

WATER PERMIT NO. 8338-3

Name of Applicant: **Unique Railroad Contractors dba Krause Brother's Construction**

Address: **520 1/2 Dakota Ave, Wahpeton ND 58075** Phone: **701 642-4488**

Amount of Water Claimed: **1.72 cfs** Total Acres: **NA**

Source of Water Supply: **groundwater (one well) and 3 ponds**

Water to be used for: **industrial and commercial use** County: **Marshall**

Type of Waste Disposal System:

Location: **24 miles east of Britton**

PRIORITY Date Received: **3-19-18** Application/License Fee: **\$ 950**

Corrected Application Received: Period of Annual Use: **Jan 1 – Dec 31**

Remarks:

Diversion Point: **SE 1/4 NE 1/4 Sec 13-T127N-**
R53W

Site location: **N 1/4, E 1/2 NW 1/4 Sec 13-T127N-**
R53W

				⊗	
			13		

Depth of Well: **800**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **3-19-18**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 8338-3

Date of first receipt of application March 19, 2018.

The Water Management Board approved Water Permit No. 8338-3 on October 4, 2018 for Unique Railroad Contractors dba Krause Brother's Construction, 520 1/2 Dakota Ave, Wahpeton ND 58075 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. 8338-3 appropriates 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 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: January 1 – December 31.
4. The date from which applicant may claim right is March 19, 2018.
5. One-fifth of the construction is to be completed on or before April 4, 2021.
6. All construction is to be completed on or before October 4, 2023.
7. Water is to be put to beneficial use on or before October 4, 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 ponds dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

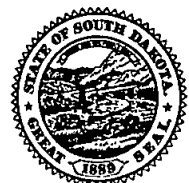
WATER MANAGEMENT BOARD

By: Jeanne Goodman

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

OCT 17 2018

date



RECEIVED

MAR 19 2018

WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>8338-3</u> (office use only) Hydrologic Unit <u>07020001</u>
	Basin <u>Minnesota - Whetstone</u>
	Newspaper <u>Britton Journal</u>
	<u>Public Opinion</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 Unique Railroad Contractors dba Krause Brother's ConstructionMailing Address 520 1/2 Dakota Ave Wahpeton ☒ ND ☒ 58075
(Address) (City) (State) (Zip Code)Phone 701-642-4488 Mobile 0.220fs well Email finance@krausebros.com2. Amount of water claimed 1.7267 *CFS or 775 **GPM and 160 ***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 Surface/Spring and Well & ponds (SE 1/4 NE 1/4)4. Location of point of diversion Section 13: T127-R53 NE1/4 NE QUADRA Pond 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 ☒ NoIf "Yes," where will water be used? Site location: NE 1/4, E 1/2 NW 1/4 Sec 13 - T127N - R53W
(example - NW1/4 section 12-T104N-R53W)5. County or counties where water will be used Marshall County6. Annual period during which water is to be used use is year round with less in winter months.

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)

Application is for Aggregate Wash Plant for construction projects for industrial use. The use of the water is for washing aggregate material as well as dust control on plant and roads around plants.

See attached sheet

I, Ryana Krause 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.

(type or print)

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

- For either Existing or Proposed Wells:

- ## 2. Wastewater Disposal System Information

- ### 3. Dugout Information

- #### 4. Water Storage Dams

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

-
- The diagram shows a trapezoidal channel cross-section. The top width is labeled c , the bottom width is labeled b , and the height is labeled d . The side slopes are indicated by a vertical line segment y and a horizontal line segment x . The bottom slope is labeled e . A horizontal line at the top left is labeled "Water Surface".

Attachment:

Our main collection/storage pond (dugout with freeboard berms to control flooding) with one pump utilizing 6" pipe which pumps as needed up to the wash plant ponds. This is in the NE corner of the mine area. At the wash plant we have 3 recirculating ponds. The first one is where we pump water to when needed from our collection/storage pond. We have two pumps in the first pond utilizing 6" pipe to deliver water to the wash plant. One pumps to the wash plant itself and the other pumps to the scrubbing screws.

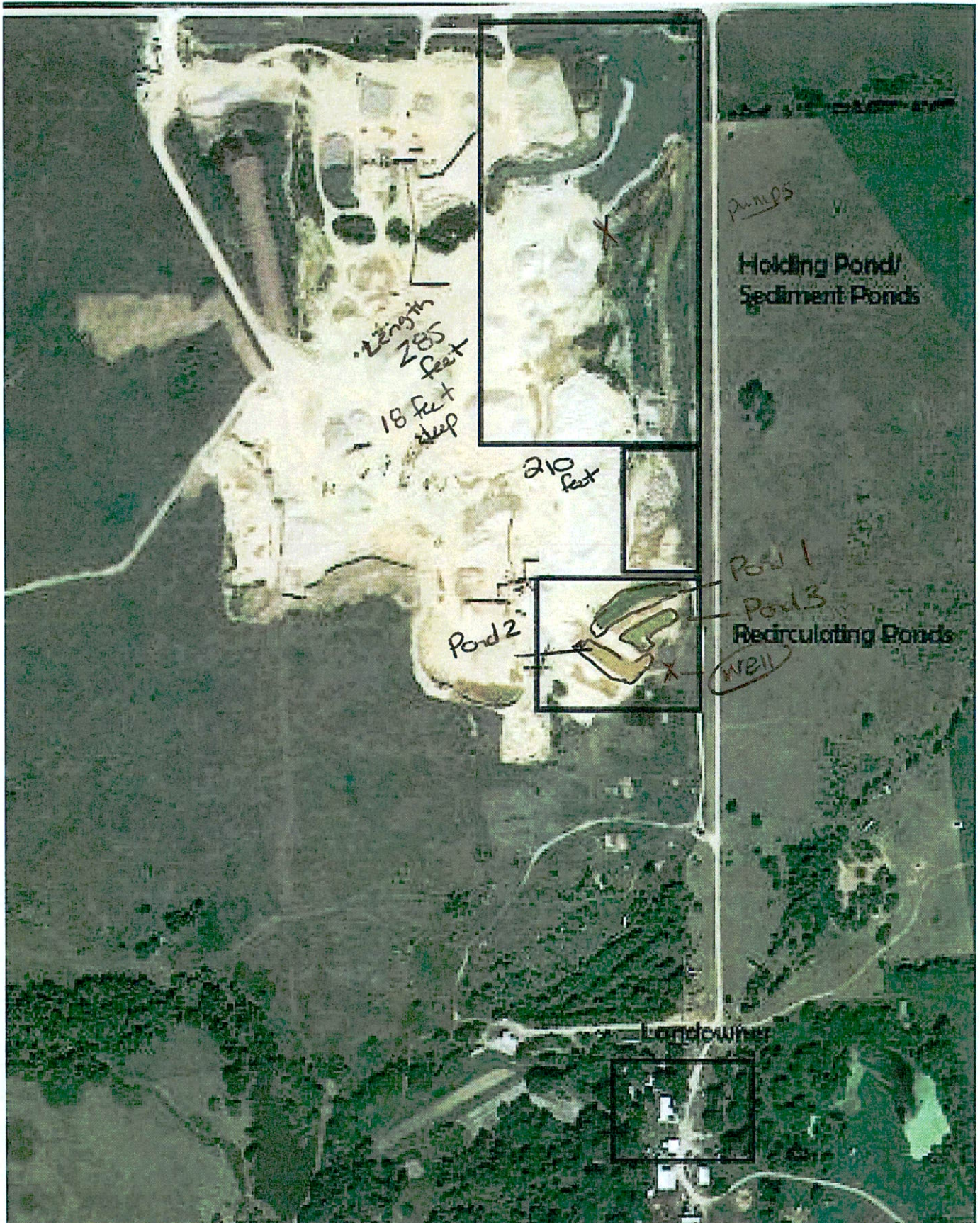
Water leaving the plant runs by gravity into the first settling pond where heavy sediment settles out. This in turn is connected to a second settling pond by a rock weir and in this pond finer sediment settles out. This second pond is connected by an 18-inch culvert back to the pond where we have the two pumps pumping water to the wash plant. These ponds are on the east edge of the mining area approximately 1/4 mile south of the north boundary. As the settling ponds fill the sediment is harvested and placed to dry in an adjacent location. This is done on an as needed basis.

The intent of the well water source is to be used when the land overflow ponds have lost its resources. It is our commitment to recycle and reuse as much of the well-drawn water that we can provide into the ponds that are located on site.

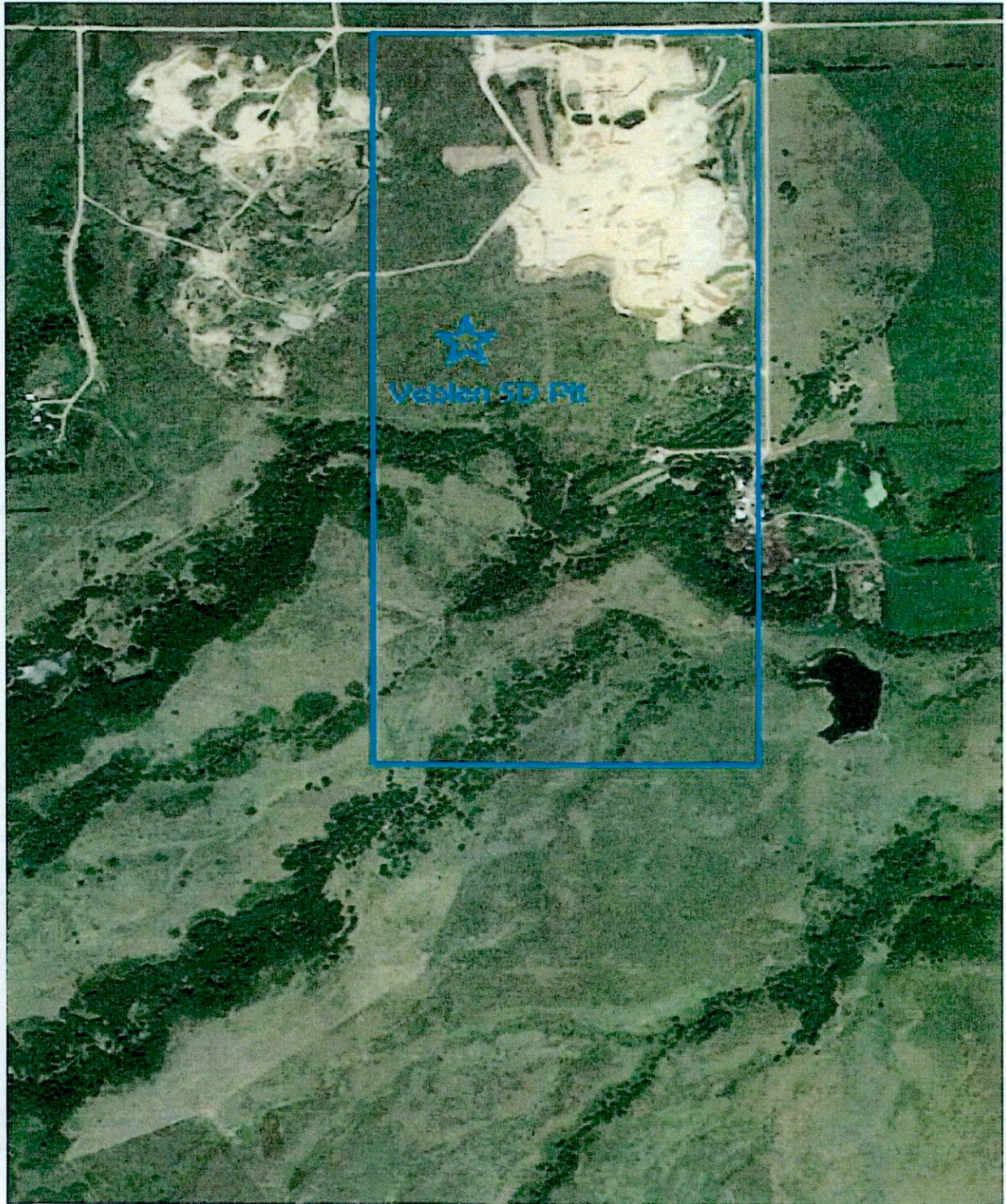
Each pond 12' deep

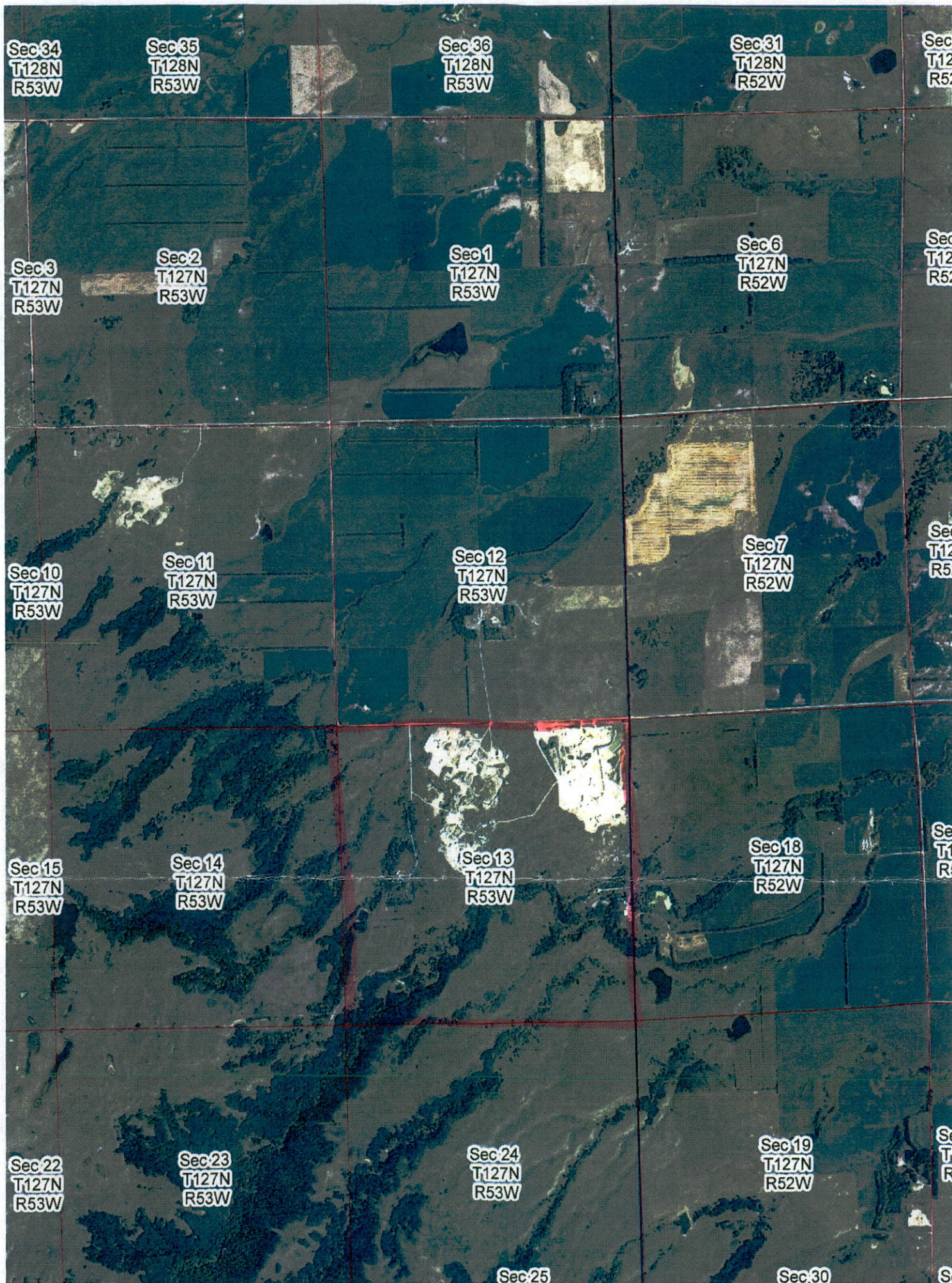
Appendix A

Pond 1 = 95 yards by 12 yards
 Pond 2 = 105 yards by 12 yards
 Pond 3 = 57 yards by 12 yards



Appendix B





RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date March 19, 2018

RECEIVED OF Krause Bros. Construction 520 1/2 Dakota Avenue Wahpeton, ND 58075-4415

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

Fee for Application for Permit No. <u>8338-3</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. <u>8338-3</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	950 00

No. **08628**

By

Jeanne Goodman
Chief Engineer
Jm



530496770

ANNUAL REPORT

South Dakota State Capitol
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

Foreign Business Corporation
SDCL 59-11-24, 24.1

Filing Fee: \$50

2018
FILING YEAR

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Total Fee: \$50

1. Business ID and Name:

FB018782
BUSINESS ID

UNIQUE RAILROAD CONTRACTORS, INC.
BUSINESS NAME

2. The jurisdiction under whose law it is formed **NORTH DAKOTA**

3. The address of the principal executive office (business address):

Actual Street Address

520 1/2 DAKOTA AVE
WAHPETON, ND 58075-4415

Mailing Address

520 1/2 DAKOTA AVE
WAHPETON, ND 58075-4415

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, (b) a commercial registered agent, or (c) an office holder.

(a) The South Dakota Noncommercial Registered Agent's name

Name **TERRY MONSON**

Actual Street Address in this State

11055 449TH AVE
VEBLEN, SD 57270

Mailing Address in this State

5. The names and business addresses of its principal officers.

Title	Name	Address
President	Roger Krause	7753 Marie Street, Wahpeton, ND 58275
Vice President	Kimberly Krause	7753 Marie Street

6. The names and business addresses of its directors (governors).

Name	Address
Nathan L Green	3588 207th Ave, Breckenridge, MN 56520

7. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a civil and/or criminal penalty (SDCL 47-1A-129; 22-39-36).

Gronlund, Eric

From: Nate <nate.green@krausebros.com>
Sent: Thursday, March 15, 2018 10:08 AM
To: Gronlund, Eric
Subject: RE: [EXT] info

Excellent. Do I send a check with and how much do I need to send? Thanks for all your help.

Nate Green

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Thursday, March 15, 2018 9:53 AM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

Submit the application. When I assign to an engineer to review, we aren't bashful and if we have questions, we will call. Eric

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Thursday, March 15, 2018 9:25 AM
To: Gronlund, Eric
Subject: RE: [EXT] info

Does everything look OK to send in?

See below

Thanks.

Nate Green

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Tuesday, March 13, 2018 10:30 AM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

I presume the pump rate of 775 gpm is from the pond to supply the wash plant. **Yes.**

What is the anticipated diversion rate from the well (gpm and annual volume)? (I doubt you anticipate getting a Dakota well capable of producing 775 gpm). **Mr. Manikowski stated that we would probably only get about 100 gpm**

Is it the intent to discharge well water (when needed) into the ponds and operate the wash plant as the system currently exists OR will the well directly supply the wash plant? **We would discharge well water into the pond when needed.**

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Tuesday, March 13, 2018 10:07 AM
To: Gronlund, Eric
Subject: RE: [EXT] info

Can you please review before I send in.

Thanks.

Nate Green

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Friday, March 9, 2018 10:59 AM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

Project description or a separate sheet briefly explaining how water will be used.

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Friday, March 09, 2018 10:44 AM
To: Gronlund, Eric
Subject: RE: [EXT] info

Where would I need to reflect on the application that the well water will be recycled and reused?

Nate

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Friday, March 9, 2018 10:35 AM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

We want an approximate depth listed that reflects the anticipated depth for the Dakota. You will not be held to a specific depth. In other words, if the application states 800 feet but when it comes time to drill you only need to go 650 feet, that's okay as long as the source (Dakota) remains the same.

From when we receive a complete application, DENR has 60 days to review for the purpose of making a recommendation and going to public notice. Public notice is about a three week process. Assuming a favorable recommendation and no one petitions to intervene, I'd anticipate 2 ½ to 3 months. If a petition is filed, then we'd need to schedule for a hearing before the Water Management Board which become a more formal and longer process. Could be 6 – 8 months or longer.

That brings up the point that it was DENR's thought to bring Alexandria Gravel Products and Krause's application before at the same time – their next meeting is May 2 – 3. However, it may not be possible to get Krause's application reviewed in time to bring before the Board in May.

Finally, is it going to be Krause's intent to put water from the Dakota aquifer well into the pond and recycle and reuse. If so, the application should reflect that.

Eric

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Friday, March 09, 2018 10:19 AM
To: Gronlund, Eric
Subject: RE: [EXT] info

One last question.

Can I put Dakota Aquifer on the application instead of how many feet. My issue is what if I put 800 feet and he only has to go 600? Also how long do we have from the time the application has been accepted until we have to dig the well. This may not be something that we can get to right away as we will want need to do some prep work to ensure that the area is ready for drilling. Thanks.

Nate Green

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Thursday, March 8, 2018 4:37 PM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

DENR permits by water source. If Krause Brothers plans to complete a well into the Dakota aquifer the application should reflect that and the application will be processed accordingly.

I think my trepidation when the draft application was filed was as I recall you felt the existing pond in use was completed into the top of an aquifer. The water level in the pond was a reflection of the aquifer's water level and Krause Brothers wanted a well to have the ability to get water when the pond level lowered. Based on this, I mistakenly thought Krause Brother would be looking at a much shallower well completed into the same source as the existing pond. So the 400 foot on the draft application raised a question in my mind.

However, it appears Krause is looking at a deeper source and that is fine and is what the application should reflect if that's your intention.

As I think I've stated in prior emails we permit by source. If you get a water permit for the Dakota aquifer but when the well is actually drilled, the well is completed into a shallower aquifer, then you'll find yourself in a position of having to go through the entire process again to secure a permit from that source.

Eric

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Thursday, March 08, 2018 4:09 PM
To: Gronlund, Eric
Subject: RE: [EXT] info

Hello Eric:

Unless you have a map that shows the depths of the aquifers in our region the well drigger said that he may need to go to the Dakota Aquifer which is anywhere from 800-1000 feet down drawing roughly 100gpm. Are we capable of doing this? It seems when I put 400 feet down it was being questioned.

Thanks.

Nate Green

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Thursday, March 8, 2018 8:47 AM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

What is the status of Krause Brothers filing a water permit application for the operation in Marshall County, SD?

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

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Wednesday, February 28, 2018 10:02 AM
To: Gronlund, Eric
Subject: RE: [EXT] info

Hello Eric:

So if I turn in the water permit application process now and leave it at the 400 feet maximum that Mr. Manikowski has suggested and we find out that we only needed to go 150 feet to reach the aquifer can this be corrected if done before the initial hearing in May? I'd like to proceed and get the application process moving forward. Can I email you the application and also can you let me know what the cost would be so that I can set up payment for this?

Thanks for all you have done to help.

Nate Green

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Thursday, February 15, 2018 1:22 PM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

Nate

Water Rights administers water use by the source. The criteria for granting a water permit includes whether unappropriated water is available and whether existing rights will be unlawfully impaired. In order to review an application the water source needs to be reviewed based on the amount of water to be withdrawn, pump rate, etc. That simply can not be done when water sources are combined on to the same application.

A test hole log is not mandatory for our initial review of an application. If Mr. Maninowski knows the area and is comfortable estimating a projected well depth we can initially proceed with processing the application.

Please understand Krause does not have a legal right to pump water for commercial/industrial use until a water permit is in place.. The application will be reviewed and public noticed. If a petition opposing the application is filed, the application will go for hearing before the Water Management Board. The soonest this could be scheduled is the May 2 – 3 Board meeting. But it could be potentially delayed even more under provision in the law that allow a petitioner to request a one time delay of the initial hearing date.

My understanding is Alexandria Gravel Products has reached out to Krause to see if some mutual understanding can be reached. Currently, their application is not set to be heard until the May meeting also.

Eric

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Thursday, February 15, 2018 10:35 AM

To: Gronlund, Eric
Subject: RE: [EXT] info

Hello Eric:

Sorry it has taken me so long to get to this. I have been bombarded with yearend. The NE pond is 18 feet deep and the 3 ponds to the south of that are 12 feet deep.

Is there a reason why our application cannot use both aquifers to make the process easier? We are planning on coming out to have him drill test holes but Mr. Manikowski who is familiar with the area and is the expert out there on well drilling is out west drilling in the oil lines. Roger Krause (owner) has spoke with Mr. Manikowski and he stated that until he drills the test holes its not likely to determine the depth because he said the water out there is hit or miss. Thus the reason why I put the deepest well he anticipated. I thought this would cover us. My biggest concern is making sure that I get this application in process before Alexandria Sand and Gravel decides they would like to add a well permit to there current one. This would be a major disappointment to me. Not sure how we should proceed since I'm stuck with the expert out in western North Dakota for now. Ideas?

