WATER PERMIT NO. 8268-3

Name of Applicant: **Lenny Peterson**

Address: **19111 Maple Ave, Hitchcock SD 57348** Phone: **605 354-4602**

Amount of Water Claimed: **2.67 cfs** Total Acres: **450**

Source of Water Supply: **Turtle Creek**

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

Type of Waste Disposal System:

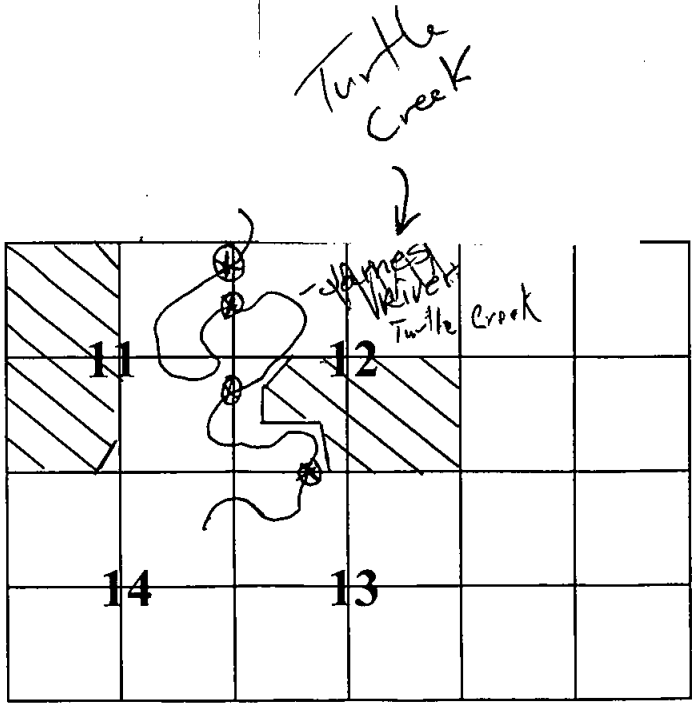
Location: **6 miles northwest of Tulare**

PRIORITY Date Received: **3-1-17** Application/License Fee: **$ 1550**

Corrected Application Received: Period of Annual Use: **May 1 – August 31**

Remarks:

Diversion Point: **between NE 1/4 NW 1/4 Sec 11 and S 1/2 SW 1/4 Sec 12; all in T115N-R65W**



Land to be Irrigated: **W 1/2 Sec 11 and S 1/2 Sec 12; all in T115N-R65W**

Depth of Well: **NA**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by: **Eric Gronlund**

Reviewed and the Number Assigned on: **2-6-17** By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SD EForm - 0499LD V5

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

Mail to:	(office use only) No. 8268-3 Hydrologic Unit 10160009
DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	Basin James River Newspaper Redfield Press Plainsman

RECEIVED
MAR - 1 2017
WATER RIGHTS PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: ☒ **New** ☐ **Vested Right** (Use predates Mar 2, 1955) ☐ **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 Irrigation Permit Lenny Peterson

Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.

Mailing Address 19111 Maple Avenue (Address) Hitchcock (City) SD (State) 57348 (Zip Code)

Phone 605 266-2793 Mobile 605 354-4602 Email _____

2. Amount of water claimed 2.67 *CFS or 1200 **GPM _____ ***AF Total Acreage 450
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Turtle Creek

4. Location of point of diversion point between NE1/4 NW 1/4 Section 11 and S 1/2 SW 1/4 Section 12; all in
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
T115N, R65W on property owned by applicant County Spink

5. County or counties where water will be used Spink

6. Annual period during which water is to be used May 1 - August 31

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

Land Description	Acres	Land Description	Acres
NW 1/4 Section 11, T115N, R65W	150	S 1/2 Section 12, T115N, R65W	150
SW 1/4 Section 11, T115N, R65W	150		

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

Develop irrigation on land. Will manage irrigation on a rotational basis. Based on up to three months of pumping the annual volume of water diverted each year will not exceed 300 acre feet of water which equates to a average application rate of 8.0 inches of water to the 450 acres. No dam will be constructed in Turtle Creek.

I, Lenny Peterson _____, the applicant, certify under
Name of Person Title (if applicable)
penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

2015-10

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

SOUTH DAKOTA
WATER PERMIT NO. 8268-3 FOR IRRIGATION

Date of first receipt of application March 1, 2017.

The Water Management Board approved Water Permit No. 8268-3 on December 7, 2017 for Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 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. 8268-3 appropriates 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W.

2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation.

3. The date from which applicant may claim right is March 1, 2017.

4. One-fifth of the construction is to be completed on or before June 7, 2020.

5. All construction is to be completed on or before December 7, 2022.

6. Water is to be put to beneficial use on or before December 7, 2026.

7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:
   a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b) Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c) Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d) Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

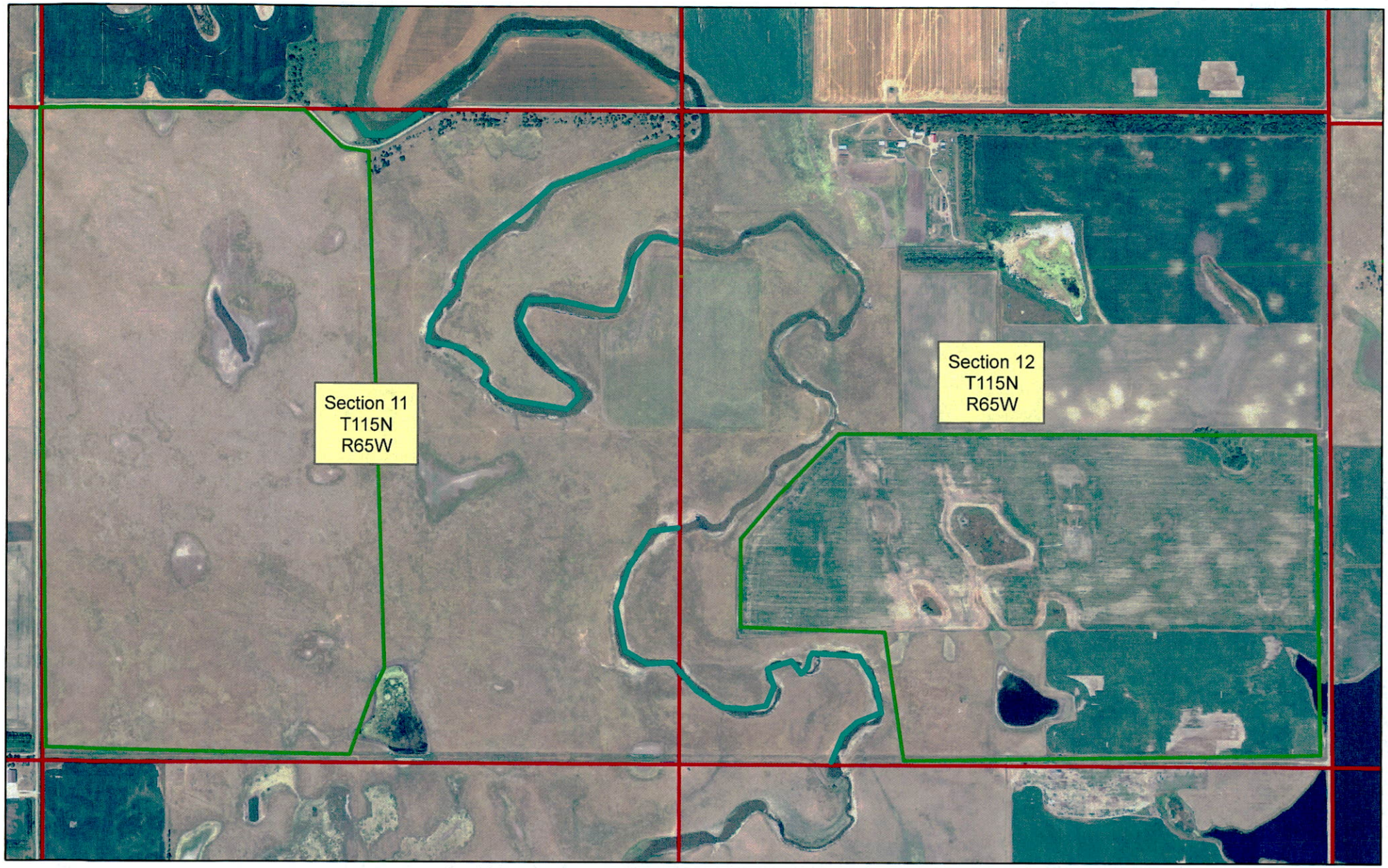
WATER MANAGEMENT BOARD

By: Jeanne Goodman

DEC 29 2017
date

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

WATER PERMIT APPLICATION FOR LENNY PETERSON



Eric Gronlund
Water Rights Program
based on representation by Lenny
& Mitch Peterson

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 3/1, 20 17

RECEIVED OF Lenny Peterson 19111 Maple Ave Hitchcock SD 57348

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

Fee for Application for Permit No. 8268-3 to Appropriate Water, to construct and to put water to beneficial use	1350	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. _____		
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	1350	00

No. 08189

By Jeanne Goodmon
Chief Engineer

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Lenny Peterson

ADDRESS: 19111 Maple Avenue, Hitchcock SD COUNTY: Spink County

DATE: March 1, 2017 TELEPHONE:

RE: licensing fee

At the March 1st hearing before the Water Management Board, Ray Rylance on behalf of Lenny Peterson withdrew Application No. 8229-3 from consideration. This withdrawn application proposed an in-channel dam on Turtle Creek, diversion of 5.34 cfs for irrigation of 405 acres.

No refund of the application filing fee is warranted. However, the $200 licensing fee is refundable.

After the meeting, Lenny and Mitch Peterson came to my office and filed a different version of the application from Turtle Creek. The new application does not request and in-channel dam, reduces the diversion rate to 2.67 cfs, increases the number of acres to a total of 450 acres and limit the annual volume diverted to 300 acre feet of water which equates on average to 8 inches per acres. In filing the application, Mr. Peterson paid the application filing fee of $1,350. We applied the $200 licensing fee from No. 8229-3 to this application filed March 1, 2017.

NAME: Eric Tunheim

REPORT ON WATER PERMIT APPLICATION NO. 8268-3
Lenny Peterson
April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.

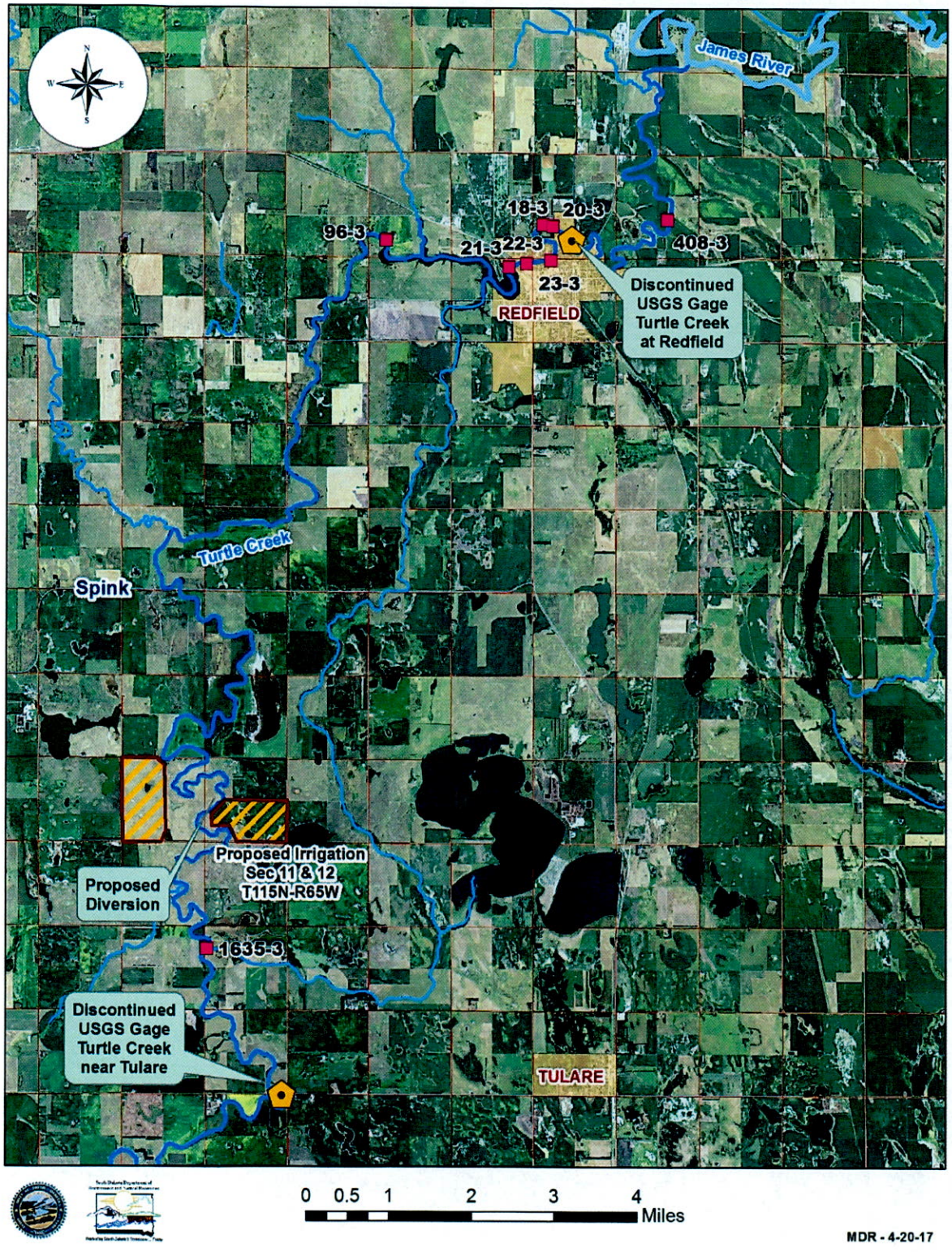


Figure 1. Area Map for Application No. 8268-3, Lenny Peterson.

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

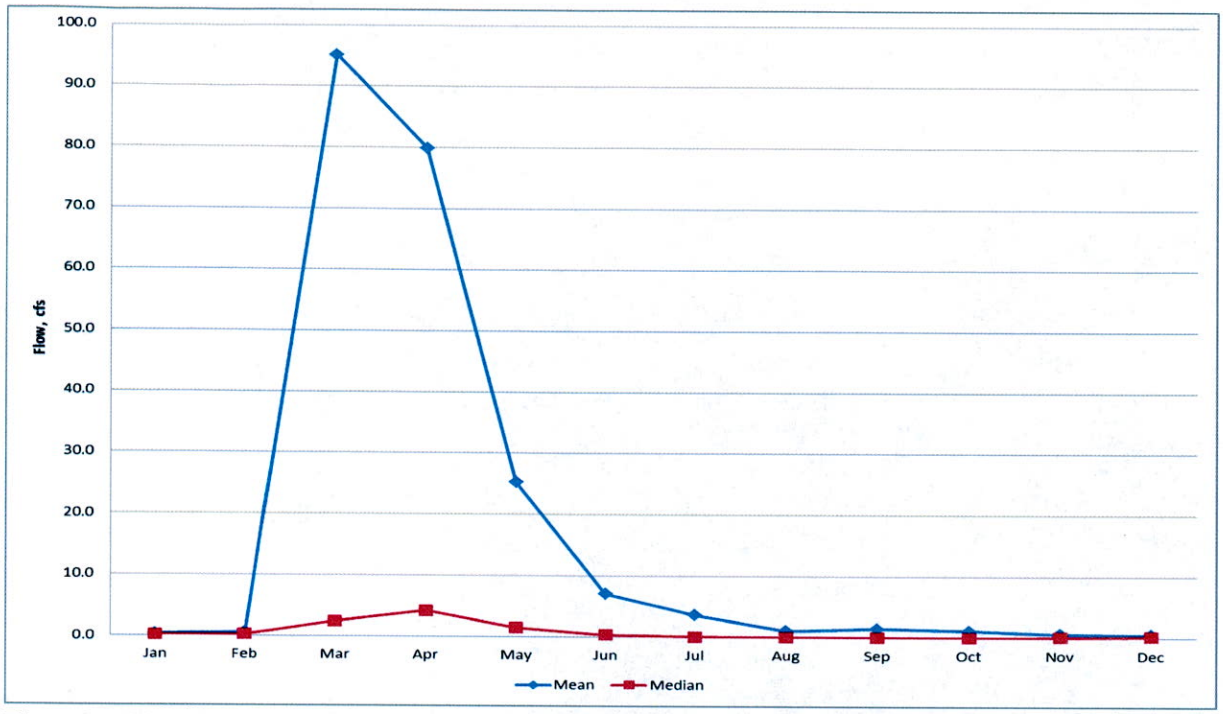


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD; Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

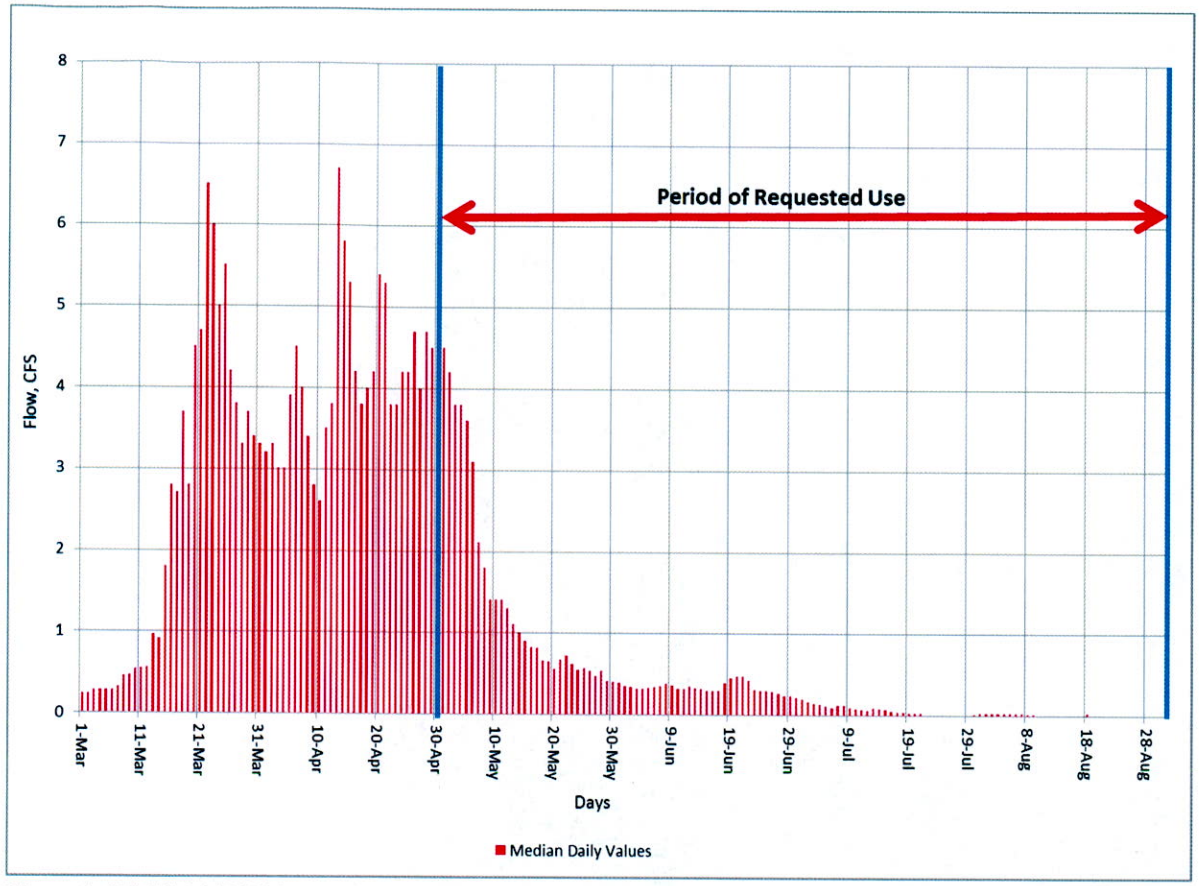


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970, (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi^2, which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

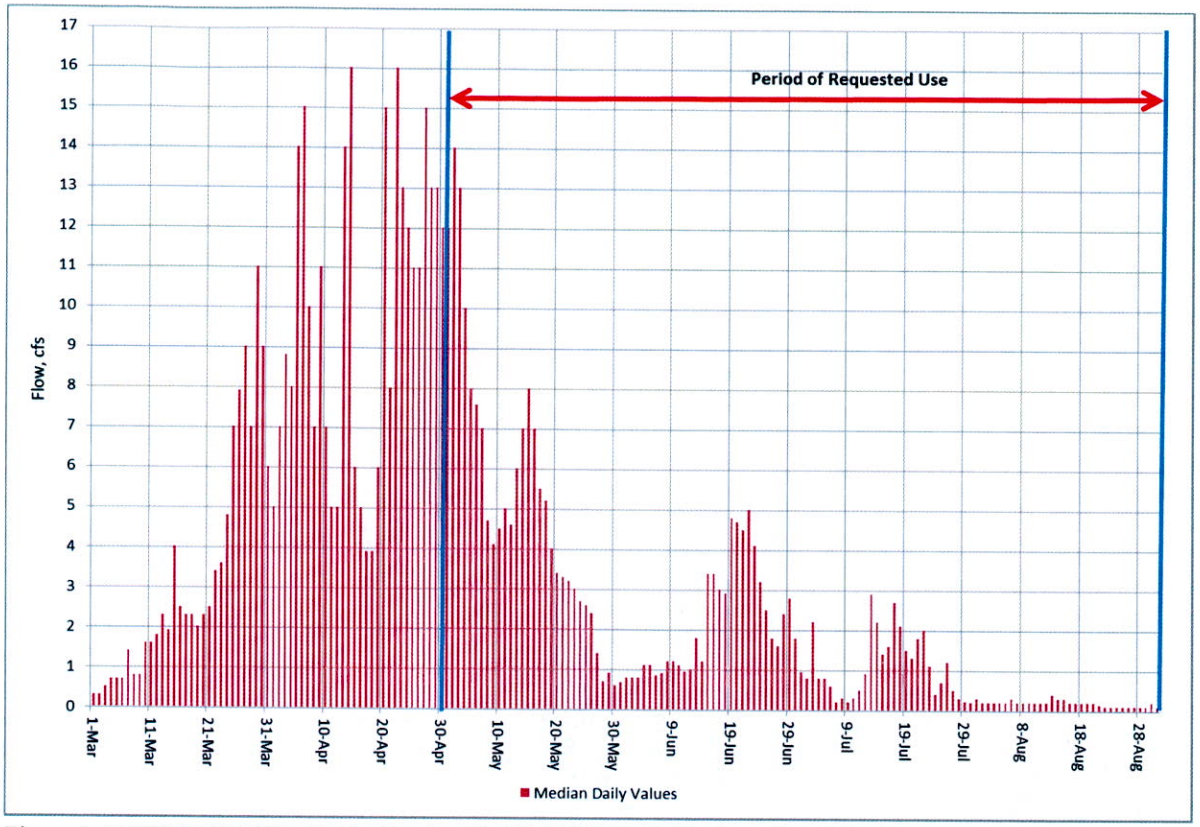


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi^2.

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

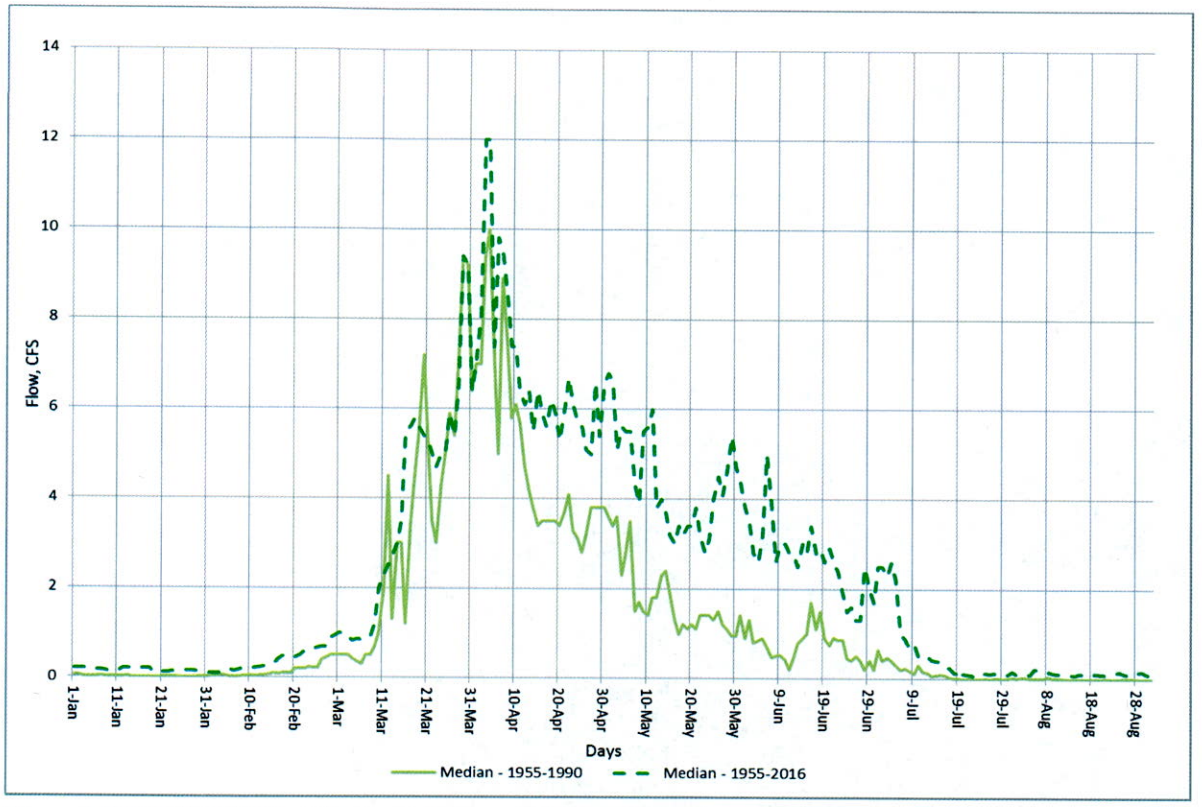


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi^2.

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

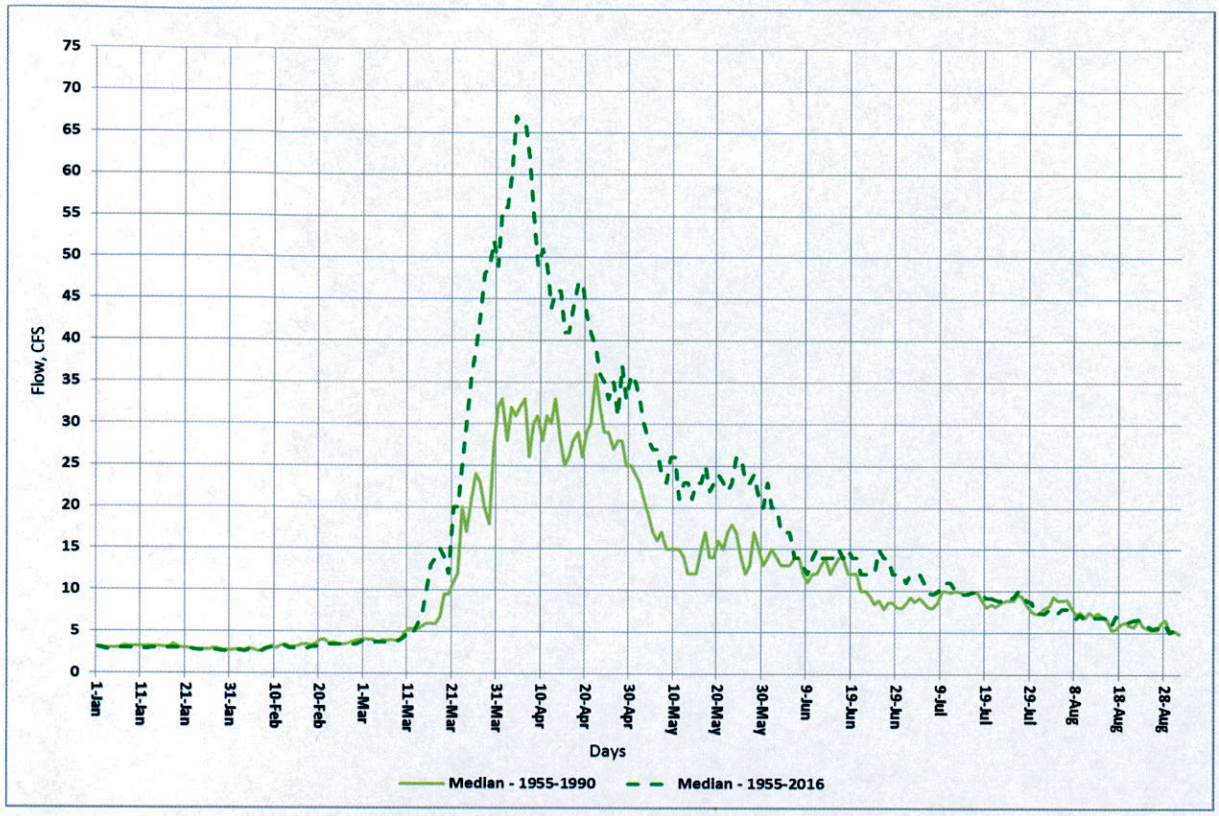


Figure 6. USGS 06471500 – Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi^2.

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

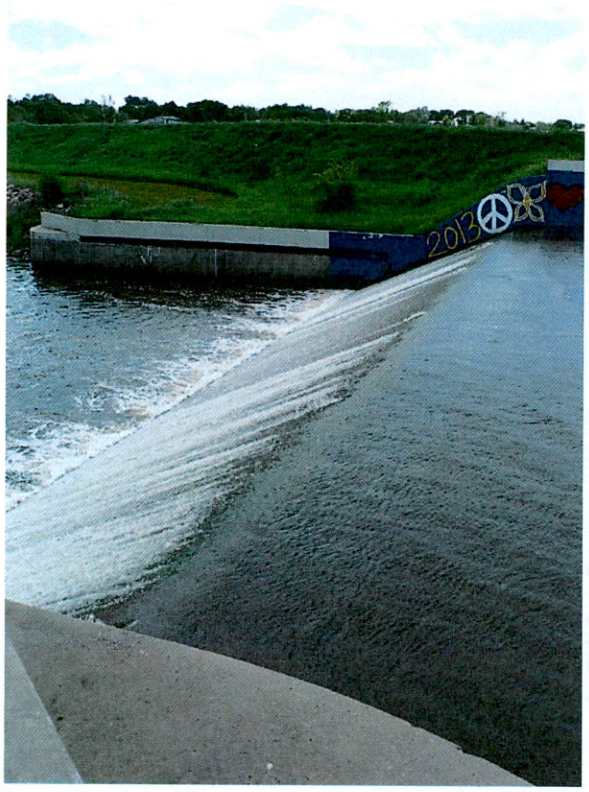
Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.





Figures 7 & 8. Spillway on Redfield Dam located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

   Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Mark D. Rath
Natural Resources Engineer III

References

1. Norton, P. A., Anderson, M.,and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.

2. Water Rights. 2017. Water Right/Permit Files, 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

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8268-3, Lenny Peterson

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. 8268-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications as to when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use until June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

    a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
    b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
    c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
    d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
May 1, 2017

Gronlund, Eric

From: Gronlund, Eric
Sent: Tuesday, May 02, 2017 1:15 PM
To: Ray Rylance; Mines, Ann
Subject: Lenny Peterson water permit application
Attachments: 8268-3report.pdf; 8268-3recommendation.pdf

Mr. Rylance:

Attached is the report and recommendation on Lenny Peterson's application to appropriate water from Turtle Creek for irrigation.

If acceptable to Mr. Peterson and yourself, DENR plans to wait to public notice the application until after the Water Management Board meets on May 11th. At the upcoming meeting the Board will formally set the July meeting date. The tentative date is currently July 12 – 13.

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

Gronlund, Eric

From: Gronlund, Eric
Sent: Wednesday, May 24, 2017 1:58 PM
To: kpeterson@venturecomm.net; Ray Rylance
Subject: Water Permit Application No. 8268-3, Lenny Peterson
Attachments: 8268-3letter&publicnotice.pdf; 8268-3report.pdf; 8268-3recommendation.pdf

Mr. Peterson & Mr. Rylance:

Water Permit Application No. 8268-3 is being sent out for public notice scheduling a hearing before the Water Management Board on Thursday, July 13th. DENR will send the public notice electronically to the two newspapers. Attached is the cover letter with public notice. Also attached is DENR's staff report and the Chief Engineer's recommendation. These attachments is also being sent to each of you by the US Postal Service. The applicant will need to contact the newspapers listed in the public notice to authorize publication and arrange for payment if you want to proceed with publishing the notice.

Please let me know if you have any questions.

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

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.

May 24, 2017

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Water Permit Application No. 8268-3 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Redfield Press printed at Redfield SD (Ph # 605-472-0822) and the Plainsman printed at Huron SD (Ph # 605-353-7401). 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
cc: Ray Rylance, Wiles & Rylance, 3 E Kemp Ave, Ste 200, Watertown SD 57201

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

Instruction to Newspaper – Publish the Notice on May 31, 2017. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 8268-3 to Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest.

The Chief Engineer's recommendation with qualifications, the application, and staff report are available at http://denr.sd.gov/public or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:00 a.m. on July 13, 2017 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on facts at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 30, 2017.

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

The July 13, 2017 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 June 30, 2017. 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.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 12, 2017. 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, May 24, 2017 2:41 PM
To: 'office.redpress@midconetwork.com' (office.redpress@midconetwork.com)
Subject: 8268-3, Lenny Peterson
Attachments: 8268-3public.wmb1.docx; FORM8.FRM.doc

Attached is a notice to be published on May 31, 2017.

Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 (605 266-2793 or cell 605 354-4602) 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 to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

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

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, May 24, 2017 2:40 PM
To: Ruby Crandall (rnewman.plainsman@midconetwork.com)
Subject: 8268-3, Lenny Peterson
Attachments: 8268-3public.wmb1.docx; FORM8.FRM.doc

Attached is a notice to be published on May 31, 2017.

Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 (605 266-2793 or cell 605 354-4602) 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 to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

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

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352



RECEIVED
JUN 12 2017
WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, *Mark E. Davis,* of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#2442 HEARING NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on May 31st, 2017, that Fifty-six and .77/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, 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.

Subscribed and sworn to before me this 31st day of May, 2017.

DEBORAH LEESCH
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA

Notary Public, South Dakota

My commission expires 10/09/2019

Hearing Notice

#2442

NOTICE OF HEARING on Application No. 8268-3 to Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest.

The Chief Engineer's recommendation with qualifications, the application, and staff report are available at http://denr.sd.gov/public or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:00 a.m. on July 13, 2017 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on facts at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 30, 2017.

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

The July 13, 2017 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 June 30, 2017. 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.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 12, 2017. 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; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02; 74:02:01:35.01.

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

Published once at the total approximate cost of $56.77. (May 31)

RECEIVED
JUN - 8 2017
WATER RIGHTS PROGRAM

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss

I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL & NAT. #3090 WATER RIGHTS

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 31ST **Day MAY 2017.** That the full amount of the fee charged for publishing **FIFTY-NINE & 66/100** dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

Subscribed and sworn to me before this **5th Day of JUNE 2017.**

Notary Public, South Dakota

My term expires 03/11/2022
Legal #3090

F.P. 05-31-17

NOTICE OF HEARING on Application No. 8268-3 to Appropriate Water

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The Water Management Board will consider this application at 9:00 a.m. on July 13, 2017 in the Matthew Training Center, Joe Foss Bldg,523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on facts at the public hearing.

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State Supreme Court as provided by law.

The July 13, 2017 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 June 30, 2017. 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.

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Steven M. Pirner
Secretary
Department of
Environment and
Natural Resources
No. 3090 (adv.)

Published once at the total approximate cost of $59.66.

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Kimberly A Dorsett & Jack H Hieb
Richardson Wyly Wise Sauk & Hieb LLP
PO Box 1030
Aberdeen SD 57401

Dear Ms. Dorsett & Mr. Hieb:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

The application, DENR's staff report and the Chief Engineer's recommendation can be found on-line under pending applications at: http://denr.sd.gov/des/wr/pubnotice.aspx. If you are unable to download on-line, please contact DENR at (605) 773-3352 to request a copy.

This public notice is sent as a courtesy since you were a party of record to a recent application that was withdrawn seeking to appropriate water from Turtle Creek. Please understand this is a new application and a new petition will need to be filed if you wish to participate in the hearing.

Sincerely,

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

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Shawn & Karla Chase
38272 W 10th Ave
Redfield SD 57469-6624

Dear Mr. & Mrs. Chase:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

The application, DENR's staff report and the Chief Engineer's recommendation can be found on-line under pending applications at: http://denr.sd.gov/des/wr/pubnotice.aspx. If you are unable to download on-line, please contact DENR at (605) 773-3352 to request a copy.

This public notice is sent as a courtesy since you were a party of record to a recent application that was withdrawn seeking to appropriate water from Turtle Creek. Please understand this is a new application and a new petition will need to be filed if you wish to participate in the hearing.

Sincerely,

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

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Devin & Toni Glass
415 W 4th Ave
Redfield SD 57469

Dear Mr. & Mrs. Glass:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

The application, DENR's staff report and the Chief Engineer's recommendation can be found on-line under pending applications at: http://denr.sd.gov/des/wr/pubnotice.aspx. If you are unable to download on-line, please contact DENR at (605) 773-3352 to request a copy.

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Sincerely,

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

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Bill & Jane Newton
902 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Newton:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

The application, DENR's staff report and the Chief Engineer's recommendation can be found on-line under pending applications at: http://denr.sd.gov/des/wr/pubnotice.aspx. If you are unable to download on-line, please contact DENR at (605) 773-3352 to request a copy.

This public notice is sent as a courtesy since you were a party of record to a recent application that was withdrawn seeking to appropriate water from Turtle Creek. Please understand this is a new application and a new petition will need to be filed if you wish to participate in the hearing.

Sincerely,

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

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Robert & Connie Tiff
PO Box 596
Redfield SD 57469

Dear Mr. & Mrs. Tiff:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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Sincerely,

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

enclosure

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Kandi Shantz
232 E 1st St
Redfield SD 57469

Dear Ms. Shantz:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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605 773-3352
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DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Edwin Hackett
504 W 10th Ave
Redfield SD 57469

Dear Mr. Hackett:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

John Solheim
501 W 4th Ave
Redfield SD 57469

Dear Mr. Solheim:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Mary Ann Schone
527 W 4th Ave
Redfield SD 57469

Dear Ms. Schone:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Douglas & Diane Dangel
823 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Dangel:

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

denr.sd.gov

May 30, 2017

Jeannine Anderson
818 W 5th St
Redfield SD 57469

Dear Ms. Anderson:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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605 773-3352
eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Dale & Connie Fiedler
903 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Fiedler:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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605 773-3352
eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Scott & Diane Forgey
810 W 5th St
Redfield SD 57469

Dear Mr. 7 Mrs. Forgey:

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605 773-3352
eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Mavis McFarlane
906 W 5th St
Redfield SD 57469

Dear Ms. McFarlane:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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605 773-3352
eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

John Ell
814 W 5th St
Redfield SD 57469

Dear Mr. Ell:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Michele Harms
1006 Lakeshore Dr
Redfield SD 57469

Dear Ms. Harms:

Enclosed is a public notice for Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. The public notice is to be published Wednesday, May 31, 2017, in the Redfield Press and the Plainsman.

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605 773-3352
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enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Dan Esser
Esser Farms
16774 379th Ave
Redfield SD 57469

Dear Mr. Esser:

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eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Paul & Lisa Cosato
900 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Cosato:

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eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Dennis & Mary Stewart
911 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Stewart:

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605 773-3352
eric.gronlund@state.sd.us

enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Perry Schmidt
38221 174th St
Redfield SD 57469

Dear Mr. Schmidt:

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enclosure

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

May 30, 2017

Patrick & Marti Thelen
904 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Thelen:

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

denr.sd.gov

May 30, 2017

Larry Eldeen
3035 Meadow Dr
Redfield SD 57469

Dear Mr. Eldeen:

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

denr.sd.gov

May 30, 2017

Earl & Sheila Sprague
925 W 5th St
Redfield SD 57469

Dear Mr. & Mrs. Sprague:

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

denr.sd.gov

May 30, 2017

Brian Schone
38507 181st St
Tulare SD 57467

Dear Mr. Schone:

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

denr.sd.gov

May 30, 2017

Joe & Karen Jungwirth
38442 10th Ave W
Redfield SD 57469

Dear Mr. & Mrs. Jungwirth:

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eric.gronlund@state.sd.us

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

denr.sd.gov

May 30, 2017

Joan B Eaton
407 W 4th Ave
Redfield SD 57469

Dear Ms. Eaton:

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eric.gronlund@state.sd.us

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

May 30, 2017

Steve & Deb Erb
508 W 10th Ave
Redfield SD 57469

Dear Mr. & Mrs. Erb:

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

enclosure

LAW OFFICES
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP
ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SOUTH DAKOTA
57402-1030

RECEIVED
JUN - 9 2017
WATER RIGHTS
PROGRAM

ROY A. WISE
WILLIAM K. SAUCK, JR.
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER

E-MAIL: kdorsett@rwwsh.com

DWIGHT CAMPBELL (1887 - 1964)
STANLEY R. VOAS (1909 -1972)
JAMES A. WYLY (1939 - 2009)
LLOYD C. RICHARDSON, JR. (1924 - 2012)
RICHARD L. RUSSMAN (1967 - 2014)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

June 7, 2017

VIA E-MAIL AND
FIRST-CLASS MAIL:
(denrinternet@state.sd.us)

Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

Ms. Jeanne Goodman, Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

Dear Mr. Gronland and Ms. Goodman:

Re: Permit Application #8268-3; Lenny Peterson

Enclosed please find a copy of the following:

1. Notice of Appearance;

2. Petition to Intervene and Oppose Application to Appropriate Water; and

3. Request for Automatic Delay.

These documents have also been served upon the applicant by mail through his attorney of record.

Sincerely,

Kimberly A. Dorsett

KAD/kkt
Enclosures

STATE OF SOUTH DAKOTA WATER MANAGEMENT BOARD

PERMIT APPLICATION #8268-3 LENNY PETERSON	**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that Kimberly A. Dorsett and Jack H. Hieb, of Richardson, Wyly, Wise, Sauck & Hieb, LLP, One Court Street, Post Office Box 1030, Aberdeen, South Dakota 57402-1030, do hereby appear as counsel of record for and on behalf of the City of Redfield, as it pertains to the above-entitled application.

Dated this 7th day of June, 2017

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

By _____

By _____

Attorneys for City of Redfield

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

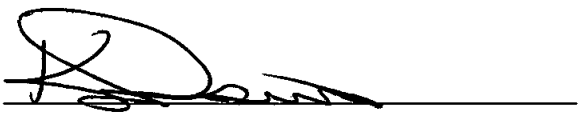
CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the City of Redfield, hereby certifies that on the 7th day of June, 2017m a true and correct copy of **NOTICE OF APPEARANCE** sent by first-class mail and by electronic mailto:

rdr@wilesandrylance.com
Mr. Raymond D. Rylance
Wiles & Rylance, LLP
Attorneys at Law
Post Office Box 227
Watertown, SD 57201-0227

DENRINTERNET@state.sd.us
Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

DENRINTERNET@state.sd.us
Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182



STATE OF SOUTH DAKOTA WATER MANAGEMENT BOARD

PERMIT APPLICATION #8268-3 LENNY PETERSON	**PETITION TO INTERVENE AND OPPOSE APPLICATION TO APPROPRIATE WATER**

The City of Redfield, by and through its attorneys of record, Kimberly A. Dorsett and Jack H. Hieb, of Richardson, Wyly, Wise, Sauck & Hieb, LLP, Aberdeen, South Dakota, hereby file this Petition opposing the application to appropriate water, Application No. 8268-3, filed by Lenny Peterson, except and unless such appropriation is conducted in strict compliance with the Recommendation of Chief Engineer for Water Permit submitted by Chief Engineer Jeanne Goodman, dated May 1, 2017. Any alteration may be opposed by the City of Redfield upon the grounds that the City of Redfield and its residents may be adversely affected, and are persons with senior, existing downstream rights to said water.

Dated this 7th day of June, 2017.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

By _____

By _____

Attorneys for City of Redfield

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the City of Redfield, hereby certifies that on the 7th day of June, 2017, a true and correct copy of **PETITION TO INTERVENE AND OPPOSE APPLICATION TO APPROPRIATE WATER** was sent by first-class mail and by electronic mail to:

rdr@wilesandrylance.com
Mr. Raymond D. Rylance
Wiles & Rylance, LLP
Attorneys at Law
Post Office Box 227
Watertown, SD 57201-0227

DENRINTERNET@state.sd.us
Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

DENRINTERNET@state.sd.us
Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182



STATE OF SOUTH DAKOTA WATER MANAGEMENT BOARD

PERMIT APPLICATION #8268-3 LENNY PETERSON	**REQUEST FOR AUTOMATIC DELAY**

The City of Redfield, by and through their attorneys of record, Kimberly A. Dorsett and Jack H. Hieb, hereby make this request for an automatic delay of the hearing on this matter filed by Lenny Peterson, which is currently scheduled to be heard before the Water Management Board on July 13, 2017, at 9:00 o'clock a.m.

Dated this 7th day of June, 2017.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

By _____

By _____

Attorneys for City of Redfield

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the City of Redfield, hereby certifies that on the 7th day of June, 2017, a true and correct copy of **REQUEST FOR AUTOMATIC DELAY** was sent mby first-class mail and by electronic mail (11:30 a.m.) to:

rdr@wilesandrylance.com
Mr. Raymond D. Rylance
Wiles & Rylance, LLP
Attorneys at Law
Post Office Box 227
Watertown, SD 57201-0227

DENRINTERNET@state.sd.us
Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

DENRINTERNET@state.sd.us
Ms. Jeanne Goodman
Chief Engineer
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182



SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

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WATER RIGHTS
PROGRAM

June 12, 2017

Jeanne Goodman
Water Rights Program
Foss Building
523 East Capitol Ave
Pierre, SD 57501

Re: Water Right Application No. 8268-3
Lenny Peterson - Turtle Creek

Dear Ms. Goodman:

This letter is to inform you of the South Dakota Department of Game, Fish, and Parks intent to request party status in the above referenced water right application. At this time, we are neither in support nor opposition to this application, but are requesting party status due to the Department's ongoing interests concerning water rights in the area.

If you have any questions, please contact me at (605) 773-4508.

Sincerely,

John Lott
Aquatic Section Chief

Cc: Lenny Petersen

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Patrick & Marti Thelen
904 West 5th St
Redfield, SD 57469

Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

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

RE: Water App#82683 Lenny Peterson

We are against the water rights usage as Redfield Lake needs the current amount of flow through the lake and over the Redfield Lake dam to keep it from having algae and turning green. With all the cattle and chemical runoff off up stream of Redfield Lake the lake needs to have as much flow as possible. The new application increases the acres from 405 to 450. The last application was denied and this application, with the additional acres added, should also be declined. The land that the water rights are being applied for was just recently purchased and was purchased without water rights. Mr. Peterson knew of the land and the lands needs when he purchased it. Please do not stop the flow of Redfield Lake water from Turtle Creek so Mr. Peterson can increase the value of his land at the cost of Redfield Lake water quality and depth. Especially in a dry year, like 2017, water is a valuable resource and shouldn't be given to an individual when a community needs the water to keep its recreation area usable.

Thank You,

Patrick & Martia Thelen

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June 14-2017

Dear Sirs

You have the right address, but wrong name. My name is Eldwin Haskell not Edwin Hackett.

I am against Lenny Petersen getting a water permit to take 2.67 cubic feet of water per second from Twelve Creek. This would affect home.

Eldwin Haskell

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6-15-17

Chief of Engineer
Department of Environment
& Natural Resources

This is our letter of Denial of application
8268-3, Jenny Peterson.
This is our same reply as 11-14-16
8229-3, Jenny Peterson, 19111 Maple Ave
Hitchcock, SD 57348

How good would this Lake be if everyone
down stream would ask for water right

Thank you for this courtesy letter, we
appreciate receiving this so we have time
to respond

Bill & Jane Newton
902 W 5th St.
Redfield, SD 57469

June 14, 2017

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

Copy of letter sent to Peterson

Jenny Petersen
19111 Maple Ave
Hitchcock S.D 57348

This petition is to vehemently oppose the appropriation of water from Turtle Creek by Jenny Petersen, 19111 Maple Ave. Hitchcock. S.D 57348.

My reason for this opposition is many-fold. I will list these. These are not in order of priority. This could set a precedent for other farmers whose farm land is adjacent or near the Creek; The Redfield City Park is adjacent to the Creek and the water level is paramount to the limited water use of park landscaping and flowers. My home is on Turtle Creek and the water level on this date is at least 1/2 foot below average.

Tom Bermann 226 E. 1st St. Redfield SD 57469

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WILES & RYLANCE
ATTORNEYS AT LAW
3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Jenson

June 20, 2017

Jack Hieb
Richarson, Wyly, Wise, Sauck & Hieb, LLP
Attorney at Law Post Box 1030
Aberdeen, South Dakota, 57402

Mr. Eric Gronlund
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501

Ms. Jeanne Goodman
Chief Engineer
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501

RE: Permit Application No. 8268-3; Lenny Peterson

Dear folks,

Please find enclosed our Petition to Oppose Chief Engineer's Recommendations regarding the above-named permit application.

If you have any questions, please feel free to call me.

Yours very truly,

WILES & RYLANCE

Raymond D. Rylance

RDR/ajt
Enclosures

PERMIT APPLICATION #8268-3 LENNY PETERSON	PETITION TO OPPOSE CHIEF ENGINEER'S RECOMMENDATIONS

Lenny Peterson, by and through his attorney of record Ray D. Rylance, Wiles and Rylance, Watertown, South Dakota, hereby file this Petition opposing the recommendation of the Chief Engineer on Application No. 8268-3.

Dated this 20th day of June, 2017.

WILES & RYLANCE

Raymond D. Rylance
Attorney for Lenny Peterson
3 East Kemp, Suite 200
P. O. Box 227
Watertown, SD 57201-0227

CERTIFICATE OF SERVICE

The undersigned, attorney for Lenny Peterson, hereby certifies that a true and correct copy of "PETITION TO OPPOSE CHIEF ENGINEER'S RECOMMENDATIONS" was sent by first class mail and by electronic mail to:

jhieb@wwsh.com
Jack Hieb
Richarson, Wyly, Wise, Sauck & Hieb, LLP
Attorney at Law\Post Box 1030
Aberdeen, South Dakota, 57402.

Eric.grondlund@state.sd.com

Mr. Eric Gronlund
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue Pierre, SD 57501

Jeanne.goodman@state.sd.com
Ms. Jeanne Goodman
Chief Engineer
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue \Pierre, SD 57501

WILES & RYLANCE

Raymond D. Rylance
Attorneys for Lenny Peterson

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16911 US Highway 281
Ashton, South Dakota 57424
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a farm operator of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
3) The average width of Turtle Creek varies from ~50 to ~100 feet.
4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
5) Using the above Turtle Creek measurements from the Application No. 8268-3 area to the dam described above, there is insufficient water to provide "300 acre feet" of water to irrigate 450 acres of farmland.
   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

"immediate depth" of 8.3 feet from shoreline to shoreline that is required to provide a volume of 300 acre feet. Thus a substantial shortfall in excess of 4 plus feet depth below the creek floor exists, i.e., 8.3 feet minus average of 4 feet (not considering loss of volume from shoreline to attain 4 feet of depth) equals greater than 4.3 feet of depth shortfall.

b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-391-0109.

Sincerely,

Casey Fey

Est. #	Creek Miles	Feet / Mile	Creek Avg. Width		Acre Square Feet	Creek Total Square Feet	Acres Creek	Application Acre Feet Water	Application Acre Square Feet	Feet of Water Depth Required
1	3.0	5,280.0	100.0			1,584,000.0		300.0	13,068,000.0	
					43,560.0		36.4			8.3
2	2.7	5,280.0	100.0			1,425,600.0		300.0	13,068,000.0	
					43,560.0		32.7			9.2
3	2.5	5,280.0	100.0			1,320,000.0		300.0	13,068,000.0	
					43,560.0		30.3			9.9
4	4.5	5,280.0	100.0			2,376,000.0		300.0	13,068,000.0	
					43,560.0		54.5			5.5
5	6.0	5,280.0	100.0			3,168,000.0		300.0	13,068,000.0	
					43,560.0		72.7			4.1
5	8.0	5,280.0	100.0			4,224,000.0		300.0	13,068,000.0	
					43,560.0		97.0			3.1

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State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building 523 East Capital

Pierre, South Dakota 57401

Chief Engineer

Water Rights Program

Joe Foss Building 523 East Capital

Pierre, South Dakota 57401

June 23, 2017

RE: #8268-3

To whom it may concern:

A few years ago, not living on the lake but close enough to view the process, we watched as Redfield Lake was dredged to clean it up and make it better for recreation and to beautify it. It took a lot of tax dollars and many hours of work by our local government to get the job done. The lake, as well as Have-A-Rest Park (on its shores) has been a source of pleasure and activity for many people; locals, hunters and those passing through. We cannot believe that our governments would spend so many tax dollars to fix up the lake and the park and then agree to dry it up. (We believe tax dollars from federal, state, county and city are involved.) It feels like one person would benefit from the loss of others and the city of Redfield.

The lake and the creek, as we understand it can be a source of water in the case of a serious fire for the city and the South Dakota Developmental Center. We understand that this creek is the source of water for cattle along its route. The creek that runs through the city park is an integral part of the life of the fish and other wild life there. The South Dakota Developmental Center has a fishing dock for the individuals who live on campus and we have seen people fishing in the park when we walk there. We suspect that if the water was depleted and puddles or

stagnant water was left, there would most likely be an increased incidence of West Nile Virus in the area, due to that type of water being the perfect place to grow mosquitos.

From what we understand, the full injury of what can happen with the syphoning off of so much water, is not known. Water is a life-giving commodity which should not be depleted from many, for the appetite of one.

Please do not allow this reduction of water flow.

Respectfully,

Earl Sprague

Sheila Sprague

Earl and Sheila Sprague

925 West 5th Street

Redfield, South Dakota 57469

Dear Srs

We at ESSer Farm Inc. are opposed to the chief enginecrs decision to allow Lenny Peterson to appropridte water from Turtle creek for. irrigation It is our belief that it will limit our ability to use Creek to water cattle in our pasture aproximatly 1 mile north of proposed site.

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ESSer Farm

Dan Esser

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23659 – 455th Avenue
Madison, South Dakota 57042
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a land owner of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
3) The average width of Turtle Creek varies from ~50 to ~100 feet.
4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
5) Using the above Turtle Creek measurements from the Application No. 8268-3 area to the dam described above, there is insufficient water to provide "300 acre feet" of water to irrigate 450 acres of farmland.
   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

"immediate depth" of 8.3 feet from shoreline to shoreline that is required to provide a volume of 300 acre feet. Thus a substantial shortfall in excess of 4 plus feet depth below the creek floor exists, i.e., 8.3 feet minus average of 4 feet (not considering loss of volume from shoreline to attain 4 feet of depth) equals greater than 4.3 feet of depth shortfall.

b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-480-2570.

Sincerely,

Kenneth Booze

Kenneth Booze

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37865 S.D. Highway 26
Redfield, South Dakota 57469
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, having a vested interest in a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

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   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

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3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-484-5328.

Sincerely,

David R. Booze

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37865 S.D. Highway 26
Redfield, South Dakota 57469
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a land owner of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
3) The average width of Turtle Creek varies from ~50 to ~100 feet.
4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
5) Using the above Turtle Creek measurements from the Application No. 8268-3 area to the dam described above, there is insufficient water to provide "300 acre feet" of water to irrigate 450 acres of farmland.
   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

"immediate depth" of 8.3 feet from shoreline to shoreline that is required to provide a volume of 300 acre feet. Thus a substantial shortfall in excess of 4 plus feet depth below the creek floor exists, i.e., 8.3 feet minus average of 4 feet (not considering loss of volume from shoreline to attain 4 feet of depth) equals greater than 4.3 feet of depth shortfall.

b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-472-1546.

Sincerely,

Inez Booze

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PROGRAM

State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre, SD 57501

RE: Application # 8268-3

To whom it may concern,

As a property owner along Turtle Creek and with a cattle operation that relies solely on Turtle Creek for a drinking water source I oppose this application # 8268-3.

The permit application to appropriate enough water to irrigate 450 acres of crops would cause a severe shortage of usable water downstream. I have lived on Turtle Creek for 67 years and Mother Nature has shut off the water flow plenty of times. We DO NOT need any more permits to irrigate to promote this situation.

I DO NOT agree with the recommendation of the Chief Engineer for water Permit Application # 8268-3 to recommend APPROVAL.

This Application for water SHOULD BE DISAPPROVED!!!

Sincerely,

Perry Schmidt

38221 174th Street

Redfield, SD 57469

605-460-2600

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PROGRAM

16911 US Highway 281
Ashton, South Dakota 57424
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

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Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-450-8705.

Sincerely,

Danny Booze

Danny Booze

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June 26, 2017

Water Rights Program, DENR
Joe Foss Building
523 East Capitol
Pierre SD 57501-3182

Dear Chief Engineer:

We are writing this letter to oppose Lenny Peterson's Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. We have many concerns involving this application. We feel the water levels of Redfield Lake will be severely impacted if approved. Redfield Lake serves as an important recreational and economic resource for the citizens of Redfield and the surrounding areas. People of all ages and walks of life utilize the opportunities it offers. Fishing, canoeing, kayaking, camping, family picnics, boating, skiing and special events are all possible because of the viability of Redfield Lake. The handicapped accessible dock is especially important because it is used by the residents of our nursing homes, Developmental Center, young children and many other citizens of the area. The camping facilities are being utilized throughout the entire camping season. Having these recreational opportunities immediately next to town allows many individuals a chance to enjoy activities not otherwise accessible to them.

We feel property values will be negatively affected, not only on Redfield Lake, but along the entire Turtle Creek Watershed. Reduced water levels on the lake will make Redfield less attractive to people looking to establish a home, both retirees and young families. Rural communities do not need more obstacles to overcome.

We encourage you to deny this application as you can see it will negatively affect many, many people in many ways.

Sincerely,

Dale Fiedler
Connie Fiedler

Dale & Connie Fiedler
903 W 5th St
Redfield SD 57469

cc: Ray Rylance

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield and a property owner along Turtle Creek. I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.

2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,

John Solheim
501 West 4th Ave.
Redfield, SD 57469

CHIEF ENGINEER
WATER RIGHTS PROGRAM
523 E CAPITOL
PIERRE. SD 57501

LENNY PETERSON
19111 MAPLE AVE
HITCHCOCK SD 57348

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JUN 29 2017
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To Chief Engineer & Lenny Peterson

I strongly oppose the issuance of a water permit #8268-3 to Mr. Peterson.

My property is directly upstream from the site of appropriation. We never granted easement to the berming of the channel & increasing the water level on our property in the original plan.

I feel this action effects to many residents & existing water rights

Roger Madsen

June 27, 2017

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JUN 29 2017
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Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Lanny Peterson
19111 Maple Ave
Hitchcock, SD 57348

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

Re: Water Rights Application #8268-3

Please do not grant this water permit. Lake Redfield affects both the agricultural and businesses as well as the welfare of our population. We all need water for drinking, cleaning, fire safety, animal husbandry and yes irrigation. Consider senior rights. Currently, most have been in effect since 1940, 3 others in 1934, '53 and '51. And yet our lake is shallow. We

would love a larger inflow to freshen up our greenish shorelines. If you allow another claim on the available water, often, that would very negatively affect everything currently in a pretty balanced state.

We can Meet (in a good year) our current needs, maintain our fish, entertain the migratory birds & continue to grow our Hava Rest Park, a popular stop for many tourists. With an adequate water level the lake does a big job for this community and those living along Turtle Creek.

It would be a huge mistake to upset this balanced situation providing so much for so many, to benefit one individual's bottom line.

Sincerely,

Mavis McFarlane

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JUN 2 9 2017
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Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Dear Sir:

We are again against Water App #82683 Lenny Peterson which would allow him to take water from Turtle Creek. This would decrease the water level in Turtle Creek and Redfield Lake. These areas provide water for livestock and many other animals as well as fish. This would be greatly reduced. Fishing and recreational opportunities would be decreased. The low water levels would create more mosquito breeding areas leading to a greater chance of West Nile or other diseases. With low water levels the property values of nearby homes would be decreased. Redfield Lake is also used as a quick source of water in the event of a fire. For these reasons we feel the Application should be denied

Sincerely

Dennis Stewart
Dan Stewart
911 W 5th St
Redfield SD 57469

Joe and Karen Jungwirth
38442 10th Avenue West
Redfield, SD 57469
Phone: 605 302-1003

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June 27, 2017

Eric Gronlund
Water Rights Program
605 773-3352
Eric.gronlund@state.sd.us
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: Lenny Peterson Application #8268-3

To whom it may concern,

My husband and I strongly oppose Lenny Peterson's application to irrigate his 450 acres out of Turtle Creek. Every farmer I've spoken to, many second and third generation farmer's on the same family land, have stated that there isn't enough water in Turtle Creek to irrigate 100 acres! Not one person I've spoken to has thought this was a logical idea. I can't understand how the engineer could approve this, a potentially ruinous act! Turtle Creek is not a river. It's not fed by snow capped mountains in the distance. It's water levels vary in some areas and some seasons.Lowering the water level along Turtle Creek and Redfield Lake could cause a slew and bring mosquitoes. This could influence tourism as well.

I have been active with Chamber of Commerce in trying to revive our town, which has reduced in population by 1000, according to the last census. Much that we are trying to accomplish relies not only on special events hosted by our community, recruiting more merchants and services, but on the surrounding amenities and beauty. A depressing, mosquito ridden lake would be disastrous for our town.

On a personal level, beyond the reduction of our own property values, this incredibly selfish request by Mr. Peterson is causing quite a bit of anxiety. As a property owner on Redfield Lake at the creek, we watch the water level with much interest. The idea that I must concern myself with a lowering water level caused by Mr. Peterson's irrigation is more than I can fathom. Why should any of us citizens have to worry about such a thing! It's totally outrageous and completely unfair. Are we as individuals supposed to hire attorneys to fight Mr. Peterson when we are each affected in our own ways.

This is wrong! I am quite sure Mr. Peterson is aware of the disturbance and anxiety he is causing our community. He apparently cares only about his own financial interests.

I am going to encourage as many citizens in our community as I can to rally and fight this application.

My husband and I are home owners on Redfield Lake/Turtle creek. We moved onto the 8.6 acres in March 2009 after purchasing the property in 2007. We sold our home in Venice, California to move to this community where my husband's family originated as homesteaders. We own a construction business and a vacation home rental business. We also own a second property in a nearby lake view development, purchased specifically for an investment. We stridently oppose granting the irrigation application of Mr. Peterson. The possibility of adverse affects on the water supply to our local lake and creek is horrifying and startling. We cannot see how Mr. Peterson can be permitted to improve his business and family prospects at the detriment to others. The potential problems could "Red Flag" this entire community, lowering property values significantly and profoundly impacting our investments, our peace of mind, and our lifestyle. I sincerely hope we do not have to live with this anxiety over and over again in the future!

Please vote against this application. Thank you for your attention.

Sincerely,

Karen Jungwirth

Cc: Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

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

Dear Sir:

We are again against Water App #82683 Lenny Peterson which would allow him to take water from Turtle Creek. This would decrease the water level in Turtle Creek and Redfield Lake. These areas provide water for livestock and many other animals as well as fish. This would be greatly reduced. Fishing and recreational opportunities would be decreased. The low water levels would create more mosquito breeding areas leading to a greater chance of West Nile or other diseases. With low water levels the property values of nearby homes would be decreased. Redfield Lake is also used as a quick source of water in the event of a fire. For these reasons we feel the Application should be denied

Sincerly
Mary Stewart
911 W 5th St.
Redfield, SD 57469

6/26/2017

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Robert and Connie Tiff
PO Box 596
Redfield, SD 57469

To Whom It May Concern,

On behalf of the Peterson Irrigation request to draft water out of what is known as Turtle Creek in Spink County.
We would like to voice our opinion as being opposed to granting Mr. Peterson permission to draft water for crop irrigation.
We are property owners both ahead of the area he wishes to irrigate from and behind the area as well.
We feel this would be a detriment to our properties because the probability of low stagnant water that can and will create insect problems as well as the fish and wild life it could hinder as well.
Our property along what is known as Redfield Lake located at 914 W. 5th St., Redfield, SD and NW ¼ 0f 24-115-65 and W ½ of SW ¼ of 24-115-65 in Spink County South Dakota.

Yours Truly
& Connie L Tiff
Robert and Connie Tiff

Randall J. Waldner, M.D.
RW Investment Holdings, LLC
18 West 8th Avenue
Redfield, SD 57469

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JUN 2 9 2017
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Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

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

RE: Water App #82683 Lenny Peterson

I am against the water rights usage application placed by Mr. Peterson. I own and operate the Lakeview Apartments on Redfield Lake and this water rights usage would adversely affect my property value and the homes of my tenants. I urge you to deny this request because the previous application would have been denied and the reductions in water use will not suffice to keep the water flowing through Redfield Lake to ensure that the lake stays in good condition. Water doesn't flow over the spillway in Redfield for the majority of the year to begin with and this application will ensure that water will never run over the spillway. This will not only greatly affect the property owners surrounding Redfield Lake, but it will also undoubtedly decrease the amount of campers at Hav-A-Rest campground and will cause the lake to be unusable from a recreation standpoint. The other farmers with land bordering Turtle Creek will also suffer extensively as well to a point that can't be quantified. Countless others will be adversely affected if this application is approved and I do not believe that an individual should benefit at the cost of so many. Please deny this application and ensure the viability of Redfield Lake and all of the many uses it has.

Thank you for your time and consideration.

Randall J. Waldner, M.D.

Gronlund, Eric

Subject: FW: [EXT] water application #82683 Lenny Peterson

From: Audrey Martchinske [mailto:ajmartchinske@yahoo.com]
Sent: Friday, June 30, 2017 8:15 PM
To: DENR INTERNET INFORMATION
Subject: [EXT] water application #82683 Lenny Peterson

Les & Audrey Helm
923 W 5th St
Redfield, SD 57469

Chief Engineer Water Rights Program:

We reside along Redfield Lake. We are opposed to the water rights usage in the above water application case. We are concerned the amount of water drawn from Turtle Creek will have a significant impact to the water level of Redfield Lake, which in turn would negatively affect our property value along with all the properties along the lake. We would ask this application be denied. Thank You.

Les & Audrey Helm

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To Whom It May Concern

As long time citizens of Redfield, SD, we feel the need to voice concern over the proposed use of the water that goes into Redfield Lake.

This water is used for fire protection not only for the City of Redfield but also for the South Dakota Developmental Center. With the limitations on the amount of water available through WEB Water system, this fire protection is very important for protection of property and life.

This the water is used before coming into the Lake, the steam below the spillway will become a haven for mosquitos, this would include the West Nile type and every other type that would populate this area.

The water below the spillway feeds a stream that is used for fishing by the People living at the South Dakota Developmental Center. During spring, summer and fall, there is someone fishing off of the boat dock there, at least 4 days a week.

The Lake itself is used for recreational activities, swimming, boating, skiing and fishing. Without the water being able to come into the Lake, this would cause hardship for area businesses and vacationers alike. The Lake area has received may compliments for the variety of activities available and the cleanliness of the adjourning camp grounds. Redfield Lake is also used by the People at the South Dakota Developmental Center for pontoon boat rides. Without the flow into the lake, this would not be possible.

The proposed use of the water before going into Redfield Lake will also cause many problems for farmers living downstream of the irrigation system who use this water for the livestock.

Yours Truly

Dave Moeller

Mavis Moeller

Mr. & Mrs. Bryon Anderson
822 W 5th St
Redfield, SD 57469

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Bryon Anderson 6/29/17

I am apposed the water permit that would divert water
in Turtle Creek.

Bryon Anderson

Kathi Anderson

LATE

FILED

PETITIONS

900 West 5th St
Redfield, SD 57469
June 20, 2017

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To: Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

To: SD DENR
Attn: Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

We are writing to oppose the water permit application of Lenny Peterson, Water Permit Application No. 8268-3. We live on Redfield Lake in Redfield, SD, and feel Mr. Peterson's diversion of water from Turtle Creek would negatively affect our personal situation, as well as our community.

Sincerely,

Paul J. Cosato

Lisa Cosato

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.

2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,

Wesley Jaden (Name)
503 W 4th AVE (Address)
Redfield, SD 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Ron Seubert (Name)
511 West 4th Ave (Address)
Redfield SD 57469

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JUL 0 7 2017
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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Dale Siebrecht (Name)
511 West 4th Avenue (Address)
Redfield, SD. 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

MaryAnn O'Hare (Name)
527 W 4th Ave (Address)
Redfield, SD

6

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.

2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,

Corey Hirsch (Name)
601 W 4th Ave (Address)
Redfield SD 57469

June 27, 2017

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Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

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Sincerely,

Joan B Eaton (Name)
207 West 4th Ave (Address)
6-28-2017

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STATE OF SOUTH DAKOTA WATER MANAGEMENT BOARD

PERMIT APPLICATION # 8268-3 LENNY PETERSON	NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Raymond Rylance of Wiles & Rylance LLP, 3 East Kemp, Suite 200, P. O. Box 227, Watertown, SD 57201-0227, does hereby appear as counsel of record for and on behalf of Lenny Peterson , in the above-entitled application.

Dated this 12th day of June,2017, , at Watertown, South Dakota.

WILES & RYLANCE

Attorneys for Lenny Peterson
3 East Kemp, Suite 200
P. O. Box 227
Watertown, SD 57201-0227

CERTIFICATE OF SERVICE

The undersigned, attorney for Lenny Peterson, hereby certifies that a true and correct ccopy of NOTICE OF APPEARANCE was sent by first class mail and by electronic mail to:

jhieb@wwsh.com
Jack Hieb
Richarson, Wyly, Wise, Sauck & Hieb, LLP
Attorney at Law\Post Box 1030
Aberdeen, South Dakota, 57402.

Eric.grondlund@state.sd.com

Mr. Eric Gronlund

Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue Pierre, SD 57501

Jeanne.goodman@state.sd.com
Ms. Jeanne Goodman
Chief Engineer
Dept of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue \Pierre, SD 57501

WILES & RYLANCE

Attorneys for Lenny Peterson

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

July 5, 2017

NOTICE

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record (see attached list)

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 8268-3, Lenny Peterson

Petitions of opposition have been filed in response to the public notice for Water Permit Application No. 8268-3 filed by Lenny Peterson. In response to public notice, counsel for the city of Redfield made a formal request for postponement of the July 13, 2017, hearing date before the Water Management Board on Application No. 8268-3. Therefore, the hearing on Application No. 8268-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 13, 2017.

The hearing to consider Application No. 8268-3 is tentatively scheduled for the Water Management Board meeting to be held October 4 - 5, 2017, in Pierre. The Board will formalize its next meeting date at their July meeting. Future notice of the time and place of the hearing for Application No. 8268-3 will be provided to all parties of record.

The submitted application, DENR staff report and recommendation and petitions received in response to the public notice can be found on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov/contested.aspx. Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson.

Please contact Eric Gronlund at (605) 773-3352 or Ann Mines Bailey, Assistant Attorney General at (605) 773-3215, if you have questions regarding the hearing process.

c: Ann Mines Bailey, Assistant Attorney General

PARTIES OF RECORD FOR WATER PERMIT APPLICATION NO. 8268-3
LENNY PETERSON

APPLICANT

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57328

PETITIONERS

Kimberly A Dorsett & Jack H Hieb
Richardson Wyly Wise Sauk & Hieb LLP
PO Box 1030
Aberdeen, SD 57401

Earl & Sheila Sprague
925 West 5th Street
Redfield, SD 57469

Kurt Permann
226 E 1st St
Redfield, SD 57469

Dan Esser
16774 379th Ave
Redfield, SD 57469

Bill & Jane Newton
902 W 5th St
Redfield, SD 57469

Kenneth Booze
23659 455th Ave
Madison, SD 57042

Eldwin Haskell
504 W 10th Ave
Redfield, SD 57469

David Booze
37865 SD Hwy 26
Redfield, SD 57469

Patrick & Marti Thelen
904 W 5th St
Redfield, SD 57469

Ms. Inez Booze
37865 SD Hwy 26
Redfield, SD 57469

Game Fish and Parks
John Lott
523 E Capitol
Pierre, SD 57501

Perry Schmidt
38221 174th Street
Redfield, SD 57469

Danny Booze
16911 US Highway 281
Ashton, SD 57424-6101

Casey Fey
Red Ash Ranch
16911 SD Hwy 281
Redfield, SD 57424

Dale & Connie Fiedler
903 W 5th St
Redfield, SD 57469

John Solheim
501 W 4th Avenue
Redfield, SD 57469

Randall J. Waldner, M.D.
RW Investment Holdings, LLC
18 West 8th Avenue
Redfield, SD 57469

Robert and Connie Tiff
PO Box 596
Redfield, SD 57469

Mary Stewart
911 W 5th St.
Redfield, SD 57469

Joe and Karen Jungwirth
38442 10th Avenue West
Redfield, SD 57469

Dennis Stewart
911 W 5th St
Redfield, SD 57469

Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Roger McIntyre
38293 179th St
Redfield, SD 57469

Dave & Marion Moeller
1312 S Main St
Redfield SD 57469-1631

Bryon & Kathi Anderson
822 W 5th St
Redfield SD 57469

CERTIFICATION

I hereby certify that on July 5, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 5, 2017, regarding automatic delay of July 13, 2017, hearing date for Water Right Permit Application No. 8268-3, as addressed below and on the enclosed parties of record list:

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

Sent Inter-office to:

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

John Farmer
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 5th day of July, 2017

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

DEPARTMENT of Late filed petitioner
and NATURAL

JOE FOSS I
523 EAST I
PIERRE, SOUTH DA

denr.sc

July 5, 2017

NOTICE

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record (see attached list)

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 8268-3, Lenny Peterson

Petitions of opposition have been filed in response to the public notice for Water Permit Application No. 8268-3 filed by Lenny Peterson. In response to public notice, counsel for the city of Redfield made a formal request for postponement of the July 13, 2017, hearing date before the Water Management Board on Application No. 8268-3. Therefore, the hearing on Application No. 8268-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 13, 2017.

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The submitted application, DENR staff report and recommendation and petitions received in response to the public notice can be found on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov/contested.aspx. Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson.

Please contact Eric Gronlund at (605) 773-3352 or Ann Mines Bailey, Assistant Attorney General at (605) 773-3215, if you have questions regarding the hearing process.

c: Ann Mines Bailey, Assistant Attorney General

Late Petitions

Paul & Lisa Cosato
900 W 5th St
Redfield SD 57469

Wesley Jaton
503 W 4th Ave
Redfield SD 57469

Ron & Onilee Siebrecht
511 W 4th Ave
Redfield SD 57469

Mary Ann Schone
527 W 4th Ave
Redfield SD 57469

Corey Hieb
601 W 4th Ave
Redfield SD 57469

Joan B Eaton
407 W 4th Ave
Redfield SD 57469

CERTIFICATION

I hereby certify that on July 7, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 5, 2017, regarding automatic delay of July 13, 2017, hearing date for Water Right Permit Application No. 8268-3, as addressed below:

Wesley Jaton
503 W 4th Ave
Redfield SD 57469

Ron & Onilee Siebrecht
511 W 4th Ave
Redfield SD 57469

Mary Ann Schone
527 W 4th Ave
Redfield SD 57469

Corey Hieb
601 W 4th Ave
Redfield SD 57469

Joan B Eaton
407 W 4th Ave
Redfield SD 57469

Vickie Maberry

Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of July, 2017

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

CERTIFICATION

I hereby certify that on July 6, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 5, 2017, regarding automatic delay of July 13, 2017, hearing date for Water Right Permit Application No. 8268-3, as addressed below:

Paul J & Lisa Cosato
900 W 5th St
Redfield SD 57348

Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of July, 2017

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

June 27, 2017

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Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.

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Sincerely,

Wesley Jeter (Name)
503 W 4th AVE (Address)
Redfield, SD 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Ron Seibert (Name)
511 West 4th Ave (Address)
Redfield SD 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Orlie Siebrecht (Name)
511 West 4th Avenue (Address)
Redfield, SD. 57469

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JUL 0 7 2017
WATER RIGHTS
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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

MaryAnn Schoke (Name)
527 W 4th Ave (Address)
Redfield, SD

6

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Corey Hirst (Name)
601 W 4th Ave (Address)
Redfield SD 57469

June 27, 2017

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

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Joan B Dalton (Name)
207 West 4th Ave (Address)
6-28-2017

RECEIVED
JUL 0 5 2017
WATER RIGHTS
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900 West 5th St
Redfield, SD 57469
June 20, 2017

To: Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

To: SD DENR
Attn: Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

We are writing to oppose the water permit application of Lenny Peterson, Water Permit Application No. 8268-3. We live on Redfield Lake in Redfield, SD, and feel Mr. Peterson's diversion of water from Turtle Creek would negatively affect our personal situation, as well as our community.

Sincerely,

Paul J. Cosato

Lisa Cosato

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

July 5, 2017

NOTICE

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record (see attached list)

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 8268-3, Lenny Peterson

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c: Ann Mines Bailey, Assistant Attorney General

PARTIES OF RECORD FOR WATER PERMIT APPLICATION NO. 8268-3
LENNY PETERSON

APPLICANT

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57328

PETITIONERS

Kimberly A Dorsett & Jack H Hieb
Richardson Wyly Wise Sauk & Hieb LLP
PO Box 1030
Aberdeen, SD 57401

Earl & Sheila Sprague
925 West 5th Street
Redfield, SD 57469

Kurt Permann
226 E 1st St
Redfield, SD 57469

Dan Esser
16774 379th Ave
Redfield, SD 57469

Bill & Jane Newton
902 W 5th St
Redfield, SD 57469

Kenneth Booze
23659 455th Ave
Madison, SD 57042

Eldwin Haskell
504 W 10th Ave
Redfield, SD 57469

David Booze
37865 SD Hwy 26
Redfield, SD 57469

Patrick & Marti Thelen
904 W 5th St
Redfield, SD 57469

Ms. Inez Booze
37865 SD Hwy 26
Redfield, SD 57469

Game Fish and Parks
John Lott
523 E Capitol
Pierre, SD 57501

Perry Schmidt
38221 174th Street
Redfield, SD 57469

Casey Fey
Red Ash Ranch
16911 SD Hwy 281
Redfield, SD 57424

Danny Booze
16911 US Highway 281
Ashton, SD 57424-6101

John Solheim
501 W 4th Avenue
Redfield, SD 57469

Dale & Connie Fiedler
903 W 5th St
Redfield, SD 57469

Randall J. Waldner, M.D.
RW Investment Holdings, LLC
18 West 8th Avenue
Redfield, SD 57469

Robert and Connie Tiff
PO Box 596
Redfield, SD 57469

Mary Stewart
911 W 5th St.
Redfield, SD 57469

Joe and Karen Jungwirth
38442 10th Avenue West
Redfield, SD 57469

Dennis Stewart
911 W 5th St
Redfield, SD 57469

Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Roger McIntyre
38293 179th St
Redfield, SD 57469

Dave & Marion Moeller
1312 S Main St
Redfield SD 57469-1631

Bryon & Kathi Anderson
822 W 5th St
Redfield SD 57469

Les & Audrey Helm
923 W 5th Street
Redfield SD 57469

CERTIFICATION

I hereby certify that on July 13, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelope(s) containing a Notice dated July 5, 2017 regarding Notice of Automatic Delay of Hearing on Water Permit Application No. 8268-3 addressed as stated below:

Les & Audrey Helm
923 W 5th Street
Redfield, SD 57469

Vickie Maberry
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of July, 2017.

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

RECEIVED
JUL 11 2017
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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	MOTION FOR PROCEDURAL AND SCHEDULING ORDER

The South Dakota Department of Environment and Natural Resources Water Rights Program respectfully moves the Board's duly appointed prehearing chairman, Rodney Freeman, for entry of a procedural and scheduling order in the above captioned matter consistent with the terms of this motion.

In support of said motion, the Department submits the following:

1. Lenny Peterson has submitted an application for a water permit (Application No. 8268-3). Mr. Peterson requests a permit to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE¼NW¼ Section 11 and the S½SW¼ Section 12 for the purposes of irrigating 450 acres located in the W½ Section 11 and S½ Section 12, all in T115N-R65W. The Chief Engineer has recommended approval of the application with the qualification that no withdrawals will occur after June 1 without written order of the Chief Engineer.

2. Notice of the application was published for the above-entitled water permit application and the final date for intervention therein was June 30, 2017.

3. The matter was initially scheduled to be heard on July 13, 2017. The City of Redfield filed a petition to intervene and requested the statutory auto-delay. The matter is currently scheduled to be heard by the Water Management Board at its October meeting. Mr. Peterson has indicated his opposition to the Chief Engineer's recommendation. Though not specifically stated, Additionally, it is the Chief Engineer's understanding that Mr. Peterson is contesting the qualification regarding the June 1 shutoff date.

4. Due to the differing interests of the parties and the potential for the presentation of the testimony of multiple experts, the Department requests that the following prehearing schedule be established and applied to all parties to the formal contested case proceeding:

a. The Department requests that any party who will be represented at the formal contested case proceeding by an attorney shall be required to have their attorney file a Notice of Appearance in this matter. While individuals may appear *pro se* at hearings before the Water Management Board, all entities must be represented by counsel. Furthermore, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.

b. Each party must disclose in writing the names of all expert witnesses it intends to call as a witness at the contested case hearing no later than September 8, 2017. Each party must include in this

submission copies of any *curricula vitae* as well as copies of any expert report prepared by the expert witness. If the expert has not prepared a report, the party must disclose a summary of the anticipated testimony the expert will provide and the methodology the expert utilized in coming to those conclusions.

c. Each party must disclose in writing the names of each witness the party anticipates calling to testify during the hearing on or before September 18, 2017.

d. Each party must provide to all other parties a list identifying all exhibits that party intends to offer as evidence in its case in chief at the hearing and copies of said exhibits on or before September 25, 2017. The copies may be provided by electronic means.

5. The Department requests that the Board include in its order the requirement that each party must mark in advance of the hearing all exhibits the party intends to introduce at the hearing in its case in chief. Each party shall be required to contact Eric Gronlund, DENR Water Rights Program, 605-773-3352 or at Eric.Gronlund@state.sd.us, to obtain a block of exhibit numbers.

6. The Department requests that the Board include in its order the requirement that each party to the contested case proceedings must prepare and provide a sufficient number of copies of exhibits for use at the hearing as follows: 10 copies for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

7. The Department requests that the Board include in its order the requirement that all original pleadings are to be sent by regular first class mail to Eric Gronlund, DENR Water Rights Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182. Parties shall also be required to serve copies of all pleadings on all other parties, including the Board Chairman, and upon the Board's Counsel, Assistant Attorney General Matt Naasz.

8. A draft procedural order is attached hereto for the Prehearing Chairman's consideration.

9. All persons who file petitions to intervene in the water permit application will be provided with copies of this motion and the proposed order or executed order upon receipt of their petition.

Dated this 11th day of July 2017.

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

Counsel for Water Rights Program, DENR

pld_AFM Water Application Lenny Peterson – Motion for Procedural and Scheduling Order (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	PROPOSED PROCEDURAL AND SCHEDULING ORDER

Upon consideration of the Motion for Procedural and Scheduling Order filed by the Department of Environment and Natural Resources, the following Order shall be entered in the above captioned action.

