

WATER PERMIT NO. 8278-3

Name of Applicant: Sonstegard Food Company

Address: 5005 South Bur Oak Place, Sioux Falls SD 57108

Phone: XX

Amount of Water Claimed: 1.11 cfs (222.2 AF)

Total Acres: NA

Source of Water Supply: groundwater (2 wells)

Water to be used for: commercial

County: Turner

Type of Waste Disposal System:

Location: 2 miles northeast of Parker

PRIORITY

Date Received: 4-3-17

Application/License Fee: \$ 950

Corrected Application Received: ~~4-17-17~~
5/3/17

Period of Annual Use: Jan 1 – Dec 31

Remarks: Water will be piped to the SW 1/4 Sec 36-T100N-R54W

Diversion Point: NE 1/4 Sec 3-T99N-R53W

Land to be Irrigated: NA

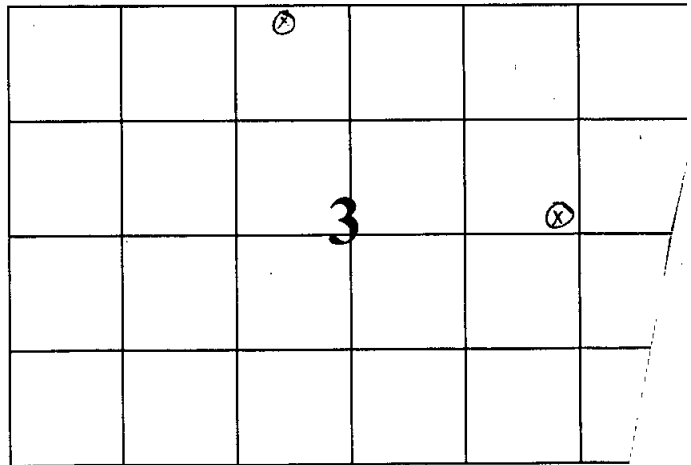
Depth of Well: 60 feet deep

Well Driller:

Remarks:

Type of Map: aerial

Prepared by:



Reviewed and the Number Assigned on: 4-17-17

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
WATER PERMIT NO. 8278-3**

Date of first receipt of application April 3, 2017.

Date of return to applicant for corrections, amendments or changes April 4, 2017.

Date of receipt of corrected application April 17, 2017.

The Water Management Board approved Water Permit No. 8278-3 on July 12, 2018 for Sonstegard Food Company, 5005 South Bur Oak Place, Sioux Falls SD 57108 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. 8278-3 appropriates 222.2 acre-feet of water annually at a maximum diversion rate of 1.11 cubic feet of water per second from two wells to be completed into the Vermillion East Fork:Montrose Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.
2. The water appropriated shall be used for the purpose of commercial use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is April 3, 2017.
5. One-fifth of the construction is to be completed on or before January 12, 2021.
6. All construction is to be completed on or before July 12, 2023.
7. Water is to be put to beneficial use on or before July 12, 2027.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

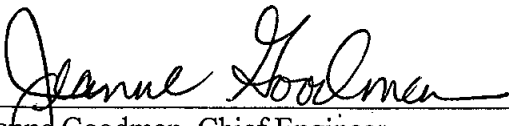
QUALIFICATIONS

1. The two wells approved under Water Permit No. 8278-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The two wells authorized by Permit No. 8278-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

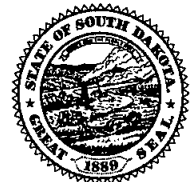
(continued)

3. Water Permit No. 8278-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Water Permit No. 8278-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions
5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork:Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork:Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.

WATER MANAGEMENT BOARD

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

SEP 04 2018
date



RECEIVED
APR - 3 2017
WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8278-3</u> (office use only) Hydrologic Unit <u>10170102</u>
	Basin <u>Vermillion River</u>
	Newspaper <u>The New Era, Parker</u>
	<u>Argus Leader</u>

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

Check use(s) of water:

- | | | | |
|---|--|--|--|
| ☐ Municipal | ☐ Water Distribution System | ☐ Recreational | ☐ Institutional |
| ☐ Rural Water System | ☒ Commercial | ☐ Fish & Wildlife | ☐ Geothermal |
| ☐ Domestic (over 18 gpm) | ☐ Industrial | ☐ Other _____ | |

Type of Application: (check one)

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

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

1. Name to Appear on Water Permit Sonstegard Food Company

Mailing Address 5005 South Bur Oak Place Sioux Falls SD 57108
(Address) (City) (State) (Zip Code)

Phone _____ Mobile _____ Email john.taylor@taylorlawsd.com

2. Amount of water claimed 1.11 *CFS or 500 **GPM and 222.2 ***AF or _____ Gallons Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use)

3. Source of water supply Vermillion East Fork Aquifer

4. Location of point of diversion 2 wells in NE 1/4 NW 1/4 SE 1/4 NE 1/4 County Turner (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)

If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☒ Yes ☐ No

If "Yes," where will water be used? SW 4 36-100-54
(example - NW 1/4 section 12-T104N-R53W)

5. County or counties where water will be used Turner County

6. Annual period during which water is to be used Continuous year-round Jan 1 - Dec 31

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

Applicant seeks to drill two (2) test wells in the N2 of S3-T99N-R53W. The wells will become production wells if flow is sufficient to meet requirement of 100,000 gallons/day or 111 Acre-Feet per year. The wells will be approximately 60 feet deep and each serviced by a 250GPM peak-demand pump. Water will be transported by underground pipeline to the use location specified above. If flow is insufficient, test wells will be shuttered in accordance with established law and procedure.

I, John E. Taylor Attorney for, 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)

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☒ Drilling new well(s) ☐ Using existing well(s)

- a) If new wells, how many 2 Have test holes been drilled ☐ Yes ☒ No Drilled by _____
(if yes, please provide copies of logs)
- b) If existing wells, how many _____ Provide copy of log(s), if available. Drilled by _____

For either Existing or Proposed Wells:

- c) Well Depth (required) 60 Depth to Top of Water Bearing Material TBD Depth to Water from Surface TBD
- d) Distance to nearest domestic well on applicant's property _____ Property owned by others _____

2. Wastewater Disposal System Information

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

3. Dugout Information

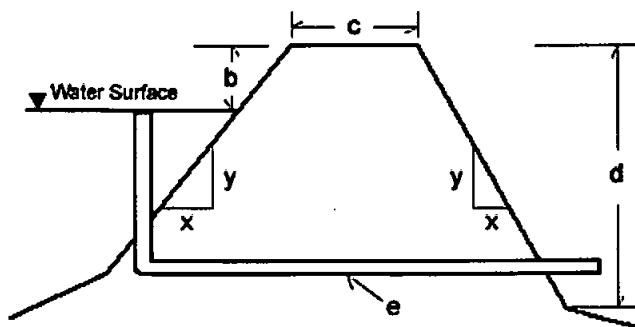
- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

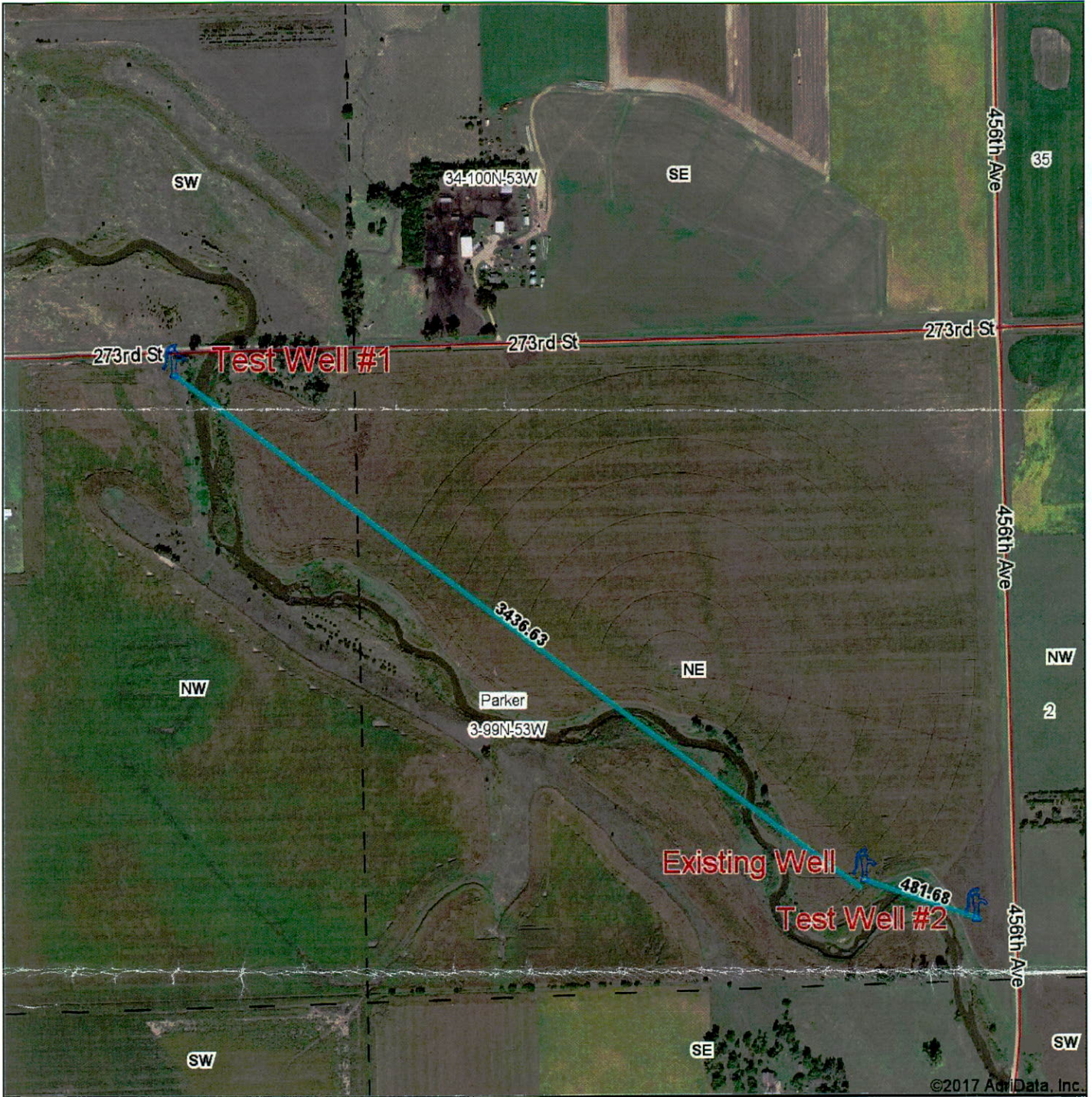
If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

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

- b) Freeboard _____
- c) Crest Width _____
Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope (e.g. 3 to 1 is a typical slope)
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres



Aerial Map



map center: 43° 25' 42.73, -97° 5' 22.56

0ft 623ft 1247ft

Maps Provided By:
surety
CUSTOMIZED ONLINE MAPPING
© AgriData, Inc. 2017 www.AgriDataInc.com

3-99N-53W
Turner County
South Dakota



3/31/2017

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APR - 3 2017

**WATER RIGHTS
PROGRAM**

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 4/3, 2017

RECEIVED OF Taylor Law Firm (Sonstegard Food Co) 4820 Rt 57th St # R Sioux Falls SD

57109

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

Fee for Application for Permit No. <u>8278-3</u> to Appropriate Water, to construct and to put water to beneficial use	750	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
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	750 00

No. 08217

By Jeanne Laamen
Chief Engineer

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 4 - 17, 20 17

RECEIVED OF John Taylor ~~Bar~~ Firm, 4802 E 57th St, Sioux Falls SD

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	200	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8278-3</u>		
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	200.00

No. **08227**

By

Jeanne Goodman

Chief Engineer

(149)

8278-3

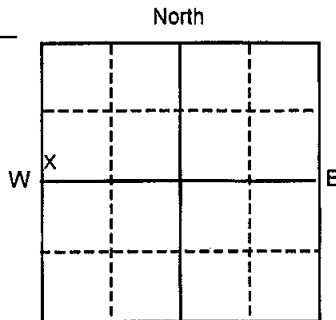
SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SW ¼ NW ¼ Sec 3 Twp 99n Rg 53w

County Turner

Please mark well location with an "X"



Well Completion Date

1 March 2018

1 Mile

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

2,200.0 ft. from Septic tank (Identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Forward rotary

CASING DATA:

☐ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	IN	FT	FT	4.75 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Bentonite	3	9.5 Lb/gal	0.0 Ft	62.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
Tremie Method

SCREEN:

☐ Perforated pipe ☐ Manufactured

Diameter _____ Inches Length _____ Feet

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information

WAS A PACKER OR SEAL USED? ☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How? not required☒ No, Why Not?

Lab to which water quality sample sent for analysis

Well Owner: Pete Sonstegard

Business Name: Sonstegard Foods Co

Address: 5005 Bur Oak Pl

City, State, Zip: Sioux Falls SD 57108

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top soil	0	2
Brown silty clay	2	26
Glacial till	26	45
Glacial till with gravel streaks	45	62

STATIC WATER LEVEL 39.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe: n/a
☐ Bailed
☐ Other

Pumping Level Below Land Surface

_____ Ft. After _____ Hrs. pumped _____ GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: _____ GPM

REMARKS

 Elevation: 1343'
 43°25'25.00"N
 97° 6'7.00"W

Test Hole #1

This well was drilled under license # 810 and this report is true and accurate.

Drilling firm: Heine Electric & Irrigation

Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

Date: 3-16-18

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WATER RIGHTS PROGRAM

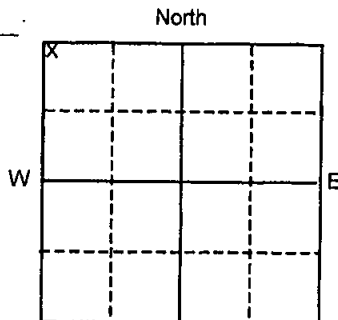
8278-3

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location NW ¼ NW ¼ Sec 3 Twp 99n Rg 53w

County Turner

Please mark well
location with an "X"

Well Completion Date

2 March 2018

1 Mile

Distance to nearest potential pollution source (septic tank, abandoned well, feed lot, etc.)?
1,150.0 ft. from Septic tank (Identify source)

PROPOSED USE:

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

METHOD OF DRILLING:

Forward rotary

CASING DATA:

☐ Steel
 ☐ Plastic
 ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT	IN	FT	FT	4.75 IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
Bentonite	3	9.5 Lb/gal	0.0 Ft	57.0 Ft
		Lb/gal	Ft	Ft

Describe grouting procedure
Tremie Method

SCREEN:

☐ Perforated pipe
 ☐ Manufactured

Diameter _____ Inches Length _____ Feet

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information

WAS A PACKER OR SEAL USED? ☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How? not requiredLab to which water quality sample sent for analysis ☒ No, Why Not?

Well Owner: Pete Sonstegard

Business Name: Sonstegard Foods Co

Address: 5005 Bur Oak Pl

City, State, Zip: Sioux Falls SD 57108

WELL LOG:

FORMATION	DEPTH	
	FROM	TO
Top soil	0	2
Brown clay	2	27
Glacial till	27	46
Glacial till with sand and gravel layers	46	57

STATIC WATER LEVEL

FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other _____

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped Describe: n/a☐ Bailed☐ Other

Pumping Level Below Land Surface

_____ Ft. After _____ Hrs. pumped _____ GPM

_____ Ft. After _____ Hrs. pumped _____ GPM

If pump installed, pump rate: _____ GPM

REMARKS

Elevation: 1349'

43°25'49.00"N

97° 6'7.00"W

Test Hole #2

This well was drilled under license # 810 and this report is true and accurate.

Drilling firm: Heine Electric & Irrigation

Signature of License Representative:

Signature of Well Owner or Equitable Property Holder:

RECEIVED

Date: 3-16-18

MAR 21 2018

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In Water Since 1946

Wells — Pumps
Dewatering Work
Test Drilling

LACEY WELL DRILLING, INC.
47582 - 240th St.
Dell Rapids, South Dakota 57022
Telephone (605) 428-5979

Down-Hole Camera
Water Specialists
Irrigation Supplies

Test Drilling Report for

Sonstegard Foods Co.

Drilled 3-28-17

T99N-R53W Sec. 3 NW¼NW¼

Per Joan Lacey

3/8/18 AM

#1 0-2 Topsoil
2-5 CLAY
5-8 Sand
8-15 Good Gravel
15' Red Rock
SWL - 8'

#2 0-2 Topsoil
2-5 CLAY
5-8 Sand
8-15 Good Gravel
15' Red Rock
SWL - 8'

#3 0-2 Topsoil
2-4 CLAY
4-22 Fine Sand
22- Red Rock
SWL - 9'

#4 0-2 Topsoil
2-5 CLAY
5-8 Sand
8-16 mixed Gravel
16' Red Rock
SWL - 9'

Drilled 4-17-17

#1 0-2 Topsoil
2-8 Sand-mud
8-15 Gravel
15' Red Rock
SWL - 8'

#2 0-2 Topsoil
2-10 Sand+mud
10' Red Rock
SWL - 9'

#3 0-2 Topsoil
2-22' clay
22' Red Rock

#4 East side of creek
0-2 Topsoil
2-10 Sand+mud
10-20 Fine Sand
20-23- Gravel
23' Red Rock
SWL - 6'



TAYLOR LAW FIRM, LLC
ATTORNEYS AT LAW

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APR - 3 2017

WATER RIGHTS
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William Taylor
John Taylor
john.taylor@taylorlawsd.com
(605) 782-5303

March 30, 2017

Ms. Jeanne Goodman
Chief Engineer
SD DENR
523 E. Capitol
Pierre, SD 57501

Subject: Test Wells

Ms. Goodman,

Our firm has been retained by the Sonstegard Food Company to pursue a water appropriate permit for a domesticated avian production facility located near Marion, SD. The proposed facility requires up to 200,000 gallons of water daily, or 222.2 acre-feet annually, for livestock management and sanitation needs. Enclosed is a permit application to appropriate water within the State of South Dakota.

In late 2016 Sonstegard Food Company received approval of Water Permit #8221-3. Recently, test-drilling was conducted upon the northern parcel contemplated in 8221-3. The flow rates from those wells are insufficient to serve as primary diversion points.

As such, Sonstegard Food Company respectfully requests authorization to drill two test wells upon a 300 acre parcel it owns in Parker Township, Turner County, SD. The parcel is located atop the East Fork of the Vermillion Aquifer, in the North Half of Section Three (3) Township Ninety-Nine (99) North, Range Fifty-Three (53) West of the 5th PM, Turner County, South Dakota. The estimated depth of the test wells is sixty feet (60') each.

Upon completion of test-well drilling activities the wells will become production wells for the facility if the demonstrated flow rate and capacity are sufficient. The wells will be serviced by 250 GPM pumps, and water will be transported along public rights-of-way via underground pipes to the facility. The proposed facility will be located in the Southwest Quarter of Section Thirty-Six (36), Township One Hundred (100), Range Fifty-Four (54) West of the 5th PM, Turner County, South Dakota. Sonstegard Foods prospectively requests a water right in conjunction with conversion of successful test wells.

In the event the test-wells/production wells are insufficient, the wells will be capped and abandoned in accordance with established State Laws and Departmental Procedures. Sonstegard Food Company will then reapply for test-well permit authorization at an alternate location.

Page 2
South Dakota DENR
Sonstegard Food Company Water Appropriation Permit Request

Either Marion Well Drilling or Putzke Well Drilling will be retained as the project contractor depending on timing and sequence availability.

Thank you for your consideration of this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "John E. Taylor", written in a cursive style.

John E. Taylor

Enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

April 4, 2017

John E Taylor
Taylor Law Firm LLC
4820 E 57th St, Suite B
Sioux Falls SD 57108

RE: Sonstegard Food Company

Dear Mr. Taylor:

Thank you for submitting the *Application for a Permit to Appropriate Water* for commercial use on behalf of Sonstegard Food Company. In order to complete the application, the following is required.

- The aerial photo map submitted with the application indicates an existing well authorized under Water Right No. 6434-3. Water Right No 6434-3 held by Berens Farms appropriates 1.23 cubic feet of per second from one well completed into the Vermillion East Fork Aquifer to irrigate 83 acres. This existing irrigation well is in close proximity to proposed Test Well #2. What is planned in the event of impairment of the existing irrigation right? Is there an agreement in place with Berens Farms? If so, please provide us with a copy for the file.
- The application/license fee is \$950.00. A check was submitted for \$750.00. Please submit an additional \$200.00.

If you have any questions, please contact Eric Gronlund or me.

Sincerely,

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



TAYLOR LAW FIRM, LLC
ATTORNEYS AT LAW

RECEIVED
APR 17 2017
WATER RIGHTS
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William Taylor
John Taylor
john.taylor@taylorlawsd.com
(605) 782-5303

April 10, 2017

Karen Schlaak
Water Rights Program
SD DENR
523 E. Capitol
Pierre, SD 57501

Subject: Response to April 4, 2017 Inquiry // Sonstegard Food Company

Ms. Schlaak,

Thank you for the correspondence in reference to Sonstegard Food Company's Application for a Permit to Appropriate Water for commercial use.

Regarding your question pertaining to potential impairment of the Berens Farms existing irrigation right, Sonstegard Food Company currently has an option in place to purchase the subject property provided test well results are adequate for the anticipated use.

Assuming test well results are adequate, the parties will proceed to closing. Sonstegard Food Company will then petition to transfer the irrigation well permit from Berens Farms to Sonstegard for continued use of the irrigation system.

Enclosed is a check for an additional \$200 for the application fee.

Thank you for your consideration of this matter.

Respectfully,

John E. Taylor

Enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

April 5, 2017

John E. Taylor
Taylor Law Firm, LLC
4820 East 57th Street
Suite B
Sioux Falls, SD 57018

Dear Mr. Taylor:

As requested, pursuant to South Dakota Well Construction Standard 74:02:04:21, Sonstegard Food Company is authorized to have a licensed well driller construct test wells completed into the Vermillion East Fork aquifer prior to approval of a water permit. The test wells will be located in the N ½ Section 3-T99N-R53W. All test wells must be constructed in accordance with the SD Well Construction Standards. Any test holes that are abandoned must be plugged pursuant to the SD Well Construction Standards.

Authorization must be obtained before water from the well can be used in excess of domestic use as defined by South Dakota Codified Law 46-1-6(7). Approval of this test well does not assure issuance of a water permit. Following review of a Water Permit Application and assessing the availability of water, the potential impacts to existing users, the beneficial use, and the public interest of a permit, the Chief Engineer will make a recommendation to the Water Management Board regarding the application. The recommendation to approve, deny, or defer the application will be publicly noticed and an opportunity afforded for the public to intervene. A public hearing may be required to consider the water permit. If you have questions, call Eric Gronlund at (605) 773-3352.

Sincerely,

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

CC:
Sonstegard Food Company
5005 S. Bur Oak Place
Sioux Falls, SD 57018

Gronlund, Eric

From: Gronlund, Eric
Sent: Tuesday, April 18, 2017 3:03 PM
To: John Taylor (john.taylor@taylorlawsd.com)
Subject: Sonstegard water permit application

John – a few points of clarification needed for Sonstegard application

1. Application states location of wells in N ½ Section 3, T99N, R53W. Two test holes were drilled in the NE ¼ NW ¼ and SE ¼ NE ¼ Section 3, T99N, R53W. Is Sonstegard's fairly certain they will utilize the location where the test holes were drilled if a permit is obtained? If so, can the application be amended to be more specific on the legal location. My understanding is that Beren Farms does not own the entire N ½ of Section 3 (see item 2) and it is not advisable to public notice for well locations not intended or not under control of the applicant.
2. The water right dating back to 2003 in the NE ¼ of Section 3 is held in the name of Joel Beren. The 2016 Turner plat book indicates the entire N ½ of Section 3, T99N, R53W to be owned by DLK&M LLC. A review of the Secretary of States' website indicates the registered agent is Dennis Kronaizl from Scotland. I recognize the plat books are not always accurate. I called the Turner County Register of Deeds and found that DLK& M LLC owns a part of the N ½ Section 3 and Dennis Kronaizl owns a part. Does Joel Berens own the land where the proposed wells are to be located?

Just trying to make sure we cover all the bases. Thanks

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

Gronlund, Eric

From: John Taylor <john.taylor@taylorlawsd.com>
Sent: Wednesday, May 03, 2017 11:24 AM
To: Gronlund, Eric
Subject: [EXT] Re: Sonstegard water permit application

Eric,

Below is information pertaining to our phone call this morning and points 1 & 2 of your April 18th email:

1. Sonstegard Food Company will utilize the location of the two test wells as permanent well points if a permit is obtained. Those locations are within the NE4NW4 and the SE4NE4 of S3-T99N-R53W, please amend the application to reflect those locations.

2. Sonstegard Food Company has an option to purchase the property upon DENR granting an appropriation permit. The property is owned by DLK&M LLC, which acquired the property from RMB LLC in June 2007. The Berens were members of RMB LLC.

Concurrently DLK&M LLC will submit a Notice of Transfer of Ownership to move permit 6434-3 from Joel (or) Maria Berens to DLK&M LLC. That document should pass through your office late this week or early next.

So, in regards to your second question, the Berens do not own the land where the proposed wells are to be located, the N2 of S3-T99N-R53W with the exception of 10 acres located in the NW4NW4 is owned by DLK&M LLC. Dennis Kronaizl will transfer his interest (if any) upon closing to Sonstegard.

Please contact me if I can further assist or clarify anything going forward.

Thanks,

John Taylor

On Apr 18, 2017, at 3:03 PM, Gronlund, Eric <Eric.Gronlund@state.sd.us> wrote:

John – a few points of clarification needed for Sonstegard application

1. Application states location of wells in N ½ Section 3, T99N, R53W. Two test holes were drilled in the NE ¼ NW ¼ and SE ¼ NE ¼ Section 3, T99N, R53W. Is Sonstegard's fairly certain they will utilize the location where the test holes were drilled if a permit is obtained? If so, can the application be amended to be more specific on the legal location. My understanding is that Beren Farms does not own the entire N ½ of Section 3 (see item 2) and it is not advisable to public notice for well locations not intended or not under control of the applicant.
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Just trying to make sure we cover all the bases. Thanks

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

John E. Taylor
Attorney

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**Water Rights Program
File Documentation**

NAME OF PERSON OR FILE: Sonstegard Food Company

DATE: June 20, 2017

TELEPHONE: John Taylor - (605) 782-5303

RE: Clarification on Sonstegard Food Company option to purchase land associated with
Water Right No. 6434-3

COMMENTS:

I called John Taylor, attorney for Sonstegard Food Company, regarding documentation in the permit application file. The documentation, emails between Eric Gronlund of the Water Rights Program and Mr. Taylor, indicated Sonstegard Food Company had an option to purchase the land associated with Water Right No. 6434-3 and then transfer the water right into their name pending approval of Permit Application No. 8278-3. I asked Mr. Taylor how complete the negotiations for this purchase were and if the only thing the parties were waiting on was approval of Application No. 8278-3.

I asked Mr. Taylor about the option for Sonstegard Food Company to purchase the land and transfer Water Right No. 6434-3 because it could have potentially affected the analysis of potential impacts on existing water rights/permits and domestic wells if Application No. 8278-3 were approved. Mr. Taylor stated that it is essentially a "done deal" pending approval of Application No. 8278-3.



Adam Mathiowetz, PE
Natural Resources Engineer
DENR-Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

July 10, 2017

Walter and Jean Mielke
45560 273rd St
Parker SD 57053

Dear Mr. & Mrs. Mielke:

As requested, enclosed is a copy of the Recommendation and Report on Water Permit Application No. 8278-3, Sonstegard Food Company. Also enclosed is a copy of Water Permit No. 8221-3 which is an existing permit for Sonstegard Food Company.

If you have any questions, please contact me.

Sincerely,

Eric Gronlund
Water Rights Program
605 773-3352
ericgronlund@state.sd.us

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
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<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8278-3, Sonstegard Food Company**

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. 8278-3, Sonstegard Food Company, c/o John E Taylor, Taylor Law Firm, 4820 E 57th St, Suite B, Sioux Falls SD 57108.

The Chief Engineer is recommending APPROVAL of Application No. 8278-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and, 4) it is in the public interest with the following qualifications:

1. The two wells approved under Water Permit No. 8278-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The two wells authorized by Permit No. 8278-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8278-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Water Permit No. 8278-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions

(continued)

5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork:Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork:Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "Jeanne Goodman", is written over the printed name.

Jeanne Goodman, Chief Engineer

June 26, 2017

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8278-3
SONSTEGARD FOOD COMPANY
C/O
JOHN E. TAYLOR
TAYLOR LAW FIRM
JUNE 26, 2017

Water Permit Application No. 8278-3 proposes to authorize the diversion of water from the Vermillion East Fork aquifer at a maximum diversion rate of 1.11 cubic feet of water per second (cfs) for commercial use in an avian production facility. This application proposes to appropriate 222.2 acre-feet of water per year (ac-ft/yr.) from up to two wells (approximately 60 feet deep). The wells are to be located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 3-T99N-R53W in Turner County. The water will be transported via pipeline to an avian production facility to be located in the SW $\frac{1}{4}$ Section 36-T100N-R54W.

AQUIFER: Vermillion East Fork: Montrose (VEF: M)

Aquifer Characteristics:

The Vermillion East Fork aquifer is a surficial aquifer associated with East Fork Vermillion River valley (Hedges et al., 1982). The aquifer is comprised of fine sand to medium pebble gravel (Lindgren and Hansen, 1990). The aquifer extends from Clark County into Turner County where it blends into the Parker Centerville aquifer (Hedges et al., 1982). The Vermillion East Fork aquifer has been subdivided into several management units (see Figure 1). Hedges and others (1985) discuss the Montrose management unit (Vermillion East Fork: Montrose). However, the boundaries of the management unit are not preserved in any report. Consistent with the criteria used to establish management units developed by Hedges and others (1982), the Montrose management unit is considered to extend from the border between the Vermillion East Fork aquifer and the Parker Centerville aquifer at the south end to the Kingsbury/Miner County line which is the southern border of an unnamed management unit identified by Stonesifer (2014).

Figure 1 is a map of the well sites proposed by Application No. 8278-3 and the management units of the Vermillion East Fork aquifer. Figure 2 is a map of the water rights/permits authorized to withdraw water from and DENR-Water Rights Program observation wells completed into the Vermillion East Fork: Montrose aquifer. Table 1 is a list of the water rights/permits and future use permit authorized to withdraw water or reserve water from the Vermillion East Fork: Montrose aquifer. Groundwater movement in the Vermillion East Fork aquifer is generally south and towards the East Fork Vermillion River (Hansen, 1986). The aquifer is almost entirely under unconfined conditions. Based on the groundwater movement and the location of water rights/permits within the Vermillion East Fork aquifer, it is appropriate to assess only the Vermillion East Fork: Montrose aquifer as determined by Buhler (2016) and in particular the portion of the management unit that is in Turner County.

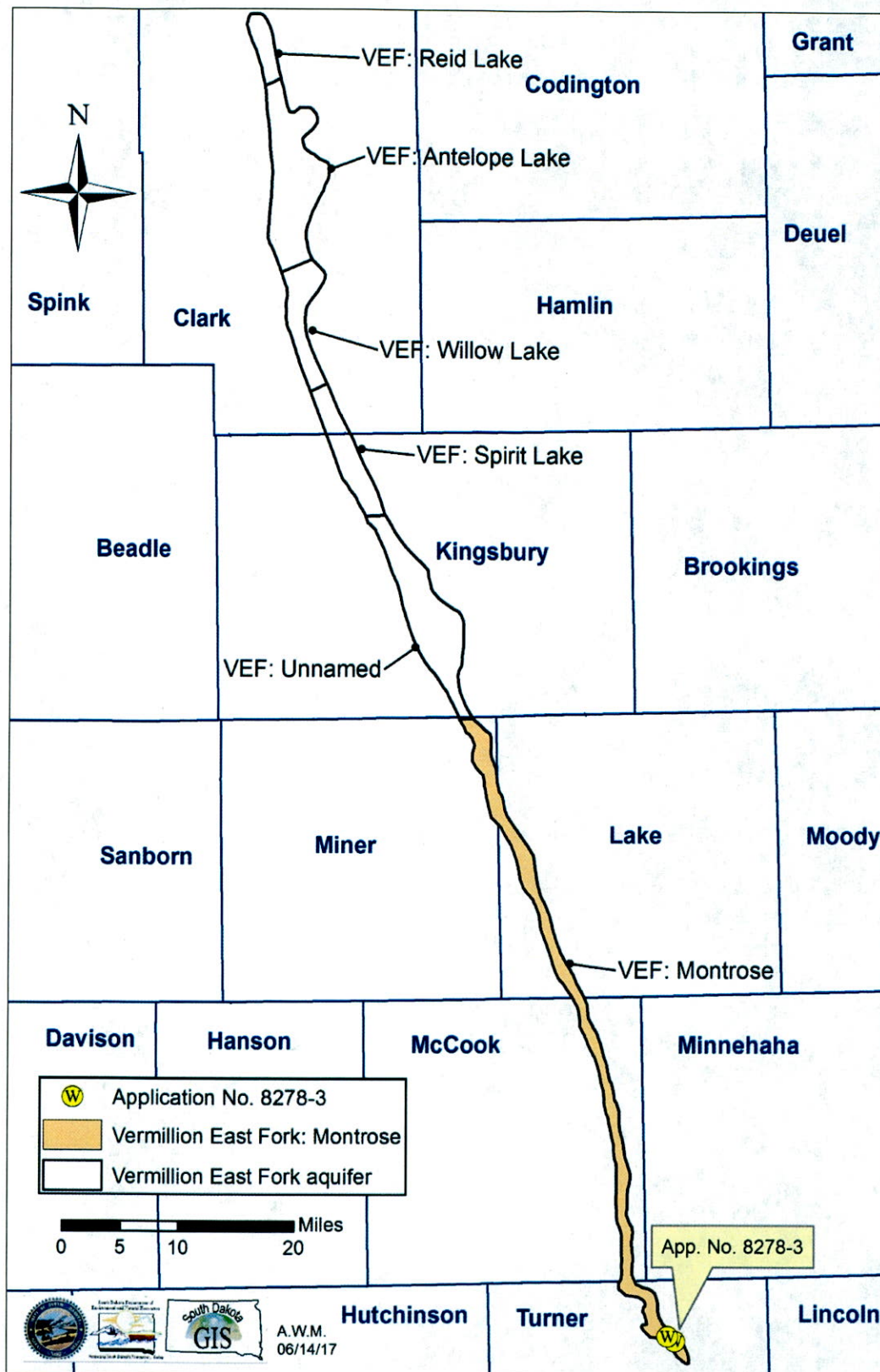


Figure 1-Map of the well sites proposed by Application No. 8278-3 and the management units of the Vermillion East Fork aquifer in South Dakota (modified from: Buhler, 2016; Hedges et al., 1982)

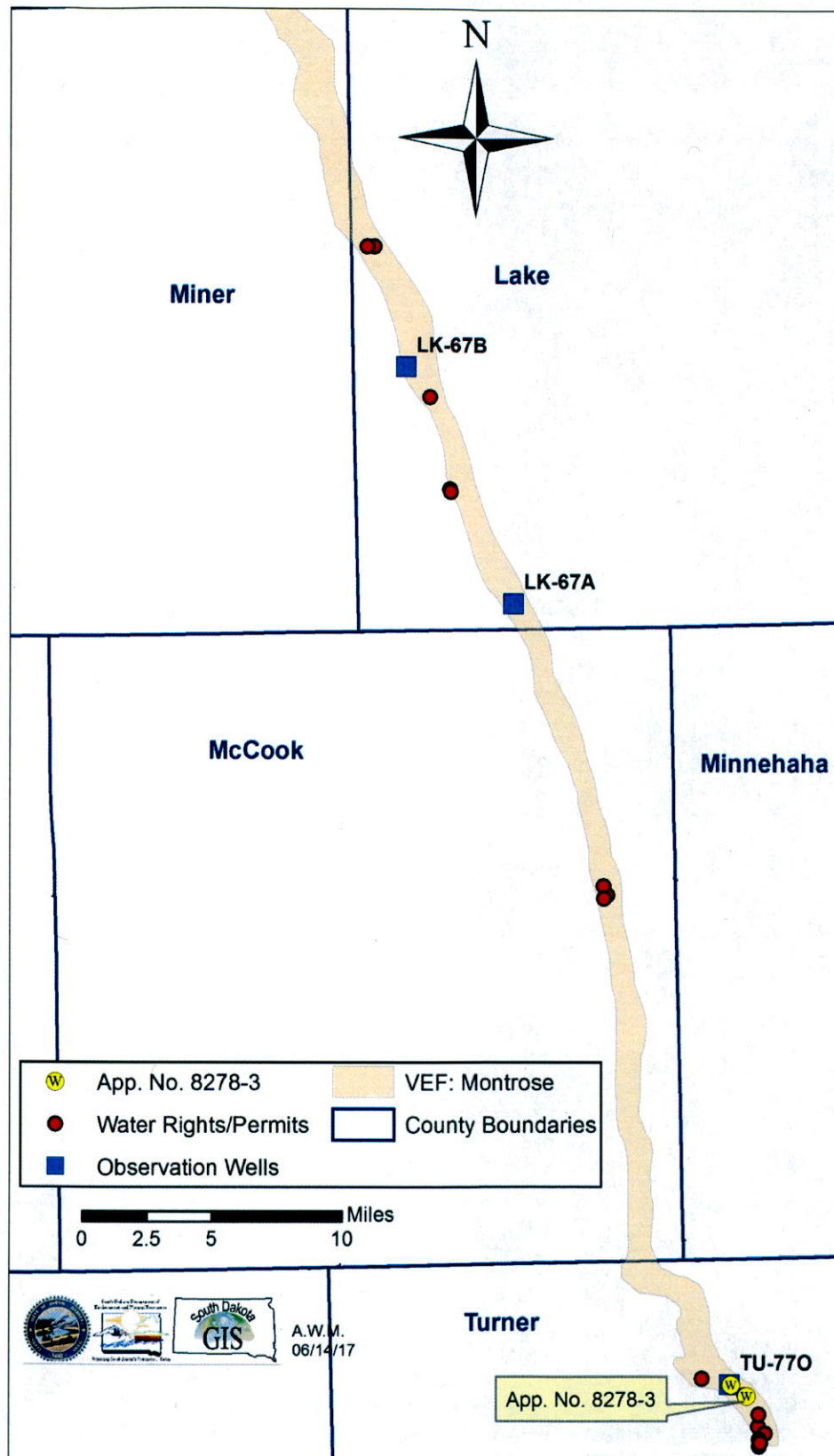


Figure 2- Map of Vermillion East Fork: Montrose with water rights/permits, future use permits, and well sites proposed by Application No. 8278-3 (Water Rights, 2017a and 2017b)

Table 1- Water rights/permits and Future Use permit authorized to withdraw water or reserve water from the Vermillion East Fork: Montrose (Water Rights, 2017b)

Permit No.	Name	County	Status	Use	Rate (cfs)	Acres	Permitted Vol. (ac-ft)
1009-3	City of Montrose	MC	LC	MUN	0.44		
2989A-3	Palmer Reinicke	LK	LC	IRR	0.3	21	
4039-3	City of Montrose	MC	FU	MUN			42
4680-3	Gracevale Htrn Brth	LK	LC	IRR	1.78	132	
5389-3	Ken Plucker Jr	TU	LC	IRR	2	160	
5914-3	Berens Farms	TU	LC	IRR	1.71	120	
6075-3	Weeg Family Farms LLP	TU	LC	IRR	1.56	132	
6401-3	Michael J Johnson	LK	LC	COM	5.56		
6434-3	DLK&M LLC	TU	LC	IRR	1.23	83	
6491-3	Joseph Plucker	TU	LC	IRR	1.11	92	
7594-3	Joseph Plucker	TU	PE	IRR	0.67	50	
7596-3	Joseph Plucker	TU	PE	IRR	0.44	20	
7597-3	Joseph Plucker	TU	PE	IRR	0.44	0	
8245-3	Gracevale Htrn Brth	LK	PE	IRR	0	132	
MC= McCook, LK= Lake, TU= Turner, LC= Water Right, FU= Future Use, PE= Water Permit, MUN= Municipal, IRR= Irrigation, COM= Commercial							

The Vermillion East Fork: Montrose underlies portions of McCook, Miner, Lake, and Turner Counties (Hedges et al., 1982). Buhler's delineation of the Vermillion East Fork: Montrose based on Hedges and others (1982) map of the Vermillion East Fork aquifer shows the Vermillion East Fork: Montrose covering approximately 34,800 acres with an estimated 5,800 acres underlying Turner County. Lindgren and Hansen (1990) estimate there is 22,000 ac-ft of water in storage in the aquifer in Turner County.

The maximum aquifer thickness of the Vermillion East Fork: Montrose in Turner County is greater than 54 feet with an average thickness of 29 feet (Lindgren and Hansen, 1990). Lithologic log reports (SDGS, 2017), and completion reports for observation wells, appropriative wells, and domestic wells (Water Rights, 2017a, 2017b, and 2017c) indicate there is sand and gravel from near land surface to nearly 60 feet below grade in some locations within one-quarter mile of the well sites proposed by this application. The water level at observation well TU-770 was 8.14 feet below ground surface on June 1, 2017. Observation well TU-770 is completed into the Vermillion East Fork: Montrose aquifer and is approximately 325 feet away from the nearest well site proposed by this application.

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

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

WATER AVAILABILITY:

This application proposes to appropriate water from the Vermillion East Fork: Montrose aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this case, the aquifer is not stratigraphically lower than the Greenhorn Formation and the applicant is not a water distribution system.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program monitors three observation wells completed into the Vermillion East Fork: Montrose aquifer (Water Rights, 2017a). Observation well TU-77O is approximately 325 feet west of the northwestern well site proposed by Application No. 8278-3, and observation wells LK-67A and LK-67 B are approximately 31 and 40.4 miles north-northwest of the northwestern well site proposed by this application (see Figure 2) (Water Rights, 2017a). The hydrographs for TU-77O, LK-67A, and LK-67B are shown in Figures 4, 5, and 6, respectively.

