

**SOUTH DAKOTA GAME, FISH & PARKS COMMISSION
STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITIONS BY: CHRIS SCHUSTER AND ARLA SCHUSTER TO RESTRICT RECREATIONAL USE OF CERTAIN WATERS KNOWN AS PORTIONS OF CATTAIL-KETTLE LAKE IN MARSHALL COUNTY, SOUTH DAKOTA	FINDINGS OF FACT AND CONCLUSIONS OF LAW
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The hearing in this contested case was held on October 9, 2025, at the Beeler Community Center in Lemmon, South Dakota, before a quorum of the South Dakota Game, Fish & Parks Commission. The hearing was held before Game, Fish & Parks Commissioners Travis Bies, Jon Locken, Jim White, Bruce Cull, Julie Bartling, and Chairwoman Stephanie Rissler presiding. Two members of the eight-member Commission were absent. The Independent Hearing Officer was Catherine Williamson.

The Petitioners, Chris Schuster and Arla Schuster, appeared personally without counsel. Intervenor Dana Rogers, Executive Director of the South Dakota Wildlife Federation, appeared personally without counsel. Other intervenors appeared virtually. Those intervenors were Ryan Roehr, Chris Gukeisen, and Emmett Keyser. All intervenors spoke in opposition to the Petitions. Written comments from the public that were submitted to the Department of Game, Fish & Parks were also read into the record. All comments were in opposition to the Petitions.

The members of the Commission present heard all witnesses testify. The Commissioners in attendance were able to make their judgments as to the reliability and credibility of the

testimony presented by all witnesses. All the Commissioners present heard all the testimony and reviewed all of the exhibits which were admitted at hearing. After considering the record in its entirety, and the Commission having voted to pass Resolution 25-11, a copy of which is attached hereto, now the South Dakota Game, Fish and Parks Commission does hereby make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner Chris Schuster is the owner of real estate located in the Northeast ¼ and Southeast ¼ of the Southwest ¼ of section 6 of Eden Township in Marshall County, South Dakota.
2. Petitioner Arla Schuster is the owner of real estate located in the Northwest ¼ and Southwest ¼ of Section 6, 125, 55W in the 5th PM in Marshall County, South Dakota.
3. Some or all of the real property described in paragraphs 1 & 2 above is now covered by water and has been to varying degrees since at least 1998.
4. Directly North of Petitioner Chris Schuster's real estate is state-owned land known as Lost Lake GPA.
5. In June, 2017, the South Dakota Legislature met in Special Session to pass House Bill 1001. It later became codified as SDCL 41-23 – Recreational Use of Nonmeandered Waters. As part of the bill, specific lakes were listed in SDCL 41-23-8 (section 8 lakes) as nonmeandered lakes that would remain open for recreational use. Cattail-Kettle Lake is one of the enumerated lakes listed in section 8.
6. SDCL 41-24-9 laid out specific criteria in which the Commission would consider when making a determination whether to grant a landowner's petition to restrict recreational access to a Section 8 lake.

7. The State of South Dakota has previously constructed a boat ramp on the west or southwest corner of Kettle Lake which is known as the Forst Sisseton boat ramp. This ramp provides access to boaters who use the waters in the summer and people who drive motor vehicles onto the ice in the winter, primarily to ice fish.
8. Members of the public utilize Kettle and Cattail lakes for fishing in both the summer and winter, waterfowl hunting, boating, canoeing, and snowmobiling.
9. Substantial recreational opportunities exist for the public on Kettle Lake and Cattail Lake, and the public has taken advantage of those opportunities.
10. The quantity of the water located in the Cattail-Kettle Lake chain has varied over the years dependent upon climatic conditions.
11. No one can predict what the water levels in the Cattail-Kettle Lake chain may be in the future.
12. Adjacent real estate which is not covered by water, but owned by Chris Schuster and Arla Schuster, respectively, is used by their families and invitees.
13. Petitioners have experienced some problem with trespassers. Testimonial evidence was presented by the Petitioners that members of the public have crossed their land in order to gain access to Lost Lake GPA.
14. Petitioners' privacy concerns related mainly to the general right to quiet enjoyment of private property. Petitioners expressed other privacy concerns, including members of the public using private docks adjacent to their land, but beyond the scope of the Petitions.
15. Petitioners have concerns regarding safety involving the potential of shooting firearms toward themselves and their family members who are utilizing the land adjacent to Lost Lake GPA.

16. Petitioners have concerns regarding safety for members of the public who are utilizing the waters and may be injured by falling trees. However, the safety concern described in SDCL 41-23-9 relates to safety on the part of the Petitioners and those who use the adjacent lands with permission of the Petitioners, and not members of the public who are lawfully using the public waters.
17. No evidence was presented that Petitioners have suffered any substantial financial losses as a result of the public's access to Cattail-Kettle Lake, and in particular, as a result of the public's access to any of the waters or areas which the Petitioners seek to have closed in their submitted Petitions.
18. The commission has considered privacy, safety, and substantially affected financial interests of the Petitioner in reaching its decision on these Petitions.
19. The Commission finds as fact that the considerations of privacy, safety, and the substantially affected financial interests of the Petitioners mitigate in favor of denying the Petitions.
20. The Commission has also considered the history of use of the waters in question, the water quality, water quantity, and the public's interest in recreational use of the water.
21. The Commission finds as fact that consideration of the history of the use of the waters in question, the water quality, water quantity, and the public's interest in recreational use of the water mitigates in favor of denying the Petitions.

CONCLUSIONS OF LAW

1. The South Dakota Game, Fish, & Parks Commission has jurisdiction over both subject matter and persons who are involved in this proceeding.

2. This proceeding was conducted pursuant to SDCL 41-23-9, and administrative rules impact this contested case, including but not necessarily limited to, ARSD 41:04:06:01 and 41:04:06:02.
3. The South Dakota Game, Fish, & Parks Commission and Department complied with all notice requirements relating to notice of the contested case hearing, whether imposed by statute or administrative rule.
4. The Petitioners had the burden of going forward and the burden of proof in this proceeding.
5. The Petitioners were granted the opportunity to present evidence and arguments supporting the Petitions and the relief which they sought.
6. Intervenors who appeared and desired to testify were permitted to give evidence both in support of and in opposition to the Petitions.
7. A quorum of the entire Game, Fish, & Parks Commission was present for the entire hearing, heard and considered all the testimony, evidence, and argument.
8. The Petitioners failed to meet their burden of proof by a preponderance of the evidence that considerations of the privacy, safety, and substantially affected financial interests of the Petitioners support granting the restrictions sought in the Petitions.
9. The Petitioners failed to meet their burden of proof by a preponderance of the evidence that the history of use, water quality, water quantity, and the public's interest in recreational use of the water support granting the restrictions sought in the Petitions.
10. The Petitioners failed to meet their burden of proof under SDCL 41-23-9 and Administrative Rules promulgated pursuant to the authority of that statute to support the granting of the Petitions and relief sought in the Petitions.

11. At the conclusion of the hearing and the deliberation of the Commission members present, the Commission returned to open session and unanimously approved Resolution 25-11, which denied the Petitions.
12. Resolution 25-11, which is attached hereto, should be incorporated and filed within the records of this Commission, and an order consistent with that resolution and these Findings of Fact and Conclusions of Law shall be entered by the Commission.

Dated this 31 day of October, 2025.

BY: Stephanie Rissler
Stephanie Rissler
Chairwoman of the SD Game, Fish & Parks
Commission