Nate Green

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Monday, February 12, 2018 1:23 PM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

For the ponds, an approximate depth I needed to determine the volume.

In regards to whether you drill a test hole, that is always a good idea. But if there is known geologic information of the area we have the flexibility to process without a test hole log. However, if the information given on proposed well construction does not match up with known information, DENR reserves the right to require a test hole log. So it is your choice. However, consulting with a well driller may be beneficial so you accurately estimate the depth. DENR permits by water source to if we process an application from aquifer "A" based on the information provided but once you drill the well you drill into aquifer "B" you'll have to go through the whole process again for aquifer "B".

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Monday, February 12, 2018 12:39 PM
To: Gronlund, Eric
Subject: RE: [EXT] info

See comments below. Anything else. I have a few questions below as well. Thanks for all your help.

Nate

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Wednesday, January 24, 2018 4:47 PM
To: 'Nate' <nate.green@krausebros.com>
Subject: RE: info

Nate:

[Application](#)

Item No. 3 states surface/spring and well. As far as the surface/spring component wouldn't this be ponds constructed into water table that receives surface run-off and spring flow? **Yes that is correct unless we are using are well to divert to the ponds.**

Item No. 4 – should state the location of the primary water supply (pond in the NE corner) to the quarter-quarter section (NE ¼ NE ¼ Section 13) and the location of the proposed well to the quarter-quarter section. **notated**

Project description:

- I presume based on the description that this is a recycle and reuse system to the extent possible.
- Will the well water (if developed) be diverted to the ponds prior to use? **Yes we would divert them to the ponds and possibly to a holding tank.**
- I understand the pump rate from the pond to the wash plant is 775 gpm and an annual volume of 160 acre-feet. How was this volume arrive at? It is much larger than the estimated annual volume of the neighboring application of Alexandria Gravel Products which is 38 acre feet/annually. **We have two pumps running at one time so I took the pumps and multiplied it by 2.**
- What is the anticipated pump rate and annual volume from the well, if developed? **That is hard to determine until we can find out what kind of water is available for us to pump. In general do we need to have Byron Manikowski (he is a well digger Lidgerwood/Geneseo, ND who has worked in this area) come out and drill a hole before the permit is signed off?**

Form 2A

- The well depth is indicated to be 400 feet deep. How was this estimate of depth determined? At that depth it would be a different water source than the existing ponds. **We spoke to Byron Manikowski and his estimate was 150 – 400 feet. I used the maximum so that we would be within the limits.**
- Under Item No 3 provide the approximate dimension (surface area) and depth of the ponds.

NorthEast pond is 95 yards north to south and 70 yards east to west.

Circulating ponds. Clean to dirty.

- (1) 95 yards x 12 yards.**
- (2) 105 yards x 12 yards.**
- (3) 57 yards x 12 yards.**

Map

- Mark with an "X" location of pump site at main water supply pond **Notated on map**
- Mark with an "X" location of proposed well site if developed. **Notated on map**

We did receive a petition in opposition to the Application No. 8317-3 from two landowners. A hearing will not be scheduled before the Water Management Board. I believe one of the petitioners is the owner of the land where your operation is located. They cite among other things concerns about impacts to their water sources (wells, dugouts) if the Alexandria Gravel Product application is approved. This makes for an interesting situation because if it is determined that water is not available or that the use by Alexandria Gravel Products will impair them, then it would be difficult to approve the surface/spring component of the application you plan to submit.

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

From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Wednesday, January 24, 2018 4:10 PM
To: Gronlund, Eric
Subject: [EXT] info

Hello Eric:

I'm in process of going over the application for water rights to include our well that we would be pursuing.

Can you please review this before I send it in. I'd rather have you review than have you send it back with questions that need to be answered.

Thanks so much for all your help.

NATHAN GREEN

Director of Operations

Krause Brothers Construction

701.642.4488 (w)

701.642.5526 (fax)

www.krausebros.com



Things turn out best for those who make the best of the way things turn out.

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DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

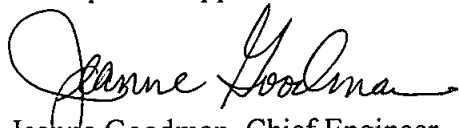
**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 8338-3, Unique Railroad Contractors**

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. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction, c/o Roger Krause, 520 ½ Dakota Avenue, Wahpeton ND 59075.

The Chief Engineer is recommending APPROVAL of Application No. 8338-3 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 ponds dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

See report on application for additional information.


Jeanne Goodman, Chief Engineer
May 15, 2018

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

REPORT ON WATER PERMIT APPLICATION NO. 8338-3

For Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause

May 11, 2018

Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause, has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota aquifer (approximately 800 feet deep) located in the SE¼ NE¼ Section 13, T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well, as needed, to a main collection/storage pond or one of three recirculation/settling ponds located in the E½ NE¼ Section 13, T127N-R53W prior to use in the aggregate wash plant. The ponds will also receive incidental surface water runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre-feet of water.

The gravel operation is located in the NE¼, E½ NW¼ Section 13, T127N-53W, on non-tribal land, within the former boundaries of the Sisseton Wahpeton Indian Reservation approximately 24 miles east of the town of Britton in Marshall County, South Dakota.

Review of the Proposed Project

The applicant proposes to utilize a series of ponds that are dug down below the water table and allowed to fill naturally with groundwater. The ponds also receive incidental surface water runoff and spring flow. The applicant also intends to use a well water source, as needed, to maintain water levels in the ponds during dry periods when water availability could be an issue.

The series of ponds consist of a main collection/storage pond, a recirculating pond, and two settling ponds. The main collection/storage pond is designed to use one pump and a 6 inch pipeline to supply water to the recirculating wash plant pond. Water is pumped from the recirculating pond to the wash plant via two pumps and a 6 inch pipeline. Water leaving the aggregate wash plant is run by gravity into two settling ponds where sediment is removed. The two settling ponds are connected to the recirculating pond by an 18-inch culvert in order to recycle and reuse the water whenever possible.

AQUIFER – PLEISTOCENE SERIES: UNKNOWN (PS: U)

Aquifer Characteristics:

The geologic unit at land surface in this area is undifferentiated glacial outwash. By definition, glacial outwash is sediment deposited by water flowing away from a melting glacier. The primary water source the applicant proposes to use for the ponds is a shallow water table aquifer consisting of sand and gravel that has not been studied or correlated with any previously mapped aquifer. For the purpose of water appropriation, aquifers in Pleistocene aged glacial deposits that have not been identified as part of a major aquifer are classified as Pleistocene Series: Unknown.

The ponds are dug into shallow glacial outwash material composed of sand and gravel. The ponds are allowed to fill naturally with groundwater and also receive incidental surface water



runoff and spring flow. With shallow water table aquifers such as this one, the water table is at or near the land surface, the configuration of the water table commonly is a subdued replica of the land surface. For example, the slope of the water table is generally proportional to the slope of the overlying land surface: the steeper the topography, the steeper the slope of the water table. The steeper the slope of the water table, the faster the groundwater flows. The aquifer is under unconfined conditions in this area, and the water table is expected to be at or near the land surface. Groundwater flow in this area is from southwest to northeast which is also the same general flow direction as surface water in the area.

According to a well drillers report on file with the Water Rights Program, a test hole had been drilled approximately one mile north of this proposed project. The test hole log indicated the presence of rock and gravel from ground surface to a depth of 7 feet (Water Rights, 2018c).

There is reasonable probability that water is available from this Pleistocene Series: Unknown aquifer, however, it would not be considered a reliable source of water. For example, in dry periods the water levels may decline such that water availability from the ponds may be an issue.

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 reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. The Pleistocene Series: Unknown aquifer is not stratigraphically lower than the Greenhorn Formation, and the use is not for a public water supply. Therefore, the recharge/withdrawal issue must be considered.

Recharge versus Discharge:

The Pleistocene Series: Unknown aquifer is at or near the land surface at this location and is readily recharged by precipitation. The extent of the glacial outwash has been mapped and covers approximately 1,924 acres of land surface (Martin and others, 2004), see Figure 1.

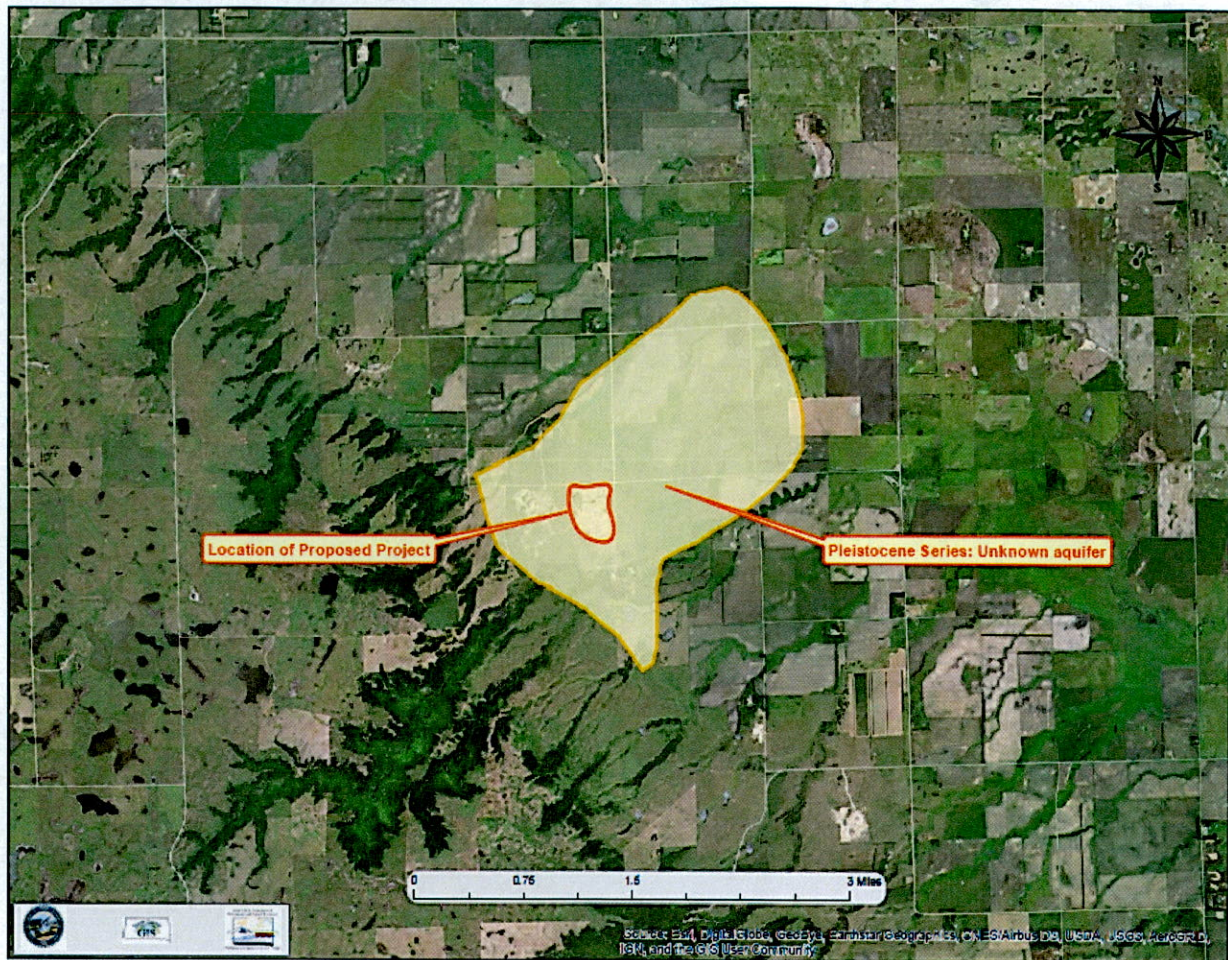


Figure 1: Areal extent of the Pleistocene Series: Unknown aquifer and the location of the project proposed by Water Permit Application No. 8338-3 (Modified from Martin and others, 2004).

Given the limited surficial extent, thickness, and slope of the water bearing material in this aquifer, water recharged will equal water discharged in most years. Recharge estimates for non-buried, unconfined aquifer in eastern South Dakota have average annual recharge rates ranging from 2 to 5.6 inches (Hedges and others, 1985). Using these estimates would result in a range of 320 to 898 acre-feet of recoverable water in storage for the Pleistocene Series: Unknown aquifer in this location.

Currently, there is one Water Permit appropriating 1.33 cfs, or approximately 38 acre-feet per year, from the Pleistocene Series: Unknown aquifer (Water Rights, 2018b). This application, if approved, will appropriate 160 acre-feet per year, resulting in a total annual withdrawal of 198 acre-feet from this Pleistocene Series: Unknown aquifer, which is much less than the estimated range of 320 to 898 acre-feet of recoverable water in storage.

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 estimated average annual withdrawals from the aquifer do not exceed the estimated average annual recharge to the aquifer.

The Water Rights Program does not monitor any observation wells completed into the Pleistocene Series: Unknown aquifer in this area. Although, in other parts of the state, water levels in this aquifer have been monitored and show that the water levels of the aquifer respond to climatic conditions with rising water levels during wet periods and declining water levels during dry periods (Water Rights, 2018a).

Existing Water Rights:

There is one water right/permit on file in this area that appropriates water from this Pleistocene Series: Unknown aquifer located approximately ¼ mile north of this proposed application. Water Permit No. 8317-3 for Alexander Gravel Products LLC appropriates 38 acre-feet annually at a maximum diversion rate of 1.33 cfs. Although unrecorded domestic wells may exist, the Water Rights Program does not have any domestic wells on file that appear to be completed into this Pleistocene Series: Unknown aquifer (Water Rights, 2018b). Additionally, during the review of this application, it was discovered that the gravel pit and ponds have been in use continuously since approximately 1992 with no complaints or adverse interference reported. Therefore, there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic use in the Pleistocene Series: Unknown aquifer.

AQUIFER - DAKOTA (DKOT)

Aquifer Characteristics:

The Dakota aquifer is a bedrock aquifer consisting of sand, sandstone, and shale that is under confined conditions at this site. The aquifer underlies 889 square miles and contains an estimated 9.39 million acre-feet of recoverable water in storage in Marshall County (Hedges and others, 1982). The aquifer extends north into North Dakota, into Roberts County to the east, into Brown County to the west, and into Day County to the south. Schoon (1971) describes the Dakota Formation as the first relatively continuous sandstone below the Greenhorn Limestone and extends downward to the top of the Skull Creek Shale in western and central South Dakota. Where the Skull Creek is absent, the Dakota overlies Precambrian rocks and, to a minor extent, rocks of the Inyan Kara Group or older sandstone (Schoon, 1971). Over large areas of the eastern part of the state, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

No well logs or test hole information was filed with the application for the proposed Dakota well. However, there is ample information available for the area and from the county study to evaluate 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 reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this particular instance, the Dakota aquifer is stratigraphically lower than the Greenhorn Formation, but a public water supply is not involved. Therefore, the recharge/withdrawal issue must be considered.

Recharge versus Discharge:

Data is not available to compare an average annual recharge estimate with the average annual withdrawal estimate for the Dakota aquifer. In past Board action, the Water Management Board after deliberation and approval of Water Permit Application No. 5136-3, adopted Findings of Fact and Conclusion of Law that affirm that the quantity of the estimated average annual recharge to the Dakota aquifer is not likely to be quantified in the near future (Water Rights, 1987). Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. Water levels for the Dakota aquifer have declined about 260 feet in the Britton area (Koch, 1975), however, the decline has slowed significantly since the mid-1970s (Winter, 1994). This change can be attributed to decreased withdrawals in the area. Also, as the head declined some wells ceased to free flow at land surface and therefore less water was allowed to simply flow to waste.

Observation Well Data:

Analysis of observation well data provides a qualitative means of assessing the aquifer and provides the best information reasonably available to evaluate the Dakota aquifer. 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 Water Rights Program does not monitor any observation wells completed into the Dakota aquifer in this immediate area (Water Rights, 2018a). The closest observation well completed into the Dakota aquifer is located approximately 77 miles southwest of this proposed application.

Existing Water Rights:

The closest well completed into the Dakota aquifer that is authorized by a water right/permit (Water Right No. 4919-3, Town of Langford), is located approximately 32 miles west of this proposed well site (Water Rights, 2018b). In addition to the appropriative rights, there are a number of domestic wells on file with the Water Rights Program in this area that appear to be completed into the Dakota aquifer. The closest domestic well on file appropriating water from the Dakota aquifer is located approximately 3½ miles southeast of this proposed application (Water Rights, 2018c). The Dakota aquifer is confined and under artesian conditions in this area and drawdown resulting from the withdrawal proposed by this application may extend some distance from a production well. However, the distance between the well proposed by this application and the wells on file (domestic and appropriative) is sufficient that well interference is not expected to be adverse at the diversion rate of 0.22 cfs proposed by this application.

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

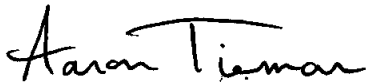
If the water levels in the Dakota aquifer were to decline, owners of existing wells bear the responsibility of lowering the pump inlet in the well to the top of the aquifer, if necessary. Increased lift would decrease the pump discharge or require a larger pump or a different type of a pump to maintain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

An increase in operating expenses that may result from interference between wells is not necessarily an adverse impact. The Water Management Board considered this situation in the matter of Water Permit Application 2313-2, Coca-Cola Bottling Company of the Black Hills (Water Rights, 1995). The Board adopted findings of fact and conclusions of law that basically state that if the increased cost or decreased production is considered an adverse impact, it could be in conflict with SDCL 46-1-4, which requires South Dakota's water resources to be put to beneficial use to the fullest extent of which they are capable.

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

Conclusions:

1. Water Permit Application No. 8338-3 proposes to withdraw groundwater at a maximum diversion rate of 1.73 cfs from four ponds penetrating a Pleistocene Series: Unknown aquifer for industrial use in an aggregate wash plant.
2. There is a reasonable probability that unappropriated water is available from this Pleistocene Series: Unknown aquifer to supply the proposed appropriation.
3. Water Permit Application No. 8338-3 also proposes to appropriate 0.22 cfs from a one well to be completed into the Dakota aquifer (approximately 800 feet deep). The well water will be used as needed to maintain water levels in the ponds during dry periods when water availability could be an issue.
4. There is a reasonable probability that unappropriated water is available from the Dakota aquifer to supply the proposed appropriation.
5. There is a reasonable probability that any possible interference due to the proposed appropriation will not adversely or unlawfully impair existing users, appropriative or domestic.



Aaron Tieman

SD DENR-Water Rights Program



References:

- Hedges, L.S., Burch, S. L., Iles, D. L., Barari, R. A., and Schoon, R. A., 1982, Evaluation of Ground-Water Resources Eastern South Dakota and Upper Big Sioux River, South Dakota, and Iowa. Task 1: Bedrock Topography and Distribution, Task 2: Extent of Aquifers, Task 3: Ground-Water Storage, Task 4: Computerized Data Base, Final Report, U.S. Army Corps of Engineers Contract DACW 45-80-C-0185.
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- Martin, J.E., Sawyer, J.F., Fahrenbach, M.D., Tomhave, D.W., Schultz, L.D., 2004, Geologic map of South Dakota: S.D. Geological Survey General Map 10, Scale 1:500,000.
- Schoon, R.A., 1971, Geology and Hydrology of the Dakota Formation in South Dakota, South Dakota Geological Survey, Report of Investigations No. 104, 61 p.
- Water Rights, 2018a, Observation Well Data, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 2018b, Water Right/Permit Files, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 2018c, Water Well Completion Report Files, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD, 57501.
- Water Rights, 1987, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 5136-3, Farmland Industries, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.
- Water Rights, 1995, Findings of Fact, Conclusions of Law and Final Decision in the Matter of Water Permit Application No. 2313-2, Coca-Cola Bottling Company of the Black Hills, SD DENR-Water Rights Program, Joe Foss Building, Pierre, SD 57501.
- Winter, D.R., 1994, Water Levels through 1989 in Bedrock Aquifers in South Dakota, U.S. Geological Survey Open-File Report 94-320, 279 p.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Codington) SS

I, Jackie Wettestad

certify that the attached printed Notice was taken

from the Watertown

Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

May 30, 2018

Cost of Printing \$67.27

Jackie Wettestad
(Signature)

Accounting Clerk
(Title)

6/1/18
(Date Signed)

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF APPLICATION NO. 8338-3 to Appropriate Water
Notice is given that Unique Railroad Contractors dba Krause Brothers Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD. Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018. 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. Pimer
Secretary
Department of Environment and Natural Resources
Published once at the total approximate cost of \$62.27.
67.27 (May 30, 2018)

RECEIVED

JUN - 4 2018

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

RECEIVED

STATE OF SOUTH DAKOTA, County of Marshall.

JUN 14 2018

WATER RIGHTS PROGRAM

Douglas M. Card of said county, being first duly sworn on oath says that he is the 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;

105
1T(May 30)
NOTICE OF APPLICATION
NO.8338-3 to Appropriate
Water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

that the Notice of application W. 8338-3
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:

May 30, 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 - four and 85/100

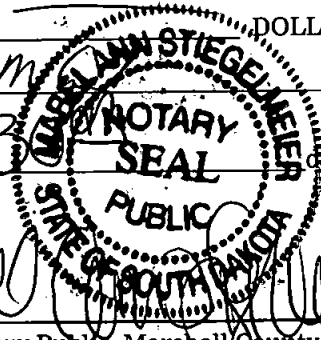
DOLLARS

Subscribed and sworn to before me this

May

A.D.

2018



Notary Public, Marshall County, S.D.

My Commission Expires November 25, 2020

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018.

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 \$34.85.

AFFIDAVIT OF PUBLICATION

RECEIVED

JUN 14 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 LANGFORD BUGLE, a weekly newspaper printed and published in the City of Langford, 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;

1T(May 30)

NOTICE OF APPLICATION

NO.8338-3 to Appropriate Water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene: Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018.

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.

that the Notice of application NO. 8338-3
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:

May 30, 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-four and 85/100

DOLLARS

Subscribed and sworn to before me this

May A.D. 2018



My Commission Expires November 25, 2023

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 \$34.85.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

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

May 21, 2018

Unique Railroad Contractors
dba Krause Brother's Construction
c/o Roger Krause
520 1/2 Dakota Ave
Wahpeton ND 58075

Dear Mr. Krause:

Water Permit Application No. 8338-3 for commercial and industrial use has 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) and the Public Opinion printed at Watertown SD (Ph # 605-886-6901). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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

NOTICE OF APPLICATION NO. 8338-3 to Appropriate Water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018.

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 _____.

Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, May 21, 2018 8:44 AM
To: legals@thepublicopinion.com
Subject: 8338-3, Krause Brothers Construction
Attachments: 8338-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on May 30, 2018.

Unique Railroad Contractors, dba Kruase Brother's Construction, c/o Roger Krause, 520 ½ Dakota Ave, Wahpeton ND 58075 (701 642-4488) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

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

Karen Schlaak

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



Schlaak, Karen

From: Schlaak, Karen
Sent: Monday, May 21, 2018 8:43 AM
To: journal@brittonsd.com
Subject: 8338-3, Krause Brothers Construction
Attachments: 8338-3public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on May 30, 2018.

Unique Railroad Contractors, dba Kruase Brother's Construction, c/o Roger Krause, 520 ½ Dakota Ave, Wahpeton ND 58075 (701 642-4488) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

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

Karen Schlaak

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



RECEIVED

JUN 11 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.

WEBSTER OFFICE

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

SISSETON OFFICE

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

June 11, 2018

(Hand Delivered)

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

Dear Mrs. Goodman:

Please be advised that this firm represents Petitioners Alexandria Gravel Products LLC, and Martin and Lori Borgen regarding their objections to the application for Water Permit No. 8338-3. Martin and Lori Borgen own and rent pasture and farmland immediately adjacent to and downhill from the site of the proposed well and ponds. The legal description of the land owned by Petitioners Martin and Lori Borgen is as follows:

W1/2SE1/4, SE1/4NW1/4, and E1/2SW1/4 and NW1/4SW1/4, all in Section 12, Township 127 North of Range 53 West of the 5th P.M., Marshall County, South Dakota

Alexandria Gravel Products, LLC acquired Water Permit No. 8317-3 which authorizes the use of water for industrial purposes immediately adjacent to and down hill from the proposed well and ponds. Alexandria Gravel Products, LLC's Water Permit No. 8317-3 authorizes the use of the water on Martin and Lori Borgen's property. For the above stated reasons, Petitioners have an interest in the application for Water Permit No. 83383 and are proper parties.

