

WATER PERMIT NO. 8317-3

Name of Applicant: Alexandria Gravel Products LLC

Address: PO Box 38, Alexandria SD 56308 Phone: 320 760-0982

Amount of Water Claimed: 1.33 cfs Total Acres: na

Source of Water Supply: springs

Water to be used for: industrial use County: Marshall

Type of Waste Disposal System:

Location: 25 miles east of Britton

PRIORITY Date Received: 10-26-17 Application/License Fee: \$ 700

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

Remarks:

Diversion Point: SE 1/4 SE 1/4 Sec 12-T127N-
R53W

Land to be Irrigated: na

Depth of Well: na

Well Driller:

Remarks:

Type of Map: aerial

Prepared by:

Reviewed and the Number Assigned on: 10-26-17

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

			12		
				⊗	

RECEIVED

OCT 26 2017

WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8317-3</u>	(office use only) Hydrologic Unit <u>07020001</u>
	Basin <u>Minnesota-Whetstone</u>	
	Newspaper <u>Britton Journal</u>	
	<u>Public Opinion, Watertown</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.)

- Name to Appear on Water Permit Alexandria Gravel Products, LLC
Mailing Address PO Box 38 Alexandria MN 56308
(Address) (City) (State) (Zip Code)
Phone 320-762-5620 Mobile 320-760-0982 Email agpllc95@gmail.com
- Amount of water claimed 1.33 *CFS or 600 **GPM and 38 ***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)
- Source of water supply Surface/Spring
- Location of point of diversion S 1/2 Section 12: T127-R53 (SE 1/4 SE 1/4) County Marshall
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No
If "Yes," where will water be used? _____
(example - NW1/4 section 12-T104N-R53W)
- County or counties where water will be used Marshall
- Annual period during which water is to be used April - September
- 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)

Washing aggregate for various construction projects. A 600 gpm pump will be set by one of three ponds measuring 75' x 150' x 8'deep. Ponds will be dug below the water table so they will fill naturally. Water will then be pumped from the first pond and water and sediment will then be recycled to the third pond interconnected with a 12" culvert (see attached map). As the sediment ponds fills they will be cleaned as needed. Ponds are located on landowners property (landowner: Marty Borgen 45033 111th Street, Claire City, SD 57224)

I, [Signature] President, 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.

**SOUTH DAKOTA
WATER PERMIT NO. 8317-3**

Date of first receipt of application October 26, 2017.

The Water Management Board approved Water Permit No. 8317-3 on May 3, 2018 for Alexandria Gravel Products LLC, c/o Scott Wirtjes, PO Box 38, Alexandria MN 56308 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. 8317-3 appropriates 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from ponds dug below the water table located in the SE 1/4 SE 1/4 Section 12-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation for an aggregate washing operation. The project is located approximately 25 miles east of Britton SD.
2. The water appropriated shall be used for the purpose of industrial 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: April 1 – September 30.
4. The date from which applicant may claim right is October 26, 2017.
5. One-fifth of the construction is to be completed on or before November 3, 2020.
6. All construction is to be completed on or before May 3, 2023.
7. Water is to be put to beneficial use on or before May 3, 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 pond dug into the water table will be located near domestic wells and other wells which may obtain water from the same aquifer. The owner of this 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 Permit holder shall report to the Chief Engineer annually the amount of water withdrawn.
3. Water Permit No. 8317-3 authorizes a total annual diversion of 38 acre feet of water.

