

WATER PERMIT NO. 8152-3

Name of Applicant: City of Lake Andes

Address: PO Box 783, Lake Andes SD 57356 Phone: 605 487-7694

Amount of Water Claimed: 0.17 cfs Total Acres: NA

Source of Water Supply: groundwater (one well)

Water to be used for: recreational use County: Charles Mix

Type of Waste Disposal System:

Location: southeast edge of Lake Andes

PRIORITY Date Received: 4-30-15 Application/License Fee: \$ 700

Corrected Application Received: 5-11-15 Period of Annual Use: Jan 1 – Dec 31

Remarks: Maintain water level in Park Ave Lake Restoration Project

Diversion Point: NE 1/4 NE 1/4 Sec 9-T96N-R65W

Land to be Irrigated: NA

Depth of Well: 800 feet deep

Well Driller:

Remarks:

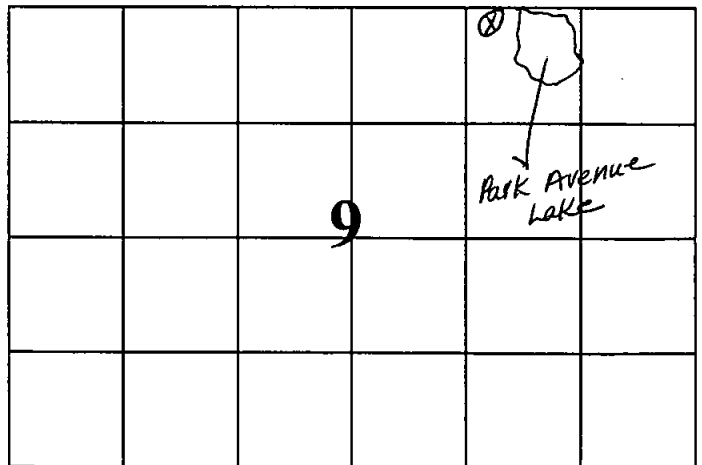
Type of Map:

Prepared by:

Reviewed and the Number Assigned on: 5-11-15

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



FORM 2: Application for uses other than irrigation
(type or print)

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APR 30 2015

WATER RIGHTS
PROGRAM

Mail to: PMB 2020 DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8152-3</u> (office use only) Hydrologic Unit <u>10140101</u>
	Basin <u>Missouri River</u>
	Newspaper <u>Lake Andes Wave 605-384-5616</u>
	<u>Daily Republic - Mitchell 605-996-5514</u>

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

☐ Municipal	☐ Suburban Housing	☒ Recreational	☐ Institutional
☐ Rural Water System	☐ Commercial	☐ Fish & Wildlife	☐ Geothermal Heat
☐ Domestic (over 18 gpm)	☐ Industrial	☐ Other _____	

Type of Application:
(check one)

☒ New	☐ Vested Right (Use predates Mar 2, 1955)	☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____		
☐ Amendment/Correction to Permit No. _____		

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)
_____1. Name to Appear on Water Permit City of Lake Andes(check one) ☒ Owner ☐ Tenant/lessee ☐ Owner's Legal Agent Debbra Houseman, Finance Officer
(name and complete address if different than above name)Mailing Address PO Box 783 Lake Andes SD 57356
(Address) (City) (State) (Zip Code)Home Phone 605-487-7694 Cell _____ Email cityhall@cme.coop2. Amount of water claimed 0.17 *CFS or 75 **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)3. Source of water supply Dakota Formation4. Location of point of diversion 1 Well in NE 1/4, NE 1/4, Sec. 9, T96N, R65W County Charles Mix
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ NoIf "Yes," where will water be used? _____
(example - NW1/4 section 12-T104N-R53W)5. County or counties where water will be used Charles Mix6. Annual period during which water is to be used January through December

7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Water will be used to maintain the water level in the Park Avenue Lake Restoration Project.
See Attached Project Construction Plan.I, Debbra Houseman, the applicant, certify that I have read this application, have examined the attached map, and that the matters stated are true.

Supplemental Information

(type or print)

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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 _____
(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 800' Depth to Top of Water Bearing Material _____ Depth to Water from Surface _____

d) Distance to nearest existing domestic well:

On applicant's property N/A On property owned by others N/A

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) N/A

b) System Capacity (gallons) _____ Year Constructed _____

c) Connected to the City of _____ Sanitary System

3. Dugout Information

a) Surface Dimensions N/A 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)

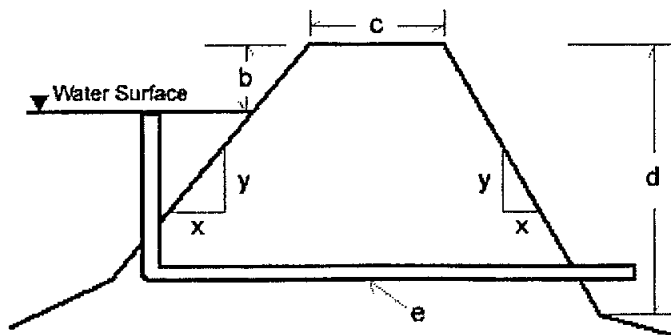
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

j) Drainage Area Above Dam _____ Acres



**SOUTH DAKOTA
WATER PERMIT NO. 8152-3**

Date of first receipt of application April 30, 2015.

Date of return to applicant for corrections, amendments or changes April 30, 2015.

Date of receipt of corrected application June 20, 2015.

The Water Management Board approved Water Permit No. 8152-3 on December 9, 2015 for City of Lake Andes, PO Box 783, Lake Andes SD 57356 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. 8152-3 appropriates 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W.
2. The water appropriated shall be used for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is April 30, 2015.
5. One-fifth of the construction is to be completed on or before June 9, 2018.
6. All construction is to be completed on or before December 9, 2020.
7. Water is to be put to beneficial use on or before December 9, 2024.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 8152-3 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. The City of Lake Andes is responsible to monitor the Park Avenue water level and control the well. The well shall be capable of being shut in and no discharge from the well is authorized when the Park Avenue lake level is at or above 1441.25 feet mean sea level which is the elevation of the vertical drop inlet overflow structure.

WATER MANAGEMENT BOARD

By: *Jeanne Goodman*

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

FEB 03 2016

date



Sec 5
T096N
R65W

Sec 4
T096N
R65W

Sec 3
T096N
R65W

Sec 8
T096N
R65W

Sec 9
T096N
R65W

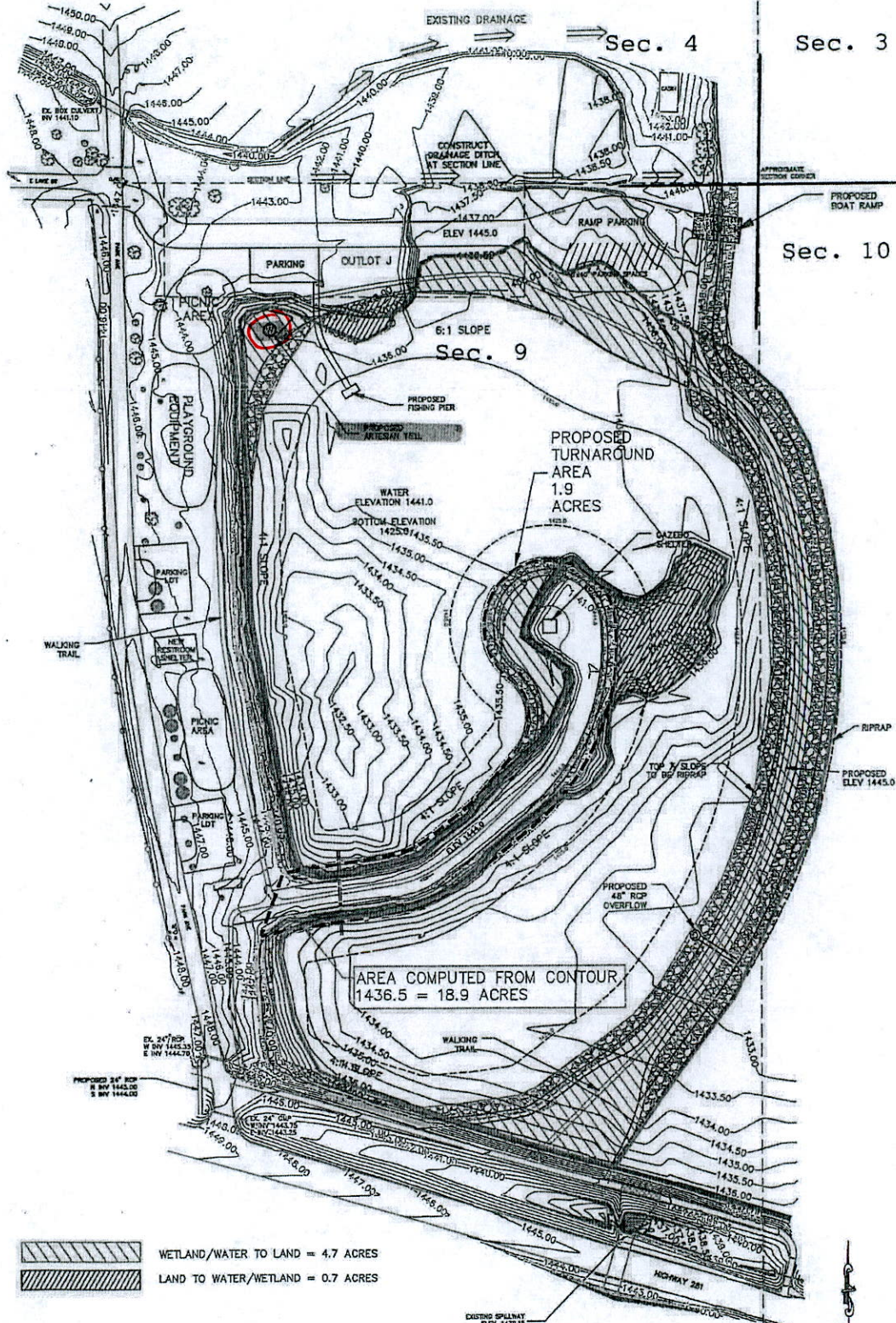
Sec 10
T096N
R65W

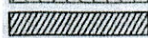
Sec 17
T096N
R65W

Sec 16
T096N
R65W

Sec 15
T096N
R65W

T96N R65W



 WETLAND/WATER TO LAND = 4.7 ACRES
 LAND TO WATER/WETLAND = 0.7 ACRES

LEGEND

POWER POLE	
WATER VALVE	
TREES	
DRAINAGE FLOW	
EXISTING STORM SEWER	
FENCE LINE	
PROPERTY LINES	

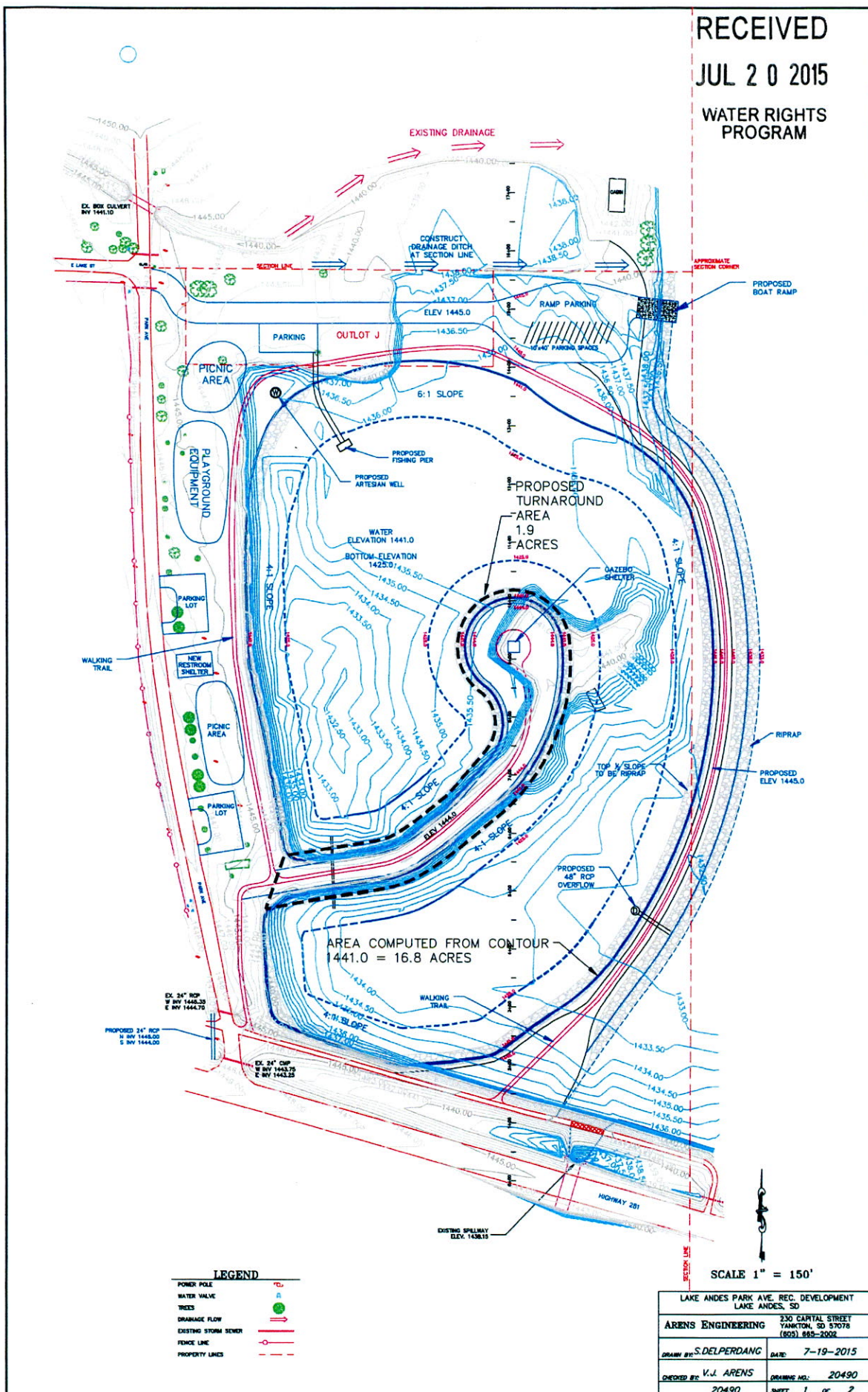
SCALE 1" = 150'

