWALT:

17 Q. The only question I have is in 1978 it was 20 feet
18 lower than what the level is now. What difference does that
19 play in the role if it was going on at that time and we have
20 seen a big increase in water up there that we never had in
21 years, and that has been dry in the past, Waubay Lake was a
22 very small, small body of water so pumping it down would not
23 take long. Years back, that isn't like 100 years back, it's a
24 very short window of time.

25 A. I missed your question in there.

1 Q. You said, if I remember correctly, in 1978 that the
2 level in this aquifer was 20 feet lower than it is at present.

3 A. Correct.

4 Q. And right now we have got an abundance of water by all
5 means, there is all kinds of water, but Waubay Lake was never
6 the size it is today and to say that you would have to pump
7 Waubay Lake down, we don't know what size Waubay Lake is going
8 to be in 10 years or 15 years down the road.

9 A. A 20-foot level reduction in that observation well
10 would likely be indicative of a 20-foot reduction in the lake,
11 due to the hydraulic connection. If that were to drop, he
12 would also have a 20-foot reduction of water in his well.
13 Based on the well log, he probably couldn't run his well. He
14 has approximately 30 feet of saturated thickness at that point
15 right now. That would leave him with 10. I imagine he could
16 run it partially, I would need to confer with a well pump
17 installer to be certain, but with that reduction, it also
18 prevents him physically from pumping to a point. Did I get
19 your question in there?

20 Q. Yeah, there is no stopping as far as if it gets to a
21 level that he cannot pump at a certain level, it's if the well
22 can't pump it, it can't pump it, there is nothing as far as
23 Waubay Lake goes down, the level gets to a certain level in
24 this aquifer, the well gets shut off, if the pump can't pump is
25 the only control factor in there; is that what I'm hearing?

1 A. No, I didn't address that. I addressed specifically
2 the aquifer. In terms of that, that would be well
3 interference, potentially a well interference issue, which
4 would need to be filed through a complaint to the DENR Water
5 Rights Program, if I understand correctly what you are asking.
6 It seems to me you are concerned about everything coming down,
7 correct?

8 Q. Right, because we have an abundance of water right now
9 and it's not that many years back there was not water like that
10 around, Waubay Lake was a very, very small body of water, and
11 it would not take long to pump it down what it was 20 years
12 ago. I was just wondering if there is any -- if the aquifer
13 gets at levels is it shut off or is it if the pump can't pump?
14 I don't know, I'm just asking that question.

15 A. I'm unaware of a shut off that would be based on the
16 lake level.

17 MR. BLOCK: I just thought of something.

18 MR. HALLEM: You have to wait for your turn to
19 testify, Mr. Block. Afterwards on it you will have another
20 opportunity to ask questions if you choose to do so. Mr.
21 Ewalt.

22 MR. EWALT: That's all I have got.

23 CHAIRMAN COMES: Do you have any follow-up questions,
24 Ms. Mines?

25 MS. MINES-BAILEY: No.

1 CHAIRMAN COMES: Mr. Block, now you have a question.

2 CROSS-EXAMINATION

3 BY MR. BLOCK:

4 Q. Now, when they asked about the watershed, on the
5 parcel of ground that I'm looking to irrigate, how much of that
6 parcel of ground do you know has a watershed that goes to Mr.
7 Ewalt's ground?

8 A. I did not measure that; so I am not aware how much.

9 Q. Okay. That's what I was curious about.

10 CHAIRMAN COMES: Is there any questions of the board
11 of Mr. Mathiowetz?

12 EXAMINATION

13 BY MR. HUTMACHER:

14 Q. The City of Grenville, are those permitted wells?

15 A. Those wells are permitted under -- they are on the
16 map, I think it's 5023-3, they are from the Pleistocene series
17 unknown. I can tell you approximately how deep they are. They
18 are completed below 1400 feet land surface or mean sea
19 elevation. Mr. Block proposes to use right around 1800 feet.
20 So they are several hundred feet lower. Different aquifer
21 entirely.

22 MR. HUTMACHER: Thank you.

23 CHAIRMAN COMES: Are there any other questions from
24 the board?

25 EXAMINATION

1 BY MR. HOLZBAUER:

2 Q. Help me once to clarify. You mentioned earlier that
3 there was no -- the only other wells that was a problem was
4 irrigation wells in the area, right?

5 A. I didn't mention any wells that were a problem. There
6 are --

7 Q. Possible interference.

8 A. There are several irrigation wells approximately five
9 miles south and then there was one well on record that we had
10 about a mile away that appeared to may be completed into the
11 same formation.

12 Q. Okay, so then the only other interference you were
13 talking about is the dugout.

14 A. The only other potential interference may be the
15 dugouts. The only ones that I'm aware of would be the dugouts.

16 MR. HOLZBAUER: Thank you.

17 CHAIRMAN COMES: Are there any other questions from
18 the board?

19 EXAMINATION

20 BY MR. HOYT:

21 Q. Just let me see if I understood the real crux of the
22 matter here as it relates to Mr. Ewalt. It's your opinion that
23 the water source for his dugouts is surface water and that
24 those dugouts are not connected with an aquifer.

25 A. I am uncertain what his water source is since I don't

1 know the depth of the dugouts exactly. Furthermore, if they
2 are -- if they have a ground water component, I do not believe
3 that they will be impacted by Mr. Block.

4 MR. HOYT: Thank you.

5 CHAIRMAN COMES: Are there any other questions from
6 the board? Does DENR have any follow up after those questions
7 from the board?

8 MS. MINES-BAILEY: I do not, thank you.

9 CHAIRMAN COMES: Mr. Block, do you have any questions
10 to follow that up after the board questions?

11 MR. BLOCK: No.

12 MR. EWALT: No, I do not.

13 CHAIRMAN COMES: Thank you, Mr. Mathiowetz. Does DENR
14 have any other witnesses?

15 MS. MINES-BAILEY: We have no further witnesses, sir.

16 CHAIRMAN COMES: Mr. Block, this would be an
17 opportunity where you could testify and subsequently
18 additionally call witnesses after that; so if you wish to
19 testify, you can do so now.

20 MR. HALLEM: What you will need to do is come on up
21 and then the court reporter will swear you in.

22 Thereupon,

23 TODD BLOCK,

24 called as a witness, being first duly sworn as hereinafter
25 certified, testified as follows:

1 MR. BLOCK: With the wells that are in Grenville, the
2 City of Grenville is hooked to WEB, the rural water; so I know
3 neither one of the wells are used, and they signed a deal with
4 WEB that as long as they were supplying them with water, they
5 would never use the wells that are in the town is one thing.

6 And the other thing is with the dugouts that are on --
7 that he had pointed out, that with all the water that we have
8 had, both of these dugouts have been over full by I don't know,
9 several feet, for many years; so even if the water table at
10 those points go back down to their original level, they both
11 may be both full of dirt, you know, when it's all said and done
12 anyways, you know, in point of a drought.

13 MR. HALLEM: Mr. Block, you have the burden and
14 responsibility to provide evidence to the board that the water
15 that you are asking for is of beneficial use and it's a public
16 interest; so you will need to describe what you are going to
17 use the water for, those type of things on it to meet your
18 burden.

19 MR. BLOCK: I guess I am going to use -- I want to put
20 up an irrigator to grow a better crop that would I guess help
21 my family and my upcoming son with the farming that he wants to
22 do, you know. And I guess if the irrigation -- if the well
23 does pull out of the aquifer that helps Waubay Lake, that takes
24 water off the surface of Waubay Lake, everybody in the area
25 would love to see the lake go down because it went from 10,000

1 square feet to 30,000 square feet. I guess that would be
2 probably the biggest benefit to anybody or everybody around the
3 lake, is that the lake would go back down.

4 CHAIRMAN COMES: Do you have any further comments you
5 wish to make?

6 MR. BLOCK: Nope.

7 CHAIRMAN COMES: Ms. Mines -- Mr. Block, the DENR and
8 the intervenor and the board would have an opportunity to ask
9 questions; so Ms. Mines, do you have any questions of Mr.
10 Block?

11 CROSS-EXAMINATION

12 BY MS. MINES-BAILEY:

13 Q. Mr. Block, do you see any increase, do you foresee any
14 increase in the runoff as a result of your proposed irrigation
15 project?

16 A. I do not because, you know, we are not looking to take
17 big volumes of water. It costs money to pump water and do all
18 that, and we are not looking to take water and run it down to
19 cause runoff. We are just looking for enough to help the crop,
20 help the crop as is needed as it gets dryer throughout the year
21 through the summer.

22 MS. MINES-BAILEY: Thank you, no further questions.

23 CHAIRMAN COMES: Mr. Ewalt, do you have any questions
24 of Mr. Block?

25 MR. EWALT: Not at the present time, no.

1 CHAIRMAN COMES: Does the board have any questions of
2 Mr. Block?

3 EXAMINATION

4 BY MR. HUTMACHER:

5 Q. Mr. Block, what is -- I am asking for an estimate.
6 You probably don't know the answer, but what is the elevation
7 difference from your proposed well site to the elevation of
8 those dugouts?