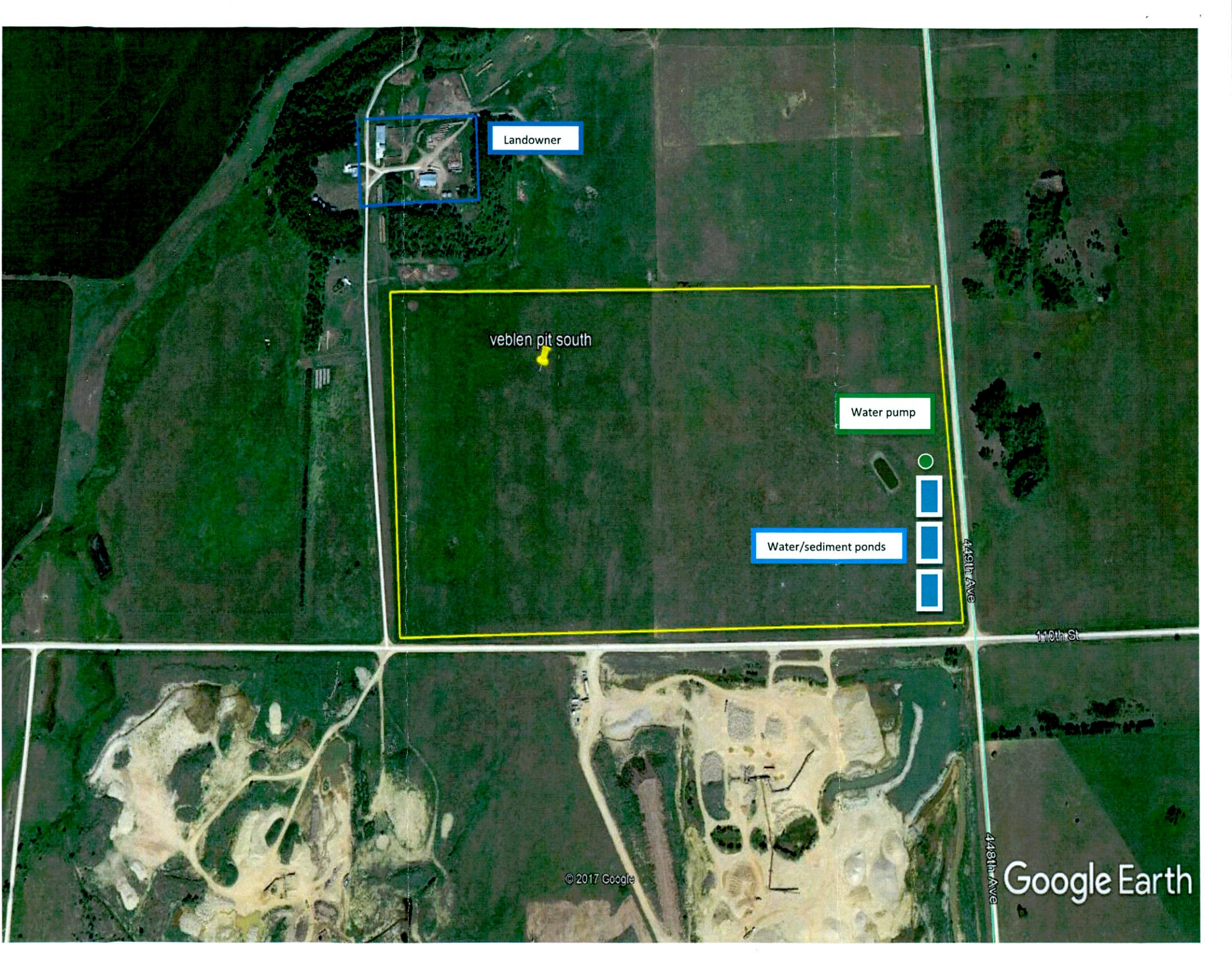
WATER MANAGEMENT BOARD

By: 