Petitioners object to the issuance of Water Permit No. 8338-3 on the following grounds:

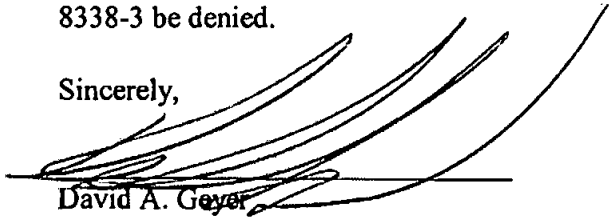
1. **Domestic Use.** A residence is locate on Martin and Lori Borgen's property down hill from the proposed well and ponds. This residence gets its water from a natural spring. Martin and Lori Borgen object to the digging of the well and constructing of ponds uphill

from the sight based upon concerns that it will affect the water used for this home.

2. **Livestock Water Supply.** Martin and Lori Borgen have livestock on their property down hill from the proposed well and ponds. The cattle are watered from a spring and run-off into stock dams. Martin and Lori Borgen object to the digging of the well and constructing ponds uphill from the sight based upon concerns that it will affect the water used to water their livestock. Specifically, Applicant constructed a dam on the proposed sight several years ago and it has adversely affected the water already available to one of their dug-outs. This has required Martin and Lori Borgen to find alternative water sources for their livestock at that location. Martin and Lori Borgen want this dam removed and the pond filled in. To the best of Martin and Lori Borgen's understanding, no permit was approved for this use and therefore it is an unlawful restriction on the flow of the water.
3. **Water Quality.** The proposed well is going to be 800 feet into the Dakota Aquifer. Petitioners are concerned that the water will be high in salt and other minerals that will contaminate the local water supply.
4. **Existing Water Rights.** The sight of the proposed well and ponds is located up-hill from where Alexandria Gravel Products, LLC is constructing three ponds for an aggregate wash plant pursuant to their Water Permit No. 8317-3. Martin and Lori Borgen will receive royalties from the aggregate sold from the wash plant since it is located on their property. Petitioners are concerned that the construction of the ponds, as well the existence of the unlawful water diversions already done, will adversely affect the water rights already held by Alexandria Gravel Products, LLC and limit their availability to sufficient water. This would result in lost revenue for Alexandria Gravel Products, LLC and lost royalties for Martin and Lori Borgen.

For the above stated reasons, Petitioners are requesting the application for Water Permit No. 8338-3 be denied.

Sincerely,



David A. Geyer

CC: Clients
Applicant



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

June 14, 2018

NOTICE OF HEARING

TO: Roger Krause, President
Unique Railroad Contractors
dba – Krause Brother's Construction
520 ½ Dakota Avenue
Wahpeton ND 58075

David A Geyer
Delaney Nielsen Sannes PC
PO Box 9
Sisseton SD 57262

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction

A petition was filed in the matter of Water Permit Application No. 8338-3 in response to the Notice of Application published in the Britton Journal and Public Opinion. This notice schedules a hearing on Application No. 8338-3 before the South Dakota Water Management Board.

Water Permit Application No. 8338-3 proposes to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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. 8338-3 at 2:30 PM on Thursday, July 12, 2018, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior agenda items. Parties will be provided written notice if there is a significant change to the hearing time.

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 July 12, 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 July 2, 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 is required 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 petitions filed in the matter of Water Permit Application No. 8338-3. 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 June 25, 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, 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

CERTIFICATION

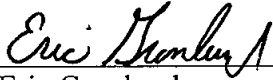
I hereby certify that on June 14, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated June 14, 2018, regarding notice of hearing for Water Right Permit Application No. 8338-3, as addressed below:

Roger Krause, President
Unique Railroad Contractors
dba – Krause Brother's Construction
520 ½ Dakota Avenue
Wahpeton ND 58075

David A Geyer
Delaney Nielsen Sannes PC
PO Box 9
Sisseton SD 57262

Sent Inter-office to:

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



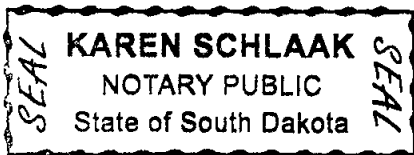
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 14th day of June, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



REPORT ON WATER PERMIT APPLICATION NO. 8338-3

For Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause
May 11, 2018

Unique Railroad Contractors dba Krause Brother's Construction, % Roger Krause, has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota aquifer (approximately 800 feet deep) located in the SE¼ NE¼ Section 13, T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well, as needed, to a main collection/storage pond or one of three recirculation/settling ponds located in the E½ NE¼ Section 13, T127N-R53W prior to use in the aggregate wash plant. The ponds will also receive incidental surface water runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre-feet of water.

The gravel operation is located in the NE¼, E½ NW¼ Section 13, T127N-53W, on non-tribal land, within the former boundaries of the Sisseton Wahpeton Indian Reservation approximately 24 miles east of the town of Britton in Marshall County, South Dakota.

Review of the Proposed Project

The applicant proposes to utilize a series of ponds that are dug down below the water table and allowed to fill naturally with groundwater. The ponds also receive incidental surface water runoff and spring flow. The applicant also intends to use a well water source, as needed, to maintain water levels in the ponds during dry periods when water availability could be an issue.

The series of ponds consist of a main collection/storage pond, a recirculating pond, and two settling ponds. The main collection/storage pond is designed to use one pump and a 6 inch pipeline to supply water to the recirculating wash plant pond. Water is pumped from the recirculating pond to the wash plant via two pumps and a 6 inch pipeline. Water leaving the aggregate wash plant is run by gravity into two settling ponds where sediment is removed. The two settling ponds are connected to the recirculating pond by an 18-inch culvert in order to recycle and reuse the water whenever possible.

AQUIFER – PLEISTOCENE SERIES: UNKNOWN (PS: U)

Aquifer Characteristics:

The geologic unit at land surface in this area is undifferentiated glacial outwash. By definition, glacial outwash is sediment deposited by water flowing away from a melting glacier. The primary water source the applicant proposes to use for the ponds is a shallow water table aquifer consisting of sand and gravel that has not been studied or correlated with any previously mapped aquifer. For the purpose of water appropriation, aquifers in Pleistocene aged glacial deposits that have not been identified as part of a major aquifer are classified as Pleistocene Series: Unknown.

The ponds are dug into shallow glacial outwash material composed of sand and gravel. The ponds are allowed to fill naturally with groundwater and also receive incidental surface water



runoff and spring flow. With shallow water table aquifers such as this one, the water table is at or near the land surface, the configuration of the water table commonly is a subdued replica of the land surface. For example, the slope of the water table is generally proportional to the slope of the overlying land surface: the steeper the topography, the steeper the slope of the water table. The steeper the slope of the water table, the faster the groundwater flows. The aquifer is under unconfined conditions in this area, and the water table is expected to be at or near the land surface. Groundwater flow in this area is from southwest to northeast which is also the same general flow direction as surface water in the area.

According to a well drillers report on file with the Water Rights Program, a test hole had been drilled approximately one mile north of this proposed project. The test hole log indicated the presence of rock and gravel from ground surface to a depth of 7 feet (Water Rights, 2018c).

There is reasonable probability that water is available from this Pleistocene Series: Unknown aquifer, however, it would not be considered a reliable source of water. For example, in dry periods the water levels may decline such that water availability from the ponds may be an issue.

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 reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. The Pleistocene Series: Unknown aquifer is not stratigraphically lower than the Greenhorn Formation, and the use is not for a public water supply. Therefore, the recharge/withdrawal issue must be considered.

Recharge versus Discharge:

The Pleistocene Series: Unknown aquifer is at or near the land surface at this location and is readily recharged by precipitation. The extent of the glacial outwash has been mapped and covers approximately 1,924 acres of land surface (Martin and others, 2004), see Figure 1.



Figure 1: Areal extent of the Pleistocene Series: Unknown aquifer and the location of the project proposed by Water Permit Application No. 8338-3 (Modified from Martin and others, 2004).

Given the limited surficial extent, thickness, and slope of the water bearing material in this aquifer, water recharged will equal water discharged in most years. Recharge estimates for non-buried, unconfined aquifer in eastern South Dakota have average annual recharge rates ranging from 2 to 5.6 inches (Hedges and others, 1985). Using these estimates would result in a range of 320 to 898 acre-feet of recoverable water in storage for the Pleistocene Series: Unknown aquifer in this location.

Currently, there is one Water Permit appropriating 1.33 cfs, or approximately 38 acre-feet per year, from the Pleistocene Series: Unknown aquifer (Water Rights, 2018b). This application, if approved, will appropriate 160 acre-feet per year, resulting in a total annual withdrawal of 198 acre-feet from this Pleistocene Series: Unknown aquifer, which is much less than the estimated range of 320 to 898 acre-feet of recoverable water in storage.

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 estimated average annual withdrawals from the aquifer do not exceed the estimated average annual recharge to the aquifer.

The Water Rights Program does not monitor any observation wells completed into the Pleistocene Series: Unknown aquifer in this area. Although, in other parts of the state, water levels in this aquifer have been monitored and show that the water levels of the aquifer respond to climatic conditions with rising water levels during wet periods and declining water levels during dry periods (Water Rights, 2018a).

Existing Water Rights:

There is one water right/permit on file in this area that appropriates water from this Pleistocene Series: Unknown aquifer located approximately ¼ mile north of this proposed application. Water Permit No. 8317-3 for Alexander Gravel Products LLC appropriates 38 acre-feet annually at a maximum diversion rate of 1.33 cfs. Although unrecorded domestic wells may exist, the Water Rights Program does not have any domestic wells on file that appear to be completed into this Pleistocene Series: Unknown aquifer (Water Rights, 2018b). Additionally, during the review of this application, it was discovered that the gravel pit and ponds have been in use continuously since approximately 1992 with no complaints or adverse interference reported. Therefore, there is a reasonable probability that this appropriation can be made without adversely impacting existing water rights or domestic use in the Pleistocene Series: Unknown aquifer.

AQUIFER - DAKOTA (DKOT)

Aquifer Characteristics:

The Dakota aquifer is a bedrock aquifer consisting of sand, sandstone, and shale that is under confined conditions at this site. The aquifer underlies 889 square miles and contains an estimated 9.39 million acre-feet of recoverable water in storage in Marshall County (Hedges and others, 1982). The aquifer extends north into North Dakota, into Roberts County to the east, into Brown County to the west, and into Day County to the south. Schoon (1971) describes the Dakota Formation as the first relatively continuous sandstone below the Greenhorn Limestone and extends downward to the top of the Skull Creek Shale in western and central South Dakota. Where the Skull Creek is absent, the Dakota overlies Precambrian rocks and, to a minor extent, rocks of the Inyan Kara Group or older sandstone (Schoon, 1971). Over large areas of the eastern part of the state, the Dakota Formation can be subdivided into three units: an upper unit consisting of light-brown to reddish-brown, fine-to medium-grained, friable, sandstone that is interbedded with gray to dark-gray shale and thin, discontinuous beds of lignite; a middle unit consisting of a gray silty clay; and a lower unit consisting of medium-to coarse-grained quartz sandstone (Schoon, 1971).

No well logs or test hole information was filed with the application for the proposed Dakota well. However, there is ample information available for the area and from the county study to evaluate 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 reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

Water Availability:

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older or lower than the Greenhorn Formation and a public water supply has applied for a permit, the Board need not consider the recharge/withdrawal issue. In this particular instance, the Dakota aquifer is stratigraphically lower than the Greenhorn Formation, but a public water supply is not involved. Therefore, the recharge/withdrawal issue must be considered.

Recharge versus Discharge:

Data is not available to compare an average annual recharge estimate with the average annual withdrawal estimate for the Dakota aquifer. In past Board action, the Water Management Board after deliberation and approval of Water Permit Application No. 5136-3, adopted Findings of Fact and Conclusion of Law that affirm that the quantity of the estimated average annual recharge to the Dakota aquifer is not likely to be quantified in the near future (Water Rights, 1987). Since the early 1900's there has been concern in regard to the declining artesian head of the Dakota aquifer. The Board concluded that whether withdrawals exceed the average annual recharge cannot be determined based solely upon a decline in head pressure and in theory the Dakota aquifer head pressure is stabilizing relative to withdrawals and discharges. Water levels for the Dakota aquifer have declined about 260 feet in the Britton area (Koch, 1975), however, the decline has slowed significantly since the mid-1970s (Winter, 1994). This change can be attributed to decreased withdrawals in the area. Also, as the head declined some wells ceased to free flow at land surface and therefore less water was allowed to simply flow to waste.

Observation Well Data:

Analysis of observation well data provides a qualitative means of assessing the aquifer and provides the best information reasonably available to evaluate the Dakota aquifer. 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 Water Rights Program does not monitor any observation wells completed into the Dakota aquifer in this immediate area (Water Rights, 2018a). The closest observation well completed into the Dakota aquifer is located approximately 77 miles southwest of this proposed application.



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. 8338-3, Unique Railroad Contractors**

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. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction, c/o Roger Krause, 520 ½ Dakota Avenue, Wahpeton ND 59075.

The Chief Engineer is recommending APPROVAL of Application No. 8338-3 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 ponds dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
May 15, 2018

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

RECEIVED

JUN 11 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.

WEBSTER OFFICE

PO Box 615 | 21 West 6th Ave.

Webster, SD 57274

SISSETON OFFICE

PO Box 9 | 520 2nd Ave. East

Sisseton, SD 57262

June 11, 2018

(Hand Delivered)

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

Dear Mrs. Goodman:

Please be advised that this firm represents Petitioners Alexandria Gravel Products LLC, and Martin and Lori Borgen regarding their objections to the application for Water Permit No. 8338-3. Martin and Lori Borgen own and rent pasture and farmland immediately adjacent to and downhill from the site of the proposed well and ponds. The legal description of the land owned by Petitioners Martin and Lori Borgen is as follows:

W1/2SE1/4, SE1/4NW1/4, and E1/2SW1/4 and NW1/4SW1/4, all in Section 12, Township 127 North of Range 53 West of the 5th P.M., Marshall County, South Dakota

Alexandria Gravel Products, LLC acquired Water Permit No. 8317-3 which authorizes the use of water for industrial purposes immediately adjacent to and down hill from the proposed well and ponds. Alexandria Gravel Products, LLC's Water Permit No. 8317-3 authorizes the use of the water on Martin and Lori Borgen's property. For the above stated reasons, Petitioners have an interest in the application for Water Permit No. 83383 and are proper parties.

Petitioners object to the issuance of Water Permit No. 8338-3 on the following grounds:

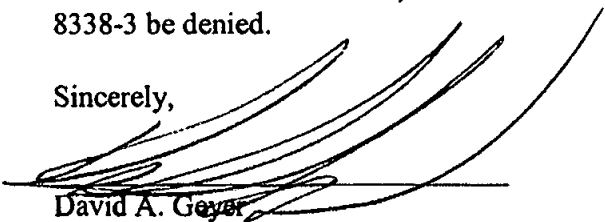
1. **Domestic Use.** A residence is locate on Martin and Lori Borgen's property down hill from the proposed well and ponds. This residence gets its water from a natural spring. Martin and Lori Borgen object to the digging of the well and constructing of ponds uphill

from the sight based upon concerns that it will affect the water used for this home.

2. **Livestock Water Supply.** Martin and Lori Borgen have livestock on their property down hill from the proposed well and ponds. The cattle are watered from a spring and run-off into stock dams. Martin and Lori Borgen object to the digging of the well and constructing ponds uphill from the sight based upon concerns that it will affect the water used to water their livestock. Specifically, Applicant constructed a dam on the proposed sight several years ago and it has adversely affected the water already available to one of their dug-outs. This has required Martin and Lori Borgen to find alternative water sources for their livestock at that location. Martin and Lori Borgen want this dam removed and the pond filled in. To the best of Martin and Lori Borgen's understanding, no permit was approved for this use and therefore it is an unlawful restriction on the flow of the water.
3. **Water Quality.** The proposed well is going to be 800 feet into the Dakota Aquifer. Petitioners are concerned that the water will be high in salt and other minerals that will contaminate the local water supply.
4. **Existing Water Rights.** The sight of the proposed well and ponds is located up-hill from where Alexandria Gravel Products, LLC is constructing three ponds for an aggregate wash plant pursuant to their Water Permit No. 8317-3. Martin and Lori Borgen will receive royalties from the aggregate sold from the wash plant since it is located on their property. Petitioners are concerned that the construction of the ponds, as well the existence of the unlawful water diversions already done, will adversely affect the water rights already held by Alexandria Gravel Products, LLC and limit their availability to sufficient water. This would result in lost revenue for Alexandria Gravel Products, LLC and lost royalties for Martin and Lori Borgen.

For the above stated reasons, Petitioners are requesting the application for Water Permit No. 8338-3 be denied.

Sincerely,



David A. Geyer

CC: Clients
Applicant

AFFIDAVIT OF PUBLICATION

RECEIVED

STATE OF SOUTH DAKOTA, County of Marshall.

JUN 14 2018

WATER RIGHTS

Douglas M. Card of said county, being first duly sworn on oath says that he is ~~PROPR~~ 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;

1T(May 30)

NOTICE OF APPLICATION NO.8338-3 to Appropriate Water

Notice is given that Unique Railroad Contractors dba Krause Brother's Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene: Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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,

that the Notice of application W. 8338-3
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:

May 30, 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-four and 85/100

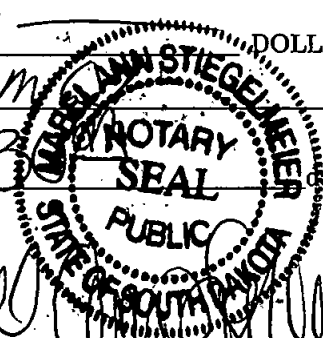
DOLLARS

Subscribed and sworn to before me this

May

A.D.

2018



Notary Public, Marshall County, S.D.

My Commission Expires November 25, 2020

523 E Capitol, Pierre SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 11, 2018.

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 \$34.85.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Codington) SS

I, Jackie Wettstad

certify that the attached printed Notice was taken

from the Watertown

Public Opinion

printed and published in Watertown

County of Codington and

state of South Dakota. The notice was published

in the newspaper on the following date:

May 30, 2018

Cost of Printing \$67.27

Jackie Wettstad
(Signature)

Accounting Clerk
(Title)

6/1/18

(Date Signed)

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF APPLICATION NO. 8338-3 to Appropriate Water
Notice is given that Unique Railroad Contractors dba Krause Brothers Construction, c/o Roger Krause, 520 1/2 Dakota Ave, Wahpeton ND 58075 has filed an application for a water permit to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD. Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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, 623 E. Capitol, Pierre SD 57501, (605) 773-3352", and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 11, 2018. 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. Pimer
Secretary
Department of Environment and Natural Resources
Published once at the total approximate cost of \$62.27.
6/1/18 (May 30, 2018)

RECEIVED

JUN - 4 2018

WATER RIGHTS
PROGRAM

AFFIDAVIT OF PUBLICATION

RECEIVED

JUN 14 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 LANGFORD BUGLE, a weekly newspaper printed and published in the City of Langford, 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;

1T(May 30)

NOTICE OF APPLICATION

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Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8338-3 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 June 11, 2018.

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.

that the

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:

May 30, 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-four and 95/100

DOLLARS

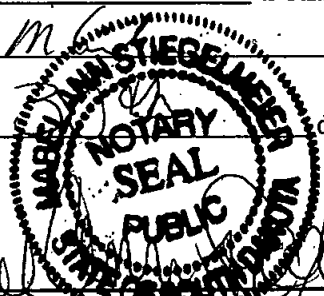
Subscribed and sworn to before me this

May

A.D.

2018

day of



My Commission Expires November 20, 2020

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. Pimer, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of \$34.85.

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.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

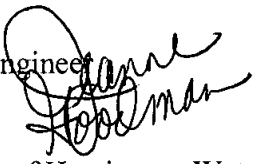
denr.sd.gov

July 6, 2018

NOTICE

TO: Roger Krause, President
Unique Railroad Contractors
dba – Krause Brother's Construction
520 ½ Dakota Avenue
Wahpeton ND 58075

Delaney, Nielsen & Sannes LLC
Attn: David A. Geyer
PO Box 9
Sisseton SD 57262

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Automatic Delay of Hearing on Water Permit Application No. 8338-3,
Unique Railroad Contractors, dba Krause Brother's Construction

A petition of opposition was filed in response to the public notice for Water Permit Application No. 8388-3 filed by Unique Railroad Contractors. A notice of hearing was sent to parties of record on June 14, 2018, scheduling a hearing before the Water Management Board. In response to this notice, petitioner's legal counsel filed for an automatic delay of the July hearing date on Application No. 8338-3. The petitioner's filing is enclosed along with a Notice of Appearance. Therefore, the hearing on Application No. 8338-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 12, 2018.

The hearing to consider Application No. 8338-3 will be rescheduled for the next Water Management Board meeting tentatively scheduled for October 3 - 4, 2018, in Pierre. The Board will formalize its next meeting date at their July 12th meeting. Notice of the rescheduled time and place of the hearing for Application No. 8338-3 will be provided to all parties of record.

The submitted application, DENR staff report and recommendation and petition received in response to the public notice can be found on-line at DENR's One-Stop Contested Case Proceedings site at <http://denr.sd.gov/contested.aspx>. Go to Water Management Board proceedings and click on "documents" for Water Permit Application No. 8338-3, Unique Railroad Contractors.

Please contact Eric Gronlund at (605) 773-3352 if you have questions regarding the hearing process.

c: Ann Mines Bailey, Assistant Attorney General

enclosure

CERTIFICATION

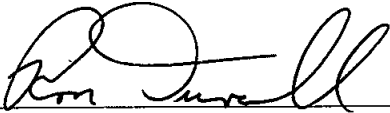
I hereby certify that on July 6, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated July 6, 2018, regarding notice of hearing for Water Right Permit Application No. 8338-3, as addressed below:

Roger Krause, President
Unique Railroad Contractors
dba – Krause Brother's Construction
520 ½ Dakota Avenue
Wahpeton ND 58075

Delaney, Nielsen & Sannes LLC
Attn: David A. Geyer
PO Box 9
Sisseton SD 57262

Sent Inter-office to:

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



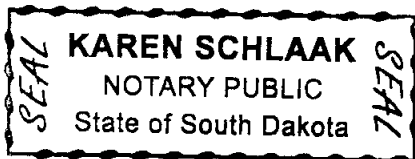
Ron Duvall
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of July, 2018



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



WEBSTER OFFICE

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

SISSETON OFFICE

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



DELANEY | NIELSEN | SANNES PC

Kent Delaney

Gordon P. Nielsen

Thomas L. Sannes

David A. Geyer

Please reply to Sisseton Office.

FAX TRANSMISSION SHEET

DATE: July 2, 2018
FROM: Gordon P. Nielsen
FAX# (605) 698-7178
TO: Jeanne Goodman
FAX# 605-773-4068
RE: Alexandria Gravel Products, LLC

Total Pages Transmitted 5 **including cover sheet.**

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Webster, SD 57274

SISSETON OFFICE

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



DELANEY | NIELSEN | SANNES P.C.

Kent Delaney

Gordon P. Nielsen

Thomas L. Sannes

David A. Geyer

Please reply to Sisseton Office.

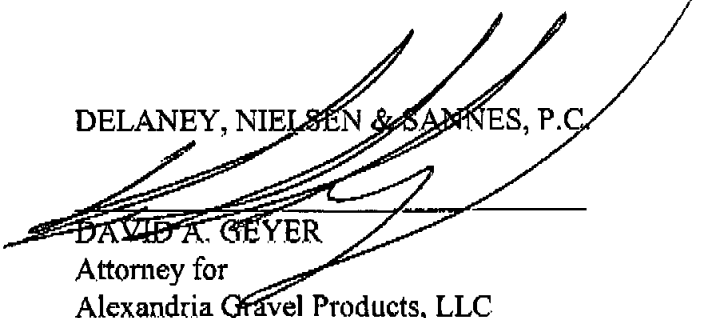
**RE: Water Permit Application No. 8338-3, Unique Railroad Contractors, dba Krause
Brother's Construction**

REQUEST FOR AUTOMATIC DELAY

Please take notice that David A. Geyer, attorney for Alexandria Gravel Products, LLC and Martin and Lori Borgen, respectfully submits this request for automatic delay of the July 12, 2018 hearing in this matter. This request is sought on the grounds that David A. Geyer has a scheduling conflict on the date set.

DATED this 2 day of July, 2018.

DELANEY, NIELSEN & SANNES, P.C.