9 A. I guess I don't know right offhand.

10 Q. Any guesstimate?

11 A. No, I guess I wouldn't, not right off the top of my
12 head.

13 Q. Are we talking about 300 feet or 30 feet?

14 A. Well, yeah, I would say it's probably closer to 300
15 feet than it would be 30 feet.

16 Q. That's a pretty good slope.

17 A. Yeah.

18 MR. HUTMACHER: Thanks.

19 EXAMINATION

20 BY MR. HOYT:

21 Q. I have a follow-up question. Earlier you alluded to
22 the fact that not all of your drainage flows towards Mr.
23 Ewalt's lands.

24 A. Yep.

25 Q. Could you just elaborate? You mentioned the 300 foot

1 difference in elevation now, but how does your land lie when we
2 look at that map?

3 A. Can I show you on this map?

4 Q. Sure, please.

5 A. So this would be the center of the well, the ground
6 breaks right here and right about here, and we would not
7 irrigate any of this, it would make a loop from the road to
8 about this angle right in here; so the only runoff that
9 would -- if there was runoff from anything, would come down
10 this water way that would come right here. That would come
11 from irrigation, which I would say, you know, I don't know
12 exactly how many acres of runoff it would be, you know, that
13 would be actual irrigated ground. I don't know if it would be
14 five, seven or 10 because I guess I don't have the exact
15 measurement layout of how the irrigator would lay in there.

16 MR. HOYT: Were you able to see that, Mr. Ewalt?

17 MR. EWALT: I could not see it. I kind of know the
18 lay of the land. I didn't know before how far they were going,
19 it was in that section; so I know the lay of the land there,
20 how far the drainage comes to the north.

21 MR. HOYT: I didn't know whether you wanted Mr. Block
22 to point that out again.

23 MR. EWALT: I can take a look at it, sure.

24 MR. HOYT: Mr. Block, stand over there.

25 A. The irrigator will touch both rows here and here; so

1 it will I believe stay in off both ends so when it swings
2 around, it's going to make a circle like that. So the only
3 runoff it would have is from right here to probably right in
4 here because everything from -- to that road breaks this way,
5 this breaks this way, this breaks over here. Actually, this
6 here one drains this way.

7 MR. HOYT: Thank you.

8 MS. DIXON: I have a question.

9 EXAMINATION

10 BY MS. DIXON:

11 Q. There is no benefit to irrigating to the point of
12 runoff, is there?

13 A. I would say not because it costs extra money to put
14 extra water out, you know.

15 MS. DIXON: Thank you.

16 CHAIRMAN COMES: Are there any other questions of the
17 board? Ms. Mines, did you have any questions to follow that
18 up?

19 MS. MINES-BAILEY: I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. EWALT:

22 Q. Just in reference to Peggy's question there is, yeah,
23 nobody is going to irrigate to the point of runoff with the
24 irrigation, but when it's irrigated --

25 MR. HALLEM: Do you have a question?

1 Q. (BY MR. EWALT) I guess my question is -- I don't know
2 how to word it as a question, but will there be runoff when it
3 rains and it's irrigated to the level you want to meet your
4 crops' needs?

5 A. The rain runoff, there will always be runoff, but the
6 irrigator, you know, I would say not. You know, Mother Nature,
7 we can't control that at all. The irrigator, if we know
8 there's rain coming in the next 24 hours or 12 hours, we are
9 going to shut it off because why would you want to pay for
10 water that God is going to give you?

11 CHAIRMAN COMES: Any further questions, Mr. Ewalt?

12 MR. EWALT: No.

13 CHAIRMAN COMES: Very good, thank you. Do you have
14 any other witnesses that you would like to call?

15 MR. BLOCK: No. Thank you.

16 CHAIRMAN COMES: Mr. Ewalt, this would be your
17 opportunity to testify and/or to call witnesses.

18 MR. EWALT: I have no witnesses.
19 Thereupon,

20 LARRY EWALT,
21 called as a witness, being first duly sworn as hereinafter
22 certified, testified as follows:

23 MR. EWALT: Okay, as Todd pointed out on the map here,
24 I don't know if you all can see it, not going out, I don't have
25 any measurements, but I believe the drainage runs, this is a

1 small grove of trees going down, but I believe the drainage
2 comes there and not knowing the actual how far his thing is
3 reaching, I don't know what the acreage is, but I believe it
4 would be more than five acres of runoff coming off it, but till
5 we have that, I can't say that it's more or less. But there
6 would be, you know, if there is runoff, it would definitely
7 come down that way.

8 As far as the absorption, the infiltration rates of
9 the land, I don't have a fact on it, but if you don't have
10 enough organic matter and stuff in the soil, it does not absorb
11 enough and the soils conditions need to be of the right
12 conditions to absorb the water, and it is my -- nobody wants to
13 waste money irrigating if they don't need it, but if you are
14 out there irrigating, we don't know when the rain is going to
15 come, not all the time, there is times even predicted we never
16 get it; so in my mind and in knowing when you go out and water
17 your garden, it rains sometimes when you don't think it's going
18 to, and when the ground is saturated from irrigation, there
19 will be runoff when it rains.

20 CHAIRMAN COMES: Hold on one moment. Thank you. Ms.
21 Mines, do you have any questions of Mr. Ewalt?

22 CROSS-EXAMINATION

23 BY MS. MINES-BAILEY:

24 Q. Mr. Ewalt, one of your concerns in your petition are
25 about your dugouts, in particular about them drying out. Could

1 you describe your dugouts for us, what kind of construction?

2 A. They were earthen dug, I believe, through the Soil
3 Conservation when my dad owned the land, and they were dug at
4 the edges of the sloughs at that time, which like I say, today
5 they are not at the edges of the slough. The one you can see
6 the banks on, the other one you can't even see the banks any
7 more, it's totally in the slough that far today. It wasn't a
8 few years ago, because I purchased the land in 2003, I was able
9 to go and put fence up where there is now water and now the
10 fence is out again. So it can change a lot, depending what
11 type of years we are having, and so that's what my concern is,
12 if we start pulling from -- taking the pressure off from down
13 below, if you lower the water down below, it's going to
14 obviously let stuff infiltrate down and get down there so you
15 will have less on top.

16 Q. Do you know how deep the dugouts are?

17 A. That I don't know how deep they used to dig them, from
18 the programs, I don't know what they were. They were dug quite
19 a few years ago.

20 Q. Do you recall any of the materials that were coming up
21 during the construction process?

22 A. Well, it was all dark, mostly dark material, some
23 rock, not gravel or anything like that.

24 Q. Have you ever cleaned those dugouts?

25 A. No, they have never been cleaned.

1 Q. Do you have any idea how deep they are?

2 A. At the present time I would have no idea how deep they
3 are at the present time.

4 Q. Have you ever seen fluctuations in your dugout?

5 A. Oh, the whole slough, I mean, since I have had it,
6 it's never been that the dugout has been without water, and I
7 purchased it in 2003 and I have never seen -- it's always been,
8 like I say, we have more water than we need around there right
9 now, but that's today.

10 Q. Did you have any gravel in your soil pile when they
11 constructed -- I am assuming you put the soil off to the side.

12 A. It's off to the side. I would have to go with a spade
13 and dig in there, that would have been -- I think the first one
14 was probably dug in the early seventies because Dad bought it
15 in '69 and I know the one was put in shortly afterwards.

16 Q. The dimension of your dugout, is it as wide as it is
17 deep do you think or wider than deeper, deeper than width?

18 A. I would have no idea where they are at at the present
19 time because they have been covered -- like I say, the one you
20 can see some of the banks, the other one you can't see any of
21 the banks even. The only reason I know it's there is because
22 you used to be able to see it. Otherwise you would never know
23 there's a dugout there at the present time, the north one.

24 MS. MINES-BAILEY: I don't have any further questions,
25 thank you.

CHAIRMAN COMES: Thank you. Mr. Block, do you have any questions of Mr. Ewalt?

CROSS-EXAMINATION

BY MR. BLOCK:

Q. Just one. I don't know if you remember, Larry, but in '76 I believe is when he said the lowest water mark was, do you ever remember seeing the stock dams dry at that time?

A. I don't think the dugouts have ever been dry, to my knowledge.

Q. I guess that's what I was wondering, in your lifetime --

A. I don't believe they have and they have only been there, the first one I am guessing would have been '71, '72, I don't know the exact date the first one was put in.

Q. But we have gone through some droughts and you have never seen them dry in that time?

A. I don't believe, to my knowledge, no.

MR. BLOCK: That's all.