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

MAY 10 2018
date





Landowner

veblen pit south

Water pump

Water/sediment ponds

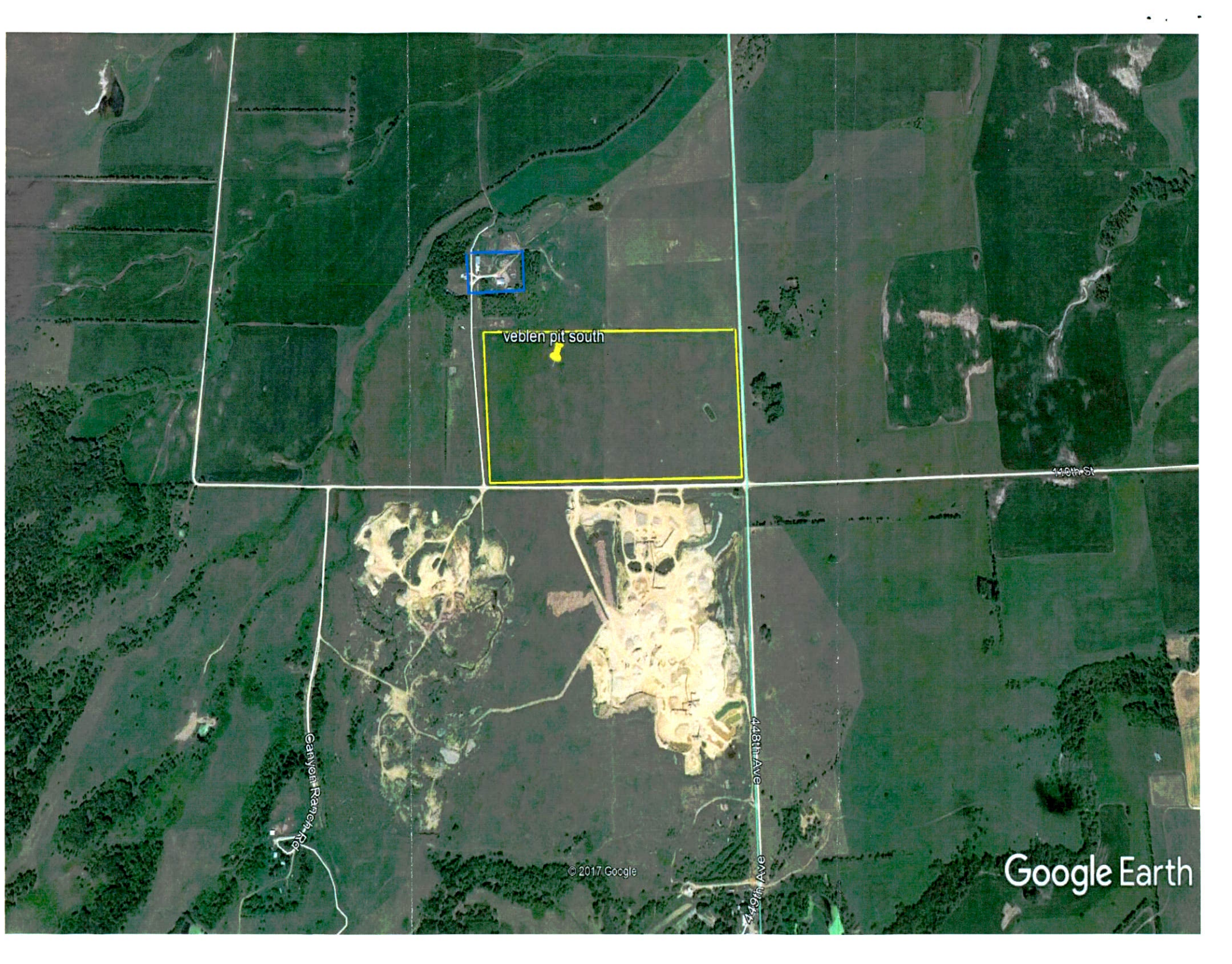
449th Ave

110th St

448th Ave

© 2017 Google

Google Earth



veblen pit south

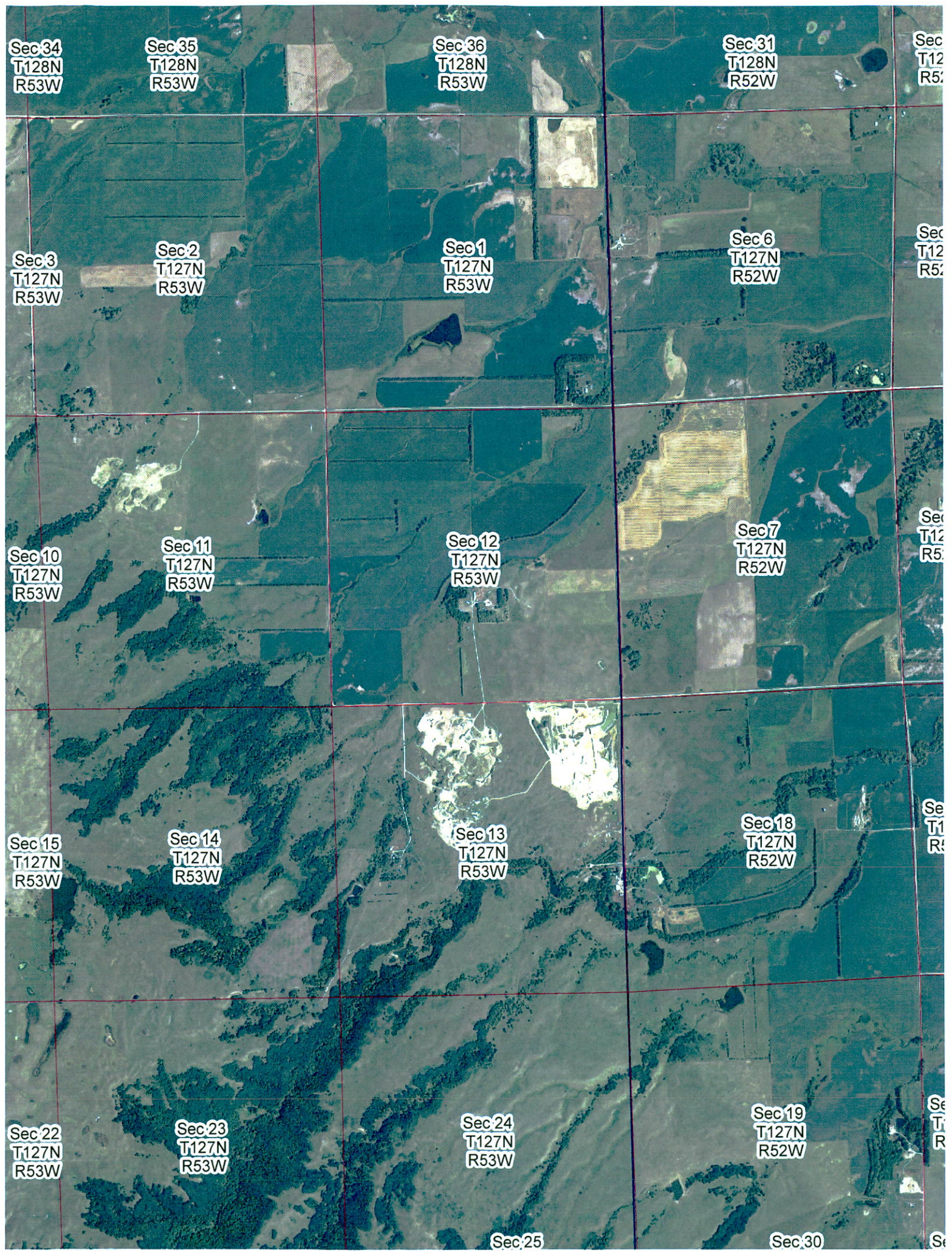
140th St

Canyon Ridge Rd

440th Ave

© 2017 Google

Google Earth



Sec 34
T128N
R53W

Sec 35
T128N
R53W

Sec 36
T128N
R53W

Sec 31
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R52W

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Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Alexandria Gravel Products LLC

ADDRESS: PO Box 38, Alexandria MN 56308 COUNTY: Maarshall County

DATE: October 26, 2017 TELEPHONE: cell 320 762-5620

RE: phone conversation with Scott

COMMENTS:

I contacted Scott with Alexandria Gravel Products regarding the annual volume of water associated with each application filed.