DAVID A. GEYER

Attorney for
Alexandria Gravel Products, LLC
and Martin and Lori Borgen
P.O. Box 9
Sisseton, SD 57262
(605) 698-7084

CERTIFICATE OF SERVICE

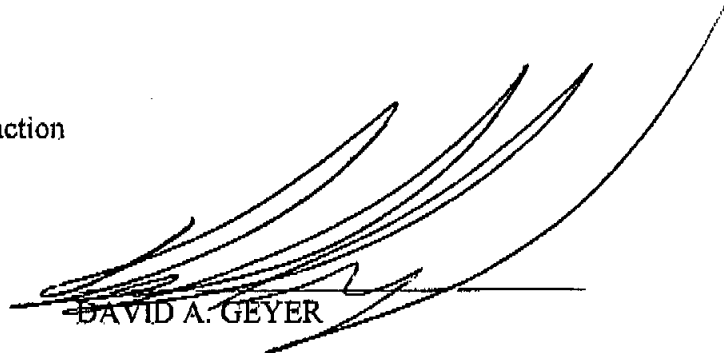
The undersigned, hereby certifies that on the 2 day of July, 2018, a true and correct copy of the Request for Automatic Delay was served via Facsimile, by the undersigned this date as follows, to wit:

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

and was served via U.S. Mail, postage prepaid, by the undersigned this date as follows: to wit:

Roger Krause, President
Unique Railroad Contractors
dba – Krause Brother's Construction
520 ½ Dakota Avenue
Wahpeton, ND 58075



DAVID A. GEYER

WEBSTER OFFICE

PO Box 615 | 21 West 6th Ave.

Webster, SD 57274

SISSETON OFFICE

PO Box 9 | 520 2nd Ave. East

Sisseton, SD 57262



DELANEY | NIELSEN | SANNES P.C.

Kent Delaney

Gordon P. Nielsen

Thomas L. Sannes

David A. Geyer

Please reply to Sisseton Office.

RE: Water Permit Application No. 8338-3, Unique Railroad Contractors, dba Krause Brother's Construction

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 and Martin and Lori Borgen. All documents and other matters requiring notice or service shall be made to Alexandria Gravel Products, LLC and Martin and Lori Borgen through their legal counsel at the following address:

Delaney, Nielsen & Sannes, LLC

Attn: David A. Geyer

P.O. Box 9

Sisseton, SD 57262

DATED this 2 day of July, 2018.

DELANEY, NIELSEN & SANNES, P.C.

DAVID A. GEYER

Attorney for

Alexandria Gravel Products, LLC

and Martin and Lori Borgen

P.O. Box 9

Sisseton, SD 57262

(605) 698-7084

CERTIFICATE OF SERVICE

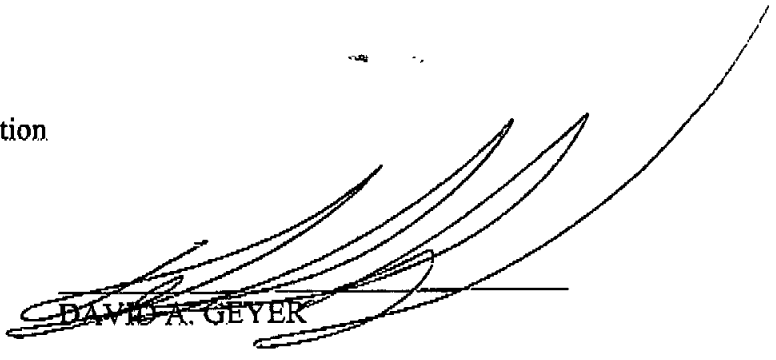
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Department of Environment and
Natural Resources
Attn: Jeanne Goodman
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

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

and was served via U.S. Mail, postage prepaid, by the undersigned this date as follows: to wit:

Roger Krause, President
Unique Railroad Contractors
dba - Krause Brother's Construction
520 1/2 Dakota Avenue
Wahpeton, ND 58075


DAVID A. GEYER

Gronlund, Eric

From: Nate <nate.green@krausebros.com>
Sent: Wednesday, July 11, 2018 11:04 AM
To: Gronlund, Eric
Cc: 'Robert B. Stock'; 'Margo Northrup'
Subject: RE: [EXT] water issue

Hello Eric:

We are changing counsel and will now have to fight for our rights since Alexandria Gravel is not willing to work with us. We are very low on product and are unable to provide this product to our customers as well as continue operation of the Fargo/Moorhead Federal Diversion project. I thought that this process would be easier for us since we did not attend their hearing to petition their permit. Hindsight we should have. So much for working together. Margo Northrup will be our current counsel and she will be sending the necessary paperwork to your office. Have a great day.

Nate Green

From: Gronlund, Eric <Eric.Gronlund@state.sd.us>
Sent: Tuesday, July 10, 2018 8:32 AM
To: 'Robert B. Stock' <rstock@vogellaw.com>; Nate (nate.green@krausebros.com) <nate.green@krausebros.com>
Cc: Mines Bailey, Ann <Ann.MinesBailey@state.sd.us>
Subject: RE: water issue

Mr. Stock:

The next time the Board meets is October – tentatively on the 3rd and 4th but the date will be set at the meeting on Thursday.

As for the possibility of having the matter heard earlier, I don't believe it is likely. There is not anything that prevents you from making a request for a special hearing but I wouldn't think it likely to happen. The Water Management Board has done special hearings in the past but those instances involved permits with great public interest concerns – such as Powertech, an application for water in the use of uranium mining – and the special meeting was to accommodate the large number of intervenors.

For your information, legal counsel for the Water Rights Program is Ann Mines Bailey, Assistant Attorney General. Ann can be reached at 605 773-3215.

Eric

From: Robert B. Stock [mailto:rstock@vogellaw.com]
Sent: Monday, July 09, 2018 5:06 PM
To: Nate; Gronlund, Eric
Subject: RE: [EXT] water issue

Eric:

Is there any way to have the hearing before October 3-4 or is that the next available meeting time?

Thanks for your help on this.

Robert B. Stock | Attorney



218 NP Avenue
P.O. Box 1389 | Fargo, ND 58107-1389
Tel: 701.237.6983 | Dir: 701.356.6316 | Cell: 701.261.7893 | TF: 800.677.5024
Fax: 701.237.0847
e-mail | vogellaw.com | [bio](#)

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From: Nate [<mailto:nate.green@krausebros.com>]
Sent: Monday, July 02, 2018 1:12 PM
To: 'Gronlund, Eric'
Cc: Robert B. Stock
Subject: FW: water issue

Hello:

Eric our attorneys office has been reaching out to Alexandria Gravel to see if the petitions were dropped by both parties if we could move forward with this. We have yet to hear back from them on this issue but we are working diligently to try and get this resolved before we have come to the hearing.

Nate Green

From: Robert B. Stock <rstock@vogellaw.com>
Sent: Monday, July 2, 2018 12:56 PM
To: Nate <nate.green@krausebros.com>
Subject: RE: water issue

Nate:

I left another message with their counsel on Friday. I will follow up again this afternoon.

Robert B. Stock | Attorney



218 NP Avenue
P.O. Box 1389 | Fargo, ND 58107-1389
Tel: 701.237.6983 | Dir: 701.356.6316 | Cell: 701.261.7893 | TF: 800.677.5024
Fax: 701.237.0847
e-mail | vogellaw.com | [bio](#)

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RECEIVED
JUL 16 2018
WATER RIGHTS
PROGRAM

319 South Coteau Street
P.O. Box 280
Pierre, SD 57501
Phone: 605-224-5825
Fax: 605-224-7102
www.riterlaw.com

July 12, 2018

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9
520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182

RE: Water Permit Application No. 8338-3

Dear Folks:

Enclosed herewith to each of you please find a copy of my Notice of Appearance. This is intended as service upon you by mail.

I also enclose the original Notice of Appearance to Jeanne Goodman and would ask that she place the same in her original file relating to this matter.

Thank you.

Very truly yours,

RITER, ROGERS, WATTIER &
NORTHROP, LLP

BY:


Margo D. Northrup

MDN-wb

Enclosure

Robert C. Riter, Jr
Margo D. Northrup

Darla Pollman Rogers
Lindsey Riter-Rapp
A. Jason Rumpca, Associate

Jerry L. Wattier
Kody R. Kyriss, Associate

Riter, Rogers, Wattier & Northrup, LLP

WATER RIGHTS PROGRAM

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9
520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182


Margo D. Northrup

WATER MANAGEMENT BOARD)
WATER PERMIT APPLICATION NO. 8338-3) NOTICE OF APPEARANCE
UNIQUE RAILROAD CONTRACTORS, D/B/A)
KRAUSE BROTHERS)

DATED at Pierre, South Dakota this 12 day of July,
2018.

By: Margo D. Northrup
Margo D. Northrup

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9
520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182


Margo D. Northrup



319 South Coteau Street
P.O. Box 280
Pierre, SD 57501

RECEIVED

JUL 24 2018

WATER RIGHTS
PROGRAM

Phone: 605-224-5825
Fax: 605-224-7102
www.riterlaw.com

July 24, 2018

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9
520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182

RE: Water Permit Application No. 8338-3

Dear Folks:

Enclosed herewith to each of you please find a copy of a Motion for Expedited Hearing and Affidavit. This is intended as service upon you by mail.

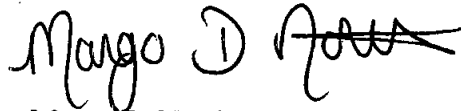
I also enclose the original Motion for Expedited Hearing and a copy of the Affidavit to Jeanne Goodman and would ask that she place the same in her original file relating to this matter. I will supplement the file with the original Affidavit at a later date.

Thank you.

Very truly yours,

RITER, ROGERS, WATTIER &
NORTHROP, LLP

BY:


Margo D. Northrup

MDN-wb

Enclosures

Robert C. Riter, Jr
Margo D. Northrup

Darla Pollman Rogers
Lindsey Riter-Rapp
A. Jason Rumpca, Associate

Jerry L. Wattier
Kody R. Kyriss, Associate

RECEIVED
JUL 24 2018
WATER RIGHTS
PROGRAM

COMES NOW, Unique Railroad Contractors, d/b/a Krause Brothers Construction (Krause Brothers), by and through their attorneys of record, Riter, Rogers, Wattier and Northrup, LLP and request an expedited hearing in the above-referenced matter and provide the following in support thereof:

1. Krause Brothers has been in the business of washing aggregate products since 2002. It has operated pursuant to a Mine License (02-742) issued by DENR.
2. In early 2018, Krause Brothers learned it needed a Water Rights Permit to continue to use the water as it had been to continue its business practices. Since that time, it has ceased its business operations and has not washed any product since 2017.
3. On March 19, 2018, Krause Brothers filed an Application for Permit to Appropriate Water Within the State of South Dakota (Permit 8338-3).
4. The hearing in this matter was scheduled for July 12, 2018. On July 2, 2018, a Notice of Appearance and Request for Automatic Delay was filed on behalf of Alexandria Gravel Products, LLC and Martin and Lori Borgen. The hearing was rescheduled tentatively for

- October 3 or 4, 2018, which is the next regularly scheduled hearing date for the Water Management Board.
5. SDCL 46-2A-5, allows for one delay of at least twenty days after the published date for hearing. This would allow for a hearing to be scheduled in August.
 6. A delay until October of 2018 will be devastating to the Applicant's Business and could potentially force the business to suspend operations and be in a position to not meet existing contractual obligations.
 7. Krause Brothers is respectfully requesting an expedited hearing date to present its Application to the Board.

DATED at Pierre, South Dakota this 24 day of July,
2018.

RITER, ROGERS, WATTIER
& NORTHRUP, LLP

By: Margo D Northrup
Margo D. Northrup

319 S. Coteau - P. O. Box 280
Pierre, SD 57501-0280
605-224-5825
Attorneys for

CERTIFICATE OF SERVICE

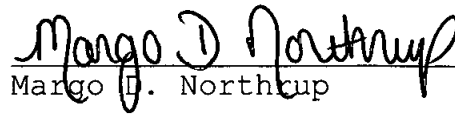
I, Margo D. Northrup, certify that a true and correct copy of Motion for Expedited Hearing was mailed to the following by first class mail on the 24 day of July, 2018:

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9

520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182


Margo D. Northrup

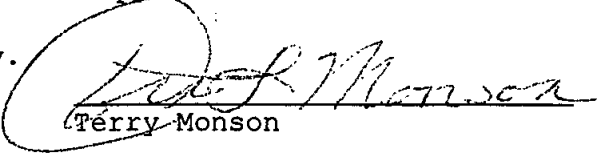
**WATER RIGHTS
PROGRAM**

1. My name is Terry Monson and I am the Pit Superintendent of Krause Brothers Construction.
2. Krause Brothers Construction has been in the business of washing aggregate products since 2002. We have been operating under a Mine License (02-742) issued by DENR since that time. In early 2018, we learned that our business needed an additional permit to appropriate the water to continue our business practices. We immediately ceased washing product and have not washed any product since 2017. As a result, our inventory has decreased to near depletion.
3. Krause Brothers is part of a contract to provide product for the Fargo/Moorhead Diversion project. If we are not able to begin to wash product in the next few weeks, we will not be able to completely fulfill this contract. We have been serving local cattle farms for the past ten years that are in need of our product. I estimate this impacts over 10,000 head of cattle. We also have contracts with local townships that are in need of our product for maintaining road improvement and other projects.
4. I have tried to determine if there were other water sources we could purchase in the interim until our Application can be heard by the Board. I reached out to BDM Rural Water and they cannot service the number of gallons we need to utilize for our business operations.

5. If our Application cannot be heard on an expedited basis, our business will be forced to suspend operations and I will be forced to release our 5 employees.

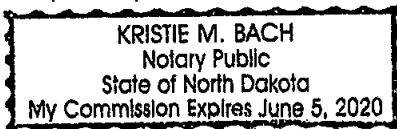
6. I am respectfully requesting that the Board schedule a hearing to consider our Application in the near future.

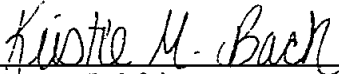
Dated this 24 day of July.


Terry Monson

Subscribed and sworn to before me on JULY 24,
2018.

(Seal)




Notary Public
My Commission Expires: 6/5/20
Notary Print Name: KRISTIE M. BACH

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES

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 7. Krause Brothers is respectfully requesting an expedited hearing date to present its Application to the Board.

DATED at Pierre, South Dakota this 24 day of July,
2018.

RITER, ROGERS, WATTIER
& NORTHRUP, LLP

By: Margo D. Northrup
Margo D. Northrup

319 S. Coteau - P. O. Box 280
Pierre, SD 57501-0280
605-224-5825
Attorneys for

CERTIFICATE OF SERVICE

I, Margo D. Northrup, certify that a true and correct copy of Motion for Expedited Hearing was mailed to the following by first class mail on the 24 day of July, 2018:

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9

520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182


Margo D. Northrup



RECEIVED

AUG 01 2018

WATER RIGHTS
PROGRAM

319 South Coteau Street
P.O. Box 280
Pierre, SD 57501

Phone: 605-224-5825
Fax: 605-224-7102
www.riterlaw.com

July 30, 2018

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182

Re: Water Management Board Water Permit Application No. 8338-3

Dear Ms. Goodman:

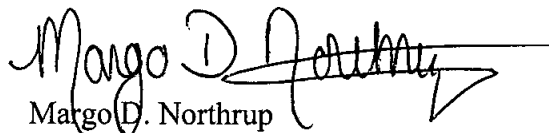
Enclosed herewith please find the original Affidavit for filing in your office. A copy of this document was previously forwarded to you.

Thank you.

Very truly yours,

RITER, ROGERS, WATTIER &
NORTHROP, LLP

By:


Margo D. Northrup

MDN-wb

Enclosure

Robert C. Riter, Jr
Margo D. Northrup

Darla Pollman Rogers
Lindsey Riter-Rapp
A. Jason Rumpca, Associate

Jerry L. Wattier
Kody R. Kyriss, Associate

Riter, Rogers, Wattier & Northrup, LLP

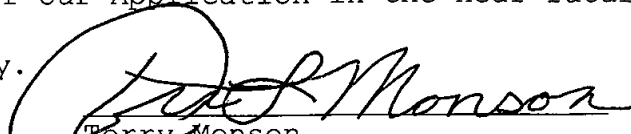
**WATER RIGHTS
PROGRAM**

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5. If our Application cannot be heard on an expedited basis, our business will be forced to suspend operations and I will be forced to release our 5 employees.

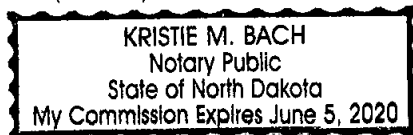
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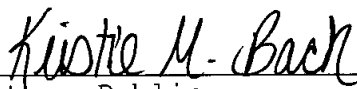
Dated this ____ day of July.


Terry Monson

Subscribed and sworn to before me on JULY 24,
2018.

(Seal)




Notary Public
My Commission Expires: 6/5/20
Notary Print Name: KRISTIE M. BACH



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

AUG 06 2018

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

August 3, 2018

Rodney Freeman
Pre-hearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

Re: *In the Matter of Water Application No. 8338-3,
Unique Railroad Contractors, d/b/a Krause Brothers*

Dear Mr. Freeman:

Enclosed please find the Response to Motion for Expedited Hearing regarding the
above-referenced matter.

Yours truly,

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

Ann F. Mines Bailey
Assistant Attorney General

AFMB/rar
Enclosures

cc w/encl: Jeanne Goodman
David Geyer
Margo Northrup
Kirsten Jasper

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	RESPONSE TO MOTION FOR
APPLICATION NO. 8338-3, Unique	)	EXPEDITED HEARING
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

Pending before the Pre-hearing Chair is a motion for an expedited hearing. The Chief Engineer feels that it is within the Board's discretion to determine whether a special meeting will be held and does not take a position as to whether the request should be granted. Nonetheless, the Chief Engineer believes the Pre-hearing Chair should be provided the procedural background to this application in order to make an informed determination. To that end, the Chief Engineer offers the following facts.

This matter involves two competing gravel operations seeking water permits: Alexandria Gravel Products, LLC. (hereinafter Alexandria) and Unique Railroad Contractors, d/b/a Krause Brothers Construction (hereinafter Unique Railroad). In October of 2017, Water Rights received an application for a water permit from Alexandria (Water Permit Application No. 8317-3). Alexandria sought to appropriate water from a pond dug into the water table for purposes of use in a gravel washing venture. The Chief Engineer, after reviewing a technical review and analysis, recommended approval and the application was publicly noticed as required on January 10, 2018.¹

¹ Alexandria's application was heard at the May hearing and was granted. No intervenors appeared at the hearing and findings of fact and conclusions of law were subsequently waived.

In response to that public notice, Water Rights received a call from the operator of Unique Railroad, a gravel operation located near the Alexandria operation. It was subsequently determined that Unique Railroad had been appropriating water for some time without a permit. Unique Railroad was immediately informed that South Dakota law required a permit before water could be appropriated and that it needed to apply for a water permit. Unique Railroad was also informed that because it would be submitting its application after the submission of Alexandria's application, its permit would be junior to the Alexandria permit.

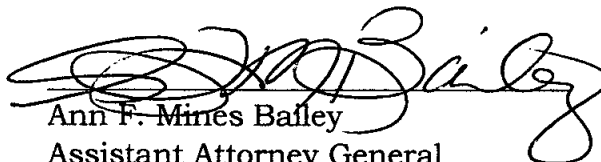
Water Rights encouraged and anticipated that Unique Railroad would file an application for a water permit soon after that telephone conversation and had hoped that both the Alexandria and the Unique Railroad applications could be presented to the Board at the same meeting. Water Rights received a draft application on January 24, 2018; however the final application was not submitted until March 19, 2018, and could not be processed and noticed in time to be scheduled for the May 2-3, 2018 meeting.

The technical review of Unique Railroad's application was completed on May 11, 2018, and the Chief Engineer's recommendation was issued on May 15, 2018. The application was then publicly noticed on May 30, 2018. On June 11, 2018, in response to that public notice, counsel for Martin and Lori Borgen, who are nearby landowners, and Alexandria filed a petition in opposition. The matter was scheduled for the July 12, 2018 meeting. On July 2, 2018, Water Rights received a request for automatic delay from counsel for the Borgens and Alexandria due to

a scheduling conflict. The matter is currently set to be presented to the Board at the October 3-4, 2018 meeting.

Should the request for a special hearing be granted, the Chief Engineer would request sufficient time to notice the parties and Board members, reserve a location, and secure the attendance of a court reporter. It is unlikely that this could occur within the remainder of the month of August. Additionally, the Chief Engineer anticipates that there will be a need for findings of fact and conclusions of law given the contentious nature of these cases and that it is unlikely that the parties will waive their rights to findings. Under ARSD 74:02:01:13.01, deadlines regarding findings are generally set based upon the regularly scheduled Board meetings but may be altered as directed by the Board. Should the request for a special meeting be granted, the Chief Engineer would request that the time for submitting findings and objections be considered.

Dated this 3rd day of August 2018.

A handwritten signature in black ink, appearing to read "Ann F. Mines Bailey", is written over the typed name.

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

Counsel for Water Rights Program, DENR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copy of the Response to Motion for Expedited Hearing in the above-entitled matter was served upon each of the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail at Pierre, South Dakota on this 3rd day of August 2018:

David A. Geyer
Delaney, Nielsen & Sannes, PC
P.O. Box 9
Sisseton, SD 57262

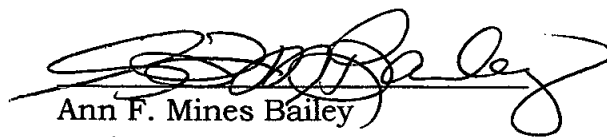
Margo Northrup
Riter, Rogers, Wattier & Northrup, LLP
P.O. Box 280
Pierre, SD 57501

Rodney Freeman
Pre-hearing Chair
Water Management Board
P.O. Box 176
Huron, SD 57350

and hand-delivered to:

Kirsten Jasper
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501

On the same date, the original was filed with Jeanne Goodman, Chief Engineer, DENR Water Rights Program, Joe Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501.



Ann F. Mines Bailey
Assistant Attorney General



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

August 3, 2018

NOTICE

TO: Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 2nd Avenue East
Sisseton SD 57262

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

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

SUBJECT: Notice of Hearing on Motion Regarding Water Permit Application No. 8338-3, Unique Railroad Contractors

In the matter of Water Permit Application No. 8338-3 filed by Unique Railroad Contractors, the Water Management Board Prehearing Officer Rodney Freeman has scheduled a telephone conference hearing on the motion for expedited hearing.

This will be a "meet me" conference call with any party desiring to participate calling in using the following the instructions below.

Start Time: 11:00 AM US/Central – Tuesday, August 7, 2018 (Duration: 1 hour)

To join the conference

To join the conference **Dial: 605-224-1125**

Enter this access code: **0662670 #**

If you have problems connecting to the call, the conference operator can be reached at 605 773-3011.

If you have questions, please contact Ron Duvall at (605) 773-3352 or email at ron.duvall@state.s.d.us.

c: Kirsten Jasper, Assistant Attorney General
Rodney Freeman, Prehearing Officer

CERTIFICATION

I hereby certify that on August 3, 2018, I have personally sent electronically by email and deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 3, 2018, regarding notice of hearing for motion on Water Right Permit Application No. 8338, as addressed below and on the attached parties of record list:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501
m.northrup@riterlaw.com

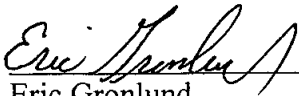
Rodney Freeman
PO Box 176
Huron SD 57350
rfreeman.huronlaw@midconetwork.com

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 2nd Avenue East
Sisseton SD 57262
david.delaneylawfirm.com

Hand Delivered to Attorney General's office:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
Ann.MinesBailey@state.sd.us

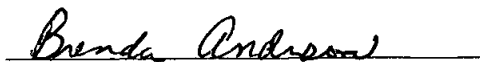
Kirsten Jasper, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
Kirsten.Jasper@state.sd.us



Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3 day of August, 2018



Brenda Anderson

Notary Public

My Commission expires

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

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

IN THE MATTER OF WATER	)	ORDER
APPLICATION No. 8338-3, Unique	)	DENYING MOTION FOR
Railroad Contractors, d/b/a Krause	)	EXPEDITED HEARING
Brothers	)	

On March 19, 2018, Unique Railroad Contractors, d/b/a Krause Brothers (Unique Railroad) filed a final application for a water permit with the South Dakota Department of Environment and Natural Resources, Water Rights Program (Water Rights). On May 30, 2018, the application was publicly noticed and, thereafter, on June 11, 2018, Martin and Lori Borgen (the Borgens) and Alexandria Gravel Products, LLC (Alexandria) filed a petition objecting to the issuance of a water permit. On June 14, 2018, Water Rights issued a Notice of Hearing, setting the matter for hearing before the Board on July 12, 2018. On July 2, 2018, the Borgens and Alexandria requested an automatic delay of the hearing. That request resulted in the hearing being set for the Board's October 3-4, 2018 meeting.