The hydrographs for TU-77O, LK-67A, and LK-67B show stable (TU-77O) or rising (LK-67A and LK-67B) water levels over their respective periods of record. All three hydrographs show the effects of climatic conditions on water levels. Water levels rise (recharge) during wetter periods and slowly decline during drier periods. The effects of climatic conditions on water levels are clear in the hydrographs for LK-67A and LK-67B but are subtle in the hydrograph for TU-77O. The hydrograph for TU-77O shows a water level that seasonally fluctuates less than five feet per year in general. The hydrograph shows the water level in the aquifer is higher in the spring following recharge from direct infiltration of snowmelt and precipitation. As spring and summer progress, water levels decline to a stable level. This stable water level indicates the aquifer is not being stressed by pumping. The slight variation in the stable water level across the period of record for TU-77O documents the effects of climatic conditions dominating the water level instead of effects caused by pumping from wells.

When climatic conditions have a dominant effect on water levels, recharge to and natural discharge from an aquifer significantly exceeds pumping. Natural discharge from an aquifer is available for appropriation. Therefore, the hydrographs document there is unappropriated water available for this proposed appropriation.

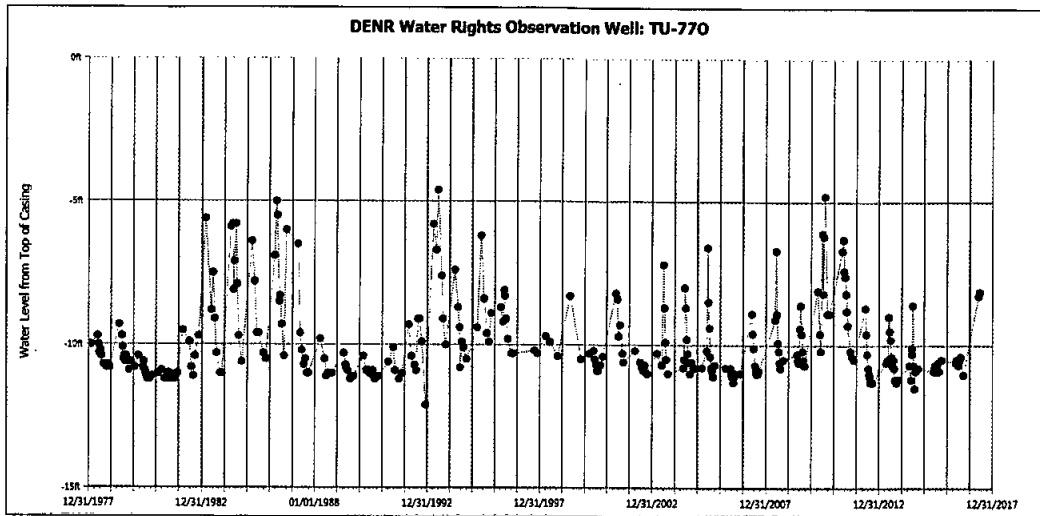


Figure 4- Hydrograph for observation well TU-770 (Water Rights, 2017a)

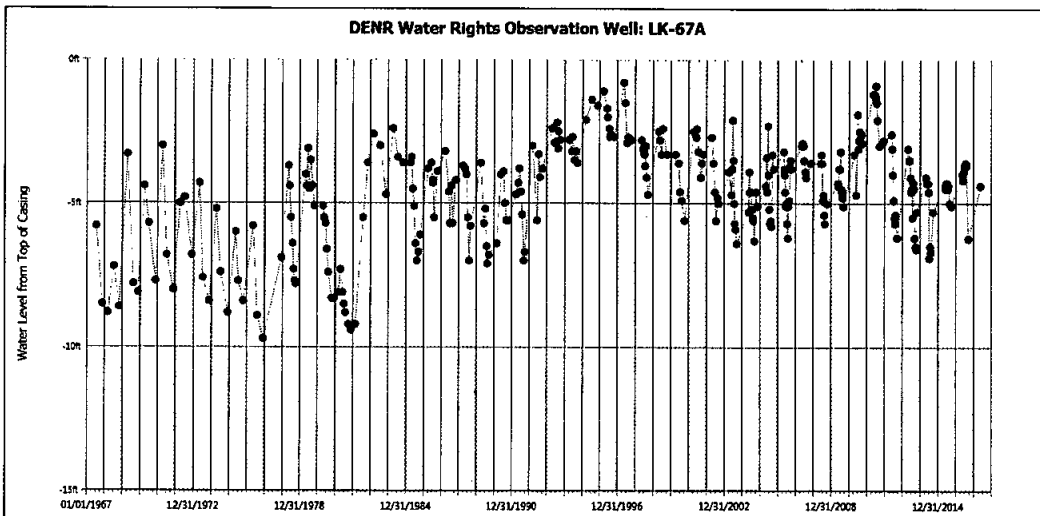


Figure 5- Hydrograph for observation well LK-67A (Water Rights, 2017a)

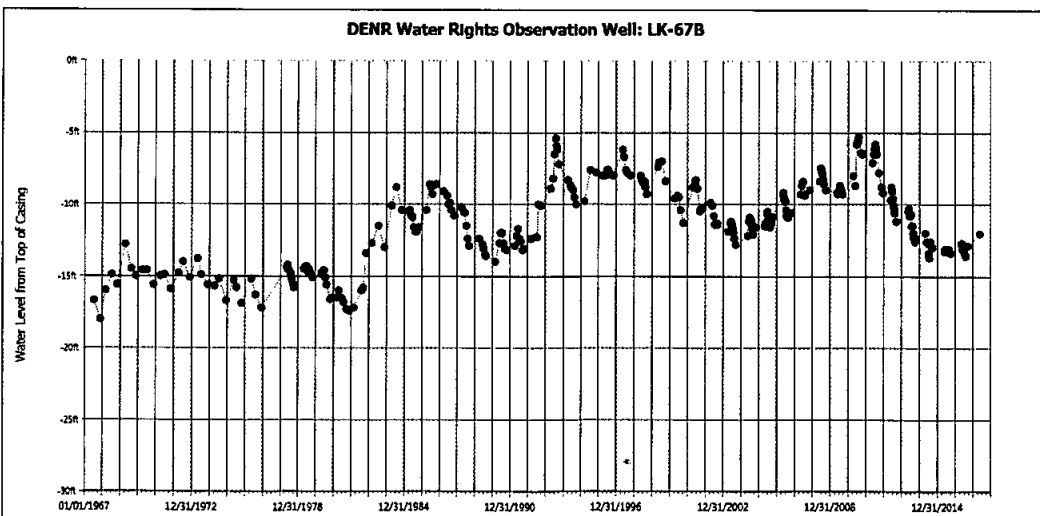


Figure 6- Hydrograph for observation well LK-67B (Water Rights, 2017a)

Recharge and Discharge:

Recharge:

Recharge to the Vermillion East Fork: Montrose aquifer is primarily through infiltration of precipitation and snowmelt (Hansen, 1986; Lindgren and Hansen, 1990). Hedges and others (1985) estimated an average annual recharge to the Vermillion East Fork: Montrose aquifer of 3.4 inches per year (in/yr.) using observation well analysis. Buhler's (2016) mapping of the Vermillion East Fork: Montrose aquifer estimated the areal extent to be approximately 34,800 acres with approximately 5,800 acres in Turner County alone. Based on those estimated areas and Hedges and others (1985) recharge rate, the recharge rate to the entire Vermillion East Fork: Montrose is approximately 9,860 ac-ft/yr. and 1,643 ac-ft/yr. in Turner County alone. Lindgren and Hansen (1990) stated there is about 240 ac-ft/yr. inflow from a portion of the Vermillion East Fork: Montrose in McCook County into the Turner County portion of the aquifer.

Discharge:

The Vermillion East Fork: Montrose aquifer discharges through evapotranspiration, discharge to the East Fork Vermillion River when the potentiometric surface of the aquifer is at a higher elevation than the stage of the river, groundwater outflow to the Parker Centerville aquifer, and well withdrawals (Lindgren and Hansen, 1990). The water rights/permits authorized to withdraw water and future use permit authorized to reserve water from the Vermillion East Fork: Montrose are shown in Figure 2 and listed in Table 1 earlier in this report.

The City of Montrose is supplied by Kingbrook Rural Water System, and the water rights are maintained only as a back-up supply for uses like fire protection (Friedeman, 2017). Subsequently, the withdrawals under the water right held by the City of Montrose (Water Right No. 1009-3) are assumed to be negligible. The City of Montrose also holds Future Use Permit No. 4039-3. The Water Management Board last reviewed Future Use Permit No. 4039-3 in 2006, and it was allowed to remain in effect to reserve 42 ac-ft/yr. from the Vermillion East Fork: Montrose aquifer for future development. The Water Rights Program is currently working with the City of Montrose to determine if they wish to maintain the future use permit. Water Right No. 6401-3 for Michael J. Johnson is for a non-consumptive use of water in a commercial gravel washing operation. Therefore, withdrawals under Water Right No. 6401-3 are also considered to be negligible.

Table 2 shows the historic annual irrigation withdrawals from the Vermillion East Fork: Montrose aquifer. The historic annual irrigation data shows that the number of permits and appropriated acres has varied over the period of record but development has been increasing in the last 15 years. Furthermore, the volume pumped fluctuates with climate and agricultural markets. The average annual irrigation withdrawal from the Vermillion East Fork: Montrose aquifer is 340.05 ac-ft/yr. The average annual pumpage from 2002-2016, the last 15 years of complete data, is 578.95 ac-ft/yr. Furthermore, Water Permit No. 8245-3 was approved in January 2017 for the irrigation of 132 acres, so it is not yet accounted for in the historic irrigation pumping average. In general, irrigators in southeastern South Dakota apply 10 inches of water or less per year. The acres currently permitted for irrigation using water from the Vermillion East Fork: Montrose aquifer is 942 acres with 657 of those acres in Turner County. Therefore, it would be more appropriate to assume annual irrigation pumpage from the Vermillion East Fork: Montrose to be less than 785 ac-ft/yr. and less than 548 ac-ft/yr. in Turner County alone.

Table 2- Historic irrigation pumpage from the Vermillion East Fork: Montrose aquifer (Water Rights, 1979-2017)

Year	No. of Permits Reporting	Appropriation (ac-ft)	Pumpage (ac-ft)
2016	10	2065	416.57
2015	9	2002	542.5
2014	10	2065	542.93
2013	10	2065	625.27
2012	7	1925	686.94
2011	7	1925	487.3
2010	7	1925	0
2009	7	1925	213.59
2008	7	1925	558.65
2007	7	1925	804.95
2006	7	1925	818.29
2005	7	1925	978.19
2004	7	1925	753.46
2003	5	1575	621.09
2002	5	1575	634.6
2001	5	1575	410.88
2000	5	1575	346.03
1999	5	1575	321.13
1998	5	1629	180.52
1997	5	1629	192
1996	5	1629	185.06
1995	4	1389	189.8
1994	4	1389	212.61
1993	4	1229	16
1992	4	2216	17.3
1991	5	2768	262
1990	5	2768	199
1989	5	2908	314
1988	4	2448	252.3
1987	4	2448	85
1986	4	2448	63
1985	4	2448	102
1984	5	3888	42
1983	4	2448	125.25
1982	4	2448	106.33
1981	7	4440	261.41
1980	7	4440	299.72
1979	7	4440	145.71
Max	10	4440	978.19
Min	4	1229	0
Avg.	5.87	2232.82	342.46

Hydrologic Budget:

The estimated average annual withdrawal, assuming full development of Future Use Permit No. 4039-3, from the Vermillion East Fork: Montrose is expected to be less than 827 ac-ft/yr. This application, if approved, could pump up to 222.2 ac-ft/yr. That is a total of 1,049.2 ac-ft/yr. The estimated average annual recharge to the Vermillion East Fork: Montrose is 9,860 ac-ft/yr. with 1,643 ac-ft/yr. in only Turner County. The Turner County portion of the Vermillion East Fork: Montrose also receives subsurface inflow of 240 ac-ft/yr. from the McCook County portion of the aquifer. A comparison of the estimated average annual recharge and withdrawals supports the observation well analysis. Therefore, there is a reasonable probability there is unappropriated water available for this proposed appropriation.

EXISTING WATER RIGHTS:

Figure 7 is a map of the project area around Application No. 8278-3 including the proposed well sites, locations of wells sites for water rights/permits and observation wells completed into the Vermillion East Fork: Montrose aquifer, water rights/permits completed into the Vermillion West Fork and Parker Centerville aquifers, and the proposed avian production facility where the water pumped under this application, if it is approved, will be used. Table 3 is a table that lists the water rights/permits and future use permits shown in Figure 7.

The nearest wells authorized by water rights/permits to withdraw water from the Vermillion East Fork: Montrose aquifer to the two well sites proposed by this application are the wells authorized by Water Right Nos. 5389-3, 6075-3, and 6434-3 at approximately 0.8 miles southeast, 1.1 miles west, and 460 feet west of the nearest proposed well site, respectively. The well authorized by Water Right No. 6434-3 is held by DLK&M LLC. The applicant, Sonstegard Food Company, has reached an agreement with DLK&M LLC to have the option to purchase the land that is associated with Water Right No. 6434-3 pending an approval of Application No. 8278-3 per documentation included with this application and a June 20, 2017, phone conversation with John Taylor. They intend to immediately transfer Water Right No. 6434-3 to Sonstegard Food Company. This means the applicant for this application will also be the holder of Water Right No. 6434-3 and will manage both appropriations in such a way as to not adversely impact their own wells.

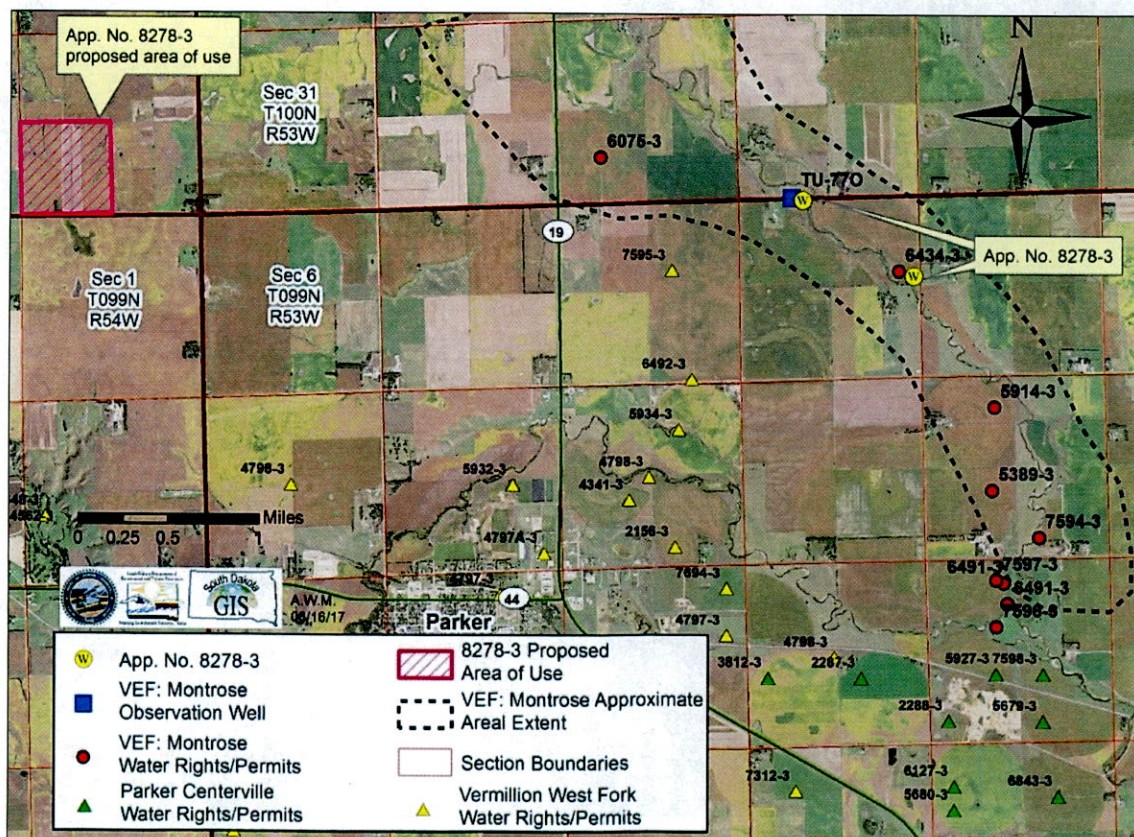


Figure 7- Map of area around Application No. 8278-3 including locations of wells sites for water rights/permits and observation wells completed into the Vermillion East Fork: Montrose (Water Rights, 2017a and 2017b)

Table 3- List of water rights/permits and future use permits shown in Figure 7 (Water Rights, 2017b)

Permit No.	Name	Status	Aquifer	Use	Rate (cfs)	Acres
5389-3	Ken Plucker Jr	LC	VEF	IRR	2	160
5914-3	Berens Farms	LC	VEF	IRR	1.71	120
6075-3	Weeg Family Farms LLLP	LC	VEF	IRR	1.56	132
6434-3	DLK&M LLC	LC	VEF	IRR	1.23	83
6491-3	Joseph Plucker	LC	VEF	IRR	1.11	92
7594-3	Joseph Plucker	PE	VEF	IRR	0.67	50
7596-3	Joseph Plucker	PE	VEF	IRR	0.44	20
7597-3	Joseph Plucker	PE	VEF	IRR	0.44	0
2287-3	Robert L Merrill	LC	PAC	IRR	1.88	133
2288-3	Allen or Kristi Merrill	LC	PAC	IRR	1	76
3812-3	Marlene Rance	LC	PAC	IRR	1.83	128
5679-3	Ballacostain LLP	LC	PAC	IRR	1.52	107
5680-3	Ballacostain LLP	LC	PAC	IRR	1.11	78
5927-3	Joseph Plucker	LC	PAC	IRR	0.87	61
6127-3	Ballacostain LLP	PE	PAC	IRR	0.86	60
6843-3	Ballacostain LLP	LC	PAC	IRR	1.56	105
7598-3	Joseph Plucker	PE	PAC	IRR	0.91	30
2156-3	Roger Ihnen	LC	VWF	IRR	1.28	90
4341-3	Weeg Family Farms LLLP	LC	VWF	IRR	0.89	62
4562-3	Lawrence R Strawbridge Living Trust	LC	VWF	IRR	0.89	74
4797-3	City of Parker	LC	VWF	MUN	1.33	N/A
4797A-3	City of Parker	PE	VWF	IRR	0.27	30
4798-3	City of Parker	FU	VWF	MUN	N/A	N/A
5932-3	James P Van Derostyne	LC	VWF	IRR	0.7	49
5934-3	James P Van Derostyne	LC	VWF	IRR	1.67	120
6492-3	Glenn Kleinsasser MD	LC	VWF	IRR	1.78	136
7312-3	Allen Merrill	PE	VWF	IRR	1.11	75
7595-3	Joseph Plucker	PE	VWF	IRR	1.78	136
7648-3	Par Mar Valley Country Club	PE	VWF	IRR	0.89	50
7694-3	Joseph Plucker	PE	VWF	IRR	1.56	33

VEF= Vermillion East Fork, VWF= Vermillion West Fork, PAC= Parker Centerville

There are several water rights/permits authorized to withdraw water from the Vermillion West Fork and Parker Centerville aquifers within approximately one to 2.5 miles of the proposed well sites. Since the Vermillion East Fork: Montrose, Vermillion West Fork, and Parker Centerville aquifers are hydraulically connected in this area, the potential for effects caused by pumping these proposed diversions should be considered. There are also a number of farms sites that may have domestic wells completed into the Vermillion East Fork: Montrose aquifer in the vicinity of the well sites proposed by this application.

The Vermillion East Fork: Montrose aquifer is an unconfined aquifer. Any drawdown created from pumping a well completed into an unconfined aquifer is minimal within a short distance of the well. The proposed wells are likely within a short distance, less than 0.5 miles, of an aquifer boundary on two sides. As the radius of influence from pumping expands and encounters the low permeability/impermeable aquifer boundaries, drawdown in the other directions will increase. However, the river is a recharge boundary. Increased drawdown from pumping will increase capture from the river. Increased capture from the river will decrease the extent of drawdown around the pumped wells. The nearest water right/permit authorized to withdraw water from the East Fork Vermillion River to the proposed well sites is 11.7 miles upstream (Water Rights,

2017b). There would be no impact to surface water appropriations of the East Fork Vermillion River if this application were approved. During periods of no flow in the East Fork Vermillion River, there will not be any water available for capture from the river.

Any very low/no flow conditions of the river may impact domestic users of the river. In the past the East Fork Vermillion River has experienced low flow conditions several times since the beginning of the period of record in October 1995 at the U.S. Geological Survey stream gage approximately one mile north of the northern proposed well site (USGS, 2017). If pumping captures groundwater that would normally discharge to the river, it may increase the frequency and duration of very low/no flow conditions in the East Fork Vermillion River.

The unconfined nature of the aquifer means the drawdown cone created from pumping either well will not be significant far from the well. The Vermillion East Fork: Montrose aquifer is relatively thin with an average thickness of 29 feet in Turner County (Lindgren and Hansen, 1990). That means management of the well system to prevent pumping either well dry will be critical for the applicant to minimize impacts to their avian production facility. This also means that impacts on nearby users will also be reduced. If the applicant does not purchase the lands associated with Water Right No. 6434-3 and therefore become owner of said water right, there is a potential to adversely impact the well authorized by Water Right No. 6434-3. At the proposed maximum appropriation volume, 222.2 ac-ft/yr., the continuous pump rate equivalent for this application will be 0.307 cfs. Assuming a transmissivity of 7,150 ft²/d based on the specific capacity of appropriative wells completed into the Vermillion East Fork: Montrose aquifer (Aqtesolv, 2017; Water Rights, 2017b and 2017c), a storativity of 0.1, a pump time of 365 days, and the average diversion rate of 0.307 cfs, drawdown at a well 460 feet away is expected to be less than two feet based on the Theis Equation (Utah, 2017). The transmissivity value used for that calculation is likely on the low end of likely transmissivity values for the aquifer. That means drawdown is likely less than the estimate.

Observation well TU-770 is approximately 0.7 miles (3,750 feet) northwest of the well authorized by Water Right No. 6434-3. That well is authorized to divert water from the Vermillion East Fork: Montrose aquifer at a maximum rate of 1.23 cfs. The well has pumped water for irrigation every year from 2004 through 2016 with the exception of 2010. There is no apparent effect on the water level shown in the hydrograph for TU-770 during that time period that could be attributed to pumping under Water Right No. 6434-3. Considering the distance from the proposed well locations to other wells, the relatively low average diversion rate, and the unconfined nature of the aquifer, there is a reasonable probability this proposed diversion can be made without impacting existing appropriative users.

In the past, the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. Since the aquifer is under unconfined conditions, drawdown due to pumping would not be significant far from the proposed well sites. There has also been a history of large capacity wells from this aquifer without well interference complaints. Furthermore, the Water Management Board has defined an adversely impacted domestic well in ARSD 74:02:04:20(7) as:

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

The Vermillion East Fork: Montrose aquifer is a relatively thin aquifer with a limited amount of water in storage. While the average annual withdrawal would not exceed average annual recharge to the aquifer, conditions may occur when the withdrawal exceeds recharge. When this occurs, water will be removed from storage, consequently reducing the saturated thickness of the aquifer. This is not anticipated to be a long term effect; however if the saturated thickness is reduced to the extent that water rights/permits can no longer pump at their developed or “historically established” diversion rates, this may be considered an adverse impact. If approved and as a precaution, the water permit should include a qualification that the well owner should control their withdrawals so there is not a reduction of needed water supplies for adequate domestic wells or for adequate wells having prior water rights. The proposed diversion is not expected to adversely impact existing appropriative or domestic users when all of the above factors are considered.

The river flood plain (i.e. the aquifer) is relatively narrow in the area of the proposed well sites. To minimize any potential impacts to the river even though any potential impacts are expected to be negligible, a setback distance for the wells from the river could be considered. Setback distances have been used similarly in the past for permits near the Vermilion River, Big Sioux River, Sand Creek, and most recently West Fork Vermillion River. These setbacks were all for high capacity irrigation wells and were usually one-quarter mile setbacks or 1,320 feet. In general, the setbacks were set at 660 ft per 1 cfs of diversion rate. Using that same premise, a setback from the East Fork Vermillion River of 730 feet if the applicant intends to pump only one well at a time or 365 feet if the applicant intends to pump both wells at the same time at one-half of the maximum diversion rate (0.555 cfs) is recommended for this application.

CONCLUSIONS:

1. Application No. 8278-3 proposes to divert water from the Vermillion East Fork: Montrose aquifer at a maximum diversion rate of 1.11 cfs for commercial use in an avian production facility with a maximum annual volume of 222.2 ac-ft.
2. The avian production facility is to be located in the SW ¼ Section 36 T100N-R54W in Turner County. The wells are to be located in the NE ¼ NW ¼ and SE ¼ NE ¼ Sec. 3-T99N-R53W. The water is to be piped underground from the wells to the place of use.
3. The Vermillion East Fork: Montrose aquifer is a surficial aquifer composed of sand and gravel that primarily occupies the flood plain of the East Fork Vermillion River in Turner, McCook, Lake, and Miner Counties.
4. The hydrographs for observation well TU-77O, LK-67A, and LK-67B show stable to rising water levels over the period of record. These water levels are dominated by

climatic conditions and thus recharge to and natural discharge from the aquifer irrespective of changing appropriative use.

5. The observation well data document there is a reasonable probability unappropriated water is available for this proposed appropriation.
6. Based on a hydrologic budget, there is a reasonable probability unappropriated water is available for this proposed appropriation.
7. When considering the unconfined nature of the aquifer, the distance between wells, and the relatively low average diversion rate, there is a reasonable probability this proposed diversion can be made without adversely impacting existing appropriative or domestic users.
8. If a setback distance is considered, a setback of 730 feet from the East Fork Vermillion River if only one well is to be pumped at a time or 365 feet if both wells are to be pumped at the same time at one-half of maximum proposed diversion rate.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

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RUN DATES:	7/6, 2017	
		AMOUNT DUE: \$72.30 pd.

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Attn: Karen Schlaak
Water Rights Program
523 E. Capital
Jose Foss Building
Pierre, SD 57501-0000

DETACH THIS STUB AND RETURN WITH PAYMENT

PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION

Customer Number: 78306 523 E. Capital
Invoice Number: 902065

Argus Leader

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

Sara Kruse being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-2.1, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Thursday, the 6 day of July, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,
_____, the _____ day of _____, 2017,

and that \$72.30 pd. was charged for publishing the same

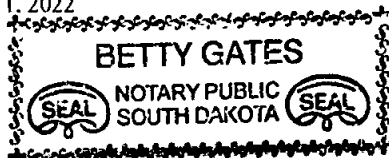
Sara Kruse

Subscribed and sworn to before me 7/6/17

Betty Gates

Notary Public, South Dakota

My Commission expires March 11, 2022



NOTICE OF APPLICATION NO. 8278-3 to Appropriate Water

Notice is given that Sonstegard Food Company, c/o John E Taylor, Taylor Law Firm, 4820 E 57th St, Suite B, Sioux Falls SD 57108 has filed an application for a water permit to appropriate 222.2 acre-feet of water annually at a maximum diversion rate of 1.1 cubic feet of water per second from two wells to be consolidated into the Vermillion East Fork Mesquite Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8278-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The 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.

Any person interested in opposing or supporting this

application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by July 17, 2017.

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

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 recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$72.30.
2243179 July 6, 2017

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Turner) SS

I, Dawn Rye

certify that the attached printed Notice was taken

from the New Era

printed and published in city of Parker

County of Turner and

state of South Dakota. The notice was published

in the newspaper on the following date:

Thursday, July 6, 2017

Cost of Printing \$36.41

Notice of application No.

8278-3 to appropriate water

Notice is given that Sonstegard Food Company, c/o John E Taylor, Taylor Law Firm, 4820 E 57th St, Suite B, Sioux Falls SD 57108 has filed an application for a water permit to appropriate 222.2 acre-feet of water annually at a maximum diversion rate of 1.11 cubic feet of water per second from two wells to be completed into the Vermillion East Fork: Montrose Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.

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

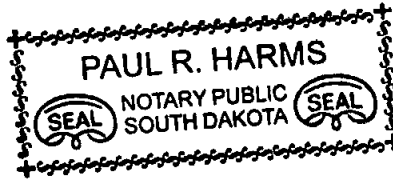
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Dawn Rye
(Signature)

Office Manager
(Title)

7/6/17
(Date Signed)

Paul R. Harms



Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, June 27, 2017 10:16 AM
To: allegals@argusleader.com
Subject: 8278-3, Sonstegard Food Company
Attachments: 8278-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on July 6, 2017.

Sonstegard Food Company, c/o John E Taylor, Taylor Law Firm, 4820 E 57th St, Suite B, Sioux Falls SD 57108 (605 782-5303) 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: Tuesday, June 27, 2017 10:16 AM
To: sebeling@ncppub.com
Subject: 8278-3, Sonstegard Food Company
Attachments: 8278-3public.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



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Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by July 17, 2017.

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Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of _____.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

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

June 27, 2017

Sonstegard Food Company
c/o John E Taylor
Taylor Law Firm
4820 E 57th St, Suite B
Sioux Falls SD 57108

Dear Mr. Taylor:

Water Permit Application No. 8278-3 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the New Era printed at Parker SD (Ph # 605 297-4419) and the Argus Leader printed at Sioux Falls SD (Ph # 605 331-2200). You will need to contact the newspapers 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 newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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

Dear Dept of Environment -

I am a concerned person that lives close to the water permit 8278-3 by Sonstegard Food Company by Parker SD.

I am opposing this permit, since I live at 45435 272nd St Parker SD. with 12 acres.

I am concerned that the permit allowing the food company to pull a large amount of water daily, which will lower the water levels on our property. It will affect well water that we have on our property.

I am very worried that we will have to change to rural water. It will be very expensive for us to afford.

Please keep us informed us on any new information on this water permit.

Joy Hill
Joyce Willoughby
45435 272nd St
Parker SD 57053

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JUL 17 2017

WATER RIGHTS
PROGRAM

July 13, 2017

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

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WATER RIGHTS
PROGRAM

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 57th St., Suite B
Sioux Falls SD 57108

RE: Water rights application No. 8278-3

To: Whom it may concern;

In regards to Sonstegard Food Company water rights application no. 8278-3 I would like to voice my opposition for the following reasons:

I am a landowner north of the proposed sight of the well digging. My property is in section 33 of Brothersfield township which is ½ mile north of the proposed sight.

My **only** source of water on my place is my shallow well. We use the well water for all of our water use.

I am very concerned that the pumping of water of these proposed wells would have a large impact on our water supply. I do not want to dig a deeper well or be forced to have rural water due to the additional expense.

Please consider this petition of opposition.

Thank you.

Sincerely,



Charlene Ritter
27253 455th Ave
Parker, SD 57053

PETITION OBJECTING TO APPLICATION PERMIT TO APPROPRIATE WATER NO. 8278-3

July 13, 2017

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**WATER RIGHTS
PROGRAM**

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

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 57th St., Suite B
Sioux Falls SD 57108

Gentlemen:

My name is Darlene A. Goosen. My address is 27312 South Dakota Highway 19, P.O. Box 101, Parker, South Dakota 57053. I live in Section 4 of Parker Township approximately one mile west of the proposed location for test well No. 1 in the application.

I was born and raised on that farm, moved away after high school and moved back home in approximately December 1998. I have lived there ever since. I use my well for domestic use and some livestock (sheep). I also have chickens, ducks, and guineas.

Approximately two or three years ago my well went dry. The old well was approximately 25 feet deep. At around the same time the well went dry, four irrigation systems in the same approximately section had been put in. I was forced to drill a new well. That well was approximately 55 feet deep and it is my recollection that that well was drilled to granite.

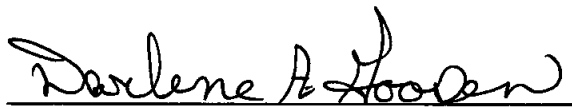
I do not want rural water.

I am filing this Petition to object to Sonstegard Food Company appropriating water from this aquifer, because I fear it will cause my well to go dry. I contacted the South Dakota Department of Environment and Natural Resources after I drilled my new well, explaining how my old well went dry by the increased use of irrigation wells. I was told that if my new well went dry that they would shut down the irrigation.

I am specifically objecting to the Sonstegard Food Company's wells and would, at the very least, ask as a condition that if my well goes dry that they cease operation of their wells and that I be provided with a supply of water at their expense.

Also, I object if any permit is granted to using any power of eminent domain or other means to cross my land. I do not consider Sonstegard's use of this water to be a public use. I consider it to be a private use. I also do not think that the wells proposed by Sonstegard and the appropriation of water from this aquifer is in the public interest. It is strictly for Sonstegard's own private interest.

Respectfully submitted,

A handwritten signature in cursive script, reading "Darlene A. Goosen", written over a horizontal line.

Darlene A. Goosen
27312 South Dakota Hwy 19
PO Box 101
Parker, SD 57053

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JUL 12 2017

WATER RIGHTS
PROGRAM

Attn: Chief Engineer
Water Rights Program,

7-10-2017

This is a letter to let you know our concerns about the 2 wells Sonstegard Food Company want to take 2 hundred thousand gallons of water a day out of for their Chicken Farm.

We own land on each side ... north and south of the wells. We have cattle on each side. We live on the north side for over 50 yrs. We also use our well water here, not only for cattle, but for our house needs. We don't have rural water.

Our deep concern is that the water won't last if 2 hundred thousand gallons a day are taken out. There is also a crop irrigation system on their land where the 2 wells are.

Please Don't GIVE THE PERMIT for them to take the water.

Sincerely,

Walter Mielke
Jean Mielke

45560 273rd. St.
Parker, S.D., 57053



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

August 10, 2017

NOTICE OF HEARING

TO: John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108
And Parties of Record (see attached list)

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8278-3, Sonstegard Food Company

Petitions to the Chief Engineer's recommendation for approval of Water Permit Application No. 8278-3 were filed in response to the Notice of Application published in the New Era and Argus Leader. This notice schedules a hearing on Application No. 8278-3 before the South Dakota Water Management Board.

Water Permit Application No. 8278-3 proposes to appropriate 222.2 acre-feet of water annually at a maximum diversion rate of 1.11 cubic feet of water per second from two wells to be completed into the Vermillion East Fork:Montrose Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8278-3 with qualifications because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

The Water Management Board will consider Application No. 8278-3 at 10:00 AM (Central Time) on Thursday, October 5, 2017, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

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

The October 5, 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 September 22, 2017. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting tentatively on December 6 – 7, 2017, and personal notice will be provided to all petitioners regarding the time, date and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing. 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 four petitions filed in the matter of Water Permit Application No. 8278-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is August 21, 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; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

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

enclosures

c: Ann Mines Bailey, Assistant Attorney General

PARTIES OF RECORD WATER PERMIT APPLICATION NO. 8278-3
SONSTEGARD FOOD COMPANY

Applicant

Counsel for Sonstegard Food Company
John E Taylor
5005 South Bur Oak Place
Sioux Falls SD 57108

Petitioners

Joyce Willoughby
45435 272nd Street
Parker SD 57053

Charlene Ritter
27253 455th Avenue
Parker SD 57053

Darlene A Goosen
27312 South Dakota Hwy 19
PO Box 101
Parker SD 57053

Walter and Jean Mielke
45560 273rd Street
Parker SD 57053

CERTIFICATION

I hereby certify that on August 10, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated August 10, 2017, regarding notice of hearing for Water Right Permit Application No. 8278-3, as addressed below:

John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Joyce Willoughby
45435 272nd Street
Parker SD 57053

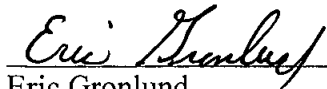
Charlene Ritter
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Parker SD 57053

Darlene A Goosen
27312 South Dakota Hwy 19
PO Box 101
Parker SD 57053

Walter and Jean Mielke
45560 273rd Street
Parker SD 57053

Sent Inter-office to:

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



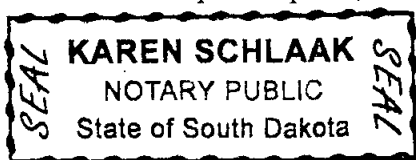
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of August, 2017



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



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 Intervenors
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.

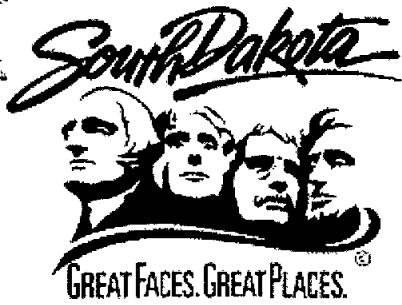
Transcript

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.



Summary of South Dakota Water Laws and Rules

Prepared by Water Rights Program

May 2013

DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov/wr>

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.

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SEP 20 2017

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC

LAWYERS

412 WEST 9TH STREET – SUITE 1

SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer

Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

September 18, 2017

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

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

Re: Water Permit Application No. 8278-3

Gentlemen:

Enclosed and intended as service by mail is a true and correct copy of Notice of Appearance and Request for Continuance in the above matter.

Best regards.

Sincerely,



MICHAEL J. SCHAFFER

For the Firm

MJS:clm

Enclosures

cc w/encls:

Ann Mines Bailey
Joyce Willoughby
Walter and Jean Mielke
Charlene Ritter
Darlene Goosen

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SEP 20 2017

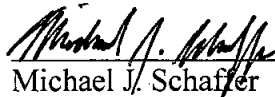
WATER RIGHTS
PROGRAM

REQUEST FOR CONTINUANCE

The undersigned, on behalf of the Petitioners objecting to Water Permit Application No. 8278-3, Sonstegard Food Company, do hereby respectfully request that the Water Management Board continue the hearing set for October 5, 2017. The undersigned has a conflict on that day and the Notice of Hearing sent to the Petitioners objecting to the Application indicated that a request for an automatic delay must be filed by September 22, 2017. The Notice further indicated that if an automatic delay is requested, the hearing will be rescheduled for a future board meeting tentatively on December 6-7, 2017. Accordingly, Petitioners respectfully request that the hearing be continued until December, 2017.

Dated this 15th day of September, 2017.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the "Request for Continuance" was served by United States mail, postage prepaid upon:

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

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

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

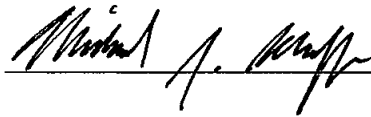
Joyce Willoughby
45435 272nd Street
Parker SD 57053

Walter and Jean Mielke
45560 273rd Street
Parker SD 57053

Charlene Ritter
27253 455th Avenue
Parker SD 57053

Darlene A. Goosen
27312 South Dakota Hwy 19
PO Box 101
Parker SD 57053

on this 18th day of September, 2017.



STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	MOTION FOR CONTINUANCE
SONSTEGARD FOOD COMPANY	)	
	)	

Comes Now, Applicant Sonstegard Food Company by and through its attorney of record and submits the following Motion for Continuance. Applicant respectfully requests the Board delay the hearing in the matter of Water Application Number 8278-3 to its December, 2017 meeting.

Dated this 21st day of September, 2017.



John E. Taylor
john.taylor@taylorlawsd.com
TAYLOR LAW FIRM, LLC
4820 East 57th Street, Suite B
Sioux Falls, SD 57108
(605) 906-0000
Attorney for Sonstegard Food Company

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SEP 20 2017

WATER RIGHTS
PROGRAM

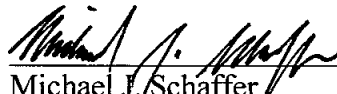
NOTICE OF APPEARANCE

Please take notice that Michael J. Schaffer from Schaffer Law Office, Prof., LLC, 412 W. 9th Street, Suite 1, Sioux Falls, South Dakota 57104, represents Joyce Willoughby, Walter Mielke, Jean Mielke, Charlene Ritter, and Darlene Goosen, Petitioners objecting to the Water Permit Application No. 8278-3 filed on behalf of Sonstegard Food Company.

The undersigned hereby requests that any further communications with Petitioners objecting to the Water Permit Application also be directed to the undersigned.

Dated this 18th day of September, 2017.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the "Notice of Appearance" was served by United States mail, postage prepaid upon:

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

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

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

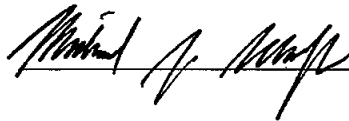
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Charlene Ritter
27253 455th Avenue
Parker SD 57053

Darlene A. Goosen
27312 South Dakota Hwy 19
PO Box 101
Parker SD 57053

on this 18th day of September, 2017.



STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER
PERMIT APPLICATION #8278-3
SONSTEGARD FOOD COMPANY

)
)
)
)

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that John E. Taylor of Taylor Law Firm, LLC, 4820 East 57th Street, Sioux Falls, SD, 57108, does hereby appear as counsel of record for and on behalf of Sonstegard Food Company, as it pertains to the above entitled application.

Dated this 21st day of September, 2017.



John E. Taylor
john.taylor@taylorlawsd.com
TAYLOR LAW FIRM, LLC
4820 East 57th Street, Suite B
Sioux Falls, SD 57108
(605) 906-0000
Attorney for Sonstegard Food Company

Gronlund, Eric

From: John Taylor <john.taylor@taylorlawsd.com>
Sent: Thursday, September 21, 2017 9:31 AM
To: Gronlund, Eric
Cc: Mines-Bailey, Ann
Subject: [EXT] Sonstegard Food Company // Continuance // Appearance
Attachments: SonstegardContinuance9.21.17.pdf; SonstegardAppearance9.21.17.pdf

Mr. Gronlund,

In regards to Sonstegard Food Company's Application #8278-3, attached are a Notice of Appearance and Motion for Continuance to reschedule the matter in December, 2017.