Based on operating 8 hours a day, 5 days a week, April through September at diversion rate of 600 gpm and needing to pump to refill/maintain the pond one out of every three day, he arrived at an annual volume of 38 acre feet of water.

$8 \text{ hours/day} \times 60 \text{ minutes/hour} \times 129 \text{ days} \times 600 \text{ gpm} \times \text{use } 1/3 \text{ of the time} = 38 \text{ ac-ft}$

Scott indicated the pump location from the creek/spring is the green dot on the map.

The use of water will take place generally with 100 feet of the water/sediment ponds.

NAME: Eric Lundberg

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date October 26, 2017

RECEIVED OF Alexandria Gravel Products LLC PO Box 38 Alexandria, MN 56308-6038

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

Fee for Application for Permit No. <u>8317-3</u> to Appropriate Water, to construct and to put water to beneficial use	500	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>8317-3</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	700	00

No. **08368**

By Jeanne Goodman Chief Engineer zm



**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. 8317-3, Alexandria Gravel Products LLC**

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. 8317-3, Alexandria Gravel Products LLC, c/o Scott Wirtjes, PO Box 38, Alexandria MN 56308.

The Chief Engineer is recommending APPROVAL of Application No. 8317-3 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 pond dug into the water table will be located near domestic wells and other wells which may obtain water from the same aquifer. The owner of this 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 Permit holder shall report to the Chief Engineer annually the amount of water withdrawn.
3. Water Permit No. 8317-3 authorizes a total annual diversion of 38 acre feet of water.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
January 4, 2018

NOTE: The ponds completed into the water table are not considered adequate wells and therefore would not be afforded protection under water rights law should fluctuation in the water levels occur.

REPORT ON WATER PERMIT APPLICATION NO. 8317-3

Alexandria Gravel Products LLC, c/o Scott Wirtjes

PO Box 38

Alexandria, MN

December 26, 2017

Water Permit Application No. 8317-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second (cfs) from dugouts located in the SE¼ SE¼ Section 12, T127N-R53W, on non-tribal land, within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. The proposed project is located approximately 25 miles east of the town of Britton in Marshall County, South Dakota.

Review of the Proposed Project

The applicant proposes to place a 600 gpm pump in one of three ponds each measuring 75' x 150' x 8' deep. The ponds will be dug below the water table so they will fill naturally. Water will be pumped from the first pond with water and sediment recycled to the second and third ponds interconnected with a 12" culvert. The annual volume limitation of 38 acre-feet was based on operating 8 hours a day, 5 days a week, April through September at a diversion rate of 600 gpm and needing to refill/maintain the ponds one out of every three days.

Review of the Water Source

The water source is a glacially derived outwash (sand and gravel) which has not been mapped or well understood. A test hole immediately in the vicinity of the proposed project indicates that there is rock and gravel from ground surface to a depth of 7 feet (Water Rights, 2017). The outwash is at the surface and is readily recharged by precipitation.

The Water Rights Program does not monitor any observation wells completed into the glacial outwash in this area. In other parts of the state, water levels in the outwash have been monitored and do respond to climatic conditions, rising during wet years and declining during dry years. During dry periods, the water levels in the area may decline such that water availability from the dugout may be a problem. However, because the outwash is readily recharged by precipitation, the discharge by the proposed project will equal the recharge. That is, water recharged in most years will be water discharged.

Review of Existing Water Rights

There are no other existing water rights/permits appropriating groundwater or nearby domestic wells so interference with other existing water rights will not be an issue. The nearest domestic well on file is located approximately one mile north and thirty feet lower in elevation of the proposed project (Water Rights, 2017). The well completion report indicates a source of water that is different than that of the proposed project.

Therefore, there is reasonable probability that there is unappropriated water available and that this appropriation can be made without adversely impacting existing water rights or domestic use.

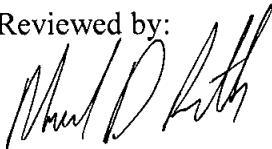
Conclusions

1. Water Permit Application No. 8317-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cfs.
2. Water is available from the water source, although during dry periods, the water levels may decline such that water availability from the dugout may be a problem.
3. There is reasonable probability that there is unappropriated water available for this use and that this appropriation can be made without adversely impacting existing water rights or domestic use.



Aaron R. Tieman
Natural Resources Engineer II
DENR, Water Rights Division

Reviewed by:



Mark D. Rath
Natural Resources Engineer III
DENR, Water Rights Division

References

Water Rights. 2017. Water Well Completion Report Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, SD.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

January 4, 2018

Marty Borgen
45033 111th Street
Claire City SD 57224

Dear Mr. Borgen:

Alexandria Gravel Products filed a water permit application to pump water from ponds dug below the water table for use at an aggregate washing plant. The application states you are the landowner where the ponds will be located in the SE ¼ SE ¼ Section 12-T127N-R53W.