On July 24, 2018, Unique Railroad filed a Motion for Expedited Hearing (Motion), seeking a hearing before the Board prior to the October 3-4, 2018 meeting. On August 3, 2018, Water Rights filed a response to the Motion, but took no position on the request. Also on August 3, 2018, a Notice was issued

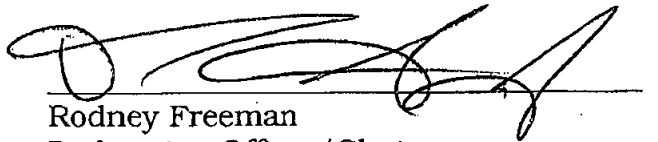
for a telephone conference regarding the Motion to be held before the Board's Prehearing Officer.

On August 7, 2018, the Motion came before the Board's Prehearing Officer, Rodney Freeman, by teleconference. Unique Railroad was present through Terry Monson and Nate Green, and was represented through counsel, Margo D. Northrup. The Borgens and Alexandria were not present but represented through their counsel David A. Geyer. Water Rights was present through Jeanne Goodman, the Chief Engineer, and Ron Duvall and was represented by counsel Assistant Attorney General Ann Mines Bailey.

After having heard the comments and argument presented by the parties and counsel, and having considered the Motion and Response, it is hereby

ORDERED, that the Motion is DENIED.

Dated this 8th day of August, 2018.

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

Rodney Freeman
Prehearing Officer/Chair
South Dakota Water Management Board



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/>

RECEIVED

AUG 22 2018

**WATER RIGHTS
PROGRAM**

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

August 21, 2018

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton SD 57262

Re: *In the Matter of Water Permit Application No. 8338-3, Unique Railroad Contractors*

Dear Ms. Northrup and Mr. Geyer:

Enclosed please find the Notice of Entry of Order Denying Motion for Expedited Hearing on behalf of DENR Water Rights Program 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

Enclosure

cc: Jeanne Goodman, Chief Engineer

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

IN THE MATTER OF WATER PERMIT	)	NOTICE OF ENTRY
APPLICATION NO. 8338-3,	)	OF ORDER DENYING
UNIQUE RAILROAD CONTRACTORS	)	MOTION FOR
	)	EXPEDITED HEARING
	)	

TO: Margo D. Northrup, Riter Rogers Law Office, PO Box 280, Pierre SD 57501;
David A. Geyer, Delaney, Nielsen & Sannes, PC, PO Box 9, Sisseton SD
57262:

NOTICE IS HEREBY GIVEN that on 8th day of August 2018, the South Dakota
Water Management Board Prehearing Officer entered an Order Denying Motion for
Expedited Hearing in the above-entitled matter, a copy of which is attached hereto
and incorporated herein as if fully set out.

Dated this 21st day of August 2018.


Ann E. 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	)	ORDER
APPLICATION No. 8338-3, Unique	)	DENYING MOTION FOR
Railroad Contractors, d/b/a Krause	)	EXPEDITED HEARING
Brothers	)	

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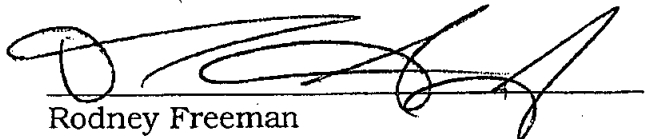
for a telephone conference regarding the Motion to be held before the Board's Prehearing Officer.

On August 7, 2018, the Motion came before the Board's Prehearing Officer, Rodney Freeman, by teleconference. Unique Railroad was present through Terry Monson and Nate Green, and was represented through counsel, Margo D. Northrup. The Borgens and Alexandria were not present but represented through their counsel David A. Geyer. Water Rights was present through Jeanne Goodman, the Chief Engineer, and Ron Duvall and was represented by counsel Assistant Attorney General Ann Mines Bailey.

After having heard the comments and argument presented by the parties and counsel, and having considered the Motion and Response, it is hereby

ORDERED, that the Motion is DENIED.

Dated this 8th day of August, 2018.

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

Rodney Freeman
Prehearing Officer/Chair
South Dakota Water Management Board

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

IN THE MATTER OF WATER PERMIT)	
APPLICATION NO. 8338-3,)	CERTIFICATE OF SERVICE
UNIQUE RAILROAD CONTRACTORS)	
)	

The undersigned hereby certifies that on the 21st day of August 2018, true and correct copies of DENR's Notice of Entry of the South Dakota Water Management Board Prehearing Officer's Order in the above-entitled matter, were mailed by U.S. mail, first class, postage paid, to:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501
m.northrup@riterlaw.com

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton SD 57262
david.delaneylawfirm.com


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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

August 27, 2018

NOTICE

TO: Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton SD 57262

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice Scheduling Hearing on Water Permit Application No. 8338-3, Unique Railroad Contractors, d/b/a/ Krause Brothers

Water Permit Application No. 8338-3 proposes to appropriate 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

The Water Management Board will conduct a hearing to consider Application No. 8338-3 at 1:30 PM on Thursday, October 4, 2018, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. 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 June 14, 2018, and the public notice in the Britton Journal and the Watertown Public Opinion published May 30, 2018, 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

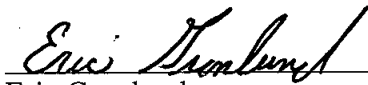
I hereby certify that on August 27, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 27, 2018, scheduling the hearing for Water Right Permit Application No. 8338-3, as addressed below:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton SD 57262

Sent Inter-office to:

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



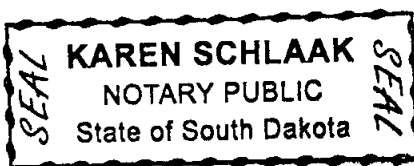
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of August, 2018



Karen Schlaak
Notary Public
My Commission expires 4-1-19





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

October 9, 2018

NOTICE

TO: Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton SD 57262

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 the Water Rights Program to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 8338-3, Unique Railroad Contractors, d/b/a/ Krause Brothers.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 11:00 AM, on Wednesday, December 5, 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 time.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to each Board member and parties of record by November 9, 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 November 19, 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 Kirsten.Jasper@state.sd.us.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision may be made on December 5, 2018. The evidentiary hearing was completed October 4, 2018. No additional testimony will be received on December 5, 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
Kirsten Jasper, Assistant Attorney General

WATER MANAGEMENT BOARD MEMBERS

Chad Comes
116 W Center
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

Board Attorney

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

Water Rights Program

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

Staff Attorney

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

CERTIFICATION

I hereby certify that on October 9, 2018, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 9, 2018, regarding preparation of findings of fact, conclusions of law and final decision on Water Right Permit Application No. 8338-3, as addressed below:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton SD 57262

Sent Inter-office to:

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

Kirsten Jasper, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

Vickie Maberry

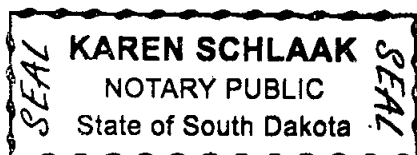
Vickie Maberry
Water Rights Program, DENR

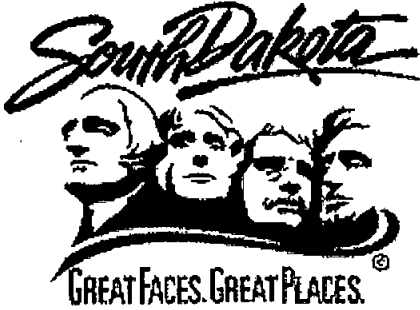
STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of October, 2018

Karen Schlaak

Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

OCT 17 2018

Unique Railroad Contractors
dba Krause Brother's Construction
c/o Roger Krause
520 1/2 Dakota Ave
Wahpeton ND 58075

Dear Mr. Krause:

Enclosed is Water Permit No. 8338-3 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



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

8338-3

RECEIVED

NOV 08 2018

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 7, 2018

Jim Hutmacher
802 E. 7th Street
Oacoma, SD 57365

Re: *In the Matter of Water Application No. 8338-3*

Dear Mr. Hutmacher:

Enclosed please find the proposed Findings of Fact, Conclusions of Law and Final Decision on behalf of DENR Water Rights Program in the above-entitled matter, as well as a certificate of service.

A copy is also being mailed to all interested parties.

Respectfully,

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: Parties on Certificate of Service

RECEIVED

NOV 08 2018

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR'S PROPOSED FINDINGS OF
APPLICATION NO. 8338-3, Unique	)	FACT, CONCLUSIONS OF LAW,
Railroad Contractors, d/b/a Krause	)	AND FINAL DECISION
Brothers	)	

This matter came before the South Dakota Water Management Board for hearing on October 4, 2018. Board members Tim Bjork, Ev Hoyt, Peggy Dixon, Chad Comes, Leo Holzbauer, and Jim Hutmacher were present at the hearing and heard the evidence presented. Applicant Unique Railroad Contractors, d/b/a Krause Brothers (Unique Railroad) appeared through counsel, Margo D. Northrup. Intervenors Martin and Lori Borgen and Alexandria Gravel Products, LLC appeared through counsel, David A. Geyer. Ann F. Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

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

FINDINGS OF FACT

1. On March 19, 2018, DENR received Water Permit Application No. 8338-3 on behalf of Unique Railroad seeking the appropriation of water for industrial use in an aggregate wash plant. The operation is located in the NE¼, E½NW¼ of Section 13, T127N-R53W in Marshall County.

2. Unique Railroad wishes to divert water from the Pleistocene Series: Unknown through a series of ponds dug below the water table. Water from the ponds would be diverted at a maximum rate of 1.73 cubic feet of water per second (cfs), not to exceed an annual total of 160 acre-feet per year. The ponds are located in the E½NE¼ of Section 13, T127N-R53W.

3. The application also seeks authority to complete a well into the Dakota Aquifer to divert water to the ponds as needed at the maximum diversion rate of 0.22 cfs. The well is to be located in the SE¼NE¼ of Section 13, T127-R53W.

4. Unique Railroad had previously been using water in ponds dug into the Pleistocene Series: Unknown without a permit. Upon being notified by the Water Rights Program, in January of 2018, Unique Railroad ceased the unauthorized use of water and subsequently submitted this application.

5. Notice of the application and hearing was timely advertised in the Watertown Public Opinion, the Britton Journal, and the Langford Bugle on May 30, 2018.

6. DENR received a timely petition in opposition to the application on behalf of Martin and Lori Borgen and Alexandria Gravel Products, LLC, on June 11, 2018.

7. The matter was initially scheduled to be heard by the Water Management Board on July 12, 2018; however, an automatic delay was requested by petitioners.

8. Water Permit Application No. 8338-3 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.

9. 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.

Pleistocene Series: Unknown

10. Pleistocene Series: Unknown is the designation given to Pleistocene-aged glacial deposits which have not been identified as part of a major aquifer. The aquifer in this area is a shallow water table aquifer comprised of glacial outwash and is unconfined.

11. The areal extent of the Pleistocene Series: Unknown aquifer is approximately 1,924 acres. Based upon a drilling log from a nearby location, it is believed that the aquifer is approximately seven feet thick in this location.

12. The main form of recharge for this aquifer is precipitation.

13. DENR witness, Aaron Tieman, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Pleistocene

Series: Unknown and Dakota Aquifers and reviewed the information obtained from observations wells completed into the Dakota Aquifer, as well as current water right/permit files and well completion reports for the aquifers.

14. Mr. Tieman testified that recharge studies have not been conducted regarding the Pleistocene Series: Unknown. However, other studies have been conducted to determine recharge rates for nonburied, unconfined aquifers in eastern South Dakota. Those studies concluded that such aquifers have an average annual recharge rate ranging from 2 to 5.6 inches.

15. Using the estimated range of recharge derived from those studies and applying it to the areal extent of the aquifer, Mr. Tieman testified that the Pleistocene Series: Unknown receives approximately 320 to 898 acre-feet of recharge per year.

16. There are no observation wells completed into the Pleistocene Series: Unknown near this location. The data from observation wells completed into similar aquifers, however, demonstrates that climatic conditions dominate the water levels.

17. There is only one other water permit, Water Permit No. 8317-3, Alexandria Gravel Products LLC, completed into this portion of the Pleistocene Series: Unknown aquifer. This existing right appropriates approximately 38 acre-feet per year.

18. There are no domestic wells completed into the Pleistocene Series: Unknown which are on file with Water Rights.

19. Mr. Tieman concluded that there is a reasonable probability that unappropriated water is available in the Pleistocene Series: Unknown Aquifer to satisfy the proposed appropriation.

20. Mr. Tieman also examined whether there would be an unlawful impairment to the existing water right in the Pleistocene Series: Unknown.

21. Mr. Tieman testified that Water Right No. 8317-3 is approximately one-quarter to one-half mile from the proposed point of diversion.

22. Mr. Tieman testified that the direction of the groundwater flow in a shallow water table aquifer such as this will essentially mirror the direction of the flow of surface water. In reviewing the locations of the existing right and the proposed point of diversion in conjunction with the elevation contours, Mr. Tieman determined that the groundwater flow to the existing water right would not be impeded by the proposed diversion.

23. In addition, Mr. Tieman testified that drawdown from the proposed diversion would not extend far from the point of diversion given the unconfined nature of the aquifer.

24. Based upon his review and his education and experience, Mr. Tieman concluded that it is not likely that the existing water right would be unlawfully impaired should this application be developed.

Dakota Aquifer

25. The Dakota Aquifer is a bedrock aquifer consisting of sand, sandstone, and shale. At this location, the aquifer is under confined conditions and is approximately 800 feet below ground surface.

26. The aquifer covers approximately 86% of the state of South Dakota and underlies approximately 889 square miles in Marshall County alone.

27. It is estimated that the Dakota Aquifer contains approximately 1.1 billion acre-feet in recoverable water in storage. In Marshall County, it is estimated that the Aquifer contains 9.3 million acre-feet of recoverable water in storage.

28. The Dakota Aquifer receives recharge from underlying formations and from precipitation on the outcrops.

29. There have not been any recharge studies conducted on the Dakota Aquifer.

30. DENR monitors 43 observation wells completed into the Dakota Aquifer with the closest well approximately 77 miles from the proposed point of diversion.

31. Mr. Tieman testified that there has been a decline in hydrostatic pressure in the Dakota Aquifer over the years. Beginning in the late 1970s there began to be a gradual stabilization of those declines indicating a possibility that the Aquifer is entering a new state of equilibrium.

32. The Dakota Aquifer is known to be the source for a vast number of uncontrolled wells. The Dakota Aquifer was popular for drilling domestic/stock wells given that they would free flow without the use of a pump. Many wells still flow uncontrolled today. The stabilization demonstrated in the observation well data is reflective of a decrease in artesian head pressure and thus, less water being allowed to flow to waste.

33. Mr. Tieman testified that given the vast size of the Dakota Aquifer, the stabilization demonstrated in the hydrographs of the observation wells, and the fact that there are still uncontrolled wells flowing indicates that there is unappropriated water available in the Dakota Aquifer.

34. In Marshall County, there are approximately 124 acre-feet in withdrawals from the Dakota Aquifer resulting from two appropriations.

35. The nearest domestic well on file is approximately three and one-half miles from the proposed point of diversion.

36. Mr. Tieman opined that there is a reasonable probability that the application could be developed without unlawfully impairing existing water rights. Mr. Tieman testified that at the distance between the proposed point of diversion and the domestic well on file, it would be unlikely to see the effects of drawdown. Furthermore, the relatively low diversion rate requested by this application would not result in a large drawdown effect.

37. Mr. Tieman further testified that he did not believe that the Borgens' domestic well would be unlawfully impaired by this proposed diversion given the unconfined nature of the aquifer. Further, Mr. Tieman

testified that there had not been any complaints lodged previously when the Applicant had been using water.

38. The Board also received the testimony of Terry Monson, on behalf of the Applicant. Mr. Monson is a supervisor of the site for Krause Brothers Construction who submitted this application under the name of Unique Railroad.

39. Mr. Monson testified that he has served as superintendent of this site since 2009. The Applicant is engaged in aggregate mining and the operation at the site is comprised of two components: a crushing plant operation and a screen wash operation. Mr. Monson testified that he believes the Applicant commenced the operations at this site in 1998. Mr. Monson further testified regarding the general layout and operations at the site.

40. Mr. Monson testified that Unique Railroad had ceased operations when notified that it had been appropriating water without a permit. He further testified that Unique Railroad was reaching a critical point in its operations in that it was about to run out of product and needed water immediately to resume operating.

41. Upon cross examination, Mr. Monson testified that a berm on the pond located in the northeast corner of Section 13 was built upon the request of the township supervisor to protect the road from runoff. The berm is approximately two feet to five or six feet high with an outlet to allow the release of water into a vegetated ditch to slow the release of water. The water

then runs east in the ditch along the road until it reaches the culvert where it then runs to the northeast.

42. Mr. Geyer, counsel for intervenors, argued that there may be interference with the collection of surface water due to the collection pond located in the northeast corner of Section 13, closest to the diversion site for Water Permit No. 8317-3, Alexandria Gravel. Counsel argued that the berm should be removed as it is collecting water which should be allowed to flow and be collected at his client's site. Mr. Geyer further argued that, while his clients did not object to the Dakota well, they did have concerns regarding the quality of the water from the Dakota Aquifer and the effect it might have on the quality of the water in the Pleistocene Series: Unknown.

43. The Board finds Mr. Tieman to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Tieman's testimony and the reports and exhibits which he prepared and/or relied upon.

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

45. The Board further finds that granting this application would not result in withdrawals from the aquifers exceeding average estimated recharge to the aquifers.

46. The Board further finds that the proposed use of the water for industrial constitutes beneficial use.

47. The Board further finds that placing the water to this beneficial use is in the public interest.

48. At the conclusion of the hearing, after the vote of the Board to grant Water Permit Application No. 8338-3, the Chief Engineer requested through counsel that the Board consider ordering the issuance of the permit immediately rather than waiting until the issuance of the Findings of Fact, Conclusions of Law and Final Decision. Counsel for intervenors did not object.

49. The Board found that it was appropriate in these circumstances, given the Applicant's need for water to continue business operations, that the permit be issued upon conclusion of the October Water Management Board hearing with these Findings of Fact, Conclusion of Law, and Final Decision being entered at the December meeting of the Board and entered an oral order to that effect.

50. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

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

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

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9.

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the 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.”

7. The Board concludes there is a reasonable probability that there is unappropriated water in both the Pleistocene Series: Unknown and Dakota aquifers available to fulfill the amount requested by the application.

8. The Board further concludes that it is not probable that withdrawals from either of the aquifers would exceed recharge to those aquifers in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.

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

11. 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 industrial use is in the public interest.

12. 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. 8338-3 is granted with the following qualifications:

1. The pond dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

Dated this ____ day of December 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. 8338-3, Unique	)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

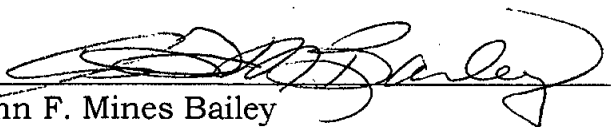
The undersigned hereby certifies that on the 7th day of November 2018, true and correct copies of DENR'S Proposed Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre, SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton, SD 57262

And hand-delivered and sent by electronic mail to:

Kirsten Jasper
Assistant Attorney General
Natural Resources Section
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Email: Kirsten.Jasper@state.sd.us


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

Counsel for Water Rights Program, DENR



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 08 2018

WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 7, 2018

Jim Hutmacher
802 E. 7th Street
Oacoma, SD 57365

Re: *In the Matter of Water Application No. 8338-3*

Dear Mr. Hutmacher:

Enclosed please find the proposed Findings of Fact, Conclusions of Law and Final Decision on behalf of DENR Water Rights Program in the above-entitled matter, as well as a certificate of service.

A copy is also being mailed to all interested parties.

Respectfully,

A handwritten signature in black ink, 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: Parties on Certificate of Service

RECEIVED

NOV 08 2018

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR'S PROPOSED FINDINGS OF
APPLICATION NO. 8338-3, Unique	)	FACT, CONCLUSIONS OF LAW,
Railroad Contractors, d/b/a Krause	)	AND FINAL DECISION
Brothers	)	

This matter came before the South Dakota Water Management Board for hearing on October 4, 2018. Board members Tim Bjork, Ev Hoyt, Peggy Dixon, Chad Comes, Leo Holzbauer, and Jim Hutmacher were present at the hearing and heard the evidence presented. Applicant Unique Railroad Contractors, d/b/a Krause Brothers (Unique Railroad) appeared through counsel, Margo D. Northrup. Intervenors Martin and Lori Borgen and Alexandria Gravel Products, LLC appeared through counsel, David A. Geyer. Ann F. Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

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

FINDINGS OF FACT

1. On March 19, 2018, DENR received Water Permit Application No. 8338-3 on behalf of Unique Railroad seeking the appropriation of water for industrial use in an aggregate wash plant. The operation is located in the NE¼, E½NW¼ of Section 13, T127N-R53W in Marshall County.

2. Unique Railroad wishes to divert water from the Pleistocene Series: Unknown through a series of ponds dug below the water table. Water from the ponds would be diverted at a maximum rate of 1.73 cubic feet of water per second (cfs), not to exceed an annual total of 160 acre-feet per year. The ponds are located in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, T127N-R53W.

3. The application also seeks authority to complete a well into the Dakota Aquifer to divert water to the ponds as needed at the maximum diversion rate of 0.22 cfs. The well is to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T127-R53W.

4. Unique Railroad had previously been using water in ponds dug into the Pleistocene Series: Unknown without a permit. Upon being notified by the Water Rights Program, in January of 2018, Unique Railroad ceased the unauthorized use of water and subsequently submitted this application.

5. Notice of the application and hearing was timely advertised in the Watertown Public Opinion, the Britton Journal, and the Langford Bugle on May 30, 2018.

6. DENR received a timely petition in opposition to the application on behalf of Martin and Lori Borgen and Alexandria Gravel Products, LLC, on June 11, 2018.

7. The matter was initially scheduled to be heard by the Water Management Board on July 12, 2018; however, an automatic delay was requested by petitioners.

8. Water Permit Application No. 8338-3 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.

9. 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.

Pleistocene Series: Unknown

10. Pleistocene Series: Unknown is the designation given to Pleistocene-aged glacial deposits which have not been identified as part of a major aquifer. The aquifer in this area is a shallow water table aquifer comprised of glacial outwash and is unconfined.

11. The areal extent of the Pleistocene Series: Unknown aquifer is approximately 1,924 acres. Based upon a drilling log from a nearby location, it is believed that the aquifer is approximately seven feet thick in this location.

12. The main form of recharge for this aquifer is precipitation.

13. DENR witness, Aaron Tieman, a natural resources engineer, reviewed the permit application, analyzed the hydrology of the Pleistocene

Series: Unknown and Dakota Aquifers and reviewed the information obtained from observations wells completed into the Dakota Aquifer, as well as current water right/permit files and well completion reports for the aquifers.

14. Mr. Tieman testified that recharge studies have not been conducted regarding the Pleistocene Series: Unknown. However, other studies have been conducted to determine recharge rates for nonburied, unconfined aquifers in eastern South Dakota. Those studies concluded that such aquifers have an average annual recharge rate ranging from 2 to 5.6 inches.

15. Using the estimated range of recharge derived from those studies and applying it to the areal extent of the aquifer, Mr. Tieman testified that the Pleistocene Series: Unknown receives approximately 320 to 898 acre-feet of recharge per year.

16. There are no observation wells completed into the Pleistocene Series: Unknown near this location. The data from observation wells completed into similar aquifers, however, demonstrates that climatic conditions dominate the water levels.

17. There is only one other water permit, Water Permit No. 8317-3, Alexandria Gravel Products LLC, completed into this portion of the Pleistocene Series: Unknown aquifer. This existing right appropriates approximately 38 acre-feet per year.

18. There are no domestic wells completed into the Pleistocene Series: Unknown which are on file with Water Rights.

19. Mr. Tieman concluded that there is a reasonable probability that unappropriated water is available in the Pleistocene Series: Unknown Aquifer to satisfy the proposed appropriation.

20. Mr. Tieman also examined whether there would be an unlawful impairment to the existing water right in the Pleistocene Series: Unknown.