Respectfully,

John E. Taylor
Attorney

Taylor Law Firm, LLC
4820 East 57th Street
Suite B
Sioux Falls, South Dakota 57108

john.taylor@taylorlawsd.com
605-360-6266 Cell
605-782-5303 Direct

<http://www.taylorlawsd.com>

The information contained in this message is confidential, protected from disclosure and may be legally privileged. If you have received this communication in error, please notify the sender immediately by replying to this message and destroy the material in its entirety, whether in electronic or printed format.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

September 21, 2017

NOTICE

TO: John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael J Schaffer
Schaffer Law Office
412 West 9th Street – Suite 1
Sioux Falls SD 57104-3602

FROM: *for* Jeanne Goodman, Chief Engineer
Water Rights Program

Eric Goodman

SUBJECT: Notice of Autodelay of Hearing on Water Permit Application No. 8278-3, Sonstegard Food Company

Petitions of opposition were filed in response to the public notice for Water Permit Application No. 8278-3 filed by Sonstegard Food Company.

Notice scheduling an October 5, 2017, hearing before the Water Management Board on Application No. 8278-3 was sent to parties on August 10, 2017. In response to this notice, counsel for the petitioners made a formal request for postponement of the October 5, 2017, hearing date. Counsel for Sonstegard Food Company also filed a request for continuance. Therefore, the hearing on Application No. 8278-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 5, 2017.

Enclosed is the request for continuance and notice of appearance filed by petitioner's counsel Michael J. Schaffer and from John E. Taylor on behalf of Sonstegard Food Company.

The hearing to consider Application No. 8278-3 is tentatively scheduled for the December 6 - 7, 2017, Water Management Board meeting. The Board will formalize its next meeting date at their October 4 - 5, 2017, meeting. Future notice of the time and place of the hearing for Application No. 8278-3 will be provided to counsel for parties.

Ann Mines Bailey, Assistant Attorney General, represents the Water Rights Program in this matter and may be reached at (605) 773-3215.

enclosure

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 21, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Autodelay dated September 21, 2017, regarding notice of hearing for Water Right Permit Application No. 8278-3, as addressed below:

John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael J Schaffer
Schaffer Law Office
412 West 9th Street – Suite 1
Sioux Falls SD 57104-3602

Sent Inter-office to:

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



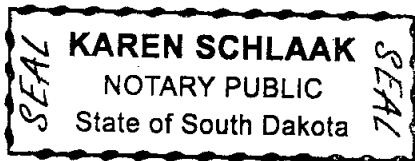
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 21st day of September, 2017



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





TAYLOR LAW FIRM, LLC

ATTORNEYS AT LAW

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OCT 03 2017

WATER RIGHTS
PROGRAM

William Taylor – bill.taylor@taylorlawsd.com
John E. Taylor – john.taylor@taylorlawsd.com

September 29, 2017

Chief Engineer
c/o Eric Gronlund
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

RE: In the Matter of Water Permit Application #8278-3, Sonstegard Food Company

Dear Eric:

Enclosed are copies of the cover letter and Applicant's First Set of Interrogatories and Request for Production of Documents to Petitioners Joyce Willoughby, Walter and Jean Mielke, Charlene Ritter and Darlene Goosen in the above matter.

Respectfully,

John E. Taylor
Attorney

Enclosures

cc: Client



TAYLOR LAW FIRM, LLC

ATTORNEYS AT LAW

William Taylor – bill.taylor@taylorlawsd.com
John E. Taylor – john.taylor@taylorlawsd.com

September 29, 2017

Mr. Michael Schaffer
Schaffer Law Office, Prof. LLC
412 West 9th Street
Ste. 1
Sioux Falls, SD 57104-3602

RE: In the Matter of Water Permit Application #8278-3, Sonstegard Food Company

Dear Mr. Schaffer:

Enclosed and intended as service by mail are the Applicant's First Set of Interrogatories and Request for Production of Documents to Petitioners Joyce Willoughby, Walter and Jean Mielke, Charlene Ritter and Darlene Goosen in the above matter.

Respectfully,

John E. Taylor
Attorney

Enclosures

cc: Client

cc w/encls:

Ann Miles Bailey
Eric Gronlund

**STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD**

	)	
IN THE MATTER OF WATER	)	APPLICANT'S FIRST SET OF
PERMIT APPLICATION #8278-3	)	INTERROGATORIES AND
SONSTEGARD FOOD COMPANY	)	REQUEST FOR PRODUCTION
	)	OF DOCUMENTS TO THE
	)	PETITIONER CHARLENE
	)	RITTER
	)	

**TO: CHARLENE RITTER, PETITIONER OBJECTING TO WATER PERMIT
APPLICATION 8278-3 AND YOUR ATTORNEY OF RECORD:**

You are requested and required to answer fully and under oath, pursuant to the South Dakota Administrative Procedures Act and SDCL §§ 15-6-33 and 15-6-34, each of the following Interrogatories and Document Requests and serve a copy of your answers thereto upon the Applicant within thirty (30) days after service of these Applicant's First Set of Interrogatories and Request for Production Documents upon you. Please be advised that your answers must include all information available not only to you, but to your agents, officers, representatives, employees, attorneys, insurers, or others who have information available to you upon inquiry to them.

INSTRUCTIONS AND DEFINITIONS

1. If you claim privilege with respect to any information requested, specify the privilege claimed, the statute, rule or decision giving rise to that privilege, and give a brief description of the nature of the information or document being withheld, including the author(s), recipients(s), and person(s) to whom the information or documents have previously been furnished.
2. If you object to, or otherwise decline to answer any portion of an interrogatory or request, provide all information called for by that portion of the interrogatory or request to which you do not object or for which you do not decline to answer. If you object to any interrogatory or request on the ground that it is too broad, provide such information which is relevant. For those portions of any interrogatories or requests to which you object or which you otherwise decline to answer, state the reason for such objection.
3. These discovery requests are continuing in nature and require supplementary answers pursuant to SDCL § 15-6-26(e) if you obtain further information between the time your answers are served and the time of hearing.
4. Whenever an interrogatory or request may be answered by referring to a writing or document, the writing or document may be attached as an exhibit to your answers and referred to in your answers. If the writing or document has more than one page, refer to the page and section where the answer to the interrogatory or request can be found.

5. If more than one interrogatory requires the current address and position of the same person, you need only provide such information in the first interrogatory requesting that information.

6. The term "and," as well as, the term "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories any information which might otherwise be construed to be outside their scope.

7. The term "custodian" refers to the person having possession, custody, or control of any document, writing, or physical evidence.

8. To "describe" shall mean to relate as completely as possible each and every act, omission, incident, event, condition, circumstance, or thing relating directly or indirectly to the subject of the description, including all pertinent dates and, without limiting the foregoing, to:

- a. identify all documents directly or indirectly related thereto;
- b. identify all communications directly or indirectly related thereto;
- c. identify all persons directly or indirectly related thereto; and
- d. identify all locations applicable to any events, incidents, conditions, circumstances or things directly or indirectly related thereto.

9. The term "document(s)" shall have the same meaning as in Federal Rule of Civil Procedure 34(a), and shall include every writing of every type or description, and every other thing constituting any medium through which any type of information has been transmitted or recorded, including any electronic or visual medium. The terms "document(s)" also means every copy of a document where such copy is not an identical duplicate of the original. This definition also includes all drafts of responsive documents.

10. A request to "explain fully" or to "describe in detail" any answer, denial or claim, is a request, insofar as may be applicable to:

- a. state fully and specifically each fact and contention to support your answer, denial or claim; and
- b. for each such fact or contention, to identify each person who has knowledge relative to that contention, each document that tends to support that fact or contention and each document that tends to dispute that fact or contention.

11. "Identify," when used in reference to a natural person means to state to the fullest extent possible his or her name, present or last known address, telephone number(s), employer and position at the time(s) in question, and present employer.

12. "Identify," when used in reference to a document or documents, report or reports, means to state the date, author or originator, their present addresses, and type of document or

written communication (e.g. bills, letter, memorandum, telegram, etc.), a brief description of the contents of the document, and disclose its present location and custodian.

13. "Identify," when used in reference to a place, means to state to the fullest extent possible the street address, city, and state in which it is situated, including but not limited to the legal description of any real property owned by you, or if such identification is not possible, otherwise to describe its location.

14. The terms "person" or "persons" as used herein mean all entities, including, without limiting the generality of the foregoing, all individuals, organizations, associations, companies, partnerships, joint venturers, corporations, trusts, and estates.

15. A reference to "a person with knowledge" or to "a person with information" concerning a matter, occasion, event, or communication shall be deemed to include a request to identify both the participants in such matters, occasions, events, or communications and the persons who are believed to possess information regarding the same, though they did not participate. Such request shall also include any expert who has factual information called for or any opinion with respect thereto.

16. As used herein, the words "record" or "records" include any regular, formal or not formal, official or not official, memorandum or written preservation of any events, actions taken, and details thereof, inquired into here. A copy of the original "record" is preferred; giving the substance of such "records" will suffice where a copy is not available.

17. The term "reports" shall include all studies, analyses, surveys, polls, memoranda, statistical and financial compilations, reviews, forecasts, projections and submission of information of any kind.

18. The terms "you," and "your," as used herein, means Petitioner, as well as any agent, officer, director, employee, attorney, or other person or persons acting on behalf of or under the control of Petitioner.

19. The term "writing" as used herein is meant to include all records, reports, papers, documents, photographs, books, letters, notes, memoranda, tape recordings, or any other correspondence in Petitioner's possession, custody or control.

INTERROGATORIES

You are hereby requested to answer the following interrogatories within the time and in the manner specified by South Dakota law:

1. Identify the name, address, telephone number, and occupation of each and every person or persons answering these interrogatories.

2. Identify the name, address, telephone number, and occupation of each and every person furnishing information or assisting in answering these interrogatories.

3. Identify the name, address, telephone number, and occupation of all persons known to you, or your counsel, associates, investigators, employees, or agents, who have knowledge of any facts relevant to Water Permit Application #8278-3 (hereafter the "Application").

4. As to all persons listed in your answer to the previous interrogatory, state whether any of them have made any oral statements or have given any written statements relevant to the subject matter of this action. If so, state:

- a. The name of the person making the statement and its date;
- b. If oral, the substance of the statement and the name and present address of all who heard it made;
- c. If written, the substance of the statement, the name and present address of the person who took the statement and the custodian of the statement; and
- d. If written, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of all such statements.

5. Describe in detail any investigation conducted or performed by you or any individual hired by you, with respect to the Application, and identify all individuals and all documents provided to or produced by said individuals.

6. Describe in detail the basis on which you contend that you have standing to participate in proceedings before the Water Management Board pertaining to the Application.

7. Identify any person or entity who has on your behalf completed an evaluation regarding the subject matter of the Application or has given any assessment of the Application of its impacts on you or others, including the public as a whole.

8. Do you claim Applicant violated any statutes, rules, regulations, ordinances or other customs or standards with respect to the Application? If so, state:

- a. The exact identifying number of the applicable statute, rule, etc.
- b. The exact act or omission constituting such violation;
- c. The identity of the person you claim committed such violation;
- d. The identity of each person you claim has knowledge of such violation, stating the specific facts and circumstances known by each such person; and
- e. Identify each document which you believe supports your claim of such violation.

9. Have you read the Recommendation of the Chief Engineer of June 26, 2017 with respect to the Application?

- a. If so, do you disagree with the Recommendation or its conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Recommendation and state with specificity the basis of your disagreement.

10. Have you read the Report to the Chief Engineer of June 26, 2017 prepared by Adam Mathiowetz, PE?

- a. If so, do you disagree with the Report or its recommendations and/or conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Report and state with specificity the basis of your disagreement.

11. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as a witness, together with their full name, address and telephone number, and state in detail the subject matter on which such witness is expected to testify and the substance of the facts and opinions to which the witness is expected to testify.

12. Identify each person with whom you or your attorneys have consulted as an expert and whether you or your attorneys have received a written report from any such expert.

13. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as an expert witness, together with the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and whether you have received a written report from any such witness.

14. Identify the custodian of each written report mentioned in your answers to the preceding two interrogatories, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of such reports.

15. Provide the full professional curriculum vitae for any expert mentioned in your answers to these interrogatories.

16. Identify any photographs, including those in electronic or digital format, movies, video tapes, charts, drawings, audio recordings or models of any person, instrumentality, scene or other thing relevant to the subject matter of this action, or reasonably calculated to lead to the discovery of material evidence in this action.

17. Identify any document, memorandum or other writing relevant to the subject matter of this action or reasonably calculated to lead to the discovery of material evidence in this action.

18. Identify and provide a summary of all communications between you and the Applicant regarding the subject matter of the Application or your petition.

19. Have you ever previously been a party to any proceeding involving or regarding the appropriation of water from any aquifer or other subsurface water source? If so, in each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

20. Have you, ever previously been a party to any proceeding regarding the siting, zoning, development, construction, operation or expansion of a concentrated animal feeding operation? If so, for each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

21. Do you or any member of your family withdraw, appropriate or divert water from the Vermillion West Fork, Vermillion East Fork and/or the Parker Centerville aquifers? If so, state the name of the appropriator, the point of withdrawal, appropriation or diversion, the use to which such water is put, the approximate date the withdrawal, appropriation or diversion began, and the volume of withdrawal, appropriation or diversion.

22. Identify any well permits, water rights and/or permits owned or held by you, authorizing withdrawal, appropriation or diversion of water from the Vermillion West Fork, Vermillion East Fork, and/or Parker Centerville aquifers. In the case of permits, state the permit number and the date of issuance and include with your answers a copy of the permit. In the case of permits allowing an appropriation for irrigation, include with your answers copies of the last six annual irrigation water usage reports submitted to the South Dakota Department of Environment and Natural Resources with respect to each such permit.

23. Describe in detail the type, depth, source, flow rate, annual usage and the aquifer from which you obtain water.

24. (For purposes of the following questions, the term "water systems" means wells, pumping systems, diversions or other works that allow you to withdraw, appropriate or divert water pursuant to water rights and/or permits as described in the preceding interrogatories.) Describe in detail your water system.

25. As of March 30, 2017, the date the Applicant filed the Application, how many persons were served by the water system you own or operate? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

26. Do you have a plan to increase the number of persons served by your water system? If so, describe the plan in detail, including the additional number of persons who may be

served within the next five (5) and ten (10) years, respectively. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

27. As of March 30, 2017, the date the Applicant filed the Application, how many head, and what type of livestock are being watered by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

28. As of March 30, 2017, the date the Applicant filed the Application, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are you irrigating using water supplied by your water system? Describe the same in detail, including legal descriptions of the location of the same.

29. As of March 30, 2017, the date the Applicant filed the Application, what was the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

30. As of the date of these Interrogatories and Request for Production of Documents were served, how many persons are served by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

31. As of the date of these Interrogatories and Request for Production of Documents were served, how many head, and what type of livestock were being watered by your water system?

32. As of the date of these Interrogatories and Request for Production of Documents were served, how many acres of noncommercial family gardens, trees, shrubbery, or orchards were being irrigated by your water system?

33. As of the date of these Interrogatories and Request for Production of Documents were served, what is the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

34. As of the date of these Interrogatories and Request for Production of Documents were served, how many gallons of groundwater will you need to withdraw annually from the Vermillion West Fork, Vermillion East Fork and/or Parker Centerville aquifers to meet all present needs of you or your water system? Please differentiate between your required withdrawals and required withdrawals to support your water system, if appropriate. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

35. Describe in detail all facts that you believe support the contentions in your correspondence to the Chief Engineer objecting to the Application.

36. State whether you claim or intend to claim at the Water Management Board hearing the Applicant, or anyone on Applicant's behalf, has made any statements, authorized any

documents or taken any action or omitted to take any action which constitutes an admission against Applicant's interest. If so, state the following:

- a. With respect to each statement, the mode of communication, its date, its full and exact substance; identify each person making or hearing the statement; and identify each document, confirming, relating or referring to the statement; and
- b. With respect to each act or omission, a detailed summary of all material facts concerning it; identify each person having knowledge of such facts; and identify each document you believe supports your claim that such act or omission occurred.

REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby requested to answer the following request for production within the time the manner specified by South Dakota law:

1. Produce at the office of the undersigned copies of all documents identified in your answers to these discovery requests or relied upon in providing answers to the foregoing interrogatories, not otherwise served by you upon the undersigned.
2. Produce at the office of the undersigned copies of all documents maintained by you or your agents, consultants, or attorneys regarding any matter set forth in your objection to the Application, including internal memoranda, e-mail messages, and external communications.
3. Produce at the office of the undersigned copies of all items that are anticipated to be used as an exhibit or offered to be admitted into evidence at Water Management Board hearing by you.
4. Produce at the office of the undersigned copies all statements obtained by you, or your agents, consultants, or attorneys in any form, from any person, related to this litigation.
5. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who it is anticipated may give expert testimony in this cause of action on behalf of you, including, but not limited to, all reports.
6. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who had been consulted with regarding this cause of action on behalf of the you, including, but not limited to, all reports.

Dated this ~~21~~¹⁴ day of September, 2017.

TAYLOR LAW FIRM, LLC

BY:



JOHN E. TAYLOR

Attorney for Sonstegard Food Company

john.taylor@taylorlawsd.com

4820 East 57th Street

Sioux Falls, SD 57108

(605) 906-0000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of above Interrogatories and Requests for Production of Documents upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail, at Sioux Falls, South Dakota postage prepaid, in envelopes addressed to said addressees, to wit:

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

Michael J. Schaffer
Schaffer Law Office, Prof. LLC
412 West 9th Street
Suite 1
Sioux Falls, SD 57104-3602

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

which are the last addresses of addressees known to the subscriber.

Dated this 29th day of September, 2017.



JOHN E. TAYLOR

**STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD**

	)	
IN THE MATTER OF WATER	)	APPLICANT'S FIRST SET OF
PERMIT APPLICATION #8278-3	)	INTERROGATORIES AND
SONSTEGARD FOOD COMPANY	)	REQUEST FOR PRODUCTION
	)	OF DOCUMENTS TO THE
	)	PETITIONER DARLENE GOOSEN
	)	A. GOOSEN

**TO: DARLENE A. GOOSEN, PETITIONER OBJECTING TO WATER PERMIT
APPLICATION 8278-3 AND YOUR ATTORNEY OF RECORD:**

You are requested and required to answer fully and under oath, pursuant to the South Dakota Administrative Procedures Act and SDCL §§ 15-6-33 and 15-6-34, each of the following Interrogatories and Document Requests and serve a copy of your answers thereto upon the Applicant within thirty (30) days after service of these Applicant's First Set of Interrogatories and Request for Production Documents upon you. Please be advised that your answers must include all information available not only to you, but to your agents, officers, representatives, employees, attorneys, insurers, or others who have information available to you upon inquiry to them.

INSTRUCTIONS AND DEFINITIONS

1. If you claim privilege with respect to any information requested, specify the privilege claimed, the statute, rule or decision giving rise to that privilege, and give a brief description of the nature of the information or document being withheld, including the author(s), recipients(s), and person(s) to whom the information or documents have previously been furnished.
2. If you object to, or otherwise decline to answer any portion of an interrogatory or request, provide all information called for by that portion of the interrogatory or request to which you do not object or for which you do not decline to answer. If you object to any interrogatory or request on the ground that it is too broad, provide such information which is relevant. For those portions of any interrogatories or requests to which you object or which you otherwise decline to answer, state the reason for such objection.
3. These discovery requests are continuing in nature and require supplementary answers pursuant to SDCL § 15-6-26(e) if you obtain further information between the time your answers are served and the time of hearing.
4. Whenever an interrogatory or request may be answered by referring to a writing or document, the writing or document may be attached as an exhibit to your answers and referred to in your answers. If the writing or document has more than one page, refer to the page and section where the answer to the interrogatory or request can be found.

5. If more than one interrogatory requires the current address and position of the same person, you need only provide such information in the first interrogatory requesting that information.

6. The term "and," as well as, the term "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories any information which might otherwise be construed to be outside their scope.

7. The term "custodian" refers to the person having possession, custody, or control of any document, writing, or physical evidence.

8. To "describe" shall mean to relate as completely as possible each and every act, omission, incident, event, condition, circumstance, or thing relating directly or indirectly to the subject of the description, including all pertinent dates and, without limiting the foregoing, to:

- a. identify all documents directly or indirectly related thereto;
- b. identify all communications directly or indirectly related thereto;
- c. identify all persons directly or indirectly related thereto; and
- d. identify all locations applicable to any events, incidents, conditions, circumstances or things directly or indirectly related thereto.

9. The term "document(s)" shall have the same meaning as in Federal Rule of Civil Procedure 34(a), and shall include every writing of every type or description, and every other thing constituting any medium through which any type of information has been transmitted or recorded, including any electronic or visual medium. The terms "document(s)" also means every copy of a document where such copy is not an identical duplicate of the original. This definition also includes all drafts of responsive documents.

10. A request to "explain fully" or to "describe in detail" any answer, denial or claim, is a request, insofar as may be applicable to:

- a. state fully and specifically each fact and contention to support your answer, denial or claim; and
- b. for each such fact or contention, to identify each person who has knowledge relative to that contention, each document that tends to support that fact or contention and each document that tends to dispute that fact or contention.

11. "Identify," when used in reference to a natural person means to state to the fullest extent possible his or her name, present or last known address, telephone number(s), employer and position at the time(s) in question, and present employer.

12. "Identify," when used in reference to a document or documents, report or reports, means to state the date, author or originator, their present addresses, and type of document or

written communication (e.g. bills, letter, memorandum, telegram, etc.), a brief description of the contents of the document, and disclose its present location and custodian.

13. "Identify," when used in reference to a place, means to state to the fullest extent possible the street address, city, and state in which it is situated, including but not limited to the legal description of any real property owned by you, or if such identification is not possible, otherwise to describe its location.

14. The terms "person" or "persons" as used herein mean all entities, including, without limiting the generality of the foregoing, all individuals, organizations, associations, companies, partnerships, joint venturers, corporations, trusts, and estates.

15. A reference to "a person with knowledge" or to "a person with information" concerning a matter, occasion, event, or communication shall be deemed to include a request to identify both the participants in such matters, occasions, events, or communications and the persons who are believed to possess information regarding the same, though they did not participate. Such request shall also include any expert who has factual information called for or any opinion with respect thereto.

16. As used herein, the words "record" or "records" include any regular, formal or not formal, official or not official, memorandum or written preservation of any events, actions taken, and details thereof, inquired into here. A copy of the original "record" is preferred; giving the substance of such "records" will suffice where a copy is not available.

17. The term "reports" shall include all studies, analyses, surveys, polls, memoranda, statistical and financial compilations, reviews, forecasts, projections and submission of information of any kind.

18. The terms "you," and "your," as used herein, means Petitioner, as well as any agent, officer, director, employee, attorney, or other person or persons acting on behalf of or under the control of Petitioner.

19. The term "writing" as used herein is meant to include all records, reports, papers, documents, photographs, books, letters, notes, memoranda, tape recordings, or any other correspondence in Petitioner's possession, custody or control.

INTERROGATORIES

You are hereby requested to answer the following interrogatories within the time and in the manner specified by South Dakota law:

1. Identify the name, address, telephone number, and occupation of each and every person or persons answering these interrogatories.

2. Identify the name, address, telephone number, and occupation of each and every person furnishing information or assisting in answering these interrogatories.

3. Identify the name, address, telephone number, and occupation of all persons known to you, or your counsel, associates, investigators, employees, or agents, who have knowledge of any facts relevant to Water Permit Application #8278-3 (hereafter the "Application").

4. As to all persons listed in your answer to the previous interrogatory, state whether any of them have made any oral statements or have given any written statements relevant to the subject matter of this action. If so, state:

- a. The name of the person making the statement and its date;
- b. If oral, the substance of the statement and the name and present address of all who heard it made;
- c. If written, the substance of the statement, the name and present address of the person who took the statement and the custodian of the statement; and
- d. If written, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of all such statements.

5. Describe in detail any investigation conducted or performed by you or any individual hired by you, with respect to the Application, and identify all individuals and all documents provided to or produced by said individuals.

6. Describe in detail the basis on which you contend that you have standing to participate in proceedings before the Water Management Board pertaining to the Application.

7. Identify any person or entity who has on your behalf completed an evaluation regarding the subject matter of the Application or has given any assessment of the Application of its impacts on you or others, including the public as a whole.

8. Do you claim Applicant violated any statutes, rules, regulations, ordinances or other customs or standards with respect to the Application? If so, state:

- a. The exact identifying number of the applicable statute, rule, etc.
- b. The exact act or omission constituting such violation;
- c. The identity of the person you claim committed such violation;
- d. The identity of each person you claim has knowledge of such violation, stating the specific facts and circumstances known by each such person; and
- e. Identify each document which you believe supports your claim of such violation.

9. Have you read the Recommendation of the Chief Engineer of June 26, 2017 with respect to the Application?

- a. If so, do you disagree with the Recommendation or its conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Recommendation and state with specificity the basis of your disagreement.

10. Have you read the Report to the Chief Engineer of June 26, 2017 prepared by Adam Mathiowetz, PE?

- a. If so, do you disagree with the Report or its recommendations and/or conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Report and state with specificity the basis of your disagreement.

11. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as a witness, together with their full name, address and telephone number, and state in detail the subject matter on which such witness is expected to testify and the substance of the facts and opinions to which the witness is expected to testify.

12. Identify each person with whom you or your attorneys have consulted as an expert and whether you or your attorneys have received a written report from any such expert.

13. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as an expert witness, together with the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and whether you have received a written report from any such witness.

14. Identify the custodian of each written report mentioned in your answers to the preceding two interrogatories, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of such reports.

15. Provide the full professional curriculum vitae for any expert mentioned in your answers to these interrogatories.

16. Identify any photographs, including those in electronic or digital format, movies, video tapes, charts, drawings, audio recordings or models of any person, instrumentality, scene or other thing relevant to the subject matter of this action, or reasonably calculated to lead to the discovery of material evidence in this action.

17. Identify any document, memorandum or other writing relevant to the subject matter of this action or reasonably calculated to lead to the discovery of material evidence in this action.

18. Identify and provide a summary of all communications between you and the Applicant regarding the subject matter of the Application or your petition.

19. Have you ever previously been a party to any proceeding involving or regarding the appropriation of water from any aquifer or other subsurface water source? If so, in each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

20. Have you, ever previously been a party to any proceeding regarding the siting, zoning, development, construction, operation or expansion of a concentrated animal feeding operation? If so, for each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

21. Do you or any member of your family withdraw, appropriate or divert water from the Vermillion West Fork, Vermillion East Fork and/or the Parker Centerville aquifers? If so, state the name of the appropriator, the point of withdrawal, appropriation or diversion, the use to which such water is put, the approximate date the withdrawal, appropriation or diversion began, and the volume of withdrawal, appropriation or diversion.

22. Identify any well permits, water rights and/or permits owned or held by you, authorizing withdrawal, appropriation or diversion of water from the Vermillion West Fork, Vermillion East Fork, and/or Parker Centerville aquifers. In the case of permits, state the permit number and the date of issuance and include with your answers a copy of the permit. In the case of permits allowing an appropriation for irrigation, include with your answers copies of the last six annual irrigation water usage reports submitted to the South Dakota Department of Environment and Natural Resources with respect to each such permit.

23. Describe in detail the type, depth, source, flow rate, annual usage and the aquifer from which you obtain water.

24. (For purposes of the following questions, the term "water systems" means wells, pumping systems, diversions or other works that allow you to withdraw, appropriate or divert water pursuant to water rights and/or permits as described in the preceding interrogatories.) Describe in detail your water system.

25. As of March 30, 2017, the date the Applicant filed the Application, how many persons were served by the water system you own or operate? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

26. Do you have a plan to increase the number of persons served by your water system? If so, describe the plan in detail, including the additional number of persons who may be

served within the next five (5) and ten (10) years, respectively. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

27. As of March 30, 2017, the date the Applicant filed the Application, how many head, and what type of livestock are being watered by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

28. As of March 30, 2017, the date the Applicant filed the Application, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are you irrigating using water supplied by your water system? Describe the same in detail, including legal descriptions of the location of the same.

29. As of March 30, 2017, the date the Applicant filed the Application, what was the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

30. As of the date of these Interrogatories and Request for Production of Documents were served, how many persons are served by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

31. As of the date of these Interrogatories and Request for Production of Documents were served, how many head, and what type of livestock were being watered by your water system?

32. As of the date of these Interrogatories and Request for Production of Documents were served, how many acres of noncommercial family gardens, trees, shrubbery, or orchards were being irrigated by your water system?

33. As of the date of these Interrogatories and Request for Production of Documents were served, what is the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

34. As of the date of these Interrogatories and Request for Production of Documents were served, how many gallons of groundwater will you need to withdraw annually from the Vermillion West Fork, Vermillion East Fork and/or Parker Centerville aquifers to meet all present needs of you or your water system? Please differentiate between your required withdrawals and required withdrawals to support your water system, if appropriate. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

35. Describe in detail all facts that you believe support the contentions in your correspondence to the Chief Engineer objecting to the Application.

36. State whether you claim or intend to claim at the Water Management Board hearing the Applicant, or anyone on Applicant's behalf, has made any statements, authorized any

documents or taken any action or omitted to take any action which constitutes an admission against Applicant's interest. If so, state the following:

- a. With respect to each statement, the mode of communication, its date, its full and exact substance; identify each person making or hearing the statement; and identify each document, confirming, relating or referring to the statement; and
- b. With respect to each act or omission, a detailed summary of all material facts concerning it; identify each person having knowledge of such facts; and identify each document you believe supports your claim that such act or omission occurred.

REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby requested to answer the following request for production within the time the manner specified by South Dakota law:

1. Produce at the office of the undersigned copies of all documents identified in your answers to these discovery requests or relied upon in providing answers to the foregoing interrogatories, not otherwise served by you upon the undersigned.
2. Produce at the office of the undersigned copies of all documents maintained by you or your agents, consultants, or attorneys regarding any matter set forth in your objection to the Application, including internal memoranda, e-mail messages, and external communications.
3. Produce at the office of the undersigned copies of all items that are anticipated to be used as an exhibit or offered to be admitted into evidence at Water Management Board hearing by you.
4. Produce at the office of the undersigned copies all statements obtained by you, or your agents, consultants, or attorneys in any form, from any person, related to this litigation.
5. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who it is anticipated may give expert testimony in this cause of action on behalf of you, including, but not limited to, all reports.
6. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who had been consulted with regarding this cause of action on behalf of the you, including, but not limited to, all reports.

Dated this 29th day of September, 2017.

TAYLOR LAW FIRM, LLC

BY: 
JOHN E. TAYLOR
Attorney for Sonstegard Food Company
john.taylor@taylorlawsd.com
4820 East 57th Street
Sioux Falls, SD 57108
(605) 906-0000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of above Interrogatories and Requests for Production of Documents upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail, at Sioux Falls, South Dakota postage prepaid, in envelopes addressed to said addressees, to wit:

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

Michael J. Schaffer
Schaffer Law Office, Prof. LLC
412 West 9th Street
Suite 1
Sioux Falls, SD 57104-3602

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

which are the last addresses of addressees known to the subscriber.

Dated this 21st day of September, 2017.



JOHN E. TAYLOR

IN THE MATTER OF WATER	)	APPLICANT'S FIRST SET OF
PERMIT APPLICATION #8278-3	)	INTERROGATORIES AND
SONSTEGARD FOOD COMPANY	)	REQUEST FOR PRODUCTION
	)	OF DOCUMENTS TO THE
	)	PETITIONER JOYCE
	)	WILLOUGHBY
	)	

You are requested and required to answer fully and under oath, pursuant to the South Dakota Administrative Procedures Act and SDCL §§ 15-6-33 and 15-6-34, each of the following Interrogatories and Document Requests and serve a copy of your answers thereto upon the Applicant within thirty (30) days after service of these Applicant's First Set of Interrogatories and Request for Production Documents upon you. Please be advised that your answers must include all information available not only to you, but to your agents, officers, representatives, employees, attorneys, insurers, or others who have information available to you upon inquiry to them.

1. If you claim privilege with respect to any information requested, specify the privilege claimed, the statute, rule or decision giving rise to that privilege, and give a brief description of the nature of the information or document being withheld, including the author(s), recipients(s), and person(s) to whom the information or documents have previously been furnished.

3. These discovery requests are continuing in nature and require supplementary answers pursuant to SDCL § 15-6-26(e) if you obtain further information between the time your answers are served and the time of hearing.

4. Whenever an interrogatory or request may be answered by referring to a writing or document, the writing or document may be attached as an exhibit to your answers and referred to in your answers. If the writing or document has more than one page, refer to the page and section where the answer to the interrogatory or request can be found.

5. If more than one interrogatory requires the current address and position of the same person, you need only provide such information in the first interrogatory requesting that information.

6. The term "and," as well as, the term "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories any information which might otherwise be construed to be outside their scope.

7. The term "custodian" refers to the person having possession, custody, or control of any document, writing, or physical evidence.

8. To "describe" shall mean to relate as completely as possible each and every act, omission, incident, event, condition, circumstance, or thing relating directly or indirectly to the subject of the description, including all pertinent dates and, without limiting the foregoing, to:

- a. identify all documents directly or indirectly related thereto;
- b. identify all communications directly or indirectly related thereto;
- c. identify all persons directly or indirectly related thereto; and
- d. identify all locations applicable to any events, incidents, conditions, circumstances or things directly or indirectly related thereto.

9. The term "document(s)" shall have the same meaning as in Federal Rule of Civil Procedure 34(a), and shall include every writing of every type or description, and every other thing constituting any medium through which any type of information has been transmitted or recorded, including any electronic or visual medium. The terms "document(s)" also means every copy of a document where such copy is not an identical duplicate of the original. This definition also includes all drafts of responsive documents.

10. A request to "explain fully" or to "describe in detail" any answer, denial or claim, is a request, insofar as may be applicable to:

- a. state fully and specifically each fact and contention to support your answer, denial or claim; and
- b. for each such fact or contention, to identify each person who has knowledge relative to that contention, each document that tends to support that fact or contention and each document that tends to dispute that fact or contention.

11. "Identify," when used in reference to a natural person means to state to the fullest extent possible his or her name, present or last known address, telephone number(s), employer and position at the time(s) in question, and present employer.

12. "Identify," when used in reference to a document or documents, report or reports, means to state the date, author or originator, their present addresses, and type of document or

written communication (e.g. bills, letter, memorandum, telegram, etc.), a brief description of the contents of the document, and disclose its present location and custodian.

13. "Identify," when used in reference to a place, means to state to the fullest extent possible the street address, city, and state in which it is situated, including but not limited to the legal description of any real property owned by you, or if such identification is not possible, otherwise to describe its location.

14. The terms "person" or "persons" as used herein mean all entities, including, without limiting the generality of the foregoing, all individuals, organizations, associations, companies, partnerships, joint venturers, corporations, trusts, and estates.

15. A reference to "a person with knowledge" or to "a person with information" concerning a matter, occasion, event, or communication shall be deemed to include a request to identify both the participants in such matters, occasions, events, or communications and the persons who are believed to possess information regarding the same, though they did not participate. Such request shall also include any expert who has factual information called for or any opinion with respect thereto.

16. As used herein, the words "record" or "records" include any regular, formal or not formal, official or not official, memorandum or written preservation of any events, actions taken, and details thereof, inquired into here. A copy of the original "record" is preferred; giving the substance of such "records" will suffice where a copy is not available.

17. The term "reports" shall include all studies, analyses, surveys, polls, memoranda, statistical and financial compilations, reviews, forecasts, projections and submission of information of any kind.

18. The terms "you," and "your," as used herein, means Petitioner, as well as any agent, officer, director, employee, attorney, or other person or persons acting on behalf of or under the control of Petitioner.

19. The term "writing" as used herein is meant to include all records, reports, papers, documents, photographs, books, letters, notes, memoranda, tape recordings, or any other correspondence in Petitioner's possession, custody or control.

INTERROGATORIES

You are hereby requested to answer the following interrogatories within the time and in the manner specified by South Dakota law:

1. Identify the name, address, telephone number, and occupation of each and every person or persons answering these interrogatories.

2. Identify the name, address, telephone number, and occupation of each and every person furnishing information or assisting in answering these interrogatories.

3. Identify the name, address, telephone number, and occupation of all persons known to you, or your counsel, associates, investigators, employees, or agents, who have knowledge of any facts relevant to Water Permit Application #8278-3 (hereafter the "Application").

4. As to all persons listed in your answer to the previous interrogatory, state whether any of them have made any oral statements or have given any written statements relevant to the subject matter of this action. If so, state:

- a. The name of the person making the statement and its date;
- b. If oral, the substance of the statement and the name and present address of all who heard it made;
- c. If written, the substance of the statement, the name and present address of the person who took the statement and the custodian of the statement; and
- d. If written, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of all such statements.

5. Describe in detail any investigation conducted or performed by you or any individual hired by you, with respect to the Application, and identify all individuals and all documents provided to or produced by said individuals.

6. Describe in detail the basis on which you contend that you have standing to participate in proceedings before the Water Management Board pertaining to the Application.

7. Identify any person or entity who has on your behalf completed an evaluation regarding the subject matter of the Application or has given any assessment of the Application of its impacts on you or others, including the public as a whole.

8. Do you claim Applicant violated any statutes, rules, regulations, ordinances or other customs or standards with respect to the Application? If so, state:

- a. The exact identifying number of the applicable statute, rule, etc.
- b. The exact act or omission constituting such violation;
- c. The identity of the person you claim committed such violation;
- d. The identity of each person you claim has knowledge of such violation, stating the specific facts and circumstances known by each such person; and
- e. Identify each document which you believe supports your claim of such violation.

9. Have you read the Recommendation of the Chief Engineer of June 26, 2017 with respect to the Application?

- a. If so, do you disagree with the Recommendation or its conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Recommendation and state with specificity the basis of your disagreement.

10. Have you read the Report to the Chief Engineer of June 26, 2017 prepared by Adam Mathiowetz, PE?

- a. If so, do you disagree with the Report or its recommendations and/or conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Report and state with specificity the basis of your disagreement.

11. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as a witness, together with their full name, address and telephone number, and state in detail the subject matter on which such witness is expected to testify and the substance of the facts and opinions to which the witness is expected to testify.

12. Identify each person with whom you or your attorneys have consulted as an expert and whether you or your attorneys have received a written report from any such expert.

13. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as an expert witness, together with the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and whether you have received a written report from any such witness.

14. Identify the custodian of each written report mentioned in your answers to the preceding two interrogatories, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of such reports.

15. Provide the full professional curriculum vitae for any expert mentioned in your answers to these interrogatories.

16. Identify any photographs, including those in electronic or digital format, movies, video tapes, charts, drawings, audio recordings or models of any person, instrumentality, scene or other thing relevant to the subject matter of this action, or reasonably calculated to lead to the discovery of material evidence in this action.

17. Identify any document, memorandum or other writing relevant to the subject matter of this action or reasonably calculated to lead to the discovery of material evidence in this action.

18. Identify and provide a summary of all communications between you and the Applicant regarding the subject matter of the Application or your petition.

19. Have you ever previously been a party to any proceeding involving or regarding the appropriation of water from any aquifer or other subsurface water source? If so, in each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

20. Have you, ever previously been a party to any proceeding regarding the siting, zoning, development, construction, operation or expansion of a concentrated animal feeding operation? If so, for each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

21. Do you or any member of your family withdraw, appropriate or divert water from the Vermillion West Fork, Vermillion East Fork and/or the Parker Centerville aquifers? If so, state the name of the appropriator, the point of withdrawal, appropriation or diversion, the use to which such water is put, the approximate date the withdrawal, appropriation or diversion began, and the volume of withdrawal, appropriation or diversion.

22. Identify any well permits, water rights and/or permits owned or held by you, authorizing withdrawal, appropriation or diversion of water from the Vermillion West Fork, Vermillion East Fork, and/or Parker Centerville aquifers. In the case of permits, state the permit number and the date of issuance and include with your answers a copy of the permit. In the case of permits allowing an appropriation for irrigation, include with your answers copies of the last six annual irrigation water usage reports submitted to the South Dakota Department of Environment and Natural Resources with respect to each such permit.

23. Describe in detail the type, depth, source, flow rate, annual usage and the aquifer from which you obtain water.

24. (For purposes of the following questions, the term "water systems" means wells, pumping systems, diversions or other works that allow you to withdraw, appropriate or divert water pursuant to water rights and/or permits as described in the preceding interrogatories.) Describe in detail your water system.

25. As of March 30, 2017, the date the Applicant filed the Application, how many persons were served by the water system you own or operate? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

26. Do you have a plan to increase the number of persons served by your water system? If so, describe the plan in detail, including the additional number of persons who may be

served within the next five (5) and ten (10) years, respectively. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

27. As of March 30, 2017, the date the Applicant filed the Application, how many head, and what type of livestock are being watered by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

28. As of March 30, 2017, the date the Applicant filed the Application, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are you irrigating using water supplied by your water system? Describe the same in detail, including legal descriptions of the location of the same.

29. As of March 30, 2017, the date the Applicant filed the Application, what was the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

30. As of the date of these Interrogatories and Request for Production of Documents were served, how many persons are served by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

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33. As of the date of these Interrogatories and Request for Production of Documents were served, what is the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

34. As of the date of these Interrogatories and Request for Production of Documents were served, how many gallons of groundwater will you need to withdraw annually from the Vermillion West Fork, Vermillion East Fork and/or Parker Centerville aquifers to meet all present needs of you or your water system? Please differentiate between your required withdrawals and required withdrawals to support your water system, if appropriate. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

35. Describe in detail all facts that you believe support the contentions in your correspondence to the Chief Engineer objecting to the Application.

36. State whether you claim or intend to claim at the Water Management Board hearing the Applicant, or anyone on Applicant's behalf, has made any statements, authorized any

documents or taken any action or omitted to take any action which constitutes an admission against Applicant's interest. If so, state the following:

- a. With respect to each statement, the mode of communication, its date, its full and exact substance; identify each person making or hearing the statement; and identify each document, confirming, relating or referring to the statement; and
- b. With respect to each act or omission, a detailed summary of all material facts concerning it; identify each person having knowledge of such facts; and identify each document you believe supports your claim that such act or omission occurred.

REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby requested to answer the following request for production within the time the manner specified by South Dakota law:

1. Produce at the office of the undersigned copies of all documents identified in your answers to these discovery requests or relied upon in providing answers to the foregoing interrogatories, not otherwise served by you upon the undersigned.
2. Produce at the office of the undersigned copies of all documents maintained by you or your agents, consultants, or attorneys regarding any matter set forth in your objection to the Application, including internal memoranda, e-mail messages, and external communications.
3. Produce at the office of the undersigned copies of all items that are anticipated to be used as an exhibit or offered to be admitted into evidence at Water Management Board hearing by you.
4. Produce at the office of the undersigned copies all statements obtained by you, or your agents, consultants, or attorneys in any form, from any person, related to this litigation.
5. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who it is anticipated may give expert testimony in this cause of action on behalf of you, including, but not limited to, all reports.
6. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who had been consulted with regarding this cause of action on behalf of the you, including, but not limited to, all reports.

Dated this 29th day of September, 2017.

TAYLOR LAW FIRM, LLC

BY:



JOHN E. TAYLOR

Attorney for Sonstegard Food Company

john.taylor@taylorlawsd.com

4820 East 57th Street

Sioux Falls, SD 57108

(605) 906-0000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of above Interrogatories and Requests for Production of Documents upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail, at Sioux Falls, South Dakota postage prepaid, in envelopes addressed to said addressees, to wit:

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

Michael J. Schaffer
Schaffer Law Office, Prof. LLC
412 West 9th Street
Suite 1
Sioux Falls, SD 57104-3602

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

which are the last addresses of addressees known to the subscriber.

Dated this 21st day of September, 2017.



JOHN E. TAYLOR

**STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD**

IN THE MATTER OF WATER
PERMIT APPLICATION #8278-3
SONSTEGARD FOOD COMPANY

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APPLICANT'S FIRST SET OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS TO THE
PETITIONERS WALTER AND
JEAN MIELKE

**TO: WALTER AND JEAN MIELKE, PETITIONERS OBJECTING TO WATER
PERMIT APPLICATION 8278-3 AND YOUR ATTORNEY OF RECORD:**

You are requested and required to answer fully and under oath, pursuant to the South Dakota Administrative Procedures Act and SDCL §§ 15-6-33 and 15-6-34, each of the following Interrogatories and Document Requests and serve a copy of your answers thereto upon the Applicant within thirty (30) days after service of these Applicant's First Set of Interrogatories and Request for Production Documents upon you. Please be advised that your answers must include all information available not only to you, but to your agents, officers, representatives, employees, attorneys, insurers, or others who have information available to you upon inquiry to them.

INSTRUCTIONS AND DEFINITIONS

1. If you claim privilege with respect to any information requested, specify the privilege claimed, the statute, rule or decision giving rise to that privilege, and give a brief description of the nature of the information or document being withheld, including the author(s), recipients(s), and person(s) to whom the information or documents have previously been furnished.
2. If you object to, or otherwise decline to answer any portion of an interrogatory or request, provide all information called for by that portion of the interrogatory or request to which you do not object or for which you do not decline to answer. If you object to any interrogatory or request on the ground that it is too broad, provide such information which is relevant. For those portions of any interrogatories or requests to which you object or which you otherwise decline to answer, state the reason for such objection.
3. These discovery requests are continuing in nature and require supplementary answers pursuant to SDCL § 15-6-26(e) if you obtain further information between the time your answers are served and the time of hearing.
4. Whenever an interrogatory or request may be answered by referring to a writing or document, the writing or document may be attached as an exhibit to your answers and referred to in your answers. If the writing or document has more than one page, refer to the page and section where the answer to the interrogatory or request can be found.

5. If more than one interrogatory requires the current address and position of the same person, you need only provide such information in the first interrogatory requesting that information.

6. The term "and," as well as, the term "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories any information which might otherwise be construed to be outside their scope.

7. The term "custodian" refers to the person having possession, custody, or control of any document, writing, or physical evidence.

8. To "describe" shall mean to relate as completely as possible each and every act, omission, incident, event, condition, circumstance, or thing relating directly or indirectly to the subject of the description, including all pertinent dates and, without limiting the foregoing, to:

- a. identify all documents directly or indirectly related thereto;
- b. identify all communications directly or indirectly related thereto;
- c. identify all persons directly or indirectly related thereto; and
- d. identify all locations applicable to any events, incidents, conditions, circumstances or things directly or indirectly related thereto.

9. The term "document(s)" shall have the same meaning as in Federal Rule of Civil Procedure 34(a), and shall include every writing of every type or description, and every other thing constituting any medium through which any type of information has been transmitted or recorded, including any electronic or visual medium. The terms "document(s)" also means every copy of a document where such copy is not an identical duplicate of the original. This definition also includes all drafts of responsive documents.

10. A request to "explain fully" or to "describe in detail" any answer, denial or claim, is a request, insofar as may be applicable to:

- a. state fully and specifically each fact and contention to support your answer, denial or claim; and
- b. for each such fact or contention, to identify each person who has knowledge relative to that contention, each document that tends to support that fact or contention and each document that tends to dispute that fact or contention.

11. "Identify," when used in reference to a natural person means to state to the fullest extent possible his or her name, present or last known address, telephone number(s), employer and position at the time(s) in question, and present employer.

12. "Identify," when used in reference to a document or documents, report or reports, means to state the date, author or originator, their present addresses, and type of document or

written communication (e.g. bills, letter, memorandum, telegram, etc.), a brief description of the contents of the document, and disclose its present location and custodian.

13. "Identify," when used in reference to a place, means to state to the fullest extent possible the street address, city, and state in which it is situated, including but not limited to the legal description of any real property owned by you, or if such identification is not possible, otherwise to describe its location.

14. The terms "person" or "persons" as used herein mean all entities, including, without limiting the generality of the foregoing, all individuals, organizations, associations, companies, partnerships, joint venturers, corporations, trusts, and estates.

15. A reference to "a person with knowledge" or to "a person with information" concerning a matter, occasion, event, or communication shall be deemed to include a request to identify both the participants in such matters, occasions, events, or communications and the persons who are believed to possess information regarding the same, though they did not participate. Such request shall also include any expert who has factual information called for or any opinion with respect thereto.

16. As used herein, the words "record" or "records" include any regular, formal or not formal, official or not official, memorandum or written preservation of any events, actions taken, and details thereof, inquired into here. A copy of the original "record" is preferred; giving the substance of such "records" will suffice where a copy is not available.

17. The term "reports" shall include all studies, analyses, surveys, polls, memoranda, statistical and financial compilations, reviews, forecasts, projections and submission of information of any kind.

18. The terms "you," and "your," as used herein, means Petitioner, as well as any agent, officer, director, employee, attorney, or other person or persons acting on behalf of or under the control of Petitioner.

19. The term "writing" as used herein is meant to include all records, reports, papers, documents, photographs, books, letters, notes, memoranda, tape recordings, or any other correspondence in Petitioner's possession, custody or control.

INTERROGATORIES

You are hereby requested to answer the following interrogatories within the time and in the manner specified by South Dakota law:

1. Identify the name, address, telephone number, and occupation of each and every person or persons answering these interrogatories.

2. Identify the name, address, telephone number, and occupation of each and every person furnishing information or assisting in answering these interrogatories.

3. Identify the name, address, telephone number, and occupation of all persons known to you, or your counsel, associates, investigators, employees, or agents, who have knowledge of any facts relevant to Water Permit Application #8278-3 (hereafter the "Application").

4. As to all persons listed in your answer to the previous interrogatory, state whether any of them have made any oral statements or have given any written statements relevant to the subject matter of this action. If so, state:

- a. The name of the person making the statement and its date;
- b. If oral, the substance of the statement and the name and present address of all who heard it made;
- c. If written, the substance of the statement, the name and present address of the person who took the statement and the custodian of the statement; and
- d. If written, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of all such statements.

5. Describe in detail any investigation conducted or performed by you or any individual hired by you, with respect to the Application, and identify all individuals and all documents provided to or produced by said individuals.

6. Describe in detail the basis on which you contend that you have standing to participate in proceedings before the Water Management Board pertaining to the Application.

7. Identify any person or entity who has on your behalf completed an evaluation regarding the subject matter of the Application or has given any assessment of the Application of its impacts on you or others, including the public as a whole.

8. Do you claim Applicant violated any statutes, rules, regulations, ordinances or other customs or standards with respect to the Application? If so, state:

- a. The exact identifying number of the applicable statute, rule, etc.
- b. The exact act or omission constituting such violation;
- c. The identity of the person you claim committed such violation;
- d. The identity of each person you claim has knowledge of such violation, stating the specific facts and circumstances known by each such person; and
- e. Identify each document which you believe supports your claim of such violation.

9. Have you read the Recommendation of the Chief Engineer of June 26, 2017 with respect to the Application?

- a. If so, do you disagree with the Recommendation or its conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Recommendation and state with specificity the basis of your disagreement.

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- a. If so, do you disagree with the Report or its recommendations and/or conclusions in any respect?
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11. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as a witness, together with their full name, address and telephone number, and state in detail the subject matter on which such witness is expected to testify and the substance of the facts and opinions to which the witness is expected to testify.

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13. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as an expert witness, together with the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and whether you have received a written report from any such witness.

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15. Provide the full professional curriculum vitae for any expert mentioned in your answers to these interrogatories.

16. Identify any photographs, including those in electronic or digital format, movies, video tapes, charts, drawings, audio recordings or models of any person, instrumentality, scene or other thing relevant to the subject matter of this action, or reasonably calculated to lead to the discovery of material evidence in this action.

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19. Have you ever previously been a party to any proceeding involving or regarding the appropriation of water from any aquifer or other subsurface water source? If so, in each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

20. Have you, ever previously been a party to any proceeding regarding the siting, zoning, development, construction, operation or expansion of a concentrated animal feeding operation? If so, for each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

21. Do you or any member of your family withdraw, appropriate or divert water from the Vermillion West Fork, Vermillion East Fork and/or the Parker Centerville aquifers? If so, state the name of the appropriator, the point of withdrawal, appropriation or diversion, the use to which such water is put, the approximate date the withdrawal, appropriation or diversion began, and the volume of withdrawal, appropriation or diversion.

22. Identify any well permits, water rights and/or permits owned or held by you, authorizing withdrawal, appropriation or diversion of water from the Vermillion West Fork, Vermillion East Fork, and/or Parker Centerville aquifers. In the case of permits, state the permit number and the date of issuance and include with your answers a copy of the permit. In the case of permits allowing an appropriation for irrigation, include with your answers copies of the last six annual irrigation water usage reports submitted to the South Dakota Department of Environment and Natural Resources with respect to each such permit.

23. Describe in detail the type, depth, source, flow rate, annual usage and the aquifer from which you obtain water.

24. (For purposes of the following questions, the term "water systems" means wells, pumping systems, diversions or other works that allow you to withdraw, appropriate or divert water pursuant to water rights and/or permits as described in the preceding interrogatories.) Describe in detail your water system.

25. As of March 30, 2017, the date the Applicant filed the Application, how many persons were served by the water system you own or operate? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

26. Do you have a plan to increase the number of persons served by your water system? If so, describe the plan in detail, including the additional number of persons who may be

served within the next five (5) and ten (10) years, respectively. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

27. As of March 30, 2017, the date the Applicant filed the Application, how many head, and what type of livestock are being watered by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

28. As of March 30, 2017, the date the Applicant filed the Application, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are you irrigating using water supplied by your water system? Describe the same in detail, including legal descriptions of the location of the same.

29. As of March 30, 2017, the date the Applicant filed the Application, what was the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

30. As of the date of these Interrogatories and Request for Production of Documents were served, how many persons are served by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

31. As of the date of these Interrogatories and Request for Production of Documents were served, how many head, and what type of livestock were being watered by your water system?

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34. As of the date of these Interrogatories and Request for Production of Documents were served, how many gallons of groundwater will you need to withdraw annually from the Vermillion West Fork, Vermillion East Fork and/or Parker Centerville aquifers to meet all present needs of you or your water system? Please differentiate between your required withdrawals and required withdrawals to support your water system, if appropriate. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

35. Describe in detail all facts that you believe support the contentions in your correspondence to the Chief Engineer objecting to the Application.

36. State whether you claim or intend to claim at the Water Management Board hearing the Applicant, or anyone on Applicant's behalf, has made any statements, authorized any

documents or taken any action or omitted to take any action which constitutes an admission against Applicant's interest. If so, state the following:

- a. With respect to each statement, the mode of communication, its date, its full and exact substance; identify each person making or hearing the statement; and identify each document, confirming, relating or referring to the statement; and
- b. With respect to each act or omission, a detailed summary of all material facts concerning it; identify each person having knowledge of such facts; and identify each document you believe supports your claim that such act or omission occurred.

REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby requested to answer the following request for production within the time the manner specified by South Dakota law:

1. Produce at the office of the undersigned copies of all documents identified in your answers to these discovery requests or relied upon in providing answers to the foregoing interrogatories, not otherwise served by you upon the undersigned.
2. Produce at the office of the undersigned copies of all documents maintained by you or your agents, consultants, or attorneys regarding any matter set forth in your objection to the Application, including internal memoranda, e-mail messages, and external communications.
3. Produce at the office of the undersigned copies of all items that are anticipated to be used as an exhibit or offered to be admitted into evidence at Water Management Board hearing by you.
4. Produce at the office of the undersigned copies all statements obtained by you, or your agents, consultants, or attorneys in any form, from any person, related to this litigation.
5. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who it is anticipated may give expert testimony in this cause of action on behalf of you, including, but not limited to, all reports.
6. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who had been consulted with regarding this cause of action on behalf of the you, including, but not limited to, all reports.

Dated this 29th day of September, 2017.

TAYLOR LAW FIRM, LLC

BY: _____


JOHN E. TAYLOR
Attorney for Sonstegard Food Company
john.taylor@taylorlawsd.com
4820 East 57th Street
Sioux Falls, SD 57108
(605) 906-0000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of above Interrogatories and Requests for Production of Documents upon the persons herein next designated, all on the date below shown, by depositing copies thereof in the United States mail, at Sioux Falls, South Dakota postage prepaid, in envelopes addressed to said addressees, to wit:

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

Michael J. Schaffer
Schaffer Law Office, Prof. LLC
412 West 9th Street
Suite 1
Sioux Falls, SD 57104-3602

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

which are the last addresses of addressees known to the subscriber.

Dated this 29th day of September, 2017.



JOHN E. TAYLOR



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

October 24, 2017

NOTICE

TO: John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing on Water Permit Application No. 8278-3, Sonstegard Food Company

Water Permit Application No. 8278-3 proposes to appropriate 222.2 acre-feet of water annually at a maximum diversion rate of 1.11 cubic feet of water per second from two wells to be completed into the Vermillion East Fork:Montrose Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.

Petitions of opposition to Water Permit Application No. 8278-3 were filed in response to the public notice. The October 5, 2017, hearing was postponed and this notice reschedules the hearing on Application No. 8284-3 for December 6, 2017.

The Water Management Board will now conduct a hearing to consider Application No. 2758-2 at 1:30 PM on Wednesday, December 6, 2017, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior items. Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing dated August 10, 2017, and the public notice published in the New Era and the Argus Leader published July 6, 2017, still apply.

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

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

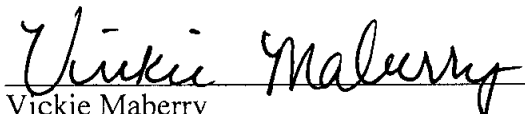
I hereby certify that on October 24, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated October 24, 2017, regarding notice of hearing for Water Right Permit Application No. 8278-3, as addressed below:

John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

Sent Inter-office to:

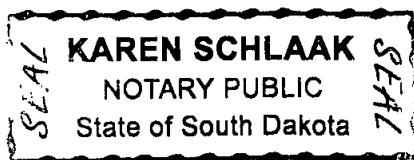
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501


Vickie Maberry
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of October, 2017


Karen Schlaak
Notary Public
My Commission expires April 1, 2019



RECEIVED

NOV 03 2017

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC

LAWYERS

412 WEST 9TH STREET - SUITE 1

SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer

Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

November 1, 2017

Mr. John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

Re: Water Permit Application No. 8278-3

Dear Mr. Taylor:

Enclosed and intended as service by mail is a true and correct copy of Petitioners' Response to Applicant's First Set of Interrogatories and Request for Production of Documents in the above matter.

Best regards.

Sincerely,



MICHAEL J. SCHAFFER
For the Firm

MJS:clm

Enclosure

cc w/encl:

~~Chief~~ Engineer/Water Rights Program

Ann Mines Bailey

Joyce Willoughby

Walter and Jean Mielke

Charlene Ritter

Darlene Goosen

RECEIVED

NOV 03 2017

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT
APPLICATION #8278-3
SONSTEGARD FOOD COMPANY

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*

PETITIONERS' RESPONSE TO
APPLICANT'S FIRST SET
OF INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS

Comes now Petitioners Darlene A. Goosen, Charlene Ritter, Joyce Willoughby,
and Walter and Jean Mielke and responds to Applicant's First Set of Interrogatories and
Request for Production of Documents as follows:

**OBJECTIONS TO INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Petitioners object to Applicant's interrogatories and request for production of
documents. The South Dakota Rules of Civil Procedure have not been adopted by the
South Dakota Water Management Board, therefore, the requested discovery is not
authorized or appropriate.

1. Identify the name, address, telephone number, and occupation of each and
every person or persons answering these interrogatories.

ANSWER: See Objection.

2. Identify the name, address, telephone number, and occupation of each and
every person furnishing information or assisting in answering these interrogatories.

ANSWER: See Objection.

3. Identify the name, address, telephone number, and occupation of all
persons known to you, or your counsel, associates, investigators, employees, or agents,
who have knowledge of any facts relevant to Water Permit Application #8278-3
(hereafter the "Application").

ANSWER: See Objection.

4. As to all persons listed in your answer to the previous interrogatory, state
whether any of them have made any oral statements or have given any written statements
relevant to the subject matter of this action. If so, state:

- a. The name of the person making the statement and its date;
- b. If oral, the substance of the statement and the name and present address of all who heard it made;
- c. If written, the substance of the statement, the name and present address of the person who took the statement and the custodian of the statement; and
- d. If written, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of all such statements.

ANSWER: See Objection.

5. Describe in detail any investigation conducted or performed by you or any individual hired by you, with respect to the Application, and identify all individuals and all documents provided to or produced by said individuals.

ANSWER: See Objection.

6. Describe in detail the basis on which you contend that you have standing to participate in proceedings before the Water Management Board pertaining to the Application.

ANSWER: See Objection.

7. Identify any person or entity who has on your behalf completed an evaluation regarding the subject matter of the Application or has given any assessment of the Application of its impacts on you or others, including the public as a whole.

ANSWER: See Objection.

8. Do you claim Applicant violated any statutes, rules, regulations, ordinances or other customs or standards with respect to the Application? If so, state:

- a. The exact identifying number of the applicable statute, rule, etc.
- b. The exact act or omission constituting such violation;
- c. The identity of the person you claim committed such violation;
- d. The identity of each person you claim has knowledge of such violation, stating the specific facts and circumstances known by each such person; and
- e. Identify each document which you believe supports your claim of such violation.

ANSWER: See Objection.

9. Have you read the Recommendation of the Chief Engineer of June 26, 2017 with respect to the Application?

- a. If so, do you disagree with the Recommendation or its conclusions in any respect?

- b. Describe fully each and every point of disagreement you have with the Recommendation and state with specificity the basis of your disagreement.

ANSWER: See Objection.

10. Have you read the Report to the Chief Engineer of June 26, 2017 prepared by Adam Mathiowetz, PE?

- a. If so, do you disagree with the Report or its recommendations and/or conclusions in any respect?
- b. Describe fully each and every point of disagreement you have with the Report and state with specificity the basis of your disagreement.

ANSWER: See Objection.

11. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as a witness, together with their full name, address and telephone number, and state in detail the subject matter on which such witness is expected to testify and the substance of the facts and opinions to which the witness is expected to testify.

ANSWER: See Objection.

12. Identify each person with whom you or your attorneys have consulted as an expert and whether you or your attorneys have received a written report from any such expert.

ANSWER: See Objection.

13. Identify each person that you or your attorneys intend to call at the Water Management Board hearing as an expert witness, together with the subject matter on which such expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and whether you have received a written report from any such witness.

ANSWER: See Objection.

14. Identify the custodian of each written report mentioned in your answers to the preceding two interrogatories, and if you will do so without a motion to produce, attach to your answers to these interrogatories copies of such reports.

ANSWER: See Objection.

15. Provide the full professional curriculum vitae for any expert mentioned in your answers to these interrogatories.

ANSWER: See Objection.

16. Identify any photographs, including those in electronic or digital format, movies, video tapes, charts, drawings, audio recordings or models of any person, instrumentality, scene or other thing relevant to the subject matter of this action, or reasonably calculated to lead to the discovery of material evidence in this action.

ANSWER: See Objection.

17. Identify any document, memorandum or other writing relevant to the subject matter of this action or reasonably calculated to lead to the discovery of material evidence in this action.

ANSWER: See Objection.

18. Identify and provide a summary of all communications between you and the Applicant regarding the subject matter of the Application or your petition.

ANSWER: See Objection.

19. Have you ever previously been a party to any proceeding involving or regarding the appropriation of water from any aquifer or other subsurface water source? If so, in each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

ANSWER: See Objection.

20. Have you, ever previously been a party to any proceeding regarding the siting, zoning, development, construction, operation or expansion of a concentrated animal feeding operation? If so, for each such instance, state the name and address of the court, tribunal or board, the approximate date when any such proceeding occurred, a general description of the character of the proceeding and information as to its disposition, the name of the parties and any identifying docket numbers, and fully describe your involvement.

ANSWER: See Objection.

21. Do you or any member of your family withdraw, appropriate or divert water from the Vermillion West Fork, Vermillion East Fork and/or the Parker Centerville aquifers? If so, state the name of the appropriator, the point of withdrawal, appropriation or diversion, the use to which such water is put, the approximate date the withdrawal, appropriation or diversion, the use to which such water is put, the approximate date the withdrawal, appropriation or diversion began, and the volume of withdrawal, appropriation or diversion.

ANSWER: See Objection.

22. Identify any well permits, water rights and/or permits owned or held by you, authorizing withdrawal, appropriation or diversion of water from the Vermillion West Fork, Vermillion East Fork, and/or Parker Centerville aquifers. In the case of permits, state the permit number and the date of issuance and include with your answers a copy of the permit. In the case of permits allowing an appropriation for irrigation, include with your answers copies of the last six annual irrigation water usage reports submitted to the South Dakota Department of Environment and Natural Resources with respect to each such permit.

ANSWER: See Objection.

23. Describe in detail the type, depth, source, flow rate, annual usage and the aquifer from which you obtain water.

ANSWER: See Objection.

24. (For purposes of the following questions, the term “water systems” means wells, pumping systems, diversions or other works that allow you to withdraw, appropriate or divert water pursuant to water rights and/or permits as described in the preceding interrogatories.) Describe in detail your water system.

ANSWER: See Objection.

25. As of March 30, 2017, the date the Applicant filed the Application, how many persons were served by the water system you own or operate? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

26. Do you have a plan to increase the number of persons served by your water system? If so, describe the plan in detail, including the additional number of persons who may be served within the next five (5) and ten (10) years, respectively. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

27. As of March 30, 2017, the date the Applicant filed the Application, how many head, and what type of livestock are being watered by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

28. As of March 30, 2017, the date the Applicant filed the Application, how many acres of noncommercial family gardens, trees, shrubbery, or orchards are you

irrigating using water supplied by your water system? Describe the same in detail, including legal descriptions of the location of the same.

ANSWER: See Objection.

29. As of March 30, 2017, the date the Applicant filed the Application, what was the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

30. As of the date of these Interrogatories and Request for Production of documents were served, how many persons are served by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

31. As of the date of these Interrogatories and Request for Production of Documents were served, how many head, and what type of livestock were being watered by your water system?

ANSWER: See Objection.

32. As of the date of these Interrogatories and Request for Production of Documents were served, how many acres of noncommercial family gardens, trees, shrubbery, or orchards were being irrigated by your water system?

ANSWER: See Objection.

33. As of the date of these Interrogatories and Request for Production of Documents were served, what is the total water storage capacity available for your water system? As of that date, how much water was being stored by your water system? Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

34. As of the date of these Interrogatories and Request for Production of Documents were served, how many gallons of groundwater will you need to withdraw annually from the Vermillion West Fork, Vermillion East Fork and/or Parker Centerville aquifers to meet all present needs of you or your water system? Please differentiate between your required withdrawals and required withdrawals to support your water system, if appropriate. Please produce copies of any documents reviewed or utilized to answer this interrogatory.

ANSWER: See Objection.

35. Describe in detail all facts that you believe support the contentions in your correspondence to the Chief Engineer objecting to the Application.

ANSWER: See Objection.

36. State whether you claim or intend to claim at the Water Management Board hearing the Applicant, or anyone on Applicant's behalf, has made any statements, authorized any documents or taken any action or omitted to take any action which constitutes an admission against Applicant's interest. If so, state the following?

- a. With respect to each statement, the mode of communication, its date, its full and exact substance; identify each person making or hearing the statement; and identify each document, confirming, relating or referring to the statement; and
- b. With respect to each act or omission, a detailed summary of all material facts concerning it; identify each person having knowledge of such facts; and identify each document you believe supports your claim that such act or omission occurred.

ANSWER: See Objection.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce at the office of the undersigned copies of all documents identified in your answers to these discovery requests or relied upon in providing answers to the foregoing interrogatories, not otherwise served by you upon the undersigned.

RESPONSE: See Objection.

2. Produce at the office of the undersigned copies of all documents maintained by you or your agents, consultants, or attorneys regarding any matter set forth in your objection to the Application, including internal memoranda, e-mail messages, and external communications.

RESPONSE: See Objection.

3. Produce at the office of the undersigned copies of all items that are anticipated to be used as an exhibit or offered to be admitted into evidence at Water Management Board hearing by you.

RESPONSE: See Objection.

4. Produce at the office of the undersigned copies all statements obtained by you, or your agents, consultants, or attorneys in any form, from any person, related to this litigation.

RESPONSE: See Objection.

5. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who it is anticipated may give expert testimony in this cause of action on behalf of you, including, but not limited to, all reports.

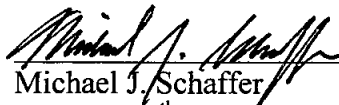
RESPONSE: See Objection.

6. Produce at the office of the undersigned copies all documents prepared by or for any person or persons who had been consulted with regarding this cause of action on behalf of the you, including, but not limited to, all reports.

RESPONSE: See Objection.

Dated this 15th day of November, 2017.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764

CERTIFICATE OF SERVICE

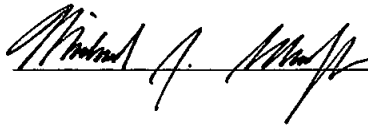
The undersigned hereby certifies that a true and correct copy of the "Petitioners' Responses to Applicant's First Set of Interrogatories and Request for Production of Documents" was served by United States mail, postage prepaid upon:

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

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

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

on this 1st day of November, 2017.



Gronlund, Eric

From: John Taylor <john.taylor@taylorlawsd.com>
Sent: Wednesday, November 15, 2017 9:40 AM
To: Mines-Bailey, Ann
Cc: mikes@schafferlawoffice.com; Gronlund, Eric
Subject: [EXT] Motion for Scheduling and Procedural Order
Attachments: Proposed Scheduling and Procedural Order.pdf; Motion for Scheduling and Procedural Order Sonstegard Food Company.pdf

Ann,

In regards to Sonstegard Food Company's Application #8278-3, attached is a Motion for Scheduling and Procedural Order. Also attached is a proposed order regarding the same.

Thanks,

John E. Taylor
Attorney

Taylor Law Firm, LLC
4820 East 57th Street
Suite B
Sioux Falls, South Dakota 57108

john.taylor@taylorlawsd.com
605-360-6266 Cell
605-782-5303 Direct

<http://www.taylorlawsd.com>

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STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	
SONSTEGARD FOOD COMPANY	)	MOTION FOR PROCEDURAL
	)	AND SCHEDULING ORDER

Comes Now, Applicant Sonstegard Food Company by and through its attorney of record and submits the following Motion 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 Applicant submits the following:

1. The Applicant, Sonstegard Food Company, has submitted an application for a water permit (Application 8278-3). The application proposes to authorize the diversion of water from the Vermillion East Fork aquifer at a maximum diversion rate of 1.11 cubic feet of water per second (cfs) for commercial use in an avian production facility. The application proposes to appropriate 222.2 acre-feet of water per year from up to two wells (approximately 60 feet deep). The wells are to be located in the NE1/4NW1/4 and SE1/4NE1/4 Sec. 3-T99N-R53W in Turner County. The water will be transported via pipeline to an avian production facility to be located in the SW1/4 Sec. 36-T100N-R54W. The Chief Engineer has recommended approval of the application.

2. Notice of the application was published for the above-entitled water permit application and the final date for intervention therein was July 17, 2017.

3. The Department of Environment and Natural Resources has received a total of four petitions to intervene in this matter, and all intervening petitioners are collectively represented by attorney Mr. Michael Schaffer.

4. Notice of hearing setting this matter for the December 2017 meeting was prepared and sent to the parties on October 24, 2017.

5. The Applicant filed a motion for continuance on November 13, 2017 requesting the Board delay the hearing in the above-entitled matter to its March 2018 meeting. The intervening petitioners' attorney, Mr. Michael Schaffer did not object to the proposed continuance.

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

a. 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 **January 26, 2018**. 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.

b. Each party must disclose in writing the names of each witness the party anticipates calling to testify during the hearing on or before **February 9, 2018**.

c. 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 **February 16, 2018**. The copies may be provided by electronic means.

7. The Applicant 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.

8. The Applicant 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: ten (10) copies for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

9. The Applicant requests that the Board include in its order the requirement that all original 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.

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

Dated this 15th day of November, 2017.

/s/ John E. Taylor
John E. Taylor
john.taylor@taylorlawsd.com
TAYLOR LAW FIRM, LLC
4820 East 57th Street, Suite B
Sioux Falls, SD 57108
(605) 906-0000
Attorney for Sonstegard Food Company

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	PROPOSED PROCEDURAL
SONSTEGARD FOOD COMPANY	)	AND SCHEDULING ORDER
	)	

Upon consideration of the Motion for Procedural and Scheduling Order filed by the applicant Sonstegard Food Company, the following Order shall be entered in the above captioned action.

It is ORDERED:

1. 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 **January 26, 2018**. 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 and contact information for any and all witnesses that the party expects to call during the hearing of this matter on or before **February 9, 2018**. 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 **February 16, 2018**. 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 ten (10) copies for use by the Board, its counsel, and court reporter, and sufficient 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 Board 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 November, 2017.

Rodney Freeman
Prehearing Chairman
South Dakota Water Management Board

Gronlund, Eric

From: Connie <conniem@schafferlawoffice.com>
Sent: Wednesday, November 15, 2017 12:09 PM
To: john.taylor@taylorlawsd.com
Cc: Mines-Bailey, Ann; Gronlund, Eric
Subject: [EXT] Songetgard Application #8278-3
Attachments: 2065_001.pdf; ATT00001.htm

See attached letter from Mike Schaffer.

Connie Mowry
conniem@schafferlawoffice.com
Schaffer Law Office, Prof. LLC
412 W. 9th Street, Suite 1
Sioux Falls SD 57104-3602
(605) 274-6760
Fax: (605) 274-6764

SCHAFFER LAW OFFICE, PROF. LLC
LAWYERS

412 WEST 9TH STREET – SUITE 1
SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer
Paul H. Linde*

Phone: (605) 274-6760
Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

November 15, 2017

VIA EMAIL

Mr. John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

Re: Water Permit Application No. 8278-3

Dear Mr. Taylor:

I received your Motion for Scheduling and Procedural Order. At this time, I would generally object to all of the requirements. I told Mr. Taylor I do not object to having a deadline to disclose experts and their reports. The rest of it seems to me to be overkill. Furthermore, if any Order is entered I think it should await the actual setting of the hearing date.

Best regards.

Sincerely,



MICHAEL J. SCHAFFER
For the Firm

MJS:clm

cc: Ann Mines Bailey
Eric Gronlund

bcc w/encls: Joyce Willoughby
Walter and Jean Mielke
Charlene Ritter
Darlene Goosen

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
NOV 16 2017
WATER RIGHTS
PROGRAM

November 15, 2017

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

Re: *Water Permit Application No. 8278-3, Sonstegard Food Company*

Dear Mr. Freeman:

Enclosed please find a copy of DENR'S Response to Motion for Procedural and Scheduling Order and the Certificate of Service in the above-entitled matter. A copy of the Response is being either mailed or hand-delivered to all interested parties.

Respectfully,

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

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

AFM/mn
Enclosures
cc w/encs: Parties on Certificate of Service

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

IN THE MATTER OF WATER	)	DENR'S RESPONSE TO
APPLICATION NO. 8278-3,	)	MOTION FOR PROCEDURAL
Sonstegard Food Company	)	AND SCHEDULING ORDER
	)	

The South Dakota Department of Environment and Natural Resources Water Rights Program has no objection to the entry of a procedural and scheduling order as proposed by the Applicant. However, DENR would request a slight modification. The Motion and proposed Order provide for the disclosure of all exhibits and the provision of copies of those exhibits to the parties. DENR's practice is to submit the administrative file kept by the Water Rights Program as an exhibit. DENR requests that it not be required to provide copies of the administrative file to each party.

The administrative file is comprised of the application, the report and recommendation of the Chief Engineer, any motion made by the parties, and any other correspondence received. While every document in the administrative file is not available online, the vast majority of the documents are accessible to the public on DENR's website and the entire file is available for inspection upon request. For this reason, in addition to the fact that the file will be continually supplemented with each new filing or letter, DENR requests that it not be required to produce a copy of the administrative file for each party.

Dated this 15th day of November, 2017.

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

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

Counsel for Water Rights Program, DENR

pld_afm Water Board – Sonstegard Food Company

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

IN THE MATTER OF WATER	)	
APPLICATION NO. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	
	)	

The undersigned hereby certifies that on the 15th day of November 2017, true and correct copies of DENR'S Response to Motion for Procedural and Scheduling Order, in the above matter, were mailed by U.S. mail, first class, postage prepaid, to:

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

John Taylor
Attorney at Law
4820 E. 52nd St., Ste. B
Sioux Falls, SD 57108

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

Counsel for Sonstegard Food Company

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter,
Darleen Goosen*

And hand-delivered to:

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

Counsel for Water Management Board

And that on the same date the original was sent by inter-office mail to:

Jeanne Goodman, Chief Engineer
Water Rights Program
DENR
523 E. Capitol Ave.
Pierre, SD 57501


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



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

NOV 27 2017

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 22, 2017

BY INTER-OFFICE MAIL

Jeanne Goodman, Chief Engineer
Water Rights Program
DENR
523 E. Capitol Ave.
Pierre, SD 57501

RE: *In the Matter of Water Permit Application #8278-3 Sonstegard Food Company*

Dear Ms. Goodman:

Enclosed please find a copy of the Order on Motion for Continuance and Motion for Procedural and Scheduling Order and original Certificate of Service regarding the above-referenced matter. A copy of the Order is being either mailed or hand-delivered to all interested parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Naasz".

Matt Naasz
Assistant Attorney General

MN/jmm

Enclosures

cc w/encs: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	ORDER ON MOTION FOR
PERMIT APPLICATION #8278-3	)	CONTINUANCE AND MOTION FOR
SONSTEGARD FOOD COMPANY	)	PROCEDURAL AND
	)	SCHEDULING ORDER

Upon consideration of the Motion for Continuance and the Motion for Procedural and Scheduling Order filed by the applicant Sonstegard Food Company, the following Order shall be entered in the above-captioned action.

It is ORDERED:

1. That the hearing on the above-captioned matter be continued until the March 2018 meeting of the South Dakota Water Management Board. DENR shall provide notice to all parties of the hearing date and time after the Board sets the March meeting date at their December 7, 2017, meeting.
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 **January 26, 2018**. 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 and provide contact information for any and all witnesses that the party expects to call during the hearing of this matter on or before **February 9, 2018**. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

c. With the exception of the administrative file maintained by DENR, 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 **February 16, 2018**. 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 ten (10) copies for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

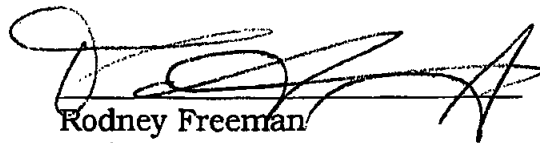
f. All original pleadings and prehearing motions shall be sent by first class mail to Eric Gronlund, DENR Water Rights Program, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. Parties

must also serve copies of all pleadings and motions on all other parties,

including the Board 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 22nd day of November 2017.

A handwritten signature in black ink, appearing to read 'Rodney Freeman', is written over the printed name.

Rodney Freeman
Prehearing Chairman
South Dakota Water Management Board

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	
	)	

The undersigned hereby certifies that on the 22nd day of November 2017, true and correct copies of the Order on Motion for Continuance and Motion for Procedural and Scheduling Order, in the above matter, were mailed by U.S. mail, first class, postage prepaid to:

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor
Attorney at Law
4820 E. 52nd St., Ste. B
Sioux Falls, SD 57108

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter,
Darleen Goosen*

Counsel for Sonstegard Food Company

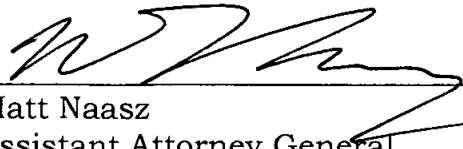
And hand-delivered to:

Ann Miles Bailey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

Counsel for Water Rights Program, DENR

and that on the same date a copy was sent by inter-office mail to:

Jeanne Goodman, Chief Engineer
Water Rights Program
DENR
523 E. Capitol Ave.
Pierre, SD 57501



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

Counsel for Water Management Board

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	MOTION FOR CONTINUANCE
SONSTEGARD FOOD COMPANY	)	
	)	

Comes Now, Applicant Sonstegard Food Company by and through its attorney of record and submits the following Motion for Continuance. Applicant respectfully requests the Board delay the hearing in the matter of Water Application Number 8278-3 to its March, 2018 meeting. The Applicant's attorney and intervening petitioner's attorney, Mr. Michael Schaffer have discussed the matter and the petitioners do not object to the proposed continuance.

Dated this 13th day of November, 2017.



John E. Taylor
john.taylor@taylorlawsd.com
TAYLOR LAW FIRM, LLC
4820 East 57th Street, Suite B
Sioux Falls, SD 57108
(605) 906-0000
Attorney for Sonstegard Food Company

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

November 27, 2017

John Taylor
Attorney at Law
4820 East 57th Street, Suite B
Sioux Falls, SD 57108

Re: Water Application Permit No. 8278-3, Sonstegard Food

John,

DENR's response to your motion for a scheduling order was sent to the wrong address. Enclosed are the originals which were mailed on November 15, 2017. Please accept my apologies.

Sincerely,

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

Ann F. Mines-Bailey
Assistant Attorney General

AFMB/jmm

Enclosures

cc letter only: Matt Naasz
Michael Schaffer
cc w/enc: ✓ Jeanne Goodman

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

November 15, 2017

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

Re: *Water Permit Application No. 8278-3, Sonstegard Food Company*

Dear Mr. Freeman:

Enclosed please find a copy of DENR'S Response to Motion for Procedural and Scheduling Order and the Certificate of Service in the above-entitled matter. A copy of the Response is being either mailed or hand-delivered to all interested parties.

Respectfully,

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

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

AFM/mn
Enclosures
cc w/encs: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR'S RESPONSE TO
APPLICATION NO. 8278-3,	)	MOTION FOR PROCEDURAL
Sonstegard Food Company	)	AND SCHEDULING ORDER
	)	

The South Dakota Department of Environment and Natural Resources Water Rights Program has no objection to the entry of a procedural and scheduling order as proposed by the Applicant. However, DENR would request a slight modification. The Motion and proposed Order provide for the disclosure of all exhibits and the provision of copies of those exhibits to the parties. DENR's practice is to submit the administrative file kept by the Water Rights Program as an exhibit. DENR requests that it not be required to provide copies of the administrative file to each party.

The administrative file is comprised of the application, the report and recommendation of the Chief Engineer, any motion made by the parties, and any other correspondence received. While every document in the administrative file is not available online, the vast majority of the documents are accessible to the public on DENR's website and the entire file is available for inspection upon request. For this reason, in addition to the fact that the file will be continually supplemented with each new filing or letter, DENR requests that it not be required to produce a copy of the administrative file for each party.

Dated this 15th day of November, 2017.

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

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

Counsel for Water Rights Program, DENR

pld_afm Water Board – Sonstegard Food Company

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	
	)	

The undersigned hereby certifies that on the 15th day of November 2017, true and correct copies of DENR'S Response to Motion for Procedural and Scheduling Order, in the above matter, were mailed by U.S. mail, first class, postage prepaid, to:

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

John Taylor
Attorney at Law
4820 E. 52nd St., Ste. B
Sioux Falls, SD 57108

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

Counsel for Sonstegard Food Company

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter,
Darleen Goosen*

And hand-delivered to:

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

Counsel for Water Management Board

And that on the same date the original was sent by inter-office mail to:

Jeanne Goodman, Chief Engineer
Water Rights Program
DENR
523 E. Capitol Ave.
Pierre, SD 57501


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 Water Board - Sonstegard Food Company - COS (mn)

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	ORDER ON MOTION FOR
PERMIT APPLICATION #8278-3	)	CONTINUANCE AND MOTION FOR
SONSTEGARD FOOD COMPANY	)	PROCEDURAL AND
	)	SCHEDULING ORDER

Upon consideration of the Motion for Continuance and the Motion for Procedural and Scheduling Order filed by the applicant Sonstegard Food Company, the following Order shall be entered in the above-captioned action.

It is ORDERED:

1. That the hearing on the above-captioned matter be continued until the March 2018 meeting of the South Dakota Water Management Board. DENR shall provide notice to all parties of the hearing date and time after the Board sets the March meeting date at their December 7, 2017, meeting.

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 **January 26, 2018**. 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 and provide contact information for any and all witnesses that the party expects to call during the hearing of this matter on or before **February 9, 2018**. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

c. With the exception of the administrative file maintained by DENR, 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 **February 16, 2018**. 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 ten (10) copies for use by the Board, its counsel, and court reporter, and sufficient copies for all parties participating in the contested proceedings.