Please find attached the staff report, recommendation and publication notice regarding Water Permit Application No. 8317-3. The notice is to be published in the Britton Journal, Aberdeen American News and Watertown Public Opinion on January 10, 2018.

If you have any questions regarding the application, please feel free to contact me.

Sincerely,

Eric Gronlund

Water Rights Program, DENR

605 773-3352

Eric.gronlund@state.sd.us

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPERS RIGHT AWAY.**

January 4, 2018

Alexandria Gravel Products LLC
c/o Scott Wirtjes
PO Box 38
Alexandria MN 56308

Dear Mr. Wirtjes:

Water Permit Application Nos. 8316-3 and 8317-3 for industrial use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Britton Journal printed at Britton SD (Ph # 605-448-2281), the American News printed at Aberdeen SD (Ph # 605-225-4100) and the Public Opinion printed at Watertown SD (Ph # 605-886-6901). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and reports on the applications 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 recommendations, 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 applications.

NOTICE OF APPLICATION NOS. 8316-3 and 8317-3 to Appropriate Water

Notice is given that Alexandria Gravel Products LLC, c/o Scott Wirtjes, PO Box 38, Alexandria MN 56308 has filed the following applications for a water permit. Application No. 8316-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from an excavation along a spring located in the SW 1/4 NW 1/4 Section 35-T129N-R54W within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. Water is to be diverted to water/sediment ponds located in the S 1/2 NW 1/4 Section 35-T129N-R54W for use. The project is located approximately 20 miles northeast of Britton SD.

Application No. 8317-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from ponds dug below the water table located in the SE 1/4 SE 1/4 Section 12-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. The project is located approximately 25 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 8316-3 and 8317-3 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 recommendations with qualifications, the applications, and staff reports 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 the applications or recommendations 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 January 22, 2018.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, 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 applications is received, the Chief Engineer shall act on the applications pursuant to the recommendations with no hearing held before the Water Management Board. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider the applications. 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 _____.

AFFIDAVIT OF PUBLICATION

RECEIVED

FEB 07 2018

STATE OF SOUTH DAKOTA, County of Marshall.

WATER RIGHTS
PROGRAM

Douglas M. Card of said county, being first duly sworn on oath says that he is publisher of the BRITTON JOURNAL, a weekly newspaper printed and published in the City of Britton, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

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Any person interested in opposing or supporting the applications or recommendations 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

that the DENR - notice of application
MS 8316-3 and 8317-3 to appropriate
water
a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for one successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

January 10, 2018

that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof

Thirty-five and 51/100

DOLLARS

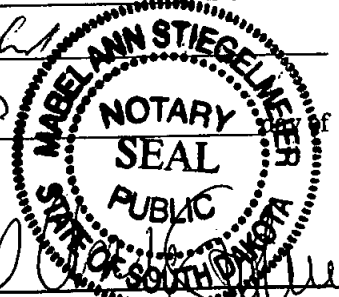
Subscribed and sworn to before me this

January A.D. 2018

M. Stiegelmeier

Notary Public, Marshall County, S.D.

My Commission Expires November 25, 2020



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 January 22, 2018.

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Published once at the total approximate cost of \$35.51

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA}

§

COUNTY OF BROWN}

May Bash being duly sworn, on his/her oath says: That the AMERICAN NEWS is a daily newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, by the Aberdeen News Company, a corporation, and has been such a newspaper during the times hereinafter mentioned; That affiant is an employee and principal clerk of said publisher and has personal knowledge of all facts stated in this affidavit; That the advertisement headed:

Legal # 398 060

a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper, and not in a supplement thereof, once each

Day for 1 successive days

The first publication being made on the 10 day of Jan, 2018

The second publication being made on the day of , 2018

The third publication being made on the day of , 2018

The fourth publication being made on the day of , 2018

The fifth publication being made on the day of , 2018

The sixth publication being made on the day of , 2018

That said newspaper is a legal newspaper published five days or more each week; with a bona fide circulation of more than two hundred copies daily; published in the English language within the said county of Brown for more than one year prior to the first publication of said notice; and printed in whole in an office maintained at the place of publication of said newspaper; That the whole amount of the fee paid for the publication of the annexed notice is \$ 62.11, which insures solely to the benefit of said publisher; That no agreement or understanding for a division thereof had been made with any other person; and That no part thereof has been agreed to be paid to any person whomsoever.

May Bash
Subscribed and sworn to before me this 10 day of Jan, 2018

Daily Circulation 13000

Amick

Notary Public, Brown County,

My commission expires March 20, 2019

(No. 398068)
(January 10, 2018 - 17)

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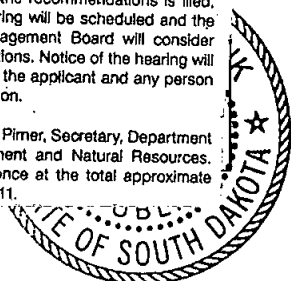
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Steven M. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$62.11.