It is ORDERED:

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.

2. The following pre-hearing schedule and obligations apply to Applicant, DENR, and all other parties:

a.) Each party shall disclose in writing the names of any expert that party intends to call as a witness at the hearing of this matter on or before September 8, 2017. This disclosure must include copies of any *curricula vitae*, along with copies of any expert report the party intends to offer. If an expert report has not been prepared, the parties shall disclose a summary statement of the anticipated testimony the expert

will provide and the methodology used by the expert to reach his/her conclusions.

b.) Each party shall disclose in writing the name and contact information for any and all witnesses that the party expects to call during the hearing of this matter on or before September 18, 2017. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

c.) Each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing and copies of said exhibits on or before September 25, 2017. The copies may be provided by electronic means.

d.) All exhibits shall be marked in advance of contested proceedings by each Party. Each party shall contact Eric Gronlund, DENR Water Rights Program, (605) 773-3352 or at Eric.Gronlund@state.sd.us, to obtain a block of exhibit numbers.

e.) Each party shall provide a sufficient number of copies of exhibits for use at the contested case hearing, including 10 copies for use by the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

f.) All original pleadings and prehearing motions shall be sent by first class mail to Eric Gronlund, DENR Water Rights Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182.

Parties must also serve copies of all pleadings and motions on all other parties, including the Hearing Chair, Jim Hutmacher, and Board Counsel, Assistant Attorney General Matt Naasz.

g.) Copies of all discovery requests, discovery responses, and any items identified in subsections a) and b) above, shall be served on all parties with the originals to be filed with the Department.

Dated this _____ day of July 2017.

_____
Rodney Freeman,
Prehearing Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of July 2017, true and correct copies of DENR'S Motion for Procedural and Scheduling Order and Proposed Procedural and Scheduling Order in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Ray Rylance
Wiles & Rylance LLp
PO Box 227
Watertown, SD 57201-0227
Counsel for Lenny Peterson

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57328

Kimberly A. Dorsett & Jack H. Hieb
Richardson, Wyly, Wise, Sauk & Heib LLP
PO Box 1030
Aberdeen, SD 57401
Counsel for City of Redfield

Earl & Sheila Sprague
925 West 5th Street
Redfield, SD 57469

Kurt Permann
226 E 1st Street
Redfield, SD 57469

Bill & Jane Newton
902 W 5th Street
Redfield, SD 57469

Kenneth Booze
23659 455th Ave.
Madison, SD 57042

Eldwin Haskell
504 W 10th Ave.
Redfield, SD 57469

David Booze
37865 SD Hwy 26
Redfield, SD 57469

Patrick & Marti Thelen
904 W. 5th Street
Redfield, SD 57469

Dan Esser
16774 379th Ave.
Redfield, SD 57469

Game Fish and Parks
John Lott
523 E Capitol
Pierre, SD 57501

Danny Booze
16911 US Hwy 281
Ashton, SD 57424-6101

John Solheim
501 W 4th Ave.
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905 W 5th Street
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Dave & Marion Moeller
1312 S Main Street
Redfield, SD 57469-1631

Byron & Kathi Anderson
822 W 5th Street
Redfield, SD 57469

Wesley Jaton
503 W 4th Ave
Redfield, SD 57469

Mary Ann Schone
527 W 4th Ave
Redfield, SD 57469

Corey Hieb
601 W 4th Ave
Redfield, SD 57469

Joan B Eaton
407 W 4th Ave
Redfield, SD 57469

Rodney Freeman
Prehearing Chairman
Water Management Board
PO Box 176
Huron, SD 57530

And hand-delivered and sent by electronic mail to:

Matt Naasz
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Matt.Naasz@state.sd.us

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

pld_AFM Lenny Peterson – COS (cm)

Gronlund, Eric

From: Adam Hansen <alhansen@redfield-sd.com>
Sent: Thursday, July 13, 2017 11:14 AM
To: Gronlund, Eric
Subject: [EXT] Water Application #8268-3

Eric,

I was approached by a citizen of Redfield that their letter in opposition was not on the DENR site with the other letters, after researching I found 6 people that don't have letters on the site: Earl & Sheila Sprague, Kenneth Booze, David Booze, Dan Esser, Dave & Marion Moeller, Byron & Kathi Anderson.

Will you please let me know what you find out.

Thanks

Adam L. Hansen
Finance Officer
City of Redfield
626 Main Street
Redfield, SD 57469
(605) 472-4550 Office
(605) 472-4553 Fax

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

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
JUL 2 0 2017
WATER RIGHTS
PROGRAM

July 18, 2017

Mr. Jim Hutmacher, Chairman
Water Management Board
802 E 7th Street
Oacoma, SD 57365

Re: In the Matter of Water Application No. 8268-3, Lenny Peterson

Dear Mr. Hutmacher:

On July 11, 2017, I submitted a Motion for Procedural and Scheduling Order in the above-entitled matter to the prehearing officer for the Water Management Board. I have since received a letter from the prehearing officer explaining that he is recusing himself from the matter as the Applicant and/or Applicant's family are clients of his law office. I am enclosing a copy of the letter from the prehearing officer for your reference.

As the prehearing officer is unable to consider the pending motion in this matter, I am bringing this matter to your attention.

Respectfully,

Ann F. Mines Bailey
Assistant Attorney General

AFM/cmm
Enclosure

cc w/encl: Jeanne Goodman, Chief Engineer Water Rights Program
All interested parties in this matter

Attorney General
JUL 14 2017
40908
RECEIVED
JUL 20 2017
WATER RIGHTS PROGRAM

CHURCHILL, MANOLIS, FREEMAN, KLUDT, SHELTON & BURNS LLP
ATTORNEYS AT LAW
FARMERS AND MERCHANTS BANK BUILDING
333 DAK AVE S • 2ND FLOOR • PO BOX 176
HURON, SOUTH DAKOTA 57350-0176
TELEPHONE: 605-352-8624
FAX: 605-352-2205
TOLL FREE 1-888-705-4115
www.churchillmanolis.com

RODNEY FREEMAN, JR. *
DOUGLAS E. KLUDT
KENT A. SHELTON
JEFF BURNS
*Also Licensed in North Dakota

IRWIN A. CHURCHILL 1882-1961
JOHN P. SAUER 1901-1965
WILLIAM S. CHURCHILL 1911-1994
GEORGE N. MANOLIS 1929-2008

July 13, 2017

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

Re: In the Matter of Water Application No. 8268-3

Dear Ann:

I feel uncomfortable signing the Scheduling Order since I have recused myself from the matter involving Lenny Peterson since his family are clients of my office. I would think you could just have the Board Chair sign things.

Sorry Ann.

Very truly yours,

Rodney Freeman, Jr
of Churchill, Manolis, Freeman,
Kludt, Shelton & Burns LLP

RF/la
Enclosures

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

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

August 4, 2017

Parties on Certificate of Service

Re: *In the Matter of Water Application No. 8268-3*

Dear Applicant, Petitioners and Counsel:

The Water Management Board is in receipt of a Motion for Procedural and Scheduling Order in this matter submitted by counsel for the Water Rights Program. Each of you should have received a copy of these documents.

If you have any objections and/or response to the Motion for Procedural and Scheduling Order, and/or the Proposed Order, please submit such response and/or objections to the undersigned, at the address above, on or before August 15, 2017.

Sincerely,

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for the Water Management Board

MN/cmm
Enclosures

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of August 2017, a true and correct copy of the letter regarding objections and/or responses to the Motion for Procedural and Scheduling Order and/or the Proposed Order, in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Ray Rylance
Wiles & Rylance LLp
PO Box 227
Watertown, SD 57201-0227
Counsel for Lenny Peterson

Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57328

Kimberly A. Dorsett & Jack H. Hieb
Richardson, Wyly, Wise, Sauk & Heib LLP
PO Box 1030
Aberdeen, SD 57401
Counsel for City of Redfield

Earl & Sheila Sprague
925 West 5th Street
Redfield, SD 57469

Kurt Permann
226 E 1st Street
Redfield, SD 57469

Bill & Jane Newton
902 W 5th Street
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Eldwin Haskell
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Corey Hieb
601 W 4th Ave
Redfield, SD 57469

Joan B Eaton
407 W 4th Ave
Redfield, SD 57469

And hand-delivered to:

Ann F. Mines Bailey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Rights Program, DENR

Matt Naasz
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215
Counsel for the Water Management Board

pld_MN Lenny Peterson – COS (cm)

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

August 31, 2017

NOTICE

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record and List (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 8268-3, Lenny Peterson

Water Permit Application No. 8268-3 proposes to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

In response to the public notice, petitions were filed in opposition to Water Permit Application No. 8268-3. Counsel for the city of Redfield made formal request for postponement of the July 13, 2017, hearing before the Water Management Board. This notice reschedules a hearing before the Water Management Board to consider Water Permit Application No. 8268-3.

The Water Management Board will conduct a hearing to consider Application No. 8268-3 at 1:30 PM (Central Time) on Wednesday, October 4, 2017, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time.

The Procedural and Scheduling Order has previously been sent to parties of record setting forth the obligations that apply to the applicant and parties prior to the hearing.

Please note six petitions were filed after the June 30, 2017, date to petition to intervene as set forth in the public notice. Prior to the evidentiary hearing, the Water Management Board will need to rule on the party status of these late filed petitioners.

(continued)

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest.

Applicable provisions of the notice of hearing published in the Redfield Press and Plainsman on May 31, 2017, will still apply at the hearing.

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. 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 petitions filed in the matter of Water Permit Application No. 8268-3. 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.

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx. Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson.

Please contact Eric Gronlund at (605) 773-3352 or Ann Mines Bailey, Assistant Attorney General at (605) 773-3215, if you have questions regarding the hearing process.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on August 31, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 31, 2017, regarding scheduling the hearing for Water Right Permit Application No. 8268-3, as addressed below and on the enclosed parties of record list:

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Sent Inter-office to:

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

John Lott
Department of Game, Fish Parks
523 E Capitol Avenue
Pierre SD 57501

Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of August, 2017

Brenda Anderson
Notary Public

Brenda Anderson, Notary Public
My Commission Expires
October 26, 2022

PARTIES OF RECORD FOR WATER PERMIT APPLICATION NO. 8268-3
LENNY PETERSON

APPLICANT

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57328

PETITIONERS

Kimberly A Dorsett & Jack H Hieb
Richardson Wyly Wise Sauk & Hieb LLP
PO Box 1030
Aberdeen, SD 57401

Earl & Sheila Sprague
925 West 5th Street
Redfield, SD 57469

Kurt Permann
226 E 1st St
Redfield, SD 57469

Dan Esser
16774 379th Ave
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Kenneth Booze
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Eldwin Haskell
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Ms. Inez Booze
37865 SD Hwy 26
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Mavis McFarlane
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923 W 5th Street
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18 West 8th Avenue
Redfield, SD 57469

Robert and Connie Tiff
PO Box 596
Redfield, SD 57469

Late Filed Petitioners

Paul & Lisa Cosato
900 W 5th St
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Wesley Jaton
503 W 4th Ave
Redfield SD 57469

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Dennis Stewart
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Redfield, SD 57469

Corey Hieb
601 W 4th Ave
Redfield SD 57469

Joan B Eaton
407 W 4th Ave
Redfield SD 57469

REPORT ON WATER PERMIT APPLICATION NO. 8268-3
Lenny Peterson
April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.

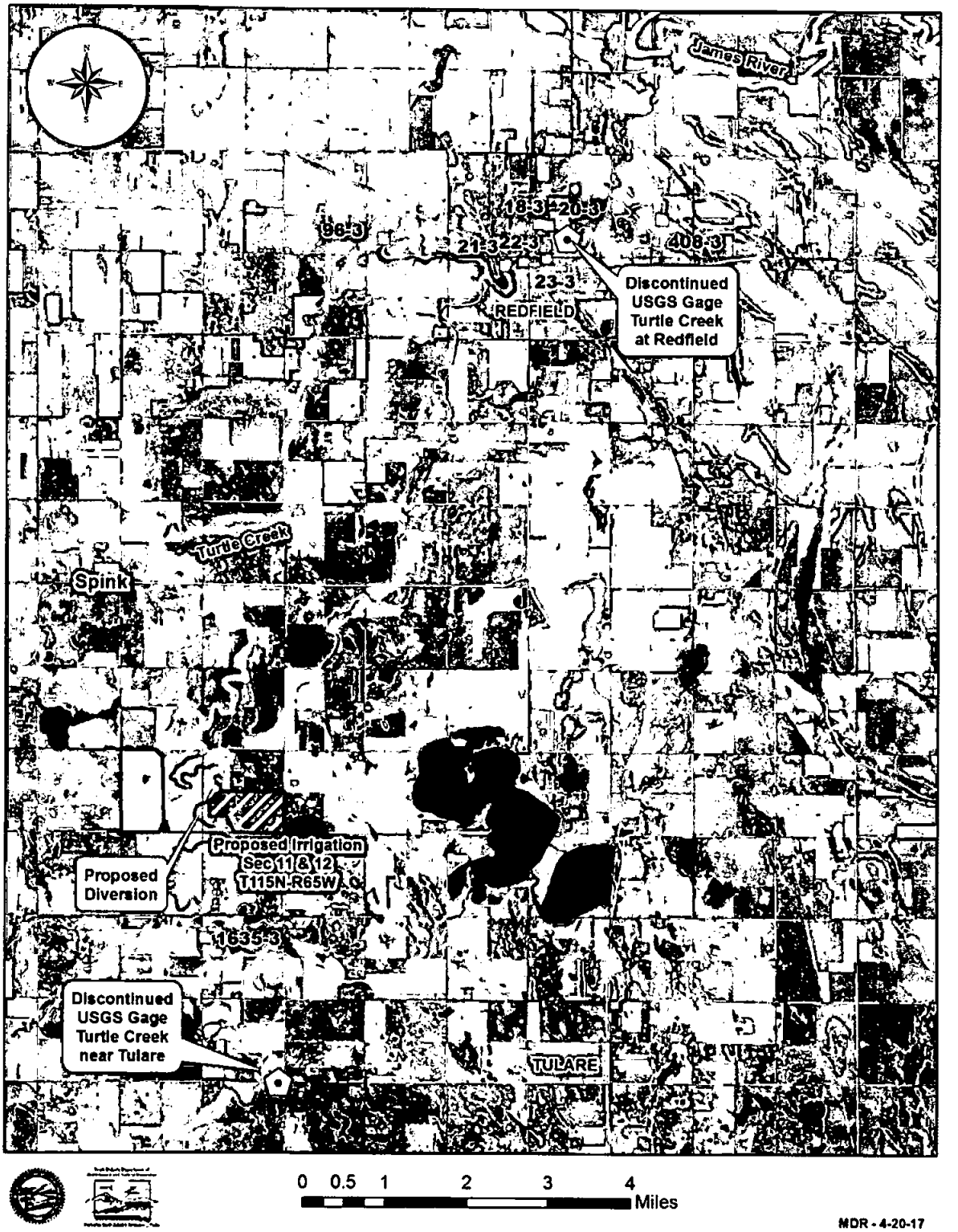


Figure 1. Area Map for Application No. 8268-3, Lenny Peterson.

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

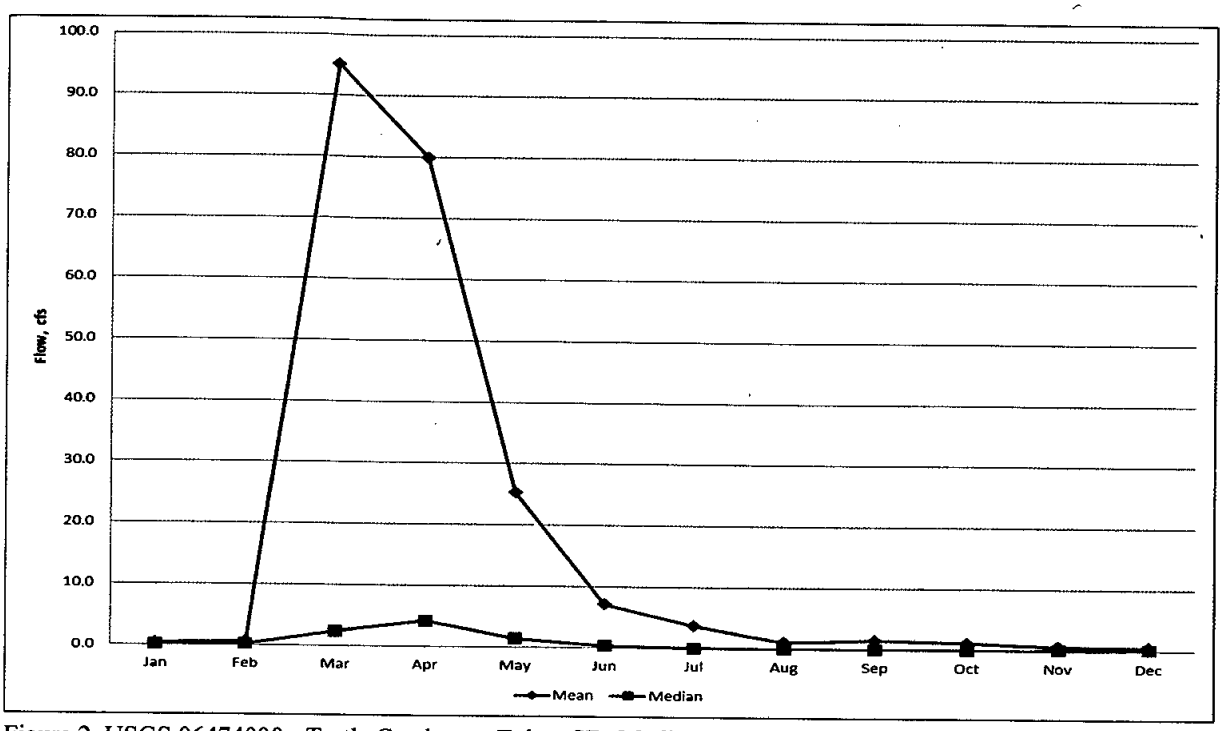


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD; Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

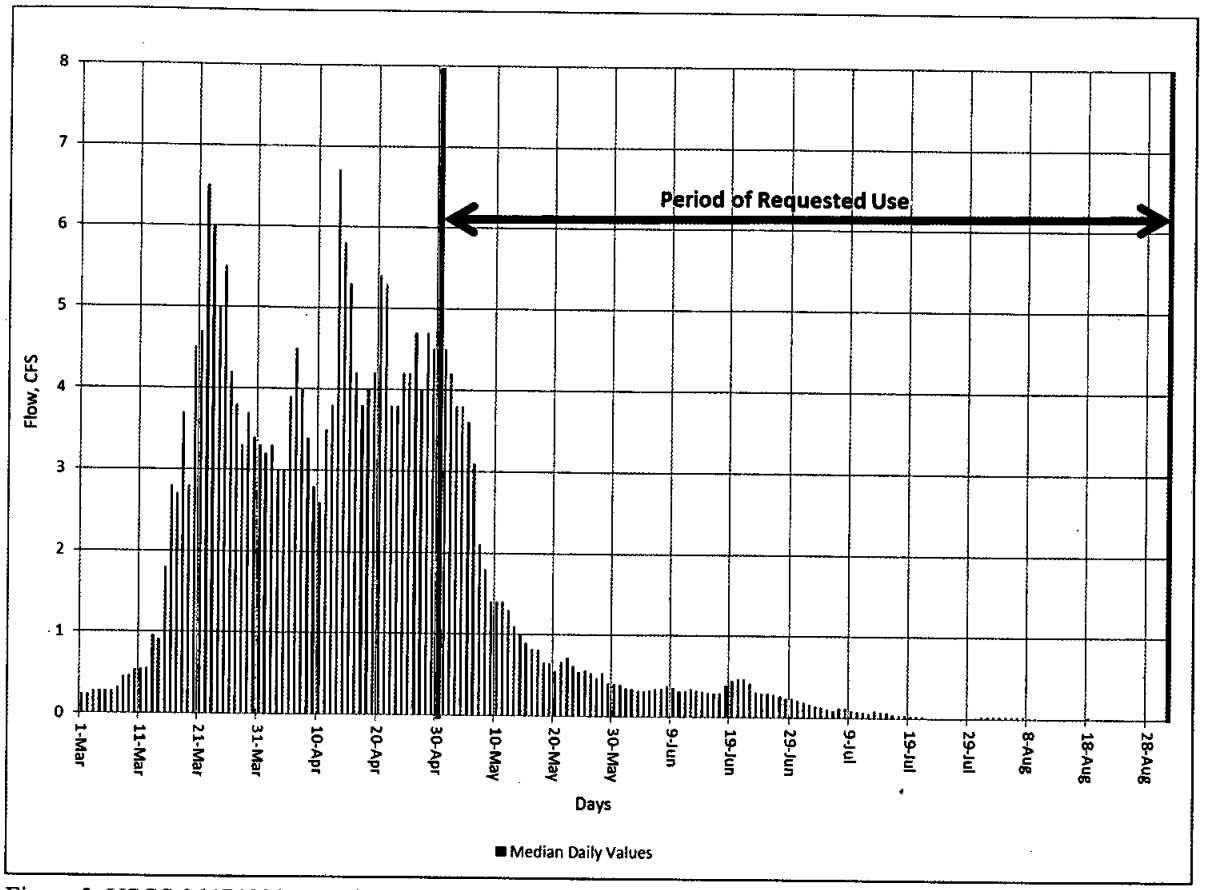


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970, (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi^2, which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

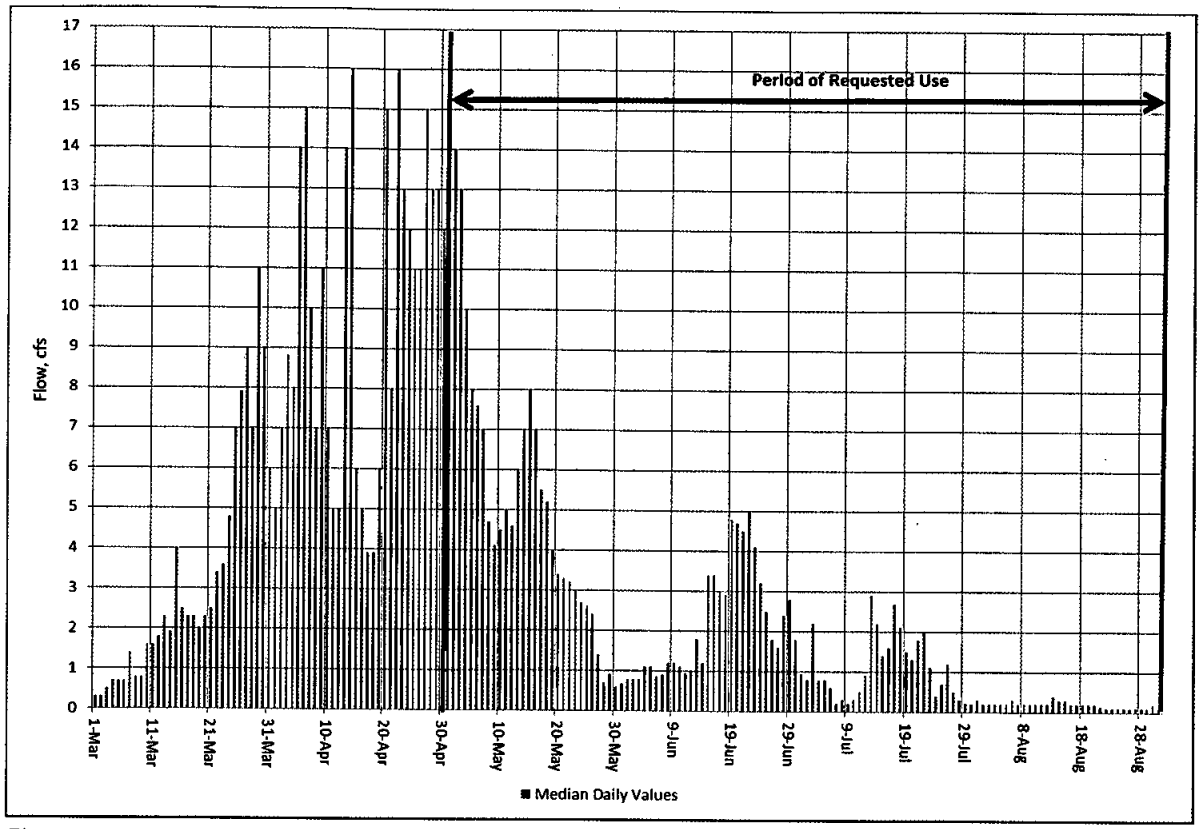


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi^2.

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

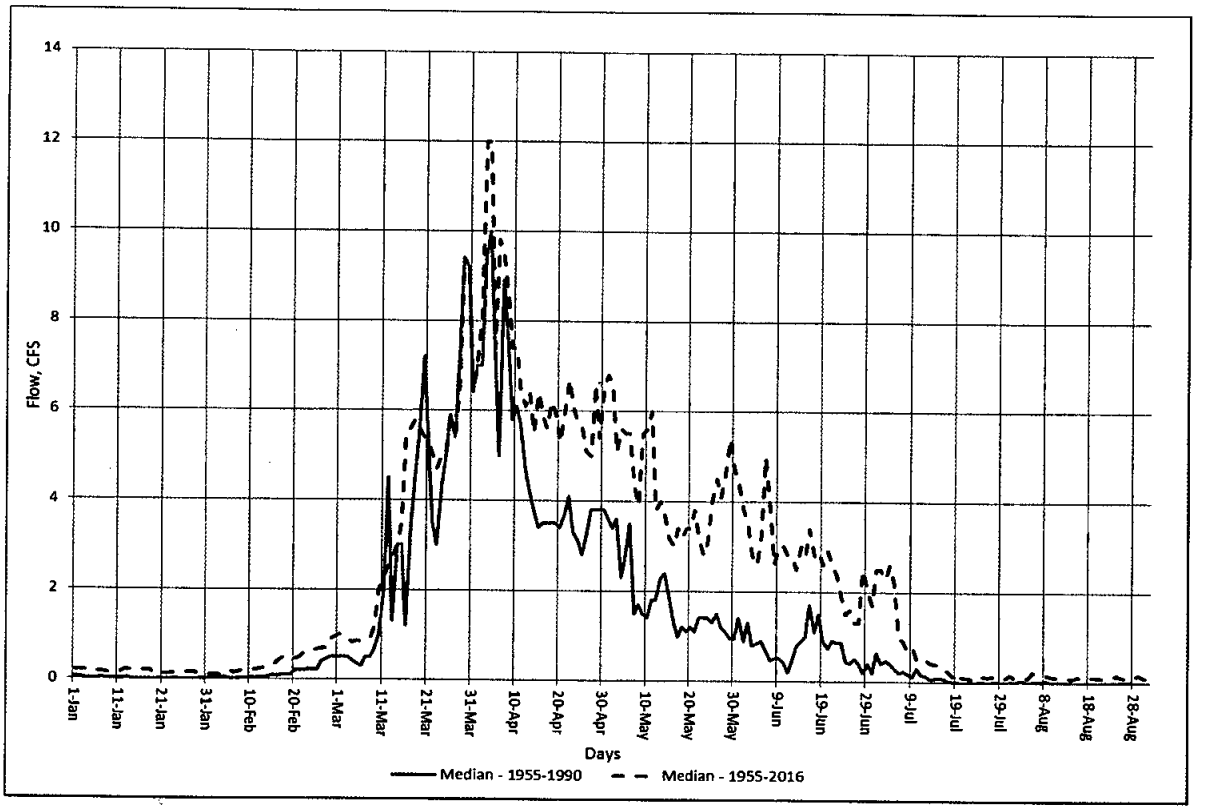


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi^2.

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

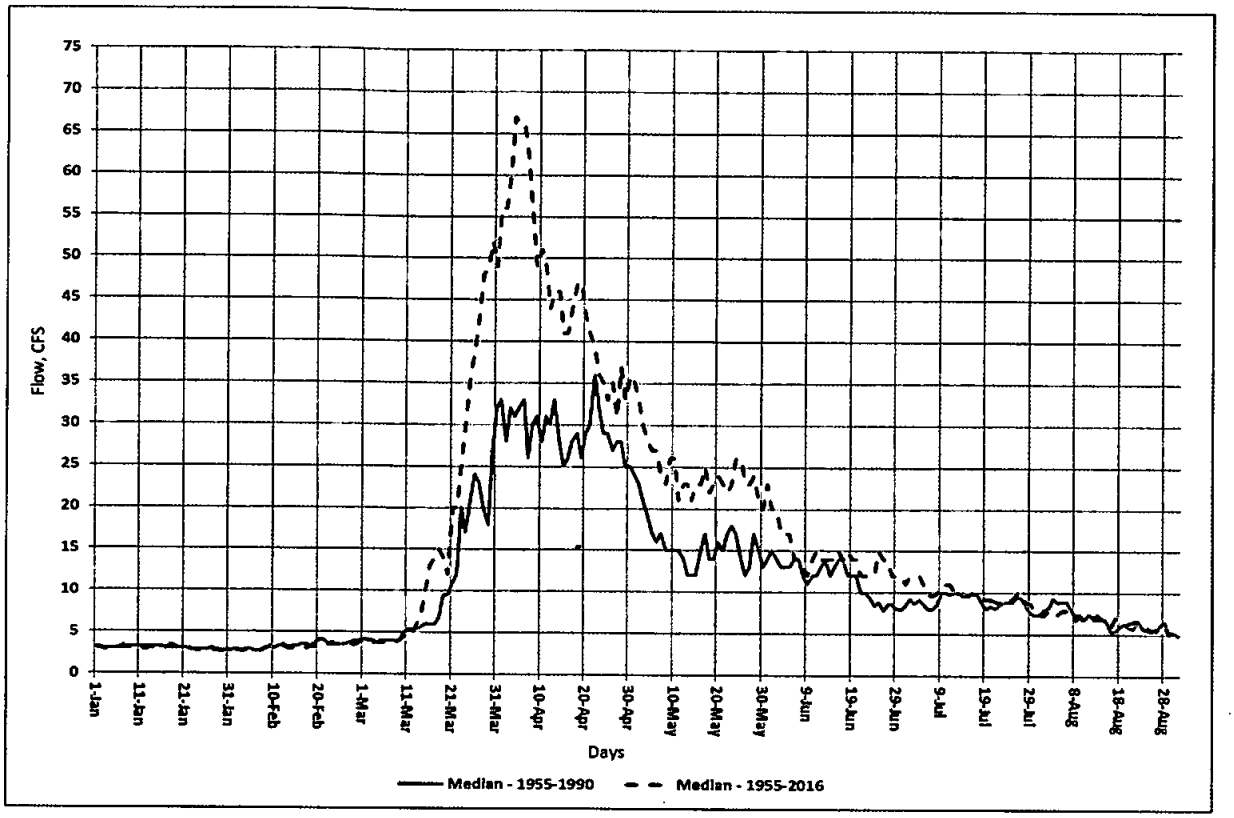


Figure 6. USGS 06471500 – Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi^2.

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

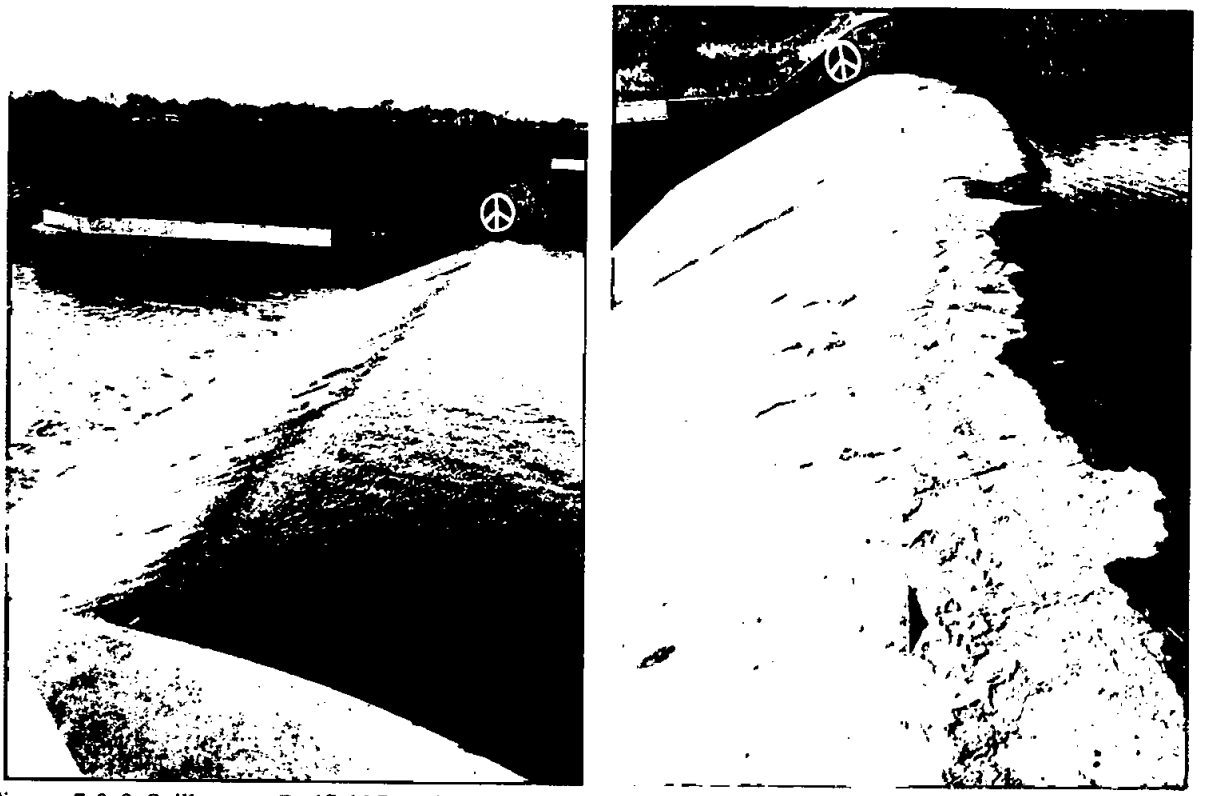
Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.



Figures 7 & 8. Spillway on Redfield Dam located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Mark D. Rath
Natural Resources Engineer III

References

1. Norton, P. A., Anderson, M.,and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.

2. Water Rights. 2017. Water Right/Permit Files, 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

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8268-3, Lenny Peterson

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. 8268-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications as to when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use until June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

    a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
    b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
    c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
    d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
May 1, 2017

Hearing Notice

#2442

NOTICE OF HEARING on Application No. 8268-3 to Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 has filed an application for a water permit to appropriate 2.67 cubic feet of water per second from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year to up to 300 acre feet of water annually which equates to an average application rate of 8 inches of water.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." In this case, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest.

The Chief Engineer's recommendation with qualifications, the application, and staff report are available at http://denr.sd.gov/public or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 9:00 a.m. on July 13, 2017 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based on facts at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 30, 2017.

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

The July 13, 2017 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 June 30, 2017. 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.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds $2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is June 12, 2017. 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, and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.02, 74:02:01:35.01.

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

Published once at the total approximate cost of $56.77. (May 31)

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JUN 12 2017
WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Spink: ss.

I, *Mark E. Davis,* of said County & State, being first duly sworn on oath, say that THE REDFIELD PRESS is a legal weekly newspaper as defined in Sec. 65.0508 South Dakota Code 1939, as amended by Chapter 298 of the Session of Laws of 1939, printed and published in the English language in the City of Redfield, in said County and State, by THE REDFIELD PRESS, and has been such newspaper during the time hereinafter mentioned, and that I Mark E. Davis, the undersigned, am Publisher of said newspaper in charge of the advertising department thereof, and have personal knowledge of all the facts stated in this affidavit, and that the legal or official notice entitled:

#2442 HEARING NOTICE

A printed copy of which is hereto attached, was printed and published in said newspaper in 1 issue, to wit: The first publication being made on May 31st, 2017, that Fifty-six and .77/100 Dollars, insures to the benefit of the publisher of THE REDFIELD PRESS, 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.

Subscribed and sworn to before me this 31st day of May, 2017.

DEBORAH LEESCH
SEAL NOTARY PUBLIC SEAL
SOUTH DAKOTA

Notary Public, South Dakota

My commission expires 10/09/2019

RECEIVED
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WATER RIGHTS PROGRAM

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss

I, ELDON JACOBS, being duly sworn on oath say that the PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am Legal Advertising Coordinator of said newspaper and know the facts herein state. The annexed notice headed:

SD ENVIRONMENTAL & NAT. #3090 WATER RIGHTS

was published for one day, in said newspaper, and not in any supplement of the said newspaper, the publication was of the 31ST **Day MAY 2017.** That the full amount of the fee charged for publishing **FIFTY-NINE & 66/100** dollars insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

Subscribed and sworn to me before this **5th Day** of **JUNE 2017.**

Notary Public, South Dakota

My term expires 03/11/2022
Legal #3090

F.P. 05-31-17

NOTICE OF HEARING on Application No. 8268-3 to Appropriate Water

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Pursuant to SDCL 46-2A-2, The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use up to June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest.

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Stte Supreme Court as provided by law.

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Steven M. Pirner
Secretary
Department of
Environment and
Natural Resources
No. 3090 (adv.)
Published once at the total approximate cost of $59.66.

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
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June 12, 2017

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PROGRAM

Jeanne Goodman
Water Rights Program
Foss Building
523 East Capitol Ave
Pierre, SD 57501

Re: Water Right Application No. 8268-3
Lenny Peterson - Turtle Creek

Dear Ms. Goodman:

This letter is to inform you of the South Dakota Department of Game, Fish, and Parks intent to request party status in the above referenced water right application. At this time, we are neither in support nor opposition to this application, but are requesting party status due to the Department's ongoing interests concerning water rights in the area.

If you have any questions, please contact me at (605) 773-4508.

Sincerely,

John Lott
Aquatic Section Chief

Cc: Lenny Petersen

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Patrick & Marti Thelen
904 West 5th St
Redfield, SD 57469

Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

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

RE: Water App#82683 Lenny Peterson

We are against the water rights usage as Redfield Lake needs the current amount of flow through the lake and over the Redfield Lake dam to keep it from having algae and turning green. With all the cattle and chemical runoff off up stream of Redfield Lake the lake needs to have as much flow as possible. The new application increases the acres from 405 to 450. The last application was denied and this application, with the additional acres added, should also be declined. The land that the water rights are being applied for was just recently purchased and was purchased without water rights. Mr. Peterson knew of the land and the lands needs when he purchased it. Please do not stop the flow of Redfield Lake water from Turtle Creek so Mr. Peterson can increase the value of his land at the cost of Redfield Lake water quality and depth. Especially in a dry year, like 2017, water is a valuable resource and shouldn't be given to an individual when a community needs the water to keep its recreation area usable.

Thank You,

Patrick & Martia Thelen

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June 14-2017

Dear Sirs

You have the right address, but wrong name. My name is Eldwin Haskell not Edwin Hackett.

I am against Lenny Petersen getting a water permit to take 2.67 cubic feet of water per second from Twelve Creek. This would affect home.

Eldwin Haskell

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6-15-17

Chief of Engineer
Department of Environment
+ Natural Resources

This is our letter of Denial of applications
8268-3, Jenny Peterson.
This is our same reply as 11-14-16
8229-3, Jenny Peterson, 19111 Maple Ave
Hitchcock, SD 57348

How good would this Lake be if everyone
down stream would ask for water right

Thank you for this courtesy letter, we
appreciate receiving this so we have time
to respond

Bill + Jane Newton
902 W 5th St
Redfield, SD 57469

June 14, 2017

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

Jenny Petersen
19111 Maple Ave
Hitchcock S.D 57348

Copy of letter sent to Petersen

This petition is to vehemently oppose the appropriation of water from Turtle Creek by Jenny Petersen, 19111 Maple Ave. Hitchcock. S.D 57348.

My reason for this opposition is many-fold. I will list these. These are not in order of priority. This could set a precedent for other farmers whose farm land is adjacent or near the Creek; The Redfield City Park is adjacent to the Creek and the water level is paramount to the limited watering of park landscaping and flowers. My home is on Turtle Creek and the water level on this date is at least 1/2 foot below average.

Tom Bermann 226 E. 1st St. Redfield SD 57469

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WILES & RYLANCE
ATTORNEYS AT LAW
3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Jenson

June 20, 2017

Jack Hieb
Richarson, Wyly, Wise, Sauck & Hieb, LLP
Attorney at Law Post Box 1030
Aberdeen, South Dakota, 57402

Mr. Eric Gronlund
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501

Ms. Jeanne Goodman
Chief Engineer
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501

RE: Permit Application No. 8268-3; Lenny Peterson

Dear folks,

Please find enclosed our Petition to Oppose Chief Engineer's Recommendations regarding the above-named permit application.

If you have any questions, please feel free to call me.

Yours very truly,

WILES & RYLANCE

Raymond D. Rylance

RDR/ajt
Enclosures

PERMIT APPLICATION #8268-3 LENNY PETERSON	PETITION TO OPPOSE CHIEF ENGINEER'S RECOMMENDATIONS

Lenny Peterson, by and through his attorney of record Ray D. Rylance, Wiles and Rylance, Watertown, South Dakota, hereby file this Petition opposing the recommendation of the Chief Engineer on Application No. 8268-3.

Dated this 20th day of June, 2017.

WILES & RYLANCE

Raymond D. Rylance
Attorney for Lenny Peterson
3 East Kemp, Suite 200
P. O. Box 227
Watertown, SD 57201-0227

CERTIFICATE OF SERVICE

The undersigned, attorney for Lenny Peterson, hereby certifies that a true and correct copy of "PETITION TO OPPOSE CHIEF ENGINEER'S RECOMMENDATIONS" was sent by first class mail and by electronic mail to:

jhieb@wwsh.com
Jack Hieb
Richarson, Wyly, Wise, Sauck & Hieb, LLP
Attorney at Law\Post Box 1030
Aberdeen, South Dakota, 57402.

Eric.grondlund@state.sd.com

Mr. Eric Gronlund
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue Pierre, SD 57501

Jeanne.goodman@state.sd.com
Ms. Jeanne Goodman
Chief Engineer
Dept. of Water and Natural Resources
Joe Foss Building
523 East Capital Avenue \Pierre, SD 57501

WILES & RYLANCE

Raymond D. Rylance
Attorneys for Lenny Peterson

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16911 US Highway 281
Ashton, South Dakota 57424
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a farm operator of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
3) The average width of Turtle Creek varies from ~50 to ~100 feet.
4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
5) Using the above Turtle Creek measurements from the Application No. 8268-3 area to the dam described above, there is insufficient water to provide "300 acre feet" of water to irrigate 450 acres of farmland.
   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

"immediate depth" of 8.3 feet from shoreline to shoreline that is required to provide a volume of 300 acre feet. Thus a substantial shortfall in excess of 4 plus feet depth below the creek floor exists, i.e., 8.3 feet minus average of 4 feet (not considering loss of volume from shoreline to attain 4 feet of depth) equals greater than 4.3 feet of depth shortfall.

b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-391-0109.

Sincerely,

Casey Fey

Est. #	Creek Miles	Feet / Mile	Creek Avg. Width		Acre Square Feet	Creek Total Square Feet	Acres Creek	Application Acre Feet Water	Application Acre Square Feet	Feet of Water Depth Required
1	3.0	5,280.0	100.0			1,584,000.0		300.0	13,068,000.0	
					43,560.0		36.4			8.3
2	2.7	5,280.0	100.0			1,425,600.0		300.0	13,068,000.0	
					43,560.0		32.7			9.2
3	2.5	5,280.0	100.0			1,320,000.0		300.0	13,068,000.0	
					43,560.0		30.3			9.9
4	4.5	5,280.0	100.0			2,376,000.0		300.0	13,068,000.0	
					43,560.0		54.5			5.5
5	6.0	5,280.0	100.0			3,168,000.0		300.0	13,068,000.0	
					43,560.0		72.7			4.1
5	8.0	5,280.0	100.0			4,224,000.0		300.0	13,068,000.0	
					43,560.0		97.0			3.1

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State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building 523 East Capital

Pierre, South Dakota 57401

Chief Engineer

Water Rights Program

Joe Foss Building 523 East Capital

Pierre, South Dakota 57401

June 23, 2017

RE: #8268-3

To whom it may concern:

A few years ago, not living on the lake but close enough to view the process, we watched as Redfield Lake was dredged to clean it up and make it better for recreation and to beautify it. It took a lot of tax dollars and many hours of work by our local government to get the job done. The lake, as well as Have-A-Rest Park (on its shores) has been a source of pleasure and activity for many people; locals, hunters and those passing through. We cannot believe that our governments would spend so many tax dollars to fix up the lake and the park and then agree to dry it up. (We believe tax dollars from federal, state, county and city are involved.) It feels like one person would benefit from the loss of others and the city of Redfield.

The lake and the creek, as we understand it can be a source of water in the case of a serious fire for the city and the South Dakota Developmental Center. We understand that this creek is the source of water for cattle along its route. The creek that runs through the city park is an integral part of the life of the fish and other wild life there. The South Dakota Developmental Center has a fishing dock for the individuals who live on campus and we have seen people fishing in the park when we walk there. We suspect that if the water was depleted and puddles or

stagnant water was left, there would most likely be an increased incidence of West Nile Virus in the area, due to that type of water being the perfect place to grow mosquitos.

From what we understand, the full injury of what can happen with the syphoning off of so much water, is not known. Water is a life-giving commodity which should not be depleted from many, for the appetite of one.

Please do not allow this reduction of water flow.

Respectfully,

Earl Sprague

Sheila Sprague

Earl and Sheila Sprague

925 West 5th Street

Redfield, South Dakota 57469

Dear Srs

We at ESSer Farm Inc. are opposed to the chief engineers decision to allow Lenny Peterson to appropridte water from Turtle creek for. irrigation It is our belief that it will limit our ability to use &reek to water cattle in our pasture aproximatly 1 mile north of proposed site.

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ESSer Farm

Dan Esser

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23659 – 455th Avenue
Madison, South Dakota 57042
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a land owner of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
3) The average width of Turtle Creek varies from ~50 to ~100 feet.
4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
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   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

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b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-480-2570.

Sincerely,

Kenneth Booze

Kenneth Booze

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37865 S.D. Highway 26
Redfield, South Dakota 57469
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

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To: Chief Engineer & Lenny Peterson,

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First, having a vested interest in a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

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Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-484-5328.

Sincerely,

David R. Booze

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WATER RIGHTS
PROGRAM

37865 S.D. Highway 26
Redfield, South Dakota 57469
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

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Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-472-1546.

Sincerely,

Inez Booze

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JUN 2 8 2017
WATER RIGHTS
PROGRAM

State of South Dakota

Department of Environment and Natural Resources

Joe Foss Building

523 East Capitol

Pierre, SD 57501

RE: Application # 8268-3

To whom it may concern,

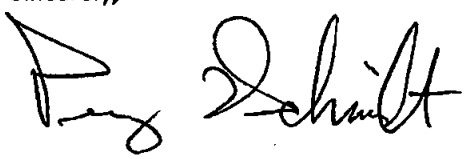
As a property owner along Turtle Creek and with a cattle operation that relies solely on Turtle Creek for a drinking water source I oppose this application # 8268-3.

The permit application to appropriate enough water to irrigate 450 acres of crops would cause a severe shortage of usable water downstream. I have lived on Turtle Creek for 67 years and Mother Nature has shut off the water flow plenty of times. We DO NOT need any more permits to irrigate to promote this situation.

I DO NOT agree with the recommendation of the Chief Engineer for water Permit Application # 8268-3 to recommend APPROVAL.

This Application for water SHOULD BE DISAPPROVED!!!

Sincerely,



Perry Schmidt

38221 174th Street

Redfield, SD 57469

605-460-2600

RECEIVED
JUN 2 8 2017
WATER RIGHTS PROGRAM

16911 US Highway 281
Ashton, South Dakota 57424
21 June 2017

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

Lenny Peterson,
19111 Maple Ave,
Hitchcock, South Dakota 57348

Subject: Application No. 8268-3 to Appropriate Water

To: Chief Engineer & Lenny Peterson,

In accordance with the Hearing Notice posted in the Redfield Press, Wednesday, 31 May 2017, in reference to the Subject Above, this letter serves as a petition and notice of opposition to issuance of a Water Permit as requested in Application No. 8268-3 to Appropriate Water. The reasons for opposition are as stated below in this letter.

First, as a farm operator of a farming operation that is located immediately to the north of the area addressed in the Application No. 8268-3, issuance of a permit that allows for 300 acre feet of water to be drawn from Turtle Creek will adversely affect in multiple ways.

Second, it is important to understand background information for opposition to issuance of a Water Permit:

1) The Turtle Creek's "water current" flows from "south to north." From the Application No. 8268-3 area, Turtle Creek flows from south to north through the farming operation and ultimately through Redfield Lake and flows into the James River located northeast of Redfield.
2) The average shoreline depths of Turtle Creek vary from a muddy one inch to one or two feet with gently increasing depth between its two shorelines varying from less than to approximately four (4) feet average in many places as the water flow progresses from south to north to the first government (WPA) built fully functional dam located approximately three (3) miles north of the Application No. 8268-3 area, and is located approximately ¼ mile north of Highway 26.
3) The average width of Turtle Creek varies from ~50 to ~100 feet.
4) The annual water flow over the dam described above normally ceases in late May and early June, and has currently ceased flow this month as in the historical past. During years of drought it requires well above normal rainfall and snow runoff normally in the following spring to return Turtle Creek to a level to allow water flow over the dam. Our history with this water flow experience has been substantiated previously by the South Dakota Department of Water & Natural Resources, Pierre, South Dakota 57501, in August 1981.
5) Using the above Turtle Creek measurements from the Application No. 8268-3 area to the dam described above, there is insufficient water to provide "300 acre feet" of water to irrigate 450 acres of farmland.
   a) The Turtle Creek water surface area that is available on the 3 miles of water flow from the Application No. 8268-3 area to the dam is approximately 36.4 acres. This acreage may reach an average depth some distance from and between the shorelines of approximately four (4) feet or less, against a required

"immediate depth" of 8.3 feet from shoreline to shoreline that is required to provide a volume of 300 acre feet. Thus a substantial shortfall in excess of 4 plus feet depth below the creek floor exists, i.e., 8.3 feet minus average of 4 feet (not considering loss of volume from shoreline to attain 4 feet of depth) equals greater than 4.3 feet of depth shortfall.

b) As the with all rivers and creeks, as capacity is tracked upstream to its source, the depth and/or volume of water diminishes rapidly. Any diversion of water in midstream has an adverse impact on both upstream and downstream within Turtle Creek as water holding capacity pressures are reduced forward in the flow to backfill the diversion and the normal available flow to downstream is further reduced.

Third, based on the above information and the impact to the farming operations and community are as follows:

1) Water for livestock will be reduced or eliminated. Additionally, in South Dakota, any shallow water quickly becomes tainted and unusable in the summer heat.
2) Turtle Creek at its normal seasonal depths without diversion of water provides both water for animals, and a natural barrier to confining or in effect fencing in livestock to remain within respective grazing areas.
3) Reduced water levels decrease the survival rates of the fish associated within Turtle Creek, a body of water that provides the public with enjoyment. Turtle Creek yields multiple fish varieties ranging from Catfish, Bullheads, to include Bass, Crappie, Walleye and Northern Pike. Winter kill be a critical issue if water depths are artificially reduced beyond normal seasonal experience through irrigation.
4) Turtle Creek is prime waterfowl migration stopover for thousands of ducks and geese annually who rely on the current water levels supporting their resting and feeding.
5) Both big game animals and associated small game and pheasants rely on Turtle Creek as a source of clean water that is untainted. Shallow water as experienced with the dugouts and water slews are a source of disease caused by insects and adverse organisms that thrive in low to muddy water that adversely impact big game, i.e., deer and small game and birds. It is critical that Turtle Creek water levels be maintained to sustain healthy wildlife populations.

Based on the mathematically inadequate water capacity described above and the impact to farming operations, wildlife, fish populations, and the public impacts, request that Application No. 8268-3 to Appropriate Water be permanently denied.

For additional clarifications or questions, contact the undersigned at 605-450-8705.

Sincerely,

Danny Booze

Danny Booze

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June 26, 2017

Water Rights Program, DENR
Joe Foss Building
523 East Capitol
Pierre SD 57501-3182

Dear Chief Engineer:

We are writing this letter to oppose Lenny Peterson's Water Permit Application No. 8268-3 to appropriate water from Turtle Creek for irrigation. We have many concerns involving this application. We feel the water levels of Redfield Lake will be severely impacted if approved. Redfield Lake serves as an important recreational and economic resource for the citizens of Redfield and the surrounding areas. People of all ages and walks of life utilize the opportunities it offers. Fishing, canoeing, kayaking, camping, family picnics, boating, skiing and special events are all possible because of the viability of Redfield Lake. The handicapped accessible dock is especially important because it is used by the residents of our nursing homes, Developmental Center, young children and many other citizens of the area. The camping facilities are being utilized throughout the entire camping season. Having these recreational opportunities immediately next to town allows many individuals a chance to enjoy activities not otherwise accessible to them.

We feel property values will be negatively affected, not only on Redfield Lake, but along the entire Turtle Creek Watershed. Reduced water levels on the lake will make Redfield less attractive to people looking to establish a home, both retirees and young families. Rural communities do not need more obstacles to overcome.

We encourage you to deny this application as you can see it will negatively affect many, many people in many ways.

Sincerely,

Dale Fiedler
Connie Fiedler

Dale & Connie Fiedler
903 W 5th St
Redfield SD 57469

cc: Ray Rylance

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield and a property owner along Turtle Creek. I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.

2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,

John Solheim
501 West 4th Ave.
Redfield, SD 57469

CHIEF ENGINEER
WATER RIGHTS PROGRAM
523 E CAPITOL
PIERRE. SD 57501

LENNY PETERSON
19111 MAPLE AVE
HITCHCOCK SD 57348

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To Chief Engineer & Lenny Peterson

I strongly oppose the issuance of a water permit #8268-3 to Mr. Peterson. My property is directly upstream from the site of appropriation. We never granted easement to the berming of the channel & increasing the water level on our property in the original plan.

I feel this action effects to many residents & existing water rights

Roger Mackintyre

June 27, 2017

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Mavis McFarlane
906 W 5th St
Redfield, SD 57469

Lanny Peterson
19111 Maple Ave
Hitchcock, SD 57348

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

Re: Water Rights Application #8268-3

Please do not grant this water permit. Lake Redfield affects both the agricultural and businesses as well as the welfare of our population. We all need water for drinking, cleaning, fire safety, animal husbandry and yes irrigation. Consider senior rights. Currently, most have been in effect since 1940, 3 others in 1934, '53 and '51. And yet our lake is shallow. We

would love a larger inflow to freshen up our greenish shore lines. If you allow another claim on the available water, often, that would very negatively affect everything currently in a pretty balanced state.

We can Meet (in a good year) our current needs, maintain our fish, entertain the migratory birds & continue to grow our HavaRest Park, a popular stop for many tourists. With[redacted] an adequate water level the lake does a big job for this community and those living along Turtle Creek.

It would be a huge mistake to upset this balanced situation providing so much for so many, to benefit one individual's bottom line.

Sincerely,

Mavis McFarlane

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JUN 29 2017
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Chief Engineer
Water Rights Program
Joe Foss Building
523 E. Capitol
Pierre SD 57501

Dear Sir:

We are again against Water App #82683 Linny Peterson which would allow him to take water from Turtle Creek. This would decrease the water level in Turtle Creek and Redfield Lake. These areas provide water for livestock and many other animals as well as fish. This would be greatly reduced. Fishing and recreational opportunities would be decreased. The low water levels would create more mosquito breeding areas leading to a greater chance of West Nile or other diseases. With low water levels the property values of nearby homes would be decreased. Redfield Lake is also used as a quick source of water in the event of a fire. For these reasons we feel the Application should be denied.

Sincerely,

Dennis Stewart
Diane Stewart
911 W. 5th Ave.
Redfield SD 57469

Joe and Karen Jungwirth
38442 10th Avenue West
Redfield, SD 57469
Phone: 605 302-1003

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June 27, 2017

Eric Gronlund
Water Rights Program
605 773-3352
Eric.gronlund@state.sd.us
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RE: Lenny Peterson Application #8268-3

To whom it may concern,

My husband and I strongly oppose Lenny Peterson's application to irrigate his 450 acres out of Turtle Creek. Every farmer I've spoken to, many second and third generation farmer's on the same family land, have stated that there isn't enough water in Turtle Creek to irrigate 100 acres! Not one person I've spoken to has thought this was a logical idea. I can't understand how the engineer could approve this, a potentially ruinous act! Turtle Creek is not a river. It's not fed by snow capped mountains in the distance. It's water levels vary in some areas and some seasons.Lowering the water level along Turtle Creek and Redfield Lake could cause a slew and bring mosquitoes. This could influence tourism as well.

I have been active with Chamber of Commerce in trying to revive our town, which has reduced in population by 1000, according to the last census. Much that we are trying to accomplish relies not only on special events hosted by our community, recruiting more merchants and services, but on the surrounding amenities and beauty. A depressing, mosquito ridden lake would be disastrous for our town.

On a personal level, beyond the reduction of our own property values, this incredibly selfish request by Mr. Peterson is causing quite a bit of anxiety. As a property owner on Redfield Lake at the creek, we watch the water level with much interest. The idea that I must concern myself with a lowering water level caused by Mr. Peterson's irrigation is more than I can fathom. Why should any of us citizens have to worry about such a thing! It's totally outrageous and completely unfair. Are we as individuals supposed to hire attorneys to fight Mr. Peterson when we are each affected in our own ways.

This is wrong! I am quite sure Mr. Peterson is aware of the disturbance and anxiety he is causing our community. He apparently cares only about his own financial interests.

I am going to encourage as many citizens in our community as I can to rally and fight this application.

My husband and I are home owners on Redfield Lake/Turtle creek. We moved onto the 8.6 acres in March 2009 after purchasing the property in 2007. We sold our home in Venice, California to move to this community where my husband's family originated as homesteaders. We own a construction business and a vacation home rental business. We also own a second property in a nearby lake view development, purchased specifically for an investment. We stridently oppose granting the irrigation application of Mr. Peterson. The possibility of adverse affects on the water supply to our local lake and creek is horrifying and startling. We cannot see how Mr. Peterson can be permitted to improve his business and family prospects at the detriment to others. The potential problems could "Red Flag" this entire community, lowering property values significantly and profoundly impacting our investments, our peace of mind, and our lifestyle. I sincerely hope we do not have to live with this anxiety over and over again in the future!

Please vote against this application. Thank you for your attention.

Sincerely,

Karen Jungwirth

Cc: Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

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

Dear Sir:

We are again against Water App # 88683 Lenny Peterson which would allow him to take water from Turtle Creek. This would decrease the water level in Turtle Creek and Redfield Lake. These areas provide water for livestock and many other animals as well as fish. This would be greatly reduced. Fishing and recreational opportunities would be decreased. The low water levels would create more mosquito breeding areas leading to a greater chance of West Nile or other diseases. With low water levels the property values of nearby homes would be decreased. Redfield Lake is also used as a quick source of water in the event of a fire. For these reasons we feel the Application should be denied.

Sincerly,
Mary Stewart
911 W 5th St.
Redfield, SD 57469

6/26/2017

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Robert and Connie Tiff
PO Box 596
Redfield, SD 57469

To Whom It May Concern,

On behalf of the Peterson Irrigation request to draft water out of what is known as Turtle Creek in Spink County.
We would like to voice our opinion as being opposed to granting Mr. Peterson permission to draft water for crop irrigation.
We are property owners both ahead of the area he wishes to irrigate from and behind the area as well.
We feel this would be a detriment to our properties because the probability of low stagnant water that can and will create insect problems as well as the fish and wild life it could hinder as well.
Our property along what is known as Redfield Lake located at 914 W. 5th St., Redfield, SD and NW ¼ 0f 24-115-65 and W ½ of SW ¼ of 24-115-65 in Spink County South Dakota.

Yours Truly

Robert & Connie L Tiff

Robert and Connie Tiff

Randall J. Waldner, M.D.
RW Investment Holdings, LLC
18 West 8th Avenue
Redfield, SD 57469

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Lenny Peterson
19111 Maple Ave.
Hitchcock, SD 57348

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

RE: Water App #82683 Lenny Peterson

I am against the water rights usage application placed by Mr. Peterson. I own and operate the Lakeview Apartments on Redfield Lake and this water rights usage would adversely affect my property value and the homes of my tenants. I urge you to deny this request because the previous application would have been denied and the reductions in water use will not suffice to keep the water flowing through Redfield Lake to ensure that the lake stays in good condition. Water doesn't flow over the spillway in Redfield for the majority of the year to begin with and this application will ensure that water will never run over the spillway. This will not only greatly affect the property owners surrounding Redfield Lake, but it will also undoubtedly decrease the amount of campers at Hav-A-Rest campground and will cause the lake to be unusable from a recreation standpoint. The other farmers with land bordering Turtle Creek will also suffer extensively as well to a point that can't be quantified. Countless others will be adversely affected if this application is approved and I do not believe that an individual should benefit at the cost of so many. Please deny this application and ensure the viability of Redfield Lake and all of the many uses it has.

Thank you for your time and consideration.

Randall J. Waldner, M.D.

Gronlund, Eric

Subject: FW: [EXT] water application #82683 Lenny Peterson

From: Audrey Martchinske [mailto:ajmartchinske@yahoo.com]
Sent: Friday, June 30, 2017 8:15 PM
To: DENR INTERNET INFORMATION
Subject: [EXT] water application #82683 Lenny Peterson

Les & Audrey Helm
923 W 5th St
Redfield, SD 57469

Chief Engineer Water Rights Program:

We reside along Redfield Lake. We are opposed to the water rights usage in the above water application case. We are concerned the amount of water drawn from Turtle Creek will have a significant impact to the water level of Redfield Lake, which in turn would negatively affect our property value along with all the properties along the lake. We would ask this application be denied. Thank You.

Les & Audrey Helm

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To Whom It May Concern

As long time citizens of Redfield, SD, we feel the need to voice concern over the proposed use of the water that goes into Redfield Lake.

This water is used for fire protection not only for the City of Redfield but also for the South Dakota Developmental Center. With the limitations on the amount of water available through WEB Water system, this fire protection is very important for protection of property and life.

This the water is used before coming into the Lake, the steam below the spillway will become a haven for mosquitos, this would include the West Nile type and every other type that would populate this area.

The water below the spillway feeds a stream that is used for fishing by the People living at the South Dakota Developmental Center. During spring, summer and fall, there is someone fishing off of the boat dock there, at least 4 days a week.

The Lake itself is used for recreational activities, swimming, boating, skiing and fishing. Without the water being able to come into the Lake, this would cause hardship for area businesses and vacationers alike. The Lake area has received may compliments for the variety of activities available and the cleanliness of the adjourning camp grounds. Redfield Lake is also used by the People at the South Dakota Developmental Center for pontoon boat rides. Without the flow into the lake, this would not be possible.

The proposed use of the water before going into Redfield Lake will also cause many problems for farmers living downstream of the irrigation system who use this water for the livestock.

Yours Truly

Dave Moeller

Marion Moeller

Mr. & Mrs. Bryon Anderson
822 W 5th St
Redfield, SD 57469

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Bryon Anderson 6/29/17

I am opposed the water permit that would divert water
in Turtle Creek.

Bryon Anderson

Kathi Anderson

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900 West 5th St
Redfield, SD 57469
June 20, 2017

To: Lenny Peterson
19111 Maple Ave
Hitchcock, SD 57348

To: SD DENR
Attn: Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

We are writing to oppose the water permit application of Lenny Peterson, Water Permit Application No. 8268-3. We live on Redfield Lake in Redfield, SD, and feel Mr. Peterson's diversion of water from Turtle Creek would negatively affect our personal situation, as well as our community.

Sincerely,

Paul J. Cosato

Lisa Cosato

June 27, 2017

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Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

Gentlemen:

I am writing this letter as a concerned citizen of the City of Redfield I oppose granting Mr. Petersen this second water permit application for the following reasons:

1. Safety to the community from the threat of fire will be greatly diminished if the application is granted. Redfield Fire Department has floating pumps and hoses they rely on in the event of a fire where there are not adequate city fire hydrants available. If the lake and creek dry up because of irrigation, citizens of Redfield will not have adequate fire protection.

2. The City of Redfield has an aggressive plan for mosquito control at this time. The threat of West Nile disease and its control will be greatly increased if the irrigation permit application is granted. If Turtle Creek and Redfield Lake dry up because of irrigation, mosquito control will become cost prohibitive and inadequate for the City of Redfield. All those miles of Turtle Creek and Redfield Lake will become breeding ground for mosquitos. The threat of West Nile disease will greatly increase.

Sincerely,

Wesley Jaden (Name)
503 W 4th AVE (Address)
Redfield, SD 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

RE: Water Permit 8268-3, Lenny Petersen

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Sincerely,

Ron Gubbels (Name)
511 West 4th Ave (Address)
Redfield SD 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Orlee Siebrecht (Name)
511 West 4th Avenue (Address)
Redfield, SD. 57469

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

MaryAnn DeMore (Name)
527 W 4th Ave (Address)
Redfield, SD

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June 27, 2017

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Corey Hirsch (Name)
604 W 4th Ave (Address)
Redfield SD 57469

June 27, 2017

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WATER RIGHTS PROGRAM

Jeanne Goodman, Chief Engineer
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Lenny Petersen
1911 Maple Avenue
Hitchcock, SD 57348

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Sincerely,

Joan B Eaton (Name)
207 West 4th Ave (Address)
6-28-2017

Procedure for Hearings before the Water Management Board

The Water Management Board's function is to regulate and control the development, conservation, and allocation of the use of water according to the principles of beneficial use and priority of appropriation. In this role, the Water Management Board conducts contested case hearings on water right permit applications. This document is intended to acquaint participants in hearings of general procedures before the Board.

The Board is a citizen board consisting of seven members appointed by the Governor. They are from varying backgrounds and locations around the state. The Board has meetings approximately every two months.

South Dakota codified laws (SDCL) and administrative rules (ARSD) govern water rights. The laws and rules may be downloaded at DENR's website at *http://www.state.sd.us/denr/denr.html*. Laws of interest include SDCL Chapters 1-26, 46-1, 46-2, 46-2A, 46-4, 46-5 and 46-6. Administrative rules to review are ARSD 74:02:01.

An individual may represent himself in a contested case before the Board or may be represented by legal counsel. However, an organization, association, partnership, corporation, etc., must be represented by an attorney. Attorneys that intend to participate in the hearing must mail a Notice of Appearance to all other parties. Non-resident attorneys must be able to demonstrate compliance with the requirements set forth SDCL 16-18-2 to practice in South Dakota.

Burden of Proof

The applicant for an permit issued by the Water Management Board has the burden of proving that he is entitled to the permit. The applicant must therefore be prepared to present the permit application and the proposed operation to the Board at a contested case hearing. This burden then switches to the petitioning parties to prove their case. Do not rely on the Department of Environment and Natural Resources (DENR) to carry the burden of proof. Although DENR makes a recommendation to the Board, this recommendation is in no way binding upon the Board. While a DENR expert will present their report and be subject to questioning by the Board and parties on the application, DENR is not an advocate for your position.

SDCL 46-2A-9 sets forth the four criteria that must be present in order to approve an application. They are:

1) A reasonable probability that unappropriated water is available for the proposed use;
2) The proposed diversion will not unlawfully impair existing rights'
3) The use is a beneficial use; and
4) The use is in the public interest.

Procedure

You or your legal counsel need to be at the hearing to present your position in a contested case hearing.

The Board Chairman runs the hearing. Address all questions and objections to the Chairman for a ruling. In some instances the Board will appoint a hearing chairman for preside over prehearing conferences and prehearing motions. An attorney from the Attorney General's office is seated with the Board to provide

them legal advice. In addition, the Water Rights Program is represented by legal counsel. This is a legal proceeding so expect to swear an oath to tell the truth when you approach the podium.

Contested case hearing are conducted pursuant to procedures outlined in SDCL ch. 1-26. Only parties of record can participate in the hearing by presenting testimony, calling witnesses or cross examining witnesses. Parties include the applicant and those individuals that have filed a petition as set forth in the public notice. The following procedure is followed:

1 Opening statements (parties may waive their opening statement)
   a. Applicant
   b. DENR – DENR will present a brief description of the application
   c. Petitioners and Intervenors

2. Evidentiary hearing
   a. Applicant (applicant's opportunity to present testimony and call witnesses)
   b. DENR – staff present their report and the Chief Engineer's recommendation
   c. Petitioners and Intervenors (opportunity to present testimony and call witnesses)

   Be prepared to explain your position on the application. Although the Board members have a great deal of expertise, don't presume they know anything about your issue before them. If you're the applicant, state what the proposed project is, the location of the project, timelines for completed the project and its benefits. If you are an opponent to the application, explain where you live in proximity to the proposed project and the adverse impact of the proposed project.

   Parties may call witnesses on their behalf. The Board oftentimes hears testimony from technical experts, neighbors or other witnesses regarding the proposal. Written endorsements are subject to the hearsay rule at the time of the hearing since the person can not be cross examined. Written comments will usually be allowed only if there is no objection from any other party.

   Upon the conclusion of any witness's testimony, Board members may ask questions of the witness and all parties will be afforded an opportunity in an orderly manner to cross examine the witness regarding their testimony. Cross examination is your opportunity to ask questions of the witness related to their direct testimony. It is not the appropriate time for you to provide your testimony.

3. Rebuttal – parties are afforded an opportunity to present testimony rebutting a prior witnesses testimony. Witnesses are again subject to cross examination but only related to their rebuttal testimony.

4. Closing arguments (summation of your position)
   a. Applicant
   b. DENR
   c. Petitioners and Interveners

5. Board decision. The decision making process occurs in public in front of all concerned and on the record. Normally, the Board limits discussion to its members but may call on witnesses, lawyers or parties to clarify a point. Upon making a verbal decision, the Board will direct

either the prevailing party or Water Rights Program's staff attorney to prepare findings of fact, conclusions of laws and Final Decision that will be considered at the Board's next meeting. The findings are a record of the facts considered by the Board. In the event the Board's decision is appealed to court, the findings reflect the facts considered by the Board to arrive at a decision. The non-prevailing party may waive their rights to findings if they are satisfied the Board addressed their concerns or have no intention of appealing the decision.

Although hearings may sometimes be considered informal, it is evidentiary hearing. Lawyers cannot testify or answer factual questions, cross examination is allowed, copies of exhibits must be available for opposing counsel or parties.

Ex-parte Communication

It is improper for any party to a pending application or contested case proceeding to contact Board members prior to the hearing. To do so is ex-parte communication with the likely result being the Board member excusing himself from the proceeding. The Board is very careful to avoid even the appearance of discussing a contested case hearing that will come before it. Situations do arise where a party requests to have a Board ruling on a motion prior to the evidentiary hearing. If an applicant or party has an issue he wishes to raise prior to the hearing, please contact the Water Rights Program and they will put you in contact with either the Board's attorney or the Water Rights Program attorney.

Exhibits

Exhibits are pictures, maps or documents you wish the Board to consider in conjunction with your testimony. Used effectively, exhibits greatly increase the interest and knowledge of the Board. Please have all exhibits you intend to present marked in advance of the hearing (example – Applicant Exhibit 1, 2 and 3 or Petitioner Exhibit 1, 2 and 3). Provide enough copies of each exhibit for the Board, Water Rights Program, opposing counsel and other parties. The exchange of exhibits by parties prior to the hearing is encouraged. Be aware that someone may object to admission of an exhibit. The Board Chairman will rule whether the exhibit is admissible. All exhibits become part of the record and will not be returned.

Transcript

A court reporter is present at all contested case hearings. A party wishing to have a transcript of the hearing should make their own arrangement with the court reporter. DENR will tape the proceeding and will prepare minutes of the hearing.

Appeal of Board's Decision

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days from when the signed findings of fact, conclusions of law and final decision is mailed to parties. The notice of appeal must be in accordance with procedures established in SDCL 1-26-31.

The best advice is to come to the hearing prepared! If you have question regarding the hearing process, please contact Eric Gronlund, Water Rights Program at (605) 773-3352.

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
http://denr.sd.gov/wr

Summary of South Dakota Water Laws and Rules

Prepared by Water Rights Program

May 2013

The following is a summary of South Dakota water laws and rules. This summary is provided as a service of the Water Rights Program, Department of Environment and Natural Resources for the purpose of introducing the public to the water rights laws of South Dakota. The actual text of the laws and rules may be viewed at http://denr.sd.gov/des/wr/laws.aspx.

PLEASE NOTE: This summary is not a substitute for the South Dakota Codified Laws or Administrative Rules of South Dakota and is not intended to serve as legal advice. In the event there is a difference in interpretation between this document and South Dakota Codified Law and/or Administrative Rule, the law and/or rule controls.

ADMINISTRATIVE OVERVIEW

1) Water in South Dakota is owned by the people of the state and not by private individuals. The right to use water may be obtained under State Law.

   Reference: SDCL 46-1-1, 46-1-3, and 46-5-5.

2) South Dakota water rights are administered by a system commonly called the "Doctrine of Prior Appropriation." This means the first in time (senior priority) is the first in right, except for individual domestic use. Priority is established based on the date of filing the application. Uses of water developed prior to or under development as of March 2, 1955 (surface water) or February 28, 1955 (ground water) may qualify for a vested water right depending on the type of use involved.

   Reference: SDCL 46-1-9, 46-2A-9, 46-2A-12, 46-4-1, 46-4-2, 46-5-4, 46-5-7, 46-5-8, 46-5-34, 46-5-34.1, and 46-6-3.

3) Domestic use of water takes precedence over appropriative rights.

   Reference: SDCL 46-1-5, 46-1-6(7), and 46-1-6(14).

4) The seven member Water Management Board regulates water use, approves and denies permits, validates vested rights, cancels water right permits or rights, establishes ordinary high and low water marks for lakes as well as setting lake outlet elevations.

   Reference: SDCL 1-40-15, 43-17-21, 43-17-23 thru 43-17-25, 43-17-28, 46-2-9, 46-2-11, 46-2A-7, 46-2A-8, 46-2A-16, 46-4-2, and 46-5-8.1.

DOMESTIC WATER USE – no permit needed

1) The following domestic uses do not require a water right permit:

   a. Domestic use of water from other than a common water distribution system that does not exceed 25,920 gallons per day (which is 18 gpm pumped 24 hours per day) or a peak diversion rate of 25 gallons per minute (gpm) for:

1. Individual farm or ranch use including livestock water;
2. Individual household use for drinking, washing, sanitary, culinary, and other ordinary household purposes; and
3. Irrigation of a noncommercial family garden, trees, lawn, shrubbery, or orchard that is no larger in area than one acre. Lawn, tree, and garden watering within a city, town, or from other common water distribution systems is covered by the system water right.

   Note: Drip irrigation systems for noncommercial purposes and not exceeding 18 gpm do not need to be permitted even if the irrigated area exceeds one acre.

b. Water use from other than a common water distribution system that does not exceed 18 gallons per minute (gpm) for:
   1. Schools, parks and other public recreation areas;
   2. Geothermal heating or cooling of a single household. Most heat pump installations for household heating and cooling should not require more than 5 to 10 gpm; and
   3. Noncommercial on-farm alcohol production.

Reference: SDCL 46-1-6(7), 46-5-50 thru 46-5-52. Water Management Board Rules 74:02:01:01 and 74:02:01:03.

WATER RIGHT PERMITTING

1) Except for the previously described domestic water uses and water distribution systems (e.g. towns, rural water systems, subdivisions, and mobile home parks) that do not pump more than 18 gpm, all uses of water require a water right permit pursuant to procedures in SDCL Chapter 46-2A. Water uses supplied from a water distribution system do not need a separate permit. Examples of uses which require a permit are:
   a. Cities, towns, rural water systems, mobile home parks, subdivisions, and other common water distribution systems that pump more than 18 gpm. Those systems not pumping more than 18 gpm that may expand and increase pumping above 18 gpm, should obtain a water right permit to establish a priority date.

      Note: Certain water distribution systems that do not pump more than 18 gpm may still be subject to compliance with Safe Drinking Water Standards. SDCL Chapter 34A-3A. Water Management Board Rules Chapter 74:04:05.

   b. Domestic use for farm, ranch, household, and livestock use from other than a common water distribution system in excess of either 25,920 gallons per day (18 gpm continuously for a day) or 25 gpm (peak rate).
   c. Any well that is allowed to flow more than 18 gpm.
   d. Any dam or dugout on a dry draw or nonnavigable watercourse impounding more than 25 acre feet.
   e. Any dam constructed for any purpose on a stream considered navigable.
   f. Irrigation of more than one acre.
   g. Commercial use, even less than 18 gpm, when supplied from other than a common water distribution system to a truckstop, tourist attraction, eating, drinking, or lodging establishment, commercial campground and any other business. An existing business without a water right has no right to the use of water. The commercial user without a water right is not entitled to receive protection in the event of well

interference by a new or future user who has a water right. The new user with a water right will have the senior priority over an existing user without a water right.

h. Industrial, manufacturing, gravel washing and mining uses when supplied by other than a common water distribution system. Temporary water permits may be issued for temporary, short term projects. See Temporary Water Permitting.

i. Geothermal use of any amount of water from other than a common water distribution system, for businesses, churches, schools, or any other building, except for individual homes using 18 gpm or less.

j. Any use by a school, park, rest area or other public recreation area in excess of 18 gpm when supplied by other than a common water distribution system.

k. Any use by a hospital, nursing home or church when supplied by other than a common water distribution system.

Fees for permit applications are set by SDCL 46-2-13(2).

Depending on the type of use involved a person who applied water to a beneficial use for works constructed prior to or under construction as of March 2, 1955 (surface water) or February 28, 1955 (ground water), may qualify for a vested right pursuant to SDCL 46-1-9 or 46-6-1, if that vested water right has not been forfeited or abandoned. Vested water right claims may be filed or the chief engineer may require vested water right claims to be filed pursuant to SDCL 46-5-49 or 46-6-2.

Reference: SDCL 46-1-3, 46-1-6(3), 46-1-9, 46-1-15, 46-5-1.1, 46-5-6.2 thru 46-5-6.8, 46-5-8.2, 46-5-9, 46-5-10, 46-5-49 and 46-6-2. Water Management Board Rules ARSD 74:02:01:03.

2) Criteria for granting a water right permit as set forth in SDCL 46-2A-9:

a. Water must be available for the proposed use.

The water source, whether surface or ground water, needs to be capable of supporting the proposed water use. For ground water, the average annual use from the water source may not exceed the average estimated annual recharge with some limited exceptions – please refer to "WELLS, Ground Water Management" for additional details.

b. The proposed diversion can be developed without unlawful impairment of existing rights.

Existing rights, including domestic uses of water, may not be unlawfully impaired regardless of whether the proposed source is surface or ground water. In order for a well to be protected it must meet the definition of an "adequate" well – please refer to "WELLS, Well Construction" for additional details.

c. The use of water must be a beneficial use.

Beneficial use is the use of water that is reasonable and useful and beneficial to the owner and consistent with the best utilization of water supplies. In general, beneficial uses of water include, but are not limited to: 1) domestic, 2) municipal, 3) rural water system, 4) irrigation, 5) suburban housing, 6) commercial, 7) industrial, 8) recreation, 9) fish and wildlife, and 10) institutional.

d. The use of water must be in the public interest.

Public interest is not specifically defined in water rights law and is a determination made by the Board based on testimony at the time of hearing. In making a public interest determination, the Board may recognize that some issues are within the jurisdiction of local, state and federal entities.

WATER RIGHT PERMIT ADMINISTRATION

1) After approval of a water right permit, the permit owner has five years to complete any construction. The owner then has an additional four years to put the water to beneficial use.

   A water right permit may be amended to extend the time for completion of construction or the time to put the water to beneficial use. The extension may be granted on account of delays due to physical or engineering difficulties, due to operation of law, or due to exigent circumstances identified by the Water Management Board. An application to amend a permit to extend the time for construction or the time to put the water to use needs to be made prior to expiration of the time period to be extended.

   Reference: SDCL 46-2A-1(2), 46-2A-8, and 46-5-26.

2) An existing water right permit or right may be amended. Amendment examples are: to change the use of water, to change place of use, to extend time for construction beyond five years, to change diversion points or to add diversion points. An amendment can not be granted to increase the rate of diversion or volume of water appropriated under the original permit or if an existing water right will be impaired. An application to increase the rate of diversion or volume of water will be treated as a new application and will be assigned a new priority date.

   The location of an existing diversion point may be moved or additional diversion points may be added without application or publication, if:

   a. The water source remains unchanged;
   b. No additional water is appropriated;
   c. If for irrigation purposes, no new land is irrigated; and
   d. The Chief Engineer makes a finding that the potential for interference with existing diversions is not increased.

   Reference: SDCL 46-2A-1(2), 46-2A-12, 46-5-13.1, 46-5-30.4, and 46-5-31.

3) Notice of any sale, grant, lease, conveyance or other transfer of an application, permit, or license to appropriate water must be filed with the Chief Engineer of the Water Rights Program within 90 days. No assignment is binding, except upon the parties thereto, unless filed for record in the Water Rights Program.

   Reference: SDCL 46-5-30.3 and 46-5-32.

4) Water right permits can be cancelled for nonconstruction. However, the Board may reinstate any water right permit with a priority date after March 31, 1977, within three years after expiration of the original construction period if unappropriated water is available. A new priority date is assigned to a reinstated permit. A water right permit or right can be lost for any of the following three reasons:

   a. Abandonment - The water right permit or right owner has no intent to use water and abandons its use. Once a water right permit or right is abandoned, it can not be reclaimed under the original permit or right.

b. Forfeiture - Occurs by operation of law if water is not used for a three year period without legal excuse. A "legal excuse" would include, generally, the lack of water, but may include other reasons. Once a water right permit or right is forfeited, it can not be reclaimed under the original permit or right.

c. A third violation of a condition of a water right permit or right.

Reference: SDCL 46-1-12, 46-2A-8.1, 46-5-36, 46-5-37, and 46-5-37.1. Water Management Board rules ARSD 74:02:01:36 thru 74:02:01:41.

FUTURE USE PERMITTING

1) The following entities may reserve water for expected future needs pursuant to procedures in SDCL 46-2A:

   a. State institution;

   b. Municipality as defined in SDCL 9-1-1;

   c. The South Dakota conservancy district or water development districts as defined in SDCL 46A-2-4;

   d. Water user district as defined in SDCL 46A-9-2;

   e. Nonprofit rural water supply company as defined in SDCL 10-36A-1;

   f. Sanitary district as defined in SDCL Chapter 34A-5;

   g. Irrigation district as defined in SDCL 46A-4; or

   h. Water project district as defined in SDCL Chapter 46A-18.

   Approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specific priority date. A future use permit does not grant authority to construct works or put the water to beneficial use. An additional application is required to construct works and put reserved water to beneficial use. The fee for a future use application is 10% of the usual fee for an application to construct works and put water to beneficial use.

   Future use permits are subject to review by the Water Management Board every seven years. If the future use permit is allowed to remain in effect after the seven year review, an additional 10% fee is required.

   Reference: SDCL 46-2-13(2), 46-5-38, and 46-5-38.1.

FLOOD CONTROL PERMITTING

1) Flood control permits are required pursuant to SDCL 46-2A for facilities constructed on a watercourse to control flooding. Emergency facilities may be constructed without a permit. However, the Chief Engineer of the Water Rights Program must be promptly notified. Flood control permits are not required for flood control facilities constructed on dry draws.

   Reference: SDCL 46-2A-11, 46-5-47, and 46-5-48.

