RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Adopt the attached resolution pursuant to the power vested in the Board under SDCL § 5-2-10, requesting the commissioner of school and public lands to draw up all necessary documents and to request that the Governor approve the grant of perpetual easements and a temporary construction easements on lands occupied by the South Dakota State University in Meade County, South Dakota, to the Bear Butte Valley Water, Inc., a South Dakota corporation, whose address is PO Box 351, Sturgis, South Dakota 57785 as follows, and as shown more specifically in the engineering drawings attached to the resolution:

(Continued)

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SUBJECT: Resolution requesting the grant of a perpetual easement property occupied by the South Dakota State University Agricultural Extension Service, in Meade County, South Dakota, to permit the construction and operation of a water reservoir, lift station, and accompanying distribution lines.

BACKGROUND: South Dakota State University requests that the Board adopt a resolution pursuant to the power vested in the Board under SDCL § 5-2-10, requesting the commissioner of school and public lands to draw up all necessary documents and to request that the Governor

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SOUTH DAKOTA BOARD OF REGENTS

Committee on Budget and Finance

AGENDA ITEM: III – O

DATE: December 12-13, 2012

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RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Adopt the attached resolution pursuant to the power vested in the Board under SDCL § 5-2-10, requesting the commissioner of school and public lands to draw up all necessary documents and to request that the Governor approve the grant of perpetual easements and a temporary construction easements on lands occupied by the South Dakota State University in Meade County, South Dakota, to the Bear Butte Valley Water, Inc., a South Dakota corporation, whose address is PO Box 351, Sturgis, South Dakota 57785 as follows, and as shown more specifically in the engineering drawings attached to the resolution:

for the construction and operation of a water distribution system, including pipelines, valves, meters, hydrants and all other appurtenant equipment and fixtures on and within the east sixty-three feet (63’), including the Section line right-of-way, of Grantor’s property described as follows: Section 13: Government Lot 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota; Section 24: Government Lots 1, 2, 3 and 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota; and Section 25: Government Lots 1 and 2, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota; and

for the construction and operation of a reservoir, booster station and water lines as part of a water distribution system, three tracts along the east one thousand three hundred sixty seven feet of the south section line, the first tract comprising the south two hundred feet (200’) from a point one thousand three hundred sixty-seven feet (1,367’) west of the southeast corner of the section to a point one thousand one hundred sixty-seven feet (1,167’) west of the corner, and the second tract comprising the south sixty-three feet (63’) from a point one thousand one hundred sixty-seven feet (1,167’) west of the southeast corner of the section to a point one hundred feet west of the corner, and a third tract comprising the south one hundred feet (100’) of the east one hundred feet (100’) of Section 13: Government Lot 4, Township 5 North, Range 5 East of the Black Hills
approve the grant of a perpetual easement and a temporary construction easement on lands occupied by the South Dakota State University in Meade County, South Dakota, to the Bear Butte Valley Water, Inc., a South Dakota corporation, whose address is PO Box 351, Sturgis, South Dakota 57785 for the construction and operation of a water reservoir, lift station, and accompanying distribution lines.

Bear Butte Valley Water, Inc., approached SDSU to request the grant of certain easements that would permit it to install a water reservoir on high ground occupied by the Agricultural Experiment Station being used as grazing land. Bear Butte Valley Water, Inc., would install water lines from the reservoir to service customers.

The SDSU site does not presently have a permanent water source. Consequently, SDSU negotiated an agreement with Bear Butte Valley Water, Inc., to permit the grant of easements to erect a water reservoir, a lift station, and to provide water lines, the longest run of which parallels to an existing improved section line roadway.