RECEIVED

JAN 16 2018

WATER RIGHTS
PROGRAM



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JAN 18 2018

WATER RIGHTS
PROGRAM

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Codington) SSI, Jackie Wettstadcertify that the attached printed Notice was taken
from the WatertownPublic Opinionprinted and published in WatertownCounty of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

January 10, 2018Cost of Printing \$67.27Jackie Wettstad
(Signature)Accounting Clerk
(Title)1/16/18
(Date Signed)DEPARTMENT
OF ENVIRON-
MENT AND
NATURAL RE-
SOURCESNOTICE OF APPLICATION
NOS. 8316-3 and 8317-3 to
Appropriate Water

Notice is given that Alexandria Gravel Products LLC, c/o Scott Wirjes, PO Box 38, Alexandria MN 56308 has filed the following applications for a water permit. Application No. 8316-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from an excavation along a spring located in the SW 1/4 NW 1/4 Section 35-T129N-R54W within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. Water is to be diverted to water/sediment ponds located in the S 1/2 NW 1/4 Section 35-T129N-R54W for use. The project is located approximately 20 miles northeast of Britton SD.

Application No. 8317-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from ponds dug below the water table located in the SE 1/4 SE 1/4 Section 12-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. The project is located approximately 25 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 8316-3 and 8317-3 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 recommendations with qualifications, the applications, and staff reports 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 the applications or recommendations 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 January 22, 2018.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, 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 applications is received, the Chief Engineer shall act on the applications pursuant to the recommendations with no hearing held before the Water Management Board. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider the applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at an approximate cost of \$67.27.
(January 10, 2018)

January 22, 2018

RECEIVED
JAN 23 2018
WATER RIGHTS
PROGRAM

WATER RIGHTS PROGRAM
FOSS BUILDING
523 E CAPITAL
PIERRE SD 57501

RE: Application No. 8317-3
Objections and Concerns

Dear Chief Engineer,

We are writing to object to the granting a permit for water rights as requested in Application Number 8317-3.

INTEREST. We are interested in the application for the following reasons:

1. We live approximately one-half mile south of the proposed ponds.
2. We use water for similar aggregate washing purposes about 1/4 mile south of the proposed ponds.
3. We own farmland used for crops and livestock pasture adjacent to and in the general vicinity of the proposed ponds.

OBJECTIONS. We are objecting to the application for the following reasons:

1. Area Farmsteads. We are concerned that the proposed water use will adversely affect area farmsteads not noted or discussed in the Chief Engineer's Recommendation. A map is attached showing the location of nearby residences of Vivian Monson, Keith and Holly Butrum, and Terry and Mary Kay Monson. These residences currently use rural water for household purposes, but Butrums use an existing well for livestock watering. The property was homesteaded in 1892 and there has been a well on the property for as long as anyone can remember. Sometime in the 1950's, some changes were made, but no one can remember if the old well was refurbished or a new well was dug. Butrums typically have approximately 150 head of cattle which would be watered from the well.
2. Area Farmland. We are concerned that the proposed water use will adversely affect water available for crops and grass on area fields and pastures, which was not discussed in the Chief Engineer's Recommendation. Maps are attached showing area land owned by Monson and Butrums to show the close proximity of the proposed ponds to the existing crop and livestock grazing uses. If the water table is lowered, less water will be available for crops.
3. Livestock Water Supply. We are concerned that the proposed water use will adversely affect area livestock watering sources such as dugouts, dams, and ponds, none of which are mentioned in the Chief Engineer's Recommendation. A map is attached showing the location of a dugout used for livestock watering. Other water sources may be affected by a lowering of the water table.
4. Area Commercial Operations. We are concerned that the proposed water use will adversely affect the viability of existing aggregate washing ponds located approximately 0.25 miles south of the proposed ponds, and the existing ponds were not discussed in the Chief Engineer's Recommendation. A map is

attached showing the location of similar aggregate washing ponds located in the NE1/4 13-127N-53W. These ponds are used for a gravel pit located upon the same property. The gravel pit and ponds have been in use continuously since approximately 1992. A reduction in water levels will adversely affect Mrs. Monson's royalties and livelihood. Currently the drought of the last 3 years has resulted in periods where there is not enough water to operate the existing ponds and the aggregate washing operations had to be suspended for weeks at a time. Increasing the number of ponds in the area will adversely impact the existing operations, resulting in more shut-down time and thus reducing sales.

5. Existing Drought Conditions. In the past 3 years, rain and snowfall amounts have been below average, resulting in drought conditions. The local groundwater supply comes from natural springs located west of the proposed ponds. Flow from the springs has decreased dramatically in the last few years, as much as 80%. We are concerned that additional surface use will adversely affect water available for crops, pasture, and livestock.