CHAIRMAN COMES: Are there any questions from the board?

EXAMINATION

BY MR. HUTMACHER:

Q. I would have one. Do you have any idea of the surface area those cover in acres, those dugouts?

A. It would be very small, they ain't great big dugouts.

1 They were, I don't know, they were 100 feet long, I don't know,
2 something like that, 120, what they used to make them.

3 Q. I am looking at the picture and if you --

4 A. That's a slough, though, that is not just a dugout.

5 Q. It's not all dugout?

6 A. No, them dugouts were built at the edges of them
7 sloughs, one at the north edge of that big slough and the other
8 one was at the northwest I'll call it on the smaller slough,
9 and that one you can see the banks; so the banks, if you have
10 some way of calculating that, you can see they blow the banks
11 out adjacent to what the hole is. So you can get some idea of
12 what the length of that dugout was.

13 Q. Would you say that that water averages a foot deep?

14 A. In the slough?

15 Q. Yeah.

16 A. Oh, it's well over a foot deep in the slough, well
17 over a foot deep in the slough. The south one is the shallower
18 slough.

19 Q. But if I was going to look at this, looking at a
20 quarter section there, I'm guessing 40 acres of that is covered
21 with water.

22 A. Fair amount of it, yes. The south part, it was just a
23 small slough there and the dugout in the early years. And it
24 just -- as silt comes in and we have had just a whole heck of a
25 lot more moisture.

1 Q. If there's 40 acres there and it's a foot deep, that's
2 40 acre feet. That's a considerable amount of water. I was
3 just curious what size it was.

4 A. Yeah.

5 MR. HUTMACHER: Thanks.

6 CHAIRMAN COMES: Any other questions from the board?

7 Ms. Mines, do the questions give rise to any more from you?

8 MS. MINES-BAILEY: I have no further questions, thank
9 you.

10 CROSS-EXAMINATION

11 BY MR. BLOCK:

12 Q. One question. Like on you said the north stock dam
13 where the A would be, you said that the banks are gone because
14 the water is so -- I don't know -- an estimation today, how do
15 I want to say it, being the banks are gone, they are built very
16 high. How many feet of water do you think would you estimate
17 is in that slough?

18 A. I would think that slough is at least 10 to 12 feet
19 deep. That's a very deep slough. It's not shallow, the south
20 one is a shallow slough, the north one is a deep slough.

21 Q. And another question, the south stock dam, just say if
22 that one would go dry, you still have a secondary dam that
23 cattle could go to on the same -- out of the same pasture.

24 A. No, because I use rotational grazing and they graze on
25 the south one when they are in the south pasture and --

1 Q. But they could, you could move them over for water.

2 A. Well, you would have to go and do it on a daily basis
3 or reroute the fencing.

4 MR. BLOCK: That's all.

5 CHAIRMAN COMES: Thank you, Mr. Ewalt. Do you have
6 any additional witnesses? I think you said no.

7 MR. EWALT: No.

8 CHAIRMAN COMES: We are at a point where there is any
9 closing. Excuse me, I'm sorry, yes.

10 MS. MINES-BAILEY: I would like to recall Adam
11 Mathiowetz to the stand for rebuttal.

12 Thereupon,

13 ADAM MATHIOWETZ,
14 called as a witness, having been previously duly sworn as
15 hereinafter certified, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MINES-BAILEY:

18 Q. Adam, I just want to -- do you remember that you are
19 still under oath?

20 A. Yes.

21 Q. You have been listening to the testimony here,
22 correct?

23 A. Correct.

24 Q. When you created this map or in looking at the maps of
25 the area, are you aware of the elevation difference between the

1 proposed well site and the dugouts?

2 A. Yes, I am.

3 Q. And what would that elevation difference be?

4 A. Approximately 73 feet.

5 Q. And you heard Mr. Ewalt testify regarding his dugouts?

6 A. Yes, I did.

7 Q. Based on the testimony that you heard, do you have an
8 opinion as to whether dugouts are connected to a ground water
9 or a surface water source?

10 A. Being at the edge of that slough, they are likely a
11 surface water supplied dugout or indirect connection with that
12 surface water source than the slough is.

13 Q. How would that -- what bearing does that have on this?

14 A. Considering that it would be a surface water source
15 and Mr. Block has applied for a ground water source, that would
16 likely mean there is no connection between the two, and
17 therefore, it would not change my report any.

18 Q. In listening to Mr. Ewalt's discussion, and perhaps I
19 should have asked this question first, were you able to form an
20 opinion as to whether or not Mr. Ewalt's dugouts are considered
21 adequate wells?

22 A. Yes, I was able to form an opinion. It is not likely
23 that Mr. Ewalt's dugouts are adequate wells as defined by South
24 Dakota water law.

25 Q. And what significance is that?

1 A. Under water law, we have protections for adequate
2 wells against interference and adverse impact from other wells.

3 MS. MINES-BAILEY: I don't have any further questions,
4 thank you.

5 CHAIRMAN COMES: Mr. Block, do you have any questions
6 of Mr. Mathiowetz following that?

7 MR. BLOCK: No.

8 CHAIRMAN COMES: Mr. Ewalt?

9 CROSS-EXAMINATION

10 BY MR. EWALT:

11 Q. On that last statement, I didn't understand your
12 answer to that, to what she had asked you the question as far
13 as dugouts and your answer. I was not able to comprehend your
14 answer.

15 A. Which point? In terms -- would you like me to explain
16 what an adequate well is? I'm not certain which portion.

17 Q. Just the last statement you made on the dugouts, I
18 didn't comprehend it because it was way over my head.

19 A. An adequate well in South Dakota water law is defined
20 as a well that is completed 20 feet into an aquifer. Or if the
21 aquifer is less than 20 feet thick, it's completed as deep
22 as -- or as near to the bottom as is reasonably possible.
23 Dugouts generally are not dug to the bottom of an aquifer.
24 Obviously in a very, very thick aquifer, it's not practical,
25 and also that an aquifer generally made of sand and gravel, it

1 would be very, very difficult to keep it open to dig very deep
2 into it. And that would then mean it's not an adequate well,
3 you physically can't dig into it deep enough. Does that answer
4 your question?

5 Q. Yep. I just didn't understand. It was over my head.

6 CHAIRMAN COMES: Are there any questions from the
7 board after that? Okay, Ms. Mines, do you have any follow up
8 after Mr. Ewalt?

9 MS. MINES-BAILEY: I have no further questions, thank
10 you.

11 CHAIRMAN COMES: Mr. Block.

12 MR. BLOCK: No.

13 MR. EWALT: No.

14 CHAIRMAN COMES: Thank you. It appears as if we are
15 done with the testimony portion of the hearing. Is there some
16 closing statements, starting with the applicant, that you would
17 like to make?

18 MR. BLOCK: I guess the only thing I have to say is
19 just as I started with, that I guess I don't see where well
20 water would affect Mr. Ewalt's surface water level, and also
21 with that, with the running the irrigator, I am not going to
22 spend any more money than I need to to take and put water on
23 ground, you know, enough to make it run off is not feasible to
24 have water running.

25 CHAIRMAN COMES: Thank you. Ms. Mines.

1 MS. MINES-BAILEY: Under South Dakota law, the board
2 has four factors to consider when determining whether to grant
3 an application for appropriation. The first is the
4 availability of unappropriated water. The report of the Chief
5 Engineer indicates that there is approximately a little over
6 8,000 acre feet of unappropriated water available for this
7 application. The second is the unlawful impairment to existing
8 rights. The testimony is that there will be no unlawful
9 impairment to existing rights.

10 The third is that it's of beneficial use. Mr. Block
11 testified that he plans on using the water for the purpose of
12 irrigating crops, which this board has traditionally found is a
13 beneficial use and in the public interest. Based on those
14 factors, the Chief Engineer has recommended approval of the
15 application. Thank you.

16 CHAIRMAN COMES: Mr. Ewalt, do you have a closing
17 argument?

18 MR. EWALT: My concern is of the runoff, not by
19 irrigating totally. I agree with Todd, I wouldn't spend money
20 to irrigate if I didn't need it either. It's the thing that
21 when it is irrigated and we get a rain and he's going to try
22 like anybody else to get as much out of every acre as he can so
23 he needs to put on as much fertilizer to accomplish that, and I
24 believe there will be runoff when it rains and there will be an
25 increase of be it nitrogen, phos (sic), and there's a big

1 chance of increasing blue algae bloom that could be hazardous
2 to the cattle when drinking the water.

3 CHAIRMAN COMES: Thank you. What are the wishes of
4 the board?

5 MR. HOYT: Mr. Chairman, I would move approval of
6 Application 8002-3 subject to the qualifications recommended by
7 the Chief Engineer.

8 MR. BJORK: Second.

9 CHAIRMAN COMES: There is a motion and second. Any
10 further discussion? Hearing none, all those in favor say
11 "aye."