21. Mr. Tieman testified that Water Right No. 8317-3 is approximately one-quarter to one-half mile from the proposed point of diversion.

22. Mr. Tieman testified that the direction of the groundwater flow in a shallow water table aquifer such as this will essentially mirror the direction of the flow of surface water. In reviewing the locations of the existing right and the proposed point of diversion in conjunction with the elevation contours, Mr. Tieman determined that the groundwater flow to the existing water right would not be impeded by the proposed diversion.

23. In addition, Mr. Tieman testified that drawdown from the proposed diversion would not extend far from the point of diversion given the unconfined nature of the aquifer.

24. Based upon his review and his education and experience, Mr. Tieman concluded that it is not likely that the existing water right would be unlawfully impaired should this application be developed.

Dakota Aquifer

25. The Dakota Aquifer is a bedrock aquifer consisting of sand, sandstone, and shale. At this location, the aquifer is under confined conditions and is approximately 800 feet below ground surface.

26. The aquifer covers approximately 86% of the state of South Dakota and underlies approximately 889 square miles in Marshall County alone.

27. It is estimated that the Dakota Aquifer contains approximately 1.1 billion acre-feet in recoverable water in storage. In Marshall County, it is estimated that the Aquifer contains 9.3 million acre-feet of recoverable water in storage.

28. The Dakota Aquifer receives recharge from underlying formations and from precipitation on the outcrops.

29. There have not been any recharge studies conducted on the Dakota Aquifer.

30. DENR monitors 43 observation wells completed into the Dakota Aquifer with the closest well approximately 77 miles from the proposed point of diversion.

31. Mr. Tieman testified that there has been a decline in hydrostatic pressure in the Dakota Aquifer over the years. Beginning in the late 1970s there began to be a gradual stabilization of those declines indicating a possibility that the Aquifer is entering a new state of equilibrium.

32. The Dakota Aquifer is known to be the source for a vast number of uncontrolled wells. The Dakota Aquifer was popular for drilling domestic/stock wells given that they would free flow without the use of a pump. Many wells still flow uncontrolled today. The stabilization demonstrated in the observation well data is reflective of a decrease in artesian head pressure and thus, less water being allowed to flow to waste.

33. Mr. Tieman testified that given the vast size of the Dakota Aquifer, the stabilization demonstrated in the hydrographs of the observation wells, and the fact that there are still uncontrolled wells flowing indicates that there is unappropriated water available in the Dakota Aquifer.

34. In Marshall County, there are approximately 124 acre-feet in withdrawals from the Dakota Aquifer resulting from two appropriations.

35. The nearest domestic well on file is approximately three and one-half miles from the proposed point of diversion.

36. Mr. Tieman opined that there is a reasonable probability that the application could be developed without unlawfully impairing existing water rights. Mr. Tieman testified that at the distance between the proposed point of diversion and the domestic well on file, it would be unlikely to see the effects of drawdown. Furthermore, the relatively low diversion rate requested by this application would not result in a large drawdown effect.

37. Mr. Tieman further testified that he did not believe that the Borgens' domestic well would be unlawfully impaired by this proposed diversion given the unconfined nature of the aquifer. Further, Mr. Tieman

testified that there had not been any complaints lodged previously when the Applicant had been using water.

38. The Board also received the testimony of Terry Monson, on behalf of the Applicant. Mr. Monson is a supervisor of the site for Krause Brothers Construction who submitted this application under the name of Unique Railroad.

39. Mr. Monson testified that he has served as superintendent of this site since 2009. The Applicant is engaged in aggregate mining and the operation at the site is comprised of two components: a crushing plant operation and a screen wash operation. Mr. Monson testified that he believes the Applicant commenced the operations at this site in 1998. Mr. Monson further testified regarding the general layout and operations at the site.

40. Mr. Monson testified that Unique Railroad had ceased operations when notified that it had been appropriating water without a permit. He further testified that Unique Railroad was reaching a critical point in its operations in that it was about to run out of product and needed water immediately to resume operating.

41. Upon cross examination, Mr. Monson testified that a berm on the pond located in the northeast corner of Section 13 was built upon the request of the township supervisor to protect the road from runoff. The berm is approximately two feet to five or six feet high with an outlet to allow the release of water into a vegetated ditch to slow the release of water. The water

then runs east in the ditch along the road until it reaches the culvert where it then runs to the northeast.

42. Mr. Geyer, counsel for intervenors, argued that there may be interference with the collection of surface water due to the collection pond located in the northeast corner of Section 13, closest to the diversion site for Water Permit No. 8317-3, Alexandria Gravel. Counsel argued that the berm should be removed as it is collecting water which should be allowed to flow and be collected at his client's site. Mr. Geyer further argued that, while his clients did not object to the Dakota well, they did have concerns regarding the quality of the water from the Dakota Aquifer and the effect it might have on the quality of the water in the Pleistocene Series: Unknown.

43. The Board finds Mr. Tieman to be a credible expert witness and that these proposed Findings of Fact are supported by the evidence presented including Mr. Tieman's testimony and the reports and exhibits which he prepared and/or relied upon.

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

45. The Board further finds that granting this application would not result in withdrawals from the aquifers exceeding average estimated recharge to the aquifers.

46. The Board further finds that the proposed use of the water for industrial constitutes beneficial use.

47. The Board further finds that placing the water to this beneficial use is in the public interest.

48. At the conclusion of the hearing, after the vote of the Board to grant Water Permit Application No. 8338-3, the Chief Engineer requested through counsel that the Board consider ordering the issuance of the permit immediately rather than waiting until the issuance of the Findings of Fact, Conclusions of Law and Final Decision. Counsel for intervenors did not object.

49. The Board found that it was appropriate in these circumstances, given the Applicant's need for water to continue business operations, that the permit be issued upon conclusion of the October Water Management Board hearing with these Findings of Fact, Conclusion of Law, and Final Decision being entered at the December meeting of the Board and entered an oral order to that effect.

50. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

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

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

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The applicant is required to satisfy each of the factors set forth in SDCL 46-2A-9.

5. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

6. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the 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.”

7. The Board concludes there is a reasonable probability that there is unappropriated water in both the Pleistocene Series: Unknown and Dakota aquifers available to fulfill the amount requested by the application.

8. The Board further concludes that it is not probable that withdrawals from either of the aquifers would exceed recharge to those aquifers in violation of SDCL § 46-6-3.1 if this application is granted.

9. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversion can be developed without unlawful impairment of existing water rights.

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

11. 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 industrial use is in the public interest.

12. 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. 8338-3 is granted with the following qualifications:

1. The pond dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre feet of water.

Dated this ____ day of December 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. 8338-3, Unique	)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

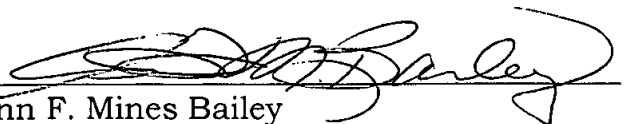
The undersigned hereby certifies that on the 7th day of November 2018, true and correct copies of DENR'S Proposed Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter, were mailed by U.S. mail, first class, postage prepaid, to:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre, SD 57501

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton, SD 57262

And hand-delivered and sent by electronic mail to:

Kirsten Jasper
Assistant Attorney General
Natural Resources Section
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Pierre, SD 57501
Email: Kirsten.Jasper@state.sd.us


Ann F. Mines Bailey
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Telephone: (605)773-3215

Counsel for Water Rights Program, DENR



Riter Rogers

Law Office

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WATER RIGHTS
PROGRAM

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November 15, 2018

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182

RE: Water Permit Application No. 8338-3

Dear Folks:

Enclosed herewith to each of you please find a copy of Objections to Findings of Fact and Conclusions of Law. This is intended as service upon you by mail.

Thank you.

Very truly yours,

RITER, ROGERS, WATTIER &
NORTHROP, LLP

BY:

Margo D. Northrup

MDN-fh

Enclosure

Robert C. Riter, Jr
Margo D. Northrup

Darla Pollman Rogers
Lindsey Riter-Rapp
A. Jason Rumpca, Associate

Jerry L. Wattier
Kody R. Kyriess, Associate

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES

WATER MANAGEMENT BOARD	)	
WATER PERMIT APPLICATION NO. 8338-3	)	OBJECTIONS TO FINDINGS
UNIQUE RAILROAD CONTRACTORS, D/B/A	)	OF FACT AND
KRAUSE BROTHERS	)	CONCLUSIONS OF LAW

COMES NOW, Unique Railroad Contractors, d/b/a Krause Brothers Construction (Krause Brothers), by and through their attorneys of record, Riter, Rogers, Wattier and Northrup, LLP and hereby submits the following Objections to the Findings of Fact and Conclusions of Law proposed by DENR Water Rights Program and its Chief Engineer.

Objections

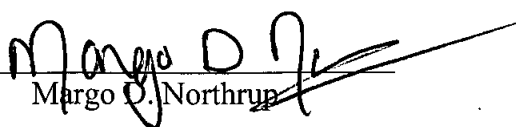
1. Krause Brothers objects to Finding of Fact No. 42 inasmuch as its an argument by legal counsel and is inappropriate to be included as a statement of fact.
2. Krause Brothers does not object to the remaining Findings of Fact and Conclusions of Law.

WHEREFORE, Krause Brothers requests the South Dakota Water Management Board adopt the Findings of Fact and Conclusions of Law as presented with the exclusion of Fact No. 42.

DATED at Pierre, South Dakota this 15 day of November, 2018.

RITER, ROGERS, WATTIER
& NORTHROP, LLP

By:


Margo O. Northrup

319 S. Coteau - P. O. Box 280
Pierre, SD 57501-0280
605-224-5825
Attorneys for Krause Brothers

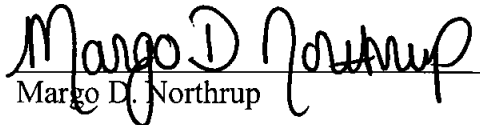
CERTIFICATE OF SERVICE

I, Margo D. Northrup, certify that a true and correct copy of Objections to Findings of Fact and Conclusions of Law was mailed to the following by first class mail on the 15 day of November, 2018:

David A. Geyer
Delaney, Nielsen & Sannes, PC
P. O. Box 9
520 2nd Ave. East
Sisseton, SD 57262

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

Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment
And Natural Resources
523 E. Capitol
Pierre, SD 57501-3182


Margo D. Northrup

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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER APPLICATION NO. 8338-3, Unique Railroad Contractors, d/b/a Krause Brothers	OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
--	---

COMES NOW, Alexandria Gravel Products, LLC and Martin and Lori Borgen, by and through their attorney of record, and hereby submits the following Objections to the Findings of Fact and Conclusions of Law and Proposed Findings of Fact and Conclusions of Law.

OBJECTIONS

1. Intervenor object to finding No. 42 to the extent that "may" in the first sentence of the finding should be removed and "will" should be inserted in its place. Intervenor do not object to the remaining portions of finding No. 42.
2. Intervenor object to the second sentence of conclusion No. 9. Intervenor existing water right will be unlawfully impaired by the proposed diversion.

PROPOSED FINDINGS

Intervenor propose that the following findings be added to the DENR's proposed findings.

1. Unique Railroad had mined into the Pleistocene Series: Unknown and caused the natural flow of the water to be diverted to their dug in holding pond.
2. Unique Railroad's holding pond collects and holds water that would natural flow down hill to the location of Intervenor's collection ponds and interfere with the water available to the Pleistocene Series: Unknown at their location.
3. That in addition to a dug in holding pond, Unique Railroad has also built a berm around the holding pond to provide additional water retention.
4. That the dug in holding pond and berm prevent the natural flow of not only water from the Pleistocene Series: Unknown, but also the surface water that would naturally flow to Intervenor's collection ponds.

5. Intervenor possess Water Permit No. 8317-3 for their collection ponds and water use, and their right to the use of the water is superior to the rights of Unique Railroad because they are first in time.

PROPOSED CONCLUSIONS

Intervenor propose that the following conclusion of law be substituted for the second sentence of DENR's conclusion of law No. 9 as objected to above.

9. The proposed diversion cannot be developed without unlawfully impairing existing water rights, specifically Water Permit No. 8317-3. Unique Railroad must reach an agreement with Intervenor to address the impairment of water currently created by their dug in holding pond and berm.

PROPOSED DECISION

Intervenor propose that the following paragraphs be added to the DENR's proposed Final Decision.

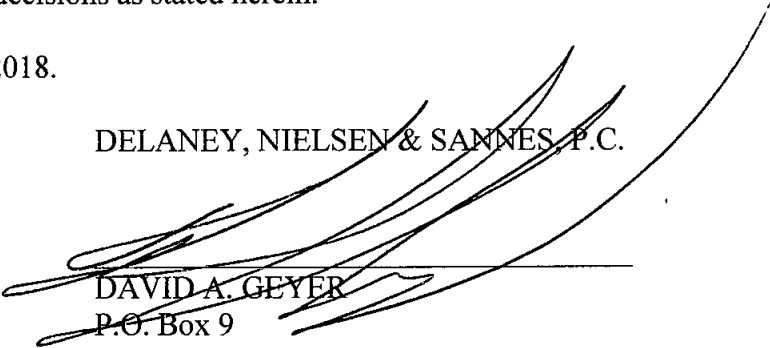
1. Permit No 8338-3 is granted on the condition that an agreement is reached with the holders of Permit No 8317-3 so that their superior water rights are not affected.

2. The owner of this permit shall maintain that the diversion, holding, and use of water under this permit does not negatively affect any existing water rights.

WHEREFORE, Intervenor request that the DENR's proposed findings of fact and conclusions of law are adopted pursuant to the objections, proposed findings, proposed conclusions, and proposed decisions as stated herein.

DATED this 19 day of November, 2018.

DELANEY, NIELSEN & SANNES, P.C.



DAVID A. GEYER

P.O. Box 9

Sisseton, SD 57262

(605) 698-7084

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW was mailed to the following by first class mail on the 17 day of November, 2018:

Chad Comes
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Madison, SD 57042

Leo Holzbauer
P.O. Box 64
Delmont, SD 57330

Rodney Freeman Jr.
P.O. 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
223 Enchantment Road
Rapid City, SD 57701

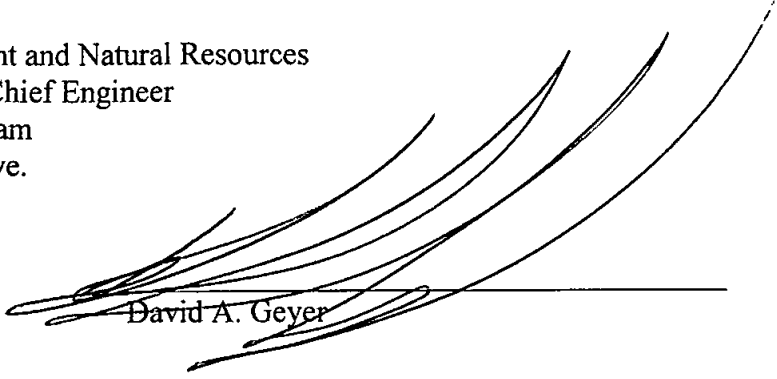
Jim Hutmacher
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Dept of Environment and Natural Resources
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David A. Geyer



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MARTY J. JACKLEY
ATTORNEY GENERAL

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**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 28, 2018

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

Re: *In the Matter of Water Application No. 8338-3, Unique Railroad
Contractors, d/b/a Krause Brothers*

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 Decision in the above referenced matter. I am submitting the proposals 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 December 5, 2018. 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 "K. Jasper".

Kirsten E. Jasper
Assistant Attorney General

KEJ/cmm
Enclosures

cc w/enc: parties on the certificate of service

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WATER RIGHTS
PROGRAM

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

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
APPLICATION NO. 8338-3, Unique	)	CONCLUSIONS OF LAW, AND
Railroad Contractors, d/b/a Krause	)	FINAL DECISION
Brothers	)	

This matter came before the South Dakota Water Management Board (Board) for hearing on October 4, 2018. Board members Jim Hutmacher (Chair), Tim Bjork, Chad Comes, Peggy Dixon, Leo Holzbauer, and Ev Hoyt were present at the hearing and heard the evidence presented. Rodney Freeman was not present and did not participate in this Decision. The applicant Unique Railroad Contractors, d/b/a Krause Brothers (Unique Railroad) was represented by Margo D. Northrup. Intervenors Martin and Lori Borgen and Alexandria Gravel Products, LLC were represented by David A. Geyer. Ann F. Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

On November 7, 2018, DENR's counsel submitted proposed Findings of Fact, Conclusions of Law, and Final Decision for the Board's consideration. Counsel for Unique Railroad submitted Objections to DENR's proposed findings and conclusions which were received on November 19, 2018. Counsel for Intervenors submitted their Objections to DENR's proposed findings and conclusions and made additional proposed findings and conclusions of their own which were received on November 26, 2018. The Board considered all

submitted proposed findings, conclusions, and objections and the Board's entry of the below modified Findings of Fact and Conclusions of Law and Final Decision is to be considered a ruling on those submissions as contemplated by SDCL § 1-26-25. *See In re Application of Benton*, 2005 SD 2.

After having heard the testimony presented, considered all records, documents, exhibits, and pleadings on file, and otherwise being fully informed as to all matters pertinent thereto, the Board hereby makes and enters the following:

FINDINGS OF FACT

1. On March 19, 2018, DENR received Water Permit Application No. 8338-3 (Application) on behalf of Unique Railroad seeking the appropriation of water for industrial use in an aggregate wash plant. The operation is located in the NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, T127N-R53W in Marshall County.
2. The Application proposes to divert water from the Pleistocene Series: Unknown aquifer through a series of ponds dug below the water table. The ponds are located in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, T127N-R53W.
3. The Application proposes that water from the ponds would be diverted at a maximum rate of 1.73 cubic feet per second (cfs), not to exceed an annual total of 160 acre-feet per year.
4. The Application also seeks authority to complete a well into the Dakota aquifer to divert water to the ponds as needed at a maximum diversion rate of 0.22 cfs. The well is to be located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T127-R53W.

5. Unique Railroad had previously been using water in ponds dug into the Pleistocene Series: Unknown aquifer without a permit.

6. In January of 2018, Unique Railroad was notified by the Water Rights Program that a permit was required for their use of this water. Unique Railroad ceased the unauthorized use of water and submitted this Application.

7. On May 30, 2018, notice of the Application and hearing was timely advertised in the Watertown Public Opinion, the Britton Journal, and the Langford Bugle.

8. On June 11, 2018, DENR received a timely petition in opposition to the Application on behalf of Martin and Lori Borgen and Alexandria Gravel Products, LLC (Intervenors).

9. The matter was initially scheduled to be heard by the Water Management Board on July 12, 2018. Intervenors, however, requested a continuance and the matter was automatically delayed.

10. Water Permit Application No. 8338-3 is a new water permit application which requires a determination, pursuant to SDCL § 46-2A-9, that there is a reasonable probability unappropriated water is available for the proposed use, the use would not unlawfully impair existing water rights, the use would be a beneficial use, and the proposed use is in the public interest.

11. In considering water availability, the Board must examine whether granting the permit would result in the annual average quantity of

water withdrawn from the groundwater source exceeding the annual average quantity of water recharge to the groundwater source.

12. Aaron Tieman, a DENR natural resources engineer, testified that he reviewed the Application, analyzed the hydrology of the Pleistocene Series: Unknown and Dakota aquifers, reviewed information obtained from observations wells completed into the Dakota aquifer, and reviewed current water rights/permit files and well completion reports for the aquifers.

13. The Pleistocene Series: Unknown aquifer is the designation given to Pleistocene-aged glacial deposits which have not been identified as part of a major aquifer. The Pleistocene Series: Unknown aquifer is an unconfined, shallow water-table aquifer comprised of glacial outwash and porous terrain.

14. The areal extent of the Pleistocene Series: Unknown aquifer is approximately 1,924 acres. Based upon a drilling log from a nearby location, it is believed that the aquifer is approximately seven feet thick in this location.

15. The main form of recharge for this aquifer is precipitation.

16. Mr. Tieman testified that recharge studies have not been conducted regarding the Pleistocene Series: Unknown. However, other studies have been conducted to determine recharge rates for non-buried, unconfined aquifers in eastern South Dakota. Those studies concluded that these aquifers have an average annual recharge rate ranging from 2 to 5.6 inches.

17. Mr. Tieman testified that he used the estimated range of recharge derived from those studies and applied it to the areal extent of the Pleistocene Series: Unknown aquifer and determined that the aquifer receives approximately 320 to 898 acre-feet of recharge per year.

18. There are no observation wells completed into the Pleistocene Series: Unknown aquifer near the Application location. The data from observation wells completed into similar aquifers, however, demonstrates that climatic conditions dominate the water levels.

19. There is only one other water permit issued regarding this portion of the Pleistocene Series: Unknown aquifer—Water Permit No. 8317-3, issued to Intervenor Alexandria Gravel Products, LLC. This existing water right appropriates approximately 38 acre-feet per year.

20. There are no domestic wells into the Pleistocene Series: Unknown aquifer on file with DENR.

21. Mr. Tieman testified that he concluded there is a reasonable probability that unappropriated water is available in the Pleistocene Series: Unknown aquifer to satisfy the Application's proposed appropriation.

22. Mr. Tieman also testified that he examined whether there would be an unlawful impairment to the existing water right in the Pleistocene Series: Unknown.

23. Mr. Tieman testified that Intervenor's Water Right No. 8317-3 is approximately one-quarter to one-half mile from the proposed point of diversion.

24. Mr. Tieman further provided that the direction of the groundwater flow in a shallow water-table aquifer, as presented in the Application, will essentially mirror the direction of the flow of surface water. In reviewing the locations of the existing water right and the Application's proposed point of diversion in conjunction with the elevation contours, Mr. Tieman testified that he determined the groundwater flow to the existing water right would not be impeded by the proposed diversion.

25. In addition, Mr. Tieman testified that given the characteristics of the aquifer, drawdown from the Application's proposed diversion would not extend far beyond the point of diversion, estimating that drawdown would occur out a few inches to no more than 100 feet away from the diversion point.

26. Based upon his review, education, experience, and the available evidence, Mr. Tieman concluded that it is unlikely that the Intervenor's existing water right or domestic use of water would be unlawfully impaired should this Application be granted. Mr. Tieman relied on the characteristics of the aquifer, the distance between the residence in question and the diversion point, and the lack of complaints reported during the period Unique Railroad operated without a permit.

27. The Dakota Aquifer is a bedrock aquifer consisting of sand, sandstone, and shale. At the Application location, the aquifer is under confined conditions and is approximately 800 feet below ground surface.

28. The aquifer covers approximately 86% of the state of South Dakota and underlies approximately 889 square miles in Marshall County alone.

29. It is estimated that the Dakota aquifer contains approximately 1.1 billion acre-feet in recoverable water in storage. In Marshall County, it is estimated that the aquifer contains 9.3 million acre-feet of recoverable water in storage.

30. The Dakota aquifer receives recharge from underlying formations and from precipitation where the aquifer outcrops the surface.

31. There have not been any recharge studies conducted on the Dakota aquifer.

32. DENR monitors 43 observation wells completed into the Dakota aquifer with the closest well approximately 77 miles from the Application's proposed point of diversion.

33. Mr. Tieman testified that there has been a decline in hydrostatic pressure in the Dakota aquifer over the years. Beginning in the late 1970s there began to be a gradual stabilization of those declines indicating a possibility that the aquifer is entering a new state of equilibrium.

34. Mr. Teiman further explained that the Dakota aquifer is known to be the source for a vast number of uncontrolled wells. The Dakota aquifer was popular for drilling domestic/stock wells given that they would free flow without the use of a pump. Many wells still flow uncontrolled today. The stabilization demonstrated in the observation well data is reflective of a

decrease in artesian head pressure and, thus, less water being allowed to flow to waste.

35. Mr. Tieman testified that there is unappropriated water available in the Dakota aquifer as indicated by the vast size of the aquifer, the stabilization demonstrated in the hydrographs of the observation wells, and the fact that there are still flowing, uncontrolled wells.

36. In Marshall County, there are approximately 124 acre-feet in withdrawals from the Dakota aquifer resulting from two appropriations.

37. The nearest domestic well on file with DENR is approximately three and one-half miles from the Application's proposed point of diversion.

38. Mr. Tieman testified to his opinion that there is a reasonable probability that the Application could be developed without unlawfully impairing existing water rights. Mr. Tieman supported his opinion with testimony that the relatively low diversion rate requested by the Application would not result in a large drawdown effect. Therefore, according to Mr. Tieman, coupled with the distance between the Application's proposed point of diversion and the domestic well, the domestic well would be unlikely to see the effects of any drawdown.

39. The Board also received the testimony of Terry Monson, on behalf of the Application. Mr. Monson is a supervisor of the site for Unique Railroad.

40. Mr. Monson testified that he has served as superintendent of this site since 2009. Unique Railroad is engaged in aggregate mining and the

operation at the site is comprised of two components: a crushing plant operation and a screen wash operation. Mr. Monson testified that he believes Unique Railroad commenced the operations at this site in 1998. Mr. Monson further testified regarding the general layout and operations at the site.

41. Mr. Monson testified that Unique Railroad had ceased operations when notified that it had been appropriating water without a permit. He further testified that Unique Railroad was reaching a critical point in its operations in that it was about to run out of product and needed water immediately to resume operations.

42. Upon cross examination, Mr. Monson testified that a berm on the pond located in the northeast corner of Section 13 was built upon the request of the township supervisor to protect the road from runoff. The berm is approximately two feet to five or six feet high with an outlet to allow the release of water into a vegetated ditch to slow the release of water. The water then runs east in the ditch along the road until it reaches the culvert where it then runs to the northeast.

43. The Board finds Mr. Tieman to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Tieman's testimony and the reports and exhibits which he prepared and/or relied upon.

44. The Board finds that Unique Railroad met its burden set forth in SDCL § 46-2A-9.

45. The Board further finds that Intervenors have not submitted sufficient evidence—through expert opinions, testimony, or other evidence—to support a determination that granting the Application would result in an unlawful impairment of an existing water right with regard to the proposed diversion points at either aquifer.

46. The Board finds that there is a reasonable probability that unappropriated water is available for Unique Railroad’s proposed use.

47. The Board further finds that granting this application would not result in withdrawals from the aquifers exceeding average estimated recharge to the aquifers.

48. The Board further finds that the proposed use of the water for industrial purposes constitutes a beneficial use.

49. The Board further finds that placing the water to this beneficial use is in the public interest.

50. At the conclusion of the hearing, after the Board voted to grant Water Permit Application No. 8338-3, DENR requested that the Board consider ordering the issuance of the permit immediately, rather than waiting until the issuance of the Findings of Fact, Conclusions of Law, and Final Decision. Intervenors did not object.

51. The Board found the request appropriate given the Applicant’s need for water to continue business operations and orally delivered an order to issue the permit at the conclusion of the October Water Management

Board hearing with these Findings of Fact, Conclusion of Law, and Final Decision to be later entered at the December Board meeting.

52. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

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

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

3. The Chief Engineer recommended granting this application. This recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest."

5. Unique Railroad is required to satisfy each of the factors set forth in SDCL § 46-2A-9. The permit must be denied if an applicant does not meet its burden of proof on any factor.

6. The Board concludes that Unique Railroad has satisfied each of the factors set forth in SDCL § 46-2A-9.

7. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the 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.”

8. The Board concludes there is a reasonable probability that there is unappropriated water available in both the Pleistocene Series: Unknown and Dakota aquifers to fulfill the Application’s requests.

9. The Board further concludes it is not probable that granting the Application would result in withdrawals from either of the aquifers exceeding recharge in violation of SDCL § 46-6-3.1.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversions can be developed without unlawful impairment of existing water rights.

11. 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 is a beneficial use.

12. 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 industrial use is in the public interest.

13. 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. 8338-3 is granted with the following qualifications:

1. The ponds dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.

4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre-feet of water.

Dated this ____ day of December 2018.

BY THE BOARD:

Jim Hutmacher, Chairman
South Dakota Water Management Board

pld_KEJ Unique Railroad Contractors – Proposed Findings of Fact, Conclusions of Law and Final Decision (cm)

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

IN THE MATTER OF WATER)	
APPLICATION NO. 8338-3, Unique)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause)	
Brothers)	

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:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
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m.northrup@riterlaw.com
Counsel for Unique Railroad

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Delaney, Nielsen & Sannes, PC
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david@delaneylawfirm.com
*Counsel for Intervenor*s

Those members of the Water Management Board who heard the matter:

Chad Comes
116 W Center
Madison, SD 57042

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57701

Tim Bjork
223 Enchantment Dr.
Rapid City, SD 57701

Everett Hoyt
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Jim Hutmacher
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Jeanne.Goodman@state.sd.us
Eric.Gronlund@state.sd.us

Leo Holzbauer
PO Box 64
Delmont, SD 57330

And hand-delivered and sent by electronic mail to:

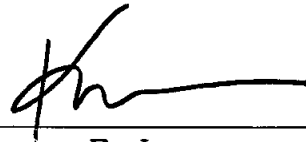
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*Counsel for Water Rights Program,
DENR*

Counsel for Water Management Board

On this 28th day of November 2018.



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pld_KEJ Unique Railroad Contractors – COS (cm)



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MARTY J. JACKLEY
ATTORNEY GENERAL

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**WATER RIGHTS
PROGRAM**

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 30, 2018

Jim Hutmacher
802 E. 7th Street
Oacoma, SD 57365

Re: *In the Matter of Water Application No. 8338-3*

Dear Mr. Hutmacher:

Enclosed please find DENR's Request Regarding Board's proposed Findings of Fact, Conclusions of Law and Final Decision on behalf of DENR Water Rights Program in the above-entitled matter, as well as a certificate of service.

A copy is also being mailed to all interested parties.

Respectfully,

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: Parties on Certificate of Service

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

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IN THE MATTER OF WATER	)	DENR'S REQUEST REGARDING
APPLICATION NO. 8338-3, Unique	)	BOARD COUNSEL'S PROPOSED
Railroad Contractors, d/b/a Krause	)	FINDINGS OF FACT,
Brothers	)	CONCLUSIONS OF LAW, AND
		FINAL DECISION

Upon review of the proposed Findings of Fact, Conclusions of Law, and Final decision prepared by counsel for the Water Management Board, the Chief Engineer requests a modification to Finding of Fact 20. Finding of Fact 20 provides "[t]here are no domestic wells into the Pleistocene Series: Unknown aquifer on file with DENR." The Pleistocene Series: Unknown is a designation given to aquifer materials from the Pleistocene period which have not been identified as part of an aquifer. These deposits are scattered throughout the region. The examination of whether there were domestic wells completed into the Pleistocene Series: Unknown was only for this small geographic area. Accordingly, the Chief Engineer suggests that Finding of Fact 20 be modified to state, "[t]here are no domestic wells completed into this portion of the Pleistocene Series: Unknown aquifer on file with DENR."

Dated this 30th day of November 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. 8338-3, Unique	)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

The undersigned hereby certifies that a true and correct copy of DENR's Request Regarding 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:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
Pierre, SD 57501
m.northrup@riterlaw.com
Counsel for Unique Railroad

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
Sisseton, SD 57262
david@delaneylawfirm.com
Counsel for Intervenors

Those members of the Water Management Board who heard the matter:

Chad Comes
116 W Center
Madison, SD 57042

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57701

Tim Bjork
223 Enchantment Dr.
Rapid City, SD 57701

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4422 Carriage Hills Dr.
Rapid City, SD 57702

Jim Hutmacher
802 E. 7th St.
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Jeanne Goodman, Chief Engineer
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523 E. Capitol Ave.
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Delmont, SD 57330

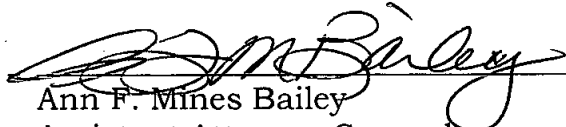
And hand-delivered and sent by electronic mail to:

Kirsten E. Jasper
Assistant Attorney General
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Pierre, SD 57501

David McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

Counsel for Water Management Board Counsel for Water Management Board

On this 30th day of November 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

pld_AFM Unique Railroad Contractors – COS (cm)

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	DENR'S REQUEST REGARDING
APPLICATION NO. 8338-3, Unique	)	BOARD COUNSEL'S PROPOSED
Railroad Contractors, d/b/a Krause	)	FINDINGS OF FACT,
Brothers	)	CONCLUSIONS OF LAW, AND
		FINAL DECISION

Upon review of the proposed Findings of Fact, Conclusions of Law, and Final decision prepared by counsel for the Water Management Board, the Chief Engineer requests a modification to Finding of Fact 20. Finding of Fact 20 provides "[t]here are no domestic wells into the Pleistocene Series: Unknown aquifer on file with DENR." The Pleistocene Series: Unknown is a designation given to aquifer materials from the Pleistocene period which have not been identified as part of an aquifer. These deposits are scattered throughout the region. The examination of whether there were domestic wells completed into the Pleistocene Series: Unknown was only for this small geographic area. Accordingly, the Chief Engineer suggests that Finding of Fact 20 be modified to state, "[t]here are no domestic wells completed into this portion of the Pleistocene Series: Unknown aquifer on file with DENR."

Dated this 30th day of November 2018.

Ann F. Mines Bailey
Assistant Attorney General
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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. 8338-3, Unique	)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

The undersigned hereby certifies that a true and correct copy of DENR's Request Regarding 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:

Margo D. Northrup
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Pierre, SD 57501
m.northrup@riterlaw.com
Counsel for Unique Railroad

David A. Geyer
Delaney, Nielsen & Sannes, PC
PO Box 9
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david@delaneylawfirm.com
Counsel for Intervenors

Those members of the Water Management Board who heard the matter:

Chad Comes
116 W Center
Madison, SD 57042

Peggy Dixon
3311 Hogan Court
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Jeanne Goodman, Chief Engineer
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523 E. Capitol Ave.
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Jeanne.Goodman@state.sd.us
Eric.Gronlund@state.sd.us

Leo Holzbauer
PO Box 64
Delmont, SD 57330

And hand-delivered and sent by electronic mail to:

Kirsten E. Jasper
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

David McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501

Counsel for Water Management Board

Counsel for Water Management Board

On this 30th day of November 2018.

Ann F. Mines Bailey
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Counsel for Water Rights Program, DENR

p1d_AFM Unique Railroad Contractors – COS (cm)

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WATER RIGHTS
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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. 8338-3, Unique	)	OF FACT, CONCLUSIONS OF LAW,
Railroad Contractors, d/b/a Krause	)	AND FINAL DECISION
Brothers	)	

TO: Unique Railroad, by and through its counsel, Margo Northrup, Riter Rogers, Wattier & Northrup, P.O. Box 280, Pierre, SD 57501; and Martin and Lori Borgen and Alexandria Gravel Products, LLC, by and through their counsel, David Geyer, Delaney, Nielsen & Sannes, PC, P.O. Box 9, Sisseton, SD 57262:

NOTICE IS HEREBY GIVEN that on the 7th day of December 2018, the South Dakota Water Management Board entered its Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter, copies of which is attached hereto and incorporated herein as if fully set out.

Dated this 12th day of December 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

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

IN THE MATTER OF WATER	)	
APPLICATION NO. 8338-3, Unique	)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

The undersigned hereby certifies that a true and correct copy of DENR's Notice of Entry of 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:

Margo D. Northrup
Riter Rogers Law Office
PO Box 280
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Counsel for Unique Railroad

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david@delaneylawfirm.com
Counsel for Intervenors

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

on this 12th day of December 2018.



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Counsel for Water Rights Program, DENR

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WATER RIGHTS
PROGRAM

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

IN THE MATTER OF WATER	)	FINDINGS OF FACT,
APPLICATION NO. 8338-3, Unique	)	CONCLUSIONS OF LAW, AND
Railroad Contractors, d/b/a Krause	)	FINAL DECISION
Brothers	)	

This matter came before the South Dakota Water Management Board (Board) for hearing on October 4, 2018. Board members Jim Hutmacher (Chair), Tim Bjork, Chad Comes, Peggy Dixon, Leo Holzbauer, and Ev Hoyt were present at the hearing and heard the evidence presented. Rodney Freeman was not present and did not participate in this Decision. The applicant Unique Railroad Contractors, d/b/a Krause Brothers (Unique Railroad) was represented by Margo D. Northrup. Intervenors Martin and Lori Borgen and Alexandria Gravel Products, LLC were represented by David A. Geyer. Ann F. Mines Bailey represented the DENR Water Rights Program and its Chief Engineer (DENR).

On November 7, 2018, DENR's counsel submitted proposed Findings of Fact, Conclusions of Law, and Final Decision for the Board's consideration. Counsel for Unique Railroad submitted Objections to DENR's proposed findings and conclusions which were received on November 19, 2018. Counsel for Intervenors submitted their Objections to DENR's proposed findings and conclusions and made additional proposed findings and conclusions of their own which were received on November 26, 2018. On November 28, 2018, after

considering all submitted proposed findings, conclusions, and objections, Board Counsel submitted proposed Findings of Fact, Conclusions of Law, and Final Decision (Proposed Findings) to the Board for consideration at the December 5, 2018 Board meeting. On November 30, 2018, DENR's counsel submitted a request regarding the Proposed Findings, specifically requesting that Finding of Fact 20 be modified to more accurately reflect the facts.

The Board having considered all submitted proposed and amended findings, conclusions, requests, and objections and the Board's entry of the below modified Findings of Fact and Conclusions of Law and Final Decision is to be considered a ruling on those submissions as contemplated by SDCL § 1-26-25. *See In re Application of Benton*, 2005 S.D. 2.

After having heard the testimony presented, considered all records, documents, exhibits, and pleadings on file, and otherwise being fully informed as to all matters pertinent thereto, the Board hereby makes and enters the following:

FINDINGS OF FACT

1. On March 19, 2018, DENR received Water Permit Application No. 8338-3 (Application) on behalf of Unique Railroad seeking the appropriation of water for industrial use in an aggregate wash plant. The operation is located in the NE¼, E½NW¼ of Section 13, T127N-R53W in Marshall County.

2. The Application proposes to divert water from the Pleistocene Series: Unknown aquifer through a series of ponds dug below the water table. The ponds are located in the E½NE¼ of Section 13, T127N-R53W.

3. The Application proposes that water from the ponds would be diverted at a maximum rate of 1.73 cubic feet per second (cfs), not to exceed an annual total of 160 acre-feet per year.

4. The Application also seeks authority to complete a well into the Dakota aquifer to divert water to the ponds as needed at a maximum diversion rate of 0.22 cfs. The well is to be located in the SE¼NE¼ of Section 13, T127-R53W.

5. Unique Railroad had previously been using water in ponds dug into the Pleistocene Series: Unknown aquifer without a permit.

6. In January of 2018, Unique Railroad was notified by the Water Rights Program that a permit was required for their use of this water. Unique Railroad ceased the unauthorized use of water and submitted this Application.

7. On May 30, 2018, notice of the Application and hearing was timely advertised in the Watertown Public Opinion, the Britton Journal, and the Langford Bugle.

8. On June 11, 2018, DENR received a timely petition in opposition to the Application on behalf of Martin and Lori Borgen and Alexandria Gravel Products, LLC (Intervenors).

9. The matter was initially scheduled to be heard by the Water Management Board on July 12, 2018. Intervenors, however, requested a continuance and the matter was automatically delayed.

10. Water Permit Application No. 8338-3 is a new water permit application which requires a determination, pursuant to SDCL § 46-2A-9, that there is a reasonable probability unappropriated water is available for the proposed use, the use would not unlawfully impair existing water rights, the use would be a beneficial use, and the proposed use is in the public interest.

11. In considering water availability, the Board must examine whether granting the permit would result in the annual average quantity of water withdrawn from the groundwater source exceeding the annual average quantity of water recharge to the groundwater source.

12. Aaron Tieman, a DENR natural resources engineer, testified that he reviewed the Application, analyzed the hydrology of the Pleistocene Series: Unknown and Dakota aquifers, reviewed information obtained from observations wells completed into the Dakota aquifer, and reviewed current water rights/permit files and well completion reports for the aquifers.

13. The Pleistocene Series: Unknown aquifer is the designation given to Pleistocene-aged glacial deposits which have not been identified as part of a major aquifer. The Pleistocene Series: Unknown aquifer is an unconfined, shallow water-table aquifer comprised of glacial outwash and porous terrain.

14. The areal extent of the Pleistocene Series: Unknown aquifer is approximately 1,924 acres. Based upon a drilling log from a nearby location, it is believed that the aquifer is approximately seven feet thick in this location.

15. The main form of recharge for this aquifer is precipitation.

16. Mr. Tieman testified that recharge studies have not been conducted regarding the Pleistocene Series: Unknown. However, other studies have been conducted to determine recharge rates for non-buried, unconfined aquifers in eastern South Dakota. Those studies concluded that these aquifers have an average annual recharge rate ranging from 2 to 5.6 inches.

17. Mr. Tieman testified that he used the estimated range of recharge derived from those studies and applied it to the areal extent of the Pleistocene Series: Unknown aquifer and determined that the aquifer receives approximately 320 to 898 acre-feet of recharge per year.

18. There are no observation wells completed into the Pleistocene Series: Unknown aquifer near the Application location. The data from observation wells completed into similar aquifers, however, demonstrates that climatic conditions dominate the water levels.

19. There is only one other water permit issued regarding this portion of the Pleistocene Series: Unknown aquifer—Water Permit No. 8317-3, issued to Intervenor Alexandria Gravel Products, LLC. This existing water right appropriates approximately 38 acre-feet per year.

20. There are no domestic wells completed into this portion of the Pleistocene Series: Unknown aquifer on file with DENR.

21. Mr. Tieman testified that he concluded there is a reasonable probability that unappropriated water is available in the Pleistocene Series: Unknown aquifer to satisfy the Application's proposed appropriation.

22. Mr. Tieman also testified that he examined whether there would be an unlawful impairment to the existing water right in the Pleistocene Series: Unknown.

23. Mr. Tieman testified that Intervenor's Water Right No. 8317-3 is approximately one-quarter to one-half mile from the proposed point of diversion.

24. Mr. Tieman further provided that the direction of the groundwater flow in a shallow water-table aquifer, as presented in the Application, will essentially mirror the direction of the flow of surface water. In reviewing the locations of the existing water right and the Application's proposed point of diversion in conjunction with the elevation contours, Mr. Tieman testified that he determined the groundwater flow to the existing water right would not be impeded by the proposed diversion.

25. In addition, Mr. Tieman testified that given the characteristics of the aquifer, drawdown from the Application's proposed diversion would not extend far beyond the point of diversion, estimating that drawdown would occur out a few inches to no more than 100 feet away from the diversion point.

26. Based upon his review, education, experience, and the available evidence, Mr. Tieman concluded that it is unlikely that the Intervenor's existing water right or domestic use of water would be unlawfully impaired should this Application be granted. Mr. Tieman relied on the characteristics of the aquifer, the distance between the residence in question and the diversion point, and the lack of complaints reported during the period Unique Railroad operated without a permit.

27. The Dakota aquifer is a bedrock aquifer consisting of sand, sandstone, and shale. At the Application location, the aquifer is under confined conditions and is approximately 800 feet below ground surface.

28. The aquifer covers approximately 86% of the state of South Dakota and underlies approximately 889 square miles in Marshall County alone.

29. It is estimated that the Dakota aquifer contains approximately 1.1 billion acre-feet in recoverable water in storage. In Marshall County, it is estimated that the aquifer contains 9.3 million acre-feet of recoverable water in storage.

30. The Dakota aquifer receives recharge from underlying formations and from precipitation where the aquifer outcrops the surface.

31. There have not been any recharge studies conducted on the Dakota aquifer.

32. DENR monitors 43 observation wells completed into the Dakota aquifer with the closest well approximately 77 miles from the Application's proposed point of diversion.

33. Mr. Tieman testified that there has been a decline in hydrostatic pressure in the Dakota aquifer over the years. Beginning in the late 1970s there began to be a gradual stabilization of those declines indicating a possibility that the aquifer is entering a new state of equilibrium.

34. Mr. Teiman further explained that the Dakota aquifer is known to be the source for a vast number of uncontrolled wells. The Dakota aquifer was popular for drilling domestic/stock wells given that they would free flow without the use of a pump. Many wells still flow uncontrolled today. The stabilization demonstrated in the observation well data is reflective of a decrease in artesian head pressure and, thus, less water being allowed to flow to waste.

35. Mr. Tieman testified that there is unappropriated water available in the Dakota aquifer as indicated by the vast size of the aquifer, the stabilization demonstrated in the hydrographs of the observation wells, and the fact that there are still flowing, uncontrolled wells.

36. In Marshall County, there are approximately 124 acre-feet in withdrawals from the Dakota aquifer resulting from two appropriations.

37. The nearest domestic well on file with DENR is approximately three and one-half miles from the Application's proposed point of diversion.

38. Mr. Tieman testified to his opinion that there is a reasonable probability that the Application could be developed without unlawfully impairing existing water rights. Mr. Tieman supported his opinion with testimony that the relatively low diversion rate requested by the Application would not result in a large drawdown effect. Therefore, according to Mr. Tieman, coupled with the distance between the Application's proposed point of diversion and the domestic well, the domestic well would be unlikely to see the effects of any drawdown.

39. The Board also received the testimony of Terry Monson, on behalf of the Application. Mr. Monson is a supervisor of the site for Unique Railroad.

40. Mr. Monson testified that he has served as superintendent of this site since 2009. Unique Railroad is engaged in aggregate mining and the operation at the site is comprised of two components: a crushing plant operation and a screen wash operation. Mr. Monson testified that he believes Unique Railroad commenced the operations at this site in 1998. Mr. Monson further testified regarding the general layout and operations at the site.

41. Mr. Monson testified that Unique Railroad had ceased operations when notified that it had been appropriating water without a permit. He further testified that Unique Railroad was reaching a critical point in its operations in that it was about to run out of product and needed water immediately to resume operations.

42. Upon cross-examination, Mr. Monson testified that a berm on the pond located in the northeast corner of Section 13 was built upon the request of the township supervisor to protect the road from runoff. The berm is approximately two feet to five or six feet high with an outlet to allow the release of water into a vegetated ditch to slow the release of water. The water then runs east in the ditch along the road until it reaches the culvert where it then runs to the northeast.

43. The Board finds Mr. Tieman to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Tieman's testimony and the reports and exhibits which he prepared and/or relied upon.

44. The Board finds that Unique Railroad met its burden set forth in SDCL § 46-2A-9.

45. The Board further finds that Intervenors have not submitted sufficient evidence—through expert opinions, testimony, or other evidence—to support a determination that granting the Application would result in an unlawful impairment of an existing water right with regard to the proposed diversion points at either aquifer.

46. The Board finds that there is a reasonable probability that unappropriated water is available for Unique Railroad's proposed use.

47. The Board further finds that granting this Application would not result in withdrawals from the aquifers exceeding average estimated recharge to the aquifers.

48. The Board further finds that the proposed use of the water for industrial purposes constitutes a beneficial use.

49. The Board further finds that placing the water to this beneficial use is in the public interest.

50. At the conclusion of the hearing, after the Board voted to grant Water Permit Application No. 8338-3, DENR requested that the Board consider ordering the issuance of the permit immediately, rather than waiting until the issuance of the Findings of Fact, Conclusions of Law, and Final Decision. Intervenors did not object.

51. The Board found the request appropriate given the Applicant's need for water to continue business operations and orally delivered an order to issue the permit at the conclusion of the October Water Management Board hearing with these Findings of Fact, Conclusion of Law, and Final Decision to be later entered at the December Board meeting.

52. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

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

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

3. The Chief Engineer recommended granting this Application. This recommendation is not, however, binding on the Board. SDCL § 46-2A-4(8).

4. South Dakota Codified Law, section 46-2A-9 provides that a permit to appropriate water may be issued “only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.”

5. Unique Railroad is required to satisfy each of the factors set forth in SDCL § 46-2A-9. The permit must be denied if an applicant does not meet its burden of proof on any factor.

6. The Board concludes that Unique Railroad has satisfied each of the factors set forth in SDCL § 46-2A-9.

7. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the 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.”

8. The Board concludes there is a reasonable probability that there is unappropriated water available in both the Pleistocene Series: Unknown and Dakota aquifers to fulfill the Application’s requests.

9. The Board further concludes it is not probable that granting the Application would result in withdrawals from either of the aquifers exceeding recharge in violation of SDCL § 46-6-3.1.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversions can be developed without unlawful impairment of existing water rights.

11. 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 is a beneficial use.

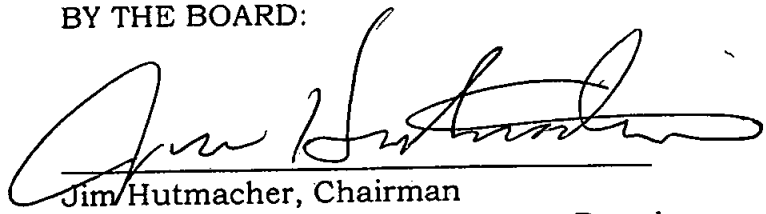
12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be “consistent with the interests of the public of this state in the best utilization of water supplies.” SDCL § 6-1-6(3). The Board finds that appropriating water for industrial use is in the public interest.

13. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

1. The ponds dug into the water table and the well 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 well authorized by Permit No. 8338-3 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the well and the ponds on an individual basis.
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre-feet of water.

Dated this 7th day of December 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



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
DEC 07 2018
WATER RIGHTS
PROGRAM

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

December 6, 2018

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

Re: *In the Matter of Water Application No. 8338-3, Unique Railroad
Contractors, d/b/a Krause Brothers*

Dear Chief Engineer Goodman:

As counsel for the Water Management Board, I have prepared the enclosed AMENDED proposed Findings of Fact, Conclusions of Law, and Final Order in the above referenced matter. I am submitting the proposals 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 December 5, 2018. 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 "Kirsten E. Jasper", with a long horizontal stroke extending to the right.

Kirsten E. Jasper
Assistant Attorney General

KEJ/mn

Enclosures (2)

cc w/encs: parties on certificate of service list

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

IN THE MATTER OF WATER	)	
APPLICATION NO. 8338-3, Unique	)	CERTIFICATE OF SERVICE
Railroad Contractors, d/b/a Krause	)	
Brothers	)	

The undersigned hereby certifies that true and correct copies of the Board's AMENDED 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:

Margo D. Northrup
Riter Rogers Law Office
P.O. Box 280
Pierre, SD 57501
m.northrup@riterlaw.com
Counsel for Unique Railroad

David A. Geyer
Delaney, Nielsen & Sannes, PC
P.O. Box 9
Sisseton, SD 57262
david@delaneylawfirm.com
Counsel for Intervenors

Those members of the Water Management Board who heard the matter:

Chad Comes
116 W. Center
Madison, SD 57042

Peggy Dixon
3311 Hogan Court
Rapid City, SD 57701

Tim Bjork
223 Enchantment Dr.
Rapid City, SD 57701

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

Jim Hutmacher
802 E. 7th St.
Oacoma, SD 57365

Jeanne Goodman, Chief Engineer
DENR Water Rights Program
523 E. Capitol Ave.
Pierre, SD 57501
Jeanne.Goodman@state.sd.us
Eric.Gronlund@state.sd.us

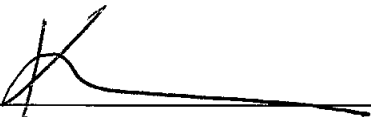
Leo Holzbauer
P.O. Box 64
Delmont, SD 57330

And hand-delivered and sent by electronic mail to:

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

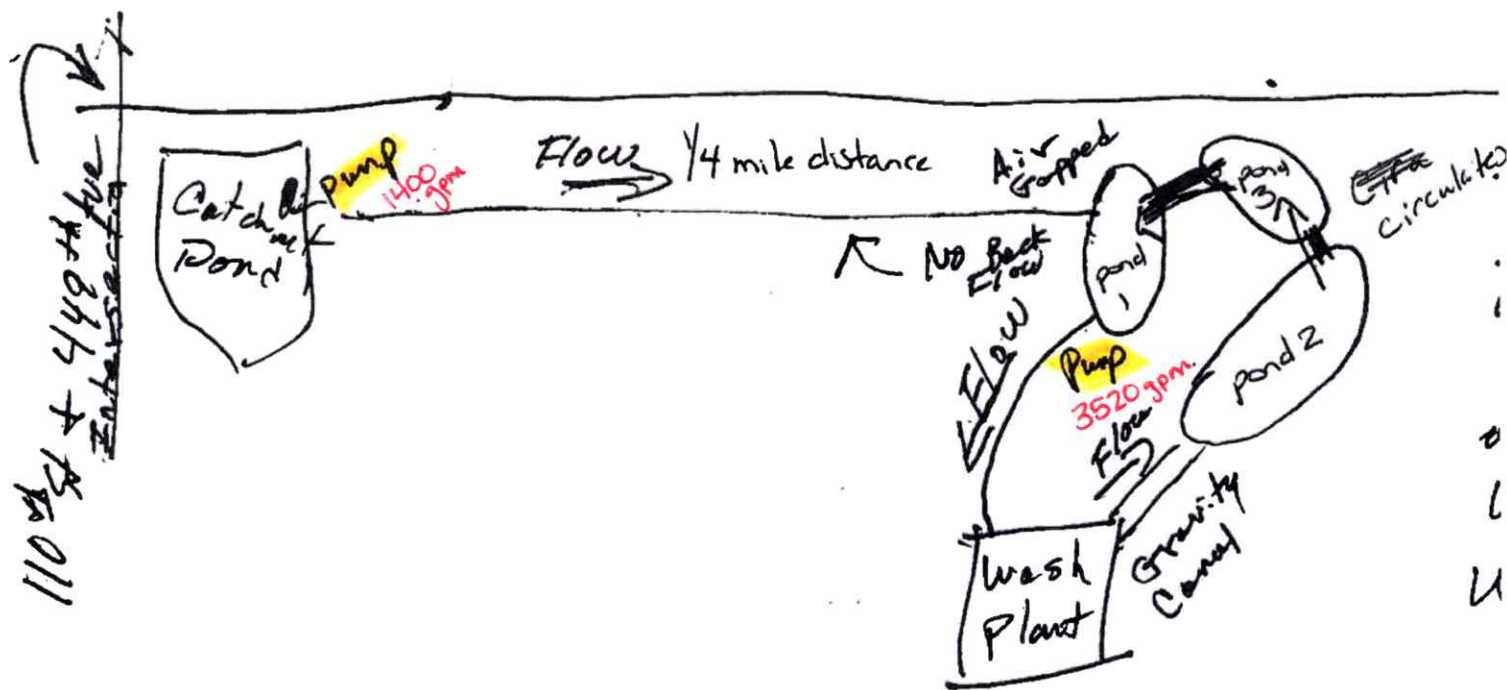
David McVey
Assistant Attorney General
1302 E. Hwy 14, Ste. 1
Pierre, SD 57501
Counsel for Water Management Board

On this 6th day of December 2018.

A handwritten signature in black ink, appearing to read 'Kirsten E. Jasper', is written over a horizontal line.

Kirsten E. Jasper
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605)773-3215

Counsel for Water Management Board



Our water supply is the catchment pond. We pump from there to the first of a series of three recirculating ponds approximately $\frac{1}{4}$ mile away.

The water is pumped to the wash plant by a separate pump then recirculated through those three ponds.



007357-9



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

October 17, 2024

8338-3

Unique Railroad Contractors
dba Krause Brothers Construction
c/o Roger Krause
520 ½ Dakota Ave
Wahpeton ND 58075

Dear Mr. Krause:

Water Permit No. 8338-3 authorized the drilling of one well, into the Dakota Aquifer, to supplement water levels into wash and recirculating ponds which would be dug to levels encountering the glacial outwash of the Pleistocene: Unknown Aquifer. Under Permit No. 8338-3, diversion of water from the ponds is limited to 1.73 cubic feet of water per second (approx. 775 gpm), with an annual volume not to exceed 160 acre-feet.

On September 6, 2024, a Water Rights Program staff engineer conducted a site inspection of the aggregate washing facility located in the NE ¼ Section 13, T127N, R53W, for the purpose of licensing Water Permit No. 8338-3. The inspection found that the well had not been completed but was unable to determine pump rates from the ponds.

During a follow up with Krause Bros staff, it was found that pumps at the wash plant are capable of diverting water at rates of 1,400 gpm (3.12 cfs) & 3,520 gpm (7.84 cfs).

Since the original permit (8338-3) authorizes a lower diversion rate than that which has been developed, I have enclosed a partially completed application for the increased rate, bringing the system into compliance. If the annual volume of 160 acre-feet does not need to be increased, the fee for this application would be \$100.00. If you wish to increase the annual allotted volume, the fees would be based on the amount of water being requested.

Please review the enclosed application and let me know if you have any questions or concerns.

Sincerely,

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

enclosure

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 8338-3

I have this day, September 6, 2024, made a thorough examination of the water use system constructed by Unique Railroad Contractors dba Krause Brother's Construction, 520 ½ Dakota Ave, Wahpeton, SD 58075 of Permit No. 8338-3, bearing the priority of March 19, 2018 authorizing the diversion of 0.22 cu. ft. per second of the waters of the Dakota Aquifer & 1.73 cfs from ponds for industrial use purposes, in Marshall County.

A. Works used to divert the water: One surface pump is being used to pump from a pond

Well Information: No wells were constructed

B. Works used to transport water to place of use:

1) Type Above ground PVC pipe 2) Size 6 inches 3) Length 1,600 feet

C. D. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Y
- 2) Exceptions to compliance are: None

E. Condition and Location:

1. The system is in good condition with the point(s) of diversion located as follows: SURFACE PUMP LOCATION From the NE corner Sec 13 T127N R53W, 350 ft S & 100 ft W, Lat 45.78859 Long - 97.22792 (NE ¼ NE ¼).
2. The works are capable of diverting and conveying to the place of use 3.12 cu. ft. per second of water and annual water use is not to exceed 160 acre-feet of water, which is to be used for Industrial purposes.
the license should be issued for 1.73 cfs.
3. All structures, wells and lands on map Y

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

FSA maps and the ArcGIS program were used to construct the site map.

No wells on the property but water is being supplied to the sediment and wash area from an existing pond as shown on the map with the aid of a surface (centrifugal) pump.

The mailing address and the phone number on the application materials are current.



Darrell DeBoer
Water Rights Inspector
DENR, Water Rights Program

Date report completed: September 10, 2024



Power unit and pump used to take water from a surface pond and transport it to a wash/sediment pond.

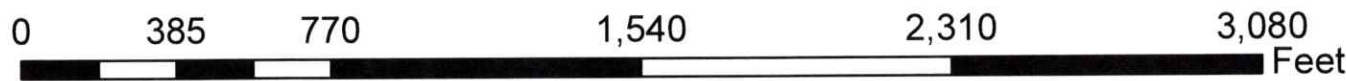
**** After a prolonged email correspondence with Krause Bros staff, it was determined that the only pond capturing water from the underlying aquifer was the “catch pond” and that while the pump at the location was capable of pumping at 1,400 GPM, only 572 gpm was being diverted to the wash plant. All recirculating ponds are lined in such a manner that would prevent inflow/outflow. AMD 10/22/2024**



PUMP LOCATIONS
From the NE corner
Sec 13 T127R 53W

PUMP #1
570 ft S & 140 ft W
Lat 45.78866 Long -97.22811

PUMP #2
2180 ft S & 315 ft W
Lat 45.78421 Long -97.22875



Darrell DeBoer
Water Right Inspector
DANR-Water Rights Program

Dewell, Amanda

From: Nate Green <nate.green@krausebros.com>
Sent: Tuesday, October 22, 2024 12:16 PM
To: Dewell, Amanda
Cc: Terry Monson
Subject: RE: [EXT] Water Permit No. 8338-3

Hello Amanda:

I spoke with Terry. His response is that we may not have understood clearly what was being asked when we filled out the permit. He stated that the ponds (holding tanks) are built partially into the ground and then bermed and lined with clay to be as impervious to loss and therefore inflow, as we are able. The clay should act as a barrier to permeate water from coming in or going into the ground. Thanks.

Nate Green

From: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Sent: Tuesday, October 22, 2024 11:35 AM
To: Nate Green <nate.green@krausebros.com>
Cc: Terry Monson <terry@krausebros.com>
Subject: RE: Water Permit No. 8338-3

Nate,

If you are confirming that the recirculating ponds are fitted with a liner or are in some way preventing inflow from the underlying aquifer, we can proceed with licensing based on the information you've provided. I ask these questions because in the permit, it identifies all the ponds as being constructed into the aquifer.

Water Permit No. 8338-3 appropriates 0.22 cubic feet of water per second (cfs) from one well to be completed into the Dakota Aquifer (800 feet deep) located in the SE 1/4 NE 1/4 Section 13-T127N-R53W for industrial use and dust suppression at an aggregate wash plant. The well water will be diverted from the well to a main pond or one of three recirculation ponds located in the E 1/2 NE 1/4 Section 13-T127N-R53W prior to use in the aggregate wash plant. The ponds are constructed into the water table of the Pleistocene:Unknown undifferentiated glacial outwash. The ponds receive water from surface runoff and spring flow. Water from the ponds will be diverted at a maximum rate of 1.73 cfs and total annual water use will not exceed 160 acre feet of water. The gravel operation is located in the NE 1/4, E 1/2 NW 1/4 Section 13-T127N-R53W within the former boundaries of the Sisseton Wahpeton Indian Reservation and approximately 24 miles east of Britton SD.

Thank you for your patience and assistance.

Amanda Dewell
DANR - Water Rights Program
Permitting Administrator
Main Phone: 605 773-3352
Website: danr.sd.gov



From: Nate Green <nate.green@krausebros.com>
Sent: Tuesday, October 22, 2024 9:51 AM
To: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Cc: Terry Monson <terry@krausebros.com>
Subject: RE: [EXT] Water Permit No. 8338-3

Hello Amanda:

I feel there may be some confusion in the layout of our system and terminology used. The Catchment pond is the only pond that surfaces from the water usage reservoir or the aquifer in SD. The other remaining ponds are holding tanks that do not use ground water or pull from the aquifer. They're holding tanks for the water that has been pulled from the aquifer. Unless I'm mistaken the permit was designed to determine how much water is being pulled from the aquifer (catchment plant). Am I incorrect? The pump that pulls from the ground is designed to pull at maximum 1400gpm. We are not getting that maximum amount from the aquifer. We are getting roughly 572 gpm but our application has been approved for 750gpm.

Again, the wash plant is not a pond, the terminology is inaccurate for our purposes it is only a holding tank that has come from the catchment plant. No water has been pulled from the aquifer from either of the 3 ponds (holding tanks). All water that has been pulled from the aquifer to the Pond 1 (holding tank) is recirculated back to the holding tanks 2 and 3 and then as water levels rise they will flow back to the washplant (holding tank 1) to be reused.

If I'm misunderstanding the concept of this permit please explain.

Thanks.

Nate Green

From: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Sent: Tuesday, October 22, 2024 8:11 AM
To: Nate Green <nate.green@krausebros.com>
Cc: Terry Monson <terry@krausebros.com>
Subject: RE: Water Permit No. 8338-3

Nate,

There seems to have been some confusion as to the current pump rates operating at the aggregate washing facility, ranging from 14 gpm – 1400 gpm/3520 gpm. As previously stated, the Water Rights Program is presently in the process of attempting to license Permit No. 8338-3 based on the system as it has been developed.

Please confirm with this email what the operating pump rates are from both the catch pond and wash pond. If the operating pump rates are within the current authorized rate of diversion, no additional fees would be required.

Thank you,

Amanda Dewell
DANR - Water Rights Program
Permitting Administrator
Main Phone: 605 773-3352
Website: danr.sd.gov



From: Nate Green <nate.green@krausebros.com>
Sent: Thursday, October 17, 2024 12:00 PM
To: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Cc: Terry Monson <terry@krausebros.com>
Subject: RE: [EXT] Water Permit No. 8338-3

Hello Amanda:

I'm writing to let you know that the current permit that we have is correct. Our diverting pump has a maximum gpm of around 1400gpm. This is without any gravitational obstructions that we may have to consider or other obstruction that we may face in pumping water. We are not getting the maximum amount of water per minute for this pump because we face these issue with how the pump is pulling the water. We did a test last week and utilized our diverting pump to fill a 2000 gallon tank to determine what we are actually getting. It took roughly 3 ½ minutes to fill this tank. This is roughly 572 gpm with this test we did. The current GPM rate that we have use on our application is roughly around 775gpm. I considered a bit more because as stated many factors come into play with pulling/pushing water.

I feel confident that we can continue using our current permit. Will you be sending a current bill as you spoke of an increase of \$100.

Also can you please correct our address. We have since moved to:

504 Dakota Ave
Wahpeton, ND 58075

Nate Green

From: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Sent: Thursday, October 17, 2024 9:13 AM
To: Nate Green <nate.green@krausebros.com>
Cc: Terry Monson <terry@krausebros.com>
Subject: RE: Water Permit No. 8338-3

Nate,

The attached letter and application have also been mailed to Mr. Roger Krause.

With the reported pump rates being greater than the maximum pump rate authorized by Permit No. 8338-3, a new application for that increased development is required. If the wash plant can be sufficiently maintained with the 160 ac-ft annual volume authorized by the permit, the fee for the increased rate of diversion would be \$100.00. However, if the wash plant requires more than 160 ac-ft annually, the fees would be based on the fee schedule listed on #4 of the instruction page.

Please let me know if you have any questions or concerns.

Amanda Dewell
DANR - Water Rights Program

Permitting Administrator
Main Phone: 605 773-3352
Website: danr.sd.gov



From: Nate Green <nate.green@krausebros.com>
Sent: Monday, October 14, 2024 12:44 PM
To: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Cc: Terry Monson <terry@krausebros.com>
Subject: RE: [EXT] Water Permit No. 8338-3

Amanda, after several calls to the manufacturer and to our sales team we have found that the maximum flow would be about 1400 gpm not 14 gpm. This is the pump that takes water from the catchment pond to pond1 we take water from to pressurize the wash plant. This pond is one of three that we use for settlement and recirculation of water to be used again and again.

As far as a rate at which water is diverted Terry mentioned that some of the water that goes into the washplant exits to the recirculation ponds via a channel (small canal) and some of it leaves with the material that is washed. From there it may seep back into the aquifer or possibly drain back towards the catchment pond. Pond 1 and 2 are designed to catch material as the water flows back to pond 1. The level of Pond 2 and 3 determine if the water will flow to each pond. If we are washing material the ponds are typically full.

The main pump going to the wash plant would have a maximum of 3520 gpm.
There is a booster pump in line on one line and another 3 inch pump if we are running the trommel washer.

The water use map Terry drew out to illustrate how our water is moved and used.
The minesite photo will give an over view of the mine site and the minesite ponds photo shows where our water is caught, stored and pumped out for use with the yellow arrow to the north and the second yellow arrow to the south indicates where the recirculation ponds are located.

If you have further questions, please don't hesitate to ask. We will do our best to provide an answer.

Thanks.

Nate Green

From: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Sent: Tuesday, October 8, 2024 11:15 AM
To: Nate Green <nate.green@krausebros.com>
Subject: RE: Water Permit No. 8338-3

I would be specifically looking for the rate at which water is diverted from the wash pond to the settling ponds, understanding that there is recirculation taking place thereafter.

Amanda Dewell
DANR - Water Rights Program

Permitting Administrator
Main Phone: 605 773-3352
Website: danr.sd.gov



From: Nate Green <nate.green@krausebros.com>
Sent: Monday, October 7, 2024 11:16 AM
To: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Subject: FW: [EXT] Water Permit No. 8338-3

Hello Amanda:

Here is the information that I have received. Let me know if you need anything else. It does not appear that a 2nd pump is being used to move water to our wash plant.

Nate

From: Terry Monson <terry@krausebros.com>
Sent: Saturday, October 5, 2024 11:46 PM
To: Nate Green <nate.green@krausebros.com>
Subject: RE: Water Permit No. 8338-3

Multiple pumps are used to recirculate the water through the washplant however only the one is used to pull water from the catchment pond.

TM

From: Nate Green <nate.green@krausebros.com>
Sent: Friday, October 4, 2024 10:53:11 AM
To: Terry Monson <terry@krausebros.com>
Subject: FW: Water Permit No. 8338-3

Do you have any information on this?

Nate

From: Dewell, Amanda <Amanda.Dewell@state.sd.us>
Sent: Wednesday, October 2, 2024 4:37 PM
To: Nate Green <nate.green@krausebros.com>
Subject: RE: Water Permit No. 8338-3

Nate, are you aware of a pump down at the three ponds in the SE ¼ NE ¼ labeled on the map at "wash pond" area, in the email I'd sent previously? We understand that water is being diverted south at 14 GPM, but question is a second pump is used?

Amanda Dewell
DANR - Water Rights Program
Permitting Administrator

Main Phone: 605 773-3352

Website: danr.sd.gov



From: Nate Green <nate.green@krausebros.com>

Sent: Tuesday, October 1, 2024 1:03 PM

To: Dewell, Amanda <Amanda.Dewell@state.sd.us>

Cc: Lee Gircsis <Lee.Gircsis@gormanrupp.com>; Terry Monson <terry@krausebros.com>

Subject: RE: [EXT] Water Permit No. 8338-3

Hello Amanda:

I will do the best that I can to help you out. I did contact the manufacturer to see what information they could send me. They sent me the PDF document.

Are you able to determine pump rate from this information?

According the performance curve this pump can perform the maximum of 14GPM.

I do have the gentlemen's name that I spoke to Gorman-Rupp Pumps that I have included on this email if there is particular questions that you have that he may be able to answer.

Let me know if there is anything else I can help you with.

Nate Green

From: Dewell, Amanda <Amanda.Dewell@state.sd.us>

Sent: Tuesday, October 1, 2024 11:45 AM

To: Nate Green <nate.green@krausebros.com>

Subject: Water Permit No. 8338-3

Nate –

Thank you for taking my call. Just to recap, I am looking for the pump rate that is being used at the gravel washing operation located in the NE ¼ Section 13, T127N, R53W (map included below). The reason for this request is that we have reached the time in which this permit (No. 8338-3) is ready to be licensed, effectively transitioning to a "water right". Once I have that pump rate, I can proceed with licensing of this system.

Amanda Dewell

DANR - Water Rights Program

Permitting Administrator

Main Phone: 605 773-3352

Website: danr.sd.gov



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

OCT 23 2024

8338-3

Unique Railroad Contractors
dba Krause Brother's Construction
c/o Roger Krause
504 Dakota Ave
Wahepton ND 58075

Dear Mr. Krause:

Enclosed is Water License No. 8338-3. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

So long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

NOTE: The investigation of Permit No. 8338-3 found that while diversion from the catch pond had been self-regulated below 1.3 cfs, the system is capable of diverting over 1.73 cfs. Therefore, this license is issued for 1.73 cfs, as authorized by Permit No. 8338-3.

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 8338-3

(1) Unique Railroad Contractors dba Krause Brother's Construction, 504 Dakota Av, Wahpeton ND 58075, made Application No. 8338-3, May 19, 2018, for a water permit to divert 0.22 cubic feet of water per second (cfs) from groundwater, one well (Dakota Aquifer). Water from the well would be diverted into a catch pond, which encountered groundwater (Pleistocene: Unknown Aquifer). The pond also received water from incidental runoff and spring flow. Water from the catch pond would then be diverted at a rate of 1.73 cfs for industrial purposes at an aggregate washing facility in Marshall County, South Dakota, with total annual use not exceeding 160 acre-feet of water.

Permit No. 8338-3, with a priority date of March 19, 2018, was approved by the Water Management Board on October 4, 2018, and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before October 4, 2023, and for the application to beneficial use of water on or before October 4, 2027.

An investigation conducted for licensing purposes found that the well was never completed and that the pond constructed into the Pleistocene: Unknown undifferentiated glacial outwash was the only point of diversion developed for this project.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 1.73 cubic feet of water per second for beneficial use. The location of the diversion point is: *(within the former boundaries of the Sisseton Wahpeton Indian Reservation)*

- Catch Pond: 570 ft S & 140 ft W of the NE corner Section 13, T127N, R53W (NE ¼ NE ¼)
(Latitude 45.78866 & Longitude -97.22811)

(3) The water is to be used during the following described annual period: January 1 – December 31.

(4) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use.

(5) Pursuant to South Dakota Water Law 46-5-30.1 Unique Railroad Contractors dba Krause Brother's Construction, the holder and/or owner of Water Right No. 8338-3 is issued a license to appropriate water, the right to use 1.73 cubic feet of water per second from groundwater (Pleistocene Unknown Aquifer), runoff, and spring flow, with a priority date of March 19, 2018, from the location specified in (2) of this license for industrial purposes at an aggregate washing facility, with a total annual volume not to exceed 160 acre-feet of water.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 8338-3 and subject to the following qualifications:

1. The ponds dug into the water table and the well will be located near domestic wells and other wells which may obtain water from the same aquifer. The owner of the 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. *(The well was not drilled.)*

continued

2. The well authorized by Permit No. 8338-3 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. *(The well was not drilled.)*
3. The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the wells and the ponds on an individual basis. *(The well was not drilled.)*
4. Water Permit No. 8338-3 authorizes a total annual diversion of 160 acre-feet of water.

Eric Gronlund

Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

OCT 23 2024

date