Respectfully submitted,

Vivian Monson

VIVIAN MONSON
11055 449TH AVE
VEBLEN SD 57270

Dated: 1-22-2018

Keith R Butrum

KEITH R. BUTRUM
11056 449TH AVE
VEBLEN SD 57270

Dated: 1-22-2018

HOUSEHOLD LOCATIONS

Nearby household locations for App. No. 8317-3
Approx. one-half mile south of proposed ponds

- 1--Vivian Monson
- 2--Keith & Holly Butrum
- 3--Terry & Mary Kay Monson

Legend



EXISTING PONDS AND PIT

Monson gravel pit and ponds located directly south
of proposed ponds
NW 1/4 13-127N-53W

Legend

PROPOSED POND LOCATION →

EXISTING GRAVEL PIT →

EXISTING PONDS →

448th Ave

Google Earth

© 2018 Google

1000 ft



LIVESTOCK WATER SOURCES

NW 1/4 18-127N-52W
Livestock Dugout

Legend

EXISTING LIVESTOCK DUGOUT →

Google Earth

© 2018 Google



1000 ft

(Landowners)

T-127-N

(Landowners)



N 10

Island Family Trust

itecloud, Annie 11



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

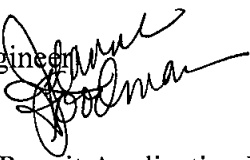
February 7, 2018

NOTICE OF HEARING

TO: Alexandria Gravel Products LLC
Scott Wirtjes
PO Box 38
Alexandria MN 56308

Vivian Monson
1105 449th Avenue
Veblen SD 57270

Keith R Butrum
11056 449th Avenue
Veblen SD 57270

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application No. 8317-3, Alexandria Gravel Products LLC

A petition was filed in the matter of Water Permit Application No. 8317-3 in response to the Notice of Application published in the Britton Journal and Public Opinion. This notice schedules a hearing on Application No. 8317-3 before the South Dakota Water Management Board.

Water Permit Application No. 8317-3 proposes to appropriate 38 acre-feet of water annually at a maximum pump rate of 1.33 cubic feet of water per second from ponds dug below the water table located in the SE 1/4 SE 1/4 Section 12-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation for industrial use in an aggregate washing operation. The project is located approximately 25 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8317-3 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. 8317-3 at 10:30 AM (Central Time) on Thursday, May 3, 2018, 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 May 3, 2018, 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 April 23, 2018. If an automatic

delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing. 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 the petition filed in the matter of Water Permit Application No. 8317-3. 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 February 20, 2018. 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, and 46-5-46; 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

CERTIFICATION

I hereby certify that on February 7, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated February 7, 2018, regarding notice of hearing for Water Right Permit Application No. 8317-3, as addressed below:

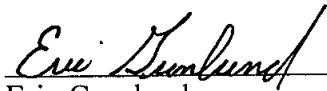
Alexandria Gravel Products LLC
Scott Wirtjes
PO Box 38
Alexandria MN 56308

Vivian Monson
1105 449th Avenue
Veblen SD 57270

Keith R Butrum
11056 449th Avenue
Veblen SD 57270

Sent Inter-office to:

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



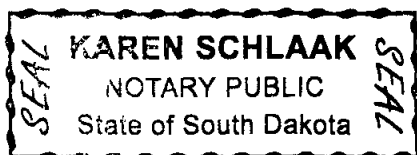
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of February, 2018



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.

WEBSTER OFFICE
PO Box 615 | 21 West 6th Ave.
Webster, SD 57274

SISSETON OFFICE
PO Box 9 | 520 2nd Ave. East
Sisseton, SD 57262



RECEIVED
APR 23 2018
WATER RIGHTS
PROGRAM

Kent Delaney
Gordon P. Nielsen
Thomas L. Sannes
David A. Geyer

DELANEY | NIELSEN | SANNES P.C.

Please reply to Sisseton Office.

RE: Water Permit Application No. 8317-3, Alexandria Gravel Products, LLC

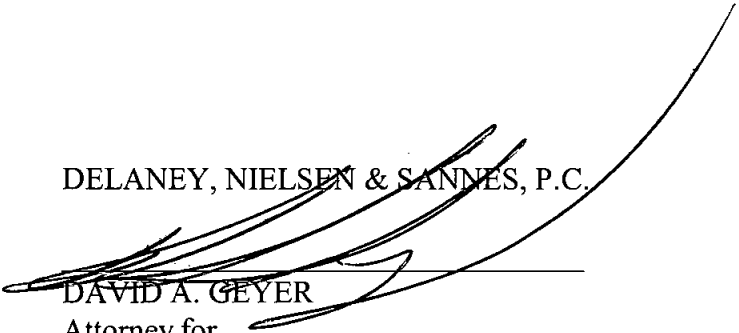
NOTICE OF APPEARANCE

Please take notice that David A. Geyer of the Delaney, Nielsen & Sannes, P.C. law firm of Sisseton, South Dakota enters his appearance in the above referenced matter on behalf of the Alexandria Gravel Products LLC. All documents and other matters requiring notice or service shall be made to Alexandria Gravel Products LLC through their legal counsel at the following address:

Delaney, Nielsen & Sannes, P.C.
P.O. Box 9
Sisseton, Sd 57262

DATED this 20 day of April, 2018.

DELANEY, NIELSEN & SANNES, P.C.