TEMPORARY WATER PERMITTING

1) Temporary water permits may be issued by the Chief Engineer when limited amounts of public water are needed on a temporary basis. For example, permission may be granted to use water for highway and other construction projects and exploration drilling. A temporary permit is not valid after December 31 of the year in which the permit was issued and, under certain circumstances, a temporary permit may be rescinded. In

addition, a temporary permit is temporary permission to use public water and does not grant any right of priority for the temporary use.

Temporary permits may be granted to use water from either public or privately owned sources of water. Approval of a temporary permit does not grant trespass rights to access the water. Water may be obtained from municipalities and other permitted water distribution systems without a temporary permit.

Reference: SDCL 46-5-40.1. Water Management Board Rules ARSD 74:02:01:32 thru 74:02:01:34.02.

WELLS

1) Ground Water Management

   a. An adversely impacted domestic well is a well in which the pump intake is at least 20 feet below the top of the aquifer or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water from the well owner's needs.

      Reference: Water Management Board Rules ARSD 74:02:04:20(7)

   b. South Dakota water laws do not allow the "mining" of ground water. "Mining" occurs when the average quantity of water pumped annually from a ground water aquifer exceeds the estimated average annual recharge to the aquifer. There are a few areas in South Dakota where additional water right permits are not being approved for this reason. A limited exception to "no mining" is made by SDCL 46-6-3.1 for water distribution systems. The Water Rights Program maintains more than 1,500 observation wells to monitor ground water levels.

      Reference: SDCL 46-2-14 and 46-6-3.1.

   c. South Dakota water law does not protect artesian head pressure as a means of diversion. In other words, a well owner is not necessarily guaranteed that water from a flowing well or from a pump placement that relies on head pressure will always be available. A pump must be capable of being placed 20 feet into the aquifer or set as near to the bottom of the aquifer as practical if the aquifer is less than 20 feet thick.

2) Well Construction

   a. All wells must be completed in accordance with South Dakota Well Construction Standards. A well driller must be licensed to drill water wells in South Dakota. The driller is required by law to file a copy of a well completion report with the Water Rights Program within 30 days of completion of each well.

      Reference: 46-2A-13, 46-6-9, and 46-6-11. Water Management Board Rules ARSD Chapter 74:02:04

   b. Any person who performs work for compensation in the repair of wells or as a well pump installer must obtain either a well driller's license or a well pump installer's license.

      Reference: 46-2A-13 and 46-6-9.2.

   c. An adequate well is defined as a well constructed to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet.

      Reference: Water Management Board Rules ARSD 74:02:04:20(6)

3) Well Owner Responsibilities

a. The owner or equitable property holder is responsible for the well from the time the licensed well driller successfully completes the well in compliance with the Well Construction Standards ARSD Chapter 74:02:04. The owner shall keep the well capped or covered, in good repair, and in a sanitary condition.

Reference: Water Management Board Rules ARSD 74:02:04:74

b. All flowing wells must be controlled by the owner to produce only the amount of water needed and to prevent waste of water.

Reference: SDCL 46-2-18, 46-6-10, 46-6-14, 46-6-20, 46-6-21, 46-6-29, and 46-6-30. Water Management Board Rules ARSD 74:02:04:74.

c. When the owner of an existing well constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Other abandoned wells must also be plugged. If an old well is not to be abandoned or will be used, the well must still be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

Reference:SDCL 46-6-18 and 46-6-27.

DAMS OR DUGOUTS

1) Dams or dugouts of any size on a navigable watercourse or storing greater than 25 acre feet of water located on a dry draw or on a nonnavigable watercourse require a water right permit.

Reference: SDCL 46-4-1 and Water Management Board Rules ARSD 74:02:01:03.

2) Dams or dugouts storing 25 acre feet or less of water located on a dry draw or on a nonnavigable watercourse can be constructed without a water right permit provided a location notice is filed. However, the dam may not be constructed if it changes the course of the water, interferes with water rights, or wrongfully floods land owned by others.

Reference: SDCL 46-4-1.1, 46-4-3 and 46-5-2.

3) The owner of a dam or dugout storing 25 acre feet or less on a dry draw must file a location notice with the county Register of Deeds and the Water Management Board to avail the owner of the rights provided in SDCL Chapter 46-4 including establishment of a priority date. The $50.00 filing fee is set by SDCL 46-2-13(1).

Reference: SDCL 46-4-3 thru 46-4-6.

4) The Board may not enforce limitations on domestic use of water from dry draw dams except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse.

Reference: SDCL 46-2-22

5) Water Management Board Safety of Dams Rules Chapter 74:02:08 apply to dams that are 25 feet or more in height (top of dam) or that store 50 acre-feet or more of water (maximum storage to top of dam.)

Reference: Water Management Board Safety of Dams Rule ARSD 74:02:08:01(7).

6) Beaver dams - No person owning land through which a watercourse passes may prohibit the removal of obstructions built by beavers in a watercourse, if the beavers have obstructed or interfered with the flow of water through the watercourse in a manner that floods land belonging to others or impairs existing water rights.

Reference: SDCL 46-5-1.2.

ORDINARY HIGH/LOW WATER MARKS AND LAKE OUTLET ELEVATIONS

1) The Water Management Board establishes ordinary high water marks (OHWM), ordinary low water marks (OLWM) and lake outlet elevations for public lakes.

State law provides that all navigable rivers and lakes are public highways within 50 feet landward from the water's nearest edge, provided that the outer boundary of such public highway may not expand beyond the OHWM and may not contract within the OLWM. Thus, the public has the right to use a strip of land up to 50 feet wide below the OHWM beginning at the water's edge or the OLWM. Further, while the public may use the 50 foot strip of land for only "public" purposes, the private adjoining landowner may use the land for any purpose not inconsistent with the rights of the public.

The meander line is a survey line and is usually not a property line nor is the title of an adjacent landowner limited to the meander line, except when the land title conveyance clearly states that the meander line is the property line. Subject to the preceding exception, the meander line defines neither the boundary of a lake or stream nor the extent of land area owned by the adjacent landowner. The meander line was established during early government surveys and used to determine the acres of land subject to sale.

Reference: SDCL 43-17-1 thru 43-17-4, and 43-17-20 thru 43-17-30.

On September 8th, the mailing of the notice to Joan Eaton was returned as un-deliverable. The petition indicates DENR used the proper address. Also an internet search was conducted and this was the address found for Joan Eaton.



RECEIVED
AUG 2 9 2017
WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	PROCEDURAL AND SCHEDULING ORDER

Upon consideration of the Motion for Procedural and Scheduling Order filed by the Department of Environment and Natural Resources, the following Order shall be entered in the above captioned action. It is ORDERED:

1. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.

2. On or before September 15, 2017, all parties (including intervenors) shall complete a Prehearing Election Form, attached hereto as Exhibit A. The completed Prehearing Election Form, together with any appropriate attachments, shall be submitted to Eric Gronlund, DENR Water Rights Program, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182, or electronically to Eric.Gronlund@state.sd.us. The completed Prehearing Election Form, together with any appropriate attachments, shall also be submitted by mail to the Applicant's Attorney at: Ray Rylance, Wiles & Rylance LLp, PO Box 227, Watertown, SD 57201-0227.

3. The following pre-hearing schedule and obligations apply to Applicant, DENR, and all other parties:

a.) On or before September 8, 2017 each party shall disclose in writing the names of any expert that party intends to call as a witness at the hearing of this matter. This disclosure must include copies of any *curricula vitae*, along with copies of any expert report the party intends to offer. If an expert report has not been prepared, the parties shall disclose a summary statement of the anticipated testimony the expert will provide and the methodology used by the expert to reach his/her conclusions. Expert witness disclosures and reports shall be served on all parties by mail.

b.) On or before September 15, 2017 each party shall disclose in writing the name and contact information for any and all witnesses that the party expects to call during the hearing of this matter. This disclosure must include a brief one or two sentence summary of each witness's expected testimony.

c.) On or before September 15, 2017 each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing and copies of said exhibits (on 8 ½" x 11" paper, parties may use larger exhibits for illustrative purposes at the hearing on this matter).

d.) All exhibits shall be marked in advance of contested proceedings by each Party. Each party shall contact Eric Gronlund, DENR Water Rights Program, (605) 773-3352 or at Eric.Gronlund@state.sd.us, to obtain a block of exhibit numbers.

e.) At the contested case hearing, each party shall provide a sufficient number of copies of exhibits for use at the hearing, including 10 copies for use by the Board, its counsel, and court reporter, and enough additional copies for all parties participating in the contested proceedings.

f.) All original prehearing motions shall be sent by first class mail to Eric Gronlund, DENR Water Rights Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182, or submitted electronically to Eric.Gronlund@state.sd.us. Parties must also serve copies of all motions on Board Counsel, Assistant Attorney General Matt Naasz at: Office of Attorney General, 1302 East Highway 14, Suite 1, Pierre, SD 57501. Parties must also serve copies of all motions on all other parties, either personally or by mail.

g.) Copies of all discovery requests, discovery responses, and any items identified in subsections a), b) and c) above, shall be filed with the Department by mailing to the DENR Water Rights Program at: Eric Gronlund, DENR Water Rights Program, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182, or submitted electronically to Eric.Gronlund@state.sd.us.

h). Filing the items identified in b), c), and g) above, (either electronically or by mail) with the DENR Water Rights Program, and on the Applicant's attorney by mail, shall constitute service upon all parties.

i.) All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson). Copies of all filings in this case may be requested from DENR (605-773-3352) at the requestor's expense.

Dated this 25th day of August 2017.

Everett E Hoyt

Everett E. Hoyt
Alternate Prehearing Officer
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	PREHEARING ELECTION FORM (EXHIBIT A)

The following form shall be used by all parties (including intervenors) to inform the Water Management Board of the nature of participation the intervenor intends to have at the hearing on this matter. Each party should complete this form and return it to Eric Gronlund, DENR Water Rights Program, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182, or electronically to Eric.Gronlund@state.sd.us. This form must also be submitted upon the Applicant's attorney at Ray Rylance, Wiles & Rylance LLp, PO Box 227, Watertown, SD 57201-0227. This form should be submitted by September 15, 2017. Please note however, that should parties intend to call witnesses and/or introduce exhibits, the Procedural and Scheduling Order entered in this matter contains specific deadlines for disclosure of expert witnesses, witnesses, and exhibits.

1. Name, address and email address of party:

_____

_____

_____

_____ (email address)

2. I am a party in the above captioned proceeding before the Water Management Board (Circle answer):

Yes No

3. I intend to participate in the hearing on Application No. 8268-3:
Yes No

4. I intend to offer personal testimony at the hearing:
Yes No

5. I intend to offer exhibits in support of my position:

Yes No

If you answered "Yes" to this question, exhibits must be disclosed pursuant to the Procedural and Scheduling Order by September 15, 2017. A form has been provided that may be used to assist in the required disclosure of exhibits.

6. I intend to call witnesses in support of my position:

Yes No

If you answered "Yes" to this question, witnesses must be disclosed pursuant to the Procedural and Scheduling Order by September 15, 2017. A form has been provided that may be used to assist in the required disclosure of witnesses.

7. I want to ask questions of (cross-examine) witnesses called by parties during the hearing.

Yes No

8. I intend to call expert witnesses to testify at the hearing.

Yes No

If you answered "Yes" to this question, pursuant to the Procedural and Scheduling Order, expert witness disclosure must be completed by September 8, 2017. A form has been provided that may be used to assist in the required disclosure of expert witnesses.

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Signed and dated: _____

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	Expert Witness List Of _____ (name of party)

In order to comply with the Procedural and Scheduling Order, the name of each expert witness that a party intends to call at the hearing on this matter must be disclosed, pursuant to that Order, by September 8, 2017. This form may be utilized in complying with the Procedural and Scheduling Order entered in this matter. If you do not intend to call an expert witness at the hearing on this matter, you need not complete this form. If utilizing this form, please complete one form for each expert witness intended to be called at the hearing on this matter.

Expert witness' name: _____

If the expert witness has prepared a report, please attach the report to this document. If no report is attached, provide a summary statement of the anticipated testimony the expert will provide and the methodology used by the expert to reach his/her conclusions.

_____

_____

_____

_____

_____

Attach a copy of the *curricula vitae* of each disclosed expert.

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Date submitted:_____ Signature:_____

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	Witness List Of _____ (name of party)

In order to comply with the Procedural and Scheduling Order, the name and contact information of each witness that a party intends to call at the hearing on this matter must be disclosed, pursuant to that Order by September 15, 2017. Additionally, a brief one or two sentence summary of each witness's expected testimony must be included. This form may be utilized in complying with the disclosure requirements of the Procedural and Scheduling Order entered in this matter.

Name of Witness	**Contact Information of Witness**	**Brief one or two sentence summary of witness's expected testimony**

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Date submitted:_____ Signature: _____

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	Exhibit List Of _____ (name of party)

In order to comply with the Procedural and Scheduling Order, each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing on this matter on or before September 15, 2017. Copies of each exhibit must also be submitted to Eric Gronlund, DENR Water Rights Program, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182 or electronically to Eric.Gronlund@state.sd.us. Each exhibit should be marked with an exhibit number in advance of the hearing on this matter. To obtain a block of exhibit numbers, contact Eric Gronlund at (605) 773-3352 or at Eric.Gronlund@state.sd.us.

This form may be utilized in complying with the disclosure requirements of the Procedural and Scheduling Order entered in this matter.

Identification of Exhibit	**Exhibit Number**

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Date submitted:_____ Signature:_____

Attorney General
SEP - 8 2017
403608

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Watertown, South Dakota 57201-0227
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John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Thole

September 5, 2017

Ann F. Mines Bailey
Assistant Attorney General
1302 E Hwy 14, Suite 1
Pierre SD 57501

RE: Lenny Peterson

Dear Ann,

Find enclosed the Final Report of Turtle Creek Stream Flow Analysis for the Lenny Peterson matter.

If you have any further questions please feel free to contact me.

Yours very truly,

WILES & RYLANCE

Raymond D. Rylance

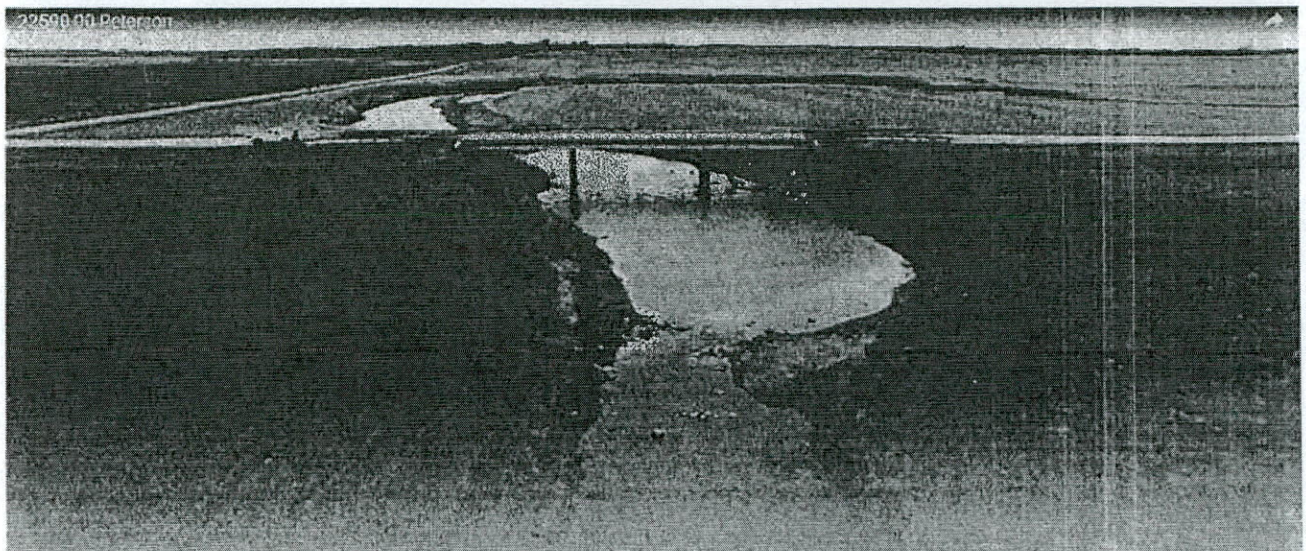
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Enclosures



DENNIS ODENS, PE

Senior Project Manager

With over 37 years of experience as a Civil Engineer, Dennis has developed an expertise in hydrology and hydraulics. He has experience in planning, design and construction engineering phases of various projects, including hydrology/hydraulic analysis, FEMA floodplain studies and open channel flow modeling; storm drainage systems; computer network analysis of water distribution systems, water supply pumping, distribution, storage, and treatment facilities.



EDUCATION

B.S. Civil Engineering,
South Dakota State University,
1980

PROFESSIONAL REGISTRATION

Professional Engineer
SD, MN, IA

PROFESSIONAL AFFILIATIONS

American Water Works Association (AWWA)

National Society of Professional Engineers

Dennis is a Senior Project Manager in the Water Resources Department. He has been associated with Banner Associates since 1980, with the exception of a four-year interim with an Illinois firm and another three-year interim with Minnesota firms. With over 37 years of experience as a Civil Engineer, Dennis has developed an expertise in hydrology and hydraulics as well as in project and administrative management, project coordination, client relations, presentation of projects and proposals to City Councils, County Commissioners, Rural Water Districts and Municipal Utilities.

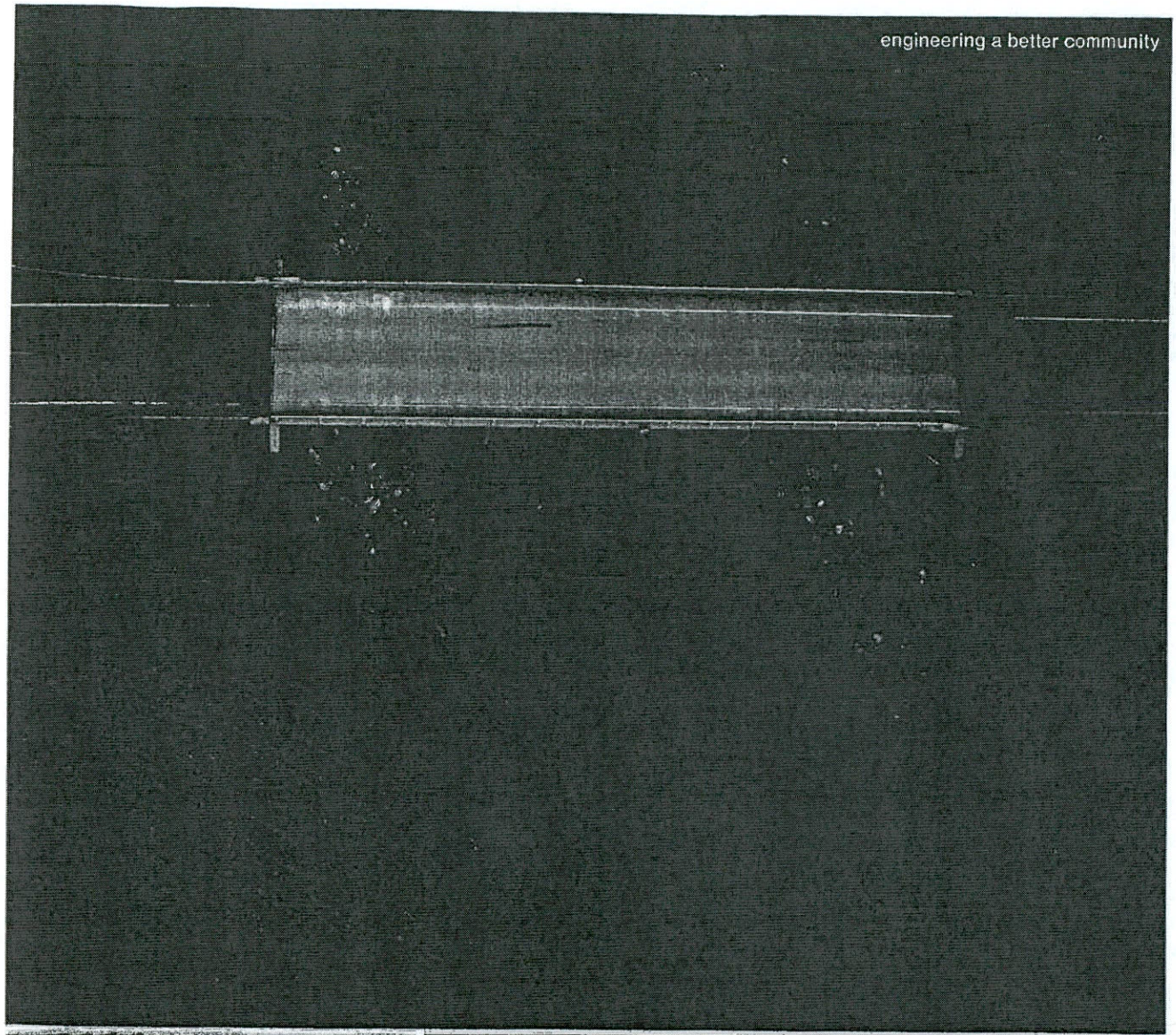
Dennis received his Bachelor of Science in Civil Engineering from South Dakota State University in 1980 and is affiliated with the Nation Society of Professional Engineers and American Water Works Association. He is currently registered as a Professional Engineer in South Dakota, Minnesota and Iowa.

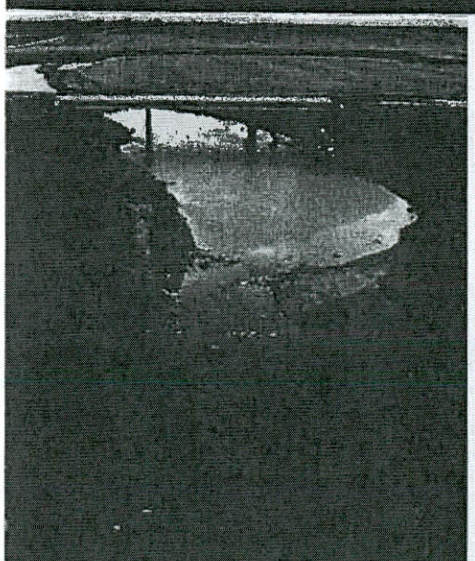
He has experience in planning, design and construction engineering phases of multiple projects, including hydrology/hydraulic analysis, FEMA floodplain studies and open channel flow modeling; storm drainage systems; computer network analysis of water distribution systems, water supply pumping, distribution, storage, and treatment facilities.

Specific project experience has included hydrology and hydraulic analysis and structure sizing for more than 50 bridge sites for South Dakota Department of Transportation; hydrology and hydraulics design for the Highway 20 Bypass at Watertown, SD; Brookings County hydraulic analysis of bridges and culverts; Madison/Lake County Drainage Basin and Soil Erosion Study, Madison, SD; Willow Creek Drainage Study, Watertown, SD; Hydraulic Analysis for two bridges in Marshall, MN.

Dennis also has extensive experience in municipal projects including subdivision layouts, street improvement projects; water distribution and water treatment; well replacement; water system analysis and large water main design and construction (6-inch to 30-inch diameter).

engineering a better community





Final Report

Turtle Creek Stream Flow Analysis

August 2017

Prepared For:
Lenny Peterson

Prepared By:
Banner Associates, Inc.
2307 West 57th St, Ste.102
Sioux Falls, South Dakota 57108
BAI Project No 22590.00.01

BANNER
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Turtle Creek Steam Flow Analysis

1.0 Introduction

1.1 Background

2.0 Evaluation

3.0 Recommendation

Tables:

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Table 2 Turtle Creek Flow Analysis Summary – Mean and Median Flow Data

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Figure 2 – Rating Curve – W.S. Elevation at SD DENR water quality gage site (0-10 cfs).

Figure 3 – Median Monthly Flow (cfs)

Appendix A

SD DENR Report 8268-3

Turtle Creek Steam Flow Analysis

1.0 Introduction

Banner Associates Inc. (Banner) entered into a service agreement with Lenny Peterson to complete a stream flow analysis on Turtle Creek for an irrigation water rights permit application. This report will summarize our investigation and recommendations regarding the stream flow in Turtle Creek.

1.1 Background

Lenny Peterson in August of 2016 applied for a water rights permit to irrigate approximately 405 acres of his land in Spink County. See Appendix A for SD DENR Recommendation and Report 8368-3. This first request included the construction of a small earthen dam to create instream storage. A pump would then be placed in the water storage to divert approximately 5.34 cfs of water for crop irrigation period of May through August. Following presentation to staff and obtaining the staff report which recommended denial of the permit the application was withdrawn.

In April of 2017 a new application was presented that would pump water from Turtle Creek at a reduced rate of 2.67 cfs without instream storage. This water would be used to irrigate approximately 450 acres with an annual volume limit of 300 acre-feet through the irrigation period of May through August.

The staff at SD Department of Environment and Natural Resources (SDDENR) considers four things when making a decision regarding a permit as follows:

1. There is reasonable probability that there is unappropriated water available for the applicants 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.

The state has on record all water right applications for Turtle Creek and has determined that in the downstream reach of Turtle Creek there are 5 existing water rights permits appropriating 4.67 cfs for irrigation and 2 authorizing storage of up to 1568 acre-feet annually for municipal use.

This report will address item 1 to determine if there is reasonable probability that there is unappropriated water available for use. This would mean that present day flows must be greater than 4.67 cfs existing water right plus 2.67 cfs of the requested water right or a total flow of 7.34 cfs during the irrigation period.

2.0 Evaluation

Historical data is analyzed to statically show what the flows have been. US Geological Survey (USGS) operated a stream flow gaging station west of Tulare, SD on Turtle Creek from 1952 to 1990. This gaging station location is approximately 4 river miles upstream of the proposed diversion. The analysis of this data is presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from about 3 to 6.5 cfs. The graph indicates in May the median flow varies from 0.5 to 3 cfs and in June and July the median flow rates are less than 0.5 cfs.

Another gaging station was operated by USGS on Turtle Creek in Redfield, SD between 1945 and 1972. The drainage area for this gaging station is 30% greater than the upstream gaging station therefore, an increase in flow is expected. The analysis of this data is also presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from about 4 to 16 cfs. The graph indicates in May the median flow varies from about 1 to 14 cfs and in June it ranges from about 0.5 to 5 cfs and in July the median flow rates range from about 0.25 cfs 3 cfs.

Lenny Peterson by observation believes that climatological changes have increased the stream flows and that the present-day stream flows are not accurately represented by the USGS historical data. SDDENR has a water quality gaging station at the bridge where the USGS gaging station used to be. This gaging station is equipped with a sonar unit that reads the distance down to the water surface approximately every 15 minutes. The state has not developed a rating curve for this site thus has not converted the data to flow.

Banner collected the bridge design data from SD Department of Transportation (SDDOT) and then complete a bridge hydraulics study to model the stream flow utilizing HEC-RAS a program developed by the Corps of Engineers for stream hydraulic analysis. A survey crew gathered information to develop a steam profile approximately 600' upstream and downstream of the bridge and collected cross section data for modeling purposes. The bridge dimensions were also measured for field verification purposes. The actual field measurements were used to model the stream flow. The model was then calibrated to the hydraulic information provided by the SDDOT with the bridge design. The model comparison results are shown in Table 1 - Bridge Model Calibration.

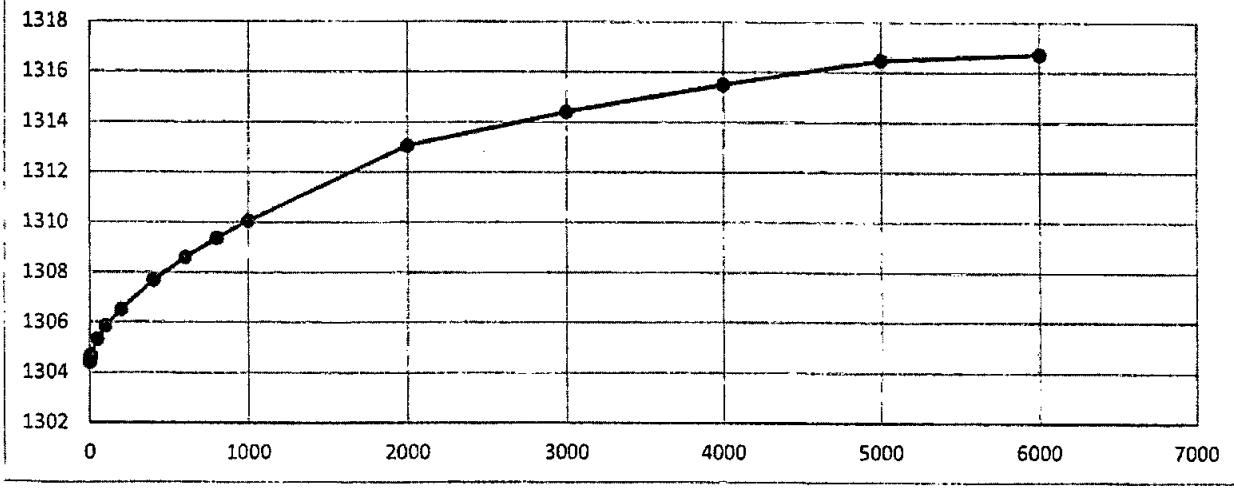
Table 1 - Bridge Model Calibration

	Bridge Design Records	Modeled Bridge Data
CFS	6,000	6,000
Bridge Waterway Opening Area (sq. ft.)	1538	1500
Velocity (ft./sec)	3.9	4.0
Water Surface Elevation (ft.)	1316.57	1316.59

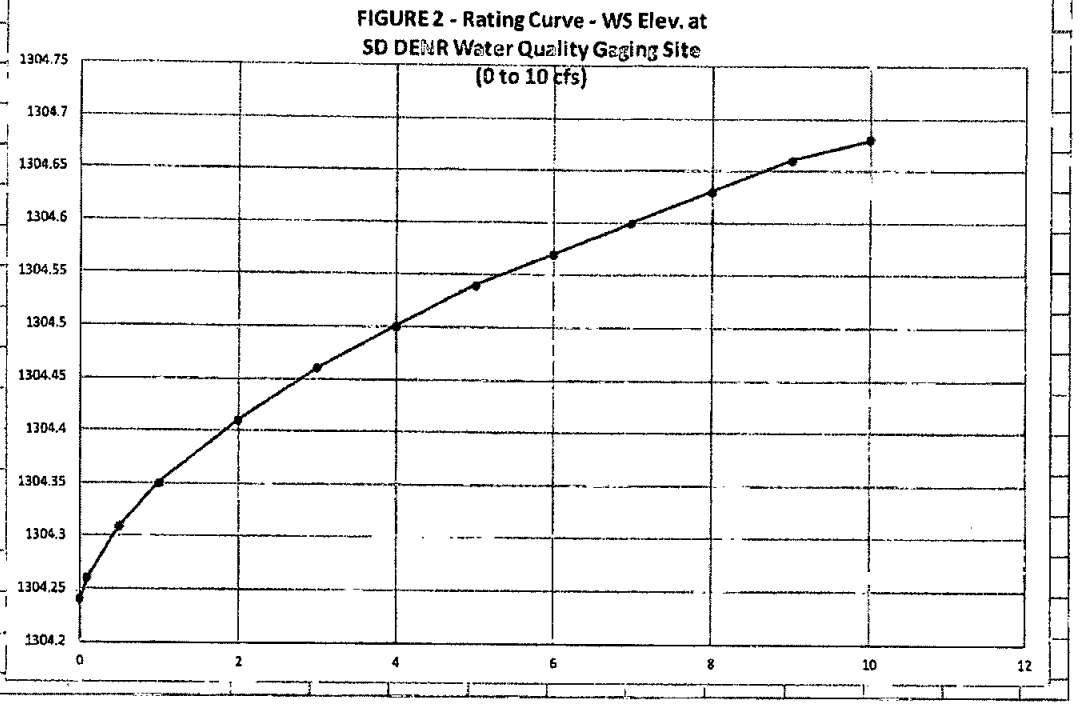
The survey information showed that the stream channel is slightly higher than depicted in the original plans thus it is reasonable to see that the bridge waterway opening is slightly smaller which in turn increases the velocity and raises the water surface elevation. Based on this data comparison it is our opinion that the model can be used to accurately predict the water surface elevation for various flows.

With the calibrated model, various stream flows were input into the model to develop a rating curve for this site. The rating curve developed is as shown in Figure 1 – Rating Curve.

FIGURE 1 - RATING CURVE - WS Elev.
AT SD DENR WATER QUALITY GAGE SITE



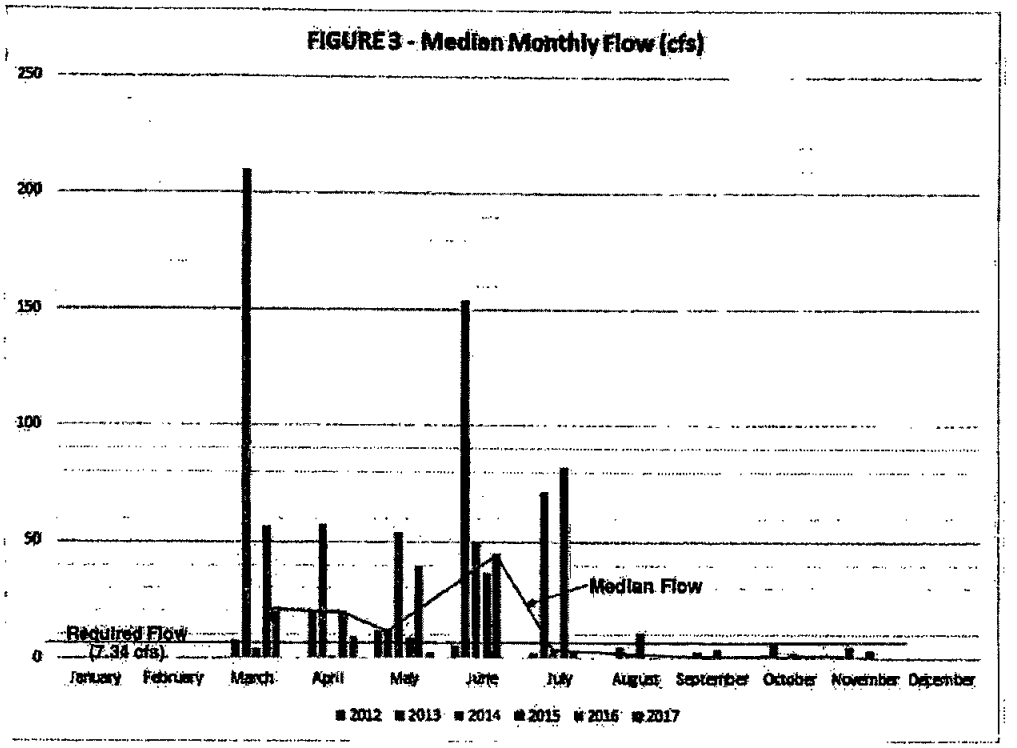
CFS	WS Elev.
0.01	1304.24
0.1	1304.261
0.5	1304.309
1	1304.35
2	1304.41
3	1304.46
4	1304.5
5	1304.54
6	1304.57
7	1304.6
8	1304.63
9	1304.66
10	1304.68



For Clarity Figure 2 shows the portion of the rating curve near the required flow of 7.34 cfs.

A trend line was developed for this curve to determine a statistical equation that could be used to convert the water quality data to a flow in cfs. The actual elevation of the sonar unit was unknown thus a water surface elevation was obtained during the field survey operation. The exact time frame of the water surface elevation is unknown but the survey stream profile and water elevation shots were taken between 10:57 a.m. and 12:30 p.m. The water surface elevation and the average of the water surface sonar depth measurements between 10:57 a.m. and 12:30 p.m. were used to calculate the sonar elevation. Once the sonar elevation was known all reading could be converted to elevations. The raw data included readings approximately every 15 minutes in a continuous record. This data was reduced to approximately 30-minute data and the winter months of Mid November to the end of February was removed from the data set being analyzed.

Once the data was prepared the average or mean value was calculated for each month of record. Then when that analysis was completed, each monthly data set was ranked from low flow to peak flow and the median flow was determined where 50% of the reading were above the median flow and 50% of the values were below the median flow. The summary of this analysis is presented in graphical form in Figure 3 – Median Monthly Flow (cfs) and in numerical form in Table 2 - Mean and Median Flow Data.



3.0 Recommendation

The summary tables show that March through June has adequate water to meet the irrigation demands for the existing and requested water rights of 7.34 cfs. The month of July is the month in question. The average of the median flows would indicate that there is adequate water in July, however if you evaluate the median flow of July for the data set the median flow 4.058 cfs which is below the 7.34 cfs desired. Adequate water was available in 2013 and 2015, however the monthly median flow in July of 2012, 2014 and 2016 was less than 7.34 cfs. In my opinion irrigation would be allowed when the water surface elevation is above 1304.63 which is the modeled water surface elevation for 8 cfs.

When the water surface elevation is above 1304.63 at the bridge west of Tulare on Turtle Creek, there is reasonable probability that there is unappropriated water available for the applicants proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is a beneficial use, and it is in the public interest to increase the agricultural production from the land being irrigated.

BANNER

Banner Associates, Inc.
2307 W 57th St, Ste 102
Sioux Falls, SD 57108
Tel 605.692.6342
Toll Free 855.323.6342
www.bannerassociates.com

TABLE 2 - Turtle Creek Flow - Based on Water Quality Monitoring Station WQM 172 (460172)												
	Average Monthly Flow (cfs)											
	January	February	March	April	May	June	July	August	September	October	November	December
2012	NA	NA	NA	NA	12.038	5.940	2.115	0.117	0.507	1.688	1.815	NA
2013	NA	NA	7.637	24.548	39.189	190.173	70.846	7.109	3.207	12.499	5.007	NA
2014	NA	NA	122.792	59.963	49.596	48.099	6.677	2.100	0.950	0.984	1.254	NA
2015	NA	NA	5.527	1.167	33.643	82.047	93.072	18.811	4.717	2.347	3.127	NA
2016	NA	NA	57.852	32.906	56.660	59.919	3.433	0.746	0.601	NA	NA	NA
2017	NA	NA	21.935	9.412	2.570	NA	NA	NA	NA	NA	NA	NA
Monthly Average Flow (cfs)			**43.149**	**25.599**	**32.283**	**77.236**	**35.229**	**5.777**	**1.997**	**4.379**	**2.801**	**NA**
	Median Monthly Fow (cfs)											
	January	February	March	April	May	June	July	August	September	October	November	December
2012	NA	NA	NA	NA	11.606	5.449	2.037	0.518	0.220	1.501	1.672	NA
2013	NA	NA	7.716	19.973	12.476	154.060	71.294	5.155	2.859	6.699	5.155	NA
2014	NA	NA	209.439	57.391	53.694	50.119	4.058	2.037	0.761	0.893	1.182	NA
2015	NA	NA	3.803	1.034	8.803	36.293	82.142	11.183	4.058	2.037	3.084	NA
2016	NA	NA	56.455	19.973	39.347	44.987	2.642	0.421	0.421	NA	NA	NA
2017	NA	NA	21.679	9.181	2.037	NA	NA	NA	NA	NA	NA	NA
Monthly Median Flow (cfs)			**21.679**	**19.973**	**12.476**	**44.987**	**4.058**	**2.037**	**0.761**	**1.750**	**2.378**	**NA**
Monthly Average Flow (cfs)			**59.819**	**21.510**	**21.327**	**58.182**	**32.435**	**3.863**	**1.664**	**2.783**	**2.773**	**NA**

APPENDIX A

SD DENR RECOMMENDATION AND REPORT 8268-3

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. 8268-3, Lenny Peterson

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. 8268-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications as to when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use until June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
May 1, 2017

REPORT ON WATER PERMIT APPLICATION NO. 8268-3
Lenny Peterson
April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.

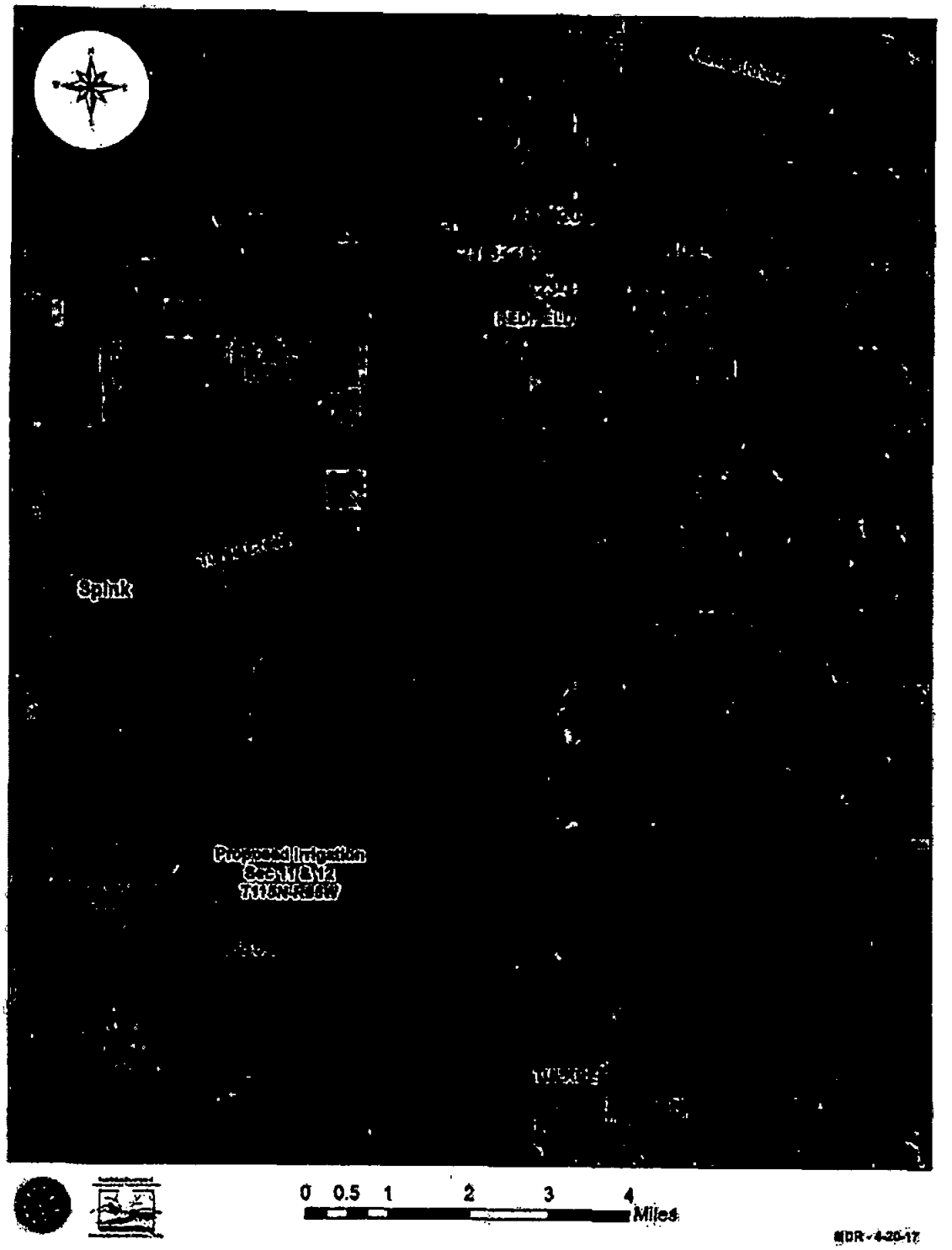


Figure 1. Area Map for Application No. 8268-3, Lenny Peterson

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

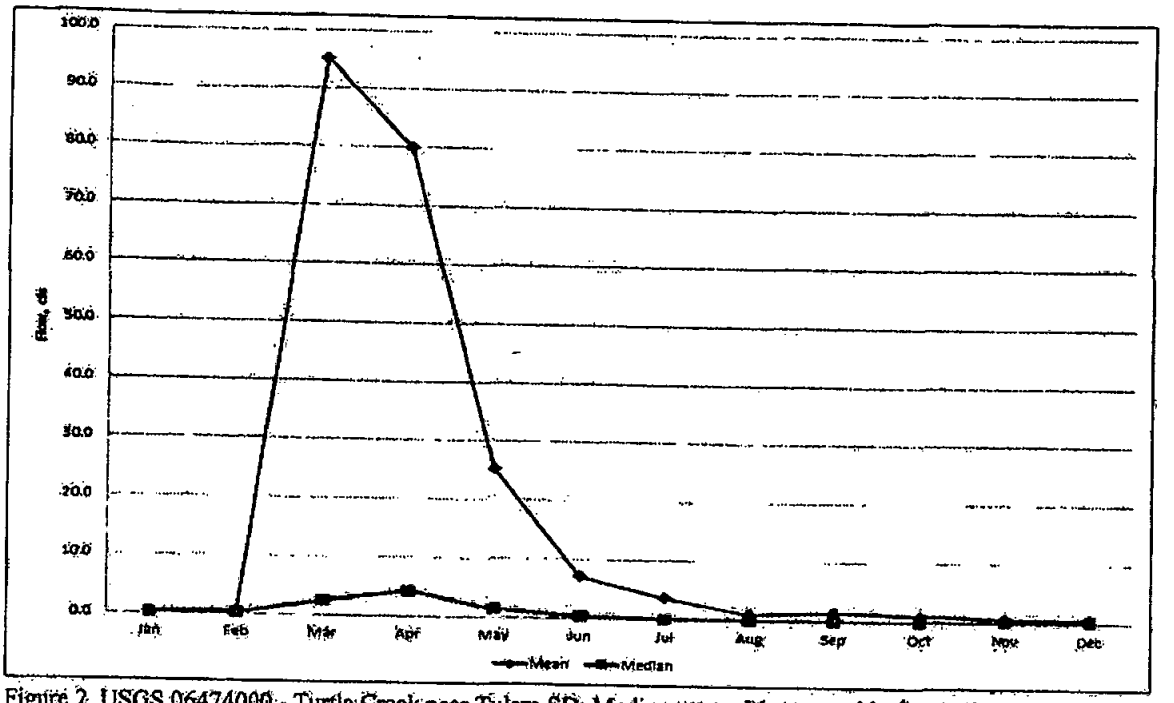


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD; Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

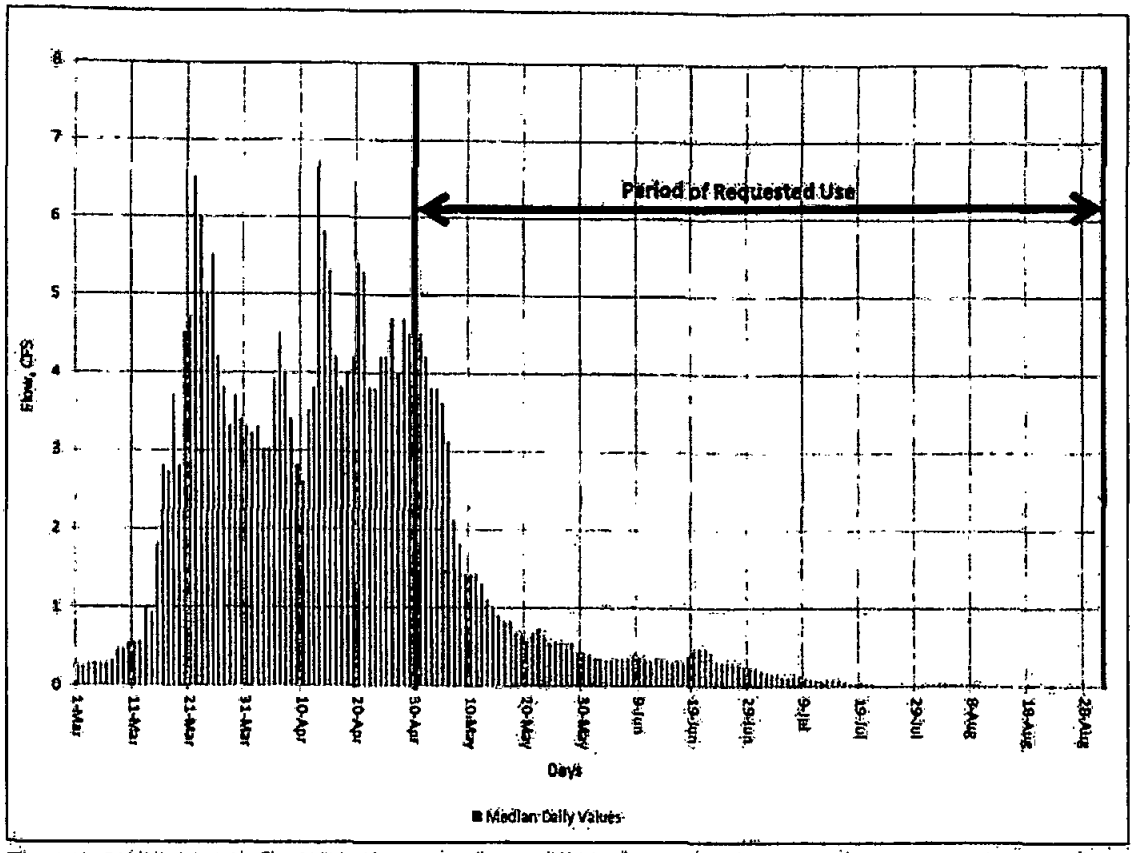


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970, (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi^2, which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

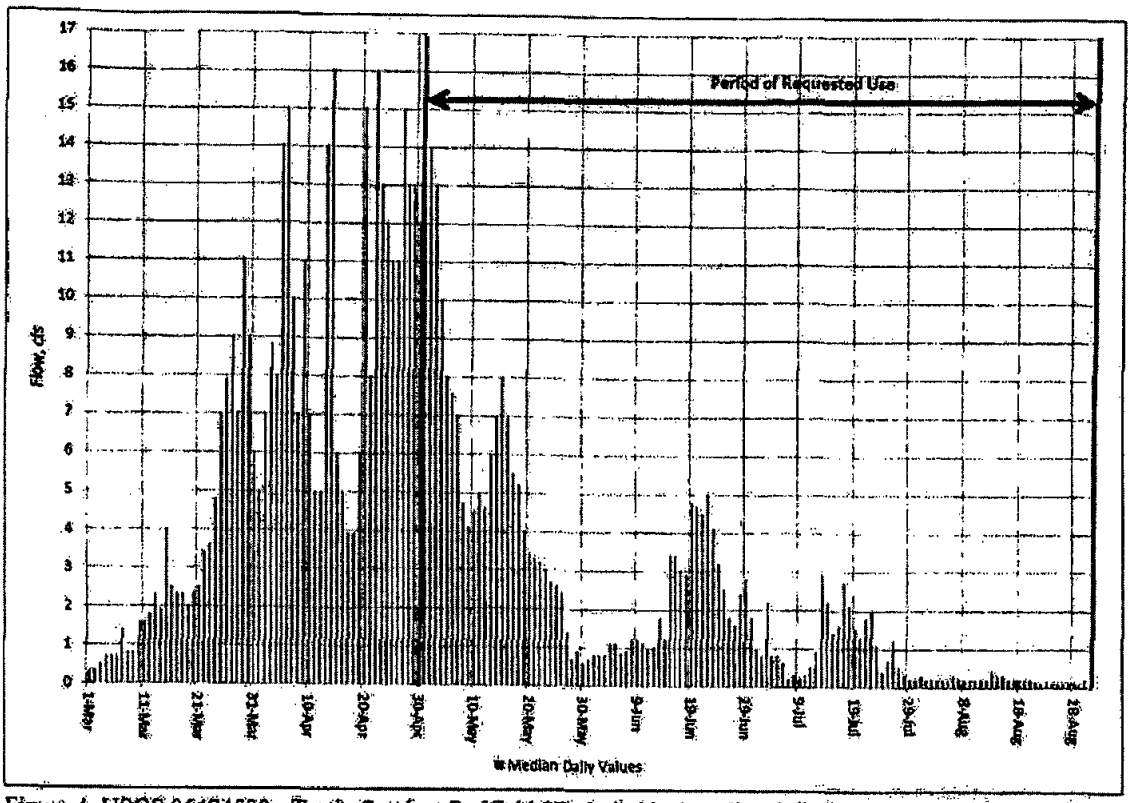


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi^2.

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

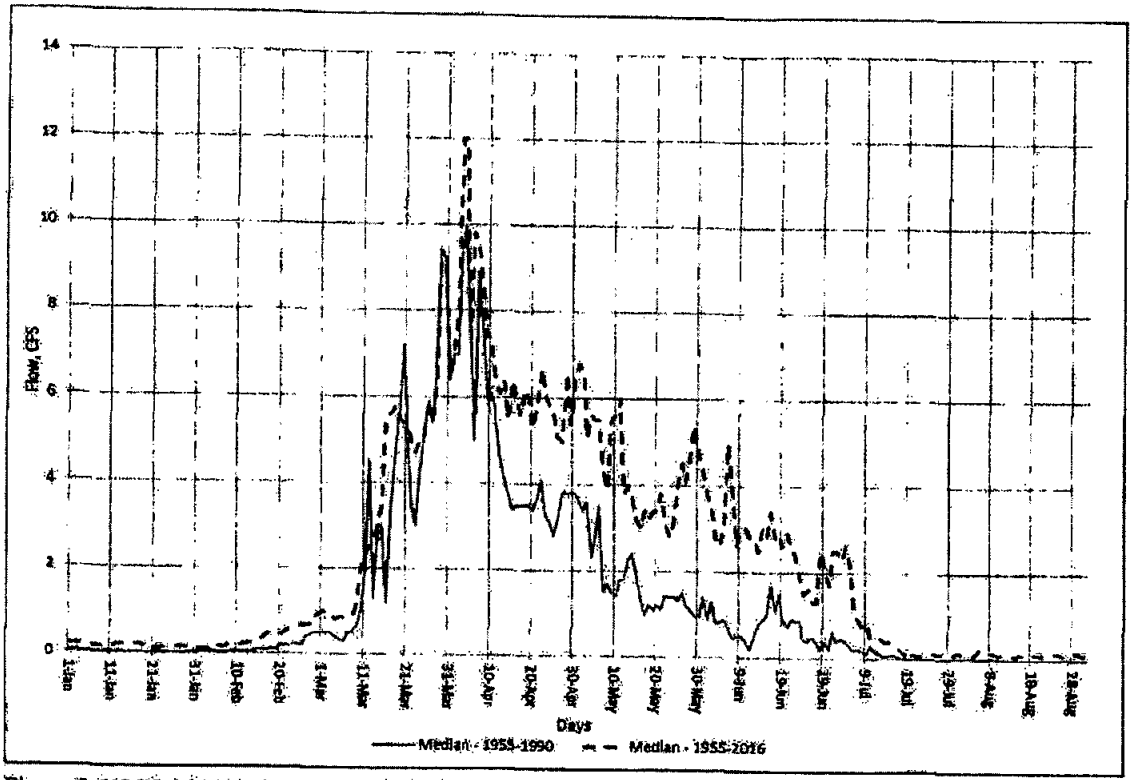


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi^2.

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

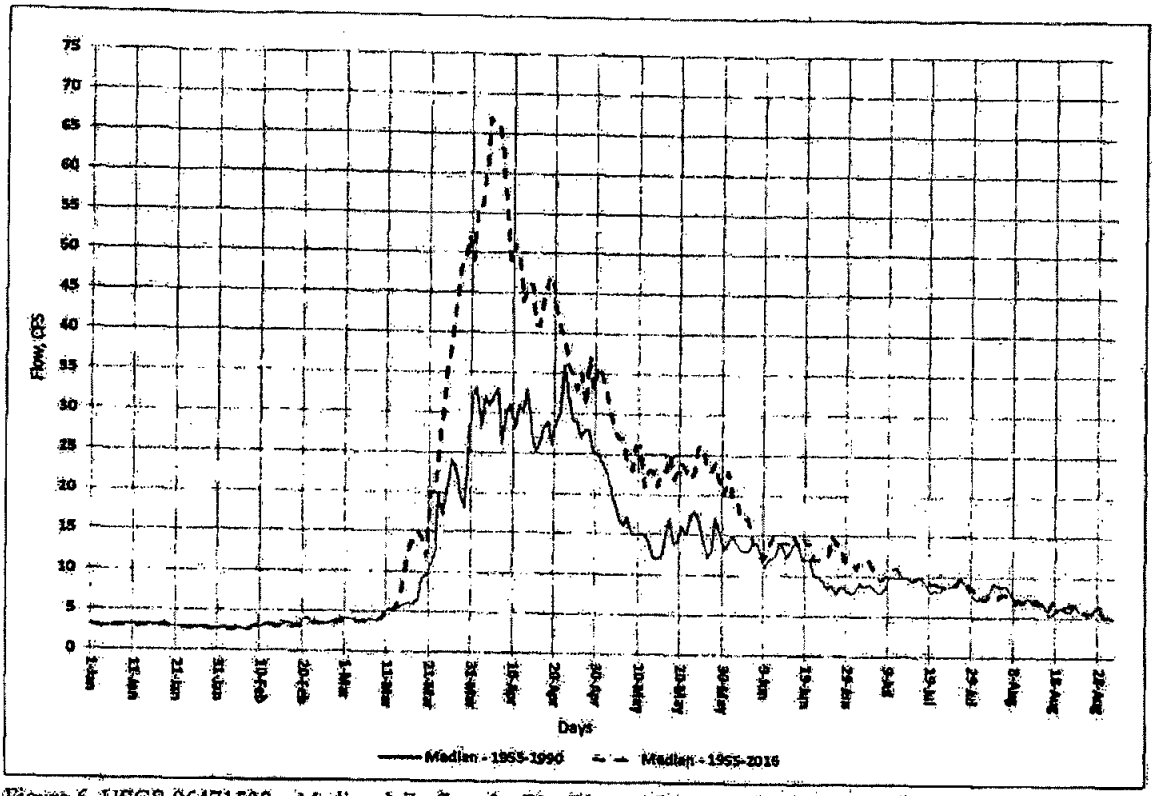


Figure 6. USGS 06471500 – Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi^2.

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

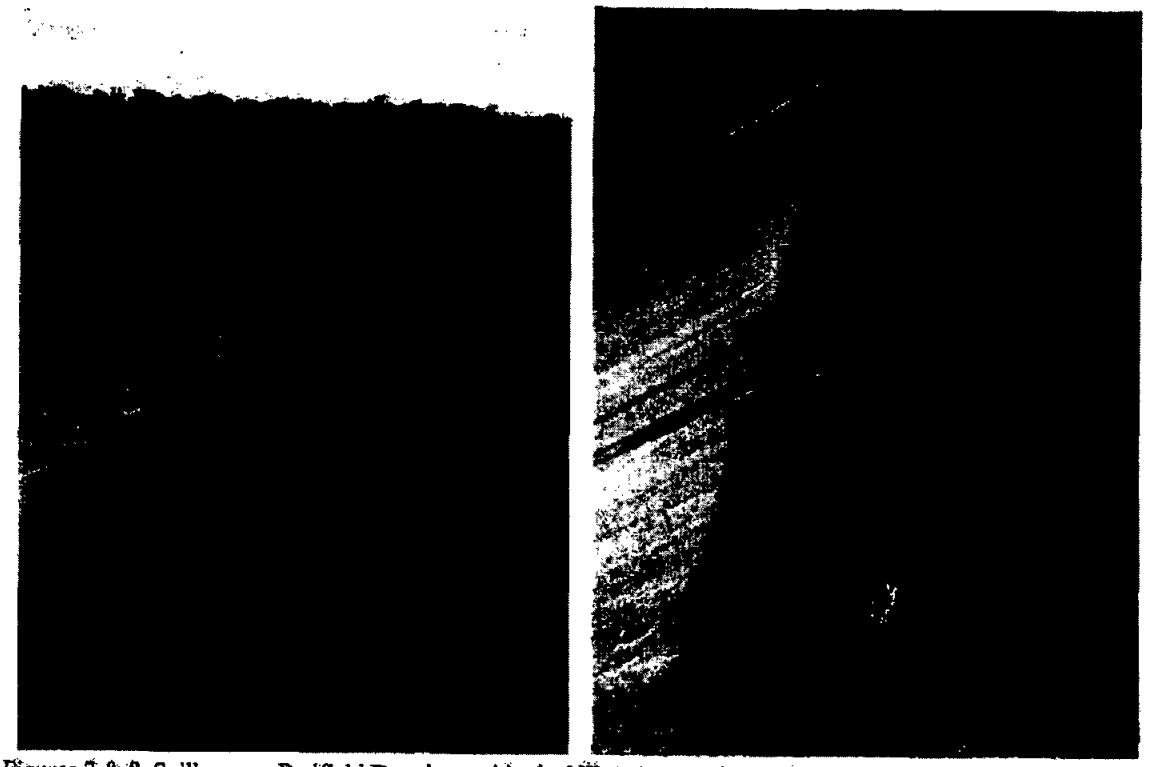
Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.



Figures 7 & 8. Spillway on Redfield Dam located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

   Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Mark D. Rath
Natural Resources Engineer III

References

1. Norton, P. A., Anderson, M.,and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.

2. Water Rights. 2017. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, September 11, 2017 4:25 PM
To: 'phohbach@mitchellrepublic.com'
Subject: 8305-3, Rockport Httrn Brethren
Attachments: 8305-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on September 21,2017.

Rockport Hutterian Brethren, c/o Donny Wipf, 26209 Rockport Rd, Alexandria SD 57311 (605 770-6849) 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 to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

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

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, September 11, 2017 4:25 PM
To: ementerprise@triotel.net
Subject: 8305-3, Rockport Httrn Brethren
Attachments: 8305-3public.short.docx; FORM8.FRM.doc

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

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352



EMAIL: JHieb@rwwsh.com
EMAIL: KDorsett@rwwsh.com
cc: JStucke@rwwsh.com

September 8, 2017

VIA E-MAIL ONLY:
Eric.Gronlund@state.sd.us

Mr. Eric Gronlund
SD Department of Natural Resources
Water Rights Program
523 E. Capitol Avenue
Pierre, SD 57501

Re: Permit Application #8268-3; Lenny Peterson

Dear Eric:

Attached please find a copy of Expert Witness List of City of Redfield together with referenced report and curriculum vitae; and Certificate of Service.

By copy of this letter, I am serving all parties a copy of the same.

Sincerely,

Jack H. Hieb

Attachments
cc: (each via U.S. Mail w/attachments)

Lenny Peterson
Ray Rylance
Earl & Sheila Sprague
Kurt Permann
Bill & Jane Newton
Kenneth Booze
Eldwin Haskell
David Booze
Patrick & Marti Thelen
Ms. Inez Booze
Dan Esser
Robert & Connie Tiff
Joe & Karen Jungwirth
Dennis & Mary Stewart
Mavis McFarlene
Roger McIntyre
Dave & Marion Moeller
Randall J. Waldner, M.D.
Game Fish and Parks - John Lott
Casey Fey
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Paul & Lisa Cosato
Wesley Jaton
Ron & Onilee Siebrecht
Mary Ann Schone
Corey Hieb
Joan B. Eaton
Rodney Freeman
Matt Naasz
John Solheim

Helms & ASSOCIATES
CIVIL ENGINEERS & LAND SURVEYORS

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PO BOX 111
ABERDEEN, SD 57402-0111

PHONE (605) 225-1212
TOLL FREE 1-888-378-4394
FAX (605) 225-3189

September 7, 2017

Mr. Jack H. Hieb, Ms. Kimberly A. Dorsett
Richardson, Wyly, Wise, Sauck & Hieb, LLP
PO Box 1030
Aberdeen, SD 57401

Re: Water Permit Application No. 8268-3 Lenny Peterson

Dear Mr. Hieb, Ms. Dorsett,

On May 1, 2017, Jeanne Goodman, Chief Engineer, Water Rights Program, Department of Environment and Natural Resources, State of South Dakota issued her recommendation for Approval of Application 8268-3 with qualifications.

I have reviewed all of the data available regarding this matter as well as the qualifications issued by the Chief Engineer. At this time I concur with the Chief Engineer's opinion, in that if all of the qualifications are precisely followed then those qualifications would appear to protect the Senior Water Rights downstream of the proposed point of diversion. In the event all of the qualifications are not precisely followed or if any one of them is modified in any way, then it is my opinion that the Senior Water Rights downstream would be negatively impacted and thereby not protected.

Sincerely,
Helms and Associates

Terry D. Helms, P.E, RLS

Documents reviewed by the writer:

- Recommendation of Chief Engineer for Water Permit Application No. 8268-3, Lenny Peterson
  Dated May 1, 2017

Terry Helms

P.O. Box 111
Aberdeen, SD 57402
(605) 225 – 1212
terryh@helmsengineering.com

PROFESSIONAL EXPERIENCE

Schmucker, Paul, Nohr and Associates, Inc.
1971-1976 – Civil Engineer In Training
1976 – Registered Professional Civil Engineer, State of S.D.
1977 – Registered Professional Land Surveyor, State of S.D.
1977 – Made Partner of Schmucker, Paul, Nohr and Associates, Inc.
1979 – Open Helms and Associates, a division of Schmucker, Paul, Nohr and Associates, Inc.
1979 – Registered Professional Civil Engineer, State of N.D.
1979 – Registered Professional Land Surveyor, State of N.D.
2017 – Retired

- For 41 years as a Professional Civil Engineer providing Planning, Design, and Construction Phase Project Management to Federal, State, and City government and private clients.
- Projects included Airport, Drainage, Highways, Landfills, Recreation Facilities, Storm Sewers, Sub-division Development, Wastewater Collection and Treatment, Water Wells, Treatment and Distribution, Urban Roadway, and Building Site Designs.

PROFESSIONAL ORGANIZATIONS

- National Society of Professional Engineers
- South Dakota Engineering Society
- American Society of Civil Engineers
- American Council of Engineering Companies
- South Dakota Society of Professional Land Surveyors

EDUCATION

1971 – Bachelor of Science, Civil Engineering
South Dakota School of Mines and Technology

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

PERMIT APPLICATION #8268-3 LENNY PETERSON	**CERTIFICATE OF SERVICE**

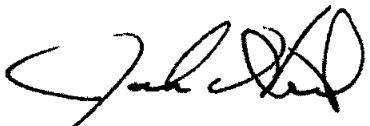
The undersigned hereby certifies that on the 8th day of September, 2017, a true and correct copy of **EXPERT WITNESS LIST OF CITY OF REDFIELD** in the above-entitled matter, was mailed by U.S. mail, first class, postage prepaid, to:

Ray Rylance Wiles & Rylance, LLP PO Box 227 Watertown, SD 57201-0227 *Counsel for Lenny Peterson*	Lenny Peterson 19111 Maple Avenue Hitchcock, SD 57328 *Applicant*
Earl & Sheila Sprague 925 W. 5th Street Redfield, SD 57469	Kurt Permann 226 E. 1st Street Redfield, SD 57469
Bill & Jane Newton 902 W. 5th Street Redfield, SD 57469	Eldwin Haskell 504 W. 10th Avenue Redfield, SD 57469
Patrick & Marti Thelen 904 W. 5th Street Redfield, SD 57469	Kenneth Booze 23659 455th Avenue Madison, SD 57042
Dan Esser 16774 379th Avenue Redfield, SD 57469	David Booze 37865 SD Highway 26 Redfield, SD 57469
John Lott SD Game, Fish & Parks 523 E. Capitol Pierre, SD 57501	Casey Fey Red Ash Ranch 16911 SD Highway 281 Ashton, SD 57424
Danny Booze 16911 US Highway 281 Ashton, SD 57424-6101	Perry Schmidt 38221 174th Street Redfield, SD 57469
John Solheim 501 W. 4th Avenue Redfield, SD 57469	Joe & Karen Jungwirth 38442 10th Avenue Redfield, SD 57469
Mary & Dennis Stewart 911 W. 5th Street Redfield, SD 57469	Joan B Eaton 407 W. 4th Avenue Redfield, SD 57469

Inez Booze 37865 SD Highway 26 Redfield, SD 57469	Dale & Connie Fiedler 903 W. 5th Street Redfield, SD 57469
Roger McIntyre 38293 179th Street Redfield, SD 57469	Robert & Connie Tiff Post Office Box 596 Redfield, SD 57469
Paul & Lisa Cosato 900 W. 5th Street Redfield, SD 57469	Byron & Kathi Anderson 822 W. 5th Street Redfield, SD 57469
Ron & Onilee Siebrecht 511 W. 4th Avenue Redfield, SD 57469	Wesley Jaton 503 W. 4th Avenue Redfield, SD 57469
Mary Ann Schone 527 W. 4th Avenue Redfield, SD 57469	Mavis McFarlane 905 W. 5th Street Redfield, SD 57469
Corey Hieb 601 W. 4th Ave Redfield, SD 57469	Dave & Marion Moeller 1312 S. Main Street Redfield, SD 57469-1631
Rodney Freeman Prehearing Chairman Water Management Board Post Office Box 176 Huron, SD 57530	Matt Naasz Assistant Attorney General State of South Dakota 1302 E. Highway 14, Suite 1 Pierre, SD 57501
Randall J. Waldner, M.D. RW Investment Holdings, LLC 18 W. 8th Avenue Redfield, SD 57469	

Dated this 8th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP



Attorneys for City of Redfield

Post Office Box 1030
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Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
JHieb@rwwsh.com
KDorsett@rwwsh.com

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

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
SEP 11 2017
WATER RIGHTS
PROGRAM

September 8, 2017

Parties on Certificate of Service

Re: *In the Matter of Water Application No. 8268-3*

Dear Applicant, Petitioners and Counsel:

Enclosed please find true and correct copies of DENR'S Disclosure of Experts, accompanying attachments and Certificate of Service in the matter of Water Application No. 8268-3, Lenny Peterson.

Sincerely,

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

Counsel for the Water Rights Program, DENR

AFM/cmm
Enclosures

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	DENR'S DISCLOSURE OF EXPERTS

Pursuant to the Procedural and Scheduling Order dated August 25, 2017, DENR hereby provides the names of its expert witnesses:

1. Mark Rath, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. A copy of his initial report and the supplemental report regarding the application and upon which the Chief Engineer's recommendation is based and his curriculum vitae are attached hereto.

2. Jeanne Goodman, Chief Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program. The Chief Engineer's recommendation and curriculum vitae are attached hereto.

Dated this 8th day of September 2017.

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

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of September 2017, true and correct copies of DENR'S Disclosure of Experts in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Ray Rylance
Wiles & Rylance LLp
PO Box 227
Watertown, SD 57201-0227
Counsel for Lenny Peterson

Kimberly A. Dorsett & Jack H. Hieb
Richardson, Wyly, Wise, Sauk & Heib LLP
PO Box 1030
Aberdeen, SD 57401
Counsel for City of Redfield

Game Fish and Parks
John Lott
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Joan B Eaton
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Corey Hieb
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Dave & Marion Moeller
1312 S Main Street
Redfield, SD 57469-1631

Byron & Kathi Anderson
822 W 5th Street
Redfield, SD 57469

Wesley Jaton
503 W 4th Ave
Redfield, SD 57469

Mary Ann Schone
527 W 4th Ave
Redfield, SD 57469

Kurt Permann
226 E. 1st Street
Redfield, SD 57469

And hand-delivered:

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

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

pld_AFM Lenny Peterson – COS (cm)

MARK D. RATH

September 2017

Home: 29409 US Hwy 14
Pierre, SD 57501
(605) 224-9071

Work: 523 E Capitol
Pierre, SD 57501
(605) 773-3352

EMPLOYMENT EXPERIENCE

Natural Resources Engineer 1990 – Present: SD Dept of Environment and Natural Resources, Water Rights Program: Responsible for monitoring, assessing and regulating water rights activities from surface water sources within the State of South Dakota. Review and assess engineering reports and water permit applications. Monitor water use, investigate violation complaints and conduct water permit reviews for licensing. Provide technical assistance for flooding issues along streams, rivers and lakes.

Graduate Research Assistant, 1988 – 1989: Water Resources Institute, SDSU: Performed feasibility study of subsurface irrigation/drainage system.

Agricultural Engineering Research Technologist, 1986 -1987: University of Nebraska Panhandle Research Center: Managed the day to day operation for a conservation tillage and irrigation management study and performed analyses of data collected from the study.

Research Assistant - Water Resources Institute, SDSU, 1986 Compiled data from a 100,000 acre watershed to be used in the Agricultural Non-Point Source Pollution Model (AGNPS) as part of the Rural Clean Water Program.

EDUCATION

B.S. Agricultural Engineering, South Dakota State University (1985). Emphasis on soil and water engineering.

M.S. Agricultural Engineering , South Dakota State University (1994). Thesis topic: Feasibility of Subsurface Irrigation/Drainage Systems in Eastern South Dakota.

REGISTRATIONS AND PROFESSIONAL SOCIETIES

Engineer in Training, EIT #E5104

CAREER ACTIVITIES

- Participated as a technical advisor for the "Northeast South Dakota Closed Basin Study", 1999 sponsored by FEMA Region VIII.
- Member of the National Integrated Drought Information System (NIDIS) Executive Council.
- Member South Dakota Drought Task Force.
- Testified as expert witness in a civil water dispute in state circuit court, Sherburn v. Pattererson., 1998.
- Provided testimony before the South Dakota Water Management Board multiple times including but not limited to the following vested water right claims, water permit and flood control permit applications:

Date	Application	Applicant
July 12, 2000	WP 2300-2	Lacreek National Wildlife Refuge
May 2, 2001	WP 6204-3	SD Department of Game Fish and Parks
July 11 & 12, 2001	VR 1635-1	SD Department of Game Fish and Parks
September 5, 2001	WP 2457-2	City of Rapid City
December 5, 2001	WP 2468-2	City of Rapid City
March 13, 2002	WP 1348-1	Gene Johnson
May1, 2002	WP 1839A-2	Mark and Pam Kieffer
July 10, 2002	VR 2479-2	Lonetree Ditch Company
March 4, 2003	WP 6375-3	Bixler Farms
May 7, 2003	WP1783-1	Fenton Farms Incorporated
October 1, 2003	WP1800-1	Harry Einfelt
October 6, 2004	WP 1819-1	Black Hills Mining Corporation
July 12, 2006	WP 2586-2	Rapid Valley Sanitary District
May 9, 2007	WP 399A-2	Steve L. Simunek
March 10, 2010	WP 2624-2	City of Rapid City
March 10, 2010	WP 2643-2	City of Rapid City
March 10, 2010	WP 504A-2	City of Rapid City
March 10, 2010	WP 2138A-2	City of Rapid City
December 1, 2010	WP 2654-3	US Bureau of Reclamation
July 8, 2015	WP 8033-3	Arthur E. Olson
October 14, 2015	Declatory Ruling Request	Gary Bussmus

PEER REVIEWED PUBLICATIONS

Smith, J.A., C.D. Yonts, M.D. Rath and J.E. Bailie. 1990. Mass of crop residue and its relationship with soil cover for a corn, dry bean and sugarbeet rotation. American society of Agricultural Engineers; 1990 Sep; Transactions of the ASAE v. 33 (5): p 1503-1508.

Smith, J.A., C.D. Yonts, D.A. Biere, and M.D. Rath. 1995. Field operation energy use for a corn - dry-edible-bean - sugarbeet rotation. Applied Engineering in Agriculture, 11(2):219-224. (Journal Series No. 10580.)

Erickson, J.W., M.D. Rath, and D. Best. 2008. Operation of the Missouri River reservoir system and its effect on fisheries management; American Fisheries Society Symposium 62, Balancing Fisheries Management and Water Uses for Impounded River Systems. P 117-134.

REPORT ON WATER PERMIT APPLICATION NO. 8268-3
Lenny Peterson
April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.

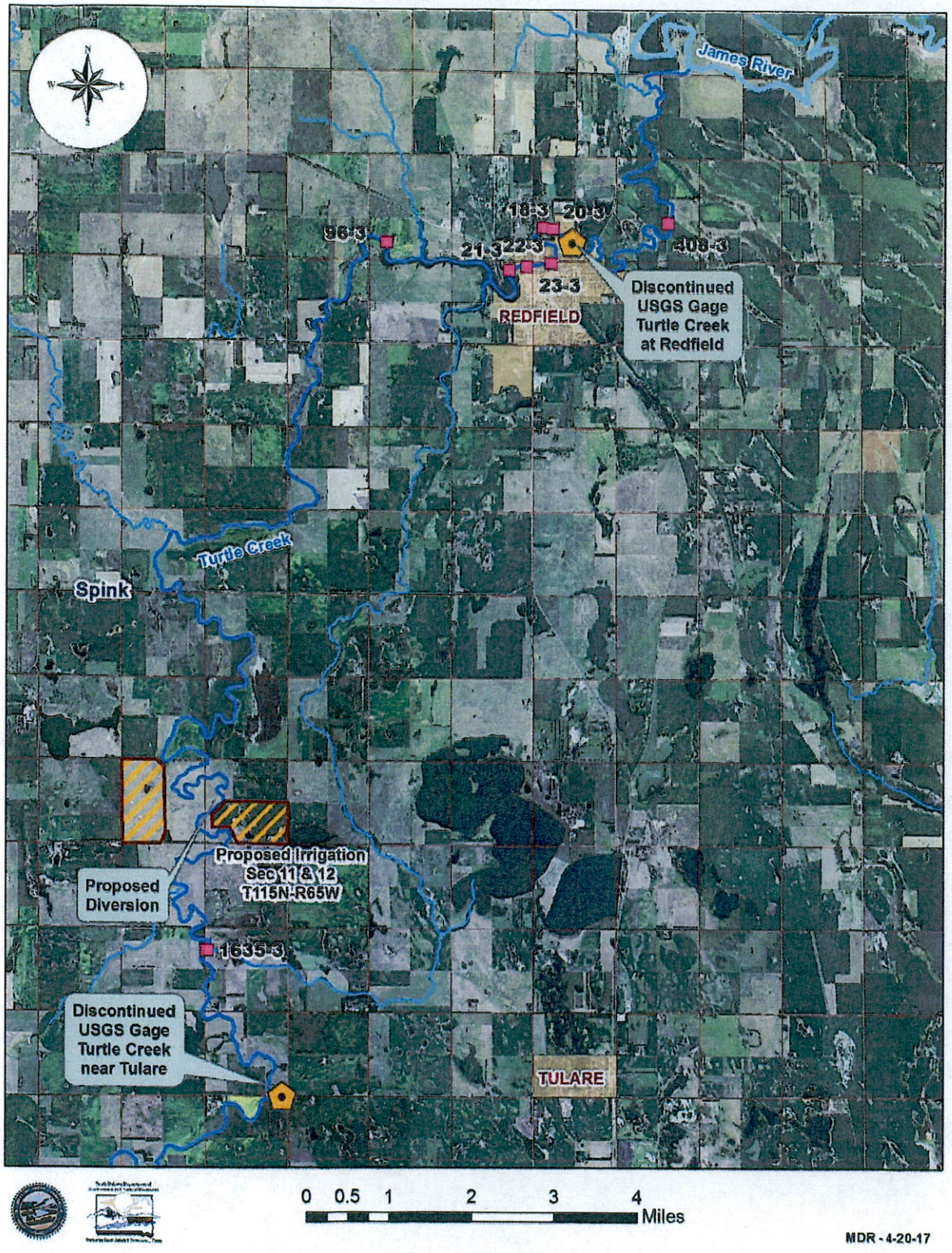


Figure 1. Area Map for Application No. 8268-3, Lenny Peterson.

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

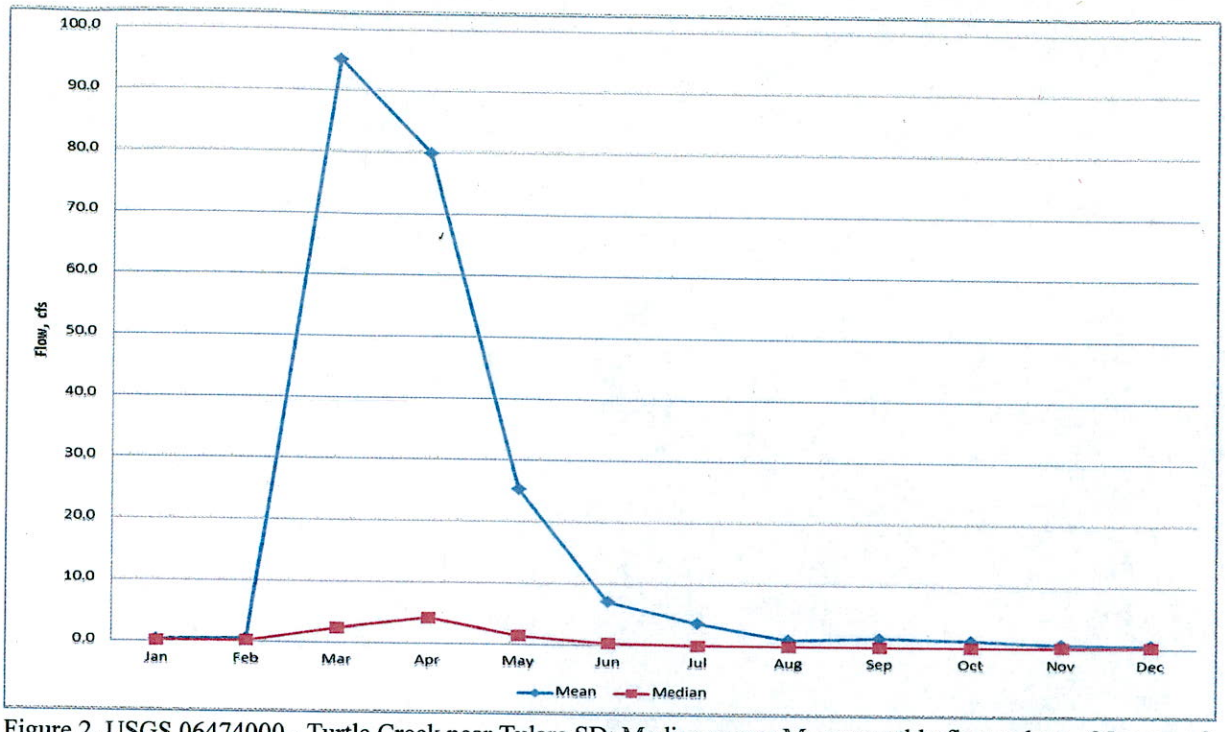


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD; Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

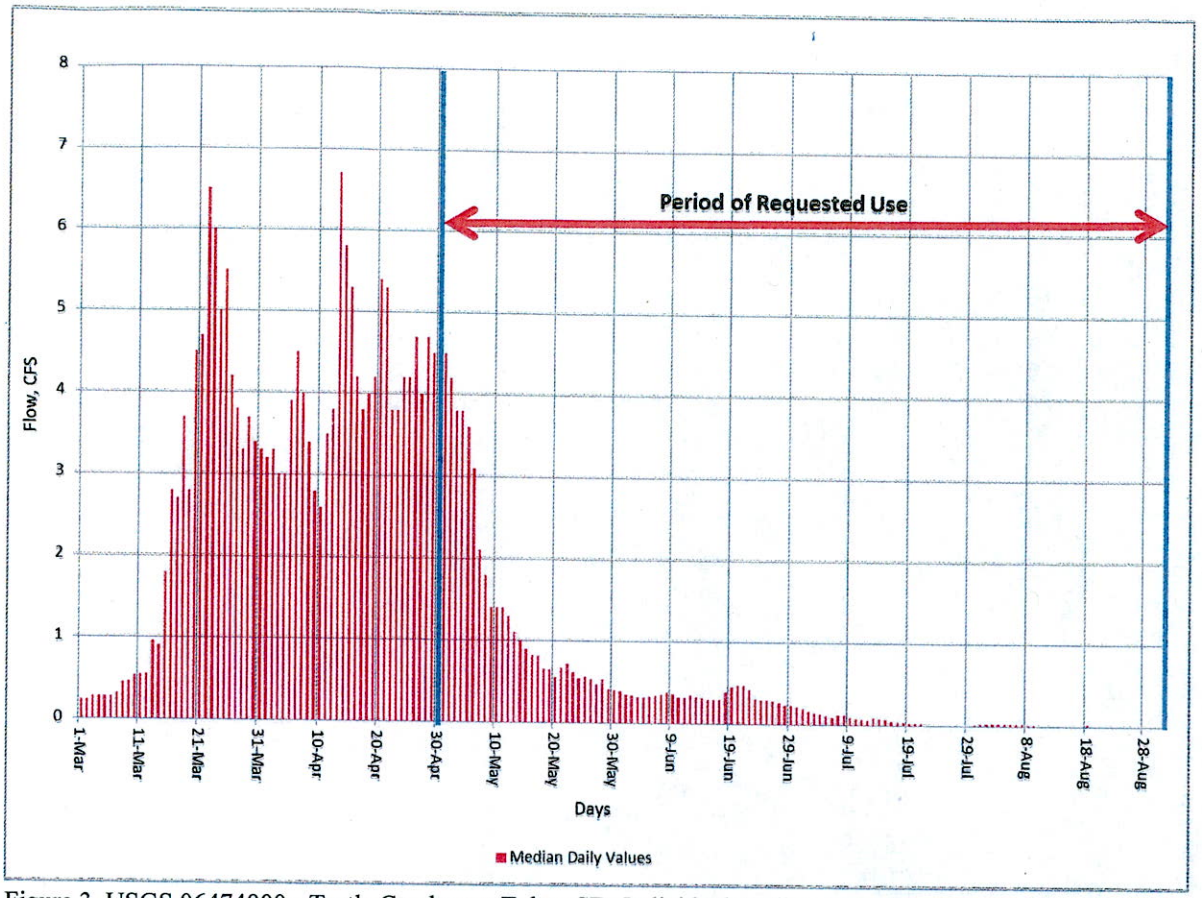


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970, (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi^2, which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

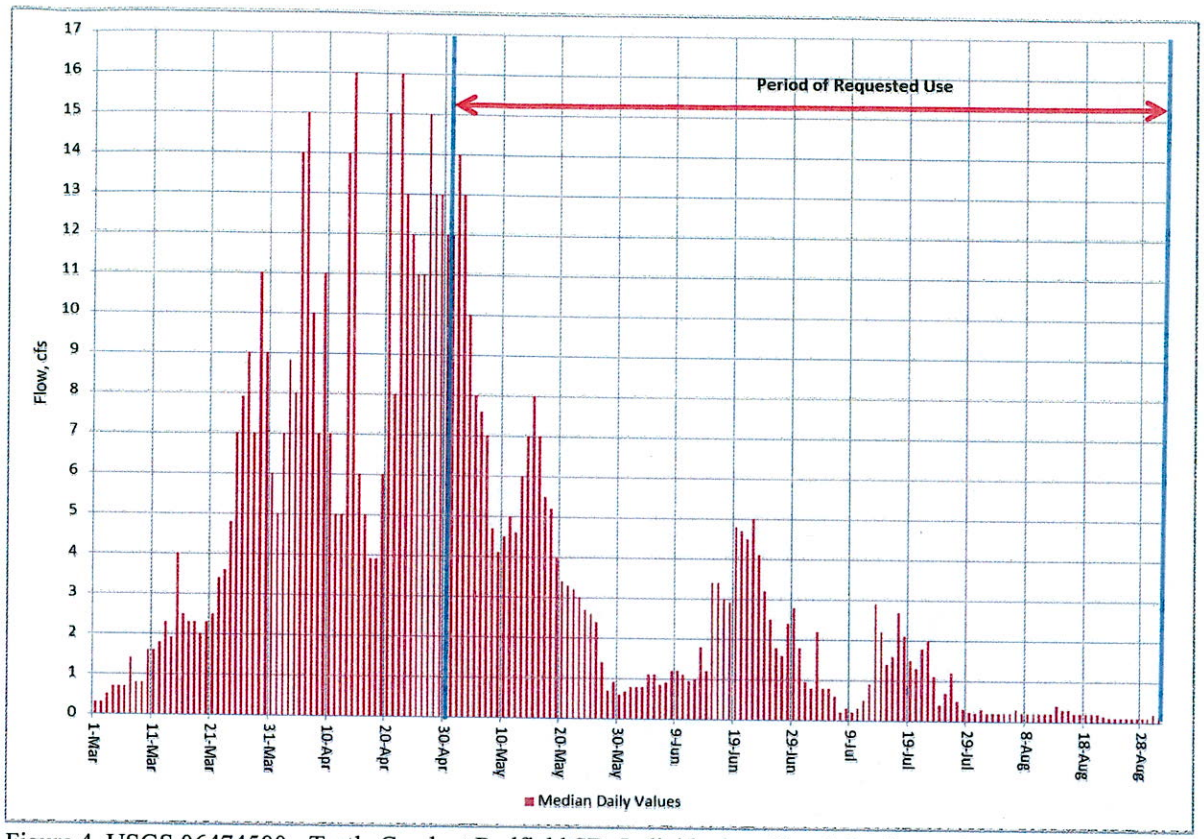


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi^2.