LAKE ANDES PARK AVE. REC. DEVELOPMENT LAKE ANDES, SD	
ARENS ENGINEERING 230 CAPITAL STREET YANKTON, SD 57078 (605) 695-2032	
DRAWN BY S. DELPERDANG	DATE 7-29-2014
DESIGNED BY V.J. ARENS	DRAWING NO. 20490
PROJECT NO. 20490	SHEET 1 OF 2

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EXHIBIT D

**WATER RIGHTS
PROGRAM**



RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 5/11, 2015

RECEIVED OF Charles Mix Co. (City of Lake Andes) PO Box 701 Lake Andes SD 57356

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

Fee for Application for Permit No. <u>8152-3</u> to Appropriate Water, to construct and to put water to beneficial use	500	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8152-3</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	700 00

No. 07390

By *James L. Holman*
Chief Engineer



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

April 30, 2015

City of Lake Andes
Debbra Houseman, Finance Officer
PO Box 783
Lake Andes SD 57356

Dear Ms. Houseman:

Thank you for submitting the *Application for a Permit to Appropriate Water* for recreational use by the City. In order to complete the application, the following is required.

- Enclosed is the Form 2A, Supplemental Information. On Item No. 1 regarding the Well Information, please complete c) Well Depth with proposed well depth. Your well driller should be able to give you an estimate depth for the proposed well.
- The application/license filing fee will be \$700.00.

If you have any questions, please contact me.

Sincerely,

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

enclosure

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MAY 11 2015

WATER RIGHTS
PROGRAM

Telephone (605)487-7645
Fax (605)487-7091

WHALEN LAW OFFICE, P.C.

P.O. BOX 127

LAKE ANDES, SD 57356-0127

Timothy R. Whalen

May 7, 2015

Karen Schlaak
DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: Charles Mix County Lake Restoration Organization

Dear Ms. Schlaak:

Enclosed herewith please find the Supplemental Information on our Application for a Permit to Appropriate Water, along with a check in the amount of \$700.00 for the application/license filing fee.

Thank you.

Sincerely,



TIMOTHY R. WHALEN

cjw

Encl.

Gronlund, Eric

From: ARENS ENGINEERING <arenseng@iw.net>
Sent: Monday, July 20, 2015 11:37 AM
To: Gronlund, Eric
Subject: Re: Lake Andes South Lake Well Permit

Eric, The existing spillway elevation 1338.15 is the spillway for the main body of Lake Andes. The proposed project is for a much smaller recreational lake for the benefits of local citizens and tourists. The proposed 48" RCP overflow would have a vertical unit with a overflow elevation 0.25' higher than the proposed lake elevation of 1441.0. The proposed overflow is to protect the project small lake in the event of a major precipitation event.

Vernon Arens, Arens Engineering, 605-665-2002

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

From: "Gronlund, Eric" <Eric.Gronlund@state.sd.us>
To: <arenseng@iw.net>
Sent: Monday, July 20, 2015 11:22 AM
Subject: FW: Lake Andes South Lake Well Permit

Mr. Arens:

Jeanne Goodman forwarded to me the revised lake drawing. I am seeking clarification on the quantification of the water permit for the Lake Andes Park Avenue Recreation Development. The new drawing submitted shows the area computed from contour of 1441.0 = 16.8 acres. However, the map shows an existing spillway elevation at 1438.15. Is this spillway elevation to be altered as part of the project? Also I note of proposed outflow (48" RCP) on the drawing. What is the invert elevation of this overflow.

It is doubtful that DENR would recommend favorably of an elevation that would allow well water to be diverted when the lake's spillway is overflowing.

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

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

From: ARENS ENGINEERING [<mailto:arenseng@iw.net>]
Sent: Monday, July 20, 2015 9:24 AM
To: Goodman, Jeanne
Cc: cmclro@charles-mix.com
Subject: Lake Andes South Lake Well Permit

Jeanne, Attached is the revised lake drawing for the City of Lake Andes Well Permit for the South Lake Andes Project. The proposed lake has a 16.8 acres water surface area at elevation 1441.0. Vernon Arens, Arens Engineering, 605-665-2002

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

From: <arenseng@iw.net>

To: "Arens Eng" <arenseng@iw.net>
Sent: Monday, July 20, 2015 8:22 AM
Subject: Message from "RNP002673459780"

> This E-mail was sent from "RNP002673459780" (Aficio MP C2051).
>
> Scan Date: 07.20.2015 09:22:34 (-0400) Queries to: arenseng@iw.net
>
>



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8152-3, City of Lake Andes**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8152-3, City of Lake Andes, c/o Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356.

The Chief Engineer is recommending APPROVAL of Application No. 8152-3 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. 8152-3 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. The City of Lake Andes is responsible to monitor the Park Avenue water level and control the well. The well shall be capable of being shut in and no discharge from the well is authorized when the Park Avenue lake level is at or above 1441.25 feet mean sea level which is the elevation of the vertical drop inlet overflow structure.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
July 21, 2015

NOTE: The well must be constructed so that the city can completely shut in the well to prohibit it from flowing. This will require constructing the well with a flowing well pitless unit so the well can be completely shut in during winter months. DENR encourages the city to discuss installation of the flowing well pitless unit with the well driller prior to construction of the well.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

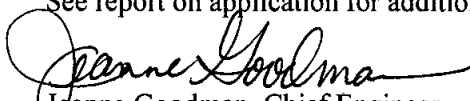
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8152-2, City of Lake Andes**

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. 8152-3, City of Lake Andes, c/o Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356.

The Chief Engineer is recommending APPROVAL of Application No. 8152-3 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. 8152-3 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. The City of Lake Andes is responsible to monitor the Park Avenue water level and control the well. The well shall be capable of being shut in and no discharge from the well is authorized when the Park Avenue lake level is above 1436.5 feet mean sea level as measured.
4. A permanent benchmark or landmark shall be established for the purpose of referencing when Park Avenue lakes water level elevation is at 1,436.5 feet mean sea level equating to a surface impoundment area of 18.9 acres. The location of the benchmark or landmark shall be described and identified on a map by direction and distance from a section corner. The survey notes, map and description of the benchmark or landmark will be held by the Water Rights Program.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
July 6, 2015

NOTE: The well must be constructed so that the city can completely shut in the well to prohibit it from flowing. This will require constructing the well with a flowing well pitless unit so the well can be completely shut in during winter months. DENR encourages the city to discuss installation of the flowing well pitless unit with the well driller prior to construction of the well.

**REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8152-3
CITY OF LAKE ANDES
JUNE 24, 2015**

Water Permit No. 8152-3 proposes to appropriate water from a well completed into the Dakota aquifer, approximately 800 feet deep, at a maximum diversion rate of 0.17 cubic feet of water per second (cfs). The well is to be located in the NE¼ NE¼ Sec. 9, T96N-R65W. Water from the well will be used for recreational use to maintain the water level in the Park Avenue Lake Restoration Project.

The Park Avenue Lake Restoration Project involves constructing a dike around Lake Andes in the southwest portion of the lake, and creating an artificial impound. The surface area of the proposed artificial impoundment is expected to be 16.8 acres. Spuhler and others, (1971) estimated an average annual lake evaporation rate for this area of approximately 38 inches per year. Therefore, evaporation from the pond will be approximately 53.52 acre-feet annually. The proposed well discharge into the impoundment of 0.17 cfs would equate to an annual rate of 123.07 acre-feet per year. A well discharge of 0.17 cfs for the eight months a year when the pond is not frozen would result in 82.05 acre-feet of water.

AQUIFER: Dakota aquifer (DKOT)

AQUIFER CHARACTERISTICS:

The Dakota aquifer consists of the permeable beds of sand and sandstone contained in the Cretaceous aged Dakota Formation. The lithology of the Dakota Formation is quite variable both laterally and vertically, consisting of interbedded sand, sandstone, and shale. It has been postulated the explanation for this is that the Dakota was deposited in a fluvial environment. The porosity of the Dakota varies with the lithology but is assumed to average 15 %, and the specific yield of the aquifer is assumed to be 0.075 (Hedges and others, 1982). Over large areas of the eastern part of State, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

“The Dakota sandstone is the most widely extended and serviceable water-bearing formation in South Dakota and it is the principal source of artesian flow in the many wells.” (Darton, 1909) The Dakota Formation underlies approximately 66,500 square miles of the 77,047 total square miles that constitute the State (Schoon, 1971). The total recoverable water in storage in the Dakota Formation in eastern South Dakota is estimated to be 381,104,000 acre-feet of water (Hedges and others, 1982). The Dakota-Newcastle Formation contains another 308,442,000 acre-feet of recoverable water in storage in western South Dakota (Allen and others, 1985).

In the area of this proposed project, the Dakota Formation is overlain by the Graneros Shale, and it overlies the Skull Creek Shale. The Dakota Formation is expected to be approximately 300

feet thick in this area (Schoon, 1971). The potentiometric surface of the aquifer is expected to be approximately 1,535 feet above mean sea level elevation (Kume, 1977), (i.e. approximately 43 psi shut in pressure).

SDCL 46-2A-9:

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

Water Availability:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Although there is an exception to the recharge/withdrawal consideration in SDCL 46-6-3.1, it applies only to applications filed by water distribution systems and is not applicable here.

Water Permit Application No. 8152-3 proposes to divert water from a well completed into the Dakota aquifer, at a maximum diversion rate of 0.17 cfs. If approved, the amount of water that can be diverted annually through this water permit would be limited only by the diversion rate, and in theory, the permit would appropriate approximately 123 acre-feet of water annually.

Data is not available to compare the average annual recharge to the Dakota aquifer with the average annual withdrawal from the aquifer. Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota Formation. This artesian pressure decline has been well documented, and in some parts of the state, water levels have declined several hundred feet since the aquifer was first developed. Some have interpreted this declining pressure as an indicator that the Dakota is being "mined". As Schoon (1971) states: "The fact that withdrawal from the artesian system exceeds recharge is clearly demonstrated by declining pressures." Water level records in parts of the state indicate this decline is continuing and is in the range of one foot per year or less.

In general, the artesian pressure of the Dakota aquifer has been declining in this area (Kume, 1977). The decline of head pressure in the area can be seen in the hydrograph for DENR-Water Rights' Observation Well AU-89A, which is located approximately 32 miles north of the well site proposed by this application, is shown in Figure 1.

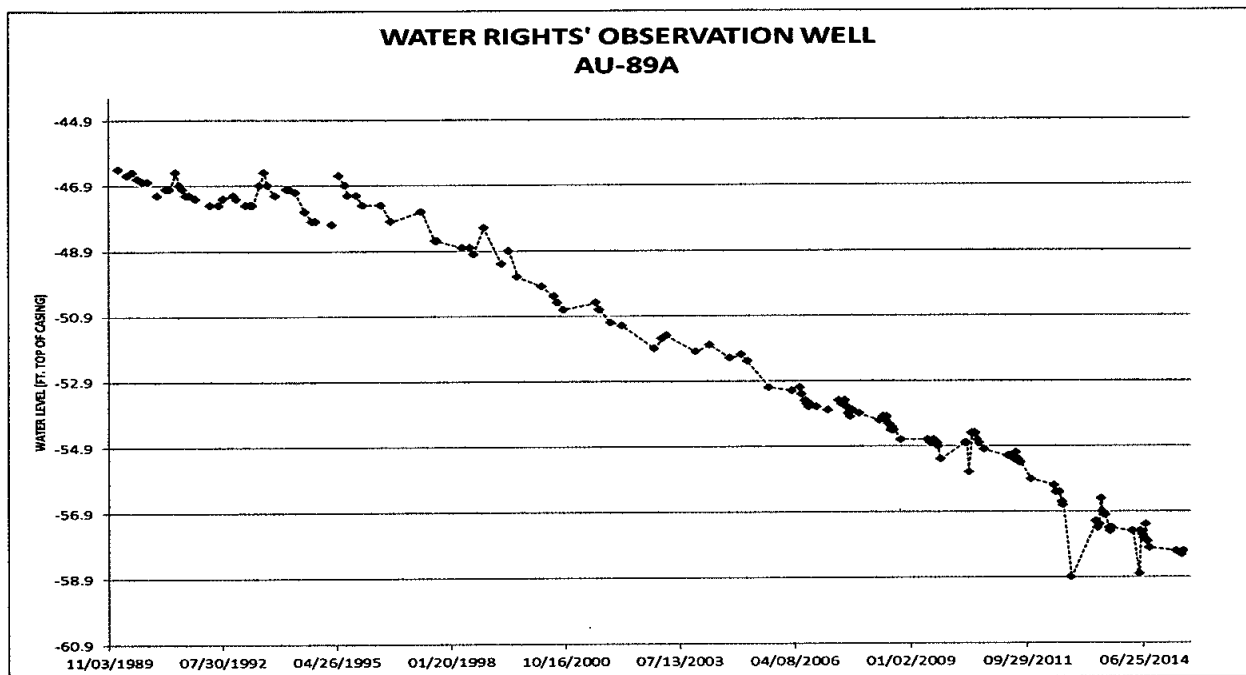


Figure 1. Hydrograph for observation well completed into the Dakota aquifer approximately 32 miles north of the well site proposed by this application.

Historically, the Water Management Board has carefully considered the issue of declining pressures in the Dakota aquifer and the lack of average annual recharge estimates for the aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure, and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. The Board found that the decline of head pressure is due to water being discharged without beneficial use through uncontrolled flowing wells and that water discharged from uncontrolled flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1. The Board also found that withdrawals pursuant to SDCL 46-6-3.1 are appropriations for beneficial uses of water, including withdrawals through private domestic wells for domestic use (Water Rights, 1987).

Existing Water Rights:

Water Rights/Permits appropriating water from the Dakota aquifer within approximately 20 miles of the well site proposed by this application are shown in Figure 2 and Table 1. In addition to the appropriative rights, there are a number of domestic wells on file with the DENR-Water Rights Program in this area that appear to be completed into the Dakota aquifer (Water Rights, 2015c). The nearest well completed into the Dakota aquifer that is authorized by a water right/permit (Water Right No. 220-3, US Fish/Wildlife Service), is located approximately four and one-half miles east of this proposed well site. The Dakota aquifer is confined and under artesian conditions in this area and drawdown resulting from the withdrawal proposed by this application may extend some distance from a production well. The distance between the well proposed by this application and the well authorized by Water Right No. 220-3 is sufficient that well interference is not expected to be adverse at the diversion rate proposed by this application (i.e. 0.17 cfs). It is possible, however, that drawdown from this appropriation, if it is approved, may be measurable in existing wells.

Wells supplying existing water rights/permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure**. Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

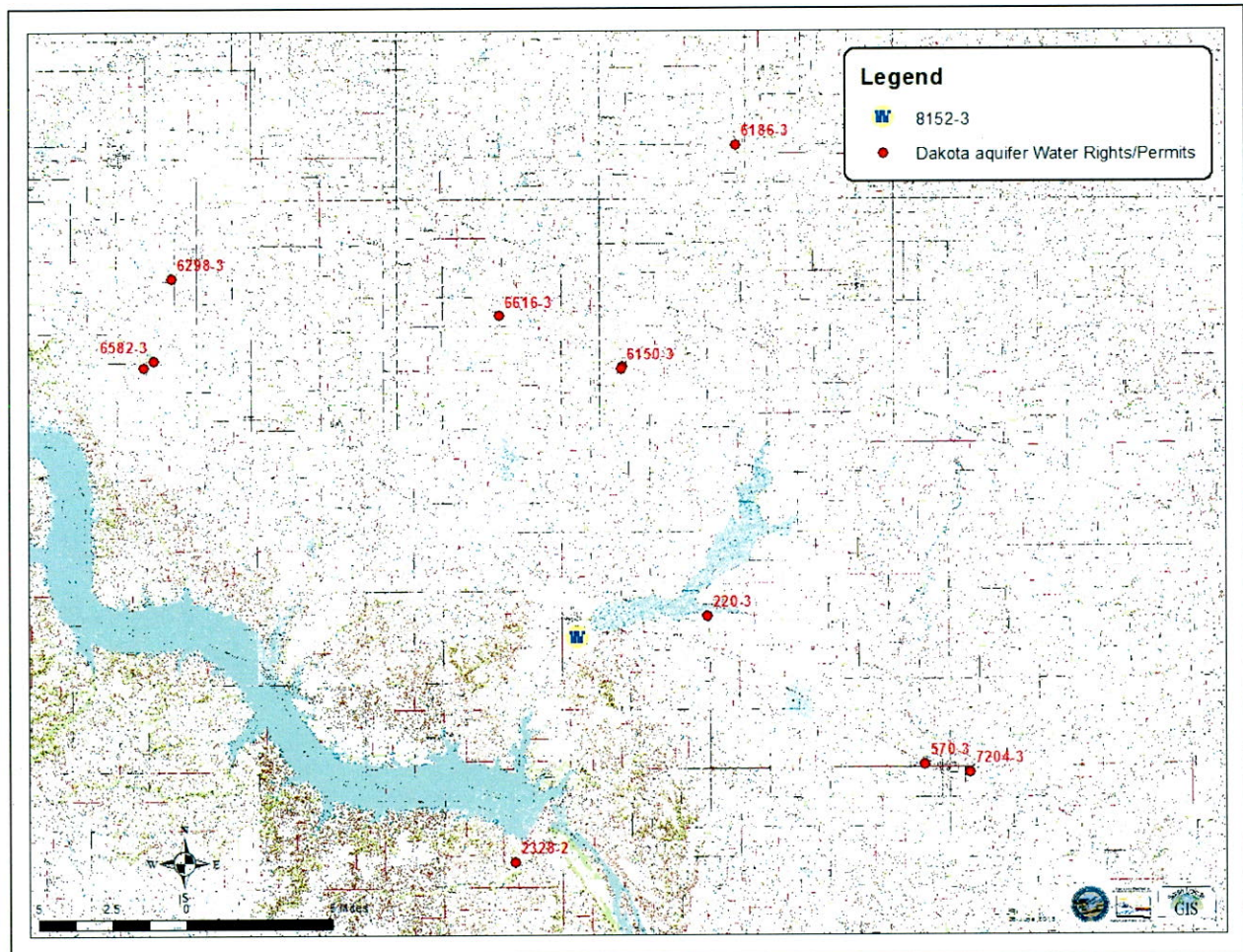


Figure 2. Approximate location of diversion points for wells supplying water rights/permits appropriating water from the Dakota aquifer in the vicinity of the well site proposed by Application No. 8152-3.

If the water levels in the Dakota aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the

matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

Table 1. Water rights/permits appropriating water from the Dakota aquifer in the vicinity of the well site proposed by Application No. 8152-3.

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS
220-3	US FISH/WILDLIFE SERVICE	07/06/1956	LC	FWP	2.22
570-3	CITY OF WAGNER	01/01/1933	LC	MUN/REC	0.55
2328-2	MICHAEL KIRWAN	02/21/1995	LC	IRR (31 acres)	0.22
6150-3	RED ROCK COOP ASSOC	08/25/1999	LC	COM/LCO	0.333
6186-3	B & B WASHOUT	03/07/2000	LC	COM	0.111
6298-3	COYOTE RIDGE COOPERATIVE	02/07/2002	PE	COM/LCO	0.1
6582-3	DEHAAN LIVESTOCK & GRAIN	02/01/2005	PE	COM/LCO	0.156
6616-3	ARMOUR HUNTERS HAVEN LLP	03/28/2005	PE	FWP/REC	0.22
7204-3	STEVEN FOUSEK	06/02/2010	PE	COM/GEO	0.133
LC= Water Right, PE= Water Permit, FWP= Fish and Wildlife Propagation, MUN= Municipal, REC= Recreational, IRR= Irrigation, COM= Commercial, LCO= Large Confinement Operation, GEO= Geothermal					

CONCLUSIONS:

1. Water Permit Application No. 8152-3 proposes to appropriate water from the Dakota aquifer at a diversion rate of 0.17 cfs to maintain the water level in Park Avenue Lake Restoration Project.
2. The artificial impound proposed by the applicant will result in an evaporation loss of approximately 60 acre-feet of water annually.
3. The diversion rate proposed by this application exceeds the evaporation losses of the pond that is to be maintained.
4. To ensure this permit, if approved, does not result in a waste of water, the City of Lake Andes is responsible to shut in the well to ensure no discharge occurs if the stage of Park Avenue lake is above 1441.25 feet msl.
5. Water levels in the Dakota aquifer have declined in many parts of the State since the first wells were completed into the aquifer.
6. The Water Management Board has concluded that whether withdrawals exceed average annual recharge cannot be determined based solely upon a decline in head pressure.
7. The potentiometric surface of the Dakota aquifer has declined primarily as a result of the waste of water from uncontrolled flowing wells.
8. The Water Management Board has concluded that in reference to SDCL 46-6-3.1, "withdrawals" applies only to water placed to beneficial use via appropriations or domestic use.

9. The Water Management Board's position has been to optimize development for beneficial use from the Dakota aquifer.
10. There is a reasonable probability that existing water rights/permits will not be adversely impacted if this application is approved.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Allen, J.C., Iles, D.L., and Petres, A.K., 1985, Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, Tasks #A.B.C. and 4A.B.: Groundwater Resource Inventory Final Report. Prepared for U.S. Army Corps of Engineers, contract DACW45-82-C-0151
- Darton, N.H., 1909, Geology and Underground Waters of South Dakota: U.S. Geological Survey Water-Supply Paper 227, 156 p.
- Hedges, L.S., Burch, S.L., Iles, D.L., Barari, R.A., and Schoon, R.A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography [Sic.] and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base. Prepared for U.S. Army Corps of Engineers, contract DACW 45-80-C-0185
- Kume, J., 1977, Geology and Water Resources of Charles Mix and Douglas Counties, South Dakota, Part II: Water Resources: South Dakota Department of Natural Resources Development-Geological Survey Bulletin 22, 31 p., 23 figs., 8 tables.
- Schoon, R.A., 1971, Geology and Hydrology of the Dakota Formation in South Dakota: S.D. Geological Survey Report of Investigations 104, 61 p.
- Spuhler, W., Lytle, W.F., and Moe, D., 1971, Climate of South Dakota: Agricultural Experiment Station, South Dakota State University, Brookings, SD, pg. 29
- Water Rights, 1987, Water Right No. 5136-3, Farmland Industries: SD DENR-Water Rights Program 5136-3 file
- Water Rights, 1995, Water Right No. 2313-2, Coca-Cola Bottling Company of the Black Hills: SD DENR-Water Rights Program 2313-2 file
- Water Rights, 2015a, Observation well Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Water Rights, 2015b, Water Right/Permit Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Water Rights, 2015c, Well Completion Report Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota



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.**

July 6, 2015

City of Lake Andes
Debbra Houseman- Finance Officer
PO Box 783
Lake Andes SD 57356

Dear Ms. Houseman:

Water Permit Application No. 8152-3 for recreational use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Lake Andes Wave printed at Lake Andes SD (Ph # 605-384-5616) and the Daily Republic printed at Mitchell SD (Ph # 605-996-5514). 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.

NOTICE OF APPLICATION NO. 8152-3 to Appropriate Water

Notice is given that the City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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 27, 2015.

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 _____.

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, July 06, 2015 4:09 PM
To: Wagner (announcer@hcinet.net)
Subject: FW: 8152-3, City of Lake Andes
Attachments: 8152-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on July 15, 2015 in the Lake Andes Wave.

City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 (phone 605 487-7694) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, July 06, 2015 4:06 PM
To: Hohbach, Penny (PHohbach@mitchellrepublic.com)
Subject: 8152-3, City of Lake Andes
Attachments: 8152-3public.short.docx

Attached is a notice to be published on July 15, 2015.

City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 (phone 605 487-7694) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit ASAP.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352

RECEIVED

JUL 17 2015

WATER RIGHTS
PROGRAM

Is being
re-advertised

ESY

7/21/15

**NOTICE OF
APPLICATION NO.
8152-3
to Appropriate Water**

Notice is given that the City of Lake Andes, Debra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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 27, 2015.

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 Grontlund 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 \$59.55

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 issue(s), to wit:

Wednesday, July 15, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$59.55

Signed: Penny Hohbach

Subscribed and sworn to before me this 15th day of July, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515

DEB TOWNSEND
Notary Public
SEAL
South Dakota

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, July 21, 2015 4:04 PM
To: Wagner (announcer@hcinet.net)
Subject: 8152-3, City of Lake Andes
Attachments: 8152-3public.short.docx; FORM8 FRM.doc

Attached is a notice to be published on July 29, 2015. This notice was published on July 15, but since that time changes were made to the application and it is necessary to republish.

City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 (phone 605 487-7694) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak
Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, July 21, 2015 4:02 PM
To: Hohbach, Penny (PHohbach@mitchellrepublic.com)
Subject: 8152-3, City of Lake Andes
Attachments: 8152-3public.short.docx

Attached is a notice to be published on July 29, 2015. This notice was published on July 15, but since that time changes were made to the application and it is necessary to republish.

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Please send the affidavit ASAP.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

Water Rights Program
523 E Capitol Ave
Pierre SD 57501
Phone: 605 773-3352



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

July 22, 2015

City of Lake Andes
Debbra Houseman-Finance Officer
PO Box 783
Lake Andes SD 57356

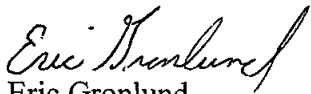
Dear Ms. Houseman:

The Notice of Water Permit Application No. 8152-3 was published on July 15, 2015 in the Lake Andes Wave printed at Lake Andes SD (Ph # 605-384-5616) and the Daily Republic printed at Mitchell SD (Ph # 605-996-5514). Since that time, Vernon Arens, with Arens Engineering has submitted a revised lake drawing for the Park Avenue Lake Restoration Project which included maintaining the water level to an elevation of 1441.25 feet mean sea level. Based on this information, the recommendation of the Chief Engineer has been revised.

Enclosed is a copy of the revised notice and recommendation of the Chief Engineer. Again, you will need to contact the two newspapers listed above as soon as possible to authorize publication and arrange for payment. The notice has been emailed to the papers and we have requested the notice be published on July 29, 2015.

If you have any questions, please contact me.

Sincerely,


Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

NOTICE OF APPLICATION NO. 8152-3 to Appropriate Water

Notice is given that the City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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.

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The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric 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_____.

City of Lake Andes
PUBLIC NOTICE

**NOTICE OF APPLICATION
NO. 8152-3 TO APPROPRIATE
WATER**

Notice is given that the City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

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Published once at the total approximate cost of \$23.61.

Pub: July 29, 2015

Affidavit of Publication

RECEIVED

STATE OF SOUTH DAKOTA)

)SS

AUG 19 2015

COUNTY OF CHARLES MIX)

**WATER RIGHTS
PROGRAM**

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

1st publication made on 29th day of July, 2015
2nd publication made on _____ day of _____, 2015
3rd publication made on _____ day of _____, 2015
4th publication made on _____ day of _____, 2015
5th publication made on _____ day of _____, 2015

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

\$ 23.61

Kristina Hajek

Subscribed and sworn before me this 18th day of August, 2015

Bruce [Signature]

Notary Public

My commission expires 10/22/16

RECEIVED

AUG - 3 2015

WATER RIGHTS
PROGRAM

**NOTICE OF
APPLICATION
NO. 8152-3 to
Appropriate Water**

Notice is given that the City of Lake Andes, Debra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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 August 10, 2015.

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 \$61.01

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 issues(s), to wit:

Wednesday, July 29, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$61.01

Signed: Penny Hohbach

Subscribed and sworn to before me this 31st day of July, 2015.

Deb Townsend

Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515

DEB TOWNSEND
Notary Public
SEAL
South Dakota



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 31, 2015

denr.sd.gov

NOTICE OF HEARING

TO: Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8152-3, City of Lake Andes

A petition opposing approval of Water Permit Application No. 8152-3 has been filed in response to the Notice of Application published in the Mitchell Daily Republic and Wagner Post and Announcer. This notice schedules a hearing on this application before the South Dakota Water Management Board.

Water Permit Application No. 8152-3 proposes to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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. 8152-3 at 9:30 AM on Wednesday, October 14, 2015, in the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

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 these applications after it reaches a conclusion based on the facts presented at the public hearing.

The October 14, 2015, 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 2, 2015. 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 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. 8152-3. 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 September 10, 2015. 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-Bailey, Assistant Attorney General

**REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8152-3
CITY OF LAKE ANDES
JUNE 24, 2015**

Water Permit No. 8152-3 proposes to appropriate water from a well completed into the Dakota aquifer, approximately 800 feet deep, at a maximum diversion rate of 0.17 cubic feet of water per second (cfs). The well is to be located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 9, T96N-R65W. Water from the well will be used for recreational use to maintain the water level in the Park Avenue Lake Restoration Project.

The Park Avenue Lake Restoration Project involves constructing a dike around Lake Andes in the southwest portion of the lake, and creating an artificial impound. The surface area of the proposed artificial impoundment is expected to be 16.8 acres. Spuhler and others, (1971) estimated an average annual lake evaporation rate for this area of approximately 38 inches per year. Therefore, evaporation from the pond will be approximately 53.52 acre-feet annually. The proposed well discharge into the impoundment of 0.17 cfs would equate to an annual rate of 123.07 acre-feet per year. A well discharge of 0.17 cfs for the eight months a year when the pond is not frozen would result in 82.05 acre-feet of water.

AQUIFER: Dakota aquifer (DKOT)

AQUIFER CHARACTERISTICS:

The Dakota aquifer consists of the permeable beds of sand and sandstone contained in the Cretaceous aged Dakota Formation. The lithology of the Dakota Formation is quite variable both laterally and vertically, consisting of interbedded sand, sandstone, and shale. It has been postulated the explanation for this is that the Dakota was deposited in a fluvial environment. The porosity of the Dakota varies with the lithology but is assumed to average 15 %, and the specific yield of the aquifer is assumed to be 0.075 (Hedges and others, 1982). Over large areas of the eastern part of State, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

“The Dakota sandstone is the most widely extended and serviceable water-bearing formation in South Dakota and it is the principal source of artesian flow in the many wells.” (Darton, 1909) The Dakota Formation underlies approximately 66,500 square miles of the 77,047 total square miles that constitute the State (Schoon, 1971). The total recoverable water in storage in the Dakota Formation in eastern South Dakota is estimated to be 381,104,000 acre-feet of water (Hedges and others, 1982). The Dakota-Newcastle Formation contains another 308,442,000 acre-feet of recoverable water in storage in western South Dakota (Allen and others, 1985).

In the area of this proposed project, the Dakota Formation is overlain by the Graneros Shale, and it overlies the Skull Creek Shale. The Dakota Formation is expected to be approximately 300

feet thick in this area (Schoon, 1971). The potentiometric surface of the aquifer is expected to be approximately 1,535 feet above mean sea level elevation (Kume, 1977), (i.e. approximately 43 psi shut in pressure).

SDCL 46-2A-9:

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

Water Availability:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. Although there is an exception to the recharge/withdrawal consideration in SDCL 46-6-3.1, it applies only to applications filed by water distribution systems and is not applicable here.

Water Permit Application No. 8152-3 proposes to divert water from a well completed into the Dakota aquifer, at a maximum diversion rate of 0.17 cfs. If approved, the amount of water that can be diverted annually through this water permit would be limited only by the diversion rate, and in theory, the permit would appropriate approximately 123 acre-feet of water annually.

Data is not available to compare the average annual recharge to the Dakota aquifer with the average annual withdrawal from the aquifer. Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota Formation. This artesian pressure decline has been well documented, and in some parts of the state, water levels have declined several hundred feet since the aquifer was first developed. Some have interpreted this declining pressure as an indicator that the Dakota is being "mined". As Schoon (1971) states: "The fact that withdrawal from the artesian system exceeds recharge is clearly demonstrated by declining pressures." Water level records in parts of the state indicate this decline is continuing and is in the range of one foot per year or less.

In general, the artesian pressure of the Dakota aquifer has been declining in this area (Kume, 1977). The decline of head pressure in the area can be seen in the hydrograph for DENR-Water Rights' Observation Well AU-89A, which is located approximately 32 miles north of the well site proposed by this application, is shown in Figure 1.

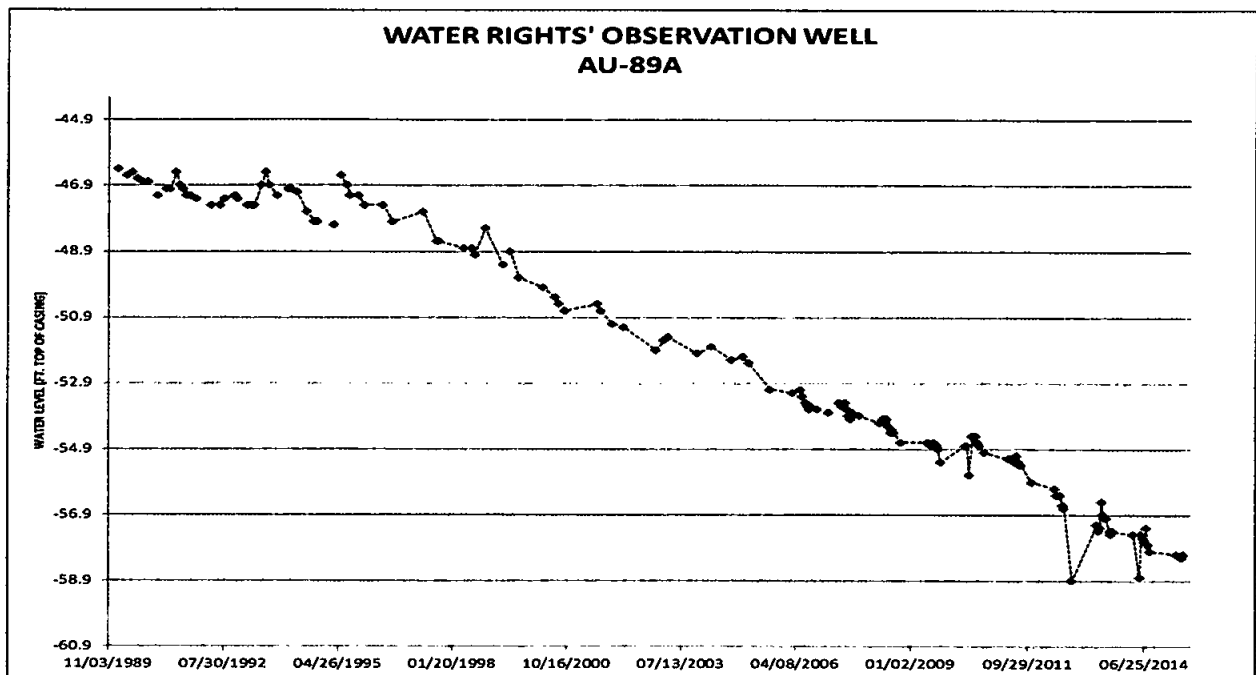


Figure 1. Hydrograph for observation well completed into the Dakota aquifer approximately 32 miles north of the well site proposed by this application.

Historically, the Water Management Board has carefully considered the issue of declining pressures in the Dakota aquifer and the lack of average annual recharge estimates for the aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure, and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. The Board found that the decline of head pressure is due to water being discharged without beneficial use through uncontrolled flowing wells and that water discharged from uncontrolled flowing wells does not constitute withdrawal (appropriation) pursuant to SDCL 46-6-3.1. The Board also found that withdrawals pursuant to SDCL 46-6-3.1 are appropriations for beneficial uses of water, including withdrawals through private domestic wells for domestic use (Water Rights, 1987).

Existing Water Rights:

Water Rights/Permits appropriating water from the Dakota aquifer within approximately 20 miles of the well site proposed by this application are shown in Figure 2 and Table 1. In addition to the appropriative rights, there are a number of domestic wells on file with the DENR-Water Rights Program in this area that appear to be completed into the Dakota aquifer (Water Rights, 2015c). The nearest well completed into the Dakota aquifer that is authorized by a water right/permit (Water Right No. 220-3, US Fish/Wildlife Service), is located approximately four and one-half miles east of this proposed well site. The Dakota aquifer is confined and under artesian conditions in this area and drawdown resulting from the withdrawal proposed by this application may extend some distance from a production well. The distance between the well proposed by this application and the well authorized by Water Right No. 220-3 is sufficient that well interference is not expected to be adverse at the diversion rate proposed by this application (i.e. 0.17 cfs). It is possible, however, that drawdown from this appropriation, if it is approved, may be measurable in existing wells.

Wells supplying existing water rights/permits and domestic uses are protected from adverse impacts per Water Management Board rules 74:02:04 and 74:02:05, which were promulgated pursuant to SDCL 46-6-6.1. These rules provide for the regulation of large capacity wells to the degree necessary to maintain an adequate depth of water for a prior appropriator in wells that have the ability to produce water **independent of artesian pressure**. Simply put, the pump placement in a prior appropriator's well is not necessarily protected.

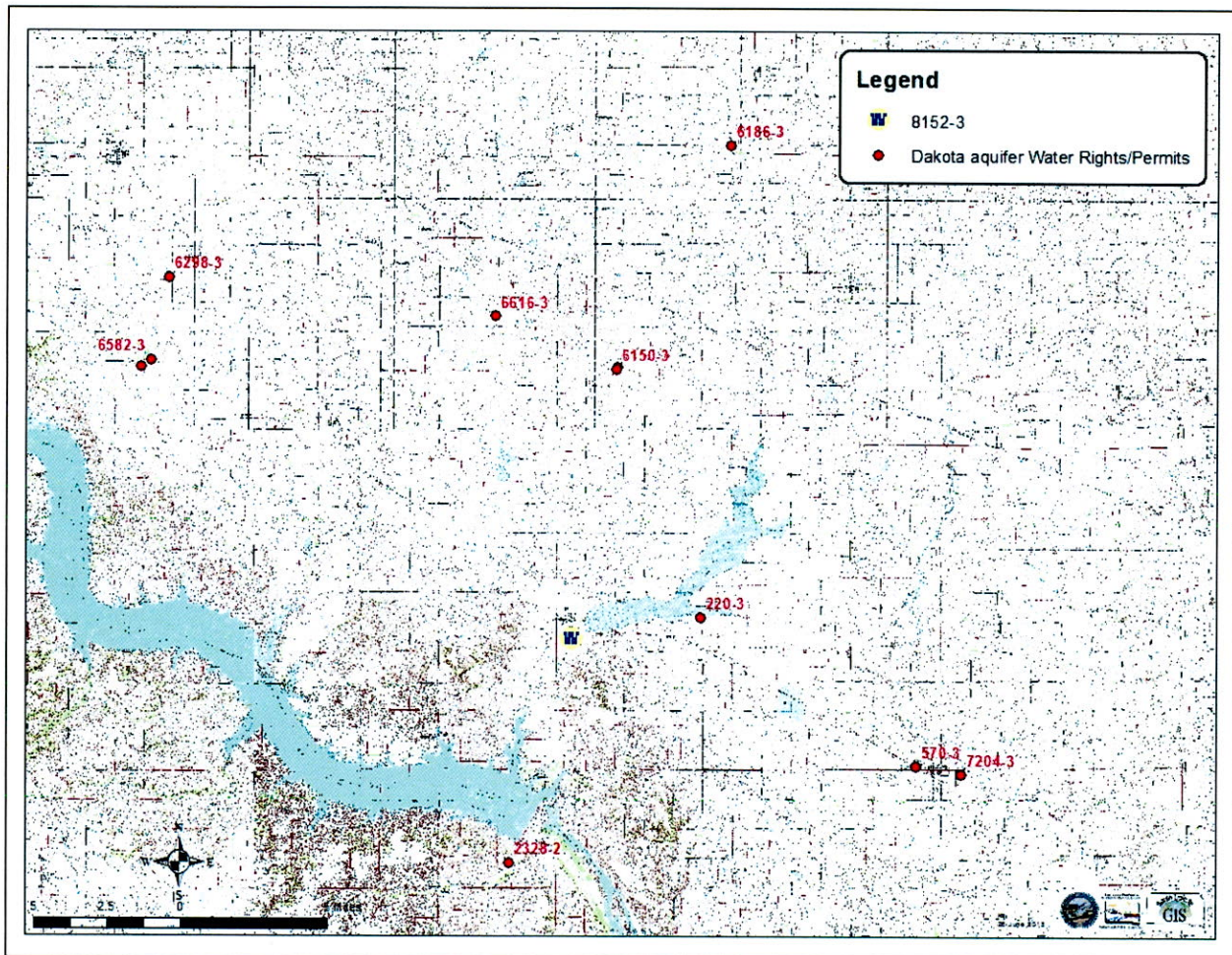


Figure 2. Approximate location of diversion points for wells supplying water rights/permits appropriating water from the Dakota aquifer in the vicinity of the well site proposed by Application No. 8152-3.

If the water levels in the Dakota aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge; or require a larger pump or a different type of a pump to maintain the same output.

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the

matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

Table 1. Water rights/permits appropriating water from the Dakota aquifer in the vicinity of the well site proposed by Application No. 8152-3.

PERMIT NO	NAME	PRIORITY DATE	STATUS	USE	CFS
220-3	US FISH/WILDLIFE SERVICE	07/06/1956	LC	FWP	2.22
570-3	CITY OF WAGNER	01/01/1933	LC	MUN/REC	0.55
2328-2	MICHAEL KIRWAN	02/21/1995	LC	IRR (31 acres)	0.22
6150-3	RED ROCK COOP ASSOC	08/25/1999	LC	COM/LCO	0.333
6186-3	B & B WASHOUT	03/07/2000	LC	COM	0.111
6298-3	COYOTE RIDGE COOPERATIVE	02/07/2002	PE	COM/LCO	0.1
6582-3	DEHAAN LIVESTOCK & GRAIN	02/01/2005	PE	COM/LCO	0.156
6616-3	ARMOUR HUNTERS HAVEN LLP	03/28/2005	PE	FWP/REC	0.22
7204-3	STEVEN FOUSEK	06/02/2010	PE	COM/GEO	0.133
LC= Water Right, PE= Water Permit, FWP= Fish and Wildlife Propagation, MUN= Municipal, REC= Recreational, IRR= Irrigation, COM= Commercial, LCO= Large Confinement Operation, GEO= Geothermal					

CONCLUSIONS:

1. Water Permit Application No. 8152-3 proposes to appropriate water from the Dakota aquifer at a diversion rate of 0.17 cfs to maintain the water level in Park Avenue Lake Restoration Project.
2. The artificial impound proposed by the applicant will result in an evaporation loss of approximately 60 acre-feet of water annually.
3. The diversion rate proposed by this application exceeds the evaporation losses of the pond that is to be maintained.
4. To ensure this permit, if approved, does not result in a waste of water, the City of Lake Andes is responsible to shut in the well to ensure no discharge occurs if the stage of Park Avenue lake is above 1441.25 feet msl.
5. Water levels in the Dakota aquifer have declined in many parts of the State since the first wells were completed into the aquifer.
6. The Water Management Board has concluded that whether withdrawals exceed average annual recharge cannot be determined based solely upon a decline in head pressure.
7. The potentiometric surface of the Dakota aquifer has declined primarily as a result of the waste of water from uncontrolled flowing wells.
8. The Water Management Board has concluded that in reference to SDCL 46-6-3.1, "withdrawals" applies only to water placed to beneficial use via appropriations or domestic use.

9. The Water Management Board's position has been to optimize development for beneficial use from the Dakota aquifer.
10. There is a reasonable probability that existing water rights/permits will not be adversely impacted if this application is approved.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Allen, J.C., Iles, D.L., and Petres, A.K., 1985, Analysis of Groundwater and Streamflow Data Western Dakotas Region of South Dakota, Tasks #A.B.C. and 4A.B.: Groundwater Resource Inventory Final Report. Prepared for U.S. Army Corps of Engineers, contract DACW45-82-C-0151
- Darton, N.H., 1909, Geology and Underground Waters of South Dakota: U.S. Geological Survey Water-Supply Paper 227, 156 p.
- Hedges, L.S., Burch, S.L., Iles, D.L., Barari, R.A., and Schoon, R.A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota and Iowa, Task 1: Bedrock Topography [Sic.] and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base. Prepared for U.S. Army Corps of Engineers, contract DACW 45-80-C-0185
- Kume, J., 1977, Geology and Water Resources of Charles Mix and Douglas Counties, South Dakota, Part II: Water Resources: South Dakota Department of Natural Resources Development-Geological Survey Bulletin 22, 31 p., 23 figs., 8 tables.
- Schoon, R.A., 1971, Geology and Hydrology of the Dakota Formation in South Dakota: S.D. Geological Survey Report of Investigations 104, 61 p.
- Spuhler, W., Lytle, W.F., and Moe, D., 1971, Climate of South Dakota: Agricultural Experiment Station, South Dakota State University, Brookings, SD, pg. 29
- Water Rights, 1987, Water Right No. 5136-3, Farmland Industries: SD DENR-Water Rights Program 5136-3 file
- Water Rights, 1995, Water Right No. 2313-2, Coca-Cola Bottling Company of the Black Hills: SD DENR-Water Rights Program 2313-2 file
- Water Rights, 2015a, Observation well Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Water Rights, 2015b, Water Right/Permit Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota

Water Rights, 2015c, Well Completion Report Records, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

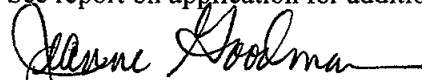
**REVISED RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8152-3, City of Lake Andes**

Pursuant to SDCL 46-2A-2, the following is the revised recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 8152-3, City of Lake Andes, c/o Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356.

The Chief Engineer is recommending APPROVAL of Application No. 8152-3 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. 8152-3 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. The City of Lake Andes is responsible to monitor the Park Avenue water level and control the well. The well shall be capable of being shut in and no discharge from the well is authorized when the Park Avenue lake level is at or above 1441.25 feet mean sea level which is the elevation of the vertical drop inlet overflow structure.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
July 21, 2015

NOTE: The well must be constructed so that the city can completely shut in the well to prohibit it from flowing. This will require constructing the well with a flowing well pitless unit so the well can be completely shut in during winter months. DENR encourages the city to discuss installation of the flowing well pitless unit with the well driller prior to construction of the well.

RECEIVED

AUG 17 2015

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8152-3

PETITION OPPOSING WATER
PERMIT APPLICATION NO. 8152-3

The Yankton Sioux Tribe, by and through Fredericks Peebles & Morgan, LLP (Thomasina Real Bird), hereby files this petition opposing water permit application no. 8152-3.

Interest

The Yankton Sioux Tribe holds aboriginal title to the lakebed of Lake Andes. *See Yankton Sioux Tribe v. United States*, 224 Ct. Cl. 62, 623 F.2d 159, 183 (1980). Despite being the title holder to this lakebed, the Tribe was neither notified nor consulted regarding the actions described in the Application which appear to have direct consequences on the lakebed. Furthermore, the Tribe holds water rights in the State of South Dakota that it is entitled to protect and the State is bound to respect. Neither the State nor the Applicant consulted with the Tribe regarding this proposed use of water. In addition, the area at issue is ancestral territory of the Tribe and has spiritual and cultural significance.

Reasons

The Yankton Sioux Tribe submits this Petition for the reasons asserted above. As owner of the Lake Andes lakebed and as a holder of tribal water rights, the Tribe's interests will likely be affected by the issuance of the requested permit. Furthermore, the intended use by the City of Lake Andes as represented in the Application is neither a permissible domestic use nor an acceptable municipal use under SDCL 46-1-6(7) or 46-1-6(14).

Dated this 10th day of August, 2015.

/s/ Thomasina Real Bird

Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600

Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I certify that on this 10th day of August, 2015, a true and correct copy of PETITION OPPOSING WATER PERMIT APPLICATION NO. 8152-3 was filed with the Chief Engineer and served upon the City of Lake Andes via U.S. Certified Mail as addressed below:

City of Lake Andes
Debbra Houseman
Finance Officer
PO Box 783
Lake Andes SD 57356

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

/s/Ashley Klinglesmith

Ashley Klinglesmith
Legal Assistant

RECEIVED

AUG - 3 2015

WATER RIGHTS
PROGRAM

**NOTICE OF
APPLICATION
NO. 8152-3 to
Appropriate Water**

Notice is given that the City of Lake Andes, Debra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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 August 10, 2015.

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. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$61.01

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF DAVISON)

Penny Hohbach of said county, being, first duly sworn, on oath, says; that he/she is the publisher or an employee of the publisher of The Daily Republic, a daily newspaper, published in the City of Mitchell, in said County of Davison, and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive; that said newspaper has been published within the said County of Davison and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the notice, order or advertisement, a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 issues(s), to wit:

Wednesday, July 29, 2015

That the full amount of the fee charged for the publication of the attached public notice insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever, that the fees charged for the publication thereof are: \$61.01

Signed: Penny Hohbach

Subscribed and sworn to before me this 31st day of July, 2015.

Deb Townsend
Notary Public
County of Davison

My Commission Expires: 09-21-18

Prepared by: The Daily Republic, P.O. Box 1288, Mitchell S.D. 57301 605-996-5515

DEB TOWNSEND
Notary Public
SEAL
South Dakota

Affidavit of Publication

STATE OF SOUTH DAKOTA)

COUNTY OF CHARLES MIX)

SS

AUG 19 2015

WATER RIGHTS PROGRAM

Kristina Hajek, of said County and State being first duly sworn on her oath says: That *The Lake Andes Wave* is a legal newspaper of general circulation, printed and published in Wagner, in said County and State, by Kristina Hajek, and has been such newspaper during the time herein mentioned; and that I, Kristina Hajek, the undersigned, of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit; a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper and not in supplement, once each week for 1 successive weeks.

1st publication made on 29th day of July, 2015
2nd publication made on _____ day of _____, 2015
3rd publication made on _____ day of _____, 2015
4th publication made on _____ day of _____, 2015
5th publication made on _____ day of _____, 2015

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

\$ 23.61

Kristina Hajek

Subscribed and sworn before me this 18th day of August, 2015

Brian Rogers

Notary Public

My commission expires 10/22/16

NOTICE OF APPLICATION NO. 8152-3 TO APPROPRIATE WATER

Notice is given that the City of Lake Andes, Debbra Houseman, Finance Officer, PO Box 783, Lake Andes SD 57356 has filed an application for a water permit to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8152-3 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 August 10, 2015.

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 \$23.61.

Pub: July 29, 2015

CERTIFICATION

I hereby certify that on August 31, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated August 31, 2015, regarding scheduling the hearing for Water Right Permit Application No. 8152-3, as addressed below:

Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

Sent Inter-office to:

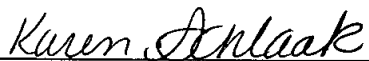
Ann Mines-Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



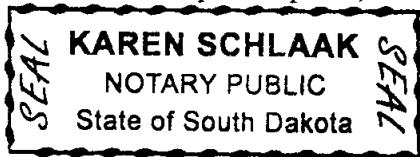
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of August, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



RECEIVED

AUG 17 2015

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8152-3

PETITION OPPOSING WATER
PERMIT APPLICATION NO. 8152-3

The Yankton Sioux Tribe, by and through Fredericks Peebles & Morgan, LLP (Thomasina Real Bird), hereby files this petition opposing water permit application no. 8152-3.

Interest

The Yankton Sioux Tribe holds aboriginal title to the lakebed of Lake Andes. *See Yankton Sioux Tribe v. United States*, 224 Ct. Cl. 62, 623 F.2d 159, 183 (1980). Despite being the title holder to this lakebed, the Tribe was neither notified nor consulted regarding the actions described in the Application which appear to have direct consequences on the lakebed. Furthermore, the Tribe holds water rights in the State of South Dakota that it is entitled to protect and the State is bound to respect. Neither the State nor the Applicant consulted with the Tribe regarding this proposed use of water. In addition, the area at issue is ancestral territory of the Tribe and has spiritual and cultural significance.

Reasons

The Yankton Sioux Tribe submits this Petition for the reasons asserted above. As owner of the Lake Andes lakebed and as a holder of tribal water rights, the Tribe's interests will likely be affected by the issuance of the requested permit. Furthermore, the intended use by the City of Lake Andes as represented in the Application is neither a permissible domestic use nor an acceptable municipal use under SDCL 46-1-6(7) or 46-1-6(14).

Dated this 10th day of August, 2015.

/s/ Thomasina Real Bird

Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600

Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I certify that on this 10th day of August, 2015, a true and correct copy of PETITION OPPOSING WATER PERMIT APPLICATION NO. 8152-3 was filed with the Chief Engineer and served upon the City of Lake Andes via U.S. Certified Mail as addressed below:

City of Lake Andes
Debbra Houseman
Finance Officer
PO Box 783
Lake Andes SD 57356

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

/s/Ashley Klinglesmith

Ashley Klinglesmith
Legal Assistant



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

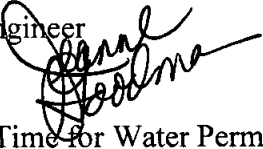
denr.sd.gov

September 10, 2015

NOTICE

TO: Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice Changing Hearing Time for Water Permit Application No. 8152-3, City of Lake Andes

Water Permit Application No. 8152-3 proposes to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

The hearing on Water Permit Application No. 8152-3 which was scheduled to be held at 9:30 AM on October 14, 2015, has been changed to later in the day.

The Water Management Board will now consider Application No. 8152-3 at 2:00 PM on Wednesday, October 14, 2015, in the Pierre Chamber of Commerce, 800 West Dakota Avenue, Pierre SD. The agenda time is an estimate.

Applicable provision of the notice of hearing sent to parties on August 31, 2015, and the public notice published in the Lake Andes Wave and Mitchell Daily Republic still apply.

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

c: Ann Mines-Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 10, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 10, 2015, regarding scheduling the hearing for Water Right Permit Application No. 8152-3, as addressed below:

Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

Sent Inter-office to:

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



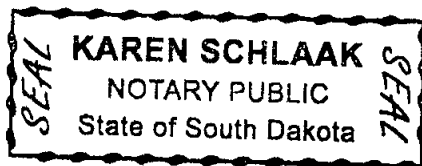
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of September, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



WHALEN LAW OFFICE, P.C.

P.O. BOX 127

LAKE ANDES, SD 57356-0127

Timothy R. Whalen

Telephone (605)487-7645

Fax (605)487-7091

whalawtim@cme.coop

RECEIVED

OCT 05 2015

**WATER RIGHTS
PROGRAM**

October 2, 2015

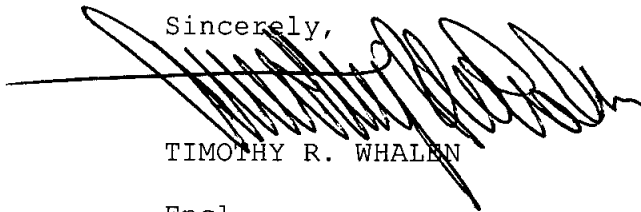
Jeanne Goodman, Chief Engineer
SD DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: In the Matter of Water Permit Application No. 8152-3

Dear Ms. Goodman:

Please be advised that I am a member of the Charles Mix County Lake Restoration Organization board of directors and its legal counsel. Enclosed herewith please find the original Notice of Appearance for the above matter. I am sending the enclosed to you for filing. All parties have been served with copies of the enclosed.

Sincerely,



TIMOTHY R. WHALEN

Encl.

Cc: Thomasina Real Bird
Pamela Hein
Ann F. Mines-Bailey

RECEIVED

OCT 05 2015

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

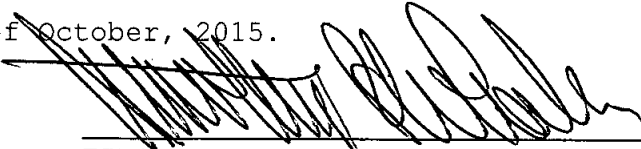
IN THE MATTER OF WATER PERMIT)

) NOTICE OF APPEARANCE

APPLICATION NO. 8152-3)

HEREBY TAKE NOTICE that Timothy R. Whalen of Whalen Law Office,
P.C. will appear on behalf of and represent the Charles Mix County Lake
Restoration Organization in the above proceedings

Dated this 2nd day of ~~October~~, 2015.



TIMOTHY R. WHALEN
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356
Telephone: 605-487-7645
Attorney for CMCLRO
whalawtim@cme.coop

CERTIFICATE OF SERVICE

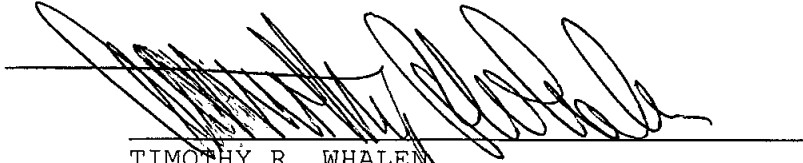
The undersigned hereby certifies that he served a true and correct
copy of the above and foregoing Notice of Appearance on the following
named attorneys at their addresses as follows:

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, CO 80027
Attorney for Yankton Sioux Tribe
trealbird@ndnlaw.com

Pamela Hein
Hein Law Office
P.O. Box 236
Lake Andes, SD 57356
Attorney for City of Lake Andes
heinlaw@hotmail.com

Ann F. Mines-Bailey
Attorney General's Office
1302 E. Hwy 14, #1
Pierre, SD 57501
Attorney for the Chief Engineer SDDENR
ann.mines@state.sd.us

by e-mail and by depositing same in the United States first class mail,
postage prepaid, on the 2nd day of October, 2015, at Lake Andes,
South Dakota.

A handwritten signature in black ink, appearing to read 'Timothy R. Whalen', is written over a horizontal line.

TIMOTHY R. WHALEN
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356
Telephone: 605-487-7645
Attorney for CMCLRO
whalawtim@cme.coop



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

October 5, 2015

NOTICE

TO: Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 8152-3, City of Lake Andes

A petition opposing approval of city of Lake Andes' Water Permit Application No. 8152-3 was filed by the Yankton Sioux Tribe in response to the notice published in the Mitchell Daily Republic and Wagner Post and Announcer. Notice of hearing before the Water Management Board was sent to parties on August 31, 2015, scheduling the hearing for October 14, 2015. In response to this notice Thomasina Real Bird, counsel for the petitioner, has made a formal request for postponement of the October 14, 2015, hearing date. Ms. Real Bird's request is enclosed. Therefore, the hearing on Application No. 8152-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 14, 2015.

The hearing to consider Application No. 8152-3 will now be scheduled for the December 2 – 3, 2015, Water Management Board meeting tentatively to be held in Pierre. Future notice of the time and place of the hearing for Application No. 8152-3 will be provided to all parties of record.

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

enclosure

c: Ann Mines-Bailey, Assistant Attorney General

RECEIVED
OCT 01 2015
WATER RIGHTS
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STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8152-3

REQUEST FOR AUTOMATIC DELAY
OF OCTOBER 14, 2015 HEARING

The Yankton Sioux Tribe has filed a Petition Opposing Water Permit Application No. 8152-3 and now requests an automatic delay of the October 14, 2015 hearing pursuant to the Notice of Hearing on Water Permit Application No. 8152-3, City of Lake Andes dated August 31, 2015.

Dated this 2nd day of October, 2015.

/s/ Thomasina Real Bird

Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I certify that on this 2nd day of October 2015, a true and correct copy of REQUEST FOR AUTOMATIC DELAY OF OCTOBER 14, 2015 HEARING was filed with the Chief Engineer and served upon the City of Lake Andes via U.S. Certified Mail as addressed below:

City of Lake Andes
Debbra Houseman
Finance Officer
PO Box 783
Lake Andes SD 57356

Pamela Hein
Hein Law Office
317 N Main St
Lake Andes, SD 57356
heinlaw@hotmail.com

Chief Engineer
Water Rights Program
Foss Building
523 E Capitol
Pierre SD 57501
Fax: (605) 773-4068
Email: DENRINTERNET@state.sd.us

/s/Ashley Klinglesmith
Ashley Klinglesmith
Legal Assistant

CERTIFICATION

I hereby certify that on October 5, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 5, 2015, regarding automatic delay of the hearing for Water Right Permit Application No. 8152-3, as addressed below:

Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

Sent Inter-office to:

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



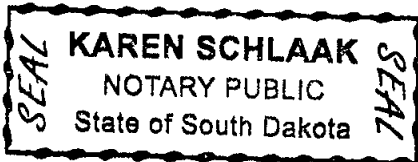
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of October, 2015



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

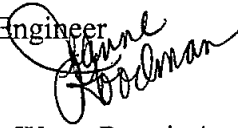
denr.sd.gov

October 27, 2015

NOTICE

TO: Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8152-3, City of Lake Andes

Water Permit Application No. 8152-3 proposes to appropriate 0.17 cubic feet of water per second from one well to be completed into the Dakota Aquifer (800 feet deep) located in the NE 1/4 NE 1/4 Section 9-T96N-R65W. The water will be for recreational use to maintain the water level in the Park Avenue Lake Restoration Project to an elevation of 1441.25 feet mean sea level.

In response to the public notice, the Yankton Sioux Tribe filed a petition in opposition to Water Permit Application No. 8152-3. A notice of hearing was sent to parties of record on August 31, 2015, scheduling a hearing before the Water Management Board on October 14, 2015. The October 14, 2015 hearing before the Water Management Board was then postponed pursuant to SDCL 46-2A-5 based on the request by Thomasina Real Bird, counsel for the Yankton Sioux Tribe. This notice schedules the hearing before the Water Management Board to consider Application No. 8152-3.

The Water Management Board will conduct a hearing to consider Application No. 8152-3 at 1:00 PM (Central Standard Time) on Wednesday, December 9, 2015, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of application published in the in the Lake Andes Wave and the Daily Republic on July 29, 2015, and the notice of hearing sent to parties of record on August 31, 2015, will still apply at the hearing.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or Ann Mines-Bailey, Assistant Attorney General at (605) 773-3215.

c: Ann Mines-Bailey, Assistant Attorney General
Timothy Whalen, PO Box 127, Lake Andes SD 57356

CERTIFICATION

I hereby certify that on October 27, 2015, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 27, 2015, regarding scheduling the hearing for Water Right Permit Application No. 8152-3, as addressed below:

Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lake Andes SD 57356

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

Timothy Whalen
PO Box 127
Lake Andes SD 57356

Sent Inter-office to:

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



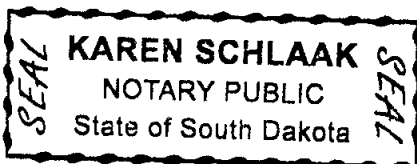
Gail Jacobson
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of October, 2015



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
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

NOV 23 2015

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 20, 2015

Re: *In the Matter of Water Permit Application No. 8152-3, City of Lake Andes*

TO WHOM IT MAY CONCERN:

Enclosed please find DENR's Prehearing Brief on Legal Issues of Petitioner Yankton Sioux Tribe in the above-referenced matter.

Respectfully,

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

Ann F. Mines Bailey
Assistant Attorney General

AFMB/jmm

Enclosures

cc: Parties Listed on Certificate of Service

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PREHEARING BRIEF
PERMIT APPLICATION No. 8152-3,	)	ON LEGAL ISSUES OF
CITY OF LAKE ANDES	)	PETITIONER YANKTON SIOUX TRIBE

The Department of Environment and Natural Resources, Water Rights Program (DENR), proffers the following brief regarding the legal issues presented by Yankton Sioux Tribe (YST) in their petition in opposition to Water Permit Application No. 8152-3, City of Lake Andes.

BACKGROUND

On April 30, 2015, DENR received an application for a water permit on behalf of City of Lake Andes. The application requests authorization for the diversion of 0.17 cfs for recreational use to maintain the water level in the Park Avenue Restoration Project. The application further requests authorization to construct a well into the Dakota Aquifer and located in the NE¼, NE¼, Sec. 9, T96N, R65W of Charles Mix County.

A petition in opposition to this application was timely filed by YST. In its petition, YST asserts that it holds title to the lakebed of Lake Andes. It further asserts that it holds water rights which it wishes to protect. Finally, YST asserts that the proposed use is “neither a permissible domestic use nor an acceptable municipal use[.]”

The application has been reviewed by DENR and it is the recommendation of the Chief Engineer that the application be granted. This

matter is scheduled for hearing on December 9, 2015. At the hearing, this Board must consider the factors set forth in SDCL § 46-2A-9: (1) whether there is a reasonable probability that there is unappropriated water available for the Applicant's proposed use, (2) whether the proposed diversion can be developed without unlawful impairment of existing water rights, (3) whether the proposed use is a beneficial use, and (4) whether the proposed use is in the public interest. The Board must also consider SDCL § 46-6-3.1, which requires that the total quantity of water withdrawn annually from the Dakota Aquifer may not exceed the average estimated annual recharge of water to the aquifer. At all times, the burden of proof is on the Applicant to show that a permit is justified.

LEGAL ISSUES PRESENTED BY YST'S PETITION

A. Ownership of the Lake Andes' lakebed

YST asserts it holds aboriginal title to the lakebed of Lake Andes. In support of this contention, YST cites to an opinion from the United States Court of Federal Claims dated May 14, 1980, in which the court included the acreage of the Lake Andes' lakebed as part of the Yankton Sioux Reservation while trying to determine the sum of money owed to YST from the United States for lands ceded to the United States. *Yankton Sioux Tribe v. United States*, 623 F.2d 159, 183 (Ct. Cl. 1980). The issue of ownership of the lakebed, however, was specifically litigated in *Yankton Sioux Tribe v. Nelson*, CIV. 76-4066, an action before the United States District Court, District of South Dakota. In that action, the District Court, like the United States Court of Federal Claims,

found that the Tribe had not ceded the lakebed to the United States in the Cession Agreement of 1892. *YST v. Nelson*, 604 F.Supp. 1146, 1150 (D.S.D. 1985). The District Court further held the Tribe held the aboriginal title to the lake bed. *Id.* at 1153-54. The determination of the District Court, however, was appealed to the Eighth Circuit Court of Appeals. *YST v. South Dakota*, 796 F.2d 241 (8th Cir. 1986). The Eighth Circuit reversed the finding of the District Court and held YST did *not* hold aboriginal title to the lakebed. The Eighth Circuit further held that title to the lakebed passed from the United States to South Dakota in 1889 under the equal footing doctrine. *Id.* at 244. The decision of the Eighth Circuit was appealed to the United States Supreme Court. The Supreme Court declined review of the case. Thus, the decision of the Eighth Circuit stands as the binding precedent of law as to this issue. Contrary to YST's claims in its petition, the title of the lakebed is held by the State of South Dakota.

B. Potential Effects on YST's *Winters* Rights

YST also states in its petition that it holds water rights in the State which may be impacted by this application. Water Rights has no record of any right or permit held in the name of YST. Thus, YST is presumably referring to rights it may hold as a result of *Winters v. United States*, 207 U.S. 564 (1908). In *Winters*, the Supreme Court found that when lands are set aside for the creation of an reservation, the water rights necessary for fulfilling the purpose of that reservation are also impliedly reserved. Thus, based upon *Winters*, it has been routinely found that there are reserved federal water rights

accompanying reservation lands. In appropriative rights states like South Dakota, the priority date for *Winters* rights is generally the date of creation of the reservation. *Arizona v. California*, 373 U.S. 546, 600 (1963). Unlike state appropriative water rights, however, the quantity of water for reserved rights does not depend on the amount actually used but must be quantified by the parties. Regardless, the issue of whether groundwater is subject to the *Winters* rights doctrine is not fully resolved. See Judith V. Royster, *Indian Tribal Rights to Groundwater*, 15 Kan. J.L. & Pub. Pol'y 489 (2006) (identifying the approaches taken in various courts).

The State of South Dakota and the Yankton Sioux Tribe have not engaged in negotiation or litigation regarding reserved water rights issues. In fact, there are no cases from either state or federal courts addressing reserved water rights for any of the tribes in South Dakota. YST's water rights have not been quantified in any context. It is not appropriate to address the reserved water rights issue in this particular water permit proceeding. If the *Winters* doctrine is later found, by a court of competent jurisdiction, to be applicable to groundwater and to YST's claims regarding the Dakota Aquifer, YST's rights may be senior in priority to this permit. However, the extent of such rights, if any, are simply unknown at this point. Nonetheless, it is not necessary to stop all appropriations in any area where there might possibly be a *Winters* claim. Nor has that been a practice of the Board in the past. See *Matter of Water Permit Application No. 7206-3, Longview Farms, LLP*, October 5, 2011, Findings

of Fact, Conclusions of Law, *Matter of Ottertail Power Company on Behalf of Big Stone II*, Dec. 4, 2007 Findings of Fact, Conclusions of Law and Final Decision.

C. Permissible/Acceptable Use.

YST also asserts the proposed use is not a permissible domestic use under SDCL § 46-1-6(7). YST additionally asserts that the proposed use is not an acceptable municipal use under SDCL 46-1-6(4). South Dakota Codified Law section 46-1-6(7) defines domestic use as

use of water not exceeding eighteen gallons per minute on an average daily basis . . . by an individual, or by a family unit or household, for drinking, washing, sanitary, and culinary purposes and other ordinary household purposes; irrigation of a noncommercial family garden, trees, shrubbery, or orchard not greater in area than one acre; eighteen gallons per minute or less for uses in schools, parks, and other public recreation areas; geothermal heat for a single household; or noncommercial on-farm alcohol production.

Municipal use is defined as

the use of water by the state through its institutions, facilities, and properties or by a municipality,. . . for household, custodial care, and fire protection purposes, whether supplied by the government or by a privately owned public utility or other agency, primarily to promote the life, safety, health, comfort, and business pursuits of the state, municipality and the inhabitants of the municipality. The term does not include the irrigation of crops on a commercial scale, even within the limits of the state institution, facility, property, or municipality, nor does it include large recreational uses such as lakes[.]

Water Rights agrees that the proposed use does not constitute a “domestic use” as it requests a diversion rate of 0.17cfs or approximately 76 gpm. Hence, the need for a water permit. See SDCL §§ 46-1-15 and 46-5-8. Nor does Water Rights contend that it is appropriate to issue this permit as one for municipal use. The application, however, seeks a permit for

recreational use. The review of the application was conducted with that use in mind and the publication notice specified the proposed use was recreational. There is nothing in the statute which prohibits a municipality from holding a permit for a recreational use. As a result, Water Rights believes that the proposed use is permissible under the laws of the State and the permit should be issued if the Board finds that the factors set forth in SDCL § 46-2A-9 have been satisfied.

Dated this 20th day of November, 2015.

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey", is written over a horizontal line.

Ann F. Mines Bailey
Assistant Attorney General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: Ann.Mines@state.sd.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Prehearing Brief on Legal Issues of Petitioner Yankton Sioux Tribe in the above matter were served by U.S. mail, first class, postage prepaid upon:

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville CO 80027

Debbra Houseman, Finance Officer
City of Lake Andes
PO Box 783
Lakes Andes SD 57356

Timothy R Whalen
Whalen Law Office PC
PO Box 127
Lakes Andes SD 57356

Jim Hutmacher
Chairman
802 E 7th Street
Oacoma SD 57365

Leo Holzbauer
PO Box 877
Wagner SD 57380

Rodney Freeman Jr
PO Box 176
Huron SD 57350

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Chad Comes
116 W Center
Madison SD 57042

Tim Bjork
112 W Oak St
Pierre SD 57501

Matt Naasz
Assistant Attorney General
Hand delivered

And on the same date, the original was filed with

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

Dated this 20th day of November, 2015.


Ann F. Mines-Bailey
Assistant Attorney General

CITY OF LAKE ANDES

P.O. BOX 783 SOUTH DAKOTA 57356 Ph. (605) 487-7694
Pamela Hein Attorney for the City Ph. (605) 487-7700

HUB OF RANDALL LAKE AREA

RECEIVED

DEC - 7 2015

WATER RIGHTS
PROGRAM



FAMOUS FOR HUNTING
FISHING AND CAMPING

December 3, 2015

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

RE: In the Matter of Water Permit Application No. 8152-3

To Whom It May Concern:

Enclosed please find the City of Lake Andes' Resistance to Request for Continuance with regards to the Yankton Sioux Tribe's Request for Continuance of the December 9th Hearing scheduled in the above referenced matter.

This is intended as service upon you by mail.

Sincerely,

Pamela S. Hein
Hein law Office, Prof. LLC
PO Box 236
Lake Andes, SD 57356

Attorney for the City of Lake Andes

RECEIVED

DEC - 7 2015

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8152-3

REQUEST FOR CONTINUANCE OF
DECEMBER 9, 2015 HEARING

The Yankton Sioux Tribe (Yankton) has filed a Petition Opposing Water Permit Application No. 8152-3. A hearing has been set in this matter for December 9, 2015. Yankton is in the process of seeking an amicable resolution to this matter through a settlement with the Applicant. In order to pursue communications with the Applicant and efforts to resolve this matter without the need for an adversarial hearing, Yankton requests that the hearing scheduled for December 9, 2015, be continued.

Dated this 2nd day of December, 2015.

/s/ Thomasina Real Bird

Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I certify that on this 2nd day of December, 2015, a true and correct copy of REQUEST FOR CONTINUANCE OF DECEMBER 9, 2015 HEARING was filed with the Chief Engineer and served upon the City of Lake Andes via U.S. Certified Mail as addressed below:

City of Lake Andes
Debbra Houseman
Finance Officer
PO Box 783
Lake Andes SD 57356

Pamela Hein
Hein Law Office
317 N Main St
Lake Andes, SD 57356
heinlaw@hotmail.com

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

Ann F. Mines-Bailey
Attorney General's Office
1302 E. Hwy 14, #1
Pierre, SD 57501

Timothy R. Whalen
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356-0127

Fax: (605) 773-4068
Email: DENRINTERNET@state.sd.us

/s/Ashley Klinglesmith
Ashley Klinglesmith
Legal Assistant

IN THE MATTER OF WATER PERMIT) RESISTANCE TO REQUEST
)
APPLICATION NO. 8152-3) FOR CONTINUANCE

4. There is no resolution or settlement that can be made of the YST's objections because the necessary party to any settlement is the State of South Dakota and the applicant verily believes that the State will not relinquish any rights relative to the lake of Lake Andes. Further, the law regarding the YST's objections and the issues associated with the lake of Lake Andes is well settled and no settlement contrary to the governing law is possible.

5. In light of the above, the applicant would be prejudiced by granting the request for continuance made by the YST at this time.

6. The applicant resists and opposes the board granting the continuance of the December 9, 2015 hearing requested by the YST.

Dated this 3 day of December, 2015.



PAMELA S. HEIN
P.O. Box 236
Lake Andes, SD 57356
Telephone: 605-487-7700
Attorney for City of Lake Andes
heinlaw@hotmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing Resistance to Request For Continuance on the following named attorneys at their addresses as follows:

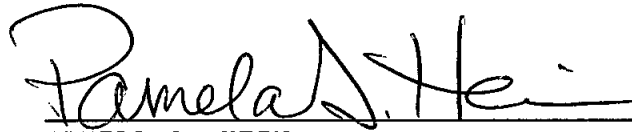
Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, CO 80027
Attorney for Yankton Sioux Tribe
trealbird@ndnlaw.com

Ann F. Mines-Bailey
Attorney General's Office
1302 E. Hwy 14, #1
Pierre, SD 57501
Attorney for the Chief Engineer SDDENR
ann.mines@state.sd.us

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501
DENRINTERNET@state.sd.us

Timothy R. Whalen
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356
whalawtim@cme.coop

by e-mail and by depositing same in the United States first class mail,
postage prepaid, on the 3 day of December, 2015, at Lake Andes,
South Dakota.

A handwritten signature in black ink, appearing to read "Pamela S. Hein", written over a horizontal line.

PAMELA S. HEIN
P.O. Box 236
Lake Andes, SD 57356
Telephone: 605-487-7700
Attorney for City of Lake Andes
heinlaw@hotmail.com

STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION NO. 8152-3

RESPONSE TO PREHEARING BRIEF
AND PROPOSED FINDINGS

The Yankton Sioux Tribe (Yankton) hereby submits its response to the Prehearing Brief on Legal Issues of Petitioner Yankton Sioux Tribe filed by the Department of Environment and Natural Resources, Water Rights Program (DENR).

BACKGROUND

On April 30, 2015, the City of Lake Andes submitted Permit Application No. 8152-3 ("Application") to DENR for a new permit to appropriate water from the Dakota Formation for recreational use. On August 10, 2015, Yankton filed a Petition Opposing Permit Application No. 8152-3. On August 17, 2015, counsel for the City of Lake Andes sent a letter to the Chairman of the Yankton Sioux Tribe asserting that the City of Lake Andes owns and maintains the property at issue and offering to provide documentation accordingly. Counsel for Yankton attempted unsuccessfully to communicate with counsel for the City of Lake Andes to procure said documentation. On November 23, 2015, DENR submitted a Prehearing Brief on Legal Issues of Petitioner Yankton Sioux Tribe. A hearing in this matter has been scheduled for December 9, 2015.

ARGUMENTS

I. Ownership of the Lake Andes Lakebed

Because Yankton has now been informed by counsel for the City of Lake Andes that the planned project will not occur within the lakebed, Yankton no longer wishes to pursue this issue as it is irrelevant and Yankton withdraws this basis for its Petition. And we will seek to have that confirmed on the record at the hearing

II. The *Winters* Doctrine

Pursuant to the *Winters* Doctrine, established by the U.S. Supreme Court in *Winters v. United States*, 207 U.S. 564 (1908), water rights were impliedly reserved to tribes when the federal government established reservations. These rights are “effective as of the time the Indian Reservations were created.” *Arizona v. California*, 373 U.S. 546, 600 (1963). The quantity of water reserved by the establishment of a reservation is that “which is needed to fulfill the purposes for which the land was set aside.” Judith Royster, *Winters in the East: Tribal Reserved Rights to Water in Riparian States*, 25 Wm. & Mary Envtl. L. & Policy Rev. 169, 173 (Fall 2000), citing *Winters* at 576-77, *Arizona v. California* at 600. Indian reserved water rights in South Dakota thus generally pre-date, and are senior to, even the State’s water rights. For example, the Yankton Sioux Reservation was established by treaty in 1858, prior to South Dakota’s statehood which was granted in 1889. Thus, Yankton’s reserved water rights have priority over the State of South Dakota’s water rights and any other water rights established after 1858.

The Supreme Court has held that the implied reservation by the federal government of water rights, which includes *Winters* rights, does apply to groundwater. *Cappaert v. U.S.*, 426 U.S. 128, 143-44 (1976). In *Cappaert v. United States*, the U.S. Supreme Court “granted certiorari to consider the scope of the implied reservation of water rights doctrine.” *Id.* at 138. The Court explained that when the federal government withdraws land from the public domain and reserves it for a federal purpose, it impliedly reserves appurtenant water in a quantity sufficient to

accomplish the purpose of the reservation. *Id.* This doctrine of reserved water rights “applies to Indian reservations and other federal enclaves.” *Id.* Looking at the interrelatedness between groundwater and surface water as integral parts of the hydrologic cycle, the Court found that, “since the implied reservation of water rights doctrine is based on the necessity of water for the purpose of the federal reservation, we hold that the United States can protect its water from subsequent diversion, *whether the diversion is of surface or groundwater.*” *Id.* at 143 (emphasis added).

While it is true that no South Dakota court has yet ruled on the applicability of the *Winters* Doctrine applies to groundwater and there is a slight split of authority among state courts on this matter, the jurisprudential trend greatly favors inclusion of groundwater within a tribe’s *Winters* rights. *See, e.g., Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist. et al.*, No. EDCV 13-883-JGB, 2015 WL 1600065 (C.D. Cali. Mar. 20, 2015); *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 989 P.2d 739 (Ariz. 1999). Only one state court, the Wyoming Supreme Court, has held that the *Winters* Doctrine does not apply to groundwater. *See In re General Adjudication of All Rights to Use Water in the Big Horn River System*, 753 P.2d 76 (Wyo. 1988). Furthermore, no federal court has found the *Winters* Doctrine to be inapplicable to groundwater. *See, e.g., United States v. Washington Dep’t of Ecology*, 375 F. Supp. 2d 1050 (W.D. Wash. 2005). “With one exception, every court to address the issue agrees that *Winters* rights encompass groundwater resources, as well as surface water, appurtenant to reserved land.” *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist. et al.*, No. EDCV 13-883-JGB, 2015 WL 1600065, at 7 (C.D. Cali. Mar. 20, 2015) (citations omitted). Based on the overwhelming majority of case law that directly addresses the applicability of the *Winters* Doctrine to groundwater and the Supreme Court holding in *Cappaert* which

encompasses *Winters* rights, it is clear that *Winters* rights extend to groundwater. Because the Tribe holds superior water rights in the water at issue, the Tribe requests that the Water Management Board recognize and acknowledge the Tribe's rights in any permit that may be issued with assurances that said rights will be protected. The Tribe reserves the right and intends to submit proposed findings of fact and conclusions of law following the hearing in this matter.

Dated this 8th day of December, 2015.



Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

CERTIFICATE OF SERVICE

I certify that on this 8th day of December, 2015, a true and correct copy of RESPONSE TO PREHEARING BRIEF AND PROPOSED FINDINGS was filed with the Chief Engineer and served upon the City of Lake Andes via U.S. Certified Mail as addressed below:

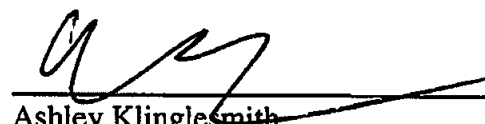
City of Lake Andes
Debbra Houseman
Finance Officer
PO Box 783
Lake Andes SD 57356

Pamela Hein
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Lake Andes, SD 57356
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Chief Engineer
Water Rights Program
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Pierre, SD 57501

Timothy R. Whalen
Whalen Law Office, P.C.
P.O. Box 127
Lake Andes, SD 57356-0127
Fax: (605) 773-4068
Email: DENRINTERNET@state.sd.us



Ashley Klinglesmith
Legal Assistant

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	ORDER DENYING REQUEST
PERMIT APPLICATION No. 8152-3,	)	FOR CONTINUANCE OF
CITY OF LAKE ANDES	)	DECEMBER 9, 2015 HEARING

On December 2, 2015, Petitioner Yankton Sioux Tribe filed a Request for Continuance of December 9, 2015 Hearing. The stated purpose for the continuance was to provide additional time to seek an amicable resolution of this matter.

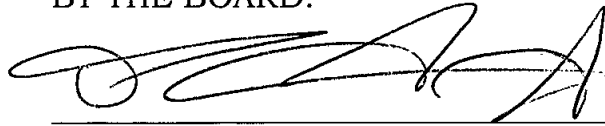
Applicant City of Lake Andes submitted a Resistance to Request for Continuance on December 3, 2015. The Applicant claimed it would be prejudiced by a continuance because the Applicant's federal 404 permit was effective for a limited amount of time.

This matter came on for telephonic hearing before the Prehearing Chairman, Rodney Freeman, at 11:30 CDT on December 7, 2015. Telephonically present at the hearing were Rodney Freeman, Prehearing Chairman; Thomasina Real Bird, counsel for Yankton Sioux Tribe; Pamela Heins, counsel for City of Lake Andes; Cheri McComsey Wittler, court reporter; Ann Mines Bailey, counsel for the Water Rights Program; Jeanne Goodman, Chief Engineer; Eric Gronlund, Water Rights Program; and Matt Naasz, counsel for the Water Management Board.

After reviewing the submissions of the parties and hearing oral argument from the parties on Petitioner's Request for Continuance of December 9, 2015 Hearing, said Request is hereby denied.

Dated this 9th day of December, 2015

BY THE BOARD:

A handwritten signature in black ink, appearing to read 'Rodney Freeman', written over a horizontal line.

Rodney Freeman
Prehearing Chairman, South Dakota
Water Management Board

EXCERPT OF DECEMBER 9, 2015, MINUTES OF THE
WATER MANAGEMENT BOARD MEETING
REGARDING WATER PERMIT APPLICATION
NO. 8152-3, CITY OF LAKE ANDES

PROVIDES FOR THE RECORD THE STIPULATION OF
THE PARTIES.

aquifer. The chief engineer recommended deferral on the application. In March 2013 the application was deferred by the board until an aquifer pump test could be conducted. In that period of time, Mr. Gatzke has searched for water in that area. In September 2015, Mr. Gatzke stated he was not able to find a sufficient water source and requested that his application be withdrawn.

Mr. Gronlund stated DENR is recommending the board accept the withdrawal of the application and that it does not prevent Mr. Gatzke from applying in the future.

Motion to approve the request for withdrawal by Freeman, seconded by Bjork. Motion carried unanimously.

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND FINAL DECISION ON WATER PERMIT APPLICATION NO. 2730-2, UNITED ORDER OF SOUTH DAKOTA:

Mr. Naasz stated the proposed rules on the parties' submissions were prepared.

Mr. Hutmacher stated he will abstain from voting on this matter, as he was absent for that portion of the meeting.

Motion to adopt the proposed rulings on the parties' submissions and authorize the current board chairman to execute the rulings by Freeman, seconded by Hoyt. Bjork, Comes, Hoyt, Dixon, and Freeman voted in favor of the motion. Holzbauer voted against the motion. Hutmacher abstained. Motion carried unanimously.

Motion to adopt Findings of Fact, Conclusions of Law, and Final Decision and authorize the current board chairman to execute the findings by Freeman, seconded by Comes. Bjork, Comes, Hoyt, Dixon, and Freeman voted in favor of the motion. Holzbauer voted against the motion. Hutmacher abstained. Motion carried unanimously.

WATER PERMIT APPLICATION NO. 8152-3, LAKE ANDES:

Mr. Holzbauer recused himself from this matter.

Mr. Naasz stated what was previously provided to the board in this matter.

Ms. Mines-Bailey stated the parties have reached an agreement that would end the need for a hearing, if the board also agrees. The parties agree that there is unappropriated water available to fulfill this application; there is no unlawful impairment to any existing right; and the proposed use of this application is both beneficial and in the public interest. The Yankton Sioux Tribe had filed a petition to intervene. The Tribe is concerned that the well site was on the Lake Andes lake bed. However, further examination of the map and discussion shows it is not on the lake bed. For that reason the Yankton Sioux Tribe will be withdrawing their objection.

Water Management Board
December 9, 2015 – Meeting Minutes

Ms. Mines-Bailey read the agreement and stipulations to the board that have been agreed upon by all parties.

Ms. Mines-Bailey stated it is being proposed that a copy of the board minutes be included in the permit file and that no separate findings of fact be drafted or submitted.

Ms. Realbird, counsel for the Yankton Sioux Tribe, stated the tribe does agree with the language proposed by Ms. Mines-Bailey.

Pam Hein, counsel for Lake Andes, stated they also agree with the language proposed by Ms. Mines-Bailey.

Mr. Naasz stated it is important to note, the board has in the past entered conclusions of law that are similar to the language in the stipulation.

All parties agreed that Findings of Facts would be waived.

Motion to accept the stipulation of the parties and grant Water Permit Application No. 8152-3 including that the stipulation and statement be included in minutes and the minutes be placed in the permit file by Freeman, seconded by Bjork. Motion carried unanimously.

STIPULATIONS:

The Winters Doctrine provides that the priority date for the determination of whether tribes have surface water rights is the creation of the reservation. *Winters v. United States* 207 US 564 (1908).

There is a split of authority as to whether the Winters Doctrine applies to ground water. In *re* General Adjudication of All Rights to Use Water of Gila River System, 989 P2d 739 (Ariz. 1999); In *re* general Adjudication of All Rights to Use Water in the Big Horn River System, 753 P2d 76 (Wyo. 1988). The Supreme Court of Arizona has held that the Winters Doctrine does apply to ground water while the Supreme Court of Wyoming has declined to so hold.

The United States Supreme Court has had more than one opportunity to hear the issue and apply the Winters Doctrine to ground water rights of Indian tribes but has failed to do so. *U.S. v. Cappaert*, 426 US 128 (1976) (affirming the Ninth Circuit but declining to fully endorse the statement of the Ninth Circuit applying the Winters Doctrine to ground water); *Wyoming v. U.S.*, 492 US 406 (1989).

The Supreme Court of South Dakota has not addressed the issue of whether the Winters Doctrine applies to ground water.

Until a court of competent jurisdiction or settlement agreement determines that the Yankton Sioux Tribe has Winters Doctrine rights that apply to ground water and until such time as those rights are quantified, the Chief Engineer and the Water Management Board are unable to determine the extent to which the Yankton Sioux Tribe has rights to the Dakota aquifer that would be superior rights to this permit.

If a court of competent jurisdiction or settlement agreement determines that the Winter Doctrine applies to groundwater claims of the Yankton Sioux Tribe and if those rights are quantified, the Yankton Sioux Tribe's priority date for its rights most likely would date back to the treaty establishing the Yankton Sioux Tribe's reservation. This Board does not purport to adjudicate the question of whether the Yankton Sioux Reservation's diminished status would affect the quantification of the Winters rights. Such a right, if any, would be senior in priority to the present application.

WATER PERMIT APPLICATION NO. 8165-3, TODD SWENSON:

Mr. Naasz stated what has was previously provided to the board in this matter.

Appearances:

Ray Rylance, appearing on behalf of Orth Brothers and Jon Jones, who petitioners.

Ivan Kupfmann, appearing on his own behalf.

Tim Bottom, appearing on behalf of Todd Swenson.

Ann Mines-Bailey on behalf of the chief engineer and the Water Rights Program.

Ms. Mines-Bailey stated it is DENR's understanding is that Mr. Swenson and the interveners have reached an agreement and have entered into a stipulation that will be a part of the record. All parties do request that the board grant the permit.

Mr. Bottom and Mr. Rylance stated they agree with Ms. Mines-Bailey.

Mr. Rylance stated Mr. Bottom and himself have put together a stipulation on behalf of their clients. The stipulation would be an addition to the recommendations of the Chief Engineer, in the letter dated July 24, 2015. The stipulation will read:

"All production wells for Water Permit No. 8165-3, shall be located a minimum of one-eighth of a mile in any direction from the top of the bank next to Sand Creek."

Ms. Mines-Bailey stated the opposition to the application was based on fears that pumping the aquifer at these well sites would diminish the flow in Sand Creek. Drawdown calculations were taken regarding the proposed well site and it was



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

FEB 03 2016

City of Lake Andes
Debbra Houseman
PO Box 783
Lake Andes SD 57356

Dear Ms. Houseman:

Enclosed is Water Permit No. 8152-3 authorizing construction of the 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