In exchange, Bear Butte Valley Water, Inc. will install and hook-up water taps to serve two SDSU pastures and will provide SDSU a $31,200 credit for future water use. The credit towards future water use, at today’s pricing, would serve the pastures for twenty-years.
RESOLUTION

Resolution requesting the grant of a perpetual easement property occupied by the South Dakota State University Agricultural Extension Service, in Meade County, South Dakota, to Bear Butte Valley Water, Inc., to permit the construction and operation of a water reservoir, lift station and accompanying distribution lines.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of University of , in consideration the agreement set forth in Attachment A, and as further specified in the draft grant of easement documents attached hereto as Attachments B and C, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the commissioner of school and public lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to effect the grant a perpetual easement and a temporary construction easements on lands occupied by the South Dakota State University in Meade County, South Dakota, to the Bear Butte Valley Water, Inc., a South Dakota corporation, whose address is PO Box 351, Sturgis, South Dakota 57785 as follows, and as shown more specifically in the engineering drawings attached to this resolution:

for the construction and operation of a water distribution system, including pipelines, valves, meters, hydrants and all other appurtenant equipment and fixtures on and within the east sixty-three feet (63’), including the Section line right-of-way, of Grantor’s property described as follows: Section 13: Government Lot 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota; Section 24: Government Lots 1, 2, 3 and 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota; and Section 25: Government Lots 1 and 2, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota; and

for the construction and operation of a reservoir, booster station and water lines as part of a water distribution system, three tracts along the east one thousand three hundred sixty seven feet of the south section line, the first tract comprising the south two hundred feet (200’) from a point one thousand three hundred sixty-seven feet (1,367’) west of the southeast corner of the section to a point one thousand one hundred sixty-seven feet (1,167’) west of the corner, and the second tract comprising the south sixty-three feet (63’) from a point one thousand one hundred sixty-seven feet (1,167’) west of the southeast corner of the section to a point one hundred feet west of the corner, and a third tract comprising the south one hundred feet (100’) of the east one hundred feet (100’) of Section 13: Government Lot 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota.

Grantor requests that any grant of easement provide that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agree to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.
Dated this thirteenth Day of December 2012
SOUTH DAKOTA BOARD OF REGENTS

By _________________________________

Kathryn O. Johnson
President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Spearfish, South Dakota, on the thirteenth day of December 2012, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this thirteenth Day of December 2012
SOUTH DAKOTA BOARD OF REGENTS

By _________________________________

Randy Schaefer
Secretary
NOTE:
LOCATION OF IMPROVEMENTS IS APPROXIMATE AND MAY CHANGE DURING CONSTRUCTION. ADDITIONAL IMPROVEMENTS THAT ARE NOT SHOWN MAY BE NECESSARY, BUT WILL REMAIN WITHIN THE EASEMENT AREA.

PUMP STATION SITE PLAN

DeWild Grant Beckert and Associates Company
Consulting Engineers and Land Surveyors

RESERVOIR SITE PLAN
BEAR BUTTE VALLEY WATER INC.
STURGIS, SOUTH DAKOTA

Date: JULY 2012
Design By: JMo
Project Manager: MNO
Project Number: 80000
Plot Date: 8712
NOTE:
LOCATION OF IMPROVEMENTS IS APPROXIMATE AND MAY CHANGE DURING CONSTRUCTION. ADDITIONAL IMPROVEMENTS THAT ARE NOT SHOWN MAY BE NECESSARY, BUT WILL REMAIN WITHIN THE EASEMENT AREA.

RESERVOIR SITE EASEMENT

PROPOSED 34'Ø, 250,000 GALLON GROUND STORAGE RESERVOIR

ACCESS & PIPELINE EASEMENT

R.O.W.

SECTION LINE

R.O.W.

RESERVOIR SITE PLAN

DeWild Grant Reekart and Associates Company
Consulting Engineers and Land Surveyors

Beck Rapids, IA  -  Sioux City, IA  -  Sioux Falls, SD

Date: JULY 2012
Designed By: JMG
Project Manager: MNO
Project Number: 804001
Plot Date: 8/7/12

RESERVOIR SITE PLAN
BEAR BUTTE VALLEY WATER INC.
STURGIS, SOUTH DAKOTA
WATERLINE, BOOSTER STATION AND RESERVOIR EASEMENT

This agreement is between The State of South Dakota for the exclusive use of South Dakota State University, Brookings, South Dakota, Grantor, and Bear Butte Valley Water, Inc. a South Dakota corporation, Grantee. Grantor is the owners of the following real property described as follows and which is hereinafter referred to as “Grantor’s Property”:

Section 13: Government Lot 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota

Grantor, in consideration of One Dollar and other Good and Valuable Consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Grantee, its successors, and assigns forever, the exclusive perpetual right and easement on Grantor’s Property with the right for ingress and egress and to construct, operate, maintain, repair, remove, and renew a waterline or any appurtenant facilities of a water distribution system including, but not limited to, pipelines, valves, meters, and hydrants. The Grantee covenants to restore Grantor’s Property upon completion of any construction, operation, maintenance, repair, removal or renewal of the waterline or appurtenant facilities.