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

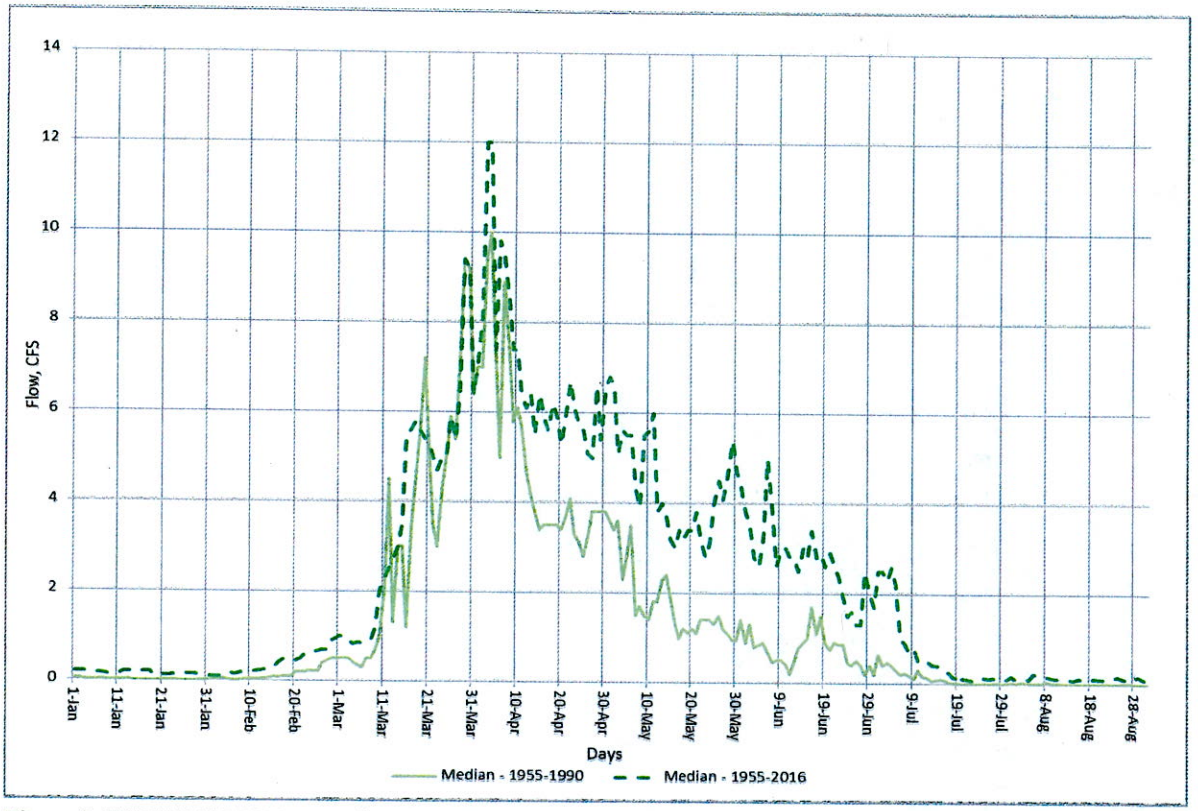


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi^2.

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

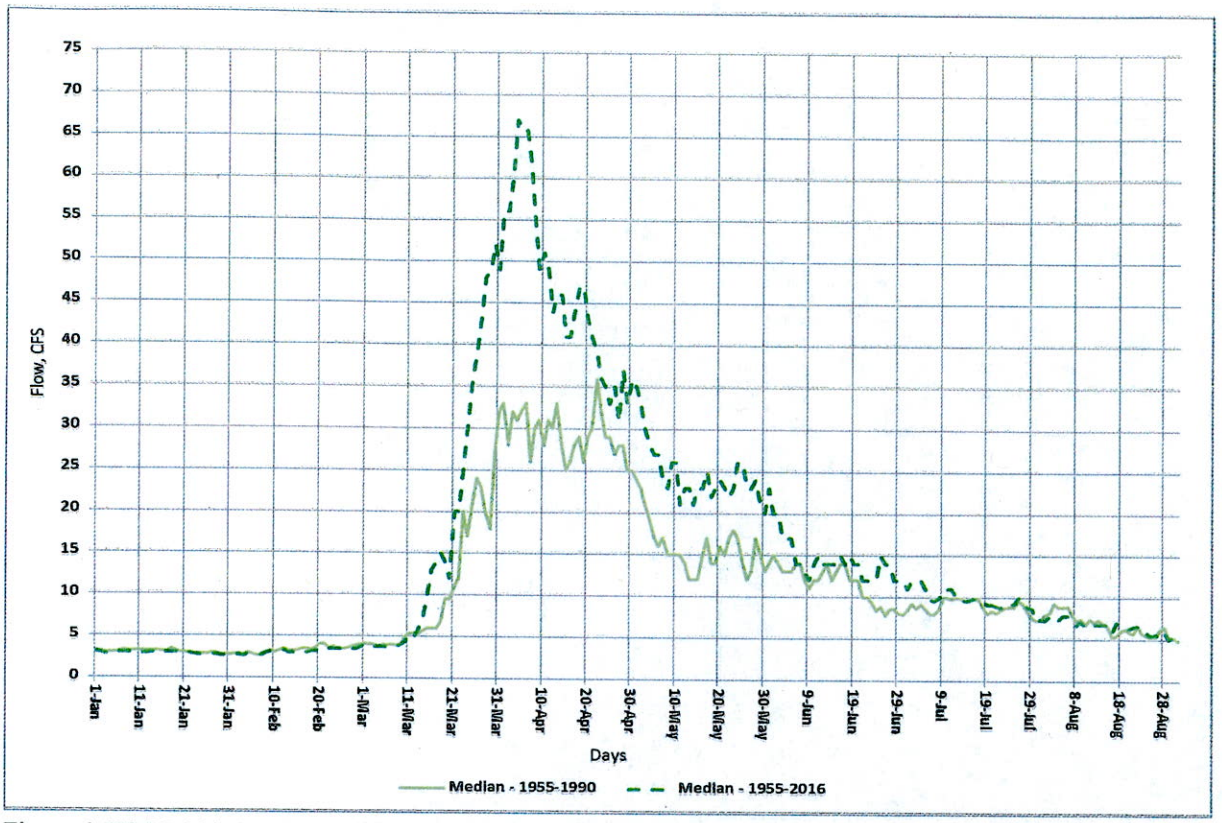


Figure 6. USGS 06471500 – Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi^2.

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.



Figures 7 & 8. Spillway on Redfield Dam located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

   Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Mark D. Rath
Natural Resources Engineer III

References

1. Norton, P. A., Anderson, M.,and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.

2. Water Rights. 2017. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

JEANNE GOODMAN, P.E.
CHIEF ENGINEER

EDUCATION

Bachelor of Science Degree in Geological Engineering, South Dakota School of Mines and Technology 1979

REGISTRATIONS, PROFESSIONAL SOCIETIES, AND AWARDS

1. South Dakota Registered Professional Engineer
2. South Dakota Engineering Society
3. Central Chapter SD Engineering Society Outstanding Engineer of 1995
4. Central Chapter SD Engineering Society Young Engineer of the Year 1986

CAREER EXPERIENCE

April 2013 – present – Chief Engineer, Water Rights Program, DENR. Administer the Program, which coordinates the appropriation of water resources in South Dakota to protect the public welfare and interest in the development of the water resources and determine in what way the water of the state should be developed for the greatest public benefit.

2000 – 2013 - Natural Resources Administrator, Surface Water Quality Program, DENR. Administer the Surface Water Quality program, which coordinates the prevention, reduction, measurement, and control of water pollutants to maintain water quality that is protective of the public's health and safety and the beneficial uses of the state's lakes and streams.

1997 – 2000 - Natural Resources Administrator, Air Quality Program, DENR. Administer the Air Quality program, which coordinates the prevention, reduction, measurement, and control of air pollutants to maintain air quality that is protective of the public's health and safety.

1987 – 1997 – Natural Resources Engineer IV, Ground Water Quality Program, DENR. Team Leader for ground-water discharge plans and enforcement of ground-water quality standards, Underground Injection Control, pesticides in Ground Water, and Wellhead Protection staff. Review storage tank plans and specifications. Supervise special water quality studies and the review of numerous regulated substance release assessments and remediations.

1981 – 1987 – Natural Resources Engineer/Hydrologist, Ground Water Quality Program, DWNR. Participated in writing Rural Clean Water Program/Comprehensive Monitoring and Evaluation proposal and workplan; reviewed mineral exploration permits for impacts to ground water; identified aquifers and compiled well data for Corps studies. Supervised staff and participated in ground water studies and investigations by installing and sampling monitoring wells; contributed sections to the Big Sioux Aquifer Water Quality study; prepared all contracts for Comprehensive Monitoring and Evaluation project, and assisted in installation of monitoring systems.

1979 – 1980 – Natural Resources Engineer I, Water Rights Program, DWNR. Investigated water rights complaints; reviewed water right applications; supervised installation of observation wells; prepared a report on flowing artesian wells.

TESTIMONY

Board of Water Management – In various capacities and responsibilities with DENR, provided testimony regarding permit application review and water use, water quality, and water monitoring relative to water right permit applications, General Water Pollution Control Permits for Concentrated Animal Feeding Operations, and ground water discharge plan applications, and proposed and modifications to Administrative Rules of South Dakota for ground water and surface water quality standards, beneficial use classifications for water bodies in South Dakota, and ground water and surface water discharge permits.

Board of Minerals and Environment – In various capacities and responsibilities with DENR, provided testimony regarding water use, water quality, and water monitoring relative to mineral and oil and gas exploration and development permits.

Court matters since 2008 - In re: *Veblen West Dairy, LLP, Chapter 11, Debtor. Bankr. No. 10-10071.* United States Bankruptcy Court, D. South Dakota (court testimony).
Storbeck, et. al. v. State of South Dakota, Third Judicial Circuit, Kingsbury County Civ. No. 07-69 (deposition).

MAJOR PUBLICATIONS

1. "South Dakota Ground-Water Quality" w/ Koch and Lawrence -USGS
   USGS Open-file Report 87-0752, Goodman and Pirner - SDDWNR
2. "Agricultural Sources of Nitrate Contamination in a Shallow Sand and Gravel Aquifer in Eastern South Dakota", in Perspectives on Nonpoint Source Pollution, EPA 440/5-85-001.
3. "Non-Point Source Pesticide Contamination of Shallow Ground Water', ASTM Paper No. 892529, St. Joseph, Missouri, Kimball and Goodman.
4. "Nitrate and Pesticide Occurrence in Shallow Groundwater During the Oakwood Lakes-Poinsett RCWP Project", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006.
5. "Coordination is the Project Cornerstone", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006, Kuck and Goodman.
6. "Ground Water Monitoring – A Guide to Monitoring for Agricultural Nonpoint Source Pollution Projects", USDA-FSA, Huron, SD. Goodman, German, and Bischoff, January 1996.

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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denr.sd.gov

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT APPLICATION NO. 8268-3, Lenny Peterson

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. 8268-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications as to when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use until June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

    a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
    b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
    c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
    d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
May 1, 2017

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WATER RIGHTS
PROGRAM

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John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Thole

September 14, 2017

Eric Gronlund
DENR Water Rights Program
Foss Building
523 E. Capitol Avenue
Pierre SD 57501-3182

RE: Matter of Water Number 8268-3

Dear Eric

Find and enclosed the following
1. Witness List
2. Expert Witness List
3. Exhibit List
4. A-Y Exhibit Documents

If you have any further questions please feel free to contact me.

Yours very truly,

WILES & RYLANCE

Raymond D. Rylance

RDR/sjs
Enclosures

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	Witness List Of LENNY PETERSON (name of party)

In order to comply with the Procedural and Scheduling Order, the name and contact information of each witness that a party intends to call at the hearing on this matter must be disclosed, pursuant to that Order by September 15, 2017. Additionally, a brief one or two sentence summary of each witness's expected testimony must be included. This form may be utilized in complying with the disclosure requirements of the Procedural and Scheduling Order entered in this matter.

Name of Witness	Contact Information of Witness	Brief one or two sentence summary of witness's expected testimony
LENNY PETERSON		
DENNIS OWENS	BANNER & ASSOC SOUIX FALLS, SD	HIS REPORT
RON DUVALL	DENR	HIS REPORT ON PERMIT # 96-3
JEANNE GOODMAN	DENR	HER RECOMMENDATION ON APPLICATION # 8268-3 & PERMIT 96-3
ERIC GOODMAN	DENR	IRRIGATION & WELLSTOWERS ON PERMITS
TOM LESSELYOUNG	City of Redfield	Redfield Permits

Richard Grosswald	City of Redfield	Redfield Permits
Mark Rath	DENR	Report on Permit 8263-3

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Date submitted: 9/14/17 Signature: _____

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	Exhibit List Of LENNY PETERSON (name of party)

In order to comply with the Procedural and Scheduling Order, each party shall provide in writing a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing on this matter on or before September 15, 2017. Copies of each exhibit must also be submitted to Eric Gronlund, DENR Water Rights Program, 523 E Capitol Avenue, Pierre, South Dakota 57501-3182 or electronically to Eric.Gronlund@state.sd.us . Each exhibit should be marked with an exhibit number in advance of the hearing on this matter. To obtain a block of exhibit numbers, contact Eric Gronlund at (605) 773-3352 or at Eric.Gronlund@state.sd.us .

This form may be utilized in complying with the disclosure requirements of the Procedural and Scheduling Order entered in this matter.

Identification of Exhibit	Exhibit Number
THOTTLE CREEK REPORT	A
IRRIGATION PERMIT MAP	B
PERMITS BELOW SPILLWAY	C
PERMITS ABOVE SPILLWAY	D
PICTURE	E
PICTURE	F
PICTURE	G
PICTURE	H
REDFIELD WATER QUESTIONER	I
LETTER	J
PERMIT # 21-3	K
PERMIT # 21-3	L
PERMIT # 22-3	M
PERMIT # 22-3	N
PERMIT # 23-3	O
PERMIT # 84-3	P
PERMIT # 87-3	Q
PERMIT # 95-3	R

Permit # 96-3	S
Permit # 408-3	T
Permit # 662-3	U
Permit # 1730-3	V
Permit # 111-3	W
Permit # 958-3	X
Report on Permit # 96-3	Y

All submitter pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Date Submitted: 9/14/17 Signature:

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	Expert Witness List Of LENNY PETERSON (name of party)

In order to comply with the Procedural and Scheduling Order, the name of each expert witness that a party intends to call at the hearing on this matter must be disclosed, pursuant to that Order, by September 8, 2017. This form may be utilized in complying with the Procedural and Scheduling Order entered in this matter. If you do not intend to call an expert witness at the hearing on this matter, you need not complete this form. If utilizing this form, please complete one form for each expert witness intended to be called at the hearing on this matter.

Expert witness' name: DENNIS ADENS

If the expert witness has prepared a report, please attach the report to this document. If no report is attached, provide a summary statement of the anticipated testimony the expert will provide and the methodology used by the expert to reach his/her conclusions.

Attach a copy of the *curricula vitae* of each disclosed expert.

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

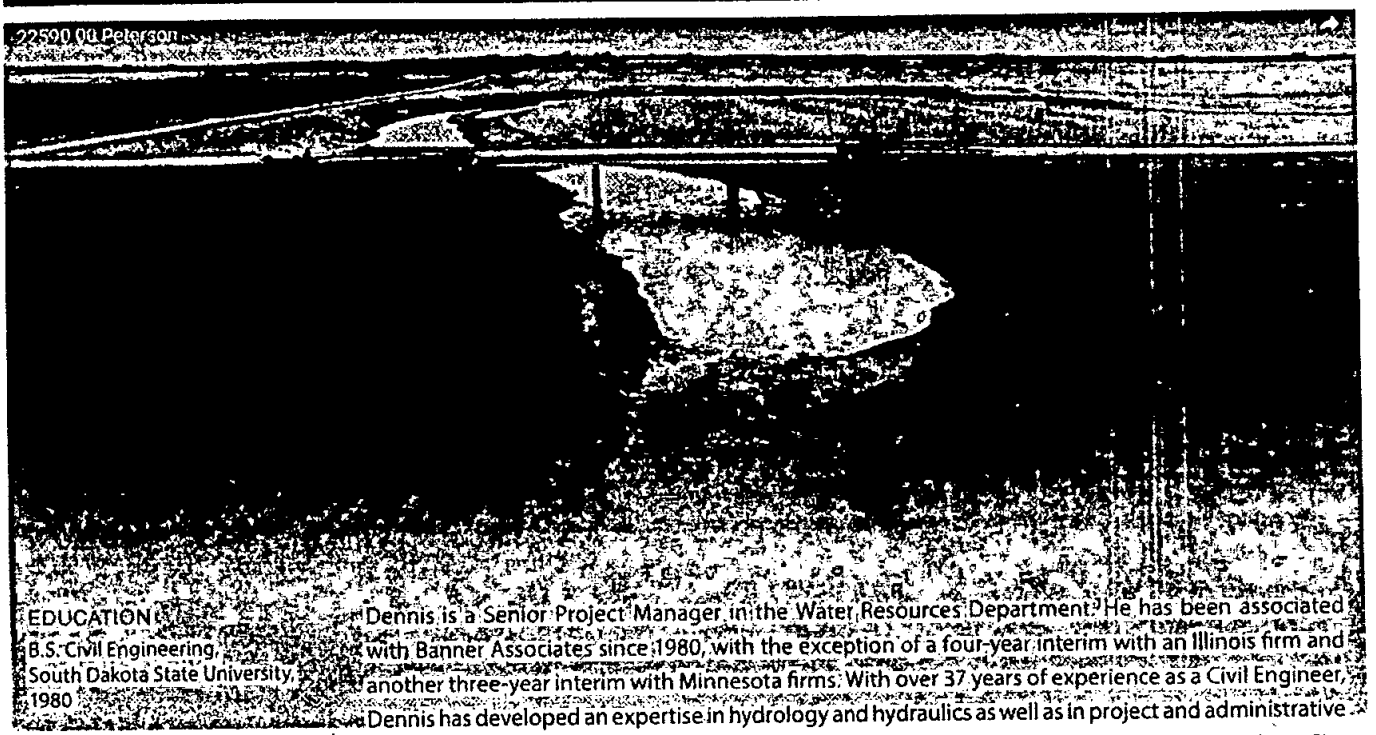
Date submitted: 9/15/17 Signature:



DENNIS ODENS, PE

Senior Project Manager

With over 37 years of experience as a Civil Engineer, Dennis has developed an expertise in hydrology and hydraulics. He has experience in planning, design and construction engineering phases of various projects, including hydrology/hydraulic analysis, FEMA floodplain studies and open channel flow modeling; storm drainage systems; computer network analysis of water distribution systems, water supply pumping, distribution, storage, and treatment facilities.



EDUCATION

B.S. Civil Engineering, South Dakota State University, 1980

PROFESSIONAL REGISTRATION

Professional Engineer
SD, MN, IA

PROFESSIONAL AFFILIATIONS

American Water Works Association (AWWA)

National Society of Professional Engineers

Dennis is a Senior Project Manager in the Water Resources Department. He has been associated with Banner Associates since 1980, with the exception of a four-year interim with an Illinois firm and another three-year interim with Minnesota firms. With over 37 years of experience as a Civil Engineer, Dennis has developed an expertise in hydrology and hydraulics as well as in project and administrative management, project coordination, client relations, presentation of projects and proposals to City Councils, County Commissioners, Rural Water Districts and Municipal Utilities.

Dennis received his Bachelor of Science in Civil Engineering from South Dakota State University in 1980 and is affiliated with the Nation Society of Professional Engineers and American Water Works Association. He is currently registered as a Professional Engineer in South Dakota, Minnesota and Iowa.

He has experience in planning, design and construction engineering phases of multiple projects, including hydrology/hydraulic analysis, FEMA floodplain studies and open channel flow modeling; storm drainage systems; computer network analysis of water distribution systems, water supply pumping, distribution, storage, and treatment facilities.

Specific project experience has included hydrology and hydraulic analysis and structure sizing for more than 50 bridge sites for South Dakota Department of Transportation; hydrology and hydraulics design for the Highway 20 Bypass at Watertown, SD; Brookings County hydraulic analysis of bridges and culverts; Madison/Lake County Drainage Basin and Soil Erosion Study, Madison, SD; Willow Creek Drainage Study, Watertown, SD; Hydraulic Analysis for two bridges in Marshall, MN.

Dennis also has extensive experience in municipal projects including subdivision layouts, street improvement projects; water distribution and water treatment; well replacement; water system analysis and large water main design and construction (6-inch to 30-inch diameter).

EXHIBIT
tabbies
A

Final Report

Turtle Creek Stream Flow Analysis

August 2017

Prepared for:

Prepared by:

Banner Associates, Inc.

BANNER

Banner Associates, Inc.
2323 W 5th St, Ste 102
Sioux Falls, SD 57104
Tel 605 977 6382
Toll Free 855 923.6382
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Turtle Creek Steam Flow Analysis

1.0 Introduction

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2.0 Evaluation

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Appendix A

SD DENR Report 8268-3

Turtle Creek Steam Flow Analysis

1.0 Introduction

Banner Associates Inc. (Banner) entered into a service agreement with Lenny Peterson to complete a stream flow analysis on Turtle Creek for an irrigation water rights permit application. This report will summarize our investigation and recommendations regarding the stream flow in Turtle Creek.

1.1 Background

Lenny Peterson in August of 2016 applied for a water rights permit to irrigate approximately 405 acres of his land in Spink County. See Appendix A for SD DENR Recommendation and Report 8368-3. This first request included the construction of a small earthen dam to create instream storage. A pump would then be placed in the water storage to divert approximately 5.34 cfs of water for crop irrigation period of May through August. Following presentation to staff and obtaining the staff report which recommended denial of the permit the application was withdrawn.

In April of 2017 a new application was presented that would pump water from Turtle Creek at a reduced rate of 2.67 cfs without instream storage. This water would be used to irrigate approximately 450 acres with an annual volume limit of 300 acre-feet through the irrigation period of May through August.

The staff at SD Department of Environment and Natural Resources (SDDENR) considers four things when making a decision regarding a permit as follows:

1. There is reasonable probability that there is unappropriated water available for the applicants 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.

The state has on record all water right applications for Turtle Creek and has determined that in the downstream reach of Turtle Creek there are 5 existing water rights permits appropriating 4.67 cfs for irrigation and 2 authorizing storage of up to 1568 acre-feet annually for municipal use.

This report will address item 1 to determine if there is reasonable probability that there is unappropriated water available for use. This would mean that present day flows must be greater than 4.67 cfs existing water right plus 2.67 cfs of the requested water right or a total flow of 7.34 cfs during the irrigation period.

2.0 Evaluation

Historical data is analyzed to statically show what the flows have been. US Geological Survey (USGS) operated a stream flow gaging station west of Tulare, SD on Turtle Creek from 1952 to 1990. This gaging station location is approximately 4 river miles upstream of the proposed diversion. The analysis of this data is presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from about 3 to 6.5 cfs. The graph indicates in May the median flow varies from 0.5 to 3 cfs and in June and July the median flow rates are less than 0.5 cfs.

Another gaging station was operated by USGS on Turtle Creek in Redfield, SD between 1945 and 1972. The drainage area for this gaging station is 30% greater than the upstream gaging station therefore, an increase in flow is expected. The analysis of this data is also presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from about 4 to 16 cfs. The graph indicates in May the median flow varies from about 1 to 14 cfs and in June it ranges from about 0.5 to 5 cfs and in July the median flow rates range from about 0.25 cfs 3 cfs.

Lenny Peterson by observation believes that climatological changes have increased the stream flows and that the present-day stream flows are not accurately represented by the USGS historical data. SDDENR has a water quality gaging station at the bridge where the USGS gaging station used to be. This gaging station is equipped with a sonar unit that reads the distance down to the water surface approximately every 15 minutes. The state has not developed a rating curve for this site thus has not converted the data to flow.

Banner collected the bridge design data from SD Department of Transportation (SDDOT) and then complete a bridge hydraulics study to model the stream flow utilizing HEC-RAS a program developed by the Corps of Engineers for stream hydraulic analysis. A survey crew gathered information to develop a steam profile approximately 600' upstream and downstream of the bridge and collected cross section data for modeling purposes. The bridge dimensions were also measured for field verification purposes. The actual field measurements were used to model the stream flow. The model was then calibrated to the hydraulic information provided by the SDDOT with the bridge design. The model comparison results are shown in Table 1 - Bridge Model Calibration.

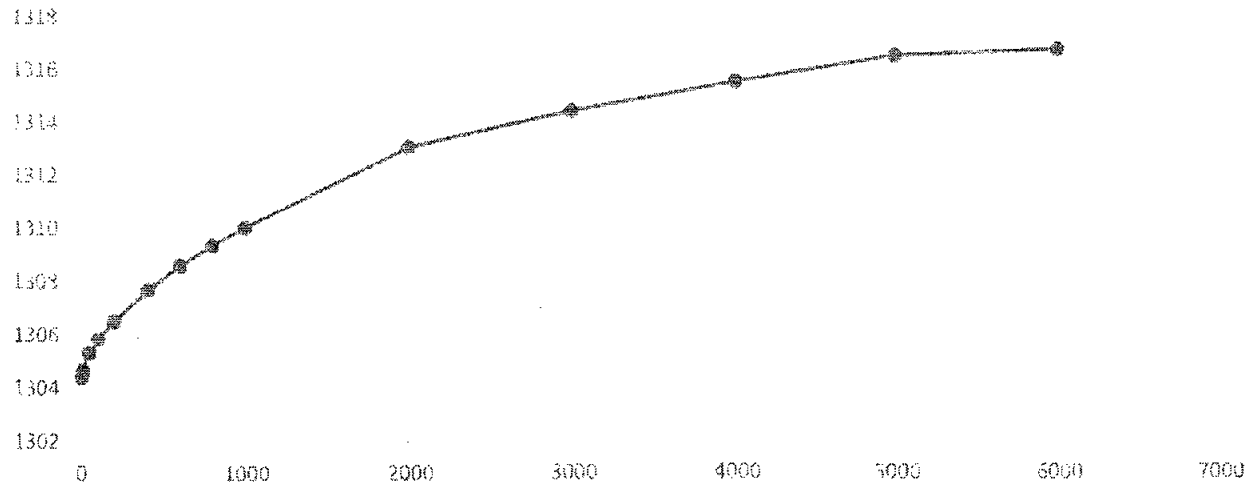
Table 1 - Bridge Model Calibration

	Bridge Design Records	Modeled Bridge Data
CFS	6,000	6,000
Bridge Waterway Opening Area (sq. ft.)	1538	1500
Velocity (ft./sec)	3.9	4.0
Water Surface Elevation (ft.)	1316.57	1316.59

The survey information showed that the stream channel is slightly higher than depicted in the original plans thus it is reasonable to see that the bridge waterway opening is slightly smaller which in turn increases the velocity and raises the water surface elevation. Based on this data comparison it is our opinion that the model can be used to accurately predict the water surface elevation for various flows.

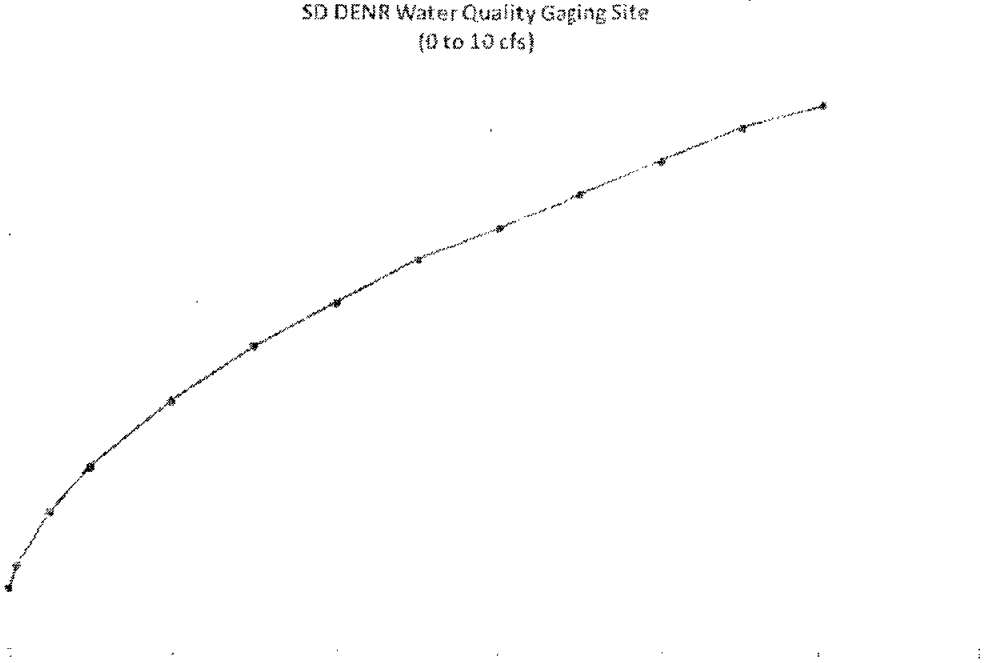
With the calibrated model, various stream flows were input into the model to develop a rating curve for this site. The rating curve developed is as shown in Figure 1 – Rating Curve.

FIGURE 1 - RATING CURVE - WS Elev.
AT SD DENR WATER QUALITY GAGE SITE



CFS	WS Elev.
0.01	1304.24
0.1	1304.261
0.5	1304.309
1	1304.35
2	1304.41
3	1304.46
4	1304.5
5	1304.54
6	1304.57
7	1304.6
8	1304.63
9	1304.66
10	1304.68

FIGURE 2 - Rating Curve - WS Elev. at
SD DENR Water Quality Gaging Site
(0 to 10 cfs)

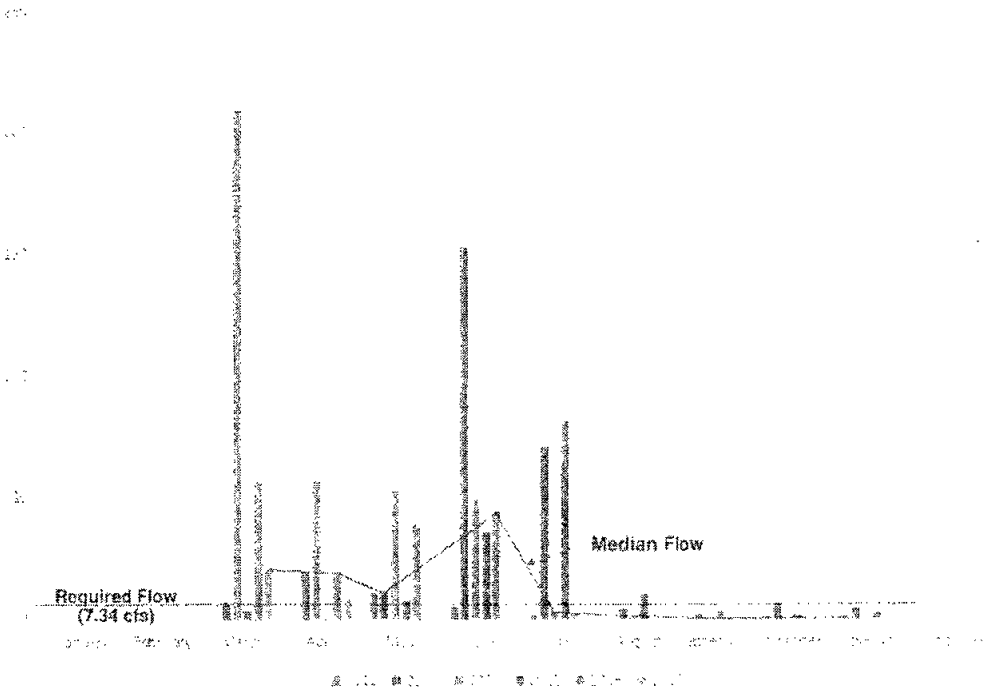


For Clarity Figure 2 shows the portion of the rating curve near the required flow of 7.34 cfs.

A trend line was developed for this curve to determine a statistical equation that could be used to convert the water quality data to a flow in cfs. The actual elevation of the sonar unit was unknown thus a water surface elevation was obtained during the field survey operation. The exact time frame of the water surface elevation is unknown but the survey stream profile and water elevation shots were taken between 10:57 a.m. and 12:30 p.m. The water surface elevation and the average of the water surface sonar depth measurements between 10:57 a.m. and 12:30 p.m. were used to calculate the sonar elevation. Once the sonar elevation was known all reading could be converted to elevations. The raw data included readings approximately every 15 minutes in a continuous record. This data was reduced to approximately 30-minute data and the winter months of Mid November to the end of February was removed from the data set being analyzed.

Once the data was prepared the average or mean value was calculated for each month of record. Then when that analysis was completed, each monthly data set was ranked from low flow to peak flow and the median flow was determined where 50% of the reading were above the median flow and 50% of the values were below the median flow. The summary of this analysis is presented in graphical form in Figure 3 – Median Monthly Flow (cfs) and in numerical form in Table 2 - Mean and Median Flow Data.

FIGURE 3 - Median Monthly Flow (cfs)



3.0 Recommendation

The summary tables show that March through June has adequate water to meet the irrigation demands for the existing and requested water rights of 7.34 cfs. The month of July is the month in question. The average of the median flows would indicate that there is adequate water in July, however if you evaluate the median flow of July for the data set the median flow 4.058 cfs which is below the 7.34 cfs desired. Adequate water was available in 2013 and 2015, however the monthly median flow in July of 2012, 2014 and 2016 was less than 7.34 cfs. In my opinion irrigation would be allowed when the water surface elevation is above 1304.63 which is the modeled water surface elevation for 8 cfs.

When the water surface elevation is above 1304.63 at the bridge west of Tulare on Turtle Creek, there is reasonable probability that there is unappropriated water available for the applicants proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is a beneficial use, and it is in the public interest to increase the agricultural production from the land being irrigated.

BANNER

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TABLE 2 - Turtle Creek Flow - Based on Water Quality Monitoring Station WQM 172 (460172)

Average Monthly Flow (cfs)

	January	February	March	April	May	June	July	August	September	October	November	December
2012	NA	NA	NA	NA	12.038	5.940	2.115	0.117	0.507	1.688	1.815	NA
2013	NA	NA	7.637	24.548	39.189	190.173	70.846	7.109	3.207	12.499	5.007	NA
2014	NA	NA	122.792	59.963	49.596	48.099	6.677	2.100	0.950	0.984	1.254	NA
2015	NA	NA	5.527	1.167	33.643	82.047	93.072	18.811	4.717	2.347	3.127	NA
2016	NA	NA	57.852	32.906	56.660	59.919	3.433	0.746	0.601	NA	NA	NA
2017	NA	NA	21.935	9.412	2.570	NA	NA	NA	NA	NA	NA	NA
Monthly Average Flow (cfs)			**43.149**	**25.599**	**32.283**	**77.236**	**35.229**	**5.777**	**1.997**	**4.379**	**2.801**	**NA**

Median Monthly Fow (cfs)

	January	February	March	April	May	June	July	August	September	October	November	December
2012	NA	NA	NA	NA	11.606	5.449	2.037	0.518	0.220	1.501	1.672	NA
2013	NA	NA	7.716	19.973	12.476	154.060	71.294	5.155	2.859	6.699	5.155	NA
2014	NA	NA	209.439	57.391	53.694	50.119	4.058	2.037	0.761	0.893	1.182	NA
2015	NA	NA	3.803	1.034	8.803	36.293	82.142	11.183	4.058	2.037	3.084	NA
2016	NA	NA	56.455	19.973	39.347	44.987	2.642	0.421	0.421	NA	NA	NA
2017	NA	NA	21.679	9.181	2.037	NA	NA	NA	NA	NA	NA	NA
Monthly Median Flow (cfs)			**21.679**	**19.973**	**12.476**	**44.987**	**4.058**	**2.037**	**0.761**	**1.750**	**2.378**	**NA**
Monthly Average Flow (cfs)			**59.819**	**21.510**	**21.327**	**58.182**	**32.435**	**3.863**	**1.664**	**2.783**	**2.773**	**NA**

APPENDIX A

SD DENR RECOMMENDATION AND REPORT 8268-3

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. 8268-3, Lenny Peterson

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. 8268-3, Lenny Peterson, 19111 Maple Avenue, Hitchcock SD 57348.

The Chief Engineer is recommending APPROVAL of Application No. 8268-3 with qualifications as to when diversion of water from Turtle Creek can take place because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use until June 1st of each calendar year, 2) the proposed diversion can be developed without unlawful impairment of existing rights if flow is maintained over the Redfield dam, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes are need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL 46-2-19 the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman

Jeanne Goodman, Chief Engineer
May 1, 2017

REPORT ON WATER PERMIT APPLICATION NO. 8268-3
Lenny Peterson
April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.

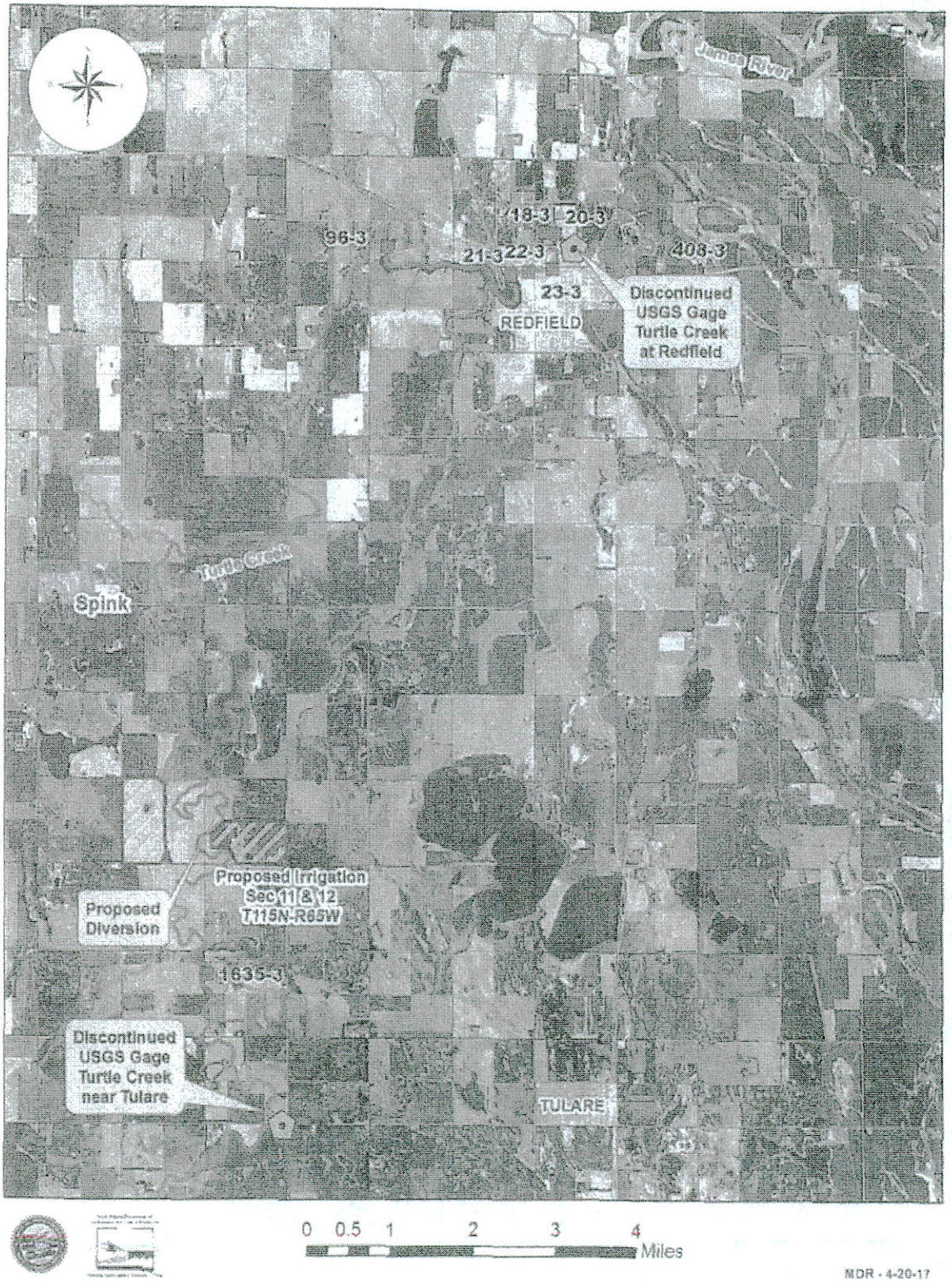


Figure 1. Area Map for Application No. 8268-3, Lenny Peterson.

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

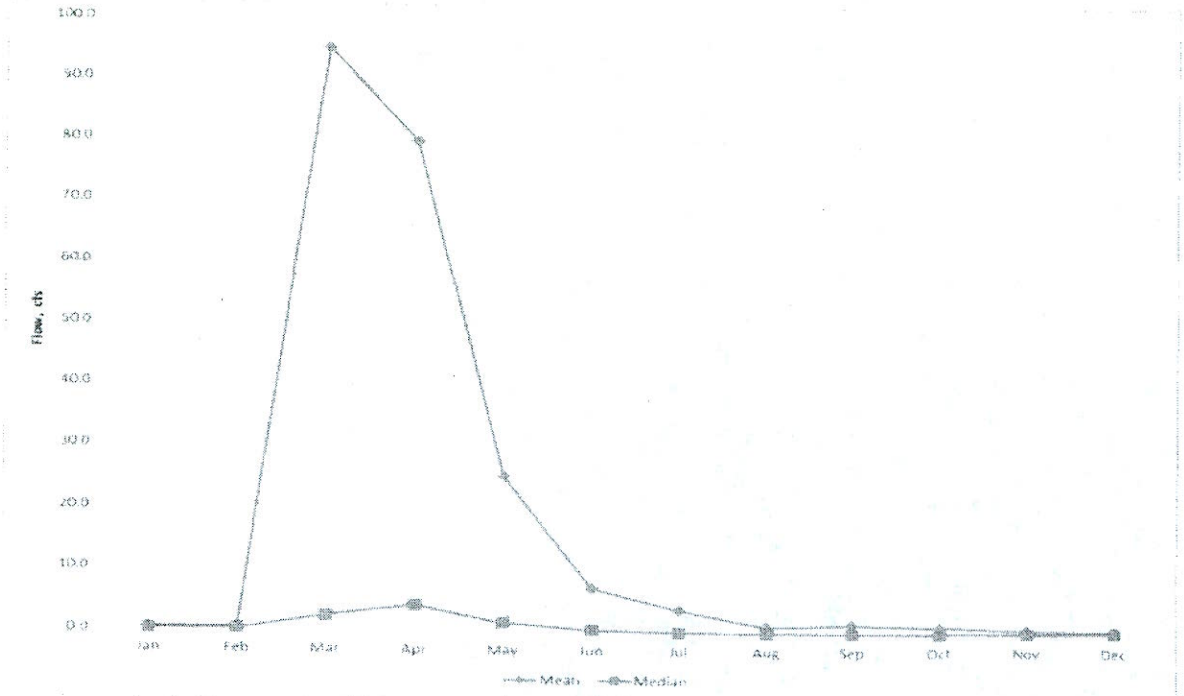


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD, Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

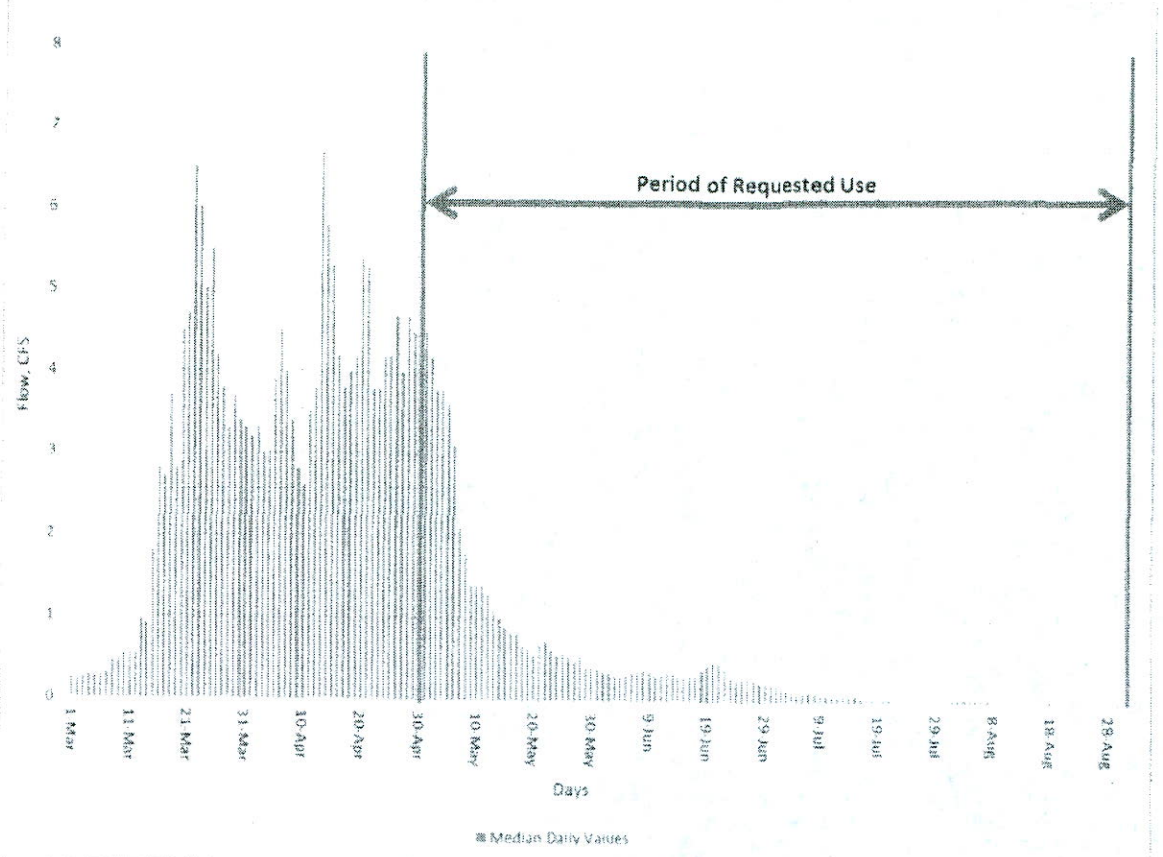


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD: Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970. (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi^2, which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

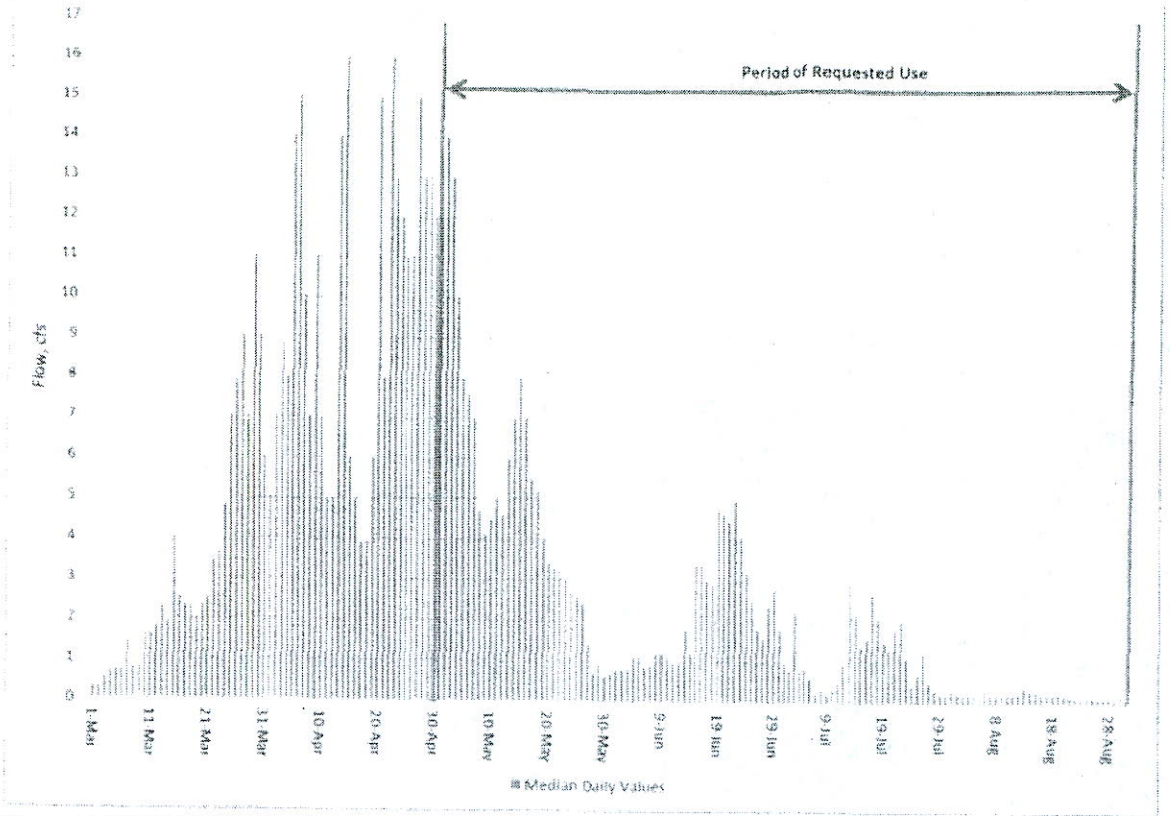


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi^2.

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

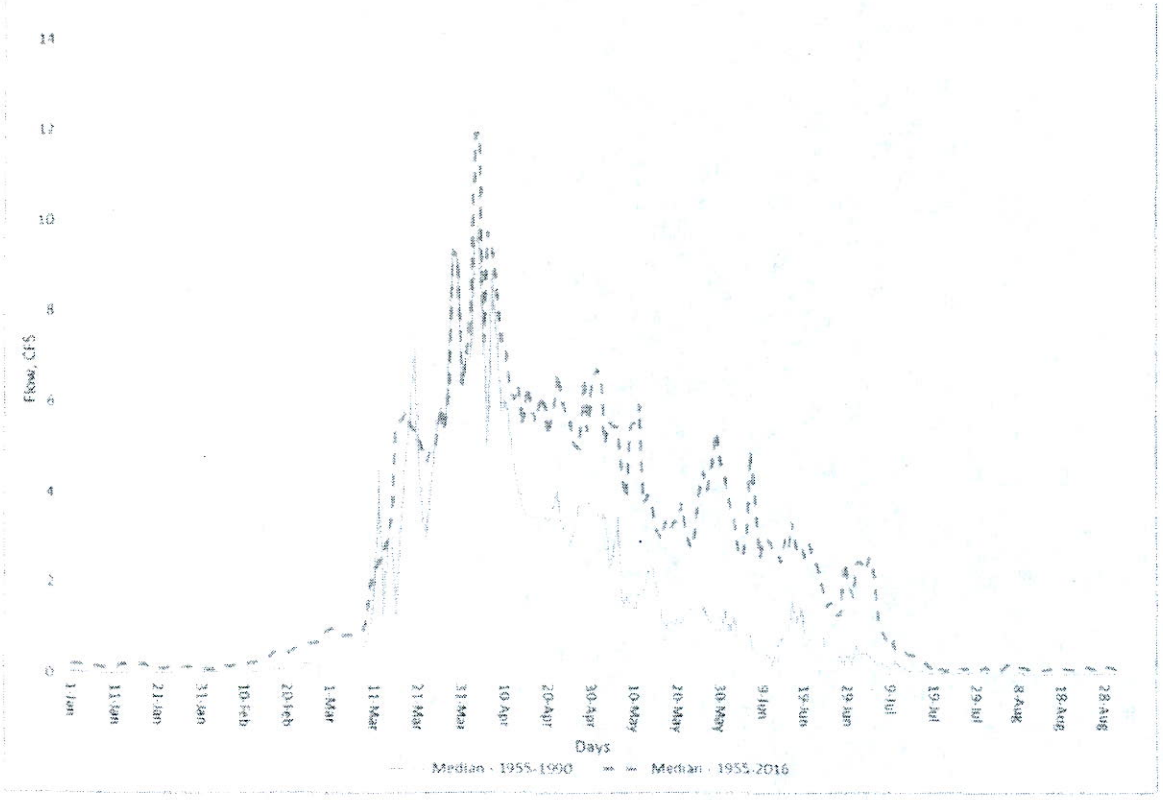


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi^2.

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

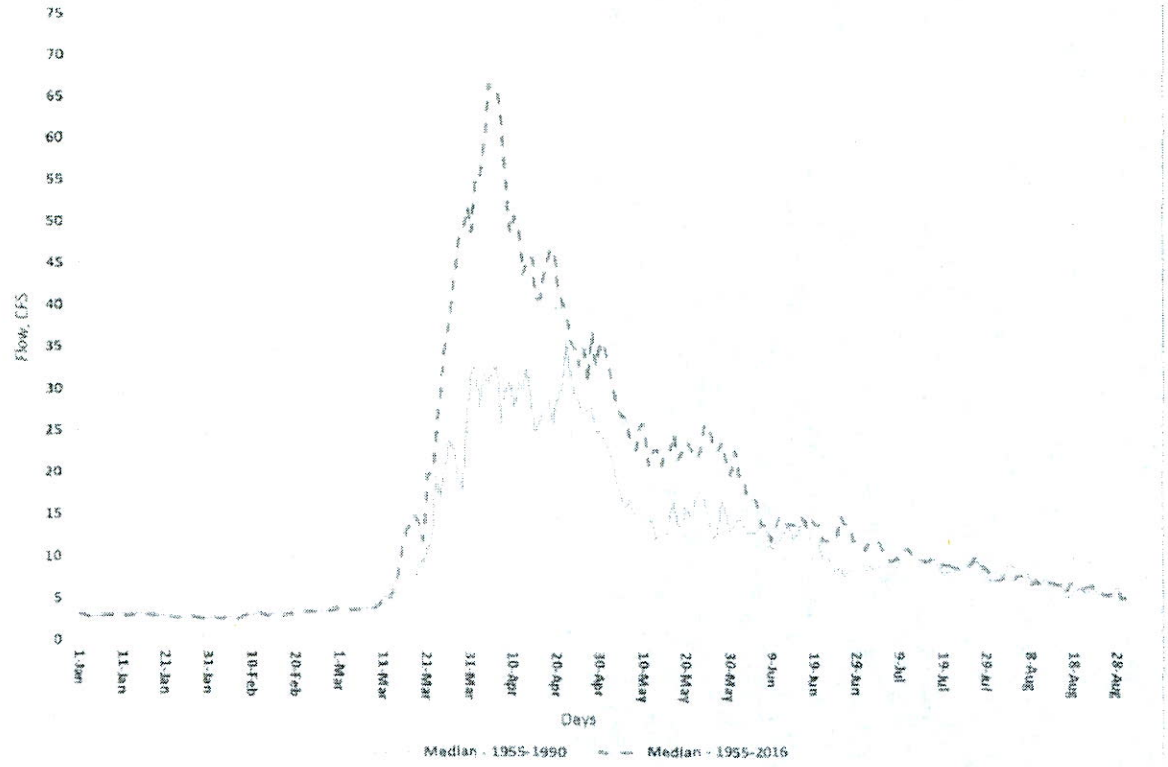


Figure 6. USGS 06471500 Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi^2.

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

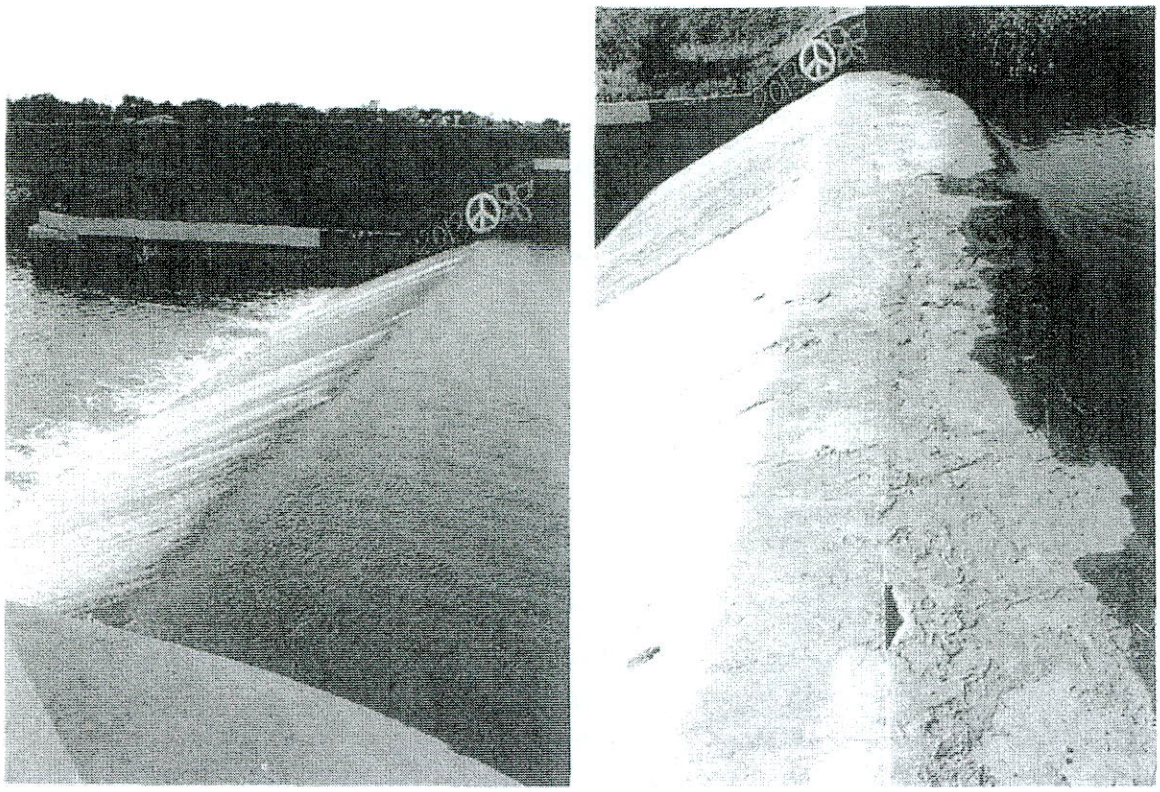
Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.



Figures 7 & 8. Spillway on Redfield Dam located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

   Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Mark D. Rath
Natural Resources Engineer III

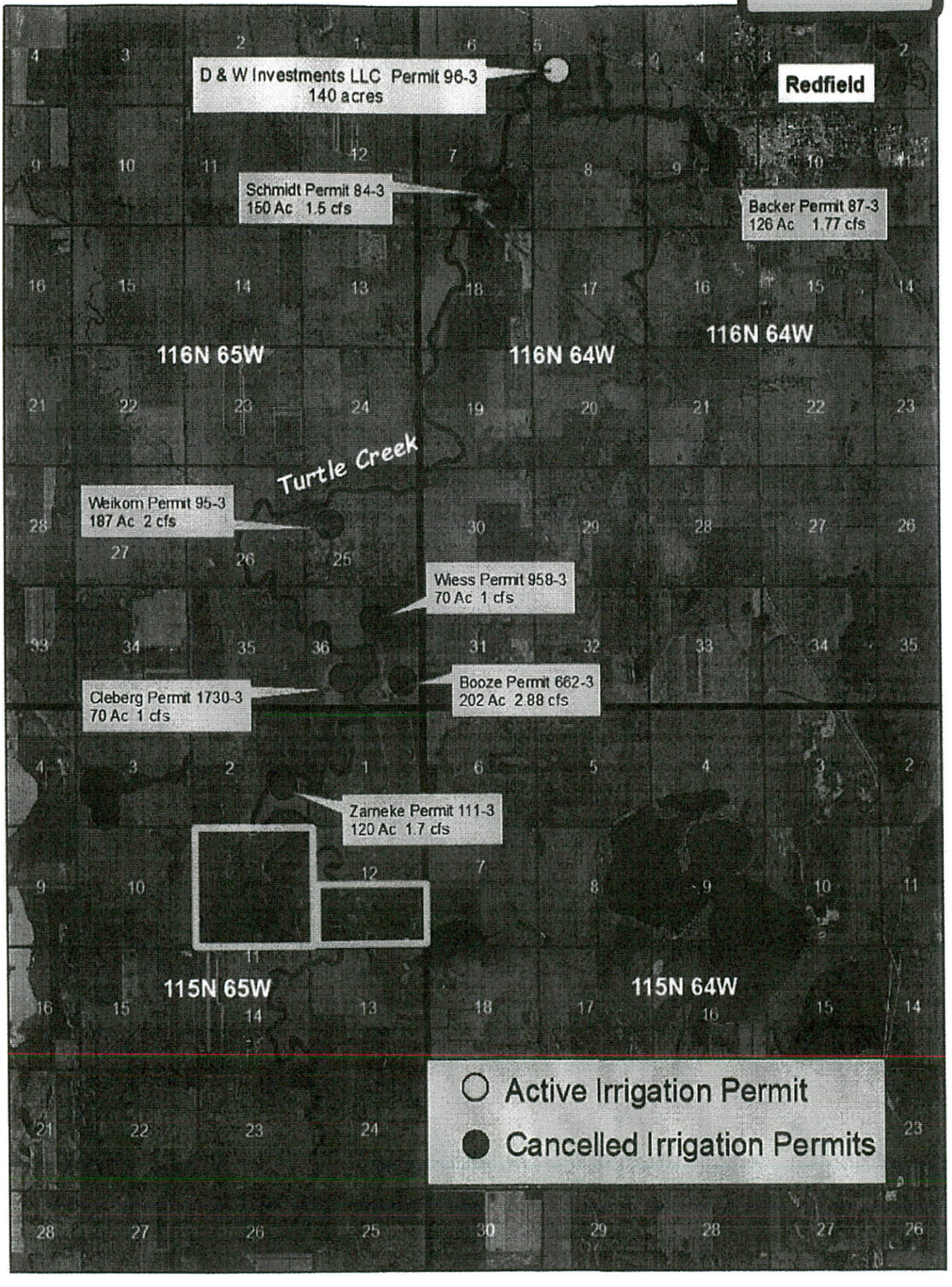
References

1. Norton, P. A., Anderson, M.,and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.

2. Water Rights. 2017. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Turtle Creek Irrigation Permits

EXHIBIT
B

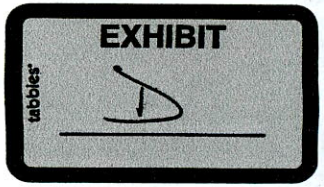


EXHIBIT

C

PERMITS BELOW SPILLWAY ON TURTLE CREEK			

PERMIT	NAME	PRIORITY DATE	RATE	ACRES
18-3	SD Development Center	9/4/1939	0.89	133
20-3	Greenlawn Cemetary Association	5/16/1940	0.01	13
21-3	Redfield	3/6/1940	0	0
22-3	Redfield	3/6/1940	0	0
23-3	Redfield	3/6/1940	0.42	47
408-3	Timber Creek Land & Cattle	2/11/1957	1.35	95
TOTAL:			**2.67**	**288**



PERMITS ABOVE SPILLWAY ON TURTLE CREEK

PERMIT	PRIORITY DATE	RATE	ACRES	CANCELLED
84-3	12/24/1952	1.5 CFS	150.5	21-Oct-88
87-3	1/8/1953	1.77 CFS	126	29-Jul-87
95-3	2/9/1953	2 CFS	187	19-Mar-70
96-3	2/11/1953	2 CFS	140	Active ?
111-3	9/3/1953	1.7 CFS	120	18-Mar-70
662-3	10/6/1959	2.88 CFS	202	17-Dec-10
958-3	1/24/1962	1 CFS	70	18-Jan-70
1730-3	2/11/1970	1 CFS	70	31-Jan-79
TOTAL:		**13.85**	**1065.5**	

12.85 CFS permitted prior to permit #1730.

995.5 Acres permitted prior to permit #1730

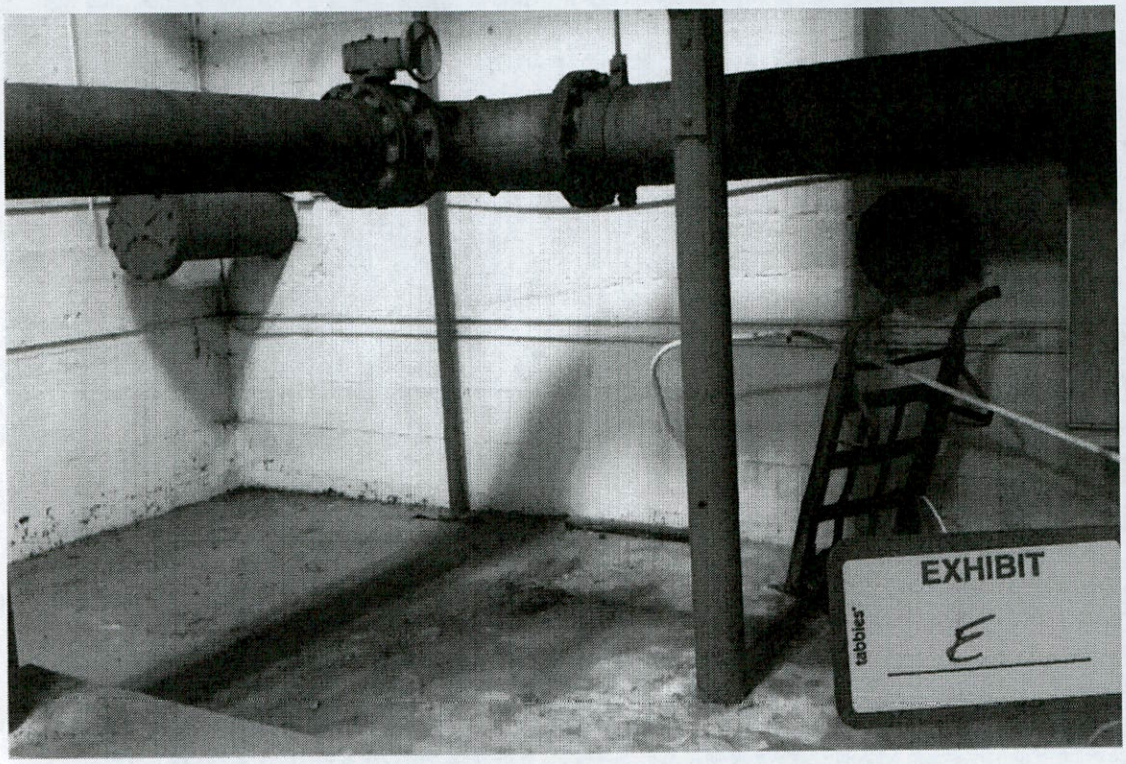

EXHIBIT
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G
S.C. DENR

SPILLWAY KENFIELD LAKE

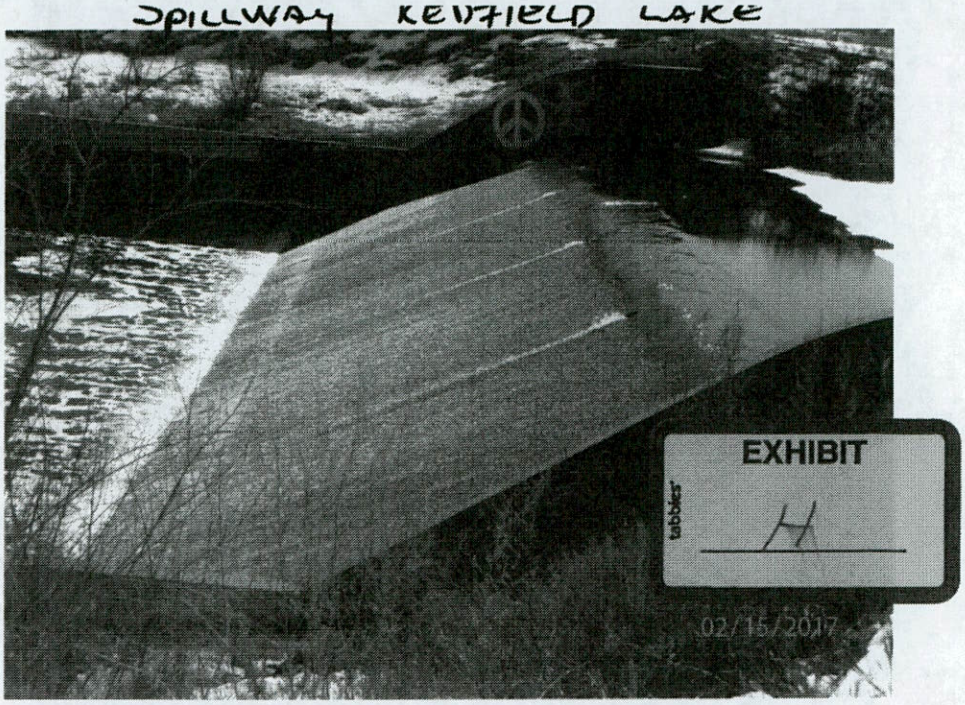


EXHIBIT
I

January 17, 2001

2000 South Dakota Water Use Questionnaire

To:

CITY OF REDFIELD
626 MAIN ST
REDFIELD SD 57469

Address correction requested:

One questionnaire is being provided for each permitted water source. The following information is based on Water Permit\Right No. 4976-3. If you have other permits\rights in the same water source, also include water use under those permits\rights on this questionnaire.

Water Source:	GROUNDWATER	**County:**	SPINK
Aquifer:	DAKOTA FORMATION	**Pumping Pt. Legal:**	SEC 09-T116N-R64W
Management Unit:	NOT APPLICABLE	**Type of Water Use:**	MUNICIPAL

1) Please estimate your year 2000 water use from the above water source: 0 **gallons**

2) If no water use in 2000, please list the reason(s) why in the comments section.

Comments: The City of Redfield currently receives all of its water from WEB. Water Permit/Right #4976-3 is for the two wells from the Dakota Formation. These wells are the backup for the City water supply in case of a large fire, or equipment failure in the WEB supply system. In 1999, these wells were refurbished and stainless steel pipe was installed, so they definitely have not been abandoned.

Contact Person: Tom Lesselyoung

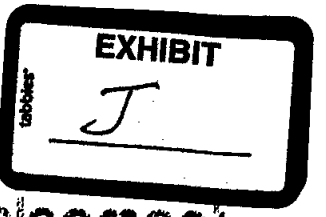
Telephone No: 605-472-0968 or Cell # 460-1968

Questions? Please call Mark Rath or Ron Duvall at 605 773-3352 for assistance.

Thank you for completing the 2000 water use questionnaire.

JAN 2001
WATER RIGHTS
PROGRAM
Pierre, SD

Water Rights on the Web: www.state.sd.us/denr/wr



SOUTH DAKOTA

Department of Natural Resource Development

WATER RIGHTS COMMISSION
Joe Foss Building, Pierre, South Dakota 57501
Phone 605/224-3151

September 19, 1977

Mr. Galen Gillette
28 E. 7th Ave.
Redfield, SD 57469

Re: Water Right No. 21-3

Dear Mr. Gillette:

Mr. Robert A. Schuurmans has asked that we write to you concerning permits on Turtle Creek and Redfield Lake. The City of Redfield has a Water Right No. 21-3 with a priority date of March 6, 1940 for Redfield Lake. The water right includes storage for recreational purposes, fire protection, public water supply and park irrigation. The main use of the lake at this time is probably for recreational purposes.

Three junior priority water rights have been issued to take water from the lake and Turtle Creek, No. 63-3, Mrs. Edna Schmidt, No. 87-3, Clarence Backer, and No. 96-3, Delvin C. Demers. These three permits were granted with the understanding that the City of Redfield water right is the senior right and that the three junior water rights can not affect the city water right. No. 84-3 has a priority date of December 24, 1952; 87-3 has a priority of January 8, 1953; and No. 96-3 has a priority of February 11, 1953.

The test as to whether the three irrigation permits may be pumped or not is whether the water diverted through the three projects is using water that would otherwise be used under the City of Redfield water right. The fact that the water may be below the spillway level on Redfield Lake is not a measure of the availability of water for the city or for these three permits. Once the reservior has been filled each year, the Redfield water right has been satisfied and these three permits can then pump water when water is flowing into the lake.

The City of Redfield can not release water from their dam just to clean out the creek bed or to flow downstream unless the upstream water rights have been satisfied.

Permit No. 96-3, when approved was approved in addition to any vested rights which were claimed. A vested right with a priority date senior to the Redfield right was claimed by the applicant when the application was considered by the State Engineer. At the time the application was submitted, the State Engineer did not have the authority to grant a priority earlier than the time that an application was received. The State Engineer did have authority to recognize a vested right claim, but the priority could not be set before the receipt of the application. The State Water Rights Commission

now (since 1955) has this authority. If any vested right claim is properly documented, the Water Rights Commission can recognize a vested right and the original priority date. Water Right No. 96-3 does not reflect the vested right claim for the same property. The vested right has been claimed in the past by the land owner, but the Right has never been proven nor established as a claim with a priority senior to the Redfield water right 21-3.

In regard to the Wesley Booze permit No. 662-3, this permit does not authorize construction of a dam. The Water Right is subject to downstream domestic use which would normally be livestock use, the Redfield water right and other downstream senior water rights. It is our understanding that there is a dam located to the north of the Booze land owned by Kenny Boub which has been there several years, based upon correspondence in our files dated 1965.

We do not know at this time the situation on the dam mentioned above. Mr. Booze could pump water as long as the City of Redfield's water right to Redfield Lake has been satisfied with one filling and providing the downstream senior water right holders have been satisfied as well as water for any domestic use.

If you have additional information on this dam, we would appreciate being advised of it.

Very truly yours,

JOHN HATCH, Chief Engineer
Water rights Commission

JH:plh

cc: Robert A. Schuurmans
723 W. 1st Street
Redfield, SD 57469

EXHIBIT tabbies K

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 21-3

WHEREAS, On the 6th day of March A. D. 19 40

CITY OF REDFIELD

of Redfield County of Spink and State of South Dakota duly made application (No. 21-3) to me for a permit to use/store 1568 acre-feet ~~cubic feet per second~~ of the waters of Turtle River County of Spink State of South Dakota, for Municipal purposes; and

WHEREAS, On the 25th day of April A. D. 19 40 Permit No. 21-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 26th day of April A. D. 19 45 and for the application to beneficial use of said water on or before the 26th day of April A. D. 19 49 and,

WHEREAS, On the 1st day of February A. D. 19 49 the holder of said permit duly made proof of the completion of adequate works for the diversion of storage 1568 acre ~~cubic~~ feet per second of said waters, as evidenced by my Certificate No. 1 dated February 4, 1949 confirming the completion of works of sufficient capacity for diverting and storing at the place of intended use 1568 acre-feet ~~cubic feet per second~~ of water with date of priority of March 6, 1940 and,

WHEREAS, On the 1st day of February A. D. 19 49 proof was duly made of the application to storage for beneficial use of 1568 acre-feet ~~cubic feet per second~~ of said water;

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to the CITY OF REDFIELD of Redfield, S. Dak. the holder and owner of said permit No. 21-3 a water right, dating from March 6, 1940 annual to the use of 1568 acre-feet of the waters of Turtle River in the County of Spink and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be impounded by a dam with spillway protection located 1570 feet S. 70°W. of the N.E. Cor. of Sec. 9, Twp. 116 N., Range 64W.

for the purpose of storage for municipal use

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

WITNESS, My hand and the seal of my office at Pierre, South Dakota, this 4th day of February A. D. Nineteen Hundred and Fourty-nine

BEAN W. LOUCKS, State Engineer.

FORM 36.

Location No.

Water Division No. 21 3 *Water District.*

Proof of Application of Water to Beneficial Use

Petition of Holder

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

Ans. C.G.Hopkins, Mayor, Redfield, South Dakota

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

Ans. City of Redfield, Redfield, S.D.

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

Ans. March 6,1940 - April 24-1940

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

Ans. Lake Redfield- 1570 feet South 70° 00' west of the Northeast corner of Section 9-116-64

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

Ans. Earth dam 600 feet long 22 feet high, 125 foot concrete spillway. water can be diverted through spillway to supply 22-3 and 23-3 as needed. Completed in 1936 and new spillway built in 1948 by State Game and Fish department.

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

Ans. Water is stored for use, and diverted through spillway to supply 22-3 and 23-3 as needed.

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

Ans.

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

Ans. Amount in storage

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

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

Ans. Water is diverted through spillway as needed to supply 22-3 and 23-3 especially during summer months.

(Sig.) O. P. Hopkins.

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Redfield, *County of* Spink, *State of South Dakota, on this* 1st *day of* February *A. D. 19*49

Witnesses.

City Auditor, Redfield, S.D.

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

Location No.

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

Amount of water ..... *second feet*

Source

County

Purpose

Place of use

Date of recording

Received and filed

EXHIBIT tabbies L

NO. 21-3

Water Division No. 3 James River Water District.
(Blanks to be filled by the State Engineer.)

RECEIVED
MAR 6 1940
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

APPLICATION FOR A PERMIT
To Appropriate Water Within the State of South Dakota

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

1. Name of applicant City of Redfield

Postoffice address Redfield, County Spink, State So.Dakota

I. If a corporation

(a) Name of same

(b) Date and place of incorporation

(c) Amount of capital stock

(d) Amount paid in

(e) Names and addresses of directors:

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

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

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

(b) Cash on hand, $ (c) Treasury stock, $

(d) Bonds to be issued, $ (e) Other resources, $

2. Name of diversion works Lake Redfield Spillway

3. Quantity of water claimed 1568 Acre Feet annually for storage and use cubic feet per second.

4. Source of water supply Turtle Creek

5. Location of point of diversion 1570 feet South 70 degrees west of N.E. corner of Section 9 Township 116 Range 64 Dam and spillway on bank.
(Right or left bank looking down stream.)

6. Annual periods during which water is to be used Jan. 1st to December 31st

7. To be used for: Recreational, public water supply and irrigation

I. Irrigation or domestic use:

(a) Number of acres to be irrigated 47 on Permit No. 21-3

(b) Legal subdivisions to be irrigated SW¼ SW¼ of Section 3-116-64 — 40 Ac.
North 360 ft of NW¼ NW¼ of Sec.10-116-64 - 7 Ac

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

(c) Statement as to domestic use (giving location, etc.)

II. Mining, power, manufacturing, transportation, or other purposes:

(a) Nature of use

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

(c) Location of plant

(d) Method of developing power

(e) Point where water will be returned to stream

8. Estimated cost of works:

(a) Head gates, $..... (b) Pumping plant, $.....

(c) Fluming, $..... (d) Canal-earth, $..... R. R. $.....

(e) Other structures..... $..... Total, $.....

9. Description of diversio. works:

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

Reservoir dam and spillway

II. Dimensions of works:

(a) Dam: Height 14 feet: length at bottom 600 feet; length at top 600 feet; thickness at bottom 86 feet; thickness at top 16 feet; slope of front (water) face 3 to 1; slope of back face 2 to 1; material used in construction earth, stone & steel piling

(b) Reservoir; Capacity when filled 1568 acre feet. Surface area at highwater mark 324.2 acres.