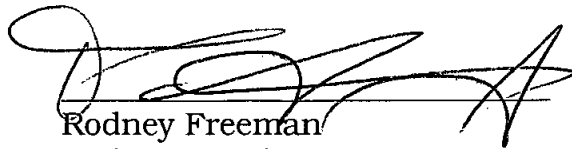
f. All original pleadings and prehearing motions shall be sent by first class mail to Eric Gronlund, DENR Water Rights Program, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. Parties

must also serve copies of all pleadings and motions on all other parties,

including the Board 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 22nd day of November 2017.

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

Rodney Freeman
Prehearing Chairman
South Dakota Water Management Board



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

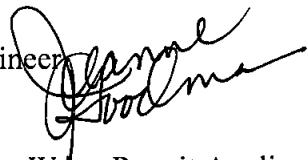
denr.sd.gov

January 19, 2018

NOTICE

TO: John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice Scheduling Hearing on Water Permit Application No. 8278-3, Sonstegard Food Company

Water Permit Application No. 8278-3 proposes to appropriate 222.2 acre-feet of water annually at a maximum diversion rate of 1.11 cubic feet of water per second from two wells to be completed into the Vermillion East Fork:Montrose Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.

The Water Management Board will conduct a hearing to consider Application No. 8278-3 at 1:00 PM on Wednesday, March 7, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing dated August 10, 2017, and the public notice in the New Era and the Argus Leader published July 6, 2017, still apply.

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

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

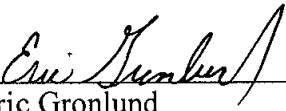
I hereby certify that on January 19, 2018 I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated January 19, 2018, regarding notice scheduling the hearing for Water Right Permit Application No. 8278-3, as addressed below:

John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

Sent Inter-office to:

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



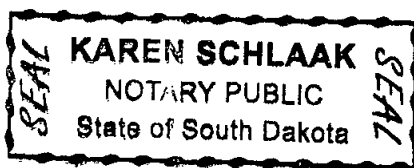
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of January, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

January 19, 2018

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor
Attorney at Law
4820 E. 52nd St., Ste. B
Sioux Falls, SD 57108

Re: *In the Matter Water Permit Application No. 8278-3,
Sonstegard Food Company*

Dear Mr. Schaffer and Mr. Taylor:

Enclosed please find a true and correct copy of DENR's Expert
Witness/Witness Disclosure with attachments and the accompanying
Certificate of Service in the above-entitled matter.

Please contact me with any questions.

Sincerely,

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

Ann Mines Bailey
Assistant Attorney General

AFM/mn
Enclosures
cc w/encs: Jeanne Goodman, Chief Engineer ✓

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

IN THE MATTER OF WATER	)	DENR'S EXPERT
APPLICATION NO. 8278-3,	)	WITNESS/WITNESS
Sonstegard Food Company	)	DISCLOSURE

Pursuant to the Procedural and Scheduling Order dated November 22, 2017, DENR hereby provides the names of the expert witnesses it intends to call:

1. Adam Mathiowetz, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. Mr. Mathiowetz will testify as to his review of the application for a water permit which serves as the basis of the Chief Engineer's recommendation of approval, including the nature and hydrologic characteristics of the aquifer, the availability of unappropriated water, and the potential impairment of existing rights. Mr. Mathiowetz's curriculum vitae is attached hereto.

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. Her

recommendation dated June 26, 2017, is attached hereto. Ms. Goodman's curriculum vitae is also attached hereto.

These are the only experts and witnesses that DENR intends to call during its case in chief.

Dated this 19th day of January, 2018.


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

Counsel for Water Rights Program, DENR

ADAM MATHIOWETZ

EDUCATION

M.S. Agricultural and Biosystems Engineering, South Dakota State University, 2011

–Thesis, Vegetative Treatment System Evaluation for Two Large Confined Animal Feeding Operations

B.S. Agricultural and Biosystems Engineering, South Dakota State University, 2009

CAREER EXPERIENCE

Engineer II – SD Dept. of Environment and Natural Resources, Water Rights Program: Responsibilities: Conducting ground water investigations and investigating complaints, conduct water permit reviews for licensing, preparing and reviewing reports for new ground water permit applications, provide technical assistance to the Chief Engineer, provide technical assistance to the Water Management Board through evaluating ground water permit applications and interpretation of data from the statewide observation well network, providing expert testimony to the Water Management Board on contested water permit applications, and assist senior engineers within the Water Rights Program with various engineering tasks as needed. Co-manage Water Rights Program summer seasonal employees measuring the Water Rights Program network of groundwater observation wells, review licensing for South Dakota licensed well drillers and pump installers, and review water well completion reports submitted to the Water Rights Program.

PROFESSIONAL REGISTRATION

Registered Professional Engineer: # 12461, State of South Dakota Board of Technical Professionals, Expires: May 31, 2019

SPECIAL PROJECTS

- Analyzed and interpreted data from all of the annual irrigation questionnaires from the Tulare: Western Spink and Tulare: Hitchcock aquifers to determine irrigation application rate.
- Analyze aquifer pumping test data for Water Permit Application Nos. 7537-3 for Bret Fliehs and 7930-3 for James Rand.
- Develop an MS Excel based random selection process for establishing priority of new applications for appropriation from fully appropriated aquifers.

TESTIMONY

Testified as an expert witness before the South Dakota Water Management Board since 2013. Cases since March 7, 2013 include:

- o Application No. 8293-3, Brian Schneck
- o Application No. 2758-2, Steffen Farms LLC
- o Application No. 8065-3, City of Hecla
- o Application No. 8002-3, Todd Block
- o Application No. 7828-3, Ryken Family Limited Partnership
- o Application No. 7520-3, JH Gunderson/GA Schiefen
- o Application No. 7610-3, Bret Fliehs
- o Application No. 7456-3, Lucas Family Investments
- o Application No. 2691-2, Chad Kehn

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
5. Chair, Industry Advisory Board, Geology/Geological Engineering Department, South Dakota School of Mines and Technology

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**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8278-3, Sonstegard Food Company**

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. 8278-3, Sonstegard Food Company, c/o John E Taylor, Taylor Law Firm, 4820 E 57th St, Suite B, Sioux Falls SD 57108.

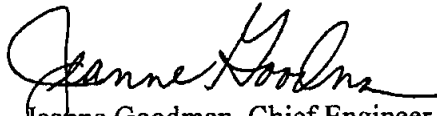
The Chief Engineer is recommending APPROVAL of Application No. 8278-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and, 4) it is in the public interest with the following qualifications:

1. The two wells approved under Water Permit No. 8278-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner, under these Permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The two wells authorized by Permit No. 8278-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8278-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Water Permit No. 8278-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions

(continued)

5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork:Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork:Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
June 26, 2017

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 8278-3
SONSTEGARD FOOD COMPANY
C/O
JOHN E. TAYLOR
TAYLOR LAW FIRM
JUNE 26, 2017

Water Permit Application No. 8278-3 proposes to authorize the diversion of water from the Vermillion East Fork aquifer at a maximum diversion rate of 1.11 cubic feet of water per second (cfs) for commercial use in an avian production facility. This application proposes to appropriate 222.2 acre-feet of water per year (ac-ft/yr.) from up to two wells (approximately 60 feet deep). The wells are to be located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 3-T99N-R53W in Turner County. The water will be transported via pipeline to an avian production facility to be located in the SW $\frac{1}{4}$ Section 36-T100N-R54W.

AQUIFER: Vermillion East Fork: Montrose (VEF: M)

Aquifer Characteristics:

The Vermillion East Fork aquifer is a surficial aquifer associated with East Fork Vermillion River valley (Hedges et al., 1982). The aquifer is comprised of fine sand to medium pebble gravel (Lindgren and Hansen, 1990). The aquifer extends from Clark County into Turner County where it blends into the Parker Centerville aquifer (Hedges et al., 1982). The Vermillion East Fork aquifer has been subdivided into several management units (see Figure 1). Hedges and others (1985) discuss the Montrose management unit (Vermillion East Fork: Montrose). However, the boundaries of the management unit are not preserved in any report. Consistent with the criteria used to establish management units developed by Hedges and others (1982), the Montrose management unit is considered to extend from the border between the Vermillion East Fork aquifer and the Parker Centerville aquifer at the south end to the Kingsbury/Miner County line which is the southern border of an unnamed management unit identified by Stonesifer (2014).

Figure 1 is a map of the well sites proposed by Application No. 8278-3 and the management units of the Vermillion East Fork aquifer. Figure 2 is a map of the water rights/permits authorized to withdraw water from and DENR-Water Rights Program observation wells completed into the Vermillion East Fork: Montrose aquifer. Table 1 is a list of the water rights/permits and future use permit authorized to withdraw water or reserve water from the Vermillion East Fork: Montrose aquifer. Groundwater movement in the Vermillion East Fork aquifer is generally south and towards the East Fork Vermillion River (Hansen, 1986). The aquifer is almost entirely under unconfined conditions. Based on the groundwater movement and the location of water rights/permits within the Vermillion East Fork aquifer, it is appropriate to assess only the Vermillion East Fork: Montrose aquifer as determined by Buhler (2016) and in particular the portion of the management unit that is in Turner County.

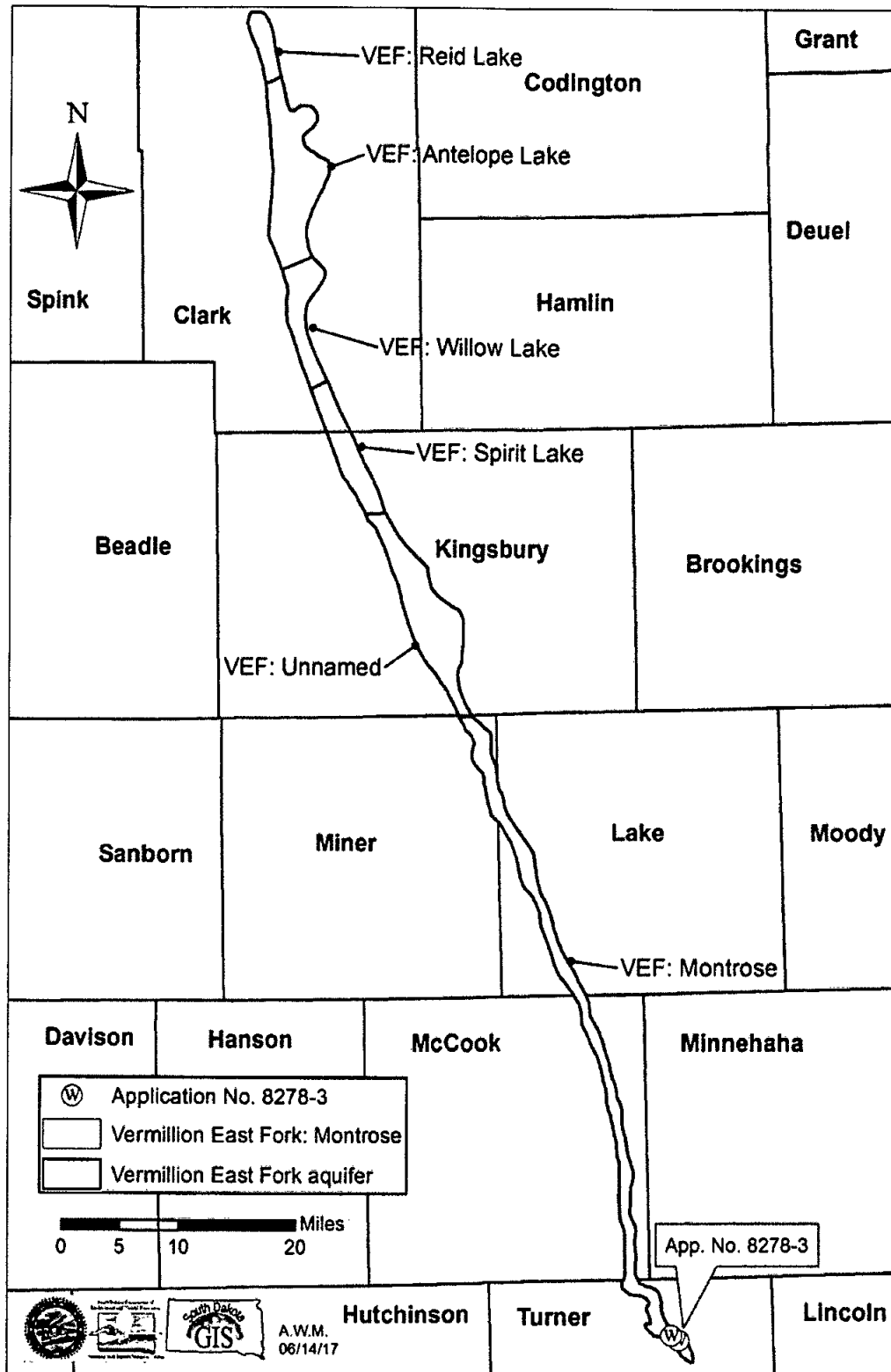


Figure 1-Map of the well sites proposed by Application No. 8278-3 and the management units of the Vermillion East Fork aquifer in South Dakota (modified from: Buhler, 2016; Hedges et al., 1982)

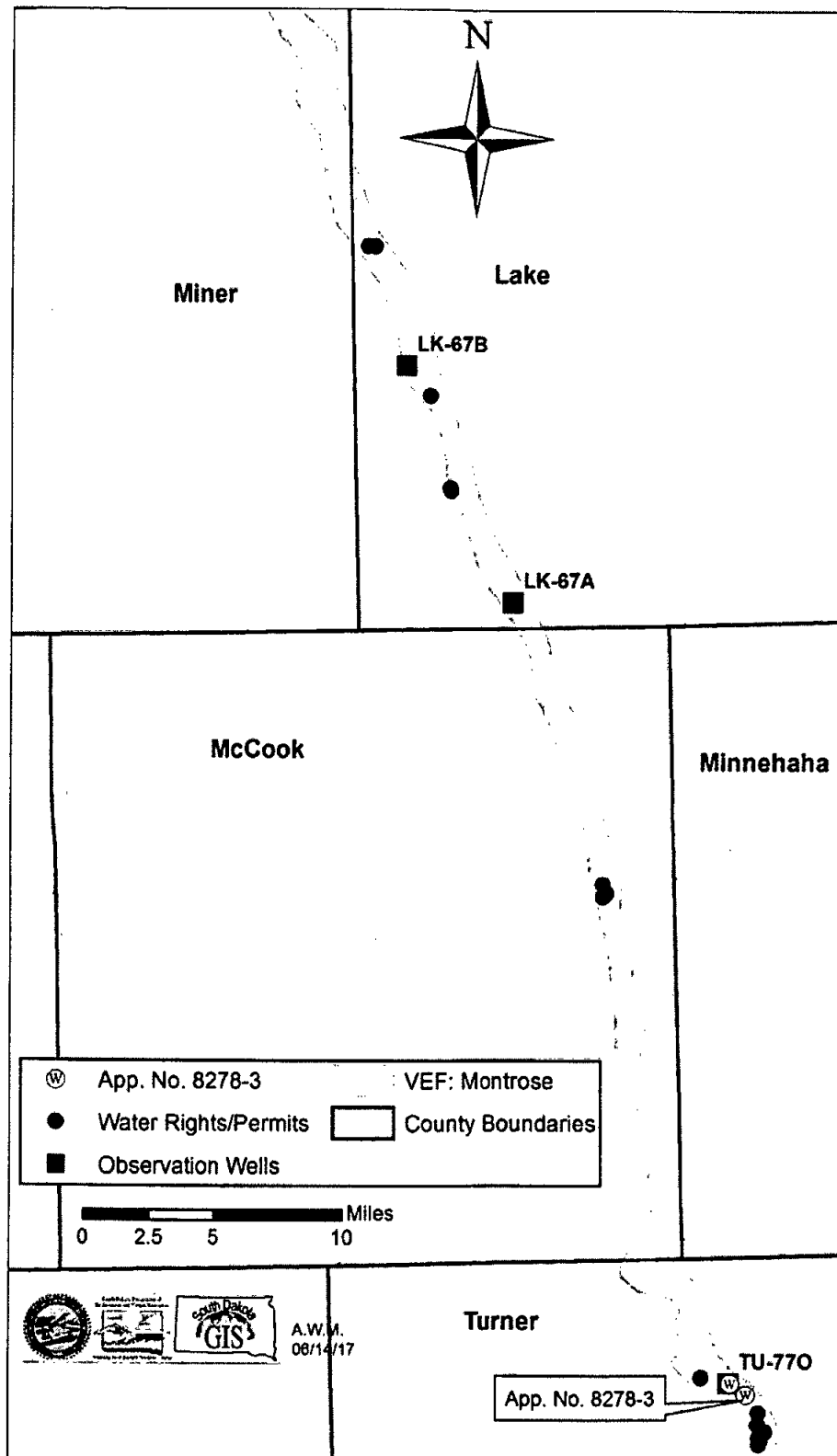


Figure 2- Map of Vermillion East Fork: Montrose with water rights/permits, future use permits, and well sites proposed by Application No. 8278-3 (Water Rights, 2017a and 2017b)

Table 1- Water rights/permits and Future Use permit authorized to withdraw water or reserve water from the Vermillion East Fork: Montrose (Water Rights, 2017b)

Permit No.	Name	County	Status	Use	Rate (cfs)	Acres	Permitted Vol. (ac-ft)
1009-3	City of Montrose	MC	LC	MUN	0.44		
2989A-3	Palmer Reinicke	LK	LC	IRR	0.3	21	
4039-3	City of Montrose	MC	FU	MUN			42
4680-3	Gracevale Httrn Brth	LK	LC	IRR	1.78	132	
5389-3	Ken Plucker Jr	TU	LC	IRR	2	160	
5914-3	Berens Farms	TU	LC	IRR	1.71	120	
6075-3	Weeg Family Farms LLP	TU	LC	IRR	1.56	132	
6401-3	Michael J Johnson	LK	LC	COM	5.56		
6434-3	DLK&M LLC	TU	LC	IRR	1.23	83	
6491-3	Joseph Plucker	TU	LC	IRR	1.11	92	
7594-3	Joseph Plucker	TU	PE	IRR	0.67	50	
7596-3	Joseph Plucker	TU	PE	IRR	0.44	20	
7597-3	Joseph Plucker	TU	PE	IRR	0.44	0	
8245-3	Gracevale Httrn Brth	LK	PE	IRR	0	132	
MC= McCook, LK= Lake, TU= Turner, LC= Water Right, FU= Future Use, PE= Water Permit, MUN= Municipal, IRR= Irrigation, COM= Commercial							

The Vermillion East Fork: Montrose underlies portions of McCook, Miner, Lake, and Turner Counties (Hedges et al., 1982). Buhler's delineation of the Vermillion East Fork: Montrose based on Hedges and others (1982) map of the Vermillion East Fork aquifer shows the Vermillion East Fork: Montrose covering approximately 34,800 acres with an estimated 5,800 acres underlying Turner County. Lindgren and Hansen (1990) estimate there is 22,000 ac-ft of water in storage in the aquifer in Turner County.

The maximum aquifer thickness of the Vermillion East Fork: Montrose in Turner County is greater than 54 feet with an average thickness of 29 feet (Lindgren and Hansen, 1990). Lithologic log reports (SDGS, 2017), and completion reports for observation wells, appropriative wells, and domestic wells (Water Rights, 2017a, 2017b, and 2017c) indicate there is sand and gravel from near land surface to nearly 60 feet below grade in some locations within one-quarter mile of the well sites proposed by this application. The water level at observation well TU-770 was 8.14 feet below ground surface on June 1, 2017. Observation well TU-770 is completed into the Vermillion East Fork: Montrose aquifer and is approximately 325 feet away from the nearest well site proposed by this application.

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

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

WATER AVAILABILITY:

This application proposes to appropriate water from the Vermillion East Fork: Montrose aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires “No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.” If the source of the water is older or lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this case, the aquifer is not stratigraphically lower than the Greenhorn Formation and the applicant is not a water distribution system.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer.

The DENR-Water Rights Program monitors three observation wells completed into the Vermillion East Fork: Montrose aquifer (Water Rights, 2017a). Observation well TU-77O is approximately 325 feet west of the northwestern well site proposed by Application No. 8278-3, and observation wells LK-67A and LK-67 B are approximately 31 and 40.4 miles north-northwest of the northwestern well site proposed by this application (see Figure 2) (Water Rights, 2017a). The hydrographs for TU-77O, LK-67A, and LK-67B are shown in Figures 4, 5, and 6, respectively.

The hydrographs for TU-77O, LK-67A, and LK-67B show stable (TU-77O) or rising (LK-67A and LK-67B) water levels over their respective periods of record. All three hydrographs show the effects of climatic conditions on water levels. Water levels rise (recharge) during wetter periods and slowly decline during drier periods. The effects of climatic conditions on water levels are clear in the hydrographs for LK-67A and LK-67B but are subtle in the hydrograph for TU-77O. The hydrograph for TU-77O shows a water level that seasonally fluctuates less than five feet per year in general. The hydrograph shows the water level in the aquifer is higher in the spring following recharge from direct infiltration of snowmelt and precipitation. As spring and summer progress, water levels decline to a stable level. This stable water level indicates the aquifer is not being stressed by pumping. The slight variation in the stable water level across the period of record for TU-77O documents the effects of climatic conditions dominating the water level instead of effects caused by pumping from wells.

When climatic conditions have a dominant effect on water levels, recharge to and natural discharge from an aquifer significantly exceeds pumping. Natural discharge from an aquifer is available for appropriation. Therefore, the hydrographs document there is unappropriated water available for this proposed appropriation.

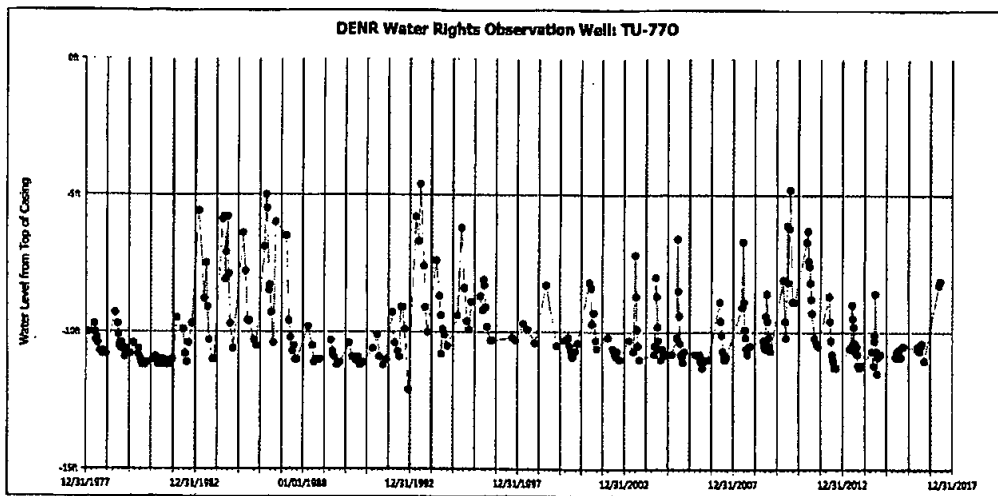


Figure 4- Hydrograph for observation well TU-770 (Water Rights, 2017a)

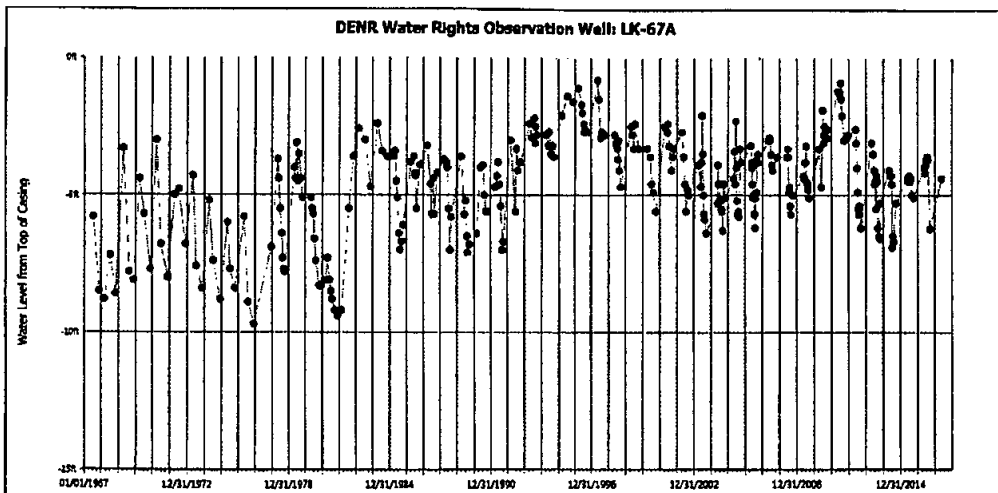


Figure 5- Hydrograph for observation well LK-67A (Water Rights, 2017a)

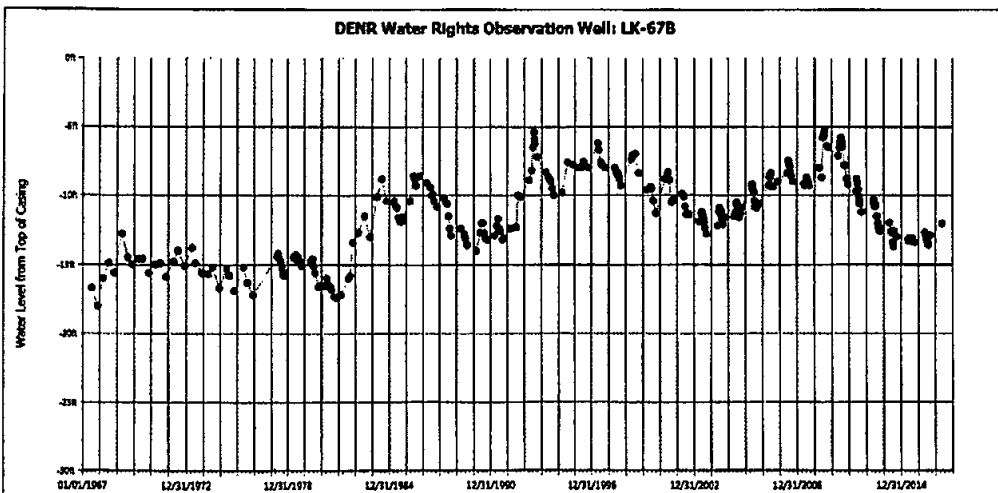


Figure 6- Hydrograph for observation well LK-67B (Water Rights, 2017a)

Recharge and Discharge:

Recharge:

Recharge to the Vermillion East Fork: Montrose aquifer is primarily through infiltration of precipitation and snowmelt (Hansen, 1986; Lindgren and Hansen, 1990). Hedges and others (1985) estimated an average annual recharge to the Vermillion East Fork: Montrose aquifer of 3.4 inches per year (in/yr.) using observation well analysis. Buhler's (2016) mapping of the Vermillion East Fork: Montrose aquifer estimated the areal extent to be approximately 34,800 acres with approximately 5,800 acres in Turner County alone. Based on those estimated areas and Hedges and others (1985) recharge rate, the recharge rate to the entire Vermillion East Fork: Montrose is approximately 9,860 ac-ft/yr. and 1,643 ac-ft/yr. in Turner County alone. Lindgren and Hansen (1990) stated there is about 240 ac-ft/yr. inflow from a portion of the Vermillion East Fork: Montrose in McCook County into the Turner County portion of the aquifer.

Discharge:

The Vermillion East Fork: Montrose aquifer discharges through evapotranspiration, discharge to the East Fork Vermillion River when the potentiometric surface of the aquifer is at a higher elevation than the stage of the river, groundwater outflow to the Parker Centerville aquifer, and well withdrawals (Lindgren and Hansen, 1990). The water rights/permits authorized to withdraw water and future use permit authorized to reserve water from the Vermillion East Fork: Montrose are shown in Figure 2 and listed in Table 1 earlier in this report.

The City of Montrose is supplied by Kingbrook Rural Water System, and the water rights are maintained only as a back-up supply for uses like fire protection (Friedeman, 2017). Subsequently, the withdrawals under the water right held by the City of Montrose (Water Right No. 1009-3) are assumed to be negligible. The City of Montrose also holds Future Use Permit No. 4039-3. The Water Management Board last reviewed Future Use Permit No. 4039-3 in 2006, and it was allowed to remain in effect to reserve 42 ac-ft/yr. from the Vermillion East Fork: Montrose aquifer for future development. The Water Rights Program is currently working with the City of Montrose to determine if they wish to maintain the future use permit. Water Right No. 6401-3 for Michael J. Johnson is for a non-consumptive use of water in a commercial gravel washing operation. Therefore, withdrawals under Water Right No. 6401-3 are also considered to be negligible.

Table 2 shows the historic annual irrigation withdrawals from the Vermillion East Fork: Montrose aquifer. The historic annual irrigation data shows that the number of permits and appropriated acres has varied over the period of record but development has been increasing in the last 15 years. Furthermore, the volume pumped fluctuates with climate and agricultural markets. The average annual irrigation withdrawal from the Vermillion East Fork: Montrose aquifer is 340.05 ac-ft/yr. The average annual pumpage from 2002-2016, the last 15 years of complete data, is 578.95 ac-ft/yr. Furthermore, Water Permit No. 8245-3 was approved in January 2017 for the irrigation of 132 acres, so it is not yet accounted for in the historic irrigation pumping average. In general, irrigators in southeastern South Dakota apply 10 inches of water or less per year. The acres currently permitted for irrigation using water from the Vermillion East Fork: Montrose aquifer is 942 acres with 657 of those acres in Turner County. Therefore, it would be more appropriate to assume annual irrigation pumpage from the Vermillion East Fork: Montrose to be less than 785 ac-ft/yr. and less than 548 ac-ft/yr. in Turner County alone.

Table 2- Historic irrigation pumpage from the Vermillion East Fork: Montrose aquifer (Water Rights, 1979-2017)

Year	No. of Permits Reporting	Appropriation (ac-ft)	Pumpage (ac-ft)
2016	10	2065	416.57
2015	9	2002	542.5
2014	10	2065	542.93
2013	10	2065	625.27
2012	7	1925	686.94
2011	7	1925	487.3
2010	7	1925	0
2009	7	1925	213.59
2008	7	1925	558.65
2007	7	1925	804.95
2006	7	1925	818.29
2005	7	1925	978.19
2004	7	1925	753.46
2003	5	1575	621.09
2002	5	1575	634.6
2001	5	1575	410.88
2000	5	1575	346.03
1999	5	1575	321.13
1998	5	1629	180.52
1997	5	1629	192
1996	5	1629	185.06
1995	4	1389	189.8
1994	4	1389	212.61
1993	4	1229	16
1992	4	2216	17.3
1991	5	2768	262
1990	5	2768	199
1989	5	2908	314
1988	4	2448	252.3
1987	4	2448	85
1986	4	2448	63
1985	4	2448	102
1984	5	3888	42
1983	4	2448	125.25
1982	4	2448	106.33
1981	7	4440	261.41
1980	7	4440	299.72
1979	7	4440	145.71
Max	10	4440	978.19
Min	4	1229	0
Avg.	5.87	2232.82	342.46

Hydrologic Budget:

The estimated average annual withdrawal, assuming full development of Future Use Permit No. 4039-3, from the Vermillion East Fork: Montrose is expected to be less than 827 ac-ft/yr. This application, if approved, could pump up to 222.2 ac-ft/yr. That is a total of 1,049.2 ac-ft/yr. The estimated average annual recharge to the Vermillion East Fork: Montrose is 9,860 ac-ft/yr. with 1,643 ac-ft/yr. in only Turner County. The Turner County portion of the Vermillion East Fork: Montrose also receives subsurface inflow of 240 ac-ft/yr. from the McCook County portion of the aquifer. A comparison of the estimated average annual recharge and withdrawals supports the observation well analysis. Therefore, there is a reasonable probability there is unappropriated water available for this proposed appropriation.

Figure 7 is a map of the project area around Application No. 8278-3 including the proposed well sites, locations of wells sites for water rights/permits and observation wells completed into the Vermillion East Fork: Montrose aquifer, water rights/permits completed into the Vermillion West Fork and Parker Centerville aquifers, and the proposed avian production facility where the water pumped under this application, if it is approved, will be used. Table 3 is a table that lists the water rights/permits and future use permits shown in Figure 7.

App. No. 8278-3
proposed area of use

Sec 31
T100N
R53W

Sec 11
T099N
R54W

Sec 6
T099N
R53W

0 0.25 0.5 Miles

GIS

A.W.M.
06/16/17

Parker

App. No. 8278-3

8278-3 Proposed Area of Use

VEF: Montrose Observation Well

VEF: Montrose Water Rights/Permits

Parker Centerville

Water Rights/Permits

Section Boundaries

Vermillion West Fork Water Rights/Permits

9

Table 3- List of water rights/permits and future use permits shown in Figure 7 (Water Rights, 2017b)

Permit No.	Name	Status	Aquifer	Use	Rate (cfs)	Acres
5389-3	Ken Plucker Jr	LC	VEF	IRR	2	160
5914-3	Berens Farms	LC	VEF	IRR	1.71	120
6075-3	Weeg Family Farms LLLP	LC	VEF	IRR	1.56	132
6434-3	DLK&M LLC	LC	VEF	IRR	1.23	83
6491-3	Joseph Plucker	LC	VEF	IRR	1.11	92
7594-3	Joseph Plucker	PE	VEF	IRR	0.67	50
7596-3	Joseph Plucker	PE	VEF	IRR	0.44	20
7597-3	Joseph Plucker	PE	VEF	IRR	0.44	0
2287-3	Robert L Merrill	LC	PAC	IRR	1.88	133
2288-3	Allen or Kristi Merrill	LC	PAC	IRR	1	76
3812-3	Marlene Rance	LC	PAC	IRR	1.83	128
5679-3	Ballacostain LLP	LC	PAC	IRR	1.52	107
5680-3	Ballacostain LLP	LC	PAC	IRR	1.11	78
5927-3	Joseph Plucker	LC	PAC	IRR	0.87	61
6127-3	Ballacostain LLP	PE	PAC	IRR	0.86	60
6843-3	Ballacostain LLP	LC	PAC	IRR	1.56	105
7598-3	Joseph Plucker	PE	PAC	IRR	0.91	30
2156-3	Roger Ihnen	LC	VWF	IRR	1.28	90
4341-3	Weeg Family Farms LLLP	LC	VWF	IRR	0.89	62
4562-3	Lawrence R Strawbridge Living Trust	LC	VWF	IRR	0.89	74
4797-3	City of Parker	LC	VWF	MUN	1.33	N/A
4797A-3	City of Parker	PE	VWF	IRR	0.27	30
4798-3	City of Parker	FU	VWF	MUN	N/A	N/A
5932-3	James P Van Derostyne	LC	VWF	IRR	0.7	49
5934-3	James P Van Derostyne	LC	VWF	IRR	1.67	120
6492-3	Glenn Kleinsasser MD	LC	VWF	IRR	1.78	136
7312-3	Allen Merrill	PE	VWF	IRR	1.11	75
7595-3	Joseph Plucker	PE	VWF	IRR	1.78	136
7648-3	Par Mar Valley Country Club	PE	VWF	IRR	0.89	50
7694-3	Joseph Plucker	PE	VWF	IRR	1.56	33
VEF= Vermillion East Fork, VWF= Vermillion West Fork, PAC= Parker Centerville						

There are several water rights/permits authorized to withdraw water from the Vermillion West Fork and Parker Centerville aquifers within approximately one to 2.5 miles of the proposed well sites. Since the Vermillion East Fork: Montrose, Vermillion West Fork, and Parker Centerville aquifers are hydraulically connected in this area, the potential for effects caused by pumping these proposed diversions should be considered. There are also a number of farms sites that may have domestic wells completed into the Vermillion East Fork: Montrose aquifer in the vicinity of the well sites proposed by this application.

The Vermillion East Fork: Montrose aquifer is an unconfined aquifer. Any drawdown created from pumping a well completed into an unconfined aquifer is minimal within a short distance of the well. The proposed wells are likely within a short distance, less than 0.5 miles, of an aquifer boundary on two sides. As the radius of influence from pumping expands and encounters the low permeability/impermeable aquifer boundaries, drawdown in the other directions will increase. However, the river is a recharge boundary. Increased drawdown from pumping will increase capture from the river. Increased capture from the river will decrease the extent of drawdown around the pumped wells. The nearest water right/permit authorized to withdraw water from the East Fork Vermillion River to the proposed well sites is 11.7 miles upstream (Water Rights,

2017b). There would be no impact to surface water appropriations of the East Fork Vermillion River if this application were approved. During periods of no flow in the East Fork Vermillion River, there will not be any water available for capture from the river.

Any very low/no flow conditions of the river may impact domestic users of the river. In the past the East Fork Vermillion River has experienced low flow conditions several times since the beginning of the period of record in October 1995 at the U.S. Geological Survey stream gage approximately one mile north of the northern proposed well site (USGS, 2017). If pumping captures groundwater that would normally discharge to the river, it may increase the frequency and duration of very low/no flow conditions in the East Fork Vermillion River.

The unconfined nature of the aquifer means the drawdown cone created from pumping either well will not be significant far from the well. The Vermillion East Fork: Montrose aquifer is relatively thin with an average thickness of 29 feet in Turner County (Lindgren and Hansen, 1990). That means management of the well system to prevent pumping either well dry will be critical for the applicant to minimize impacts to their avian production facility. This also means that impacts on nearby users will also be reduced. If the applicant does not purchase the lands associated with Water Right No. 6434-3 and therefore become owner of said water right, there is a potential to adversely impact the well authorized by Water Right No. 6434-3. At the proposed maximum appropriation volume, 222.2 ac-ft/yr., the continuous pump rate equivalent for this application will be 0.307 cfs. Assuming a transmissivity of 7,150 ft²/d based on the specific capacity of appropriative wells completed into the Vermillion East Fork: Montrose aquifer (Aqtesolv, 2017; Water Rights, 2017b and 2017c), a storativity of 0.1, a pump time of 365 days, and the average diversion rate of 0.307 cfs, drawdown at a well 460 feet away is expected to be less than two feet based on the Theis Equation (Utah, 2017). The transmissivity value used for that calculation is likely on the low end of likely transmissivity values for the aquifer. That means drawdown is likely less than the estimate.

Observation well TU-770 is approximately 0.7 miles (3,750 feet) northwest of the well authorized by Water Right No. 6434-3. That well is authorized to divert water from the Vermillion East Fork: Montrose aquifer at a maximum rate of 1.23 cfs. The well has pumped water for irrigation every year from 2004 through 2016 with the exception of 2010. There is no apparent effect on the water level shown in the hydrograph for TU-770 during that time period that could be attributed to pumping under Water Right No. 6434-3. Considering the distance from the proposed well locations to other wells, the relatively low average diversion rate, and the unconfined nature of the aquifer, there is a reasonable probability this proposed diversion can be made without impacting existing appropriative users.

In the past, the Water Management Board has recognized that to place water to maximum beneficial use, a certain amount of drawdown may occur. Since the aquifer is under unconfined conditions, drawdown due to pumping would not be significant far from the proposed well sites. There has also been a history of large capacity wells from this aquifer without well interference complaints. Furthermore, the Water Management Board has defined an adversely impacted domestic well in ARSD 74:02:04:20(7) as:

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

The Vermillion East Fork: Montrose aquifer is a relatively thin aquifer with a limited amount of water in storage. While the average annual withdrawal would not exceed average annual recharge to the aquifer, conditions may occur when the withdrawal exceeds recharge. When this occurs, water will be removed from storage, consequently reducing the saturated thickness of the aquifer. This is not anticipated to be a long term effect; however if the saturated thickness is reduced to the extent that water rights/permits can no longer pump at their developed or “historically established” diversion rates, this may be considered an adverse impact. If approved and as a precaution, the water permit should include a qualification that the well owner should control their withdrawals so there is not a reduction of needed water supplies for adequate domestic wells or for adequate wells having prior water rights. The proposed diversion is not expected to adversely impact existing appropriative or domestic users when all of the above factors are considered.

The river flood plain (i.e. the aquifer) is relatively narrow in the area of the proposed well sites. To minimize any potential impacts to the river even though any potential impacts are expected to be negligible, a setback distance for the wells from the river could be considered. Setback distances have been used similarly in the past for permits near the Vermillion River, Big Sioux River, Sand Creek, and most recently West Fork Vermillion River. These setbacks were all for high capacity irrigation wells and were usually one-quarter mile setbacks or 1,320 feet. In general, the setbacks were set at 660 ft per 1 cfs of diversion rate. Using that same premise, a setback from the East Fork Vermillion River of 730 feet if the applicant intends to pump only one well at a time or 365 feet if the applicant intends to pump both wells at the same time at one-half of the maximum diversion rate (0.555 cfs) is recommended for this application.

CONCLUSIONS:

1. Application No. 8278-3 proposes to divert water from the Vermillion East Fork: Montrose aquifer at a maximum diversion rate of 1.11 cfs for commercial use in an avian production facility with a maximum annual volume of 222.2 ac-ft.
2. The avian production facility is to be located in the SW ¼ Section 36 T100N-R54W in Turner County. The wells are to be located in the NE ¼ NW ¼ and SE ¼ NE ¼ Sec. 3-T99N-R53W. The water is to be piped underground from the wells to the place of use.
3. The Vermillion East Fork: Montrose aquifer is a surficial aquifer composed of sand and gravel that primarily occupies the flood plain of the East Fork Vermillion River in Turner, McCook, Lake, and Miner Counties.
4. The hydrographs for observation well TU-77O, LK-67A, and LK-67B show stable to rising water levels over the period of record. These water levels are dominated by

climatic conditions and thus recharge to and natural discharge from the aquifer irrespective of changing appropriative use.

5. The observation well data document there is a reasonable probability unappropriated water is available for this proposed appropriation.
6. Based on a hydrologic budget, there is a reasonable probability unappropriated water is available for this proposed appropriation.
7. When considering the unconfined nature of the aquifer, the distance between wells, and the relatively low average diversion rate, there is a reasonable probability this proposed diversion can be made without adversely impacting existing appropriative or domestic users.
8. If a setback distance is considered, a setback of 730 feet from the East Fork Vermillion River if only one well is to be pumped at a time or 365 feet if both wells are to be pumped at the same time at one-half of maximum proposed diversion rate.