The above described easement shall be a 30-foot-wide area along a portion of Grantor’s Property as reflected on the attached Exhibit A. The waterline may be installed anywhere within the 30 foot easement unless prohibited by other preexisting easements, reservations, restrictions and covenants of record.

In addition to the above described easement, Grantor also hereby grants, bargains, sells, and conveys unto the Grantee, its successors, and assigns forever, the exclusive perpetual right and easement on Grantor’s Property with the right for ingress and egress and to install, construct, operate, maintain, repair, remove, and renew a water booster station and a reservoir or any appurtenant facilities of the booster station and reservoir. The permanent, perpetual easement shall be located in the area represented in the attached Exhibit A. To the extent that Grantee determines electrical power is necessary for Grantee’s proper use of the property, the easement contained in this document shall include the right to install power to and over the easements for use at the booster station or reservoir.
After the installation of the waterline, reservoir and booster station, Grantee shall fill and level all ditches, ruts and depressions caused by construction operations, remove all debris resulting from such construction operations, and generally restore the surface to usable condition, all within a reasonable time after the installation. Should Grantee abandon this easement for any cause, unless Grantor agrees otherwise, Grantee shall remove the reservoir or booster station and other property placed within the abandoned easement area by or for Grantee and fill and level all ditches, ruts and depressions caused by removal operations, remove all debris resulting from removal operations, and generally restore the surface to usable condition, all within a reasonable time after the abandonment. When removing the reservoir and booster station, Grantee shall only be obligated to remove the structure to three feet (3’) below grade and may then cover with at least one foot (1’) of topsoil and grass. In the event of abandonment of the easement, Grantee may at Grantee’s discretion, remove the waterlines or cap the waterlines and leave it in place. If Grantee fails to properly remove the improvements and restore the ground, Grantor may do so at Grantee’s risk and expense, and Grantee agrees to reimburse Grantor for the cost of the removal and restoration operations.

The Grantee covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the Grantor, Grantor’s successors and assigns.

Grantor has clear title to property above described wherein the easement runs and Grantor warrants that Grantor has the right to convey this easement. Grantor agrees not to construct any improvements or fixtures over the easement that would interfere with Grantee’s use of the easement.

Grantor agrees that these easements shall be freely assignable to any entity or any successor company or entity. Grantor acknowledges that this easement may be assigned to any governmental or private institution for purposes of securing financing. The parties to this agreement agree that it shall extend to and be binding upon the heirs, administrators, executors, successors, beneficiaries, and assigns of Grantor and Grantee.

IN WITNESS WHEREOF the Grantor does hereby set forth its signature hereto in due execution of this agreement this _____ day of ____________, 2012.

GRANTOR:  
The State of South Dakota for the exclusive use of South Dakota State University

By: ________________________________
Its: ________________________________
ACKNOWLEDGMENT

State of South Dakota  )
 ) ss.
County of______________ )

On this the _______ day of_______________________, 2012, before me the
undersigned officer, personally appeared__________________________, the
_________________ of The State of South Dakota for the exclusive use of South Dakota
State University, known to me to be the person who is described in and who executed the
within and foregoing instrument and he/she acknowledged to me that he/she executed the
same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

____________________________________
Notary Public, South Dakota
(SEAL) My Commission Expires:________________
AGREEMENT OF PAYMENT FOR EASEMENTS

Bear Butte Valley Water, Inc. (hereinafter “Bear Butte Valley”) has requested easements over property owned by the State of South Dakota (hereinafter “the State”) and currently being used by the South Dakota State University. The required easements are attached hereto.