DEPTH AT OUTLET—FEET	SURFACE AREA AT EACH ..... FEET OF DEPTH AT OUTLET—ACRES	CAPACITY A[illegible]E-FEET

(c) Head gate: Width.....feet; height.....feet; Material .....

(d) Canal: Total length.....miles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work 5 years.

11. Time required for complete application of water to the proposed beneficial use 9 years.

12. Choice of newspaper for publication of notice of intention to appropriate Redfield Press

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

I F. W. Marmon, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of City Auditor (Owner, manager, engineer.), that I have read the above and foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed F. W. Marmon

Subscribed and sworn to before me this 6th day of March, 1940

N. B. Savage

Notary Public (or other qualified officer.)

STATE OF SOUTH DAKOTA,
County of Hughes } ss.

Pierre, South Dakota, April 26, 1940

This is to certify that the foregoing application was received at this office at 1:00 o'clock P. m. upon the 6th day of March 1940 and that after examination it was found to conform to the Water Laws of South Dakota and a "Notice of Intention" was advertised as required by law and the matter was taken up by the State Engineer at his office at Pierre on April 19, 1940, and no objections to the appropriation were made or received.

Dean W. Loucks
State Engineer.

Number of permit 21-3

Date of first receipt of application 1:00 P. M. March 6, 190

Date of return to applicant for correction 19

Date of receipt of corrected application 19

Date from which applicant may claim right 1:00 P. M., March 6, 1940

Approved April 26, 19 40, Recorded in Book 2 Page 470-471

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

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before October 26, 1942

2nd. The whole of said work is to be completed on or before April 26, 19 45

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is April 26, 19 49

4th. The water appropriated shall be used for the purpose of Storage for recreation, fire protection, public water supply, and irrigation

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

6th. The amount of the appropriation herein granted shall not exceed 5 cubic feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before April 26, 1949; said water to be used during the following described annual periods:

January 31st to December 31st.

EXHIBIT
Docket
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SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

PROTECTING SOUTH DAKOTA'S TOMORROW...TODAY!

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Search Results for South Dakota Water Rights

Search Again

Permit No:	22-3	**Status:**	LICENSE	**Link:**	PDF image of permit/right file					
Name/Business:	CITY OF REDFIELD			**County:**	SPINK					
Type of use:	MUNICIPAL			**Priority Date:**	3/6/1940					
Pump Rate:	0	cubic feet per second			**If Irrigation (acres):**	0				
Legal Description:	NE1/4NE1/4	**Sec**	9	**Twn**	116	N	**Rng:**	64	W	
Basin:	JAMES RIVER BASIN									
Source:	TURTLE RIVER, REDFIELD FIRE DAM									
Aquifer:										

Comments:

LIMITED TO 1568 AFA UNDER W/R 21-3

Dennis Daugaard, Governor

Steven M. Pirner, P.E., Department Secretary

Vicki Murray, Executive Assistant

605.773.5559 - fax 605.773.6035

Email SD DENR

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 22-4

WHEREAS, On the 6th *day of* March *A. D. 19* 40

the CITY OF REDFIELD

of Redfield *County of* Spink *and State of* South Dakota *duly made application (No.* 22-3 *) to me for a perm it to use* storage water ~~////////////////~~ *of the waters of* Turtle River

County of Spink *State of South Dakota, for* Municipal-fire protection

purposes; and

WHEREAS, On the 26th *day of* April *A. D. 19* 40

Permit No. 22-3 *was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the* 26th *day of* April *A. D. 19* 45 *and for the application to beneficial use of said water on or before the* 26th *day of* April *A. D. 19* 49

and,

WHEREAS, On the 1st *day of* February *A. D. 19* 49

the holder of said permit duly made proof of the completion of adequate works for the diversion of water for fire protection ~~////////////////////////~~ *as evidenced by my Certificate No.* 2

dated February 4, 1949 *confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use* water for fire protection ~~cubic feet per second of water~~ *with date of priority of* March 6, 1940 *and,*

WHEREAS, On the 1st *day of* February *A. D. 19* 49

proof was duly made of the application to beneficial use of water for fire protection ~~cubic feet per second of~~ *said water:*

hereby grant and assign to ....

of ..... Redfield ..... the holder ... and owner .... of said permit No. 22-3 .....

a water right, dating from ..... March 6, 1940 ..... to the use of water for fire protection

////////////////// of the waters of ..... Turtle River .....

in the County of ..... Spink ..... and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at ..... a point 440 feet S. 40° W. of the N.E. Corner of Sec. 9 Twp. 116 N., R. 64 W. .....

and conducted to ////////// the place of use. .....

.....

.....

for the purpose .... of ..... Municipal-Fire Protection .....

.....

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

WITNESS, My hand and the seal of my office at Pierre, South Dakota, this ..... 4th ..... day of ..... February ..... A. D. Nineteen Hundred and ..... Forty-Nine .....

.....

DEAN W. LOUCKS, State Engineer.

STATE OF SOUTH DAKOTA

License No. 22-3

Name of Reservoir ..... Redfield .....

Stream ..... Turtle River .....

County ..... Spink .....

Use ..... Fire Protection .....

Location of Dam ..... 440' S 40°E of .....

NE Cor. Sec. 9-116-64 .....

Post Office ..... Redfield .....

Owner ..... Municipal .....

Use ..... Fire Protection .....

Priority ..... March 6, 1940 .....

Issued ..... April 26, 1940 .....

Book of Water Rights 47-74 Page .....

Permit No. 22-3

Water Division No. 3 ..... James River .... Water District

Certificate of Construction of Works.

No. 2

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the .... CITY OF REDFIELD ....

....

of .... Redfield .... County of .... Spink .... and State of

.... South Dakota .... the holder.... of Permit No. 22-3 .... issued upon Application

No.... 22-3 .... bearing date of priority of .... March 6, 1940 ...., authorizing the diversion of

water from storage .... ~~[illegible]~~ of the waters of Turtle River under Permit No. 21-3...

County of .... Spink .... State of South Dakota, at a point 140 feet S. ...

40°W. of the N.E. Cor. of Sec. 9, Twp. 116N, Range 64W. ....

...., for ..... Municipal-fire protection ....

purposes, ha... s ... fully complied with the provisions of the laws of the State of South Dakota relating to proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use fie protection for the City of Redfield ....

~~[illegible]~~ ....

EXHIBIT

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 22-4

WHEREAS, On the 6th day of March A. D. 19 40

the CITY OF REDFIELD

of Redfield County of Spink and State of South Dakota duly made application (No. 22-3) to me for a permit to use storage water ~~////////////////~~ of the waters of Turtle River County of Spink State of South Dakota, for Municipal-fire protection purposes; and

WHEREAS, On the 26th day of April A. D. 19 40 Permit No. 22-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 26th day of April A. D. 19 45 and for the application to beneficial use of said water on or before the 26th day of April A. D. 19 49 and,

WHEREAS, On the 1st day of February A. D. 19 49 the holder of said permit duly made proof of the completion of adequate works for the diversion of water for fire protection ~~////////////////~~ as evidenced by my Certificate No. 2 dated February 4, 1949 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use water for fire protection ~~cubic feet per second of water~~ with date of priority of March 6, 1940 and,

WHEREAS, On the 1st day of February A. D. 19 49 proof was duly made of the application to beneficial use of water for fire protection ~~cubic feet per second of~~ said water:

hereby grant and confirm to .....

of ..... Redfield ..... the holder ... and owner .... of said permit No. 22-3 .....

a water right, dating from ..... March 6, 1940 ..... to the use of water for fire protection

////////////////// of the waters of ..... Turtle River .....

in the County of ..... Spink ..... and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at ..... a point 140 feet S. 40° W. of the N.E. Corner of Sec. 9 Twp. 116 N., R. 64 W. ..... and conducted to ////////// the place of use. .....

.....

.....

for the purpose .... of ..... Municipal-Fire Protection .....

.....

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

WITNESS, My hand and the seal of my office at Pierre, South Dakota,

this ..... 4th ..... day of ..... February ..... A. D. Nineteen

Hundred and ..... Forty-Nine

.....

DEAN W. LOUCKS, State Engineer.

STATE OF SOUTH DAKOTA

License No. 22-3

To be Reported

by Turtle River

Spink County

Protection ////////

on 140' S 40° W of

Sec. 9-116-64

Redfield

Municipal

Protection

March 6, 1940

April 26, 1940

of Water Rights Page 472-74

EXHIBIT

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STATE OF SOUTH DAKOTA

WATER LICENSE NO. 23-3

WHEREAS, On the 6th *day of* March *A. D. 1940* the CITY OF REDFIELD of Redfield County of Spink and State of South Dakota *duly made application (No.* 23-3 *) to me for a permit to use* 0.42 *cubic feet per second of the waters of* Turtle River *County of* Spink *State of South Dakota, for* Irrigation *purposes; and*

WHEREAS, On the 26th *day of* April *A. D. 1940 Permit No.* 23-3 *was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the* 26th *day of* April *A. D. 19*45 *and for the application to beneficial use of said water on or before the* 26th *day of* April *A. D. 1949 and,*

WHEREAS, On the 1st *day of* February *A. D. 1949 the holder of said permit duly made proof of the completion of adequate works for the diversion of* 0.42 *cubic feet per second of said waters, as evidenced by my Certificate No.* 3 *dated* February 4, 1949 *confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use* 0.42 *cubic feet per second of water, with date of priority of* March 6, 1940 *and,*

WHEREAS, On the 1st *day of* February *A. D. 1949 proof was duly made of the application to beneficial use of* 0.42 *cubic feet per second of said water;*

EXHIBIT
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STATE OF SOUTH DAKOTA

WATER LICENSE No. 84-3

WHEREAS, On the 24th day of December A. D. 1952

Albert F. Schmidt

of Hadfield County of Spink and State of South Dakota duly made application (No. 84-3) to us for a permit to use 1.5 cubic feet per second of the waters of Turtle Creek County of Spink, State of South Dakota, for irrigation purposes; and

WHEREAS, On the 23rd day of May A. D. 1953 Permit No. 84-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 25th day of May A. D. 1956 and for the application to beneficial use of said water on or before the 25th day of May A. D. 1956 and,

WHEREAS, On the ____ day of August A. D. 1955 the holder of said permit duly made proof of the completion of adequate works for the diversion of 1.5 cubic feet per second of said waters, as evidenced by our Certificate No. 84-3 dated October 17, 1955 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 1.5 cubic feet per second of water, with date of priority of December 24, 1952, and; and

WHEREAS, On the 2nd day of September A. D. 1955 proof was duly made of the application to beneficial use of 1.5 cubic feet per second of said water; on 140 acres of land in the SE¼ and 12.5 acres in the SW¼ of Section 7, T 116N, R 64W, along the Easterly bank of Turtle Creek.

of Bedfield, South Dakota the holder and owner of said permit No. 34-3

a water right, dating from December 24, 1952 to the use of 1.5

cubic feet per second of the waters of Turtle Creek

in the County of Spink and State of South Dakota, or so much thereof as may be

necessray for the purposes hereinbelow mentioned, to be diverted at a point between a point 681 feet West of the S¼ Corner of Section 7, T 116N, R 64W, and a point 1415 feet West of the E¼ Corner of said Section,

and conducted to and upon 140 acres of land in the SE¼ and 10.5 acres of land in the SW¼ of said Section, which are situated along the Easterly bank of Turtle Creek,

for the purpose of Irrigation

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

WITNESS, My hand and seal of our office at Pierre, South Dakota,

this 12th day of October A. D. Nineteen

Hundred and fifty-five

State Water Resources Commission

By:

J. W. Grimes, Chief Engineer, Executive Officer

OF SOUTH DAKOTA

License No. 34-3

Erv T. Schmidt

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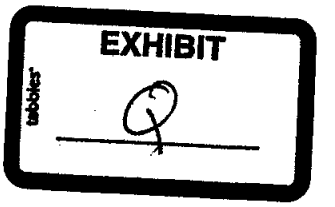
SE¼ and S½

E 116N R 64W

Irrigation

ority December 24, 1952

3 of Page 45



STATE OF SOUTH DAKOTA

WATER LICENSE No. 87-3

WHEREAS, On the 8th day of January A. D. 19 53

Clarence Backer

of Rodfield County of Spink and State of South Dakota duly made application (No. 87-3) to us for a permit to use 1.77 cubic feet per second of the waters of Turtle Creek (Lake Rodfield) County of Spink, State of South Dakota, for irrigatio. purposes; and

WHEREAS, On the 9th day of June A. D. 19 55 Permit No. 87-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 9th day of June A. D. 19 60 and for the application to beneficial use of said water on or before the 9th day of June A. D. 19 64 and,

WHEREAS, On the 31st day of March A. D. 19 62 the holder of said permit duly made proof of the completion of adequate works for the diversion of 1.88 cubic feet per second of said waters, as evidenced by our certificate No. 87-3 dated March 31, 1962 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 1.88 cubic feet per second of water, with date of priority of January 8, 1953 xxx and,

WHEREAS, On the 31st day of March A. D. 19 62 proof was duly made of the application to beneficial use of 1.77 cubic feet per second of said water, for irrigation of 126 acres in the SE¼ and SW¼ NE¼, Sec. 9, T116N, R64W

of ..... the holder.... and owner.... of said permit No. .....

a water right, dating from January 8, 1953 to the use of 1.77

cubic feet per second of the waters of Turtle Creek (Lake Redfield)

in the County of Spink and State of South Dakota, or so much thereof as may be necessray for the purposes hereinbelow mentioned, to be diverted ~~at~~ between two points in the SW¼ NE¼ Section 9, T116N, R64W

and conducted to and upon portions of the SW¼ NE¼ and SE¼ Section 9, T116N, R64W

for the purpose.... of irrigation

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

WITNESS, My hand and seal of our office at Pierre, South Dakota, this 2nd day of April A. D. Nineteen Hundred and sixty-two

State Water Resources Commission

By:

J. W. GRIMES
Chief Engineer, Executive Officer

OF SOUTH DAKOTA

License No. .....

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SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

PROTECTING SOUTH DAKOTA'S TOMORROW...TODAY!

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Search Results for South Dakota Water Rights

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Permit No:	95-3	**Status:**	CANCELLED	**Link:**	PDF image of permit/right file
Name/Business:	RUEBEN WEIKUM			**County:**	SPINK
Type of use:	IRRIGATION			**Priority Date:**	2/9/1953
Pump Rate:	2 cubic feet per second			**If Irrigation (acres):**	187
Legal Description:	NE1/4 **Sec** 26 **Twn** 116 N **Rng:** 65 W				
Basin:	JAMES RIVER BASIN				
Source:	TURTLE CREEK				
Aquifer:					

Dennis Daugaard, Governor

Steven M. Pirner, P.E., Department Secretary

Vicki Murray, Executive Assistant

605.773.5559 - fax 605.773.6035

Email SD DENR

Division of Environmental Services

Air Quality

Minerals & Mining

December 11, 1969

Mr. Reuben Weikum
Redfield
South Dakota 57469

Dear Mr. Weikum:

On December 8, 1969, Mr. Burton Jones of this office contacted you about your Water Permit No. 95-3 authorizing the diversion of 2.00 cubic feet per second of water from Tuttle Creek to irrigate 187 acres.

You indicated that the system was not built, and no irrigation has been done.

South Dakota Water Laws provide that the water diversion system is to be completed within a five year period after the water permit is approved. The expiration date of the five year period for Water Permit No. 95-3 was February 3, 1959.

Therefore cancellation of Water Permit No. 95-3 will be considered by the Water Resources Commission at 3:00 P.M.,C.S.T., on March 10, 1970 at its office in Pierre, South Dakota.

Sincerely,

J.W. GRIMES

JWG/BFJ/bw

11 9:15 AM. MAR 11 1953

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

In the Matter of the Application of Rueben Meikum, for a Permit to Appropriate Water for Beneficial Use

PROTEST

OF THE CITY OF REDFIELD

It appearing that on or about the 20th day of February, 1953, one Rueben Meikum made his application in accordance with the provisions of the Water Laws of the State of South Dakota for a permit to appropriate for beneficial use 2.0 cubic feet of water per second of time from the waters of Turtle Creek; and that pursuant to such application, Dean A. Apucks, State Engineer of the State of South Dakota, caused notice to be published of such application and of the time and place for hearing on such application and for all persons who believe that their prior rights would be injuriously affected or that the allowance of the permit would be detrimental to the public welfare, to file protests with the said State Engineer in writing prior to the date of such hearing on such application which is set for the 3rd day of April, 1953, at 2:00 P. M. at the office of the State Engineer at Pierre, South Dakota.

THEREFORE, pursuant to such above-mentioned notice, the City of Redfield, Spink County, South Dakota, desires to enter protest to the granting of such application by the State Engineer for the following reasons:

¶1 That heretofore and on the 4th day of February, 1949, the City of Redfield was granted a water right dating from the 6th day of March, 1940, to the use of and to appropriate water for annual beneficial use, from the waters of said Turtle Creek, of 1568 acre-feet impounded by a dam for the purpose of storage for municipal use.

¶2 That heretofore and on the 4th day of February, 1949, the City of Redfield was granted a water right dating from the 6th day of March, 1940, to the use of water for fire protection of the waters of Turtle Creek for the purpose of municipal fire protection.

¶3 That heretofore and on the 4th day of February, 1949, the City of Redfield was granted a water right dating from the 6th day of March, 1940, to the use of 0.42 cubic feet per second of the waters of Turtle Creek for the purpose of irrigation.

¶4 That the said City of Redfield has heretofore expended its money in the approximate amount of $20,000.00, and its labor in the construction of this said dam, lake and spillway together with an expenditure in excess of $28,000.00 by the Federal Government, and has created Lake Redfield thereby, and each year continues to expend money and labor in the upkeep of said dam and lake and spillway, and in addition the State Game, Fish and Parks Commission has expended an excess of $80,000.00 on the same.

¶5 That the said City of Redfield has been maintaining said Lake Redfield for swimming and fishing, in addition to the other uses stated in this protest, and other recreation for the benefit of the public, and that therefore the public has a beneficial interest in the continued existence of said Lake Redfield at its present size, form and level, and that the State Game, Fish and Parks Commission has stocked the lake several times with fish.

¶6 That the outlet through said dam is 6 feet below the top of the spillway so that only the top 6 feet of water may be drawn off and used by the said City of Redfield for fire protection, irrigation and to flush the creek for sanitary purposes including the liquid run-off from the Redfield State Hospital sanitary sewer disposal plant and to draw off water for irrigation purposes under their prior right.

¶7 That the normal evaporation during the course of a year is approximately 3 feet of water, which further reduces the amount of water available

spring run-off, except for a very small amount of water from springs in the bed of said Lake, therefore the only water available for City use is the water stored behind the said dam and spillway which has been retained from the spring run-off.

¶9 That during a summer season of short rainfall, such as the summer of1952, the waters of Turtle Creek will not provide sufficient water for the use of the City of Redfield and the Redfield State Hospital, whereas there should be water available over and above these requirements to occasionally flush the said Turtle Creek for sanitary purposes, which includes the Redfield State Hospital sanitary sewer run-off.

¶10 That the said City of Redfield requires a supply of water so as to provide for [illegible]0 gallons per minute for a period of 8 hours to retain the present fire insurance rates for a city of the 6th class, and that if such supply of water is not available the fire rates of property in said City of Redfield will be increased.

¶11 That the said City of Redfield is planning to enlarge its pumping capacity at a later date, and will then require an additional amount of water from the waters of Turtle Creek for fire protection.

The hereinbefore described water rights in ¶1, ¶2, and ¶3 were granted under water licenses 21-3, 22-3, and 23-3, which are on file in the office of the State Engineer of the State of South Dakota at Pierre, South Dakota, and are hereby referred to for further particulars, and by reference made a part hereof.

That the City of Redfield, South Dakota, has made full Beneficial use and has appropriated all of the water heretofore allowed under the above described water rights for the purposes therein stated from the 4th day of March, 1940, and at all times since that date, and fully expects to continue such full beneficial use in the foreseeable future.

That the City of Redfield, through its City Council, believes that were a water right of 2.0 cubic feet of water per second of time, from the waters of Turtle Creek, granted to the said applicant, Rueben Neikum, that the prior water rights of the said City of Redfield, South Dakota, would be injuriously affected, and in addition, that the allowance of such a water right would be detrimental to the public welfare.

THEREFORE, the City of Redfield, South Dakota, acting by and through its City Council, in accordance with a Resolution of the said City Council duly passed at a regular meeting on March 2, 1953, protests the granting of the application of the said applicant, Rueben Neikum, for a water right to the waters of the said Turtle Creek under the water laws of the State of South Dakota, provided, that if the granting of such water right to said applicant will not in any way interfere with the existing water rights of the City of Redfield, or with the rights of the public to the use of Lake Redfield and will not lower the level of the water of Lake Redfield below the top of the spillway in said dam, then the City of Redfield does not desire to enter protest to the granting of rights to the waters of Turtle Creek.

That the City of Redfield, South Dakota, hereby reserves the right to appear on the date of hearing on such application, April 3, 1953, through its City Attorney, W. G. Dunker, and Associate Counsel, Roy T. Bull, for the purpose of presenting further arguments and evidence in regard to the above matter.

Dated this 9th day of March, 1953.

CITY OF REDFIELD

By C. G. Hopkins

C.G.Hopkins,Mayor

ATTEST:

9:15 A.M.

Resolution

WHEREAS, certain persons owning farming land adjacent to Turtle Creek, namely, Albert F. Schmidt, Clarence Backer and Reuben Bickum, have recently made application to the State Engineer of the State of South Dakota for the right to appropriate water for beneficial use from the waters of said Turtle Creek under the laws of the State of South Dakota, and it appears likely that still other persons will later apply for water rights from the said waters of Turtle Creek, if the present applications are granted;

AND, WHEREAS, the prior water rights of the City of Redfield, South Dakota, to waters of Turtle Creek consist of the right to the annual use of 1568 acre-feet of water for the purpose of storage behind a 14 foot spillway and dam, the right to the use of such storage water for the purpose of municipal fire protection, and the right to .62 cubic feet of water per second of time for the purpose of irrigation.

AND, WHEREAS, the said City of Redfield has expended in excess of $20,000 in the construction of said dam and has thereby created Lake Redfield, which serves a purpose long needed by the City of Redfield, as mentioned above.

THEREFORE, BE IT RESOLVED, that the City Council of the City of Redfield, South Dakota, at a regular meeting held on Monday, March 2, 1953, does hereby protest any such application or applications that will or may bring the level of the water of Lake Redfield below the top of the 14 foot spillway, or that will in any manner injuriously affect the prior water rights of the City of Redfield to the waters of Turtle Creek,

BE IT FURTHER RESOLVED, that the City Council of the City of Redfield, South Dakota does not protest the granting of water rights to any waters of Turtle Creek over and above that needed by the City of Redfield, as was previously granted by the State Engineer of the state of South Dakota.

Mayor

ATTEST:

Permit No. 95-3 was issued to RUEBEN WEIKUM

on APRIL 3, 1953, for 2.0 c.f.s. from _____.

TURTLE CREEK in SPINK County.

Present owner (s) was (were) contacted and indicated this system,

SYSTEM WAS NOT CONSTRUCTED

Cancelled: _____

application

RECEIVED
3:30 A.M.
FEB 18 1953
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Water Division No. 3 James River District
(Blanks to be Filled by the State Engineer.)

RECEIVED
9:30 A.M.
FEB 9 1953
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of applicant Ruben Weikum

Postoffice address Redfield, County Spink, State So. Dak.

I. If a corporation

(a) Name of same

(b) Date and place of incorporation

(c) Amount of capital stock

(d) Amount paid in

(e) Names and address of directors:

CANCELLED
BY ACTION OF W. R. C.
DATE 3-18-70 BY

Map No. 74-3

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

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

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

(b) Cash on hand, $

(c) Treasury stock, $

(d) Bonds to be issued, $

(e) Other resources, $

2. Name of diversion work Weikum Irrigation Works

3. Quantity of water claimed 2.00 cubic feet per second.

4. Source of water supply Turtle Creek

5. Location of point of diversion Point No.1- N.45°00'W.1400' from East ¼ Cor. Sec. 26 T. 116 N. R. 65 W. and Point No. 2- 880' South of North ¼ Cor of Sec. 25 T 116 N. R. 65 W. on Both bank.

6. Annual periods during which water is to be used May to October inclusive.

7. To be used for:

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

(a) Number of acres to be irrigated 187 acres.

(b) Legal subdivisions to be irrigated See attached sheet

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

(c) Statement as to domestic use (giving location, etc.)

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

(a) Nature of use Name any of the above uses claimed

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

Amount claimed for engine cooling

(a) Head gates, $..... (b) Pumping plant, $.....

(c) Fluming, $..... (d) Canal-earth, $..... Rock, $.....

(e) Other structures ..... $..... Total, $.....

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)
Pump, pipe and 3x Sprinklers 5/32 x 5/16 x 7/32"

II. Dimensions of works:

(a) Dam: Height.....feet; length at bottom.....feet; length at top .....feet; thickness at bottom.....feet; thickness at top..... feet; slope at front water face.....; slope face.....; material used in construction.....

(b) Reservoir: Capacity when filled.....acre feet. Surface area at highwater mark.....acres.

DEPTH AT OUTLET-FEET	SURFACE AREA AT EACH ..... FEET DEPTH AT OUTLET—ACRES	ACRE-FEET CAPACITY
25 ft	pressure 198 G.P.M.	
30 ft	" 218 "	
35 ft	" 237 "	
40 ft	" 254 "	
45 ft	" 271 "	
50 ft	" 287 "	

Pressure Gauge will be provided.

(c)* Head gate: Width.....feet; height..... feet; Material.....

(d) Canal: Total length.....miles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work ..... 1 ..... years.

11. Time required for complete application of water to the proposed beneficial use ..... 1 ..... years.

12. Choice of newspaper for publication of notice of intention to appropriate .....
Redfield Press, Redfield, So. Dak.

STATE OF SOUTH DAKOTA
County of SPINK } ss.

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

Signed Ruben Weikum

Subscribed and sworn to before me this 16TH day of February 1953

Hold for receipt of same before processing

STATE OF SOUTH DAKOTA)
) ss.
County of Hughes)

Pierre, South Dakota, February 2, 1954

This is to certify that the foregoing application was received at this office at 9:30 o'clock a. m. upon the 9th day of February 19 53 and that after examination it was found to comply with the South Dakota water laws, was published in accordance with the provisions thereof and consideration given to any and all information presented. The City of Redfield filed a protest to this application which was given due consideration. All and any legal rights which the City of Redfield holds to the use of water from Turtle River is prior to this right.

Claud Oscarson
State Engineer.

Number of permit 95-3

Date of first receipt of application February 9, 19 53

Date of return to applicant for correction February 11, 19 53

Date of receipt of corrected application February 18, 19 53

Date from which applicant may claim right February 9, 19 53

Approved February 3, 19 54, Recorded in Book 3 Page 110

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

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before August 3, 19 54

2nd. The whole of said work is to be completed on or before February 3, 19 55

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is February 3, 19 55

4th. The water appropriated shall be used for the purpose of sprinkler irrigation

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

6th. The amount of the appropriation herein granted shall not exceed 2.0 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before February 3, 19 55; said water to be used during the following described annual period: May to October inclusive.

Witness my hand this 3rd day of April, 1954

Claud Oscarson
State Engineer.

STATE OF SOUTH DAKOTA)
) ss.
County of Hughes)

Pierre, South Dakota, 2-3, 1954

This is to certify that the foregoing application was received at this office at 9:30 o'clock a m. upon the 9th day of Jul., 1953 and that after examination it was found to comply with the South Dakota water laws, was published in accordance with the provisions thereof and consideration given to any and all information presented. The City of Redfield filed a protest to this application which was given due consideration. All and any legal rights which the City of Redfield holds to the use of water from Turtle River is prior to this right.

State Engineer

Number of permit 95-3

Date of first receipt of application Jul. 9, 1953

Date of return to applicant for correction Jul. 11, 1953

Date of receipt of corrected application Jul. 18, 1953

Date from which applicant may claim right Jul. 9, 1953

Approved Jul. 3, 1954, Recorded in Book 3 Page 110

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

1st. The equivalent of at least one-fifth, of the work above specified is to be completed on or before Aug. 3, 1954

2nd. The whole of said work is to be completed on or before Jul. 3, 1955

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is Jul. 3, 1955

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

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

6th. The amount of the appropriation herein granted shall not exceed 2.0 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may here[illegible] the production of crops in the exercise of the best

State Publishing Company, Pierre

9—Notice of Intention to Appropriate Water

No. 95-3

(First Publication _____, 19_____)

APPROPRIATION OF WATER

Office of State Engineer,

Pierre, S. Dak., February 20, 19 53

Notice is hereby given that Raoben Volkum whose postoffice address is Redfield S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 2.0 cubic feet of water per second of time from the Turtle Creek through the Volkum Irrigation Works, the point of diversion of which is to be located on the both bank of said stream in the ~~NW¼ SE¼~~ between a point 6500' W. 1100' from E. ¼ Cor. Sec. 26 and a point 600' S. of N.¼ Cor. Sec. 25, of Section ~~26~~ Twp. 116N Range 65W. Said water to be used for the purpose of providing irrigation on the following described land:

NW¼ Sec. 25 and SE¼ of NE¼ S.C. 26, T. 116N, R. 65 W.

~~and for~~ ~~purposes~~

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 3 day of April, 19 53, at 2:00 P. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further, the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any or all information presented.

REA W. DUCKS
State Engineer

NDC-EM
cc: [illegible]

No. 95-3

Form 1—Proof of Publication—Appropriation of Water.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA } ss.
County of Spink

Harold D. Jones being duly sworn, deposes and says the annexed printed copy of Notice of Intention to Appropriate Water was taken from the Redfield Press a newspaper which during the whole time of publication of said notice hereinafter stated, has been and is printed and published in the City of Redfield County of Spink and State of South Dakota; that the said notice was published in said newspaper on the following dates:

February 26,
March 5, 12, 19, 1953

in each and every issue of the full number thereof, the first publication being made on the 26th day of February 1953 and the last publication on the 19th day of March 1953, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was Mng. Ed. the printer and publisher of the said newspaper.

Harold D. Jones

Subscribed and sworn to before me this 19 day of March A. D. 1953

Margaret E. Jones

Notary Public Spink County, S. D.

No. 34
Notice of Intention to Appropriate Water No. 95-3
(First Publication February 26, 1953)
APPROPRIATION OF WATER
Office of State Engineer
Pierre, S. Dak., February 20, 1953

Notice is hereby given that Rueben Welkum whose postoffice address is Redfield, S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 2.0 cubic feet of water per second of time from the Turtle Creek through the Welkum Irrigation Works, the point of diversion of which is to be located on both banks of said stream between a point N. 65 deg. 00' W. 1400' from E. ¼ Cor. Sec. 26 and a point 880' S. of N¼ Cor. Sec. 25, Twp. 116 N Range 65W. Said water to be used for the purpose of providing irrigation on the following described land:
NW¼ SEC. 25 and SE¼ of NE¼ of NW¼ SEC. 26, T. 116N, R. 65W.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 3rd day of April, 1953, at 2:00 P. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further, the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any or all information presented.

DEAN W. LOUCKS
State Engineer
(Feb. 26, Mar. 5, 12, 19)

Form No. 23

RECEIVED
FEB 23 1956
STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

APPLICATION FOR EXTENSION OF TIME FOR COMPLETING WORKS

Feb 2 1956
(date)

To the State Water Resources Commission
Pierre, South Dakota

Dear Sirs:

I hereby request that an extension of time from Feb 3, 1956 to Feb 3, 1959 be granted me for the completion of works to be done under Permit No. ____ and that the time for proof of beneficial use of water be extended to ____

Said works are located in Spink County and are described as follows:

Location of headworks: In the S.E. ¼ of the N.E. ¼ of Section 26 Township Eplin 116 Range 65W E., B.H.M.

The water is to be used for the purpose of Irrigation of Hay land And Crop Land and Pasture

The extension of time for the completion of these works is requested for the following reasons: Because he did not understand, or did not receive notification of his permit being granted. -

Reuben Weisbrun
Holder of Permit No. ____
Redfield S Dak

APPROVED:

State Water Resources Commission

By: J.W. Simmons
Chief Engineer, Executive Officer
subject to notation

EXHIBIT
tabbies
5

WATER LICENSE NO. 96-3

(1) WHEREAS, On the 11th day of February A. D. 19 53

Joseph Albrecht

made Water Right Application No. 96-3 for a permit to use 2.0 cubic feet per second of the waters of Turtle Creek

County of Spink, State of South Dakota, for irrigation purposes; and

(2) WHEREAS, On the 21st day of May A. D. 19 53

Permit No. 96-3, with a date of priority of February 11, 1953 was issued to said applicant ____ for the diversion of said water, and provided for the completion of construction of the water supply system therein described on or before the 21st day of May A. D. 19 58 and for the application to beneficial use of said water on or before the 21st day of May A. D. 19 58

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 2.0 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent.

for irrigating 140 acres in the SW¼, Section 5, T116N, R64W

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Joseph Albrecht of Redfield, South Dakota the holder and owner of said permit No. 96-3 a water right, dating from February 11, 1953 to use of 2.0 cubic feet per second of the waters of Turtle Creek in the County of Spink, and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at any point along the reservoir in the SW¼, Section 5, T116N, R64W and conduct to and upon 140 acres in the SW¼, Section 5, T116N, R64W for the purpose of irrigation

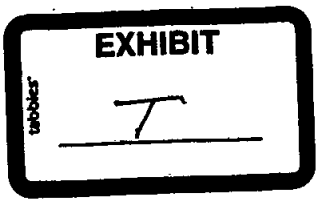
Subject to any limitations listed in Water Right Permit No. 96-3 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota the 29th day of April A. D. Nineteen Hundred and Seventy

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer, J.W. GRIMES



Form No. 16.

STATE OF SOUTH DAKOTA

WATER LICENSE No. 408-3

WHEREAS, On the 11th day of February A. D. 19 57

Stuart Benning

of Rodfield County of Spink and State of South Dakota duly made application (No. 408-3) to us for a permit to use 1.35 cubic feet per second of the waters of Turtle Creek in County of Spink, State of South Dakota, for irrigation purposes; and

WHEREAS, On the 23rd day of March A. D. 19 57 Permit No. 408-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 13th day of March A. D. 19 60 and for the application to beneficial use of said water on or before the 13th day of March A. D. 19 62 and,

WHEREAS, On the 22nd day of August A. D. 19 62 the holder of said permit duly made proof of the completion of adequate works for the diversion of 1.35 cubic feet per second of said waters, as evidenced by our Certificate No. 408-3 dated September 14, 1962 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 1.35 cubic feet per second of water, with date of priority of February 11, 1957 and.

WHEREAS On the 22nd day of August A. D. 19 62 proof was duly made of the application to beneficial use of 1.35 cubic feet per second of said water; for irrigating 95 acres in the SE¼ Section 2, T116N, R64W

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,

We hereby grant and confirm to Stuart Bonning

of Redfield the holder and owner of said permit No. 408-3

a water right, dating from February 11, 1957 to the use of 1.35

cubic feet per second of the waters of Turtle Creek

in the County of Spink and State of South Dakota, or so much thereof as may be necessray for the purposes hereinbelow mentioned, to be diverted at between points N36°5'W, 3410.6 ft. and N58°20'W, 3014.0 ft. from the SE corner, Section 2, T116N, R64W

and conducted to and upon 95 acres in the SE¼ Section 2, T116N, R64W

for the purpose of irrigation

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

WITNESS, My hand and seal of our office at Pierre, South Dakota, this 14th day of September A. D. Nineteen Hundred and Sixty-Two

State Water Resources Commission

By:

Chief Engineer, Executive Officer
J. W. GRIMES

STATE OF SOUTH DAKOTA

Water License No.

To

Source of Supply County

Amt c. f. s.

Point of Diversion

Place of Use

Purpose

Date of Priority

Recorded

in Book of Page

Form No. 28.

STATE OF SOUTH DAKOTA

WATER LICENSE No. 408-3

WHEREAS, On the 11th day of February A. D. 19 57

Stuart Benning

of Redfield County of Spink and State of South Dakota duly made application (No. 403-3) to us for a permit to use 1.35 cubic feet per second of the waters of Turtle Creek in County of Spink, State of South Dakota, for irrigation purposes; and

WHEREAS, On the 23rd day of March A. D. 19 57 Permit No. 408-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 13th day of March A. D. 19 60 and for the application to beneficial use of said water on or before the 13th day of March A. D. 19 62 and,

WHEREAS, On the 22nd day of August A. D. 19 62 the holder of said permit duly made proof of the completion of adequate works for the diversion of 1.35 cubic feet per second of said waters, as evidenced by our Certificate No. 408-3 dated September 14, 1962 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 1.35 cubic feet per second of water, with date of priority of February 11, 1957 ~~xxxx~~ and.

WHEREAS On the 22nd day of August A. D. 19 62 proof was duly made of the application to beneficial use of 1.35 cubic feet per second of said water; for irrigating 95 acres in the SE¼ Section 2, T116N, R64W

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,

We hereby grant and confirm to Stuart Benning

of Redfield the holder and owner of said permit No. 408-3

a water right, dating from February 11, 1957 to the use of 1.35

cubic feet per second of the waters of Turtle Creek

in the County of Spink and State of South Dakota, or so much thereof as may be necessray for the purposes hereinbelow mentioned, to be diverted at between points N36°5'W, 3410.6 ft. and N50°20'W, 3014.0 ft. from the SE corner, Section 2, T116N, R64W

and conducted to and upon 95 acres in the SE¼ Section 2, T116N, R64W

for the purpose of irrigation

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

WITNESS, My hand and seal of our office at Pierre, South Dakota,

this 14th day of September A. D. Nineteen

Hundred and Sixty-Two

State Water Resources Commission

By:

Chief Engineer, Executive Officer
J. W. GRIMES

STATE OF SOUTH DAKOTA

Water License No.

To

Source of Supply County

c. f. s.

Point of Diversion

Place of Use

Purpose

Date of Priority

Recorded

In Book of Page

EXHIBIT
tabbies
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STATE OF SOUTH DAKOTA

WATER LICENSE No. 662-3

WHEREAS, On the 6th day of October A. D. 1959

Wesley Booze

of Redfield County of Spink and State of South Dakota duly made application (No. 662-3) to us for a permit to use 3.07 cubic feet per second of the waters of Turtle Creek

County of Spink, State of South Dakota, for irrigation purposes; and

WHEREAS, On the 8th day of December A. D. 1959 Permit No. 662-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 2nd day of December A. D. 1964 and for the application to beneficial use of said water on or before the 2nd day of December A. D. 1967 and,

WHEREAS, On the 8th day of July A. D. 1964 the holder of said permit duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by our Certificate No. 662-3 dated July 14, 1964 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 3.2 cubic feet per second of water, with date of priority of October 6, 1959 ~~1956~~, and,

WHEREAS, On the 8th day of July A. D. 1964 proof was duly made of the application to beneficial use of 2.81 cubic feet per second of said water for irrigating 202.2 acres in portions of Sec. 36, T116N, R65W and Sec. 1, T115N, R65W

of Redfield the holder and owner of said permit No. 662-3

a water right, dating from October 6, 1959 to the use of 2.88

cubic feet per second of the waters of Turtle Creek

In the County of Spink and State of South Dakota, or so much thereof as may be necessray for the purposes hereinbelow mentioned, to be diverted ~~at~~ between a point N25°30'E, 166 rods, and a point S13°30'E, 158 rods from the SW corner, Section 36, T116N, R65W

and conducted to and upon 202.2 acres in portions of Section 36, T116N, R65W, and Section 1, T115N, R65W, more specifically described in the Certificate of Completion of Work

for the purpose of irrigation

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

WITNESS, My hand and seal of our office at Pierre, South Dakota, this 14th day of July A. D. Nineteen Hundred and Sixty-Four

State Water Resources Commission

By:

J. W. ORIMES
Chief Engineer, Executive Officer

SOUTH DAKOTA
ense No. ____
ly ____ County
____ c. f. s.
sion ____
ty ____ Page ____ of ____

EXHIBIT tabbies √

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

PROTECTING SOUTH DAKOTA'S TOMORROW...TODAY!

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» SubMenu

Search Results for South Dakota Water Rights

Search Again

Permit No:	1730-3	**Status:**	CANCELLED	**Link:**	PDF image of permit/right file
Name/Business:	MARK J CLEBERG			**County:**	SPINK
Type of use:	IRRIGATION			**Priority Date:**	2/11/1970
Pump Rate:	1 cubic feet per second			**If Irrigation (acres):**	70
Legal Description:	NE1/4 **Sec** 36 **Twn** 116 N **Rng:** 65 W				
Basin:	JAMES RIVER BASIN				
Source:	TURTLE CREEK				
Aquifer:					

Dennis Daugaard, Governor

Steven M. Pirner, P.E., Department Secretary

Vicki Murray, Executive Assistant

605.773.5559 - fax 605.773.6035

Email SD DENR

Division of Environmental Services

Air Quality

Minerals & Mining

Permit No. 17 0-3 was issued to Mr. & Mrs. O. Alaura

on March 18 1970, for 1.0 c.f.s. from Trout Creek

in Kiowa County.

Present owner (~~is~~) was (~~were~~) contacted and indicated this system,

had mower Rem Cancelled

CANCELLED: Oct. 31 1979

EXHIBIT tabbies W

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

PROTECTING SOUTH DAKOTA'S TOMORROW...TODAY!

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Search Results for South Dakota Water Rights

Search Again

Permit No:	111-3	**Status:**	CANCELLED	**Link:**	PDF image of permit/right file
Name/Business:	MRS. WILLIAM ZARNEKE			**County:**	SPINK
Type of use:	IRRIGATION			**Priority Date:**	9/3/1953
Pump Rate:	1.7	cubic feet per second		**If Irrigation (acres):**	120
Legal Description:	SE1/4	**Sec** 2	**Twn** 115 N	**Rng:**	65 W
Basin:	JAMES RIVER BASIN				
Source:	TURTLE CREEK				
Aquifer:					

Dennis Daugaard, Governor

Steven M. Pirner, P.E., Department Secretary

Vicki Murray, Executive Assistant

605.773.5559 - fax 605.773.6035

Email SD DENR

Division of Environmental Services

Air Quality

Minerals & Mining

December 11, 1969

Mrs. William Zarneke
1603 S. 4th
Aberdeen, South Dakota 57401

Dear Mrs. Zarneke:

On December 9, 1969, Mr. Burton Jones of this office contacted your tennant, Mr. Wesley Booze about your Water Permit No. 111-3 authorizing the diversion of 1.70 cubic feet per second of water from Turtle Creek to irrigate 120 acres.

Mr. Booze indicated that some irrigation had taken place, but that the land had not been irrigated for the past six or seven years.

Section 61.0125 of the South Dakota laws state: "Forfeiture for nonuse. When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water."

Therefore cancellation of Water Permit No. 111-3 will be considered by the Water Resources Commission at 3:00 P.M.,C.S.T., on March 18,1970, at its office in Pierre, South Dakota.

Sincerely,

J.W. GRIMES

JWG/BFJ/bw

EXHIBIT tabbies X

SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

PROTECTING SOUTH DAKOTA'S TOMORROW...TODAY!

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Search Results for South Dakota Water Rights

Search Again

Permit No:	958-3	**Status:**	CANCELLED	**Link:**	PDF image of permit/right file				
Name/Business:	FRANK WIESS			**County:**	SPINK				
Type of use:	IRRIGATION			**Priority Date:**	1/24/1962				
Pump Rate:	1	cubic feet per second			**If Irrigation (acres):**	70			
Legal Description:	NE1/4	**Sec**	36	**Twn**	116	N	**Rng:**	65	W
Basin:	JAMES RIVER BASIN								
Source:	TURTLE CREEK								
Aquifer:									

Dennis Daugaard, Governor

Steven M. Pirner, P.E., Department Secretary

Vicki Murray, Executive Assistant

605.773.5559 - fax 605.773.6035

Email SD DENR

Division of Environmental Services

Air Quality

Minerals & Mining

Permit No. 958-3 was issued to FRANK H. WEISS

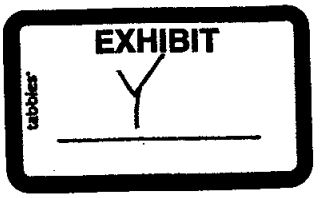
on SEPTEMBER 19, 1962 for 1.0 c.f.s. from _____.

TURTLE CREEK in SPINK County.

Present owner (s) was (were) contacted and indicated this system,

HAD NOT BEEN DEVELOPED.

Cancelled: _____



DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

September 12, 2017

Raymond D. Rylance
Wiles & Rylance
PO Box 227
Watertown SD 57201-0227

Mr. Rylance:

I am writing concerning your petition to investigate Water Right No. 96-3 to determine whether the permit holder has abandoned or forfeited the water right.

As requested by your petition, an investigation of Water Right No. 96-3 has been completed. A report containing the results of the investigation is enclosed. I agree with the report conclusion that insufficient evidence exists for the state to prove the water right has been abandoned or forfeited. In fact, evidence exists showing it likely has not been abandoned or forfeited. Consequently, I choose to not recommend cancellation of the water right to the Water Management Board and will not be scheduling the matter for board consideration pursuant to South Dakota Codified Law 46-5-37.1.

Please contact me if you have any questions. I can be reached at 605.773.3352.

Sincerely,

Jeanne Goodman

Jeanne Goodman, Chief Engineer
SD DENR, Water Rights Program

enclosures

c: D & W Investments LLC
Janet Kegler
Ann F. Mines Bailey, Assistant Attorney General

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Sincerely,

Jeanne Goodman

Jeanne Goodman, Chief Engineer
SD DENR, Water Rights Program

enclosures

c: D & W Investments LLC
Janet Kegler
Ann F. Mines Bailey, Assistant Attorney General

September 6, 2017

Report concerning Petition for Chief Engineer to Investigate Status of Water Right No. 96-3, D & W Investments LLC

Petition. On March 24, 2017, a petition (see Appendix A – pp. 1 & 2) was received from Raymond D. Rylance, representing Lenny Peterson, requesting the chief engineer to investigate whether Water Right No. 96-3 has been abandoned or forfeited. South Dakota Codified Law (SDCL) 46-5-37.1 provides that any interested person may petition the chief engineer to investigate whether or not a water permit or right has been abandoned or forfeited. Following the investigation, the chief engineer may recommend to the Water Management Board that the permit or right be cancelled due to either abandonment or forfeiture, or both, or take no action.

Legal Citations. A list of statutes and rules pertinent to this matter can be found in Appendix A pages 3 through 5.

Background. Water Right No. 96-3 appropriates 2.00 cubic feet of water per second (cfs) from Turtle Creek in Spink County to irrigate 140 acres in the SW1/4 section 5-T116N-R64W (Figure 1). The acreage covered by the water right is located adjacent to the reservoir created by the Redfield Lake dam located just west of the city of Redfield.

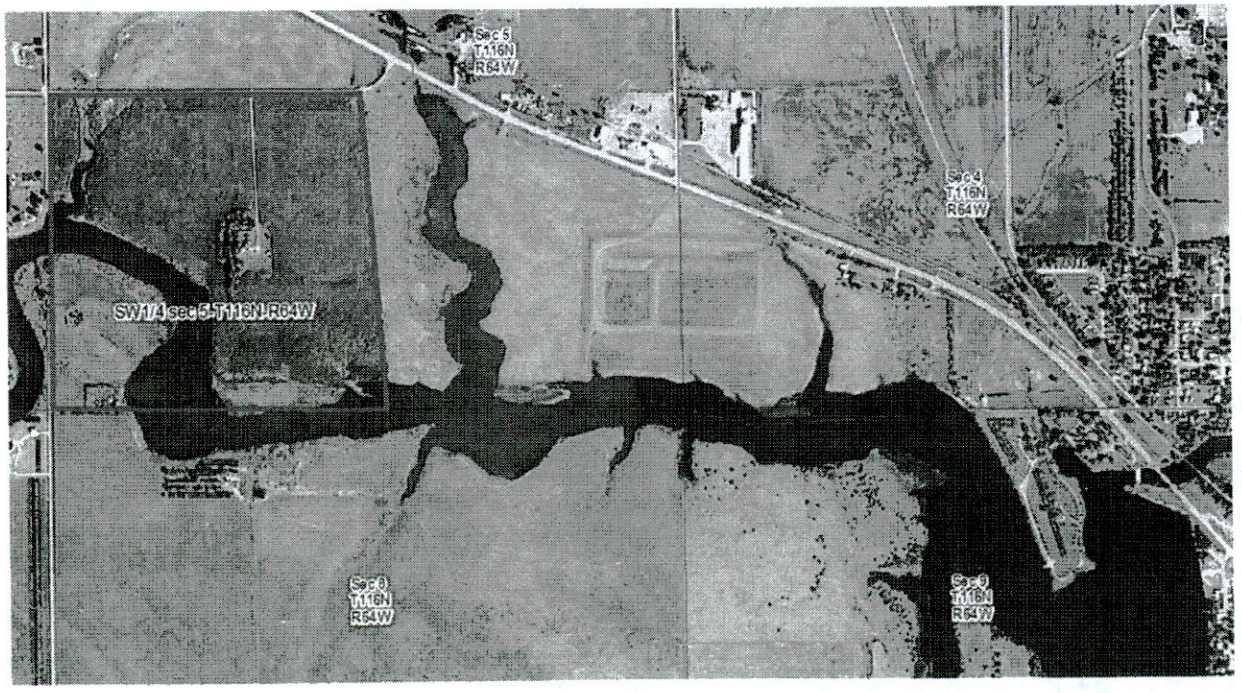


Figure 1

An inspection of the permit in 1970 found that the system was constructed and water put to beneficial use. The equipment used to irrigate at the time of the inspection was a trailer mounted motor and pump, 880 feet of 5-inch mainline, and 2,220 feet of 4-inch sprinkler line with 50 Rainbird sprinkler heads. Based on the inspection findings, the water license was issued April 29, 1970.

Currently, Water Right No. 96-3 is in the name of D & W Investments LLC, 4314 Titan Drive, Rapid City SD. However, this investigation found that a portion of the acreage covered by the water right on the south side of the reservoir is owned by Janet Kegler. Ms. Kegler indicated she has owned the property since 1994. A transfer of ownership has been filed by Ms. Kegler to place that portion of the covered acreage under her name. Figure 2 shows the names that have been on Water Right No. 96-3.

Holders of Water Right No. 96-3	**Years**
Joseph Albrecht	1953 - 1976
Delvin C. & Georgia A. Demmers	1976 - 2003
Georgia A. Demmers	2003 – 2016
D & W Investments LLC (Registered agent – Matt Demmers)	2016 – present

Figure 2

Site Inspection – D & W Investments, LLC Acreage. An inspection of the site on August 4, 2017, found that the acreage held by D & W Investments LLC is being used to grow soybeans excluding some shelterbelt areas. Matt Demmers, present during the inspection, indicated that a portion of the acreage had been in grass (50 to 60 acres) but was converted to crop ground by the current renter. Currently, approximately 100 acres are crop ground including the previous acres that were in grass. Both Mr. Demmers and Scott Bebo (not present during the inspection), the renter for the last 4 years, indicated that the acreage is planted to soybeans and corn on a rotating basis. Mr. Demmers indicated the property had not been in a federal set aside program, such as the Conservation Reserve Program.

Prior to the on-site inspection, Mr. Demmers provided photos of his irrigation pipeline and equipment as well as a video showing a tractor operating a power take off driven pump to run a stationary Nelson big gun. The photos were provided by email on July 7, 2017, and are found in the Appendix A, pages 6 through 10. During the inspection Mr. Demmers also pointed out another motor and pump that are currently not operable due to the motor being vandalized – that photo and others taken of the Demmer property during the site inspection are in Appendix A, pages 11 and 12. Currently, Mr. Demmers is investigating options for placement of a center pivot on the property.

Site Inspection – Kegler Acreage. An inspection of the site on August 4, 2017, found that the acreage held by Janet Kegler is used for a home site, hay and some trees. The area is about 22.5 acres and is mostly in hay. Ms. Kegler acquired the property in 1994 and at one time approximately 500 to 600 trees were watered for commercial purposes. The trees were watered using a plastic tank filled from the creek. Some trees remaining on the property are still watered, and the property has been rezoned to allow commercial development. Ms. Kegler indicated site work has been completed to raise an area where a building will be located with the surrounding area to be irrigated gardens. Ms. Kegler indicated, to her knowledge, the area had never been in a federal set aside program. Photos of the property taken during the site inspection are found in Appendix A, pages 13 and 14.

Historical Water Use – Water Right No. 96-3. Annual irrigation questionnaires first began being filed for Water Right No. 96-3 in 1977 and were consistently received from 1983 to present when submission of the questionnaire became mandatory. During the period from 1983 through 2005 there was no instance of a 3-year period during which water was not used.

During an 11-year period from 2006 through 2016 no water use was reported on the annual irrigation questionnaires (see Appendix B). Table 1 shows reasons for not irrigating and comments provided on each irrigation questionnaire.

Table 1 SM = sufficient moisture SNC = system not constructed

Year	Irrigated	Reasons	Comments on Irrigation Questionnaire
2006	No	SM, SNC	Upon the death of son that ran and was putting together the system, we could not finish for the year this year. Would like to keep permit intact.
2007	No	SM	
2008	No	SM	
2009	No		
2010	No	SM	
2011	No	SM	Too much rain & lower ground flooding. High water levels.
2012	No	SM, SNC	Irrigation motor blew up & pump froze up. Have not been able to finish repair yet. Got timely rains, sufficient to make a good crop.
2013	No	SM	
2014	No	SM	
2015	No	SM	
2016	No	SM	

Note: Annual water use reporting was presumably only for Demmers acreage, not the Kegler acreage.

Prior to 2006, the reported number of acres irrigated varied from year-to-year (it is unknown which specific acres were irrigated) and the irrigated acres were identified as either grass, hay, pasture, trees, or alfalfa. The method of irrigation was identified as hand-move sprinklers, towlines, or flood.

Historical Water Use – Neighboring Irrigation Water Rights. As part of the investigation, the irrigation questionnaires of neighboring crop land water rights were also reviewed concerning water usage from 2006 through 2016. The area immediately surrounding Water Right No. 96-3 lacks other crop land irrigation permits. The nearest crop land water right is No. 408-3, held by Timber Creek Land and Cattle LLC. The water right is located approximately 3.5 miles downstream and is licensed to use water from Turtle Creek for irrigation. The other closest water rights are permitted to use ground water for irrigation and are located approximately 6 to 10 miles from Water Right No. 96-3. Table 2 identifies each water right, the distance from No. 96-3, and whether or not water was used during the period from 2006 through 2016.

Table 2 -- Irrigation History for Water Rights near Water Right No. 96-3

X – irrigation was reported "blank" – no irrigation reported

Year	No. 96-3	No. 408-3	No. 4553-3	No. 3861-3	No. 2440-3
2006		X	X	X	X
2007		X	X	X	X
2008		X		X	X
2009		X		X	X
2010		X		X	X
2011			X	X	
2012		X	X	X	X
2013			X	X	
2014		X		X	X
2015		X	X	X	X
2016		X	X	X	X

96-3 D & W Investment LLC – Turtle Creek
408-3 Timber Creek Land & Cattle LLC – Turtle Creek downstream approx. 3.5 miles
4553-3 William & Deborah St. Clair – ground water approx. 6 miles northwest
3861-3 William & Deborah St. Clair – ground water approx. 9 miles south
2440-3 James Frankenstein – ground water approx. 10 miles south, southeast

Investigation Discussion

Pursuant to the petition filed by Mr. Rylance under SDCL 46-5-37.1:

> "...the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture..."

If the chief engineer chooses to pursue cancellation, then the burden of proof is upon the state to show that Water Right No. 96-3 is subject to abandonment or forfeiture based upon the evidence.

Abandonment. Matt Demmers and Janet Kegler both indicated that they want the water right to remain intact. Ms. Kegler confirmed that desire by filing a transfer of ownership on the portion of the property she owns. Mr. Demmers also has equipment on site that can be used to divert water and irrigate (Appendix A pp. 6 – 11) while Ms. Kegler indicated a portable pump was used to fill a plastic tank but was not onsite during the inspection. Comments regarding "system not constructed" on the 2006 and 2012 irrigation questionnaires (see Table 1) do not indicate abandonment was intended based on the comments provided on each questionnaire.

Forfeiture. Pursuant to SDCL 46-5-37:

> "If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water."

This statute indicates a water right may be forfeited due to nonuse provided the appropriated water is not used for a period of three years. Other provisions of state law and the Administrative Rules of South Dakota (ARSD) provide legal excuse for not using water.

- **SDCL 46-5-37.2 (Appendix A p. 3)** provides that a permit may not be forfeited if the acreage is placed in a federal reserve or production quota program such as the Conservation Reserve Program. The property covered by Water Right No. 96-3 has not been in a federal set aside program from 2006 through 2016 so no legal excuse is provided for not using water.

- **ARSD 74:02:01:37.02 (Appendix A p. 4 & 5)** provides that a water supply maintained for either fire protection or standby purposes is not nonuse of water. This provision typically pertains to nonirrigation water uses but may apply to irrigation if more than one water source is available for use. There are no other permitted water sources so Turtle Creek is not a standby water source. The irrigation equipment being suitable for fighting fire is questionable both in capability and need for acreage planted to corn or soybeans. The portable pump used on the Kegler property was not seen during the inspection but likely is not sufficient to fight a grass fire. In regard to No. 96-3, legal excuse for not using water is not provided under this rule.

- **ARSD 74:02:01:37.01** reads as follows:
  Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

  (1) Unavailability of water to satisfy a permit, right, or vested right;
  (2) Legal proceedings which prevent the use of water;
  (3) Water use under existing climatic conditions would result in a waste of water.

  Regarding subsection No. 2 (legal proceedings preventing use of water). There have been legal proceedings on the Demmers acreage. Mr. Demmers had power of attorney for 5 years while his mother was suffering from dementia with the water right ultimately getting transferred to D & W Investments LLC. During this time the property was leased out and continues to be leased. Assuming there is not some legal aspect in the granting of power of attorney which would preclude irrigating; subsection No. 2 does not provide legal excuse for not irrigating.

  Regarding subsection No. 3 (climatic conditions resulting in waste of water). During the period from 2006 through 2016, the irrigation questionnaires (see Appendix B) filed for Water Right No. 96-3 indicate that sufficient moisture was available every year except for 2009 (see Table 1). A review of the nearest other water rights indicate that water was used the majority of the years between 2006 and 2016 (see Table 2). However, the nearest of these water rights is approximately 3.5 miles away with the furthest being about 10 miles away. Precipitation can vary significantly over short distances. Sufficient moisture is a valid legal excuse for not using water pursuant to ARSD 74:02:01:37.01(2) since use of water under those conditions results in a waste of water (i.e. irrigating crops that don't need water).

Regarding subsection No. 1 (unavailability of water). Another potential legal excuse is the unavailability of water to satisfy Water Right No. 96-3 even though the water right is situated along the pool of water impounded by Redfield Lake dam. Two discontinued USGS gaging stations were located on Turtle Creek – one gage was upstream (USGS 06474000 – Turtle Creek near Tulare SD) and one was downstream (USGS 06474500 – Turtle Creek at Redfield SD) of No. 96-3. Depending on the gage, the historical records show daily median flows dropping significantly from the period of May or from July to mid-July through the remaining irrigation season. The upstream gage approaches zero flow and the downstream gage was around 2 cfs (approximately 900 gallons per minute) in mid-July then drops off quickly to less than 1 cfs. Since these are median flow figures, half the time during the period of record (25 years - upstream gage; 27 years - downstream gage) flows were higher and the other half lower.

The license issued in Water Right No. 96-3 provides a priority date of February 11, 1953, which is junior to the priority date established under Water Right No. 21-3, City of Redfield, which is March 6, 1940. Water Right No. 21-3 authorizes the Redfield Lake dam impoundment which may be used to satisfy Water Right Nos. 22-3 and 23-3 also held by the City of Redfield. However, in issuing the permit for No. 96-3 the state engineer included in his remarks (see Appendix C) attached to the permit that No. 96-3 was considered a vested right and takes precedence over the City of Redfield's water rights. The reasoning for this involved a court case (Case No. 9433 "Josephine Kolb vs. City of Redfield) regarding the property included on No. 96-3. The Spink county clerk of courts had record of the case but was unable to locate a copy of the decision. The state engineer also noted in his remarks that the applicant for No. 96-3 claims a vested right for 2.0 cfs from Turtle Creek, stored or flowing, over the property covered by No. 96-3 and that riparian rights remained with the property owner based on the court decision.

I interpret this to mean the holder of No. 96-3 is entitled to divert water stored in Redfield Lake dam provided there are inflows into the reservoir matching or exceeding the pump rate authorized by No. 96-3. If there is no flow in the creek, then the holder of No. 96-3 is not entitled to pump water that would not exist without the presence of Redfield Lake dam. Any pumping prior to construction of Redfield Lake dam was dependent on stream flow and construction of the dam should not change that condition. In addition, a portion of the water impounded by Redfield Lake dam is due to tributaries entering Turtle Creek below No. 96-3 and would also be unavailable without the existence of the dam.

Conclusion

I advise the chief engineer to not recommend cancellation of Water Right No. 96-3 pursuant to SDCL 46-5-37.1 for the following reasons:

1. The property owners have all expressed an interest in Water Right No. 96-3 remaining intact. No one expressed intent to abandon the water right.
2. Forfeiture of all or part of Water Right No. 96-3 is a consideration given the history provided by the annual irrigation questionnaires which indicates an 11 year period of no use from 2006 through 2016. Forfeiture can occur following a 3-year period of nonuse pursuant to SDCL 46-5-37. ARSD 74:02:01:37.01 provides for certain legal excuses that suspend the 3-year period of nonuse. Subsections 1 and 3 of this rule are pertinent to this matter – unavailability of water and use of water under climatic conditions resulting in a waste of water. The record provided by the annual irrigation questionnaires indicates "sufficient moisture" every year except for one. This claim of sufficient moisture is questionable for an entire irrigation season given that the nearest other crop irrigation water rights indicate use during most years. The difficulty in using other water rights as indicators that water use was warranted is the proximity of the other water rights to No. 96-3. The nearest other water right is about 3.5 miles away and precipitation can vary considerably over short distances. Regardless, the assertion of sufficient moisture when combined with the unavailability of water has merit in providing legal excuse for nonuse of water. Sufficient moisture may have been the case in the spring and early summer while the lack of water available in mid to late summer and fall also provides legal excuse. Historic stream flow records show greatly reduced stream flows beginning from either mid-May or mid-July on through fall depending on the gage. The only evidence available to the chief engineer concerning stream flows is the historic USGS stream gage records on Turtle Creek. By 2006, the stream gages no longer existed so no flow records exist for the 11-year period of nonuse. However, the existing flow records suggest that during the mid to latter part of the irrigation season, typically when the need is greatest, water was unavailable during some years.

The burden is on the state to prove that Water Right No. 96-3 is subject to cancellation due to either abandonment or forfeiture, or both. There is not sufficient evidence of abandonment or forfeiture for the chief engineer to recommend cancellation of Water Right No. 96-3 with any expectation of prevailing before the Water Management Board.



Ron Duvall, Water Rights Permitting Administrator
SD DENR, Water Rights Program

APPENDIX A

Petition to Chief Engineer

(Pages 1 and 2)

WILES & RYLANCE
ATTORNEYS AT LAW
3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Jenson

RECEIVED
MAR 24 2017
WATER RIGHTS PROGRAM

March 21, 2017

Jeanne Goodman
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Re: Petition

Dear Ms. Goodman:

Please find enclosed our Petition to investigate permit #96.3.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

WILES & RYLANCE

Raymond D. Rylance

RDR/jls
Enclosure

Jeanne Goodman
Chief Engineer
DWNR
523 East Capitol Ave.
Pierre, SD 57501

PETITION

Dear Jeanne,

Pursuant to SDCL 46-5-37.1 Lenny Peterson requests that the Chief Engineer investigates water permit #96-3 to determine whether the permit holder has abandoned or forfeited the permit.

Dated this 21 day of March, 2017.

WILES & RYLANCE

Raymond D. Rylance
Attorney for Petitioner
3 East Kemp, Suite 200
PO Box 227
Watertown, SD 57201-0227
(605) 886-5881

Legal Citations

(Pages 3 through 5)

South Dakota Codified Laws (SDCL)

46-5-36. Abandonment of use of water appurtenant to land--Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

Source: SDC 1939, § 61.0141; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0128.

46-5-37. Failure to use beneficially appropriated water--Forfeiture for nonuse--Reversion to public. If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water.

Source: SDC 1939, § 61.0139; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0125; SL 2011, ch 165, § 269.

46-5-37.1. Abandonment or forfeiture of permits or rights--Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Source: SL 1983, ch 314, § 69; SL 2011, ch 165, § 270.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Source: SL 1989, ch 384.

Administrative Rules of South Dakota (ARSD)

74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

Source: SL 1975, ch 16, § 1; transferred from § 52:01:01:34, effective July 1, 1979; 9 SDR 96, effective January 30, 1983; 10 SDR 27, effective September 26, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-2A-8, 46-5-36, 46-5-37, 46-5-37.1.

74:02:01:37. Invalid water permit, right, or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions:

(1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;

(2) Use of water has been abandoned as specified in SDCL 46-5-36;

(3) Use of water has been forfeited for nonuse as specified in SDCL 46-5-37.

Source: SL 1975, ch 16, § 1; transferred from § 52:01:01:35, effective July 1, 1979; 9 SDR 96, effective January 30, 1983; 10 SDR 27, effective September 26, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 15 SDR 158, effective April 23, 1989; 17 SDR 40, effective September 19, 1990; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-2A-8, 46-5-36, 46-5-37, 46-5-37.1.

74:02:01:37.01. Legal excuse for nonuse of water. Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

(1) Unavailability of water to satisfy a permit, right, or vested right;

(2) Legal proceedings which prevent the use of water;

(3) Water use under existing climatic conditions would result in a waste of water.

Source: 13 SDR 49, effective October 27, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 15 SDR 158, effective April 23, 1989; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-5-37, 46-5-37.1.

74:02:01:37.02. Exceptions to nonuse of water. A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to

divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

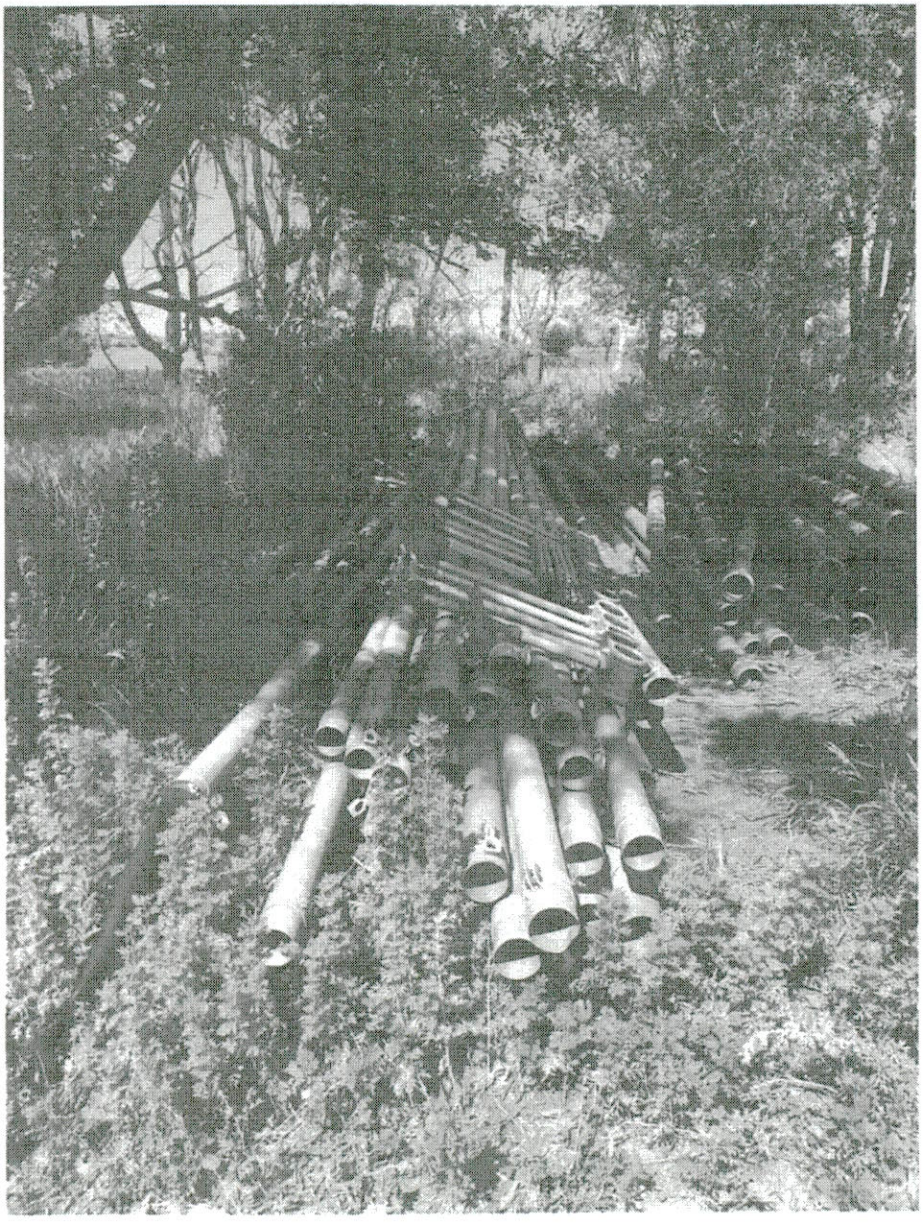
Source: 17 SDR 40, effective September 19, 1990; 24 SDR 90, effective January 4, 1998.
General Authority: SDCL 46-2-5.
Law Implemented: SDCL 46-2-9, 46-2-11, 46-5-37, 46-5-37.1.

74:02:01:38. Procedure for consideration of water permit, right, or vested right cancellations -- Contents of notice. If investigation by the chief engineer indicates a water permit, right, or vested right is invalid pursuant to § 74:02:01:37, the chief engineer shall prepare a recommendation to cancel. If the holder of an invalid permit, right, or vested right is not known following examination of known records, the chief engineer shall publish a notice of cancellation pursuant to SDCL 46-2A-4(1) to (9), as applicable, and SDCL 1-26-17.

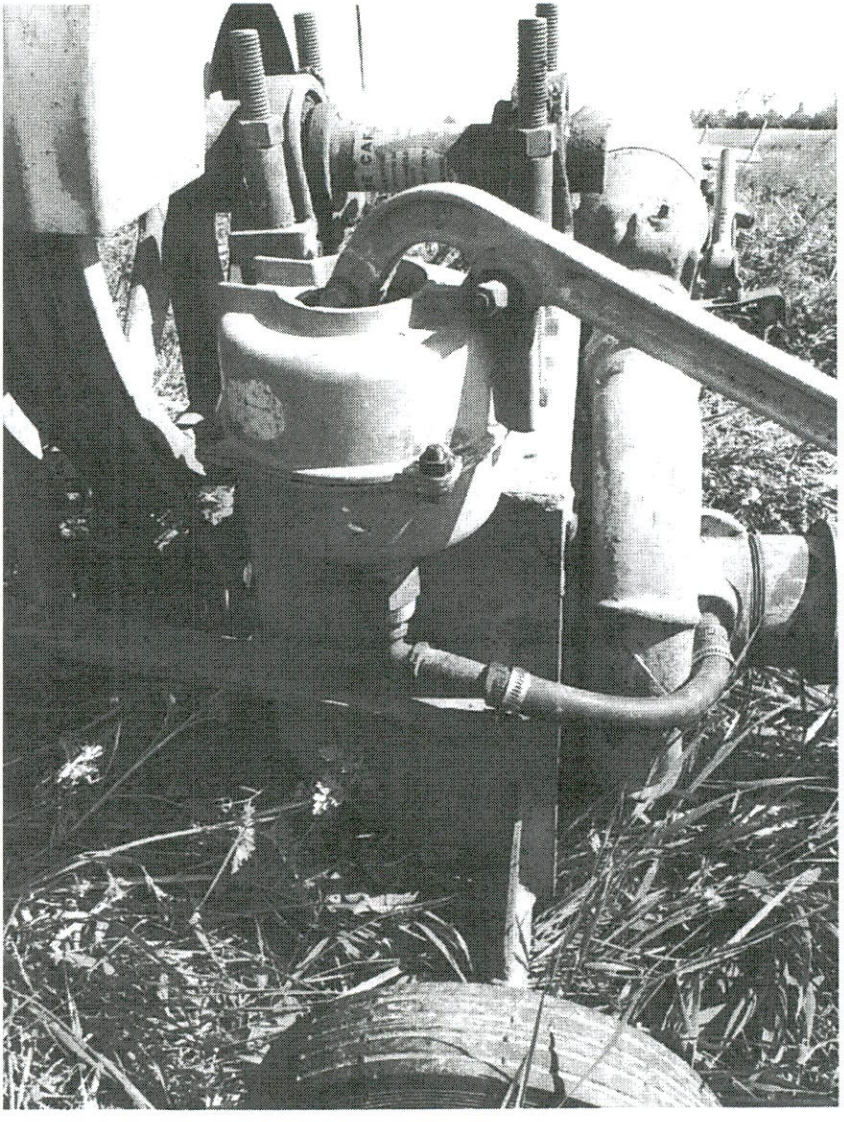
The chief engineer shall send the notice of cancellation by first class mail to the holder of the invalid permit, right, or vested right, if known, at least 27 days before the scheduled hearing.

Source: SL 1975, ch 16, § 1; transferred from § 52:01:01:36, effective July 1, 1979; 9 SDR 96, effective January 30, 1983; 10 SDR 27, effective September 26, 1983; 13 SDR 49, effective October 27, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 15 SDR 158, effective April 23, 1989; 24 SDR 90, effective January 4, 1998.
General Authority: SDCL 46-2-5.
Law Implemented: SDCL 46-2-9, 46-2-17, 46-2A-2, 46-2A-4, 46-2A-5, 46-5-36, 46-5-37, 46-5-37.1.