Adam Mathiowetz, PE
SD DENR-Water Rights Program

REFERENCES:

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- Stonesifer, J.R. 2014. Report to the Chief Engineer Water Permit Application No. 7981-3 Farron Pratt, April 28, 2014. South Dakota DENR-Water Rights Program. Pierre, SD.
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- Water Rights. 1979-2017. "1979-2016 Irrigation Questionnaires": SD DENR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights. 2017a. Observation Well Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017c. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

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

IN THE MATTER OF WATER	)	
APPLICATION NO. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	

The undersigned hereby certifies that on the 19th day of January, 2018, true and correct copies of DENR'S Expert Witness/Witness Disclosure with attachments, in the above matter, were mailed by U.S. mail, first class, postage prepaid, to:

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor
Attorney at Law
4820 E. 52nd St., Ste. B
Sioux Falls, SD 57108

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter, and
Darleen Goosen*

Counsel for Sonstegard Food Company

And that on the same date the original was sent by inter-office mail to:

Jeanne Goodman, Chief Engineer
Water Rights Program
DENR
523 E. Capitol Ave.
Pierre, SD 57501


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

Counsel for Water Rights Program, DENR

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	
SONSTEGARD FOOD COMPANY	)	SONSTEGARD FOOD COMPANY
	)	DISCLOSURE OF WITNESSES

Pursuant to the Procedural and Scheduling Order dated November 22, 2017, Applicant Sonstegard Food Company by and through its attorney of record and submits the following disclosure of the witnesses it intends to call and a summary of each witness' expected testimony:

1. Peter Sonstegard, Sonstegard Food Company, 5005 South Bur Oak Place, Sioux Falls, SD, 57108. Mr. Sonstegard will testify as to the ownership of the property and well field for which the water right is sought, the proposed construction of the wells, the nature of the proposed avian production facility in Turner County, the use to which the water will be put in the facility, the quantity of water to be used, and why the proposed water use is a beneficial use and in the public interest.

2. Max Barnett, Sonstegard Food Company, 5005 South Bur Oak Place, Sioux Falls, SD, 57108. Mr. Barnett will testify as to the ownership of the property and well field for which the water right is sought, the proposed construction of the wells, the nature of the proposed avian production facility in Turner County, the use to which the water will be put in the facility, the quantity of water to be used, and why the proposed water use is a beneficial use and in the public interest.

3. Sonstegard Food Company reserves the right to call additional witnesses in rebuttal to testimony from witnesses identified by the Petitioners.

Dated this 6th day of February, 2018.

/s/ John E. Taylor

John E. Taylor

john.taylor@taylorlawsd.com

TAYLOR LAW FIRM, LLC

4820 East 57th Street, Suite B

Sioux Falls, SD 57108

(605) 906-0000

Attorney for Sonstegard Food Company

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	SONSTEGARD FOOD COMPANY
SONSTEGARD FOOD COMPANY	)	EXPERT WITNESS DISCLOSURE
	)	

Pursuant to the Procedural and Scheduling Order dated November 22, 2017, Applicant Sonstegard Food Company by and through its attorney of record and submits the following disclosure of the expert witnesses it intends to call:

1. Adam Mathiowetz, Engineer, South Dakota Department of Environment and Natural Resources, Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501. Mr. Mathiowetz will testify as to his review of the application for a water permit which serves as the basis of the Chief Engineer's recommendation of approval, including the nature and hydrologic characteristics of the aquifer, the availability of unappropriated water, and the potential impairment of existing rights. Mr. Mathiowetz's curriculum vitae is included within DENR's Expert Witness / Witness Disclosure filing dated January 19, 2018.

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. Her recommendation dated June 26, 2017 and curriculum vitae is included within DENR's Expert Witness / Witness Disclosure filing dated January 19, 2018.

3. Sonstegard Food Company reserves the right to call additional expert witnesses in rebuttal to testimony from expert witnesses identified by the Petitioners.

Dated this 26th day of January, 2018.

/s/ John E. Taylor

John E. Taylor

john.taylor@taylorlawsd.com

TAYLOR LAW FIRM, LLC

4820 East 57th Street, Suite B

Sioux Falls, SD 57108

(605) 906-0000

Attorney for Sonstegard Food Company

RECEIVED

FEB 12 2018

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC

LAWYERS

412 WEST 9TH STREET – SUITE 1

SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer
Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

February 8, 2018

Jeanne Goodman
Chief Engineer
Water Rights Program
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

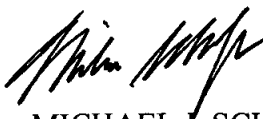
Re: Water Permit Application No. 8278-3

Dear Ms. Goodman and Mr. Taylor:

Enclosed and intended as service by mail is a true and correct copy of Petitioners'
Disclosure of Witnesses in the above matter.

Best regards.

Sincerely,



MICHAEL J. SCHAFFER
For the Firm

MJS:clm
Enclosure
cc w/encl:

Ann Mines Bailey
Joyce Willoughby
Walter and Jean Mielke
Charlene Ritter
Darlene Goosen

RECEIVED

FEB 12 2018

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PETITIONERS'
PERMIT APPLICATION #8278-3	)	DISCLOSURE OF WITNESSES
SONSTEGARD FOOD COMPANY	)	

Pursuant to the Procedural and Scheduling Order dated November 22, 2017,
Petitioners Joyce Willoughby, Walter Mielke, Jean Mielke, Charlene Ritter, and Darlene
Goosen, by and through their attorney of record submit the following disclosure of
witnesses they may call and a summary of each witness' expected testimony:

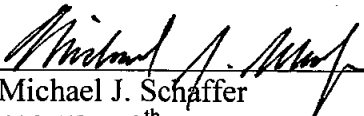
1. Joyce Willoughby
45435 272nd Street
Parker SD 57053.
2. Walter and Jean Mielke
45560 273rd Street
Parker SD 57053
3. Charlene Ritter
27253 455th Avenue
Parker SD 57053
4. Darlene A. Goosen
27312 South Dakota Hwy 19
PO Box 101
Parker SD 57053

Each will testify concerning their wells and their use of water and their concerns
about the affect that this withdrawal of water may have on their wells.

Petitioners reserve the right to call additional witnesses in rebuttal to testimony
from witnesses identified by Applicant, as well as witnesses identified by the other
parties.

Dated this 8th day of February, 2018.

SCHAFFER LAW OFFICE, PROF. LLC


Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764

CERTIFICATE OF SERVICE

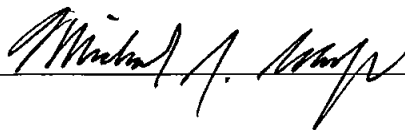
The undersigned hereby certifies that a true and correct copy of the "Petitioners' Disclosure of Witnesses" was served by United States mail, postage prepaid upon:

Jeanne Goodman
Chief Engineer
Water Rights Program
DENR
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

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

on this 8th day of February, 2018.



STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
PERMIT APPLICATION #8278-3	)	SONSTEGARD FOOD COMPANY
SONSTEGARD FOOD COMPANY	)	DISCLOSURE OF EXHIBITS
	)	

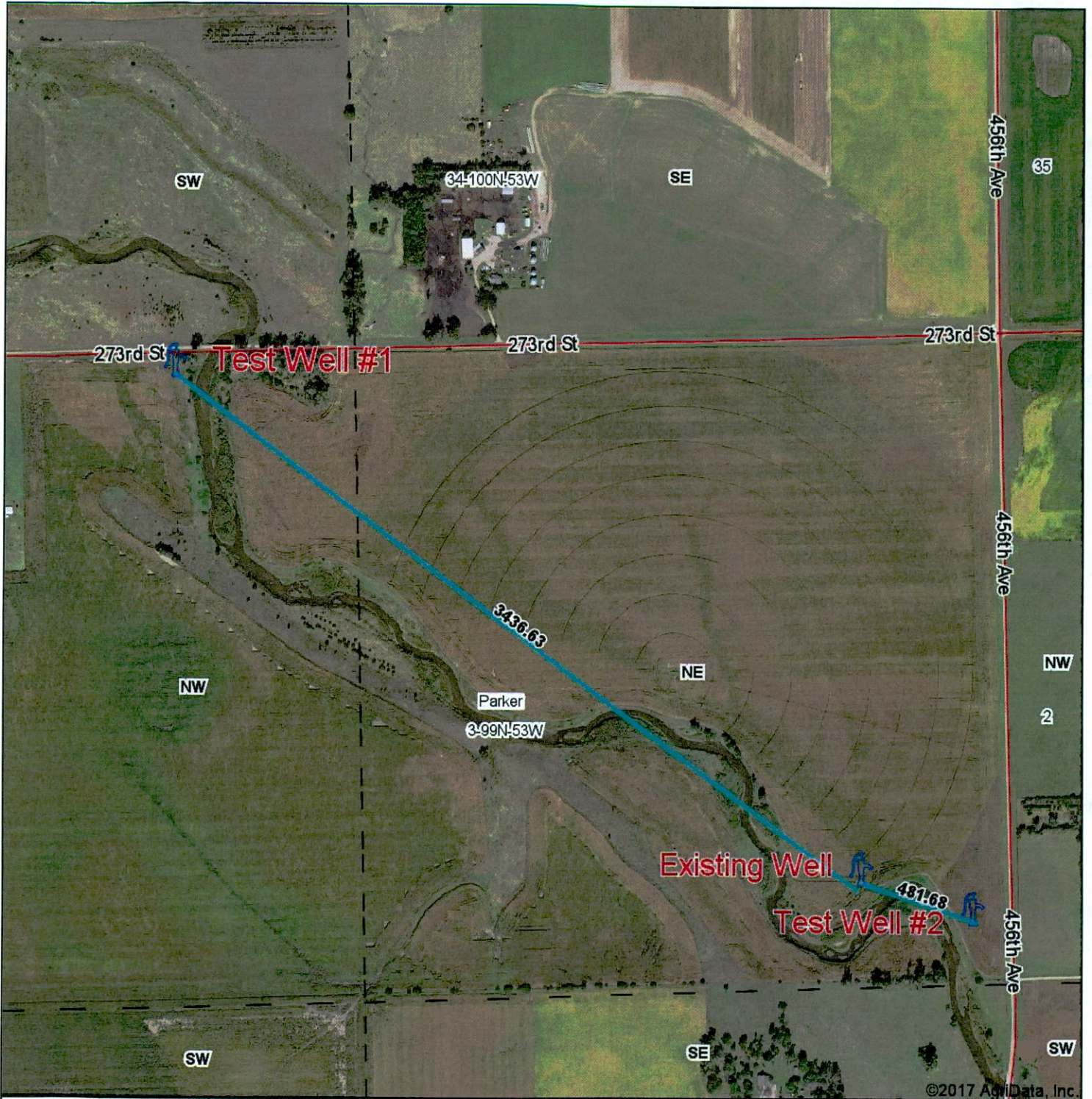
Pursuant to the Procedural and Scheduling Order dated November 22, 2017, Applicant Sonstegard Food Company by and through its attorney of record and submits the following disclosure of exhibits it intends to offer during the hearing. Copies of these exhibits will be provided with this notice except as noted:

1. DENR's Report - Recommendation of Chief Engineer for Water Permit Application No. 8278-3 Sonstegard Food Company, available at https://denr.sd.gov/wrimage/pub/8278-3_rec.pdf.
2. Exhibit 11 – Map of Subject Property and Proposed Well Locations.

Dated this 16th day of February, 2018.

/s/ John E. Taylor
John E. Taylor
john.taylor@taylorlawsd.com
TAYLOR LAW FIRM, LLC
4820 East 57th Street, Suite B
Sioux Falls, SD 57108
(605) 906-0000
Attorney for Sonstegard Food Company

Aerial Map



map center: 43° 25' 42.73, -97° 5' 22.56

0ft 623ft 1247ft

Maps Provided By:
surety
CUSTOMIZED ONLINE MAPPING
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3-99N-53W
Turner County
South Dakota



3/31/2017

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FEB 20 2018

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC
LAWYERS

412 WEST 9TH STREET – SUITE 1
SIOUX FALLS, SOUTH DAKOTA 57104-3602

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Phone: (605) 274-6760
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*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

February 15, 2018

Jeanne Goodman
Chief Engineer
Water Rights Program
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

Re: Water Permit Application No. 8278-3

Dear Ms. Goodman and Mr. Taylor:

Enclosed and intended as service by mail is a true and correct copy of Petitioners' Exhibit List in the above matter.

Best regards.

Sincerely,



MICHAEL J. SCHAFFER
For the Firm

MJS:clm
Enclosure
cc w/encl:

Ann Mines Bailey
Joyce Willoughby
Walter and Jean Mielke
Charlene Ritter
Darlene Goosen

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PETITIONERS'
PERMIT APPLICATION #8278-3	)	EXHIBIT LIST
SONSTEGARD FOOD COMPANY	)	

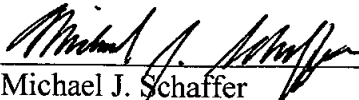
Petitioners, by and through counsel, submit the following as their list of Exhibits to be offered at the hearing:

1. Letter from Jean and Walter Mielke to Mike Schaffer dated January 16, 2018, with attached documentation concerning their well.
2. Letter from Layne Schulz to Darlene Goosen regarding her well information.
3. Letter to Joyce Willoughby from Layne Schultz dated October 20, 2017, with well information.
4. Email communication from Charlene Ritter to Mike Schaffer with attached well information.

In addition, the Petitioners reserve the right to use the documentation they submitted in their original Petition, well logs from Sonstegard, which are, as of yet, unavailable, and any documentation submitted by the other parties, maps of the proposed site for the wells and Petitioners' wells, as well as documents that may be used in cross-examination or rebuttal.

Dated this 15th day of February, 2018.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764
Attorneys for Petitioners

CERTIFICATE OF SERVICE

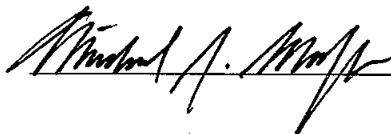
The undersigned hereby certifies that a true and correct copy of the "Petitioners' Exhibit List" was served by United States mail, postage prepaid upon:

Jeanne Goodman
Chief Engineer
Water Rights Program
DENR
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

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

on this 15th day of February, 2018.



Jan 16, 2018

Mr. SCHAFFER,

Enclosed are the stats concerning our 2 wells.
By now we are not sure of the exact information
you need concerning our water use here.

We have 80 head of cattle where we live

30 head of cattle $\frac{1}{2}$ mi south of here.

We use water also to spray 500 acres of crops.

We water a large garden

We use all well water for our household of 4 adults.

Sometimes 5 adults live here.

All this water use varies when its spraying
+ garden season and also for the cattle.

Do we have to make an estimate that
would probably not be 100% accurate?

Thank-you

Jean & Walter Miller

Our well mens advise was not to dig down to
~~bottom~~^{top} of granite as it would be at least $\$3.00$ a foot cost.

We have information from the geological survey about
wells close by here for kind of soil and depths. We
can copy and send if you think this necessary.



Environment and Natural Resources
Geological Survey Program
Akeley-Lawrence Science Center
414 East Clark Street
Vermillion, SD 57069-2390
605-677-5227
Fax 605-677-5895
denr.sd.gov



October 23, 2017

Walter and Jean Mielke
45560 273 Street
Parker, South Dakota 57053

Dear Mr. and Mrs. Mielke:

In response to your request for information on wells in the SE $\frac{1}{4}$, Section 3, Township 99 North, Range 53 West and in the SE $\frac{1}{4}$ of Section 34, Township 100 North, Range 53 West, I am providing you with available logs of test holes and wells. I did not find any well information for the SE $\frac{1}{4}$ of Section 34, Township 100 North, Range 53 West.

Enclosed are three logs of wells completed in Section 3, Township 99 North, Range 53 West. Two logs are from private wells and one log is from an observation well maintained by the Water Rights Program, Department of Environment and Natural Resources. Also enclosed are four logs of test holes that are located in or adjacent to the SE $\frac{1}{4}$, Section 3, Township 99 North, Range 53 West or the SE $\frac{1}{4}$ of Section 34, Township 100 North, Range 53 West.

The drill logs show that there is sand and gravel present in the subsurface ranging in depth from near land surface to a depth of 60 feet. The depth of the Sioux Quartzite cannot be determined from any of the enclosed logs and is inferred to be greater in depth than the total depth of each boring.

If you have any questions, or if I can be of any further assistance, please feel free to contact me.

Best Regards,

Layne D. Schulz
Senior Geologist

For the State Geologist

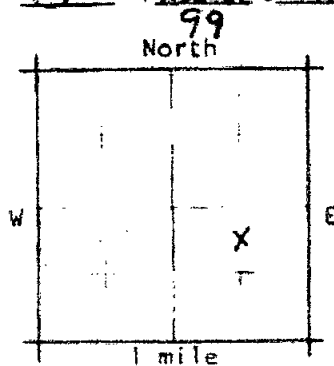
Enclosures

STATE OF SOUTH DAKOTA WELL DRILLERS REPORT

Location LSE 1/4 Sec. 3 Twp. 99 N. Rg. R53W

County Turner

Please mark well location with an "X"



Well Completion Date 7-14-84

PROPOSED USE:

☒ Domestic ☐ Municipal ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Stock

Method of Drilling:

Rotary

WELL CONSTRUCTION:

Diameter of hole 9 inches Depth 44 feet

Casing: ☐ Steel ☒ Plastic ☐ Other

Specify 200 psi PVC

Pipe Weight Diameter From To
5 lb/ft 5 inches 0 feet 44 feet

5 lb/ft 5 inches 0 feet 44 feet

Was a well screen used? ☒ Yes ☐ No

If Not Specify _____

Screen Type plastic slot Slot Size 12

Length 5 Diameter 3"

Was Casing left open end? ☐ Yes ☒ No

Was a Packer or seal used? ☒ Yes ☐ No

If so what material? 1" packer

Was well gravel packed? ☐ Yes ☒ No

Was well grouted? ☐ Yes ☒ No

Describe grouting procedure _____

To what depth? _____ Feet

What was grouting material? _____

If cement, how many sacks? _____

Location of packer(s) and screen or perforated pipe packer 2' deep in casing

WAS WELL PLUGGED OR ABANDONED ☒ Yes ☐ No

If so how and with what material? old well Bentonite

Well Owner:

Name Walter Mielke

Address Rt 1 Parker S.D.

Well Log:

Depth

Formation	From	To
<u>yellow clay</u>	<u>0</u>	<u>12</u>
<u>powder sand & clay</u>	<u>12</u>	<u>44</u>
<u>sand to gravel</u>	<u>44</u>	<u>47</u>

STATIC WATER LEVEL 15 Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

If other; specify _____

Can well be completely shut off? _____

WELL TEST DATA:

☒ Pumped

☐ Bailed Described: _____

☐ Other _____

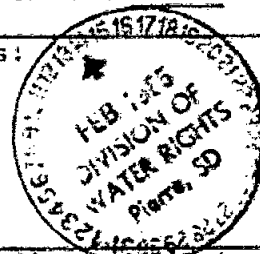
Pumping Level Below Land Surface

18 ft. After 2 Hrs. pumped 15 GPM

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

Remarks:



This well was drilled under license # 123

and this report is true and accurate.

Pier Drilling
Drilling Firm

Phil Pien
Signed by

7-14-84
Date

ltt ant
2-20-85

Backhoe & Trenching
28208 467th Avenue • Lennox, SD 57039
605-647-4395

STATEMENT

Date _____

47-9-17

SUBTOTAL

TAX

**TOTAL
AMOUNT**

Thank You!

Nov. 14 2017

Rural areas at risk as water levels drop in massive aquifer

ASSOCIATED PRESS

DENVER — The draining of a massive aquifer that underlies portions of eight states in the central U.S. is drying up streams, causing fish to disappear and threatening the livelihood of farmers who rely on it for their crops.

Water levels in the Ogallala Aquifer have been dropping for decades as irrigators pump water faster than rainfall can recharge it. An analysis of federal data found the Ogallala aquifer shrank twice as fast over the past six years compared with the previous 60, The Denver Post reported.

The drawdown has become so severe that streams are drying at a rate of 6 miles per year, and some highly resilient fish are disappearing. Farmers and ranchers worry they will no longer have enough water for their livestock and crops as the aquifer is depleted.

The aquifer lost 10.7 million acre-feet of storage between 2013 and 2015, the U.S. Geological Survey said in a report.

"Now I never know, from one minute to the next, when I turn on a faucet or hydrant, whether there will be water or not," said Lois Scott, 75, who lives west of Cope, Colorado, north of the frequently bone-dry bed of the Arikaree River.

A 40-foot well her grandfather dug by hand in 1914 gave water until recently, she said, lamenting the loss of lawns where children once frolicked and green pastures for cows. Scott's now considering a move to Brush, Colorado, and leaving her family's historic homestead farm.

"This will truly become the Great American Desert," she said.

Also known as the High Plains Aquifer, the Ogallala underlies 175,000 square miles, including parts of Colorado, Wyoming, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota and Texas. That's one of the primary agricultural regions of the U.S., producing \$35 billion in crops annually.

Farmers and ranchers have been tapping into the aquifer since the 1930s to boost production and help them get by in times of drought. However, over-pumping has dried up 358 miles of surface rivers and streams across a 200-square-mile area covering eastern Colorado, western Kansas and Nebraska, according to researchers from Colorado State University and Kansas State University.

Your Source

Legals

for the latest...

Bids and Proposals

Invitation to Bid
Sealed bids will be received by the State Engineer on behalf of the Department of Human Services at the Office of the State Engineer, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501, 3182 until November 16, 2017 at 3:00 PM CT for labor and materials for Grace without the express written Building, 523 East Capitol and made payable to the room at the Minnesota

Bids and Proposals

D. If bidder does not submit a bid, bidder will fulfill the requirements of B and C above on or before the date of the bid opening.

E. The Plans and Specifications are to be used only with respect to this project and are not to be used for any other project or purposes other than preparing a bid for this project.

F. The Plans and Specifications will not be disseminated to any person or entity for purposes other than obtaining pricing information State Engineer, Joe Foss Building, 523 East Capitol and made payable to the room at the Minnesota

Bids and Proposals

Is the only time for bidders to review the site. Bidders are responsible to know site conditions prior to submitting bids.

Copies of the Plans and Specifications may be obtained by bidders at the office of Brosz Engineering Inc., 3030 Airport Rd Suite A, Pierre, SD 57501, Loren Schaefer, loren@broszengr.com telephone number (605) 472.4451. Copies are on file for viewing purposes at the Office of the State Engineer, Joe Foss Building, 523 East Capitol and made payable to the room at the Minnesota

Bids and Proposals

a contract for construction of the project, bidder does not need to return or destroy Plans and Specifications until after completion of the project.

Each bid in excess of \$50,000.00 must be accompanied by a certified check, cashier's check or draft in the amount of 5% of the base bid and all add alternates and drawn on a State or National Bank or a 10% bid bond issued by a surety You are hereby summoned to appear before the above

County Summons

DAKOTA, EX REL, SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES IN THE INTERESTS OF K.W.I.W. AND J.W. MINOR CHILD, AND CONCERNING MARVIN WHITE AND VENUS BRADFORD, RESPONDENTS

TO: MARVIN WHITE AND VENUS BRADFORD, AND ALL WHOM IT MAY CONCERN
You are hereby summoned to appear before the above

County Summons

DAKOTA, EX REL, SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES IN THE INTERESTS OF K.W.I.W. AND J.W. MINOR CHILD, AND CONCERNING MARVIN WHITE AND VENUS BRADFORD, RESPONDENTS

TO: MARVIN WHITE AND VENUS BRADFORD, AND ALL WHOM IT MAY CONCERN
You are hereby summoned to appear before the above

THE IN MINOR

[Help](#)[turnvill@iw.net](#)[Logout](#)[Mail](#)[Address Book](#)[Calendar](#)[RSS](#)[Settings](#)[Back](#)[Compose](#)[Reply](#)[Reply all](#)[Forward](#)[Delete](#)[Move](#)[Print](#)[Spam](#)[Mark](#)[More](#)[Inbox](#)

4

[Drafts](#)[Sent Items](#)[Spam](#)

10

[Trash](#)[Chats](#)[Contacts](#)[Emailed Contacts](#)[Junk](#)[Saved](#)[Sent](#)**Well Log Turner County_ Darlene Goosen**

Message 32 of 36

From: Schulz, Layne

To: turnvill@iw.net

Cc: Jensen, Ann, Iles, Derric

Date: Today 16:44

Ms. Goosen,

Attached is the well information you requested. If you have any questions, or need any further assistance, please feel free to contact me.

[GoosenWell_TurnerCo.pdf \(...\)](#)

Sincerely,

Layne D. Schulz

Senior Geologist

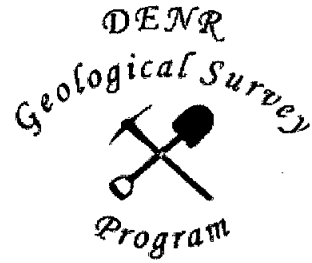
South Dakota Geological Survey

Layne.schulz@usd.edu

(605) 677-5227



South Dakota Department of
Environment and Natural Resources
Geological Survey Program
Akeley-Lawrence Science Center
414 East Clark Street
Vermillion, SD 57069-2390
605-677-5227
Fax 605-677-5895
denr.sd.gov



October 20, 2017

Ms. Joyce Willoughby
45435 272 Street
Parker, South Dakota 57053

Ms. Willoughby,

Enclosed are three logs for wells completed in Section 33, Township 100 North, Range 53 West. The logs show that there is sand and gravel present in the subsurface ranging in depth from about 15 feet to 90 feet separated by layers of clay. The logs do not show the depth of the Sioux Quartzite in the subsurface. The depth of the Sioux Quartzite in the area of the wells can only be inferred to be greater in depth than the deepest well boring which is 92 feet.

If you have any questions, or if I can be of any further assistance, please feel free to contact me.

Best Regards,

Layne D. Schulz
Senior Geologist

For the State Geologist

Enclosures

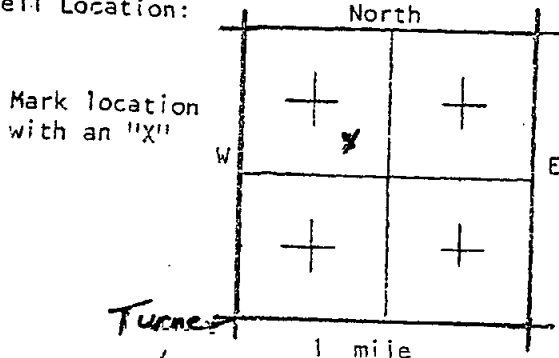
WELL DRILLERS REPORT
SOUTH DAKOTA WATER RIGHTS COMMISSION

4-78

Well Owner:

Name Elmer Landhorst
Address Parker, South Dakota

Well Location:



Mark location with an "X"

County Hand County
± SE ± NW Sec. 3 Twp. 100 Rg. 53 (GRW)

Proposed Use:

☐ Domestic ☐ Municipal ☐ Test Holes
☒ Irrigation ☐ Industrial ☐ Stock

Method of Drilling:

☒ Forward Rotary ☐ Bored ☐ Jetted
☐ Reverse Rotary ☐ Cable ☐ Other

Well Construction:

Diameter of Hole 12"
Depth 91'
Casing ☒ Steel ☐ Concrete
☐ Plastic ☐ Other
If other, specify _____

Was casing end left open

Was a well screen installed

Describe Well Screen

Diameter 12" Material Wire wrap

Slot size 100

Was well gravel packed

Was well grouted

Was water sample taken

Remarks:

Water Level Information:

Static water level 18" below land surface

If flowing: closed in pressure _____ PSI

rate of flow _____ GPM

Controlled by:

☐ Valve ☐ Reducers ☐ Other

If other; specify _____

Well Test Data:

☒ Pumped

☐ Bailed

☐ Other

Describe:

Line shaft Turbine

Pumping Level Below Land Surface

78 ft. After 8 Hrs. pumped 600 GPM
" " " " " "
" " " " " "

Well Log:

Formation	Depth	
	From	To
<u>top soil</u>	<u>0'</u>	<u>5'</u>
<u>clay</u>	<u>5'</u>	<u>15'</u>
<u>sand & gravel</u>	<u>15'</u>	<u>28'</u>
<u>small thin clay</u>		
<u>clay & rock</u>	<u>28'</u>	<u>75'</u>
<u>gravel</u>	<u>75'</u>	<u>90'</u>
<u>clay</u>	<u>90'</u>	<u>92'</u>

(Use Back if Necessary)

Date Completed:

November 20, 1978

Driller:

Vant Hal & Sons, Inc.

Driller's or Firm's Name

366

License NO.

Rock Valley, Iowa

Address

Edna M. Vant Hal

Signed By

Apr. 30-79

Date

07-92

Date:

NOTICE OF WELL CONSTRUCTION

Turner

(1) WELL CONSTRUCTION

Location of well SE 1/4 NW 1/4 Section 33 Township 100 N Range 53 W

Well owner Elmer Lankhorst (Name) Parker, S.D. (Address)

Date well drilling completed April 22, 1977 Purpose of well Irrigation
(domestic, irrigation, municipal, industrial, other)

WELL LOG

Layers, top to top in feet	Description of layer
0' - 5'	top soil
5' - 13'	sand & clay
13' - 25'	gravel
25' - 49'	blue clay
49' - 68'	sand & gravel

Depth to top of water producing aquifer 19 ft.

Depth to static water level 13 ft.

Name of producing aquifer (if known) _____

Total depth of drill hole 68 ft.

Depth to bottom of casing 68 ft.

Casing information: In the space below show kind, size, weight, lengths per diameter, etc., for production casing and surface casing, if used.

Steel, 16", .250 wall, 19 to 22 ft. *100 slot
43 ft casing - 25 ft. screen

Screen information: In the space below show length of screen below bottom of casing, diameter and kind of screen or casing perforations.

25 ft. Johnson irrigator wire wrap
screen, 16".

If a flowing well, flow of completed well no G.P.M.

Attach sheet if more space is needed

Vant Hul and Sons, Inc.
Name of Drilling Contractor

(2) PUMP INSTALLATION

Company name and size of pump Fairbanks Morse - 8" HP 60

Type of pump line shaft turbine Capacity of installed pump 800 G.P.M.

Depth of pump placement 65 ft., Date of pump installation June 30, 1977

(3) WATER SURFACE MEASURING TUBE

On some wells an air-tight water surface measuring tube is required: See Section 46.408 of Chapter 46.4, MINIMUM WELL CONSTRUCTION STANDARDS.

Show exact vertical length of water surface measuring tube, when installed _____ ft., tube diameter _____, tube material _____.

Vant Hul and Sons, Inc.
Name of Pump Installation Contractor



From: Charlene Ritter <CharleneRitter@banksecuritystate.com>
Date: January 18, 2018 3:25:48 PM CST
To: "mikes@schaffertlawoffice.com" <mikes@schaffertlawoffice.com>
Subject: FW: Well Record for house well -Turner County Near Parker

Mike:

Here is the information that I received regarding my well. It was not recorded when my well was dug or drilled. I think the well driller is probably Deceased but will make a couple more phone calls to see if anyone knows any more information.

Thanks!
Charlene Ritter

From: Schulz, Layne [<mailto:Layne.Schulz@usd.edu>]
Sent: Thursday, January 18, 2018 2:47 PM
To: Charlene Ritter
Cc: Iles, Derric
Subject: Well Record for house well -Turner County Near Parker

Ms. Ritter,

As per our phone conversation today and your request for well information, I searched the available data records and did not find a record for your house well located in NE ¼, SE ¼, Section 33, Township 100 North, Range 53 West. As you already know, there are two irrigation wells drilled in the west ½ of section 33. The well in the Northwest ¼ (Lankhorst/Milke) was drilled to a depth of 92 feet and the well located in the Southwest ¼ (Berens/Weeg) was drilled to a depth of 50 feet. I have included, as attachments, these two completion reports for you to view. I apologize for not being able to complete your request, but unfortunately not all domestic wells drilled in South Dakota have well records. If you need further information, or need any other assistance, please feel free to contact me.

Layne D. Schulz
Senior Geologist
South Dakota Geological Survey
Layne.schulz@usd.edu
(605) 677-5227

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER WATER	)	
APPLICATION NO. 8278-3,	)	
Sonstegard Food Company	)	DENR'S
	)	DISCLOSURE OF EXHIBITS

Pursuant to the Procedural and Scheduling Order dated November 22, 2017, DENR hereby provides the following list of exhibits it intends to offer during the contested hearing. Copies of these exhibits are attached with this notice except as noted.

1. DENR Exhibit 1: the administrative file. The paper file is available for review upon request. The majority of the documents are available online at <http://denr.sd.gov/ccdocs.aspx?CCID=CCID56>.
2. DENR Exhibit 2: Curriculum Vitae of Adam Mathiowetz. This document was previously disclosed and a copy provided on January 19, 2018.
3. DENR Exhibit 3: Curriculum Vitae of Jeanne Goodman. This document was previously disclosed and a copy provided on January 19, 2018.
4. DENR Exhibit 4: Area Map.

Dated this 16th day of February 2018.



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. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	

The undersigned hereby certifies that on the 16th day of February, 2018,
true and correct copies of DENR'S Disclosure of Exhibits with attachment, in the
above matter, were mailed by U.S. mail, first class, postage prepaid, to:

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor
Attorney at Law
4820 E. 57th St., Ste. B
Sioux Falls, SD 57108

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter, and
Darleen Goosen*

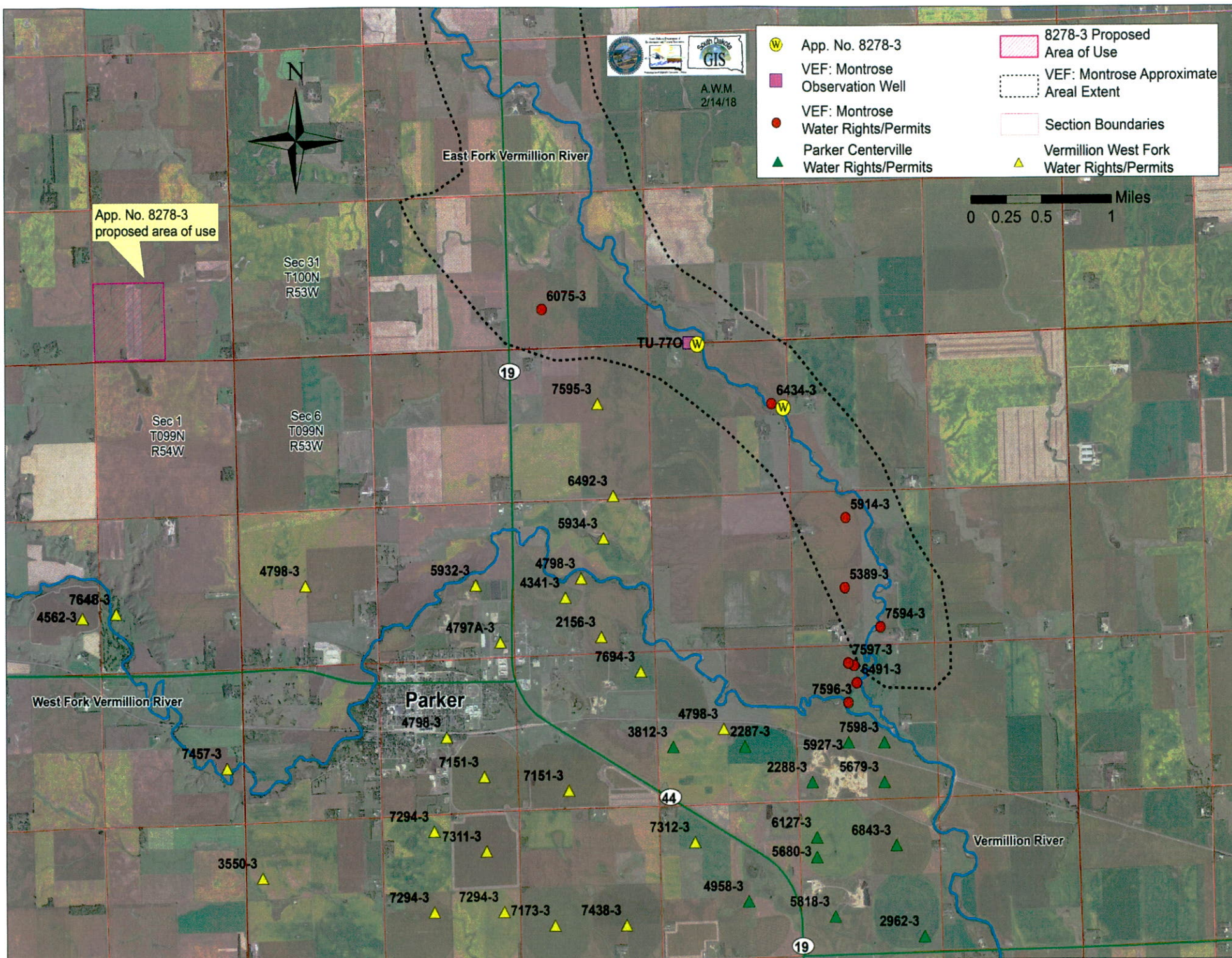
Counsel for Sonstegard Food Company

And that on the same date the original was sent by inter-office mail to:

Jeanne Goodman, Chief Engineer
Water Rights Program
DENR
523 E. Capitol Ave.
Pierre, SD 57501


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

Counsel for Water Rights Program, DENR





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

February 28, 2018

NOTICE

TO: John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Change of Hearing Time for Water Permit Application No. 8278-3, Sonstegard Food Company

Due to changes in the Water Management Board agenda the hearing on Application No. 8278-3 filed by Sonstegard Food Company is being moved up to 11:00 AM on March 7, 2018.

The Water Management Board will now conduct the hearing to consider Application No. 8278-3 beginning at 11:00 AM on Wednesday, March 7, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Enclosed is the agenda for the March 7th meeting.

Questions regarding the hearing process may be directed to Ann Mines Bailey at (605) 773-3215.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

I hereby certify that on February 28, 2018 I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 28, 2018, regarding notice changing the hearing time for Water Right Permit Application No. 8278-3, as addressed below:

John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

Sent Inter-office to:

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



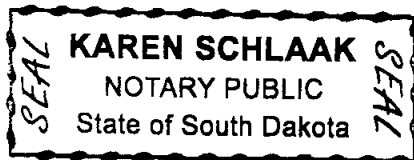
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of February, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019





WATER MANAGEMENT BOARD

March 7, 2018

Floyd Matthew Training Center

Joe Foss Building

523 E Capitol Avenue

Pierre SD

Scheduled hearing times are Central Time

AGENDA

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items.

Live audio of the meeting can be heard at www.sd.net/mtc

- 8:30 AM Call to Order
 Adopt Final Agenda
 Conflicts Disclosures and Requests for State Board Waivers
 December 7, 2017, Board Minutes
 May 2 - 3, 2018 Meeting Location (Pierre suggested)
 Status and Review of Water Rights Litigation – Ann Mines Bailey
 Administer Oath to Department of Environment and Natural Resources Staff
- 8:45 AM Consideration of Findings of Fact, Conclusions of Law and Final Decision on Water
 Permit Application No. 8284-3, Berg Farms
- 9:00 AM Training Session on Dams – Tim Schaal
- 10:00 AM Violations for Failure to Report on Irrigation Questionnaire – Genny McMath
 Appointment of 2018 Rapid Valley Water Master – Aaron Tieman
 Cancellation Consideration – Eric Gronlund
 Future Use Reviews – Eric Gronlund
- 10:30 AM Water Permit Application No. 8319-3, Ducks Unlimited – Tim Schaal
- 11:00 AM Water Permit Application No. 8278-3, Sonstegard Food Company – Adam Mathiowetz

Lunch break at the discretion of the Board

ADJOURN

Board members are reminded that effective July 1, 2016, members are subject to SDCL 3–23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

April 4, 2018

NOTICE

TO: John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing on Water Permit Application No. 8278-3, Sonstegard Food Company

Water Permit Application No. 8278-3 proposes to appropriate 222.2 acre-feet of water annually at a maximum diversion rate of 1.11 cubic feet of water per second from two wells to be completed into the Vermillion East Fork:Montrose Aquifer (60 feet deep) located in the NE 1/4 NW 1/4 and SE 1/4 NE 1/4 Section 3-T99N-R53W approximately two miles northeast of Parker SD. The water will be transported via a pipeline to an avian production facility to be located in the SW 1/4 Section 36-T100N-R54W approximately three miles northwest of Parker SD.

The Water Management Board will conduct a hearing to consider Application No. 8278-3 at 1:00 PM on Thursday, May 3, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. Future notice will be provided to all parties if there is a significant change to the hearing time. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing.

Applicable provisions of the notice of hearing dated August 10, 2017, and the public notice in the New Era and the Argus Leader published July 6, 2017, still apply.

Questions regarding the hearing process may be directed to Ann Mines Bailey, Assistant Attorney General at (605) 773-3215.

c: Ann Mines Bailey, Assistant Attorney General

CERTIFICATION

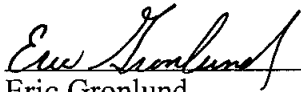
I hereby certify that on April 4, 2018 I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 4, 2018, regarding notice scheduling the hearing for Water Right Permit Application No. 8278-3, as addressed below:

John E Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

Sent Inter-office to:

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



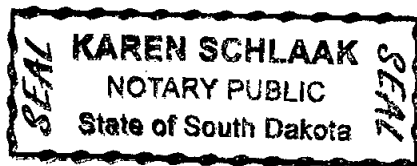
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of April, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



RECEIVED

APR 30 2018

WATER RIGHTS
PROGRAM

SCHAFFER LAW OFFICE, PROF. LLC

LAWYERS

412 WEST 9TH STREET – SUITE 1

SIOUX FALLS, SOUTH DAKOTA 57104-3602

Michael J. Schaffer
Paul H. Linde*

Phone: (605) 274-6760

Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

April 27, 2018

VIA EMAIL & U.S. MAIL

Jeanne Goodman
Chief Engineer
Water Rights Program
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

Ann Mines Bailey
Stephen R. Blair
Attorney General's Office
1302 E. Hwy 14, #1
Pierre SD 57501

Re: Water Permit Application No. 8278-3

Dear Parties:

Enclosed and intended as service by mail is a true and correct copy of Petitioners' Brief in the above matter.