DAVID A. GEYER
Attorney for
Alexandria Gravel Products, LLC
P.O. Box 9
Sisseton, SD 57262
(605) 698-7084

CERTIFICATE OF SERVICE

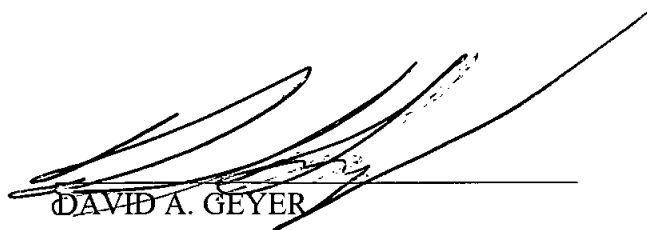
The undersigned, hereby certifies that on the 20 day of April, 2018, a true and correct copy of the Notice of Appearance was served via U.S. Mail, first class mail, postage prepaid, by the undersigned this date as follows, to wit:

Department of Environment and
Natural Resources
Attn: Jeanne Goodman
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

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

Keith R. Butrum
11056 449th Ave.
Veblen, SD 57270

Vivian Monson
11055 449th Ave.
Veblen, SD 57270



DAVID A. GEYER



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

MAY 10 2018

Alexandria Gravel Products LLC
c/o Scott Wirtjes
PO Box 38
Alexandria MN 56308

Dear Mr. Wirtjes:

Enclosed is Water Permit No. 8317-3 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: David A Geyer, Attorney

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 8317-3

I have this day, September 6, 2024, made a thorough examination of the water use system constructed by Alexandria Gravel Products LLC, PO Box 38, Alexandria, MN 56308 of Permit No. 8317-3, bearing the priority of Oct 26, 2017 authorizing the diversion of 1.33 cu. ft. per second of the waters of ponds dug below water table level for industrial purposes, in Marshall County.

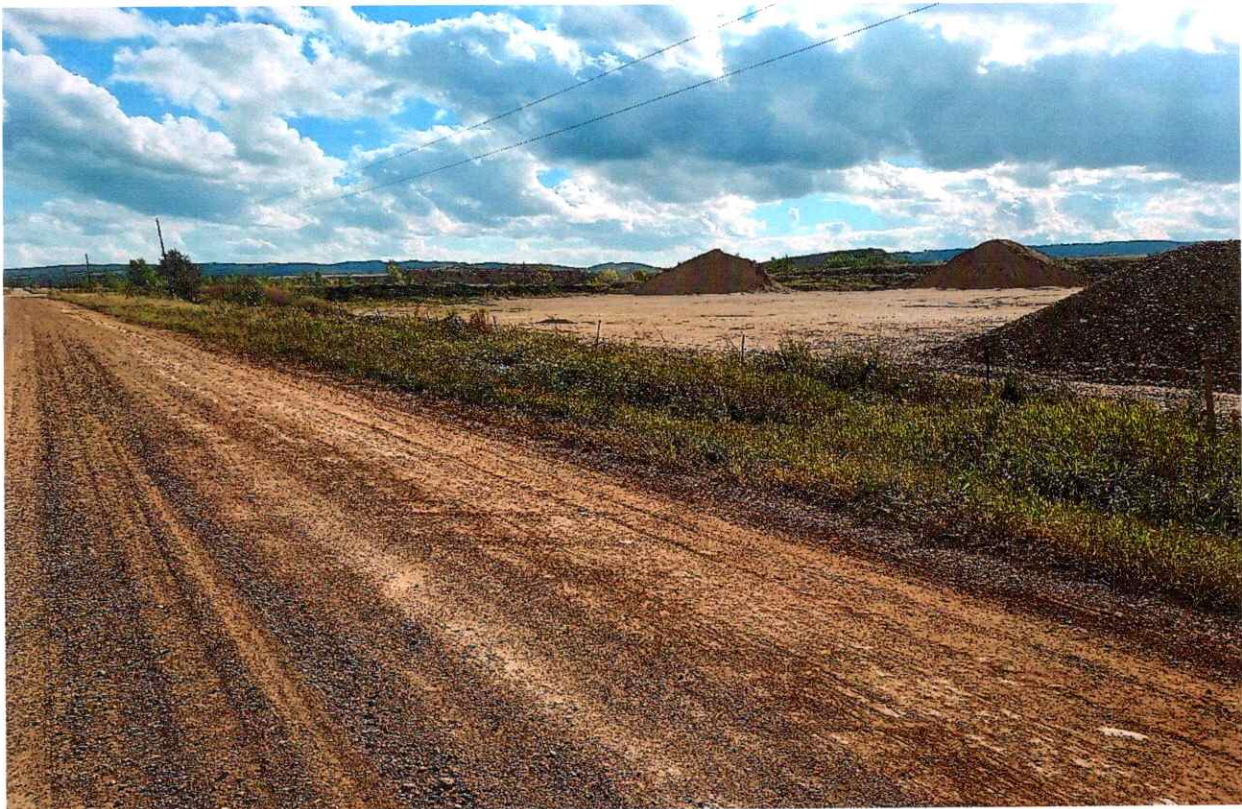
F. Comments or other permit(s) associated with the project:

I called Mr. Scott Wirtjes, President, (320/760-0982) on September 5, 2024, regarding the Permit. He said that they have not done any development on the property in accord to what was proposed in the Application Materials as shown on the accompanying photo of the property.

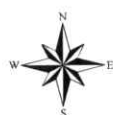


Darrell DeBoer
Water Rights Inspector
DENR, Water Rights Program

Date report completed: September 9, 2024



Looking south to where the proposed water/sediment ponds were to be located on September 6, 2024.



0 425 850 1,700 2,550 3,400 Feet