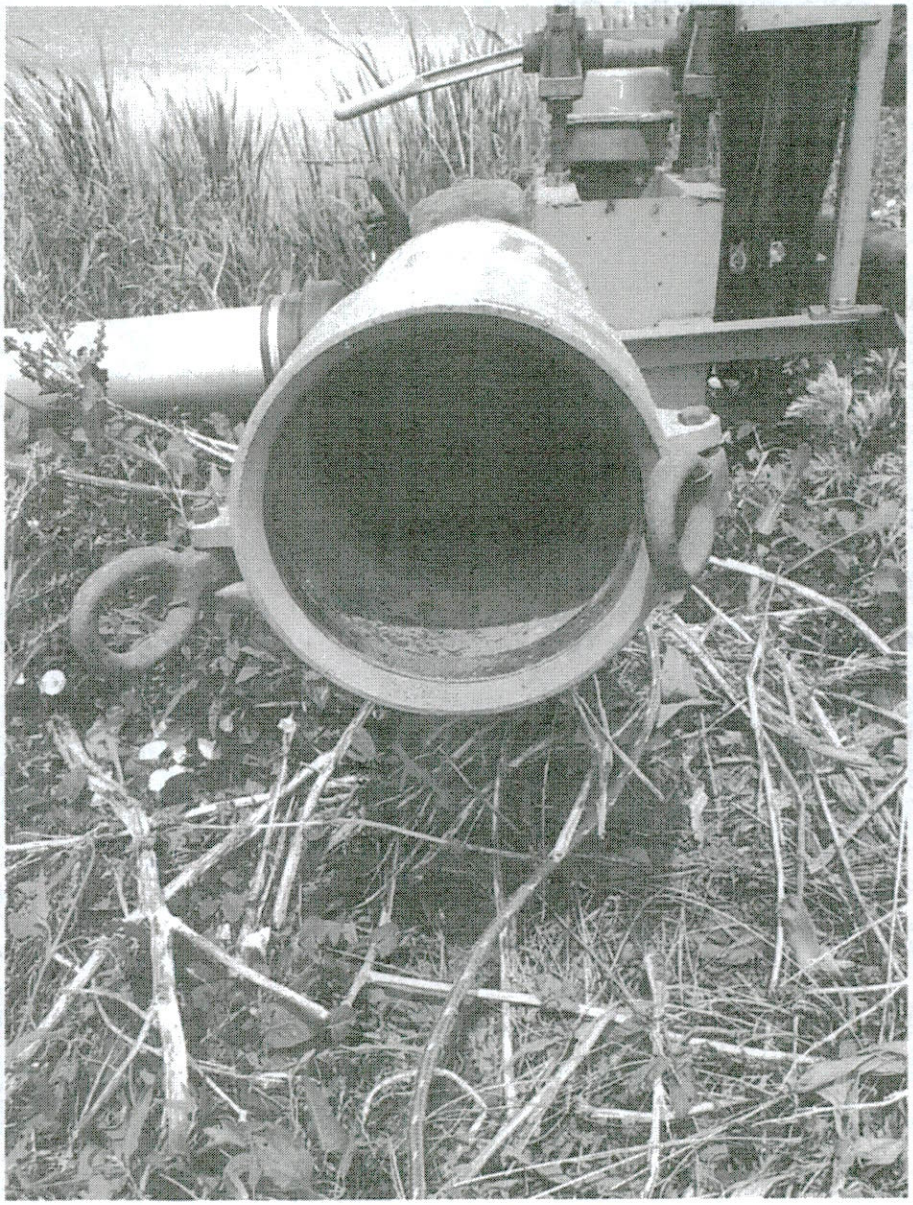
Pictures provided by Matt Demmers via email on July 7, 2017 (Pages 6 through 10)

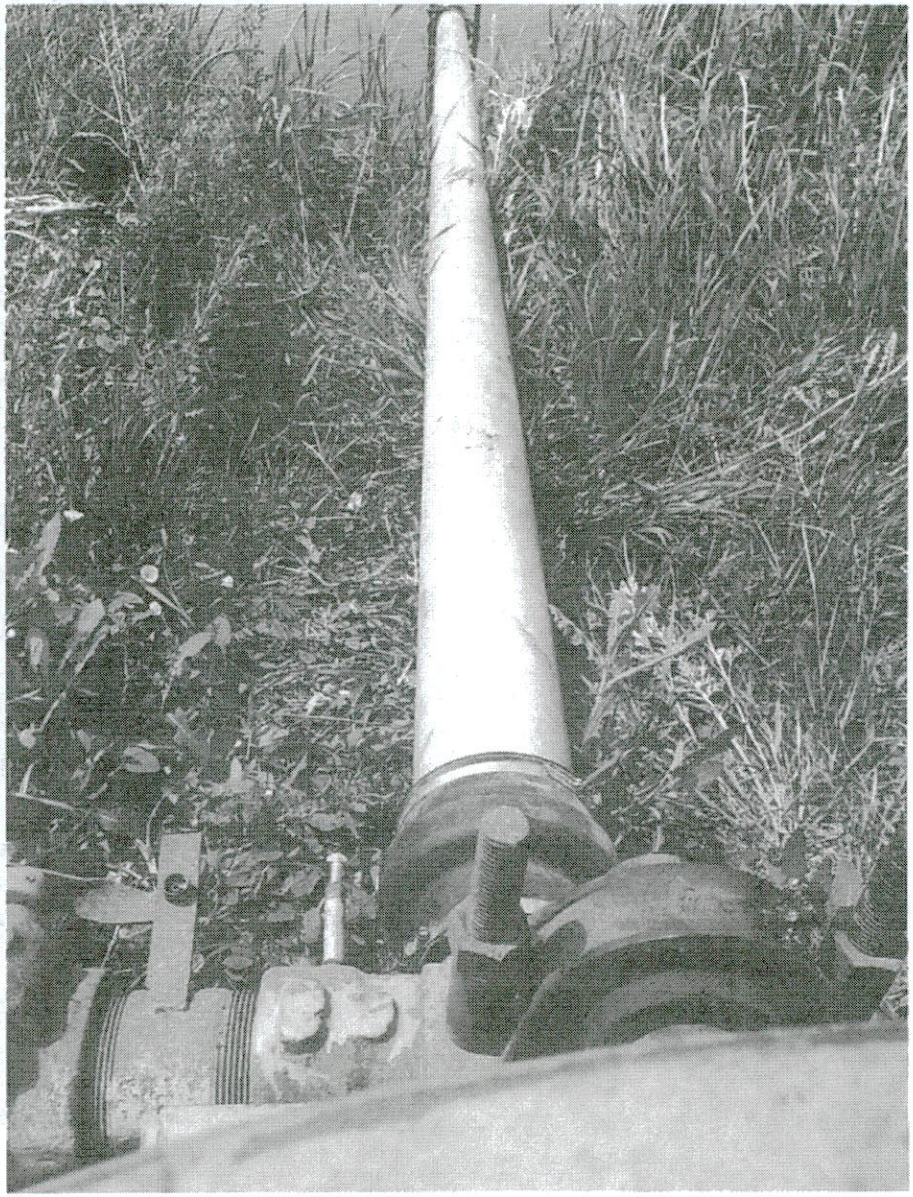




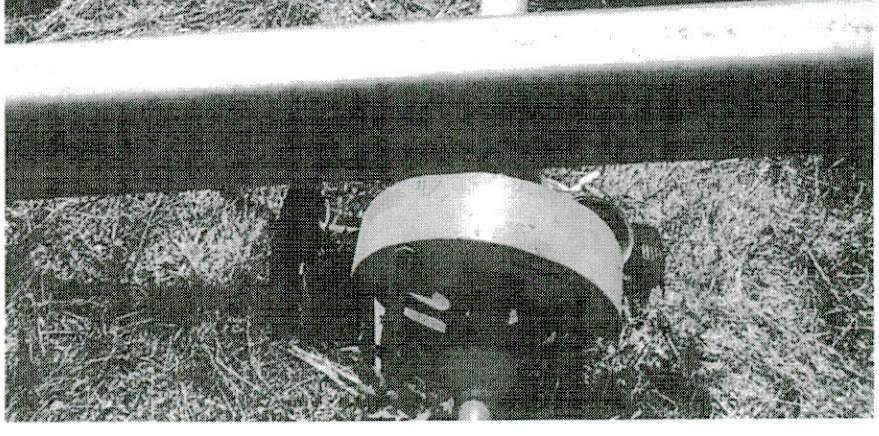














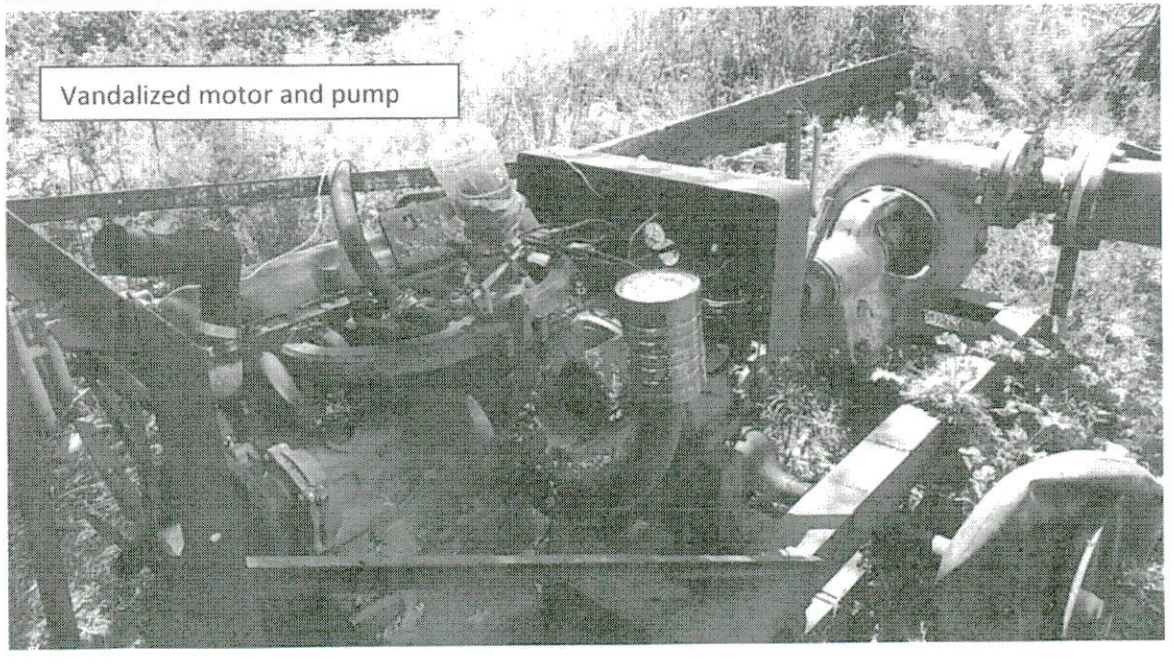




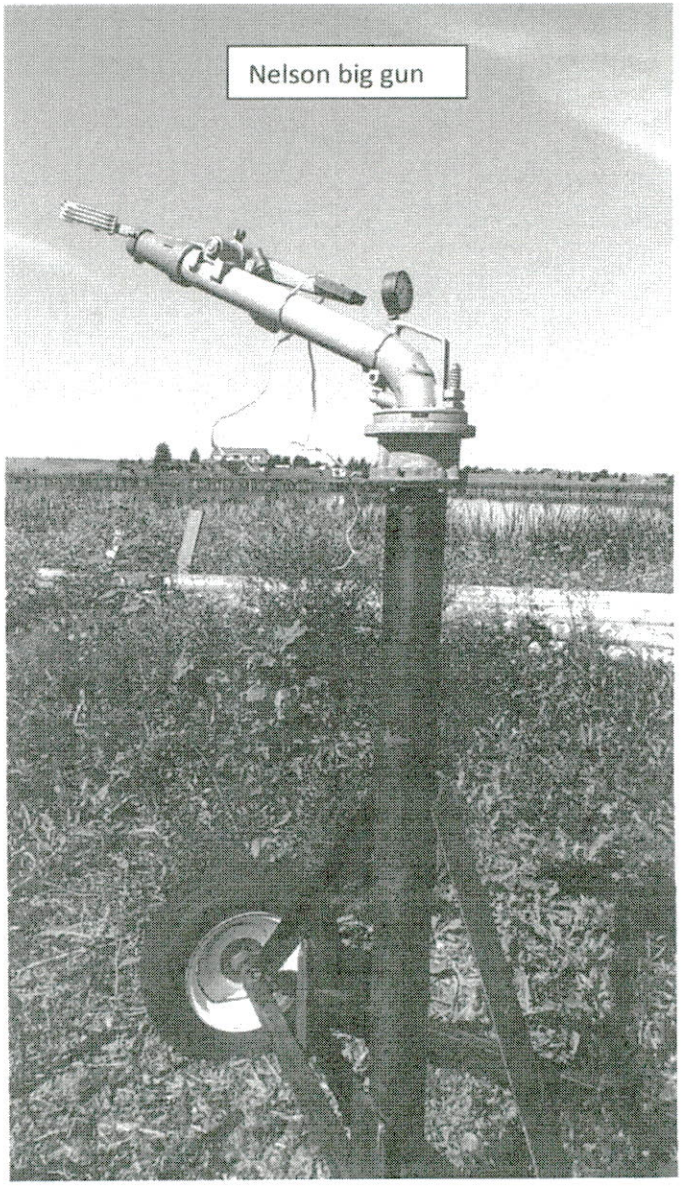
Pictures by Ron Duvall from August 4, 2017, site inspection



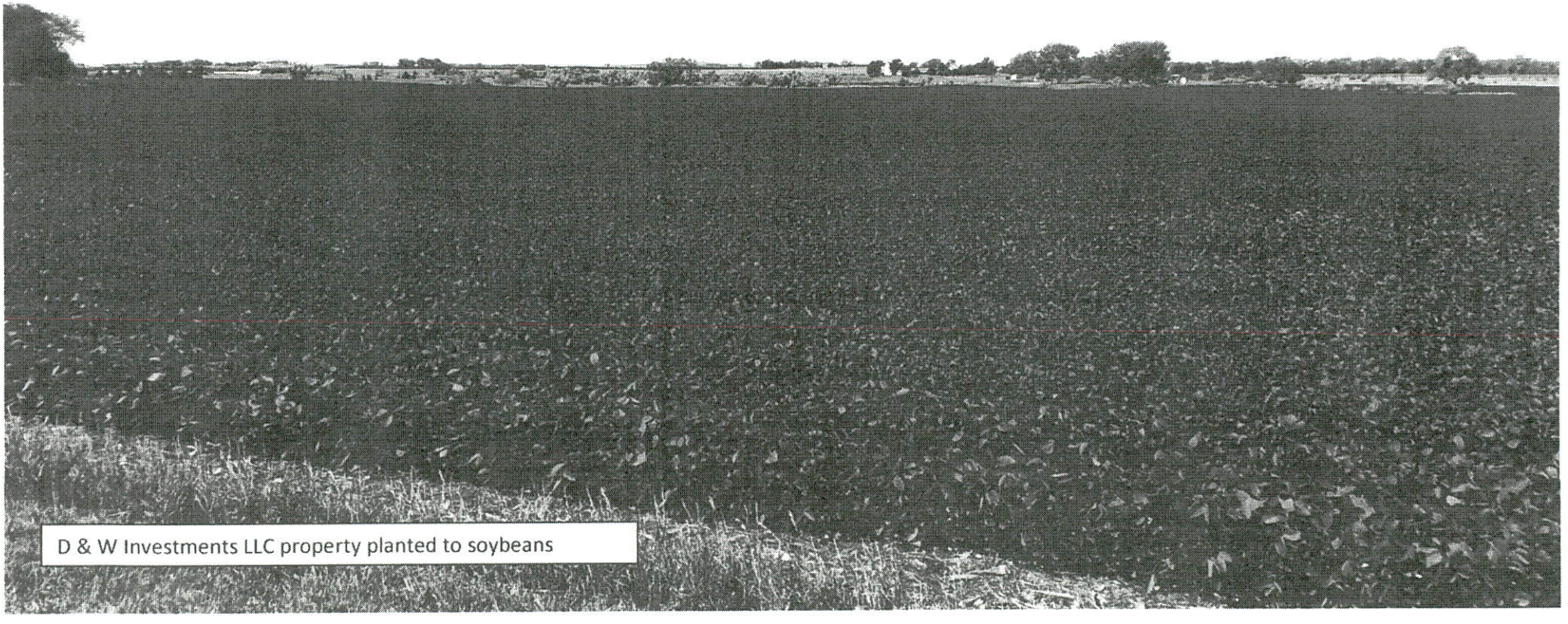
Tractor/pump combo used to operate the Nelson big gun



Vandalized motor and pump

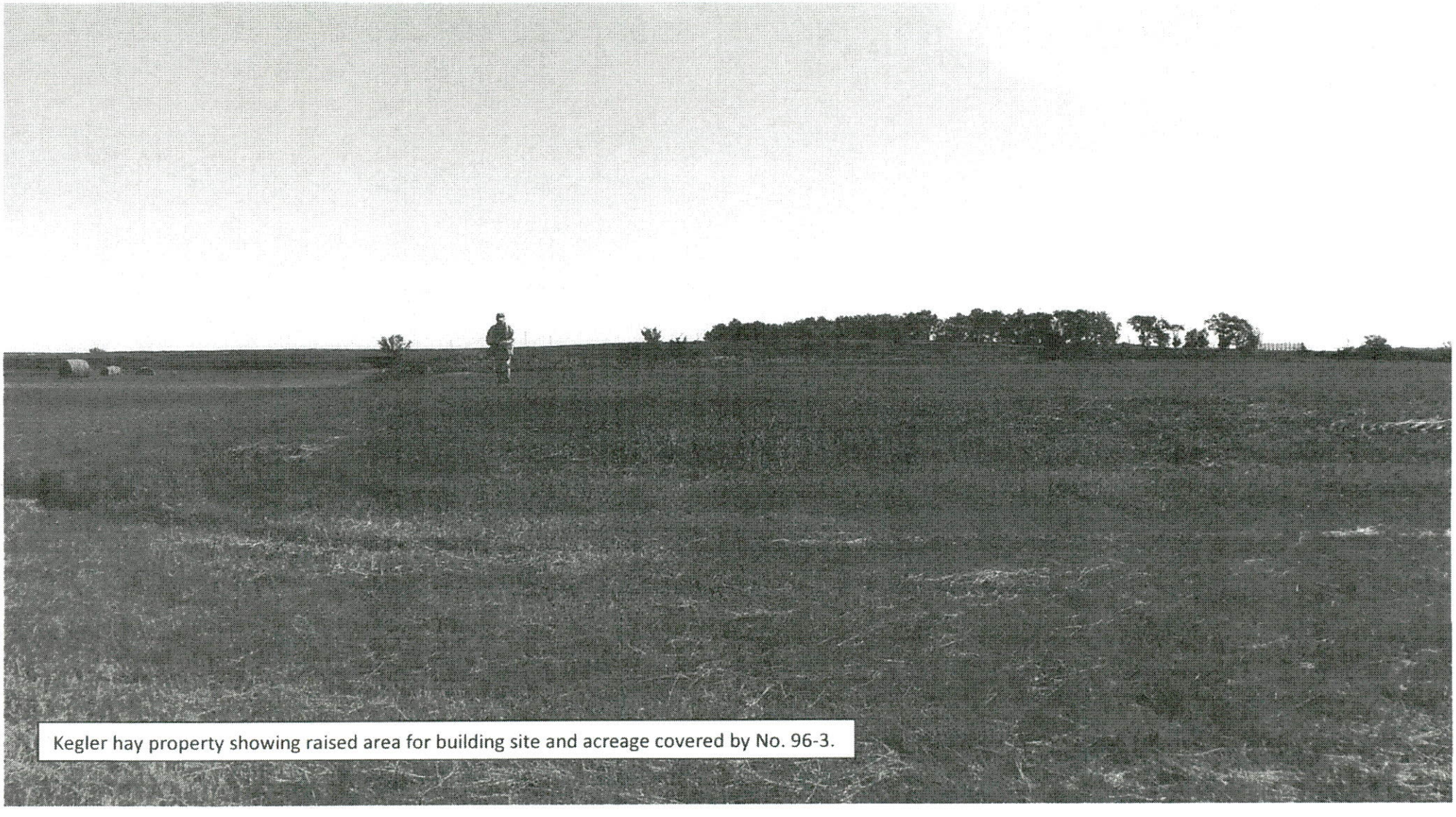


Nelson big gun



D & W Investments LLC property planted to soybeans

Pictures by Ron Duvall from August 4, 2017, site inspection



Kegler hay property showing raised area for building site and acreage covered by No. 96-3.



Kegler home site with trees and hay area in foreground.

APPENDIX B

Irrigation Questionnaires from 2006 through 2016

For Water Right No. 96-3, D & W Investments LLC

2006 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2006**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501-3181 (605) 773-3352
or send your form(s) electronically over the internet at https://www.state.sd.us/eforms/secure/eforms/E0455V5-IQ.pdf

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

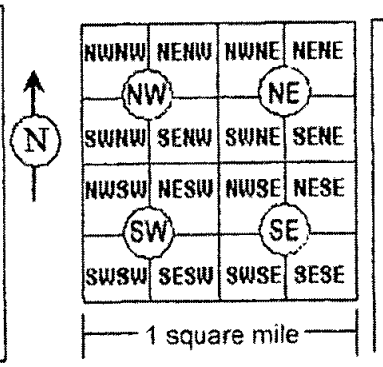
Any address/ownership corrections?

Telephone No. _____

1. Did you irrigate in 2006? *yes ☐ **no ☒
   *If yes, _____ acres were irrigated out of the 140.00 acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☒ no water available ☐
   system not constructed ☒ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☒, please explain in the comment box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2006? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK
5. Provide your water use on the back of this form.

Comment Box
Upon the Death of Son that ran & was putting together the System we could not finish for the year this year. Would like to keep permit in fact.



Office use only

RECEIVED
NOV 14 2006
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 (see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2006 water use to irrigate the above acreage on the REVERSE side of this form.

MONTH IRRIGATED	CROP TYPE	NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

IF MORE ROOM IS NEEDED, PLEASE INCLUDE THE INFORMATION ON A BLANK SHEET OF PAPER

2007 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 3, 2007**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501-3181 (605) 773-3352
or send your form(s) electronically over the internet at https://www.state.sd.us/eforms/secure/eforms/E0455V6-IQ.pdf

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

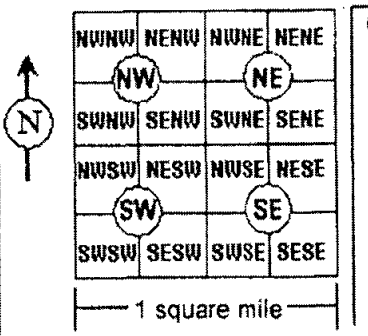
Any address/ownership corrections?

Telephone No. 605 - 472-0712

1. Did you irrigate in 2007? *yes ☐ **no ☒
   *If yes, _____ acres were irrigated out of the **140.00** acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☒ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2007? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. **A. TURTLE CREEK**
5. Provide your water use on the back of this form.

Comment Box



Office use only

RECEIVED
NOV - 7 2007
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 **(see above section map for help reading legal descriptions)**

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2007 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2008 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2008**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 (605) 773-3352
or send your form(s) electronically over the internet at https://www.state.sd.us/eforms/secure/eforms/E0455V7-IQ.pdf

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

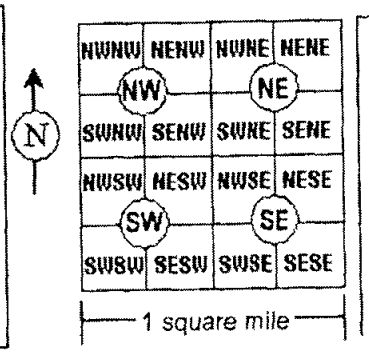
Any address/ownership corrections?

Telephone No. 605-472-0712

1. Did you irrigate in 2008? *yes ☐ **no ☒
   *If yes, _____ acres were irrigated out of the 140.00 acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☒ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2008? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. **A. TURTLE CREEK**
5. Provide your water use on the back of this form.

Comment Box



Office use only

Acreage permitted for irrigation under No. 96-3 **(see above section map for help reading legal descriptions)**

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2008 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2009 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2009**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

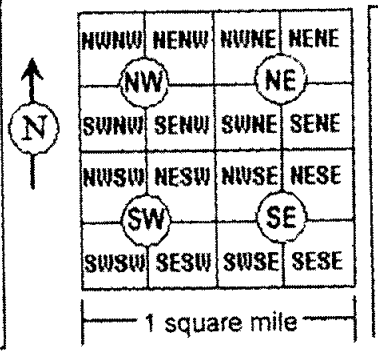
Any address/ownership corrections?

Telephone No. _____

1. Did you irrigate in 2009? *yes ☐ **no ☒
   *If yes, _____ acres were irrigated out of the **140.00** acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☐ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2009? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. **A. TURTLE CREEK**
5. Provide your water use on the back of this form.

Comment Box



Office use only

RECEIVED
OCT 2 0 2009
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 **(see above section map for help reading legal descriptions)**

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2009 water use to irrigate the above acreage on the REVERSE side of this form.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2010 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 3, 2010**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

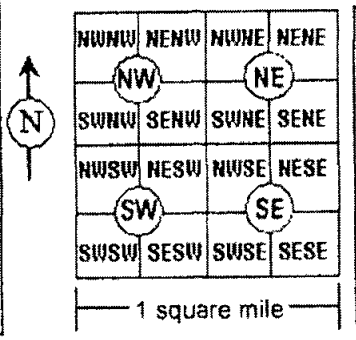
Email _____

Phone _____

1. Did you irrigate in 2010? *yes ☐ **no ☒
   *If yes, _____ acres were irrigated out of the 140.00 acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☒ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2010? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK
5. Provide your water use on the back of this form.

Comment Box



Office use only

RECEIVED
OCT 2 0 2010
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 **(see above section map for help reading legal descriptions)**

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2010 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2011 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 2, 2011**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

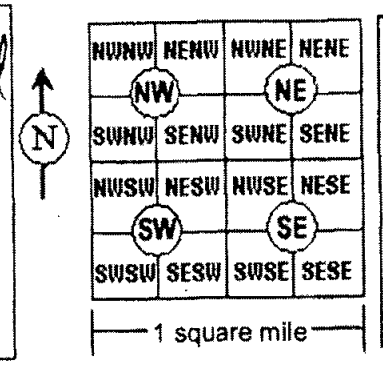
Any address/ownership corrections?

Email _____
Phone 605-472-0712

1. Did you irrigate in 2011? *yes ☐ **no ☒
   *If yes, _____ acres were irrigated out of the 140 acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☒ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? 2011
   other ☐, please explain in the Comment Box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2011? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. **A. TURTLE CREEK**
5. Provide your water use on the back of this form.

Comment Box
To much rain & lower ground flooding.
High water levels



Office use only

RECEIVED
OCT 18 2011
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 (see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2011 water use to irrigate the above acreage on the REVERSE side of this form.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2012 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 3, 2012**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections? no.

Email _____

Phone _____

1. Did you irrigate in 2012? *yes ☐ **no ☑
   *If yes, _____ acres were irrigated out of the 140 acres covered by Permit No. 96-3
   **If no, check reason(s) for not irrigating:
   sufficient moisture ☑ no water available ☐
   system not constructed ☑ use abandoned ☐
   enrolled in CRP ☐, through what year? 2012
   other ☐, please explain in the Comment Box:

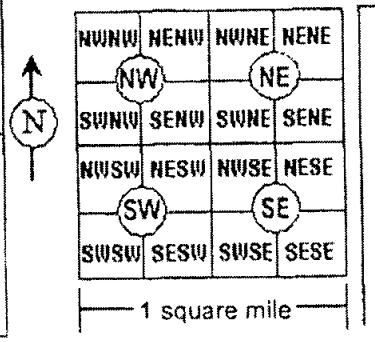
2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2012? yes ☐ no ☑

4. If more than one water source is listed below, circle each source used. **A. TURTLE CREEK**

5. Provide your water use on the back of this form.

Comment Box Irrigation motor blew up & pump froze up. Have not been able to finish repair yet. - Got fine grains, sufficient to make a crop.



Office use only

RECEIVED
DEC 18 2012
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 (see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2012 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☑ sprinklers ☑ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2013 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 2, 2013**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Email _____

Phone _____

1. Did you irrigate in 2013? *yes ☐ **no ☑
   *If yes, number of acres irrigated? _____
   **If no, check reason(s) for not irrigating acres covered by Permit No. 96-3
   sufficient moisture ☑ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

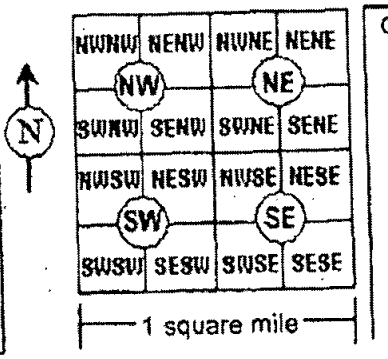
2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2013? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. **A. TURTLE CREEK**

5. Provide your water use on the back of this form.

Comment Box



Office use only

RECEIVED
NOV 12 2013
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 (see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

2014 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2014**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
4314 TITAN DR
RAPID CITY SD 57701 4312

Any address/ownership corrections?

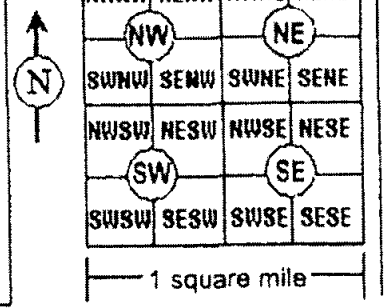
Email _____

Phone _____

1. Did you irrigate in 2014? *yes ☐ **no ☑
   *If yes, number of acres irrigated? _____
   **If no, check reason(s) for not irrigating acres covered by Permit No. 96-3
   sufficient moisture ☑ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the system in 2014? yes ☐ no ☐
4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK
5. Provide your water use on the back of this form.

Comment Box



Office use only

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NOV 13 2014
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 **(see above section map for help reading legal descriptions)**

sec 05-T116N-R64W, SW1/4 - 140.0 acres

2005

2015 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2015**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3

GEORGIA A DEMMERS
4314 TITAN DR
RAPID CITY SD 57701 4312

Any address/ownership corrections?

Email _____

Phone _____

1. Did you irrigate in 2015? *yes ☐ **no ☒
   *If yes, number of acres irrigated? _____
   **If no, check reason(s) for not irrigating acres covered by Permit No. 96-3
   sufficient moisture ☒ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

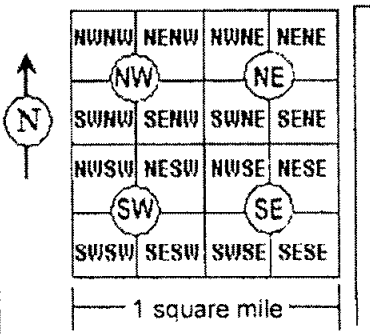
2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2015? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.

Comment Box



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NOV 23 2015
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 (see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2015 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____

(check all that apply) If center pivot, how many? ____ **Please note, pivots need end gun stops to prevent overspray!**

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2016 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2016**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.
Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352
or send your form(s) electronically over the internet at http://denr.sd.gov/iq.aspx

Permit No. 96-3
MATT J DEMMERS
D & W INVESTMENTS LLC
4314 TITAN DR
RAPID CITY SD 57701 4312

Any address/ownership corrections?

Email mdemmers1000@msn.com
Phone 605-390-9214

1. Did you irrigate in 2016? *yes ☐ **no ☒
   *If yes, number of acres irrigated? _____
   **If no, check reason(s) for not irrigating acres covered by Permit No. 96-3
   sufficient moisture ☒ no water available ☐
   system not constructed ☐ use abandoned ☐
   enrolled in CRP ☐, through what year? _____
   other ☐, please explain in the Comment Box:

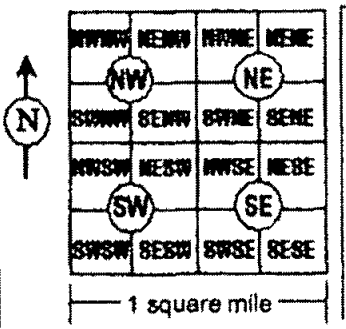
2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2016? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.

Comment Box



Office use only

RECEIVED
DEC - 5 2016
WATER RIGHTS PROGRAM

Acreage permitted for irrigation under No. 96-3 (see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2016 water use to irrigate the above acreage on the REVERSE side of this form.
For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

APPENDIX C

Remarks of State Engineer Attached to Issued Permit

For Water Right No. 96-3

Entire file for No. 96-3 is available at
http://denr.sd.gov/wrimage/wrinfo/wr_div3/96-3.pdf

REMARKS BY STATE ENGINEER
Joseph Albrecht
Redfield, S. Dak.
May 21, 1953
Water Permit No. 963

On May 7, a letter was received from W. O. Dunker, City Attorney of Redfield, enclosing a resolution by the City of Redfield and a written protest by the City of Redfield to the application of Joseph Albrecht for 2 cu. ft. per second of water from Turtle Creek. The protest is qualified in the next to the last paragraph which reads in part as follows:

"Provided that if the granting of such water right to said applicant will not, in any way, interfere with the existing water rights of the City of Redfield or with the rights of the public to their use of said Lake Redfield and will not lower the level of the water of said Lake Redfield below the top of the spillway in said dam, then the said City of Redfield does not desire to enter protest to the granting of future rights to the water of Turtle Creek."

On the date set for considering the application as advertised, there was no representative of the City present at the State Engineer's Office but the applicant appeared together with Engineer E. K. Mather of Mitchell and Attorney Parliman of Sioux Falls. The matter was quite thoroughly discussed by Engineer Mather. The matter of the vested rights of the applicant was strraund and the case of Mrs. ~~Cole~~ Kalb, the former owner, was referred to. This case involved the resistance of Mrs. ~~Cole~~ Kalb to the granting of an easement for the establishment of Lake Redfield and in which case Mrs. ~~Cole~~ Kalb was awarded $2,347.65 for damages. The action of Mrs. ~~Cole~~ Kalb dates back to 1940 which was prior to the application of the City of Redfield.

In granting the permit to Mr. Albrecht under procedure of the appropriative doctrine of water law as set up in our present State Code, ~~refect~~ this Office recognizes the vested rights of the applicant which have been maintained at considerable expense and effort and which vested rights would take precedent over any appropriative rights granted either to the City of Redfield or to other applicants. In granting this permit it should be understood that the vested rights above referred to and as referred to in the application will not in any way be affected by the granting of this permit, and in granting such permit same is made in recognition of the action of the court in the 1940 case between Mrs. ~~Cole~~ Kalb and the City of Redfield. It is, however, the opinion of the State Engineer that the awarding of the permit will not interfere to any material or practical extent with the existing water rights of the City of Redfield or with rights of the public to the use of Lake Redfield, in which event the City has stated that they do not desire to enter protest to the granting of future rights to the waters of Turtle Lake. It is also the opinion of the State Engineer from information available and without the aid of any stream flow records above Lake Redfield, that there is adequate water available to satisfy the application of Mr. Albrecht for the use of 2 cu. ft. per second for irrigation and other purposes as granted.

The applicant claims a vested right to two (2) second feet of water from Turtle Creek, stored on or flowing over the portion of the SW¼ of Sec. 5 Twp 116 N, R 64 W of 5th PM, flooded by a dam across said Turtle Creek, built as a PWA project by the City of Redfield in 1935, more fully described and discussed in Circuit Court Proceedings Case No. 9633, "Josephine Kolb vs City of Redfield", of the records of the Clerk of Courts Office of Spink County, South Dakota, which clearly indicates that title to said SW¼ of Sec. 5 and all riparian rights remain with the owner of said SW¼ of Sec 5, who has paid taxes on said land annually prior and subsequent to the construction of said dam and lake.

Instead of requiring the City of Redfield to erect structures necessary to keep water off the said SW¼ of Sec. 5, the owner collected damages incidental to the flooding of approximately 20 acres of land, which created a lake on and across a portion of said Quarter Section, and the owner thereof claims a vested right to use 2 second feet of stored or flowing water therefrom for irrigation of 140 acres of land on said Quarter Section. Said Quarter Section contains approximately 165.5 acres, on which taxes are paid annually and more fully described and discussed in Circuit Court Proceedings , Case No. 9951, "Clayton Fawman vs Joseph Albrecht".

Because the owner has continually claimed and successfully resisted a transfer of land or water to the City of Redfield or anyone else, claim is made of a vested right preceeding that of any water right of record and riparian rights of those lands in which transfer of rights to the City of Redfield, or State of South Dakota, has resulted in the owner escaping taxation of land now covered by water, or within a 12 ft public right of way along the margin of the lake or reservoir.

To maintain his right to priority in use of water, the applicant claims

1. A right to use Turtle Creek water flow as necessary to maintain a lake or stream flow of sufficient quantity to furnish 2 second feet of irrigation water supply for use on 140 acres of said SW¼ of said Sec. 5.
2. A right to build and maintain a dam across Turtle Creek immediately west of the north-south quarter section line in Section 5, Twp 116 N 64 W, in case of failure of the concrete dam described in Water Right No. 21-3 granted to the City of Redfield with priority of March 6, 1940, or its repaired or rebuilt successor.
3. A right to build and maintain a dam across a draw draining into Turtle Creek from the north east and east of the west line of the SW¼ of said Sec. 5, for the purpose of holding and storing flood water in said draw that can be used for irrigation of 140 acres in the said SW¼ of Sec. 5 at the rate of 2 second feet in case a succession of dry years results in water levels in the Turtle Creek Lake being sufficiently below dam crest to endanger the water supply for fire protection of the City of Redfield.

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LAW OFFICES
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP
ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SOUTH DAKOTA
57402-1030

ROY A. WISE
WILLIAM K. SAUCK, JR.
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER

E-MAIL: jhieb@rwwsh.com
jstucke@rwwsh.com

DWIGHT CAMPBELL (1887 - 1964)
STANLEY R. VOAS (1909 -1972)
JAMES A. WYLY (1939 - 2009)
LLOYD C. RICHARDSON, JR. (1924 - 2012)
RICHARD L. RUSSMAN (1967 - 2014)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

September 15, 2017

VIA E-MAIL ONLY:
(Eric.Gronlund@state.sd.us)

Mr. Eric Gronlund
SD Department of Natural Resources
Water Rights Program
523 E. Capitol Avenue
Pierre, SD 57501

Dear Eric:

Re: Permit Application #8268-3; Lenny Peterson

Pursuant to the Department's Procedural and Scheduling Order, please find attached the following documents:

1. City of Redfield's Prehearing Election Form (Exhibit A);

2. City of Redfield's Witness List;

3. City of Redfield's Exhibit List; and

4. Certificate of Service.

It is our understanding that the Order does not require us to produce the exhibits themselves at this time, and that we are to bring hard copies to the hearing, to be provided for each of the Board members, the court reporter, and counsel for all other parties. If we have misunderstood the Order in any way regarding these materials, please let me know.

Finally, it is our understanding that we are not required to serve copies of these materials on the interested parties, because that information is available on line at DENR's One Stop Contested Case Proceedings site.

If you need anything else from us in advance of the hearing, please let me know.

Best regards.

Sincerely,

Jessi Stucke

Jessi Stucke, CP
Certified Paralegal

JS/kkt
Attachments

cc: Ray Rylance (e-mailed: rdr@wilesandrylance.com)
Adam Hansen (e-mailed: alhansen@redfield-sd.com)
w/attachments

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

PERMIT APPLICATION #8268-3 LENNY PETERSON	**CITY OF REDFIELD'S PREHEARING ELECTION FORM (EXHIBIT A)**

Pursuant to the Department's *Procedural and Scheduling Order*, City of Redfield, by and through its undersigned counsel, submits the following Prehearing Election Form (Exhibit A):

1. **Name, address and email address of party:**

   City of Redfield
   Adam Hansen, City Finance Officer
   626 Main Street
   Redfield, SD 57469
   ALHansen@Redfield-SD.com

2. **I am a party in the above captioned proceeding before the Water Management Board:**

   Yes.

3. **I intend to participate in the hearing on Application No. 8268-3:**

   Yes.

4. **I intend to offer personal testimony at the hearing:**

   Yes.

5. **I intend to offer exhibits in support of my position:**

   Yes. Exhibits City of Redfield may offer are disclosed herewith.

6. **I intend to call witnesses in support of my position.**

   Yes. Witnesses City of Redfield may call to testify at the hearing of this application are disclosed herewith.

7. **I want to ask questions of (cross-examine) witnesses called by parties during the hearing.**

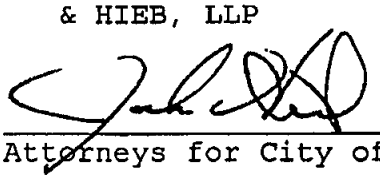
Yes.

8. **I intend to call expert witnesses to testify at the hearing.**

Yes. The City's expert witness was disclosed previously on September 8, 2017 pursuant to the Department's *Procedural and Scheduling Order*.

Dated this 15th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP



Attorneys for City of Redfield

Post Office Box 1030
1 Court Street
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: JHieb@rwwsh.com
Email: KDorsett@rwwsh.com

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

PERMIT APPLICATION #8268-3 LENNY PETERSON	**WITNESS LIST OF CITY OF REDFIELD**

Pursuant to the Department's *Procedural and Scheduling Order*, City of Redfield discloses the following exhibits it may offer at the hearing of this matter:

Witness	**Summary of Anticipated Testimony**
1. **Mr. Jayme Akin** Mayor, City of Redfield 626 Main Street Redfield, SD 57469 (605)472-4550	*Mayor Akin is expected to testify to the City's water needs and usage as they relate to the water permits held by the City.*
2. **Mr. Adam Hansen** Finance Officer, City of Redfield 626 Main Street Redfield, SD 57469 (605)472-4550	*Mr. Hansen took the photographs identified in City of Redfield's Exhibit List.*
3. **Mr. Terry Helms** Helms & Associates Post Office Box 111 Aberdeen, SD 57402 (605)225-1212	*Mr. Helms is expected to testify to the efficacy of the qualifications issued by the Department's Chief Engineer, as well as potential negative outcomes if the qualifications are not precisely followed.*
4. **Mr. Rich Gruenwald** Fire Chief, City of Redfield Fire Dept. 40 W. 7th Avenue Redfield, SD 57469 (605)472-4556	*Chief Gruenwald is expected to testify to the City's water needs and usage as they relate to fire suppression.*

5. **Mr. Tom Lesselyoung**
Water/Sewer
Superintendent,
City of Redfield
626 Main Street
Redfield, SD 57469
(605)472-4550

Mr. Lesselyoung is expected to testify to the City's water needs and usage as they relate to the water permits held by the City. He may also provide testimony regarding observed usage of permits held by others near the City.

Dated this 15th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

Attorneys for City of Redfield

Post Office Box 1030
1 Court Street
Aberdeen, SD 57402-1030
Telephone No.(605)225-6310
Email: JHieb@rwwsh.com
Email: KDorsett@rwwsh.com

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

* *

PERMIT APPLICATION #8268-3 LENNY PETERSON	* * *	**CITY OF REDFIELD EXHIBIT LIST**

* *

Pursuant to the Department's *Procedural and Scheduling Order*, City of Redfield discloses the following exhibits it may offer at the hearing of this matter:

Exhibit	**Description**
100-111	Photographs of Turtle Creek spillway
112-122	Photographs of SD Developmental Center
	Photographs of City's Athletic Complex & Park:
123-128	Football Field
129-130	Baseball Field
131-137	Park & Rainbow Bridge
138-139	Irrigation Equipment
140-152	Photographs of Greenlawn Cemetery and irrigation equipment
153-158	Photographs of irrigated lawns
159-161	Photographs of irrigation equipment used under W/R Permit No. 408-3
162-163	Photographs at the confluence of Turtle Creek and the James River

Dated this 15th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

Attorneys for City of Redfield

Post Office Box 1030
1 Court Street
Aberdeen, SD 57402-1030
Telephone No. (605) 225-6310
Email: JHieb@rwwsh.com
Email: KDorsett@rwwsh.com

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

PERMIT APPLICATION #8268-3 LENNY PETERSON	**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 15th day of September, 2017, a true and correct copy of each of the following documents:

1. City of Redfield's Witness List;

2. City of Redfield's Exhibit List; and

3. City of Redfield's Prehearing Election Form (Exhibit A)

was served via electronic mail on:

Mr. Ray Rylance
Wiles & Rylance
Post Office Box 227
Watertown, SD 57201-0227
Counsel for Lenny Peterson

Dated this 15th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

Attorneys for City of Redfield

Post Office Box 1030
1 Court Street
Aberdeen, SD 57402-1030
Telephone No. (605) 225-6310
JHieb@rwwsh.com
KDorsett@rwwsh.com

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

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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WATER RIGHTS PROGRAM

September 15, 2017

Parties on Certificate of Service

Re: *In the Matter of Water Application No. 8268-3, Lenny Peterson*

Dear Applicant, Petitioners and Counsel:

Enclosed please find true and correct copies of my Notice of Appearance, DENR'S Disclosure of Experts with accompanying attachments, Prehearing Election Form and Certificate of Service in the matter of Water Application No. 8268-3, Lenny Peterson.

Sincerely,

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

Counsel for the Water Rights Program, DENR

AFM/mn
Enclosures

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	NOTICE OF APPEARANCE

The undersigned attorney, Ann F. Mines Bailey, hereby notices her appearance as counsel for the South Dakota Department of Environment and Natural Resources, Water Rights Program, in the above-entitled action, and requests that copies of all further pleadings, affidavits, or motions in the above-entitled matter be served upon her.

Respectfully submitted this 15th day of September, 2017.

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

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	DENR'S DISCLOSURE OF WITNESSES AND EXHIBITS

Pursuant to the Procedural and Scheduling Order dated August 25, 2017, DENR hereby provides the names of the witnesses it intends to call:

1. Mark Rath, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. Mr. Rath will testify as to his review of the application for a water permit and subsequent reports which serve as the basis of the Chief Engineer's recommendation of approval, including the nature and hydrologic characteristics of the stream, the availability of unappropriated water, and the potential impairment of existing rights.

2. Jeanne Goodman, Chief Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. The Chief Engineer will testify regarding her recommendation of approval of this application.

3. Jesse Wilkens, Environmental Scientist, Watershed Protection Program, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD

57501. Mr. Wilkens is a potential rebuttal witness who has knowledge of WQM 172 water quality station data and instrumentation.

4. Sean Kruger, Environmental Scientist, Watershed Protection Program, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. Mr. Kruger is a potential rebuttal witness who has knowledge of WQM 172 water quality station data and instrumentation.

Furthermore, DENR hereby provides the following list of the exhibits it intends to offer during the contested hearing. Copies of these exhibits will be provided with this notice except as noted.

1. DENR Exhibit 1: the administrative file. The paper file will be available for review upon request. The majority of the documents are available online at http://denr.sd.gov/ccdocs.aspx?CCID=CCID45.

2. DENR Exhibit 2: Curriculum Vitae of Mark Rath.

3. DENR Exhibit 3: Curriculum Vitae of Jeanne Goodman.

4. DENR Exhibit 4: Map of the Area (Figure 1 of the Report dated April 20, 2017).

5. DENR Exhibit 5: Graph of USGS 06474000 (Figure 3 of the Report dated April 20, 2017).

6. DENR Exhibit 6: Graph of USGS 06474500 (Figure 4 of the Report dated April 20, 2017).

7. DENR Exhibit 7: Photographs of Redfield Lake Spillway

8. DENR Exhibit 8: Photographs of Turtle Creek.

9. DENR Exhibit 9: Photographs of bridge at Water Quality Monitoring Station WQM 172 site. These photographs are not included at this time but will be provided as soon as possible.

Dated this 5th day of September, 2017.

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

Counsel for Water Rights Program, DENR

pld_afm Water Board - Lenny Peterson - Disclosure of Witnesses and Exhibits (mn)

MARK D. RATH

September 2017

Home: 29409 US Hwy 14
Pierre, SD 57501
(605) 224-9071

Work: 523 E Capitol
Pierre, SD 57501
(605) 773-3352

EMPLOYMENT EXPERIENCE

Natural Resources Engineer 1990 – Present: SD Dept of Environment and Natural Resources, Water Rights Program: Responsible for monitoring, assessing and regulating water rights activities from surface water sources within the State of South Dakota. Review and assess engineering reports and water permit applications. Monitor water use, investigate violation complaints and conduct water permit reviews for licensing. Provide technical assistance for flooding issues along streams, rivers and lakes.

Graduate Research Assistant, 1988 – 1989: Water Resources Institute, SDSU: Performed feasibility study of subsurface irrigation/drainage system.

Agricultural Engineering Research Technologist, 1986 -1987: University of Nebraska Panhandle Research Center: Managed the day to day operation for a conservation tillage and irrigation management study and performed analyses of data collected from the study.

Research Assistant - Water Resources Institute, SDSU, 1986 Compiled data from a 100,000 acre watershed to be used in the Agricultural Non-Point Source Pollution Model (AGNPS) as part of the Rural Clean Water Program.

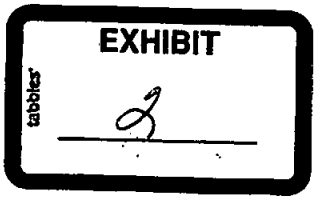
EDUCATION

B.S. Agricultural Engineering, South Dakota State University (1985). Emphasis on soil and water engineering.

M.S. Agricultural Engineering , South Dakota State University (1994). Thesis topic: Feasibility of Subsurface Irrigation/Drainage Systems in Eastern South Dakota.

REGISTRATIONS AND PROFESSIONAL SOCIETIES

Engineer in Training, EIT #E5104



CAREER ACTIVITIES

- Participated as a technical advisor for the "Northeast South Dakota Closed Basin Study", 1999 sponsored by FEMA Region VIII.
- Member of the National Integrated Drought Information System (NIDIS) Executive Council.
- Member South Dakota Drought Task Force.
- Testified as expert witness in a civil water dispute in state circuit court, Sherburn v. Pattererson., 1998.
- Provided testimony before the South Dakota Water Management Board multiple times including but not limited to the following vested water right claims, water permit and flood control permit applications:

Date	Application	Applicant
July 12, 2000	WP 2300-2	Lacreek National Wildlife Refuge
May 2, 2001	WP 6204-3	SD Department of Game Fish and Parks
July 11 & 12, 2001	VR 1635-1	SD Department of Game Fish and Parks
September 5, 2001	WP 2457-2	City of Rapid City
December 5, 2001	WP 2468-2	City of Rapid City
March 13, 2002	WP 1348-1	Gene Johnson
Mayl, 2002	WP 1839A-2	Mark and Pam Kieffer
July 10, 2002	VR 2479-2	Lonetree Ditch Company
March 4, 2003	WP 6375-3	Bixler Farms
May 7, 2003	WP1783-1	Fenton Farms Incorporated
October 1, 2003	WP1800-1	Harry Einfelt
October 6, 2004	WP 1819-1	Black Hills Mining Corporation
July 12, 2006	WP 2586-2	Rapid Valley Sanitary District
May 9, 2007	WP 399A-2	Steve L. Simunek
March 10, 2010	WP 2624-2	City of Rapid City
March 10, 2010	WP 2643-2	City of Rapid City
March 10, 2010	WP 504A-2	City of Rapid City
March 10, 2010	WP 2138A-2	City of Rapid City
December 1, 2010	WP 2654-3	US Bureau of Reclamation
July 8, 2015	WP 8033-3	Arthur E. Olson
October 14, 2015	Declatory Ruling Request	Gary Bussmus

PEER REVIEWED PUBLICATIONS

Smith, J.A., C.D. Yonts, M.D. Rath and J.E. Bailie. 1990. Mass of crop residue and its relationship with soil cover for a corn, dry bean and sugarbeet rotation. American society of Agricultural Engineers; 1990 Sep; Transactions of the ASAE v. 33 (5): p 1503-1508.

Smith, J.A., C.D. Yonts, D.A. Biere, and M.D. Rath. 1995. Field operation energy use for a corn - dry-edible-bean - sugarbeet rotation. Applied Engineering in Agriculture, 11(2):219-224. (Journal Series No. 10580.)

Erickson, J.W., M.D. Rath, and D. Best. 2008. Operation of the Missouri River reservoir system and its effect on fisheries management; American Fisheries Society Symposium 62, Balancing Fisheries Management and Water Uses for Impounded River Systems. P 117-134.

JEANNE GOODMAN, P.E.
CHIEF ENGINEER

EDUCATION

Bachelor of Science Degree in Geological Engineering, South Dakota School of Mines and Technology 1979

REGISTRATIONS, PROFESSIONAL SOCIETIES, AND AWARDS

1. South Dakota Registered Professional Engineer
2. South Dakota Engineering Society
3. Central Chapter SD Engineering Society Outstanding Engineer of 1995
4. Central Chapter SD Engineering Society Young Engineer of the Year 1986

CAREER EXPERIENCE

April 2013 – present – Chief Engineer, Water Rights Program, DENR. Administer the Program, which coordinates the appropriation of water resources in South Dakota to protect the public welfare and interest in the development of the water resources and determine in what way the water of the state should be developed for the greatest public benefit.

2000 – 2013 - Natural Resources Administrator, Surface Water Quality Program, DENR. Administer the Surface Water Quality program, which coordinates the prevention, reduction, measurement, and control of water pollutants to maintain water quality that is protective of the public's health and safety and the beneficial uses of the state's lakes and streams.

1997 – 2000 - Natural Resources Administrator, Air Quality Program, DENR. Administer the Air Quality program, which coordinates the prevention, reduction, measurement, and control of air pollutants to maintain air quality that is protective of the public's health and safety.

1987 – 1997 – Natural Resources Engineer IV, Ground Water Quality Program, DENR. Team Leader for ground-water discharge plans and enforcement of ground-water quality standards, Underground Injection Control, pesticides in Ground Water, and Wellhead Protection staff. Review storage tank plans and specifications. Supervise special water quality studies and the review of numerous regulated substance release assessments and remediations.

1981 – 1987 – Natural Resources Engineer/Hydrologist, Ground Water Quality Program, DWNR. Participated in writing Rural Clean Water Program/Comprehensive Monitoring and Evaluation proposal and workplan; reviewed mineral exploration permits for impacts to ground water; identified aquifers and compiled well data for Corps studies. Supervised staff and participated in ground water studies and investigations by installing and sampling monitoring wells; contributed sections to the Big Sioux Aquifer Water Quality study; prepared all contracts for Comprehensive Monitoring and Evaluation project, and assisted in installation of monitoring systems.

1979 – 1980 – Natural Resources Engineer I, Water Rights Program, DWNR. Investigated water rights complaints; reviewed water right applications; supervised installation of observation wells; prepared a report on flowing artesian wells.

EXHIBIT
tabbies
3

TESTIMONY

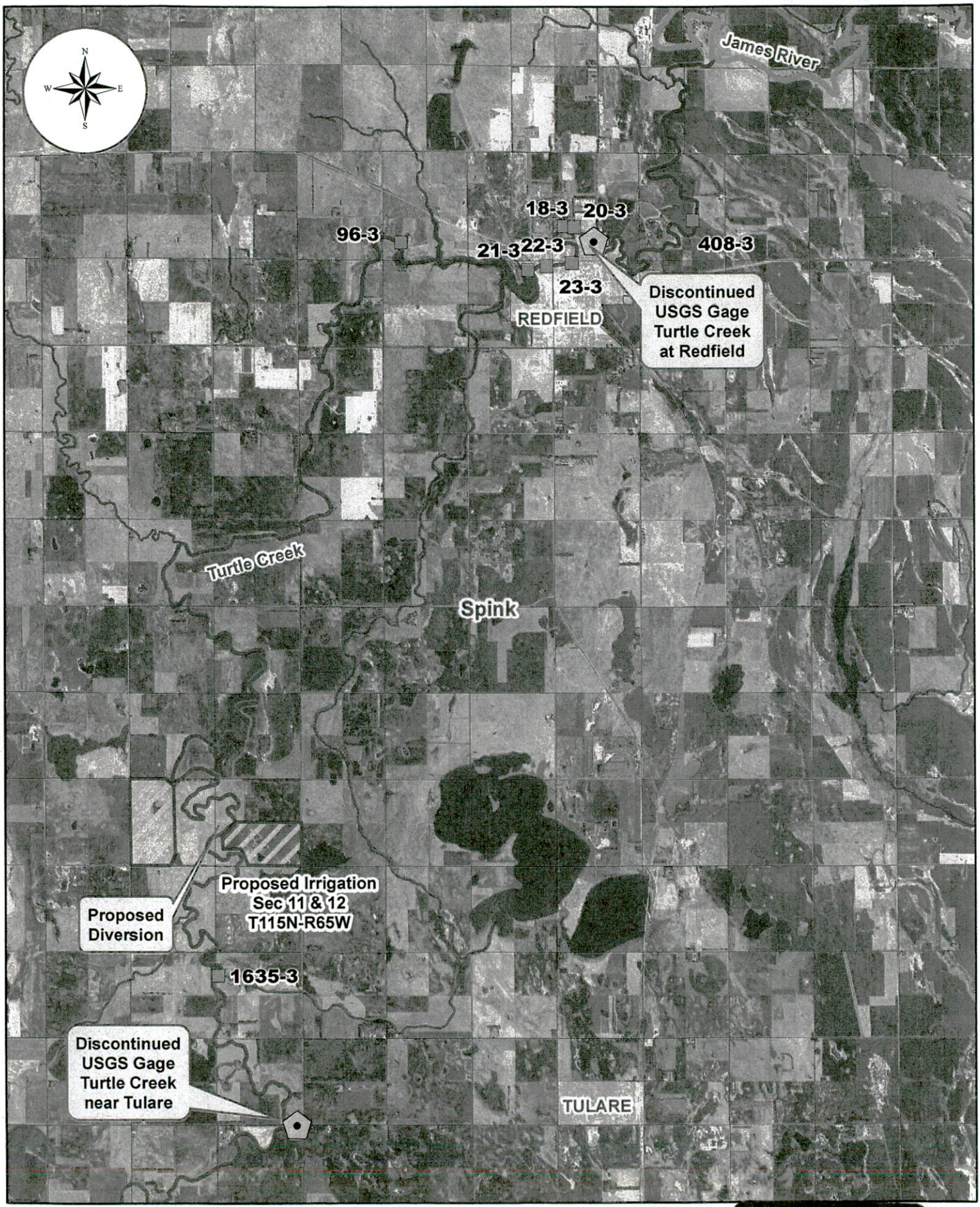
Board of Water Management – In various capacities and responsibilities with DENR, provided testimony regarding permit application review and water use, water quality, and water monitoring relative to water right permit applications, General Water Pollution Control Permits for Concentrated Animal Feeding Operations, and ground water discharge plan applications, and proposed and modifications to Administrative Rules of South Dakota for ground water and surface water quality standards, beneficial use classifications for water bodies in South Dakota, and ground water and surface water discharge permits.

Board of Minerals and Environment – In various capacities and responsibilities with DENR, provided testimony regarding water use, water quality, and water monitoring relative to mineral and oil and gas exploration and development permits.

Court matters since 2008 - In re: *Veblen West Dairy, LLP, Chapter 11, Debtor. Bankr. No. 10-10071.* United States Bankruptcy Court, D. South Dakota (court testimony).
Storbeck, et. al. v. State of South Dakota, Third Judicial Circuit, Kingsbury County Civ. No. 07-69 (deposition).

MAJOR PUBLICATIONS

1. "South Dakota Ground-Water Quality" w/ Koch and Lawrence -USGS
   USGS Open-file Report 87-0752, Goodman and Pirner - SDDWNR
2. "Agricultural Sources of Nitrate Contamination in a Shallow Sand and Gravel Aquifer in Eastern South Dakota", in Perspectives on Nonpoint Source Pollution, EPA 440/5-85-001.
3. "Non-Point Source Pesticide Contamination of Shallow Ground Water', ASTM Paper No. 892529, St. Joseph, Missouri, Kimball and Goodman.
4. "Nitrate and Pesticide Occurrence in Shallow Groundwater During the Oakwood Lakes-Poinsett RCWP Project", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006.
5. "Coordination is the Project Cornerstone", in The National Rural Clean Water Program Symposium, EPA/625/R-92/006, Kuck and Goodman.
6. "Ground Water Monitoring – A Guide to Monitoring for Agricultural Nonpoint Source Pollution Projects", USDA-FSA, Huron, SD. Goodman, German, and Bischoff, January 1996.



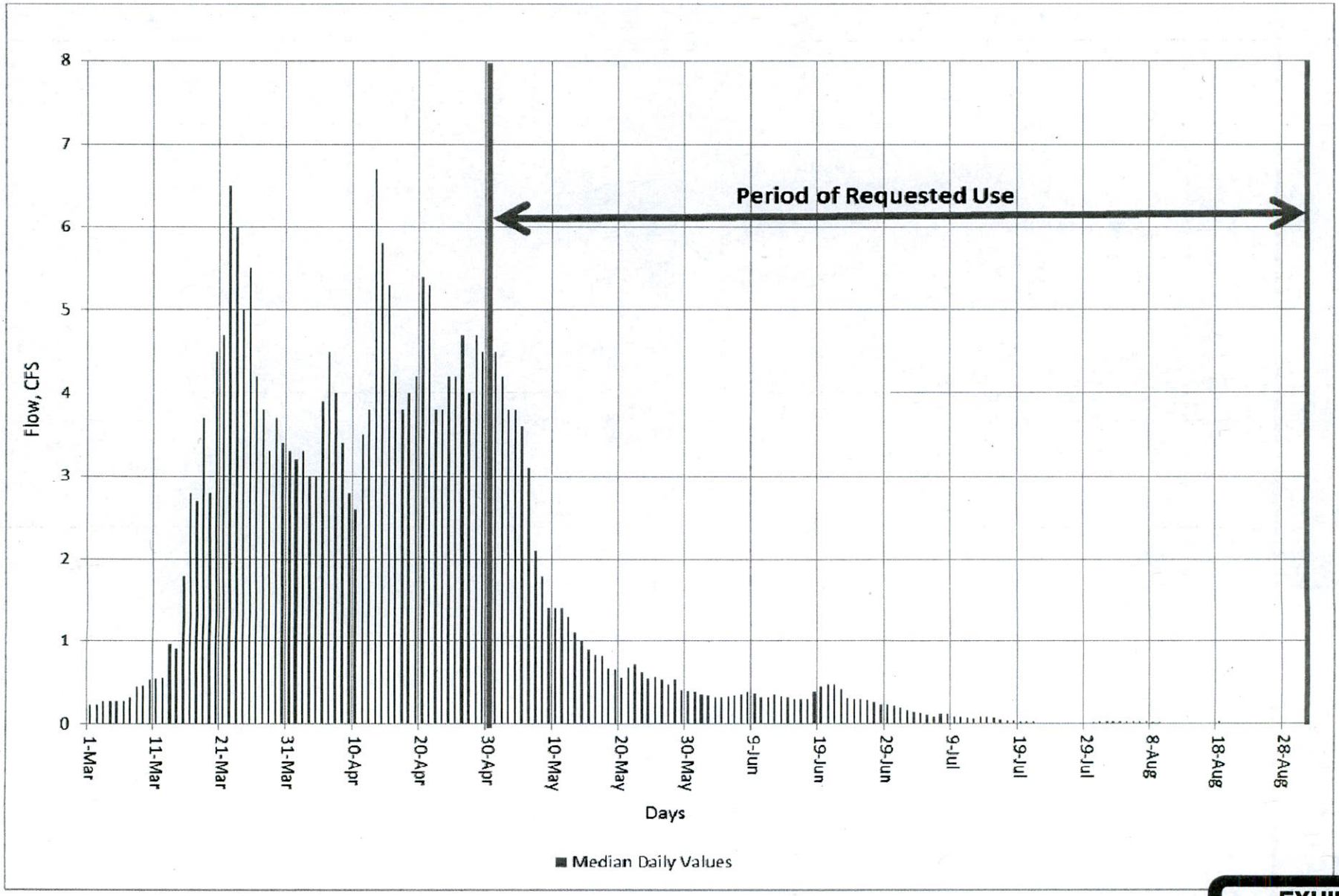
0 0.5 1 2 3 4 Miles

EXHIBIT

4

20-17

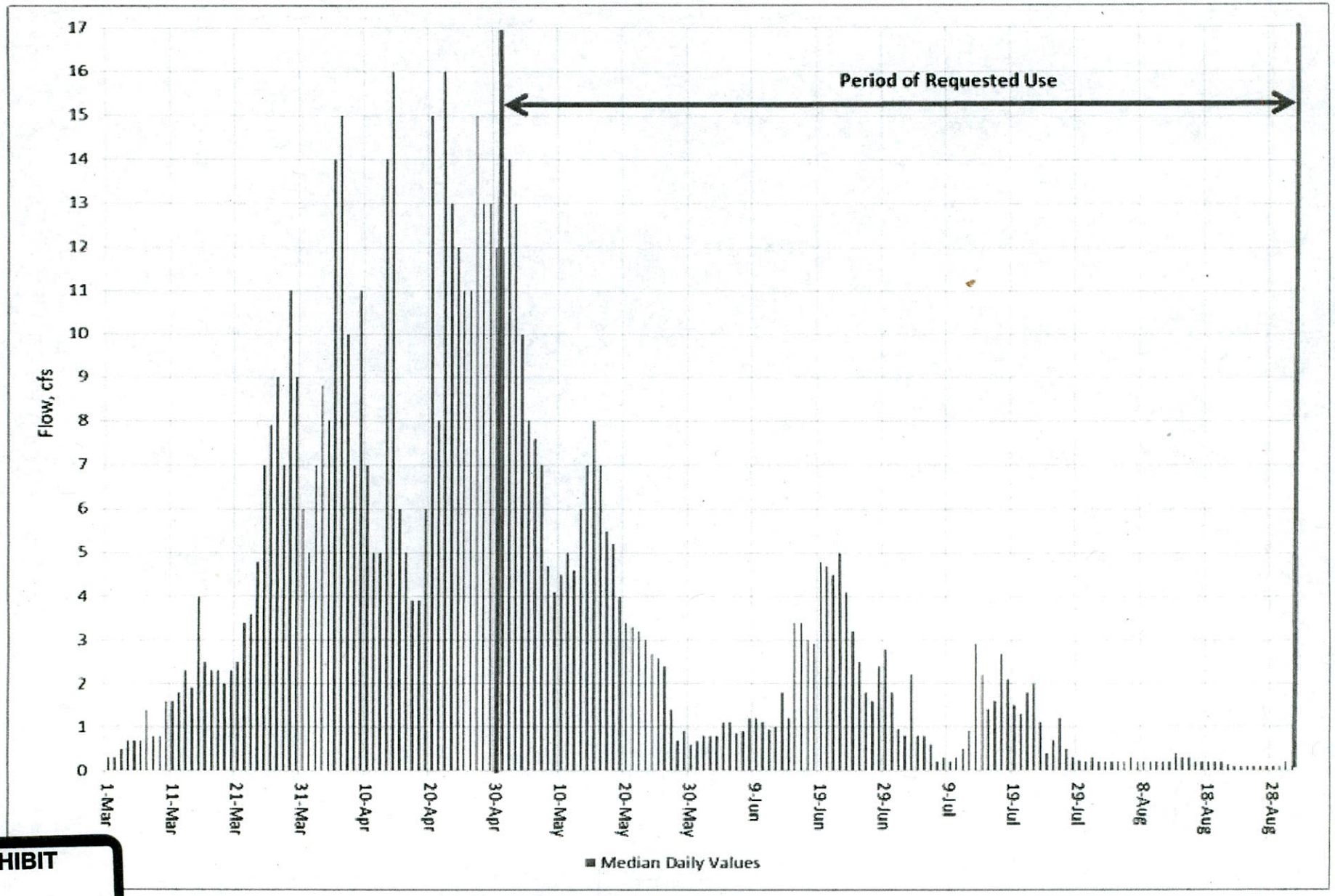
USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values
25 years of record, 1952 to 1990; contributing drainage area of 1140 mi^2



EXHIBIT

5

USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values
27 years of record, 1945 to 1972; contributing drainage area of 1482 mi^2



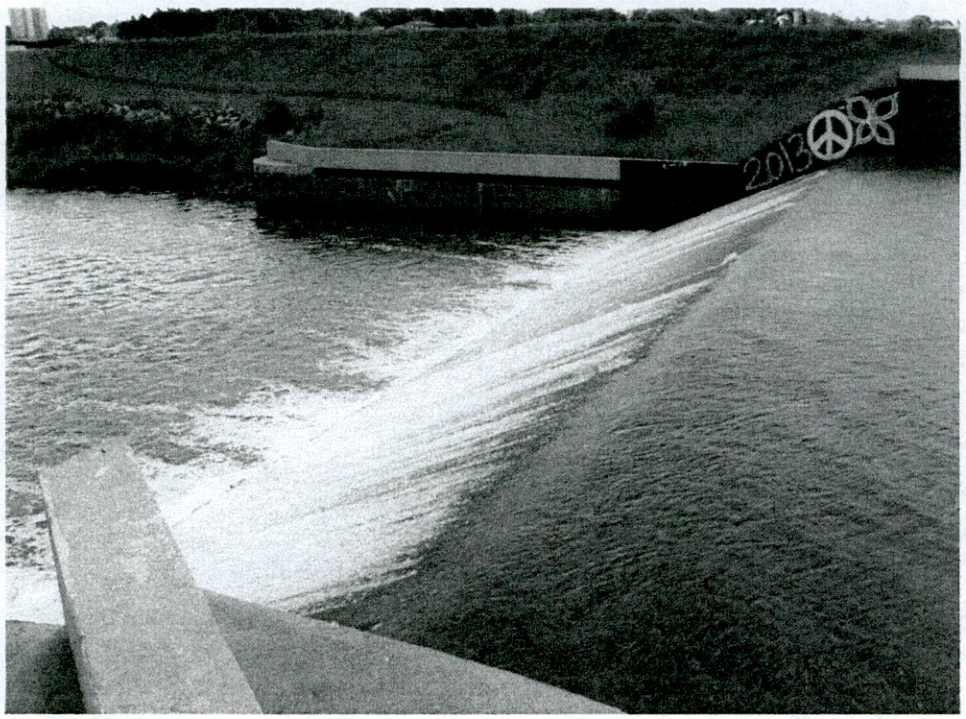
EXHIBIT

6

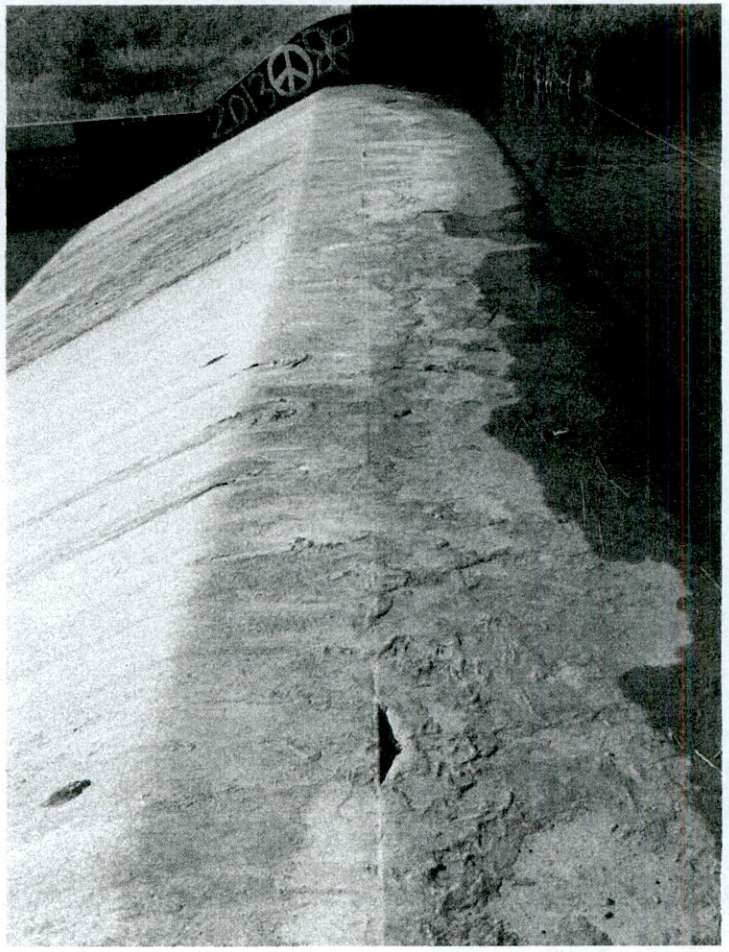
Redfield Lake Spillway 2016

NW ¼ NE ¼ of Sec 9 T116N-R64W

Spink County SD



August 29, 2016 photo by M Rath



May 31, 2016 photo by M Rath

EXHIBIT

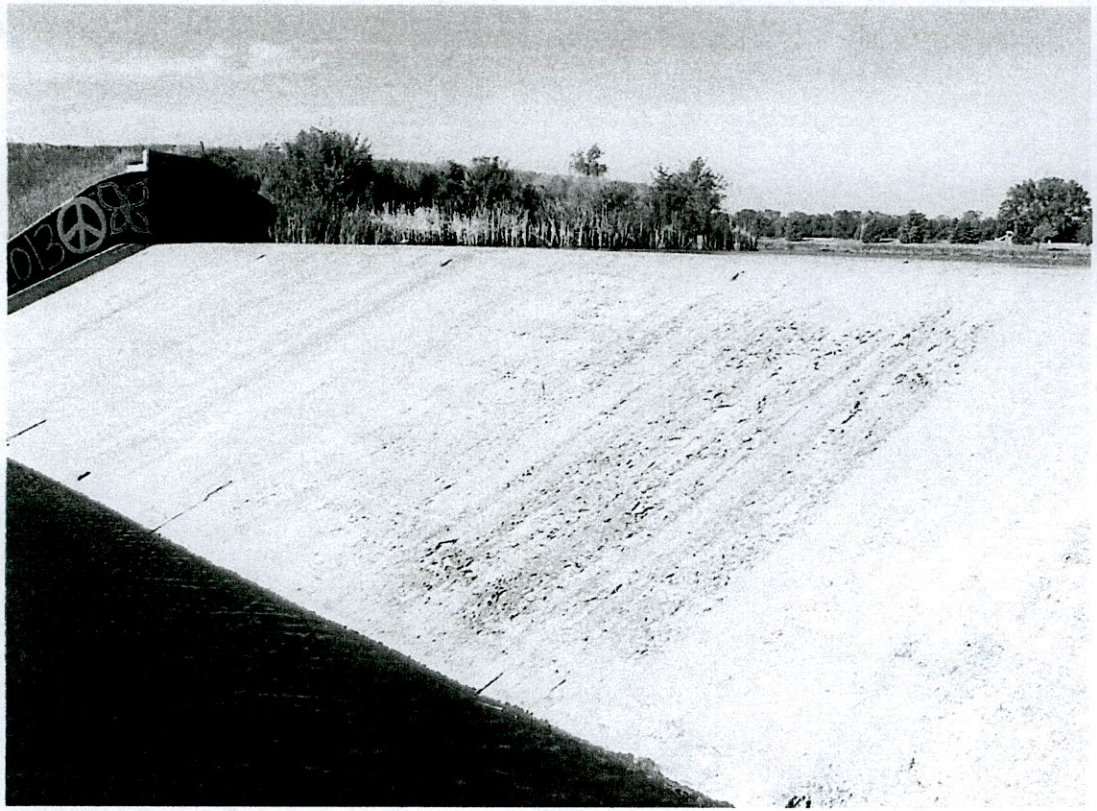
tabbies

7

Redfield Lake Spillway 2017

NW ¼ NE ¼ of Sec 9 T116N-R64W

Spink County SD



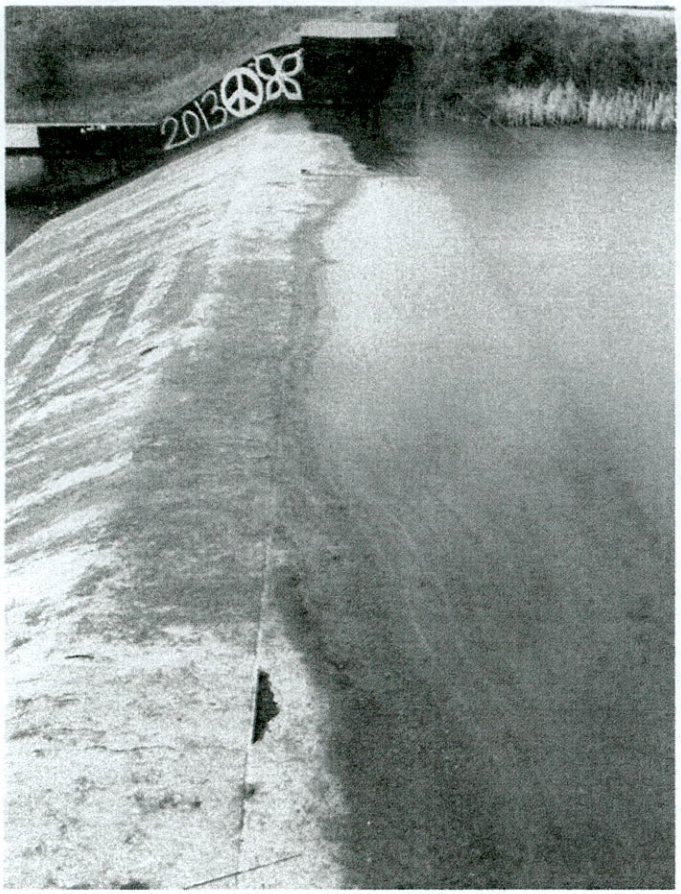


June 6, 2017 photos by M Rath

Redfield Lake Spillway 2017

NW ¼ NE ¼ of Sec 9 T116N-R64W

Spink County SD



June 13, 2017 photo by M Rath



June 27, 2017 photo by M Rath

Turtle Creek Approximately Four Stream Miles Upstream
from Project Site for Application No. 8268-3
Spink County SD



Facing south immediately upstream of the former site of the USGS gage - Turtle Creek near Tulare SD
NW ¼ NW ¼ Sec 36 T115N-R65W
June 27, 2017 Photo by M Rath



Facing north immediately downstream of the former site of the USGS gage - Turtle Creek near Tulare SD
SE ¼ SE ¼ Sec 25 T115N-R65W
June 27, 2017 Photo by M Rath

EXHIBIT
8

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	PREHEARING ELECTION FORM (EXHIBIT A)

The following form shall be used by all parties (including intervenors) to inform the Water Management Board of the nature of participation the intervenor intends to have at the hearing on this matter. Each party should complete this form and return it to Eric Gronlund, DENR Water Rights Program, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182, or electronically to Eric.Gronlund@state.sd.us. This form must also be submitted upon the Applicant's attorney at Ray Rylance, Wiles & Rylance LLp, PO Box 227, Watertown, SD 57201-0227. This form should be submitted by September 15, 2017. Please note however, that should parties intend to call witnesses and/or introduce exhibits, the Procedural and Scheduling Order entered in this matter contains specific deadlines for disclosure of expert witnesses, witnesses, and exhibits.

1. Name, address and email address of party:

Jeanne Goodman, Chief Engineer
Water Rights Program, DENR
c/o Ann Mines Bailey
1302 E. Hwy 14, Suite 1
Pierre, SD 57501
ann.mines@state.sd.us (email address)

2. I am a party in the above captioned proceeding before the Water Management Board (Circle answer):

(Yes) No

3. I intend to participate in the hearing on Application No. 8268-3:

(Yes) No

4. I intend to offer personal testimony at the hearing:

(Yes) No

5. I intend to offer exhibits in support of my position:
(Yes) No

If you answered "Yes" to this question, exhibits must be disclosed pursuant to the Procedural and Scheduling Order by September 15, 2017. A form has been provided that may be used to assist in the required disclosure of exhibits.

6. I intend to call witnesses in support of my position:
(Yes) No

If you answered "Yes" to this question, witnesses must be disclosed pursuant to the Procedural and Scheduling Order by September 15, 2017. A form has been provided that may be used to assist in the required disclosure of witnesses.

7. I want to ask questions of (cross-examine) witnesses called by parties during the hearing.

(Yes) No

8. I intend to call expert witnesses to testify at the hearing.

(Yes) No

If you answered "Yes" to this question, pursuant to the Procedural and Scheduling Order, expert witness disclosure must be completed by September 8, 2017. A form has been provided that may be used to assist in the required disclosure of expert witnesses.

All submitted pleadings, documents and disclosures will be posted on-line at DENR's One-Stop Contested Case Proceedings site at http://denr.sd.gov.contested.aspx (Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8268-3, Lenny Peterson).

Signed and dated:  9/11/17

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of September 2017, true and correct copies of the Notice of Appearance, DENR'S Disclosure of Witnesses and Exhibits with accompanying attachments, and the Prehearing Election Form, in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Ray Rylance
Wiles & Rylance, LLP
P.O. Box 227
Watertown, SD 57201-0227
Counsel for Lenny Peterson

Game Fish and Parks
John Lott
523 E. Capitol Ave.
Pierre, SD 57501

Bill & Jane Newton
902 W. 5th St.
Redfield, SD 57469

Eldwin Haskell
504 W. 10th Ave.
Redfield, SD 57469

Patrick & Marti Thelen
904 W. 5th St.
Redfield, SD 57469

Dan Esser
16774 379th Ave.
Redfield, SD 57469

Kimberly A. Dorsett & Jack H. Hieb
Richardson, Wyly, Wise, Sauk & Hieb, LLP
P.O. Box 1030
Aberdeen, SD 57401
Counsel for City of Redfield

Joan B. Eaton
407 W. 4th Ave.
Redfield, SD 57469

Kenneth Booze
23659 455th Ave.
Madison, SD 57042

David Booze
37865 SD Hwy 26
Redfield, SD 57469

Ms. Inez Booze
37865 SD Hwy 26
Redfield, SD 57469

Perry Schmidt
38221 174th St.
Redfield, SD 57469

Les & Audrey Helm
923 W. 5th St.
Redfield, SD 57469

Danny Booz
16911 US Hwy 281
Ashton, SD 57424-6101

John Solheim
501 W. 4th Ave.
Redfield, SD 57469

Mary Stewart
911 W. 5th St.
Redfield, SD 57469

Dennis Stewart
911 W. 5th St.
Redfield, SD 57469

Roger McIntyre
38293 179th St.
Redfield, SD 57469

Randall J. Waldner, M.D.
RW Investment Holdings, LLC
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Redfield, SD 57469

Paul & Lisa Cosato
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Redfield, SD 57469

Ron & Onilee Siebrecht
511 W. 4th Ave.
Redfield, SD 57469

Casey Fey
Red Ash Ranch
16911 SD Hwy 281
Ashton, SD 57424

Earl & Sheila Sprague
925 W. 5th St.
Redfield, SD 57469

Corey Hieb
601 W. 4th Ave.
Redfield, SD 57469

Dale & Connie Fiedler
903 W. 5th St.
Redfield, SD 57469

Robert & Connie Tiff
P.O. Box 596
Redfield, SD 57469

Joe & Karen Jungwirth
38442 10th Ave.
Redfield, SD 57469

Mavis McFarlane
905 W. 5th St.
Redfield, SD 57469

Dave & Marion Moeller
1312 S. Main St.
Redfield, SD 57469-1631

Byron & Kathi Anderson
822 W. 5th St.
Redfield, SD 57469

Wesley Jaton
503 W. 4th Ave.
Redfield, SD 57469

Mary Ann Schone
527 W. 4th Ave.
Redfield, SD 57469

Kurt Permann
226 E. 1st St.
Redfield, SD 57469

And hand-delivered to:

Eric Gronlund
DENR Water Rights
523 E. Capitol Ave.
Pierre, SD 57501

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

pld_afm Water Board - Lenny Peterson - Certificate of Service (mn)

LAW OFFICES
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP
ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SOUTH DAKOTA
57402-1030

ROY A. WISE
WILLIAM K. SAUCK, JR.
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER

E-MAIL: kdorsett@rwwsh.com

DWIGHT CAMPBELL (1887 - 1964)
STANLEY R. VOAS (1909 -1972)
JAMES A. WYLY (1939 - 2009)
LLOYD C. RICHARDSON, JR. (1924 - 2012)
RICHARD L. RUSSMAN (1967 - 2014)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

September 15, 2017

VIA E-MAIL
(eric.gronland@state.sd.us)

Mr. Eric Gronland
Department of Water and
Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3182

Dear Eric:

Re: Permit Application #8229-3; Lenny Peterson

As a supplement to our prior Exhibit Disclosure, please find attached electronic color photos to be admitted as exhibits by the City of Redfield, marked as Exhibits 100-163.