Sincerely,



MICHAEL J. SCHAFFER
For the Firm

MJS:clm
Enclosure

cc w/encl: Rodney Freeman, Prehearing Officer

APR 30 2018

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PETITIONERS'
PERMIT APPLICATION #8278-3	)	BRIEF
SONSTEGARD FOOD COMPANY	)	

Petitioners, by and through counsel, submit the following Brief to be considered by the Water Management Board:

Sonstegard Food Company made application for the appropriation of 1.11 cubic feet per second or 500 gallons per minute of water from the east fork of the Vermillion River aquifer in the north half of Section 3-T99R-R53W, consisting of two wells. The application indicates that the water will be transported via a pipeline to an avian production facility to be located in the southwest ¼ of Section 36-T100R-R54W, approximately four miles from the location of the proposed wells.

SDCL §46-2A-9 provides for the appropriation of water under the following circumstances:

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.

The statute requires that the appropriation "can be developed without unlawful impairment of existing rights," and a determination that the permit to appropriate water for the proposed use is a "beneficial use" and "in the public interest."

The beneficial use in this case is use in an avian production facility some four miles from the proposed wells with the water being transported via a pipeline.

In her Petition to the Board, Darlene Goosen, a landowner lying between the wells and the proposed facility where the water would be used made the following objection:

Also, I object if any permit is granted to using any power of eminent domain or other means to cross my land. I do not consider Sonstegard's use of this water to be a public use. I consider it to be a private use. I also do not think that the wells proposed by Sonstegard and the appropriation of water from this aquifer is in the public interest. It is strictly for Sonstegard's own private interest.

Darlene Goosen Petition Objecting to Application Permit to Appropriate Water No. 8278-3.

South Dakota also has a statute which purports to give the power of eminent domain to a private person who has received a permit for use of water. SDCL §46-8-1 reads as follows:

Any person may exercise the right of eminent domain in the manner provided by law to acquire as a public use any property or other rights necessary for application of water to beneficial uses or to enlarge an existing structure for conveyance of water for use in common with an existing or former owner. Application of water to beneficial use is a public use, in the public interest and of benefit to the public.

According to that statute, "application of water to beneficial use is a public use, in the public interest and of benefit to the public."

An application of this statute in the circumstances of this case to authorize the power of eminent domain to Sonstegard Food Company to pipe the water from the proposed wells to the proposed avian facility would be tantamount to an unconstitutional taking and an improper use of the power of eminent domain.

The South Dakota Constitution protects private property from such a taking and specifically provides as follows:

Private property shall not be taken for public use, or damaged, without just compensation, which will be determined according to legal procedure established by the Legislature and according to §6 of this article.

South Dakota Const. Art. VI §13.

The South Dakota Supreme Court has consistently interpreted the provision in the eminent domain clause of the Constitution “for public use,” to mean “use by the public.” *Montana-Dakota Utilities Co.,v. Parkshill Farms, LLC*, 2017 S.D. 88, 905 N.W.2d 334, 338.

Use of water by Sonstegard taken from one location to be transported to another location is not a public use and is not use by the public. It is purely for a private purpose. A determination by this Board that Sonstegard’s proposed use is a beneficial use of water, which could then be used by Sonstegard to bootstrap itself into a right of eminent domain to run its pipeline through other people’s property would be totally improper, beyond the jurisdiction of this Board and, if upheld, an unconstitutional taking.

The South Dakota Supreme Court has held that a permit for the appropriation of water cannot confer the right to cross another person’s land to transport that water. In *Geiger v. McMahon*, 31 S.D. 95, 139 N.W.2d 958 (S.D. 1913), the South Dakota Supreme Court held:

The permit given to appropriate water by the state engineer, under the statute of this state, can only give a permit to appropriate public waters which are the proper subject of appropriation for the purposes of irrigation. The state engineer, by a permit to appropriate water, cannot take land, or an interest in land, from one person and give it to another, or otherwise interfere with land titles. The state engineer, by his permit, cannot give one person the lawful right to convey water over and across

the lands of another by means of an irrigation ditch, without the consent of the landowner.

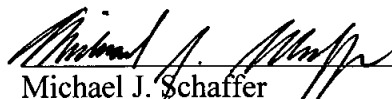
Id. at 960.

Furthermore, to suggest that because water is for a “beneficial use,” it is *ipso facto* in the public interest and of benefit to the public is improper and would essentially read out of the statute (SDCL §46-2A-9) the meaning of “and in the public interest.”

Accordingly, these Petitioners respectfully request that this Board decline to issue the permit, or if it issues the permit that it decline to authorize the transport or transmission of the water via pipeline over property of others. Petitioners and others, whose land may be affected, do not have notice of this potential infringement upon their property rights. The diversion proposed by Sonstegard cannot be “developed without unlawful impairment of existing rights,” (SDCL §46-2A-9), in this case the property rights of landowners between the two sites (the location of the wells and the avian production facility). Furthermore, a decision granting the permit may effectively clothe the applicant, a private party, with the power of eminent domain (under SDCL §46-8-1) which would be unconstitutional under both the state and federal constitutions. Such a result could never be in the public interest.

Dated this 27th day of April, 2018.

SCHAFFER LAW OFFICE, PROF. LLC


Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764
Attorneys for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the "Petitioners' Exhibit List" was served by email and United States mail, postage prepaid upon:

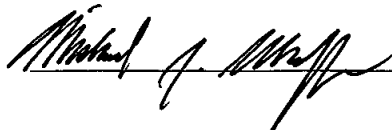
Jeanne Goodman
Jeanne.Goodman@state.sd.us
Chief Engineer
Water Rights Program
DENR
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
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on this 27th day of April, 2018.



**STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 8278-3, Sonstegard	)	SONSTEGARD FOOD COMPANY'S
Food Company	)	REPLY BRIEF

Applicant Sonstegard Food Company submits this brief in response to the brief filed and served Friday April 27 in this proceeding by Petitioners.

Background

Applicant Sonstegard Food Company applied for a permit to appropriate up to 500 gallons of water per minute from the Vermillion East Fork of the Montrose Aquifer. Applicant plans to construct a pipeline from the point of diversion to an egg facility it plans to construct approximately four miles from the diversion point. Petitioner Darlene Goosen and others petitioned for a hearing on the application. The matter is set for hearing on May 2 before the Water Management Board.

Petitioner Goosen lives approximately a half mile from the proposed points of diversion and along one potential route for the pipeline. In the brief, Ms. Goosen asserts that Applicant Sonstegard should be denied a permit to appropriate water because a statute allowing permit holders to condemn a pipeline right of way is arguably subject to constitutional challenge. Goosen asks for relief that is outside of the jurisdiction of the Water Management Board and beyond the scope of the issues in this proceeding.

Statutory Framework

SDCL 46-1-3 declares "[t]hat all water within the state is the property of the people of the state, but the right to use of water may be acquired by appropriation as provided by law." SDCL

46-6-2 provides that “[g]roundwaters of the state may be appropriated pursuant to the procedures contained in chapter 46-2A.” SDCL Ch. 46-2A and Board regulations set out the procedure for appropriating water, requiring a putative appropriator to file an application with the Chief Engineer of the DENR Water Rights Division detailing the source of the water, the amount of the proposed appropriation, the use to which the water will be put, and the point where the water will be diverted.¹

SDCL 46-2A-2 requires that on receipt of a completed application the Chief Engineer make a recommendation on whether or not the application should be permitted. In making her recommendation, the Chief Engineer must consider whether there is unappropriated water available in the aquifer, whether the diversion can be developed without impairment of existing water rights, and whether the proposed use is beneficial and in the public interest. SDCL 46-2A-9.

In keeping with her statutory duties, Chief Engineer Goodman and the Water Rights Division reviewed Sonstegard’s application. The Chief Engineer found there was sufficient water available for Sonstegard’s proposed appropriation, that diverting the water at the location proposed would not interfere with existing water rights, that the proposed use was beneficial and in the public interest, and recommended the permit be granted.

Board Jurisdiction

The Water Management Board provides “[g]eneral supervision of the waters of the state . . .”. It regulates and controls “[t]he right to use the waters of the state according to the principles

¹ Throughout her brief Petitioner Goosen uses “diversion” as a synonym for “carry”. The South Dakota water rights statutes describe the point from which water is taken from a source as the “diversion” or “point of diversion”, in this case one or more wells. The statutes use the word “carry” to describe the transportation of water. A pipeline, in the concept of the statutes, carries water, it does not divert it. For purposes of this brief “diversion” refers to the point water will be taken from the aquifer and “transport” or “carry” will refers to the transportation of the water.

of beneficial use . . .”. SDCL 46-2-9. Per SDCL Ch. 46-2A, the Board hears challenged applications for the appropriation of water. That authority is limited, however, to determining, based on the evidence presented, if “[t]he applicable requirements for the permit . . . have been met . . .”. If so the Board “[s]hall approve the permit . . .” SDCL 46-2A-7. Accordingly, the issues before the Board in this proceeding are whether the Chief Engineer correctly determined

1. That there is sufficient unappropriated water in the aquifer;
2. That the wells can be constructed and operated without unlawfully impairing existing water rights; and
3. That the proposed use is beneficial and in the public interest.

If the answer to those three questions is yes, the Board must grant the permit. SDCL 46-2A-7.

Transport of the Water is not in Issue

The statutes defining the scope of this proceeding do not include consideration of the means and method of transport of the water from the point of diversion to the point of use. The reason is obvious. SDCL 46-2A-8 allows the recipient of a permit five years to undertake “. . . any construction necessary to put the water to beneficial use . . .” Quite simply, the statutory scheme contemplates a determination whether there is sufficient unappropriated water in the aquifer to allow the proposed appropriation, whether diverting the water from the aquifer at the location and in the manner contemplated will impair existing water rights, and finally, if the proposed use is beneficial and in the public interest. If those questions are answered in the affirmative, the Board must authorize the permit. The applicant then has five years to figure out how to get the water from the point of diversion to the point of use. How that is accomplished is not an issue in this proceeding.

The Board’s Jurisdiction does not include Condemnation

Petitioner Goosen argues that the Board should deny Sonstegard's permit application because she is a land owner situated between the proposed point of diversion and the Sonstegard facility, that the pipeline Sonstegard proposes to construct to transport the water could pass across her land, and therefore constitutes a taking of private property in derogation of her constitutional protections. Petitioner's arguments are grounded in parsing of the statutes and are beyond the matters under consideration in this proceeding.

SDCL 46-8-1 allows use of eminent domain "[in] the manner provided by law. . ." to acquire property or property rights necessary to put water to a beneficial use. Article VI, §13 of the South Dakota Constitution directs the Legislature to establish the procedure for exercising eminent domain. The Legislature did so in SDCL Ch. 21-35, which addresses condemnation of private property under the right of eminent domain, vesting jurisdiction to hear condemnation issues exclusively in the circuit courts, not the Water Management Board. SDCL 21-35-1 provides

In all cases where any . . . corporation, public or private, including the owners of water rights . . . invested with the privilege of taking or damaging private property . . . in making, constructing . . . or using any work or improvement allowed by law, shall determine to exercise such privilege, it shall file a petition *in the circuit court for the county in which the property to be taken or damaged is situated*, praying that the just compensation to be made for such property may be ascertained by a jury. (Italics added for emphasis.)

Per the statute, jurisdiction for condemnation matters is vested solely in the circuit court. The proper place to raise issues regarding any effort Applicant Sonstegard may make to obtain a pipeline right of way is in the circuit court, not before the Water Management Board.

In the Matter of the Decision of the State of South Dakota Water Management Board Approving Water Permit No. 1791-2, 351 N. W. 2d 119 (S.D. 1983) our Supreme Court dealt with whether pipeline routing and condemnation was a proper consideration in a hearing

addressing whether to grant a permit to appropriate water. The case concerned a permit to appropriate water from the Missouri River and transport it from Pierre to Wyoming on the ETSI pipeline. An intervenor contended the issue of eminent domain and the pipeline route should have been considered in the Water Management Board proceedings. The Supreme Court, considering the nature of the hearing before the Water Management Board, observed

Here, the [Water Management Board's] function was not a determination of the pipeline route, or of ETSI's powers of eminent domain, or of the taking of any private property. The sole question before Board was the granting of a permit for appropriation of water from Oahe Reservoir . . . all property owners on the final pipeline route will have due process rights under SDCL Ch. 21-35 if ETSI attempts to use the power of eminent domain.

It is clear from the statutes and the decisions of the Supreme Court that issues concerning the development of the works and facilities necessary to carry the water from the point of diversion to the point of use are not under consideration in this hearing. Condemnation and the exercise of statutorily granted eminent domain are not within the jurisdiction of the Water Management Board, but rather, are within the exclusive jurisdiction of the circuit court.

The Permit Is in the Public Interest

Petitioners make a back-handed argument that the water sought to be appropriated is for a private facility, that accordingly granting the Sonstegard application cannot be in the public interest, and therefore the permit, and the concomitant right to transport the water, should be denied. SDCL 46-1-6 (3), the statutory definition of beneficial use, does not distinguish between public and private users. Rather, it provides that a beneficial use is one that is reasonable and useful "[t]o the appropriator . . ." Clearly the Legislature thinks a private use is a beneficial use of water.

The public policy of South Dakota, as clearly expressed in SDCL 46-1-4, is that water resources be used to the fullest extent possible.

"It is hereby declared that because of conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable. . ."

SDCL 46-8-1 flatly declares "Application of water to beneficial use is a public use, in the public interest, and of benefit to the public." The Legislature clearly disagrees with Petitioner's contentions and has declared application of water as in the public interest and a public use.

Conclusion

The issues before the Board in this proceeding are limited to determining if there is water available to support the proposed appropriation, whether existing rights will be impaired, if the use is a beneficial use and in the public interest.

The means and methods of transporting the water to the point of use are not in issue. The Legislature, has provided a means for acquiring a right-of-way for transport of the water, and has reserved jurisdiction on that mandate to the circuit court.

The appropriation of water for operation of a privately-owned agricultural business is, by logic, reason and statute, in the public interest.

Applicant Sonstegard respectfully requests the Water Management Board, if asked to consider the matters raised in Petitioner's brief, rule accordingly.

Dated this 1st day of May 2018.

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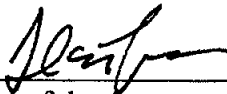
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of May 2018 a true and correct copy of Sonstegard Food Company's Reply Brief were served by email on the following: persons:

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

IN THE MATTER OF THE WATER
PERMIT APPLICATION NO. 8278-3,
SONSTEGARD FOOD COMPANY

Partial Transcript of Proceedings
Testimony of Peter Sonstegard
Thursday, May 3, 2018

BOARD MEMBERS PRESENT

Jim Hutmacher, Chairman
Peggy Dixon
Rodney Freeman
Tim Bjork
Chad Comes
Steve Blair, Counsel for the Board

ORIGINAL

APPEARANCES

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

WILLIAM G. TAYLOR and JOHN E. TAYLOR, Taylor Law Firm,
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appearing on behalf of the Intervenors.

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

1 THURSDAY, MAY 3, 2018

2 (The following is an excerpt containing the testimony
3 of Peter Sonstegard.)

4 Thereupon,

5 PETER SONSTEGARD,

6 called as a witness, being first duly sworn as hereinafter
7 certified, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WILLIAM TAYLOR:

10 Q. Mr. Sonstegard, would you tell the board your name and
11 your address and what you do for a living.

12 A. Peter Sonstegard, address is 2514 South Clarkway
13 Drive, Sioux Falls, South Dakota. I'm the chief operating
14 officer for Sonstegard Foods.

15 Q. What is the business of Sonstegard Foods?

16 A. Sonstegard Foods is an egg business, we produce eggs,
17 we have chickens, and we further process the eggs for domestic
18 resale and international sales.

19 Q. Is Sonstegard Foods a family business?

20 A. Yes, I'm the third generation in the business.

21 Q. And who started Sonstegard Foods?

22 A. My father started the business, my grandfather was an
23 egg man and he came to work for my father later on in life.

24 Q. So your father started it, your grandfather worked for
25 your father, and now you work for the business?

1 A. Correct.

2 Q. Where is the business headquartered?

3 A. Sioux Falls.

4 Q. In what states do you do business?

5 A. Well, we do business in about every state in the
6 country with selling eggs. But we have locations in Arkansas,
7 Georgia, Iowa, Minnesota, and that's it.

8 Q. And do you propose a business in Turner County, South
9 Dakota?

10 A. Do I what?

11 Q. What do you propose to do in Turner County, South
12 Dakota? Just tell the board what your business is going to be
13 in Turner County.

14 A. In Turner County, we propose and have been permitted
15 at the county level for an avian laying facility of 2.5 million
16 cage-free chickens, they will be in a total of 10 barns. It's
17 going to be a state-of-the-art project with a lot of new
18 technology in the chicken business, and we will be buying corn
19 locally from the local producers and selling eggs across the
20 country.

21 Q. Where is this facility, these 10 barns, going to be
22 located? Can you show the board on the map.

23 A. Yep, I can. In the pinkish shaded area.

24 Q. Where it says "proposed area of use"?

25 A. Yes.

1 Q. You said that the barn was going to house 2.5 million
2 chickens. Can you describe to the board just in a general way
3 how the operations inside of this 2.5 million, 10-barn -- 2.5
4 million chicken, 10-barn facility work.

5 A. Sure. There will be 10 barns, each barn will have
6 250,000 birds, it will be segmented into four sections, two
7 levels on each side of a wall, they will be able to cross
8 ventilate the air --

9 COURT REPORTER: You are going to have to speak up and
10 enunciate. Two levels, each side of the wall, they will be
11 able to?

12 A. It will be partitioned into two sections on each side
13 of the wall within the barn and it will be a computerized
14 ventilation, computerized feeding. We will have a feed mill on
15 site so we will be formulating our own feed there on the site,
16 and then we monitor air, temperature, and water consumption of
17 the chickens and also the output of the eggs to make sure that
18 the birds are getting the right diet, the right nutrition, the
19 right water, the right air, to maximize production.

20 Q. (BY MR. BILL TAYLOR) All right, so the purpose of
21 this facility is not to raise chickens, it's to raise eggs.

22 A. Well, it all starts with the chicken. (Laughter)

23 Q. I didn't rehearse that.

24 A. It's an egg laying facility so we will be raising the
25 chickens, they will be producing the eggs, and then we will be

1 processing the eggs.

2 Q. You raise the eggs. When the eggs are produced and
3 gathered from the chickens, how are they gathered? How do you
4 do that?

5 A. Sure, so it's changed quite a bit. Now the eggs
6 actually roll out of the enclosure onto a collection belt and
7 so that collection belt comes to a main belt with an egg
8 counter; so we are counting the eggs as they come off
9 throughout the day from the chickens.

10 Q. And you said you are going to process the eggs.
11 Explain what you mean by process the eggs.

12 A. Sure. So we clean the eggs, we wash the eggs, and
13 then we grade the eggs by size and market them based on quality
14 and size. And then we also have the ability to break the eggs
15 and make a liquid product or further process and dry the eggs
16 and do a powder.

17 Q. You won't do that at this facility, that's done
18 somewhere else.

19 A. Some of it's done on site and some of it's done at
20 other facilities.

21 Q. So what's done on site versus the other facilities?

22 A. Some of the facilities we do not have chickens, we
23 just have egg processing facilities. So the eggs would not be
24 gathered there, but they are broken or graded. This site,
25 since we will have chickens, we will be gathering, washing,

1 grading in the future and processing in the future.

2 Q. The immediate plan, though, is only to produce eggs on
3 this site.

4 A. Correct.

5 Q. Now, this is an application for a water permit, for
6 you to appropriate water out of the ground water in the state
7 of South Dakota in the Vermillion East Fork Montrose aquifer.
8 What use is that water put to in your facility?

9 A. Sure. So the water is going to be used for feeding
10 the chickens, for watering the chickens, for them to be
11 available to drink. In our current aviaries, the chicken
12 houses, we have a trigger nipple system; so there will be a
13 tube, enclosed tube, enclosed system where the chickens will go
14 at the nipple and peck and a droplet of water goes into their
15 mouth, and some systems also have a cup underneath the nipple
16 to prevent any spillage of water or so that if it does, the
17 chicken can drink out of the cup also. It's just to best
18 utilize the water and to prevent any inefficiency.

19 And then we also have a potential cleaning in between
20 flocks, disinfecting of the facility or the barn in between
21 rotations of the flocks. And we are also a shower in, shower
22 out facility for bio security. I'm sure everyone has heard
23 about avian flu, we have been there, and so we shower all
24 employees in before they go to work with the chickens.

25 Q. So to start at the back side, the employees who come

1 and go from the facility shower before they go to work.

2 A. Yes.

3 Q. And then do you supply them with clothing that they
4 wear in the facility?

5 A. Yes, that's correct.

6 Q. Sterile clothing that's not -- that you know is not
7 infected.

8 A. Yes.

9 Q. And you will use some water for cleaning and
10 disinfecting you said between flocks?

11 A. Yes.

12 Q. What does that mean, between flocks?

13 A. So a life cycle of a laying hen this day and age is
14 around 12 to 18 months and then we will rotate flocks and bring
15 in a new flock of chickens. In that time period we clean the
16 barn, the majority of it is a dry cleaning, but once we feel it
17 is dry cleaned enough, there will be a disinfection.

18 Q. And do you use some water for this annual or 18-month,
19 depending on when the flock has to be --

20 A. Some water, yes, very little, but some.

21 Q. As part of that cleaning disinfecting system.

22 A. Correct.

23 Q. Just for information, how is the barn hygiene managed
24 during the time the flock is there?

25 A. How is the barn hygiene managed?

1 Q. How is it cleaned? It doesn't just sit there and
2 accumulate dirt for 18 months.

3 A. So there is actually -- with the barns in this day and
4 age, we have a manure belt system so as the birds are excreting
5 throughout the day, there is a belt to catch the majority of
6 that manure and it is carried out of the barn and collected
7 into a manure barn outside of the barn, outside of the laying
8 barn. And it also is dried down, the moisture is taken out
9 with air dryers to reduce the volume and moisture in the
10 manure.

11 Q. And you said that there is a cup and nipple system in
12 the facility that the birds drink out of. Explain how that
13 works.

14 A. Yeah, so understanding water is important to the bird
15 for life and for the production of the egg, being the majority
16 of an egg is water, so we are actually monitoring the water
17 coming in and making sure that every lane in the barn, we have
18 monitors that make sure that they have adequate water supply,
19 make sure that there is no air leaks or air locks in the line,
20 and it is brought in, it goes through the tube system, which is
21 the length of the building, and as the bird would like water,
22 it goes and pecks on the nipple and the nipple drops the water
23 into the chicken's mouth.

24 Q. So there is no free flow of water for the chickens to
25 drink from, they drink on demand?

1 A. Correct, it's all enclosed. There is no free flowing.

2 Q. So there's no waste in that water.

3 A. There is no waste of that water. Unless the chicken
4 may bump a nipple, which happens.

5 Q. This water system is computer controlled?

6 A. Yes, monitored.

7 Q. Computer monitored?

8 A. Yes.

9 Q. Do you have an employee that keeps track and monitors
10 so there is no loss of water?

11 A. Correct, and loss of water and also usage, you can
12 compare lane by lane, house by house, what the average usage is
13 and based on age, what the chickens should be drinking, and so
14 if they are drinking too much or too little, it might be too
15 much salt in the feed or it might be a water problem in the
16 line or an air lock; so it's an alarm to us, an early indicator
17 of other issues if they are drinking too little or too much.

18 Q. You said that there would be a grain mill on the
19 premises. What's the purpose of a grain mill serve?

20 A. Sure. So the grain mill would be milling the feed for
21 our chickens. It will be all automated, we will have an
22 inline, no trucks, so there will be augers to every barn, every
23 barn, based on the age, will be getting a different feed
24 formula based on the egg output, age, and the productive cycle
25 of the bird.

1 Q. Where does the grain come from that's used to feed
2 these chickens?

3 A. We are looking at procuring the grain locally in the
4 area of the farm. We will be producing -- we will be
5 purchasing around two and a half million bushels of grain at
6 our full capacity. A quick figure is one bushel of grain per
7 one bird per year.

8 Q. So you will buy all your feed locally?

9 A. Correct.

10 Q. And you grind it on your site?

11 A. Yes.

12 Q. And feed it to the chickens.

13 A. Correct.

14 Q. What do you do with the manure that's generated by the
15 chickens?

16 A. The nutrient that comes from the chickens we sell to
17 local producers in the area.

18 Q. What's --

19 A. They spread it on their field and use it as a
20 fertilizer for the crops, and we feel it's a pretty good
21 fertilizer being that it has many micro nutrients, it has a
22 good soil builder also.

23 Q. Is it a popular product, easy to sell?

24 A. Yeah, it's very easy to sell, especially in the state
25 of South Dakota.

1 Q. What is the approximate cost of this facility when
2 it's completed?

3 A. Well, it depends on what steel prices do, but
4 currently we guesstimate it around 100 million total with the
5 barn and the facility, but I think we might have to put our
6 number up with the current forecast.

7 Q. And that will be carried on the local tax base?

8 A. Yes.

9 Q. Now, you heard Mr. Mathiowetz testify today?

10 A. Yes.

11 Q. He brought up the subject of a westerly -- what I
12 would describe as a westerly well field that you have a permit
13 for. I can't find the permit number.

14 MR. JOHN TAYLOR: 8221-3.

15 Q. (BY MR. BILL TAYLOR) 8221-3. Where is that well
16 field located?

17 A. From the facility?

18 Q. Yes.

19 A. It would be -- it's about a mile and some change from
20 the facility the way the crow flies.

21 Q. Westerly?

22 A. South and west.

23 Q. Southwest. What are your intentions for that site?

24 A. Our intentions for that were to be able to have water
25 for this facility also.

1 Q. Why do you want to have two sources of water for this
2 facility?

3 A. Because of redundancy, the fact that we have two and a
4 half million chickens and 10 houses to be kept fed and watered,
5 we need redundancy in our system. We have had wells in the
6 past that have been hit by lightning and if that well goes out,
7 then we have to have another one to back up.

8 Q. And you understand that if this permit is granted,
9 your capacity to appropriate is in conjunction of the two well
10 sites?

11 A. A combination, yes.

12 Q. I think that's all the questions. I have one other
13 question. When Mr. Schaffer was examining Mr. Mathiowetz, he
14 asked the questions about his clients, the Ritter, Goosen,
15 Mielke group that have not had their wells inspected and have
16 not registered their wells and the cost that would be incurred.
17 Are you willing to do something about that?

18 A. Yeah, we would be -- we would be willing to help them
19 with the costs of being inspected and make sure if there was
20 any issue, that we can make it right with the state.

21 Q. So that they could get their wells registered and
22 recorded as adequate wells?

23 A. Yes.

24 Q. And why would you do that?

25 A. Well, to be good neighbors.

1 MR. WILLIAM TAYLOR: Thank you, that's all the
2 questions I had.

3 MR. HUTMACHER: Mr. Schaffer, cross.

4 CROSS-EXAMINATION

5 BY MR. SCHAFFER:

6 Q. Yes, Mr. Sonstegard, in that regard, if their wells
7 weren't adequate and they maybe weren't deep enough and they
8 had to drill them deeper to make them adequate wells under
9 South Dakota law, are you saying Sonstegard would pay that
10 cost?

11 A. Without knowing anything about their well, we would
12 intend to work with them on it, yes.

13 Q. Well, that's sort of nebulous, I mean, would you be
14 willing to have that imposed as a condition of getting this
15 permit, that you would, Sonstegard Foods would be willing to
16 have their wells inspected, determine whether they are
17 adequate, and if not adequate, made adequate?

18 A. With the current condition or like with the current
19 permit that they have or with the current usage? I'm just
20 asking.

21 Q. Yeah, with their current usage.

22 A. Yes, we would.

23 Q. And incur the cost if they need to drill a deeper
24 well?

25 A. Yes.

1 Q. You would be willing to have that as a condition of
2 the permit?

3 A. I would be willing to help them with it, yes.

4 Q. Would you be willing to have it included as a
5 condition?

6 A. If that's what the board would want as a condition.

7 Q. Couple questions. This land where these wells are
8 proposed, it's in a company called Joe's Family Farms, LLC; is
9 that an entity that is owned by your family?

10 A. Yes.

11 Q. And these --

12 A. Actually it's not owned by my family, it's owned by my
13 father.

14 Q. He's part of the family, isn't he? So we know that
15 Lacey Well Drilling was out there and drilled these test holes.
16 Did you talk to Lacey Well Drilling about their results?

17 A. I asked Lacey Well Drilling to drill test holes, yes.

18 Q. Did they advise you that they didn't find adequate
19 water for what you were proposing?

20 A. They drilled wells for us and they gave us the report
21 back. They said this is the report for your water, if you can
22 find it or not, we didn't do a pump, a test -- what is it
23 called?

24 MR. WILLIAM TAYLOR: A pump test.

25 A. Pump test, so without doing a pump test, you really

1 cannot fully determine.

2 Q. (BY MR. SCHAFFER) Did they give you their opinion as
3 to whether or not they thought there would be enough water for
4 your proposed use?

5 A. They give you lots of opinions.

6 Q. Well, did they in this case?

7 A. They said they hit granite and they would like to look
8 further.

9 Q. They hit granite, meaning they --

10 A. They didn't have a drill big enough to go past the
11 granite.

12 Q. Did they tell you basically they didn't think that
13 this was going to be adequate for your proposed use?

14 A. The test wells they drilled?

15 Q. Yes.

16 A. Yes, I don't know that they said -- I don't know if
17 they said it would or would would not be adequate.

18 Q. And Heine Well Drilling was also out in that general
19 vicinity; is that right?

20 A. They were on the southwest quarter.

21 Q. Okay.

22 A. Of that section.

23 Q. And that's a quarter -- Joe's Farms bought the north
24 half of that section and that's where these two wells are,
25 proposed wells are situated.

1 A. Correct.

2 Q. Last year someone in your family bought the southwest
3 quarter of that same section, right?

4 A. Yes, correct.

5 Q. And you had Heine Well Drilling from someplace in
6 Nebraska out there drilling test holes, right?

7 A. Yes.

8 Q. Did they tell you the same thing, that they hit
9 granite?

10 A. No.

11 Q. Did they tell you they could find any water or
12 adequate water on that southwest quarter?

13 A. They said with the depth of the wells they drilled,
14 they did not find water.

15 Q. Okay. And you also had Dave Putzke from Tea, I
16 believe, out there drilling wells on this land that's the
17 subject of this application.

18 A. Correct.

19 Q. And we don't have any reports from Mr. Putzke, do we?

20 A. You are indicating that he did not submit the well
21 information or the log information.

22 Q. Yeah, they are not in the record.

23 A. I don't know if he did or did not submit it.

24 Q. Did you ask him for those?

25 A. No, we did not.

1 Q. Did you talk to Mr. Putzke after he drilled those
2 wells?

3 A. Yes, I did.

4 Q. And did he tell you that there wasn't adequate water
5 or words to that effect?

6 A. No, he did not indicate there was not adequate water.

7 Q. Do you have anybody that's told you that you are even
8 going to have adequate water from this proposed -- these
9 proposed well sites?

10 A. We have DENR that's indicated that there is water
11 available for appropriation.

12 Q. I understand, but you understand just because it's
13 available based on the recharge rate doesn't mean that if you
14 drill a well, you are going to have enough water for your
15 operation, right?

16 A. I understand that.

17 Q. And no one has told you that you would have adequate
18 water out of the three well drillers you have had out there,
19 have they?

20 A. I didn't say that.

21 Q. Well, have any of them told you that you would?

22 A. There is a well existing on site that has adequate
23 water.

24 Q. That's the irrigation.

25 A. The irrigation well, and there have been test wells

1 drilled with adequate water.

2 Q. By Putzke or by Lacey?

3 A. By Putzke.

4 Q. But we don't have those records?

5 A. We don't have them here today, no.

6 Q. And that other -- that west well that's a mile or
7 something as the crow flies from the proposed site, do you have
8 any wells drilled there?

9 A. No.

10 Q. Did you drill test holes there?

11 A. No.

12 Q. So you have never tried to put that permit into
13 application?

14 A. No, we have not.

15 Q. Have you drilled test holes in any of that area where
16 the proposed site is?

17 A. The proposed chicken site?

18 Q. Yes.

19 A. No, we have not.

20 Q. So you don't even know if there is any water out there
21 you could use for that, do you?

22 A. Based on the geology, and I'm not a geologist by any
23 means, what I have been told is we would have to drill fairly
24 deep and through a lot of granite to be able to attain water, a
25 water source.

1 Q. In either site?

2 A. On the chicken site that you were referring to.

3 Q. Okay. And that proposed chicken site is about four
4 miles from the proposed site for this application; is that
5 right?

6 A. Yes.

7 Q. Now, you applied for a conditional use permit for this
8 chicken site from the Turner County Board of Adjustment in
9 2016; is that right?

10 A. We were granted a conditional use permit.

11 Q. In 2016.

12 A. Whatever year it was.

13 Q. I'm looking at a document that shows it was approved
14 in July of 2016; does that sound about right?

15 A. If that's what the document states, yes.

16 Q. And as one of the conditions for that permit, you were
17 to provide documentation on how water would be acquired for
18 that permit, correct?

19 A. Correct.

20 Q. And did you ever provide any documentation to Turner
21 County, the Turner County Board of Adjustment as to how your
22 water would be acquired?

23 A. Yes.

24 Q. And what was that?

25 A. I believe we submitted -- actually, I'm not sure what

1 we submitted to them other than I believe we submitted a report
2 from TM Rural Water and that we would be pursuing well water
3 appropriation.

4 Q. You submitted it, your attorney submitted a document
5 saying the operator has begun the process of seeking a study
6 for provision of water from the local rural water system and
7 has sought to acquire water rights for wells. Operator will
8 use a combination of rural water system sources and wells or
9 other private water systems. That's what your lawyer
10 submitted.

11 A. That's correct.

12 Q. So is it your intention to use TM Rural Water or these
13 wells?

14 A. There is some things in our facility that will
15 required by law and I believe it's the health department to use
16 rural water for drinking water, for toilets and for other
17 things.

18 Q. And by the way, and I just drove by there last night,
19 the only -- this permit was -- conditional use permit was
20 granted in July of 2016. The only work that's been done out
21 there is some black dirt has been moved and piled up; is that
22 right?

23 MR. WILLIAM TAYLOR: I object to this line of
24 questioning as not relevant to the issue of this water permit,
25 what is going on or what has gone on at the facility itself.

1 MR. BLAIR: I'd recommend you overrule that and the
2 board can give weight to the testimony that it deems fit.

3 Q. (BY MR. SCHAFFER) Go ahead and answer.

4 A. Can you repeat the question?

5 Q. Basically the only work that's been done out there is
6 there is some black dirt piled up.

7 A. That's incorrect.

8 Q. What other work has been done?

9 A. We have filed for a state DENR permit and we have
10 also -- we are here today for a water permit.

11 Q. Has any construction begun on any buildings?

12 A. No.

13 Q. Have you even applied for a building permit?

14 A. Yes.

15 MR. WILLIAM TAYLOR: Can I have a standing objection
16 to this line of questioning as irrelevant to the issues before
17 the board?

18 MR. BLAIR: You may, Mr. Taylor.

19 Q. (BY MR. SCHAFFER) Have you applied for a building
20 permit?

21 A. Yes.

22 Q. With Turner County?

23 A. Yes.

24 Q. When was that?

25 A. I don't recall.

1 Q. Was it for building or for grading?

2 A. Is there -- I don't know that there is a separate
3 permit for building versus grading.

4 Q. Have you applied for a building permit to build a
5 structure?

6 A. Yes.

7 Q. And that's in Turner County?

8 A. Yes.

9 Q. When do you plan to have this CAFO operational?

10 A. Upon receiving permits from the state, we will be able
11 to start construction.

12 Q. Do you have any estimates as to years?

13 A. I can't indicate what the state's time line might be
14 for the permit.

15 Q. Do you have your CAFO permit from the DENR?

16 A. No.

17 Q. The point is you have no current need for the use of
18 this water as we sit here today.

19 A. We will need the water when we are completed with our
20 permit.

21 Q. But you can't give us a date when that will be?

22 A. Upon completion of the DENR permit. Based on the time
23 of the year and the construction abilities, it will be within
24 18 months, a year or 18 months from the start of construction.

25 Q. Do you even know if that conditional use permit is

1 even valid?

2 A. I haven't looked at it.

3 Q. You know that the ordinance that it was adopted under
4 required that -- it had a provision in there that it was void
5 if the building, work, or use authorized by the permit was not
6 commenced within one year of the date of approval.

7 MR. WILLIAM TAYLOR: I object to this line of
8 questioning. First of all, the question is argumentative.
9 Second, what goes on between Turner County and Mr. Sonstegard
10 and Mr. Schaffer, who is involved in the Turner County
11 conditional use permits process, is completely irrelevant to
12 what we are here to talk about today.

13 MS. MINES-BAILEY: DENR would join the objection with
14 regards to relevance.

15 MR. SCHAFFER: I would point out that they are
16 applying for a permit for a proposed use at a particular site
17 that we don't know if it's even valid at this point.

18 MR. BLAIR: I'm going to sustain the objection at this
19 point. I think we gave you some latitude to make your record.

20 Q. (BY MR. SCHAFFER) How are you planning to transport
21 the water from this -- where the proposed wells are to the
22 proposed site?

23 A. In a pipe.

24 Q. And do you know what route that pipe will take?

25 A. It would be -- the most logical would be to go

1 straight west.

2 Q. Do you have any easements from landowners to cross
3 their land to get it to the CAFO?

4 A. No.

5 Q. Have you approached any of the landowners for
6 easements to get it to the CAFO?

7 A. No.

8 Q. Do you intend to get easements from the landowners?

9 A. I intend on following the rules and recommendations
10 from the permitting for pipelines, I'm not aware of what those
11 rules and regulations are.

12 Q. The proposed site for this permit is in the east fork
13 of the Vermillion River, correct?

14 A. Say that again.

15 Q. The proposed site for this application is in the east
16 fork of the Vermillion River.

17 A. Correct.

18 Q. And the proposed site for the CAFO is basically in the
19 west fork of the Vermillion River.

20 A. I don't think it sits in an aquifer.

21 Q. But it's fairly close to the west fork of the
22 Vermillion River; would you agree?

23 A. The west fork, yes.

24 Q. And do you propose to have egg washing facilities
25 located there?

1 A. Yes.

2 Q. And --

3 A. At some time, yes.

4 Q. And I only ask these questions because one of the
5 factors the board has to consider is the public interest, Mr.
6 Sonstegard. Your company operates a facility near Harris,
7 Iowa, called Sunrise Farms; is that correct?

8 A. That is correct.

9 Q. And that's a similar business, except probably quite a
10 bit bigger, right?

11 A. Yes.

12 Q. And that had an egg washing facility connected to it,
13 didn't it?

14 A. It has an egg washing.

15 Q. And you are aware, are you not, of a large fish kill
16 that occurred in that river near there?

17 A. Yes.

18 MR. WILLIAM TAYLOR: Wait a minute, I'm going to
19 object to this line of questioning. If the purpose of this
20 line of questioning is to establish that there is some
21 environmental risk with the enterprise that Sonstegard plans to
22 undertake, the forum for that is not here. The question of
23 public interest before this board is whether or not the
24 application of the water to be appropriated is in the public
25 interest. It's not whether or not this business is in the

1 public interest for Turner County. It's beyond the scope and
2 the authority of this board, and any testimony on environmental
3 questions that are related to the operation of the facility
4 belongs in another forum, actually it belongs to the county, I
5 suppose belongs in the county forum for the application for the
6 conditional use permit, which I think was litigated two years
7 ago.

8 MR. SCHAFFER: I would just point out that the
9 engineer's recommendation contains a provision that says this
10 permit is subject to compliance with the requirements of the
11 department's water pollution control permit and ground water
12 quality standards, ground water discharge permit, surface water
13 quality standards, and surface water discharge provisions. The
14 recommendation of the engineer says it's required to be
15 compliant with all of those environmental laws in the state of
16 South Dakota.

17 MR. WILLIAM TAYLOR: Each one of which requires a
18 permit. All of those permits are issued by the Board of
19 Minerals and Environment, not by -- there might be one that's
20 issued -- no, I think they are all -- the chief engineer would
21 be able to answer that question better than I, but it's not
22 within the scope of this hearing. It's not unorthodox or
23 unusual at all for a water permit to say, oh, yeah, you have to
24 comply with the rest of the laws of the state of South Dakota,
25 but we don't litigate whether or not they comply with the rest

1 of the laws of the state of South Dakota to determine if it's
2 in the public interest --

3 MR. BLAIR: Mr. Taylor, speaking objections are
4 somewhat allowed. I'm going to sustain the objection.

5 MR. SCHAFFER: Well, I would like to make at this time
6 an offer of proof, and I don't know what exhibit number we are
7 up to.

8 MR. FREEMAN: A and F and F1 I think is all you have.

9 MR. SCHAFFER: Call it G, I suppose.

10 (Exhibit G marked for identification.)

11 MR. SCHAFFER: It's an offer of proof at this point,
12 but I don't know how you guys handle it. And this is a
13 certified copy of an order and decree in Iowa, consent order
14 and decree enclosing civil penalties and injunctions against
15 Sunrise Farms, one of their affiliated companies, for a fish
16 kill covering 18 miles of a creek in Iowa where they dumped 12
17 truckloads of egg wash, of high concentrated ammonia in a
18 cornfield that went down and killed 160 some thousand fish and
19 I don't know if you want extra copies. It's just an offer of
20 proof, I know --

21 MR. HUTMACHER: But they need to -- I need to know if
22 they object to introduction of Exhibit G.

23 MS. MINES-BAILEY: This is just for the offer of
24 proof?

25 MR. SCHAFFER: Yes.

1 MS. MINES-BAILEY: I will not object then.

2 MR. WILLIAM TAYLOR: I'm just going to make the point
3 that we had a pretrial order in this case that required
4 exchange of -- I'm trying to make this case easy; so we had
5 this order that required everybody to exchange their exhibits,
6 I've never seen this before.