12 (Whereupon, the motion passed unanimously.)

13 CHAIRMAN COMES: Opposed same sign. Motion carried.
14 Mr. Hallem, would you talk about findings.

15 MR. HALLEM: Under South Dakota law, findings of fact
16 and conclusions of law need to be submitted by the parties, and
17 in the past when there has been a pro se individual, the Water
18 Rights Program has agreed to do the initial set of findings and
19 conclusions and proposals. Ms. Mines, is that acceptable for
20 you?

21 MS. MINES-BAILEY: It is.

22 MR. HALLEM: And those findings and conclusions need
23 to be submitted at least 20 days prior to the next hearing,
24 which, as currently -- is it December?

25 MS. MINES-BAILEY: December 3rd.

1 MR. HALLEM: Currently it's December 3rd. So 20 days
2 beforehand would be the 17th. Could you submit them by the
3 14th of -- if it's December 3rd, you go backwards on it, the
4 17th would be -- November 17th would be 20 days beforehand,
5 which would be a Monday.

6 MS. MINES-BAILEY: I'm coming up with the 13th.

7 MR. HALLEM: Excuse me, then it would be -- you are
8 correct, it would be the 13th. That's why I'm a lawyer, not a
9 mathematician. It would be November 13th. Then after that,
10 then 10 days later both the applicant and you, Mr. Ewalt, would
11 have the opportunity to submit any comments, objections, or
12 your own findings and conclusions. After that it would be my
13 job to prepare proposed rulings on the submissions from all the
14 parties, from the department, as well as both of you, as well
15 as proposed findings of fact and conclusions of law to the
16 board.

17 If you are going to submit a lot of documents on it,
18 DENR will need to provide them to me by email and Mr. Gronlund
19 would do that. If you are just writing a couple pages and they
20 are general comments and objections, I don't need that in a
21 Word format. And that needs to be submitted, you will have --
22 consistent with the directions that Mr. Gronlund will give you,
23 that being submission on all the board members as well as the
24 other parties to this matter. Do either of you have any
25 questions regarding the next procedure?

1 The next time this matter will be taken up is at the
2 December 3rd board meeting and the board will address the
3 adoption of the findings and conclusions and then that
4 decision. Once notice is given, there will be rights of appeal
5 to circuit court and then ultimately the Supreme Court, if the
6 parties choose to do so. That's all I have.

7 CHAIRMAN COMES: Okay. Thank you. Let's break until
8 2:15 before we take up the next matter.

9 (Whereupon, the proceedings were concluded.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

Dated this 4th day of December 2014.



Carla A. Bachand, RMR, CRR
Freelance Court Reporter



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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



October 27, 2014

NOTICE

TO: Todd Block
PO Box 135
Grenville SD 57239

Larry Ewalt
43922 133rd Street
Webster SD 57274

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

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

The Water Management Board directed Ann Mines-Bailey, counsel for DENR, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 8002-3 filed by Todd Block. The Board will consider adoption of Findings, Conclusions and Final Decision at 1:00 PM, on Wednesday, December 3, 2014, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. Notice will be provided if there is a change in the hearing date or time.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties of record by November 13, 2014. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed), Water Rights Program counsel and other parties of record by November 24, 2014. Board counsel requests that the draft findings or alternative findings be provided in a WORD format file via email to jeff.hallem@state.sd.us.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on December 3, 2014. The evidentiary hearing was completed on October 22, 2014. No additional testimony will be received.

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

Enclosure

c: Jeff Hallem, Assistant Attorney General
Ann Mines-Bailey, Assistant Attorney General

2015 WATER MANAGEMENT BOARD MEMBERS

Chad Comes - Chairman
116 W Center
Madison SD 57042

Leo Holzbauer - Secretary
PO Box 877
Wagner SD 57380

Rodney Freeman Jr - Pre Hearing Officer
PO Box 176
Huron SD 57350

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Tim Bjork
112 W Oak St
Pierre SD 57501

Jim Hutmacher - Vice Chairman
802 E 7th Street
Oacoma SD 57365

BOARD ATTORNEY

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

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Jeanne Goodman, Chief Engineer
Water Rights Program
523 East Capitol Ave
Pierre, SD 57501

STAFF ATTORNEYS

Matt Naasz & Ann Mines-Bailey
Office of Attorney General
Natural Resources Section
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre SD 57501

October 27, 2014

CERTIFICATION

I hereby certify that on October 27, 2014, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 27, 2014, regarding preparation of findings for Water Right Permit Application No. 8002-3, as addressed below:

Todd Block
PO Box 135
Grenville SD 57239

Larry Ewalt
43922 133rd St
Webster SD 57

Sent Inter-office to:

Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Jeff Hallem, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

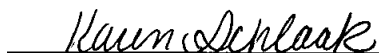


Gail Jacobson

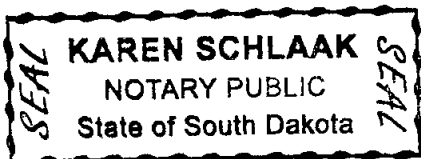
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of October, 2014



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 7, 2014

Mr. Chad Comes, Chairman
Water Management Board
116 West Center
Madison, SD 57402

Mr. Leo Holzbauer, Secretary
Water Management Board
Post Office Box 877
Wagner, SD 57380

Mr. Rodney Freeman, Jr.
Hearing Officer
Post Office Box 176
Huron, SD 57350

Ms. Peggy Dixon, Vice-Chairman
Water Management Board
3311 Hogan Court
Rapid City, SD 57702

Mr. Everett Hoyt
4422 Carriage Hills Drive
Rapid City, SD 57702

Mr. Tim Bjork
112 West Oak Street
Pierre, SD 57501

Mr. Jim Hutmacher
802 East 7th Street
Oacoma, SD 57365

Re: *Water Permit Application No. 8002-3*

Dear Member of the Board,

Enclosed please find a copy of the proposed Findings of Fact, Conclusions of Law, and Final Decision regarding Water Permit Application No. 8002-3.

Thank you very much,

A handwritten signature in cursive script, reading "Ann F. Mines-Bailey".

Ann F. Mines-Bailey
Assistant Attorney General

AFMB/mad
Enclosure

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 7, 2014

Todd Block
P.O. Box 135
Grenville, SD 57239

Larry Ewalt
43922 133rd Street
Webster, SD 57274

Re: *Water Permit Application No. 8002-3*

Gentlemen,

Enclosed please find a copy of the proposed Findings of Fact, Conclusions of Law, and Final Decision regarding Water Permit Application No. 8002-3 and the Certificate of Service. Pursuant to the Board's oral order at the hearing held on October 22, 2014, the intervener may file written objections which should be mailed to each Board member and counsel for the Water Rights program on or before November 24, 2014. The Board will consider adoption of the Findings of Fact, Conclusions of Law, and Final Decision at 1:00 PM, on Wednesday, December 3, 2014, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann F. Mines-Bailey".

Ann F. Mines-Bailey
Assistant Attorney General

AFMB/mad
Enclosure



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 7, 2014

Mr. Chad Comes, Chairman
Water Management Board
116 West Center
Madison, SD 57402

Mr. Leo Holzbauer, Secretary
Water Management Board
Post Office Box 877
Wagner, SD 57380

Mr. Rodney Freeman, Jr.
Hearing Officer
Post Office Box 176
Huron, SD 57350

Ms. Peggy Dixon, Vice-Chairman
Water Management Board
3311 Hogan Court
Rapid City, SD 57702

Mr. Everett Hoyt
4422 Carriage Hills Drive
Rapid City, SD 57702

Mr. Tim Bjork
112 West Oak Street
Pierre, SD 57501

Mr. Jim Hutmacher
802 East 7th Street
Oacoma, SD 57365

Re: *Water Permit Application No. 8002-3*

Dear Member of the Board,

Enclosed please find a copy of the proposed Findings of Fact, Conclusions of Law, and Final Decision regarding Water Permit Application No. 8002-3.

Thank you very much,

A handwritten signature in black ink, appearing to read "Ann F. Mines-Bailey".

Ann F. Mines-Bailey
Assistant Attorney General

AFMB/mad
Enclosure

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
PERMIT APPLICATION No. 8002-	)	CONCLUSIONS OF LAW, AND
3, TODD BLOCK	)	FINAL ORDER

This matter came before the South Dakota Water Management Board for hearing on October 22, 2014. Board members Chad Comes, Peggy Dixon, Leo Holzbauer, Tim Bjork, Rodney Freeman, Jim Hutmacher, and Everett Hoyt were present and heard the evidence presented. Mr. Block appeared on his own behalf. Petitioner Larry Ewalt also appeared *pro se*. Ann Mines-Bailey represented the DENR Water Rights Program and its Chief Engineer.