Sincerely,

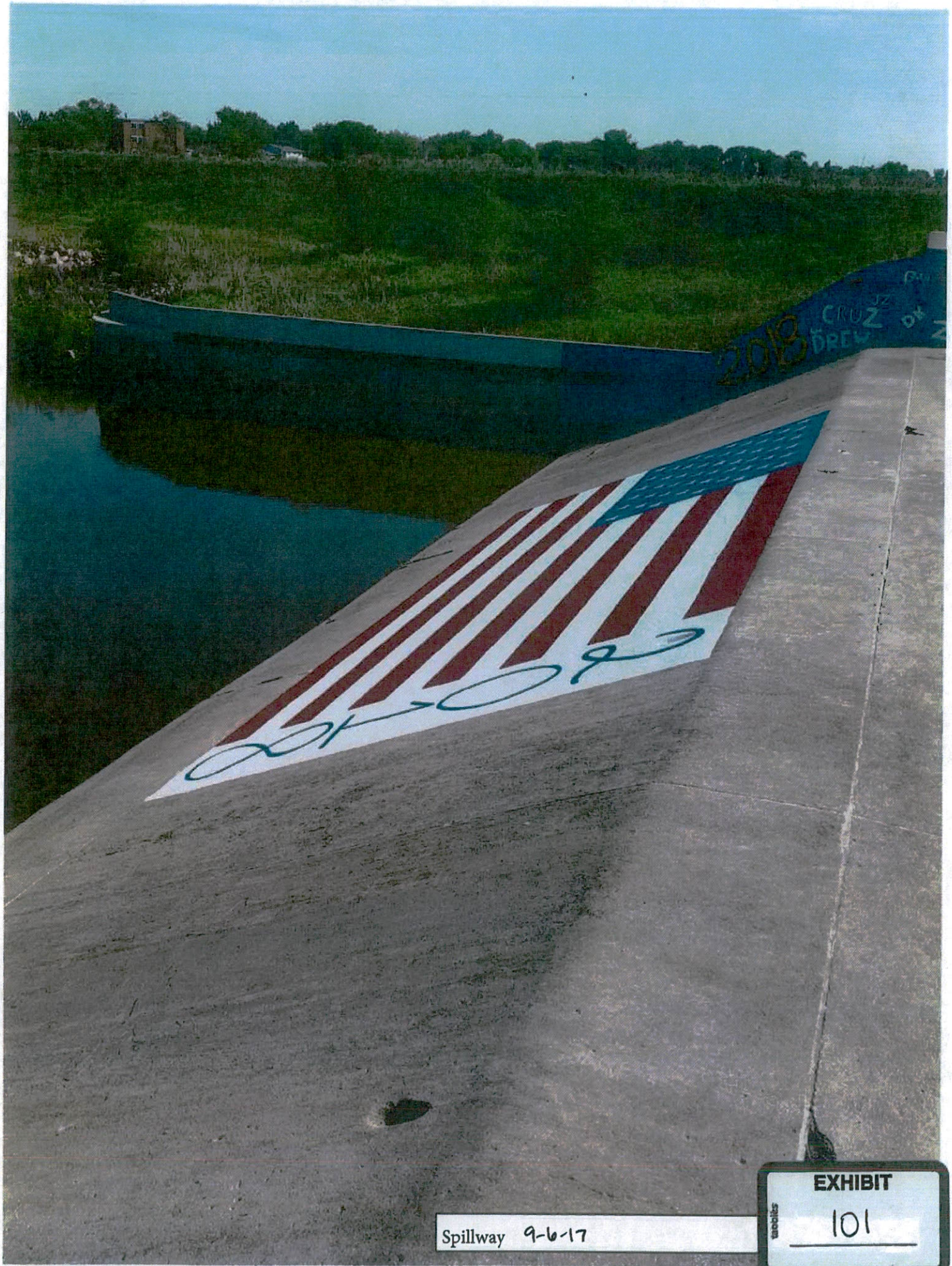
Kimberly A. Dorsett

KAD/kkt
Attachments

cc: Ann Mines-Bailey (email: ann.mines-bailey@state.sd.us)
Ray Rylance (email and mail: rdr@wilesandrylance.com)
Adam Hansen (e-mail: alhansen@redfield-sd.com)
each w/attachments

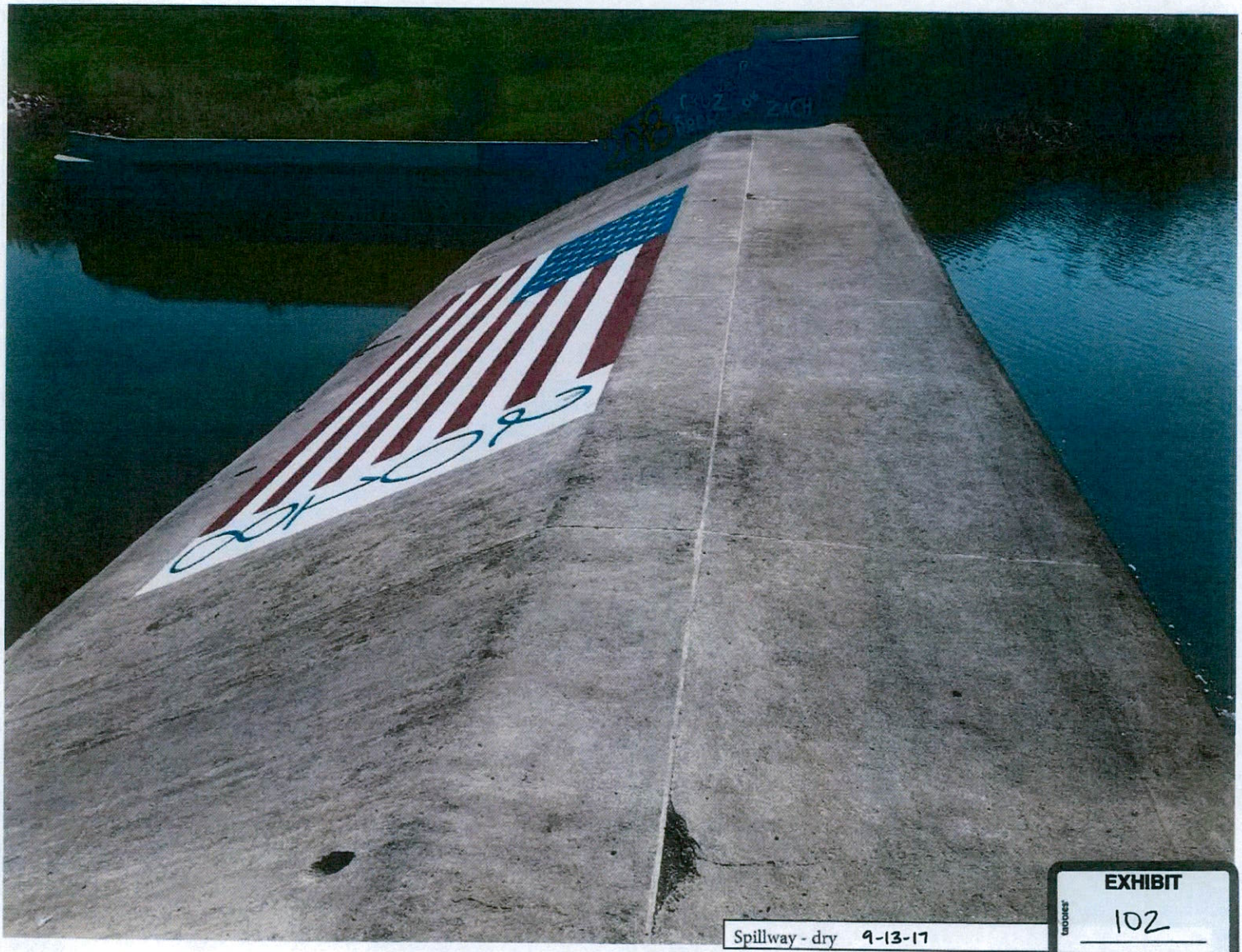
EXHIBIT
100

Turtle Creek directly below spillway cement sticking out very low water
9-13-17



Spillway 9-6-17

EXHIBIT
101



Spillway - dry 9-13-17

EXHIBIT
102



Spillway - dry 9-13-17

EXHIBIT
tabbies
103



Spillway 9-13-17 low water level below spillway



Spillway 9-13-17 no water running over

EXHIBIT
105



Spillway 9-13-17 no water running over

EXHIBIT

tabbies

106



Spillway backside 9-13-17

EXHIBIT
107

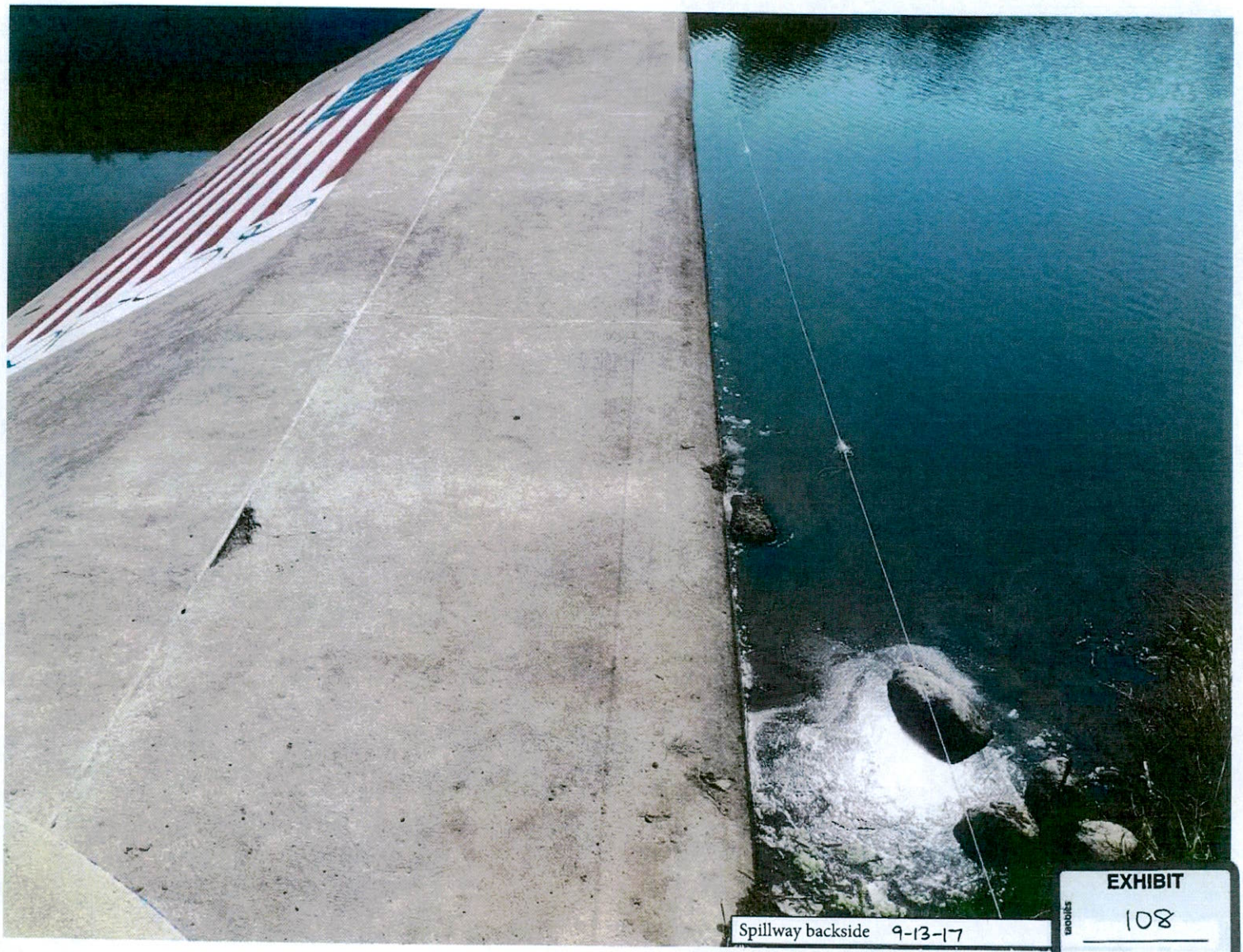
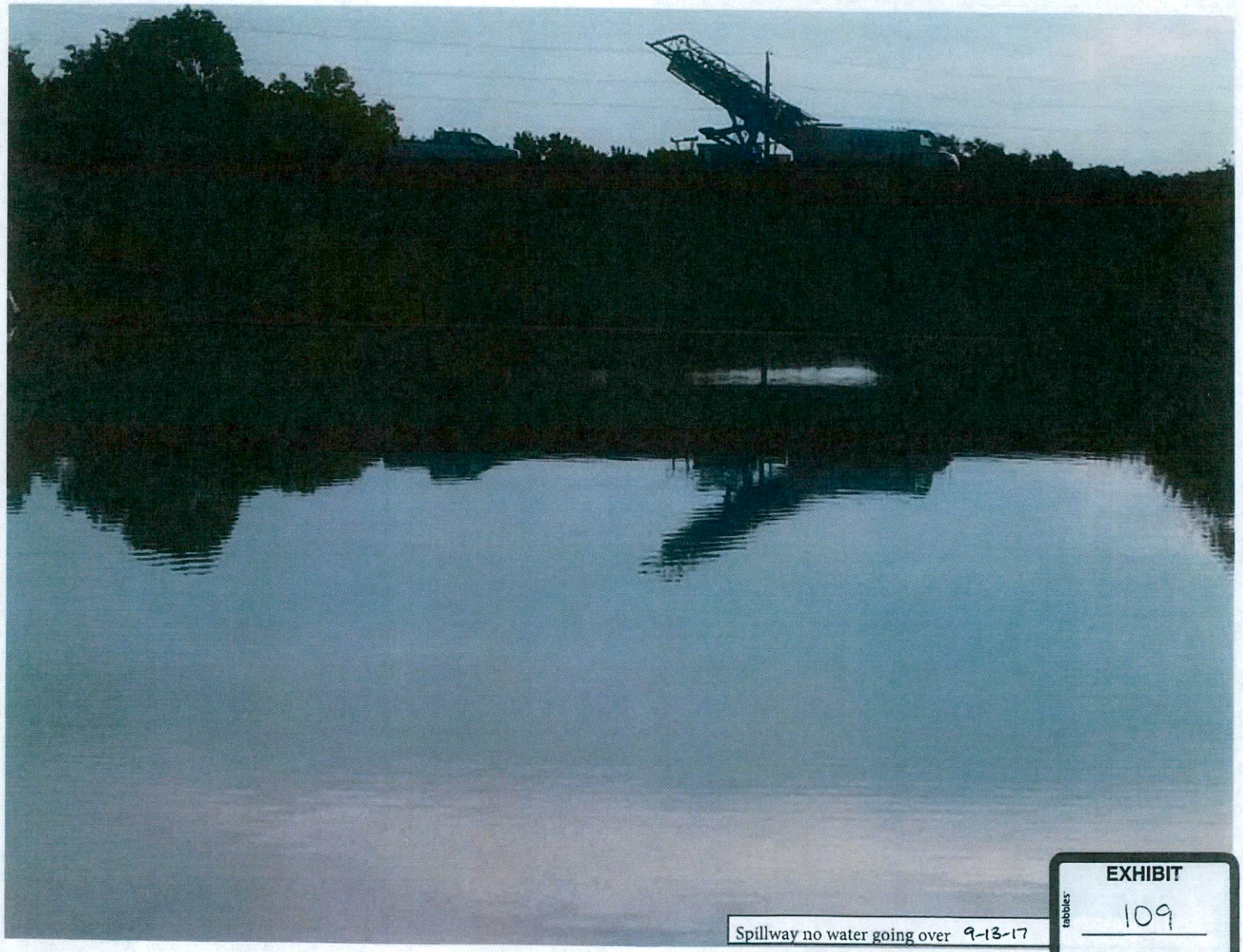


EXHIBIT
taobits
108



Spillway no water going over 9-13-17

EXHIBIT

109

tabbies



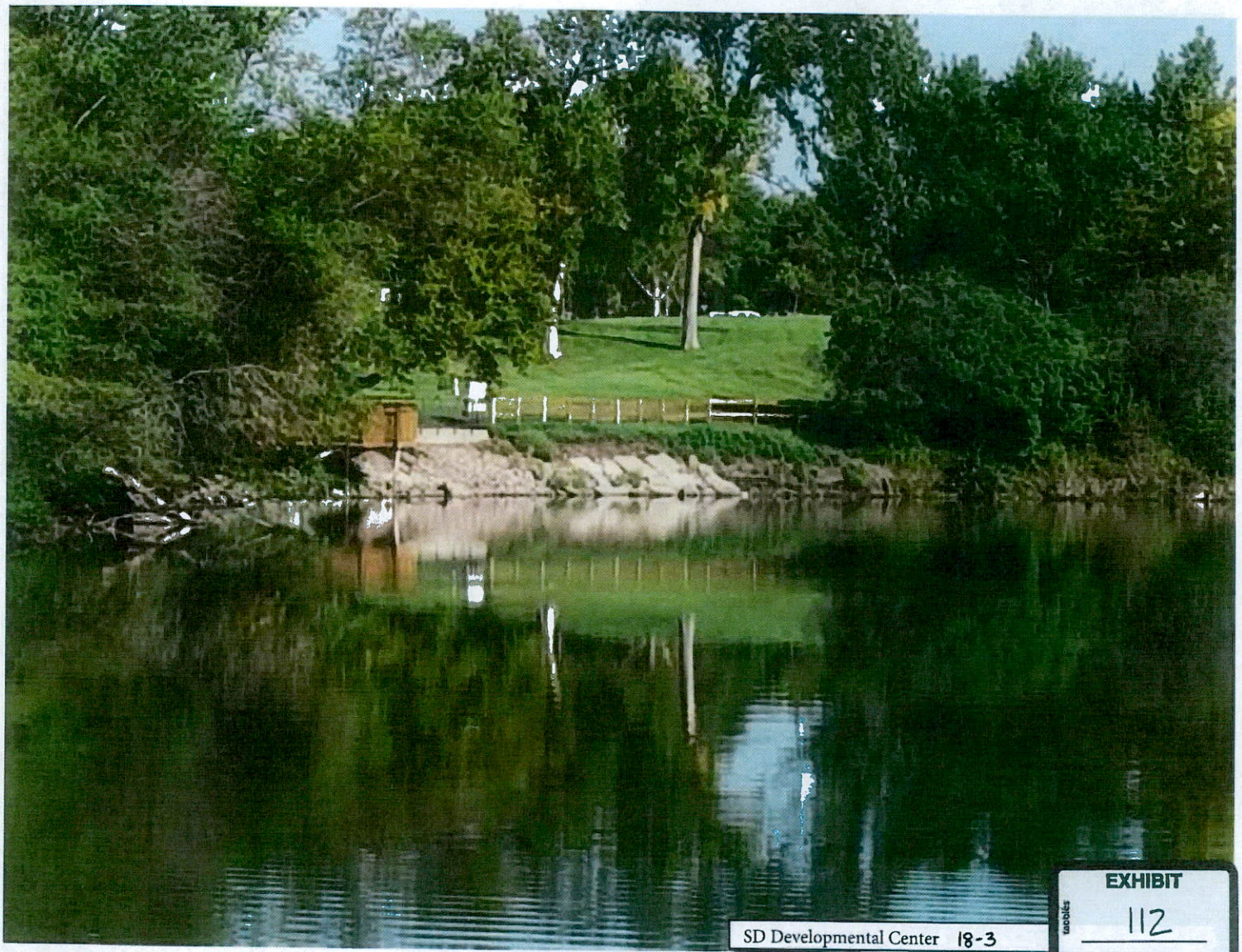
Spillway no water going over 9-13-17

EXHIBIT
110



Spillway no water going over 9-13-17

EXHIBIT
111



SD Developmental Center 18-3

EXHIBIT
112



SD Developmental Center 18-3

EXHIBIT
113



SD Developmental Center Dam 18-3

EXHIBIT
114



SD Developmental Center Dam 18-3

EXHIBIT
115



SD Developmental Center Dam 18-3

EXHIBIT
116



SD Developmental Center Dam low water

18-3

EXHIBIT

117



EXHIBIT
118

SD Developmental Center Dam trickle of water over structure



SD Developmental Center Dam trickle of water over structure

18-3



SD Developmental Center Dock 18-3

EXHIBIT
120



EXHIBIT
121

SD Developmental Center Dock irrigated property



SD Developmental Center Dock low water

EXHIBIT

122



Irrigated Athletic Complex 23-3

EXHIBIT
124



Irrigated Athletic Complex 23-3

EXHIBIT
125



Irrigated Athletic Complex 23-3

EXHIBIT
126



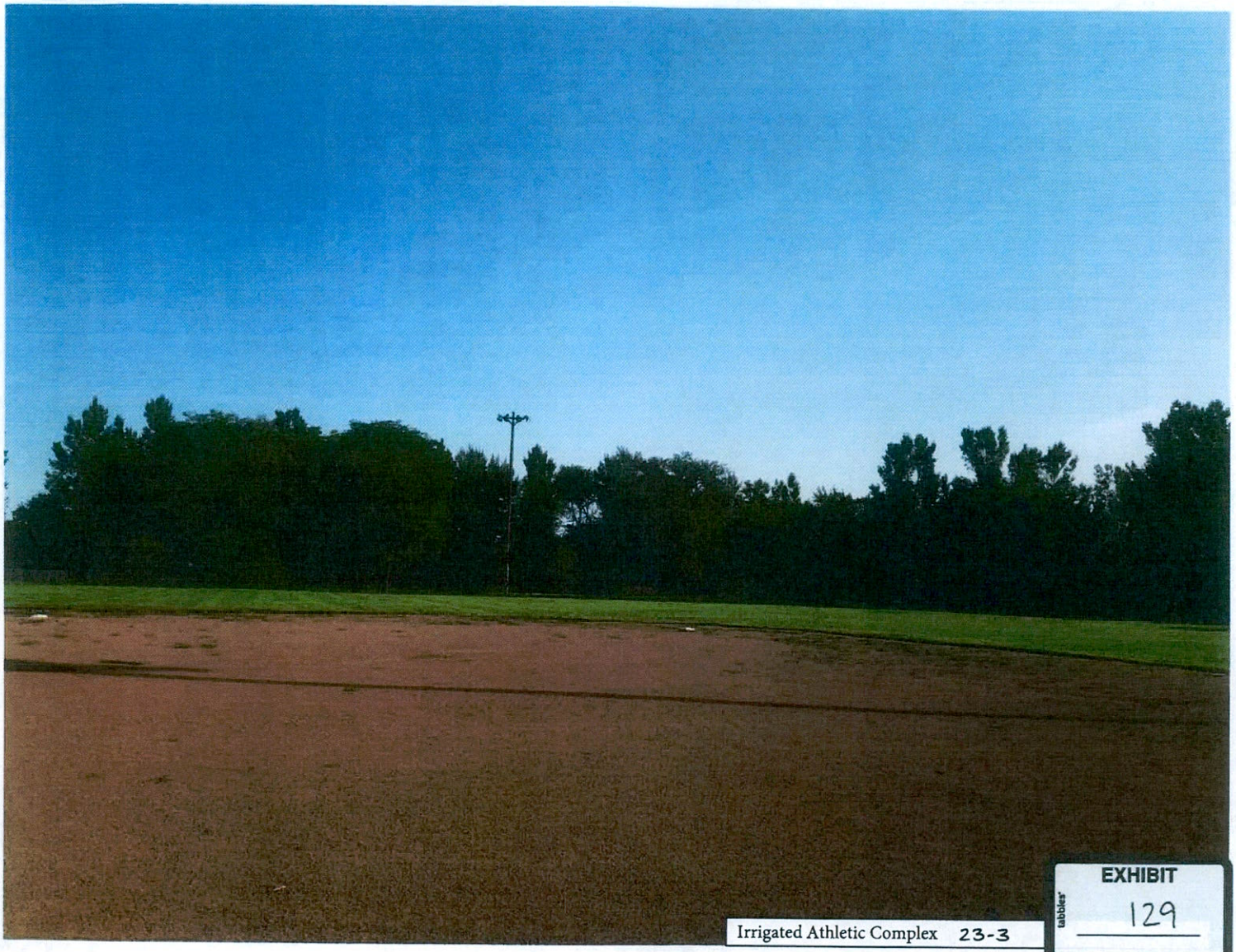
Irrigated Athletic Complex 23-3

EXHIBIT
127



Irrigated Athletic Complex 23-3

EXHIBIT
128



Irrigated Athletic Complex 23-3

EXHIBIT
129



Irrigated Athletic Complex 23-3

EXHIBIT
130



Irrigated City Park 23-3

EXHIBIT
131



Irrigated City Park 23-3

EXHIBIT
132



Irrigated City Park 23-3

EXHIBIT

133



City Park Non Irrigated 23-3

EXHIBIT
134



Mini-Rainbow Bridge City Park 23-3

EXHIBIT
135

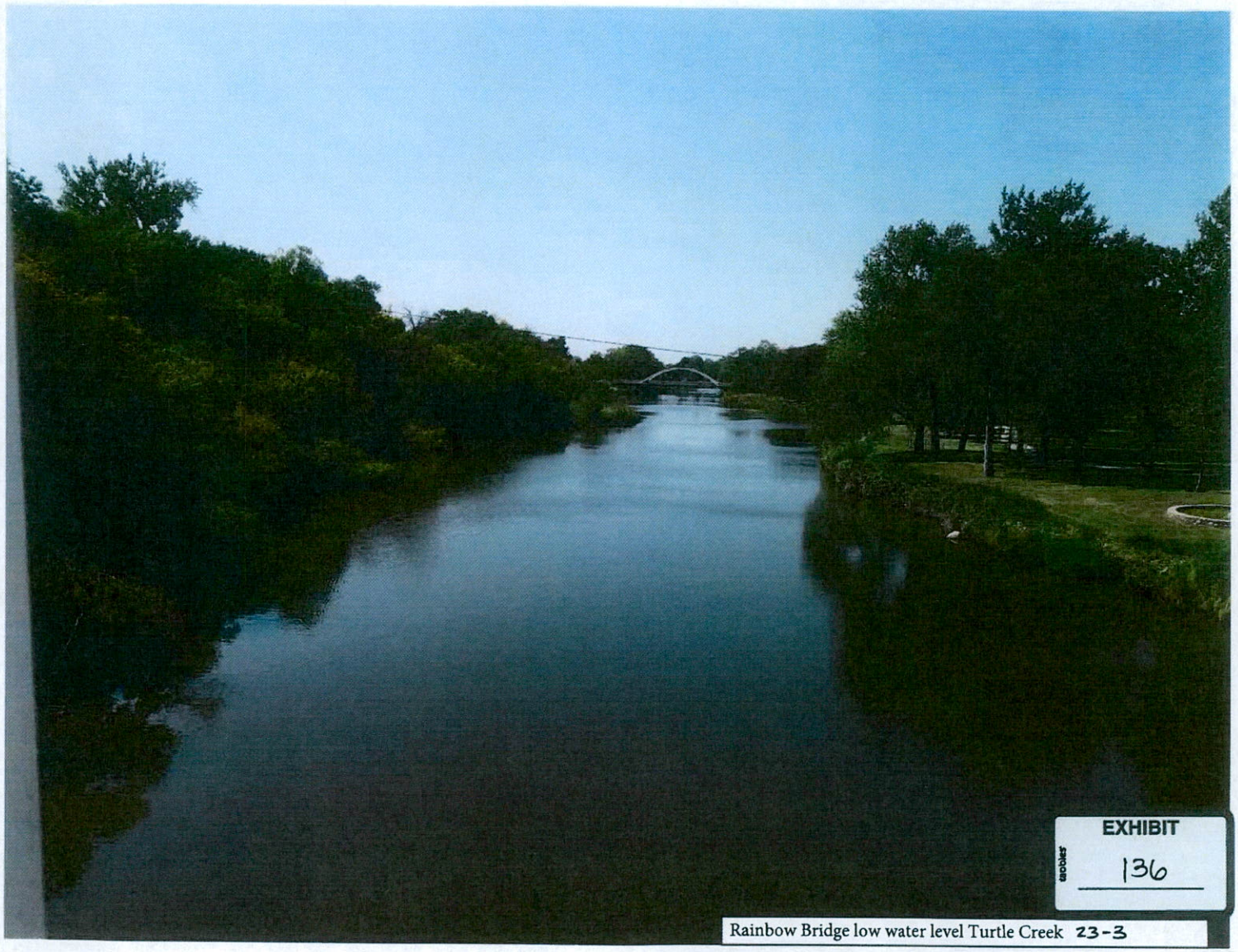


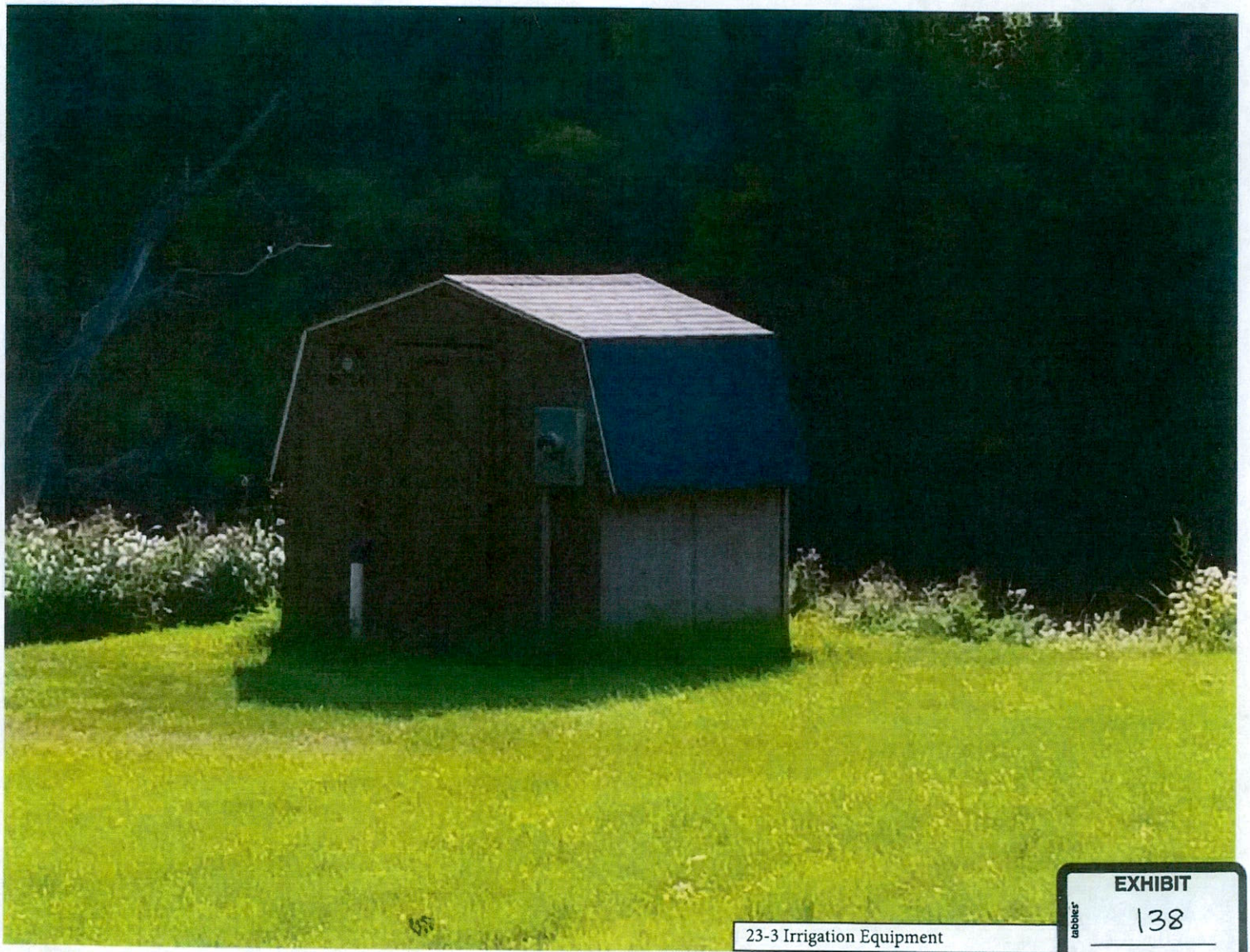
EXHIBIT
136

Rainbow Bridge low water level Turtle Creek 23-3



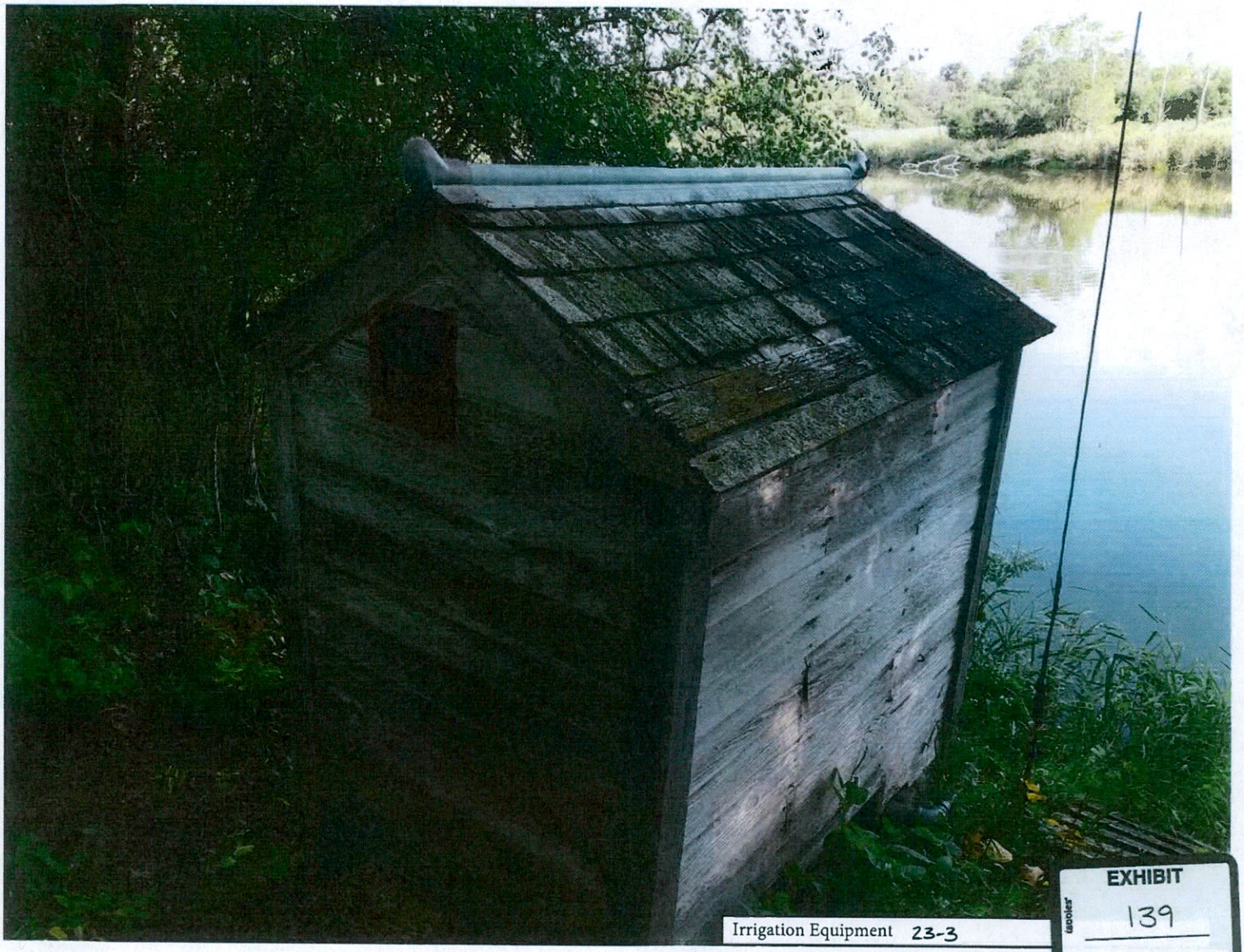
Rainbow Walk Bridge 23-3

EXHIBIT
137



23-3 Irrigation Equipment

EXHIBIT
138



Irrigation Equipment 23-3

EXHIBIT
139



Greenlawn Cemetery Turtle Creek low water 20-3



20-3 Low Water Level

EXHIBIT
141



20-3 Greenlawn Cemetery

EXHIBIT
142



20-3 Greenlawn Cemetery

EXHIBIT
143



20-3 Greenlawn Cemetery

EXHIBIT
144



20-3 Greenlawn Cemetery

EXHIBIT
145



20-3 Greenlawn Cemetery

EXHIBIT
tabbies
146



20-3 Greenlawn Cemetery

EXHIBIT
147



20-3 Greenlawn Cemetery

EXHIBIT
148



EXHIBIT
149

20-3 Cemetery Irrigation Equipment

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

* *

PERMIT APPLICATION #8268-3

LENNY PETERSON

CITY OF REDFIELD'S AMENDED EXHIBIT LIST

* *

Pursuant to the Department's *Procedural and Scheduling Order*, City of Redfield discloses the following exhibits it may offer at the hearing of this matter:

Exhibit	Description
100-111	Photographs of Turtle Creek spillway
112-122	Photographs of SD Developmental Center
	Photographs of City's Athletic Complex & Park:
123-128	Football Field
129-130	Baseball Field
131-137	Park & Rainbow Bridge
138-139	Irrigation Equipment
140-152	Photographs of Greenlawn Cemetery and irrigation equipment
153-158	Photographs of irrigated lawns
159-161	Photographs of irrigation equipment used under W/R Permit No. 408-3
162-163	Photographs at the confluence of Turtle Creek and the James River
164-168	Photographs of Hav-A-Rest Campground and docks

Dated this 25th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

Attorneys for City of Redfield

Post Office Box 1030
1 Court Street
Aberdeen, SD 57402-1030
Telephone No. (605) 225-6310
Email: JHieb@rwwsh.com
Email: KDorsett@rwwsh.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of City of Redfield's Amended Exhibit List and exhibits 164-168 were served via electronic mail on the 25th day of September, 2017 on:

Mr. Raymond D. Rylance
Wiles & Rylance
Post Office Box 227
Watertown, SD 57201-0227
rdr@WilesAndRylance.com
Counsel for Lenny Peterson

Mr. Eric Gronlund
South Dakota Department of
Water and Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501
Eric.Gronlund@state.sd.us

Ms. Ann Mines-Bailey
Special Assistant Atty General
South Dakota Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
Ann.Mines@state.sd.us
Counsel for DENR

and mailed by first-class U.S. Mail, postage prepaid, on the 25th day of September, 2017, to the following interested parties:

Matt Naasz
Assistant Attorney General
State of South Dakota
1302 E. Highway 14, Suite 1
Pierre, SD 57501

Rodney Freeman
Prehearing Chairman
Water Management Board
Post Office Box 176
Huron, SD 57530

Earl & Sheila Sprague
925 W. 5th Street
Redfield, SD 57469

Kurt Permann
226 E. 1st Street
Redfield, SD 57469

Bill & Jane Newton
902 W. 5th Street
Redfield, SD 57469

Eldwin Haskell
504 W. 10th Avenue
Redfield, SD 57469

Patrick & Marti Thelen
904 W. 5th Street
Redfield, SD 57469

Kenneth Booze
23659 455th Avenue
Madison, SD 57042

Dan Esser
16774 379th Avenue
Redfield, SD 57469

David Booze
37865 SD Highway 26
Redfield, SD 57469

John Lott
SD Game, Fish & Parks
523 E. Capitol
Pierre, SD 57501

Casey Fey
Red Ash Ranch
16911 SD Highway 281
Ashton, SD 57424

Danny Booze
16911 US Highway 281
Ashton, SD 57424-6101

John Solheim
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Mary & Dennis Stewart
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Dave & Marion Moeller
1312 S. Main Street
Redfield, SD 57469-1631

Dated this 25th day of September, 2017.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

Attorneys for City of Redfield



SDGFP Boat Dock Hav-A-Rest Campground

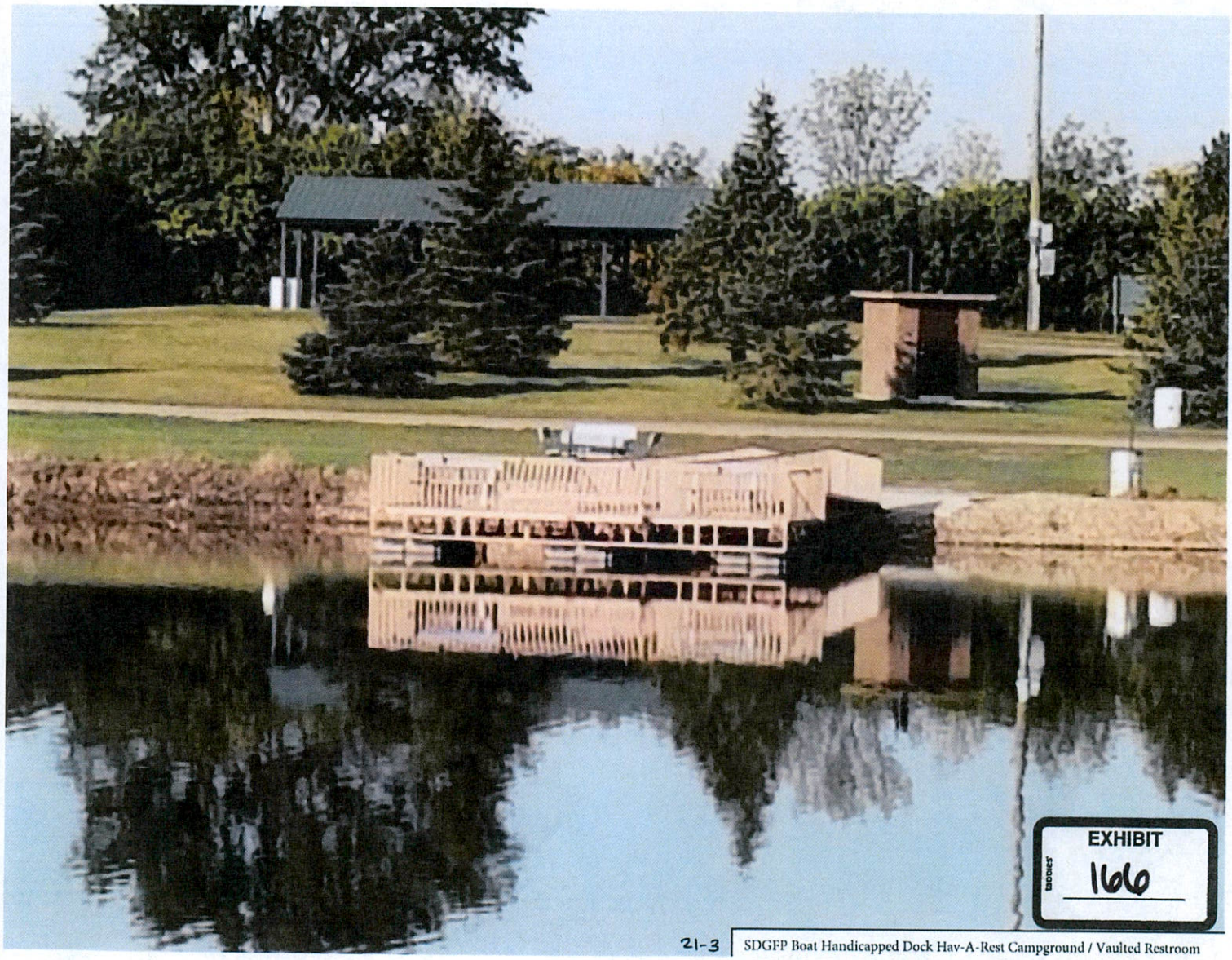
21-3

EXHIBIT
164



Hav-A-Rest Campground 21-3

EXHIBIT
165



21-3 SDGFP Boat Handicapped Dock Hav-A-Rest Campground / Vaulted Restroom



SDGFP Boat Handicapped Dock Hav-A-Rest Campground



SDGFP Boat Handicapped Dock Hav-A-Rest Campground
21-3

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	DENR'S UPDATED DISCLOSURE OF EXHIBITS

Pursuant to the Procedural and Scheduling Order dated August 25, 2017, DENR hereby provides copies of DENR Exhibit 9: Photographs of bridge at Water Quality Monitoring Station WQM 172 site.

Dated this 28th day of September 2017.

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

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of September 2017, true and correct copies of DENR'S Updated Disclosure of Exhibits in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Ray Rylance
Wiles & Rylance LLp
PO Box 227
Watertown, SD 57201-0227
Counsel for Lenny Peterson

Kimberly A. Dorsett & Jack H. Hieb
Richardson, Wyly, Wise, Sauk & Heib LLP
PO Box 1030
Aberdeen, SD 57401
Counsel for City of Redfield

Game Fish and Parks
John Lott
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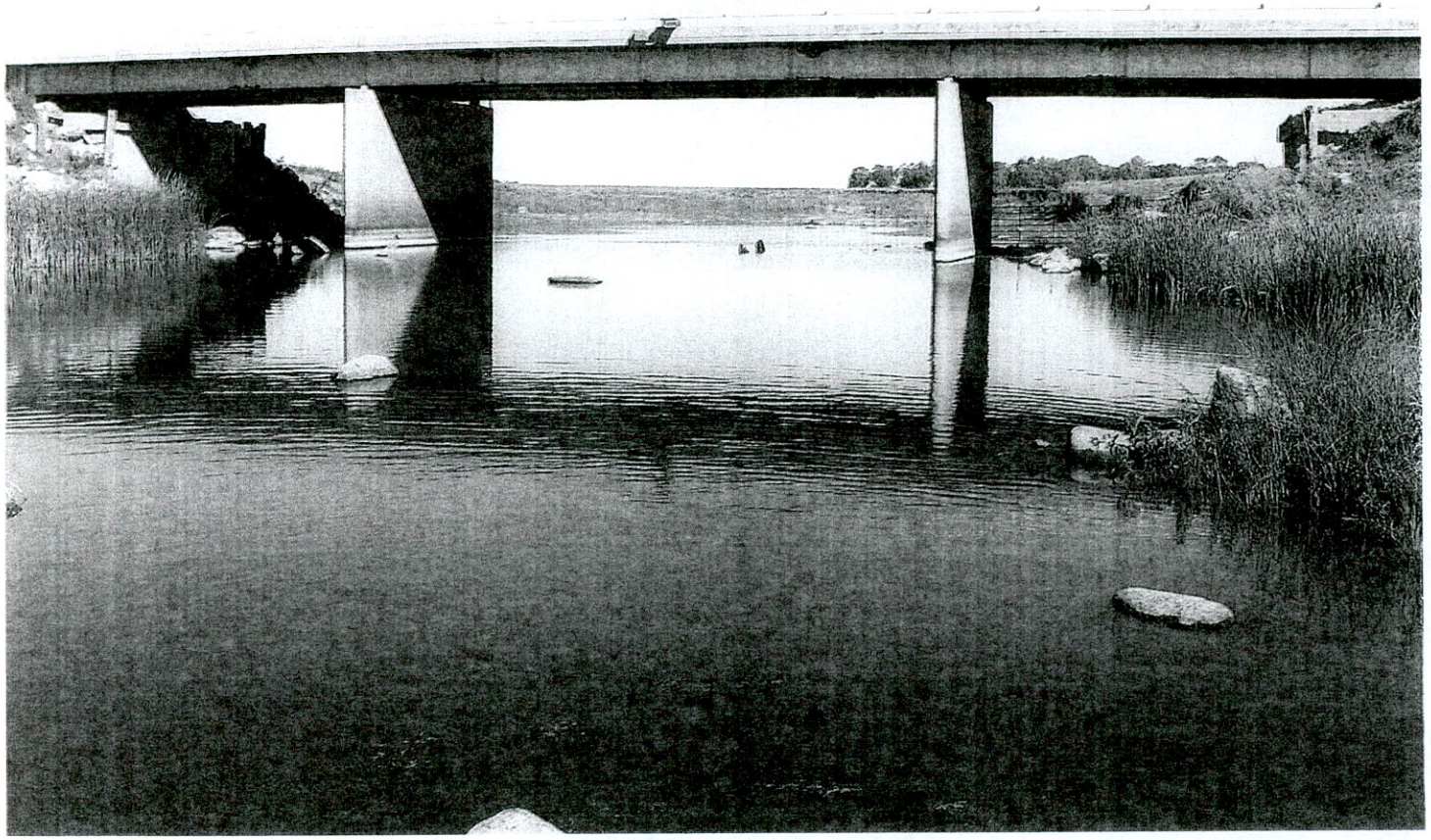
And hand-delivered:

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

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

pld_AFM Lenny Peterson – COS (cm)

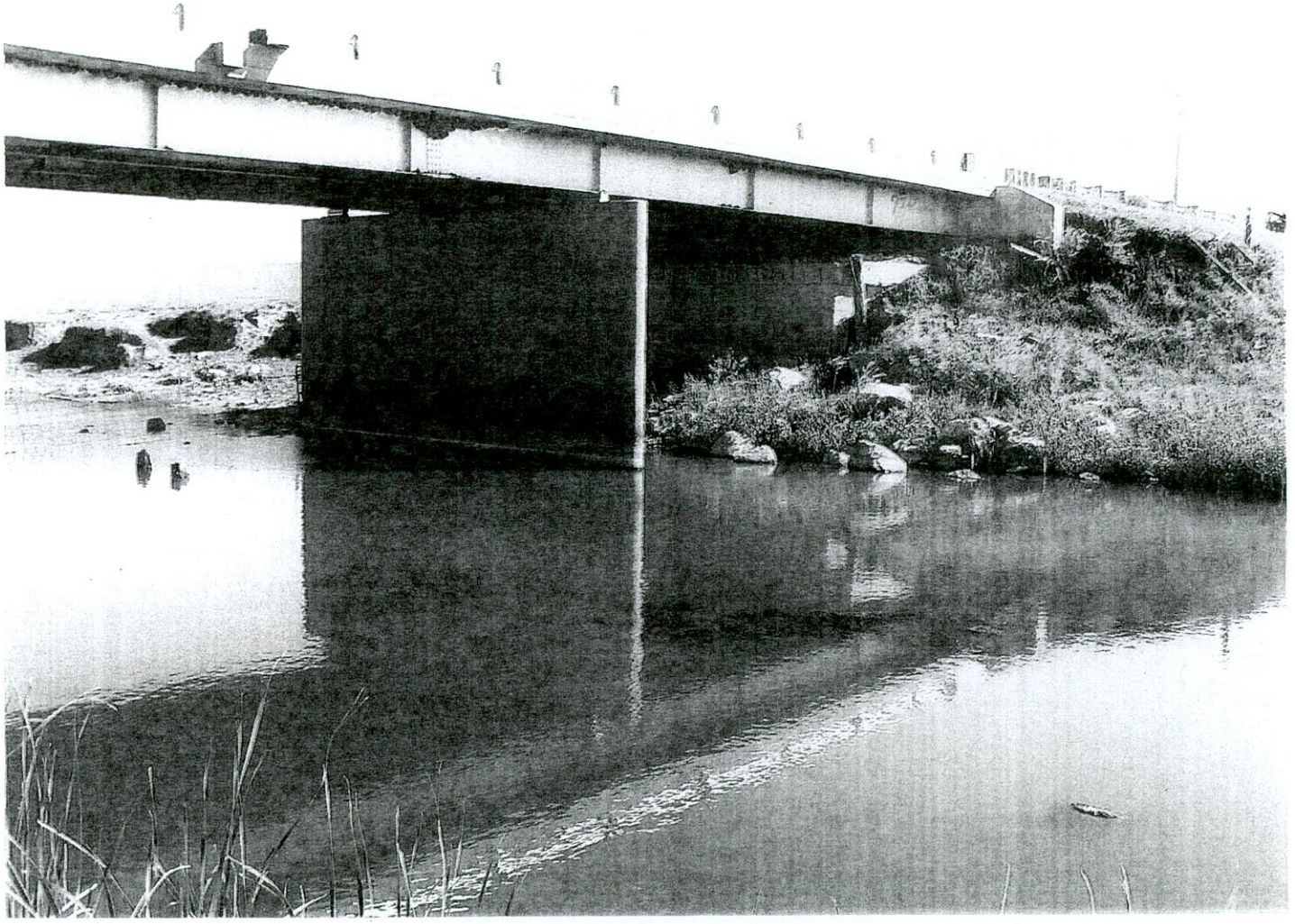
183rd Street bridge over Turtle Creek west of Tulare SD
WQM 172 monitoring site
Spink County SD



Facing north downstream towards 183rd St bridge over Turtle Creek between SE¼ SE¼ Sec 25 and NE¼ NE¼ Sec 36 - T115N-R65W; WQM 172 monitoring site and former USGS gage site. Photo by M Rath

EXHIBIT
9

183rd Street bridge over Turtle Creek west of Tulare SD
WQM 172 monitoring site
Spink County SD



The east end on the upstream side of the 183rd St bridge over Turtle Creek between SE¼ SE¼ Sec 25 and NE¼ NE¼ Sec 36 - T115N-R65W; WQM 172 monitoring site and former USGS gage site. Photo by M Rath

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

denr.sd.gov

October 17, 2017

NOTICE

TO: Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227
and Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

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

The Water Management Board directed Ann Mines Bailey, counsel for the Water Rights Program, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 8268-3 filed by Lenny Peterson.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 8:30 AM, on Thursday, December 7, 2017, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior issues on the agenda. Notice will be provided if there is a change in the date or time.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to each Board member and parties of record by November 10, 2017. Written objections or comments in support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision are to be mailed to each Board member, the Board attorney, Water Rights Program counsel and other parties of record by November 22, 2017. A mailing list is enclosed. Board counsel requests that the draft findings or alternative findings be provided in a WORD format file via email to *matthew.naasz@state.sd.us*.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision may be made on December 7, 2017. The evidentiary hearing was completed October 4, 2017. No additional testimony will be received on December 7, 2017.

If you have questions about the findings process, please contact Ann Mines Bailey at (605) 773-3215.

enclosure

c: Ann Mines Bailey, Assistant Attorney General
Matthew Naasz, Assistant Attorney General

CERTIFICATION

I hereby certify that on October 17, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 17, 2017, regarding scheduling consideration of findings for Water Right Permit Application No. 8268-3, as addressed below and on the attached parties of record list:

Ray Rylance
Wiles & Rylance LLP
PO Box 227
Watertown SD 57201-0227

Sent Inter-office to:

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

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

Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of October, 2017

Karen Schlaak
Notary Public
My Commission expires April 1, 2019

SEAL KAREN SCHLAAK NOTARY PUBLIC State of South Dakota SEAL

WATER MANAGEMENT BOARD MEMBERS

Chad Comes
116 W Center
Madison SD 57042

Leo Holzbauer-**Secretary**
PO Box 877
Wagner SD 57380

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

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Tim Bjork-**Vice Chairman**
112 W Oak St
Pierre SD 57501

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

Board Attorney

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

Water Rights Program

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

Staff Attorney

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

PARTIES OF RECORD FOR WATER PERMIT APPLICATION NO. 8268-3
LENNY PETERSON

APPLICANT

Ray Rylance
Wiles & Rylance LLP
Po Box 227
Watertown SD 57201-0227

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57328

PETITIONERS

Kimberly A Dorsett & Jack H Hieb
Richardson Wyly Wise Sauk & Hieb LLP
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Aberdeen, SD 57401

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 27, 2017

Parties in Matter of Water Permit Application No. 8268-3, Lenny Peterson

Dear Petitioners and Counsel:

The link to DENR's One-Stop Contested Case Proceedings site in the Procedural and Scheduling Order for Application No. 8296-3 to view submitted pleading, documents and disclosures submitted was incorrect.

The correct link is: **http://denr.sd.gov/contested.aspx**

Sincerely,

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

C: Ann Mines Bailey, Assistant Attorney General
Matt Naasz, Assistant Attorney General

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
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http://atg.sd.gov/

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 9, 2017

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

Re: *In the Matter of Water Application No. 8268-3*

Dear Mr. Hutmacher:

Enclosed please find the Proposed Findings of Fact and Conclusions of Law on behalf of DENR Water Rights Program in the above-entitled matter, as well as a certificate of service.

A copy is also being mailed to all interested parties.

Respectfully,

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

Counsel for Water Rights Program, DENR

AFM/cmm
Enclosures

cc: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	DENR'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the South Dakota Water Management Board for hearing on October 7, 2017. Board members Tim Bjork, Chad Comes, Ev Hoyt, and Leo Holzbauer were present and heard the evidence presented. Applicant, Lenny Peterson, was represented by Mr. Ray Rylance. Ms. Ann Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR). Petitioner, City of Redfield, was represented by Mr. Jack Hieb.

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

FINDINGS OF FACT

1. Mr. Peterson seeks a permit to appropriate water from Turtle Creek from a diversion point located between the NE¼NW¼ Section 11 and the S½SW¼ Section 12, all in T115N-R65W in Spink County. The point of diversion is approximately nine miles southwest of Redfield.

2. The sole proposed use is for irrigation of the 450 acres located in the W½ Section 11 and S½ Section 12, T115N-R65W in Spink County at a

diversion rate of up to 2.67 cubic feet of water per second (cfs) with a limited annual volume of 300 acre-feet of water.

3. The Chief Engineer recommended approval of the application with the following qualifications:

- Diversion of the water from Turtle Creek authorized by the permit would be subject to the following:

  a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

  b. Diversion of water under the permit would be subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

  c. The permit would not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders are issued by the Chief Engineer.

  d. The permit would authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

- The Water Management Board would retain jurisdiction of the permit in the event that additional information would demonstrate that changes were required to protect domestic uses or senior water rights.

- That the Chief Engineer, or her designated representative, pursuant to SDCL § 46-2-19, could enter upon the lands authorized by the permit for the purpose of inspecting works and determining if the irrigation system is operational.
- Finally, the permit would be approved subject to the submission of the annual irrigation questionnaire.

4. Notice of the application and hearing was timely advertised in The Redfield Press and The Plainsman on May 31, 2017. The notice further provided that petitions to intervene were to be filed by June 30, 2017.

5. Mr. Peterson submitted a petition in opposition to the Chief Engineer's recommendation regarding his application on June 20, 2017. At the hearing, Mr. Peterson specifically objected to the imposition of a June 1 shutoff date, the qualification requiring flow over the extent of the spillway weir at Redfield dam, and to his permit being subject to senior water rights.

6. DENR also received timely petitions to intervene from the following parties: City of Redfield, Casey Fey, Eldwin Haskell, Bill and Jane Newton, South Dakota Department of Game, Fish and Parks, Patrick and Marti Thelen, Roger McIntyre, Mary Stewart, Kurt Permann, Dale and Connie Fiedler, Mavis McFarlane, Robert and Connie Tiff, Danny Booze, Dennis Stewart, Dr. Randall J. Waldner, Perry Schmidt, Joe and Karen Jungwirth, John Solheim, Inez Booze, Les and Audrey Helm, Earl and Sheila Sprague, Dave and Marion Moeller, Kenneth Booze, Bryon and Kathi Anderson, David Booze, and Dan

Esser. With the exception of the City of Redfield, none of the intervening parties appeared at the hearing.

7. DENR also received the petitions from the following individuals after the filing deadline: Paul and Lisa Cosato, Wesley Jaton, Ron Siebrecht, Onilee Siebrecht, Mary Ann Schone, Corey Hieb, and Joan Eaton. Mr. Peterson objected to receipt of the petitions as they were untimely. The Board overruled the objection and allowed the petitioners to become parties to the hearing.

8. The parties participating at the hearing included the applicant, DENR, and the City of Redfield.

9. In order to approve an application for a new water permit, the Board must determine that there is a reasonable probability that there is unappropriated water available for the proposed use, whether the use would unlawfully impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

10. Turtle Creek is a prairie stream that headwaters near Miller, South Dakota, and flows to the James River east of Redfield. It is a seasonal stream with heavier flows in the spring due to snow runoff and thunderstorm or rain events. As the summer progresses, however, the amount of water decreases and the creek becomes a less reliable water source.

11. There are two discontinued United States Geological Survey gaging stations located on Turtle Creek. One of the gages is located approximately four miles upstream of the proposed point of diversion. It was

referred to as the Tulare gage during the hearing. The other gage is located downstream of the Redfield Lake dam and was referred to as the Redfield gage.

12. The Tulare gage provided data regarding the flows of Turtle Creek over a 25 year period of record. The Redfield gage provided flow data for Turtle Creek over a 27 year period of record.

13. The Tulare gage site is currently used by the South Dakota Department of Environment and Natural Resources, Watershed Protection Program as a water quality monitoring site. The water quality monitoring site has a sensor on the bridge which measures the water surface elevation. The sensor takes measurements every fifteen minutes, 365 days a year. That data is retrieved by staff several times a year. At this time, the program has not gone through the necessary steps to convert those measurements into flow data. As a result, the water quality monitoring site currently cannot be used as an active tool to accurately measure flows in the creek.

14. There are approximately five existing water rights downstream of Mr. Peterson's proposed point of diversion. These downstream rights appropriate 4.67 cubic feet per second (cfs) for irrigation and an additional 1,568 acre-feet of storage. Additionally, the Department of Game, Fish and Parks holds a right between the Tulare gage and the proposed diversion for 4,500 acre-feet of storage. Domestic use also exists on Turtle Creek but has not been quantified.

15. DENR witness, Mark Rath, a natural resources engineer with more than twenty years of experience, reviewed the permit application to

determine if unappropriated water was available to satisfy the application and if granting the application would result in an unlawful impairment of existing rights. In conducting his review, Mr. Rath considered the information presented in the application, information regarding the water source, including gaging data and existing domestic use and senior water rights on the water source. Based upon these sources and his education and experience, Mr. Rath opined there was unappropriated water available to fulfill the application.

16. Mr. Rath testified that when determining whether unappropriated water is available in a surface water source, timing is the key issue. The water must be available when it is needed.

17. Mr. Rath examined the data provided by the Tulare and Redfield gaging stations. Looking at the median daily values for the entire period of record, Mr. Rath concluded that during the spring months (March to early May) there is significant flow which drops off as the summer progresses.

18. Given information that climatic conditions had increased the amount of water currently available, coupled with the fact that the gaging stations on Turtle Creek had been discontinued, Mr. Rath examined two other similarly-situated surface water sources with active gaging stations to determine the effect, if any of climatic conditions. Mr. Rath specifically examined Elm River and Firesteel Creek because these creeks drain similar size areas, are in a regional proximity to Turtle Creek, and have active USGS gaging sites which were in operation during the entire period of record as the Turtle Creek gaging stations. Based upon his review of these two surface

sources, Mr. Rath determined that there was an increase of water available than what had been determined to be available twenty five years ago but that most of the increased flow occurs in the spring months of March, April, and May and tapers off during the summer months. Because of the similarities between these two sources and Turtle Creek, Mr. Rath expects that Turtle Creek is experiencing the same increase in the amount of water available. This analysis supports the conclusion that there is unappropriated water available in Turtle Creek.

19. Mr. Rath further testified that a review of the historical data of Turtle Creek obtained from the two discontinued USGS gaging stations, demonstrates that flows drastically drop off at the end of May. As a result, the Chief Engineer recommended a June 1 shut-off date to protect the existing water rights with the option that if there is sufficient water flowing, the Chief Engineer could issue a written order allowing Mr. Peterson an extended period of use.

20. The Board also received the testimony of Mr. Dennis Odens on behalf of Mr. Peterson. Mr. Odens is Senior Projects Manager with Banner Associates, Inc. Mr. Odens is a Professional Engineer with over 37 years of experience.

21. Mr. Odens utilized the data from construction of the bridge where the water quality monitoring site is located and the data compiled from the water quality monitoring site and constructed a rating curve to convert the raw data obtained from the site over the last five years into flow measurements.

Once converted into flow data, Mr. Odens analyzed the data to determine the availability of water. Mr. Odens reached a similar conclusion as Mr. Rath, that there has been a climatic change resulting in an increased amount of water currently available. Mr. Odens also testified his findings somewhat mirrored the findings of Mr. Rath in that the water availability tapers off in late summer; however Mr. Odens opined that it would be probable that Mr. Peterson could irrigate through and during the month of June. Mr. Odens recommended that Mr. Peterson's ability to irrigate should be linked to the water surface elevation of 1304.63 feet mean sea level at the location of the bridge, which is based on his calculation of the water surface elevation when there is 8 cfs flowing in the creek.

22. Mr. Odens additionally testified that the elevation change between 8 cfs and 7 cfs based upon his calculations is .03 feet or .36 inches. He further testified that he did not account for domestic use in determining that there would be sufficient water to meet the requirements of the senior rights if there was 8 cfs available in Turtle Creek.

23. Mr. Peterson, the applicant, also testified in support of his application. Mr. Peterson testified that he wishes to put the water to the beneficial use of irrigation of his cropland and urged the Board to issue his permit without a shut-off date and without a qualification of flow going over the Redfield Lake spillway.

24. Petitioner, City of Redfield, offered the testimony of Mr. Terry Helms with Helms and Associates. Mr. Helms is a Professional Engineer with more than forty years of experience.

25. Mr. Helms agreed with the determinations of Mr. Rath and Mr. Odens that there was unappropriated water available but disagreed with Mr. Odens' opinion that Mr. Peterson could, generally, irrigate during the entire month of June. Mr. Helms stated that without continuously monitoring the creek channel, the data obtained from the water quality monitoring site is less reliable. Mr. Helms also testified that he stopped and observed the Tulare site the morning of the hearing and observed a fence strung across the creek. Such an obstruction would skew the elevation measurements and potentially impair downstream senior rights.

26. Mr. Helms further testified that, in his opinion, the use of the spillway provides the most precise method currently in existence on Turtle Creek for monitoring the water use. Mr. Helms stated that the spillway has been in existence for a great period of time and that its elevation does not change and, therefore, it will remain an accurate measurement.

27. Tom Lesselyoung also provided testimony to the Board. Mr. Lesselyoung is the water and wastewater superintendent for the City of Redfield. Mr. Lessleyoung testified that the City has several wells which are not currently in use. He further testified that the City is currently using WEB water as the primary source of water but relies upon the Redfield Lake dam

and Turtle Creek as a secondary source of water, particularly for fire protection.

28. Rich Gruenwald also testified before the Board. Mr. Gruenwald is the Fire Chief for the City of Redfield. Mr. Gruenwald testified that the City's water rights are an integral part of the City's fire protection plan; illustrated by the purchase of several pumps and pumper trucks which can draw water directly out of the Redfield Lake.

29. Adam Hansen, the Finance Officer for the City of Redfield, also testified as to the City's use of, and dependence upon, its Turtle Creek water permits for recreation and irrigation.

30. The Board also received the testimony of Jeanne Goodman, Chief Engineer. The Chief Engineer testified that the law and the technical information available for Turtle Creek have changed since the last permit for this water source was issued. She further testified regarding her concerns with Mr. Odens' suggestion of administering the water rights based upon the water surface elevation denoted by a marker. She expressed concerns regarding the accuracy and difficulty of implementing such a method. She further testified that after reviewing all the reports submitted in this matter and personally inspecting the length of the creek between the gaging stations, it was her opinion that, not only was a June 1 shut-off date appropriate to protect senior rights, but that the qualification requiring flow over the entire length of the spillway was the most efficient method of administration.

31. The Board finds that while there is unappropriated water available, the evidence does not support the probability of that such water would be available after June 1 as June flows are unreliable.

32. The Board further finds that the recommendation of the Chief Engineer to implement a June 1 shut-off date and to require flow over the entire width of the Redfield Lake spillway is fair and reasonable and provides the protection required under the law for senior rights while placing the water to maximum beneficial use.

33. The Board further finds that there would not be an unlawful impairment to an existing water right should this application be granted with the qualifications recommended by the Chief Engineer.

34. The Board further finds that the proposed use of the water for irrigation constitutes a beneficial use.

35. Additionally, the Board finds that placing the water to this beneficial use is in the public interest.

36. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

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

CONCLUSIONS OF LAW

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

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

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

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

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation.

7. There is a reasonable probability that there is unappropriated water available to satisfy this application.

8. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed as proposed without unlawful impairment to the existing rights with the qualifications recommended by the Chief Engineer, particularly that the applicant shall not irrigate after June 1 unless the Chief Engineer issues a

written order authorizing an extension and that irrigation under this permit is not permissible unless water is discharging across the entire length of the spillway weir at Redfield dam.

9. The Board further finds that the use proposed by the application is a beneficial use and is the public interest.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8268-3 is hereby granted with the following qualifications:

1. Diversion of the water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

   c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders have been issued by the Chief Engineer.

   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in

the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL § 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Permit No. 8268-3 is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this _____ day of December, 2017.

BY THE BOARD:

_____

Jim Hutmacher, Chairman
South Dakota Water Management Board

pld_AFM Lenny Peterson – Proposed Findings of Fact and Conclusions of Law (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of November 2017, true and correct copies of DENR'S Proposed Findings of Fact and Conclusions of Law in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

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pld_AFM Lenny Peterson - COS (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	PETERSON'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the South Dakota Water Management Board for hearing on October 7, 2017. Board members Tim Bjork, Chad Comes, Ev Hoyt, and Leo Holzbauer were present and heard the evidence presented. Applicant, Lenny Peterson, was represented by Mr. Ray Rylance. Ms. Ann Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR). Petitioner, City of Redfield, was represented by Mr. Jack Hieb.

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

FINDINGS OF FACT

1. Mr. Peterson seeks a permit to appropriate water from Turtle Creek from a diversion point located between the NE¼NW¼ Section 11 and the S½SW¼ Section 12, all in T115N-R65W in Spink County. The point of diversion is approximately nine miles southwest of Redfield.

2. The sole proposed use is for irrigation of the 450 acres located in the W½ Section 11 and S½ Section 12, T115N-R65W in Spink County at a

diversion rate of up to 2.67 cubic feet of water per second (cfs) with a limited annual volume of 300 acre-feet of water.

3. The Chief Engineer recommended approval of the application with the following qualifications:

- Diversion of the water from Turtle Creek authorized by the permit would be subject to the following:

  a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

  b. Diversion of water under the permit would be subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

  c. The permit would not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders are issued by the Chief Engineer.

  d. The permit would authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

- The Water Management Board would retain jurisdiction of the permit in the event that additional information would demonstrate that changes were required to protect domestic uses or senior water rights.

- That the Chief Engineer, or her designated representative, pursuant to SDCL § 46-2-19, could enter upon the lands authorized by the permit for the purpose of inspecting works and determining if the irrigation system is operational.
- Finally, the permit would be approved subject to the submission of the annual irrigation questionnaire.

4. Notice of the application and hearing was timely advertised in The Redfield Press and The Plainsman on May 31, 2017. The notice further provided that petitions to intervene were to be filed by June 30, 2017.

5. Mr. Peterson submitted a petition in opposition to the Chief Engineer's recommendation regarding his application on June 20, 2017. At the hearing, Mr. Peterson specifically objected to the imposition of a June 1 shutoff date, the qualification requiring flow over the extent of the spillway weir at Redfield dam, and to his permit being subject to senior water rights.

6. DENR also received timely petitions to intervene from the following parties: City of Redfield, Casey Fey, Eldwin Haskell, Bill and Jane Newton, South Dakota Department of Game, Fish and Parks, Patrick and Marti Thelen, Roger McIntyre, Mary Stewart, Kurt Permann, Dale and Connie Fiedler, Mavis McFarlane, Robert and Connie Tiff, Danny Booze, Dennis Stewart, Dr. Randall J. Waldner, Perry Schmidt, Joe and Karen Jungwirth, John Solheim, Inez Booze, Les and Audrey Helm, Earl and Sheila Sprague, Dave and Marion Moeller, Kenneth Booze, Bryon and Kathi Anderson, David Booze, and Dan

Esser. With the exception of the City of Redfield, none of the intervening parties appeared at the hearing.

7. The parties participating at the hearing included the applicant, DENR, and the City of Redfield.

8. In order to approve an application for a new water permit, the Board must determine that there is a reasonable probability that there is unappropriated water available for the proposed use, whether the use would unlawfully impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

9. There are two discontinued United States Geological Survey gaging stations located on Turtle Creek. One of the gages is located approximately four miles upstream of the proposed point of diversion. It was referred to as the Tulare gage during the hearing. The other gage is located downstream of the Redfield Lake dam and was referred to as the Redfield gage.

10. The Tulare gage provided data regarding the flows of Turtle Creek over a 25 year period of record. The Redfield gage provided flow data for Turtle Creek over a 27 year period of record.

11. There are approximately five existing water rights downstream of Mr. Peterson's proposed point of diversion. These downstream rights appropriate 4.67 cubic feet per second (cfs) for irrigation and an additional 1,568 acre-feet of storage. Additionally, the Department of Game, Fish and Parks holds a right between the Tulare gage and the proposed diversion for

4,500 acre-feet of storage. Domestic use also exists on Turtle Creek but has not been quantified.

12. DENR witness, Mark Rath, a natural resources engineer with more than twenty years of experience, reviewed the permit application to determine if unappropriated water was available to satisfy the application and if granting the application would result in an unlawful impairment of existing rights. In conducting his review, Mr. Rath considered the information presented in the application, information regarding the water source, including gaging data and existing domestic use and senior water rights on the water source. Based upon these sources and his education and experience, Mr. Rath opined there was unappropriated water available to fulfill the application.

13. Mr. Rath testified that when determining whether unappropriated water is available in a surface water source, timing is the key issue. The water must be available when it is needed.

14. Mr. Rath examined the data provided by the Tulare and Redfield gaging stations. Looking at the median daily values for the entire period of record, Mr. Rath concluded that during the spring months (March to early May) there is significant flow which drops off as the summer progresses.

15. The Board also received the testimony of Mr. Dennis Odens on behalf of Mr. Peterson. Mr. Odens is Senior Projects Manager with Banner Associates, Inc. Mr. Odens is a Professional Engineer with over 37 years of experience.

16. Mr. Odens utilized the data from construction of the bridge where the water quality monitoring site is located and the data compiled from the water quality monitoring site and constructed a rating curve to convert the raw data obtained from the site over the last five years into flow measurements. Once converted into flow data, Mr. Odens analyzed the data to determine the availability of water. Mr. Odens reached a similar conclusion as Mr. Rath, that there has been a climatic change resulting in an increased amount of water currently available. Mr. Odens also testified his findings somewhat mirrored the findings of Mr. Rath in that the water availability tapers off in late summer; however Mr. Odens opined that it would be probable that Mr. Peterson could irrigate through and during the month of June. Mr. Odens recommended that Mr. Peterson's ability to irrigate should be linked to the water surface elevation of 1304.63 feet mean sea level at the location of the bridge, which is based on his calculation of the water surface elevation when there is 8 cfs flowing in the creek.

17. Mr. Odens additionally testified that the elevation change between 8 cfs and 7 cfs based upon his calculations is .03 feet or .36 inches. He further testified that he did not account for domestic use in determining that there would be sufficient water to meet the requirements of the senior rights if there was 8 cfs available in Turtle Creek.

18. Mr. Peterson, the applicant, also testified in support of his application. Mr. Peterson testified that he wishes to put the water to the beneficial use of irrigation of his cropland and urged the Board to issue his

permit without a shut-off date and without a qualification of flow going over the Redfield Lake spillway.

19. Petitioner, City of Redfield, offered the testimony of Mr. Terry Helms with Helms and Associates. Mr. Helms is a Professional Engineer with more than forty years of experience.

20. The evidence supports that water would be available for the month of June, for Peterson's application without interfering with existing downstream water rights.

21. The existing water right holders do not have restrictions or condition to bypass water for downstream users with earlier priority water rights.

22. The city of Redfield's water permit, for fire protection, has expired due to non-use pursuant to regulation 74:02:01:37.02, 7SDR40, 24SDR90. And SDCL46-2-5.

CONCLUSIONS OF LAW

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

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

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

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

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation.

7. There is a reasonable probability that there is unappropriated water available to satisfy this application.

8. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed as proposed without unlawful impairment to the existing rights without the qualifications recommended by the Chief Engineer, particularly that the applicant shall not irrigate after June 1 unless the Chief Engineer issues a written order authorizing an extension and that irrigation under this permit is not permissible unless water is discharging across the entire length of the spillway weir at Redfield dam.

9. The Board further finds that the use proposed by the application is a beneficial use and is the public interest.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8268-3 is hereby granted with the following qualifications:

1. Diversion of the water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water.

   b. Diversion of water under this permit is subject to senior water rights.

   c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 30th of each calendar year unless written orders have been issued by the Chief Engineer.

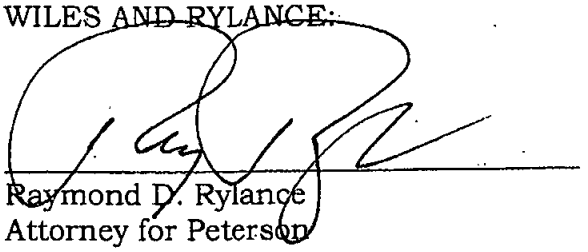
2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL § 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Permit No. 8268-3 is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 21st day of November, 2017.

WILES AND RYLANCE:



Raymond D. Rylance
Attorney for Peterson

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of November 2017, true and correct copies of Lenny Peterson's Proposed Findings of Fact and Conclusions of Law in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

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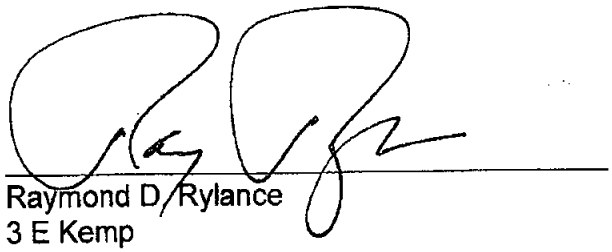
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STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	PETERSON'S OBJECTIONS OF DENR FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW, Lenny Peterson, by and through his attorney of Record, Raymond D. Rylance, and makes the following Objections to Proposed Findings of Fact and Conclusions of Law

OBJECTIONS

Peterson objects to the following Findings of Fact and Conclusion of Law proposed by the DENR: 7, 8, 10, 13, 18, 19, 25, 26, 27, 28, 29, 30, 32, 33

Peterson's objects to that the portion of #31, which states the evidence does not support the probability of that such water would be available after June 1 as June flows are unreliable.

Peterson objects to Conclusion of Law #8.

Dated this 21st day of November, 2017.

WILES AND RYLANCE:

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December 1, 2017

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Water Rights Program DENR
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Ann F. Mines Bailey
Assistant Attorney General
HAND-DELIVERED

Re: *In the Matter of Water Application No. 8268-3, Lenny Peterson*

Dear Counsel and Chief Engineer:

Enclosed please find the proposed Water Management Board's Rulings on Parties' Submissions and proposed Findings of Fact, Conclusions of Law and Final Decision I have prepared in the above matter. The documents were prepared consistent with statements made at the October 4, 2017, meeting of the Water Management Board. The Board will consider these proposals at its December meeting. It is within the Board's discretion whether oral argument by the parties will be afforded prior to consideration of the matter.

Yours truly,

Matt Naasz
Assistant Attorney General

MN/cmm
Enclosures

cc w/enc: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of December 2017, true and correct copies of the Water Management Board's Rulings on Parties' Submissions and Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

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Redfield, SD 57469

Paul & Lisa Cosato
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Redfield, SD 57469

Ron & Onilee Siebrecht
511 W 4th Ave
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Ms. Inez Booze
37865 SD Hwy 26
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Casey Fey
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Jim Hutmacher
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And hand-delivered to:

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Counsel for the Water Management Board

pld_MN Lenny Peterson – COS Rulings on Submissions and FFCL (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	WATER MANAGEMENT BOARD'S RULINGS ON PARTIES' SUBMISSIONS

Pursuant to the direction of the Water Management Board, counsel for the DENR Water Rights Program submitted Proposed Findings of Fact and Conclusions of Law and Final Decision in the above-captioned matter. Subsequently, Mr. Ray Rylance, counsel for Applicant Lenny Peterson, submitted proposed Findings of Fact, Conclusions of Law and Final Decision. The Board, upon review of the submissions received, the administrative record, and having orally entered its decision, enters the following rulings:

A. DENR's proposed Findings of Fact are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision with the following changes:

1. In proposed Finding of Fact #9, insert "not" between "would" and "unlawfully."
2. In proposed Finding of Fact #21, insert "Tulare gage-site" between "construction of the" and "bridge where the water quality monitoring site is located."

B. DENR's Proposed Conclusions of Law are accepted by the Board as consistent with and supported by the administrative record, the Board's oral decision and the Findings of Fact adopted by the Board in the above rulings.

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

D. Applicant's Proposed Findings of Fact and Conclusions of Law are rejected by the Board to the extent they are inconsistent with these rulings and with the Board's adopted Findings of Fact, Conclusions of Law and Final Decision. The Board's Findings of Fact, Conclusions of Law, and Final Decision are consistent with and supported by the administrative record and are a reasonable interpretation and application of the applicable provisions of South Dakota law.

E. Applicant's objections to DENR's Proposed Findings of Fact and Conclusions of Law are overruled.

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

Dated this _____ day of December 2017.

BY THE BOARD:

_____

Jim Hutmacher, Chairman
South Dakota Water Management Board

pld_MN Lenny Peterson – Rulings on Parties' Submissions (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on October 4, 2017. Board members Tim Bjork, Chad Comes, Ev Hoyt, and Leo Holzbauer were present and heard the evidence presented. Applicant, Lenny Peterson, was represented by Mr. Ray Rylance. Ms. Ann Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR). Petitioner, City of Redfield, was represented by Mr. Jack Hieb.

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

FINDINGS OF FACT

1. Mr. Peterson seeks a permit to appropriate water from Turtle Creek from a diversion point located between the NE¼NW¼ Section 11 and the S½SW¼ Section 12, all in T115N-R65W in Spink County. The point of diversion is approximately nine miles southwest of Redfield.

2. The sole proposed use is for irrigation of the 450 acres located in the W½ Section 11 and S½ Section 12, T115N-R65W in Spink County at a

diversion rate of up to 2.67 cubic feet of water per second (cfs) with a limited annual volume of 300 acre-feet of water.

3. The Chief Engineer recommended approval of the application with the following qualifications:

- Diversion of the water from Turtle Creek authorized by the permit would be subject to the following:

  a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

  b. Diversion of water under the permit would be subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

  c. The permit would not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders are issued by the Chief Engineer.

  d. The permit would authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

- The Water Management Board would retain jurisdiction of the permit in the event that additional information would demonstrate that changes were required to protect domestic uses or senior water rights.

- That the Chief Engineer, or her designated representative, pursuant to SDCL § 46-2-19, could enter upon the lands authorized by the permit for the purpose of inspecting works and determining if the irrigation system is operational.
- Finally, the permit would be approved subject to the submission of the annual irrigation questionnaire.

4. Notice of the application and hearing was timely advertised in The Redfield Press and The Plainsman on May 31, 2017. The notice further provided that petitions to intervene were to be filed by June 30, 2017.

5. Mr. Peterson submitted a petition in opposition to the Chief Engineer's recommendation regarding his application on June 20, 2017. At the hearing, Mr. Peterson specifically objected to the imposition of a June 1 shutoff date, the qualification requiring flow over the extent of the spillway weir at Redfield dam, and to his permit being subject to senior water rights.

6. DENR also received timely petitions to intervene from the following parties: City of Redfield, Casey Fey, Eldwin Haskell, Bill and Jane Newton, South Dakota Department of Game, Fish and Parks, Patrick and Marti Thelen, Roger McIntyre, Mary Stewart, Kurt Permann, Dale and Connie Fiedler, Mavis McFarlane, Robert and Connie Tiff, Danny Booze, Dennis Stewart, Dr. Randall J. Waldner, Perry Schmidt, Joe and Karen Jungwirth, John Solheim, Inez Booze, Les and Audrey Helm, Earl and Sheila Sprague, Dave and Marion Moeller, Kenneth Booze, Bryon and Kathi Anderson, David Booze, and Dan

Esser. With the exception of the City of Redfield, none of the intervening parties appeared at the hearing.

7. DENR also received the petitions from the following individuals after the filing deadline: Paul and Lisa Cosato, Wesley Jaton, Ron Siebrecht, Onilee Siebrecht, Mary Ann Schone, Corey Hieb, and Joan Eaton. Mr. Peterson objected to receipt of the petitions as they were untimely. The Board overruled the objection and allowed the petitioners to become parties to the hearing.

8. The parties participating at the hearing included the applicant, DENR, and the City of Redfield.

9. In order to approve an application for a new water permit, the Board must determine that there is a reasonable probability that there is unappropriated water available for the proposed use, that the use would not unlawfully impair existing rights, that the use would be a beneficial use, and that the proposed use is in the public interest.

10. Turtle Creek is a prairie stream that headwaters near Miller, South Dakota, and flows to the James River east of Redfield. It is a seasonal stream with heavier flows in the spring due to snow runoff and thunderstorm or rain events. As the summer progresses, however, the amount of water decreases and the creek becomes a less reliable water source.

11. There are two discontinued United States Geological Survey gaging stations located on Turtle Creek. One of the gages is located approximately four miles upstream of the proposed point of diversion. It was

referred to as the Tulare gage during the hearing. The other gage is located downstream of the Redfield Lake dam and was referred to as the Redfield gage.

12. The Tulare gage provided data regarding the flows of Turtle Creek over a 25 year period of record. The Redfield gage provided flow data for Turtle Creek over a 27 year period of record.

13. The Tulare gage site is currently used by the South Dakota Department of Environment and Natural Resources, Watershed Protection Program as a water quality monitoring site. The water quality monitoring site has a sensor on the bridge which measures the water surface elevation. The sensor takes measurements every fifteen minutes, 365 days a year. That data is retrieved by staff several times a year. At this time, the program has not gone through the necessary steps to convert those measurements into flow data. As a result, the water quality monitoring site currently cannot be used as an active tool to accurately measure flows in the creek.

14. There are approximately five existing water rights downstream of Mr. Peterson's proposed point of diversion. These downstream rights appropriate 4.67 cubic feet per second (cfs) for irrigation and an additional 1,568 acre-feet of storage. Additionally, the Department of Game, Fish and Parks holds a right between the Tulare gage and the proposed diversion for 4,500 acre-feet of storage. Domestic use also exists on Turtle Creek but has not been quantified.

15. DENR witness, Mark Rath, a natural resources engineer with more than twenty years of experience, reviewed the permit application to

determine if unappropriated water was available to satisfy the application and if granting the application would result in an unlawful impairment of existing rights. In conducting his review, Mr. Rath considered the information presented in the application, information regarding the water source, including gaging data and existing domestic use and senior water rights on the water source. Based upon these sources and his education and experience, Mr. Rath opined there was unappropriated water available to fulfill the application.

16. Mr. Rath testified that when determining whether unappropriated water is available in a surface water source, timing is the key issue. The water must be available when it is needed.

17. Mr. Rath examined the data provided by the Tulare and Redfield gaging stations. Looking at the median daily values for the entire period of record, Mr. Rath concluded that during the spring months (March to early May) there is significant flow which drops off as the summer progresses.

18. Given information that climatic conditions had increased the amount of water currently available, coupled with the fact that the gaging stations on Turtle Creek had been discontinued, Mr. Rath examined two other similarly-situated surface water sources with active gaging stations to determine the effect, if any of climatic conditions. Mr. Rath specifically examined Elm River and Firesteel Creek because these creeks drain similar size areas, are in a regional proximity to Turtle Creek, and have active USGS gaging sites which were in operation during the entire period of record as the Turtle Creek gaging stations. Based upon his review of these two surface

sources, Mr. Rath determined that there was an increase of water available compared to what had been determined to be available twenty five years ago, but that most of the increased flow occurs in the spring months of March, April, and May and tapers off during the summer months. Because of the similarities between these two sources and Turtle Creek, Mr. Rath expects that Turtle Creek is experiencing the same increase in the amount of water available. This analysis supports the conclusion that there is unappropriated water available in Turtle Creek.

19. Mr. Rath further testified that a review of the historical data of Turtle Creek obtained from the two discontinued USGS gaging stations demonstrates that flows drastically drop off at the end of May. As a result, the Chief Engineer recommended a June 1 shut-off date to protect the existing water rights with the option that if there is sufficient water flowing, the Chief Engineer could issue a written order allowing Mr. Peterson an extended period of use.

20. The Board also received the testimony of Mr. Dennis Odens on behalf of Mr. Peterson. Mr. Odens is Senior Projects Manager with Banner Associates, Inc. Mr. Odens is a Professional Engineer with over 37 years of experience.

21. Mr. Odens utilized the data from construction of the Tulare gage-site bridge where the water quality monitoring site is located and the data compiled from the water quality monitoring site and constructed a rating curve to convert the raw data obtained from the site over the last five years into flow

measurements. Once converted into flow data, Mr. Odens analyzed the data to determine the availability of water. Mr. Odens reached a similar conclusion as Mr. Rath, that there has been a climatic change resulting in an increased amount of water currently available. Mr. Odens also testified his findings somewhat mirrored the findings of Mr. Rath in that the water availability tapers off in late summer; however Mr. Odens opined that it would be probable that Mr. Peterson could irrigate through and during the month of June. Mr. Odens recommended that Mr. Peterson's ability to irrigate should be linked to the water surface elevation of 1304.63 feet mean sea level at the location of the bridge, which is based on his calculation of the water surface elevation when there is 8 cfs flowing in the creek.

22. Mr. Odens additionally testified that the elevation change between 8 cfs and 7 cfs based upon his calculations is .03 feet or .36 inches. He further testified that he did not account for domestic use in determining that there would be sufficient water to meet the requirements of the senior rights if there was 8 cfs available in Turtle Creek.

23. Mr. Peterson, the applicant, also testified in support of his application. Mr. Peterson testified that he wishes to put the water to the beneficial use of irrigation of his cropland and urged the Board to issue his permit without a shut-off date and without a qualification of flow going over the Redfield Lake spillway.

24. Petitioner, City of Redfield, offered the testimony of Mr. Terry Helms with Helms and Associates. Mr. Helms is a Professional Engineer with more than forty years of experience.

25. Mr. Helms agreed with the determinations of Mr. Rath and Mr. Odens that there was unappropriated water available but disagreed with Mr. Odens' opinion that Mr. Peterson could, generally, irrigate during the entire month of June. Mr. Helms stated that without continuously monitoring the creek channel, the data obtained from the water quality monitoring site is less reliable. Mr. Helms also testified that he stopped and observed the Tulare site the morning of the hearing and observed a fence strung across the creek. Such an obstruction would skew the elevation measurements and potentially impair downstream senior rights.

26. Mr. Helms further testified that, in his opinion, the use of the spillway provides the most precise method currently in existence on Turtle Creek for monitoring the water use. Mr. Helms stated that the spillway has been in existence for a great period of time and that its elevation does not change and, therefore, it will remain an accurate measurement.

27. Tom Lesselyoung also provided testimony to the Board. Mr. Lesselyoung is the water and wastewater superintendent for the City of Redfield. Mr. Lessleyoung testified that the City has several wells which are not currently in use. He further testified that the City is currently using WEB water as the primary source of water but relies upon the Redfield Lake dam

and Turtle Creek as a secondary source of water, particularly for fire protection.

28. Rich Gruenwald also testified before the Board. Mr. Gruenwald is the Fire Chief for the City of Redfield. Mr. Gruenwald testified that the City's water rights are an integral part of the City's fire protection plan; illustrated by the purchase of several pumps and pumper trucks which can draw water directly out of the Redfield Lake.

29. Adam Hansen, the Finance Officer for the City of Redfield, also testified as to the City's use of, and dependence upon, its Turtle Creek water permits for recreation and irrigation.

30. The Board also received the testimony of Jeanne Goodman, Chief Engineer. The Chief Engineer testified that the law and the technical information available for Turtle Creek have changed since the last permit for this water source was issued. She further testified regarding her concerns with Mr. Odens' suggestion of administering the water rights based upon the water surface elevation denoted by a marker. She expressed concerns regarding the accuracy and difficulty of implementing such a method. She further testified that after reviewing all the reports submitted in this matter and personally inspecting the length of the creek between the gaging stations, it was her opinion that, not only was a June 1 shut-off date appropriate to protect senior rights, but that the qualification requiring flow over the entire length of the spillway was the most efficient method of administration.

31. The Board finds that while there is unappropriated water available, the evidence does not support the probability that such water would be available after June 1 as June flows are unreliable.

32. The Board further finds that the recommendation of the Chief Engineer to implement a June 1 shut-off date and to require flow over the entire width of the Redfield Lake spillway is fair and reasonable and provides the protection required under the law for senior rights while placing the water to maximum beneficial use.