7 MR. SCHAFFER: And this was something that I
8 anticipated in terms of cross-examination. I don't think those
9 exhibits were contemplated, but maybe I misread the order.

10 MR. WILLIAM TAYLOR: It says in the pretrial order
11 that exhibits that are to be used in the hearing are supposed
12 to be disclosed. We disclosed ours, they didn't disclose any
13 of these.

14 MR. BLAIR: You were the hearing chair. I think for
15 purposes of an offer of proof to make the record, Mr. Schaffer
16 can have the exhibit marked. It's not an exhibit going to the
17 granting or not granting of the permit, it's just to allow him
18 to make his record.

19 MR. WILLIAM TAYLOR: He can have it marked for an
20 offer of proof.

21 MR. SCHAFFER: That's what we are doing right here.

22 MR. BLAIR: That's Exhibit G?

23 MR. SCHAFFER: Yes.

24 MR. BLAIR: It will go in the hearing file only for
25 purposes of -- only for the purposes of Mr. Schaffer's record

1 on the sustained objection.

2 MR. SCHAFFER: Thank you. I don't have any further
3 questions.

4 MS. MINES-BAILEY: I need just one moment. We have no
5 questions, thank you.

6 MR. HUTMACHER: Mr. Taylor.

7 REDIRECT EXAMINATION

8 BY MR. WILLIAM TAYLOR:

9 Q. One question I omitted to ask. Mr. Sonstegard, does
10 your company or family now own the half section in which
11 irrigation well 6434-3 is located?

12 A. Yes.

13 Q. Because at the time the application was made, you only
14 had an option to purchase it, right?

15 A. Correct.

16 Q. You have since closed that option and bought the
17 property.

18 A. Correct.

19 MR. WILLIAM TAYLOR: Thank you, that's all.

20 MR. HUTMACHER: Any redirect?

21 MR. SCHAFFER: No.

22 MR. HUTMACHER: Ann, you are okay?

23 MS. MINES-BAILEY: No questions. Thank you.

24 MR. HUTMACHER: Any questions of the board for Mr.

25 Sonstegard? Hearing none, I think you are good. Mr. Taylor,

1 more witnesses?

2 (End of partial transcript.)

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C E R T I F I C A T E

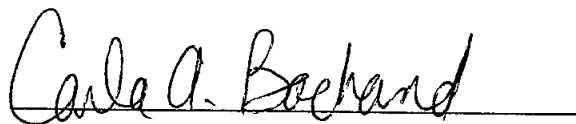
STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

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

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

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

Dated this 29th day of May 2018.



Carla A. Bachand, RMR, CRR
Freelance Court Reporter



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

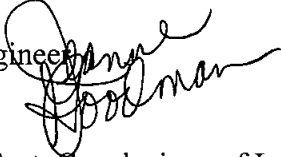
denr.sd.gov

May 7, 2018

NOTICE

TO: John E Taylor & Bill Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

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 counsel for Sonstegard Food Company to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 8278-3.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 1:00 PM, on Thursday, July 12, 2018, 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 hearing 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 June 12, 2018. 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 June 22, 2018. A mailing list is enclosed. Board counsel requests that the draft findings or alternative findings be provided in both a PDF format and a WORD format file via email to steven.blair@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 July 12, 2018. The evidentiary hearing was completed May 3, 2018. No additional testimony will be received on July 12, 2018.

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
Steven Blair, Assistant Attorney General

WATER MANAGEMENT BOARD MEMBERS

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Madison SD 57042

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223 Enchantment Road
Rapid City SD 57701

Jim Hutmacher-**Chairman**
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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

CERTIFICATION

I hereby certify that on May 7, 2018 I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 7, 2018, regarding preparation findings of fact, conclusions of law and final decision for Water Right Permit Application No. 8278-3, as addressed below:

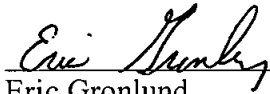
John E Taylor & Bill Taylor
Taylor Law Firm
5005 South Bur Oak Place
Sioux Falls SD 57108

Michael Schaffer
Schaffer Law Office
412 West 9th Street, Suite 1
Sioux Falls SD 57104-3602

Sent Inter-office to:

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

Steven Blair, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



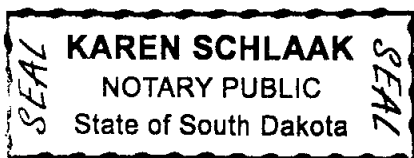
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of May, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



SCHAFFER LAW OFFICE, PROF. LLC
LAWYERS

412 WEST 9TH STREET – SUITE 1
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Michael J. Schaffer
Paul H. Linde*

Phone: (605) 274-6760
Fax: (605) 274-6764

*Also Licensed in Iowa, Minnesota and Nebraska

E-mail: mikes@schafferlawoffice.com

June 20, 2018

VIA EMAIL & U.S. MAIL

Jeanne Goodman
Chief Engineer
Water Rights Program
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Sonstegard Food Company
c/o John E. Taylor
Taylor Law Firm
4820 E. 52nd Street, Suite B
Sioux Falls SD 57108

Ann Mines Bailey
Stephen R. Blair
Attorney General's Office
1302 E. Hwy 14, #1
Pierre SD 57501

Re: Water Permit Application No. 8278-3

Dear Parties:

Enclosed and intended as service by mail is a true and correct copy of Petitioners' Proposed Findings of Fact and Conclusions of Law in the above matter.

Sincerely,



MICHAEL J. SCHAFFER
For the Firm

MJS:clm
Enclosure
cc w/encl: Water Management Board Members

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	PETITIONERS'
PERMIT APPLICATION #8278-3	)	PROPOSED FINDINGS OF
SONSTEGARD FOOD COMPANY	)	FACT AND CONCLUSIONS
	)	OF LAW

Petitioners, by and through counsel, submit these additional proposed Findings of Fact and Conclusions of Law concerning the application for a water permit by Sonstegard Food Company.

1. In the engineer's report on the application, Sonstegard Food Company, set forth two well sites on the subject property for the permit. Petitioners respectfully request that Sonstegard be required to use those designated well sites and comply with the setback distances set forth in the engineer's report, requiring a setback of 730 feet from the east fork of the Vermillion River if only one well is to be pumped at a time or 365 feet if both wells are to be pumped at the same time at one-half of maximum proposed diversion rate. See Chief Engineer's Report, Conclusion No. 8, Page 13.
2. Petitioners request that the Board find, consistent with the recommendation of the Chief Engineer, that the well owner under these permits shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior rights, and that in the event that such reduction occurs, that Sonstegard Food Company be directed to cease pumping. Recommendation of Chief Engineer for Water Permit Application No. 8278-3, Recommendation No. 1.

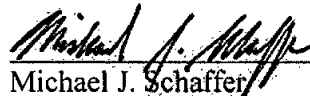
3. Further, Petitioner Darlene Goosen challenged the authority of the Water Management Board to, in effect, grant the right of eminent domain to Sonstegard Food Company to take her private property for transport of the water to the avian production facility under SDCL §46-2A-9, and the Board concluded that it did not have jurisdiction to address that question and was not addressing that question in this matter.

CONCLUSIONS OF LAW

The Water Management Board does not have jurisdiction to grant the right of eminent domain directly or indirectly and is not doing so under SDCL §46-2A-9.

Dated this 20th day of June, 2018.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer
412 West 9th Street, Suite 1
Sioux Falls, SD 57104-3602
Telephone (605) 274-6760
Facsimile: (605) 274-6764
Attorneys for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the "Petitioners' Proposed Findings of Fact and Conclusions of Law" was served by email and United States mail, postage prepaid upon:

Jeanne Goodman
Jeanne.goodman@state.sd.us
Chief Engineer
Water Rights Program
DENR
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Sonstegard Food Company
c/o John E. Taylor
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Attorney General's Office
1302 E. Hwy 14, #1
Pierre SD 57501

Steven R. Blair
steven.blair@state.sd.us
Attorney General's Office
1302 E. Hwy 14, #1
Pierre SD 57501

And was served by United States mail, postage prepaid upon:

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Madison SD 57042

Leo Holzbauer, Secretary
PO Box 64
Delmont SD 57330

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

Peggy Dixon
3311 Hogan Court
Rapid City SD 57702

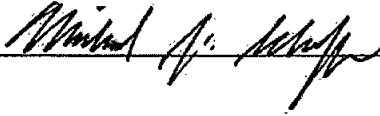
Everett Hoyt
4422 Carriage Hills Dr.
Rapid City SD 57702

Tim Bjork, Vice Chairman
223 Enchantment Road
Rapid City SD 57701

Jim Hutmacher, Chairman
802 E. 7th Street
Oacoma SD 57365

Kirsten Jasper, Board Attorney
Natural Resources Section
Office of the Attorney General
George S. Mickelson Criminal Justice Center
1302 E. Hwy 14, Suite 1
Pierre SD 57501

on this 20th day of June, 2018.





OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUN 27 2018

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 26, 2018

Jim Hutmacher, Chairman
802 E 7th Street
Oacoma, SD 57365

Re: Proposed Findings of Fact, Conclusions of Law and Final Order

Dear Mr. Hutmacher:

It has come to my attention that there are two errors in DENR's Proposed Findings of Fact, Conclusions of Law, and Final Decision. In Proposed Finding of Fact No. 10, the wrong permit number is cited in the first sentence. Instead of 8226-3, it should be 8278-3. Also, in the third sentence of Proposed Conclusion of Law No. 19, it improperly states that "[t]he Board finds that appropriating water for irrigation is in the public interest." It should read "[t]he Board finds that appropriating water for commercial use is in the public interest." Please accept my apologies for the errors. Thank you.

Respectfully,

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

Ann Mines-Bailey
Assistant Attorney General

AMB/rar

cc: Jeanne Goodman
Michael Schaffer
Chad Comes
Rodney Freeman Jr
Everett Hoyt
Kristen Jasper

John Taylor
Bill Taylor
Leo Holzbauer
Peggy Dixon
Tim Bjork
Steve Blair



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MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUL 05 2018

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

July 3, 2018

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

Re: *In the Matter of Water Application No. 8278-3, Sonstegard Food Company*

Dear Chief Engineer Goodman:

As counsel for the Water Management Board, I have prepared the enclosed proposed Findings of Fact, Conclusions of Law, and Final Order in the above referenced matter. I am submitting the proposed to you for filing in the Department's file. The Board will consider these proposed findings and conclusions at its board meeting to be held July 11 & 12. It is within the Board's discretion whether oral arguments by the parties will be afforded prior to consideration of the matter. The proposed findings and conclusions are being served upon those parties included on the service list for this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB", followed by a horizontal line.

Steven R. Blair
Assistant Attorney General

SRB/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 OF WATER	)	FINDINGS OF FACT,
APPLICATION NO. 8278-3,	)	CONCLUSIONS OF LAW, AND
Sonstegard Food Company	)	FINAL ORDER

This matter came before the South Dakota Water Management Board (Board) for hearing on May 3, 2018. Board members Tim Bjork, Chad Comes, Peggy Dixon, Rodney Freeman, and Chairman Jim Hutmacher were present at the hearing. Sonstegard Food Company, applicant, was represented by counsel William and John Taylor of the Taylor Law Firm. Sonstegard Food Company (Sonstegard Food) also appeared personally by and through its chief operating officer, Peter Sonstegard. Petitioners were represented by counsel Michael Schaffer of the Schaffer Law Firm. Petitioners Darlene Goosen and Joyce Willoughby also personally appeared at the hearing. The Department of Environment and Natural Resources, Water Rights Program (DENR), and the Chief Engineer, Jeanne Goodman, were represented by Assistant Attorney General Ann Mines Bailey.

On June 12, 2018, Sonstegard Food submitted proposed Findings of Fact and Conclusions of Law to be considered in this matter. On June 20, 2018, Petitioners submitted proposed additional Findings of Fact and Conclusions of Law to be considered by the Board. On June 21, 2018, DENR submitted objections to Sonstegard Food's proposed findings and conclusions,

as well as the Department's own proposed Findings of Fact, Conclusions of Law, and Final Decision.

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 and motions, now enters the following:

RULING ON OBJECTIONS & SUBMISSIONS

The Board hereby rejects the Findings of Fact, Conclusions of Law and Final Decisions proposed by Sonstegard Food, Petitioners, and DENR. Having rejected these various proposed findings and conclusions the Board need not rule on the objections filed by DENR to those findings and conclusions. The Board enters the Findings of Fact, Conclusions of Law, and Final Decision contained below which shall comprise the entire final decision of the Board unless other materials are incorporated herein by reference.

FINDINGS OF FACT

1. On April 3, 2017, DENR received Water Permit Application No. 8278-3 on behalf of Sonstegard Food seeking an appropriation of water for commercial use in the operation of an avian production facility.
2. The application proposes the use of two wells completed into the Vermillion East Fork: Montrose Aquifer and geographically located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T99N-R53W in Turner County, South Dakota.

3. The application seeks a diversion rate of 1.11 cubic feet of water per second (cfs) for a maximum annual diversion of 222.2 acre-feet of water per year (ac-ft/yr).

4. Sonstegard Food intends to transport the water via pipeline to the avian production facility located in the SW¼ of Section 36, T100N-R54W.

5. Sonstegard Food also holds Water Permit No. 8221-3 authorizing withdrawal of 222.2 ac-ft/yr from the Vermillion West Fork Aquifer.

6. On June 26, 2017, the Chief Engineer recommended approval of the application with the following qualifications:

1. The two wells approved under Water Permit No. 8278-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under th[is] Permit[] shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The two wells authorized by Permit No. 8278-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8278-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
4. Water Permit No. 8278-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards
 - b) Chapter 74:54:02 Ground Water Discharge Permit
 - c) Chapter 74:51:01 Surface Water Quality Standards
 - d) Chapter 74:51:02 Uses Assigned to Lakes
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork: Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork: Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.
7. Public notice of the application was published in the Argus Leader and New Era Press newspapers on July 6, 2017.
8. DENR received timely petitions in opposition to the application from Walter and Jean Mielke on July 12, 2017, and Darlene Goosen, Charlene Ritter, and Joyce Willoughby on July 17, 2017.
9. The matter was initially scheduled for hearing at the October 2017 meeting of the Board; however, an automatic delay was requested by Petitioners' counsel.
10. On September 21, 2017, counsel for Sonstegard Food filed a Notice of Appearance and Motion for Continuance seeking to continue the hearing on the matter to the December 2017 Board meeting.
11. On November 22, 2017, a Scheduling Order was issued by Prehearing Chairman Rodney Freeman. This Order continued the matter until

the March, 2018, Board meeting. Due to inclement weather, the hearing was again rescheduled for the May 2018 Board meeting.

12. Water Permit Application No. 8278-3 is a new water permit application which requires a determination pursuant to SDCL § 43-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

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

14. The Vermillion East Fork Aquifer is comprised of fine sand to medium pebble gravel. Typically, it is surficial and unconfined.

15. The Vermillion East Fork Aquifer extends from Clark County to Turner County along the East Fork of the Vermillion River to the point of confluence between the East and West Forks of the Vermillion River in southern Turner County.

16. The Vermillion East Fork Aquifer is comprised of several management units. The Montrose Management Unit of the Vermillion East Fork Aquifer extends from the northern border of Miner County through McCook, Lake, and Turner Counties. The Aquifer is unconfined in this area.

The Vermillion East Fork: Montrose Aquifer flow gradient is northwest to southeast.

17. Adam Mathiowetz, a natural resources engineer with DENR, reviewed the permit application, analyzed the hydrology of the Montrose management unit of the Vermillion East Fork Aquifer, and reviewed the information obtained from the observation wells completed into the Vermillion East Fork: Montrose Aquifer, as well as current water right/permit files and well completion reports for the Aquifer.

18. According to Mr. Mathiowetz the Vermillion East Fork: Montrose Aquifer receives recharge through infiltration of precipitation and ground water inflow. Studies conducted estimate a recharge rate of approximately 3.4 in/yr. Total recharge to the Montrose management unit is approximately 9,860 ac-ft/yr. In Turner County alone, the Vermillion East Fork: Montrose Aquifer is recharged at an average rate of approximately 1,643 ac-ft/yr.

19. Mr. Mathiowetz testified that withdrawals from the Montrose Management Unit include well withdrawals for irrigation, municipal, commercial and rural water system use. At the time of the hearing, well withdrawals from this management unit totaled approximately 785 ac-ft/yr.

20. DENR monitors three observation wells completed into the Vermillion East Fork: Montrose Aquifer. The observation well data demonstrated that, over the period of record, the Aquifer responds to climatic conditions. Data from observation wells LK-67A and LK-67B additionally show

increasing water levels over the period of record. Furthermore, neither LK-67A nor LK-67B showed significant impacts due to nearby pumping.

21. There are 13 water rights in the Vermillion East Fork: Montrose Aquifer. Water Right No. 6434-3 is the closest water right and is located approximately 460 feet from the southernmost proposed well site. Sonstegard Food owns and controls irrigation Water Right No. 6434-3. The closest domestic well is located within a quarter mile of the proposed point of diversion.

22. Wells authorized by water rights/permits to withdraw water from the Aquifer in proximity to the Sonstegard Food's proposed wells are Water Right Nos. 5914-3, 5389-3, 6075-3 and 6434-3 at approximately 0.8 miles southeast, 1.2 miles south, 1.1 miles west, and 460 feet west of the proposed well location(s).

23. The unconfined nature of the Vermillion East Fork: Montrose Aquifer means the drawdown cone created from pumping either of the Applicant's proposed wells will not be significant and will decrease as distance from the wells increases. At the proposed maximum annual appropriation volume, 222.2 ac-ft/yr, the continuous pump rate will be equivalent to 0.307 cfs from one well. Assuming a transmissivity of 7,150 ft²/d based on the specific capacity of appropriative wells completed into the Vermillion East Fork: Montrose Aquifer, a storativity of 0.1, a pump time of 365 days, and the average diversion rate of 0.307 cfs, drawdown at a well 460 feet away is

expected to be less than two feet based on the Theis Equation. Drawdown is likely less than the estimate.

24. Mr. Mathiowetz opined that there is a low probability of unlawful impairment to existing rights based upon the unconfined nature of the Aquifer, the relatively low application rate requested by Sonstegard Food, the physical characteristics of the Aquifer, and that the Sonstegard Food's wells are relatively close to each other and would be managed in a manner which would prohibit interference.

25. Mr. Mathiowetz further testified that, based upon the well completion reports on file with DENR that Ms. Goosen's, and Mr. and Mrs. Mielke's individual wells are adequate wells as defined by ARSD 74:02:04:20(6). DENR does not have well completion reports on file for Ms. Willoughby's or Ms. Ritter's individual wells.

26. There is a reasonable probability the Sonstegard Food's diversion will not impact existing domestic and appropriative users with adequate wells considering the distance from the proposed well locations to other wells, the low average diversion rate, and unconfined nature of the Vermillion East Fork: Montrose Aquifer.

27. Chief Engineer Jeanne Goodman testified that she recommended approval of the application. She also provided an explanation as to how domestic well complaints are processed within the Water Rights program.

28. Peter Sonstegard, Chief Operating Officer of Sonstegard Food Company, testified that the water will be transported to an egg production

facility housing up to 2.5 million laying hens located approximately four miles west of the point of diversion. The water will be used to water the flock, clean eggs, sanitize roosting facilities and operate facility restrooms.

29. Ms. Joyce Willoughby, Petitioner, lives on property near the proposed diversion site. Ms. Willoughby has a domestic well which is completed into the same water source as the proposed diversion. Ms. Willoughby testified that she is concerned that her well will be impacted by the proposed diversion.

30. Ms. Darlene Goosen, Petitioner, owns and lives on property located between the proposed diversion site and the proposed site of use. Ms. Goosen's source of water at her property is a well completed into the same water source as the proposed diversion. Ms. Goosen testified regarding her concerns that her well will be impacted by Sonstegard Food's proposed diversion.

31. Ms. Goosen, in testimony and through her counsel, also expressed concerns that Sonstegard Food will use eminent domain statutes for the purposes of placing on her property a pipeline to transport the water from the point of diversion to the avian production facility.

32. The Board finds Mr. Mathiowetz to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits which he prepared and/or relied upon.

33. Petitioners have not submitted sufficient evidence – through expert opinions, testimony, or other evidence – that would support a determination

that there is a reasonable probability that unappropriated water is not available in this aquifer.

34. The Board finds that there is a reasonable probability unappropriated water is available for Sonstegard Food's proposed use.

35. The Board finds that granting this application will not result in withdrawals from the aquifer exceeding average estimated recharge to the Aquifer.

36. The Board additionally finds that the proposed use of the water for commercial use in an avian production facility constitutes beneficial use.

37. The Board further finds that placing the water to this beneficial use is in the public interest.

38. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based upon the forgoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Water Management Board has jurisdiction over the matter and authority to conduct a hearing and issue a decision pursuant to SDCL §§ 46-2-9, 46-2-11 and 46-2A-23.

2. Sonstegard Food's application is complete and proper pursuant to SDCL §§ 46-5-10 and 11, 46-2A-14 and 15.

3. Pursuant to SDCL § 46-2A-2, the recommendation of the Chief Engineer and accompanying report are procedurally proper.

4. The Chief Engineer recommended granting this application. This recommendation is, however, not binding on the Board. SDCL § 46-2A-4(8).

5. The Application was properly noticed by publication pursuant to SDCL §§ 46-2A-3, 4, and 23.

6. The Chief Engineer provided notice of board hearings pursuant to SDCL § 1-26-17.

7. Petitioners' intervention into the matter was procedurally proper pursuant to SDCL § 46-2A-4(5)(a)-(c).

8. The original and subsequent hearing postponements were procedurally proper pursuant to SDCL § 46-2A-5.

9. Service and filing of pleadings, petitions, motions and briefs by the Applicant, Petitioners and DENR were proper pursuant to SDCL § 46-2A-6.

10. The applicant is required to satisfy each of the factors set forth in SDCL § 46-2A-9.

11. SDCL § 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

12. The first factor for consideration under SDCL § 46-2A-9 is whether water is available for appropriation. Determination of water availability

includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether “according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

13. The Board concludes there is a reasonable probability that unappropriated water available to fulfill the amount requested by the application.

14. The Board further concludes that it is not probable that withdrawals from the Aquifer would exceed recharge to the Aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

15. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing rights.

16. Petitioners’ registered and unregistered domestic wells and water usage constitutes domestic use pursuant to SDCL § 46-1-5(7).

17. Petitioners’ registered and unregistered domestic wells and use of the water from those wells takes precedence over appropriative rights pursuant to SDCL § 46-1-5(1).

18. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best

utilization of water supplies under SDCL § 46-1-6(3). The proposed use for commercial purposes is a beneficial use.

19. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be “consistent with the interests of the public of this state in the best utilization of water supplies.” SDCL § 6-1-6(3). The Board finds that appropriating water for commercial use is in the public interest.

20. The Board does not have jurisdiction to address the issues regarding eminent domain.

21. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8278-3 is granted with the following qualifications:

1. The two wells approved under Water Permit No. 8278-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under th[is] Permit [] shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The two wells authorized by Permit No. 8278-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8278-3 is subject to compliance with requirements of the Department’s Water Pollution Control

Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.

4. Water Permit No. 8278-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards
 - b) Chapter 74:54:02 Ground Water Discharge Permit
 - c) Chapter 74:51:01 Surface Water Quality Standards
 - d) Chapter 74:51:02 Uses Assigned to Lakes
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.
5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork: Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork: Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.

Dated this ____ day of July 2018.

BY THE BOARD:

Jim Hutmacher, Chairman
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. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	

The undersigned hereby certifies that a true and correct copy of the Board's proposed Findings of Fact, Conclusions of Law, and Final Decision to be entered in the above captioned matter, were served by United States mail, first class, postage prepaid upon the following:

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor & Bill Taylor
Taylor Law Office
412 West 9th Street, Ste. 1
Sioux Falls, SD 57108

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter, and
Darleen Goosen*

Counsel for Sonstegard Food Company

Chad Comes
116 W Center
Madison, SD 57042

Leo Holzbauer
PO Box 64
Delmont, SD 57330

Tim Bjork
223 Enchantment Dr.
Rapid City, SD 57701

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57701

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

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

Rodney Freeman Jr.
PO Box 176
Huron, SD 57530

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 E. Capitol Ave.
Pierre, SD 57501

And hand-delivered to:

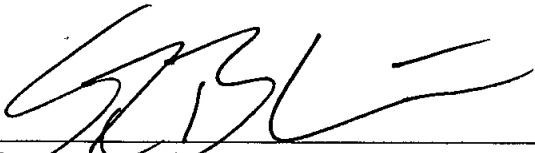
Ann F. Mines Bailey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

*Counsel for Water Rights Program,
DENR*

Kirsten Jasper
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

Counsel for Water Management Board

On this 3rd day of July 2018.

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

Steven R. Blair
Assistant Attorney General
1302 E. Highway 14, Ste. 1
Pierre, SD 57501
Telephone: (605) 773-3215

Counsel for Water Management Board



OFFICE OF ATTORNEY GENERAL

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MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

JUL 18 2018

**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

July 17, 2018

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor & Bill Taylor
Taylor Law Office
412 West 9th Street, Ste. 1
Sioux Falls, SD 57108

Re: *In the Matter of Water Application No. 8278-3*

Dear Counsel:

Enclosed please find DENR's Notice of Entry of Findings of Fact, Conclusions of Law and Final Order in the above-entitled matter, as well as a certificate of service.

Respectfully,

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

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: Jeanne Goodman, Chief Engineer

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	NOTICE OF ENTRY OF FINDINGS
APPLICATION NO. 8278-3,	)	OF FACT, CONCLUSIONS OF LAW,
Sonstegard Food Company	)	AND FINAL ORDER
	)	

TO: Sonstegard Food Company, by and through their attorneys, John and Bill Taylor, Taylor Law Office, 4820 East 57th Street, Sioux Falls, SD 57108; and Joyce Willoughby, Charlene Ritter, Darleen Goosen, and Walter and Jean Mielke, by and through their attorney Michael Schaffer, Attorney at Law, 412 West 9th Street, Suite 1, Sioux Falls, SD 57104:

NOTICE IS HEREBY GIVEN that on the 12th day of July 2018, the South Dakota Water Management Board entered its Findings of Fact, Conclusions of Law, and Final Order in the above-entitled matter, a copy of which is attached hereto and incorporated herein as if fully set out.

Dated this 17th day of July 2018.



Ann F. Mines Bailey
Assistant Attorney General
1302 E. Highway 14, Ste. 1
Pierre, SD 57501
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	)	FINDINGS OF FACT,
APPLICATION NO. 8278-3,	)	CONCLUSIONS OF LAW, AND
Sonstegard Food Company	)	FINAL ORDER

This matter came before the South Dakota Water Management Board (Board) for hearing on May 3, 2018. Board members Tim Bjork, Chad Comes, Peggy Dixon, Rodney Freeman, and Chairman Jim Hutmacher were present at the hearing. Sonstegard Food Company, applicant, was represented by counsel William and John Taylor of the Taylor Law Firm. Sonstegard Food Company (Sonstegard Food) also appeared personally by and through its chief operating officer, Peter Sonstegard. Petitioners were represented by counsel Michael Schaffer of the Schaffer Law Firm. Petitioners Darlene Goosen and Joyce Willoughby also personally appeared at the hearing. The Department of Environment and Natural Resources, Water Rights Program (DENR), and the Chief Engineer, Jeanne Goodman, were represented by Assistant Attorney General Ann Mines Bailey.

On June 12, 2018, Sonstegard Food submitted proposed Findings of Fact and Conclusions of Law to be considered in this matter. On June 20, 2018, Petitioners submitted proposed additional Findings of Fact and Conclusions of Law to be considered by the Board. On June 21, 2018, DENR submitted objections to Sonstegard Food's proposed findings and conclusions,

as well as the Department's own proposed Findings of Fact, Conclusions of Law, and Final Decision.

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 and motions, now enters the following:

RULING ON OBJECTIONS & SUBMISSIONS

The Board hereby rejects the Findings of Fact, Conclusions of Law and Final Decisions proposed by Sonstegard Food, Petitioners, and DENR. Having rejected these various proposed findings and conclusions the Board need not rule on the objections filed by DENR to those findings and conclusions. The Board enters the Findings of Fact, Conclusions of Law, and Final Decision contained below which shall comprise the entire final decision of the Board unless other materials are incorporated herein by reference.

FINDINGS OF FACT

1. On April 3, 2017, DENR received Water Permit Application No. 8278-3 on behalf of Sonstegard Food seeking an appropriation of water for commercial use in the operation of an avian production facility.
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 - c) Chapter 74:51:01 Surface Water Quality Standards
 - d) Chapter 74:51:02 Uses Assigned to Lakes
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.

5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork: Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork: Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.

7. Public notice of the application was published in the Argus Leader and New Era Press newspapers on July 6, 2017.

8. DENR received timely petitions in opposition to the application from Walter and Jean Mielke on July 12, 2017, and Darlene Goosen, Charlene Ritter, and Joyce Willoughby on July 17, 2017.

9. The matter was initially scheduled for hearing at the October 2017 meeting of the Board; however, an automatic delay was requested by Petitioners' counsel.

10. On September 21, 2017, counsel for Sonstegard Food filed a Notice of Appearance and Motion for Continuance seeking to continue the hearing on the matter to the December 2017 Board meeting.

11. On November 22, 2017, a Scheduling Order was issued by Prehearing Chairman Rodney Freeman. This Order continued the matter until

the March, 2018, Board meeting. Due to inclement weather, the hearing was again rescheduled for the May 2018 Board meeting.

12. Water Permit Application No. 8278-3 is a new water permit application which requires a determination pursuant to SDCL § 43-2A-9 that there is a reasonable probability unappropriated water is available for the proposed use, whether the use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

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

14. The Vermillion East Fork Aquifer is comprised of fine sand to medium pebble gravel. Typically, it is surficial and unconfined.

15. The Vermillion East Fork Aquifer extends from Clark County to Turner County along the East Fork of the Vermillion River to the point of confluence between the East and West Forks of the Vermillion River in southern Turner County.

16. The Vermillion East Fork Aquifer is comprised of several management units. The Montrose Management Unit of the Vermillion East Fork Aquifer extends from the northern border of Miner County through McCook, Lake, and Turner Counties. The Aquifer is unconfined in this area.

The Vermillion East Fork: Montrose Aquifer flow gradient is northwest to southeast.

17. Adam Mathiowetz, a natural resources engineer with DENR, reviewed the permit application, analyzed the hydrology of the Montrose management unit of the Vermillion East Fork Aquifer, and reviewed the information obtained from the observation wells completed into the Vermillion East Fork: Montrose Aquifer, as well as current water right/permit files and well completion reports for the Aquifer.

18. According to Mr. Mathiowetz the Vermillion East Fork: Montrose Aquifer receives recharge through infiltration of precipitation and ground water inflow. Studies conducted estimate a recharge rate of approximately 3.4 in/yr. Total recharge to the Montrose management unit is approximately 9,860 ac-ft/yr. In Turner County alone, the Vermillion East Fork: Montrose Aquifer is recharged at an average rate of approximately 1,643 ac-ft/yr.

19. Mr. Mathiowetz testified that withdrawals from the Montrose Management Unit include well withdrawals for irrigation, municipal, commercial and rural water system use. At the time of the hearing, well withdrawals from this management unit totaled approximately 785 ac-ft/yr.

20. DENR monitors three observation wells completed into the Vermillion East Fork: Montrose Aquifer. The observation well data demonstrated that, over the period of record, the Aquifer responds to climatic conditions. Data from observation wells LK-67A and LK-67B additionally show

increasing water levels over the period of record. Furthermore, neither LK-67A nor LK-67B showed significant impacts due to nearby pumping.

21. There are 13 water rights in the Vermillion East Fork: Montrose Aquifer. Water Right No. 6434-3 is the closest water right and is located approximately 460 feet from the southernmost proposed well site. Sonstegard Food owns and controls irrigation Water Right No. 6434-3. The closest domestic well is located within a quarter mile of the proposed point of diversion.

22. Wells authorized by water rights/permits to withdraw water from the Aquifer in proximity to the Sonstegard Food's proposed wells are Water Right Nos. 5914-3, 5389-3, 6075-3 and 6434-3 at approximately 0.8 miles southeast, 1.2 miles south, 1.1 miles west, and 460 feet west of the proposed well location(s).

23. The unconfined nature of the Vermillion East Fork: Montrose Aquifer means the drawdown cone created from pumping either of the Applicant's proposed wells will not be significant and will decrease as distance from the wells increases. At the proposed maximum annual appropriation volume, 222.2 ac-ft/yr, the continuous pump rate will be equivalent to 0.307 cfs from one well. Assuming a transmissivity of 7,150 ft²/d based on the specific capacity of appropriative wells completed into the Vermillion East Fork: Montrose Aquifer, a storativity of 0.1, a pump time of 365 days, and the average diversion rate of 0.307 cfs, drawdown at a well 460 feet away is

expected to be less than two feet based on the Theis Equation. Drawdown is likely less than the estimate.

24. Mr. Mathiowetz opined that there is a low probability of unlawful impairment to existing rights based upon the unconfined nature of the Aquifer, the relatively low application rate requested by Sonstegard Food, the physical characteristics of the Aquifer, and that the Sonstegard Food's wells are relatively close to each other and would be managed in a manner which would prohibit interference.

25. Mr. Mathiowetz further testified that, based upon the well completion reports on file with DENR that Ms. Goosen's, and Mr. and Mrs. Mielke's individual wells are adequate wells as defined by ARSD 74:02:04:20(6). DENR does not have well completion reports on file for Ms. Willoughby's or Ms. Ritter's individual wells.

26. There is a reasonable probability the Sonstegard Food's diversion will not impact existing domestic and appropriative users with adequate wells considering the distance from the proposed well locations to other wells, the low average diversion rate, and unconfined nature of the Vermillion East Fork: Montrose Aquifer.

27. Chief Engineer Jeanne Goodman testified that she recommended approval of the application. She also provided an explanation as to how domestic well complaints are processed within the Water Rights program.

28. Peter Sonstegard, Chief Operating Officer of Sonstegard Food Company, testified that the water will be transported to an egg production

facility housing up to 2.5 million laying hens located approximately four miles west of the point of diversion. The water will be used to water the flock, clean eggs, sanitize roosting facilities and operate facility restrooms.

29. Ms. Joyce Willoughby, Petitioner, lives on property near the proposed diversion site. Ms. Willoughby has a domestic well which is completed into the same water source as the proposed diversion. Ms. Willoughby testified that she is concerned that her well will be impacted by the proposed diversion.

30. Ms. Darlene Goosen, Petitioner, owns and lives on property located between the proposed diversion site and the proposed site of use. Ms. Goosen's source of water at her property is a well completed into the same water source as the proposed diversion. Ms. Goosen testified regarding her concerns that her well will be impacted by Sonstegard Food's proposed diversion.

31. Ms. Goosen, in testimony and through her counsel, also expressed concerns that Sonstegard Food will use eminent domain statutes for the purposes of placing on her property a pipeline to transport the water from the point of diversion to the avian production facility.

32. The Board finds Mr. Mathiowetz to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits which he prepared and/or relied upon.

33. Petitioners have not submitted sufficient evidence – through expert opinions, testimony, or other evidence – that would support a determination

that there is a reasonable probability that unappropriated water is not available in this aquifer.

34. The Board finds that there is a reasonable probability unappropriated water is available for Sonstegard Food's proposed use.

35. The Board finds that granting this application will not result in withdrawals from the aquifer exceeding average estimated recharge to the Aquifer.

36. The Board additionally finds that the proposed use of the water for commercial use in an avian production facility constitutes beneficial use.

37. The Board further finds that placing the water to this beneficial use is in the public interest.

38. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based upon the forgoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Water Management Board has jurisdiction over the matter and authority to conduct a hearing and issue a decision pursuant to SDCL §§ 46-2-9, 46-2-11 and 46-2A-23.

2. Sonstegard Food's application is complete and proper pursuant to SDCL §§ 46-5-10 and 11, 46-2A-14 and 15.

3. Pursuant to SDCL § 46-2A-2, the recommendation of the Chief Engineer and accompanying report are procedurally proper.

4. The Chief Engineer recommended granting this application. This recommendation is, however, not binding on the Board. SDCL § 46-2A-4(8).
5. The Application was properly noticed by publication pursuant to SDCL §§ 46-2A-3, 4, and 23.
6. The Chief Engineer provided notice of board hearings pursuant to SDCL § 1-26-17.
7. Petitioners' intervention into the matter was procedurally proper pursuant to SDCL § 46-2A-4(5)(a)-(c).
8. The original and subsequent hearing postponements were procedurally proper pursuant to SDCL § 46-2A-5.
9. Service and filing of pleadings, petitions, motions and briefs by the Applicant, Petitioners and DENR were proper pursuant to SDCL § 46-2A-6.
10. The applicant is required to satisfy each of the factors set forth in SDCL § 46-2A-9.
11. SDCL § 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.
12. The first factor for consideration under SDCL § 46-2A-9 is whether water is available for appropriation. Determination of water availability

includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether "according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

13. The Board concludes there is a reasonable probability that unappropriated water available to fulfill the amount requested by the application.

14. The Board further concludes that it is not probable that withdrawals from the Aquifer would exceed recharge to the Aquifer in violation of SDCL § 46-6-3.1 if this application is granted.

15. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The Board concludes that the proposed diversion can be developed without unlawful impairment of existing rights.

16. Petitioners' registered and unregistered domestic wells and water usage constitutes domestic use pursuant to SDCL § 46-1-5(7).

17. Petitioners' registered and unregistered domestic wells and use of the water from those wells takes precedence over appropriative rights pursuant to SDCL § 46-1-5(1).

18. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best

utilization of water supplies under SDCL § 46-1-6(3). The proposed use for commercial purposes is a beneficial use.

19. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 6-1-6(3). The Board finds that appropriating water for commercial use is in the public interest.

20. The Board does not have jurisdiction to address the issues regarding eminent domain.

21. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 8278-3 is granted with the following qualifications:

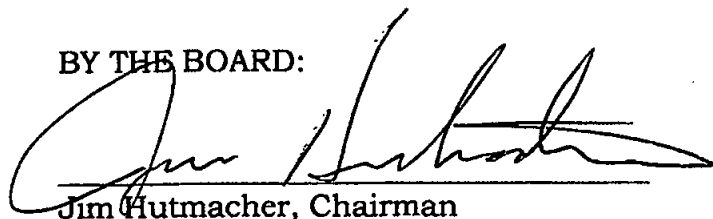
1. The two wells approved under Water Permit No. 8278-3 will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under th[is] Permit [] shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The two wells authorized by Permit No. 8278-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. Water Permit No. 8278-3 is subject to compliance with requirements of the Department's Water Pollution Control

Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.

4. Water Permit No. 8278-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards
 - b) Chapter 74:54:02 Ground Water Discharge Permit
 - c) Chapter 74:51:01 Surface Water Quality Standards
 - d) Chapter 74:51:02 Uses Assigned to Lakes
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions.
5. The two production wells for Permit No. 8278-3 shall be located from the top of the bank next to the East Fork Vermillion River a minimum of 780 feet in any direction if only one well is to be pumped at a time or 365 feet in any direction if both wells are to be pumped at the same time at a rate for each well of no more than 0.555 cubic feet of water per second (250 gallons per minute).
6. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Vermillion East Fork: Montrose aquifer.
7. Water Permit No. 8278-3 authorizes a total annual diversion of 222.2 acre feet of water from the Vermillion East Fork: Montrose aquifer. Water Permit Nos. 8221-3 and 8278-3 which are from different aquifers are limited to a combined total annual diversion of 222.2 acre feet of water to supply the avian production facility.

Dated this 12th day of July 2018.

BY THE BOARD:

A handwritten signature in black ink, appearing to read "Jim Hutmacher", is written over a horizontal line.

Jim Hutmacher, Chairman
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. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	

The undersigned hereby certifies that on the 17th day of July 2018, true and correct copies of DENR'S Notice of Entry of Findings of Fact, Conclusions of Law and Final Order, in the above matter, were mailed by U.S. mail, first class, postage prepaid, to:

Michael Schaffer
Attorney at Law
412 W. 9th St., Ste. 1
Sioux Falls, SD 57104

John Taylor & Bill Taylor
Taylor Law Office
412 West 9th Street, Ste. 1
Sioux Falls, SD 57108

*Counsel for Joyce Willoughby, Walter
and Jean Mielke, Charlene Ritter, and
Darleen Goosen*

Counsel for Sonstegard Food Company

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 E. Capitol Ave.
Pierre, SD 57501


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

Counsel for Water Rights Program, DENR



OFFICE OF ATTORNEY GENERAL

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Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

RECEIVED

JUL 23 2018

**WATER RIGHTS
PROGRAM**

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

July 19, 2018

John Taylor
Attorney at Law
4820 E. 57th St., Ste. B
Sioux Falls, SD 57108

Re: *In the Matter of Water Application No. 8278-3*

Dear Counsel:

Enclosed please find DENR's Notice of Entry of Findings of Fact, Conclusions of Law and Final Order in the above-entitled matter, as well as an Amended Certificate of Service. This was initially mailed to the wrong address on July 17th. My apologies.

Respectfully,

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

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: Jeanne Goodman, Chief Engineer

RECEIVED

JUL 23 2018

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER RIGHTS
PROGRAM

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	AMENDED
APPLICATION NO. 8278-3,	)	CERTIFICATE OF SERVICE
Sonstegard Food Company	)	

The undersigned hereby certifies that on the 19th day of July 2018, true and correct copies of DENR'S Notice of Entry of Findings of Fact, Conclusions of Law and Final Order, in the above matter, were mailed by U.S. mail, first class, postage prepaid, to:

John Taylor
Attorney at Law
4820 E. 57th St., Ste. B
Sioux Falls, SD 57108

Counsel for Sonstegard Food Company

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
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Pierre, SD 57501


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Telephone: (605) 773-3215

Counsel for Water Rights Program, DENR



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

SEP 04 2018

Sonstegard Food Company
5005 South Bur Oak Place
Sioux Falls SD 57108

Dear Mr. Sonstegard:

Enclosed is Water Permit No. 8278-3 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,


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

enclosures

c: John Taylor, Attorney