The Board, having considered the testimony and exhibits presented, all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. Mr. Block seeks a permit to divert water from the Coteau Lakes aquifer at a rate of 1.44 cubic feet per second (cfs) for irrigation of 120 acres located in the NW ¼ NW¼ Section 14; T123N-R55W, in Day County.
2. The sole proposed use is irrigation.
3. The application anticipates constructing a well completed into the Coteau Lakes aquifer.
4. The Chief Engineer recommended approval of the application subject to the permit including three specified qualifications.

5. Notice of the Application and hearing was timely advertised in the Reporter & Farmer in Webster, South Dakota and in the Watertown Public Opinion in Watertown, South Dakota on June 23, 2014.

6. The Block application is a new water permit application which requires a determination there is a reasonable probability that there is unappropriated water available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

7. In considering water availability this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

8. The Coteau Lakes aquifer is a series of discontinuous outwash bodies generally surrounding and underlying area lakes. The portion of the aquifer that would supply water for this application underlies approximately 21,800 acres in Day County.

9. The expected average annual recharge rate to this portion of the Coteau Lakes aquifer that would supply water to this permit is 8,175 acre-feet per year.

10. The average annual withdrawal from the portion of the Coteau Lakes aquifer that would supply water to this permit in the years 1994 to 2012 is 88.7 acre-feet per year.

11. There is approximately 8086.3 acre-feet per year of water in the portion of the Coteau Lakes aquifer that would supply water to this permit the Coteau Lakes aquifer available for appropriation.

12. There is one observation well completed into this portion of the Coteau Lakes aquifer. This observation well is located approximately six miles south of the proposed well site.

13. Water levels in the observation well reflect climatic conditions. Data from the observation well indicates the recharge to, and natural discharge from, the Coteau Lakes aquifer significantly exceeds pumping. The observation well is expected to be representative for this portion of the aquifer.

14. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Coteau Lakes aquifer, reviewed the information obtained from the observations well located in this portion of the aquifer, as well as water right/permit files, irrigation summaries, and well completion reports for the aquifer. Based upon these sources and his education and experience, Witness Mathiowetz opined there is unappropriated water available to fulfill the application.

15. The Board finds that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

16. The Board must also examine whether granting this application would impair existing rights. The nearest well authorized in this portion of the Coteau Lakes aquifer is located approximately five miles south of the proposed well site, on the opposite side of Waubay Lake.

17. The nearest domestic well on file constructed into this portion of the Coteau Lakes aquifer is located approximately 0.8 miles to the northwest of the proposed well site.

18. Witness Mathiowetz testified that the proposed permit is unlikely to unlawfully impair existing water rights.

19. Larry Ewalt intervened in the matter.

20. Mr. Ewalt expressed concerns regarding the watershed for the proposed area flowing onto his land and the potential for an increase in fertilizer and chemical runoff onto his property.

21. Mr. Ewalt also expressed concern that the proposed well would lower the water table and deplete two dugouts located on his property.

22. Witness Mathiowetz testified that Mr. Ewalt's north dugout is located approximately 2,500 feet from the proposed well site and the south dugout is approximately 1,800 feet from the proposed well site.

23. Mr. Ewalt testified that the dugouts were created prior to his ownership of the land. He is uncertain as to the depth of either dugout. He was not able to testify if the dugouts had ever been cleaned out. He testified that they were connected to sloughs and had grown considerably over the last few years. He further testified that he has never seen either of the dugouts run dry.

24. Witness Mathiowetz testified that it was unlikely that the dugouts were completed into the aquifer and therefore, it would be unlikely that pumping at the proposed well site would lower the dugouts. Additionally,

Witness Mathiowetz opined that it was unlikely that the dugouts meet the definition of adequate wells and therefore, would not be protected under South Dakota law. Witness Mathiowetz further testified that even if the dugouts penetrated the aquifer it was unlikely that pumping at the proposed well site would affect the dugouts as it would require Mr. Block to pump so much water the level of Waubay Lake would be lowered, which would be a diversion well beyond the limits of his permit. The Board finds Witness Mathiowetz's testimony to be credible.

25. In light of the testimony received, the Board finds that granting the proposed application will not result in an impairment of existing rights.

26. The Board further finds that the proposed use of irrigation is a beneficial use of the water.

27. The Board additionally finds that the proposed use of the water is in the public interest.

Based on the foregoing findings of fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended approval of Mr. Block's application. This recommendation is not, however, binding on the Board. SDCL 46-2A-4(8).

4. For a new permit application, the applicant would need to prove each of the elements in SDCL § 46-2A-9.

5. SDCL § 46-2A-9 provides that 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." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation. Consideration of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether "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."

7. Although there is a "greenhorn" exception to the recharge/withdrawal consideration in SDCL § 46-6-3.1, stratigraphically the Coteau Aquifer does not qualify for this exception and it applies only to

applications filed for use in public water supply systems and is not applicable here.

8. There is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

9. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed without unlawful impairment of existing rights.

10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

11. The fourth element of SDCL § 46-2A-9 concerns the public interest. The public interest element requires weighing the general public interest in the local economy associated with farming and irrigation along with any other public interest issues presented. It is in the public interest to grant the application subject to the qualifications as recommended by the Chief Engineer.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8002-3 is hereby granted with the following qualifications:

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

2. The new well authorized by Permit No. 8002-3 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.

Dated this _____ day of November, 2014.

BY THE BOARD:

Chad Comes, Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION) CERTIFICATE OF SERVICE
No. 8002-3, TODD BLOCK)
)

The undersigned hereby certifies that on the 7th day of November, 2014, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION was mailed by first-class mail to:

Chad Comes – Chairman
Water Management Board
116 West Center
Madison, SD 57042

Leo Holzbauer – Secretary
Water Management Board
P.O. Box 877
Wagner, SD 57380

Rodney Freeman, Jr.
Hearing Officer
P.O. Box 176
Huron, SD 57350

Peggy Dixon - Vice Chairman
Water Management Board
3311 Hogan Court
Rapid City, SD 57702

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

Tim Bjork
112 West Oak Street
Pierre, SD 57501

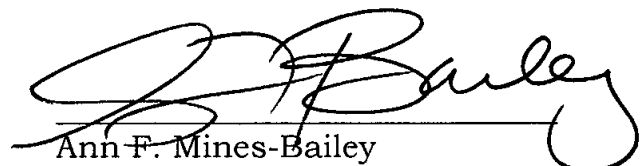
Jim Hutmacher
802 East 7th Street
Oacoma, SD 57365

Todd Block
P.O. Box 135
Grenville, SD 57239

Larry Ewalt
43922 133rd Street
Webster, SD 57274

and a true and correct copy of the same was sent via email to:

Mr. Jeff Hallem
Assistant Attorney General
Natural Resources Section
1302 East Highway 14, Suite 1
Pierre, SD 57501
jeff.hallem@state.sd.us



Ann F. Mines-Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

RECEIVED

DEC 01 2014

**WATER RIGHTS
PROGRAM**

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 25, 2014

Jeanne Goodman
DENR – Water Rights Program
523 East Capitol Avenue
Pierre, SD 57501-3181

Ann Mines-Bailey
Assistant Attorney General
HAND DELIVERED

Todd Block
P.O. Box 135
Grenville, SD 57239

Larry Ewalt
43922 133rd Street
Webster, SD 57274

Re: *In the Matter of Water Permit Application No. 8002-3, Todd Block*

Dear Chief Engineer, Ms. Mines-Bailey & Parties:

Enclosed please find the proposed Water Management Board Rulings on Parties' Submissions and proposed Findings of Fact, Conclusions of Law and Final Decision and Order I have prepared in the above matter. The documents were prepared consistent with statements made at the October 22, 2014, meeting of the Water Management Board. The Board will consider proposals at its December meeting. It is within the Board's discretion whether oral arguments by the parties will be afforded prior to consideration of the matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Jeffrey P. Hallem".

Jeffrey P. Hallem
Assistant Attorney General

JPH/jmm

Enclosures

cc w/enc: Water Management Board

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	WATER MANAGEMENT BOARD'S
PERMIT APPLICATION No.	)	RULINGS ON PARTIES
8002-3, TODD BLOCK	)	SUBMISSIONS

Pursuant to the direction of the Water Management Board, counsel for the Department of Environment and Natural Resources, Water Rights Program (DENR) submitted proposed Findings of Facts, Conclusions of Law and Final Order in the above-entitled matter. Neither the Applicant nor Petitioner Larry Ewalt, both who appeared pro se, filed proposed Findings of Fact, Conclusions of Law or objections to DENR's submission. The Board, upon review of the submission received, the administrative record, and having orally entered its decision, enters the following rulings:

A. That DENR's proposed Findings of Fact Nos. 2-27 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision.

B. DENR's proposed Finding of Fact No. 1 is accepted by the Board as substantially consistent with and supported by the administrative record and the Board's oral decision, as modified as follows to make the Finding more consistent with the record: after "120 acres" insert "; the well and acres to be."

C. DENR's proposed Conclusions of Law Nos. 1-11 are accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision and the Findings of Fact adopted by the Board in the above rulings.

D. DENR's proposed Final Decision and Order is accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision, and the Findings of Fact and Conclusions of Law adopted by the Board in the above rulings.

E. The Board's attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Decision and Order consistent with the above rulings to be executed by the Chair of the Board or the Board's designee without further notice of hearing.

Dated this ____ day of December 2014.

BY THE BOARD

By: _____
Chad Comes, Chair
South Dakota Water Management Board

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
PERMIT APPLICATION No.	)	CONCLUSIONS OF LAW, AND
8002-3, TODD BLOCK	)	FINAL DECISION AND ORDER

This matter came before the South Dakota Water Management Board for hearing on October 22, 2014. Board members Chad Comes, Peggy Dixon, Leo Holzbauer, Tim Bjork, Rodney Freeman, Jim Hutmacher, and Everett Hoyt were present and heard the evidence presented. Mr. Block appeared on his own behalf. Petitioner Larry Ewalt also appeared *pro se*. Ann Mines-Bailey represented the DENR Water Rights Program and its Chief Engineer.

The Board, having considered the testimony and exhibits presented, all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. Mr. Block seeks a permit to divert water from the Coteau Lakes aquifer at a rate of 1.44 cubic feet per second (cfs) for irrigation of 120 acres; the well and acres to be located in the NW ¼ NW¼ Section 14; T123N-R55W, in Day County.
2. The sole proposed use is irrigation.
3. The application anticipates constructing a well completed into the Coteau Lakes aquifer.
4. The Chief Engineer recommended approval of the application subject to the permit including three specified qualifications.

5. Notice of the Application and hearing was timely advertised in the Reporter & Farmer in Webster, South Dakota and in the Watertown Public Opinion in Watertown, South Dakota on June 23, 2014.

6. The Block application is a new water permit application which requires a determination there is a reasonable probability that there is unappropriated water available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

7. In considering water availability this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

8. The Coteau Lakes aquifer is a series of discontinuous outwash bodies generally surrounding and underlying area lakes. The portion of the aquifer that would supply water for this application underlies approximately 21,800 acres in Day County.

9. The expected average annual recharge rate to this portion of the Coteau Lakes aquifer that would supply water to this permit is 8,175 acre-feet per year.

10. The average annual withdrawal from the portion of the Coteau Lakes aquifer that would supply water to this permit in the years 1994 to 2012 is 88.7 acre-feet per year.

11. There is approximately 8086.3 acre-feet per year of water in the portion of the Coteau Lakes aquifer that would supply water to this permit the Coteau Lakes aquifer available for appropriation.

12. There is one observation well completed into this portion of the Coteau Lakes aquifer. This observation well is located approximately six miles south of the proposed well site.

13. Water levels in the observation well reflect climatic conditions. Data from the observation well indicates the recharge to, and natural discharge from, the Coteau Lakes aquifer significantly exceeds pumping. The observation well is expected to be representative for this portion of the aquifer.

14. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Coteau Lakes aquifer, reviewed the information obtained from the observations well located in this portion of the aquifer, as well as water right/permit files, irrigation summaries, and well completion reports for the aquifer. Based upon these sources and his education and experience, Witness Mathiowetz opined there is unappropriated water available to fulfill the application.

15. The Board finds that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

16. The Board must also examine whether granting this application would impair existing rights. The nearest well authorized in this portion of the Coteau Lakes aquifer is located approximately five miles south of the proposed well site, on the opposite side of Waubay Lake.

17. The nearest domestic well on file constructed into this portion of the Coteau Lakes aquifer is located approximately 0.8 miles to the northwest of the proposed well site.

18. Witness Mathiowetz testified that the proposed permit is unlikely to unlawfully impair existing water rights.

19. Larry Ewalt intervened in the matter.

20. Mr. Ewalt expressed concerns regarding the watershed for the proposed area flowing onto his land and the potential for an increase in fertilizer and chemical runoff onto his property.

21. Mr. Ewalt also expressed concern that the proposed well would lower the water table and deplete two dugouts located on his property.

22. Witness Mathiowetz testified that Mr. Ewalt's north dugout is located approximately 2,500 feet from the proposed well site and the south dugout is approximately 1,800 feet from the proposed well site.

23. Mr. Ewalt testified that the dugouts were created prior to his ownership of the land. He is uncertain as to the depth of either dugout. He was not able to testify if the dugouts had ever been cleaned out. He testified that they were connected to sloughs and had grown considerably over the last few years. He further testified that he has never seen either of the dugouts run dry.

24. Witness Mathiowetz testified that it was unlikely that the dugouts were completed into the aquifer and therefore, it would be unlikely that pumping at the proposed well site would lower the dugouts. Additionally,

Witness Mathiowetz opined that it was unlikely that the dugouts meet the definition of adequate wells and therefore, would not be protected under South Dakota law. Witness Mathiowetz further testified that even if the dugouts penetrated the aquifer it was unlikely that pumping at the proposed well site would affect the dugouts as it would require Mr. Block to pump so much water the level of Waubay Lake would be lowered, which would be a diversion well beyond the limits of his permit. The Board finds Witness Mathiowetz's testimony to be credible.

25. In light of the testimony received, the Board finds that granting the proposed application will not result in an impairment of existing rights.

26. The Board further finds that the proposed use of irrigation is a beneficial use of the water.

27. The Board additionally finds that the proposed use of the water is in the public interest.

Based on the foregoing findings of fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended approval of Mr. Block's application. This recommendation is not, however, binding on the Board. SDCL 46-2A-4(8).

4. For a new permit application, the applicant would need to prove each of the elements in SDCL § 46-2A-9.

5. SDCL § 46-2A-9 provides that 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." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation. Consideration of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether "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."

7. Although there is a "greenhorn" exception to the recharge/withdrawal consideration in SDCL § 46-6-3.1, stratigraphically the Coteau Aquifer does not qualify for this exception and it applies only to

applications filed for use in public water supply systems and is not applicable here.

8. There is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

9. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed without unlawful impairment of existing rights.

10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

11. The fourth element of SDCL § 46-2A-9 concerns the public interest. The public interest element requires weighing the general public interest in the local economy associated with farming and irrigation along with any other public interest issues presented. It is in the public interest to grant the application subject to the qualifications as recommended by the Chief Engineer.

FINAL DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8002-3 is hereby granted with the following qualifications:

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

2. The new well authorized by Permit No. 8002-3 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.

Dated this _____ day of December, 2014.

BY THE BOARD:

Chad Comes, Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION No. 8002-3, TODD) CERTIFICATE OF SERVICE
BLOCK)

The undersigned hereby certifies that true and correct copies of proposed Water Management Board's Rulings on DENR's proposed Findings of Fact, Conclusions of Law, and Final Decision and Order in the above matter were served by U.S. mail, first class, postage prepaid upon:

Chad Comes - Chairman
Water Management Board
116 West Center
Madison, SD 57042

Leo Holzbauer - Secretary
Water Management Board
P.O. Box 877
Wagner, SD 57380

Rodney Freeman, Jr.
Hearing Officer
P.O. Box 176
Huron, SD 57350

Peggy Dixon - Vice Chairman
Water Management Board
3311 Hogan Court
Rapid City, SD 57702

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

Tim Bjork
112 West Oak Street
Pierre, SD 57501

Jim Hutmacher
802 East 7th Street
Oacoma, SD 57365

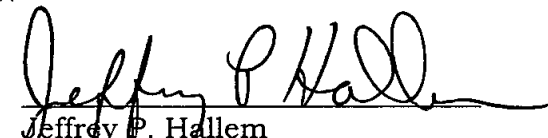
Todd Block
P.O. Box 135
Grenville, SD 57239

Larry Ewalt
43922 133rd Street
Webster, SD 57274

Ann F. Mines-Bailey
Assistant Attorney General
Hand Delivered

and that on said date the original was filed with Chief Engineer Jeanne Goodman, Water Rights Program, Department of Environment and Natural Resources, at 523 East Capitol Avenue, Pierre, South Dakota 57501-3189.

Dated this 25 day of November 2014.


Jeffrey P. Hallem
Assistant Attorney General

RECEIVED

DEC 08 2014

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

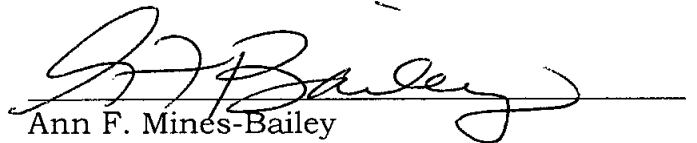
SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	NOTICE OF ENTRY OF WATER
PERMIT APPLICATION No.8002-3,	)	MANAGEMENT BOARD'S RULINGS
TODD BLOCK	)	ON PARTIES' SUBMISSIONS AND
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND FINAL DECISION AND ORDER

TO: Todd Block, P.O. Box 135, Grenville, SD 57239, and Larry Ewalt,
43922 133rd Street, Webster, SD 57274

NOTICE IS HEREBY GIVEN that on the 3rd day of December, 2014, the South Dakota Water Management Board entered its Rulings on the Parties' Submissions, and its Findings of Fact, Conclusions of Law, and Final Decision and Order in the above-entitled matter, copies of which are attached hereto and incorporated herein as if fully set out.

Dated this 5th day of December, 2014.


Ann F. Mines-Bailey
Assistant Attorney General
Counsel for the Water Management Board
Office of the Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	WATER MANAGEMENT BOARD'S
PERMIT APPLICATION No.	)	RULINGS ON PARTIES
8002-3, TODD BLOCK	)	SUBMISSIONS

Pursuant to the direction of the Water Management Board, counsel for the Department of Environment and Natural Resources, Water Rights Program (DENR) submitted proposed Findings of Facts, Conclusions of Law and Final Order in the above-entitled matter. Neither the Applicant nor Petitioner Larry Ewalt, both who appeared pro se, filed proposed Findings of Fact, Conclusions of Law or objections to DENR's submission. The Board, upon review of the submission received, the administrative record, and having orally entered its decision, enters the following rulings:

A. That DENR's proposed Findings of Fact Nos. 2-27 are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision.

B. DENR's proposed Finding of Fact No. 1 is accepted by the Board as substantially consistent with and supported by the administrative record and the Board's oral decision, as modified as follows to make the Finding more consistent with the record: after "120 acres" insert "; the well and acres to be."

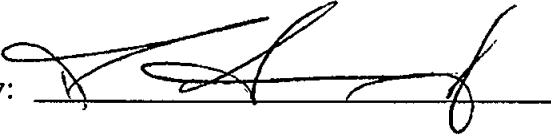
C. DENR's proposed Conclusions of Law Nos. 1-11 are accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision and the Findings of Fact adopted by the Board in the above rulings.

D. DENR's proposed Final Decision and Order is accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision, and the Findings of Fact and Conclusions of Law adopted by the Board in the above rulings.

E. The Board's attorney is directed to prepare Findings of Fact, Conclusions of Law and Final Decision and Order consistent with the above rulings to be executed by the Chair of the Board or the Board's designee without further notice of hearing.

Dated this 3rd day of December 2014.

BY THE BOARD

By: 

South Dakota Water Management Board

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
PERMIT APPLICATION No.	)	CONCLUSIONS OF LAW, AND
8002-3, TODD BLOCK	)	FINAL DECISION AND ORDER

This matter came before the South Dakota Water Management Board for hearing on October 22, 2014. Board members Chad Comes, Peggy Dixon, Leo Holzbauer, Tim Bjork, Rodney Freeman, Jim Hutmacher, and Everett Hoyt were present and heard the evidence presented. Mr. Block appeared on his own behalf. Petitioner Larry Ewalt also appeared *pro se*. Ann Mines-Bailey represented the DENR Water Rights Program and its Chief Engineer.

The Board, having considered the testimony and exhibits presented, all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. Mr. Block seeks a permit to divert water from the Coteau Lakes aquifer at a rate of 1.44 cubic feet per second (cfs) for irrigation of 120 acres; the well and acres to be located in the NW ¼ NW¼ Section 14; T123N-R55W, in Day County.
2. The sole proposed use is irrigation.
3. The application anticipates constructing a well completed into the Coteau Lakes aquifer.
4. The Chief Engineer recommended approval of the application subject to the permit including three specified qualifications.

5. Notice of the Application and hearing was timely advertised in the Reporter & Farmer in Webster, South Dakota and in the Watertown Public Opinion in Watertown, South Dakota on June 23, 2014.

6. The Block application is a new water permit application which requires a determination there is a reasonable probability that there is unappropriated water available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

7. In considering water availability this Board must examine whether the average quantity of water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

8. The Coteau Lakes aquifer is a series of discontinuous outwash bodies generally surrounding and underlying area lakes. The portion of the aquifer that would supply water for this application underlies approximately 21,800 acres in Day County.

9. The expected average annual recharge rate to this portion of the Coteau Lakes aquifer that would supply water to this permit is 8,175 acre-feet per year.

10. The average annual withdrawal from the portion of the Coteau Lakes aquifer that would supply water to this permit in the years 1994 to 2012 is 88.7 acre-feet per year.

11. There is approximately 8086.3 acre-feet per year of water in the portion of the Coteau Lakes aquifer that would supply water to this permit the Coteau Lakes aquifer available for appropriation.

12. There is one observation well completed into this portion of the Coteau Lakes aquifer. This observation well is located approximately six miles south of the proposed well site.

13. Water levels in the observation well reflect climatic conditions. Data from the observation well indicates the recharge to, and natural discharge from, the Coteau Lakes aquifer significantly exceeds pumping. The observation well is expected to be representative for this portion of the aquifer.

14. DENR witness, Adam Mathiowetz, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Coteau Lakes aquifer, reviewed the information obtained from the observations well located in this portion of the aquifer, as well as water right/permit files, irrigation summaries, and well completion reports for the aquifer. Based upon these sources and his education and experience, Witness Mathiowetz opined there is unappropriated water available to fulfill the application.

15. The Board finds that there is a reasonable probability that there is unappropriated water available for the applicant's proposed use.

16. The Board must also examine whether granting this application would impair existing rights. The nearest well authorized in this portion of the Coteau Lakes aquifer is located approximately five miles south of the proposed well site, on the opposite side of Waubay Lake.

17. The nearest domestic well on file constructed into this portion of the Coteau Lakes aquifer is located approximately 0.8 miles to the northwest of the proposed well site.

18. Witness Mathiowetz testified that the proposed permit is unlikely to unlawfully impair existing water rights.

19. Larry Ewalt intervened in the matter.

20. Mr. Ewalt expressed concerns regarding the watershed for the proposed area flowing onto his land and the potential for an increase in fertilizer and chemical runoff onto his property.

21. Mr. Ewalt also expressed concern that the proposed well would lower the water table and deplete two dugouts located on his property.

22. Witness Mathiowetz testified that Mr. Ewalt's north dugout is located approximately 2,500 feet from the proposed well site and the south dugout is approximately 1,800 feet from the proposed well site.

23. Mr. Ewalt testified that the dugouts were created prior to his ownership of the land. He is uncertain as to the depth of either dugout. He was not able to testify if the dugouts had ever been cleaned out. He testified that they were connected to sloughs and had grown considerably over the last few years. He further testified that he has never seen either of the dugouts run dry.

24. Witness Mathiowetz testified that it was unlikely that the dugouts were completed into the aquifer and therefore, it would be unlikely that pumping at the proposed well site would lower the dugouts. Additionally,

Witness Mathiowetz opined that it was unlikely that the dugouts meet the definition of adequate wells and therefore, would not be protected under South Dakota law. Witness Mathiowetz further testified that even if the dugouts penetrated the aquifer it was unlikely that pumping at the proposed well site would affect the dugouts as it would require Mr. Block to pump so much water the level of Waubay Lake would be lowered, which would be a diversion well beyond the limits of his permit. The Board finds Witness Mathiowetz's testimony to be credible.

25. In light of the testimony received, the Board finds that granting the proposed application will not result in an impairment of existing rights.

26. The Board further finds that the proposed use of irrigation is a beneficial use of the water.

27. The Board additionally finds that the proposed use of the water is in the public interest.

Based on the foregoing findings of fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The present application falls within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made and the Notice of Hearing was properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended approval of Mr. Block's application. This recommendation is not, however, binding on the Board. SDCL 46-2A-4(8).

4. For a new permit application, the applicant would need to prove each of the elements in SDCL § 46-2A-9.

5. SDCL § 46-2A-9 provides that 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." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation. Consideration of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether "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."

7. Although there is a "greenhorn" exception to the recharge/withdrawal consideration in SDCL § 46-6-3.1, stratigraphically the Coteau Aquifer does not qualify for this exception and it applies only to

applications filed for use in public water supply systems and is not applicable here.

8. There is a reasonable probability that there is unappropriated water available to fulfill the amount requested by the application.

9. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed without unlawful impairment of existing rights.

10. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

11. The fourth element of SDCL § 46-2A-9 concerns the public interest. The public interest element requires weighing the general public interest in the local economy associated with farming and irrigation along with any other public interest issues presented. It is in the public interest to grant the application subject to the qualifications as recommended by the Chief Engineer.

FINAL DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8002-3 is hereby granted with the following qualifications:

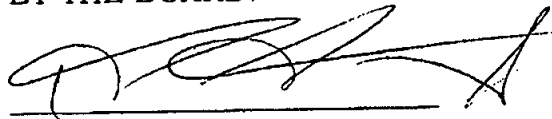
1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells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

2. The new well authorized by Permit No. 8002-3 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.

Dated this 3rd day of December, 2014.

BY THE BOARD:



South Dakota Water Management Board

RECEIVED

DEC 08 2014

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF WATER)
PERMIT APPLICATION No.8002-3,)
TODD BLOCK)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Notice of Entry of Water Management Board's Rulings on Parties' Submissions and Findings of Fact, Conclusions of Law and Final Decision and Order in the above matter were served by U.S. mail, first class, postage prepaid upon:

Todd Block
P.O. Box 135
Grenville, SD 57239

Larry Ewalt
43922 133rd Street
Webster, SD 57274

And that on the same date the original was filed with Jeanne Goodman, Chief Engineer, Dept. of Environment and Natural Resources, Water Rights Program, at 523 East Capitol Avenue, Pierre, SD 57501.

Dated this 5th day of December, 2014.



Ann F. Mines-Bailey
Assistant Attorney General
Counsel for the Water Management Board
Office of the Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

FEB 17 2015

Todd Block
PO Box 135
Grenville SD 57239

Dear Mr. Block:

Enclosed is Water Permit No. 8002-3 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,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**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: TODD BLOCK, PO BOX 135, GRENVILLE, SD 57239 0135

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) 8001-3 & 8002-3. 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) 8001-3 & 8002-3 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) 8001-3 & 8002-3 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: OHIMHK**

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.

**Report of Examination of Works and/or Application of Water to Beneficial Use
For Permit No. 8002-3**

I have this day, November 20, 2024, I talked to Todd Block, PO Box 133, Grenville, SD 57239 on the phone (605/237-2233) regarding the status of Permit No. 8002-3, bearing the priority of April 14, 2014 authorizing the diversion of 1.44 cu. ft. per second of the waters of Coteau Lakes Aquifer for irrigation purposes, in Day County.

Mr. Block indicated that he is currently in negotiations with Inman Irrigation in Aberdeen, SD for the purchase and installation of a used center pivot irrigation system in 2025.



Darrell DeBoer
Water Rights Inspector
DENR, Water Rights Program

Date report completed: November 20, 2024



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 27, 2025

No. 8001-3 and 8002-3

Todd Block
PO Box 133
Greenville, SD 57239

Dear Mr. Block:

I'm writing you today in reference to Water Permit No. 8001-3 and 8002-3.

Permit No. 8001-3 authorized the diversion of 1.44 cfs from surface water (Waubay Lake) for the irrigation of 120 acres located within the SE ¼, S ½ NE ¼, Section 7; all in T123N, R54W, with construction to be completed by June 19, 2019, and for the application to beneficial use of water on or before June 19, 2023.

Permit No. 8002-3 authorized the diversion of 1.44 cfs from groundwater, one well (Coteau Lakes Aquifer) for the irrigation of 120 acres located within the NW ¼, Section 14; all in T123N, R55W, with construction to be completed by December 3, 2019, and for the application to beneficial use of water on or before December 3, 2023.

On November 20, 2024, Water Rights Program inspector Darrell DeBoer conducted a site visit for the purpose of licensing the irrigation systems authorized by Permit No. 8001-3 and No. 8002-3. During the inspection he noted that you are currently in negotiations for the purchase and installation of center pivot irrigation systems in 2025.

Due to the systems not being constructed by the deadline outlined in the permit, the Water Rights Program will be pursuing cancellation of Permit No. 8001-3 and No. 8002-3, due to non-construction.

If you reach agreement for the purchase and installation of center pivot irrigation systems, new irrigation permits will need to be obtained. For your convenience I have enclosed the application for irrigation in South Dakota.

Please contact me to discuss the cancelation of Permit No. 8001-3 and 8002-3.

Sincerely,

Miranda Smith
Water Rights Program
605 773-3352
Miranda.Smith@state.sd.us

enclosure



8001-3
8002-3

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 6, 2025

NOTICE OF ENTRY OF ORDER FOR ONE YEAR SUSPENSION OF WATER PERMITS

TO: Todd Block, PO Box 114, Roslyn SD 57261

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
Water Rights Program

SUBJECT: One Year Suspension of Water Permit Nos. 8001-3 & 8002-3

On March 5, 2025, the Water Management Board ordered:

Effective April 4, 2025, Water Permit Nos. 8001-3 & 8002-3 be suspended for the 2025 irrigation season for failure to submit the 2024 irrigation questionnaires.

If the 2024 irrigation questionnaires are received prior to April 4, 2025, the suspensions will not take effect.

A one-year suspension of Water Permit Nos. 8001-3 & 8002-3 means water may not be pumped during the 2025 irrigation season. Consistent with the Board's order, you are not permitted to irrigate in 2025 unless the 2024 irrigation questionnaires are submitted prior to April 4, 2025.

After April 4, 2025, you may petition the Board to rescind the suspension. You will need to submit, to the Water Rights Program, the 2024 irrigation questionnaires and a letter including your reason for not completing the 2024 irrigation questionnaires within the allotted time and requesting time on the agenda for the next Water Management Board meeting. The next Water Management Board meeting is scheduled for May 7-8, 2025, in Pierre SD.

Decisions made by the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Water Rights staff will conduct unscheduled compliance checks of suspended water rights to ensure irrigation is not taking place.

Please contact Amanda Dewell (605) 773-3352 with any questions.

8001-3

8002-3

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

TODD BLOCK
PO BOX 114
ROSLYN SD 57261



9590 9402 6392 0303 3255 25

2. Article Number (Transfer from service label)

7021 1970 0000 9489 7486

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Barbara Block

C. Date of Delivery

3-12-25

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that I have personally mailed a true and correct NOTICE OF AMENDMENT OF WATER RIGHT, NOTICE OF ENTRY OF ORDER (ONE & THREE YEAR SUSPENSION OF WATER RIGHTS) dated March 6, 2025, via certified mail to the following parties.

Walter Heine
PO Box 145
Blunt SD 57522

Larry Ryken
244 Gavins Point Rd
Yankton SD 57078

Albert Hattum
21862 West Bend Rd
Harrold SD 57536

James & Joan McElhany
45840 SD Hwy 22
Castlewood SD 57223

Layna Saathoff
46044 199th St
Bruce SD 57220

Makens Oak Tree LLP
c/o Michael Makens
PO Box 274
Clark SD 57552

John or Byran Uecker
PO Box 573
Wagner SD 57380

Selby Community Golf Course
201 S Railway St
Selby SD 57472

Lane Tekrony
47840 180th St
Clear Lake SD 57226

Charlotte Nichols
c/o Philip Nichols
7497 Rolling Meadow Dr
West Chester OH 45069

Saddle Butte Angus
c/o Larry May
20545 May Rd
Interior SD 57750

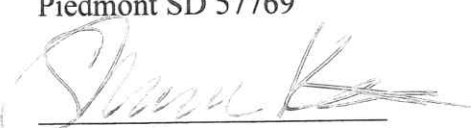
Robert Novotny
10035 County Rd 19
Lidgerwood ND 58503

Stop Drop Lock Inc
c/o Karl Schenk
44352 308th St
Mission Hills SD 57046

Todd Block
PO Box 114
Roslyn SD 57261

Ryan Edwards
25331 Yellow Eagle Rd
White River SD 57579

Robert Phelps Jr
16220 Spring Valley Rd
Piedmont SD 57769


Shannon Konst
Senior Secretary-Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of March, 2025.


Rachel Rodriguez Notary Public
My Commission expires May 16, 2029





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 18, 2025

8001-3
8002-3

Todd Block
PO Box 135
Grenville SD 57239

Dear Mr. Block:

I am writing to acknowledge the receipt of your 2024 irrigation information submitted for Water Permit Nos. 8001-3 & 8002-3 on March 17, 2025.

The Water Management Board moved to suspend Water Permit Nos. 8001-3 & 8002-3 for a period of one year if the questionnaires were not returned prior to April 4, 2025. You may disregard the "Notice of Entry of Order for One Year Suspension" of Water Permit Nos. 8001-3 & 8002-3, dated March 6, 2025.

On this year's reports the selection of "System Not Constructed" was made. Permit Nos. 8001-3 & 8002-3 were approved on June 19, 2014 & December 3, 2014, with construction to be completed by June 19, 2019 & December 3, 2019, and water to be placed to beneficial use by June 19, 2023 & December 3, 2023; respectively.

Unfortunately, with the dates for construction completion & placement of water to beneficial use having passed, these permits should be considered for cancellation due to non-construction.

Please contact me to discuss cancellation of Permit Nos. 8001-3 & 8002-3.

Sincerely,

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