In exchange for the State granting the attached easements or in a form substantially similar to the attached easements, Bear Butte Valley agrees to provide the following upon initial construction of its water systems:

1. A credit to the State for future water use in the amount of Thirty-One Thousand Two Hundred Dollars ($31,200);

2. Two pasture line taps without any payment of a hook-up fee, valued at $1,800 each or a meter pit and fittings charge, valued at $1,000 each, installed during initial construction; and

3. During initial construction, Bear Butte will install, at its cost, up to 1,000 feet of service line. The State shall designate where the 1,000 feet will be placed. For example, the State can designate 950 feet of the service line to be dedicated to one pasture tap and 50 feet to the other pasture tap or any combination that totals up to 1,000 feet. The service line linear foot cost estimate as installed is $3.75 for a total $3,750 value.

Except as modified herein, the service being provided by Bear Butte shall be provided under the same circumstances, rates, rules and conditions as taps and water are provided to an individual acquiring a service from Bear Butte Valley.
The State will receive a regular bill at an address and location provided by the State to Bear Butte Valley reflecting the amount of credit unused.

Dated this ___ day of ____________, 2012.

BEAR BUTTE VALLEY WATER, INC.

BY: __________________________________
ITS: __________________________________
WATERLINE UTILITY EASEMENT

This waterline utility easement is between The State of South Dakota for the exclusive use of South Dakota State University, Brookings, South Dakota, hereinafter referred to as Grantor, and BEAR BUTTE VALLEY WATER, INC., a South Dakota corporation, whose address is PO Box 351, Sturgis, South Dakota 57785, hereinafter referred to as Grantee. The Grantor, in consideration of One Dollar and other Good and Valuable Consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Grantee, its successors, and assigns forever, the exclusive perpetual right and easement on land owned by the Grantor with the right to construct, operate, maintain, repair, and renew waterlines or appurtenant facilities of a water distribution system including pipelines, valves, meters, hydrants and all other appurtenant equipment and fixtures. Said perpetual right and easement will be on and within the east 63 feet, including the Section line right-of-way, of Grantor’s property described as follows:

Section 13: Government Lot 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota

Section 24: Government Lots 1, 2, 3 and 4, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota

Section 25: Government Lots 1 and 2, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota

After the installation of the waterline, Grantee shall fill and level all ditches, ruts and depressions caused by construction operations, remove all debris resulting from such construction operations, and generally restore the surface to usable condition, all within a reasonable time after the installation. Should Grantee abandon this easement for any cause, unless Grantor agrees otherwise, Grantee shall remove above ground waterline fixtures placed within the abandoned easement area by or for Grantee and fill and level all ditches, ruts and depressions caused by removal operations, remove all debris resulting from removal operations, and generally restore the surface to usable condition, all within a reasonable time after the abandonment. In case of abandonment, Grantee may at Grantee’s discretion, remove the waterline or cap the waterline and leave it in place. If Grantee fails to properly remove the
improvements and restore the ground, Grantor may do so at Grantee’s risk and expense, and Grantee agrees to reimburse Grantor for the cost of the removal and restoration operations.

The Grantee covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the Grantor, Grantor’s successors and assigns.

Grantor has clear title to property above described wherein the easement runs and Grantor warrants that Grantor has the right to convey this easement. Grantor agrees not to construct any improvements or fixtures over the easement that would interfere with Grantee’s use of the easement.

Grantor agrees that these easements shall be freely assignable to any entity or any successor company or entity. Grantor acknowledges that this easement may be assigned to any governmental or private institution for purposes of securing financing. The parties to this agreement agree that it shall extend to and be binding upon the heirs, administrators, executors, successors, beneficiaries, and assigns of Grantor and Grantee.

IN WITNESS WHEREOF the Grantor does hereby set forth Grantor’s signature hereto in due execution of this agreement this _____ day of ______________, 2012.

GRANTOR:
The State of South Dakota for the exclusive use of South Dakota State University

By:____________________________________

Its:____________________________________

STATE OF ______________________)

) SS:
COUNTY OF ______________________)

On this ___ day of __________, 2012, before me personally appeared ____________________________, the ____________________________ of The State of South Dakota for the exclusive use of South Dakota State University, known to me to be the person who is described herein, and who executed the within and foregoing instrument and severally acknowledged that he/she executed the same.

____________________________________

(Seal)                My Commission Expires: ________________