33. The Board further finds that there would not be an unlawful impairment to an existing water right should this application be granted with the qualifications recommended by the Chief Engineer.

34. The Board further finds that the proposed use of the water for irrigation constitutes a beneficial use.

35. Additionally, the Board finds that placing the water to this beneficial use is in the public interest.

36. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

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

CONCLUSIONS OF LAW

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

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

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

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

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation.

7. There is a reasonable probability that there is unappropriated water available to satisfy this application.

8. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed as proposed without unlawful impairment to the existing rights with the qualifications recommended by the Chief Engineer, particularly that the applicant shall not irrigate after June 1 unless the Chief Engineer issues a

written order authorizing an extension and that irrigation under this permit is not permissible unless water is discharging across the entire length of the spillway weir at Redfield dam.

9. The Board further finds that the use proposed by the application is a beneficial use and is the public interest.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8268-3 is hereby granted with the following qualifications:

1. Diversion of the water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders have been issued by the Chief Engineer.

d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in

the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL § 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Permit No. 8268-3 is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this _____ day of December 2017.

BY THE BOARD:

_____

Jim Hutmacher, Chairman
South Dakota Water Management Board

pld_MN Lenny Peterson – Findings of Fact, Conclusions of Law and Final Decision (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	))))	NOTICE OF ENTRY OF RULINGS AND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION

TO: **Ray Rylance**, Counsel for Lenny Peterson, Wiles & Rylance LLP, PO Box 227, Watertown, SD 57201-0227; **Kimberly A. Dorsett & Jack H. Hieb,** Counsel for City of Redfield, Richardson, Wyly, Wise, Sauk & Heib LLP, PO Box 1030, Aberdeen, SD 57401; **Lenny Peterson**, 19111 Maple Ave., Hitchcock, SD 57328; **Earl & Sheila Sprague**, 925 West 5th Street, Redfield, SD 57469; **Kurt Permann**, 226 E 1st Street, Redfield, SD 57469; **Bill & Jane Newton**, 902 W 5th Street, Redfield, SD 57469; **Kenneth Booze**, 23659 455th Ave., Madison, SD 57042; **Eldwin Haskell**, 504 W 10th Ave., Redfield, SD 57469; **David Booze**, 37865 SD Hwy 26, Redfield, SD 57469; **Patrick & Marti Thelen**, 904 W. 5th Street, Redfield, SD 57469; **Ms. Inez Booze**, 37865 SD Hwy 26, Redfield, SD 57469; **Dan Esser**, 16774 379th Ave., Redfield, SD 57469; **Perry Schmidt**, 38221 174th Street, Redfield, SD 57469; **South Dakota Department of Game, Fish and Parks, John Lott**, 523 E Capitol, Pierre, SD 57501; **Casey Fey, Red Ash Ranch**, 16911 SD Hwy 281, Ashton, SD 57424; **Danny Booze**, 16911 US Hwy 281, Ashton, SD 57424-6101; **Dale & Connie Fiedler,** 903 W 5th Street, Redfield, SD 57469; **John Solheim**, 501 W 4th Ave., Redfield, SD 57469; **Robert & Connie Tiff**, PO Box 596, Redfield, SD 57469; **Mary Stewart**, 911 W 5th Street, Redfield, SD 57469; **Joe & Karen Jungwirth**, 38442 10th Ave., Redfield, SD 57469; **Dennis Stewart**, 911 W 5th Street, Redfield, SD 57469; **Mavis McFarlane**, 905 W 5th Street, Redfield, SD 57469; **Roger McIntyre**, 38293 179th Street, Redfield, SD 57469; **Dave & Marion Moeller**, 1312 S Main Street, Redfield, SD 57469-1631; **Randall J. Waldner, M.D., RW Investment Holdings, LLC**, 18 West 8th Ave., Redfield, SD 57469; **Les and Audrey Helm**, 923 W 5th St., Redfield, SD 57469; **Byron & Kathi Anderson**, 822 W 5th Street, Redfield, SD 57469; **Paul & Lisa Cosato**, 900 W 5th St, Redfield, SD 57469; **Wesley Jaton**, 503 W 4th Ave., Redfield, SD 57469; **Ron & Onilee Siebrecht**, 511 W 4th Ave, Redfield, SD 57469; **Mary Ann Schone**, 527 W 4th Ave, Redfield, SD 57469; **Corey Hieb**, 601 W 4th Ave., Redfield, SD 57469; **Joan B Eaton**, 407 W 4th Ave., Redfield, SD 57469:

NOTICE IS HEREBY GIVEN that on the 7th day of December, 2017, the South Dakota Water Management Board entered its Rulings on the Parties' Submissions, and its Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter, copies of which are attached hereto and incorporated herein.

Dated this 14th day of December 2017.

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

Counsel for Water Rights Program, DENR

pld_AFM Lenny Peterson – Notice of Entry (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	WATER MANAGEMENT BOARD'S RULINGS ON PARTIES' SUBMISSIONS

Pursuant to the direction of the Water Management Board, counsel for the DENR Water Rights Program submitted Proposed Findings of Fact and Conclusions of Law and Final Decision in the above-captioned matter. Subsequently, Mr. Ray Rylance, counsel for Applicant Lenny Peterson, submitted proposed Findings of Fact, Conclusions of Law and Final Decision. The Board, upon review of the su missions received, the administrative record, and having orally entered its decision, enters the following rulings:

A. DENR's proposed Findings of Fact are accepted by the Board as consistent with and supported by the administrative record and the Board's oral decision with the following changes:

1. In Proposed Finding of Fact #9, insert "not" between "would" and "unlawfully."

2. Change the last sentence of Proposed Finding of Fact #15 to read as follows: "Based upon these sources and his education and experience, Mr. Rath opined that while there is reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use

prior to June 1 in most years, there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years."

3. Change the last sentence of Proposed Finding of Fact #18 to read as follows: "This analysis supports Mr. Rath's conclusion that while there is reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years."

4. In Proposed Finding of Fact #21, insert "Tulare gage-site" between "construction of the" and "bridge where the water quality monitoring site is located."

5. Change Proposed Finding of Fact #31 to read as follows: "The Board finds that while the evidence supports that there is reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, the evidence supports that there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years."

B. DENR's Proposed Conclusions of Law are accepted by the Board as consistent with and supported by the administrative record, the Board's oral

decision and the Findings of Fact adopted by the Board in the above rulings, with the following changes:

1. Change Proposed Conclusion of Law #7 to read as follows: "There is reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, but there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years.

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

D. Applicant's Proposed Findings of Fact and Conclusions of Law are rejected by the Board to the extent they are inconsistent with these rulings and with the Board's adopted Findings of Fact, Conclusions of Law and Final Decision. The Board's Findings of Fact, Conclusions of Law, and Final Decision are consistent with and supported by the administrative record and are a reasonable interpretation and application of the applicable provisions of South Dakota law.

E. Applicant's objections to DENR's Proposed Findings of Fact and Conclusions of Law are overruled.

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

Dated this 7 day of December 2017.

BY THE BOARD:

Tim Bjork, Acting Chairman
South Dakota Water Management Board

pld_MN Lenny Peterson – Rulings on Parties' Submissions (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8268-3, LENNY PETERSON	)))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on October 4, 2017. Board members Tim Bjork, Chad Comes, Ev Hoyt, and Leo Holzbauer were present and heard the evidence presented. Applicant, Lenny Peterson, was represented by Mr. Ray Rylance. Ms. Ann Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR). Petitioner, City of Redfield, was represented by Mr. Jack Hieb.

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

FINDINGS OF FACT

1. Mr. Peterson seeks a permit to appropriate water from Turtle Creek from a diversion point located between the NE¼NW¼ Section 11 and the S½SW¼ Section 12, all in T115N-R65W in Spink County. The point of diversion is approximately nine miles southwest of Redfield.

2. The sole proposed use is for irrigation of the 450 acres located in the W½ Section 11 and S½ Section 12, T115N-R65W in Spink County at a

diversion rate of up to 2.67 cubic feet of water per second (cfs) with a limited annual volume of 300 acre-feet of water.

3. The Chief Engineer recommended approval of the application with the following qualifications:

- Diversion of the water from Turtle Creek authorized by the permit would be subject to the following:

  a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

  b. Diversion of water under the permit would be subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

  c. The permit would not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders are issued by the Chief Engineer.

  d. The permit would authorize diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

- The Water Management Board would retain jurisdiction of the permit in the event that additional information would demonstrate that changes were required to protect domestic uses or senior water rights.

- That the Chief Engineer, or her designated representative, pursuant to SDCL § 46-2-19, could enter upon the lands authorized by the permit for the purpose of inspecting works and determining if the irrigation system is operational.
- Finally, the permit would be approved subject to the submission of the annual irrigation questionnaire.

4. Notice of the application and hearing was timely advertised in The Redfield Press and The Plainsman on May 31, 2017. The notice further provided that petitions to intervene were to be filed by June 30, 2017.

5. Mr. Peterson submitted a petition in opposition to the Chief Engineer's recommendation regarding his application on June 20, 2017. At the hearing, Mr. Peterson specifically objected to the imposition of a June 1 shutoff date, the qualification requiring flow over the extent of the spillway weir at Redfield dam, and to his permit being subject to senior water rights.

6. DENR also received timely petitions to intervene from the following parties: City of Redfield, Casey Fey, Eldwin Haskell, Bill and Jane Newton, South Dakota Department of Game, Fish and Parks, Patrick and Marti Thelen, Roger McIntyre, Mary Stewart, Kurt Permann, Dale and Connie Fiedler, Mavis McFarlane, Robert and Connie Tiff, Danny Booze, Dennis Stewart, Dr. Randall J. Waldner, Perry Schmidt, Joe and Karen Jungwirth, John Solheim, Inez Booze, Les and Audrey Helm, Earl and Sheila Sprague, Dave and Marion Moeller, Kenneth Booze, Bryon and Kathi Anderson, David Booze, and Dan

Esser. With the exception of the City of Redfield, none of the intervening parties appeared at the hearing.

7. DENR also received the petitions from the following individuals after the filing deadline: Paul and Lisa Cosato, Wesley Jaton, Ron Siebrecht, Onilee Siebrecht, Mary Ann Schone, Corey Hieb, and Joan Eaton. Mr. Peterson objected to receipt of the petitions as they were untimely. The Board overruled the objection and allowed the petitioners to become parties to the hearing.

8. The parties participating at the hearing included the applicant, DENR, and the City of Redfield.

9. In order to approve an application for a new water permit, the Board must determine that there is a reasonable probability that there is unappropriated water available for the proposed use, that the use would not unlawfully impair existing rights, that the use would be a beneficial use, and that the proposed use is in the public interest.

10. Turtle Creek is a prairie stream that headwaters near Miller, South Dakota, and flows to the James River east of Redfield. It is a seasonal stream with heavier flows in the spring due to snow runoff and thunderstorm or rain events. As the summer progresses, however, the amount of water decreases and the creek becomes a less reliable water source.

11. There are two discontinued United States Geological Survey gaging stations located on Turtle Creek. One of the gages is located approximately four miles upstream of the proposed point of diversion. It was

referred to as the Tulare gage during the hearing. The other gage is located downstream of the Redfield Lake dam and was referred to as the Redfield gage.

12. The Tulare gage provided data regarding the flows of Turtle Creek over a 25 year period of record. The Redfield gage provided flow data for Turtle Creek over a 27 year period of record.

13. The Tulare gage site is currently used by the South Dakota Department of Environment and Natural Resources, Watershed Protection Program as a water quality monitoring site. The water quality monitoring site has a sensor on the bridge which measures the water surface elevation. The sensor takes measurements every fifteen minutes, 365 days a year. That data is retrieved by staff several times a year. At this time, the program has not gone through the necessary steps to convert those measurements into flow data. As a result, the water quality monitoring site currently cannot be used as an active tool to accurately measure flows in the creek.

14. There are approximately five existing water rights downstream of Mr. Peterson's proposed point of diversion. These downstream rights appropriate 4.67 cubic feet per second (cfs) for irrigation and an additional 1,568 acre-feet of storage. Additionally, the Department of Game, Fish and Parks holds a right between the Tulare gage and the proposed diversion for 4,500 acre-feet of storage. Domestic use also exists on Turtle Creek but has not been quantified.

15. DENR witness, Mark Rath, a natural resources engineer with more than twenty years of experience, reviewed the permit application to

determine if unappropriated water was available to satisfy the application and if granting the application would result in an unlawful impairment of existing rights. In conducting his review, Mr. Rath considered the information presented in the application, information regarding the water source, including gaging data and existing domestic use and senior water rights on the water source. Based upon these sources and his education and experience, Mr. Rath opined that while there is a reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years.

16. Mr. Rath testified that when determining whether unappropriated water is available in a surface water source, timing is the key issue. The water must be available when it is needed.

17. Mr. Rath examined the data provided by the Tulare and Redfield gaging stations. Looking at the median daily values for the entire period of record, Mr. Rath concluded that during the spring months (March to early May) there is significant flow which drops off as the summer progresses.

18. Given information that climatic conditions had increased the amount of water currently available, coupled with the fact that the gaging stations on Turtle Creek had been discontinued, Mr. Rath examined two other similarly-situated surface water sources with active gaging stations to determine the effect, if any of climatic conditions. Mr. Rath specifically

examined Elm River and Firesteel Creek because these creeks drain similar size areas, are in a regional proximity to Turtle Creek, and have active USGS gaging sites which were in operation during the entire period of record as the Turtle Creek gaging stations. Based upon his review of these two surface sources, Mr. Rath determined that there was an increase of water available compared to what had been determined to be available twenty five years ago, but that most of the increased flow occurs in the spring months of March, April, and May and tapers off during the summer months. Because of the similarities between these two sources and Turtle Creek, Mr. Rath expects that Turtle Creek is experiencing the same increase in the amount of water available. This analysis supports Mr. Rath's conclusion that while there is reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years.

19. Mr. Rath further testified that a review of the historical data of Turtle Creek obtained from the two discontinued USGS gaging stations demonstrates that flows drastically drop off at the end of May. As a result, the Chief Engineer recommended a June 1 shut-off date to protect the existing water rights with the option that if there is sufficient water flowing, the Chief Engineer could issue a written order allowing Mr. Peterson an extended period of use.

20. The Board also received the testimony of Mr. Dennis Odens on behalf of Mr. Peterson. Mr. Odens is Senior Projects Manager with Banner Associates, Inc. Mr. Odens is a Professional Engineer with over 37 years of experience.

21. Mr. Odens utilized the data from construction of the Tulare gage-site bridge where the water quality monitoring site is located and the data compiled from the water quality monitoring site and constructed a rating curve to convert the raw data obtained from the site over the last five years into flow measurements. Once converted into flow data, Mr. Odens analyzed the data to determine the availability of water. Mr. Odens reached a similar conclusion as Mr. Rath, that there has been a climatic change resulting in an increased amount of water currently available. Mr. Odens also testified his findings somewhat mirrored the findings of Mr. Rath in that the water availability tapers off in late summer; however Mr. Odens opined that it would be probable that Mr. Peterson could irrigate through and during the month of June. Mr. Odens recommended that Mr. Peterson's ability to irrigate should be linked to the water surface elevation of 1304.63 feet mean sea level at the location of the bridge, which is based on his calculation of the water surface elevation when there is 8 cfs flowing in the creek.

22. Mr. Odens additionally testified that the elevation change between 8 cfs and 7 cfs based upon his calculations is .03 feet or .36 inches. He further testified that he did not account for domestic use in determining

that there would be sufficient water to meet the requirements of the senior rights if there was 8 cfs available in Turtle Creek.

23. Mr. Peterson, the applicant, also testified in support of his application. Mr. Peterson testified that he wishes to put the water to the beneficial use of irrigation of his cropland and urged the Board to issue his permit without a shut-off date and without a qualification of flow going over the Redfield Lake spillway.

24. Petitioner, City of Redfield, offered the testimony of Mr. Terry Helms with Helms and Associates. Mr. Helms is a Professional Engineer with more than forty years of experience.

25. Mr. Helms agreed with the determinations of Mr. Rath and Mr. Odens that there was unappropriated water available but disagreed with Mr. Odens' opinion that Mr. Peterson could, generally, irrigate during the entire month of June. Mr. Helms stated that without continuously monitoring the creek channel, the data obtained from the water quality monitoring site is less reliable. Mr. Helms also testified that he stopped and observed the Tulare site the morning of the hearing and observed a fence strung across the creek. Such an obstruction would skew the elevation measurements and potentially impair downstream senior rights.

26. Mr. Helms further testified that, in his opinion, the use of the spillway provides the most precise method currently in existence on Turtle Creek for monitoring the water use. Mr. Helms stated that the spillway has

been in existence for a great period of time and that its elevation does not change and, therefore, it will remain an accurate measurement.

27. Tom Lesselyoung also provided testimony to the Board. Mr. Lesselyoung is the water and wastewater superintendent for the City of Redfield. Mr. Lessleyoung testified that the City has several wells which are not currently in use. He further testified that the City is currently using WEB water as the primary source of water but relies upon the Redfield Lake dam and Turtle Creek as a secondary source of water, particularly for fire protection.

28. Rich Gruenwald also testified before the Board. Mr. Gruenwald is the Fire Chief for the City of Redfield. Mr. Gruenwald testified that the City's water rights are an integral part of the City's fire protection plan; illustrated by the purchase of several pumps and pumper trucks which can draw water directly out of the Redfield Lake.

29. Adam Hansen, the Finance Officer for the City of Redfield, also testified as to the City's use of, and dependence upon, its Turtle Creek water permits for recreation and irrigation.

30. The Board also received the testimony of Jeanne Goodman, Chief Engineer. The Chief Engineer testified that the law and the technical information available for Turtle Creek have changed since the last permit for this water source was issued. She further testified regarding her concerns with Mr. Odens' suggestion of administering the water rights based upon the water surface elevation denoted by a marker. She expressed concerns regarding the

accuracy and difficulty of implementing such a method. She further testified that after reviewing all the reports submitted in this matter and personally inspecting the length of the creek between the gaging stations, it was her opinion that, not only was a June 1 shut-off date appropriate to protect senior rights, but that the qualification requiring flow over the entire length of the spillway was the most efficient method of administration.

31. The Board finds that while the evidence supports that there is reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, the evidence supports that there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years.

32. The Board further finds that the recommendation of the Chief Engineer to implement a June 1 shut-off date and to require flow over the entire width of the Redfield Lake spillway is fair and reasonable and provides the protection required under the law for senior rights while placing the water to maximum beneficial use.

33. The Board further finds that there would not be an unlawful impairment to an existing water right should this application be granted with the qualifications recommended by the Chief Engineer.

34. The Board further finds that the proposed use of the water for irrigation constitutes a beneficial use.

35. Additionally, the Board finds that placing the water to this beneficial use is in the public interest.

36. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

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

CONCLUSIONS OF LAW

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

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

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

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

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and

in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first element in SDCL § 46-2A-9 is whether there is water available for the appropriation.

7. There is a reasonable probability that there is unappropriated water available from Turtle Creek for applicant's proposed use prior to June 1 in most years, but there is reasonable probability that there is not unappropriated water available from Turtle Creek for applicant's proposed use after June 1 in most years.

8. The second element in SDCL § 46-2A-9 is whether the proposed water use would impair existing rights. The proposed diversion can be developed as proposed without unlawful impairment to the existing rights with the qualifications recommended by the Chief Engineer, particularly that the applicant shall not irrigate after June 1 unless the Chief Engineer issues a written order authorizing an extension and that irrigation under this permit is not permissible unless water is discharging across the entire length of the spillway weir at Redfield dam.

9. The Board further finds that the use proposed by the application is a beneficial use and is the public interest.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Application No. 8268-3 is hereby granted with the following qualifications:

1. Diversion of the water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.

b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.

c. Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year unless written orders have been issued by the Chief Engineer.

d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼NE¼ Section 9, T116N, R64W, in Spink County when pumping is occurring.

2. The Water Management Board retains jurisdiction of Water Permit No. 8268-3 in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.

3. Pursuant to SDCL § 46-2-19, the Chief Engineer, or designated representative, may enter upon the lands authorized by Water Permit No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.

4. Water Permit No. 8268-3 is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 7 day of December 2017.

BY THE BOARD:

Tim Bjork, Acting Chairman
South Dakota Water Management Board

pld_MN Lenny Peterson – Findings of Fact, Conclusions of Law and Final Decision (cm)

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

DEC 2 9 2017

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Enclosed is Water Permit No. 8268-3 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

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

enclosures

c: Ray Rylance, Attorney

8268-3

Rath, Mark

From: Rath, Mark
Sent: Tuesday, October 30, 2018 9:30 AM
To: 'jhieb@rwwsh.com'
Cc: Gronlund, Eric; Goodman, Jeanne; 'alhansen@redfield-sd.com'
Subject: FW: [EXT] Attn Mark Rath

Jack,

This is in regards to your phone call and the email you forwarded on to me concerning an obstruction in Turtle Creek on Lenny Peterson's land. I looked at the photo you provided and it appears to be the same low level field crossing I looked at it in 2016. In 2016 I verified the crossing has a functioning culvert allowing water to flow through it. During high flows, water would also flow over the top of the crossing. Below is a photo I took of it when I was out there in 2016 and below that is a copy of a clipped 2016 FSA aerial photo showing the crossing in reference to the creek which matches up with the photo you provided (located at bottom of this email), but turned about 180 degrees.

In 2016 Lenny Peterson told Eric Gronlund and I he had to put the field crossing in so he could access his farm land on the east side of the creek.

Unless I hear different from you, I do not plan to pursue this issue at this time. Feel free to contact me if you have further questions.

Mark Rath
SD DENR
605-773-3352





From: Duvall, Ron
Sent: Tuesday, October 30, 2018 8:50 AM
To: Rath, Mark
Cc: Walsh, Brian
Subject: FW: [EXT] Attn Mark Rath

Mark, for you…

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

From: Jack Hieb [mailto:jhieb@rwwsh.com]
Sent: Tuesday, October 30, 2018 8:49 AM

To: DENR-INTERNET INFORMATION
Subject: [EXT] Attn Mark Rath

Sent from my iPhone

Begin forwarded message:

> **From:** Adam Hansen <alhansen@redfield-sd.com>
> **Date:** October 30, 2018 at 8:39:24 AM CDT
> **To:** Jack Hieb <jhieb@rwwsh.com>
> **Subject: Peterson Wier**
>
> **From:** 6054600754@vzwpix.com <6054600754@vzwpix.com>
> **Sent:** Tuesday, October 30, 2018 8:38 AM
> **To:** Adam Hansen <alhansen@redfield-sd.com>
> **Subject:** Fwd:



8268-3

DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

June 5, 2020

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

Dear Mr. Peterson:

You sent an email the early part of May enclosing the "Turtle Creek Stream Flow Analysis" prepared by Banner and Associates. I believe you want this report to be the platform to request an amendment to qualification No. 1 to Water Permit No. 8268-3 which appropriates water from Turtle Creek for irrigation. Qualification No. 1 states:

1. Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:
   a) Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b) Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c) Water Permit No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d) Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

DENR believes that the appropriate way to request a change to this qualification is for you to file a water permit application to amend Water Permit No. 8268-3. Specifically, that qualification No. 1 be amended and for you to provide the language for the amended qualification. The Water Rights Program staff will then review the application, make a recommendation and the matter will be public noticed for hearing before the Water Management Board. Until a complete review of the application is conducted, a recommendation can not be made. However, I did discuss with you during our recent phone conversation regarding the need to ensure that existing rights will not be unlawfully impaired.

If you do proceed with filing an application to amend Water Permit No. 8268-3, the soonest that this matter could be brought before the Water Management Board is the October 7 – 8, 2020, meeting.

Sincerely,

Eric Gronlund

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

engineering a better community





www.bannerassociates.com

Final Report

Turtle Creek Stream Flow Analysis

March 2020

Prepared For:
Lenny Peterson

Prepared By:
Banner Associates, Inc.
2307 West 57th St, Ste.102
Sioux Falls, South Dakota 57108
BAI Project No 22590.00.01

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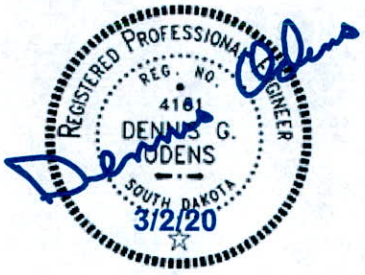
Turtle Creek Steam Flow Analysis

1.0 Introduction

1.1 Background

2.0 Evaluation

3.0 Recommendation



Tables:

Table 1 Bridge Model Calibration

Table 2 – Turtle Creek Flow – Based on Water Quality Monitoring Station WQM 172 (460172)

Table 3 - Median Irrigation Season Flow (cfs) May thru August

Figures:

Figure 1 – Rating Curve – W.S. Elevation at SD DENR water quality gage site.

Appendix A

SD DENR Report 8268-3

Turtle Creek Steam Flow Analysis

1.0 Introduction

Banner Associates Inc. (Banner) entered into a service agreement with Lenny Peterson in April of 2017 to complete a stream flow analysis on Turtle Creek for an irrigation water rights permit application. A report was written that summarized our investigation and recommendations regarding the stream flow in Turtle Creek from May21, 2012 through May 16, 2017. Lenny Peterson ask that the data, computations and report be updated to include the 2019 irrigation season.

1.1 Background

Lenny Peterson, in August of 2016, applied for a water rights permit to irrigate approximately 405 acres of his land in Spink County. This first request included the construction of a small earthen dam to create instream storage. A pump would then be placed in the water storage to divert approximately 5.34 cubic feet per second (cfs) of water for crop irrigation. Following presentation to staff and obtaining the staff report which recommended denial of the permit, the application was withdrawn.

In April of 2017 a new application was presented that would pump water from Turtle Creek at a reduced rate of 2.67 cfs without instream storage. This water would be used to irrigate approximately 450 acres with an annual volume limit of 300 acre-feet.

The staff at SD Department of Environment and Natural Resources (SDDENR) considers four things when making a decision regarding a permit as follows:

1. There is reasonable probability that there is unappropriated water available for the applicants 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.

The state has on record all water right application for Turtle Creek and has determined that in the downstream reach of Turtle Creek there are 5 existing water rights permits appropriating 4.67 cfs of water for irrigation and 2 existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use.

This report will address item 1 to determine if there is reasonable probability that there is unappropriated water available for use. This would mean that present day flows must be greater than 4.67 cfs existing water rights plus 2.67 cfs of the requested water right or a total flow of 7.34 cfs during the irrigation period.

2.0 Evaluation

Historical data is analyzed to statically show what the flows have been. US Geological Survey (USGS) operated a stream flow gaging station west of Tulare, SD on Turtle Creek from 1952 to 1990. This gaging station location is approximately 4 river miles upstream of the proposed diversion. The analysis of this data is presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from 3 to 6.5 cfs. The graph indicates in May the median flow varies from 0.5 to 3 cfs and in June and July the median flow rates are less than 0.5 cfs.

Another gaging station was operated by USGS on Turtle Creek in Redfield, SD between 1945 and 1970. The drainage area for this gaging station is 30% greater than the upstream gaging station therefore and increase in flow is expected. The analysis of this data is also presented in report 8268-3 prepared for the current water rights application. The median flow in April varies from 3 to 16 cfs. The graph indicates in May the median flow varies from 1 to 8 cfs and in June it ranges from 1 to 5 cfs and in July the median flow rates range from 0.25 to 3 cfs.

Lenny Peterson, by observation, believes that climatological changes have increased the stream flows and that the present-day stream flows are not accurately represented by the USGS historical data. SDDENR has a water quality gaging station at the bridge where the USGS gaging station used to be. This gaging station is equipped with a sonar unit that reads the distance down to the water surface approximately every 15 minutes. The state has not developed a rating curve for this site thus has not converted the data to flow.

Banner collected the bridge design data from SD Department of Transportation (SDDOT) and then completed a bridge hydraulics study to model the stream flow utilizing HEC-RAS, a program developed by the Corps of Engineers for stream hydraulic analysis. A survey crew gathered information to develop a steam profile approximately 600' upstream and downstream of the bridge and collected cross section data for modeling purposes. The bridge dimensions were also measured for field verification purposes. The actual field measurements were used to model the stream flow. The model was then calibrated to the hydraulic information provided by the SDDOT with the bridge design. The model comparison results are shown in Table 1 - Bridge Model Calibration.

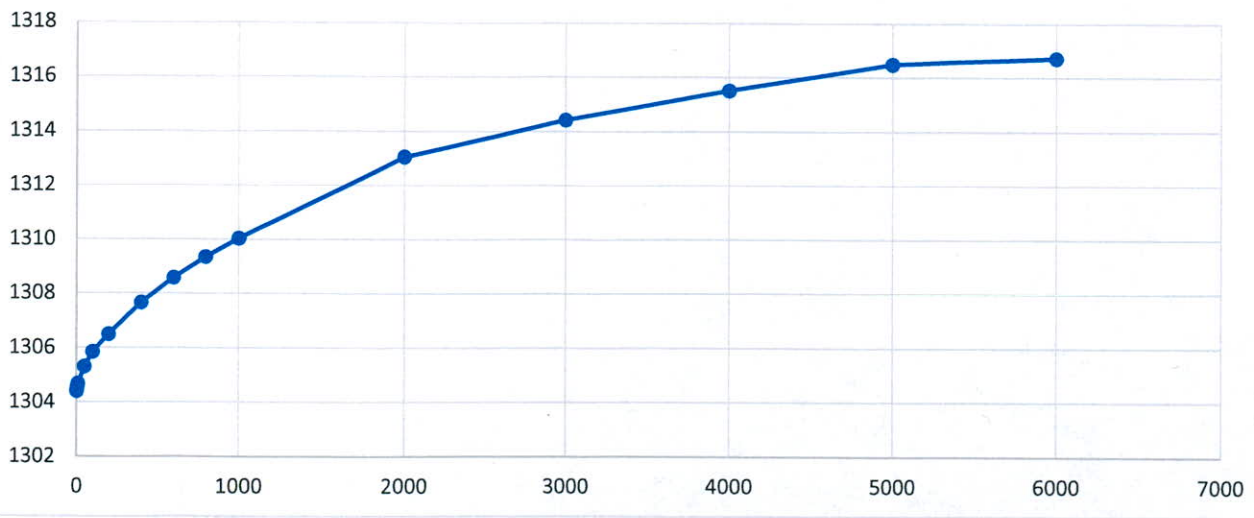
Table 1 - Bridge Model Calibration

	Bridge Design Records	Modeled Bridge Data
CFS	6,000	6,000
Bridge Waterway Opening Area (sq. ft.)	1538	1500
Velocity (ft./sec)	3.9	4.0
Water Surface Elevation (ft.)	1316.57	1316.59

The survey information showed that the stream channel was slightly higher than depicted in the original plans, thus it is reasonable to see that the bridge waterway opening is slightly smaller which in turn increases the velocity and raises the water surface elevation. Based on this data comparison, it is our opinion that the model can be used to accurately predict the water surface elevation for various flows.

With the calibrated model, various stream flows were input into the model to develop a rating curve for this site. The rating curve developed is as shown in Figure 1 – Rating Curve.

Figure 1 - Rating Curve - Water Surface Elevation



A trend line was developed for this curve to determine a statistical equation that could be used to convert the water quality data to a flow in cfs.

The actual elevation of the sonar unit was unknown thus a water surface elevation was obtained during the field survey operation. The exact time frame of the water surface elevation is unknown, but the survey stream profile and water elevation shots were taken between 10:57 a.m. and 12:30 p.m. The water surface elevation and the average of the water surface sonar depth measurement between 10:57 a.m. and 12:30 p.m. were used to calculate the sonar elevation. Once the sonar elevation was known all reading could be converted to elevations. The Raw data included readings approximately every 15 minutes in a continuous record. This data was reduced to approximately 30-minute data with the winter months of Mid November to the end of February were removed from the data set being analyzed.

Once the data was prepared, the average or mean value was calculated for each month of record. Then when that analysis was completed, each monthly data set was ranked from low flow to peak flow. The median flow was determined where 50% of the reading were above the median flow and 50% of the values were below the median flow. The summary of this analysis is present in Table 2 – Turtle Creek Flow – Based on Water Quality Monitoring Station WQM 172 (460172).

Table 2 - Turtle Creek Flow - Based on Water Quality Monitoring Station WQM 172 (460172)

Average Monthly Flow (cfs) — **Irrigation Season**

	January	February	March	April	May	June	July	August	September	October	November	December
2012	NA	NA	NA	NA	12.038	5.940	2.115	0.117	0.507	1.688	1.815	NA
2013	NA	NA	7.637	24.548	39.189	190.173	70.846	7.109	3.207	12.499	5.007	NA
2014	NA	NA	122.792	59.963	49.596	48.099	6.677	2.100	0.950	0.984	1.254	NA
2015	NA	NA	5.527	1.167	33.643	82.047	93.072	18.811	4.717	2.347	3.127	NA
2016	NA	NA	57.852	32.906	56.660	59.919	3.433	0.746	0.601	NA	NA	NA
2017	NA	NA	21.935	9.412	24.93965	0.151783	0.223733	0.002011	0.235545366	0.132668	0.056129	**NA**
2018	NA	NA	68.64496	40.50525	15.24691	62.4865	391.1574	25.27958	6.280853413	8.080087	4.244688	**NA**
2019	NA	NA	2033.67	1200.248	796.1395	208.8795	121.937	724.1201	NA	NA	NA	**NA**
Monthly Average Flow (cfs)			**331.151**	**195.536**	**128.432**	**82.212**	**86.183**	**97.286**	**2.357**	**4.288**	**2.584**	**NA**

Median Monthly Fow (cfs) — **Irrigation Season**

	January	February	March	April	May	June	July	August	September	October	November	December
2012	NA	NA	NA	NA	11.606	5.449	2.037	0.518	0.220	1.501	1.672	NA
2013	NA	NA	7.716	19.973	12.476	154.060	71.294	5.155	2.859	6.699	5.155	NA
2014	NA	NA	209.439	57.391	53.694	50.119	4.058	2.037	0.761	0.893	1.182	NA
2015	NA	NA	3.803	1.034	8.803	36.293	82.142	11.183	4.058	2.037	3.084	NA
2016	NA	NA	56.455	19.973	39.347	44.987	2.642	0.421	0.421	NA	NA	NA
2017	NA	NA	21.679	9.181	1.337785	0	0	0	0	0.007813	0	**NA**
2018	NA	NA	64.1549	29.86708	11.1827	0.635539	234.0845	19.41996	6.374701202	6.698667	4.86957	NA
2019	NA	NA	223.9376	1069.014	486.6503	139.6445	118.4075	671.4519	NA	NA	NA	NA
Monthly Median Flow (cfs)			**56.455**	**19.973**	**12.041**	**40.640**	**37.676**	**3.596**	**0.761**	**1.769**	**2.378**	**NA**
Monthly Average Flow (cfs)			**59.819**	**21.510**	**21.211**	**48.485**	**27.029**	**3.219**	**1.386**	**2.228**	**2.219**	**NA**

The general growing season for small grain is 3 months and corn 4 is months. The corn variety planted plays a big factor or variable in the assessment. Generally, corn planted in early May with 115-day maturity will be denting by the end of August. Thus, for this report the critical irrigation season is May through August. The total data through the irrigation season was analyzed for each year. The median flow during the irrigation season of May through August is shown in Table 3.

Table 3 - Median Irrigation Season Flow (cfs) May thru August	
2012	2.4
2013	21.6
2014	25.3
2015	40.1
2016	9.2
2017	0
2018	21.7
2019	212.4

Recommendation

The summary tables show that March through July has adequate water to meet the irrigation demands for the existing and requested water rights of 7.34 cfs. Adequate water was available in 2013, 2015, 2018 and 2019, however the July monthly median flow in 2012, 2014, 2016 and 2017 was less than 7.34 cfs. When analyzing the period of May through August which is considered the critical irrigation period there are only 2 years (2012 and 2017) that the median flow was less than 7.34 cfs. In my opinion irrigation would be allowed anytime the water flowing through Turtle Creek exceeds 8 cfs without detriment to the pre-existing water rights. The water surface elevation of 1304.63 is the modeled water surface elevation for 8 cfs at the bridge site.

When the water surface elevation is above 1304.63 at the bridge west of Tulare on Turtle Creek, there is reasonable probability that there is unappropriated water available for the applicants proposed use, the proposed diversion can be developed without unlawful impairment of existing rights, the proposed use is a beneficial use, and it is in the public interest to increase the agricultural production from the land being irrigated.

The means to establish a location and method for measuring flow is beyond the scope of this report, but a simple method may be measuring the depth of flow through a box culvert that exists on Turtle Creek between the Tulare Bridge and Redfield. A box culvert would have a defined waterway opening that would yield an accurate way of measuring flow.



APPENDIX A
SD DENR REPORT 8268-3

REPORT ON WATER PERMIT APPLICATION NO. 8268-3

Lenny Peterson

April 20, 2017

Application No. 8268-3, Lenny Peterson, proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek located at a point between the NE 1/4 NW 1/4 Section 11 and the S 1/2 SW 1/4 Section 12 for irrigation of 450 acres located in the W 1/2 Section 11 and S 1/2 Section 12; all in T115N-R65W. The applicant is proposing to limit water diverted each year up to 300 acre-feet of water annually, equating to an average annual application of 8 inches of water per acre. The proposed project is located approximately 6 miles northwest of the Town of Tulare in Spink County (Figure 1).

South Dakota Codified Law SDCL 46-2A-2 directs the Chief Engineer to make a recommendation to the Water Management Board on a permit application. The Chief Engineer needs to consider four things in making a recommendation on whether a permit should be approved, approved with qualifications, denied, or deferred. They are: 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.

This report will analyze the available information and make a recommendation to the Chief Engineer on the first two items the Chief Engineer needs to consider in making a recommendation to the Water Management Board.

Comparison Between Previously Withdrawn Application and Current Application

In August of 2016 the applicant submitted an Application No. 8229-3, proposed to irrigate 405 acres in Sections 11 and 12; all in T115N-R65W from Turtle Creek during the months May through August annually. The proposal included creating up to 78.3 acre-feet of instream storage on Turtle Creek by constructing a small dam across the channel to create a reservoir to pump from storage throughout the irrigation season. The applicant proposed to divert at a maximum rate of 5.34 (cfs) from the proposed dam. This application was withdrawn by the applicant in March of 2017.

Application No. 8268-3 also proposes to pump from Turtle Creek but at a reduced rate of 2.67 cfs compared to the 5.34 cfs requested in the previous application. The applicant is not requesting any storage so there is no dam proposed. There is a proposed increase in the number of acres to be irrigated from 405 acres to 450 acres. However, the applicant is proposing to limit the annual volume allowed from 810 acre-feet annually, the statutory limit, to 300 acre-feet annually.

Review of Existing Water Rights

There is one existing water right held by South Dakota Department of Game Fish and Parks located approximately 2 miles upstream of the proposed project allowing water to be diverted up to 4500 acre-feet per year, from Turtle Creek to Twin Lakes to stabilize water levels in the lake for recreational purposes, (Table 1). In the downstream reach of Turtle Creek from the proposed project to the Turtle Creek confluence with the James River there are five existing water rights/permits appropriating 4.67 cfs for irrigation and two existing water rights authorizing storage of up to 1568 acre-feet annually for municipal use (Figure 1).

WR No.	Name	Use	Priority	Amount
1635-3	SD GF&P	Recreation	January 1, 1934	Sufficient water to maintain Twin Lakes water levels
96-3	D&W Investments LLC	Irrigation	February 11, 1953	2.0 cfs
21-3	City of Redfield	Municipal - Irrigation	March 6, 1940	1568 ac-ft
22-3	City of Redfield	Municipal – Fire Protection	March 6, 1940	Limited to appropriation under No. 21-3
23-3	City of Redfield	Irrigation	March 6, 1940	0.42 cfs
18-3	SD Development Center	Irrigation	September 4, 1939	0.89 cfs
20-3	Greenlawn Cemetery Association	Irrigation	May 16, 1940	0.01 cfs
408-3	Timber Creek Land and Cattle LLC	Irrigation	February 11, 1957	1.35 cfs

Table 1. Turtle Creek water rights located in Spink County SD, Water Rights. 2017.

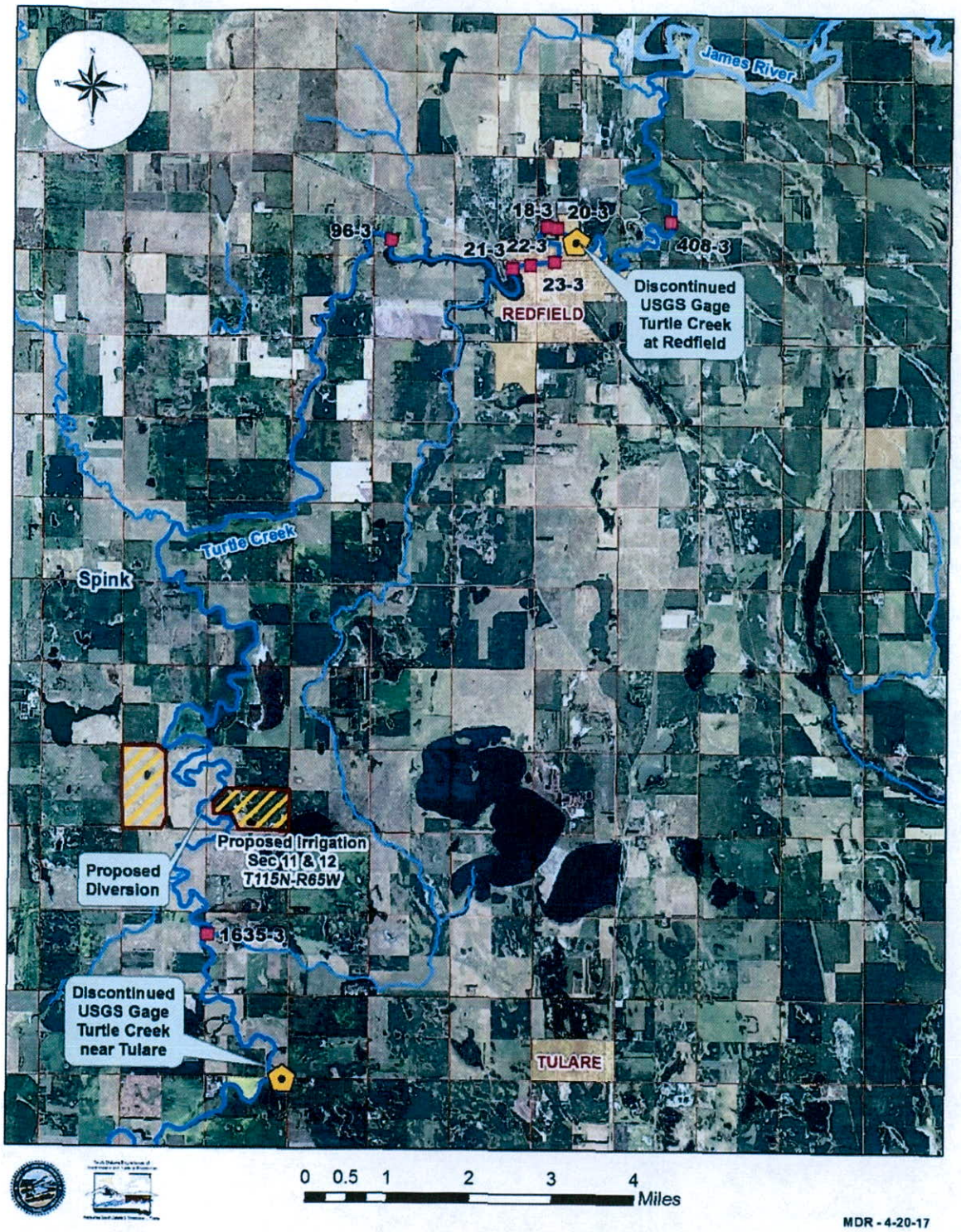


Figure 1. Area Map for Application No. 8268-3, Lenny Peterson.

Review of the Water Source

Turtle Creek is a prairie stream that headwaters in Beadle, Hand and Faulk counties and flows to the northeast before discharging into the James River east of Redfield. The Turtle Creek watershed upstream of the proposed project drains approximately 1140 square miles.

Since staff in the Water Rights Program is unable to predict future climatological conditions and their effect on stream flow, we rely on historical records to give us an indication of the flow characteristics of a stream throughout the year. Between the years of 1952 to 1990, the U.S. Geological Survey (USGS) operated a stream flow gaging station on Turtle Creek near Tulare SD (USGS 06474000), approximately 4 river miles upstream of the proposed project. The USGS collected daily flow data at this gaging station for 25 years during the period the station was operated. The USGS maintains an archive of historical flow and statistical data for this gaging station that can be accessed by the public.

Mean, often referred to as average, and median, otherwise referred to as 50 percentile, are statistical terms having a similar role in understanding the central tendency of a set of statistical results. Mean is often used to describe a middle value of a set of data values and is calculated by determining the sum of the data values divided by the number of data values. Median can be described as the value separating the higher half of a set of data values from the lower half and may be thought of as the central value of a data set. The disadvantage of using mean to describe flow is the mean value can be significantly affected by any single value in the data set being very high or very low compared to the rest of the data values. In the analysis of long term flow data, large flood event data values will skew the calculated mean value giving an unreasonable expectation of a higher flow value for a period of time. An example of this is shown in Figure 2, which is a comparison of the monthly mean flow value versus the monthly median flow value for the Turtle Creek gaging station. Large spring runoff events cause the mean values to be much larger than median values in those months. This is why using median tends to give us a more representative measure of a mid-point value compared to mean when analyzing flow data.

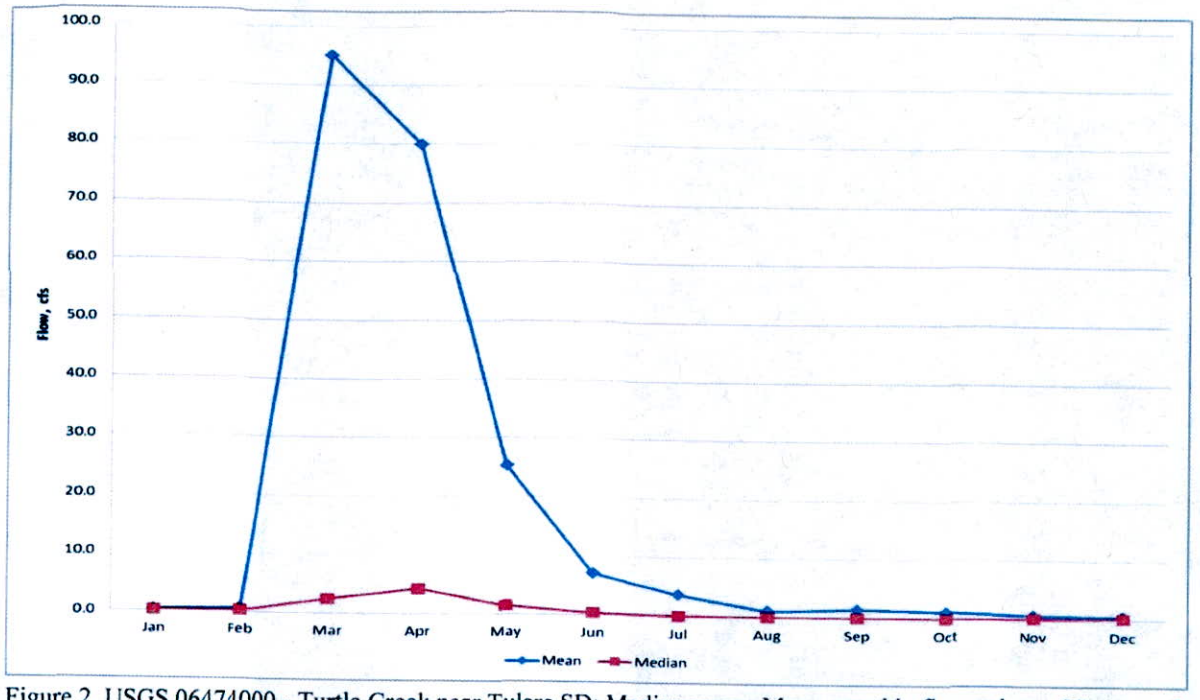


Figure 2. USGS 06474000 - Turtle Creek near Tulare SD; Median versus Mean monthly flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

Figure 3 indicates at the median values (red bars) for each day for the time frame March 1 through August 31 for the 25 year period of record. The applicant's requested period of use is overlaid on the figure to give a frame of reference. As this figure indicates, there is an increase in flow in Turtle creek corresponding to spring snowmelt and spring rain events. The figure shows the median daily flow values significantly curtail around mid-May time frame.

It should be noted during any given year, flow in the creek is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record.

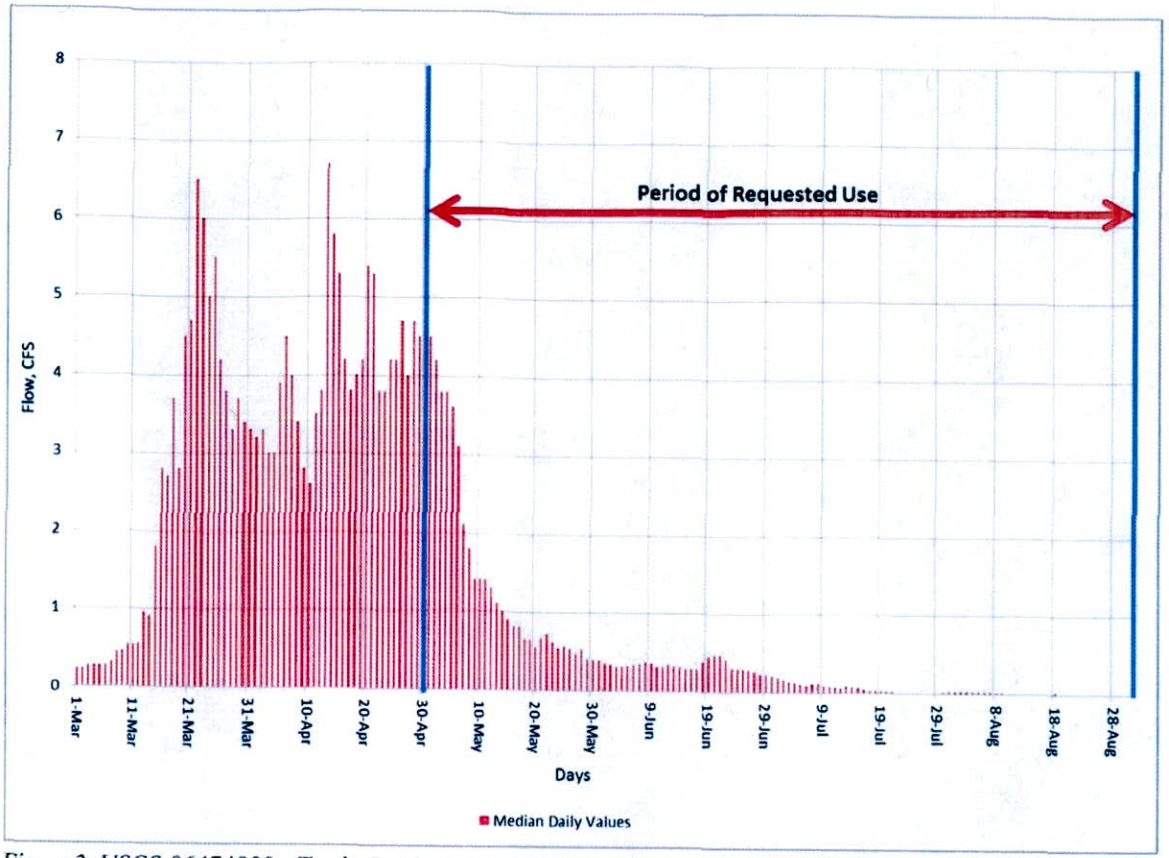


Figure 3. USGS 06474000 - Turtle Creek near Tulare SD; Individual median daily flow values - 25 years of record, 1952 to 1990. Contributing drainage area of 1140 mi^2.

The USGS operated another stream flow gaging station on Turtle Creek downstream from the proposed project, Turtle Creek at Redfield SD (USGS 06474500), for a total of 27 years between 1945 and 1970, (Figure 4). This gaging station was located in the northern part of the City of Redfield immediately downstream from the existing five water rights located in the City of Redfield but approximately 3 miles upstream from the last existing irrigation water right irrigation and approximately 6.5 miles upstream from the confluence with the James River. The drainage area upstream from this gaging station is 1482 mi^2, which is 30% larger than the drainage area for the Tulare gage. The daily median flow for this gaging does show an increase in the amount of daily median flow as compared to the amount shown in Figure 3 for the Turtle Creek at Tulare gage. The annual flow pattern for the Redfield gage is similar in that annual flows peak in March and April and start tailing off in May leading into low flows for the remainder of the summer. The daily median flow record for this gage does illustrate small flow increases in June and July likely tied to summer rain runoff events in the watershed.

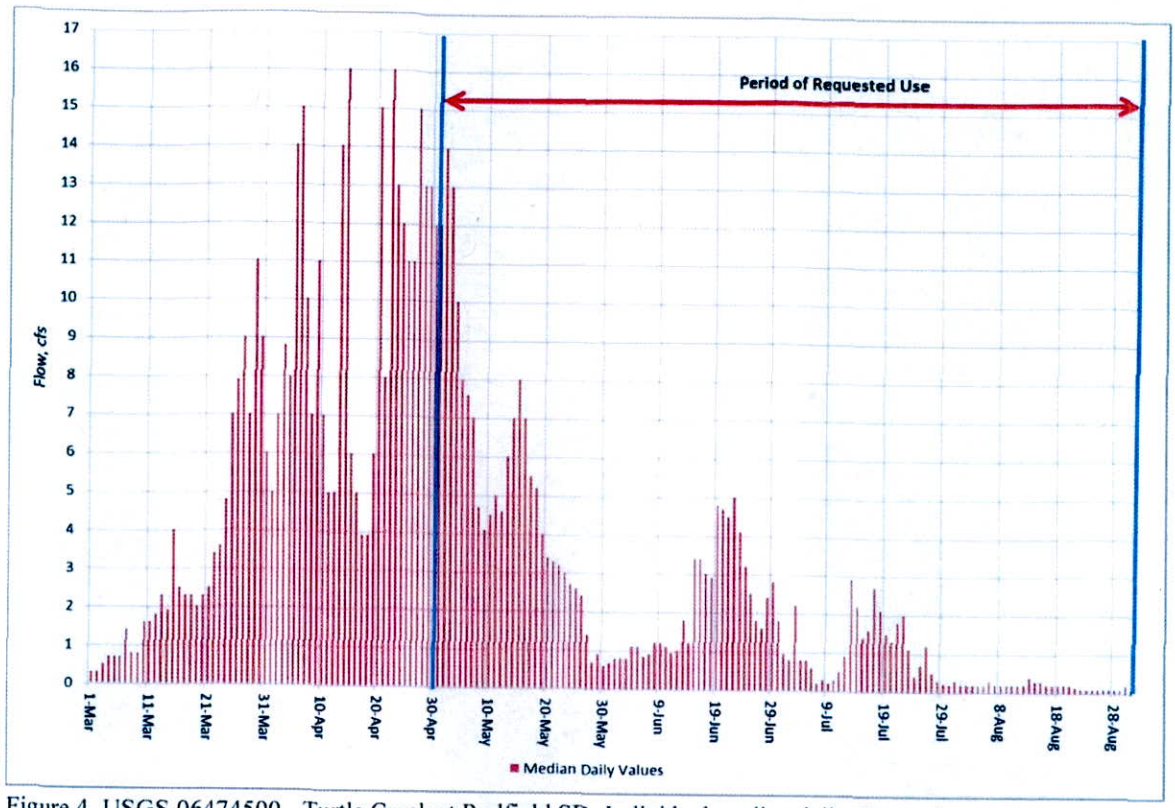


Figure 4. USGS 06474500 - Turtle Creek at Redfield SD; Individual median daily flow values - 27 years of record, 1945 to 1972. Contributing drainage area of 1482 mi^2.

Since the USGS quit operating the two gaging stations, Turtle Creek near Tulare SD and Turtle Creek at Redfield, in 1990 and 1970 respectively, there is a possibility a change in climatic conditions in the last 26 years may have changed the flow characteristics of Turtle Creek at these locations. A USGS study published in 2014 looked at trends in streamflow characteristics for the Missouri River watershed from 1960 to 2011. The entire Missouri River watershed was broken into six watershed regions; one of the regions included within this study contained the James River and its tributaries. The James River basin stream gages included in this study were ones located on the mainstem of the James River but not on contributing streams. The study concluded there was an increasing trend in stream flow at the selected mainstem James River gaging stations throughout the calendar year (Norton, 2014). However, there is no documentation in the USGS report on whether the recent wet period starting in the early 1990's provided more flow in Turtle Creek, a tributary to the James River, or changed the flow pattern of the creek similar to what was reported at the selected James River gaging stations in the USGS study.

Extending the period of record for monitoring flows at the Turtle Creek gage to include the past 25 years is not possible. An alternative for approximating flow changes experienced over the past 25 years is to use flow data from other long term gaging stations located on similar

tributaries to the James River in the geographic vicinity of the Turtle Creek gaging station. There are two other stream gages located on similarly large tributaries on the west side of the James River that have long term monitoring of flows overlapping the period of record for the Turtle Creek gaging station. One gaging station is located approximately 68 miles to the south of the Turtle Creek near the Tulare gaging station on Firesteel Creek located near Mt Vernon SD with 60 years of data operated from 1955 to present (Figure 5).

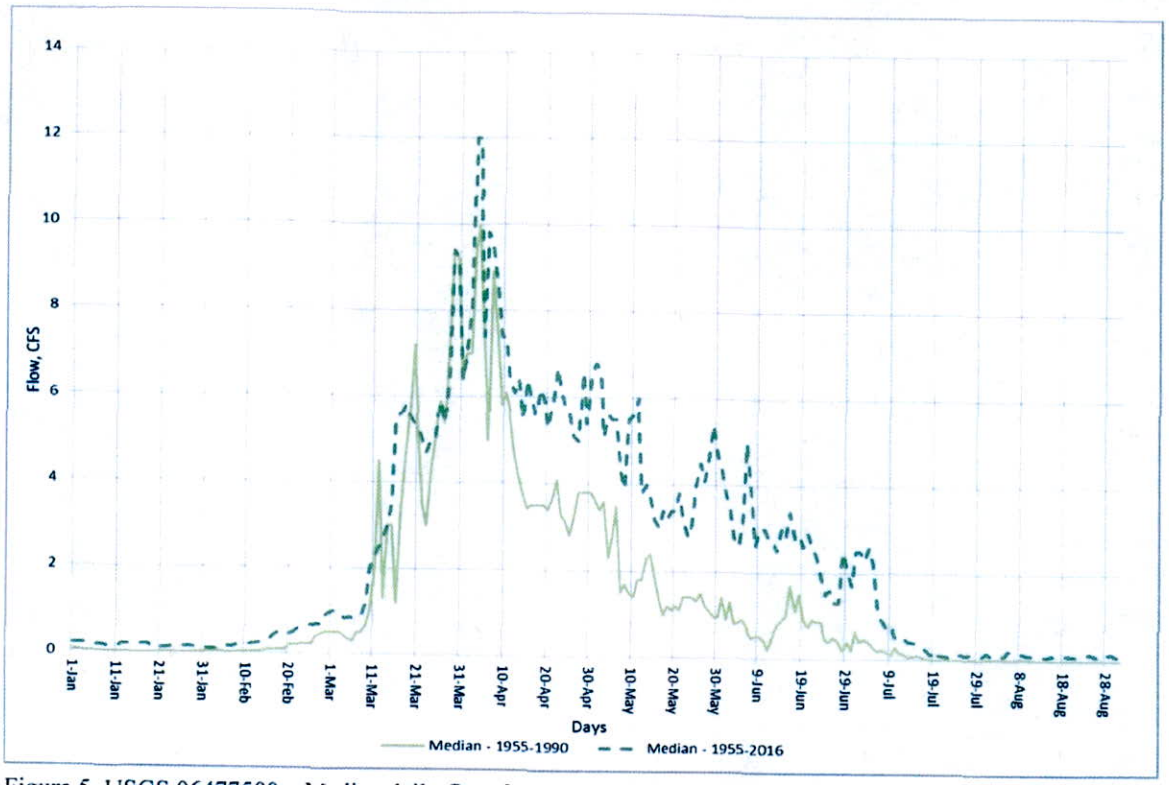


Figure 5. USGS 06477500 – Median daily flow for Firesteel Creek near Mt Vernon SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 588 mi^2.

Figure 5 compares daily flows on Firesteel Creek at the median level (solid green) for the period 1955 to 1990 to the median level (dashed green) for the period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, there is an increase in the flow rate at the fifty percentile level, but the time frame the flow increases relates to the same increase in flow corresponding to the spring snowmelt and spring rain events and tails off around the June to early July time frame.

The second gaging station is located approximately 65 miles to the north of the Turtle Creek gaging station located on the Elm River at Westport SD with 71 years of record operated from 1945 to present (Figure 6).

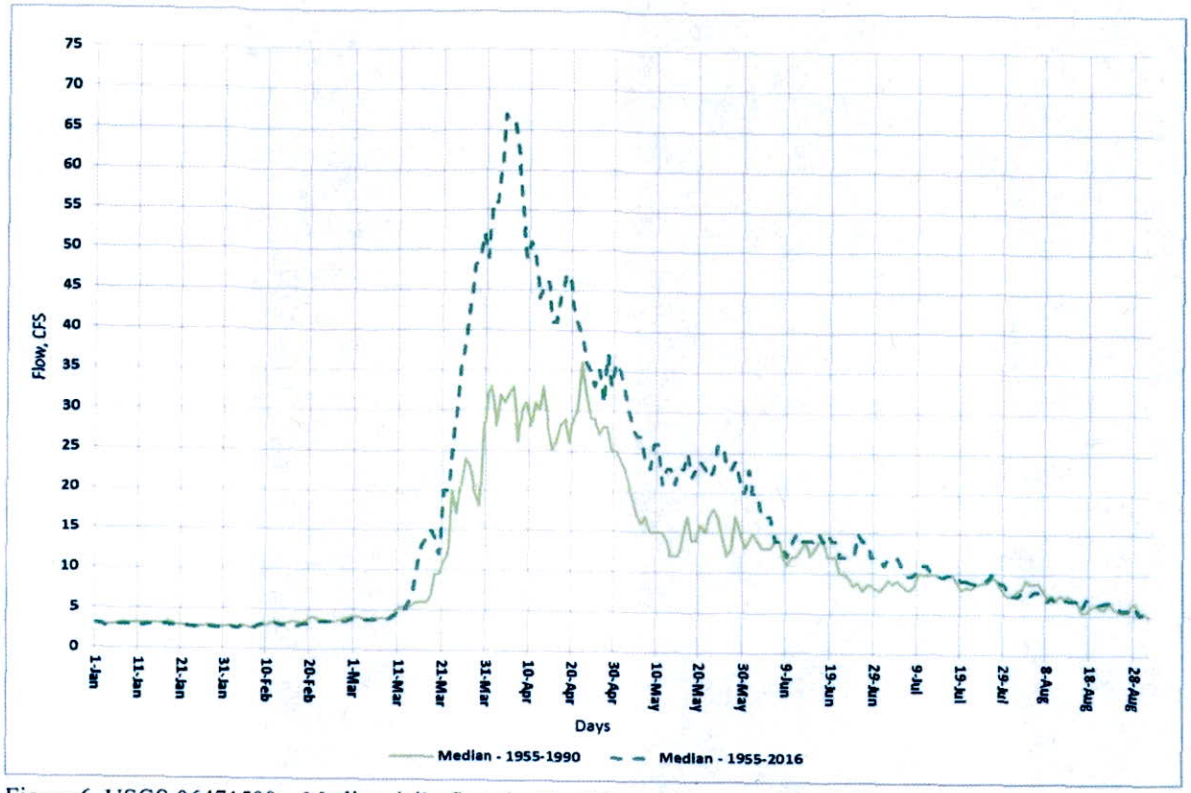


Figure 6. USGS 06471500 – Median daily flow for Elm River at Westport SD; 1955 to 1990 and 1955 to 2016. Contributing drainage area of 1210 mi^2.

Figure 6 likewise compares daily flows on the Elm River at the median level (solid green) for the period 1955 to 1990 in relation to the median level (dashed green) for period 1955 to 2016. This figure indicates, with the additional years of record included into the analysis, similar increases in flows to what was found at the Firesteel Creek gage. There has been an increase in the flow rate at the median flow level. The time frame the flow increases relates to the same increase in flow that corresponds to the spring snowmelt and spring rain events and tails off around the June time frame.

Evaluating flow records from the stream gaging station on Firesteel Creek and the Elm River, the data shows there has been an increase in flow during the spring runoff months, but this increase does not extend through the summer irrigation months. Similar flow characteristics would be expected for Turtle Creek through the proposed project area.

Discussion

Two of things the Chief Engineer must consider in making a recommendation is can the proposed diversion be developed without unlawful impairment of existing rights and is there a reasonable probability that there is unappropriated water available?

Reviewing the proposed project, the applicant is proposing to divert water directly from the creek at a maximum rate of 2.67 cfs between May 1 and August 31. He intends to limit diversions to a maximum of a 300 acre-foot annual limit which is less than the statutory limit 900 acre-feet for the 450 acres proposed.

The primary issue of concern is the timing of the diversion. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season. If the Water Management Board approves the application the applicant would need to bypass sufficient flow to not only satisfy downstream existing rights but also allow for instream flow for domestic use which includes livestock watering. Based upon existing flow data the reliability of flow becomes questionable after late May. If the permit is issued, it should be qualified to contain a bypass requirement, a mandatory shutoff date and a provision allowing the Chief Engineer to issue written orders to address conditions when sufficient flow is occurring after the shutoff date and issue shutoff orders when water is unavailable prior to the shutoff date.

A likely location of where to set mandatory bypass qualification is the spillway on Redfield Lake located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Figures 7 & 8 are photos taken during the irrigation season of 2016 demonstrating both the conditions of when irrigation by the applicant would be allowed and when it would need to cease. Qualifying the permit this way would address the need to bypass sufficient flow for senior water rights both up and downstream of the dam.



Figures 7 & 8. Spillway on Redfield Dam located in the NW ¼ NE ¼ of Sec 9 T116N-R64W. Photo on the left taken May 31, 2016 and the photo on the right taken August 29, 2016 showing the flowing and non-flow conditions from Redfield Lake, respectively, during the proposed irrigation period for this application.

It is recommended that a mandatory shutoff date of June 1 of each calendar year be set for this permit. If flow in Turtle Creek is sufficient to meet the needs of senior rights and domestic use after June 1, the permit holder can request a written order from the Chief Engineer to allow him to continue to pump. The James River has a similar mandatory shutoff requirement and the Water Rights Program has found it is an effective way to get the permit holder to adhere to the permit qualifications. If Water Permit No. 8268-3 is approved it should contain the following qualification:

Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam

located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Conclusions

1. This application proposes to appropriate 2.67 cubic feet of water per second (cfs) from Turtle Creek for irrigation of 450 acres.
2. The applicant is proposing to limit his diversions to a maximum of 300 acre-feet annually.
3. The applicant proposes to divert directly from Turtle Creek. Based upon the available USGS flow data, Turtle Creek cannot be considered a reliable water source throughout the irrigation season.
4. If Water Permit No. 8268-3 is approved it should contain the following qualification:

   Diversion of water from Turtle Creek authorized by Water Permit No. 8268-3 is subject to all of the following:

   a. Flow as needed for domestic use, including livestock water and prior rights must be bypassed.
   b. Diversion of water under this permit is subject to senior water rights and any written orders, including shut-off orders, issued by the Chief Engineer.
   c. Water Permit No. 8268-3 does not authorize diversion of water from the Turtle Creek after June 1st of each calendar year, unless written orders have been issued by the Chief Engineer.
   d. Water Permit No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield dam located in the NW¼ NE¼ Section 9, T116N, R64W, Spink County when pumping is occurring.

Mark D. Rath
Natural Resources Engineer III

References

1. Norton, P. A., Anderson, M.,and Stamm, J. 2014. Trends in Annual, Seasonal, and Monthly Streamflow Characteristics at 227 Streamgages in the Missouri River Watershed, Water Years 1960–2011. Scientific Investigations Report 2014–5053. US Geological Survey.

2. Water Rights. 2017. Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

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

July 14, 2022

8268-3

Lenny Peterson
19111 Maple Avenue
Hitchcock SD 57348

Dear Mr. Peterson:

This letter is in reference to your July 12, 2022, phone call request for written authorization to pump water from Turtle Creek as authorized by Water Permit No. 8268-3 beyond the June 1 shutoff date since water is discharging across the entire length of the spillway at Redfield dam. Mark Rath with the Water Rights Program was in the area and confirmed that water is currently discharging over the spillway at a depth of three to four inches. Because there is sufficient flow in Turtle Creek and water is flowing over the spillway you are authorized to pump within the quantities authorized by Water Permit No. 8268-3.

Pumping shall cease if climatic conditions in the basin cause Turtle Creek flow to decrease such that water is no longer flowing over the spillway at Redfield dam. The Water Rights Program intends to closely monitor the situation.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Sincerely,

Eric Gronlund

Eric Gronlund, Chief Engineer
Water Rights Program

Water Rights Program - DANR

File Documentation

No *8268-3*

Name of Person: *Lenny Peterson*
Address: *19111 Maple Ave, Hitchcock, SD 57348*
Date: *08-23-2022*
RE: *Recission of temporary pumping from Turtle Creek*

County: *Spink*
Phone: *605-354-4602*

Comments:
Lenny Peterson called me back concerning shutting off pumping from Turtle Creek due to no flow over spillway at Redfield Lake dam. He said he had ceased pumping the previous day.

Mark D Rath
Natural Resources Engineer III
SD DANR-Water Rights Program

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

June 20, 2023

8268-3

Lenny Peterson
19111 Maple Avenue
Hitchcock, SD 57348

Dear Mr. Peterson,

This letter is in reference to your June 19, 2023, text message with a picture of Redfield dam spilling and requesting to irrigate from Turtle Creek under Water Permit No. 8268-3 beyond the June 1st shutoff date. A qualification on the water permit allows the Chief Engineer to issue written orders after the June 1st shutoff date to authorize diversion of water. Based on the documentation provided, a written order is issued affording you the ability to irrigate from Turtle Creek within the quantities authorized by Water Permit No. 8268-3 until such time when water is no longer discharging across the entire length of the spillway at Redfield dam. This written order is only valid for the 2023 irrigation season.

Pumping shall cease if climatic conditions in the basin decrease the flow in Turtle Creek such that water is no longer flowing across the entire length of the spillway at Redfield dam. The Water Rights Program intends to closely monitor the situation.

If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605)-773-3352.

Sincerely,

Eric Gronlund

Eric Gronlund, Chief Engineer
Water Rights Program

Form 12

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 8268-3

I have this day, **January 25, 2024**, made a thorough examination of the water use system constructed by **Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348** of Permit No. **8268-3**, bearing the priority of **March 1, 2017** authorizing the diversion of **2.67** cu. ft. per second of the waters of **Turtle Creek** for **irrigation** purposes, in **Spink** County.

Inspection contact & relationship **Lenny Peterson, permit holder**

A. Works used to divert the water:

Pump:

1) Make **Cornell**
2) Model **6HH-150-4**
3) Size **6"**
4) Capacity **1600** GPM

Motor:

1) Make **Baldor**
2) Model No. **A44-1034-2177**
3) Horsepower rating **150** hp

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

1) Type **PVC**
2) Length **4400 ft – 8" & 300 ft – 12"**

C. Works used to apply water to beneficial use:

Center pivot: North

1) Make **T-L**
2) Overall length **1300** feet
3) Number of towers **8**
4) End gun **Y**
5) Capacity **600** GPM

Center pivot: South

6) Make **T-L**
7) Overall length **1300** feet
8) Number of towers **8**
9) End gun **Y**
10) Capacity **600** GPM

Each pivot is capable of 600 GPM, running simultaneously*

D. Compliance with Permit Requirements:

1) Permit qualifications being abided by **Yes**
If no, describe: **NA**
2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period **Y**
List any extended period of nonuse: **none**

3) Exceptions to compliance are: **none**

E. Condition and Location:

1. The system is in **poor, good, etc** condition with the point(s) of diversion located as follows: **From the NE corner of Sec 11 T115N-R58W- 1965 ft W & 1945 ft S; Lat 44.78766 Long -98.61241**
2. The works are capable of diverting and conveying to the place of use **2.67** cu. ft. per second of water which is to be used for **irrigation use**. Water has been put to beneficial use to the maximum extent as follows:

legal description/acreage	**legal description/acreage**
All land located in	All land located in
Sec 11 T115N-R58W	Sec 11 T115N-R58W
NW1/4 NW1/4 - 30 ac	NW1/4 SW1/4 - 31 ac
NE1/4 NW1/4 - 35 ac	NE1/4 SW1/4 - 34.5 ac
SE1/4 NW1/4 - 35 ac	SE1/4 SW1/4 - 34.5 ac
SW1/4 NW1/4 - 30 ac	SW1/4 SW1/4 - 31 ac
NW1/4 NE1/4 - 2.5 ac	NW1/4 SE1/4 - 2.0 ac
SW1/4 NE1/4 - 2.5 ac	SW1/4 SE1/4 - 2.0 ac

comprising a total of **270** acres of land and the license should be issued for **2.67** cfs.

3. All structures and lands on map **Yes**
If no, describe: **NA**

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

The water permit authorized the diversion of 2.67 cfs from Turtle Creek to irrigate up to 450 acres in portions of Section 11 & 12 T115N-R58W. The permit holder developed irrigation of 270 acres in Section 11 but did not develop any irrigation in Section 12.

Mark D Rath
Natural Resources Engineer III
DANR, Water Rights Program

Date report completed: **January 26, 2024**

File No. 8268-3

Licensing of Acreage Outside of Permitted Area

NAME: **Lenny Peterson**

ADDRESS: **19111 Maple Ave, Hitchcock SD 57348**

DATE: **01-29-2024** **COUNTY:** **Spink**

AUTHORITY

Pursuant to SDCL 46-5-30.5, acreage developed for irrigation outside of the area described on the permit may be licensed provided the following conditions are met:

NO INCREASE IN PERMITTED ACREAGE OR WATER APPROPRIATED:

The permit was issued for 450 irrigated acres to be located in W1/2 of Section 11 and the S1/2 of Section 12: all in T115N-R65W at a diversion rate of up to **2.67 cfs**. The acreage developed for irrigation is **270** acres as compared to **450** acres authorized by the permit. The developed diversion rate is **2.67 cfs**, the same as the permitted amount.

UNPERMITTED ACREAGE:

- **Contiguous to Permitted Acreage**

  The 9 acres are located in the E1/2 adjacent to the permitted acres in the W1/2 of Section 11: all in T115N-R65W

- **Owned by Same Property Owner**

  All of the irrigated property is owned by Lenny and Karen Peterson.

- **Developed Prior to Expiration of Construction Period**

  The construction period expired on December 7, 2022. The permit holder reported irrigating the acres in 2022.

RECOMMENDED ACTION

Based on the above criteria, it is recommended that the **9** acre area be included in the water license.

Mark D Rath

Mark D Rath, Natural Resources Engineer
Water Rights Program

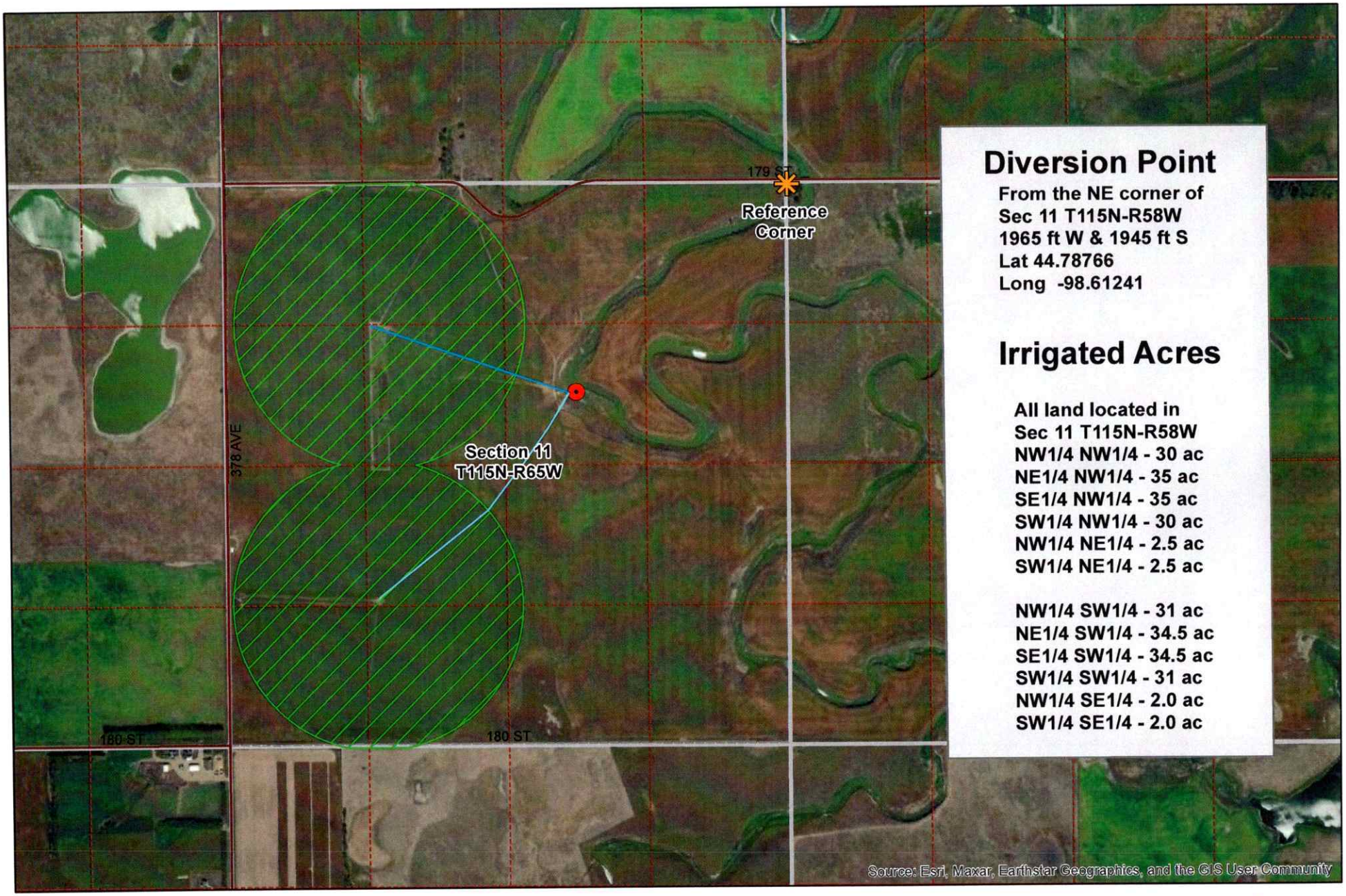
The Chief Engineer makes a finding pursuant to SDCL 46-5-30.5 that:

This acreage change does not impair existing water rights and the overall project, as developed, is consistent with the original application. Licensing of the unpermitted acreage may occur without application or publication pursuant to SDCL 46-2A-4.

Eric Gronlund

Eric Gronlund, Chief Engineer
Water Rights Program

8268-3



Diversion Point

From the NE corner of
Sec 11 T115N-R58W
1965 ft W & 1945 ft S
Lat 44.78766
Long -98.61241

Irrigated Acres

All land located in
Sec 11 T115N-R58W
NW1/4 NW1/4 - 30 ac
NE1/4 NW1/4 - 35 ac
SE1/4 NW1/4 - 35 ac
SW1/4 NW1/4 - 30 ac
NW1/4 NE1/4 - 2.5 ac
SW1/4 NE1/4 - 2.5 ac

NW1/4 SW1/4 - 31 ac
NE1/4 SW1/4 - 34.5 ac
SE1/4 SW1/4 - 34.5 ac
SW1/4 SW1/4 - 31 ac
NW1/4 SE1/4 - 2.0 ac
SW1/4 SE1/4 - 2.0 ac

N
W E
S

2,000 1,000 0 2,000 4,000 6,000 Feet

Mark D Rath
Natural Rsources Engineer III

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 8268-3

(1) Lenny Peterson; 19111 Maple Ave, Hitchcock SD 57348, made Application No. 8268-3, March 1, 2017, for a water permit to divert 2.67 cubic feet of water per second from Turtle Creek, Spink County, South Dakota for irrigation purposes. Permit No. 8268-3, with a priority date of March 1, 2017, was approved by the Water Management Board December 7, 2017, and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before December 7, 2022, and for the application to beneficial use of water on or before December 7, 2026.

An investigation conducted for licensing purposes found acreage developed outside of the permitted area. Pursuant to SDCL 46-5-30.5 and ARSD 74:02:01:14.01, the Chief Engineer made a finding that the change in acreage did not impair existing water rights and the overall project, as developed, is consistent with the original application.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 2.67 cubic feet of water per second for beneficial use. The location of the diversion point is:

- 1,965 ft W & 1,945 ft S of the NE corner of Section 11, T115N, R65W (SW ¼ NE ¼) (Latitude 44.78766 & Longitude -98.61241)

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

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

Section 11, T115N, R58W

NW ¼ NE ¼	2.5 acres	NE ¼ SW ¼	34.5 acres
SW ¼ NE ¼	2.5 acres	NW ¼ SW ¼	31 acres
NE ¼ NW ¼	35 acres	SW ¼ SW ¼	31 acres
NW ¼ NW ¼	30 acres	SE ¼ SW ¼	34.5 acres
SW ¼ NW ¼	30 acres	NW ¼ SE ¼	2 acres
SE ¼ NW ¼	35 acres	SW ¼ SE ¼	2 acres

TOTAL: 270 acres

(5) Pursuant to South Dakota Water Law 46-5-30.1 Lenny Peterson, the holder and/or owner of Water Right No. 8268-3 is issued a license to appropriate water, the right to use 2.67 cubic feet of water per second from Turtle Creek, with a priority date of March 1, 2017, from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 8268-3 and subject to the following qualifications:

continued

Qualifications

1. Diversion of water from Turtle Creek authorized by Water Right No. 8268-3 is subject to all of the following:
   a) Flow as needed for domestic use, including livestock water and prior water rights must be bypassed.
   b) Diversion of water under this water right is subject to senior water rights and written orders, including shut-off orders, issued by the Chief Engineer.
   c) Water Right No. 8268-3 does not authorize diversion of water from Turtle Creek after June 1st of each calendar year, unless written orders have been authorized by the Chief Engineer.
   d) Water Right No. 8268-3 authorizes diversion of water from Turtle Creek only when water is discharging across the entire length of the spillway weir at Redfield Dam, located in the NE ¼ NE ¼ Section 9, T116N, R64W, Spink County when pumping is occurring.
2. The Water Management Board retains jurisdiction of Water Right No. 8268-3 in the event that additional information shows that changes need to be made to protect domestic uses or senior water rights.
3. Pursuant to SDCL 46-2-19 the Chief Engineer, or design representative, may enter upon the lands authorized by Water Right No. 8268-3 for the purpose of inspecting works and determining if the irrigation system is operating.
4. This Water Right is approved subject to the irrigation water use questionnaire being submitted each year.

Eric Gronlund

FEB 0 4 2024
date

Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

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

FEB 0 4 2024

8268-3

Lenny Peterson
19111 Maple Ave
Hitchcock SD 57348

Dear Mr. Peterson:

Enclosed is Water License No. 8268-3. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

So long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

Eric Gronlund

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures